



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF SMALL BUSINESS ADVOCATE

September 10, 2012

E-FILED

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 Default Service Program
Docket No. P-2012-2283641**

Dear Secretary Chiavetta:

Enclosed for filing are the Exceptions, on behalf of the Office of Small Business Advocate, in the above-docketed proceeding. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Elizabeth Rose Triscari".

Elizabeth Rose Triscari
Assistant Small Business Advocate
Attorney ID #306921

Enclosures

cc: Parties of Record

Brian Kalcic

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for : Docket No . P-2012-2283641
Approval of Its Default Service Program :

CERTIFICATE OF SERVICE

I certify that I am serving two copies of the Exceptions, on behalf of the Office of Small Business Advocate, by e-filing, e-mail, and/or first-class mail (unless otherwise noted) upon the persons addressed below:

Hon. Dennis J. Buckley
Administrative Law Judge
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105
(717) 787-1191
(717) 787-0481 (fax)
debuckley@pa.gov
(E-mail and Hand Delivery)

Richard A. Kanaskie, Esquire
Carrie B. Wright, Esquire
Bureau of Investigation & Enforcement
Pa. Public Utility Commission
P. O. Box 3265
Harrisburg, PA 17105
(717) 787-1976
(717) 772-2677 (fax)
rkanaskie@pa.gov
carwright@pa.gov

Divesh Gupta, Esquire
Constellation Energy
100 Constellation Way - #500C
Baltimore, MD 21202
(410) 470-3158
(443) 213-3556 (fax)
divesh.gupta@constellation.com

Stephen L. Huntoon, Esquire
NextEra Energy Resources, LLC
801 Pennsylvania Avenue, N.W. - #220
Washington, DC 20001
(202) 349-3348
shuntoon@nexteraenergy.com

Anthony E. Gay, Esquire
Exelon Business Services Co.
2301 Market Street
P. O. Box 8699
Philadelphia, PA 19101-8699
(215) 841-4635
(215) 568- 3389 (fax)
anthony.gay@exeloncorp.com

Thomas P. Gadsden, Esquire
Kenneth M. Kulak, Esquire
Brooke E. Leach, Esquire
Morgan Lewis & Bockius, LLP
1701 Market Street
Philadelphia, PA 19103-2921
(215) 963-5234
(215) 963-5001 (fax)
tgadsden@morganlewis.com
kkulak@morganlewis.com

Tanya J. McCloskey, Esquire
Candis A. Tunilo, Esquire
Christy M. Appleby, Esquire
Aron J. Beatty, Esquire
Office of Consumer Advocate
555 Walnut Street - 5th floor
Harrisburg, PA 17101-1923
(717) 783-5048
(717) 783-7152 (fax)
tmccloskey@paoca.org
ctunilo@paoca.org
cappleby@paoca.org
abeatty@paoca.org
(E-mail and Hand Delivery)

Charles E. Thomas III, Esquire
Thomas Long Niesen & Kennard
P. O. Box 9500
Harrisburg, PA 17108-9500
(717) 255-7600
(717) 236-8278 (fax)
cet3@thomaslonglaw.com

Melanie J. Elatieh, Esquire
UGI Corporation
460 North Gulph Road
King of Prussia, PA 19406
(610) 992-3750
(610) 992-3258 (fax)
ElatiehM@ugicorp.com

Brian J. Knipe, Esquire
Buchanan Ingersoll & Rooney, PC
17 North Second Street - 15th Floor
Harrisburg, PA 17101-1503
(717) 237-4280
(330) 384-3875 (fax)
brian.knipe@bipc.com

Jeffrey J. Norton, Esquire
Carl R. Shultz, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street - 8th Floor
P. O. Box 1248
Harrisburg, PA 17101
(717) 237-6000
(717) 237-6019 (fax)
jnorton@eckertseamans.com
cshultz@eckertseamans.com

Thu B. Tran, Esquire
Robert W. Ballenger, Esquire
George D. Gould, Esquire
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102
(215) 981-3777
(215) 765-6481 (fax)
ttran@clsphila.org
rballenger@clsphila.org
ggould@clsphila.org

Todd S. Stewart, Esquire
Hawke McKeon & Sniscak, LLP
P. O. Box 1778
Harrisburg, PA 17105-1778
(717) 236-1300
(717) 236-4841 (fax)
tsstewart@hmslegal.com

Amy M. Klodowski, Esquire
FirstEnergy Solutions Corp.
800 Cabin Hill Drive
Greensburg, PA 15601
(724) 838-6765
(724) 830-7737 (fax)
aklodow@firstenergycorp.com

Patrick M. Cicero, Esquire
Harry S. Geller, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
(717) 236-9486
(717) 233-4088 (fax)
pulp@palegalaid.net

Daniel Clearfield, Esquire
Deanne M. O'Dell, Esquire
Edward Lanza, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street - 8th Floor
P. O. Box 1248
Harrisburg, PA 17101
(717) 237-6000
(717) 237-6019 (fax)
dclearfield@eckertseamans.com
dodell@eckertseamans.com
elanza@eckertseamans.com

Charis Mincavage, Esquire
Adeolu A. Bakare, Esquire
McNees Wallace & Nurick, LLC
P. O. Box 1166
Harrisburg, PA 17108-1166
(717) 232-8000
(717) 237-5300 (fax)
cmincavage@mwn.com
abakare@mwn.com

Andrew S. Tubbs, Esquire
Post & Schell, PC
17 North Second Street - 12th Floor
Harrisburg, PA 17101-1601
(717) 612-6057
(717) 731-1985 (fax)
atubbs@postschell.com

Barbara R. Alexander
83 Wedgewood Drive
Winthrop, ME 04364
(207) 395-4143
barbalex@ctel.net
(E-mail Only)

Thomas McCann Mullooly, Esquire
Trevor D. Stiles, Esquire
Foley & Lardner, LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202
(414) 297-5566
tmullooly@foley.com
tstiles@foley.com

Scott H. DeBroff, Esquire
Alicia R. Duke, Esquire
Rhoads & Sinon, LLP
One South Market Square - 12th Floor
P. O. Box 1146
Harrisburg, PA 17108-1146
(771) 237-6798
(717) 238-8623 (fax)
sdebroff@rhoads-sinon.com
aduke@rhoads-sinon.com

Melanie Santiago-Mosier
Washington Gas Energy Services, Inc.
13865 Sunrise Valley Drive - #200
Herndon, VA 20171
(703) 793-7565
mmosier@wges.com
(E-mail Only)

Jesse A. Dillon, Esquire
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18106
(610) 774-5013
(610) 774-6726 (fax)
jadillon@pplweb.com

Richard Hahn
LaCapra Associates, Inc.
One Washington Mall - 9th Floor
Boston, MA 02108
(617) 778-2467
rhahn@lacapra.com
(E-mail Only)

Tori L. Giesler, Esquire
FirstEnergy Service Company
2800 Pottsville Pike
P. O. Box 16001
Reading, PA 19612-6001
(610) 921-6658
(610) 939-8655 (fax)
tgiesler@firstenergycorp.com

Telemac N. Chryssikos, Esquire
Washington Gas Energy Services, Inc.
101 Constitution Avenue, N.W. - #319
Washington, DC 20080
(202) 624-6116
tchryssikos@washgas.com
(E-mail Only)


Elizabeth Rose Triscari
Assistant Small Business Advocate
Attorney ID No. 306921

Date: September 10, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of PECO Energy Company for : Docket No . P-2012-2283641
Approval of Its Default Service Program :**

**EXCEPTIONS
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE**

**Elizabeth Rose Triscari
Assistant Small Business Advocate
Attorney ID # 306921**

**For: Steven C. Gray
Acting Small Business Advocate
Attorney ID # 77538**

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

Dated: September 10, 2012

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I. INTRODUCTION

On January 13, 2012, PECO Energy Company (“PECO” or the “Company”) filed the Petition of PECO Energy Company for Approval of Its Default Service Program (“Petition”) with the Pennsylvania Public Utility Commission (“Commission”) pursuant to Section 2807(e) of the Public Utility Code, 66 Pa. C.S. §2807(e), and 52 Pa. Code §§54.181 – 54.189 and 69.1801 – 1817. The Petition seeks approval of PECO’s proposed second Default Service Program (“DSP II”) to secure default service supply for the Company’s customers for the period from June 1, 2013 through May 31, 2015.

The OSBA filed an Answer to the Petition as well as a Notice of Intervention and Public Statement on February 2, 2012.

An Answer and Notice of Intervention were also filed by the Office of Consumer Advocate (“OCA”) on February 2, 2012. A Notice of Appearance was filed by the Commission’s Bureau of Investigation and Enforcement (“I&E”) on February 7, 2012.

Interventions were also filed by: UGI Energy Services, Inc. d/b/a UGI EnergyLink (“UGIES”); Dominion Retail, Inc. d/b/a Dominion Energy Solution (“Dominion”) and Interstate Gas Supply, Inc. d/b/a IGS Energy (“IGS”); NextEra Energy Services, Pennsylvania, LLC and NextEra Power Marketing, LLC (“NextEra Entities”); Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”), and West Penn Power Company (“West Penn”) (collectively, “FirstEnergy Utilities”); Tenant Union Representative Network & Action Alliance of Senior Citizens of Greater Philadelphia (collectively, “TURN”); Retail Energy Supply Association (“RESA”); Philadelphia Area Industrial Energy Users Group (“PAIEUG”); Green Mountain Energy Company (“GMEC”); Direct Energy

Services, LLC (“Direct Energy”); ChoosePA Wind.com (“ChoosePA Wind”); Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”); FirstEnergy Solutions Corp. (“FES”); Exelon Generation Company, LLC and Exelon Energy Company (“ExGen”); Noble Americas Energy Solutions LLC (“Noble”); PPL EnergyPlus, LLC (“PPL EnergyPlus”); Washington Gas Energy Services, Inc. (“WGES”); and Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc. (collectively “Constellation”).

A Prehearing Conference took place on March 13, 2012, before Administrative Law Judge (“ALJ”) Dennis J. Buckley, where the parties agreed to a procedural schedule and discovery modifications.

The OSBA submitted the Direct Testimony, Rebuttal Testimony, and Surrebuttal Testimony of its witness, Brian Kalcic.

Evidentiary hearings were held in Harrisburg on May 22, 2012. Witnesses for the parties were cross-examined, and the testimony of the parties was entered into the record.

The OSBA submitted a Main Brief and Reply Brief in this proceeding on June 18, 2012 and July 3, 2012, respectively.

ALJ Buckley issued a Recommended Decision (“RD”) on August 29, 2012.

The OSBA submits these exceptions in response to the RD.

II. EXCEPTIONS

Exception No. 1: The ALJ erred by not recommending modification of PECO's proposed procurement plan for the Medium Commercial Class to ensure reasonable price stability for customers remaining on default service. (RD, at 24-25)

The ALJ recommended that the Commission approve PECO's proposed procurement plan for the Medium Commercial Class. That plan replaces the current acquisition of Medium Commercial default service supply through a mix of one-year fixed price full requirements contracts (85%) and spot-priced full requirements contracts (15%) with solely six-month fixed price full requirements contracts. These six-month contracts would run back-to-back with no laddering, resulting in 100% turnover of default service supply every six months. Such turnover creates a significant risk of unreasonable price volatility.

The RD determined that because a majority of Medium Commercial customers are now shopping, they "appear to have a diminished need for the same level of price stability" offered under PECO's previous default service plan.¹ However, the OSBA objects to PECO's Medium Commercial Class procurement plan because it wrongly deemphasizes price stability for those Medium Commercial customers that choose to remain on default service, in favor of making default service rates more market reflective.²

The OSBA recommends that PECO instead utilize one-year (non-laddered) fixed price full requirements contracts to acquire Medium Commercial default service supply.³

¹ RD at 25.

² OSBA Statement No. 1 at 5-6.

³ OSBA Statement No. 1 at 6.

The result would be that Medium Commercial default service supply would turnover every twelve months as opposed to every six months. This approach is similar to the procurement plan used in PECO's last default service plan and would maintain a reasonable degree of price stability.

ALJ Buckley's decision rejected the OSBA's recommendation, alleging that the OSBA "provides no justification for its objection" and "fails to address" the fact that a majority of Medium Commercial customers are now shopping.⁴ In actuality, the OSBA has acknowledged that the level of customer shopping is a factor to consider when determining the appropriate level of price stability. As ALJ Buckley correctly points out, the OSBA submitted testimony as such when discussing Small Commercial Class procurement.⁵

The OSBA does not, however, believe that higher shopping levels should obviate the need for price stability.⁶ Not all customers choose to shop. Not all customers who attempt to shop receive attractive offers. For whatever reason customers remain on default service, they should not be saddled with an unnecessarily and unreasonably volatile rate. Price stability should remain an important consideration when acquiring default service supply, regardless of how many customers choose to shop.⁷

For example, PECO's Small Commercial procurement plan replaces two-year contracts with one-year contracts. Similar to its attempted justification for the Medium Commercial procurement plan, PECO argues that competitive retail markets serving

⁴ RD at 25.

⁵ OSBA Statement No. 1 at 5-6.

⁶ *Id.* at 5.

⁷ *Id.*

Small Commercial customers have developed substantially since the start of its current default service plan and that therefore these customers do not require as much price stability in their default service rates.⁸ The OSBA did not object to PECO's Small Commercial procurement plan because unlike the Medium Commercial plan, it is counterbalanced by the fact that the one-year contracts would now be laddered.⁹ Laddering the contracts will limit turnover in Small Commercial default service supply to 50% every 6 months. The OSBA determined that this approach should provide reasonable price stability for Small Commercial default service customers in light of the percentage of customers shopping.¹⁰

In contrast, PECO's Medium Commercial procurement plan would result in a 100% turnover in default service supply every 6 months. Even considering the level of Medium Commercial customers shopping, this approach could lead to unreasonable default service price volatility for those customers remaining on default service.

At the expense of reasonable price stability, PECO has instead emphasized market reflective rates in crafting its Medium Commercial procurement plan. PECO argues that its plan does not reflect a current market price standard, but simply the consideration of the appropriate level of price stability in light of developing retail opportunities.¹¹ However, market reflective rates have clearly trumped price stability in PECO's proposal. PECO's plan is thus inconsistent with the Commission's *Act 129 Final Rulemaking Order*, which states that "Act 129 explicitly repealed the 'prevailing market

⁸ PECO Statement No. 3 at 27.

⁹ OSBA Statement No. 1 at 5.

¹⁰ *Id.* at 5-6.

¹¹ PECO Initial Brief at 17.

prices' standard and declared instead that the utilities' generation purchases must be designed to ensure 'adequate and reliable service' at the 'least cost to customers over time.'"¹²

The *Act 129 Final Rulemaking Order* affirmed the importance of price stability versus market price in default service procurement, stating in relevant part:

We disagree with RESA's overall recommendations as to the proper interpretation of the "least cost" standard as mandating that default service rates approximate, on a prospective basis, the market price of energy. Such an interpretation would signal retention of the "prevailing market price" standard that has been expressly replaced under Act 129. Moreover, this interpretation conflicts with the Act 129 objective of achieving price stability which dictates consideration of a range of energy products, not just those that necessarily reflect the market price of electricity at a given point in time. Price stability benefits are very important to some customer groups in that exposing them to significant price volatility through general reliance on short term pricing would be inconsistent with Act 129 objectives.¹³

Although the existence of competitive retail opportunities may be a factor to consider when evaluating default service procurement proposals, reasonable price stability should not be sacrificed in favor of making rates more market reflective.

¹² *Implementation of Act 129 of October 15, 2008; Default Service And Retail Electric Markets*, Docket No. L-2009-2095604 (Order entered October 4, 2011) at 4.

¹³ *Id.* at 39-40.

III. CONCLUSION

Wherefore, the OSBA respectfully requests that the Commission modify PECO's proposed procurement plan for the Medium Commercial Class in accordance with the OSBA's recommendations.

Respectfully submitted,


Elizabeth Rose Triscari
Assistant Small Business Advocate
Attorney ID No. 306921

For:

Steven C. Gray
Acting Small Business Advocate
Attorney ID No. 77538

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

Dated: September 10, 2012