

COMMONWEALTH OF PENNSYLVANIA



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March 22, 2010

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Petition of PECO Energy Company for
Approval of its Revised Electric Purchase of
Receivables Program
Docket No. P-2009-2143607

Dear Secretary McNulty:

Enclosed for filing is the Main Brief of the Office of Consumer, in the above-referenced proceeding.

Copies have been served as indicated on the Certificate of Service.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Barrett C. Sheridan".

Barrett C. Sheridan
Assistant Consumer Advocate
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Enclosures

cc: Honorable Cynthia W. Fordham

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company for : Docket No. P-2009-2143607
Approval of its Revised Electric Purchase :
of Receivables Program :

MAIN BRIEF OF THE
OFFICE OF CONSUMER ADVOCATE

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I. INTRODUCTION

Through its Petition filed November 20, 2009, PECO Energy Company (PECO) proposed a Revised Purchase of Receivables (POR) Program to take effect January 1, 2011 (Revised POR Petition). PECO implemented its current POR program in 1998 as a result of the Public Utility Commission's (PUC's or Commission's) approval of a Joint Petition for Settlement of PECO Energy Company's Restructuring Plan (Restructuring Settlement) in Docket Nos. R-00973953, P-00971265. See Re PECO Energy Company, 186 PUR4th 105 (May 14, 1998)(PECO Restructuring Order). In the Revised POR Petition, PECO proposed to 1) modify its Electric Generation Supplier (EGS) Tariff to set forth the terms and conditions under which PECO will purchase receivables from EGSs, 2) provide customer notice and education, and 3) address recovery of the costs of implementing the Revised POR and customer education. After the Revised POR Program is in effect, PECO will purchase receivables from EGSs, without recourse, and terminate service to the EGS customer for non-payment of the EGS charges. PECO will implement the Revised POR Program on or after January 1, 2011.

The Office of Consumer Advocate (OCA) filed a formal complaint and notice of intervention with public statement on December 7, 2009. Pursuant to the procedural schedule established by Administrative Law Judge Cynthia Fordham's Second Prehearing Conference Order, the OCA served the pre-filed Direct, Rebuttal, and Surrebuttal testimony of Barbara R. Alexander.¹ The Company, the OCA and other parties agreed to waive cross-examination and to stipulate to the admission of parties' pre-filed expert testimony into the evidentiary record.

¹ Ms. Alexander is an independent consultant on consumer protection, customer service and low-income issues associated with utility regulation and retail competition markets since 1996. Prior to opening her own consulting practice, Ms. Alexander was the Director of the Consumer Assistance Division of the Maine Public Utilities Commission. She is a 1968 graduate of the University of Michigan and earned her Juris Doctor degree from the University of Maine Law School in 1976. Ms. Alexander's resume is attached to her Direct Testimony as Exhibit BA-1.

During the course of the proceeding, the parties engaged in settlement negotiations to attempt to resolve some or all of the issues presented by PECO's proposal. The Company, OCA, Office of Small Business Advocate (OSBA), Constellation New Energy, Inc., the Retail Energy Supply Association, Direct Energy Services, LLC, and Dominion Retail, Inc., (Settling Parties) have entered into a Joint Petition for Partial Settlement of most of the issues.² The Philadelphia Area Industrial Energy Users Group have not joined the Partial Settlement but have stated that they do not oppose the Settlement. The Office of Trial Staff has not joined the proposed Settlement.

The Joint Petition for Settlement resolves a number of issues presented by PECO's proposal. Among other things, the Joint Petition for Settlement allows PECO to implement a revised POR program where PECO will be permitted to terminate service to customers for failure to pay the electric generation supplier (EGS) charges that PECO bills for and purchases under the revised POR. The Settlement also modifies the definition of basic supply service from PECO's original proposal to ensure that PECO is only purchasing, and permitted to terminate for, charges directly related to energy supply. The Settlement also ensures that, under the revised POR, EGSs are not able to deny service to any residential customer for credit-related reasons and that EGSs may not seek additional deposits from residential customers. The Settlement further provides for a process for customer notification and education regarding these significant changes in PECO's existing POR program. The OCA is providing this same day its Statement in Support of the Settlement.

Two issues, however, have been reserved for litigation. Those issues are:

- a. Whether PECO can terminate electric service to customers after January 1, 2011, based upon costs for EGS service incurred by such customers prior to January 1, 2011; and

² A more complete procedural history of the case is set forth in the Joint Petition for Partial Settlement at ¶¶ 1-8.

- b. Whether PECO should be required to unbundle its generation-related uncollectible accounts expense from its distribution rates for collection from default service customers and also purchase EGS receivables at a discount corresponding to PECO's uncollectible expense, implementation costs and any administrative costs.

Joint Petition for Partial Settlement at ¶ 9.G(1). The OCA is addressing the first issue in this Brief. The OCA submits that the Commission should determine that PECO is not permitted to terminate service to customers based on EGS charges that were incurred before the start of the revised POR program.

PECO currently has in existence a form of POR program that was implemented pursuant to PECO's 1998 Restructuring Settlement. Under this existing POR program, PECO is not allowed to terminate service to customers for unpaid EGS charges. Thus, PECO bills customers for EGS charges on a PECO bill and remits payment to the EGS whether or not it receives payment from the customer. If the customer does not pay the EGS charges for 90 days, PECO returns the billing function to the EGS, i.e., PECO stops including the EGS charges on the PECO bill and the EGS must bill the customer on its own. See PECO St. 1 at 4-5. If the EGS decides it does not wish to issue bills for its customer, referred to as dual billing, the EGS can return the customer to PECO's default service. PECO can then only terminate service to the customer if the customer accrues an arrearage of PECO's default service charges.³

This procedure was agreed to in PECO's 1998 Restructuring Settlement and remains in effect through 2010. As part of its Revised POR Program for 2011 and forward, PECO will have the ability to terminate service for non-payment of EGS charges for basic electricity supply. PECO also requests, however, that it be permitted to assume arrearages for

³ If a customer does not pay their distribution charges to PECO at any time, PECO can pursue termination in accordance with the Public Utility Code. Since those charges are not at issue here, the OCA will only refer to unpaid EGS charges and unpaid default service charges.

EGS charges from service rendered in 2010 (and possibly earlier years) which were billed under its existing program that does not allow termination and use those arrearages to terminate customers under its Revised program. The OCA submits that such a procedure is contrary to the 1998 Restructuring Settlement, inconsistent with the POR program under which the charges were billed, and could result in customers being terminated for something other than basic electric supply service. As such, PECO's request must be denied.

II. ARGUMENT

A. Introduction

The first question reserved for litigation concerns the interplay of consumer protections negotiated as terms of the Company's 1998 Restructuring Settlement and the implementation of the revised POR program that is to replace the one agreed to in the Restructuring Settlement. The 1998 Restructuring Settlement established a form of POR program that provided certain consumer protections for customers. One of the key elements of the existing POR program is that customers could not have their PECO distribution service terminated based on unpaid EGS charges. The Restructuring Settlement, and this protection, were to remain in effect until December 31, 2010. Restructuring Settlement, ¶¶22, 43.

PECO now proposes that it be allowed to terminate service based upon EGS charges incurred by the customer under the existing POR program before the expiration of the Restructuring Settlement. PECO seeks to sweep arrearages associated with EGS service rendered in 2010 (and perhaps before) under the existing POR program into its new revised POR program and use those EGS arrearages to terminate service to customers. PECO St. 1 at 13. The OCA submits that this proposal must be rejected.

The OCA submits that PECO customers who are or have been served by an EGS before PECO's Revised POR becomes effective on January 1, 2011 should not be at risk of termination of service for those prior purchases of electric supply. PECO's proposal to terminate customers for EGS charges incurred under the Company's existing POR Program is contrary to the binding provisions of the Company's 1998 Restructuring Settlement, inconsistent with the POR program under which the charges were billed, and could result in customers being terminated for something other than basic electric supply service. PECO's proposed treatment

of arrearages for shopping customers incurred prior to the January 1, 2011 implementation date of PECO's Revised POR should be denied for the reasons set forth below.

B. PECO's Proposal Is Inconsistent With The 1998 Restructuring Settlement, The POR Program Under Which The Charges Were Billed, And Could Result In Termination For Other Than Basic Electric Supply Service.

OCA witness Barbara R. Alexander summarized the problem with the Company's proposal:

Q. PECO PROPOSES TO INCLUDE UNPAID EGS CHARGES INCURRED PRIOR TO JANUARY 1, 2001 IN ITS TERMINATION NOTICES. DO YOU AGREE?

A. No. PECO should not be allowed to retroactively implement a collection policy that significantly changes the customer's rights under its agreement with the EGS. Customers who signed agreements prior to January 1, 2011 should not be required to accept this change imposed by PECO without their consent. Furthermore, this provision alters the Restructuring Settlement which governs the current POR program and its prohibition on termination for unregulated EGS charges until January 1, 2011.

OCA St. 1 at 16.

The 1998 Restructuring Settlement established a program for PECO to bill its customers for EGS charges on the PECO bill. A fundamental aspect of the Restructuring Settlement was that PECO would not be allowed to terminate service to customers based on unpaid EGS charges. PECO witness McCawley acknowledges that PECO cannot, under its current POR program, terminate service to customers based on unpaid EGS charges. PECO St. 1 at 5. This limitation is based on Paragraph 22 of PECO's 1998 Restructuring Settlement which provides:

Only PECO EDC can physically disconnect or reconnect a customer's distribution service. Physical termination of service may only be permitted for failure to pay for EDC [electric distribution company] or PLR [provider of last resort] service.

Restructuring Settlement ¶ 22. The 1998 Restructuring Settlement, by its own terms, is to remain in effect until December 31, 2010. The Restructuring Settlement provides:

The obligations under this settlement that apply for a specific term set forth herein shall expire automatically in accordance with the term specified, and shall require no further action for their expiration. This settlement, including all of the terms and conditions set forth above, shall expire on December 31, 2010.

Restructuring Settlement, ¶43.

Under the current POR program set forth in the 1998 Restructuring Settlement, PECO may not terminate service to EGS customers for non-payment of EGS charges. PECO St. 1 at 5. PECO will bill the customer for both EDC and EGS charges only for a limited period of time (90 days) if there are unpaid EGS charges, after which PECO can convert the customer to dual billing. Id. Under dual billing, the EGS bills for its own service and is separately responsible for the collection of overdue amounts associated with its separately billed charges. Id. If the EGS does not wish to assume billing responsibility, it may end its service with the customer and return the customer to PECO provider of last resort (PLR) service. Only after the customer accrues an arrearage on these PLR charges could the customer be subject to termination by PECO.

PECO's proposal in this case would end this essential feature of the current POR program before the expiration of the 1998 Restructuring Settlement. PECO now proposes to take unpaid EGS charges incurred prior to January 1, 2011, convert them to purchased receivables under the revised POR program and subject customers to termination under the revised POR program. PECO's proposal is directly contrary to the plain language of the 1998 Restructuring Settlement in that it would allow termination for something other than failure to pay for EDC or provider of last resort service.

This proposal not only eliminates the applicable provision of the 1998 Restructuring Settlement as set forth, it presents other fundamental consumer protection issues. The EGS charges being billed by PECO under its current program are qualitatively different than those charges which would be subject to purchase as receivables under PECO's Revised POR. In the existing POR program, there is no definition or qualification of the EGS charges that can be billed by PECO. Because PECO does not currently require EGSs to restrict amounts offered for consolidated billing, EGS charges for service incurred under the existing program may include charges for "non-regulated services," EGS early termination fees, EGS deposits or other unregulated charges. See PECO St. 1 at 11-12. Since termination of electric service based on EGS charges is not permitted under the existing POR program, the structure of the existing POR program did not limit the types of charges being billed by PECO.

As part of the Revised POR which allows termination for unpaid EGS charges, however, PECO has proposed and the Joint Petition for Partial Settlement provides an important qualification that only EGS charges for "basic electricity supply" will be eligible for purchase as receivables that could lead to termination.⁴ PECO St. 1 at 12. Under the Revised POR program, PECO will require the EGSs to certify that the receivables purchased by PECO under the Revised POR Program "are only associated with basic electricity supply." *Id.* Ms. Alexander emphasized the importance of developing a proper definition of "basic electricity supply," under PECO's proposed Revised POR Program:

Under PECO's current POR program, the Company has no reason to investigate the details of EGS charges that the EGS has calculated for PECO's bill to the customer because PECO does not seek termination for nonpayment of EGS charges. However, with the onset of the Revised POR Program and PECO's proposal to

⁴ One of the tariff changes proposed by PECO is to add a definition of "basic electricity supply" to its Electric Generation Supplier Coordination Tariff. See PECO St. 1, Exh. JJM-2, Tariff Electric Pa. P.U.C. No. 1S, Original Page No. 94 (blackline version).

change is policy and pursue termination for nonpayment of unregulated EGS charges, PECO should be required to make sure that an EGS cannot include any amount other than “basic services” in the bills issued by PECO.

OCA St. 1 at 8-9.

Under the design and parameters of the existing POR program, there is no screening or assurance as to the types of charges being billed by the EGS to its customers. Since there can be no assurance that these are “basic electricity supply” costs as defined for the Revised POR program, it would be wholly improper to allow termination of electric service for any charges incurred prior to the start of the revised POR program.

Moreover, as identified by OCA witness Alexander, PECO’s plan to treat unpaid EGS charges from the existing POR Program as subject to termination will conflict with the expectations of current shopping customers and terms in consumers’ agreements with EGSs. OCA St. 1 at 6-7. Customers who are shopping in 2010 have not entered into terms and conditions of service with their EGS that inform them they could have their service terminated for non-payment since termination is not part of the current program. PECO’s proposal would significantly change the customer’s terms of service without the customer’s consent.

PECO’s position that it should be allowed to terminate service for non-payment of EGS charges for service provided before the Revised POR Program takes effect is contrary to the Restructuring Settlement, inconsistent with the POR program under which the charges were billed, and could result in customers being terminated for something other than basic electric supply service. As OCA witness Alexander testified, “PECO should not be allowed to implement its revised POR program for amounts billed on behalf of an EGS prior to January 1, 2011.” OCA St. 1 at 18.

III. CONCLUSION

WHEREFORE, the Office of Consumer Advocate requests that the Public Utility Commission deny PECO's proposal to treat unpaid EGS charges for service incurred before the effective date of PECO's Revised POR Program as a basis for termination of electricity service.

Respectfully submitted,



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Dated: March 22, 2010
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CERTIFICATE OF SERVICE

Petition of PECO Energy Company for : Docket No. P-2009-2143607
Approval of its Revised Electric Purchase :
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I hereby certify that I have this day served a true copy of the foregoing document, the Main Brief of the Office of Consumer, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

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