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January 28, 2011

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Petition of PECO Energy Company for Approval of its Smart Meter Technology Procurement and Installation Plan – Petition for Approval of PECO Energy Company's Initial Dynamic Pricing and Customer Acceptance Plan
Docket No. M-2009-2123944

Dear Secretary Chiavetta:

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

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

Respectfully Submitted,

Jennedy S. Johnson

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Assistant Consumer Advocate
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Enclosures
cc: Honorable Marlane R. Chestnut

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company for Approval of its Smart Meter Technology Procurement and Installation Plan - Petition for Approval of PECO Energy Company's Initial Dynamic Pricing and Customer Acceptance Plan	:	Docket No. M-2009-2123944

MAIN BRIEF
OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: January 28, 2011

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I. INTRODUCTION

A. Procedural History

On October 28, 2010, PECO Energy Company (PECO or Company) filed a Petition with the Pennsylvania Public Utility Commission (Commission) seeking approval of its Initial Dynamic Pricing and Customer Acceptance Plan (Plan). The purpose of the Plan is to test the initial dynamic pricing rates in order to: (1) better understand how to cost-effectively enroll customers in voluntary dynamic rate programs and related offerings and (2) examine and understand the load impact of different dynamic rates and technology options. Pet. at 6. The filing was made pursuant to the requirements of Act 129 of 2008, specifically under revised Section 2807(f). Section 2807(f)(5) requires each Electric Distribution Company (EDC) with at least 100,000 customers to submit "one or more proposed time-of-use and real-time pricing plans" by January 1, 2010. A time-of-use rate is defined as a rate that reflects the cost of serving customers during different periods, including off-peak and on-peak periods, but not as frequently as each hour. 66 Pa.C.S. § 2806.1(m). A real-time price is defined as a rate that directly reflects the different cost of energy during each hour. Id. The filing was published in the Pennsylvania Bulletin on November 13, 2010 with Interventions and Answers due by November 29, 2010. 40 Pa.B. 6619.

On November 29, 2010, the OCA filed its Answer. On December 1, 2010, the Office of Trial Staff (OTS) filed a Notice of Appearance. On November 29, 2010, the Office of Small Business Advocate (OSBA) filed a Protest and Verification. Petitions to Intervene were filed on November 29, 2010 by the Retail Energy Supply Association (RESA)[1], Direct Energy

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1 RESA filed a Petition for Leave to Withdraw its Intervention on December 21, 2010.

Services, LLC and Direct Energy Business, LLC (Direct Energy), and the Philadelphia Area Industrial Energy Users Group (PAIEUG).

The matter was assigned to the Office of Administrative Law Judge and was further assigned to Administrative Law Judge Marlane R. Chestnut. Pursuant to the Prehearing Order dated December 9, 2010, a procedural schedule was established. The OCA retained J. Richard Hornby[2] and Nancy Brockway[3] who, pursuant to the schedule adopted by the ALJ, submitted written Direct Testimony on December 23, 2010 and written Surrebuttal Testimony on January 19, 2011. On January 11, 2001, Rebuttal Testimony was filed by OSBA and the Company.

Throughout the proceeding the parties engaged in settlement negotiations which resulted in a partial settlement that was filed with the Commission on January 28, 2010. The Settlement addressed all issues except whether the administrative costs of the Plan assigned to each class should be collected from both shopping and non-shopping customers.

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2 J. Richard Hornby is a Senior Consultant at Synapse Energy Economics, Inc. and has previously presented expert testimony and provided litigation support in approximately 100 proceedings in over thirty jurisdictions in the United States and Canada, including Pennsylvania. Mr. Hornby's work at Synapse specializes in planning, market structure, ratemaking, and gas supply/fuel procurement in the electric and gas industries, and he has presented testimony in both smart meter and dynamic pricing proceedings. His experience in energy efficiency measures and policies began thirty years ago. OCA St. 1 at 1-3; see also, OCA St. 1, Exhibit JRH-1.

3 Nancy Brockway is a principal of NBrockway & Associates, a firm providing consulting services in the areas of energy and utilities. Ms. Brockway has served as a Commissioner on the New Hampshire Public Utilities Commission, an expert witness on consumer and low-income utility issues for the National Consumer Law Center, and as Director of the Multi-Utility Research and Analysis with the National Regulatory Research Institute (NRRI). While at NRRI, Ms. Brockway wrote a study on the impact of advanced metering structure and related options on residential consumers. Ms. Brockway specializes in issues relating to the role of regulation in the protection of consumers and the environment, and she has presented testimony in both smart meter and dynamic pricing proceedings. OCA St. 2 at 1-2; see also, OCA St. 2, Exhibit NB-1.

B. Summary of PECO's Dynamic Pricing Plan

In its Petition, the Company proposed to offer two different rate options as part of its two-year[4] "test and learn" Plan: a Critical Peak Pricing (CPP) rate and Time-of-Use (TOU) rate. Pet. at 5, PECO St. 2 at 19. Residential customers that are not enrolled in the Company's Customer Assistance Program (CAP)[5] will be eligible to voluntarily participate in both the CPP and TOU rates. Pet. at 6.

The CPP rate is a discounted flat rate for all kWh consumed other than on those occasions when a critical day is called. Id. The CPP rate features a higher-than-average critical peak price during the four-hour peak period on event days (to be called fifteen days per summer) and a discounted off-peak rate for the other hours of the year. PECO St. 3 at 12. The critical peak price is 100.9 cents/kWh, i.e. $1.00/ kWh, for the residential rate class. Id. The off-peak rate is 15.6 cents/kWh, a 0.9 cent/kWh discount from the assumed default service customer's rate of 16.5 cents/kWh. Id.

For the TOU rate, which will be offered only to Residential customers, each weekday is divided into peak and off-peak periods with customers paying a discounted rate for off-peak usage and a higher rate for peak period usage relative to PECO's standard, non-time-differentiated tariff. Id. Specifically, the TOU rate is composed of a peak rate of 24.1 cents/kWh during 1,044 hours of the year with an off-peak rate of 15.4 cents/kWh during the other hours. Id. at 12; PECO Exh. AF-9. The peak period is defined as between 2pm and 6pm on

4 The Plan will run from late 2012 through the summer of 2014. PECO St. 2 at 21.

5 The current CAP discounts far exceed any potential savings that could be achieved under either dynamic pricing rate. Pet. at 6. PECO will, however, provide a random sampling of CAP customers with in-home displays (IHDs) and related education materials in order to evaluate the effect of near real-time information feedback on those customers' energy usage. Id.

non-holiday summer weekdays.[6] PECO St. 3 at 9. This rate is designed to encourage permanent load shifting away from high-priced hours during every summer weekday. Id. at 2.

For the residential class, PECO estimates that the CPP and TOU rates are expected to lead to class average annual bill reductions of roughly 0.8% and 0.1%, respectively. PECO St. 3 at 17. The Company states that for the CPP, the average 4-month summer bill for an enrolled residential customer will increase around seven percent and decrease six percent during the eight non-summer months. PECO St. 3 at 18. Due to the year-round nature of the TOU rate, the bill impacts are close to zero for the average residential customer. Id. The Company estimates that before customers respond to the rate, the most extreme bill impacts will be as large as a six percent increase or decrease with roughly half of customers experiencing bill savings and the other half experiencing a rate increase. Id. at 19. After customer response, the Company projects that participating residential customers could experience up to a four percent increase or decrease in their average monthly bill. PECO Exh. AF-17.

The Company will employ a "test and learn" strategy that will package the CPP and TOU rates with different combinations of marketing, education and enabling technology "in order to understand the effect on enrollment of each feature, including the rate itself." Pet. at 6-7. Only the customers in the "test and learn" population (estimated to be between 150,000 and 200,000 customers) will be offered the opportunity to enroll in these options proactively. Id. at 7. Any eligible customer that has a smart meter installed may, however, request to be placed on a dynamic rate. Id. PECO will track customer response data so that effective combinations of rates, technology, education and promotional strategies can be identified for future offerings. Pet. at 7. These future offerings will be made to customers who have smart meters. Pet. at 7; PECO St. 2 at 23-24.

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6 PECO defines "summer" as June through September. PECO St. 3 at 8.

C. Settlement and Identification of Outstanding Issue

As was mentioned above, throughout the proceeding the parties engaged in settlement negotiations which resulted in a Partial Settlement (Settlement). The Settlement addresses all issues except whether the administrative costs assigned to each class should be collected from both shopping and non-shopping customers. In accordance with the procedural schedule adopted in this proceeding, the OCA files this Main Brief presenting its recommendation to the ALJ and the Commission as to the issue that was not resolved by the Settlement.

II. COST RECOVERY

A. Introduction

The Company estimates that its Plan, based on the "test and learn" population of approximately 150,000 to 200,000 customers, will cost $11.6 million. Pet. at 9. These costs are being incurred for design and development, marketing, incentives, call center training, web design, communication, measurement and evaluations, and overall project management. PECO St. 4 at 8-9. The Plan costs are eligible for funding under matching grants received by PECO under the U.S. Department of Energy Smart Grid Investment Grant Program. Pet. at 9. The Company anticipates that the application of this grant money will reduce the Plan costs by approximately 48%. Id. The Company proposes that the balance of Plan costs be recovered only from default service customers through default service cost recovery mechanisms, specifically through the Company's Generation Supply Adjustment (GSA) filings. Pet. at 8. The only issue reserved for briefing is whether the aforementioned costs should be collected from both shopping and non-shopping customers on each Rate Schedule to which costs were assigned.[7]

[7] For the purposes of this proceeding only, the Settling parties agreed to accept PECO's initial assignment of the costs to the affected Rate Schedules.

B. <u>The Commission Should Collect the Administrative Costs Associated with the CPP and TOU Costs From All Customers on Each Affected Rate Schedule</u>

The Company estimates that it will incur $11.6 million in costs to implement the CPP and TOU pilot program and has proposed to collect the administrative costs associated with the CPP and TOU rates only from its default service customers on the affected rate schedules. Pet. at 9. Approximately $2 million, or 18%, of the costs reflect incentives paid to customers who enroll in the CPP and TOU rates. PECO St. 4, Exh. WJP-1B; OCA St. 1, Exh___(JRH-3). The remaining $9.5 million represent administrative costs associated with the pilot program. OCA St. 1, Exh___(JRH-3). It is the OCA's position that the Company should recover these administrative costs from both shopping and non-shopping customers on each affected rate schedule.

The Company's proposal to recover the administrative costs of its Plan only from default service customers through the GSA is not consistent with the principles of cost causation and is not equitable. As Mr. Hornby explains:

> The Plan is primarily a test of CPP and TOU rates as opposed to a simple offering of new rates to customers taking default service. As indicated in OCA St. 1, Exhibit__(JRH-3), $2 million or 18% of the costs the Company will incur to implement the Plan are incentives to customers who enroll in CPP and TOU. The remaining $9.5 million are costs associated with a pilot that will collect information that will benefit <u>all</u> customers in each rate class, *i.e.*, customers on Default Service and customers on Competitive Energy Service.

OCA St. 1 at 19-20 (emphasis added). Simply put, the Company's Plan is a pilot program designed to obtain information on how customers decide to participate in dynamic pricing programs, what promotional messages customers best respond to and what actions customers will take in response to the rates. This information will be shared with the public - including both shopping and non-shopping customers and third party suppliers - greatly enabling both education and design for all customers and for third party suppliers.

Company witnesses George and Faruqui further expounded on these points and agree that all customers, including those who are currently shopping, will benefit from the information regarding dynamic pricing that the Plan will develop. Drs. Faruqui and George say that the lessons learned from the two rate designs:

> will raise awareness of other choices and products that EGSs can compete with. Additionally, the Company will produce a final, publically available report that describes the results of the research, which could be beneficial to all interested stakeholders and third party suppliers.

OCA St. 1, Exh___(JRH-4). In his Rebuttal, Dr. George further stated that "the 'test and learn' strategy is flexible and intended to inform full-scale dynamic rate deployment in the future." PECO St. 2-R at 4. Mr. Hornby also addressed how the benefit of the Company's pilot will accrue to all customers. He states that as a result of this information:

> customers will have better information on which to base their assessment of the pricing offers of Electric Generation Suppliers (EGSs) and EGSs will have better information regarding [how] to design and promote their pricing offers.

OCA St. 1 at 20. Mr. Hornby also points out that EGSs will be able to take advantage of changes that the Company makes in its data processing and billing systems in order to support TOU and CPP rates. OCA St. 1-S at 12.

Moreover, default service customers did not and will not cause the Company to incur these costs. The cause of these costs is the need to comply with the Act 129 mandate of offering dynamic pricing. Indeed, as Mr. Hornby points out:

> The goal of the Plan is to test rates that will provide customers more accurate price signals, encourage them to reduce peak demand and use energy more efficiently.

OCA St. 1-S at 13. These goals are identical to, and complement, PECO's efforts to reduce peak demand and energy usage though its Energy Efficiency and Conservation (EE&C) Plan.

Finally, there is nothing in the Company's Plan that would preclude a shopping customer from returning to default service (in accordance with their contractual commitments with the EGS) and taking service under the CPP or TOU rates if they so choose. OCA St. 1-S at 12. By the same token, there is nothing that precludes a default service customer from shopping. Whether or not a customer is shopping at a particular point in time is not at all determinative of appropriate cost recovery. It is inequitable to allow some customers to avoid these "test and learn" costs that benefit all customers.

The OCA submits that the Commission should require the Company to collect the administrative costs of its Plan from all customers on the respective rate schedules that have been assigned such costs.

C. <u>OCA Response to the Criticism of the Company and OSBA</u>

Mr. Hornby's testimony was the subject of Rebuttal from Mr. Knecht, on behalf of the OSBA and Mr. Patterer, on behalf of PECO. Specifically, Mr. Knecht argues that shopping customers can derive no benefit from the Company's plan and that Mr. Hornby's proposal is anti-competitive. OSBA St. 1 at 3. Mr. Patterer argues that Mr. Hornby's proposal was not consistent with Commission's most recent order in the PPL Time of Use Proceeding (PPL TOU). PECO St. 4-R at 6. Mr. Hornby addressed these witnesses' concerns in his Surrebuttal testimony.

With respect to Mr. Knecht's claim regarding lack of benefits to shopping customers, Mr. Hornby explains how the Company's Plan will benefit all customers:

> Shopping customers will benefit as much as customers taking default service from the lessons to be learned regarding the design of CPP and TOU rates as well as regarding customer preferences for particular promotional methods, technology offers and educational offers. EGS' who provide service to shopping customers in these rate classes will draw upon the results of the Plan to design competitive CPP and TOU rates and offers to attract and retain shopping customers. Moreover, EGS will be able to take advantage of changes that the Company makers in its data processing and billing systems in order to support CPP and TOU rates.

OCA St. 1-S at 12. How the Plan will benefit all customers is also addressed in Section II.B., above. As was also mentioned above, there is nothing in the Company's plan to prevent a shopping customer from returning to default service and participating in the Company's dynamic pricing offers. For these reasons, the OSBA's argument is without merit.

With respect to Mr. Patterer's claim that the PPL TOU Order precludes the treatment that Mr. Hornby suggests, the OCA submits that the evidence of record here supports the Commission reaching a different conclusion in this proceeding than in the PPL TOU proceeding. In the PPL TOU proceeding, no evidence was presented regarding the benefits of the PPL TOU rate to all customers. Additionally, that program was not, as here, a pilot whose purpose is to test the initial dynamic pricing rates in order to: (1) better understand how to cost-effectively enroll customers in voluntary dynamic rate programs and related offerings and (2) examine and understand the load impact of different dynamic rates and technology options. Pet. at 6. Such research, measurement and evaluation provides a benefit to all customers as it will shape products and programs that the Company will offer to all of its customers (in the participating rate classes) in the future. Further, Mr. Hornby, as well as Company witnesses Faruqui and George, address the benefits of PECO's Plan for <u>all</u> customers, both those who shop and those who take default service. <u>See</u> Section II.B., above. Given this evidence, the OCA submits that the Commission should hold that the costs of the PECO Plan be recovered from all customers.

III. CONCLUSION

The OCA submits that the evidence of record supports a finding that PECO's Plan will provide benefits to both shopping and non-shopping customers. Accordingly, the OCA respectfully requests that the Commission find that it is appropriate to collect the administrative costs of PECO's Dynamic Pricing Plan from all customers in the respective rate classes to which costs are assigned.

Respectfully Submitted,

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Dated: January 28, 2011
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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APPENDICES TO THE
MAIN BRIEF OF THE
OFFICE OF CONSUMER ADVOCATE

Appendix A- Statement of Questions

Should the Commission require the Company to collect the administrative costs of its Plan from all customers on the respective rate schedules to which costs are assigned?

Suggested Answer: Yes.

Appendix B- Proposed Findings of Fact

1. The PECO Dynamic Pricing filing was made pursuant to the requirements of Act 129 of 2008, specifically under revised 2807(f)(5) that requires each Electric Distribution Company (EDC) with at least 100,000 customers to submit "one or more proposed time-of-use and real-time pricing plans" by January 1, 2010. PECO St. 1 at 3-5; 66 Pa.C.S. § 2807(f)(5).

2. PECO estimates that its Dynamic Pricing Plan will cost approximately $11.6 million. PECO St. 4 at 8.

2. $2 million or 18% of the costs PECO will incur to implement the Plan are incentives to customers who enroll in CPP and TOU. PECO St. 4, Exh. WJP-1B; OCA St. 1, Exh___(JRH-3).

3. The remaining $9.5 million are administrative costs associated with a pilot. OCA St. 1, Exh___(JRH-3).

4. The administrative costs result from the need to comply with the Act 129 mandate of offering dynamic pricing. OCA St. 1-S at 13.

5. The goal of the Company's "test and learn" strategy is to inform full-scale dynamic rate deployment in the future. PECO St. 2-R at 4.

6. The information gathered as a result of the Dynamic Pricing pilot will provide customers with better information on which to base their assessment of the pricing offers of EGSs and EGSs will have better information regarding how to design and promote their offers. OCA St. 1 at 20.

7. EGSs will be able to take advantage of changes that the Company makes in its data processing and billing systems in order to support TOU and CPP rates. OCA St. 1-S at 12.

8. There is nothing in the Company's Plan that would preclude a shopping customer from returning to default service (in accordance with their contractual commitments with the EGS) and taking service under the CPP to TOU rates if they so choose. OCA St. 1-S at 12.

Appendix C- Proposed Conclusions of Law and Ordering Paragraphs

1. PECO has not met its burden of proof that its proposed methodology for collecting the administrative costs of its Dynamic Pricing Plan from default service customers alone is reasonable or consistent with the principles of cost causation and equity.

IT IS HEREBY ORDERED THAT:

1. PECO's proposal to collect the administrative costs of its Plan only from default service customers on each rate schedule to which costs have been assigned is denied.

2. PECO shall collect the administrative costs incurred as a result of the CPP and TOU rates from all customers in the respective rate classes to which costs are assigned.

CERTIFICATE OF SERVICE

Petition of PECO Energy Company for Approval of its Smart Meter Technology Procurement and Installation Plan - Petition for Approval of PECO Energy Company's Initial Dynamic Pricing and Customer Acceptance Plan	:	Docket No. M-2009-2123944

I hereby certify that I have this day served a true copy of the foregoing document, Main Brief of the Office of Consumer Advocate, 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 28th day of January 2011.

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