

COMMONWEALTH OF PENNSYLVANIA



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January 28, 2011

HAND DELIVERED

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 of PECO Energy Company for Approval of its Initial Dynamic Pricing and Customer Acceptance Plan
Docket No. M-2009-2123944**

Dear Secretary Chiavetta:

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,

A handwritten signature in black ink, appearing to read "Sharon E. Webb".

Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995

Enclosures

cc: Parties of Record

Robert D. Knecht

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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**

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Docket No. M-2009-2123944

**Petition of PECO Energy Company for
Approval of its Initial Dynamic Pricing
and Customer Acceptance Plan**

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**MAIN BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

**Sharon E. Webb
Assistant Small Business Advocate
Attorney ID No. 73995**

**For: William R. Lloyd, Jr.
Small Business Advocate
Attorney ID No. 16452**

**Office of Small Business Advocate
300 North Second Street, Suite 1102
Harrisburg, PA 17101**

Dated: January 28, 2011

I. INTRODUCTION

On October 28, 2010, PECO filed the Petition of PECO Energy Company for Approval of its Initial Dynamic Pricing and Customer Acceptance Plan (“DP Petition”). The Commission has docketed PECO’s DP Petition at the same docket number at which PECO’s August 14, 2009, smart meter technology and installation plan (“SMIP”) Petition was docketed.

II. BACKGROUND

SMIP Proceeding

All electric distribution companies (“EDCs”) with more than 100,000 customers were required to file SMIPs with the Commission pursuant to Act 129 of 2008. PECO Energy Company (“PECO” or “Company”) filed its SMIP on August 14, 2009.

The OSBA filed a Notice of Intervention and Public Statement in the SMIP Plan proceeding on September 25, 2009.

Thereafter, the OSBA filed the rebuttal testimony of its witness, Robert D. Knecht. The OSBA also actively participated in the negotiations that led to the Joint Petition for Partial Settlement (“Settlement”) and is a signatory to the Settlement. The OSBA submitted a statement in support of the Partial Settlement that was filed at the above-referenced docket on November 25, 2009. The OSBA also submitted a Main Brief on December 2, 2009, and a Reply Brief on December 9, 2009, regarding the issues reserved for litigation.

By Order entered May 6, 2010, the Commission approved the Partial Settlement and adjudicated the issues reserved for litigation.

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Dynamic Pricing Proceeding

On October 28, 2010, PECO filed the DP Petition. The Commission has docketed PECO's DP Petition at the same docket number at which PECO's SMIP Petition was docketed. On November 29, 2010, the OSBA filed a Protest to the DP Petition

The DP Petition, was assigned to Administrative Law Judge ("ALJ") Marlane R. Chestnut. Due to the expedited schedule contained in the November 4, 2010, Secretarial Letter, no prehearing conference was held.

The OSBA issued interrogatories to determine the extent of its participation related to the subject matter of the DP Petition. Ultimately, because the OSBA did not disagree with PECO's filing, the OSBA did not file direct testimony. However, in response to cost allocation and rate design proposals presented by Office of Consumer Advocate ("OCA") witness Mr. J. Richard Hornby in direct testimony, the OSBA filed the rebuttal testimony of its witness, Robert D. Knecht, on January 11, 2011.

Subsequently, the parties reached a Settlement on all but one issue. This brief presents the OSBA's position on that issue.

III. ISSUE RESERVED FOR BRIEFING

The Settlement sets forth a list of issues that were resolved through the negotiation process. The Settlement accepts the Company's cost allocation among rate class groups as set forth in the Company's filed case.

The parties were unable to reach an agreement on whether the costs allocated to Default Service Procurement Classes 1, 2, and 3 should be recovered from both shopping and non-shopping customers. The Settlement reserves that issue for briefing and for a decision by the Commission.

IV. ARGUMENT

In the DP Petition, PECO proposed to recover program costs from only those customers that are eligible to participate in the proposed DP Plan, namely default service customers in default service rate class groups 1 (residential), 2 (small commercial and industrial), and 3 (medium commercial and industrial). No costs were assigned to default service rate class group 4 (large industrial) because no dynamic pricing options would be available to that rate class group. The OSBA did not contest either the cost allocation or cost recovery mechanism as originally filed. While the OSBA may not entirely agree with the cost allocation principle implicit in the Company's allocation, the OSBA accepted the Company's arguments that (a) the Commission has generally required EDCs to recover costs for time-of-use rate programs in their default service rate mechanisms, and (b) that common administrative costs for default service programs are generally allocated in proportion to energy consumption.¹

The Office of Consumer Advocate ("OCA") accepted PECO's proposal for the direct assignment of costs which are specifically related to individual rate class groups (namely default service customers in default service rate class groups 1 (residential), 2 (small commercial and industrial), and 3 (medium commercial and industrial). However the OCA proposed to recover the common costs among the rate class groups based on total kWh consumption *i.e.*, both shopping and non-shopping consumption, rather than default service consumption.² Mr. Hornby

¹ See OSBA Statement No. 1, the Rebuttal Testimony of Robert D. Knecht at 2.

² OCA Statement No. 1, the Direct Testimony of J. Richard Hornby at 20.

failed to make a recommendation as to how the allocated costs should be recovered in rate design.³

In rebuttal, Mr. Knecht testified that Mr. Hornby's proposal is likely to be anticompetitive. Specifically, Mr. Knecht noted the following:

Although Mr. Hornby declines to make a rate design proposal, it would make little sense to allocate common costs on the basis of both default service and shopping kWh and then recover the costs from only default service customers. Mr. Hornby therefore implicitly concludes that a separate tariff charge mechanism will be needed to recover DP Plan costs from shopping customers. In effect, Mr. Hornby will therefore require shopping customers to pay for a program in which they cannot participate. To the extent that those shopping customers are already paying for the administrative costs incurred by their own electric generation suppliers ('EGSs') related to dynamic pricing or other innovative rates, the shopping customers will end up paying twice. While I recognize that PECO's consultants appear to believe that these pilot programs will have value for EGSs, I am not aware of any evidence from the EGS community volunteering that either EGSs or their customers pay for the administrative costs associated with PECO's proposed dynamic pricing options.

Second, Mr. Hornby's argument that costs are caused by Act 129 is unhelpful for determining how costs should be allocated. If the costs are caused by Act 129, it would be just as sensible to allocate them based on number of customers than to allocate them based on total kWh deliveries. In fact, Act 129 mandated that EDCs incur many different kinds of costs, including energy efficiency program costs and smart meter costs. The Commission has developed cost allocation and cost recovery mechanisms for these programs based on reasonable cost causation principles, and can do so with respect to DP Plan costs.

³ See OSBA Statement No. 1 at 2, *citing* OSBA-OCA-I-4(c).

Third, in developing his proposal for cost allocation, Mr. Hornby appears to have overlooked the fact that non-residential customers are not eligible for the time-of-use rate ('TOU') option within the DP Plan, and may participate only in the critical peak pricing ('CPP') program. [footnote omitted] Mr. Hornby proposes to exclude large commercial and industrial customers from contributing to the recovery of DP Plan costs because they are not eligible for either rate option. However, he makes no similar accommodation for small and medium commercial and industrial customers even though they are eligible to participate only in the TOU rate option.⁴

In the event that the Commission determines a willingness to consider a method for allocating DP Plan common costs which is different from the method it uses for other default service administrative costs, Mr. Knecht made the following recommendations:

First, I recommend that the Commission limit the assignment of DP Plan costs to default service customers who are eligible to participate in these rate options. This approach is consistent with cost causation and competitively neutral. I agree with both PECO and Mr. Hornby that large industrial customers should be exempt from cost assignment because they are not eligible to participate in either rate option.

Second, I recommend that those program costs which can be directly assigned to specific rate classes be directly assigned.

Third, as a conceptual matter, the common program administration costs for the Company's DP Plan are similar to the common costs for the rest of the Company's Smart Meter Technology and Implementation Plan ('SMIP'). For example, network and information technology ('IT') costs

⁴ OSBA Statement No 1 at 3.

are common to both the SMIP and the DP Plan. In its order entered May 6, 2010 earlier in this proceeding, the Commission determined that SMIP common costs should be allocated based on number of customers. [footnote omitted] A similar conclusion can readily apply to DP Plan common costs. I therefore recommend that all DP Plan common costs be allocated among the various rate class groups based on number of customers, rather than kWh sales.

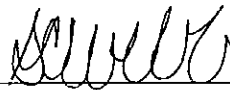
Fourth, I agree with PECO's recommendation that the program costs be recovered in the default service charge, rather than Mr. Hornby's implicit proposal to develop a charge which applies to both shopping and default service customers.⁵

⁵ OSBA Statement No. 1 at 4.

V. CONCLUSION

For the reasons enumerated in this brief, the OSBA supports the proposed Settlement and respectfully requests that the Administrative Law Judge and the Commission approve the Settlement document in its entirety without modification. Additionally, for the reasons set forth above, the OSBA respectfully requests that the Commission approve PECO's proposed cost recovery methodology and reject the OCA's proposal to recover costs of the Company's DP Plan from shopping customers.

Respectfully submitted,



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Dated: January 28, 2011

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of PECO Energy Company for Approval :
of its Smart Meter Technology Procurement :
and Installation Plan :**

Docket No. M-2009-2123944

**Petition of PECO Energy Company for Approval :
of its Initial Dynamic Pricing and Customer :
Acceptance Plan :**

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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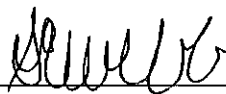
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