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December 19, 2018

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Office of Consumer Advocate v. PECO Energy Company
Docket Nos. M-2018-3005860 & C-2018-3006242

Dear Secretary Chiavetta:

Enclosed for filing is the *Preliminary Objection of PECO Energy Company to the Complaint of the Office of Consumer Advocate*.

Very truly yours,



Ward L. Smith
Assistant General Counsel

WLS/adz
Attachment

c: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
|------------------------------------|---|-----------------------------------|
| Office of Consumer Advocate | : | |
| | : | |
| v. | : | Docket Nos. M-2018-3005860 |
| | : | C-2018-3006242 |
| PECO Energy Company | : | |

NOTICE TO PLEAD

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You are hereby notified pursuant to 52 Pa. Code § 5.101(f) that a responsive pleading must be filed within ten (10) days of the date of service of the following **Preliminary Objection**.

Respectfully submitted,



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Counsel for PECO Energy Company

Dated: December 19, 2018

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PENNSYLVANIA PUBLIC UTILITY COMMISSION

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| Office of Consumer Advocate | : | |
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| v. | : | |
| | : | |
| PECO Energy Company | : | Docket No. C-2018-3006242 |

CERTIFICATE OF SERVICE

I, Ward L. Smith hereby certify that I served a copy of *Preliminary Objection of PECO Energy Company to the Complaint of the Office of Consumer Advocate*, upon all interested parties listed below, via overnight delivery to:

Richard Kanaskie
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
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**BEFORE THE
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| v. | : | Docket Nos. M-2018-3005860 |
| | : | C-2018-3006242 |
| PECO Energy Company | : | |

**PRELIMINARY OBJECTION OF PECO ENERGY COMPANY TO
THE COMPLAINT OF THE OFFICE OF CONSUMER ADVOCATE**

Pursuant to 52 Pa. Code § 5.101, the Respondent, PECO Energy Company (“PECO” or the “Company”) hereby submits this Preliminary Objection to the Complaint filed by the Office of Consumer Advocate (“OCA”) on November 28, 2018 in the above-captioned docket.

I. OVERVIEW

The OCA’s Complaint challenges PECO’s proposed disposition of PJM Interconnection, L.L.C. (“PJM”) bill credits PECO will receive pursuant to a settlement approved by the Federal Energy Regulatory Commission (“FERC”) at FERC Docket No. EL05-121-009. The bill credits refund a portion of Regional Transmission Expansion Plan (“RTEP”) charges incurred by PECO after January 1, 2007.

PECO has proposed to refund all of the bill credits to customers for the period after PECO’s implementation of a reconcilable transmission service cost (“TSC”) adjustment clause under Section 1307 of the Public Utility Code (the “Code”) on January 1, 2011. PECO will pay the bill credits to customers through adjustments to the Company’s existing non-bypassable transmission charge (“NBT”). For the period between 2007 and 2010, when PECO paid the

RTEP charges and did not recover those costs from customers through the TSC, PECO will retain the bill credits. PECO projects that customers will receive [96%] of the total bill credits awarded to PECO, or approximately \$74 million.

The OCA broadly avers that it may be “unjust, unreasonable, and in violation of the Pennsylvania Public Utility Code” for PECO to retain any portion of the bill credits.¹ However, the Complaint does not address why it would be unreasonable for PECO to exclude refunds from the NBT that relate to RTEP charges paid by PECO prior to the TSC. Therefore, the Complaint is factually and legally insufficient and, as a consequence, it is objectionable under 52 Pa. Code §§ 5.101(a)(3).

II. BACKGROUND

1. On May 31, 2018, the FERC approved a settlement agreement at Docket No. EL05-121-009 (the “Settlement”)² that implements a schedule of credits and charges for certain covered transmission enhancements to address costs collected from PECO and other load-serving entities during the 2007-2016 period under PJM’s allocation methodology previously approved by FERC Order No. 494.³ Under the Settlement, PECO will receive \$79.5 million in total credits that PJM will refund through 2025 (the “RTEP Credits”). Of this amount, approximately \$5.5 million relates to PECO’s overpayment of RTEP charges during the 2007-2010 period before implementation of the TSC and, ultimately, the NBT.⁴

¹ Complaint, ¶ 4.G.

² *PJM Interconnection, L.L.C.*, Order on Contested Settlement, 163 FERC ¶ 61,168 (2018).

³ *PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063 (2007), *order on reh’g*, Opinion No. 494-A, 122 FERC ¶ 61,082 (2008).

⁴ On December 4, 2014, the Commission considered and approved PECO’s proposed third default service program for the period June 1, 2015 through May 31, 2017 (“DSP III”), as modified by a joint petition for partial settlement. *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 Dec. 4, 2014) (“DSP III Order”). In the DSP III Order (p. 46), the Commission agreed that PECO, in its capacity as an electric

2. On November 7, 2018, PECO filed its semiannual adjustment to the NBT in PECO Electric Tariff No. 5, Supplement No. 76 (“Supplement No. 76”). In Supplement No. 76, the Company proposed to reflect all RTEP Credits in the NBT that relate to PJM charges for transmission-related services acquired for PECO’s default service customers on and after implementation of the TSC on January 1, 2011. Such credits will reduce the NBT rate and, in turn, the variable distribution service charges for all customers.

3. On November 28, 2018, the OCA filed its Complaint and PECO was served with the Complaint by the Secretary’s Bureau on November 29, 2018.

III. PRELIMINARY OBJECTION

4. Pursuant to 52 Pa. Code § 5.101(a)(3), a party may file preliminary objections for “[i]nsufficient specificity of a pleading.” The Commission’s rule regarding specificity of a pleading is based on Pennsylvania’s Rule of Civil Procedure 1019, which requires a plaintiff to plead all the facts that he or she must prove in order to achieve recovery on the alleged cause of action.⁵ Pennsylvania is a fact pleading, rather than notice, state.⁶

5. The Complaint alleges that it may be unreasonable for PECO to retain any portion of the total RTEP Credits.⁷ The Complaint does not, however, contain any averments that set

distribution company, should acquire certain non-market based transmission service on behalf of all distribution customers (shopping and non-shopping customers) and recover the associated costs on a non-bypassable basis through its NBT. Consistent with the DSP III Order, on June 1, 2015, PECO implemented the NBT to recover (1) Generation Deactivation/Reliability Must Run charges (PJM bill line 1930) set after December 4, 2014; (2) RTEP charges (PJM bill line 1108); and (3) Expansion Cost Recovery charges (PJM bill line 1730).

⁵ *Lewis v. PECO Energy Co.*, Docket No. C-2013-2357268 (Recommended Decision issued May 24, 2013) (“Recommended Decision”), pp. 4-5. In its Order entered July 31, 2013, the Commission sustained PECO’s preliminary objections and observed that the Recommended Decision had become final without further Commission action.

⁶ *E.g., Unified Sportsman of Pa. v. Pa. Game Comm’n*, 950 A.2d 1120, 1134 (Pa. Cmwlth. 2008).

⁷ *See* Complaint, ¶¶ 4.D and 4.G. In its Public Statement, the OCA asserts that PECO’s rates were capped from 2007 through 2010. While PECO’s generation rates were capped until December 31, 2010, the rate cap protections on transmission and distribution service expired on December 31, 2006.

forth the basis on which the OCA contends that it would be unreasonable for PECO to exclude the portion of RTEP Credits from the NBT that are awarded to PECO for PECO's payments made to PJM prior to the January 1, 2011 effective date of the Company's reconcilable transmission cost adjustment clause. Consequently, the Complaint is factually and legally insufficient in that it does not aver facts that support the OCA's conclusory allegation that Supplement No. 76 is unjust, unreasonable and/or contrary to the Public Utility Code.

Accordingly, the Complaint lacks the material allegations that PECO needs to further evaluate its defenses against the OCA's claims and is objectionable under 52 Pa. Code § 5.101(a)(3).⁸

⁸ Having filed this Preliminary Objection, PECO is not obligated to answer the Complaint until further directed by the presiding officer or the Commission. 52 Pa. Code § 5.101(e)(1).

IV. CONCLUSION

WHEREFORE, PECO Energy Company respectfully requests that the Commission sustain its Preliminary Objection and dismiss the Complaint filed by the Office of Consumer Advocate.

Respectfully submitted,



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Dated: December 19, 2018

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