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November 3, 2011

Via E-Filing and Overnight Mail

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

Re: Comments of Exelon to the October 14, 2011 Tentative Order
Docket No. I-2011-2237952

Dear Secretary Chiavetta:

Enclosed for filing are the original and five copies of the Comments of Exelon to the October 14, 2011 Tentative Order in the above-captioned proceeding.

Copies have been served as indicated on the attached Certificate of Service.

Very truly yours,

Jeanne J Dworetzky

Jeanne J. Dworetzky
Assistant General Counsel

JJD/adz
Enc.

Cc: Parties on the Attached Service List
Office of Competitive Markets Oversight
Retail Markets Investigation (ra-RMI@state.pa.us)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

INVESTIGATION OF PENNSYLVANIA'S RETAIL ELECTRICITY MARKET: RECOMMENDED DIRECTIVES ON UPCOMING DEFAULT SERVICE PLANS	:	**DOCKET NO. I-2011-2237952**

COMMENTS OF EXELON
TO THE OCTOBER 14, 2011 TENTATIVE ORDER

I. INTRODUCTION

PECO Energy Company ("PECO"), Exelon Generation Company and Exelon Energy Company (collectively "Exelon") hereby submit these Comments in response to the Pennsylvania Public Utility Commission's ("Commission") October 14, 2011 Tentative Order (the "Tentative Order") in this docket. The Tentative Order presents recommendations for electric distribution companies ("EDCs") regarding the format and structure of upcoming default service plans. Exelon applauds the Commission for providing direction to EDCs and other stakeholders in light of the many issues raised in the Commission's on-going Investigation of Pennsylvania's Retail Electricity Market (the "Investigation") and appreciates the opportunity to comment on the important recommendations proposed in the Tentative Order.

Since the Commission initiated the Investigation on April 29, 2011 with its Phase I Order,[1] Exelon has been an active participant in Commission proceedings and in the extensive work of the Office of Competitive Market Oversight ("OCMO"). Exelon submitted detailed comments in response to the Phase I Order, and Denis P. O'Brien, PECO's President and Chief

[1] *Investigation of Pennsylvania's Retail Electricity Market*, Docket No. I-2011-2237952 (Order entered April 29, 2011) (the "Phase I Order").

Executive Officer and Executive Vice President of Exelon Corporation, testified before the Commission at its June 8, 2011 *en banc* hearing.

Following the Commission's Phase II Order,[2] in which it directed OCMO to hold technical conferences to address intermediate and long-term issues relating to the retail competitive market and default service model, Exelon has been participating fully in all of the OCMO's conferences. PECO has also prepared additional materials on its current default service plan and potential future procurements to assist the OCMO in developing recommendations for the Commission. In addition, Exelon is participating extensively in several stakeholder subgroups created to work through specific issues such as opt-in auction programs and customer referral programs.

As the Commission recognized in its Tentative Order, the Investigation has led to an understanding among stakeholders that the Investigation's outcome could affect the upcoming default service plans which EDCs must file in accordance with their existing obligations as default service providers ("DSPs"). At the same time, Exelon urges the Commission to ensure that any changes implemented as a result of the Investigation do not create new risks or unnecessary costs in the next default service period. In addition, Exelon requests that the Commission make clear that wholesale default service supply contracts will be fully honored and that EDCs will be allowed to recover all default service costs, on a full and current basis, in the event that previously approved default service plans need to be revised.

Exelon submits the following comments with respect to the Commission's specific recommendations.

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[2] *Investigation of Pennsylvania's Retail Electric Market*, Docket No. I-2011-2237952 (Order entered July 28, 2011) (the "Phase II Order").

II. COMMENTS ON RECOMMENDATIONS

A. Default Service Plan Time Period

In the Tentative Order, the Commission recommends that EDCs file default service plans with two-year terms. As the Commission observes, its existing regulations provide that initial default service plans are to be for a period of two to three years.[3] The Default Service Policy Statement also expressly provides that subsequent plans should be for two years, unless otherwise directed by the Commission.[4] A two-year plan is well within the expectations of all stakeholders, and Exelon, therefore, agrees with this recommendation.

A two-year plan is also clearly preferable to a one-year plan. As a DSP must file its default service plan no less than one year prior to the expiration of a current plan under the Commission's regulations,[5] a plan term of only one year beginning on June 1, 2013 would require the filing of a plan for the period after June 1, 2014 to be made no later than June 1, 2013 – the same day that the approved one-year plan begins. The development and submission of a new default service plan by June 1, 2013 – reflecting the results of the Investigation – and the implementation of potential legislative, regulatory, and EDC system changes that may be required by those results would be extremely difficult.

In sum, Exelon concurs that a two-year plan should provide a "reasonable time period" for implementation of "any long term changes" resulting from the Investigation.[6] It is possible; however, that significant information technology upgrades or other operational changes may be required, in which some flexibility may be needed. Exelon therefore recommends that the Commission acknowledge this possibility in its final Order.

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[3] Tentative Order, p. 4 (citing 52 Pa. Code § 54.185(a)).
[4] 52 Pa. Code § 1804.
[5] 52 Pa. Code § 185(a).
[6] Tentative Order, p. 4.

B. Energy Contract Duration

In its Default Service Final Rulemaking Order,[7] the Commission emphasized the importance of flexibility in designing default service portfolios that satisfy the statutory requirements of a "prudent mix" designed to ensure "least cost over time":

> EDCs, that have the primary responsibility under the Competition Act to procure generation supply requirements as well as the expertise to perform these activities, should be permitted the flexibility and latitude to accomplish the goal of achieving the "least cost" standard in a manner that meets the need of their customers and service territories. We also agree . . . that the standard must give the DSP sufficient latitude to select contracts that constitute a "prudent mix" which includes a sufficient variety of products that adequately take into consideration price volatility, changes in generation supply, customer usage characteristics and the need to assure safe and reliable service.[8]

The Commission also expressed concern that "adoption of specific component requirements creates constraints that limit the flexibility of the DSP to design a combination of products that meets the requirements under the Competition Act and Act 129."[9] Exelon believes that the Commission's conclusions regarding the necessity of preserving "sufficient latitude" for DSPs in designing default service portfolios are correct and consistent with Act 129.

In the Tentative Order, the Commission affirms its determination not to "mandat[e] a prescriptive portfolio of contract lengths," but makes two specific recommendations: first, that EDCs file new default service plans that limit or eliminate the existence of short-term energy contracts that extend past the end date of the plan (i.e., June 1, 2015); and second, that EDCs limit the proportion of long-term contracts included in their default service plan portfolios.[10]

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[7] *See Implementation of Act 129 of October 15, 2008; Default Service and Retail Electric Markets*, Docket No. L-2009-2095604 (Order entered October 4, 2011) ("*Final Rulemaking Order*").
[8] Final Rulemaking Order, p. 38.
[9] *See id.*, p. 60.
[10] Tentative Order, p. 5.

With respect to the first recommendation, the Commission states that such extended contracts are neither mandated by statute nor are they "the only possible prudent mix of contracts."[11]

Exelon agrees with the Commission that a "prudent mix" does not specifically require short-term contracts that extend past the term of a default service plan. However, a default service procurement plan that does not include some contracts which extend past the plan's end date creates a risk that a significant portion of supply may have to be obtained in the period immediately before the end of a plan. This, in turn, could result in much higher prices and substantial rate volatility for customers. For these reasons, the Commission has repeatedly emphasized the importance of "laddering" contracts in procuring default service supply:

> We agree with those parties that utilizing such practices as laddering contracts, with varying procurement periods and contract durations over multiple procurements provide definite benefits in terms of minimizing the impacts of market volatility and decreasing customer risk. . . . Therefore, we continue to endorse the use of contract diversification and accumulation as part of the default supply procurement process, but leave it to the DSPs to develop those methods of accumulation and diversification that best meet the needs and characteristics of the customer base and service territory.[12]

This is supported by the regulations which state that default supply contracts "should be laddered to minimize risk, in which a portion of the portfolio changes at least annually, with a minimum of two competitive bid solicitations a year to further reduce the risk of acquisition at a time of peak prices."[13]

Exelon believes that the Commission's goal of avoiding or limiting "overhang" of supply contracts past June 1, 2015 can be addressed if EDCs develop plans in which any laddered, short-term contracts extending beyond the end of a plan period are procured relatively close to

[11] *Id.*
[12] Final Rulemaking Order, pp. 62-63.
[13] 52 Pa. Code 69.1805.

the beginning of the delivery term. In addition to ensuring that such contracts are more market-reflective in pricing than those that might be purchased with longer lead-times prior to delivery, holding procurements closer to the delivery period will also permit the Commission, EDCs, and other stakeholders to respond to evolving market conditions and changes to law or regulatory requirements.

With respect to long-term contracts, Exelon agrees with the Commission's recommendation to limit the proportion of such contracts in an EDC's overall default service portfolio and to consider using existing long-term contracts to satisfy compliance with the long-term contract requirement of 66 Pa.C.S. § 2807(e)(3.2)(iii). Under PECO's current default service plan, a five-year, 50 MW base load energy block contract for the residential procurement group will extend until December 31, 2015. Consistent with its recommendation, the Commission should clarify in its final Order that long-term contracts continuing from a previously approved default service plan may be used to satisfy the long-term requirements of a "prudent mix" under 66 Pa. C.S. 2807(e)(3.2) in a subsequent default service plan, without the necessity of procuring new long-term contracts during the subsequent plan.

C. Retail Opt-in Auction and Referral Programs

As part of the Investigation, Exelon has been working closely with stakeholders in a working group considering the use of retail opt-in auctions, in which customers taking default service from an EDC would have the option to accept a competitively-developed Electric Generation Supplier ("EGS") retail offer. In addition, Exelon is working with stakeholders on potential customer referral programs which, as the Commission notes, have been proposed in a variety of formats ranging from the provision of information, to EDC's assistance in enrollment with an EGS standard product.[14]

While Exelon supports the inclusion of customer referral programs in upcoming default service filings, it believes that the mandatory offering of an opt-in program may be premature. At this time, there is insufficient consensus among the stakeholders participating in the opt-in auction working group as to basic program design, including such threshold issues as the number of customers that should be permitted to participate in an initial opt-in offering; whether such opt-in auctions would have an adverse impact on existing or future default procurements; the nature of the product design; and whether an opt-in auction would create customer confusion, particularly when introduced at the same time as customer referral programs.

For example, how would a customer meaningfully evaluate the choice between participating in an opt-in program, selecting an EGS under an EDC referral program, or taking advantage of general shopping opportunities being promoted by EGSs? Given the lack of stakeholder consensus regarding the design of an opt-in program and the potential for increased customer confusion, Exelon suggests the Commission focus on the development of well-planned customer referral programs (which appear to be more acceptable to some stakeholders and potentially more effective at promoting shopping) and defer recommending the inclusion of any opt-in program in default service plans at this time.

While Exelon supports customer referral programs, it notes that significant implementation issues must be considered in their design, including potential revisions to call center procedures, necessary information technology upgrades or establishment of external call centers. Exelon believes the Tentative Order properly stops short of proposing a specific format for customer referral programs, however, particularly in light of the differences between EDC

[14] Tentative Order, pp. 6-7.

customer information and support systems, the Commission should clarify in its final Order that all costs incurred by EDCs associated with the development and operation of customer referral programs will be recoverable on a full and current basis. Assurance of cost recovery will facilitate the design of more robust programs and reduce issues that otherwise may be litigated in upcoming default service proceedings.

D. Time of Use Rates/Dynamic Pricing

In the Tentative Order, the Commission recommends that EDCs contemplate contracting with an EGS to help satisfy their Act 129 requirement to provide time of use ("TOU") rate offerings to customers. Exelon generally supports the Commission's recommendation, and believes that Section 2807(f)(5) of the Public Utility Code (the "Code") permits, for example, either bidding out the provision of TOU service to an EGS and transferring customers who have enrolled in a TOU program to the winning EGS or contracting with a conservation service provider ("CSP") to manage the offering in lieu of the EDC doing so within the scope of its default supply.

Under Section 2807(f)(5), an EDC has three obligations: (1) to submit proposed rates for Commission approval; (2) to offer those rates to customers with smart meters; and (3) to file an annual report analyzing the program's effect on customers' energy demand and consumption and wholesale market prices.[15] As with default service supply under 66 Pa. C.S. § 2807(e), TOU rate offerings by EGSs on behalf of EDCs should be established through a competitive procurement process. Similarly, the obligation to "offer" TOU rates to customers with smart meters does not require an EDC to be the retail provider for such rates or to obtain the supply for such rates. The annual reporting obligation also does not mandate that the EDC itself offer the rate, but an EDC

[15] 66 Pa. C.S. § 2807(f)(5).

may ensure that it obtains sufficient information from any TOU provider to comply with the annual reporting obligation.

The Commission has already approved a TOU program for PECO.[16] While Exelon supports the Commission's TOU recommendation in the Tentative Order, Exelon requests that the Commission clarify in its final Order that an EDC should be provided flexibility in the implementation of its TOU program. Exelon believes this flexibility is important to ensure that technical issues associated with integrating TOU offerings into smart meter plans will be addressed fully and expeditiously in collaboration with stakeholders and in coordination with other smart meter plan developments and requirements, including, in PECO's case, its obligations to the United States Department of Energy with respect to its $200 million Smart Grid Investment Grant.[17]

E. Default Service Rate Adjustment Structure -- Residential and Small Commercial Customers

Exelon supports the Commission's recommendation that EDCs consider the incorporation of semi-annual default service rate adjustments within their next default service plans.[18] Like many EDCs, PECO presently adjusts its residential, small and medium commercial default service rates on a quarterly basis.[19] While further analysis is needed, Exelon believes recalculating rates and reconciling prior period under and over recoveries on a semi-annual basis may result in greater price stability for customers and more certainty concerning the price-to-compare for competitive suppliers.

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[16] *See Petition of PECO Energy Company for Approval of its Initial Dynamic Pricing and Customer Acceptance Plan*, Docket No. M-2009-2123944 (Order entered April 15, 2011).
[17] *See* Memorandum for the Heads of Executive Departments and Agencies from OMB Director Jacob J. Lew, dated September 15, 2011 (stating Administration's intention to reclaim Stimulus Act grantee funds not spent by September 30, 2013, to the extent permitted by law).
[18] Tentative Order, p. 7.
[19] *See* PECO Tariff Electric Pa. P.U.C. No. 4, Seventh Revised Page No. 31.

Exelon also suggests that the Commission give EDCs the flexibility to reconcile on an annual basis. PECO currently reconciles on a quarterly basis, which means that any over/under difference arising in one quarter will be recovered beginning three months after the end of the quarter. This amount can be substantially affected by "billing lag" – the difference between the time generation supply costs are incurred by PECO and the time default service customers are billed for such costs. The result is a price-to-compare that fluctuates for reasons that are not directly related to the cost of default service supply. By using an annual schedule for reconciliation of "over/under" amounts, these additional fluctuations in default service prices will be smoothed out and price signals that more closely track market prices will be sent to both customers and competitive suppliers.

F. Hourly-Priced Default Service for Medium Commercial and Industrial Customers

In its Tentative Order, the Commission recommends that EDCs consider expanding hourly-priced default service to encompass medium commercial and industrial customers, which the Commission defines as customers with demands greater than 100 kW.[20] The Commission notes that a significant number of customers in the 100 kW – 500 kW classification are shopping and expresses concern that some cross-subsidization of these customers by small commercial customers may be occurring.[21] Exelon supports the Commission's goals of bringing more short-term, market reflective pricing to medium commercial customers in the Commonwealth and ensuring there is no cross-subsidy between small and medium commercial customer classes.[22] However, Exelon respectfully requests that the Commission recognize that not all EDCs,

[20] Tentative Order, p. 8.
[21] *Id.*
[22] In PECO's service territory, there is no cross-subsidization between the small and medium-sized commercial customer classes because procurements for medium commercial customers are not commingled with procurements for the small commercial class. *See Petition of PECO Energy Company for Approval of Its Default Service Program and Rate Mitigation Plan*, Docket P-2008-2062739 (Order entered June 2, 2009), p. 6.

including PECO, currently have the advanced metering and back office system capabilities to implement hourly interval pricing for medium commercial customers. As described further below, PECO does have an extensive, Commission-approved smart meter plan in place to procure, design and deploy advanced metering technology and infrastructure; however, the plan will not be completed in 2013. Exelon believes that the Commission can help move the retail market for medium commercial customers forward while maintaining the efficiency and feasibility of existing smart meter implementation plans, by encouraging EDCs to design procurement plans that offer shorter-term, market-reflective pricing to this customer class in the next default service plan.

As the Commission is aware, PECO is working on its $550 million Smart Meter Implementation Plan, which includes an initial deployment of 600,000 smart meters throughout PECO's service territory by 2013 and universal deployment to all customers by 2020 or earlier. PECO's plan also requires the design and installation of an extensive advanced metering infrastructure, including an advanced communication network, billing systems and supporting information technology systems, which is necessary to enable the functioning of the advanced meter network. In addition, PECO's Smart Meter Implementation Plan is an integral part of the $200 million smart grid grant that PECO received from the U.S. Department of Energy. Accordingly, Exelon does not believe it would be helpful to disrupt PECO's carefully-planned smart meter implementation schedule.

In addition, Exelon notes that the implementation of hourly pricing on an interim basis for the approximately 6,000 medium commercial and industrial customers in PECO's service territory would necessitate the replacement of their current meters with new meters capable of providing hourly meter data - meters which would have to be replaced with smart meters within a few years. This would be a substantial, unnecessary expense to customers.

In sum, while it would not be cost-effective to require PECO to offer hourly pricing to medium commercial default service customers at this time, Exelon believes that the Commission can encourage EDCs to design procurement plans that offer more short-term, market-reflective pricing to such customers, and PECO will work to identify such products in developing its default service plan.

G. Future Issues Identified Within the Investigation

In the Tentative Order, the Commission reminds EDCs that issues addressed and resolved in the Investigation "may be recommended or directed for incorporation within pending or approved default service plans."[23] While the Commission notes that this reminder applies only "to the extent that such issues will not substantially affect wholesale bidders' analyses of future default service plans,"[24] Exelon believes that it is critical for the Commission to clarify that its approval of a default service plan constitutes a final adjudication that is subject to modification only in accordance with the applicable provisions of the Code.

Under Section 2807(e)(3.8) of the Code, the Commission may modify default service supply contracts or disallow costs associated with a default service plan only upon non-compliance with a Commission-approved plan or "the commission of fraud, collusion or market manipulation" with regard to default service contracts.[25] Otherwise, a default service provider is entitled to recover, on a full and current basis, all reasonable costs incurred in compliance with the Code's default service requirements and a Commission-approved procurement plan.[26]

[23] Tentative Order, pp. 8-9.
[24] *Id.*
[25] 66 Pa.C.S. § 2807(e)(3.8).
[26] 66 Pa. C.S. § 2807(e)(3.7).

By suggesting that an EDC may be required to modify its approved default service plan in unspecified ways (which could include changes that affect wholesale suppliers with contracts under the approved plan, even if such changes did not "substantially affect" analyses of future plans), the Commission may create unintended uncertainty regarding the sanctity of wholesale contracts or the EDC's entitlement to full and current cost recovery. Such uncertainty could significantly raise the price at which bidders are willing to supply default service for all customers. Exelon therefore recommends that, in its final Order, the Commission clearly state that changes arising from the Investigation will be applied only prospectively and not retroactively to existing contracts, and that an EDC's right to full and current recovery of its default service costs will not be impaired in any way.

III. CONCLUSION

Exelon appreciates the opportunity to comment on the Tentative Order and asks that the Commission consider its comments. Exelon looks forward to continuing to work with the Commission and other stakeholders as the Investigation progresses.

Respectfully submitted,

Jeanne J. Dworetzky

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INVESTIGATION OF PENNSYLVANIA'S RETAIL ELECTRICITY MARKET: RECOMMENDED DIRECTIVES ON UPCOMING DEFAULT SERVICE PLANS	: : :	DOCKET NO. I-2011-2237952

CERTIFICATE OF SERVICE

I, Jeanne J. Dworetzky, hereby certify that I have this day served a true and correct Copy of the Comments of Exelon to the October 14, 2011 Tentative Order electronically (and by first class mail where no electronic address was available) upon the following:

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