

COMMONWEALTH OF PENNSYLVANIA



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June 1, 2010

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
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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 are the Reply Exceptions of the Office of Consumer Advocate, in the above-referenced proceeding.

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

Respectfully Submitted,

A handwritten signature in black ink that reads "Barrett Sheridan".

Barrett C. Sheridan
Assistant Consumer Advocate
PA Attorney I.D. # 61138

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 :

REPLY EXCEPTION OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: June 1, 2010

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I. INTRODUCTION

Through its Petition filed November 20, 2009, PECO Energy Company (PECO or PECO Electric) 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 (ALJ) 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-

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.

examination and to stipulate to the admission of parties' pre-filed expert testimony into the evidentiary record.

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 (OTS) has not joined the proposed Settlement.

The Joint Petition for Partial Settlement resolves a number of issues presented by PECO's proposal. Among other things, the Joint Petition for Partial 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 electricity 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.

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

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
- 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 addressed the first issue in its Main Brief and Reply Brief, detailing why, based on the terms of PECO's 1998 Restructuring Settlement and current POR program, the Commission should deny PECO's request to be permitted to terminate service to customers based on EGS charges that were incurred before the start of the revised POR program.

ALJ Cynthia Fordham issued her Recommended Decision on April 29, 2010. Based on her review of the record, the Statements in Support, and the proposed Settlement, ALJ Fordham recommends approval of the Joint Petition for Partial Settlement. R.D. at 6-26. ALJ Fordham took specific note of "the customer service protections, the consumer education and notice provisions, the billing dispute procedures..." and other provisions of the proposed Settlement in reaching her conclusion that "the Settlement is fair, just, reasonable, and in the public interest." Id. at 26.

Of the issues reserved for litigation, ALJ Fordham adopted the position of OCA and the Office of Small Business Advocate ("OSBA") and recommends that PECO not be allowed to terminate service to customers based on EGS charges incurred before January 1, 2011, the proposed implementation date of PECO's Revised POR. R.D. at 34-36.

By letter dated May 19, 2010, the OCA gave notice that it would not be filing exceptions to the Recommended Decision of ALJ Fordham. The Company and OTS separately filed exceptions. The Company's single exception addresses ALJ Fordham's recommendation that PECO not be allowed to terminate service to customers based on EGS charges incurred before January 1, 2011. As set forth below, the Commission should adopt the recommendation of ALJ Fordham on this issue and deny the exception filed by PECO.

II. REPLY EXCEPTION

OCA Reply Exception to PECO Exception No. 1: ALJ Fordham's Recommended Denial Of PECO's Request To Terminate Service To Customers Based On EGS Charges Incurred Before The Implementation Date Of PECO's Revised Purchase Of Receivables Program Is Consistent With The Restructuring Settlement, Default Service Settlement, And Pending Joint Petition For Partial Settlement. (R.D. at 14-15, 26-35; OCA M.B. at 2-10; OCA R.B. at 1-11).

In her R.D., ALJ Fordham adopted the position of OCA and OSBA that PECO should not be allowed to terminate service to customers based on EGS charges incurred before the implementation date of PECO's Revised POR. R.D. at 34-35. ALJ Fordham based her determination on a thorough review of the Company's and RESA's arguments concerning settlement language, risk, and implementation costs and the opposing arguments presented by OCA and OSBA. Id. at 14-16, 26-36. ALJ Fordham found persuasive the OCA and OSBA arguments that the protections afforded consumers under PECO's 1998 Restructuring Settlement should not be retroactively altered. ALJ Fordham recommends denial of "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." R.D. at 36. ALJ Fordham concludes that PECO's ability to terminate service for unpaid EGS charges as part of the Revised POR Program "should apply only to those EGS charges for service incurred on and after PECO's

Revised POR is implemented and only for those EGS charges for basic electricity supply.” R.D. at 35-36.

The Company filed an Exception to the ALJ’s decision on this issue. PECO Exc. 3-5. The Company argues that ALJ Fordham erred by seeking to extend the termination restriction which the Company is currently subject to, pursuant to the Restructuring Settlement, past the expiration of the Restructuring Settlement. PECO Exc. at 4. PECO also states that its proposal to terminate service for unpaid EGS charges is consistent with the Default Service Settlement. Id. at 4-5; Petition for Approval of PECO’s Default Service Program and Rate Mitigation Plan, Docket No. P-2009-2062739, Order (June 2, 2009)(Default Service Settlement). PECO states that ALJ Fordham’s recommendation would impose an “asymmetrical allocation of rights and obligations” to which PECO did not agree. Id. at 5. PECO asks the Commission to construe Paragraph 66 of the Default Service Settlement as lifting, without further restriction, the constraint on termination imposed by the Restructuring Settlement. Id. Finally, PECO suggests that its current Supplier Tariff language, which states that EGSs may only submit “basic charges” for consolidated billing under PECO’s current POR, is a sufficient safeguard such that PECO should be allowed to terminate service if those EGS “basic charges” are unpaid once PECO’s Revised POR is implemented. Id. at 5.

The OCA submits that ALJ Fordham properly rejected all of PECO’s arguments and concluded that PECO’s ability to terminate service based on unpaid EGS charges can apply only to EGS charges incurred after the end of the effective date of the Restructuring Settlement and only to those EGS charges which meet the definition of “basic electricity supply.” R.D. at 32, 34-36. Significantly, ALJ Fordham’s conclusion is consistent with the language of three settlements: 1) the Restructuring Settlement, 2) the Default Service Settlement, and 3) the

pending Joint Petition for Partial Settlement which ALJ Fordham recommends the Commission approve. In contrast, PECO's Exception contends that two settlements should be construed differently, so as to protect PECO from inconvenience and cost, and third, the Joint Petition for Partial Settlement – which defines “basic electricity supply” – should be ignored. PECO Exc. at 3-5. For the reasons set forth in the OCA briefs and herein, the Company's Exception must be denied.

The OCA submits that ALJ Fordham's recommendation is based on a sound understanding of the Restructuring Settlement and consideration of how PECO's current POR operates. As noted by ALJ Fordham, the Restructuring Settlement was approved by the Commission in 1998 and “included an extensive program to support retail competition, containing specific standards for competitive billing and collection.” R.D. at 14. ALJ Fordham cites to PECO's own description of how PECO's consolidated billing and current POR program operates, and how PECO recovers associated expenses, including uncollectibles, through its distribution rates. Id. at 14-15, 34-35. As to the portion of the Restructuring Settlement pertinent to the contested issue in this case, ALJ Fordham considered the Company's and other parties' citation to Paragraphs 22 and 43, which state in part:

- ¶ 22 Physical termination of service may only be permitted for failure to pay for EDC or [Provider of Last Resort] service.
- ¶ 43 This settlement, including all of the terms and conditions set forth above, shall expire on December 31, 2010.”

R.D. at 27-28.³ As ALJ Fordham summarized the contested issue, relevant to the Restructuring Settlement:

It is undisputed that under the terms of the *Restructuring Settlement* PECO customers are protected from termination for

³ The OCA Main Brief set forth the full text of Paragraphs 22 and 43 of the Restructuring Settlement. OCA M.B. at 6-7; see also OCA. R.B. at 4-5.

unpaid EGS charges through December 31, 2010. [citations omitted]. However, the terms of PECO's proposed POR program would permit the Company to terminate the same customers for EGS charges that were incurred prior to January 1, 2011. [citation omitted]

R.D. at 28.

The OCA is a party to the Restructuring Settlement and disputed PECO's proposal which would abrogate an important, bargained for consumer protection which has encouraged consumers to shop for EGS supply without risk of termination of service for unpaid EGS charges. R.D. at 28-29; OCA M.B. at 6-8; OCA R.B. at 4-9. Specifically, for the duration of the Restructuring Settlement, the only unpaid electric supply charges which may result in termination of service by PECO are charges for PECO electric supply service. Restructuring Settlement ¶ 22; R.D. at 28; OCA M.B. at 3, 5-7; OCA R.B. at 5. As OCA has explained, PECO's current POR protects consumers, where PECO will issue a consolidated bill for electric generation charges 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. OCA M.B. at 7; R.D. at 15, 29. If the EGS does not want to separately bill the customer for EGS charges, then the EGS may end its service to the customer and the customer returns to PECO provider of last resort service. OCA M.B. at 7. ALJ Fordham correctly recognized that PECO's proposal to implement its Revised POR, including a provision to allow PECO to terminate service based on EGS charges incurred before January 1, 2011, that is while the Restructuring Settlement is in effect, would be improperly retroactive. R.D. at 35. PECO's argument that it should have authority as part of the Revised POR to terminate service after December 31, 2010 for EGS charges incurred while the Restructuring Settlement is in effect must be denied. See PECO Exc. at 4.

PECO also excepts to ALJ Fordham's application of the Default Service Settlement. PECO Exc. at 3-5. PECO reads the Default Service Settlement as providing PECO with authority, on and after January 1, 2011, to terminate service based on unpaid EGS charges to the same extent that PECO could terminate based on unpaid EDC charges – without regard to when the EGS charges were incurred. Id. at 4-5. PECO objects to the consequences and risk which PECO may face, if ALJ Fordham's recommendation is adopted. Id. at 5.

The OCA submits that PECO's exception based on the Default Service Settlement must be denied. ALJ Fordham clearly understood that PECO's transition period under the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2801, *et seq.* and capped rates for electric generation will end on December 1, 2010, that the Commission has approved PECO's Default Service Settlement, which includes tariff supplements for electric generation service, to take effect January 1, 2011, and that PECO's proposed Revised POR Program is intended to operate in conjunction with PECO's new default service tariffs. Id. at 1, 14-15. As to the contested issue of PECO's termination authority, ALJ Fordham noted that Paragraph 66 of the Default Service Settlement identifies certain minimum requirements for PECO's Revised POR Program:

¶ 66 PECO will have the ability to terminate service to a customer for the customer's non-payment of supplier charges in the same manner and to the same extent that PECO could terminate service to such a customer for non-payment of EDC charges, subject to appropriate consumer protections to be developed in consultation with the parties to this Settlement.

R.D. at 27, 29; PECO M.B. at 4. ALJ Fordham also took note of the OCA's and OSBA's position that the Default Service Settlement does not and was not intended to disturb the Restructuring Settlement protections, since the Default Service Settlement calls for PECO's

Revised POR Program to be implemented on January 1, 2011. R.D. at 29, citing Default Service Settlement ¶ 65; OCA R.B. at 6. The OCA submits that ALJ Fordham’s conclusion that the “language of the *Default Settlement* does not change the protections afforded in the *Restructuring Settlement*” is soundly based. R.D. at 25.

As to the costs and risks associated with the transition from the Restructuring Settlement to PECO’s default service tariffs and Revised POR Program, ALJ Fordham correctly was not swayed by PECO’s claim that it should be allowed to terminate service based on EGS charges incurred before January 1, 2011 to avoid costs and inconvenience. R.D. at 27. ALJ Fordham determined that PECO has been able to recover its costs, including uncollectibles expense, while operating its current POR under the Restructuring Settlement. R.D. at 34-35. Further, as summarized by ALJ Fordham, both the OCA and OSBA challenged the legitimacy of PECO’s claim. For example, OSBA noted that PECO had agreed as part of the Default Service Settlement and Revised POR Program “that if payments from shopping customers were insufficient to cover the costs of receivables purchased from the EGSs, PECO would not try to recover the shortfall from other customers.” R.D. at 17; OSBA Statement in Support at 3. OCA noted that if PECO incurs programming costs to avoid termination based on EGS charges incurred before January 1, 2011, the Joint Petition for Settlement provides that the discount rate paid by EGSs will be extended to allow recovery by PECO. R.D. at 22; OCA Statement in Support. The OCA submits that ALJ Fordham did not err in recommending denial of PECO’s proposal, where PECO has several choices as to how to structure its Revised POR Program. R.D. at 31-32; OCA R.B. at 8, 9.

PECO’s final objection is to ALJ Fordham’s requirement that PECO may only terminate service, as part of the Revised POR Program, if the EGS charges are for “basic

electricity supply.” PECO Exc. at 5; R.D. at 35-36. According to PECO, its authority to terminate service under its Revised POR Program should extend to EGS charges for “customers’ basic charges” incurred before January 1, 2011, as sufficient to protect consumers. PECO Exc. at 5. PECO’s Exception conflicts with the specific language of PECO’s Petition, wherein PECO linked its proposed termination of service to “unpaid EGS charges for basic electric supply.” R.D. at 35, quoting PECO Petition ¶ 23. The definition of “basic electricity supply,” which PECO, OCA, OSBA and other parties have agreed to as part of the Joint Petition for Settlement is an integral part of the Company’s Revised POR Program. R.D. at 7, 17, 18-19, 30-31; OCA M.B. at 8-9; OCA R.B. at 6-7. The OCA submits that the Commission should soundly reject PECO’s Exception which seeks to ignore or depart from the terms of the Joint Petition for Settlement which ALJ Fordham recommends be approved as in the public interest.

III. CONCLUSION

For the reasons set forth above, and those set forth in the Main and Reply Briefs of the OCA, the OCA submits that the Commission should adopt the ALJ's recommendation that PECO not be allowed to terminate service to customers based on EGS charges incurred before January 1, 2011, the proposed date for implementation of PECO's Revised POR. The Commission should reject the Company's Exception on this issue.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the Reply Exceptions 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:

Dated this 1st day of June 2010.

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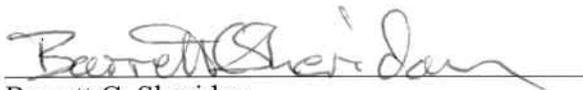
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