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OFFICE OF SMALL BUSINESS ADVOCATE

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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 Default Service Program
Docket No. P-2012-2283641

Dear Secretary Chiavetta:

Enclosed for filing are the original and nine (9) copies of the Main Brief, on behalf of the Office of Small Business Advocate, in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please contact me.

Sincerely,

Elizabeth Rose Triscari
Assistant Small Business Advocate
Attorney ID #306921

Enclosures

cc: Parties of Record

Brian Kalcic

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company for : Docket No . P-2012-2283641
Approval of Its Default Service Program :

MAIN BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

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PA PUBLIC UTILITY COMMISSION
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Dated: June 18, 2012

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I. INTRODUCTION AND PROCEDURAL HISTORY

On January 13, 2012, PECO Energy Company (“PECO” or “the Company”) filed the Petition of PECO Energy Company for Approval of Its Default Service Program (“Petition”) with the Pennsylvania Public Utility Commission (“Commission”) pursuant to Section 2807(e) of the Public Utility Code, 66 Pa. C.S. §2807(e), and 52 Pa. Code §§54.181 – 54.189 and 69.1801 – 1817. The Petition seeks approval of PECO’s proposed second Default Service Program (“DSP II”) to secure default service supply for the Company’s customers for the period from June 1, 2013 through May 31, 2015.

The OSBA filed an Answer to the Petition as well as a Notice of Intervention and Public Statement on February 2, 2012.

An Answer and Notice of Intervention were also filed by the Office of Consumer Advocate (“OCA”) on February 2, 2012. A Notice of Appearance was filed by the Commission’s Bureau of Investigation and Enforcement (“I&E”) on February 7, 2012.

Interventions were also filed by: UGI Energy Services, Inc. d/b/a UGI EnergyLink (“UGIES”); Dominion Retail, Inc. d/b/a Dominion Energy Solution (“Dominion”) and Interstate Gas Supply, Inc. d/b/a IGS Energy (“IGS”); NextEra Energy Services, Pennsylvania, LLC and NextEra Power Marketing, LLC (“NextEra Entities”); Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”), and West Penn Power Company (“West Penn”) (collectively, “FirstEnergy Utilities”); Tenant Union Representative Network & Action Alliance of Senior Citizens of Greater Philadelphia (collectively, “TURN”); Retail Energy Supply Association (“RESA”); Philadelphia Area Industrial Energy Users Group (“PAIEUG”); Green Mountain Energy Company (“GMEC”); Direct Energy Services, LLC (“Direct Energy”); ChoosePA Wind.com (“ChoosePA

Wind”); Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”); FirstEnergy Solutions Corp. (“FES”); Exelon Generation Company, LLC and Exelon Energy Company (“ExGen”); Noble Americas Energy Solutions LLC (“Noble”); PPL EnergyPlus, LLC (“PPL EnergyPlus”); Washington Gas Energy Services, Inc. (“WGES”); and Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (collectively “Constellation”).

A Prehearing Conference took place on March 13, 2012, before Administrative Law Judge (“ALJ”) Dennis J. Buckley, where the parties agreed to a procedural schedule and discovery modifications.

The OSBA submitted the Direct Testimony, Rebuttal Testimony, and Surrebuttal Testimony of its witness, Brian Kalcic.

Evidentiary hearings were held in Harrisburg on May 22, 2012. Witnesses for the parties were cross-examined, and the testimony of the parties was entered into the record.

This Main Brief is being filed pursuant to the procedural schedule set forth in the Second Prehearing Order entered by ALJ Buckley on March 19, 2011.

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

A. Summary of Briefing Party’s Position

The OSBA will only address the default service procurement plans for the Small Commercial and Medium Commercial procurement groups. The OSBA agrees generally with the Company’s proposal to use fixed price, full requirements, load following contracts to acquire default service supply for Small Commercial and Medium Commercial default service customers. However, the OSBA requests that a limited modification be made to the Company’s

proposed procurement plan for the Medium Commercial group. Specifically, the OSBA asserts that one-year contracts, instead of PECO's proposed six-month contracts, are necessary to provide greater price stability for Medium Commercial default service customers.

B. Residential Class Procurement

The OSBA did not take a position with respect to Residential Class Procurement.

1. Term Length of Supply Contracts

The OSBA did not take a position with respect to the term length of supply contracts for the Residential Class Procurement.

2. RESA's Proposal to Include 10% Spot Purchases for Residential Customers

The OSBA has no comment on RESA's proposal for the Residential class. The OSBA notes that no party has made such a proposal for the Small Commercial or Medium Commercial classes.

3. OCA's Proposal to Continue Block and Spot Supply Procurement for Residential Customers

The OSBA has no comment on the OCA's proposal for the Residential class. The OSBA notes that no party has made such a proposal for the Small Commercial or Medium Commercial classes.

C. Small Commercial Class Procurement

The OSBA agrees with the Company's proposed procurement for the Small Commercial procurement group because it provides reasonable price stability for Small Commercial default service customers. PECO's current DSP I uses a mix of full requirements products for the Small Commercial procurement group: one-year contracts (70%); two-year contracts (20%); and PJM day-ahead market (10%). These contracts are not overlapping, or laddered.

The Company's DSP II, in contrast, proposes exclusively one-year fixed price full requirements, load following contracts. The Company argues that because competitive retail markets serving Small Commercial customers have developed substantially since the start of DSP I, these customers do not require as much price stability in their default service rates in DSP II. Therefore, PECO's proposed modifications are intended to deemphasize price stability in favor of making Small Commercial default service rates more reflective of current market prices.¹

The OSBA continues to believe that price stability should remain an important consideration when designing a default service procurement plan. Although two-year contracts will be replaced by one-year contracts, the one-year contracts will now be laddered, thus limiting the turnover in default service supply to 50% at each procurement. The Company's proposal therefore offers reasonable price stability for Small Commercial default service customers and should be implemented.²

D. Medium Commercial Class Procurement

The OSBA recommends a modification to PECO's proposal for the Medium Commercial procurement group. Currently, PECO uses a mix of one-year (non-laddered) contracts (85%) and spot market products (15%). The Company's proposed DSP II would acquire all Medium Commercial default service supply via six-month fixed price full requirements, load following contracts. These contracts would run back-to-back with no laddering. As a result, 100% of the

¹ OSBA Statement No. 1 at 5-6.

² OSBA Statement No. 1 at 5-6.

default service supply would turn over every six months, which could lead to unreasonable default service price volatility for Medium Commercial default service customers.³

OSBA witness Brian Kalcic recommended that PECO instead utilize one-year (non-laddered) fixed price full requirements contracts to acquire 100% of the Medium Commercial default service supply.⁴ This approach is similar to the procurement plan used in DSP I (except for the elimination of spot market purchases) and would maintain the same degree of price stability that currently exists under DSP I.

Both PECO and RESA oppose Mr. Kalcic's recommendation to acquire default service supply for Medium Commercial customers through one-year contracts. Company witness John J. McCawley argues that because 82% of the Medium Commercial load is served by EGSs (as of April 2012), these customers do not require the same level of default service price stability as in DSP I.⁵ RESA witness Aundrea Williams objects to Mr. Kalcic's recommendation for the reason that the Company's proposal will make default service prices more market reflective.⁶

However, deemphasizing price stability in favor of making Medium Commercial default service rates more market reflective ignores the fact that "Act 129 explicitly repealed the 'prevailing market prices' standard and declared instead that the utilities' generation purchases must be designed to ensure 'adequate and reliable service' at the 'least cost to customers over time.'" ⁷ Therefore, PECO's and RESA's emphasis on current market prices is misplaced. The OSBA respectfully requests that the Medium Commercial default service supply be procured

³ OSBA Statement No. 1 at 6.

⁴ *Id.*

⁵ PECO Statement No. 2-R at 7.

⁶ RESA Statement No. 1-R at 4.

⁷ *Implementation of Act 129 of October 15, 2008; Default Service And Retail Electric Markets*, Docket No. L-2009-2095604 (Order entered October 4, 2011) at 4; 66 Pa. C.S. §2807(e)(3.7).

consistent with Mr. Kalcic's recommendations to provide greater price stability for Medium Commercial default service customers.

E. Large Commercial and Industrial Class Procurement

The OSBA did not take a position with respect to Large Commercial and Industrial Class Procurement.

F. Extension of Supply Contracts Beyond May 31, 2015

The OSBA did not object to the Company's proposal for Small Commercial Class contracts to extend six months beyond May 31, 2015. The OSBA notes that both the Company's proposed Medium Commercial Class procurement plan and Mr. Kalcic's recommended modification to that plan would not extend beyond the default service term.

G. Procurement Schedule

1. OCA's Proposal to Reallocate Tranches Between Solicitations

The OSBA has no comment on the OCA's proposal to reallocate tranches between solicitations for the Residential Class. The OSBA notes that no party has made such a proposal for the Small Commercial or Medium Commercial classes.

2. OCA's Proposed "Hold Back" for Opt-In Program

The OSBA has no comment on the OCA's proposed "Hold Back" for the Opt-In Program. The OSBA notes that no party has made such a proposal for the Small Commercial or Medium Commercial classes.

H. Load Cap

The OSBA did not oppose the Company's proposed load cap.

I. Other Procurement and Implementation Plan Requirements (e.g., Contingency Plans, Competitive Procurement Process, Supply Master Agreements, AEPS Compliance, Independent Evaluator)

The OSBA did not take a position with respect to other procurement and implementation plan requirements.

III. RATE DESIGN AND COST RECOVERY

A. Summary of Briefing Party's Position

The OSBA does not object to the Company's proposal to reconcile the GSA on an annual basis. The OSBA believes that the OCA's proposal to reconcile the GSA each quarter based on a 12-month rolling average of over- and under-collections is also reasonable.

The OSBA does not object to PPL EnergyPlus's proposal to impose an NMB Rider to recover the costs associated with Generation Deactivation charges. However, the OSBA asserts that if approved, the NMB Rider should be restricted to the recovery of only those transmission costs that cannot be predicted and/or hedged by default service suppliers or EGSs.

The OSBA opposes RESA's proposal to impose a 5-mill adder to the Price to Compare ("PTC").

B. Reconciliation of Default Service Costs and Revenues

The OSBA does not object to PECO's proposed annual reconciliation of over- and under-collections in the GSA for the Small Commercial procurement group. The reconciliation component of the GSA is included in the Company's PTC. By moving from a quarterly to an annual GSA, PECO hopes to smooth out its current quarterly fluctuations, thereby sending clearer price signals to customers and competitive suppliers. The OSBA agrees that eliminating unnecessary swings in the GSA through annual reconciliation is preferable to PECO's current practice.⁸

⁸ OSBA Statement No. 1 at 8.

Dominion/IGS and RESA both oppose the Company's proposal to reconcile the GSA annually. Each of their witnesses on this issue is concerned that annual reconciliation could distort the market prices that underlie default service rates.⁹ However, as OSBA witness Mr. Kalcic explains, any reconciliation of the GSA will cause default service rates to deviate to some extent from the underlying cost of acquiring default service supply.¹⁰ The question then is which type of reconciliation would cause the least distortion of default service prices over time.

The OSBA believes that the proposal made by OCA witness Richard S. Hahn, in which he recommended that PECO reconcile the GSA each quarter based on a 12-month rolling average of over- and under-collections (also known as rolling annual reconciliation), is reasonable. This compromise method would further the goals of all parties. It would smooth out the quarterly swings (*i.e.*, over- and under-recoveries) that occur in PECO's GSA, and at the same time minimize distortions in default service prices. In fact, the OSBA supported rolling annual reconciliation in a very recent case involving the methodology used by PPL Electric Utilities Company to reconcile its Generation Supply Charge (similar to PECO's GSA). The ALJ's Recommended Decision in that proceeding found that rolling annual reconciliation was the preferred method over either quarterly or annual reconciliation.¹¹

C. EDC Recovery of Additional PJM Charges

PPL EnergyPlus witness Gene Allesandrini has recommended that all costs associated with the Generation Deactivation charges that PJM imposes on load serving entities within a transmission zone be recovered by PECO through a non-market based charges rider ("NMB

⁹ Dominion/IGS Statement No. 1 at 6-7; RESA Statement No. 1 at 15-16.

¹⁰ OSBA Statement No. 2 at 2.

¹¹ *Petition of PPL Electric Utilities Corporation for Approval to Implement a Reconciliation Rider for Default Supply Service*, Docket No. P-2011-2256365 (Recommended Decision April 4, 2012) at 52-53. At the time of filing, a Commission decision is still pending.

Rider”) that would apply to both shopping and non-shopping customers.¹² Mr. Allesandrini’s reasoning is that such charges are unknown and cannot be hedged by suppliers, and consequently, necessitate the imposition of a corresponding risk premium in their competitive bids.¹³

Although the OSBA agrees that reducing the risk premiums that suppliers impose due to uncertainty over the level of non-market based charges is a reasonable goal, the collection of Generation Deactivation charges in an NMB Rider could have unfair and unintended consequences for current shopping customers. As OSBA witness Mr. Kalcic explained, to the extent that EGSs are currently recovering Generation Deactivation charges from shopping customers, an NMB Rider could effectively end up double billing those shopping customers for non-market based costs until their existing contracts expire.¹⁴

Mr. Kalcic recommends that any implementation of an NMB Rider be delayed for a period of time, perhaps a year.¹⁵ The delay in implementation would allow for a transition period whereby EGSs would have a date certain when Generations Deactivation charges would be recovered in the NMB Rider, and could adjust their bids accordingly. While EGS offers made during the transition period might continue to include some premium for Generation Deactivation charges, that premium would be limited by the finite period over which EGSs would continue to be responsible for the charges and competition for new customers among EGSs.

¹² PPL EnergyPlus Statement No. 1 at 2-6.

¹³ PPL EnergyPlus Statement No. 1 at 3-4.

¹⁴ OSBA Statement No. 2 at 4.

¹⁵ *Id.* at 5.

The OSBA opposes RESA witness Ms. Williams' proposal that PECO assume responsibility for all costs associated with procuring transmission service, subject to recovery from all customers.¹⁶ RESA's proposal is not limited to the recovery of non-market based transmission charges, such as advocated by PPL EnergyPlus, but rather would require that PECO assume responsibility for all transmission related costs, including Network Integration Service ("NITS") charges.¹⁷

The justification for the proposed NMB Rider, *i.e.*, reducing the risk premiums associated with transmission costs that cannot be predicted, simply does not apply to RESA's proposal to relieve suppliers of responsibility for known transmission costs, such as NITS charges. Including transmission costs that can be predicted, and thus hedged, will not produce any benefit for consumers because there is no risk premium attached to such costs.¹⁸ If approved, the NMB Rider should be restricted to the recovery of those transmission costs that cannot be predicted. Furthermore, removing all transmission costs from the PTC would deprive shopping customers of the opportunity to save money on the transmission portion of their bills.¹⁹

D. Costs Included in the Generation Supply Adjustment Charge

The OSBA did not take a position on this issue.

E. Ratemaking Treatment of Auction Revenue Rights

The OSBA did not take a position on this issue.

F. Elimination of Alternative Energy Portfolio Standard Surcharge

The OSBA did not take a position on this issue.

¹⁶ *Id.* at 9-10.

¹⁷ RESA Statement No. 1 at 17.

¹⁸ OSBA Statement No. 2 at 10.

¹⁹ *Id.*

G. RESA's Proposal for a \$0.005/kWh Adder to the Price-to-Compare

RESA's proposal to impose a 5-mill per kWh surcharge on PECO's default service customers is unnecessary, unlawful, and inequitable. RESA witness Christopher H. Kallaher recommends that such surcharge be used to pay PECO's costs for providing default service that have otherwise not been collected and to pay for retail market enhancements.²⁰

Mr. Kallaher argues, without providing any evidence in support, that PECO may not be recovering all of the costs that it incurs as the default service provider.²¹ It is noteworthy that PECO has not expressed any concern in this regard. Perhaps this is because PECO is well aware that default service providers are permitted to fully recover all reasonable costs incurred through the use of a reconciliation mechanism under Section 2807(e)(3.9) of the Public Utility Code.²² It is reasonable to assume that PECO is recovering all of its default service costs in the GSA. Therefore, the surcharge is unnecessary for PECO to recover its costs.

Furthermore, the OSBA disagrees with Mr. Kallaher's proposal in that it imposes on default service customers the cost of implementing retail market enhancements. This issue is discussed more fully in Section IV(F) below.

However, even if the surcharge were to be used to cover the cost of retail market enhancements, Mr. Kallaher provides no basis for how he arrived at the proposed level of his recommended surcharge. Five mills appears to be completely arbitrary.²³ RESA's proposed

²⁰ RESA Statement No. 2 at 34.

²¹ RESA Statement No. 2 at 33.

²² 66 Pa.C.S. §2807(e)(3.9).

²³ OSBA Statement No. 2 at 8.

surcharge would result in revenues of \$70 million per year, but the estimated cost for retail market enhancements is only \$3.7 million.²⁴

Mr. Kallaher correctly anticipates that his recommended surcharge would produce revenue in excess of PECO's alleged otherwise unrecovered costs and the costs of retail market enhancements.²⁵ Not surprisingly, Mr. Kallaher also has a recommendation as to how that excess revenue should be used. Pursuant to Mr. Kallaher's proposal, PECO would be able to retain up to 10 percent of any excess revenue as an incentive (profit) and the remaining would be returned to all distribution customers, *i.e.*, both default service and shopping customers.²⁶ PECO's profit would be approximately \$6.6 million per year.²⁷

There are at least three glaring problems with Mr. Kallaher's proposal. First, it would be unlawful for PECO to earn a profit on the provision of default service. Default service providers are only entitled to recover all reasonable costs as well as an allowed rate of return on equity.

Second, the surcharge would artificially inflate the PTC because it is unrelated to the true cost of providing default service.²⁸ Any "savings" offered by EGSs over the inflated PTC are not actually savings at all. The increase in the PTC caused by the surcharge could result in an increase to the prices offered by EGSs, in which case shopping customers might not realize any savings at all. The only benefit would be to EGSs that take in additional profits as a consequence of imposing a surcharge on default service customers.²⁹

²⁴ OCA Statement No. 1-R at 6.

²⁵ RESA Statement No. 2 at 34.

²⁶ *Id.* at 34-35.

²⁷ OCA Statement No. 1-R at 6-7.

²⁸ OSBA Statement No. 3 at 2.

²⁹ *Id.*

Finally, collecting a surcharge from default service customers and then returning the excess revenue collected from that surcharge to all distribution customers (including shopping customers who did not pay the surcharge) would cause default service customers to subsidize shopping customers. It is patently inequitable and discriminatory to redistribute revenues from default service customers to shopping customers without any link to cost causation.³⁰

RESA's proposed 5-mill adder to the PTC is unnecessary, unlawful, and inequitable. The Commission should reject it.

IV. RETAIL MARKET ENHANCEMENTS

A. Summary of Briefing Party's Position

The OSBA agrees with the Company's application of the EGS Opt-In Competitive Offer Program ("Opt-In Program") and EGS Standard Offer Customer Referral Program ("Standard Offer Program") to only residential customers. The OSBA accepts the Company's New/Moving Customer Program proposal, which would apply to small business customers.

B. EGS Opt-In Competitive Offer Program

1. Customer Eligibility (*CAP issues to be discussed in Section IV.D*)

Consistent with the Commission's directives in its Intermediate Work Plan Final Order at Docket No. I-2011-2237952 ("Final Order"), only residential customers are eligible to participate in PECO's proposed Opt-In Program. In preparing the Final Order, the Commission carefully weighed the parties' arguments for and against including small business customers in an Opt-In auction and concluded that the Opt-In auction should not include small business customers at this time. The Final Order states in pertinent part:

³⁰ See *Lloyd v. PA. Public Utility Commission*, 904 A.2d 1010 (Pa. Cmwlth. 2006).

The Commission recognizes the lack of shopping in the small C&I segment and, as such, requested comments on the inclusion of these customers in the Retail Opt-in Auctions. Parties were almost equally split between including and excluding small C&I customers. While the Commission agrees that shopping can be improved in this segment, *it maintains its original proposal that small C&I customers should not be eligible to participate.* Because there is no consistency across the EDCs in defining “small commercial,” the Commission believes it would be inappropriate to include a segment of customers that may reflect a wide variation in electric load. The definitions vary across EDCs and, as such, do not produce comparable groups of customers when reviewing shopping offers and statistics.³¹

Despite this clear and unambiguous directive from the Commission, RESA seeks a second bite at the apple in the instant proceeding, proposing that the Opt-In Program be extended to small business customers (defined as 25kW and below).³² RESA witness Mr. Kallaher asserts that the Final Order somehow suggests that the Commission would consider including small business customers in Opt-In auctions on a case-by-case basis, *i.e.*, within the context of individual DSP filings.³³ This reading of the Final Order is disingenuous. On the contrary, the Final Order clearly states that the Commission would review the results of residential Opt-In auctions to determine whether or not similar auctions should be applied to small business customers at some future date, should shopping levels warrant it. The Final Order states:

While the Commission has, at this time, decided that Retail Opt-in Auctions will be a one-time event, it will take under advisement Dominion’s recommendation that, following the residential auctions, the Commission review the success and determine whether a similar program would be suitable for the small C&I sector.³⁴

³¹ *Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 1, 2012) at 42 (emphasis added).

³² RESA Statement No. 2 at 4.

³³ *Id.* at 9.

³⁴ Final Order at 43.

Even if the Commission were to revisit in this proceeding the already settled issue of excluding small business customers from Opt-In auctions, Mr. Kallaher provides only limited support for his proposal. He makes the tenuous argument that extending the Opt-In Program to small business customers would “add potential value for EGSs and, in turn, provide added benefits to those customers.”³⁵ Mr. Kallaher also asserts that shopping among PECO’s small business customers is low compared to other commercial customers.³⁶ Neither of Mr. Kallaher’s arguments are new and they have already been considered and rejected by the Commission.

Moreover, Mr. Kallaher has admitted in his testimony “that the individual EDC plans should conform to the guidance set forth in [the Final Order] unless some substantial operational or other ‘unique’ reason compels a different treatment.”³⁷ No party to this proceeding, including RESA, has offered any evidence of PECO’s operational constraints or “uniqueness” that would justify the inclusion of small business customers in the Opt-In Program in contravention of the Commission’s clear directives in the Final Order.

2. Composition of Product Offer

The OSBA did not take a position on this issue.

3. Customer Participation Cap

The OSBA did not take a position on this issue.

4. Supplier Participation Load Cap

The OSBA did not take a position on this issue.

5. Customer Options on Product Expiration and Notice Requirements

The OSBA did not take a position on this issue.

³⁵ RESA Statement No. 2 at 19-20.

³⁶ *Id.* at 20.

³⁷ *Id.* at 9.

6. Structure of Opt-In Auction – Sealed-Bid Format Versus Descending Price Clock Auction

The OSBA did not take a position on this issue.

7. PECO’s Proposed Application Process and EGS Terms and Conditions

The OSBA did not take a position on this issue.

C. EGS Standard Offer Program

1. Customer Eligibility (*CAP issues to be discussed in Section IV.D*)

Consistent with the Commission’s Final Order, the OSBA agrees with PECO’s proposal that the EGS Standard Offer Program will not apply to non-residential customers.

2. Composition of Product Offer

The OSBA did not take a position on this issue.

3. Customer Options Upon Product Expiration

The OSBA did not take a position on this issue.

4. Types of Customer Calls Eligible for Presentation of Referral Program

The OSBA did not take a position on this issue.

5. Commencement Date of the EGS Standard Offer Program

The OSBA did not take a position on this issue.

6. PECO’s Proposed Application Process and EGS Terms and Conditions

The OSBA did not take a position on this issue.

D. Participation By Low-Income Customers In Proposed Retail Market Enhancements

The OSBA did not take a position on this issue.

E. Additional Proposed Retail Market Enhancements

1. Time-of-Use Offering

The OSBA did not take a position on this issue.

2. New/Moving Customer Referral Program

The OSBA does not object to the Company's New/Moving Customer Program proposal.

3. Referral of PECO Wind Customers

The OSBA did not take a position on this issue.

4. Seamless Moves

The OSBA did not take a position on this issue.

F. Recovery of Program Costs for Proposed Retail Market Enhancements

The OSBA will address the recovery of program costs for retail market enhancements generally, rather than with respect to each specific program.³⁸

The OSBA agrees with PECO's proposal to recover the costs associated with its retail market enhancements through a discount on its purchased EGS receivables.

RESA, in contrast, proposes to recover the costs of PECO's Opt-In Program and Standard Offer Program from default service customers.³⁹ In the alternative, RESA argues and FES agrees, that such costs should be recovered through a non-bypassable charge applicable to all distribution customers eligible for the enhancement programs.⁴⁰

³⁸ The OSBA notes that the only retail market enhancement applicable to small business customers in PECO's proposed plan is the New/Moving Customer Referral Program, which should incur little or no costs to implement. Therefore, even if the Commission rejects PECO's proposal to recover retail market enhancements from EGSs, there should be no program costs recovered from small business customers. OSBA Statement No. 1 at 7.

³⁹ RESA Statement No. 2 at 17, 28

⁴⁰ RESA Statement No. 2 at 17, 28; RESA Statement No 2-R at 16; FES Statement No. 1 at 9; FES Statement 1-R at 10, 16.

In apparent support of that position, witnesses for both FES and RESA argue that PECO's retail market enhancements benefit default service customers because all customers benefit from the development of a more robust/competitive electricity market. The OSBA agrees that all customers benefit from a competitive electricity market, but all customers also benefit from PECO's default service procurement. As OSBA witness Mr. Kalcic explained in his Rebuttal Testimony:

While I agree that all customers benefit from a competitive retail electricity market, it is also true that PECO's default service procurement program benefits *all* customers since it provides shopping customers a viable option to EGS offers. Furthermore, the costs of running the Opt-In auction are fundamentally no different than the RFP-related costs that PECO incurs to acquire electricity supply for default service customers. Therefore, if default service customers are to share in the cost of PECO's retail market enhancement initiatives (as Mr. Banks suggests), then it is equally appropriate that shopping customers contribute toward the cost of PECO's default service program. In other words, cost sharing should be a two-way street.

On the other hand, if PECO's RFP-related procurement costs are the sole responsibility of default service customers (as is presently the case), then the costs of PECO's Opt-In and customer referral programs should be the sole responsibility of shopping customers (or their EGSs).⁴¹

RESA witness Mr. Kallaher goes even a step further, seeking to penalize default service customers who choose not to shop. He suggests that "the costs of the retail market enhancements RESA advocates are caused by the existence of default service, without which customers would all be on competitive supply, eliminating the need for measures to encourage them to move away from the utility."⁴² RESA implies that if all PECO customers only had the good sense to shop, all of these costs would be avoided. However, it is inequitable to penalize

⁴¹ OSBA Statement No. 2 at 3.

⁴² RESA Statement No. 2 at 17.

default service customers who choose not to shop by forcing them to subsidize customer choice in the Commonwealth.⁴³ Therefore, the OSBA respectfully requests the Commission reject RESA's and FES' cost recovery proposals.

1. EGS Opt-In Competitive Offer Program

Please see above.

2. EGS Standard Offer Program

Please see above.

3. Other Enhancements

Please see above.

V. OTHER ISSUES

The OSBA has not identified any other issues.

VI. CONCLUSION

The OSBA respectfully requests that the Commission adjudicate this proceeding in accordance with the arguments presented herein. The OSBA also respectfully requests that PECO be required to present its compliance tariff with redlines, noting the changes from the present tariff.

⁴³ OSBA Statement No. 2 at 7-8.

Respectfully submitted,



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Dated: June 18, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of PECO Energy Company for : Docket No . P-2012-2283641
Approval of Its Default Service Program :**

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Main Brief, on behalf of the Office of Small Business Advocate, by e-mail and first-class mail (unless otherwise noted) upon the persons addressed below:

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