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August 11, 2016

**VIA eFILING**

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  
from June 1, 2017 through May 31, 2019  
Docket No. P-2016-2534980**

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Dear Secretary Chiavetta:

Enclosed for filing is the Initial Brief of PECO Energy Company (“Initial Brief”) in the above-referenced matter.

As evidenced by the attached Certificate of Service, a copy of the Initial Brief has been served upon Administrative Law Judge Cynthia Williams Fordham, and all parties of record. Should you have any questions, please contact me directly at 215.841.5974. Thank you.

Very truly yours,



W. Craig Williams

Enclosures

cc: Per Certificate of Service (w/encls.)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY** :  
**COMPANY FOR APPROVAL OF ITS** :  
**DEFAULT SERVICE PROGRAM FOR** : **Docket No. P-2016-2534980**  
**THE PERIOD FROM JUNE 1, 2017** :  
**THROUGH MAY 31, 2019** :

**CERTIFICATE OF SERVICE**

I hereby certify and affirm that I have this day served a copy of the **Initial Brief of PECO Energy Company** on the following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

**VIA ELECTRONIC MAIL AND FIRST CLASS MAIL**

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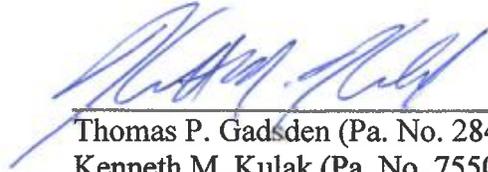
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Dated: August 11, 2016



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## I. INTRODUCTION

### A. Procedural History

This proceeding was initiated on March 17, 2016, when PECO Energy Company (“PECO” or the “Company”) filed a Petition (“DSP IV Petition”) pursuant to Section 2807(e) of the Pennsylvania Public Utility Code (the “Public Utility Code” or “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, 2017 to May 31, 2019 (“DSP IV”). DSP IV is PECO’s fourth default service program and is designed to ensure that PECO’s default service customers continue to have access to an adequate and reliable electric generation supply at the least cost over time and to enable PECO to recover its costs of furnishing that service.

In the DSP IV Petition, PECO requested that the Commission approve DSP IV, including procurement, implementation and contingency plans, a rate design plan and associated tariff pages, and copies of the agreements and forms to be used in the procurement of default service supply. As explained in the DSP IV Petition, PECO proposed to continue most of the existing programs as approved by the Commission as part of PECO’s current default service program (“DSP III”), including the Company’s Electric Generation Supplier (“EGS”) Standard Offer Program (“Standard Offer Program” or “SOP”).<sup>1</sup>

Copies of the Petition were served in accordance with 52 Pa. Code § 54.185(c). Additionally, on April 9, 2016, the *Pennsylvania Bulletin* published the Commission’s Notice setting a deadline for filing protests, complaints or petitions to intervene by April 19, 2016 and

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<sup>1</sup> See *Petition of PECO Energy Co. for Approval of Its Default Serv. Program for the Period from June 1, 2015 through May 31, 2017*, Docket No. P-2014-2409362 (Order entered December 4, 2014) (“DSP III Order”).

scheduling a Prehearing Conference for April 22, 2016 before Administrative Law Judge (“ALJ”) Cynthia W. Fordham. Thereafter, the following entities were afforded active party status in this case:

The Commission’s Bureau of Investigation and Enforcement	(“I&E”)
Office of Consumer Advocate	(“OCA”)
Office of Small Business Advocate	(“OSBA”)
Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania	(“CAUSE-PA”)
Direct Energy Services, LLC	(“Direct Energy”)
Noble Americas Energy Solutions, LLC	(“Noble”)
Philadelphia Area Industrial Energy Users Group	(“PAIEUG”)
Retail Energy Supply Association	(“RESA”)
The Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia	(“TURN et al.”)

At the Prehearing Conference, a schedule was established for submitting written testimony, holding evidentiary hearings and filing briefs. *See* Prehearing Order #2 (May 27, 2016). Written direct, rebuttal and surrebuttal testimony were submitted by various parties on the dates established for each submission.

The parties to this case also engaged in extensive discovery. PECO responded to 87 interrogatories, and other parties collectively responded to 11 interrogatories, with many containing multiple subparts.

The parties discussed the possibility of resolving some or all of the issues by settlement during the course of the proceeding. At the July 14, 2016 evidentiary hearing, all pre-filed written testimony and exhibits were admitted into evidence and the parties notified the ALJ that a partial settlement (“Settlement”) had been achieved.<sup>2</sup> Thereafter, the ALJ approved a revised

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<sup>2</sup>At the request of the parties, the ALJ canceled the hearing scheduled for July 15, 2016. As discussed in Section I.B, *infra*, the parties to the Settlement reserved issues associated with shopping by low-income customers enrolled in PECO’s Customer Assistance Program (“CAP”) for briefing.

schedule providing for the filing of Initial Briefs and Reply Briefs on August 11, 2016 and August 25, 2016, respectively, after the filing of the Joint Petition for Partial Settlement (“Joint Petition”). *See* Prehearing Order #3 (July 21, 2016).

**B. The Partial Settlement**

The terms of the Settlement are set forth in the Joint Petition filed on July 28, 2016, which also contains the Joint Petitioners’ Statements in Support.<sup>3</sup>

As explained in the Joint Petition, the revised DSP IV set forth in the Settlement contains all of the elements required by the Code, the Commission’s default service regulations (52 Pa. Code §§ 54.181 – 54.190) and its Policy Statement on Default Service (52 Pa. Code §§ 69.1801 – 69.1817). In addition, the Settlement addresses the following key contested issues:

- **Length of DSP IV Procurement Plan:** Under the Settlement, DSP IV will have a four-year term, beginning June 1, 2017 and ending May 31, 2021, with a stakeholder collaborative in January 2018 to address any issues with the products or programs approved as part of DSP IV and in place during the stipulated four-year term. Joint Petition at ¶11. The Settlement adopts a longer default service program to reduce the frequency of default service proceedings and associated costs.
- **Residential Class Default Service Supply Portfolio.** Under the Settlement, the Joint Petitioners agree to PECO’s original proposal to continue to procure a mix of one-year and two-year fixed-price full requirements (“FPFR”) products of which

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<sup>3</sup> All parties to this proceeding, except Noble, either joined in the Settlement or have authorized the Joint Petitioners to represent that they do not oppose the Settlement. *See* Joint Petition, p. 1. Noble opposes the Settlement in part and is filing its objections to the Settlement concurrent with the Joint Petitioners’ Initial Briefs. PECO will respond to any issues that may be raised by Noble in its Reply Brief on August 25, 2016 in accordance with the schedule outlined in Noble’s July 28, 2016 letter in opposition to the Settlement and approved by the ALJ.

approximately 96% of the supply is in the form of one-year and two-year FPFRR products, with six months spacing between the commencement of contract delivery periods. *Id.* at ¶¶ 17-19. The remaining approximately 4% of Residential Class supply currently obtained through a 17-month FPFRR products and spot market purchases will be replaced by two-year FPFRR products (for approximately 3% of Residential default service load) and spot purchases directly from the energy markets operated by PJM Interconnection, L.L.C. (“PJM”) (for approximately 1% of Residential default service load). *Id.* at ¶ 17. The Settlement shortens the term length of the FPFRR products that will be procured during DSP IV from the five-year FPFRR product originally proposed by PECO.

- **Recovery of Certain PJM Charges.** The Settlement adopts PECO’s original proposal to continue to be responsible for and recover the PJM charges specified in the Company’s Non-Bypassable Transmission Charge and to continue to recover Network Integration Transmission Service (“NITS”) and Non-Firm Point-to-Point Transmission costs associated with default service customers through PECO’s bypassable Transmission Service Charge. *Id.* at ¶ 38. Under the Settlement, PECO will also implement additional measures to enhance the transparency of NITS costs and charges. *Id.* at ¶ 39.
- **Standard Offer Program (“SOP”).** The Settlement provides that PECO’s currently-effective SOP, including the cost recovery mechanisms last approved by the Commission as part of DSP III, will continue until May 31, 2021. *Id.* at ¶ 40. In addition, PECO will revise its SOP scripts, training materials and call handling process to implement several changes recommended by the OCA regarding the

presentation and marketing of the SOP to customers. *Id.* ¶¶ at 41-42. PECO will also convene an EGS workshop to discuss potential operational enhancements to improve administration of the SOP. Topics will include sharing accurate customer account information associated with customers who have affirmatively selected to enroll in the SOP. *Id.* at ¶ 43.

**C. Issues Reserved For Briefing In The Joint Petition For Partial Settlement**

As explained in the Joint Petition, the issues reserved for briefing involve PECO's plan to allow CAP customers to shop for electric generation supply.

**II. DESIGN OF PECO'S CUSTOMER ASSISTANCE PROGRAM SHOPPING PLAN**

In contrast to the majority of other Pennsylvania electric distribution companies ("EDCs"), PECO's CAP customers are not currently eligible to purchase electric generation supply from an EGS. In its October 12, 2012 Order issued in the Company's second default service proceeding, the Commission directed PECO to allow its CAP customers to shop for electric generation supply.<sup>4</sup> In accordance with that directive, on May 1, 2013, PECO filed a CAP Shopping Plan ("Original Plan") to enable CAP customers to purchase electric generation supply from EGSs in the same manner as non-CAP customers, but without exceeding PECO's Residential Price-to-Compare ("PTC"). The Original Plan was designed to promote shopping and access to the benefits of the competitive market for low-income customers, while balancing the costs of CAP shopping to be paid by PECO residential customers. *See* PECO St. No. 2-R, at 11-12.

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<sup>4</sup> *See* *Petition of PECO Energy Co. for Approval of Its Default Serv. Program*, Docket No. P-2012-2283641, at 156 (Order entered October 12, 2012).

In its final Order regarding the Original Plan, the Commission rejected the Original Plan's requirement that EGSs not charge CAP customers a price for generation supply in excess of the prevailing PTC.<sup>5</sup> In its ruling, the Commission concluded that it did not have authority under the Public Utility Code to limit prices charged by EGSs and also agreed with the EGSs opposing the CAP pricing ceiling that such proposal would limit the diversity of shopping options available to CAP customers.<sup>6</sup> In addition, the Commission declined to adopt the OCA's proposal to prohibit EGSs from imposing early cancellation or termination fees on CAP customers on the ground that it lacked the legal authority to impose such restrictions on EGSs.<sup>7</sup> Appeals of the *CAP Shopping Order* were taken by the OCA and CAUSE-PA.<sup>8</sup>

In an opinion issued on July 14, 2015, the Commonwealth Court determined that the Commission had the authority to impose or approve CAP rules that limit the terms of offers from EGSs to ensure adequately-funded, cost-effective and affordable universal service programs.<sup>9</sup> The Commonwealth Court further concluded that record evidence supported the Commission's finding that an EGS price ceiling would be anti-competitive and limit the choices available to PECO's CAP customers, but found that there was a statutory basis and sufficient record evidence to support the OCA's proposed prohibition against early termination and cancellation fees.<sup>10</sup> Therefore, the Commonwealth Court remanded the case to the Commission for further

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<sup>5</sup> *Petition of PECO Energy Co. for Approval of Its Default Serv. Plan*, Docket No. P-2012-2283641, at 14 (Opinion and Order entered January 24, 2014) ("*CAP Shopping Order*").

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 16-17.

<sup>8</sup> See *Coalition for Affordable Util. Servs. and Energy Efficiency in Pa., et al. v. Pa. Pub. Util. Comm'n*, 1020 A.3d 1087, 1089 (2015) ("*CAUSE-PA*").

<sup>9</sup> *Id.* at 1087, 1103-1104.

<sup>10</sup> *Id.* at 1106-1108.

proceedings.<sup>11</sup> CAUSE-PA and the OCA requested review of the Commonwealth Court's decision by the Pennsylvania Supreme Court, but that request was denied on April 5, 2016.<sup>12</sup> On May 11, 2016, the Commission, by Secretarial Letter, directed PECO to file a proposed rule revision to its Original Plan in its current default service program ("DSP III") consistent with the *CAUSE-PA* decision.<sup>13</sup>

On July 19, 2016, PECO notified the Commission that the Company intends to submit its proposed rule revision, by way of an amended tariff, to its Original Plan in accordance with the May 11, 2016 Secretarial Letter by September 1, 2016.<sup>14</sup> PECO's proposed rule revision will implement CAP shopping in the Company's service territory, consistent with the *CAP Shopping Order* as modified by the Commonwealth Court in the *CAUSE-PA* decision, during the first quarter of 2017 (i.e., during DSP III). Specifically, under PECO's revised CAP shopping plan, EGSs who wish to offer competitive generation service to PECO's CAP customers will not be subject to any pricing restrictions. In addition, CAP customers and EGSs will be prohibited from entering into any contract that imposes early cancellation or termination fees. Consistent with the May 11, 2016 Secretarial Letter, PECO's proposed rule revision will also contain a plan for collection of data in consultation with the Commission's Office of Competitive Market Oversight for analysis of CAP shopping experiences and future evaluations and recommendations. *See* July 19, 2016 Letter, p. 2.

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<sup>11</sup> *Id.* at 1109.

<sup>12</sup> *Coalition for Affordable Util. Servs. and Energy Efficiency in Pa., et al. v. Pa. Pub. Util. Comm'n*, 2016 WL 1383864 (Pa. Apr. 5, 2016).

<sup>13</sup> *See Petition of PECO Energy Co. for Approval of its Default Serv. Plan*, Docket No. P-2012-2283641 (Secretarial Letter issued May 11, 2016).

<sup>14</sup> *See Petition of PECO Energy Co. for Approval of its Default Serv. Plan*, Docket No. P-2012-2283641 (Letter filed July 19, 2016) ("July 19, 2016 Letter").

Despite the Commission's directive to PECO to implement CAP shopping in accordance with the *CAP Shopping Order* and the *CAUSE-PA* decision during DSP III, CAUSE-PA objects to implementation of a CAP shopping platform in PECO's service territory before the commencement of DSP IV on June 1, 2017. CAUSE-PA St. No. 1, pp. 13-15. In particular, CAUSE-PA witness Geller contends that unrestricted CAP shopping cannot be accomplished without subjecting PECO's CAP customers to harm for two primary reasons. First, Mr. Geller argues that the shopping experience of PECO's customers is likely to be the same as a significant number of CAP customers in the service territories of five other EDCs who have paid more than the PTC for competitive electric generation supply. *See* CAUSE-PA St. Nos. 1, pp. 13-15 & 1-SR, pp. 3-6. Second, Mr. Geller asserts that affordability of service will be jeopardized if CAP customers are subject to EGS prices in excess of the PTC in light in of PECO's new Fixed Credit Option ("FCO") CAP design. Under the FCO, which will be effective in October 2016, a CAP customer's bill credit will be based solely on PECO's PTC and not actual generation charges. *See* CAUSE-PA St. No. 1, pp. 19-26.

Based on these arguments, CAUSE-PA proposes that the development of CAP shopping within DSP IV should reflect the following two principles: (1) CAP customers should be prohibited from entering into an EGS contract in which the CAP customer will pay, at any time, generation service rates greater than the PTC; and (2) CAP customers should be prohibited from entering into an EGS contract that includes early cancellation or termination fees. CAUSE-PA St. No. 1, p. 31. In order to implement these principles, CAUSE-PA recommends that PECO's SOP provide the exclusive platform for CAP shopping with two additional program rules for CAP customers. First, SOP suppliers serving CAP customers must agree to guarantee a 7% discount off the PTC. If the PTC drops more than 7% at any time during the customer's

enrollment, SOP suppliers must either re-enroll the CAP customer in a new SOP contract that is 7% off the applicable PTC or return the customer to default service. Second, at the end of the 12-month SOP contract, participating EGSs must re-enroll the CAP customer in a new SOP contract or the CAP customer will return to default service. *See id.*, pp. 31-34. The OCA and TURN *et al.* support CAUSE-PA's recommendations regarding CAP customer shopping in PECO's service territory. *See* OCA St. No. 2-R, pp. 2-5 & 2-SR, pp. 14; TURN *et al.* St. No. 1-SR, pp 4-11.

PECO believes that CAUSE-PA's alternative CAP shopping platform, which is supported by the OCA and TURN *et al.*, is inconsistent with the *CAP Shopping Order*. The Commission has also made clear that it will consider PECO's proposed CAP shopping rule revision, which will be filed by September 1, 2016, in a separate proceeding. *See* May 11, 2016 Secretarial Letter, p. 2. In addition, as Mr. McCawley explained, the appropriate time for the Commission to consider any modifications to PECO's revised CAP shopping plan is after data is available regarding the shopping experience of PECO's CAP customers under such plan. *See* PECO St. No. 2-R, p. 13. Because PECO's CAP customers have never shopped, this data is necessary to determine whether the shopping experience of PECO's CAP customers is comparable to the experience of CAP customers in other service territories who CAUSE-PA alleges have suffered harm associated with paying prices for generation supply above the PTC.

### III. CONCLUSION

For the reasons set forth above, the Commission should not adopt, as part of this proceeding, modifications to PECO's plan to allow low income customers enrolled in its Customer Assistance Program to shop for electric generation supply in the manner proposed by CAUSE-PA and supported by the OCA.

Respectfully submitted,



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Dated: August 11, 2016

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