



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF SMALL BUSINESS ADVOCATE

July 3, 2012

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**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 Reply 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 :**

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**REPLY BRIEF  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE**

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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. ALJ Buckley entered the Second Prehearing Order setting forth that procedural schedule on March 19, 2011.

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.

The OSBA filed its Main Brief on June 18, 2012.

## **II. OSBA’S GENERAL REPLY**

In its Main Brief, the OSBA addressed the arguments made by the various parties on issues in which the OSBA has an interest. This Reply Brief responds only to specific arguments raised by PECO, RESA, Dominion/IGS, and First Energy on those issues in their Main Briefs.

### **III. OSBA'S REPLY TO RESA WITH RESPECT TO SMALL COMMERCIAL CLASS PROCUREMENT**

RESA generally does not oppose PECO's proposed procurement plan for small commercial customers, *i.e.*, laddered one-year full requirements contracts.<sup>1</sup> However, RESA does oppose the proposed September 2014 procurement in that it would acquire supply beyond the end of the default service plan term. Instead, RESA recommends replacement of the 12-month term contracts in the September 2014 procurement with 6-month term contracts. However, any such procurement extending beyond the default service period can be altered later, if and when necessary, as a result of the Commission's Retail Market Investigation. As RESA admits in its own brief, "the least complicated course of action would be to make any adjustments necessary after the Commission issues its guidance."<sup>2</sup> The Commission has merely recommended that EDCs file plans "limiting or eliminating" contracts extending beyond the default service plan. PECO's proposed procurement is consistent with that recommendation, limiting "overhanging" contracts, while at the same time preserving price stability for small commercial default service customers. PECO's Small Commercial Class procurement plan should be implemented as proposed.

### **IV. OSBA'S REPLY TO PECO AND RESA WITH RESPECT TO MEDIUM COMMERCIAL CLASS PROCUREMENT**

PECO argues that the significant level of shopping by medium commercial customers justifies moving from one-year full requirements contracts (with 15% spot-priced contracts) to 6-month (non-laddered) contracts. PECO admits that six month contracts could result in less price stability for medium commercial customers, but argues that this lower level of price stability is

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<sup>1</sup> RESA Main Brief at 15.

<sup>2</sup> *Id.* at 19.

appropriate due to shopping levels.<sup>3</sup> The OSBA disagrees and recommends one-year full requirement contracts (non-laddered) to ensure reasonable price stability for default service customers. PECO's proposal results in default service supply that will turnover every six months, which could lead to price volatility that is unreasonable no matter how few medium commercial customers remain on default service.

PECO also denies that its medium commercial class procurement proposal is reflective of a "current market price" standard.<sup>4</sup> However, RESA supports PECO's proposal for just that reason arguing that "the use of six-month contracts is another way to achieve default service rates that are sufficiently market reflective over time."<sup>5</sup> RESA's concern is that the use of longer contracts, as proposed by the OSBA, will result in default service rates "that are not reflective of the true market-price of energy at the time of delivery."<sup>6</sup> As the OSBA argues in its Main Brief at pp. 5-6, such emphasis on current market prices trumping price stability is inconsistent with Act 129's repeal of the "prevailing market prices" standard in favor of "adequate and reliable service" at the "least cost to customers over time."

The OSBA respectfully requests that PECO's Medium Commercial Procurement Plan be modified consistent with the OSBA's recommendation.

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<sup>3</sup> PECO Main Brief at 17.

<sup>4</sup> *Id.*

<sup>5</sup> RESA Main Brief at 16.

<sup>6</sup> *Id.*

V. **OSBA'S REPLY TO DOMINION/IGS AND RESA WITH RESPECT TO RECONCILIATION OF DEFAULT SERVICE COSTS AND REVENUES**

RESA and Dominion/IGS were the only parties to argue against the Company's proposal to move from quarterly to annual reconciliation of default service costs and revenues. The common argument was that doing so would cause distortion in the Price To Compare ("PTC"). Dominion argues that "annual reconciliation can cause severe price dis-association such that the rate customers are asked to pay has no relevance to the actual market price."<sup>7</sup> Similarly, RESA argues that the result of adopting PECO's annual reconciliation proposal "will be to divorce the default service rates from underlying wholesale costs... thus distorting [customers'] perception of the market price of energy."<sup>8</sup>

This argument is proven wrong by the evidence presented by PECO witness Alan B. Cohn in Exhibit ABC-1R, attached to his rebuttal testimony.<sup>9</sup> The evidence shows that quarterly reconciliation would cause significant swings in the PTC with increases of over 6% and decreases of over 7% that are unrelated to the market price of energy. In contrast, annual reconciliation results in only a 0.43% change. Contrary to the unsupported argument advanced by RESA and Dominion/IGS, the evidence in this case shows that annual reconciliation will smooth out reconciliation effects and cause less distortion of the PTC over time. Therefore, annual reconciliation should be adopted as proposed by PECO.

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<sup>7</sup> Dominion/IGS Main Brief at 8.

<sup>8</sup> RESA Main Brief at 27.

<sup>9</sup> PECO Statement No. 5-R.

## **VI. OSBA'S REPLY TO RESA'S PROPOSED NMB RIDER**

While the OSBA does not object to PPL Energy Plus's recommendation to implement a NMB Rider to recover generation deactivation charges from all customers through a non-bypassable charge, it does object to RESA's expanded proposal to also include other transmission costs, namely, NITS, RTEP, expansion costs, and ELR charges.

Generation deactivation charges cannot be hedged because they cannot be predicted. As a result, EGSs may be expected to charge a risk premium associated with those costs.<sup>10</sup> The OSBA supports reducing such risk premiums. However, the other transmission costs RESA proposes to include in the NMB Rider are predictable and thus have no associated risk premium.<sup>11</sup> RESA's concerns about estimating these costs are unreasonable. There is no benefit to ratepayers that can be gained by including these costs in the NMB Rider.<sup>12</sup> In fact, including these costs can actually harm shopping customers by depriving them of the opportunity to save money on the transmission portion of their bills.<sup>13</sup>

Moreover, despite RESA's proclaimed commitment to default service reform, its proposal would take a step backward by effectively re-bundling transmission and distribution costs. The Commission should reject it.

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<sup>10</sup> OSBA Statement No. 2 at 4.

<sup>11</sup> *Id.* at 10.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

## **VII. OSBA'S REPLY TO RESA'S, DOMINION/IGS' AND FES' PROPOSALS FOR RECOVERY OF COSTS OF RETAIL MARKET ENHANCEMENTS**

RESA, Dominion/IGS, and FES all oppose PECO's proposal to recover the costs associated with its retail market enhancements from EGSs through a discount on its purchased EGS receivables. The OSBA agrees with PECO that the costs of these programs should be recovered from the EGSs who will benefit from the programs, consistent with the Commission's directive in the Intermediate Work Plan Final Order. In the Final Order, the Commission correctly concluded, "In the Commission's view, having the participating EGSs pay for the auction implementation is a prudent way to recover the auction costs, given that the participating EGSs are the entities reaping the possible customer acquisition benefits resulting from the auction."<sup>14</sup>

### **A. RESA's Proposal for a \$0.005 kWh Adder to the Price to Compare**

RESA's has proposed that a new charge be added to the PTC called the Default Service Cost Recovery Charge ("DSCRC") in the amount of \$0.005/kWh. According to RESA, the DSCRC would pay default service costs not otherwise collected by PECO as well as costs related to retail market enhancements. PECO would retain 10% of the remainder of the proceeds from the DSCRC with the balance being returned to all distribution customers, despite being collected only from default service customers. The OSBA outlines in pp. 11-13 of its Main Brief why this proposed adder is unnecessary, contrary to law, and inequitable.

By way of further argument against RESA's proposed adder, the OSBA notes that it is in direct contravention of many of the themes contained in RESA's Main Brief, specifically, RESA's views regarding the impropriety of cross-subsidization and distortion of the PTC.

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<sup>14</sup> *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. 1-2011-2237952 (Final Order entered March 1, 2012) at 78.

In its Main Brief, RESA argues that the adder is appropriate based on unsubstantiated claims that shopping customers are paying for default service costs in distribution rates, *i.e.*, that PECO's rates are not fully unbundled, and thereby subsidize default service customers.<sup>15</sup> However, RESA then takes the exact opposite position that cross-subsidization of shopping customers by default service customers (through the DSCRC) is appropriate. Although RESA argues that all customers will benefit from the retail market initiatives, RESA contends that only default service customers should pay for them, thus resulting in default service customers subsidizing shopping customers. RESA cannot have it both ways. As OSBA witness Mr. Kalcic explained, cost sharing should be a two-way street.<sup>16</sup>

In RESA's view, default service ratepayers should pay for all of the costs of providing default service, and then pay for the costs of EGS marketing efforts and RMI initiatives (through the DSCRC). This approach is not consistent with cost causation and it is not equitable.

Similarly, RESA argues against annual reconciliation because the result "will be to divorce the default service rates from underlying wholesale costs...thus distorting [customers'] perception of the market price of energy."<sup>17</sup> But, RESA's proposed adder will do just that by artificially inflating the PTC due to the fact that the surcharge is not based on the true cost of providing default service.

RESA's proposed adder is inconsistent with its own arguments against cross-subsidization and distortion of the PTC. It should be rejected.

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<sup>15</sup> RESA Main Brief at 37. The OSBA disagrees with this after-the-fact justification for the adder and notes that if RESA had a genuine concern about default service costs being recovered in distribution rates, it should have raised the issue in PECO's most recent base rates case.

<sup>16</sup> OSBA Statement No. 2 at 3.

<sup>17</sup> RESA Main Brief at 27.

## **B. Non-Bypassable Charge Applicable To All Distribution Customers**

RESA's alternative cost recovery proposal and that subscribed to by Dominion/IGS and FES is to recover the costs of retail market enhancements through a non-bypassable charge applicable to all distribution customers (eligible to participate in a particular retail market enhancement program). Their argument is that because all distribution customers benefit from retail market enhancements, all customers should bear the costs of them.

This argument ignores the fact that PECO's default service procurement program also benefits all customers by providing a viable option to EGS offers. However, it is unimaginable that suppliers would agree to share the RFP-related costs that PECO incurs to acquire electricity supply for default service customers. Therefore, since PECO's RFP-related procurement costs are the sole responsibility of default service customers, it is only fair that the costs of retail market enhancements should be the sole responsibility of EGSs or their shopping customers.<sup>18</sup>

## **VIII. OSBA'S REPLY TO RESA'S PROPOSAL TO INCLUDE SMALL BUSINESS CUSTOMERS IN THE OPT-IN PROGRAM**

RESA is the only party which has attempted an end-run around the Commission's directive in the Intermediate Work Plan Final Order that small business customers should not be included in opt-in auctions.<sup>19</sup> RESA has proposed to include in the Opt-In Program small business customers with peak monthly demand of 25 kW and below. Notably, the individual

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<sup>18</sup> OSBA Main Brief at 18.

<sup>19</sup> *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 1, 2012) at 42.

energy suppliers participating in this proceeding who might potentially benefit from PECO's Opt-In Program did not take a position on this issue or join RESA in its proposal.<sup>20</sup>

PECO affirmatively opposes extending the Opt-In Program to small business customers recognizing that they are less homogeneous than residential customers and comprise different tariff rates.<sup>21</sup> Although RESA responds to PECO on this issue in its Main Brief with a statement that in RESA's experience, small business customers exhibit many of the same characteristics as residential customers, it offers no evidence in support of that claim.<sup>22</sup>

RESA also argues that shopping statistics in the PECO service territory support its argument to include small business customers because only 39% of these customers shop, which is comparable to the 25% shopping level of residential customers. As explained in the OSBA's Main Brief, arguments to include small commercial customers in an Opt-In Program based on small business shopping levels are not new, and have already been heard and rejected by the Commission.<sup>23</sup>

RESA further argues that the Commission in the Intermediate Work Plan Final Order was merely reluctant to establish a *statewide* rule and this should not preclude the inclusion of small commercial customers in PECO's Opt-In program.<sup>24</sup> However, if the Commission intended that the inclusion of small business customers be determined on a case-by-case basis in each EDC's default service plan, it would have indicated as such. Rather, the Commission weighed the

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<sup>20</sup> FES believes retail market enhancement programs should be available to customers in all rate classes, but acknowledges that PECO's proposal to exclude small business customers is consistent with the Commission's determination in the Intermediate Work Plan Final Order. FES Main Brief at 10.

<sup>21</sup> PECO Statement 2-R at 15.

<sup>22</sup> RESA Main Brief at 53.

<sup>23</sup> OSBA Main Brief at 13-15.

<sup>24</sup> RESA Main Brief at 54-55.

arguments for and against, and concluded clearly and unambiguously that small business customers be excluded from opt-in auctions at this time. Thus, small business customers should not be eligible to participate in PECO's Opt-In Program.

**IX. CONCLUSION**

The OSBA respectfully requests that the Commission adjudicate this proceeding in accordance with the arguments presented herein.

Respectfully submitted,



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

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I certify that I am serving two copies of the Reply 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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