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August 25, 2016

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

**VIA ELECTRONIC FILING**

**RE: Petition of PECO Energy Company for Approval of its Default Service Program for the Period June 1, 2017 through May 31, 2019; Docket No. P-2016-2534980**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Response of the Philadelphia Area Industrial Energy Users Group ("PAIEUG") to Noble's Objections, in the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to this proceeding are being duly served with a copy of this document. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By   
Alessandra L. Hylander

Counsel to Philadelphia Area Industrial Energy Users Group

Enclosure

c: Administrative Law Judge Cynthia W. Fordham (via E-Mail and First-Class Mail)  
Certificate of Service

A5302997:1

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## CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of Section 1.54 (relating to service by a participant).

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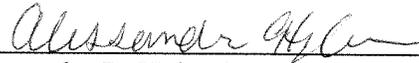
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Counsel to the Philadelphia Area Industrial  
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Dated this 25<sup>th</sup> day of August, 2016, in Harrisburg, Pennsylvania.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of PECO Energy Company for** :  
**Approval of its Default Service Program** :  
**For the Period from June 1, 2017 through** : **P-2016-2534980**  
**May 31, 2019** :

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**RESPONSE OF THE  
PHILADELPHIA AREA INDUSTRIAL ENERGY USERS GROUP  
TO NOBLE'S OBJECTIONS**

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Air Liquide America, L.P.  
The Boeing Company  
Drexel University  
Einstein Healthcare Network  
Thomas Jefferson University  
Evonik Corporation  
Kimberly-Clark Corporation  
Main Line Health

Merck & Co., Inc.  
Philadelphia College of Osteopathic Medicine  
Saint Joseph's University  
Temple University  
Villanova University  
GlaxoSmithKline  
Magee Rehabilitation Hospital  
Building Owners & Managers Association  
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Dated: August 25, 2016

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## I. INTRODUCTION

On March 17, 2016, PECO Energy Company ("PECO" or "Company") filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") a Petition for Approval of the Company's Fourth Default Service Program ("DSP IV"). *Petition of PECO Energy Company for Approval of Its Default Service Program for the Period from June 1, 2017 Through May 31, 2019*; Docket No. P-2016-2534980 (Mar. 17, 2016) (hereinafter, "Petition"). On April 8, 2016, the Philadelphia Area Industrial Energy Users Group ("PAIEUG")<sup>1</sup> filed a Petition to Intervene and Answer to the Company's Petition. A Prehearing Conference was held on April 22, 2016, before Administrative Law Judge ("ALJ") Cynthia W. Fordham.

PAIEUG received the Company's Direct Testimony on March 17, 2016. Pursuant to the procedural schedule, on June 3, 2016, PAIEUG received Direct Testimony from the following parties: 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"); and the Retail Energy Supply Association ("RESA"). On June 24, 2016, PAIEUG received Rebuttal Testimony from the following parties: the Company; OCA; and RESA. On July 8, 2016, PAIEUG received Surrebuttal Testimony from OCA; CAUSE-PA; and RESA.

An evidentiary hearing was held in this proceeding on July 14, 2016, for the purposes of presenting testimony and performing cross-examination. During the hearing, the following parties informed ALJ Fordham that they had reached a partial settlement: PECO; PAIEUG; OCA; OSBA; Bureau of Investigation and Enforcement ("I&E"); and RESA (the "Settling Parties"). Noble Americas Energy Solutions, L.L.C. ("Noble") indicated it opposed the

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<sup>1</sup> PAIEUG's compilation is listed on the cover page of this Response to Noble's Objections.

settlement with respect to the treatment of Federal Energy Regulatory Commission ("FERC") jurisdictional wholesale market charges at the retail level. Also at the hearing, the Settling Parties agreed to a revised schedule providing for the filing of Initial Briefs and Reply Briefs to address the only issue reserved for litigation, which is the design of PECO's customer assistance shopping plan. Prehearing Order #3, p. 3.

On July 28, 2016, the Settling Parties submitted a Joint Petition for Partial Settlement ("Joint Petition"), and PAIEUG filed a Statement in Support of the Joint Petition. Pursuant to the revised procedural schedule, on August 11, 2016, PAIEUG received Main Briefs from the following parties: PECO; OCA; I&E; CAUSE-PA; RESA; and the Tenant Union Representative Network, and Action Alliance of Senior Citizens of Greater Philadelphia (TURN, *et al.*). Also on July 28, 2016, Noble filed its written objections to the Partial Settlement.

Pursuant to the procedural schedule approved by the ALJ, PAIEUG hereby files this Response to Noble's objections to the Joint Petition.

## **II. RESPONSE**

In PECO's third Default Service Plan ("DSP III") proceeding, the parties litigated the issue of whether the collection of non-marked based transmission ("NBT") costs should continue to be collected by shopping customers' Electric Generation Suppliers ("EGSs") or whether the collection of these costs should be transferred to the Electric Distribution Company (*i.e.*, PECO). *See 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, Opinion and Order, pp. 40-54 (Dec. 4, 2014) (hereinafter, "PECO DSP III Order"). As part of this litigation, PAIEUG strenuously objected to the collection of these costs being transferred to the EDC due to concerns that such transfer would result in a rebundling of transmission and distribution costs, as well as raise significant contractual issues for Large Commercial and Industrial customers, in

part by limiting the services and offerings available for such customers through their EGSs. The PUC ruled, however, that PECO should implement a non-bypassable transmission service charge for all distribution customers by which to collect Regional Transmission Expansion Plan ("RTEP") charges, Expansion Cost Recovery charges ("ECRCs"), and generation deactivation charges. *Id.* The PUC also ruled that Network Integration Transmission Charges ("NITS") should continue to be collected from shopping customers by their EGSs. *Id.*

PECO's DSP IV sought to largely preserve the terms of DSP III, as they relate to the collection of NBT and NITS charges. Joint Petition, ¶ 9. To that end, the only modification the Joint Petition makes with respect to these issues, for purposes of DSP IV, is that PECO will be required to publish changes to the NITS charge on the Company's SUCCESS portal and the Supplier Information's Webpage. Joint Petition, ¶¶ 38-39.

Noble opposes implementation of the DSP IV, as modified by the Joint Petition, on the following grounds: (i) the PJM transmission charges subject to the Company's NBT fall under the FERC's jurisdiction, and PECO's continued recovery of these charges from shopping customers on a non-bypassable basis is unlawful because it violates the terms of FERC orders and PJM's Open Access Transmission Tariff; (ii) PECO's NBT is unjust, unreasonable, and unduly discriminatory and violates the Electricity Generation Customer Choice and Competition Act because it essentially rebundles transmission and distribution costs; and (iii) PECO's NBT interferes with an Electric Generation Supplier's right as a PJM load-serving entity to directly bill their shopping customers for their PJM transmission costs in connection with customized product and service offerings. *Objections of Noble Americas Energy Solutions L.L.C. to the Joint Petition for Partial Settlement*, pp. 5-9.

In DSP III, PAIEUG opposed changing the collection of NBT costs from EGSs to the EDC, raising many of the same arguments set forth by Noble in this proceeding. *See* PECO DSP III Order, pp. 40-54. As previously noted, however, the PUC rejected PAIEUG's arguments and determined that PECO could impose a non-bypassable transmission service charge for the collection of NBT costs. *Id.* In light of the PUC's Order in PECO's DSP III proceeding, PAIEUG submits that Noble's objections to the Joint Petition do not directly reflect any of the terms specifically addressed within the Joint Petition or any of the issues raised in PECO's DSP IV proceeding. For these reasons, PAIEUG supports the Joint Petition and submits that the Joint Petition should be approved without modification.

### III. CONCLUSION

WHEREFORE, the Philadelphia Area Industrial Energy Users Group respectfully requests that the Pennsylvania Public Utility Commission approve the Joint Petition for Partial Settlement as filed in this proceeding.

Respectfully submitted,

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Dated: August 25, 2016