

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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IRWINA. POPOWSKY
Consumer Advocate

June 13, 2012

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
P.O. Box 3265
Harrisburg, PA 17120

Re: Petition of PECO Energy Company for
Expedited Approval of its Dynamic Pricing
Plan Vendor Selection and Dynamic Pricing
Plan Supplement
Docket No. P-2012-2297304

Dear Secretary Chiavetta:

Enclosed please find the Response of the Office of Consumer Advocate to Opposition of Reliant Energy Northeast LLC, in the above-referenced proceeding.

Copies have been served upon all parties of record as shown on the attached Certificate of Service.

Sincerely yours,

A handwritten signature in cursive script that reads "Tanya J. McCloskey".

Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. #50044

Enclosures

cc: Certificate of Service
157542

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company for :
Expedited Approval of its Dynamic :
Pricing Plan Vendor Selection and : Docket No. P-2012-2297304
Dynamic Pricing Plan Supplement :

RESPONSE OF THE
OFFICE OF CONSUMER ADVOCATE
TO OPPOSITION OF RELIANT ENERGY
NORTHEAST LLC

The Office of Consumer Advocate is in receipt of the Petition to Intervene and Opposition of Reliant Energy Northeast LLC (Reliant) in the above-captioned case. In its pleading, Reliant identifies itself as the winning bidder in the Vendor Selection process conducted by PECO Energy Company (PECO) for its Dynamic Pricing Plan. Reliant then goes on to raise objections to certain provisions of the Dynamic Pricing Plan seeking to change certain terms of the Plan that formed the basis of the Request for Proposal (RFP) and bids. The OCA submits that Reliant's Opposition to the Dynamic Pricing Plan is without merit, but more fundamentally, the OCA submits that the Commission should soundly reject this attempt to change the rules of the program *after* the bid has been conducted and the winner selected. Such a result would be unfair to other bidders, would be unfair to consumers, and would jeopardize the integrity of the bidding process.

On October 28, 2010, PECO filed a proposed Dynamic Pricing Plan with the Pennsylvania Public Utility Commission (Commission) in furtherance of its implementation of its Smart Meter Technology Procurement and Installation Plan, filed in accordance with Act 129

of 2008. The Company proposed a pilot program designed to determine effective combinations of rate design, technology, marketing and educational strategies for customers related to dynamic rate offerings such as Critical Peak Pricing and Time-of-Use Pricing programs. The Dynamic Pricing Plan was designed to include a multi-stage “test and learn” approach and was to target up to 200,000 customers.

The Dynamic Pricing Plan was the subject of litigation, including the filing of testimony by expert witnesses for PECO, the OCA, and the Office of Small Business Advocate. Other intervenors in the proceeding included Direct Energy, the Retail Energy Supply Association (RESA)¹, and the Philadelphia Area Industrial Energy Users Group (PAIEUG). The Office of Trial Staff (now, Bureau of Investigation and Enforcement) also filed a Notice of Appearance.

Before the scheduled hearings, a partial settlement was reached.² Through the partial settlement, various modifications to the Dynamic Pricing Plan pilot were agreed to by the settling parties. The settlement addressed issues such as the inclusion of additional Time-of-Use test cells in the pilot program, consumer protections for pilot program participants, further information gathering, cost recovery and reconciliation, and studies of alternative programs such as a peak time rebate program. Petition of PECO Energy Company for Approval of its Dynamic Pricing Plan, Docket M-2009-2123944, *slip op.* at 9-17 (Order entered April 15, 2011). The Commission approved the partial settlement and addressed the unresolved issue through its Final Order.

¹ RESA withdrew from the proceeding but remained on the service list.

² The unresolved issue concerned the allocation of the costs of the program between shopping and non-shopping customers. The Commission determined that the costs of the program should be collected only from default service customers since this program is offered by the default service provider to default service customers only. Petition of PECO Energy Company for Approval of its Dynamic Pricing Plan, Docket M-2009-2123944, *slip op.* at 19-20 (Order entered April 15, 2011).

Prior to the implementation of the program, the Commission initiated its Retail Markets Investigation at Docket No. I-2011-2237952. As part of the Investigation, the Commission issued an Order which recommended that EDCs consider contracting with an EGS to satisfy the Act 129 Time-of-Use requirement. See, Retail Market Investigation, Docket I-2011-2237952, Tentative Order of October 14, 2011 at 7; Final Order of December 16, 2011 at 47. In response to these Orders, PECO determined to attempt to solicit bids from EGSs to serve as the TOU supply vendor for the Dynamic Pricing Plan. PECO notified the Commission and the parties to the proceeding of this intent through letters dated January 27, 2012 and March 8, 2012. PECO also conducted a meeting with the interested parties from the Dynamic Pricing proceeding on March 6, 2012. PECO Letter of March 8, 2012.

PECO then issued its Requests for Proposals and completed its Vendor Selection process. By Petition filed on April 2, 2012, PECO identified Reliant Energy Northeast LLC as the winning Time-of-Use Supply Vendor and Freeman, Sullivan & Company as the Program Management Vendor. Petition at p. 6. PECO filed the instant Petition seeking expedited approval of the Plan Vendor Selection and modifications to the Dynamic Pricing Plan that would enable an EGS to provide Time-of-Use supply rather than the Company. Petition at p. 6.

On May 18, 2012, Reliant, the winning bidder for providing TOU supply, filed an opposition to the Dynamic Pricing Plan program. Reliant now seeks to change some of the terms of the program yet still retain its status as the winning bidder. The OCA objects to this attempt to change the terms of a program after the bid has been completed. Such a result calls into question the integrity of the RFP process and is unfair to other bidders as well as to consumers.

The program terms that Reliant seeks to change were fundamental to the type of program that was designed here—a test and learn pilot program of Time-of-Use rates. The

Dynamic Pricing Plan is an experimental program to test ways in which an EDC as the Default Service Provider can meet the requirements of Section 2807(f)(5) to offer Time-of-Use rates to all customers that have been provided smart meter technology. The purpose of the Dynamic Pricing Plan was to determine the best strategies for using the smart meters that are being deployed throughout PECO's service territory. This "test and learn" program is specifically designed to educate customers about time-of-use, test different incentive levels, and test different marketing strategies for time-of-use programs. The program also provides specific consumer protections, including a bill protection feature for residential customers, so that customers who enroll in the pilot program are not harmed if they encounter payment problems related to their participation in the program. These protections are particularly important since part of the program test concept is to assess the impact of dynamic rates on vulnerable customers.

Reliant seeks to change three terms of the program. Reliant seeks to have its name and telephone number included on the bill rather than the telephone number of PECO's time-of-use pilot support group; to change the pilot closeout procedures under which a customer who does not affirmatively respond to a Reliant offer to continue to receive generation supply from Reliant or another EGS would be returned to default service; and to add safeguards for Reliant related to regulatory compliance. Reliant Petition at p. 1-2. The OCA objects to any changes in the terms and conditions of a bid after the conclusion of the bid process and selection of the winning bidder. The OCA will specifically address Reliant's first two objections here.

In its first objection, Reliant states that it understands that neither Reliant's name nor telephone number will appear on the bill as the supplier of generation for the time-of-use program. As to this specialized pilot program, the OCA understands that the name of the program and the telephone number for the PECO support group for the Dynamic Pricing

program is to appear on the bill so that customers can contact the support group directly. The OCA submits that it is critical that the telephone number for PECO's support group appear on the customer's bill for this pilot program. The pilot is designed to inform, educate and support customers who sign up for these new pilot program rates. In particular, customers who may encounter high bills from the inability to shift usage or encounter payment problems as a result of the program will need the specialized services of the support group so that all negotiated consumer protections are available to them. The OCA submits that regardless of whether Reliant's name appears on the bill, the telephone number of the PECO support group for this specific program should be included on the bill and prominently noted.

Reliant also objects to the Plan Closeout protocol. Under the Plan Closeout protocol, Reliant will be able to make offers to participating customers to retain the customer on a time-of-use rate plan or to offer the customer another type of rate plan. If the customer takes no action to accept one of these offers, the customer will be returned to PECO's default service. PECO Petition, Plan Supplement, p. 27. It is critical to note that this program is designed to meet PECO's statutory obligation to provide default service customers with a time-of-use rate option. PECO has proposed to utilize the service of a competitively selected EGS to provide this service on a pilot basis for the term of the pilot program. Throughout this pilot, all communications are about the time-of-use options, how to manage electric use, and how to use the new technology that will be deployed. Customers will be asked to complete surveys and participate in focus groups about the marketing, messages and experience with time-of-use programs. Retail choice education is not part of the protocols or terms of the program. This program is designed to introduce customers to dynamic pricing, not to migrate customers to a competitive retail market.

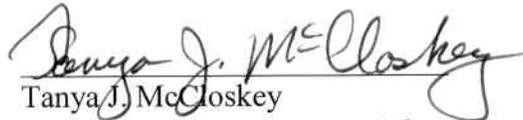
Additionally, the Dynamic Pricing Program here is a program that is to be offered by the default service provider to meet its statutory obligation to under Section 2807(f)(5). Here, PECO as the DSP is making the program available to customers with smart meters. The pilot program is limited in nature and will end in the first quarter of 2014. At that time, a new time-of-use program will need to be developed and new terms, conditions and rules will need to be established. For this pilot, it is important to close out the program as proposed by PECO so as to avoid any negative impact on customers or future program development.³

The OCA submits that the Commission should reject Reliant's opposition to the Dynamic Pricing Plan. The Commission should not place the integrity of the RFP process in jeopardy by considering changes to the terms and conditions of a program after the selection of a winning bidder. Moreover, the terms and conditions that Reliant seeks to change are fundamental to the design of the test and learn pilot program, essential to a successful pilot program on time-of-use rates, and essential to protections for consumers, including vulnerable customers, that agree to volunteer to test out these new dynamic rates.

³ The OCA would note that the Plan Closeout Activities were terms of the Dynamic Pricing Plan that formed the basis of the Request for Proposals. To change this term after the conclusion of the vendor selection process would be unfair to all other bidders and compromise the integrity of the bid process.

WHEREFORE, the Office of Consumer Advocate respectfully requests that the Commission reject Reliant's opposition to PECO's request for Expedited Approval of its Dynamic Pricing Plan Vendor Selection and Dynamic Pricing and Customer Acceptance Plan Supplement.

Respectfully Submitted,



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DATED: June 13, 2012
157544

CERTIFICATE OF SERVICE

RE: Petition of PECO Energy Company for Expedited Approval of its Dynamic Pricing Plan
Vendor Selection and Dynamic Pricing Plan Supplement
Docket No. P-2012-2297304

I hereby certify that I have this day served a true copy of the foregoing document, the Response of the Office of Consumer Advocate to Opposition of Reliant Energy Northeast LLC, 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 13th day of June 2012.

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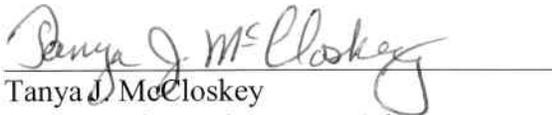
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