PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVNAIA 17105-3265

Petition of PECO Energy Company for Approval of its Default Service Program II	**Public Meeting: September 27, 2012** **2283641-OSA** **Docket No. P-2012-2283641**

MOTION OF
COMMISIONER PAMELA A. WITMER

Before the Pennsylvania Public Utility Commission (PUC or Commission) is the Petition of PECO Energy Company (PECO or Company) for approval of their Default Service Program (DSP II) for the period from June 1, 2013 to May 31, 2015. Evidentiary hearings were held on May 22, 2012, and on August 27, 2012, the Administrative Law Judge (ALJ) issued a Recommended Decision (R.D.), approving the Company's DSP, subject to certain modifications. Following the issuance of the R.D., numerous parties filed Exceptions and Reply Exceptions on September 11, 2012, and September 18, 2012, respectively.

This Motion eliminates the need to conduct a binding poll on the following issues: Composition of the Product Offer for the Electric Generation Supplier (EGS) Opt-In Competitive Offer Program[1] (OI Program) and the Recovery of Program Costs for Proposed Retail Market Enhancements.[2] In addition, this Motion will propose minor adjustments to the Company's EGS Opt-In Competitive Offer Program, in order to align it with the Commission's Order entered August 16, 2012, in the First Energy DSP Final Order, (Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669 and P-2011-2273670).

Prior to addressing each of these items, it is important to generally understand the Company's proposal regarding the inclusion of an OI Program in its DSP II. Below is the R.D.'s summary of the major components of PECO's OI Program:

> Under PECO's proposed Opt-In Program, EGSs would bid in response to a one-time request for proposals (RFP), conducted during the first quarter of 2013, to provide competitive retail service to up to 50% of PECO's residential default service customers at a fixed-price that is at least 5% below the applicable PTC for the quarterly period beginning June 1, 2013. The EGS offer to customers will include a $50 bonus payment which shall be paid by the EGS after offer acceptance and the customer's completion of three complete billing cycles with the selected EGS....
>
> ...The bidding process will be supervised by an independent monitor who will tabulate bids in ascending order, with the price associated with the bid that results in the cumulative number of customers equaling or exceeding 100% of PECO's

[1] *See* Binding Poll Issue Number 14.
[2] *See* Binding Poll Issues Numbers 26 and 27.

non-shopping customers (excluding Customer Assistance Program (CAP) customers) establishing a final clearing price. Upon approval of the RFP results by the Commission, one or more tranches of eligible customers will be randomly allocated to winning bidders (each an "Opt-In Supplier") in accordance with the number of customers contained in their respective winning bids, and customers will be notified of the winning offer. Opt-In Suppliers will provide service to those customers who accept the offer for a term of six monthly billing cycles beginning with the customer's next meter read date on or after June 1, 2013. In addition, Opt-In Suppliers will be required to accept shopping customers who contact PECO to request an opt-in offer.

Opt-In Suppliers will provide offers to their allocated customers through an offer package mailed by PECO on behalf of the EGS, which includes an offer letter with the clearing price, a description of the Opt-In Program's standard terms and conditions and the procedure by which the customer can accept the offer during the thirty-day opt-in period. Customers who accept the offer by response postcard, through the Opt-In Supplier's website or by telephone, will be enrolled by the Opt-In Supplier via a switching request and Electronic Data Interchange transaction in accordance with PECO's current Electric Supplier Coordination Tariff (Supplier Tariff) and Electric Data Exchange Working Group protocols.

The Commission's guidelines recommend that customers be able to exit a retail opt-in program at any time without paying a termination or cancellation fee. PECO contends that its Opt-In Program conforms to this guideline. At any time during the six-month term of retail opt-in service, a participating customer may leave the Opt-In Program either by converting to another product from the Opt-In Supplier without switching, contracting with a different EGS or electing to return to default service. Under those circumstances, the Opt-In Supplier will not be permitted to charge the customer an early termination fee or other penalties.

Prior to the end of the program term, the Opt-In Supplier must provide the notices required by the Commission's regulations, PECO's Supplier Tariff and the "options" notices required under the *Intermediate Work Plan Order*. After receiving the required notices, the customer may choose to continue with its Opt-In Supplier. If the customer takes no action, the customer will remain on a month-to-month contract with his or her then-current EGS. In either case, the obligations of the Opt-In Supplier to offer the clearing price and comply with other terms of the program will no longer apply.[3]

<u>**OI Program Length**</u>

In this proceeding, PECO had originally proposed that its OI Program be for a term of twelve months; however, upon review of the Commission's *Intermediate Work Plan Final*

[3] R.D. at 55-57 (internal citations omitted).

Order, which was entered on March 2, 2012,[4] the Company revised its OI Program length to six monthly billing cycles, in an effort to comply with the recommendation that customers receive supply service under the terms of an OI Program for a period of six billing cycles.[5]

Despite the fact that the ALJ recommends approving PECO's OI Program in its entirety, including the six billing month duration, I propose that the duration of the OI Program should be twelve months, instead of six billing cycles.[6] As a result, the R.D. should be modified accordingly.

<u>OI Product Composition</u>

As proposed, PECO's OI Product would have been obtained through a one-time RFP process and would have been established on the basis of a percentage discount from the PTC that equals at least 5%, beginning June 1, 2013. Further, while the Company included a $50 bonus as part of its OI Program, the bonus would only be paid after OI offer acceptance and the customer's completion of three complete billing cycles. This general pricing scheme was supported or unopposed by a majority of the parties, and, as a result, the ALJ recommended adoption of the Company's proposal.

Upon further review of our directives in the *Intermediate Work Plan Final Order* as well as the R.D. and Exceptions in this proceeding, I recommend that the ALJ's recommendation be modified. Rather than accept PECO's proposal of a six billing cycle fixed-price that is at least 5% below the applicable PTC for the quarterly period beginning June 1, 2013, with a $50 bonus payment that would be paid by the EGS after offer acceptance and the customer's completion of three complete billing cycles, instead I propose adoption of the following OI Product:

- A twelve-month product, comprised of a $50 bonus, a 4 month guaranteed 5% off the PTC at the time of enrollment, and an EGS provided fixed-price product for the remaining eight months.[7]
- Because the OI Program duration and product have been modified, I also recommend that in order to receive the bonus, customers must remain in the OI Program for at least the initial 4 month period.
- Finally, in order to effectively evaluate the terms of this program, the Commission will require that participating EGSs provide the terms and conditions of the 8 month OI fixed-priced offering for the PUC to review.

With these improvements, I believe this product offering will be attractive enough to garner EGS support and, more importantly, customer participation in the OI Program.

---

[4] *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan Order*, Docket No. I-2011-2237952 (Order entered March 2, 2012).

[5] *See Intermediate Work Plan Final Order,* Docket Number I-2011-2237952 , at 50.

[6] Notably, the Company had originally proposed the OI Product to be twelve months. *See* R.D. at 59. In addition, both the Office of Consumer Advocate (OCA) and First Energy Solutions (FES) recommended a twelve month term for the OI Program. *See id.*

[7] This proposal mirrors the Commission's decision in the FE DSP Final Order *see Joint Petition of Metropolitan Edison Co., Pennsylvania Electric co., Pennsylvania Power Co. and West Penn Power Co. for approval of their Default Service Programs*, Docket No. P-2011-2273650 et al., (Order entered August 16, 2012).

However, because this product offering differs from that proposed by the Company, PECO's proposals and the ALJ's recommendations regarding the role of the independent monitor as well as the selection of winning EGSs and associated customer assignment will have to be modified. Therefore, within 60 days, in addition to providing updated proposals on EGS payment for the market enhancement programs as explained below, the Company, EGSs and other interested parties will also be required to file with the Commission an updated proposal for the role of the independent monitor, OI Program EGS selection and customer assignment that align with this revised OI Program design.

Recovery of Market Enhancement Program Costs

Regarding the issue of recovery of Program costs for Proposed Retail Market Enhancements, the ALJ recommended adoption of PECO's proposed 0.3% Purchase of Receivables (POR) discount, which would comply with the Commission's directive in the *Intermediate Work Plan Final Order* that EGSs be responsible for these program costs.[8] While I agree with the ALJ that our position articulated in the *Intermediate Work Plan Final Order* was and continues to be that EGSs should be responsible for Market Enhancement Program costs, I do not believe that we have sufficient information to adopt PECO's proposal today. At this time, and upon review of the EGS' positions in this proceeding, I have significant concerns that the POR discount method of allocating costs may be a significant barrier to EGS participation. Accordingly, the Company, EGSs and interested parties should be directed to resubmit a plan or proposals within 60 days for Commission review and approval addressing how participating EGSs or customers will pay for the Market Enhancements approved in this DSP proceeding.

The resolution of these issues is particularly important, as they are the cornerstone to the success of these programs. The thrust of the *Intermediate Work Plan Final Order* was to suggest programs that would be implemented during this round of DSPs in order to bolster customer participation in the retail electric market; however, these steps can only jumpstart the market if they are carried out. We urge the EGSs and Company to come to an agreement on how these costs will be allocated in order to carry out these programs and bring more retail customers to market.

THEREFORE, I move that:

1. The Office of Special Assistants draft an appropriate Order consistent with this Motion.

DATE: September 27, 2012

Pamela A. Witmer

PAMELA A. WITMER, COMMISSIONER

[8] *See* R.D. at 85,86.