

COMMONWEALTH OF PENNSYLVANIA



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March 7, 2011

Rosemary Chiavetta  
Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
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 the Exceptions of the Office of Consumer Advocate, in the above-referenced proceeding.

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

Respectfully Submitted,

A handwritten signature in cursive script that reads "Kennedy S. Johnson".

Kennedy S. Johnson  
Assistant Consumer Advocate  
PA Attorney I.D. # 203098

Enclosures

cc: Honorable Marlane R. Chestnut

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company for :  
Approval of its Smart Meter Technology : Docket No. M-2009-2123944  
Procurement and Installation Plan - Petition :  
for Approval of PECO Energy Company's :  
Initial Dynamic Pricing and Customer :  
Acceptance Plan :

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EXCEPTIONS  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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Dated: March 7, 2011

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## I. INTRODUCTION

On October 28, 2010, PECO Energy Company (PECO or Company) filed a Petition with the Pennsylvania Public Utility Commission (Commission) seeking approval of its Initial Dynamic Pricing and Customer Acceptance Plan (Plan). The filing has been made pursuant to the requirements of Act 129 of 2008, specifically under revised Section 2807(f). Section 2807(f)(5) requires each Electric Distribution Company (EDC) with at least 100,000 customers to submit “one or more proposed time-of-use and real-time pricing plans” by January 1, 2010. A time-of-use rate is defined as a rate that reflects the cost of serving customers during different periods, including off-peak and on-peak periods, but not as frequently as each hour. 66 Pa.C.S. § 2806.1(m). A real-time price is defined as a rate that directly reflects the different cost of energy during each hour. Id.

On November 29, 2010, the OCA filed its Answer. On December 1, 2010, the Office of Trial Staff (OTS) filed a Notice of Appearance. On November 29, 2010, the Office of Small Business Advocate (OSBA) filed a Protest and Verification. Petitions to Intervene were filed on November 29, 2010 by the Retail Energy Supply Association (RESA)<sup>1</sup>, Direct Energy Services, LLC and Direct Energy Business, LLC (Direct Energy), and the Philadelphia Area Industrial Energy Users Group (PAIEUG).

The matter was assigned to the Office of Administrative Law Judge and was further assigned to Administrative Law Judge Marlane R. Chestnut. Pursuant to the Prehearing Order dated December 9, 2010, a procedural schedule was established.

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<sup>1</sup> RESA filed a Petition for Leave to Withdraw its Intervention on December 21, 2010.

The OCA retained J. Richard Hornby<sup>2</sup>, and Nancy Brockway<sup>3</sup> who, pursuant to the schedule adopted by the ALJ, submitted written Direct Testimony on December 23, 2010 and written Surrebuttal Testimony on January 19, 2011. On January 11, 2011, Rebuttal Testimony was filed by OSBA.

Throughout the proceeding the parties engaged in settlement negotiations which resulted in a Partial Settlement (Settlement) that was filed with the Commission on January 28, 2011. The Settlement addressed all issues except whether the administrative costs of the Plan assigned to each class should be collected from both shopping and non-shopping customers. That issue was the subject of Main and Reply Briefs submitted by the parties on January 28, 2011 and February 3, 2011, respectively.

The Office of Administrative Law Judge issued the Recommended Decision (R.D.) of ALJ Chestnut on February 16, 2011 in which she recommended that the Commission approve the Joint Petition for Partial Settlement as filed. R.D. at 22. As to the recovery of administrative costs, the ALJ recommended that the Commission adopt PECO's proposal to recover the administrative costs of this pilot program only from non-shopping customers. R.D. at 23. The OCA files this Exception to the portion of the ALJ's Recommended Decision regarding the recovery of administrative costs.

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<sup>2</sup> J. Richard Hornby is a Senior Consultant at Synapse Energy Economics, Inc. and has previously presented expert testimony and provided litigation support in approximately 100 proceedings in over thirty jurisdictions in the United States and Canada, including Pennsylvania. Mr. Hornby's work at Synapse specializes in planning, market structure, ratemaking, and gas supply/fuel procurement in the electric and gas industries, and he has presented testimony in both smart meter and dynamic pricing proceedings. His experience in energy efficiency measures and policies began thirty years ago. OCA St. 1 at 1-3; see also, OCA St. 1, Exhibit JRH-1.

<sup>3</sup> Nancy Brockway is a principal of NBrockway & Associates, a firm providing consulting services in the areas of energy and utilities. Ms. Brockway has served as a Commissioner on the New Hampshire Public Utilities Commission, an expert witness on consumer and low-income utility issues for the National Consumer Law Center, and as Director of the Multi-Utility Research and Analysis with the National Regulatory Research Institute (NRRI). While at NRRI, Ms. Brockway wrote a study on the impact of advanced metering structure and related options on residential consumers. Ms. Brockway specializes in issues relating to the role of regulation in the protection of consumers and the environment, and she has presented testimony in both smart meter and dynamic pricing proceedings. OCA St. 2 at 1-2; see also, OCA St. 2, Exhibit NB-1.

## II. EXCEPTION

OCA Exception: The ALJ Erred in Finding that PECO Should Recover Administrative Costs Only from Default Service Customers. R.D. at 17-20; M.B. at 5-9; R.B. at 2-4.

In her R.D., the ALJ states that the administrative costs assigned to each default service class should be recovered only from the default service customers. R.D. at 20. To support this conclusion, the ALJ states that PECO's Dynamic Pricing rates are offered only to default service customers and should, therefore, be recovered only from those customers. *Id.* The OCA submits that the Company's proposal, which the ALJ approved, to recover the administrative costs of its Plan only from default service customers is not consistent with the principles of cost causation and is not equitable. In particular, the ALJ's decision does not reflect the fact that PECO's Plan is a pilot program that will educate and benefit all customers as well as Electric Generation Suppliers (EGSs). For the reason detailed below, the OCA respectfully requests that the Commission require the Company to recover these administrative costs from both shopping and non-shopping customers.

As the ALJ notes in her R.D., the Company estimates that it will incur \$11.6 million in costs to implement the Critical Peak Pricing (CPP) and Time of Use (TOU) pilot program and has proposed to collect all the costs associated with the CPP and TOU rates from its default service customers on the affected rate schedules. R.D. at 17; Pet. at 9. Approximately \$2 million, or 18%, of the costs reflect incentives actually paid to customers who enroll in the CPP and TOU rates. R.D. at 17; PECO St. 4, Exh. WJP-1B; OCA St. 1, Exh \_\_\_ (JRH-3). The remaining \$9.5 million represent administrative costs associated with the pilot program. R.D. at 17; OCA St. 1, Exh \_\_\_ (JRH-3).

In his Direct Testimony, OCA witness Mr. Hornby explained that the Company's proposal to recover the administrative costs of its Plan only from default service customers through the GSA is not consistent with the principles of cost causation and is not equitable. As Mr. Hornby noted:

The Plan is primarily a test of CPP and TOU rates as opposed to a simple offering of new rates to customers taking default service. As indicated in OCA St. 1, Exhibit\_\_ (JRH-3), \$2 million or 18% of the costs the Company will incur to implement the Plan are incentives to customers who enroll in CPP and TOU. The remaining \$9.5 million are costs associated with a pilot that will collect information that will benefit all customers in each rate class, *i.e.*, customers on Default Service and customers on Competitive Energy Service.

M.B. at 6; OCA St. 1 at 19-20 (emphasis added). Simply put, the Company's Plan is a pilot program designed to obtain information on how customers decide to participate in dynamic pricing programs, what promotional messages customers best respond to and what actions customers will take in response to the rates. This information will be shared with the public - including both shopping and non-shopping customers and third party suppliers - greatly supporting both education and rate design for all customers and for third party suppliers.

Company witnesses George and Faruqui further expounded on these points and agreed that all customers, including those who are currently shopping, will benefit from the information regarding dynamic pricing that the Plan will develop. Drs. Faruqui and George stated that the lessons learned from the two rate designs:

will raise awareness of other choices and products that EGSs can compete with. Additionally, the Company will produce a final, publically available report that describes the results of the research, which could be beneficial to all interested stakeholders and third party suppliers.

M.B. at 7; OCA St. 1, Exh\_\_\_(JRH-4). In his Rebuttal, Dr. George further stated that “the ‘test and learn’ strategy is flexible and intended to inform full-scale dynamic rate deployment in the future.” PECO St. 2-R at 4. Mr. Hornby also addressed how the benefit of the Company’s pilot will accrue to all customers. He stated that as a result of this information:

customers will have better information on which to base their assessment of the pricing offers of Electric Generation Suppliers (EGSs) and EGSs will have better information regarding [how] to design and promote their pricing offers.

OCA St. 1 at 20. Mr. Hornby also pointed out that EGSs will be able to take advantage of changes that the Company makes in its data processing and billing systems in order to support TOU and CPP rates. OCA St. 1-S at 12.

The ALJ recognized that these benefits will result from PECO’s pilot program. R.D. at 19. The ALJ went on, however, to say that despite these benefits, the OCA’s proposal would require shopping customers to pay for a program in which they cannot participate. R.D. at 19. This is too narrow a view of PECO’s Plan—focusing on the character of the rates instead of the character of the Plan itself—and overlooks all of the benefits discussed above.

As the OCA explained in its Main Brief, there is nothing in the Company’s Plan that would preclude a shopping customer from returning to default service (in accordance with their contractual commitments with the EGS) and taking service under the CPP or TOU rates if they so choose. M.B. at 8-9; OCA St. 1-S at 12. By the same token, there is nothing that precludes a default service customer from shopping. Whether or not a customer is shopping at a particular point in time is not determinative of appropriate cost recovery from that customer. It is inequitable to charge only some customers for these “test and learn” costs that benefit all customers.

Further, as was mentioned above, the Company's Plan will benefit all customers.

As Mr. Hornby stated:

Shopping customers will benefit as much as customers taking default service from the lessons to be learned regarding the design of CPP and TOU rates as well as regarding customer preferences for particular promotional methods, technology offers and educational offers. EGS' who provide service to shopping customers in these rate classes will draw upon the results of the Plan to design competitive CPP and TOU rates and offers to attract and retain shopping customers. Moreover, EGS will be able to take advantage of changes that the Company makes in its data processing and billing systems in order to support CPP and TOU rates.

OCA M.B. at 9; OCA St. 1-S at 12.

Finally, in her decision the ALJ notes the Company and OSBA's discussion of prior Commission Orders as support for PECO's proposal. R.D. at 18. The OCA submits that the evidence of record here supports the Commission reaching a different conclusion in this proceeding than in the PPL TOU and Duquesne TOU proceedings. The Duquesne TOU proceeding is distinguishable from this proceeding in that Duquesne already had a TOU plan in place as part of its current Default Service Plan. R.B. at 3; Petition of Duquesne Light Co. for Approval of a TOU Plan, Docket No. P-2009-2149807 at 3 (Order entered June 23, 2010). Further, Duquesne's proposal to include its costs as part of its Customer Education Surcharge is a completely different mechanism from the one at issue in this proceeding. Id. at 9.

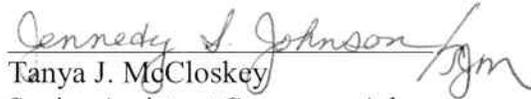
In the PPL TOU proceeding, no evidence was presented regarding the benefits of the PPL TOU rate to all customers. As was mentioned above, Mr. Hornby, as well as Company witnesses Faruqui and George, describe the benefits of PECO's Plan for all customers, both those who shop and those who take default service. Additionally, the PPL TOU program was not, as here, a pilot whose purpose is to test the initial dynamic pricing rates in order to: (1)

better understand how to cost-effectively enroll customers in voluntary dynamic rate programs and related offerings and (2) examine and understand the load impact of different dynamic rates and technology options. Pet. at 6. Such research, measurement and evaluation provides a benefit to all customers as it will shape products and programs that the Company and EGSs will offer to customers in the future.

### III. CONCLUSION

For the reasons detailed above and in its Main and Reply Briefs, the OCA respectfully submits that the Company's proposed method of collecting administrative costs, which was adopted by the ALJ, should be rejected. Instead, the administrative costs should be collected from all customers in the applicable rate classes as these costs provide benefits to all customers. The OCA's proposal is consistent with cost causation and is equitable. Accordingly, the OCA respectfully requests that the Commission find that it is appropriate to collect the administrative costs of PECO's Dynamic Pricing Plan from all customers in the respective rate classes to which costs are assigned.

Respectfully Submitted,



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Dated: March 7, 2011

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CERTIFICATE OF SERVICE

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Procurement and Installation Plan - Petition :  
for Approval of PECO Energy Company's :  
Initial Dynamic Pricing and Customer :  
Acceptance Plan :

I hereby certify that I have this day served a true copy of the foregoing document, Exceptions of the Office of Consumer Advocate into the record, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 7<sup>th</sup> day of March 2011.

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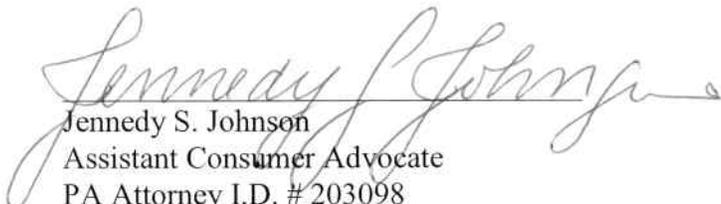
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