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January 28, 2011

JAN 28 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 **Main Brief of PECO Energy Company** in the above-captioned matter. A copy of the Main Brief in searchable PDF format is also enclosed. As evidenced by the attached Certificate of Service, a copy of the Main Brief is being served upon Administrative Law Judge Marlane R. Chestnut and all parties.

Pursuant to 52 Pa. Code § 1.11(2), the enclosed Main 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 Main Brief and this letter which we have enclosed and return to us in the envelope provided.

Rosemary Chiavetta, Secretary
January 28, 2011
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Should you have any questions regarding this matter, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Cath Vas", with a long horizontal flourish extending to the right.

Catherine G. Vasudevan

CGV/ap
Enclosures

c: Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**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**

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DOCKET NO. M-2009-2123944

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JAN 28 2011

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

**MAIN BRIEF OF
PECO ENERGY COMPANY**

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

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January 28, 2011

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I. STATEMENT OF THE CASE

A. Procedural History

This proceeding was initiated on October 28, 2010, when PECO Energy Company (“PECO” or the “Company”) petitioned the Pennsylvania Public Utility Commission (the “Commission”) to approve the Company’s Initial Dynamic Pricing and Customer Acceptance Plan (“Dynamic Pricing Plan” or “Plan”). The Plan continues PECO’s implementation of its Smart Meter Technology Procurement and Installation Plan (“Smart Meter Plan”)¹. In particular, the Plan explains how the Company will test two initial dynamic rate options (Critical Peak Pricing (“CPP”) and Time-of-Use (“TOU”) Pricing) to determine effective combinations of rate design, technology, marketing and educational strategies for customers. In its Petition, PECO requested that the Commission: (1) find that the Dynamic Pricing Plan satisfies the requirements of Act 129 of 2008, 66 Pa. C.S. § 2807(f) (“Act 129”), and the Commission’s May 6, 2010 Order approving PECO’s Smart Meter Plan; and (2) approve PECO’s proposed tariff provisions and recovery of Dynamic Pricing Plan costs through the Company’s Generation Supply Adjustment (“GSA”) filings.²

On November 29, 2010, an Answer was filed by the Office of Consumer Advocate (“OCA”) and a Protest and Verification were filed by the Office of Small Business Advocate (“OSBA”). Also on November 29, 2010, Direct Energy Services, LLC and Direct Energy Business, LLC (collectively “Direct Energy”), the Retail Energy Supply Association (“RESA”) and the Philadelphia Area Industrial Energy Users Group (“PAIEUG”) each filed Petitions to Intervene. The Office of Trial Staff (“OTS”) filed a Notice of Appearance on December 1, 2010.

¹ See *Petition of PECO Energy Company for Approval of its Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123944 (Order entered May 6, 2010).

² PECO’s GSA was approved at Docket No. P-2008-2062739.

On December 9, 2010, Administrative Law Judge Marlane R. Chestnut (the “ALJ”) issued a Prehearing Order granting the Petitions to Intervene filed by Direct Energy, RESA³ and PAIEUG and establishing a schedule for the submission of testimony and the conduct of hearings.

Pursuant to the litigation schedule established in the Prehearing Order, written direct, rebuttal and surrebuttal testimony was submitted by various parties. In addition, the parties engaged in discovery. Throughout this proceeding, the parties discussed the possibility of resolving some or all of the issues by settlement or stipulation.

B. The Partial Settlement

Before the scheduled hearings on January 20 and 21, 2011, the parties advised the ALJ that: (a) a settlement of all but one issue had been achieved; and (b) cross-examination of witnesses had been waived. Based on these representations, the ALJ cancelled the scheduled hearings. The terms of the Settlement are set forth in a Joint Petition for Partial Settlement (“Joint Petition”), being filed concurrently with this Brief. PECO urges the ALJ to recommend that the Commission approve the *Joint Petition* for the reasons set forth therein and in the *Joint Petitioners’ Statements in Support of the Settlement* attached thereto. PECO, OCA and OSBA are signatories to the Joint Petition while OTS, Direct Energy and PAIEUG do not oppose the Settlement. In accordance with instructions from the ALJ, a Motion For Admission Of Testimony And Exhibits is being filed along with the Joint Petition.

C. The Reserved Issue

The item reserved for litigation by the Joint Petitioners involves whether the development and implementation costs of PECO’s Plan that are assigned or allocated to Default Service Procurement Classes 1, 2, and 3 should be recovered from both shopping and default service

³ On December 21, 2010, RESA filed a Petition for Leave to Withdraw Intervention from this proceeding.

customers or from default service customers only. *See* Joint Petition, p. 1. In accordance with instructions from the ALJ, the Company's proposed findings of fact, conclusions of law and ordering paragraphs related to the reserved issue are attached to this Brief as Appendix A.

II. ARGUMENT

A. PECO's Proposal To Recover Plan Costs From Default Service Customers Is Consistent With Recent Commission Precedent

In the past year, the Commission has considered how to appropriately recover the costs of dynamic pricing programs proposed by two electric distribution companies: Duquesne Light Company and PPL Electric Utilities Corp. On each occasion, the Commission has concluded that program development and implementation costs should be recovered from default service customers only.

In its Petition, Duquesne sought approval of several TOU pilots, as well as permission to recover 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). The OCA argued that many of the TOU plan development and implementation costs should be recovered through base rates:

The OCA argues that the costs associated with developing and testing new rate designs are typical costs incurred in the normal course of business for a public utility. Consequently, the OCA asserts that, apart from those costs relating to consumer education materials that will be developed to explain and promote the TOU pilot programs to customers, all other costs associated with developing and implementing the TOU program should be recovered as part of a normal base rate process.

Id. at 9. The Commission rejected both the Duquesne and OCA cost recovery proposals, concluding that TOU plan development and implementation costs should be recovered through default service rates:

With regard to the issue of cost recovery, the Commission does not view Duquesne's Consumer Education Surcharge as an appropriate mechanism for the recovery of market research, development, and implementation costs specific to an EDC's default service rate options, including TOU pilots. Further, the Commission disagrees with the OCA that such TOU costs should be recovered within a base rate proceeding. Base rate proceedings address costs related to distribution service, not default service. The Commission believes that costs incurred strictly to facilitate an EDC's default service rates should be collected within default service rates themselves. Therefore, the Commission will permit Duquesne to recover market research, development, and implementation costs of its TOU plan through its default service rates.

Id. at 11-12.

The Commission made similar findings in orders related to PPL's TOU programs. When PPL first proposed optional time-of-use programs, cost recovery was a heavily contested issue. The Commission ultimately directed PPL "to collect its TOU plan costs, and to credit the benefits, though its charges/credits to default service customers only." *Pa. P.U.C. v. PPL Electric Utilities Corporation*, Docket No. R-2009-2122718 (Order entered March 9, 2010). In a later proceeding, PPL sought approval of new TOU rate options and permission to recover incremental costs associated with notification, enrollment and customer education. *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). The Commission concluded that the incremental costs should be recovered from default service customers within the appropriate generation supply classes, reasoning that such recovery would "create a more level playing field for potential Electric Generation Supplier (EGS) offers." *Id.* at 12.

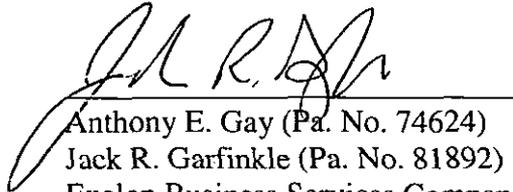
In light of the Commission orders regarding the Duquesne and PPL TOU programs, PECO proposed to recover its Dynamic Pricing Plan costs from default service customers. *See* PECO St. No. 4, pp. 9-11. While the methodology for assigning and allocating Plan costs to PECO's Default Service Procurement Classes is not in dispute, *see* Joint Petition, ¶ 9.I, the OCA argues that Dynamic Pricing Plan costs (other than direct incentives to CPP and TOU customers) should be recovered from both default service and "shopping" customers. *See* OCA St. No. 1, pp. 19-20; OCA St. No. 1-S, pp. 11-13. Specifically, the OCA contends that recovering these costs exclusively from default service customers is inconsistent with the principles of cost causation and inequitable because all customers will benefit from the information gained through implementation of the Dynamic Pricing Plan. *See* OCA St. No. 1, p. 20.

Because the Commission has recently considered these issues and found that recovery of development and implementation costs from default service customers is appropriate, PECO does not believe this issue should be revisited in this case. It is important to note that if the Commission determines that such costs are to 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, PECO's proposal to recover Dynamic Pricing Plan costs from default service customers should be approved.

Respectfully submitted,



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January 28, 2011

Counsel for PECO Energy Company

APPENDIX A

PROPOSED FINDINGS OF FACT

1. On January 28, 2011, PECO Energy Company (“PECO” or the “Company”); the Office of Consumer Advocate (“OCA”); and the Office of Small Business Advocate (“OSBA”) (collectively, the “Joint Petitioners”), by their respective counsel, filed with the Pennsylvania Public Utility Commission (the “Commission”) a Joint Petition For Partial Settlement (“Joint Petition” or “Settlement”) of all but one issue in the above-captioned proceeding and requested that Administrative Law Judge Marlane R. Chestnut (the “ALJ”) approve the Settlement without modification.¹

2. The item reserved for litigation by the Joint Petitioners involves whether the development and implementation costs of PECO’s Initial Dynamic Pricing and Customer Acceptance Plan (“Dynamic Pricing Plan” or “Plan”) which are allocated or assigned to Default Service Procurement Classes 1, 2, and 3 should be collected from both shopping and default service customers. *See* Joint Petition, p. 1.

3. PECO proposed to recover Dynamic Pricing Plan costs allocated or assigned to Default Service Procurement Classes 1, 2, and 3 from default service customers only. *See* PECO St. No. 4, pp. 9-11.

4. The OCA is the only party opposing the Company’s proposal for recovering development and implementation costs of the Dynamic Pricing Plan. The OCA proposes that Dynamic Pricing Plan costs (other than direct incentives to CPP and TOU customers) should be

¹ The Office of Trial Staff (“OTS”), Direct Energy Services, LLC and Direct Energy Business, LLC (collectively “Direct Energy”) and the Philadelphia Area Industrial Energy Users Group (“PAIEUG”), which are also parties to this case, do not oppose the Settlement.

recovered from both default service and “shopping” customers. *See* OCA St. No. 1, pp. 19-20; OCA St. No. 1-S, pp. 11-13.

5. In the past year, the Commission has considered how to appropriately recover the costs of dynamic pricing programs proposed by two electric distribution companies: Duquesne Light Company and PPL Electric Utilities Corp. On each occasion, the Commission has concluded that program development and implementation costs should be recovered from default service customers only. *See 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).

PROPOSED CONCLUSION OF LAW

1. The recovery of Dynamic Pricing Plan development and implementation costs which are allocated or assigned to Default Service Procurement Classes 1, 2, and 3 from customers receiving default service is reasonable, in the public interest and consistent with the Commission’s Orders at Docket Nos. R-2010-2201138, P-2009-2149807, R-2009-2122718.

PROPOSED ORDERING PARAGRAPH

1. PECO shall recover Dynamic Pricing Plan development and implementation costs which are allocated or assigned to Default Service Procurement Classes 1, 2, and 3 from customers receiving default service.

**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 :**

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of the following:

- (1) Joint Petition for Partial Settlement**
- (2) Motion for Admission of Testimony and Exhibits, and**
- (3) Main Brief on Behalf of PECO Energy Company**

upon the following persons in the manner specified in accordance with the requirements
of 52 Pa. Code § 1.54:

VIA ELECTRONIC MAIL AND HAND DELIVERY

Honorable Marlane R. Chestnut
Administrative Law Judge
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JAN 28 2011

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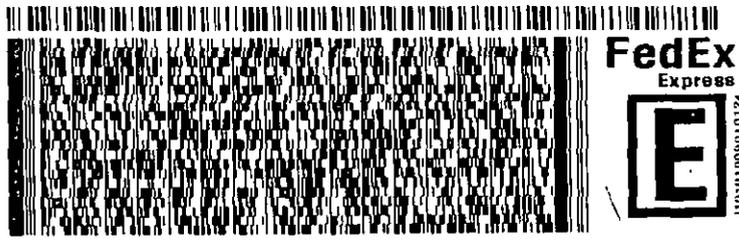
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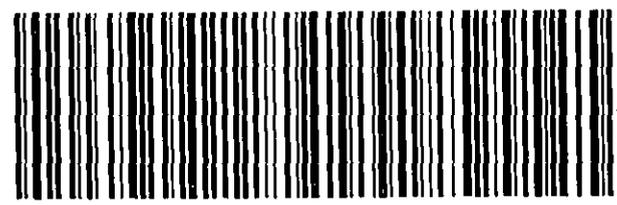
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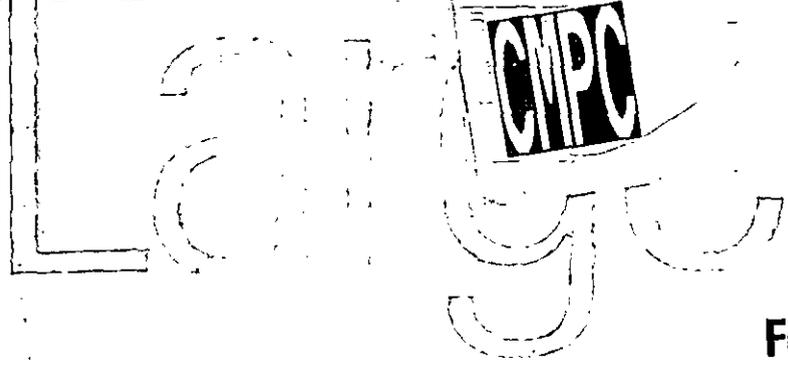


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