

COMMONWEALTH OF PENNSYLVANIA



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September 10, 2012

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
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 please find the Office of Consumer Advocate's Exceptions to the Recommended Decision in the above-captioned proceeding.

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

Sincerely,

A handwritten signature in cursive script that reads "Candis A. Tunilo".

Candis A. Tunilo
Assistant Consumer Advocate
PA Attorney I.D. # 89891

Enclosures

cc: Hon. Dennis J. Buckley, ALJ
Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

EXCEPTIONS
OF THE OFFICE OF CONSUMER ADVOCATE

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Dated: September 10, 2012

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I. INTRODUCTION

On August 29, 2012, the Office of Administrative Law Judge issued the Recommended Decision of Administrative Law Judge (ALJ) Dennis J. Buckley in PECO Energy Company's (PECO or Company) 2012 Default Service Proceeding (DSP II). PECO filed DSP II for service beginning on June 1, 2013 and ending May 31, 2015. The Office of Consumer Advocate (OCA) files these Exceptions to the Recommended Decision to ensure that customers continue to receive default service consistent with Pennsylvania law while opening up new opportunities for customers to receive additional benefits in the retail market.

The Pennsylvania Public Utility Commission (Commission) has been investigating the retail electricity market (RMI) as this proceeding has unfolded. The Commission has issued two orders providing recommendations and guidance for the default service plans and for certain competitive enhancement programs.¹ The OCA submits that the primary task in this proceeding is to ensure that default service is provided in a reasonable manner consistent with Pennsylvania law, while at the same time providing cost effective improvements to the retail market that will encourage customers to take advantage of competitive retail offers if they so choose.

The provision of default service and the enhancements that have been proposed by the Company and other parties in this proceeding are closely interrelated. The OCA commends ALJ Buckley on his detailed examination of the many interrelated and complicated issues in this case. The OCA submits that it is important to recognize at the outset that during the litigation and briefing of this PECO DSP II matter, the parties did not have the benefit of the Commission's recently issued Order in the FirstEnergy Companies' default service plans. See Joint Petition of

¹ Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans, Docket No. I-2011-2237952, Order (Dec. 16, 2011) (December 16 Final Order); Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan, Docket No. I-2011-2237952, Order (March 2, 2012) (IWP Order).

Metropolitan Edison Company, Pennsylvania Electric Company, and West Penn Power Company for Approval of Their Default Service Programs, Docket Nos. P-2011-2273650 *et al.*, Order (Aug. 16, 2012) (FirstEnergy DSP II). The OCA recognizes that the Commission has given certain guidance in the IWP Order and has provided a decision for the FirstEnergy Companies in the context of the FirstEnergy Companies' proposals. In light of the Commission's recent determinations and given the two-year time frame for this default service plan, the OCA has determined that it will limit its Exceptions to ALJ Buckley's Recommended Decision.

In his Recommended Decision, ALJ Buckley recommended the adoption of PECO's proposed procurement plan for residential customers. OCA witness Hahn proposed certain modifications to improve upon the procurement plan and better meet the goals of Act 129. See gen'ly OCA St. 1; OCA St. 1-R; OCA St. 1-S. The ALJ did not accept the OCA's proposed modifications to PECO's plan in order to diversify the product mix through the inclusion of block and spot products and to adjust the timing of certain procurements. While the OCA continues to support the use of block and spot products for residential default service and believes that the added diversity will better achieve the least cost supply for residential customers over time, the OCA will not except to the ALJ's recommendation in this case given the particular circumstances presented here.

The OCA also recognizes that the Commission did not adopt the use of block and spot products in the FirstEnergy DSP II Order given the potential for reduced default service load resulting from the competitive enhancement programs that will be part of the current default service plans. The Commission specifically stated that "it is not our intention to establish a precedent in this proceeding regarding the utilization of block procurements for default service

... .” FirstEnergy DSP II Order at 26. The OCA agrees with the Commission that no precedent should be established regarding the use of procurement methods adopted in this round of default service proceedings, particularly in light of the upcoming competitive enhancement programs. Given the unique nature of this default service plan period, the OCA will not except to the ALJ’s recommendation and asks that the Commission also indicate that it is not establishing precedent in this case regarding the use of block and spot supply in the future.

Similarly, ALJ Buckley did not accept the OCA’s proposal to hold back some of the Fixed Price Full Requirements (FPFR) tranches until after the enrollment period for the Opt-In Auction Program is completed. R.D. at 31. The OCA recommended that one of its two hold back proposals be adopted in order to mitigate the impact on the FPFR suppliers of a large segment of default service customers moving to Electric Generation Supplier (EGS) service at one time through PECO’s Opt-In Auction Program. OCA witness Hahn testified that FPFR suppliers may increase their prices in order to mitigate this volumetric risk. See OCA St. 1 at 11-12. The OCA recommended incorporating a hold back of default service supply until the amount of customers participating in PECO’s Opt-In Auction Program are known as a consumer protection that will assure that the Opt-In Auction Program does not inadvertently increase the price of default service.

The ALJ did not accept this proposal relying on the Commission’s determination in the FirstEnergy DSP II Order. In the FirstEnergy DSP II Order, the Commission found that eliminating the block and spot procurement and including 12-month contracts in the supply mix was sufficient mitigation so that the hold back protection was unnecessary. FirstEnergy DSP II Order at 29. Given PECO’s inclusion of 12-month supply contracts and the ALJ’s

recommendation to not include block and spot products, the OCA will not pursue the hold back proposal in this case under these circumstances.

The OCA would note, though, that the hold back proposal was only one of two mechanisms proposed by the OCA to mitigate the price impacts of the Opt-In Auction Program on the FPFRR default service supply contracts. The OCA also proposed a second mechanism – that the customer participation cap for the Opt-In Auction Program be set at 20% of eligible residential customers. See OCA M.B. at 67-70. In the absence of the OCA’s proposed hold back of supply, a 20% customer participation cap is an essential consumer protection that should be adopted, especially since the Opt-In Auction Program is a brand new, untested program. The OCA, therefore, will except to the ALJ’s recommended rejection of this proposal.

The OCA has also determined that it will not except to certain aspects of ALJ Buckley’s recommendations regarding the retail competitive enhancement programs. The design of these programs has been the subject of much testimony in this case, and the ALJ carefully considered the recommendations of the parties. The ALJ recommended approval, in substantial part, of PECO’s proposed designs, which the OCA can accept for the purposes of this proceeding in conjunction with PECO’s procurement plan. The ALJ, however, did not accept certain key consumer protections that the OCA submits are critical to any competitive enhancement program that will be deployed. The OCA provides its Exceptions below to demonstrate the need for these critical consumer protections in the competitive enhancement programs.

The OCA will also provide its Exceptions below to other aspects of the ALJ’s Recommended Decision regarding the reconciliation of the Generation Supply Adjustment Charge (GSA), the inclusion of IT capital costs in the GSA, and the adoption of PECO’s proposal to share in the benefits and costs of the Auction Revenue Rights (ARRs).

II. EXCEPTIONS

A. Rate Design and Cost Recovery.

Exception 1: The ALJ Erred in Rejecting the OCA’s Proposal for PECO To Reconcile Its Default Service Costs and Revenues Using a 12-Month Rolling Average Reconciliation. (R.D. at 41-44; OCA M.B. at 37-40; OCA R.B. at 20-22).

The ALJ recommended that the Commission adopt PECO’s proposal to move from a quarterly reconciliation of actual costs and billed revenues collected through the Generation Supply Adjustment (GSA) surcharge for the residential class to an annual reconciliation. R.D. at 44. The OCA agrees that a 12-month reconciliation period is reasonable and should be used. The difference between PECO’s proposal and OCA’s proposal is that PECO proposed to reconcile its over- and under-collections annually, and the OCA proposed that PECO reconcile its over- and under-collections using a 12-month rolling average. The OCA submits that using a 12-month rolling average reconciliation for PECO’s over- and under-collections will result in a better combined performance in terms of low price variance and a low sum on over- and under-collections. See OCA St. 1 at 17.

The OCA submits that the ALJ appears to have misconstrued the OCA’s proposal in that the ALJ recommends that the Commission “reject the proposals of RESA, Dominion and the OCA to continue with quarterly reconciliation” Id. at 44. The OCA’s reconciliation proposal was not similar to RESA’s and Dominion’s proposals for a quarterly reconciliation. Instead, the OCA’s proposal was very similar to PECO’s proposal. Both the OCA and PECO proposed that PECO continue to update its “C Factor” (latest procurements) on a quarterly basis but to use a 12-month period for reconciliation of over- and under-collections. See PECO St. 5 at 10; OCA St. 1 at 16. Where PECO and the OCA’s proposals differ is with regard to the method for reconciliation of the “E Factor” (over- or under-collections of the GSA). See OCA

St. 1 at 17; OCA M.B. at 37-38. PECO proposed to move to an annual reconciliation of the “E Factor.” PECO St. 5 at 10. The OCA supported PECO proposal to move to a 12-month reconciliation of the “E Factor” but recommended that PECO modify its proposal and move to a 12-month rolling average reconciliation of the GSA in order to keep the Price to Compare (PTC) more current. OCA St. 1 at 17-18.

OCA witness Hahn explained why a 12-month rolling average reconciliation of the “E Factor” is preferable to an annual reconciliation as follows:

I analyzed a hypothetical situation where a utility purchased power supplies and was exposed to price and volume risks. I assumed that certain purchases were made and that actual prices and volumes changed over a four year period, and that actual costs were reconciled to expected costs. I then measured the variance in quarterly price and the sum on the quarterly over- or under-collections over those same four years. I analyzed this situation under three types of reconciliation mechanisms: (1) quarterly, (2) annually, and (3) a 12-month rolling average performed quarterly. This hypothetical illustration is provided in Exhibit OCA-RSH-8. The 12-month rolling average reconciliation performed quarterly resulted in the best combined performance in terms of both a low price variance and a low sum on over / under collections.

OCA St. 1 at 17. (Emphasis added). See also OCA St. 1 at Exh. OCA-RSH-8. Although, PECO witness Cohn objected to OCA witness Hahn’s analysis, Mr. Hahn defended that analysis as follows:

Mr. Cohn asserts that my reconciliation example provided in Exhibit OCA-RSH-8 is flawed because I compare estimated revenue to actual costs, instead of actual revenue to actual costs, and that I include price variation in this example. I disagree that this example is flawed. This example was provided to illustrate how the three reconciliation mechanisms perform under changing market conditions that produce a mismatch between revenues and costs. Mr. Cohn may disagree with my labeling of the parameters in Exhibit OCA-RSH-8, but the illustration is still valid. Mr. Cohn appears to agree with me that quarterly reconciliations are the least desirable approach, as it results in large swings in both the over / (under) collections balance and fluctuation in rates. I continue to believe that a rolling average reconciliation methodology results in the best outcome.

OCA St. 1-S at 9. (Emphasis added). See also OCA St. 1 at Exh. OCA-RSH-8.

In the Recommended Decision, the ALJ noted in his disposition of this issue that an annual reconciliation “means that fluctuations in default service prices will be smoothed out and result in clearer price signals for both customers and EGSs.” R.D. at 44-45. The OCA agrees and submits that a 12-month rolling average reconciliation will go a step further and promote a better atmosphere for shopping, as it will create a more stable, up to date and predictable PTC. The OCA submits that a 12-month rolling average reconciliation method should have the effect of smoothing out the PTC, as a longer time frame is used to average out the “E Factor.” Less volatility in the PTC could lead to greater consumer confidence in accepting EGSs’ offers that provide a specified savings over a current PTC. As such, the OCA’s recommendation to implement a 12-month rolling average reconciliation for PECO’s GSA should be adopted.

Exception 2: The ALJ’s Decision Incorrectly Treated Information Technology (IT) As a Capital Item and Incorrectly Applied The Law Regarding Including The Recovery Of Capital Costs In A Surcharge. (R.D. at 47-48; OCA M.B. at 40-43; OCA R.B. at 23-25).

In this case, PECO requested a change in its tariff language to recover through its Generation Supply Adjustment (GSA) surcharge the costs incurred to implement DSP II, including what PECO termed as “capital expenditures related to information technology (“IT”) changes.” PECO R.B. at 22; PECO M.B. at 41. PECO proposed to amortize the capital costs of any necessary IT or other changes over 5 years and earn a return on equity at the rate allowed under its Smart Meter Surcharge. PECO St. 5 at 18. The ALJ adopted PECO’s proposal and stated that the OCA’s reliance on the Popowsky case was misplaced because PECO’s claim does not involve improvements to physical distribution facilities. R.D. at 48; Popowsky v. Pa. P.U.C., 869 A.2d 1144 (Pa. Commw. Ct. 2005) (CSIC or Popowsky). Specifically, the ALJ stated that “PECO is seeking to include IT capital costs incurred in connection with its obligation as a

default service provider in its service territory for which cost recovery is explicitly allowed.”
R.D. at 48.

The OCA submits that the law is clear that capital items are not recoverable in a surcharge unless specifically identified in a statute. Moreover, by allowing PECO a return on equity through the surcharge, PECO will be profiting on its default service rates.

The OCA submits that PECO’s proposal to recover capital costs through the GSA and include a guaranteed equity return thereon is improper. Specifically, OCA witness Hahn testified:

In the response to OCA Set VII, PECO states that it expects to invest \$272,500 in IT systems to implement DSP II, and \$2.2 million in system to implement the retail market initiatives, such as the Retail Opt-In Auction program. The \$272,500 investment in capital to implement DSP II is very small relative to the size of the Company and not significant enough to justify a separate charge in the GSA. Furthermore, it is my understanding that the Pennsylvania courts have previously determined that it is inappropriate to recover capital costs via a surcharge, unless specifically permitted by law.

OCA St. 1 at 18. (Internal citation omitted).

The ALJ found that recovery of these costs is not inconsistent with the case law as these are not physical facilities. R.D. at 48. The ALJ’s R.D. misreads the case law on this issue. The Pennsylvania Industrial Energy Coalition v. Pa. P.U.C. and Popowsky v. Pa. P.U.C., cases are not limited to the recovery of improvements to physical facilities as the ALJ has stated. Pennsylvania Industrial Energy Coalition v. Pa. P.U.C., 653 A.2d 1336 (Pa. Commw. Ct. 1995) (PIEC); Popowsky v. Pa. P.U.C., 869 A.2d 1144 (Pa. Commw. Ct. 2005) (CSIC or Popowsky). The cases have firmly established a policy that, in the absence of specific statutory authority, capital costs can only be recovered through base rates, not in a surcharge. The PIEC case involved the recovery of costs for a Demand Side Management surcharge, and like in the instant case, the statute there permitted “the recovery of all costs which are prudent and reasonable.”

PIEC at 1347. In PIEC, the Commonwealth Court held that Section 1315 of the Public Utility Code requires that capital costs such as physical facilities be recovered in a base rate case only, not through a surcharge mechanism, because PIEC relied on the used and useful principle that all such costs must be used and useful in order to be included in rates. PIEC at 1347. The Court reaffirmed this principle in the Popowsky/CSIC case, stating: “the ‘used and useful’ principle enunciated in 66 Pa.C.S. § 1315, prevent[s] the inclusion of capital improvements in a surcharge.” Popowsky at 1155.

While PIEC and Popowsky both involved physical capital facilities, the principle underlying both of those cases is still applicable here. PECO and the ALJ R.D. attempt to distinguish the Popowsky case because the Popowsky case involved a water utility’s capital expenditures for physical distribution facilities improvements. R.D. at 48; PECO M.B. at 42. PECO states that this proposal is to recover IT-related capital costs, not distribution facilities improvements capital costs, and that this means that Popowsky is not applicable here. PECO M.B. at 42. The OCA submits that the Popowsky holding is based on the determination that the used and useful principle does not allow for the recovery of capital costs through a surcharge, whether they are physical facilities or some other capital item, because a Company cannot earn a return on a capital item unless it is “used and useful.” The principle is the same regardless of whether the capital item in question is physical plant or some other capital item. There is no ratemaking distinction between these different types of capital items. The Company’s attempt to distinguish different types of capital costs fails. These are costs the Company seeks to treat as rate base items with a return on equity earned on these costs and to collect through a surcharge.

There is no statutory law which permits the recovery of capital costs in the GSA. The ALJ states that Section 2807(e)(3.9) “does not limit such costs to non-capital items.” 66 Pa.C.S.

§ 2807(e)(3.9). However, the explicit language of Section 2807(e)(3.9) never permits the recovery of capital items either. Id. In the very same statute, Act 129, the legislature specifically allowed the recovery of capital costs in the smart meter technology surcharge. 66 Pa. § 2807(f)(7). The OCA submits that the fact that the legislature specifically allowed capital cost recovery in one portion of the statute and did not identify it in the DSP section demonstrates that the legislature intended for these cost recovery surcharges to be different. This reinforces the principles established in the PIEC and Popowsky cases that unless it is specifically authorized, by statute, capital items cannot be recovered in a surcharge.

The ALJ also did not correctly apply the Commission regulations regarding costs that are recoverable under the GSA. R.D. at 48. The Commission's regulations are clear that the GSA is only to recover the costs of providing default service. The GSA is a straight pass-through of the costs of providing default service and including a return component impermissibly changes the cost recovery mechanism into a profit-making surcharge. The Company cannot be permitted to earn a profit on providing default service through a reconcilable surcharge. Section 54.187(a) of the Commission's regulations state:

(a) The costs incurred for providing default service shall be recovered through a default service rate schedule. The rate schedule shall be designed to recover fully all reasonable costs incurred by the DSP during the period default service is provide to customers, based on the average cost to acquire supply for each customer class.

52 Pa. Code § 54.187(a). These regulations permit full recovery of all reasonable costs for providing default service, but there is no specific indication that any capital costs may be recovered in a surcharge.

PECO proposes to treat these “capital” items as expenses with a return component added. OCA witness Hahn described the difference between the treatment of expenses and capital items in his Surrebuttal Testimony:

The references cited in Mr. Cohn’s rebuttal testimony clearly state that expenses associated with the provision of default service are recovered via the GSA. There is no mention of recovery of capital investments in the GSA. I do note that there is a difference between the amortization of one-time expenses over a specific period of time and the recovery of capital invested in physical assets. For example, if IT labor costs are incurred to implement a new feature of the default service program, it might be appropriate to amortize these non-recurring expenses over time rather than expensing them in one month. This is the case in Exhibit F to the Joint Settlement Petition for PECO’s DSP I, which states that IT expenses are amortized over 5 years with a 6% return. This is different than what the Company proposes in DSP II. In Exhibit ABC-3, the Company requests recovery of certain costs using a capitalization structure from its most recent Quarterly Earnings Report and a return on equity per the latest Smart Meter Surcharge. This approach is clearly the type of return sought on capital investments and not amortization of non-recurring expenses. Mr. Cohn’s proposal to recover the cost of capital investments in the GSA should not be adopted.

OCA St. 1-S at 11. (Emphasis in original).

The OCA requests that the Commission deny PECO’s request to include capital costs in its GSA surcharge.

Exception 3: The ALJ Erred in Recommending Adoption of PECO’s Proposal To Share Auction Revenue Rights Revenues and Costs with Customers. (R.D. at 48-50; OCA M.B. at 43-46; OCA R.B. at 25-27).

The ALJ recommended that the Commission adopt PECO’s proposal to allocate 50% of the costs and benefits associated with Auction Revenue Rights (ARRs)² to PECO’s shareholders

² As described by OCA witness Hahn:

Auction Revenue Rights (“ARRs”) are entitlements allocated annually to Firm Transmission Service Customers that entitle the holder of each ARR to receive an allocation of the revenues (or charges) from the Annual Financial Transmission Rights (“FTR”) Auction. FTRs are financial products that allow market participants to hedge against the cost of congestion. FTRs are sold by PJM via auctions. PJM distributes the revenues from these FTR auctions to holders of ARR. ARR are allocated to firm transmission customers based upon historic transmission paths used to supply that customer’s load. The firm transmission customer must elect the paths for which it desires

and 50% to customers. R.D. at 50. The OCA respectfully submits that the ALJ erred in recommending that PECO's proposal be adopted. PECO's proposal will simply provide additional profits to the Company's shareholders without doing anything above and beyond what the Public Utility Code requires. As OCA witness Hahn testified, there is no serious risk to PECO of a potential loss in nominating ARR. See OCA St. 1-S at 10. Even if PECO incurred a net loss from ARRs, however, the Company would collect that loss from customers through the GSA and be made whole. See OCA St. 1 at 15-16.

Although PECO asserts that a risk of loss does exist with regard to ARRs (see PECO St. 5-R at 9), the OCA submits that such risk is negligible. OCA witness Hahn testified that there is little risk of PECO choosing wrong transmission paths, so very little risk of loss exists for PECO. Specifically, Mr. Hahn testified that "[c]ongestion patterns of the ARRs do not change very much. Major construction of new transmission facilities would be required to alter or reduce congestion." OCA St. 1 at 15. In reality, ARRs have produced significant benefits for PECO's default service customers. In fact, PECO has realized only net benefits from ARRs. OCA St. 1 at 15; OCA St. 1-S at 10. As Mr. Hahn stated: "[i]f there was a serious risk of PECO choosing the 'wrong path,' these benefits would be smaller or perhaps negative." OCA St. 1-S at 10. If PECO incurs a loss in nominating ARRs, however, the Company would be made whole for the loss through the GSA surcharge, which passes along to customers all of the benefits and costs of ARRs. See OCA St. 1 at 15.

The OCA further submits that appropriately managing ARRs is part of PECO's responsibilities as an EDC, akin to maintaining poles and wires. As OCA witness Hahn testified:

ARRs. It is theoretically possible that an ARR can be a financial liability as well as a financial benefit.

OCA St. 1 at 14.

The management of ARRs is associated with serving loads, as only Load Serving Entities (“LSEs”) are afforded the opportunity to nominate and receive ARRs. Since PECO is required to be an LSE by virtue of its role as a default service provider, it is clearly within the realm of PECO’s core business to manage ARRs.

OCA St. 1-S at 10. No other Pennsylvania EDC employs such a sharing mechanism for ARRs, and PECO has not provided adequate reasons for changing the status quo in this regard.

The OCA submits that there is no need to provide additional incentive to the Company to do what is already required under the Public Utility Code, and therefore, PECO’s proposal to share benefits and costs of ARRs should be rejected.

Exception 4: The ALJ Erred in Not Adopting the OCA’s Request for Information To Be Provided Regarding the Elimination of Alternative Energy Portfolio Standards Surcharge. (R.D. at 50-51; OCA M.B. at 47; OCA R.B. at 27).

The ALJ erred in not adopting the OCA’s request for additional detail regarding the elimination of the Alternative Energy Portfolio Standards (AEPS) surcharge. The ALJ stated in footnote number 15 that:

The OCA agreed with PECO’s proposal but stated that PECO must provide sufficient detailed information to assess “individual costs of DSP and AEPS compliance.” OCA St. No. 1 at 17. However, the OCA did not provide any testimony regarding what additional information it believes may be necessary to conduct this assessment beyond the information already provided by PECO under its tariff regarding DSP and AEPS costs.

R.D. at 51, fn. 15. Based on this assessment, the ALJ rejected the OCA’s request that additional detail be provided. The ALJ is correct that overall, the OCA supports PECO’s proposal to eliminate the separate AEPS surcharge and combine the reconciliation of the DSP costs and the AEPS costs into one surcharge, the GSA surcharge. PECO St. 5 at 12-13. The OCA submits that the ALJ misunderstood the information the OCA was requesting be provided in the GSA surcharge.

PECO witness Cohn identified in Exhibits ABC-2 and ABC-3 the categories of AEPS and DSP costs to be used to calculate the GSA surcharge, but PECO never stated that it will itemize these costs for review in its reconciliation filing. PECO St. 5 at Exh. ABC-2, ABC-3; PECO R.B. at 25. The OCA has not challenged these categories and is not asking for any additional categories of information to be provided at this time. In his Direct Testimony, however, OCA witness Richard Hahn requested that PECO provide sufficient detail in its GSA reconciliation filings to be able to assess the appropriateness of the individual costs of the DSP and AEPS compliance. OCA St. 1 at 17. Specifically, the OCA requests that PECO provide the itemized cost details presented in the categories of information described in the tariff pages at Exhibits ABC-2 and ABC-3 in its GSA reconciliation filings. Nowhere in its filing does PECO state that it will provide the specific itemized cost details about how the GSA, and the individual DSP and AEPS compliance cost components, are actually calculated in its GSA reconciliation filings. PECO only states that it will use those categories of information to calculate the GSA. The OCA is requesting that this detailed information be included and itemized in its GSA reconciliation filings.

The OCA requests that the Commission clarify in its decision that PECO will provide in its GSA reconciliation filings, the itemized cost details for the categories presented in the tariff pages of Exhibit ABC-2 and ABC-3.

B. Retail Market Enhancements.

Exception 5: The ALJ Erred By Not Recommending Adoption of the OCA's 20% Customer Participation Cap for the Opt-In Auction Program. (R.D. at 60-61; OCA M.B. at 66-70; OCA R.B. at 40-43).

The ALJ recommended that a 50% customer participation cap be adopted for PECO's Opt-In Auction Program, although the ALJ noted that PECO did not have a preference for a 50%

cap or the 20% cap proposed by OCA. R.D. at 61. In recommending a 50% customer participation cap, the ALJ relied on the IWP Order. R.D. at 61. The OCA respectfully submits that a 20% customer participation cap should be adopted for PECO's Opt-In Auction Program in order to mitigate the increased volumetric risk in providing default service, which could result in an increase in the cost of providing default service. See OCA M.B. at 67-70.

To be clear, it is the OCA's position that all non-CAP residential default service customers should be solicited for participation in PECO's Opt-In Auction Program.³ The maximum number of customers who should be permitted to enroll in the program, however, should be limited to no more than 20% of the total number of customers eligible for solicitation. The OCA's primary concern in this regard is that a larger pool of potential Opt-In Auction Program enrollees will directly contribute to uncertainty for Fixed Price Full Requirements (FPFR) suppliers bidding in PECO's residential default service auctions that will take place prior to commencement of the program. Such uncertainty will likely increase the level of risk premiums that such FPFR suppliers will include in their default service bids, thereby increasing the price of default service. See gen'ly OCA M.B. at 67-70.

As OCA witness Hahn testified:

I am concerned that the Retail Opt-in Auction program as proposed by PECO will introduce an additional volumetric risk, over and above the existing volumetric risk, in providing residential default service, which will increase the cost of default service. Competitive suppliers that bid to supply default service will need to assess the risk that up to half of the default service load that they win the right to supply will be taken away from them after they have finalized their prices. Accounting for this risk will require these suppliers to raise their prices through additional risk premiums.

³ As discussed in OCA's Main Brief, the OCA supported PECO's proposal to not include CAP customers in its Retail Market Enhancement Programs. See OCA M.B. at 85. Therefore, CAP customers should not be solicited for the programs.

OCA St. 1 at 10. Additionally, there are policy reasons why OCA's proposed 20% cap should be adopted. OCA witness Alexander testified:

This program should limit enrollment to 20% of residential default service customers. My position is a not a reflection of any objection to customer choice and the development of a retail market. Rather, opening up this program that has little or no precedent or experience to rely upon to predict results carries significant risks that may adversely impact customer opinion about the retail market. If 50% of the default service customers can enroll and far less agree to enroll, the Retail Opt-in Auction may be publicly viewed as a failure. If 20% can participate and far more seek to enroll and participate, this would be an excellent indication of customer interest in the retail market and EGSs would have the option to offer the same terms to additional customers outside the auction process itself. Indeed, such a result would stimulate even more EGS offers to these customers. The purpose of this program should be to leverage the EDC involvement in promoting this program to encourage those customers who have not yet entered the retail market for generation supply service with a specific offer that is designed to assure a positive experience. It would be more prudent to start with reasonable expectations to jump-start the retail market.

OCA St. 2 at 10.

The OCA's proposal is designed to curb the risk of increased default service prices, while ensuring a successful Opt-In Auction Program for all stakeholders. A 20% customer participation cap would provide a better level of load certainty for FPFR suppliers. If the cap is reached and additional customers exhibit interest in the program, EGSs could make similar offers to the additional customers directly, outside of the program. As such, the OCA respectfully requests the Commission to review the substantial evidence provided by the OCA on this issue and adopt the OCA's recommendation to implement a 20% customer participation cap for PECO's Opt-In Auction Program.

Exception 6: The ALJ Erred in Recommending that Customers Calling with a High Bill Complaint Be Among the Group Solicited for the Customer Referral Program. (R.D. at 71-72; OCA M.B. at 82-84; OCA R.B. at 50-51).

The ALJ discusses the Standard Offer Program in the R.D., which included the provision that customers calling with a high bill complaint would be solicited for the Standard Offer Program. Specifically, the R.D. provides:

PECO's proposal is consistent with the Commission's guidance and should be adopted. The OCA proposal that the Standard Offer Program be offered only during calls in which the customer is seeking to "establish service, transfer service to a new location, or is specifically seeking to discuss customer choice and/or the referral program," is unsupported and unduly limiting.

R.D. at 71-72. The ALJ erred in his decision regarding this issue, as the OCA provided specific support and recommendations regarding the exclusion of high bill complaint calls.

Contrary to the ALJ's R.D., the OCA submits that its proposal is supported and is not unduly limiting. The OCA proposal provides that:

The Referral program should be affirmatively offered to new customers or those moving within the EDC service territory, but other customer calls to the EDC should not affirmatively require an explanation of the Referral Program unless there is a customer request to do so.

OCA St. 2 at 16. OCA witness Alexander testified regarding the potential problems that could arise with other types of calls being included and raised several possible scenarios where a referral to the Standard Offer Program may be inappropriate. As a result of these potential problems, calls relating to utility obligations to respond to high bills, billing and usage questions, payment difficulties or payment plan options, collection, service quality and outages, and appointments for utility service in the field, should not be included in the obligation to present the Referral Program. The focus of these calls should only be on resolving the customer's specific concerns without delay. OCA witness Alexander testified:

An approach that would require PECO to market the Customer Referral program to customers who call relating to their bills, credit and collection issues, reliability of service, or other calls unrelated to customer choice may result in a degradation of essential consumer protections. Customers should be assured that the service

and concern that they initiated relating to their PECO bill or PECO's customer service will be handled with a high priority and without delays.

OCA St. 2 at 16; see also, OCA St. 2-S at 4-5.

Burdening such calls with unwanted or unsolicited discussions may jeopardize quality of service in direct contravention of Section 2807(d). 66 Pa.C.S. § 2807(d). Section 2807(d) states:

The electric distribution company shall continue to provide customer service functions consistent with the regulations of the commission, including meter reading, complaint resolution and collections. Customer services shall, at a minimum, be maintained at the same level of quality under retail competition.

66 Pa.C.S. § 2807(d). PECO responded that quality of service will not be degraded as it will resolve the reason for the call before offering the Standard Offer Program. PECO R.B. at 44.

The OCA submits that with a high bill problem, customer satisfaction can be ambiguous. Unlike a call requesting the transfer of service or a new service request call, high bill complaint calls may not be resolved in a single customer contact. These calls may be escalated through supervisors or result in field work, such as meter testing, or even to the point of an informal complaint with the Commission's Bureau of Consumer Services or a Formal Complaint. At what point during the customer calls would the customer "be satisfied" and provided information regarding the Standard Offer Program, after each customer contact or once the succession of calls and/or field work has been completed? Is the information provided if the customer call results in an informal or Formal Complaint? The OCA submits that these issues have not been addressed by either the Company's proposal or the ALJ's R.D.

Consistent with Ms. Alexander's testimony, the OCA submits that the Standard Offer Program should be affirmatively offered to new customers, those customers moving within the EDC service territory, and those who specifically inquire about customer choice or the Standard Offer Program. Other customer calls to the EDC should not trigger a requirement to offer the

Standard Offer Program. Accordingly, the OCA requests the Commission to review the evidence on this matter and adopt the OCA position.

Exception 7: The ALJ Erred By Rejecting the OCA's Proposal that There Should Be a Longer Period of Time Between the End of the Opt-In Auction Program and the Beginning of the Standard Offer Program. (R.D. at 72-73; OCA M.B. at 84-85; OCA R.B. at 51).

The R.D. stated that the “OCA failed to provide any specific evidence to support a delay” in the implementation of the Standard Offer Program. R.D. at 73. The OCA submits that the EGS Standard Offer Program should not be implemented until the EGS Opt-In Competitive Offer Program is completed because the simultaneous operation of the two programs may raise customer confusion about the differences in the prices and terms between the two programs. The OCA presented evidence regarding potential consumer confusion with the proposed overlapping programs.

The ALJ states that a month between completion of Opt-In enrollment and the beginning of the Standard Offer Program is sufficient time between the two programs. R.D. at 73. The OCA submits that the ALJ has missed the central problem presented. The problem is that these two programs will be on-going at the same time, resulting in customer confusion and possible negative comparisons of the price and terms.

OCA witness Alexander recommended that the experience with the Opt-In Auction be the focus of the summer 2013 market enhancement activities in order to avoid potential customer confusion with overlapping program terms. OCA witness Alexander testified that:

I continue to recommend that the Customer Referral Program should not be implemented at the same time as the Opt-In Auction to avoid customer confusion and potential for adverse comparisons to the prices and terms of service associated with these various options, thus threatening the overall intent to stimulate customer interest in retail choice.

OCA St. 2-R at 2-3; OCA St. 2 at 6. Under the R.D., the two programs will be in effect at the same time and marketed to customers within a relatively close timeframe. Customers enrolled in the Opt-In Auction and the Standard Offer Program will have different terms and different rates and may not understand the difference between the two programs. The underlying purpose of both the Opt-In Auction and Standard Offer Program is to provide two different opportunities to incent customers who have otherwise not previously shopped to enter the retail electric marketplace and to have a positive electric shopping experience.

The OCA recommends that the EGS Standard Offer Program not be implemented at the same time as the Opt-In Competitive Offer Program.

III. CONCLUSION

For all the foregoing reasons, the Office of Consumer Advocate respectfully Excepts to the Recommended Decision of Administrative Law Judge Dennis J. Buckley, and requests the Commission to review the evidence on the issues pertaining to these Exceptions and to adopt the positions advanced herein.

Respectfully Submitted,



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Dated: September 10, 2012

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Exceptions to the Recommended Decision, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 10th day of September 2012.

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