

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

Petition of PECO Energy Company
for Expedited Approval of its
Dynamic Pricing Plan Vendor
Selection and Dynamic Pricing Plan
Supplement

Public Meeting September 13, 2012
2297304-LAW
Docket No. P-2012-2297304

**JOINT MOTION OF
CHAIRMAN ROBERT F. POWELSON
AND COMMISSIONER PAMELA A. WITMER**

Before the Commission today for disposition is (1) a Petition of PECO Energy Company (PECO or Company) requesting expedited approval of a vendor to provide time-of-use (TOU) service for the Company's Dynamic Pricing Plan (Plan); (2) a Petition of PECO for approval of its Plan supplement; (3) a Petition to Intervene and Opposition of Reliant Energy Northeast LLC (Reliant); and (4) a Response of the Office of Consumer Advocate (OCA) to Opposition of Reliant Energy Northeast LLC.

By way of background, Act 129 of 2008 requires default service providers to submit proposals to the Commission to provide TOU or real-time rate products to consumers.¹ Due to widespread and systemic issues with PPL's TOU offering, the Commission subsequently recommended in its Retail Markets Investigation that the Commonwealth's current default service providers, the electric distribution companies (EDCs), contract with electric generation suppliers (EGSs) to provide the TOU or real-time rates required by Act 129.²

On January 24, 2012, PECO issued a request for proposals (RFP) seeking vendors to "implement a comprehensive Dynamic Pricing pilot" through the provision of supplying electricity at TOU rates and the implementation of program management. PECO selected Reliant as the winning bidder for the electric supply portion of the pilot and filed the instant Petition, which seeks approval of this selection along with a supplement to the original January 24, 2012 RFP dated April 2012.

In its Petition, PECO is essentially seeking three things: approval of its vendor selections to provide TOU service and management for the Plan program; a finding that the Plan, as supplemented, fulfills the requirements in Act 129 to provide TOU service; and approval of the Company's costs through its Generation Supply Adjustment filings. Reliant, through its Petition, is seeking to have its name appear on customers' bills as their generation supplier; ensure that "a coordinated and transparent process exist" between Reliant and the vendor selected to provide management functions for the pilot; and to remain the generation service provider for the program customers following the closure of the pilot program.

¹ 66 Pa. C.S. § 2807(f)(5).

² *Investigation of Pennsylvania's Retail Electricity market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952 (Order entered December 16, 2011).

Addressing Reliant's first issue -- whether Reliant's name should appear on customers' bills -- we note that PECO stated in its Answer opposing Reliant's Petition that it "is willing to place Reliant's name on the bill."³ Thus, we do not need to address this issue.

Next, while Reliant requests assurances for a coordinated and transparent process between the selected vendors, it did not provide details as to what issues need to be addressed to enable Reliant to work seamlessly with PECO's selected vendor for management functions. The Commission cannot, therefore, adequately address this issue due to this lack of specificity. We do believe, however, that PECO should make every attempt to ensure that a proper framework exists to enable all three parties to work effectively together to ensure the success of the pilot.

Regarding Reliant's third issue -- whether the customers should be transferred to PECO's default service⁴ or remain with Reliant following the closure of the pilot period -- we note that the RFP is silent on the issue. Further, PECO's attempt to clarify the issue, in its April 2012 supplement to the RFP, did not occur until after Reliant was selected as the winning vendor.⁵ Moreover, neither PECO nor the OCA cites to any statute, Regulation or Commission Order that mandates that the pilot customers must, or even should, automatically be assigned to PECO's default service offering.

We believe transferring the program customers to PECO's default service at the end of the pilot program would result in these customers being slammed in violation of the Public Utility Code and the Commission's Regulations. Regardless of whether the TOU pilot program is a default service offering, as argued by PECO, or a competitive offering, as argued by Reliant, it is clear that it is retail, and not wholesale electric service.

The term "retail electric customer" is defined as "a direct purchaser of electric power."⁶ First, we note that PECO never sought to amend its currently-effective default service plan, which dictates how all wholesale electricity is to be bought for resale to end-use customers. This clearly indicates that PECO believes this product to be a retail product. Further, the RFP required vendors to commit to "[o]ffer[ing] a dynamic pricing rate to every customer who receives a smart meter."⁷ The winning vendor thus would be providing the dynamic pricing rates directly to customers, making this a retail product under the Public Utility Code.

It is equally clear that customers participating in the TOU pilot are choosing Reliant as their EGS.⁸ The Public Utility Code⁹ and the Commission's Regulations¹⁰ make it clear that EDCs shall not change a retail, end-use customer's choice of generation supplier without the customer's consent. These customers, therefore, should remain with Reliant unless they affirmatively choose to receive service from an alternative EGS or to return to PECO's default

³ *PECO Energy Company's Answer in Opposition to the Petition to Intervene and Opposition of Reliant Energy Northeast LLC*, Docket No. P-2012-2297304, at 2.

⁴ In its Plan Supplement, PECO states that customers should "return to PECO on the applicable default service rate" following closure of the pilot. The TOU program, however, is open to all customers, whether currently shopping or not. Thus, PECO's phraseology is inappropriate.

⁵ Ironically, both PECO and the OCA, in support of PECO's position, accuse Reliant of attempting to change the terms and conditions after being selected as the winning vendor.

⁶ 66 Pa. C.S. § 2803.

⁷ PECO's *Statement of Work: Implementation of PECO Dynamic Pricing Customer Acceptance Pilot Plan 2012-2014* at 7 (January 24, 2012) (RFP).

⁸ See generally definition "Electric Generation Supplier, *id.*: "A . . . corporation . . . that sells to end-use customers electricity or related services utilizing the jurisdictional transmission or distribution facilities of an electric distribution company."

⁹ *Id.* at §2807(d)(1).

¹⁰ See generally 52 Pa. Code §§ 54.123, 57.171 - 57.179.

service offering. Moreover, aside from any slamming concerns or arguments, it is not in the public interest to automatically transfer customers that have made an affirmative choice to move away from PECO's basic default service rate back to that rate without them affirmatively choosing to do so.

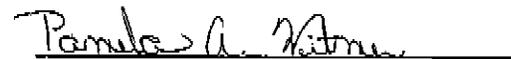
Following the closure of the pilot program, however, Reliant must maintain any remaining program customers on a TOU rate. Further, customers should be free to leave Reliant at any time without being subject to a termination fee or any other switching restriction for as long as they remain on the post-program TOU rate.

Lastly, we feel compelled to state once again that the Commonwealth's EDCs do not "own" their customers. We feel strongly that our EDCs must rid themselves of this mindset, which is a relic from the pre-competition days of vertically integrated service provided by a single entity.

THEREFORE, WE MOVE THAT:

1. The Petition of PECO requesting expedited approval of a vendor to provide TOU service for the Company's Dynamic Pricing Plan is approved as consistent with this Motion;
2. The Petition of PECO for approval of its Plan supplement is approved in part and denied in part, consistent with this Motion;
3. The Petition of Reliant is approved in part and denied in part consistent with this Motion;
4. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.


ROBERT F. POWELSON
CHAIRMAN


PAMELA A. WITMER
COMMISSIONER

DATE: September 13, 2012