

COMMONWEALTH OF PENNSYLVANIA



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March 22, 2010

**HAND DELIVERED**

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**

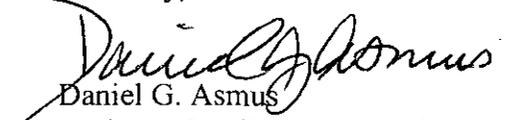
Dear Secretary McNulty:

I am delivering for filing today the original plus nine copies of the Main Brief, on behalf of the Office of Small Business Advocate, in the above-captioned proceeding.

Two copies have been served today on all known parties in this proceeding. A Certificate of Service to that effect is enclosed.

If you have any questions, please do not hesitate to contact me.

Sincerely,

  
Daniel G. Asmus  
Assistant Small Business Advocate  
Attorney ID No. 83789

Enclosures

cc: Parties of Record

Brian Kalcic

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PETITION OF PECO ENERGY :  
COMPANY FOR APPROVAL OF ITS : DOCKET NO. P-2009-2143607  
REVISED ELECTRIC PURCHASE OF :  
RECEIVABLES PROGRAM :

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MAIN BRIEF  
ON BEHALF OF THE  
OFFICE OF SMALL BUSINESS ADVOCATE

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Dated: March 22, 2010

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## **I. PROCEDURAL HISTORY**

On November 20, 2009, PECO Energy Company (“PECO” or “the Company”) filed the Petition of PECO Energy Company for Approval of its Revised Electric Purchase of Receivables Program (“Petition”) with the Pennsylvania Public Utility Commission (“Commission”). PECO proposed that the revised purchase of receivables (“POR”) program take effect on January 1, 2011, and requested that the Commission approve its Petition no later than March 31, 2010.

The Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention and Public Statement in the proceeding on December 4, 2009.

Other parties to this proceeding include the Commission’s Office of Trial Staff (“OTS”); the Office of Consumer Advocate (“OCA”); the Philadelphia Area Industrial Energy Users Group (“PAIEUG”); Constellation New Energy, Inc. (“Constellation”); Dominion Retail, Inc. (“Dominion”); Direct Energy Services, LLC (“Direct”); and the Retail Energy Supply Association (“RESA”).

The OSBA filed a pre-hearing memorandum and participated in the pre-hearing conference on January 5, 2010, before Administrative Law Judge (“ALJ”) Cynthia Williams Fordham.

The OSBA filed the Direct Testimony of its witness, Brian Kalcic, on February 2, 2010, and the Surrebuttal Testimony of Mr. Kalcic on March 3, 2010.

Evidentiary hearings scheduled for March 4 and 5, 2010, were cancelled by ALJ Fordham at the request of the parties. As the ALJ has agreed, the parties will submit their testimony for the record by stipulation.

The parties have been able to negotiate a proposed Joint Petition for Partial Settlement (“Settlement”) on many of the issues raised in this proceeding.

The parties have been unable to reach an agreement on two issues: (1) the concern of the OSBA and the OCA over PECO’s proposal to have the right to terminate customers for unpaid electric generation supplier (“EGS”) charges for basic electricity supply, which are incurred or billed before the revised POR program is implemented on January 1, 2011; and (2) OTS’ proposal to require PECO to unbundle generation-related uncollectible accounts expense from distribution rates for collection from default service customers and to purchase EGS receivables at a discount rate corresponding to PECO’s uncollectible expense, POR implementation costs, and any related administrative costs.

The proposed Settlement reserves these two issues for briefing and for a decision by the Commission.

The OSBA submits this Main Brief pursuant to the procedural schedule set forth in the December 18, 2009, Prehearing Order #2 of ALJ Fordham. The OSBA is limiting its argument in this brief to PECO’s proposal to have the right to terminate customers for unpaid EGS charges for basic electricity supply, which are incurred or billed before the revised POR program is implemented on January 1, 2011.

## II. OVERVIEW OF POR PROGRAM

The 1998 settlement of PECO's restructuring ("Restructuring Settlement") required PECO to implement a POR program.<sup>1</sup> PECO currently offers a POR program to EGSs participating in the consolidated electric distribution company ("EDC") billing option. This billing option is a service by which PECO transmits customer usage data to the EGS, which calculates its customers' charges and transmits those charges back to PECO. PECO then sends a single bill to the customer including both PECO and EGS charges.<sup>2</sup>

Under the existing POR programs, PECO pays the EGS all undisputed EGS charges billed by PECO for up to 90 days, regardless of whether or not the customer has paid PECO. At the end of 90 days, either PECO or the EGS can convert the account to dual billing. After such a conversion, PECO and the EGS bill the customer separately for their respective services.<sup>3</sup>

In 2008, PECO filed a default service plan with the Commission, which resulted in a settlement ("Default Service Settlement") that was approved by Commission Order entered June 2, 2009.<sup>4</sup> The Default Service Settlement required PECO to file either a revised POR program in its next distribution rate case or a stand-alone POR program by July 1, 2010. Under both options, the revised POR program is to be implemented by

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<sup>1</sup> *Joint Petition for Full Settlement of PECO Energy Company's Restructuring Plan and Related Appeals and Application for a Qualified Rate Order and Application for Transfer of Generation Assets*, Docket Nos. P-00973953 and P-00971265 (Order entered May 14, 1998) at 17, ¶ 22.

<sup>2</sup> PECO Petition at 4, ¶ 5.

<sup>3</sup> *Id.* at 4, ¶ 6.

<sup>4</sup> *Petition of PECO Energy Company for Approval of its Default Service Program and Rate Mitigation Plan*, Docket No. P-2008-2062739 (Order entered June 2, 2009).

January 1, 2011.

As filed, PECO's Petition would permit the Company (1) to purchase the customer receivables of EGSs participating in PECO's consolidated billing option for basic retail electricity supply services in PECO's service territory; (2) to discount temporarily the purchase of those receivables to recover PECO's initial implementation costs for the revised POR program; and (3) to conduct collection activities with respect to all purchased EGS receivables and, if necessary, to terminate electric service to any customer whose account (including the EGS receivable purchased by PECO) remains unpaid as of December 31, 2010.<sup>5</sup>

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<sup>5</sup> PECO Petition at 1-2, initial paragraph.

### **III. SUMMARY OF ARGUMENT**

Under the terms of PECO's Restructuring Settlement, the Company is precluded, through December 31, 2010, from terminating electric service to a customer who is delinquent on the payment of EGS charges.<sup>6</sup> Under the terms of PECO's revised POR program, that customer protection will end at midnight on December 31, 2010, with the implementation of the new POR program.<sup>7</sup>

According to PECO witness John J. McCawley, "Under PECO's Revised POR Program, customers may be terminated for unpaid EGS charges for basic electric supply that were incurred or billed on or before January 1, 2011."<sup>8</sup> However, under its current POR program, PECO has been paying EGS charges for 90 days regardless of whether or not PECO has collected those charges from the appropriate shopping customers. PECO has then been recovering the uncollectible portion of those charges (as well as program expenses) through its distribution rates.<sup>9</sup> At the same time, PECO has been prohibited from terminating EGS customers who have failed to reimburse PECO for the payments the Company has made to those customers' EGSs.<sup>10</sup> Therefore, permitting PECO to terminate customers for pre-January 1, 2011, unpaid EGS charges that PECO has been recovering through distribution rates would constitute a violation of the Restructuring Settlement.

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<sup>6</sup> OSBA Statement No. 1, Direct Testimony of Brian Kalcic at 3; *see Joint Petition for Full Settlement of PECO Energy Company's Restructuring Plan and Related Appeals and Application for a Qualified Rate Order and Application for Transfer of Generation Assets*, Docket Nos. P-00973953 and P-00971265 (Order entered May 14, 1998) at 17, ¶ 22.

<sup>7</sup> PECO Petition at 4-5, ¶ 6.

<sup>8</sup> PECO Statement No. 1-R, Rebuttal Testimony of John J. McCawley at 5

<sup>9</sup> PECO Petition at 5, ¶ 7.

<sup>10</sup> Restructuring Settlement at 17, ¶ 22.

Furthermore, for PECO now to be given recourse against customers for arrearages arising over the past four years, when the Company has already been recovering uncollectibles through distribution rates, would be unreasonable and would amount to a double recovery. In addition, attempting to collect arrearages which are four years old could create an administrative nightmare.

Finally, PECO may argue that it faces increased risk in the revised POR program because it has not proposed to discount the POR payments to EGSs, other than an initial start-up discount to recover implementation costs. Consequently, there is no discount to compensate the Company for receivables that the Company purchases from EGSs which the EGSs have been unable to collect through December 31, 2010. However, any such problem is PECO's doing; the Company is taking a risk that it is not required to take.

#### IV. ARGUMENT

##### A. Existing POR Program

PECO went through the restructuring process in the late 1990s, as did all large electric utilities, in order to facilitate competition in the provision of electric generation service. As part of its Restructuring Settlement, PECO established a POR program.

Under the current POR program, PECO uses consolidated billing, under which all charges (including the EGS charges and PECO's distribution, transmission, and stranded costs charges) are billed by PECO on one bill to the customer.<sup>11</sup> PECO then pays the EGS, dollar for dollar, all undisputed EGS charges billed by PECO for up to 90 days, regardless of whether or not the customer has paid PECO. PECO does not consider a customer's claim of inability to pay to be a dispute, and therefore, pays the EGS for the charges related to such a claim.<sup>12</sup>

At the end of 90 days, the delinquent account can be converted by either PECO or the EGS to dual billing, making PECO and the EGS separately responsible for collection of any overdue amounts associated with their separate services.<sup>13</sup> Presumably, in many such instances, the EGS simply stops service to the delinquent customer, who then reverts to default service with PECO.<sup>14</sup>

PECO has presumably attempted to collect EGS charges from EGS customers. However, the Company is precluded, through December 31, 2010, from terminating

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<sup>11</sup> PECO Petition at 4, ¶ 6.

<sup>12</sup> PECO Petition at 4, ¶ 6.

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

<sup>14</sup> However, there is no record evidence in this proceeding about how quickly each individual EGS has terminated service and the magnitude of the receivables PECO would be purchasing from each individual EGS.

electric service to a customer who is delinquent in paying those EGS charges.<sup>15</sup>

Specifically, paragraph 22 of the Restructuring Settlement states in pertinent part, “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 or PLR service.*”<sup>16</sup> (emphasis added)

Although the Company has been prohibited from terminating service, PECO has been recovering the uncollectible portion of the EGS charges (as well as program expenses) through its distribution rates.<sup>17</sup> As specifically conceded by the Company, “PECO’s expenses associated with its current POR program, including uncollectible expense, are recovered through its distribution rates.”<sup>18</sup> The “expenses” referenced by the Company include the 90 days of payments to EGSs prior to reversion to dual billing, as explained below.

## **B. PECO’s Proposal**

The terms of PECO’s Restructuring Settlement expire on December 31, 2010.<sup>19</sup> As proposed by PECO, the protections against termination under the Restructuring

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<sup>15</sup> OSBA Statement No. 1, Direct Testimony of Brian Kalcic at 3; Restructuring Settlement at 17, ¶ 22.

<sup>16</sup> Restructuring Settlement at 17, ¶ 22.

<sup>17</sup> PECO Petition at 5, ¶ 7.

<sup>18</sup> *Id.*

<sup>19</sup> Restructuring Settlement at 44, ¶ 43, which states, “This settlement, including all of the terms and conditions set forth above, shall expire on December 31, 2010.”

Settlement will also end at midnight on December 31, 2010, with the implementation of the new POR program.<sup>20</sup>

According to PECO witness John J. McCawley, “Under PECO’s Revised POR Program, customers may be terminated for unpaid EGS charges for basic electric supply that were incurred or billed on or before January 1, 2011.”<sup>21</sup> Mr. McCawley’s statement is consistent with the Petition itself, which states that “PECO further proposes that it have the right to terminate customers where the unpaid EGS charges for basic electric supply were incurred or billed before the Revised POR Program is implemented on January 1, 2011.”<sup>22</sup>

### **C. Objections to PECO’s Proposal**

Having purchased the receivables from the EGSs since 1998, PECO presumably has attempted to collect the EGS charges, but the Company has not been able to terminate the customer because the EGS charges were not “for EDC or PLR service.”<sup>23</sup> Nevertheless, PECO has been able to recover uncollectible EGS charges through its distribution rates. However, by its Petition, PECO seeks authority to terminate service to customers who failed to pay PECO for those EGS charges prior to January 1, 2011.

In his direct testimony, OSBA witness Brian Kalcic stated that “the OSBA is researching the question of whether or not PECO can legally terminate service in the

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<sup>20</sup> PECO Petition at 4-5, ¶ 6.

<sup>21</sup> PECO Statement No. 1-R, Rebuttal Testimony of John J. McCawley at 5

<sup>22</sup> PECO Petition at 12, ¶ 23.

<sup>23</sup> Restructuring Settlement at 17, ¶ 22.

post-restructuring period *for EGS balances incurred during the restructuring period*. The OSBA will address this issue in its briefs, as appropriate.”<sup>24</sup>

The OSBA has concluded that permitting PECO to begin terminating customers on January 1, 2011, for unpaid EGS charges incurred during the restructuring period would be unwarranted double recovery, in that PECO has already been recovering unpaid EGS charges through distribution rates.<sup>25</sup> Furthermore, giving PECO recourse against EGS customers for pre-January 1, 2011, arrearages would violate the Restructuring Settlement and Commission regulations.

At the same time the Company was permitted to recover unpaid EGS charges through distribution rates, PECO agreed not to terminate customers for unpaid EGS charges during the term of the Settlement. It would be illogical to conclude that the settling parties intended that, after the Restructuring Settlement expires on December 31, 2010, PECO should be permitted to terminate customers on the basis of charges that those customers incurred while under the termination protections of the Restructuring Settlement. It is reasonable to infer that if the parties had intended such a result, they would have explicitly so stated in the Restructuring Settlement. As part of an overall compromise of many issues, the Company agreed to waive the right to terminate and agreed to recover EGS uncollectibles through distribution rates. PECO should not now be permitted to renege on that agreement just because it may have failed to recover 100% of those charges.

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<sup>24</sup> OSBA Statement No. 1, Direct Testimony of Brian Kalcic at 3 (emphasis in original).

<sup>25</sup> Significantly, PECO has introduced no evidence to show that the Company has failed to recover all of the unpaid EGS charges through distribution rates. However, even if PECO actually has failed to recover (through the uncollectibles expense in distribution rates) 100% of the EGS charges, PECO has introduced no evidence as to the amounts that have, and have not, been recovered.

In its Petition, PECO indicated that the termination rules in the revised POR program would be subject to the consumer protection provisions contained in Chapter 14 of the Public Utility Code, 66 Pa. C.S. § 1401 *et seq.*, and Chapter 56 of the Commission's regulations, 52 Pa. Code § 56.1 *et seq.*<sup>26</sup> Chapter 14 applies only to residential customers.<sup>27</sup> With respect to Chapter 56, it is not clear from PECO's Petition and testimony whether PECO intends to apply the protections of Chapter 56 to non-residential customers as well.

It can be argued that any termination of service for unpaid EGS charges incurred more than four years prior to the attempted termination would be barred by the statute of limitations. Specifically, the Commission's regulation at 52 Pa. Code § 56.35 prohibits a utility from requiring payment of a bill which is more than four years old as a condition for furnishing service. Similarly, 52 Pa. Code § 56.83(7) prohibits a utility from terminating service for non-payment of a bill which is more than four years old.

On their face, the provisions of Section 56.35 and Section 56.83(7) seem to apply only to residential customers. It is not clear whether PECO intends to apply these provisions to non-residential customers with EGS charges unpaid as of December 31, 2010.

However, there is Commission precedent for applying the four-year limitation to non-residential customers. In *Angie's Bar v. Duquesne Light Company*, 72 Pa. PUC 213, 217 (1990), the Commission noted (in reference to the four-year limit for seeking refunds found in 66 Pa. C.S. §1312) that "while expressly applying only to residential customers,

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<sup>26</sup> PECO Petition at 12, ¶ 23.

<sup>27</sup> OSBA Statement No. 1, Direct Testimony of Brian Kalcic at 4.

an analogy can be drawn from the four-year limitations contained in the Commission's regulations at Sections 56.35 and 56.83(7). We can find no distinguishing factor which would suggest that a different time limitation for commercial customers should be applied." Therefore, if the Company is permitted to terminate service for EGS charges incurred prior to January 1, 2011 (which the Commission should not permit), PECO should be prohibited from using termination if the charges are more than four years old.

Finally, permitting PECO to terminate service for debts which could be up to four years old would create a potential administrative nightmare. As an example of the administrative problems created by PECO's proposal, consider the hypothetical case where a four-year-old EGS arrearage is the only one on a customer's record. The customer was returned to default service as a result of the arrearage but has paid every PECO bill promptly since that time. On January 1, 2011, PECO has already long since purchased the receivable for that customer and has recovered some or all of the purchase price of the receivable through the uncollectibles expense in distribution rates. However, PECO would now be able to demand payment of the old debt and to terminate the customer if the demand is not met.

It is difficult to understand why PECO would alienate or terminate this hypothetical good customer that pays its PECO charges on time and in full. PECO may say that the Company would not do such a thing. But, the point is that PECO *could* do such a thing, and there is nothing in the Petition that would keep the Company from doing so. Furthermore, there is nothing in the Petition distinguishing those customers PECO would terminate from those customers PECO would choose not to terminate.

#### **D. Purchase of Pre-January 1, 2011, Receivables**

By its Petition, PECO proposes to purchase EGS receivables which exist on December 31, 2010.<sup>28</sup> Those receivables presumably are the amounts the EGSs have been unable to collect through dual billing. PECO has submitted no evidence of the magnitude of those receivables and no evidence of how much, if anything, PECO will pay for those receivables.

PECO may argue that it will face increased risk in the revised POR program because it has not proposed to discount the POR payments to EGSs, other than the initial start-up discount to recover implementation costs. In other words, there is no discount to compensate the Company for uncollectible receivables that the Company purchases from EGSs. However, any such problem will be a matter of PECO's own doing; the Company will be taking a risk that it is not required to take.

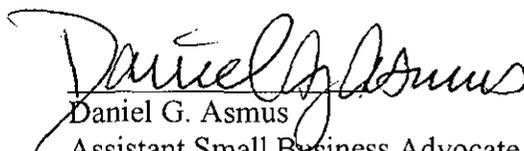
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<sup>28</sup> PECO Petition at 12, ¶ 23.

V. CONCLUSION

For the reasons set forth above, the OSBA respectfully requests that the Commission reject PECO's request for authority to terminate service for EGS charges incurred prior to January 1, 2011, and for EGS uncollectibles purchased as of December 31, 2010. The OSBA also respectfully requests that the Commission direct PECO that termination of customers for delinquent EGS charges may only be carried out on a going-forward basis, *i.e.*, for charges incurred on or after January 1, 2011.

Respectfully submitted,

  
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Dated: March 22, 2010

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company for :  
Approval of its Revised Electric Purchase : Docket No. P-2009-2143607  
of Receivables 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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Berlin, CT 06037  
**(First-class Mail only)**

Community Energy, Inc.  
201 King of Prussia Road, Suite 550  
Radnor, PA 19087  
**(First-class Mail only)**

Affiliated Power Purchasers, Inc.  
224 Phillip Morris Drive - #402  
Salisbury, MD 21804  
**(First-class Mail only)**

Allegheny Energy Supply Company, LLC  
800 Cabin Hill Drive  
Greensburg, PA 15601  
**(First-class Mail only)**

Dominion Retail, Inc.  
P. O. Box 298  
Pittsburgh, PA 15230-0298  
**(First-class Mail only)**

FirstEnergy Solutions  
341 White Pond Drive - #B3  
Akron, OH 44320  
**(First-class Mail only)**

Pepco Energy Services  
1300 North 17<sup>th</sup> Street - #1600  
Arlington, VA 22209  
**(First-class Mail only)**

Taylor Consulting and Contracting, LLC  
625 Main Street  
Avoca, PA 18641  
**(First-class Mail only)**

Champion Energy Services, LLC  
13831 N.W. Freeway - #250  
Houston, TX 77040  
**(First-class Mail only)**

Usource, LLC  
348 Indian Ridge Drive  
Moon Township, PA 15108  
**(First-class Mail only)**

Constellation NewEnergy, Inc.  
100 Constellation Way - #1200C  
Baltimore, MD 21202  
**(First-class Mail only)**

OnDemand Energy Solutions  
300 Corporate Drive - #130  
P. O. Box 869  
Moon Township, PA 15108  
**(First-class Mail only)**

The Energy Cooperative Association of PA  
1528 Walnut Street - #2100  
Philadelphia, PA 19102  
**(First-class Mail only)**

UGI Energy Services, Inc.  
1 Meridian Boulevard - #2C01  
Wyomissing, PA 19610  
**(First-class Mail only)**

Reliant Energy Solutions East, LLC  
121 Champion Way - #200  
Canonsburg, PA 15317  
**(First-class Mail only)**

Sempra Energy Solutions, LLC  
401 West A Street - #500  
San Diego, CA 92101  
**(First-class Mail only)**

Richards Energy Group  
3901 Nolt Road - Bldg. 1  
Landisville, PA 17538  
**(First-class Mail only)**

Direct Energy  
1001 Liberty Avenue  
Pittsburgh, PA 15222  
**(First-class Mail only)**

GDF SUEZ Energy Resources NA, Inc.  
1990 Post Oak Boulevard - #1900  
Houston, TX 77056  
**(First-class Mail only)**

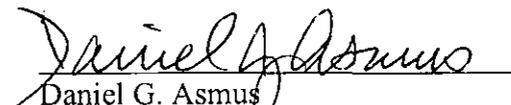
Hess Corporation  
One Hess Plaza  
Woodbridge, NJ 07095  
**(First-class Mail only)**

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Exelon Energy Company  
300 Exelon Way  
Kennett Square, PA 19348  
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