



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

May 19, 2010

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Petition of PECO Energy Company for Approval of its Revised Electric
Purchase of Receivables Program

Docket No. P-2009-2143607

Dear Secretary Chiavetta:

Enclosed for filing, please find an original and nine (9) copies of the **Exceptions** of the Office of Trial Staff (OTS) in the above-captioned proceeding.

As evidenced by the enclosed Certificate of Service, copies are being served on all active parties of record.

Sincerely,

Richard A. Kanaskie
Senior Prosecutor
Office of Trial Staff
PA Attorney I.D. #80409

Enclosure
RAK/nhd

cc: Parties of Record
Chairman Cawley
Vice Chairman Christy
Commissioner Gardner
Commissioner Powelson
Chief Counsel Pankiw
Director Davis

RECEIVED
2010 MAY 19 PM 2:35
PA PUC
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**EXCEPTIONS
OF THE
OFFICE OF TRIAL STAFF**

Richard A. Kanaskie
Senior Prosecutor
PA Attorney ID #80409

Office of Trial Staff
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-1976

Dated: May 19, 2010

SECRETARY'S BUREAU
PA PUC

2010 MAY 19 PM 2:35

RECEIVED

TABLE OF CONTENTS

I. INTRODUCTION 1

II. EXCEPTION 4

The Administrative Law Judge’s Recommendation To Not Unbundle Rates
To Allow For The Proper Assignment of Costs Is Not In The Public
Interest And Must Be Rejected 4

III. CONCLUSION 14

TABLE OF AUTHORITIES

Cases

Pennsylvania Public Utility Commission v. C S Water and Sewer Associates,
74 Pa. P.U.C. 767 (1991) 10

Pennsylvania Public Utility Commission v. Philadelphia Electric Company,
60 Pa. P.U.C. 1 (1985) 10

Commission Decisions

*Petition of PPL Utilities Corporation Requesting Approval of a Voluntary
Purchase of Accounts Receivables Program and Merchant Function Charge*
Docket No. P-2009-2129502 (Order Entered November 19, 2009)..... 8

I. INTRODUCTION

On November 20, 2009 PECO Energy Company (“PECO” or “Company”) filed its *Petition of PECO Energy Company for Approval of its Revised Electric Purchase of Receivables Program* (“Petition”) with the Pennsylvania Public Utility Commission (“Commission”). In this Petition PECO sought approval to revise its current Purchase of Receivables (“POR”) program. In addition, the Petition contains tariff supplements related to PECO’s current Electric Generation Supplier Coordination Tariff and the Electric Tariff which was previously approved by the Commission.

The filing was assigned to the Office of Administrative Law Judge (“OALJ”) for the development of a record and issuance of a Recommended Decision (“RD”). The Administrative Law Judge (“ALJ”) assigned to this proceeding is Cynthia Williams Fordham. OTS filed an Answer to the Petition on December 10, 2009 recommending that the Petition be denied and the proceeding assigned to the OALJ. The Office of Small Business Advocate (“OSBA”) and the Office of Consumer Advocate (“OCA”) filed Notices of Intervention, Public Statements and Answers to the Petition on December 4, 2009. In addition, a Petition to Intervene was received from the Philadelphia Area Industrial Energy Users Group (“PAIEUG”) on December 11, 2009. The Retail Energy Supply Association (“RESA”) and Direct Energy Services, LLC (“Direct Energy”) filed Petitions to Intervene on December 14, 2009. In addition, Constellation New Energy, Inc. and Constellation Energy Commodities Group, Inc. (collectively

“Constellation”) filed Petitions to Intervene on December 16, 2009. In addition to the previously submitted Answer, OTS filed its Notice of Appearance on January 4, 2010. Also, on January 4, 2010, Dominion Retail (“Dominion”) requested that its Petition to Intervene dated December 3, 2009 be assigned to the present Docket Number.¹

A Prehearing Conference was held on January 5, 2010 at 10:00 a.m. before ALJ Fordham at which time a procedural schedule was developed. Among other procedural dates, the schedule established that Evidentiary Hearings would be held in Philadelphia on March 4 and 5, 2010. Harrisburg parties participated in the Prehearing Conference from Hearing Room 3 of the Commonwealth Keystone Building in Harrisburg, while ALJ Fordham conducted the Prehearing Conference from a 4th Floor Hearing Room in the Philadelphia Public Utility Commission Office Building. On January 22, 2010, ALJ Fordham issued Prehearing Order # 2 memorializing all determinations, including the procedural schedule presented at the Prehearing Conference.

In accordance with the schedule, OTS submitted its Direct Testimony on February 2, 2010. On the same date, testimony was submitted by OCA, OSBA, RESA and Dominion. On February 5, 2010, OTS submitted Supplemental Direct Testimony and a Supplemental Exhibit.

¹ Dominion Retail’s initial Petition to Intervene listed an incorrect docket number. Dominion subsequently requested the Petition be included in this proceeding.

Rebuttal Testimony was submitted by OTS, PECO, RESA, OCA and Dominion on February 22, 2010. This submission was followed by the service of Surrebuttal Testimony and the accompanying Exhibit of OTS on March 1, 2010. Dominion also submitted Surrebuttal Testimony on the same day. On March 3, 2010, PECO, OCA and OSBA submitted Surrebuttal Testimony. By request of the parties, the Evidentiary Hearings scheduled for March 4 and 5, 2010 were cancelled by ALJ Fordham. The cancellation of the Evidentiary Hearings was based, on part, to the stipulation of a significant number of issues by the signatory parties. Issues that were unable to be resolved were reserved for argument in Main and Reply Briefs. Included in the issues reserved for Briefing by the parties is the applicable discount rate to be applied to the POR. In addition, the need to unbundle non-jurisdictional generation related expenses from distribution rates requires resolution. The parties agreed to the entry of evidence by stipulation and waived cross-examination of all witnesses. Settlement discussions continued resulting in the subsequent request to extend the due date for Main Briefs in order to allow for the development of an agreement between the signatories. OTS did not oppose the further delay in the proceedings to allow the signatories to develop a consensus document alleviating further litigation. However, OTS did not support the Joint Petition for Partial Settlement and opines that approval in its present form is not in the public interest.

The Recommended Decision of Administrative Law Judge Cynthia Williams Fordham was issued on April 29, 2010. OTS hereby files this Exception

to certain findings and recommendations of the presiding Administrative Law Judge.

II. EXCEPTION

The Administrative Law Judge's Recommendation To Not Unbundle Rates To Allow For The Proper Assignment of Costs Is Not In The Public Interest And Must Be Rejected.

OTS Main Brief, pp. 8-15.

OTS Reply Brief, pp. 3-8.

Recommended Decision, pp. 36-46.

The Administrative Law Judge's recommendation to allow distribution customers to subsidize the activities of unregulated entities violates the public interest and must be rejected. The failure to recommend the unbundling of non-jurisdictional generation rates and jurisdictional distribution charges will result in the inequitable allocation of costs.

Relying heavily on the arguments presented by the intervening Electric Generation Suppliers ("EGS"), the ALJ recommends that PECO's proposed Purchase of Receivables program should be accepted despite the failure to include the appropriate components in the design of the appropriate Discount Rate. Specifically, the ALJ recommends that expenses associated with the uncollectible accounts of the non-jurisdictional electric generation suppliers should be borne solely by the distribution ratepayers. Clearly, this is improper and must be modified to properly assign costs. Any representation that ratepayers are currently paying these charges ignores the basic fact that the Company's proposal now insulates non-jurisdictional electric generation suppliers from the risk of

uncollectible accounts. The current practice argued and apparently adopted by the ALJ involves Supplier of Last Resort (“SOLR”) obligations that are subject to Commission review as jurisdictional activities. The results of a Company’s obligations under its SOLR responsibilities must not be confused with the outcome of the Company’s proposed POR program. The representation that customers are already paying this charge does not mean that, with the advent of non-jurisdictional service, the Electric Generation Supplier should be insulated from bearing the proportional risk. As one intervening EGS witness stated “[t]he risk of non-payment is a cost of doing business. Whether a company is selling electricity or widgets, there will always be instances where some customers do not pay for the products or services that they receive. Businesses account for this expense by factoring it into the prices that they charge.”² Although this risk is readily acknowledged by at least one EGS, the Administrative Law Judge’s recommendation to shift this burden to jurisdictional ratepayers insulates the non-jurisdictional entities. A program offered under the guise of enhancing competition cannot ignore the fundamental tenets of utility regulation that prohibits the shifting of costs from unregulated parties to regulated parties. Competition in the Commonwealth is not best served by the improper shifting of costs. Unfortunately, this is precisely what the ALJ’s recommendation does.

² OTS Main Brief, p. 10, citing RESA Statement No. 1-R, p. 6.

As egregious as the insulation from the cost of doing business being afforded the non-jurisdictional electric generation suppliers by the ALJ's recommendation is, what is more troubling is that adherence to PECO's proposed POR will result in shopping customers paying for uncollectible accounts twice. The ALJ's recommendation will require shopping customers to continue to pay for uncollectible accounts in their distribution rates. In addition, under the POR program proposed in this proceeding, shopping customers will pay for the uncollectible accounts associated with their generation purchase. Because it is undisputed in this proceeding that PECO does not collect all of its billed revenue, the failure to include an uncollectible accounts factor in the Discount Rate means that shopping customers will pay for uncollectible accounts again in their generation rates. This double payment will occur because the EGS is insulated from this risk as they receive full reimbursement under the PECO plan. The solution to this shortcoming is painfully obvious and simple. As described in the OTS Direct Testimony submitted on February 2, 2010,

[u]nbundling PECO's generation related uncollectible accounts expense from *distribution rates and collecting* it from the default service customers through a surcharge per kwh is appropriate because it puts everyone on a level playing field. This is achieved because the shopping customers pay for the uncollectibles through their price for generation from the EGS, and the non-shopping customers pay for the uncollectibles through their price to compare from the distribution company.³

³ OTS Statement No. 1, p. 10.

Furthermore, all parties are protected as unbundling the non-jurisdictional generation rates from the jurisdictional distribution rates will

...avoid [the] double recovery of uncollectible expense from shopping customers, once in their generation rates, and again in their default service distribution rates. The shopping customers should not be required to subsidize the electric service of default customers who remain with the Company, just as the default customers should not be required to subsidize those customers who shop.⁴

Clearly, the additional burden placed on shopping customers cannot be the intended result of an approved Purchase of Receivables program. There is no credible evidence in the record of this proceeding that offers an explanation as to how the Company's proposal, as gleefully supported by the participating Electric Generation Suppliers, will avoid this inevitable result.

OTS maintains that the ALJ erred by not recommending the unbundling of generation rates from distribution rates in order to provide the necessary protection to the jurisdictional ratepayers. As demonstrated in the OTS testimony and summarized above, there is no credible support for allowing shopping customers to be placed in the position where expenses associated with uncollectible accounts may be recovered from them twice. The recommendation appears to be offered solely to protect the non-jurisdictional electric generation suppliers from bearing their proportionate costs.

⁴ Id.

The ALJ's recommendation is also flawed as it ignores the guidance established in the Purchase of Receivables plan submitted by PPL Utilities Corporation ("PPL").⁵ The Commission approved the PPL POR plan and commented that "PPL will be permitted to unbundle its generation related uncollectible accounts expense from distribution rates and collect it from default service customers through the MFC Charges...."⁶ Unbundling non-jurisdictional generation rates from the distribution charges allows for the proper assignment of jurisdictional and non-jurisdictional costs. The PPL POR program acknowledged the importance of unbundling rates and further refined its proposal by including the proper uncollectible accounts expense factor in its Discount Rate. The Commission further noted in the PPL proceeding that "...[u]nder the POR Program, PPL will purchase EGS accounts receivables for residential shopping customers who take service...at a discount of 1.37%. This discount reflects an uncollectible accounts expense percentage factor of 1.32% and a POR administrative factor of .05%."⁷ A similar recognition of the discount rate including an uncollectible expense account factor for shopping commercial and

⁵ *Petition of PPL Utilities Corporation Requesting Approval of a Voluntary Purchase of Accounts Receivables Program and Merchant Function Charge*, Docket No. P-2009-2129502, Order Adopted and Entered November 19, 2009.

⁶ *Id.*, p. 6.

⁷ *Id.*, p. 4

industrial customers was included in the PPL Order.⁸ The ALJ's recommendation, if adopted, establishes different standards in two different service territories within the Commonwealth of Pennsylvania. Furthermore, the ALJ's recommendation guarantees that ratepayers in PECO's service territory will be treated differently than ratepayers in PPL's service territory. PECO's ratepayers will be absorbing the costs of non-jurisdictional electric generation supplier related costs while PPL's customers are not required to subsidize the non-jurisdictional business. In addition, the non-jurisdictional electric generation suppliers will enjoy benefits by participating in a Purchase of Receivables program in PECO's service territory that they will not enjoy in PPL's service territory. Inexplicably, two supporters of the PPL POR plan that included the unbundling of generation costs now believe that unbundling rates and properly assigning costs is now improper. Both the Retail Energy Supply Association ("RESA") and Dominion Retail ("Dominion") are Electric Generation Suppliers authorized to conduct business in the PPL service territory and the PECO service territory. Both RESA and Dominion were supporters of the PPL POR plan.⁹ It is somewhat disingenuous to advocate one methodology in one jurisdiction and then offer an inconsistent recommendation in

⁸ Id., p. 5 The Commission identified that "PPL will purchase EGS accounts receivables for small commercial and industrial (C&I) shopping customers who take...service...at a discount of 0.17%. This discount reflects an uncollectible accounts expense percentage factor of 0.12% and a POR administrative factor of 0.05%.

⁹ RESA and Dominion were signatories to the settlement of the PPL POR plan that was submitted to the Commission.

another service territory, unless, of course, there is something to be gained for the EGS. The ALJ's recommendation offers something for the EGSs to gain as it allows for increased profits due to the sheltering of costs associated with the supply of generated electricity.

There is simply no credible evidence to distinguish the operation of PPL's properly designed POR program from the program proposed in PECO's service territory. There is no merit in arguing that PPL's proceeding was settled or that the length of the proceeding had some impact on the elements of PPL's POR program. The PPL program was subject to Commission review and that settlement, as all settlements presented to the Commission, must satisfy the standard of review that requires an affirmative determination that the terms and provisions contained therein are in the public interest.¹⁰ The terms and conditions in the PPL POR program, including the uncollectible accounts factor in the discount rate, were considered to be in the public interest and were subsequently approved by the Commission. It is implausible that the terms and conditions of PECO's POR program, absent the same provisions, could be considered in the public interest. This very type of inconsistency in program design must be avoided as it will present unfair treatment for ratepayers in different service territories within the Commonwealth of Pennsylvania. OTS maintains that the

¹⁰ See, e.g. *Pennsylvania Public Utility Commission v. C.S. Water and Sewer Assoc.*, 74 Pa. PUC 767 (1991); *Pennsylvania Public Utility Commission v. Philadelphia Electric Company*, 60 Pa. PUC 1 (1985).

ALJ's recommendation is flawed as it supports different components in what should be universally designed proposals. OTS has actively participated in every Purchase of Receivables program submission and has consistently maintained that each POR program must contain similar provisions so as to not unfairly burden one set of ratepayers compared to another.

PECO's POR plan is best described as an opportunistic filing for the Electric Generation Suppliers. Faced with a submission that allows for the avoidance of significant costs which will provide an opportunity for increased profits, it is no surprise that they would vigorously defend the Company's filing. This vigorous defense flies in the face of publicly stated opinions offering contrary views. In fact, RESA's actions in this proceeding defy its own website where it was noted that a "Purchase of Receivables ("POR") program involves the utility purchasing the receivables of an ARES at a discount rate equal to the utility's actual uncollectible rate."¹¹ In addition, RESA's website offers proposed legislation including similar guidelines. As shown in OTS Exhibit NO. 1-SR, RESA's site offers that "[r]eceivables for power and energy... shall be purchased by the electric utility at a just and reasonable discount rate.... The discount rate shall be based on the electric utility's historical bad debt and any administrative costs associated with the electric utility's purchase of receivables."¹²

¹¹ OTS Exhibit No. 1-SR, p. 1.

¹² *Id.*, p. 3

The record in this proceeding is void of substantial evidence to explain why the recommendations presented by RESA differ in this proceeding. The argument that an EGS may not offer service in a particular territory, as RESA has advanced, is hollow and unsupported by the evidence in this proceeding. To threaten to not offer services in a territory is strictly an inflammatory comment and is readily discounted by looking no further than PPL's territory to observe their results. Furthermore, it is highly unlikely that an EGS would entertain missing the opportunity to offer its product in a service territory consisting of approximately 1.6 million customers. In any event, OTS is satisfied that in the event the intervening parties to this proceeding decide to vacate the PECO service territory, other Electric Generation Suppliers will offer their services allowing for the development of a meaningful competitive market. To the extent the ALJ's recommendation gave any deference to the EGS argument that it may not provide service, it must be rejected as it is contrary to the public interest and not supported by credible evidence.

The Office of Trial Staff maintains that the questions before the Commission in this proceeding are very simple. Is it in the public interest for the design of a Purchase of Receivables program to result in shopping customers paying for the expense associated with uncollectible accounts in both their distribution rates as well as the cost of generated electricity? As argued throughout this proceeding, the proper assignment of costs between the jurisdictional and non-jurisdictional entities is of paramount importance. PECO's

Purchase of Receivables program must be amended to allow for the unbundling of rates in order to properly assign costs in order to protect the interests of all regulated parties.

In addition, the Commission must address whether it is in the public interest to approve programs that will result in inconsistent policies within the Commonwealth of Pennsylvania. PECO's proposal differs from the recently approved program in the PPL service territory. If PECO's plan were to be approved without modification, customers in different service territories within Pennsylvania will be impacted differently. OTS opines that prudent regulation calls for the consistent treatment of these planned POR programs so that all customers and regulated entities are treated equally.

III. CONCLUSION

For the reasons set forth herein, the Office of Trial Staff respectfully requests that the Commission grant the aforementioned OTS Exception to the Recommended Decision of the Administrative Law Judge and require that PECO unbundle the generation related cost from its distribution rates and include the proper uncollectible accounts factor in its proposed Discount Rate.

Respectfully submitted,



Richard A. Kanaskie
Senior Prosecutor
PA Attorney ID #80409

Office of Trial Staff
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 787-1976

Dated May 19, 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 hereby certify that I am serving the foregoing **Exceptions** dated May 19, 2010, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below, in accordance with the requirements of § 1.54 (relating to service by a party):

Kenneth M. Kulak, Esquire
Catherine G. Vasudevan, Esquire
Thomas P. Gadsen, Esquire
PECO Energy Company
1701 Market Street
Philadelphia, PA 19103

Anthony E. Gay, Esquire
Jack R. Garfinkle, Esquire
Exelon Business Services Co.
2301 Market Street, S23-1
Philadelphia, PA 19103

Daniel Asmus, Esquire
Office of Small Business Advocate
1102 Commerce Building
300 North Second Street
Harrisburg, PA 17101

Barrett C. Sheridan, Esquire
Tanya J. McCloskey, Esquire
Office of Consumer Advocate
555 Walnut Street
5th Floor Forum Place
Harrisburg, Pa 17101-1923

Christopher A. Lewis, Esquire
Christopher R. Sharp, Esquire
Blank Rome, LLP
One Logan Square
Philadelphia, PA 19103-6998

Barry A. Naum, Esquire
Charis Mincavage, Esquire
Carl J. Zwick, Esquire
McNees, Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166

Daniel Clearfield, Esquire
Deanne M. O'Dell, Esquire
Eckert Seamans Cherin & Mellott
P.O. Box 1248
Harrisburg, PA 17108-1248

Todd Stewart, Esquire
Hawke McKeon & Sniscak, LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105

SECRETARY'S OFFICE
2010 MAY 19 PM 2:35
RECEIVED

Honorable Cynthia W. Fordham
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street Room 4063
Philadelphia, PA 19107

A handwritten signature in black ink, appearing to read "Richard A. Kanaskie", written over a horizontal line.

Richard A. Kanaskie
Senior Prosecutor
Office of Trial Staff
PA Attorney I.D. #80409