

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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IRWINA. POPOWSKY
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December 19, 2011

Rosemary Chiavetta
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RE: Joint Petition of Metropolitan Edison
Company, Pennsylvania Electric Company,
Pennsylvania Power Company and West
Penn Power Company for Approval of Their
Default Service Programs
Docket Nos. P-2011-2273650; P-2011-
2273668, P-2011-2273669, P-2011-2273670

Dear Secretary Chiavetta:

Enclosed please find the Answer 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 black ink, appearing to read "Darryl A. Lawrence".

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Enclosures

cc: Hon. Elizabeth H. Barnes
Office of Special Assistants
Certificate of Service

151293

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Programs	:	Docket Nos.	P-2011-2273650
	:		P-2011-2273668
	:		P-2011-2273669
	:		P-2011-2273670

ANSWER OF THE
OFFICE OF CONSUMER ADVOCATE

I. INTRODUCTION

On November 17, 2011, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (Met-Ed, Penelec, Penn Power, West Penn or, jointly, the Companies) filed a Joint Petition (Petition) with the Pennsylvania Public Utility Commission (Commission) seeking approval of default service programs (DSPs) and procurement plans for the period June 1, 2013 through May 31, 2015. This filing has been made pursuant to the requirements of Act 129 of 2008 (Act 129), the Commission's Default Service Regulations and the Commission's Policy Statement on Default Service.

As an initial matter, the Office of Consumer Advocate (OCA) would note that the Companies have filed the instant Petition without any testimony in support of their proposed DSPs. The Petition provides a proposed procedural schedule that indicates the Companies intend to submit such supporting testimony on December 20, 2011, over a full month after the date that the Petition was filed. Petition at ¶ 104. Based on the proposed procedural schedule, parties

would have barely one month after the receipt of the Companies' testimony to conduct discovery and prepare direct testimony in response. Id.

The OCA submits that such a schedule significantly compromises the ability of intervening parties to investigate, analyze and make the necessary evidentiary presentation on the many complex, significant and new issues presented by this default service filing. The OCA recognizes that a nine-month statutory timeframe exists for the Commission to render a decision on this matter. 66 Pa.C.S. § 2807(e)(3.6). The OCA submits, however, that the Companies have yet to file a complete plan, as the statute requires, until such time as the Companies' supporting testimony is filed. The OCA respectfully urges the Commission to implement a reasonable schedule, one that affords the parties a meaningful opportunity to be heard and to participate fully on these important issues.

In their Petition, the Companies propose to acquire supply for residential customers through a series of load-following, full requirements supply contracts in 50 MW tranches. Petition at ¶ 12. For each residential tranche, 90% of the supply will be at a fixed price, with the remaining 10% priced at the hourly PJM real-time zonal locational marginal price for each of the Companies. Petition at ¶ 12. These contracts will include energy, capacity, and transmission service (other than Network Integration Transmission Service). Petition at ¶ 10. The winning bidders will also be responsible for meeting all requirements of the Alternative Energy Portfolio Standards Act (AEPS Act) and such other services or products that are required to supply default service, except for 40% of the solar photovoltaic requirement that the Companies have previously committed to supply as part of the FirstEnergy and Allegheny Energy Merger Settlement (Merger Settlement). Petition at ¶ 10.

The new contracts for residential products are proposed to be for a two-year duration, starting on June 1, 2013. Petition at ¶ 12. The only residential product with a longer term is a 48-month, 50 MW block product that is already in place for Met-Ed, Penelec and Penn Power, which expires May 31, 2015. Petition at ¶ 12. The two-year full requirements products are proposed to be procured in their entirety using a descending clock auction through two procurements, one in November 2012 and the other in January, 2013. Petition at ¶¶ 15, 16.

The Companies have proposed a Contingency Plan in the event that one or more tranches are not fully subscribed through the procurement process, or in the event that a winning bidder defaults prior to the time for delivery. Petition at ¶ 27. In the event that a tranche is not fully subscribed, the Companies propose to rebid the unfilled tranches in the next procurement. Petition at ¶ 28. Any remaining unfilled tranches after the last procurement will be filled through direct purchases by the Companies in the PJM markets. Petition at ¶ 28. In the event of a bidder default, and as time permits, the Companies propose to conduct a supplemental competitive solicitation, or to offer the unfilled tranches to other winning bidders or to purchase the necessary supply through the PJM spot markets. Petition at ¶¶ 28, 29.

To recover their costs for serving residential customers, the Companies propose a quarterly, reconcilable adjustment mechanism. Petition at ¶ 61. Despite the fact that the Companies will receive dollar for dollar recovery of all default service costs through a reconcilable adjustment mechanism, the Companies have proposed adding a 0.5¢ per kWh “Market Adjustment Charge” on every kWh sold to residential and commercial default service customers. Petition at ¶ 38. The Companies also propose certain rate design changes for the residential and commercial classes, as to the current methods used to compute the Price to Compare (PTC). Petition at ¶¶ 31-33. Other issues, including a Default Service Support Rider,

Solar Photovoltaic Requirements Charge Rider and Time of Use Rates, are also set forth and described in the Petition. In addition, the Petition provides a discussion of commitments that the Companies currently have as to the Merger Settlement. Petition at ¶¶ 90-98.

The Companies' filing includes several issues that, heretofore, have not been standard elements of an EDC's default service programs, including a Retail Opt-In Auction and a Customer Referral Program. Petition at ¶¶ 73-89. Each of these items will be discussed in the following section. As noted above, the Companies are also proposing a Market Adjustment Charge which would add a 0.5¢ per kWh to the PTC paid by all residential and commercial default service customers. Petition at ¶ 38. The OCA submits that this proposal raises serious legal and policy issues that must be addressed in this proceeding.

II. ANSWER

The OCA has preliminarily reviewed the Companies' Petition and identified a number of significant issues presented by the filing. The OCA anticipates that additional issues will arise as a more comprehensive review of the Companies' filing is undertaken, after the Companies file their testimonies and after discovery is conducted. The preliminary issues identified by the OCA include:

A. Procurement Methodology.

The Companies propose to acquire 100% of the supply for residential customers using fixed price, load-following, full requirements supply contracts in 50 MW tranches and price 10% of this supply at the hourly real-time zonal price for each of the Companies. The OCA submits that further consideration must be given to whether the proposed purchasing plan will provide the least cost over time for residential customers in accord with the requirements of Act 129. The OCA intends to examine the type and mix of resources being procured to ensure

that the products and plan are designed to meet the requirements of Act 129. In addition, the OCA submits that the Companies' proposal to charge customers for 10% of the supply based on spot market pricing must be thoroughly evaluated. Petition at ¶ 12.

The Petition further provides that all new residential products procured for default service will have a 24-month term, starting June 1, 2013 and ending May 31, 2015. Petition at ¶ 12. These residential products will all be acquired through two procurements, one in November, 2012 and one in January 2013. Petition at ¶ 15. The OCA submits that the Companies' proposed choice of residential products, which all end on the same date, and the Companies' proposed procurement methods of acquiring all residential supply through two procurement events, occurring very close in time, must be thoroughly reviewed in the hearing process. The Commission must ensure that the procurement methodology adopted in this proceeding is consistent with the Public Utility Code and is designed to provide the least cost reliable supply, taking into account price stability for customers over time.

B. Contingency Plan.

The Companies propose to rely on other qualified bidders or the PJM spot markets in the event there is load that is unserved or a supplier has defaulted and less than 30 calendar days exist prior to the start of the delivery period in that class. Petition at ¶ ¶ 27-29. From the filing, it does not appear that the Companies will file an alternative procurement plan with the Commission. The OCA submits that the contingency plan must be thoroughly reviewed in the hearing process to ensure that it neither abrogates the Commission's review of the plan itself nor relies too heavily on spot market purchases.

C. Rate Design.

The Companies propose a variety of changes to various riders, including the Price to Compare Default Service Rider, the Hourly Pricing Default Service Rider, the Default Service Support Rider and the Solar Photovoltaic Requirements Charge Rider. Petition at ¶¶ 31, 34, 39 and 46. From the Petition it appears that many of the proposed changes are meant to conform West Penn's current cost recovery methods to those of the other FirstEnergy EDCs -- Met-Ed, Penn Power and Penelec. The Petition provides that the PTC will change on a quarterly basis. Petition at ¶ 32. The Companies also propose to reconcile generation supply charges on a quarterly basis to recover the costs of serving their default service load. Petition at ¶ 67. The OCA submits that each cost component as well as the operation of the adjustment mechanism and the reconciliation mechanism must be reviewed. In addition, the impact of reconciliation on both shopping and non-shopping customers must be considered as the recovery mechanism will be part of the Price to Compare.

D. AEPS Procurement.

The Companies are proposing that the load-following providers procure the alternative energy credits needed to meet their obligations under the Alternative Energy Portfolio Standards Act, except for 40% of the solar photovoltaic requirement that the Companies have previously committed to supply as part of the Merger Settlement. Petition at ¶ 10. The Companies have proposed to meet their solar requirements under the AEPS Act, in part, through an RFP designed to obtain a fixed amount of solar photovoltaic alternative energy credits (SPAECs) over a 10-year period. Petition at ¶ 20. The Companies propose to acquire the remaining 60% of the required SPAECs through short-term contracts. Petition at ¶ 21. This methodology should be examined to determine whether it produces the lowest reasonable cost

for alternative energy credits (AECs) and whether it appropriately supports the development of the alternative resources required under the AEPS Act. As the Commission's Policy Statement recognizes, long term contracts may be necessary to support the development of alternative energy resources. 52 Pa. Code § 69.1805.

E. Time of Use Rates.

The Companies propose to offer a new Time of Use Rate (TOU) program for West Penn and Penn Power. Petition at ¶ 49. The Petition provides that West Penn and Penn Power seek to adopt a new Residential TOU Default Service Rider that will allow those companies to bid out the TOU service to an EGS. The successful EGS for each company will be chosen through an auction process, and the attendant costs of the auction process are proposed to be collected from residential customers through the Default Service Support Rider. Petition at ¶ ¶ 50, 51 and 59. The OCA submits that the Companies' proposed TOU program must be thoroughly examined in order to ensure its compliance with existing law and the Commission's regulations.

F. Retail Opt-In Auction.

The Companies propose to implement a retail opt-in auction program for their residential, non-shopping customers. Petition at ¶ 73. EGSs will bid for the ability to offer generation service to customers who enroll in the program on a percent off the PTC basis for a two-year period. Petition at ¶ ¶ 74-76. The Petition provides that all costs associated with this retail opt-in auction will be recovered from residential customers through the Default Service Support Rider. Petition at ¶ 77. The OCA submits that this opt-in auction program must be thoroughly analyzed to ensure its compliance with the Public Utility Code, and to ensure that such a program does no harm to default service, consumers, or the retail competitive market.

G. Customer Referral Program.

The Companies propose to implement a customer referral program to provide information to consumers about shopping opportunities. Petition at ¶ 82. The Companies propose to target non-shopping, residential customers who call with a new mover request, a high bill complaint or to make an inquiry about customer choice. Id. Customers who desire further information will be transferred to a Customer Referral Plan representative, who will explain what options may be available based on current, fixed-price EGS offers that the Companies have solicited. Petition at ¶ 83, 84. The Petition provides that all costs associated with this Customer Referral Program will be recovered from residential customers through the Default Service Support Rider. Petition at ¶ 87. The OCA submits that the Commission should review the proposed Customer Referral Program and the costs that may arise from the implementation of such a referral program to ensure that such a program is reasonably designed, cost-justified, and that the costs are allocated appropriately among stakeholders. In addition, implementation of both a Retail Opt-In Auction and the Customer Referral Program as proposed by the Companies must be carefully coordinated in order to avoid undue customer confusion. These issues will need to be thoroughly examined in this proceeding.

H. Market Adjustment Charge.

The Companies propose to add a 0.5¢ per kWh charge to the PTC for the residential and commercial classes that will serve to increase the default service rate by one-half cent. The Petition alleges that the Market Adjustment Charge will “compensate the Companies for the obligation and attendant risk of procuring electric power for customers who choose not to shop”, and will additionally enhance competition by “creating additional ‘headroom’ beneath the price-to-compare for competitive offers.” Petition at ¶ 38.

The OCA submits that the proposed Market Adjustment Charge is in conflict with the Public Utility Code in several respects, particularly since the Companies receive full recovery of all costs of providing default service on a dollar-for-dollar basis through an automatic adjustment surcharge. The OCA has calculated that if the Market Adjustment Charge had been in effect in the first 11 months of 2011, the Companies would have received over \$120 million in additional profit – as there are no offsetting costs or risks associated with adding the 0.5¢ per kWh charge to the PTC. Even assuming that fewer customers will remain on default service in the future, the 0.5¢ per kWh charge will almost certainly provide tens of millions of dollars in profits that are over and above the costs incurred by the Companies to provide default service. It should be noted that, through this Market Adjustment Charge proposal, the Companies are not offering a fixed rate to customers where the Companies would bear the risk as to under or over recovery.

Moreover, the proposed Market Adjustment Charge would impact shopping customers in the Companies' service territories. An artificially inflated default service rate will result in increased EGS' charges for consumers who accept a percent-off-the-default price offering. For example, First Energy Solutions (FES) offered 6% off the Price to Compare for residential customers and 4% off the Price to Compare for commercial customers as part of a proposed municipal opt-out program in Meadville, Pennsylvania. See Consolidation of Three Petitions Regarding Municipal Aggregation and Directive re: Customer Switching Pursuant to "Opt-out" Municipal Aggregation Programs, Dock. Nos. P-2010-2207062, P-2010-2207953 and P-2010-2209253 (Opt-out Municipal Aggregation), First Energy Solutions Answer filed November 22, 2010 at pg. 2. Although FES' proposal was ultimately found to not be in

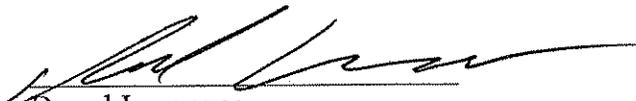
compliance with the Public Utility Code by the Commission¹, the basic issue of an artificially inflated PTC remains – shopping customers who accept a percent-off-the-default price offer in the Companies’ service territories will pay higher rates with the proposed Market Adjustment Charge in place.

In fact, the Petition provides that the Companies propose to implement a Retail Opt-In Auction, whereby customers who choose to participate would receive a percent off the price to compare offer. Petition at ¶¶ 74-76. As discussed, the Market Adjustment Charge would artificially inflate the PTC and thus increase the price of any EGS offer as the Companies propose in the Retail Opt-In Auction. In effect, the Companies’ proposed Market Adjustment Charge would simply increase costs for consumers across the board.

¹ Opt-out Municipal Aggregation, Declaratory Order entered Mar. 17, 2011.

WHEREFORE, the Office of Consumer Advocate respectfully requests that this matter be set for hearings. Hearings are necessary to ensure that the default service rates that will be charged starting June 1, 2013 are just and reasonable and otherwise consistent with Pennsylvania law.

Respectfully Submitted,



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Dated: December 19, 2011

150887

CERTIFICATE OF SERVICE

Joint Petition of Metropolitan Edison Company, : Docket Nos.
Pennsylvania Electric Company, Pennsylvania : P-2011-2273650
Power Company, and West Penn Power : P-2011-2273668
Company for Approval of Their Default Service : P-2011-2273669
Programs : P-2011-2273670

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

Dated this 19th day of December, 2011.

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North Shore Energy Consulting, LLC
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NRGING, LLC
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