

COMMONWEALTH OF PENNSYLVANIA



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November 13, 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 Answer to Petition for Clarification and Reconsideration 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 "Christy M. Appleby".

Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824

Enclosures

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

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The OCA files this Answer in support of PECO's request for clarification regarding the issue of cost recovery for the RME programs and PECO's request clarification regarding the timing of the terms and conditions for the eight-month fixed price portion of the Opt-In Auction program. The OCA supports PECO's request that the Commission clarify that the costs for the RME programs will be recovered from the EGSs, and not customers, and that the only issue to be addressed by the EGSs and PECO is the mechanism by which those costs would be collected from EGSs. Petition at ¶ 14.

The OCA also supports PECO's request for clarification regarding the timing of the filing with the Commission of the 8-month offering terms and conditions for the Opt-In Auction. It is the OCA's view that the EGS filing must occur prior to the mailing of the initial customer offer letter or forty-five days before the expiration of the four-month introductory offering so that customers have full information about the program they are being asked to join.

II. OCA Answer to PECO Petition for Clarification

A. Cost Recovery For RME Programs

The OCA agrees with PECO's request for clarification that "the costs of the Company's RME Programs are to be recovered from EGSs only – not customers – consistent with the Commission's Position in the *Intermediate Work Plan Order*" and the Commission's decision in FirstEnergy's Default Service Plan proceeding. Petition at ¶ 14; see, Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan, Docket No. I-2011-2237952, Order at 32, 74, 84-85 (Mar. 2, 2012) (*IWP Order*); Joint Petition of 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 at 136-37, Ordering ¶ 12 (Aug. 16, 2012)(*FirstEnergy DSP II Order*). The OCA submits that clarification is

necessary where the Commission's October 12 Order may have been unclear regarding the cost recovery for the RME programs.

In its October 12 Order, the Commission directed that PECO and interested EGSs submit a proposal to the Commission regarding how EGSs will pay for PECO's Retail Market Enhancement programs. See October 12 Order at Ordering ¶ 14. However, as PECO noted, there appears to be conflicting language between Ordering Paragraph 14 and a sentence in the disposition section regarding the issue of payment for Retail Market Enhancement programs. Petition at ¶ 14.

PECO proposed in its DSP II filing that the cost of the Opt-In Auction Program be recovered directly from the winning EGSs in proportion to the number of customers allocated to each EGS. PECO M.B. at 72. Alternatively, if there are no winning bidders for the Opt-In Auction Program, PECO proposed that the costs of the program would be recovered through a 0.3% Purchase of Receivables (POR) discount until the costs are fully recovered. Id. For the Standard Offer Program, PECO proposed that the costs of the program be recovered through a POR discount. PECO St. 2 at 28.

In the October 12 Order, the Commission reiterated its position from its IWP Order that EGSs should be responsible for the costs of the RME programs. See October 12 Order at 91, 148, citing, IWP Order at 32, 74, 84-85. With regard to the Opt-In Auction Program, the Commission specifically stated in the IWP Order that it is prudent to recover the auction program costs from EGSs, given that the participating EGSs are the entities reaping the possible customer acquisition benefits resulting from the auction. See IWP Order at 74, 84-85. With regard to the Standard Offer Referral Programs, the Commission stated in its IWP Order that these program costs will be the responsibility of participating EGSs. See IWP Order at 32.

In its October 12 Order in this matter, the Commission directed PECO and interested EGSs to submit a proposal to the Commission on how EGSs will pay for PECO's RME program costs. See October 12 Order at Ordering ¶ 14. Ordering Paragraph 14 confirmed the Commission's statements that EGSs will pay for RME programs earlier in its October 12 Order. See, October 12 Order at 91 and 148.

As PECO discussed in its Petition, there appears to be conflicting language between the Ordering Paragraph, the Commission's statements on pages 91 and 148 of the October 12 Order and a phrase on page 148 that references customers. Petition at ¶ 14. Ordering Paragraph 14 specifically states:

That PECO Energy Company, in collaboration with electric generation suppliers, are directed to submit a proposal to the Commission on how **electric generation suppliers will pay for the costs** of the Retail Market Enhancement Programs as modified by this Opinion and order. This proposal shall be submitted as part of the revised Default Service Plan to be filed pursuant to Ordering Paragraph No. 18, *infra*.

October 12 Order at Ordering ¶ 14. (Emphasis added).¹ The OCA submits that Ordering Paragraph 14 is clear that the costs of the RME programs will be recovered only from the EGSs and directs PECO, in collaboration with EGSs, to submit a proposal about how the EGSs will pay for the costs.

The Commission's statement on page 91 of the October 12 Order mirrors the Commission's directive in Ordering Paragraph 14. Page 91 of the Commission's Order stated:

Therefore, within sixty (60) days of the date of entry of this Opinion and Order, **in addition to providing updated proposals on EGS payment for the market enhancement programs as explained below**, PECO, EGSs and other interested Parties also will be required to file an updated proposal for the role of independent monitor, Opt-In EGS selection and Opt-In Program customer assignment that aligns with the revised Opt-In Program design.

¹ As PECO notes, there appears to be a typographical error and the correct Ordering Paragraph reference should be to Paragraph 20, and not to Paragraph 18. PECO's Petition requests that this typographical error be corrected. Petition at ¶ 24(1).

October 12 Order at 91 (emphasis added).

However, the disposition section of the October 12 Order regarding the cost recovery for the RME programs contains what could be interpreted as contradictory language. In the disposition section for the issue, the Commission states:

Upon review of the EGS' positions in this proceeding, the Commission has significant concerns that the POR discount method of allocating costs may be a significant barrier to EGS participant. Accordingly, PECO, EGSs, and interested parties are directed to resubmit a plan or proposal within sixty (60) days of the date of entry of this Opinion and Order, for Commission review and approval, addressing **how participating EGSs or customers will pay for the costs of market enhancements approved in this DSP proceeding.**

October 12 Order at 148. (Emphasis added). When these paragraphs are read together in the context of the October 12 Order, the Commission appears to limit its discussion to "significant concerns" with PECO's proposal to collect the costs of the RME programs through a Purchase of Receivables (POR) discount and does not address any issues or concerns regarding from whom the costs of programs should be recovered. However, the last sentence of the section cited above for the first time introduces customers into the discussion. October 12 Order at 148. This additional language is without explanation and contrary to the language in other sections of the October 12 Order, Ordering Paragraph 14, PECO's proposal in this proceeding, the ALJ's Recommended Decision, and the Commission's IWP Order and the FirstEnergy DSP II Order.

It bears mentioning that the Commission directed that the FirstEnergy Companies and EGSs submit a plan to the Commission regarding how EGSs will pay for the FirstEnergy Companies' RME programs in the Commission's recent decision in the FirstEnergy Companies DSP II matter. See, FirstEnergy DSP II Order at 136-37, Ordering ¶ 12; see also, Petition at fn. 3. For purposes of consistency of the RME programs across the Commonwealth, the OCA supports PECO's request that the Commission clarify that the costs for the RME programs will

be recovered from the EGSs, and not customers, and that the only issue to be addressed by the EGSs and PECO relative to Ordering Paragraph 14 is the mechanism by which those costs would be collected from EGSs.

B. Timing Of The Filing Of The 8-Month Portion Of The Opt-In Aggregation Program Offer

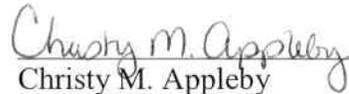
PECO also requests clarification regarding the timing of an EGS's submission of the terms and conditions regarding its eight-month Opt-In Aggregation Program offering for Commission review and approval. Petition at ¶ 22; see, October 12 Order at 90-91. The OCA supports PECO's request for clarification regarding the timing of the filing of the 8-month price offering terms and conditions. Id. The OCA submits that the filing should be made in advance of the initial customer offer letter and customer enrollment so that customers will have complete information about the program before making a decision.

The IWP Order provided a vision of the Opt-In product offer as "unique and eye-catching, and as customer friendly as possible." IWP Order at 69. The OCA's position throughout this proceeding has been that customers should be fully informed of the terms and conditions prior to enrollment in the Opt-In program. OCA M.B. at 64-65; OCA R.B. at 38-40. Lack of complete information could potentially dissuade customers from participating in the Opt-In program or result in dissatisfaction with the program when they do receive the eight-month offering terms and conditions. The OCA submits that a better approach for customers is to provide the customer with all of the terms and conditions, including the 8-month price, in the initial customer offer letter.

III. Conclusion

For the foregoing reasons and the reasons discussed in PECO's Petition for Clarification and Reconsideration, the OCA respectfully requests that PECO's Petition be granted on the merits.

Respectfully submitted,


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DATE: November 13, 2012
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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 Answer to Petition for Clarification and Reconsideration, 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 13th day of November 2012.

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