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July 6, 2020

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2020 Through May 31, 2025 – Docket No. P-2020-3019290

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Electric Supplier Coalition's Petition for Certification of a Ruling on a Discovery Matter with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

*Karen O. Moury*

Karen O. Moury

KOM/lww  
Enclosure

cc: Hon. Eranda Vero w/enc.  
Cert. of Service w/enc.

## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of the Electric Supplier Coalition's Petition for Certification of a Ruling on a Discovery Matter upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Dated: July 6, 2020

*Karen O. Moury*

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Karen O. Moury

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for :  
Approval of its Default Service Program for :  
the Period from June 1, 2021 through May 31, : Docket No. P-2020-3019290  
2025 :

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**PETITION OF ELECTRIC SUPPLIER COALITION FOR CERTIFICATION  
OF A RULING ON A DISCOVERY MATTER**

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TO THE HONORABLE ADMINISTRATIVE LAW JUDGE VERO:

Pursuant to Section 5.304(a)(2) of the Commission’s regulations, 52 Pa. Code § 5.304(a)(2), the Electric Supplier Coalition (“ESC” or “Coalition”) hereby files this Petition for Certification requesting interlocutory review of the Interim Order issued by Administrative Law Judge (“ALJ”) Eranda Vero on July 2, 2020 regarding the Motion to Compel of PECO Energy Company (“PECO”) relating to Interrogatories, Set I, Nos. 2, 4, 5 and 6. The Electric Supplier Coalition avers as follows.

1. The proposed Question for Certification is as follows:

Whether it was appropriate to direct electric generation suppliers (“EGSs”) to produce pricing, sales, complaint and long-term contract information relating to the competitive generation services they provide to shopping customers in the retail market in a proceeding that is designed to establish the parameters under which PECO will provide default generation service to non-shopping customers in a regulated market?

Proposed Answer: No.

2. The three main reasons this was inappropriate are that: (a) EGS activities in the competitive retail market selling electricity to shopping customers are wholly irrelevant to the regulated structure under which PECO sells electricity to non-shopping customers; (b) EGS information from the competitive retail market is highly confidential and, even aggregated, would be prejudicial if shared among themselves; and (c) requiring the ESC to produce irrelevant and highly confidential information about its members’ participation in the competitive retail market as a condition of offering its perspectives about PECO’s regulated default service model and related proposals would violate their fundamental

rights of due process. If the ALJ is persuaded, she could treat this Petition as a request for reconsideration and so modify the Interim Order.

3. The central purpose of PECO's four-year DSP V Plan is to establish the plan for PECO as the default service provider to procure and supply generation service to customers on its distribution system who do not receive generation service from EGSs in the retail competitive market. These are non-shopping customers.

4. By contrast, the EGSs who are members of the Coalition do not serve non-shopping customers. Rather, they supply generation service to customers on PECO's distribution system who elect to receive generation from an EGS in the retail competitive market established by the Competition Act. They serve shopping customers.

5. Ignoring the separate and distinct roles that: (a) PECO has a default service provider serving *non-shopping customers* at fully reconcilable rates in a Commission-regulated environment, and that (b) Coalition members have of serving *shopping customers* in a fully competitive market, the Interim Order inappropriately intertwines these vastly different activities. In order to avoid substantial prejudice to the Coalition's legal rights, it is critical that the ALJ recognize the differences in these services.

6. **EGS activities in the competitive retail market are largely irrelevant to how PECO fulfills its role as a default service provider in the regulated environment.** How EGSs price their competitive retail products, how many customers they serve, how much electricity they sell to their customers, whether their shopping customers complain about their prices and how they structure their energy supply contracts have nothing to do with how PECO's regulated default generation service is procured or sold to non-shopping customers. To the degree EGS activities are relevant in this proceeding, it is in relation to whether the DSP provides the space needed to exist in a competitive market for shopping customers in the face of a dominant incumbent serving non-shopping customers.

7. The Interim Order claims that the information sought by PECO is relevant in assessing the extent to which ESC members can expand their businesses under the DSP program, and refers to the possibility for EGSs to charge higher prices for such service. In making these assertions, the Interim

Order relies on ESC testimony about the stagnation of the market but overlooks the facts that ESC members currently have no role in PECO's DSP program and are not seeking such a role as part of this proceeding. While it is true that the ESC testimony points to a number of flaws in PECO's DSP V Plan and with its "basic default service model," Mr. Kavulla relies on his observations about the stagnant market to propose specific recommendations to address those shortcomings, including changes in PECO's four-year plan and revisions to the existing default service structure going forward.

8. At no time does Mr. Kavulla suggest that EGSs operating in the competitive retail market should take their business models and replace or supplement PECO's default service structure. Indeed, he expressly references the need for a separate process to examine alternative default service frameworks, which would be required under the Commission's regulations. In such a proceeding, it would be incumbent upon the Commission to determine how other entities would procure and price default service for customers. It would be up to the Commission to structure default service to protect customers. EGS activity in the competitive market would be irrelevant to that process and would continue on its own path.

9. Particularly problematic is the Interim Order's suggestion that the ESC aggregate the data so as to preserve its confidentiality – data that the Commission itself protects from public disclosure unless aggregated statewide. This approach wholly overlooks the fact that only the ESC's counsel would be able to view the data in aggregate and that no ESC representative, including its own witness, would have any visibility to this data or any opportunity to review or respond to other parties' reaction to this data and its impact on ESC's recommendations. These realities create untenable dynamics.

10. Notably, none of the requested information currently exists. It belongs to seven companies who are competitors and it is not sitting on a shelf. Indeed, it would take extensive time and resources to compile it, while the ESC members are focused on running their businesses and protecting customer interests during COVID-19. Simply, it is unreasonable to place the Coalition in a position of picking between responding to irrelevant, highly confidential interrogatories or exercising its rights to review and testify about PECO's DSP V Plan. The Coalition has a right to offer its perspectives as to whether PECO's plan or the default service structure need to be revised to comply with the law.

WHEREFORE, the Electric Supplier Coalition respectfully requests that Administrative Law Judge Vero grant this Petition for Certification.

Respectfully submitted,

*Karen O. Moury*

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Date: July 6, 2020

Attorneys for Electric Supplier Coalition