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December 29, 2014

**Via Electronic Filing**

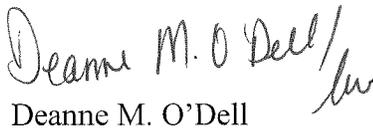
Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
PO Box 3265  
Harrisburg, PA 17105-3265

Re: Petition of PECO Energy Company for approval of its Default Service Program for the period from June 1, 2015 through May 31, 2017; Docket No. P-2014-2409362

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Retail Energy Supply Association's ("RESA") Answer to OSBA's Petition for Reconsideration with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

  
Deanne M. O'Dell

DMO/lww  
Enclosure

cc: Hon. Cynthia Fordham, w/enc.  
Cert. of Service w/enc.

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of RESA's Answer to OSBA's Petition for Reconsideration upon the participants listed below in accordance with the requirements of § 1.54 (relating to service by a participant).

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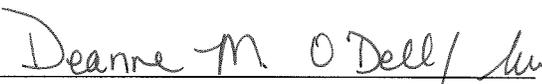
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Dated: December 29, 2014

  
Deanne M. O'Dell, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for :  
Approval of its Default Service Program for : Docket Nos. P-2014-2409362  
the Period from June 1, 2015 through May 31, :  
2017 :

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**ANSWER OF THE RETAIL ENERGY SUPPLY ASSOCIATION  
TO OSBA PETITION FOR RECONSIDERATION**

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In the Opinion and Order entered December 4, 2014 (“*PECO DSP III Order*”), the Commission addressed the default service plan filed by PECO Energy Company (“PECO”) for the period of June 1, 2015 through May 31, 2017 (“*DSP III*”). In doing so, the Commission appropriately approved the Joint Petition for Partial Settlement (“*Partial Settlement*”) which addressed all but two issues which the Commission adjudicated in the *PECO DSP III Order*. Although the ultimate result did not adopt the proposals of the Retail Energy Supply Association (“RESA”)<sup>1</sup>, the Philadelphia Area Industrial Energy Users Group (“PAIEUG”), or the Office of Small Business Advocate (“OSBA”) in full, only the OSBA filed a Petition for Reconsideration. In its Petition, OSBA asks the Commission to reverse its determination to approve the Partial Settlement which would transition PECO’s Medium Commercial customers (those with peak demands greater than or equal to 100 kW) to hourly priced service. RESA opposes OSBA’s Petition for Reconsideration and recommends that the Commission summarily deny it.

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<sup>1</sup> RESA’s members include: AEP Energy, Inc.; Champion Energy Services, LLC; Consolidated Edison Solutions, Inc.; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; GDF SUEZ Energy Resources NA, Inc.; Homefield Energy; IDT Energy, Inc.; Integrys Energy Services, Inc.; Interstate Gas Supply, Inc. dba IGS Energy; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; NRG Energy, Inc.; PPL EnergyPlus, LLC; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P. The comments expressed in this filing represent only those of RESA as an organization and not necessarily the views of each particular RESA member.

The arguments set forth in OSBA’s Petition do not meet the applicable legal standard for either reconsideration or rehearing as the arguments which OSBA regurgitates in support of its position were clearly considered and rejected by the Commission in the *PECO DSP III Order*. These OSBA arguments include: (1) reliance on the Commission’s Act 129 Default Service Rulemaking Order to support OSBA’s view of the statute;<sup>2</sup> (2) claiming that the Commission requires legislative changes to implement hourly priced service for Medium Commercial customers;<sup>3</sup> and, (3) there is essentially enough shopping for this customer class and these customers should not be “forced off of fixed rate generation default service and onto a completely unhedged hourly priced service.”<sup>4</sup> After discussing – in detail – OSBA’s views and all of its arguments in support, the Commission stated in the *PECO DSP III Order* that it was “persuaded by the argument proffered by PECO and RESA” and rejected OSBA’s position.<sup>5</sup> The Commission’s deliberate consideration of OSBA’s arguments is further evidenced by the statement of Commissioner Brown in which she states that she “weigh[ed] this issue carefully” and ultimately voted in support of the *PECO DSP III Order*. This provides further support for the view that the Commission carefully considered OSBA’s arguments and rejected them. OSBA’s attempt to claim that the Commission overlooked its arguments or did not give them due consideration is without merit. As such, there is no credible basis upon which to grant OSBA’s Petition for Reconsideration and it should be denied.

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<sup>2</sup> OSBA Petition for Reconsideration at ¶¶31-34. The Commission discussed this argument on pages 33-34 of the *PECO DSP III Order*.

<sup>3</sup> OSBA Petition for Reconsideration at ¶¶26-27. The Commission discussed this argument on pages 34-35 of the *PECO DSP III Order*.

<sup>4</sup> OSBA Petition for Reconsideration at ¶¶39-40. The Commission discussed this argument on pages 32-33 of the *PECO DSP III Order*.

<sup>5</sup> *PECO DSP III Order* at 39.

In addition to OSBA's recycled arguments (which were fully vetted in this proceeding), OSBA substantially quotes from Administrative Law Judge ("ALJ") Susan Colwell's Recommended Decision ("PPL RD") in the pending default service proceeding for PPL Electric Utilities Corporation ("PPL").<sup>6</sup> Apparently, OSBA believes that reconsideration is justified because the OSBA did not craft its legal arguments in the same way they were proffered by ALJ Colwell in another proceeding. However, the essence of ALJ Colwell's reasoning (with which RESA disagrees) is that the Commission lacks statutory authority to approve hourly priced default service for medium commercial customers. This is the exact same argument made by OSBA and rightly rejected by the Commission in the *PECO DSP III Order*. The fact that the OSBA is using the words of an ALJ in its Petition for Reconsideration is meaningless and there is nothing about ALJ Colwell's reasoning to justify reconsideration of the *PECO DSP III Order*.

Moreover, as RESA set forth in detail in its Exceptions in the PPL proceeding,<sup>7</sup> ALJ Colwell's legal reasoning is fundamentally flawed for a number of reasons to include the following:

While the ALJ is unjustifiably critical of the Commission's *End State Order* as "expanding the standard provided in the statute" and advises the Commission that it should "do so in a formal rulemaking proceeding,"<sup>8</sup> the ALJ's admonition ignores the Commission's long-standing view – as even stated in Section 69.1805(2) – that the amount of "shorter duration purchases and spot market purchases" for the default service load for C&I customers with 25 – 500 kW in peak load "should be gradually increased, depending on developments in retail and wholesale energy markets."<sup>9</sup> In fact, at the time the Commission adopted Section 69.1802(2), it made clear that it "did not interpret Act 129 as limiting [its] ability to provide

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<sup>6</sup> *Petition of PPL Electric 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, Recommended Decision dated October 17, 2014, *exceptions pending*.

<sup>7</sup> RESA Exceptions regarding PPL DSP III at 5-8.

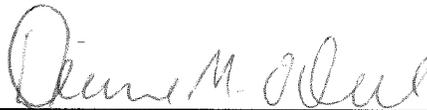
<sup>8</sup> PPL RD at 43.

<sup>9</sup> 52 Pa Code § 69.1805(2).

guidance to EDCs in their procurement practices for particular customer groups.”<sup>10</sup> Rather, the Commission recognized “that there were practical limits to its regulation of large, complex energy markets” and that “[r]equirements that might seem very appropriate today could be rendered obsolete by changes in markets, applicable law, or advances in technology.”<sup>11</sup> Therefore, the Commission chose to adopt a policy statement to provide “guidance to the industry as opposed to strict rules,” with the intent that such guidance could be reevaluated and reshaped as markets changed and developed.<sup>12</sup> In other words, the Commission has always been clear since the inception of Section 69.1505(2) that: (1) it expected the default service plan for these C&I customers to increase reliance on short-term contracts and spot market purchases over time; and, (2) that the Commission maintained its ability to provide guidance regarding procurement practices as the markets evolved.

For all these reasons, RESA respectfully requests that the Commission deny OSBA’s Petition for Reconsideration.

Respectfully submitted,



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Date: December 29, 2014

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<sup>10</sup> *Proposed Policy Statement Regarding Default Service and Retail Electric Markets*, Docket No. M-2009-2140580, Final Policy Statement entered September 23, 2011 at 13 (“*Default Service Policy Statement*”).

<sup>11</sup> *Default Service Policy Statement* at 2.

<sup>12</sup> 52 Pa. Code § 69.1802; *Default Service Policy Statement* at 2, 4.