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February 3, 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 Reply 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,

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

Enclosures

cc: Parties of Record

Robert D. Knecht

BEFORE THE
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
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REPLY BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

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Dated: February 3, 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 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

A. SMIP Proceeding

Each electric distribution company ("EDC") with more than 100,000 customers was required to file a SMIP 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 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 ("SMIP Settlement") and is a signatory to the SMIP Settlement. The OSBA submitted a statement in support of the SMIP Settlement that was filed on November 25, 2009. The OSBA also submitted a Main Brief on December 2, 2009, and a Reply Brief on December 9, 2009, regarding certain issues that had been reserved for litigation.

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

B. Dynamic Pricing Proceeding

On October 28, 2010, PECO filed the DP Petition. The Commission 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 with regard to 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 of all issues but one. The OSBA actively participated in the negotiations that led to the Joint Petition for Partial Settlement ("DP Settlement") and is a signatory to the DP Settlement that was filed on January 28, 2011. In addition, the OSBA submitted a statement in support of the DP Settlement that was attached to the settlement document.

Also on January 28, 2011, the OSBA, the OCA, and PECO filed Main Briefs on the issue that was not settled. The OSBA is filing this Reply Brief in response to arguments presented in the OCA's Main Brief regarding that issue.

III. ISSUE RESERVED FOR BRIEFING

The DP Settlement sets forth a list of issues that were resolved through the negotiation process. Among the resolved issues, the DP Settlement accepts the Company's proposed methodology for allocating dynamic pricing costs among the Default Service Procurement Classes.[1]

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 in those respective classes. The DP Settlement reserves that issue for briefing and for a decision by the Commission.[2]

In their Main Briefs, PECO and the OSBA argued that the costs allocated to each Default Service Procurement Class should be recovered from only the default service customers in that class. However, in its Main Brief, the OCA argued that the costs allocated to an individual Default Service Procurement Class should be recovered not only from the default service customers in that class but also from the shopping customers eligible to return to default service as members of that class.

IV. ARGUMENT

A. Allocation of Costs among the Classes

In the DP Petition, PECO proposed to allocate program costs to only those customers in classes that would be eligible to participate in the proposed DP Plan, *i.e.*, default service customers in Default Service Procurement Class 1 (residential), 2 (small commercial and

[1] *Compare* DP Petition at 8-9, ¶17, and DP Settlement at 7, ¶9(I).

[2] DP Settlement at 1.

industrial), and 3 (medium commercial and industrial). The Company proposed to allocate no costs to customers in Default Service Procurement Class 4 (large industrial) because no dynamic pricing options would be available to customers in that class.[3]

PECO proposed to assign program costs to the specific Default Service Procurement Class for which those costs were incurred. In addition, the Company proposed to allocate those costs that could not be directly assigned, *i.e.*, the common costs, among Default Service Procurement Classes 1, 2, and 3 on the basis of each class' kWhs of default service consumption relative to the total default service consumption of the three classes. Finally, PECO proposed to recover each class' allocated costs from only the default service customers in that class.[4]

As set forth in its testimony and its Main Brief, the OSBA did not contest either the cost allocation or cost recovery mechanism proposed by PECO. Without conceding complete agreement 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 through their default service rate mechanisms, and (b) that common administrative costs for default service programs are generally allocated in proportion to energy consumption.[5]

In its Main Brief, the OCA acknowledged its acceptance of PECO's proposal for the direct assignment of costs which are specifically related to individual classes and for the allocation of the common costs to the classes on the basis of their relative default service consumption.[6]

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[3] DP Petition at 8-9, ¶17.

[4] *Id.*

[5] *See* OSBA Main Brief at 3 and OSBA Statement No. 1, Rebuttal Testimony of Robert D. Knecht at 2.

[6] OCA Main Brief at 5, fn. 7.

Therefore, there is no dispute about the methodology for determining the share of the costs for which each class will be responsible.

B. Recovery of Costs within the Classes

According to the OCA, the costs allocated to each Default Service Procurement Class should be recovered from both the customers receiving default service as members of that class and the shopping customers eligible to return to default service as members of that class.[7] However, the OCA has not proposed a mechanism for recovering those costs from shopping customers.[8]

In its Main Brief, the OSBA cited the following testimony by OSBA witness Mr. Knecht regarding the principal flaw in the OCA's position:

> . . . 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.[9]

In its Main Brief, the OCA offered several arguments in response to Mr. Knecht's testimony. First, the OCA asserted that it is reasonable to recover costs from shopping

[7] OCA Main Brief at 6, 8, and 10.

[8] As OSBA witness Mr. Knecht testified, OCA witness Mr. Hornby failed to recommend a rate design for the recovery of the allocated costs from both non-shopping and shopping customers. OSBA Statement No. 1 at 2, *citing* OSBA-OCA-I-4(c). The OCA also failed to recommend such a rate design in its Main Brief.

[9] OSBA Statement No. 1, Rebuttal Testimony of Robert D. Knecht, at 3.

customers because both shoppers and electric generation suppliers ("EGSs") would benefit from the lessons learned by PECO regarding dynamic pricing rate design and customer preferences. Second, the OCA posited that it is reasonable to recover costs from shopping customers because EGSs will be able to take advantage of changes made by PECO in its data processing and billing systems to support the dynamic pricing options. Third, the OCA contended that it is reasonable to recover costs from shopping customers because shopping customers may return to default service.[10]

In addition to the foregoing specific responses to Mr. Knecht, the OCA stated a cost causation argument, as follows:

> 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.[11]

However, in making that cost causation argument, the OCA overlooked relevant statutory language from which the intent of the General Assembly can be inferred.

Specifically, the obligation for PECO to propose its DP Plan is set forth in Section 2807(f)(5) of the Public Utility Code, 66 Pa. C.S. §2807(f)(5), as follows:

> By January 1, 2010, or at the end of the applicable generation rate cap period, whichever is later, a ***default service provider*** shall submit to the commission one or more proposed time-of-use rates and real-time price plans. The commission shall approve or modify the time-of-use rates and real-time price plan within six months of submittal. The ***default service provider*** shall offer the time-of-use rates and real-time price plan to all customers that have been provided with smart meter technology under paragraph (2)(iii). Residential or commercial customers may elect to participate in time-of-use rates or real-time pricing. The ***default service provider*** shall submit an annual report to the price programs and the efficacy of the programs in affecting energy demand and consumption and the effect on wholesale market prices. (emphasis added)

[10] OCA Main Brief at 8-9.

[11] OCA Main Brief at 7.

Significantly, the language of Section 2807(f)(5) expressly imposes the obligation to provide dynamic pricing options on the "default service provider." As defined in Section 2803 of the Public Utility Code, 66 Pa. C.S. §2803, the "default service provider" may be an "alternative supplier" that is not the EDC. Therefore, the use of "default service provider" in Section 2807(f)(5) implies that the General Assembly intended dynamic pricing plans to be an element of default service and not a rate option to be offered as part of distribution or transmission service.

Section 2807(e)(3.9) of the Public Utility Code, 66 Pa. C.S. §2807(e)(3.9), provides for recovery of the default service provider's costs, as follows:

> The default service provider shall have the right to recover on a full and current basis, pursuant to a reconcilable automatic adjustment clause under section 1307 (relating to sliding scale of rates; adjustments), all reasonable costs incurred under this section [Section 2807, including Section 2807(f)(5)] and a commission-approved competitive procurement plan.

Notably, Section 2807(e)(3.9) does not provide for recovery of default service costs (including dynamic pricing costs) from customers other than those taking default service.

In contrast, when the General Assembly wanted to authorize recovery of costs under Section 2807(f) from both shopping and non-shopping customers, it used language to that effect. Specifically, Section 2807(f)(7) provides for the recovery of SMIP costs as follows:

> An ***electric distribution company*** may recover reasonable and prudent costs of providing smart meter technology under paragraph 2(ii) and (iii), as determined by the commission. . . . An ***electric distribution company*** may recover smart meter technology costs:
>
> (i) through base rates, including a deferral for future base rate recovery of current basis with carrying charge as determined by the commission; or
>
> (ii) on a full and current basis through a reconcilable automatic adjustment clause under section 1307. (emphasis added)

The use of "default service provider" in paragraph 5 of Section 2807(f) and "electric distribution company" in paragraph 7 of Section 2807(f) implies that the General Assembly intended to draw a distinction between the recovery of SMIP costs and the recovery of dynamic pricing costs. Recovery of SMIP costs from all of the EDC's customers is consistent with paragraph 2 of Section 2807(f), which requires the EDC to install smart meters for all customers, regardless of whether they are shoppers or non-shoppers. In contrast, recovery of dynamic pricing costs from only non-shopping customers is consistent with the recovery of other costs incurred by the default service provider.

Recovery of dynamic pricing costs from only non-shopping customers is also consistent with Section 2806.1(k)(1) of the Public Utility Code, 66 Pa. C.S. §2806.1(k)(1), which provides as follows for the recovery of energy efficiency and conservation ("EE&C") costs:

> An ***electric distribution company*** shall recover on a full and current basis from customers, through a reconcilable adjustment clause under section 1307, all reasonable and prudent costs incurred in the provision or management of a plan provided under this section. This paragraph shall apply to all ***electric distribution companies***, including ***electric distribution companies*** subject to generation or other rate caps. (emphasis added)

EE&C costs are recoverable from both shopping and non-shopping customers because both shopping and non-shopping customers are eligible to participate in EE&C programs. In contrast, because PECO's dynamic pricing programs would be available to only default service customers, dynamic pricing program costs should be recovered from only default service customers.

V. CONCLUSION

For the reasons enumerated in the OSBA's Main Brief and in this Reply Brief, 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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CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Reply 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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