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October 31, 2012

**VIA eFILING AND FIRST CLASS MAIL**

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**  
**Docket No. P-2012-2283641**

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Dear Secretary Chiavetta:

Enclosed for filing is the **Petition of PECO Energy Company for Clarification and Reconsideration of the Commission's Order Entered October 12, 2012** in the above-captioned proceeding ("the Petition"). In accordance with the Commission's announcement during Hurricane Sandy, this Petition is timely filed due to the closure of the Commission on October 29th and 30th.

As indicated on the attached Certificate of Service, copies of the Petition have been served via First Class mail.

Sincerely,



Thomas P. Gadsden

TPG/tp  
Enclosures

c: Per Certificate of Service

Almaty Beijing Boston Brussels Chicago Dallas Frankfurt Harrisburg Houston Irvine London Los Angeles Miami  
Moscow New York Palo Alto Paris Philadelphia Pittsburgh Princeton San Francisco Tokyo Washington Wilmington

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY COMPANY           :**  
**FOR APPROVAL OF ITS DEFAULT                :** **DOCKET NO. P-2012-2283641**  
**SERVICE PROGRAM                               :**

**CERTIFICATE OF SERVICE**

I hereby certify and affirm that I have this day served copies of the **PECO Energy Company's Petition for Clarification and Reconsideration of the Commission's Order Entered October 12, 2012** 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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Dated: October 31, 2012

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY COMPANY :  
FOR APPROVAL OF ITS DEFAULT : DOCKET NO. P-2012-2283641  
SERVICE PROGRAM :**

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**PETITION FOR CLARIFICATION  
AND RECONSIDERATION  
OF THE COMMISSION'S ORDER ENTERED OCTOBER 12, 2012**

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**I. INTRODUCTION AND OVERVIEW**

Pursuant to 52 Pa.C.S. § 5.572, PECO Energy Company (“PECO” or the “Company”) hereby petitions the Pennsylvania Public Utility Commission (the “Commission”) to clarify and, as necessary, reconsider its order entered October 12, 2012 (“October 12 Order”) with respect to the Company’s Default Service Program for the period from June 1, 2013 to May 31, 2015 (“DSP II”). In particular, PECO requests that the Commission clarify its October 12 Order by: (1) affirming the Commission’s authorization for PECO to proceed with a DSP II competitive procurement for default service to residential customers consistent with the terms of the October 12 Order while it prepares a “revised” default service plan consistent with the Commission’s direction regarding Retail Market Enhancement programs (“RME Programs”); (2) clarifying that the costs of the Company’s RME Programs are to be recovered from electric generation suppliers (“EGSs”) and not customers; (3) clarifying the timing for the Commission’s review of participating EGS’ eight-month Opt-In Program offerings; and (4) addressing and correcting several references that appear to be typographical errors.

PECO also requests that the Commission reconsider the 30-day timeline established by the October 12 Order for development of a revised proposal regarding application and form requirements for EGSs who participate in PECO's Opt-In and Standard Offer Program (the "EGS Applications and Form Agreements"). The EGS Applications and Form Agreements include provisions that are directly related to cost recovery and RME Program design issues that are the subject of the stakeholder discussions for which the Commission established a longer 60-day period in the October 12 Order. Accordingly, PECO believes that any proposal addressing the applications and agreements should also be subject to the same 60-day timeframe to ensure consistency with final proposals for resolution of RME Program design issues.

In addition, PECO requests that the Commission clarify and, to the extent necessary, reconsider its direction to PECO to develop a plan that will allow low-income customers in its Customer Assistance Program ("CAP") to purchase their generation supply from EGSs by January 1, 2014. As described *infra*, the October 12 Order is not clear as to whether PECO is required to submit a plan by January 1, 2014, or whether implementation of all changes necessary for CAP shopping are to be completed by January 1, 2014. In light of PECO's prior experience addressing CAP issues, PECO believes that a collaborative process to eliminate or minimize differences between stakeholders with CAP interests is the most effective mechanism for expediting program changes for consideration by the Commission. PECO therefore proposes to begin a collaborative process and initiate separate proceedings through the submission of a CAP shopping plan to the Commission by March 31, 2013, with the actual date for complete implementation (which may be after January 1, 2014) based upon the outcome of those proceedings.



The Company's most immediate concern is procuring default service supply contracts for delivery of power on June 1, 2013, consistent with DSP II. The Independent Evaluator has informed PECO that the October 12 Order may not be viewed by potential bidders as sufficiently final. Therefore, the Independent Evaluator recommended that PECO: (1) obtain affirmation of the finality of the Order as to procurement issues; and (2) pending such affirmation, postpone the previously scheduled November 2012 DSP II procurement to December 2012. To that end, the Company requests that the Commission clarify its October 12 Order by explicitly stating that: (1) all issues pertaining to the procurement of default service supply contracts under PECO's DSP II were decided with finality, as required by the "final order" mandate of Section 2807(e)(3.6) of the Public Utility Code, 66 Pa.C.S. § 2807(e)(3.6); and (2) the Company may begin to implement its default service procurement plan consistent with the applicable terms of the October 12 Order and is permitted to conduct its scheduled November procurement in December in light of the additional time required to provide clarity to bidders through the resolution of this Petition.<sup>1</sup>

## II. BACKGROUND

1. On January 13, 2012, PECO filed a Petition ("Petition") requesting that the Commission approve its DSP II and find that the Program satisfies the criteria set forth in 66 Pa.C.S § 2807(e)(3.7).

2. As described in the Petition, DSP II contains all of the elements of a default service plan required by the Public Utility Code, the Commission's default service regulations

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<sup>1</sup> PECO recognizes that the Commission has scheduled only one public meeting in November (November 8, 2012). In the event the Commission is not able to render a decision clarifying the finality of the October 12 Order with respect to procurement issues at that meeting, PECO believes that a secretarial letter will be sufficient for this purpose. If clarification is not received until the December public meeting (scheduled for December 5, 2012), the Independent Evaluator has informed PECO that a December procurement will not be able to proceed in a timely fashion.

(52 Pa. Code §§ 54.181 – 54.189), and the Commission’s Policy Statement on Default Service (52 Pa. Code §§ 69.1801- 69.1817), including procurement, implementation, and contingency plans, a rate design plan, and copies of the agreements and forms to be used in procurement of default service supply.

3. PECO’s Petition also proposed a variety of retail market enhancements in accordance with the orders of the Commission in its Investigation of Pennsylvania’s Retail Electricity Market (the “Retail Markets Investigation”).<sup>2</sup> The RME Programs proposed by PECO included an EGS Opt-In Competitive Offer Program (“Opt-In Program”) and an EGS Standard Offer Program.

4. The Commission issued the October 12 Order at the conclusion of a fully litigated proceeding. In the October 12 Order, the Commission approved, with modifications, the Company’s default service procurement and implementation plan (pp. 12-44) and its plan to recover default service costs (pp. 45-77). However, several aspects of the Company’s proposed RME Programs were identified by the Commission for further consideration and additional process as follows:

(a) RME Program Design Issues. The Commission directed that PECO, electric generation suppliers (“EGSs”), and other interested parties provide an updated proposal addressing changes directed by the Commission regarding PECO’s proposed Opt-In Program within sixty days of the October 12 Order. *See* October 12 Order, pp. 91 & 157. The Commission also directed EGSs participating in the Opt-In Program to submit the terms and

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<sup>2</sup> These orders include *Investigation of Pennsylvania’s Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952 (Order entered December 16, 2011) (“*Default Service Recommendations Order*”) and *Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan* (Order entered March 2, 2012) (“*Intermediate Work Plan Order*”).

conditions of their eight-month Opt-In Program offerings to the Commission for review and approval no later than forty-five days before offers are extended to potential customers. *Id.*, pp. 91 & 156.

(b) EGS Applications and Form Agreements. The Commission ordered that interested parties conduct a collaborative to review the terms and conditions of the EGS Applications and Form Agreements. Specifically, the Commission provided as follows:

[W]e shall require that the Parties participating in this collaborative complete their review and submit any recommended revisions to the Commission within thirty days of the entry of this Opinion and Order. We strongly encourage the Parties to settle their differences, and submit a joint proposal to the Commission for its consideration.

October 12 Order, pp. 106-107 (Opt-In Program); *see also* p. 124 (Standard Offer Program)

(3) RME Program Cost Recovery. The Commission agreed with the Administrative Law Judge that its position “was and continues to be that EGSs should be responsible for [retail market enhancement] program costs.” October 12 Order, p. 148. However, the Commission found that it lacked sufficient information to adopt the Company’s purchase of receivable discount proposal and directed PECO, EGSs and interested parties to: “resubmit a plan or proposal within sixty (60) days of the date of entry of this Opinion and Order, for Commission review and approval, addressing how participating EGSs or customers will pay for the costs of market enhancements approved in this DSP proceeding.” *Id.* Along those lines, in Ordering Paragraph 14, the Commission required submission of a proposal “on how electric generation suppliers will pay for the costs of the Retail Market Enhancement Programs . . . to be filed pursuant to Ordering Paragraph No. 18.”

(4) Shopping by CAP Customers. In Ordering Paragraph 18, the Commission directed the Company to develop a CAP shopping plan, as follows:

IT IS ORDERED: . . .

18. That PECO Energy Company is directed to develop a plan that will allow its CAP customers to purchase their generation supply from EGSs by January 1, 2014. Toward this end, we shall direct OCMO to work with PECO to: (1) ensure that, to the extent possible, the Opt-In and Standard Offer Programs are available to CAP customers; and (2) provide a path that allows both CAP credits and LIHEAP funds to be used by customers that choose an EGS to supply their generation service.

October 12 Order, p. 156.

5. In Ordering Paragraphs 20 and 21, the Commission directed the Company to file a “revised Default Service Plan,” as follows:

IT IS ORDERED: . . .

20. That PECO Electric Company shall file a revised Default Service Plan, including associated tariff supplements, which reflect *all* of the revisions set forth in this Opinion and Order. This revised Default Service Plan shall be filed within sixty days of the entry of this Opinion and Order and shall be served on the active Parties to this proceeding.

21. That any directive, requirement, disposition, or the like contained in the body of this Opinion and Order, which is not the subject of an individual Ordering Paragraph, shall have the full force and effect as if fully contained in this part.

October 12 Order, p. 157 (emphasis in original).

6. Pursuant to Ordering Paragraphs 20 and 21, *supra*, the Company will make a filing no later than December 11, 2012, that addresses the directives of the Commission with respect to RME Programs and other directives in the October 12 Order. With regard to their default service procurement, implementation and cost recovery plans approved by the

Commission in the October 12 Order, the Company anticipates its December 2012 filing will include the following in compliance with the October 12 Order:

- A revised Supplier Master Agreement which can be used for procurement of spot-priced default service supply for the Large Commercial & Industrial Class scheduled in early 2013, with revised bidding rules to support such procurement; and
- Revised default service tariffs maintaining quarterly reconciliation (instead of the over/under annual reconciliation proposed by PECO) after June 1, 2013, with complete flow-through of the costs and benefits of Auction Revenue Rights to default service customers.

### III. SECTION 2807(E)(3.6)

7. Section 2807(e)(3.6) of the Public Utility Code provides:

The default service provider shall file a plan for competitive procurement with the commission and obtain commission approval of the plan considering the standards in paragraphs (3.1), (3.2), (3.3) and (3.4) before the competitive process is implemented. The commission shall hold hearings as necessary on the proposed plan. *If the commission fails to issue a final order on the plan within nine months of the date that the plan is filed, the plan shall be deemed to be approved and the default service provider may implement the plan as filed.* Costs incurred through an approved competitive procurement plan shall be deemed to be the least cost over time as required under paragraph (3.4)(ii).

66 Pa.C.S. § 2807(e)(3.6) (emphasis added).

8. In this case, the nine-month period demarcated in Section 2807(e)(3.6) ended on October 13, 2012. As a consequence, the October 12 Order satisfies the “final order” requirement of Section 2807(e)(3.6) only if the portions of that Order identifying issues for further consideration after October 13, 2012 (i.e., the content of the EGS Program Applications

and Form Agreements, cost recovery for the RME Programs, and CAP customer shopping) are legally separated from the portions of that Order approving, with finality, PECO's DSP II (i.e., the default service procurement, implementation and cost recovery plans).

#### IV. REQUEST FOR RECONSIDERATION AND CLARIFICATION – LEGAL STANDARDS

9. In *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553 (1982), the Commission provided the following guidance on the criteria it would consider in deciding requests for reconsideration:

A petition for reconsideration, under the provisions of 66 Pa C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was said that “[p]arties . . ., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them. . . .” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

10. This Commission has previously held that the standard for determining whether clarification is warranted is substantially similar to the standard for granting reconsideration set forth in *Duick*:

The OCA's Petition was filed pursuant to 52 Pa. Code § 5.572, Petitions for Relief. This regulation encompasses “Petitions for Clarification,” and, as with Petitions for Reconsideration, these are decided by the application of the standards set forth in *Duick v. Pennsylvania Gas and Water Co.*, Docket No. C-R0597001 *et al.*, 56 Pa. P.U.C. 553, 559 (1982) n1. Under the standards set forth in *Duick*, a Petition for Reconsideration may properly raise any

matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations that appear to have been overlooked or not addressed by the Commission. *Duick* at 559.

*Application of PPL Elec. Util. Corp.*, Docket No. A-2009-2082652 et al., 2010 Pa. PUC LEXIS 1707 at 3-4 (Order entered April 22, 2010). *See also Energy Efficiency and Conservation Program*, Docket No. M-2008-2069887, 2009 Pa. PUC LEXIS 1158 at 3-4 (Order entered June 2, 2009).

## **V. REQUEST FOR CLARIFICATION AND RECONSIDERATION**

11. This Petition satisfies the standards for granting clarification and, as necessary, reconsideration of the October 12 Order. As described in detail below, the Company has identified several considerations and important issues that were either: (1) not directly addressed by the October 12 Order; (2) subject to conflicting statements in the October 12 Order; or (3) the result of typographical error.

### **A. Authorization To Proceed With DSP II Competitive Procurements**

12. Given the Commission’s decision to create additional proceedings to address issues associated with PECO’s proposed RME Programs, the Commission may not have considered the importance of explicitly providing that PECO’s plans for default service procurements (including implementation and cost recovery) were decided with finality. This is critical to ensure it is clear that the Company is authorized to begin procurement activities consistent with the Order, including its scheduled 2012 procurements for default service residential customers.

13. As explained *supra*, the Independent Evaluator has informed PECO that the October 12 Order may not be viewed by potential bidders as sufficiently final and has recommended that PECO obtain affirmation of the finality of the Order as to procurement issues. The Independent Evaluator has further recommended pending that affirmation, that PECO should postpone the previously scheduled November DSP II procurement until December. If the Company is not able to proceed with this procurement in 2012, the integrity of the DSP II Program, including the product mix approved in the October 12 Order, could be jeopardized. The Commission should therefore clarify that: 1) all issues pertaining to the procurement of default service supply contracts under PECO's DSP II were decided with finality, as required by the "final order" mandate of Section 2807(e)(3.6) of the Public Utility Code, 66 Pa.C.S. § 2807(e)(3.6), and 2) that PECO may begin to implement its default service procurement plan consistent with the applicable terms of the October 12 Order and may conduct its scheduled November procurement for the default service residential class in December in light of the additional time needed to provide clarity to bidders.

#### **B. Cost Recovery For Retail Market Enhancement Programs**

14. In the October 12 Order, the Commission appears to have provided conflicting guidance on whether the costs of RME Programs should be recovered from EGSs or customers. As previously explained, the Commission agreed with the Administrative Law Judge that EGSs should be responsible for RME Program costs. October 12 Order, p. 148. To that end, in Ordering Paragraph 14, the Commission states that the parties should submit a proposal "on how electric generation suppliers will pay for the costs of the Retail Market Enhancement Programs." In the body of the Order, however, the Commission also states that the proposal should address "how participating EGSs *or customers* will pay for the costs of market enhancements approved



in this DSP proceeding.” October 12 Order, p. 148 (emphasis added). PECO requests clarification that the costs of the Company’s RME Programs are to be recovered from EGSs only – not customers – consistent with the Commission’s position in the *Intermediate Work Plan Order*.<sup>3</sup> In the absence of this clarification by the Commission, PECO believes that the discussions with other stakeholders regarding cost recovery will be unnecessarily complicated and PECO will be unlikely to reach full agreement on any cost recovery proposal for submission to the Commission in accordance with the October 12 Order.

### **C. PECO’s Compliance With The Requirement To Develop A CAP Shopping Plan**

15. In directing PECO to develop a plan through a collaborative effort with the Office of Competitive Market Oversight (“OCMO”) that will allow its CAP customers to purchase their generation supply from EGSs by January 1, 2014, the Commission did not specify whether the January 1, 2014 deadline was the date for filing the plan or the date by which the plan should be implemented. PECO anticipates that, along with such collaboration with OCMO, other parties will wish to participate in the development of the CAP shopping plan. In particular, the following entities filed testimony expressing their thoughts regarding CAP shopping in the PECO service territory: the Retail Electric Supplier Association, Dominion Retail, Inc., the Office of Consumer Advocate, and the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania. Based on the testimony of those parties, the Commission acknowledged that “PECO currently does not allow its CAP customers to shop, and that there are

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<sup>3</sup> This clarification is consistent with the Commission’s decision that the cost of retail market enhancements approved in connection with the FirstEnergy electric distribution companies’ default service proceedings be recovered from EGSs. See Order, *Joint Petition of Metropolitan Edison Co., Pennsylvania Elec. Co., Pennsylvania Power Co. and West Penn Power Co. For Approval of Their Default Service Programs*, Docket No. P-2011-2273650 *et al.*, pp. 136, 157, 160 (Order entered August 16, 2012).

a number of issues that must be addressed in order to change this policy.” October 12 Order, p. 131.

16. In their testimony in this proceeding, the parties provided conflicting viewpoints on the issues that need to be addressed in PECO’s CAP shopping plan. In PECO’s experience, a collaborative process among the stakeholders is typically useful to eliminate, minimize, or more clearly define the stakeholders’ differences of opinion. In order to provide sufficient time to engage in this collaborative process, PECO proposes to commence the collaborative immediately and file a CAP shopping plan with the Commission no later than March 31, 2013.

17. If the stakeholders are able to reach full consensus by the March 31, 2013 filing, then there will be little or no need for additional testimony or hearings on the CAP shopping plan. The Commission would then be able to issue its final approval of the CAP shopping plan shortly thereafter, and PECO would be able to proceed with software coding and other implementation processes at that time.

18. Conversely, if the stakeholders are unable to reach full consensus by the March 31, 2013 filing, there may be the need for additional testimony or hearings. Depending upon the scope of unresolved issues at that time, PECO may need to await Commission resolution of the disputed issues before it can proceed to implement the CAP shopping plan. It is not possible to predict the scope or length of litigation that may be necessary to resolve any contested issues.

19. The time needed to fully implement the CAP shopping plan, once its final form is known and approved by the Commission, will depend upon the details and actual final form of the plan. Currently, however, PECO estimates that it will take approximately nine to twelve months to fully implement the CAP shopping plan once its final form is known and approved.

20. If the stakeholders are able to reach consensus on a plan by March 31, 2013 and litigation is therefore avoided or minimized, PECO estimates that full implementation by January 1, 2014 may be achievable. However, if the stakeholders are unable to come to consensus and litigation extends further into 2013, full implementation by January 1, 2014 does not appear achievable. Some of the factors that affect this timing are outside of PECO's control. In particular, PECO cannot control whether the stakeholders will be able to come to consensus, nor can it control the scope or length of any litigation that may develop if consensus is not reached.

21. PECO therefore seeks clarification that, if it engages in the collaborative process described above and files its CAP shopping plan with the Commission by March 31, 2013, it will be deemed to be in material compliance with Ordering Paragraph 18 even if future litigation delays implementation of that plan until after January 1, 2014.

**D. Timing Of The Commission's Review Of Terms And Conditions  
Governing Eight-Month Opt-In Product Offerings**

22. In addition, the Company requests clarification regarding the timing of an EGS' submission of the terms and conditions governing its eight-month Opt-In Program offering for Commission review and approval. In the October 12 Order, in order to effectively evaluate the terms of the Opt-In Program, the Commission directed participating EGSs to file the terms and conditions of their eight-month Opt-In Program offers no later than forty-five days before those offers are extended to potential customers. October 12 Order, p. 156. The Commission, however, did not provide guidance on whether such filing should occur prior to the mailing of the initial customer offer letter or forty-five days before the expiration of the four-month introductory product with pricing at least five percent below the applicable Price-to-Compare. PECO requests clarification on this issue so that efforts to develop a proposed application and

form requirements for EGSs participating in the Opt-In Program with other parties can be appropriately focused.

#### **E. Timing For Revised EGS Applications And Form Agreements**

23. In the October 12 Order, the Commission established a 60-day timeline for the filing of a revised default service plan (including a cost recovery proposal for the RME Programs) and a 30-day timeline for proposals regarding an integral component of those programs – the EGS Applications and Form Agreements. *See* Ordering Paragraphs 17 & 20. While the Company appreciates the Commission’s concern for the Opt-In Program Schedule, *see* October 12 Order, p. 107, the substantive provisions of the EGS Applications and Form Agreements are dependent upon overall program design decisions, including cost recovery for the RME Programs. Any form applications and agreements submitted before PECO and other stakeholders have completed their discussions regarding the RME Programs are likely to require further revision. The Company therefore requests that the Commission extend the timeline for proposals regarding the EGS Applications and Form Agreements from 30 to 60 days so that those documents may be prepared consistent with the results of the RME Programs discussions mandated by the Commission.

#### **F. Typographical Errors**

24. The Company also requests clarification on the following items, which it believes are the result of inadvertent typographical errors:

(1) In Ordering Paragraph 14, the Commission states that the cost recovery proposal for the Retail Market Enhancement Programs should “be filed pursuant to Ordering Paragraph No. 18, *infra*”. However, Ordering Paragraph 18 discusses a filing related to CAP customers that

must be completed by January 1, 2014. The Company requests clarification that the Commission intended to refer to Ordering Paragraph 20, which discusses the filing of a revised Default Service Plan within 60 days of the October 12 Order.

(2) In Ordering Paragraph 19, the Commission provides direction regarding the Company's "Default Service Supply Riders." PECO did not propose any Default Service Supply Riders in this proceeding. PECO requests clarification that the Commission included Ordering Paragraph 19 in error.

## VI. CONCLUSION

WHEREFORE, for the foregoing reasons, the Commission should grant this Petition for Clarification and Reconsideration of the October 12 Order to allow the Company to proceed with its 2012 default service procurement for the residential customer class, to properly address the Commission's directives in the October 12 Order, and correct the typographical errors in that Order.

Respectfully Submitted



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