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December 29, 2014

**VIA eFILING**

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

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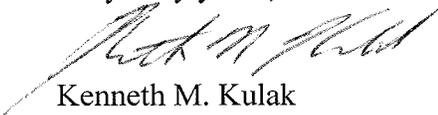
Dear Secretary Chiavetta:

Enclosed is the **Answer of PECO Energy Company to the Office of Small Business Advocate's Petition for Reconsideration of the Commission's Opinion and Order of December 4, 2014** (the "Answer") in the above-referenced matter.

As evidenced by the attached Certificate of Service, a copy of the Answer has been served upon Administrative Law Judge Cynthia W. Fordham and all parties.

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

Almaty Beijing Boston Brussels Chicago Dallas Frankfurt Harrisburg Houston Irvine London Los Angeles Miami  
Moscow New York Palo Alto Paris Philadelphia Pittsburgh Princeton San Francisco Tokyo Washington Wilmington

**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 **Answer of PECO Energy Company to the Office of Small Business Advocate's Petition for Reconsideration of the Commission's Opinion and Order of December 4, 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**

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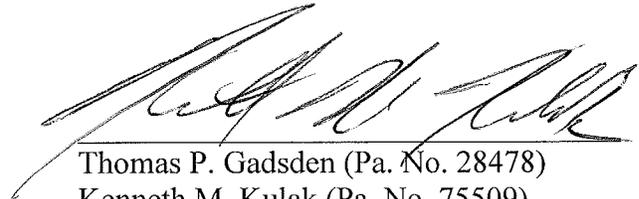
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*Counsel for PECO Energy Company*

Date: December 29, 2014

**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 :**

**ANSWER OF PECO ENERGY COMPANY  
TO THE OFFICE OF SMALL BUSINESS ADVOCATE'S  
PETITION FOR RECONSIDERATION  
OF THE COMMISSION'S OPINION AND ORDER OF DECEMBER 4, 2014**

Pursuant to 52 Pa. Code § 5.572(e), PECO Energy Company ("PECO") hereby answers the petition ("Petition") of the Office of Small Business Advocate ("OSBA"), which seeks reconsideration of the Pennsylvania Public Utility Commission's (the "Commission's") December 4, 2014 Opinion and Order approving PECO's Default Service Program for the June 1, 2015 to May 31, 2017 period ("DSP III"), as modified by the Joint Petition for Partial Settlement ("Settlement") filed on August 28, 2014.

In the Opinion and Order (the "Order"), the Commission resolved two issues reserved for litigation in the Settlement, namely: (1) the procurement of default service supply for PECO's Medium Commercial Class, which consists of PECO electric distribution customers with annual peak demand equal to or greater than 100 kW but less than 500 kW; and (2) whether PECO should establish a non-bypassable transmission service charge to recover certain PJM charges. *See* Order, pp. 39-40, 46, 53-54, 61. The OSBA's Petition challenges only the Commission's approval of PECO's proposal to implement hourly-priced default service for Medium Commercial customers as outlined in the Settlement.

In its original DSP III petition, PECO explained that over 80% of its Medium Commercial customers have chosen an electric generation supplier (“EGS”) for generation service and proposed continued procurement of default service for those customers who choose not to shop using six-month fixed price full requirements (“FPFR”) products, without overlap, approximately two to four months prior to delivery. *Id.*, p. 27. As part of its proposal, 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 100 kW be moved to hourly-priced default service pricing during DSP III while PECO completes its advanced meter infrastructure deployment, including testing, implementation of back-office and other information technology systems and integration with PECO’s billing system.<sup>1</sup> *Id.*

Under the Settlement, PECO agreed to support hourly-priced default service for Medium Commercial customers with interval meters (the “Hourly Pricing Transition”) and to use commercially reasonable efforts to implement the Hourly Pricing Transition, 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

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<sup>1</sup> 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.

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.

Order, p. 27. 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.*, p. 28.

As described in the Order, Administrative Law Judge Cynthia B. Fordham (the “ALJ”) issued a decision in which she recommended that the Commission approve the Settlement and PECO’s proposal for Medium Commercial customers. *Id.*, pp. 30-31. The OSBA subsequently filed exceptions to the ALJ’s recommended decision, asserting that reliance on the Commission’s direction in the *End State Order* to implement hourly-priced default service for Medium Commercial customers is contrary to the legal standards for default service and that record evidence supports continuation of six-month FPFR default service supply contracts for Medium Commercial customers. *Id.*, pp. 32-35. The Commission denied the OSBA’s exceptions, concluding that the concerns expressed by the OSBA have been addressed within the Settlement and that the Settlement is consistent with the Commission’s pronouncements in the *End State Order*. *Id.*, p. 39.

In its Petition, the OSBA requests that the Commission reverse its decision approving the Hourly Pricing Transition and direct PECO to implement its original proposal to procure six-month FPFR contracts for Medium Commercial default service customers. As part of its argument, the OSBA cites the recommended decision issued on October 17, 2014, in *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2015 Through May 31, 2017*, Docket No. P-2014-2417907 (“*PPL Recommended Decision*”), which recommended rejection of a similar proposal by PPL Electric

to provide hourly-priced default service to customers with annual peak demands over 100 kW. Petition, pp. 5-6. The OSBA contends that the *PPL Recommended Decision* “provides the legal analysis lacking” in the recommended decision in this proceeding and asserts that “directing hourly pricing for Medium Commercial customers solely on the basis of consistency with the *End State Order* is an error of law that must be reversed.” Petition, pp. 8-9.

Under the Commission’s well-established standard for petitions for reconsideration set forth in *Philip Duick et al. v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982), the Commission expects a petition for reconsideration “to set forth new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission.” *Id.*, p. 559. A proper petition for reconsideration may also plead “newly discovered evidence” or allege “errors of law, or a change in circumstances.” *Pennsylvania Public Utility Comm’n v. Jackson Sewer Corporation*, 2001 WL 36260384 (Pa. P.U.C. Nov. 13, 2001), p. 3.

The OSBA Petition does not meet these requirements. None of the arguments set forth in the OSBA’s petition are “new and novel,” and the OSBA does not suggest that they are. The Order plainly demonstrates that the Commission considered each of the arguments OSBA now makes in its Petition and did not “overlook” these arguments. *Compare* Order, pp. 32-34 (reviewing OSBA’s arguments, including claims that PECO’s proposal is inconsistent with the Public Utility Code and Commission regulations regarding “least cost” analysis, that PECO’s proposal requires further legislative action, that PECO’s proposal is unsupported by record evidence, and that PECO’s proposal improperly relies upon the *End State Order*) and Petition, pp. 5-12 (same).<sup>2</sup>

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<sup>2</sup> While the OSBA notes that the *PPL Recommended Decision* was issued after reply exceptions were due in this proceeding, that recommended decision was of course available to the Commission. To the extent that the OSBA is

To the extent the OSBA is asserting that the Commission committed an “error of law” in not considering the substance of the OSBA’s arguments and rather “solely” required consistency with the *End State Order*, PECO respectfully submits that the OSBA appears to be misinterpreting the Commission’s decision. In ruling that PECO’s proposal was “consistent with the Commission pronouncements within the *End State Order*,” the Commission was not simply requiring “consistency” as a matter of form, but rather found that PECO’s proposal was consistent with the extensive consideration and findings made by the Commission in the *End State Order*. Such a conclusion by the Commission does not constitute an error of law, and the OSBA offers no legal authority to suggest otherwise.

For the reasons set forth above, the Commission should deny the OSBA’s Petition for Reconsideration of the Commission’s Opinion and Order of December 4, 2014.

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offering a new argument based upon a finding in the *PPL Recommended Decision* of a conflict between the *End State Order* and the Commission’s current policy statement on default service (*see* Petition, pp. 6-7), PECO notes that the policy statement includes provisions which clearly envision the continuing evolution of the mix of long-term, short-term, and spot market default service supply purchases for non-residential customers. *See* 52 Pa. Code § 69.1805(2) (“In subsequent programs, the mix percentage of supply acquired through long-term and short-term contracts and spot market purchases should be adjusted, *depending on developments in retail and wholesale energy markets* to ensure least cost to customers.”) (emphasis added).

Respectfully submitted,



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December 29, 2014

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