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February 3, 2011

VIA FEDERAL EXPRESS

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P.O. Box 3265
Harrisburg, PA 17120

**Re: Petition of PECO Energy Company for Approval of its Smart Meter Technology
Procurement and Installation Plan – Petition for Approval of PECO Energy
Company's Initial Dynamic Pricing and Customer Acceptance Plan,
Docket No. M-2009-2123944**

Dear Secretary Chiavetta:

Enclosed for filing are an original and nine copies of the **Reply Brief of PECO Energy Company** in the above-captioned matter. A copy of the Reply Brief in searchable PDF format is also enclosed. As evidenced by the attached Certificate of Service, a copy of the Reply Brief is being served upon Administrative Law Judge Marlane R. Chestnut and all parties.

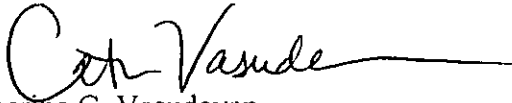
Pursuant to 52 Pa. Code § 1.11(2), the enclosed Reply Brief shall be deemed filed on the date shown on the express delivery receipt attached to the delivery envelope.

Please date-stamp the extra copy of the Reply Brief and this letter which we have enclosed and return to us in the envelope provided.

Rosemary Chiavetta, Secretary
February 3, 2011
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Should you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,



Catherine G. Vasudevan

CGV/ap
Enclosures

c: Per Certificate of Service

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF ITS :
SMART METER TECHNOLOGY :
PROCUREMENT AND INSTALLATION : **DOCKET NO. M-2009-2123944**
PLAN – PETITION FOR APPROVAL OF :
PECO ENERGY COMPANY’S INITIAL :
DYNAMIC PRICING AND CUSTOMER :
ACCEPTANCE PLAN :

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SECRETARY'S BUREAU

**REPLY BRIEF OF
PECO ENERGY COMPANY**

**Before Administrative Law Judge
Marlane R. Chestnut**

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February 3, 2011

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I. INTRODUCTION

PECO Energy Company (“PECO” or the “Company”) files this Reply Brief in response to the Main Brief filed by the Office of Consumer Advocate (“OCA”) addressing the issue that was reserved for briefing in the Joint Petition for Partial Settlement (“Joint Petition”) filed on January 28, 2011. As explained in the Company’s Main Brief, which was also filed on January 28, 2011, the reserved issue is whether the development and implementation costs of PECO’s Initial Dynamic Pricing and Customer Acceptance Plan (“Dynamic Pricing Plan” or “Plan”) that are assigned or allocated to Default Service Procurement Classes 1, 2, and 3 should be recovered from both shopping and default service customers or from default service customers only. *See* PECO Main Brief, pp. 2-3; Joint Petition, p. 1.

Consistent with the Pennsylvania Public Utility Commission’s (“Commission”) rulings on cost recovery in its orders approving the dynamic pricing programs of other electric distribution companies, PECO proposed to recover its Dynamic Pricing Plan costs solely from default service customers. *See* PECO St. No. 4, pp. 9-11. The Office of Small Business Advocate (“OSBA”) and the Philadelphia Area Industrial Energy Users Group (“PAIEUG”) separately filed Main Briefs supporting this proposal. The OCA, which is the only party that disagrees with the Company’s approach, filed a Main Brief espousing its position that Plan costs should be recovered from both shopping and default service customers.

To a very large extent the arguments advanced by the OCA were fully addressed in the Company’s Main Brief, and an extensive reanalysis is, therefore, not necessary. However, as an aid to the Administrative Law Judge (“ALJ”), this Reply Brief will revisit certain key areas of disagreement.

II. ARGUMENT

A. The OCA's Cost Recovery Proposal Is Inconsistent With Recent Commission Precedent

As explained in the Company's Main Brief (pp. 3-4), the Commission has recently determined that the development and implementation costs of dynamic pricing programs proposed by Duquesne and PPL should be recovered from default service customers only. *PPL Electric Utilities Corporation Supplement No. 94 To Tariff Electric – Pa. P.U.C. No. 201- Time-of-Use Rates*, Docket No. R-2010-2201138 (Order entered December 2, 2010); *Petition of Duquesne Light Company for Approval of a Time-of-Use Plan*, Docket No. P-2009-2149807 (Order entered June 23, 2010); *Pa. P.U.C. v. PPL Electric Utilities Corporation*, Docket No. R-2009-2122718 (Order entered March 9, 2010).

In its Main Brief, the OCA did not address the *Duquesne* Order. And, although the OCA acknowledged that the Commission Orders approving PPL's Time-of-Use ("TOU") program are adverse to its position, it argues that those Orders should be distinguished because: (1) unlike PPL's TOU program, PECO's Plan is a "pilot" and not a "simple offering of new rates" to default service customers; and (2) PECO intends to share publicly the lessons learned from its Plan, thereby generating benefits for electric generation suppliers ("EGSs") and their customers, while, in PPL's case, "no evidence was presented regarding the benefits of the PPL TOU rate to all customers." *See* OCA Main Brief, pp. 6-10. It is questionable whether the differences between PECO's Plan and PPL's TOU program that the OCA purports to identify actually exist and, if they do, whether they are material to the reserved issue. However, those questions need not be addressed because the Commission's Order approving Duquesne's TOU program establishes that neither "pilot" status nor the potential to create benefits for all customers distinguishes PECO's Plan from the Commission's earlier determination that the development

and implementation costs of dynamic pricing programs should be recovered from default customers only.

As described in PECO's Main Brief, Duquesne recently sought approval of several TOU "pilot" programs as well as permission to recover the associated development and implementation costs through its existing Consumer Education Surcharge (assessed to all customers served under its electric tariff). *Petition of Duquesne Light Company for Approval of a Time-of-Use Plan*, Docket No. P-2009-2149807 (Order entered June 23, 2010). In that case, the OCA argued that many of Duquesne's TOU plan development and implementation costs should be recovered through its distribution rates. *Id.* at 9. The Commission rejected both the Duquesne and OCA cost recovery proposals and concluded that Duquesne's TOU plan development and implementation costs should be recovered through its default service rates (i.e., from default service customers only). *Id.* at 11-12. Additionally, in that Order, the Commission established deadlines by which Duquesne must file and serve summaries of the results of its pilot programs. *Id.* at 10-11. Those summaries will clearly be in the public domain and, therefore, will be available to help EGSs craft their own dynamic pricing products. Consequently, Duquesne's pilot programs – and the Commission's Order approving recovery of the Duquesne's development and implementation costs from default service customers – cannot be distinguished from PECO's Plan.

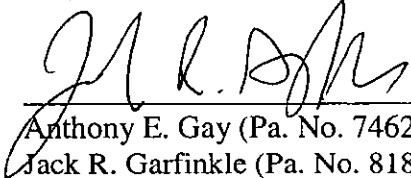
In summary, the issues so recently decided by the Commission in the PPL and Duquesne cases should not be revisited in this proceeding. The Commission carefully considered the OCA's position in those earlier cases and, in *Duquesne*, clearly did so in the context of "pilot" programs that will produce information to be made publicly available for the benefit of all customers.

Finally, while PECO believes there is no justification for the Commission to re-examine its recent holdings on cost recovery in this case, if the Commission, nonetheless, were to determine that development and implementation costs should be recovered from both “shopping” and default service customers, then an appropriate rate mechanism must be approved to recover *from shopping customers, on a full and current basis, the costs that are apportioned to them.*

III. CONCLUSION

For the reasons set forth above and in PECO's Main Brief, PECO's proposal to recover Dynamic Pricing Plan costs from default service customers should be approved.

Respectfully submitted,



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PLAN – PETITION FOR APPROVAL OF :
PECO ENERGY COMPANY'S INITIAL :
DYNAMIC PRICING AND CUSTOMER :
ACCEPTANCE PLAN :

CERTIFICATE OF SERVICE

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

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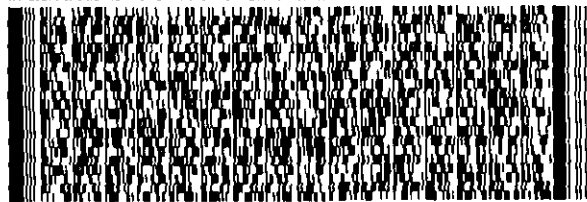
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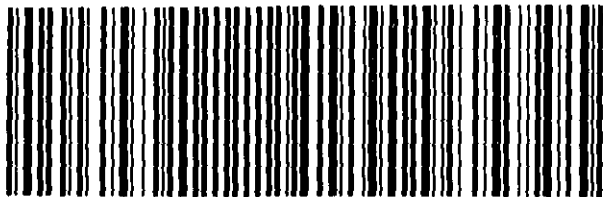
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