PENNSYLVANIA PUBLIC UTILITY COMMISSSION
HARRISBURG, PENNSYLVANIA 17105-3265

Met-Ed, Penelec, Penn Power & West Penn Joint Petition for Approval of Their Default Service Programs

Public Meeting: August 2, 2012
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Docket Nos.: P-2011-2273650
P-2011-2273668
P-2011-2273669
P-2011-2273670

MOTION OF COMMISSIONER PAMELA A. WITMER

Before the Pennsylvania Public Utility Commission ("PUC" or "Commission") is the Joint Petition of Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power") and West Penn Power Company ("West Penn") (collectively, "Companies") for approval of their Default Service Program ("DSP") for the period from June 1, 2013 to May 31, 2015. Evidentiary hearings were held on April 11-12, 2012, and on June 15, 2012, the Administrative Law Judge ("ALJ") issued a Recommended Decision ("R.D."), approving the Companies' DSP, subject to certain modifications. Following the issuance of the R.D., numerous parties filed Exceptions and Reply Exceptions on June 25, 2012, and July 9, 2012, respectively.

This Motion eliminates the need to conduct a binding poll on the following issues: Timing of Retail Opt-in (ROI) Customer Solicitation and Electric Generation Supplier ("EGS") Auction;[1] ROI Discount from the Price to Compare ("PTC");[2] Structure of ROI Auction;[3] Recovery of Market Enhancement Program Costs[4] and Modifications to the New/Moving Customer Referral Program.[5]

Before addressing each of these items, however, it is important to generally understand the Companies' proposal regarding inclusion of a ROI Aggregation Program in its DSP. Below is the R.D.'s summary of the major components of the Companies' ROI proposal:

> The Companies have proposed a Retail Opt-In Aggregation Program in substantially the form outlined in the *Intermediate Work Plan Final Order*. Under the proposed Retail Opt-In Aggregation Program, EGSs would bid in a Retail Opt-In Auction to provide competitive retail service to not more than 50% of each Company's residential default service customers at a price that is at least 5% below the applicable Price to Compare on the date of the auction. The results of the auction would be

[1] *See* Issue number 19 on page 16 the August 2, 2012, of the Binding Poll Sheets for the above-referenced proceeding.
[2] *See* Issue number 22, *Id.* at 24.
[3] *See* Issue number 27, *Id.* at 29.
[4] *See* Issue number 28, *Id.* at *30-31.*
[5] *See* Issue number 33, *Id.* at 36.

> submitted to the Commission for approval, and the winning bidders would be required to execute an Opt-In Aggregation Agreement in the form set forth in the Companies' Ex. CVF-10. The winning bidders would provide service under the terms of the Opt-In Aggregation Agreement to enrolled customers for a term of twelve months beginning with the customer's June meter reading and ending with the customer's May meter reading.[6]

Because this is the first ROI proposal that we have reviewed since issuing the Retail Markets Investigation ("RMI") *Intermediate Work Plan Final Order* at Docket No. I-2011-2237952, it is not surprising that numerous other details regarding the ROI proposal were litigated in this proceeding, including proposals for customer eligibility and the ability for customers to return to default service if enrolled in this program, etc.

In the same vein, however, because this is the first ROI [and Standard Offer Customer Referral Program] proposal the Commission has reviewed in the course of a default service proceeding, and in the interest of the programs' success, I think it is important for the Commission to give clear direction on our preferred market enhancement program design, with specific emphasis on the ROI Program.

<u>ROI Program Length</u>

As indicated above, the Companies, in accordance with the direction given in our *Intermediate Work Plan Final Order*, structured its proposed ROI Program as a twelve-month program. This proposal complies with our suggestion in the *Intermediate Work Plan Final Order* that the Opt-In product "be no shorter than six months" and no longer than 12 months. Notably, no party to this proceeding took issue with a twelve-month suggestion.[7] Accordingly, I agree that twelve month duration is acceptable.

Where I differ from the R.D. and the position of the parties, however, is with regard to the structure of the ROI product offer as discussed in further detail below.

<u>Timing of ROI Customer Solicitation and EGS Auction</u>

In an effort to ensure that customers have sufficient pricing information prior to enrolling in an ROI Program, the Commission in the *Intermediate Work Plan Final Order* suggested that a "proposal to hold enrollments before the product specifications are known will create customer confusion."[8] Accordingly, the Commission, when suggesting use of a ROI Auction, recommended that an EGS Auction be held prior to customer enrollment.[9] Consistent with this guidance, the Companies proposed and the ALJ recommended in the R.D. that the ROI Auction be held prior to customer enrollment, citing the Companies' position "that customers cannot reasonably be expected to 'shop' without knowing the price and terms of the product they hope to buy."[10]

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[6] R.D. at 90 (internal citations omitted).
[7] *See* R.D. at 97.
[8] *Intermediate Work Plan Final Order* at 55.
[9] *Id.*
[10] R.D. at 98.

Although I agree with the ALJ that customers need sufficient pricing information to make an informed decision to participate in the program, for the reasons discussed below, I do not agree with the ALJ that the ROI product in this proceeding needs to be obtained through an auction conducted before customer enrollment begins. Accordingly, the recommendation to conduct a ROI auction prior to customer enrollment should be rejected. Because the auction, as proposed, by the Companies has been rejected, the Companies' proposal and the ALJ's recommendation on page 91 regarding customer notification and opt-in enrollment procedures will have to be modified. Therefore, within 60 days, in addition to providing updated proposals on EGS payment for the market enhancement programs as explained below, the Companies and EGSs will also be required to update their proposals for customer notification, opt-in enrollment and customer assignment that coordinates with this revised ROI program design.

<u>ROI Discount from the PTC</u>

As initially proposed, the ROI product would have been obtained through a competitive auction process and would have been established on the basis of a percentage discount from the PTC. Upon review of the parties' Direct Testimony in this proceeding and the Commission's guidance in the *Intermediate Work Plan Final Order* that an ROI auction be held to obtain a product at least 5% off the PTC, the Companies revised their ROI Program to offer a price at least 5% below the PTC at the time the ROI Auction is conducted.[11] This general pricing scheme was supported or unopposed by a majority of the parties, and, as a result, the ALJ recommended adoption of the Companies' revised proposal that EGSs offer a minimum 5% discount below the PTC when the ROI auction is held.

Upon further review of the *Intermediate Work Plan Final Order* as well as the R.D. and Exceptions in this proceeding, I recommend that the ALJ's recommendation be rejected. Instead, I propose adoption of the following ROI Product:

- A twelve-month product, comprised of a $50 bonus, a 4 month guaranteed 5% off the PTC at the time of enrollment, and an EGS provided fixed-price product for the remaining eight months.[12]
- Because of the reinsertion of the $50 bonus, I also recommend that in order to receive the bonus, customers must remain in the ROI Program for at least the initial 4 month period.
- Finally, in order to effectively evaluate the terms of this program, the Commission will require that participating EGSs provide the PUC for review, the terms and conditions of the 8 month ROI fixed-priced offering.

With these improvements, we believe this product offering will be attractive enough to garner EGS support and, more importantly, customer participation in the ROI Program. By having a "set" price, more EGSs can participate in this program, customer enrollment can be held before procurement, and the issue of using a Declining Clock Auction ("DCA") to obtain the auction product is moot.

[11] *Id.* at 105.

[12] This proposal closely mirrors RESA's recommendation for the Standard Offer Program in Exceptions that "the Commission adopt a standard offer term of 4 months (at 7% off the PTC at the time of the offer), with a requirement that the EGS provide a fixed price for the remaining 8 months." RESA Exceptions at 42.

Structure of the ROI Auction

As proposed, because their ROI product offer would have been comprised of a price that is at least 5% below the applicable PTC on the date of the auction, the Companies sought to conduct a Retail Opt-In auction using a DCA. Specifically, the Companies proposed that the price being bid would be a "fixed price, with the price starting in round 1 of bidding at 5% below the applicable [PTC] at the time of the Auction, and with the price decreasing round-by-round until the auction closes with the winning bids being the lowest-price bids."[13]

Because we have modified the Companies' proposal from an ROI Auction to an ROI Program consisting of a one-year ROI product of 5% off the PTC at the time of enrollment for 4 months, a fixed price for the remaining 8 months and inclusion of a $50 bonus,[14] there is no need for a DCA to be run in order to solicit EGS participation in the ROI Program. Conversely, because the ROI Product is essentially a "set" amount, there is no reason that an alternative mechanism to determine EGS participation cannot be used. As such, the ALJ's recommendation that the Companies' proposal for a DCA be adopted should be rejected.

Recovery of Market Enhancement Program Costs

Regarding the issue of Market Enhancement Program Cost Recovery, the ALJ made the following recommendation: "…that the EGSs pay for the market enhancement programs [the ROI Program and Standard Offer Customer Referral Program] because the participating EGSs are the entities receiving the possible customer acquisition benefits resulting from these programs."[15] This recommendation is consistent with our position in the *Intermediate Work Plan Final Order* and is adopted here today.

Notwithstanding the above finding, how the EGSs should pay for these programs, however, was the subject of much debate.

The ALJ made the following recommendations:

1. That the cost of the ROI Auction be divided equally among participating EGSs before the auction and the winning EGSs would be responsible for marketing costs included in the tranches they win and the mailing of the ROI material would be contingent upon payment being received from each EGS;[16] and

2. That, for the Standard Offer Customer Referral Program, each participating EGS would pay $100,000 toward the initial start-up costs of the Standard Offer Referral Program and share in the ongoing expenses plus a two-year amortization of any start-up costs in excess of the $100,000 and to provide that the program only move forward

[13] R.D. at 114.
[14] The "bonus issue" was polled as issue number 23.
[15] *See* August 2, 2012, Binding Polling Sheet at 30.
[16] R.D. at 117.

if a minimum of five EGSs execute the Standard Offer Customer Referral Program Agreement and make the initial payments as specified above.[17]

Upon review of the R.D. as well as the rest of the record, I do not believe that we have sufficient information to adopt the proposal for Standard Offer Customer Referral Program cost recovery as recommended by the ALJ. At this time, I have significant concerns that the $100,000 required up front cost for participation may be a significant barrier to entry. Likewise, the costs for the newly designed ROI Program have not been discussed during the course of this proceeding. Accordingly, the Companies and EGSs should be directed to resubmit a plan or proposals within 60 days or before for Commission review regarding how EGSs will pay for the Standard Offer Customer Referral Program and the redesigned ROI Program.

The resolution of these issues is particularly important, as they are the cornerstone to the success of these programs. The thrust of the *Intermediate Work Plan Final Order* was to suggest programs that would be implemented during this round of DSPs in order to bolster customer participation in the retail electric market; however, these steps can only jumpstart the market if they are carried out. We urge the EGSs and Companies to come to an agreement on how these costs will be allocated in order to carry out these programs and bring more retail customers to market.[18]

<u>Modifications to the New/Moving Customer Referral Program</u>

As indicated in our *Intermediate Work Plan Final Order*, we "determined that the New/Moving Customer Referral Program will be restricted to those customers calling to initiate service or calling to move service within an EDC's service territory."[19] In that Order, we further explained our expectation that EDCs would be able to provide general information about Pennsylvania's retail electric market and could do something as simple as refer a customer to "PAPowerSwitch.com" or complete a "hot transfer" to an EGS if the customer knew which EGS they would like to select.[20]

Although we directed EDCs to merge or consolidate the New/Moving Customer Referral Program with the Standard Offer Customer Referral Program in their next default service plans, we made clear that "the New/Moving Customer Referral Program can be implemented on its own in a relatively short period of time with a minimum amount of effort."[21]

With these facts in mind, it was disconcerting that RESA and the Companies suggested to "drop" the New/Moving Customer Referral Program entirely and instead focus its resources solely on the Standard Offer Customer Referral Program. I find it significant that the Companies "currently offer information on retail shopping to customers when they call to initiate service or

[17] *Id.* at 127.
[18] If an agreement on the allocation of these costs is not reached within the allotted time period, the Commission will order an allocation of costs that from one of the proposals submitted by the stakeholders.
[19] *See Intermediate Work Plan Final Order at 17.*
[20] *See id.* at 18-19.
[21] *Id.*at 20. We further directed that a working group be established to expeditiously develop appropriate call center scripts for this program, with the expectation that the New/Moving Customer Referral Program be implemented no later than the fourth quarter of 2012. *Id.*

change their service location"[22] as well as the Companies' claim that "the earliest they could implement any proposed modifications to their existing program is…[by] December 2012."[23]

If anything, these facts clearly support our position that the New/Moving Customer Referral Program can be implemented in a relatively short period of time with minimal effort on the part of an EDC. Accordingly, rather than wait until December 2012 to implement the New/Moving Customer Program as articulated in the R.D., the Companies should be required to begin this program as soon as possible, while anticipating refinement of the program once the RMI working group is able to finalize the "call center scripts" as described in the *Intermediate Work Plan Final Order*.[24]

THEREFORE, I move that:

1. The Recommended Decision be modified consistent with this Motion.
2. The Office of Special Assistants draft an appropriate Order consistent with this Motion.

DATE: August 2, 2012

Pamela A. Witmer

PAMELA A. WITMER, COMMISSIONER

[22] R.D. at 131.
[23] *Id.*
[24] *See Intermediate Work Plan Final Order* at 20.