



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF SMALL BUSINESS ADVOCATE

June 25, 2012

E-Filed and Hand Delivery

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

**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,
and P-2011-2273670**

Dear Secretary Chiavetta:

Enclosed for filing is the original of the Exceptions, on behalf of the Office of Small Business Advocate, in the above-docketed proceedings. 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,

A handwritten signature in cursive script, appearing to read "Sharon E. Webb".

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Enclosures

cc: Parties of Record

Robert D. Knecht

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

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

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**EXCEPTIONS
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

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Dated: June 25, 2012

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I. INTRODUCTION AND PROCEDURAL HISTORY

On or about November 17, 2011, Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”) and West Penn Power Company (“West Penn”) (collectively, “First Energy” or “the Companies”) filed a Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs (“Petition”) with the Pennsylvania Public Utility Commission (“Commission”) pursuant to Section 2801 of the Public Utility Code, 66 Pa. C.S. §2801, as amended by Act 129 of 2008, (“Act 129”) and 52 Pa. Code §§54.181 – 54.189 and 69.1801 – 1817. The Petition seeks approval of proposed programs to secure default service supply for the Companies’ customers for the period 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 December 5, 2011.

An Answer and Notice of Intervention were also filed by the Office of Consumer Advocate (“OCA”) on December 19, 2011. A Notice of Appearance was filed by the Commission’s Bureau of Investigation and Enforcement (“I&E”). Interventions were also filed by ARIPPA, the York County Solid Waste and Refuse Authority (“YCSWRA”), Constellation NewEnergy, Inc. and Constellation Energy Commodities Group (“Constellation”), Exelon Generation Company, LLC. and Exelon Energy Company (“Exelon”), the Retail Energy Supply Association (“RESA”), Direct Energy Services, LLC (“Direct”), PECO Energy Company (“PECO”), CAUSE PA, First Energy Solutions Corp. (“FES”), Washington Gas Energy Company (“Washington Gas”), Dominion Retail, Inc. (“Dominion”) and the Met-Ed Industrial Users Group (“MEIUG”), the Penelec Industrial Customer Alliance (“PICA”), the Penn Power

Users Group (“PPUG”), and the West Penn Power Industrial Intervenors (“WPPII”) (collectively, the “Industrial Intervenors”).

A Prehearing Conference took place on December 22, 2011, before Administrative Law Judge (“ALJ”) Elizabeth H. Barnes, 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, Robert D. Knecht.

Evidentiary hearings were held in Harrisburg on April 11-12, 2012. Witnesses for the parties, including Mr. Knecht, were cross-examined, and the testimony of the parties was entered into the record.

The OSBA submitted a Main Brief pursuant to the procedural schedule set forth in the Scheduling Order entered by ALJ Barnes on December 22, 2011. The OSBA submitted a Reply Brief on May 16, 2012.

The Recommended Decision of ALJ Barnes was issued on June 15, 2012. The OSBA files this Exception to the RD in accordance with the Secretarial Letter.

II. SUMMARY OF THE OSBA’S PROCUREMENT PROPOSAL

NOTE: The OSBA will only address Commercial default service procurements.

The Company proposes that Commercial default service supplies be procured entirely through the use of two-year full-requirements contracts, of which 90 percent of the supplies are priced at a fixed rate and 10 percent are priced at the spot market price. The OSBA’s position is that this proposal should be modified to consist of a mix of a combination of one-year and six-month contracts, including a laddering of contracts, as specified in the Commission’s

guidelines.¹ The OSBA's position, as initially presented in Mr. Knecht's direct testimony, was set forth in OSBA's Main Brief.

Specifically, I recommend that the Companies initially procure half of their Small C&I default service requirements through one-year contracts and half of their requirements through a 6-month contract. After every subsequent six month period (the first being in approximately July of 2013), the Companies would conduct a procurement to replace the expiring contract (for half of the class default supplies) with a new 12 month contract. To the extent that the Commission retains its desire that all supply contracts expire at May 2015, the last procurement would be a six-month contract.² However, if in late 2014 the Commission is satisfied that the mechanism is working reasonably, this approach could simply be continued.³

The exclusive use of two year contracts results in a "hard stop" to all contracts and the potential for a large price change in June, 2015. The exclusive use of two year contracts fails to incorporate the "laddering" of contracts specified by the Commission guidelines, and thereby foregoes all of the benefits of laddering that the Commission recognized when it established those guidelines.⁴ As set forth in the OSBA's Main Brief, Mr. Knecht stated:

The Commission's Policy Statement regarding default service and retail electric markets at Section 69.1805 specifies that default service plans for both small (under 25 kW) and medium (25 to 500 kW) non-residential customers include laddered contracts to reduce the risk and "a minimum of two competitive bid solicitations per year to further reduce the risk of acquisition at the

¹ OSBA Main Brief at 4, *citing* OSBA Statement No. 1 at 15.

² OSBA Main Brief at 4, *citing* Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans, Docket No. I-2011-2237952, Order Entered December 16, 2011. *See* page 19 for the Commission's desire that contracts do not extend beyond May 2015.

³ OSBA Main Brief at 4, *citing* OSBA Statement No. 1 at 15-16.

⁴ OSBA Main Brief at 5, *citing* OSBA Statement No. 1 at 16-17.

time of peak prices.”⁵ The Companies’ proposal meets neither one of these criteria.

The Companies’ proposal fails to comply with Commission guidelines which specify at least two procurements per year, as noted in the OSBA’s Main Brief and Mr. Knecht’s testimony.⁶

III. EXCEPTION: The ALJ erred in finding that the Companies’ proposed Commercial Class Default Service Procurement complies with Section 69.1805 of the Commission’s guidelines. (RD at 27-29)

A. Use of Two-Year Contracts for the Commercial Class

The OSBA proposes that the Companies initially procure half of their Small C&I default service requirements through one-year contracts and half of their requirements through a 6-month contract. After every subsequent six month period (the first being in approximately July of 2013), the Companies would conduct a procurement to replace the expiring contract (for half of the class default supplies) with a new 12 month contract.

According to the ALJ, the Commission should reject the OSBA’s proposal. As justification for the rejection the ALJ reasoned as follows:

In considering and approving a default service provider’s plan, the Commission is required to make specific findings that the plan “includes prudent steps necessary to negotiate favorable generation supply contracts...[and]includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term, and spot market basis.” 66 Pa. C.S. §2807 (e)(3.7) I find that the Companies’ plans satisfy each of the requirements. Full requirements suppliers acquire the combination of energy, capacity, ancillary services, and transmission products needed to ensure adequate and reliable service to default service customers at

⁵ OSBA Main Brief at 5, *citing* 52 Pa. Code §69.1805. Note that the referenced language appears in both the current and proposed versions of the Policy Statement.

⁶ OSBA Main Brief at 5. *See also*, OSBA Statement No. 1 at 17.

a fixed price in the face of load and price uncertainty, and the Companies' DCAs result in the selection of those suppliers who can provide these products at the least cost over time (citation omitted). The procurement length of twenty-four months is consistent with both the Public Utility Code's requirement for a "prudent mix" of default supply contracts and the Commission's guidance for default service plans for the June 1, 2013-May 31, 2015 period which directs EDCs to limit or eliminate contracts that will expire past May 31, 2015."⁷

Neither the Companies nor the ALJ even attempt to address the Commission's guideline that contract terms be laddered within the 2013 to 2015 default service period.

B. Number of Procurements Per Year

The OSBA proposes a procurement schedule which includes a minimum of two competitive bid solicitations per year to further reduce the risk of acquisition at the time of peak prices. According to the ALJ, the Commission should reject the OSBA's proposal. As justification for the rejection the ALJ reasoned as follows:

As a threshold matter, the Commission's Default Service Policy Statement does not constitute a rule, regulation, or other "binding norm" requiring semi-annual procurements of one year contracts. (citation omitted). More importantly, while the Companies' proposed procurements of two-year contracts in November 2012 and January 2013, are not within the same *calendar* year (January 1- December 31), they are within the same PJM delivery year (June 1-May 31) and are thus compliant with Section 69.1805, because the DSPs are synchronized with the PJM year. (citation omitted)

I agree with the Companies that the PJM delivery year (June 1-May 31) is appropriate and in compliance with Section 69.1805.⁸

The ALJ seems to have accepted the Companies' argument that suggests they can satisfy the Commission's suggested procurement frequency of two per year by holding two

⁷ Recommended Decision at 27.

⁸ Recommended Decision at 29.

procurements within the 2012/2013 PJM year (in November and February).⁹ However, the ALJ, and the Companies, appear to have forgotten about the 2013-2014 year, during which the Companies have proposed *no* procurements, in clear contravention of the Commission's preferred frequency of no less than two procurements a year. Whether using the calendar year, or the PJM delivery year, the Companies have proposed only two procurements for a two year default service period, an average of one procurement per year.

C. Advantages of the Commission's Guidelines

While the OSBA does not dispute the ALJ's contention that Commission guidelines are not the same as a rulemaking, the OSBA does not agree that these guidelines should be lightly thrown away. The Commission's guidelines were carefully thought out, and provide at least two significant benefits to default service ratepayers.

First, the Commission's guideline to hold at least two procurements per year limits the exposure of default service rates to market conditions at the time that any individual procurement is held. The case of the disastrous Pike County Light & Power ("PCL&P") default service procurement in the fall of 2005 clearly demonstrates the problem of subjecting too large a share of default service load to a single procurement date.¹⁰

Second, the laddering of contracts allows for more rate stability by allowing default service rates to adjust to market prices in steps, rather than all at once in a "hard stop" mechanism.

In explaining why the OSBA proposal is superior to the Companies' proposal, Mr. Knecht stated:

⁹ Recommended Decision at 29.

¹⁰ The Commission approval of the PCL&P plan came at Docket No. P-00052168. The Commission's subsequent approval of an aggregation plan to mitigate the extreme default service rates came at Docket No. P-00062205.

Lower Risk for Suppliers: Shorter-term contracts reduce the risk for wholesale suppliers, and therefore would be expected to result in lower bid prices. The Commission explicitly recognizes this risk in its consideration of the contract term for the opt-in retail auction proposal, in the Tentative Order at page 29: “We share the concern expressed that a two-year contract term is too long in that it may increase the risk premiums suppliers will have to incorporate into their prices.” Wholesale suppliers likely face larger risks than those faced by retail suppliers participating in an opt-in auction, in that they absorb the risk of customers opting in and out of default service, and there would be no caps on default service participation as envisioned by the Commission for the opt-in auctions.

Price Stability: While the Companies’ proposal would result in a constant price for 90 percent of default service supplies over a two-year period, it creates the potential for a large shift in default service rates at the end of the term (May 2015). Many factors in electricity supply markets may change between early 2013 and mid-2015, all of which could cause a significant shift in wholesale market prices. By updating prices more regularly, and by including laddered contract terms, my proposal will allow the changes in the wholesale market to be reflected in default service rates more frequently and more moderately.¹¹

The OSBA respectfully submits that neither the Companies nor the ALJ have offered any compelling reasons why the Commission’s guidelines should be ignored, and the substantial benefits associated with those guidelines be lost.

IV. CONCLUSION

For the reasons set forth herein, the OSBA respectfully requests that the Commission grant the OSBA’s Exception, and direct the Companies’ to incorporate the “laddering” of supply contracts into the proposal for procuring Commercial default supply as set forth in the Commission’s guidelines, and also to hold no less than two additional procurements to procure default power supply for the 2013/2014 year.

¹¹ OSBA Statement No. 1 at 15-16.

Respectfully submitted,



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