



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF SMALL BUSINESS ADVOCATE

September 17, 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 Reply 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 Reply 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

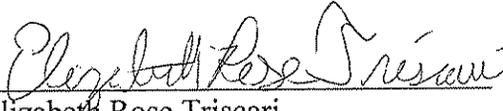
Melanie Santiago-Mosier
Washington Gas Energy Services, Inc.
13865 Sunrise Valley Drive - #200
Herndon, VA 20171
(703) 793-7565
mmosier@wges.com
(E-mail Only)

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 17, 2012.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY 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 17, 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”); 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 filed Exceptions on September 10, 2012. Exceptions were also filed by PECO, OCA, PPL EnergyPlus, RESA, Dominion/IGS, FES, GMEC, and jointly by Constellation, ExGen, and NextEra (the “Joint Suppliers”).

On September 13, 2012, the OSBA filed a Motion to Strike certain portions of the Exceptions filed by RESA and a Motion to Strike certain portions of the Exceptions filed by the Joint Suppliers.

The OSBA submits the following Reply Exceptions in response to certain of the Exceptions filed by Dominion/IGS, RESA, FES, and the Joint Suppliers.

II. REPLY EXCEPTIONS

A. Default Service Reconciliation

Reply to Dominion/IGS Exception No. 1: The ALJ erred by approving PECO's proposal to reconcile its default service costs on an annual basis. (RD at 41-44), (Dominion/IGS Exceptions pp. 2-3)

Reply to RESA Exception No. 4: The ALJ Erred in Approving PECO's Proposed Annual Reconciliation of Default Service Costs and Revenues for the Residential, Small and Medium Commercial Classes. (RD at 44), (RESA Exceptions at 9-11)

The default service price to compare ("PTC") is typically comprised of a C-factor reflecting the *current* cost of default service supply and the E-factor reflecting *prior period* default service variances between the cost of supply and the revenues billed. Thus, so long as the E-factor is part of the PTC, the PTC will always deviate to some extent from the actual current cost of default service supply.¹

Both Dominion/IGS and RESA have objected to PECO's proposal to reconcile default service rates on an annual basis by insisting that annual reconciliation will result in less market reflective rates. However, as RESA's witness argues, default service rates need to reflect costs on a current basis in order to ensure that a functioning retail competitive market develops.² The OSBA submits that, as a theoretical matter, the E-Factor is not reflective of market conditions, because it is caused by *prior period* variances, and therefore does not at all reflect the *current* period cost of default service.

¹ OSBA Statement No. 2 at 2.

² RESA Statement No. 1 at 15.

Thus, in order to keep rates as market reflective as possible, the E-factor should be as low as possible. The lesser the E-factor is, the less distortion there will be to the PTC.

As evidenced in PECO witness Alan B. Cohn's testimony, PECO's proposal to reconcile the E-factor on an annual basis will result in lower E-factors and therefore less volatile default service rates. Specifically, Mr. Hahn's Exhibit ABC-1R shows that quarterly reconciliation would cause significant swings in the PTC with increases of over 6% and decreases of over 7% that are caused by the E-factor and thus are wholly unrelated to the current market price of energy.³ Smoothing out the PTC through annual reconciliation actually results in the PTC being *more* closely related to the current cost of default service supply, not *less* market reflective as argued by RESA and Dominion/IGS.

The OSBA acknowledges RESA's and Dominion/IGS' concerns about the timeliness or contemporaneousness of when the reconciliation adjustment is reflected in default service rates. If the Commission, based on those concerns, were to reject the ALJ's recommendation to implement annual reconciliation, the OSBA submits that instead of requiring PECO to continue quarterly reconciliation (as RESA and Dominion/IGS recommend), rather the Commission should adopt the position offered by OCA witness Richard S. Hahn, which is a reasonable compromise. Mr. Hahn recommends that PECO implement what is sometimes referred to as "rolling annual reconciliation," as opposed to PECO's proposed reconciliation on a fixed annual basis. Fixed annual reconciliation would mean that the variance would be amortized over a fixed 12-month period, and the E-factor charge/credit would be updated only once every 12 months. Mr. Hahn, in contrast, proposes that the variance should be recovered over

³ PECO Statement No. 5-R at Exhibit ABC-1R.

12-month rolling periods, with the E-factor charge/credit updated quarterly. Mr. Hahn's proposal would retain the rate stability advantages of the Company's proposal by retaining a 12-month amortization period, but would have the additional advantage of more quickly incorporating variances into rates, thereby addressing the concerns of RESA and Dominion/IGS.

Therefore, the Commission should reject RESA's and Dominion/IGS' exceptions and adopt the ALJ's recommendation for PECO to implement fixed annual reconciliation of default service costs, or alternatively, OCA's recommendation to update the E-factor every quarter based on a 12-month rolling average of over- and under-collections.

B. Cost Recovery for Retail Market Enhancements

Reply to RESA Exception No. 7: The ALJ Erred in Rejecting RESA's Proposal to Implement A Non-Bypassable \$0.005/kWh Default Service Cost Recovery Charge. ("DSCRC") (RD at 54), (RESA Exceptions at 20-23)

Reply to Dominion/IGS Exception No. 3: The ALJ erred in recommending that the entirety of costs of the Retail Opt-In Offer Program ("ROI") be borne by participating suppliers. (RD at 83-85), (Dominion/IGS Exceptions at 4-5)

Reply to FES Exception No. 2: The R.D.'s Conclusion That PECO Should Recover The Costs of the Opt-In EGS Offer Program, If There Are No Winning EGSs, And The Costs Of the Referral Program, Through A Discount On Purchased Receivables Is Erroneous And Unsupported By Credible And Substantial Evidence. (RD at 85-86), (FES Exceptions at 4-8)

The OSBA notes at the outset that if the Commission adopts PECO's proposal and the ALJ's recommendation that only Residential customers should be eligible for the EGS Opt-In Competitive Offer Program ("ROI Auction"), the only retail market enhancement applicable to Small Commercial and Medium Commercial customers in

PECO's proposed plan is the New/Moving Customer Referral Program. No parties disputed that this program should incur little to no costs to implement. Therefore, even if the Commission rejects the ALJ's recommendation to recover retail market enhancements from EGSs, there should be no costs recovered from Small Commercial and Medium Commercial customers.

However, because RESA has taken exception to the ALJ's recommendation with respect to Small Commercial customer eligibility for PECO's ROI Auction, the OSBA has determined it is necessary to respond to the cost recovery proposals of RESA, FES, and Dominion/IGS.

RESA's preferred method of cost recovery is a \$0.005 per kWh charge added to the PTC (*i.e.*, collected from default service customers), which it has termed a Default Service Cost Recovery Charge ("DSCRC"). The name is misleading. This charge cannot genuinely be intended to recover costs of providing default service (such costs are already recovered in the GSA), but rather is intended to (i) cover the costs of proposed retail market enhancements, and (ii) encourage PECO's customers to shop (by arbitrarily raising the price of default service). Even if PECO has incurred costs that are not otherwise recovered, the DSCRC is inequitable because although it is collected from *only* default service customers, any remaining proceeds would be credited back to default service *and shopping* customers.

RESA also claims that the DSCRC is a "modest" charge to the default service rate. However, the adder would result in revenues of approximately \$70 million per year.⁴ With the estimated cost for retail enhancements being only \$3.7 million, the amount of the adder is anything but modest and is completely unrelated to cost

⁴ OCA Statement No. 1-R at 6.

causation.⁵ In addition, RESA's proposed DSCRC would entitle PECO to a whopping profit of \$6.6 million per year, all at the expense of solely default service customers.

Moreover, the DSCRC would only serve to artificially inflate the PTC because it is unrelated to the true cost of providing default service. As a result, any "savings" offered by EGSs over the inflated PTC would not be actual savings at all. To the extent that the artificial increase in the PTC caused by the surcharge results in an increase in the prices offered by EGSs, shopping customers might not realize any real savings at all. In that case, the only party to benefit from the DSCRC would be the EGSs that take in additional profits as a consequence of imposing a surcharge on default service customers.⁶ The Commission's commitment to retail competition is premised on a goal of saving customers money on their electric bill. RESA's proposed adder would undermine that goal.

FES and Dominion/IGS propose that default service customers and shopping customers share in the cost of retail market enhancements. They argue that retail market enhancements benefit all customers and therefore all customers, including default service customers, should pay for them through a non-bypassable charge. But, as the OSBA explained in its Main Brief, PECO's default service procurement also benefits all customers by offering a viable option to EGS offers.⁷ If default service customers are to share in the cost of PECO's retail market enhancements, then it is equally appropriate for shopping customers to contribute toward the cost of PECO's default service program. On the other hand, if PECO's RFP-related costs are to remain the sole responsibility of

⁵ *See id.*; OSBA Main Brief at 12.

⁶ OSBA Statement No. 3 at 2.

⁷ OSBA Main Brief at 18.

default service customers, then the costs of retail market enhancements should remain the sole responsibility of shopping customers (or their EGSs). Cost sharing should be a two-way street to avoid cross-subsidization.

Therefore, the Commission should reject FES' and Dominion/IGS' exceptions to the extent that they propose for default service customers to share in the cost of retail market enhancements.⁸

C. EDC Recovery of Additional PJM Charges

1. Generation Deactivation Charges

Reply to Joint Suppliers Exception No. 1: The Commission should deny the ALJ's ruling to reject the Generation Deactivation Recovery Proposal and instead...[see 3 proposed options below] (RD at 46), (Joint Suppliers Exceptions at 3-19)

The Joint Suppliers, without having conducted any discovery or submitted any testimony or briefs, and at the late stage of Exceptions, have argued that the ALJ's recommendation regarding PECO's recovery of Generation Deactivation Charges should be rejected and have proposed three alternative options for the Commission's consideration. The first option was proposed by the OSBA during the course of this proceeding and was considered (and rejected) by the ALJ. The other two proposed options are introduced for the first time in Exceptions and therefore the parties have had virtually no time or opportunity to evaluate and respond to them. The OSBA has filed a Motion to Strike these two proposed options as well as the extra-record evidence cited in support of them. Because that motion is pending and the outcome is unknown, the OSBA will give its initial position on these newly proposed options.

⁸ The OSBA takes no position on the alternative cost recovery methods proposed by FES and Dominion/IGS, provided that the entirety of the costs are recovered from EGSs.

Reply to Joint Suppliers Exception No. 1 (1): Allow a one-year transition period for Small Commercial, Medium Commercial (together, “Commercial”) and Large Commercial and Industrial (“Large C&I”) customers with EGS contracts under which they are receiving service on June 1, 2012, the first day of the DSP’s term (herein referred to as “Existing EGS Contracts”) as proposed by the Office of Small Business Advocates (“OSBA”) in the instant proceeding, and as presented in the August 2, 2012 Dissenting Statement of Commissioner Gardner (“Gardner Dissent”) on the First Energy-PA DSP case. [“Option 1”]

The OSBA would not object to the Joint Suppliers first proposed option because it is consistent with the OSBA’s position in this proceeding. In Direct Testimony, PPL EnergyPlus proposed for PECO to recover Generation Deactivation charges imposed by PJM through a non-market based charges rider (“NMB Rider”). The OSBA did not generally object to this proposal, agreeing that reducing the risk premiums that suppliers may impose due to the uncertainty over the level of Generation Deactivation charges is a reasonable goal.

However, the OSBA did recognize that this proposal could have unfair and unintended consequences for current shopping customers with contracts in which Generation Deactivation charges are part of the contracted rate. An NMB Rider would effectively double-bill these customers for Generation Deactivation charges until their existing contracts expire. The OSBA recommended that, if the Commission approves an NMB Rider whereby PECO would collect Generation Deactivation charges for all customers, the implementation of the NMB Rider should be delayed for a period of time, perhaps a year, to allow for a transition period whereby EGSs would have a date certain when Generations Deactivation charges would be recovered in the NMB Rider, and could adjust their price offers accordingly.⁹ While EGS offers made during the transition period might continue to include some premium for Generation Deactivation charges,

⁹ OSBA Statement No. 2 at 4-5; OSBA Main Brief at 8-10.

that premium would be limited by the finite period over which EGSs would continue to be responsible for the charges and competition for new customers among EGSs. Option 1 is essentially PPL EnergyPlus's proposal with the addition of the OSBA's recommendation for a transition period.

Reply to Joint Suppliers Exception No. 1 (2): Carve Large C&I customers with Existing EGS Contracts out and approve the Generation Deactivation Cost Recovery Proposal for all other customers, including all Large C&I customers without Existing EGS Contracts as of June 1, 2013. ["Option 2"]

The OSBA takes no position with respect to the Large C&I default service plan and, by extension, takes no position with respect to Option 2, *i.e.*, the Joint Suppliers' proposed carve out for Large C&I customers. However, the OSBA notes that the Joint Suppliers define "Generation Deactivation Cost Recovery Proposal" as the proposal of PPL EnergyPlus wherein PECO would "recover costs associated with Generation Deactivation Charges from and on behalf of all customers through a non-bypassable charge."¹⁰ PPL EnergyPlus does not include a transition period in its proposal as recommended by the OSBA. To the extent that the Commission is inclined to consider the Joint Suppliers' Option 2, the OSBA would recommend that the Commission allow a one-year transition period for Small Commercial and Medium Commercial customers that are shopping as of June 1, 2013, so as to mitigate the potential for the NMB Rider to double-bill those shopping customers for Generation Deactivation Charges (during the remaining term of their contracts).

Reply to Joint Suppliers Exception No. 1 (3): Allow PECO to collect Generation Deactivation charges *only for* default service customers, and *not for* shopping customers, via the mechanism PECO currently utilizes under its Transmission Service Charge Rider ("TSC Rider") to collect other non-market based PJM charges, like Network Integration Transmission Service

¹⁰ See the Joint Suppliers' Exceptions at page 2.

**(“NITS”) and Regional Transmission Expansion Plan (“RTEP”) charges.
[“Option 3”]**

The OSBA does not agree with the Joint Suppliers’ characterization of NITS and RTEP charges as non-market based PJM charges. That said, since the Joint Suppliers’ Option 3 would (i) not apply to Small Commercial and Medium Commercial shopping customers, and (ii) not raise the possibility that Small Commercial and Medium Commercial shopping customers could be billed twice for Generation Deactivation charges, the OSBA does not oppose it.

2. Other PJM Charges

Reply to RESA Exception No. 5: The ALJ Erred in Rejecting RESA’s Proposal to Shift Responsibility for the Recovery of Generation Deactivation and Other PJM Charges from EGSs to PECO (RD at 46), (RESA Exceptions at 11-19)

As explained above, the OSBA does not object to shifting the responsibility of collecting Generation Deactivation charges from EGSs to PECO, provided that an adequate transition period is implemented to avoid double-billing shopping customers. The OSBA does, however, object to RESA’s proposal, whereby PECO would be responsible for collecting *all* costs associated with transmission service through an NMB Rider. RESA proposes that PECO collect, in addition to Generation Deactivation charges, NITS, RTEP, and Expansion costs (together “Transmission Service Charges”), as well as charges that result from PJM’s implementation of its revised Economic Load Response program (“ELR Charges”) (together with Transmission Service Charges, “Other PJM Charges”).¹¹

¹¹ The OSBA has also filed a Motion to Strike extra-record evidence contained in RESA’s Exceptions cited in support of RESA’s proposed NMB Rider.

If approved by the Commission, an NMB Rider should be restricted to the recovery of *non-market based* transmission costs that cannot be predicted or hedged so as to reduce the risk premiums that are associated with these types of costs.¹² If the NMB Rider relieves EGSs of *known* transmission costs, such as NITS charges, then there would be no concurrent benefit for consumers because there should be no risk premium attached to such costs.

RESA argues that the Other PJM Charges, like Generation Deactivation charges, are frequently unpredictable and cannot be hedged, and therefore, are appropriately included in the NMB Rider. The OSBA disagrees. Although there may not be a market for hedging transmission costs like NITS charges, these charges are in fact predictable. NITS charges are tariff rates that only change once a year.

Moreover, if RESA's proposal is adopted, transmission costs would no longer be part of the PTC, thereby depriving customers of the opportunity to save money on the transmission portion of their bills.

RESA also argues that since PECO collects Transmission Service Charges for default service customers only, this creates a competitive advantage for default service over EGS provided service. RESA's concerns are unreasonable. As described above, these costs can be predicted and therefore present, at best, a negligible economic risk to EGSs when determining offers.

Therefore, the Commission should adopt the ALJ's recommendation and reject RESA's proposal to include Other PJM Charges in an NMB Rider.

¹² OSBA Statement No. 2 at 9-10.

D. EGS Opt-In Competitive Offer Program – Customer Eligibility

Reply to RESA Exception No. 8: The ALJ Erred In Recommending That Small Commercial Customers Should Be Excluded from the Opt-In Auction and Customer Referral Programs (RD at 58) (RESA Exceptions at 23-24)

RESA argues that the ALJ's recommendation to exclude Small Commercial customers from PECO's ROI Auction should be rejected, because it is inconsistent with the Commission's decision in the First Energy Utilities default service proceeding ("First Energy DSP Order").¹³ In that proceeding, the Commission adopted RESA's proposal, similar to the one in this proceeding, to include small business customers (defined as those with peak annual demand less than 25 kW) in retail market enhancement programs. The First Energy DSP Order, however, is not controlling in this proceeding. If the Commission wanted to impose the exact same programs with the exact same parameters on all EDCs it could have. Rather, the Commission issued a set of directives for default service providers ("DSPs") to follow in the Retail Market Investigation Intermediate Work Plan Final Order ("Intermediate Work Plan Order"),¹⁴ but left some discretion to DSPs to tailor their respective retail market enhancement programs to their individual situations.

Moreover, the First Energy DSP Order was a complete departure from the Intermediate Work Plan Order on the issue of small business customer participation in ROI Auctions.¹⁵ The Intermediate Work Plan Order addressed the issue of ROI Auctions

¹³ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670 (Order entered August 16, 2012).

¹⁴ *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Order Entered March 2, 2012).

¹⁵ On August 31, 2012, the OSBA filed a Petition for Reconsideration of the First Energy DSP Order.

(like the one proposed in PECO's default service plan), in which EGSs bid to provide competitive retail service to a group of customers within a specific EDC's service territory.

In the section of the Intermediate Work Plan Order which discussed the issue of customer eligibility for ROI Auctions, the Commission stated that (in its prior December 16, 2011, Tentative Order):

The Commission also recommended that small C&I customers not be included in the Retail Opt-in Auctions due to a lack of a standard small commercial definition across the state. Although the Commission's Customer Information Regulations provide a definition of "small business customer,"¹⁶ this standard rarely, if ever, aligned with EDC commercial rate classifications. Additionally, most, if not all, small C&I customers are also residential consumers at their homes and would have the opportunity to participate in the Retail Opt-in Auctions as residential consumers. The Commission believed this would provide such customers a shopping experience that may encourage them to also shop for the generation supply for their business. In making such a recommendation, we requested that those parties who believed that small C&I customers should be eligible provide a proposed statewide definition for "small commercial customer" and provide an explanation as to how an EDC would identify such customers.¹⁷

In its resolution of the eligibility issue, the Commission stated:

The Commission recognizes the lack of shopping in the small C&I segment and, as such, requested comments on the inclusion of these customers in the Retail Opt-in Auctions. Parties were almost equally split between including and excluding small C&I customers. While the Commission agrees that shopping can be improved in this segment, it maintains its original proposal that small C&I customers should not be eligible to participate. Because there is no consistency across the EDCs in defining 'small commercial,' the Commission believes it would be inappropriate to include a segment of customers that may reflect a wide variation in electric load. The definitions vary across EDCs and, as such, do not

¹⁶ *Small business customer* – The term refers to a person, sole proprietorship, partnership, corporation, association or other business entity that receives electric service under a small commercial, small industrial or small business classification and whose maximum registered peak load was less than 25kW within the last 12 months. See 52 Pa. Code § 54.2 (relating to definitions).

¹⁷ Intermediate Work Plan Final Order at 37-38.

produce comparable groups of customers when reviewing shopping offers and statistics.¹⁸

However, after the conclusion of the First Energy default service proceeding, the Commission turned 180 degrees on this issue. The Commission's reasoning was not based upon the variable definition of the small commercial class, as was the stated rationale set forth above, but on the basis that over half of the customers with loads under 25kW were not shopping. This new basis for its decision was something that had already been noted and considered, but dismissed by the Commission in the Intermediate Work Plan Final Order.¹⁹

In the First Energy DSP Order, the Commission stated:

Based upon our review and analysis of the evidence of record, we are persuaded by the arguments of RESA that the Companies Market Enhancement Programs should include small commercial customers as defined by RESA [loads up to 25kW]. While we recognize that this decision deviates from our conclusions in the *IWPF Order*, we find that RESA's position with regard to the relatively low levels of current shopping in the Companies service territories is compelling. In particular, the record indicates that over half of the small commercial customers in the Companies' service territories are not participating in the competitive market and the reasons for these customers not shopping are similar to those for residential customers.²⁰

The OSBA submits that the Commission made an error of law in changing its rationale for including or excluding small C&I customers from the ROI Auction, and that the Commission has overlooked its previously-stated rationale for excluding small C&I customers, including, in part, its conclusion that it would be inappropriate to include a segment of customers that may reflect a wide variation in electric load, without giving

¹⁸ Intermediate Work Plan Order at 42.

¹⁹ *Id.*

²⁰ First Energy DSP Order at 103-104.

any explanation, reasoning or analysis to support its change in position. The prior rationale is not even mentioned in the First Energy DSP Order. Therefore, the First Energy DSP Order should not be considered when determining whether small business customers should be eligible to participate in PECO's ROI Auction.

III. CONCLUSION

Wherefore, the OSBA respectfully requests that the Commission deny the foregoing Exceptions.

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

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