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December 29, 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**

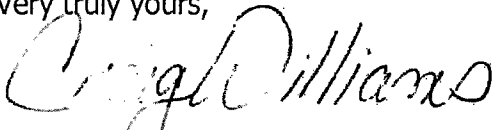
Dear Secretary Chiavetta:

Enclosed for filing is **PECO Energy Company's Answer to Petitions for
Reconsideration and Clarification ("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 Williams Fordham and all parties of record.

If you have any questions, please contact me directly at 215.841.5974. Thank you.

Very truly yours,

A handwritten signature in cursive script that reads "Craig Williams".

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 THE PERIOD : DOCKET NO. P-2016-2534980
FROM JUNE 1, 2017 THROUGH MAY 31, :
2019 :**

**ANSWER OF PECO ENERGY COMPANY
TO PETITIONS FOR RECONSIDERATION AND/OR CLARIFICATION
OF THE COMMISSION’S OPINION AND ORDER OF DECEMBER 8, 2016**

I. INTRODUCTION

Pursuant to 52 Pa. Code § 5.572(e), PECO Energy Company (“PECO”) hereby answers the petitions (“Petitions”) of the Office of Consumer Advocate (“OCA”), the Coalition For Affordable Utility Services And Energy Efficiency In Pennsylvania (“CAUSE-PA”) and the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (collectively, “TURN”),¹ which seek reconsideration and/or clarification of the Pennsylvania Public Utility Commission’s (the “Commission’s”) December 8, 2016 Opinion and Order approving PECO’s Default Service Program for the period commencing June 1, 2017 (“DSP IV”), as modified by the Joint Petition for Partial Settlement (“Settlement”) filed on July 28, 2016.

In the Opinion and Order (the “Order”), the Commission concluded that issues pertaining to the ability of customers enrolled in PECO’s Customer Assistance Program (“CAP”) to shop for electric generation supply should not be addressed as part of DSP IV but instead in PECO’s second default service proceeding (“DSP II”) docket in accordance with a Secretarial Letter

¹ CAUSE-PA and TURN filed a Joint Petition for Reconsideration and/or Clarification.

issued by the Commission on May 11, 2016 (the “May 11 Secretarial Letter”).² The Petitions challenge the Commission’s decision and, in the alternative, request that the Commission now clarify the “process” it will apply in addressing comments filed in the DSP II docket and the record of the DSP IV proceeding incorporated in the DSP II docket.

As the Commission explained in the Order, PECO’s CAP customers are not currently eligible to purchase electric generation supply from an electric generation supplier (“EGS”). During its DSP II proceedings, PECO proposed to allow CAP customers to shop for generation supply with EGSs that agreed not to charge a price above PECO’s Price-to-Compare (“PTC”). The Commission rejected PECO’s proposed limitation³ and, following an appeal by OCA, CAUSE-PA, and TURN, the Commonwealth Court affirmed the Commission’s ruling. At the same time, the Commonwealth Court found that there was sufficient record evidence to support a prohibition against early termination and cancellation fees, as proposed by the OCA.⁴ As a result, the Commonwealth Court remanded the case to the Commission for further proceedings to approve a “rule revision to the PECO CAP Shopping Plan that would impose such a prohibition.”⁵ In response to the Commonwealth Court’s remand, the Commission issued the May 11 Secretarial Letter, which directed PECO to file a proposed rule revision (“CAP Rule Revision”) in the DSP II docket to permit CAP customers to shop during DSP III.

² See *Petition of PECO Energy Co. for Approval of its Default Serv. Plan*, Docket No. P-2012-2283641 (Secretarial Letter issued May 11, 2016). The issue of CAP shopping in PECO’s service territory had been reserved for briefing in the Settlement.

³ See *Petition of PECO Energy Co. for Approval of its Default Serv. Program*, Docket No. P-2012-2283641 (Order entered Jan. 24, 2014) (“*DSP II Order*”), pp. 14, 16-17.

⁴ See *Coalition for Affordable Util. Servs. and Energy Efficiency in Pennsylvania, et al. v. Pa. P.U.C.*, 120 A.3d 1087, 1103-1104, 1107-1109 (Pa. Cmwlth. 2015) (“*CAP Shopping Order*”).

⁵ *Id.* at 1109. CAUSE-PA and TURN requested review of the Commonwealth Court’s decision by the Pennsylvania Supreme Court, but that request was denied on April 5, 2016. *Coalition for Affordable Util. Servs. and Energy Efficiency in Pa. v. Pa. P.U.C.*, 2016 WL 1383864 (Pa. Apr. 5, 2016).

Prior to the issuance of the May 11 Secretarial Letter, PECO initiated this proceeding by filing its petition for approval of DSP IV and accompanying direct testimony.⁶ On June 3, 2016, CAUSE-PA submitted written direct testimony objecting to implementation of the *CAP Shopping Order* during DSP III and proposing an alternative CAP shopping platform that would permit CAP shopping during DSP IV. This proposal (the “CAP-SOP Proposal”), supported by the OCA and TURN, was modeled on PECO’s existing Standard Offer Program with the addition of several CAP-specific rules, including a ceiling on the prices EGSs would be permitted to charge based on the PTC. PECO opposed the CAP-SOP Proposal, contending that the issues of CAP shopping and implementation of the *CAP Shopping Order* should be addressed in the DSP II docket in accordance with the Commission’s direction in the May 11 Secretarial Letter. Subsequently, on September 1, 2016, PECO filed its CAP Rule Revision in the DSP II docket to implement CAP shopping in PECO’s service territory in accordance with the *CAP Shopping Order* and the May 11 Secretarial Letter.

As described in the Order, Administrative Law Judge Cynthia B. Fordham (the “ALJ”) issued a decision in which she agreed with PECO and recommended that the Commission approve the Settlement and address the CAP-SOP Proposal in the DSP II proceeding consistent with the May 11 Secretarial Letter.⁷ The OCA, CAUSE-PA, and TURN (the “CAP-SOP Advocates”) subsequently filed exceptions to the ALJ’s Recommended Decision, asserting that the ALJ erred by declining to address CAP shopping issues and failing to consider evidence in this DSP IV proceeding which they alleged supports the CAP-SOP Proposal. The Commission denied the CAP-SOP Advocates’ requests to consider the CAP-SOP Proposal as part of DSP IV, but granted CAUSE-PA/TURN’s request that the Commission incorporate the DSP IV record in

⁶ See Order, pp. 3-6 (summarizing history of this proceeding, including PECO’s filing of petition and testimony on March 17, 2016).

⁷ See *id.*, pp. 6 & 51.

the DSP II proceeding and allow TURN to fully participate.⁸ The Commission also emphasized that it has “every intention of fully considering the positions of all interested parties, including all parties to [the DSP IV proceeding], regarding PECO’s 2016 [CAP Rule Revision] and the ability of PECO’s CAP customers to shop for generation supply.”⁹

II. ANSWER

In their Petitions, the CAP-SOP Advocates ask the Commission to reverse its decision to address the CAP-SOP Proposal in the DSP II proceeding and, in the alternative, “clarify” the “process” for the Commission’s consideration of the DSP IV record in the DSP II docket.¹⁰ Specifically, the CAP-SOP Advocates request a modification of the Order to consolidate the DSP II and DSP IV proceedings and refer CAP shopping issues to the ALJ for a decision “on the merits.”¹¹ Alternatively, the CAP-SOP Advocates request that the Commission “clarify and set forth a procedure for full consideration of the evidence in both dockets” (OCA Petition, p. 5) and “provide a clear explanation of how it plans to adequately incorporate the record from DSP IV to the record in DSP II, and how it will weigh the facts and evidence before it” (CAUSE-PA/TURN Petition, p. 7). The Petitions should be denied for several reasons.

First, the CAP-SOP Advocates’ Petitions do not satisfy the criteria the Commission has traditionally applied as the principal basis for granting reconsideration. *See Philip Duick et al. v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553, 559 (1982) (explaining that 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.”). In urging the Commission to render a decision on the CAP-SOP Proposal in

⁸ *Id.*, pp. 61-63, 67.

⁹ *Id.*, p. 62.

¹⁰ *See* OCA Petition, pp. 3, 5-6; CAUSE-PA/TURN Joint Petition, pp. 1-2, 5-10.

¹¹ *See* OCA Petition, pp. 5-6; CAUSE-PA/TURN Joint Petition, pp. 7-8.

this proceeding, the CAP-SOP Advocates simply reiterate the arguments they unsuccessfully advanced to the Commission previously and do not suggest that any of those arguments are “new and novel.” Contrary to the CAP-SOP Advocates’ assertions, the Commission considered each of the arguments the CAP-SOP Advocates now make in their Petitions and found that the implementation of CAP shopping in PECO’s service territory should be addressed in the context of the remanded DSP II proceeding. Indeed, over 20 pages of the Order are devoted to reviewing the CAP-SOP Advocates’ arguments in support of their claim that the Commission should consider CAP shopping issues in the context of DSP IV, including their objections to implementation of CAP shopping during DSP III, the need to consider significant new information presented in the DSP IV proceeding, and the possibility that addressing CAP shopping in the DSP II docket presents issues of due process, an inadequate evidentiary record, and potential violations of the *CAP Shopping Order*.¹² From that lengthy discussion, it is clear that the Commission did not “overlook” any of these arguments.¹³

Second, having failed to persuade the Commission to address implementation of the *CAP Shopping Order* in DSP IV, the CAP-SOP Advocates also fail to offer any valid reason why the Commission must “clarify” the process it will use in the DSP II docket as part of these DSP IV proceedings. The OCA, CAUSE-PA, and TURN have all filed comments and reply comments in the DSP II docket regarding CAP shopping and both their substantive and procedural

¹² See Order, pp. 41-63. Notably, although the OCA contends that the Commission “limited the scope of the DSP II proceeding to the rule change and not a full consideration of [CAP shopping]” and may have “overlooked the limitations of the DSP II proceeding” (OCA Petition, p. 3), the OCA did not limit its initial comments filed in the DSP II docket to the CAP Rule Revision but advocated for a wholesale revision of PECO’s CAP shopping plan. See Comments of the Office of Consumer Advocate, *Petition of PECO Energy Co. for Approval of its Default Serv. Plan*, Docket No. P-2012-2283641 (Comments filed December 2, 2016).

¹³ CAUSE-PA/TURN’s contention (p. 10) that the *CAP Shopping Order* requires a decision “on the merits” of CAP shopping in DSP IV is simply wrong. The Commonwealth Court affirmed the Commission’s decision to authorize shopping for PECO’s CAP customers without pricing restrictions and did not direct the Commission to re-assess the implementation of CAP shopping in PECO’s next default service proceeding. See *CAP Shopping Order*, 120 A.3d at 1107-1109. Indeed, the Court observed that “we anticipate that when PECO files its next Universal Service Plan, it will include in its filing an analysis of its CAP Shopping Plan, including how that plan has affected the availability and affordability of electricity supply for CAP participants and the cost-effectiveness of the CAP.” *Id.* at 1108.

concerns, and the Commission has assured all interested parties that it has “every intention” of “fully considering” the positions of those parties.¹⁴ Furthermore, the Commission has formally incorporated the record of this proceeding in the DSP II docket to facilitate that consideration, and specifically granted TURN the right to fully participate in the DSP II proceedings.¹⁵ To the extent a party believes that any subsequent decision of the Commission in the DSP II docket is not based on substantial evidence or otherwise improper, that party will have the right to seek relief in that proceeding.

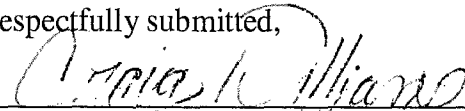
¹⁴ Order, p. 62.

¹⁵ *See id.* CAUSE-PA/TURN’s assertion that the Commission’s determination to take official notice of the documents constituting the record in the DSP IV proceeding is somehow flawed is also misplaced. This is not a situation where the Commission has taken notice of facts not in evidence, nor is there any basis to conclude that the Commission will act inconsistently with its regulations in the DSP II docket in the future; indeed, the Commission’s regulations explicitly provide that the Commission has discretion to decide whether “oral argument, oral evidence or cross-examination is appropriate in the circumstances” when taking official or judicial notice of facts. 52 Pa. Code § 408(d). Moreover, CAUSE-PA/TURN incorporated their own briefs and testimony from the DSP IV proceedings in their comments filed in the DSP II docket (before the Commission issued the Order in DSP IV) to argue in favor of the CAP-SOP proposal, notwithstanding their “procedural objections”. *See* Comments of the Office of Consumer Advocate, *Petition of PECO Energy Co. for Approval of its Default Serv. Plan*, Docket No. P-2012-2283641 (Comments filed December 2, 2016), pp. 2-3.

IV. CONCLUSION

For the reasons set forth above, the Commission should deny the CAP-SOP Advocates' Petitions for Reconsideration and/or Clarification of the Commission's Opinion and Order of December 8, 2016.

Respectfully submitted,



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Date: December 29, 2016

Counsel for PECO Energy Company

**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 **PECO Energy Company's Answer to Petitions for Reconsideration and Clarification** 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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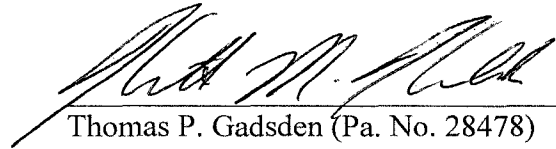
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Dated: December 29, 2016