



COMMONWEALTH OF PENNSYLVANIA
OFFICE OF SMALL BUSINESS ADVOCATE

December 27, 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 Comments, 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 *by TCA*
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 APPROVAL OF ITS DEFAULT : Docket No. P-2012-2283641
SERVICE PROGRAM :**

**COMMENTS OF THE OFFICE OF SMALL BUSINESS ADVOCATE
ON REVISED DEFAULT SERVICE PLAN COMPLIANCE FILING**

I. INTRODUCTION AND BACKGROUND

On October 12, 2012, the Pennsylvania Public Utility Commission (“Commission”) entered an Opinion and Order (“DSP II Order”) regarding the Default Service Program of PECO Energy Company (“PECO” or the “Company”) for the period from June 1, 2013 to May 31, 2015 (“DSP II”).

The DSP II Order directed PECO to file a revised plan consistent with the Commission’s revisions directed in the DSP II Order and to submit proposals, in collaboration with electric generation suppliers (“EGSs”) and other interested parties, addressing certain retail market enhancement program (“RME Program”) issues.

These RME Program issues arose, in part, due to the Commission’s revisions to PECO’s Opt-In Competitive Offer Program (“Opt-In Program”), including directing that small business customers (under 25 kW) be eligible to participate.¹

Specifically, the DSP II Order directed PECO to submit, in collaboration with other interested parties: (1) a proposal regarding EGS selection, customer assignment, and the role of the independent monitor for the revised Opt-In Program; (2) a proposal regarding

¹ In contrast, the DSP II Order did not direct that small business customers be eligible to participate in the “Standard Offer Program.” See DSP II Order at 109.

form application and form requirements for EGSs who participate in the Opt-In Program and Standard Offer Program (the “EGS Applications and Form Agreements”); and (3) a proposal for recovery of RME Program costs.

The Company filed a Petition for Clarification and Reconsideration on October 31, 2012 (“Clarification Petition”). Certain parties filed answers to the Clarification Petition addressing the issues raised by PECO. However, no party filed its own petition for reconsideration raising additional issues. The Commission subsequently entered an Opinion and Order on November 21, 2012 (“Clarification Order”) in response to the Clarification Petition.

The Clarification Order, among other things, clarified that parties should consider the possibility that customers, in addition to EGSs, may be responsible for at least some RME Program Costs.

Pursuant to the DSP II Order and Clarification Order, the Company engaged in collaborative discussions with interested stakeholders, a process in which the Office of Small Business Advocate (“OSBA”) was an active participant. Consensus among the parties was generally achieved regarding certain issues with respect to the Opt-In Program, such as, EGS participation, customer assignment, and the lack of need for an independent monitor. Although some progress was made, a consensus was not achieved regarding the final form of the EGS Applications and Form Agreements. Similarly, the parties did not agree on whether (or what portion) customers should contribute toward RME Program Costs.

On December 11, 2012, the Company submitted its Revised Default Service Plan Compliance Filing (“Revised Plan”), which reflects all of the revisions directed by the DSP II Order and Clarification Order as well as the revisions agreed to by the collaborative participants with respect to the Opt-In Program and Standard Offer Program. For those issues on which the

collaborative participants did not agree, PECO included its own proposals for the Commission's consideration, which are consistent with the Company's original DSP II filing.

The Revised Plan proposed a schedule for review by interested parties, requesting that comments be filed on December 27, 2012 and reply comments on January 7, 2012. The OSBA submits the following comments consistent with this proposed schedule.

II. COMMENTS

1. The OSBA generally supports PECO's Revised Plan and is either in agreement with or has no opposition to all parameters contained therein, including the revised Request for Proposals and Program Rules, as well as the EGS Form Application and Form Agreement, for the Opt-In Program.

2. The OSBA agrees with PECO that the only Commission-ordered change to PECO's initial filing with respect to small business customer eligibility in RME Programs is the addition of small business customers (under 25kW) to the Opt-In Program. This issue was raised at the appropriate time in the proceeding (*i.e.*, in direct testimony), briefed by interested parties, rejected by the ALJ, subject to Exceptions, and then affirmatively and specifically addressed and directed by the Commission in the DSP II Order.² Although the OSBA took a different position on this issue during these proceedings, it accepts that the Commission has ordered otherwise after development of a record. Thus, the Revised Plan properly makes small business customers (under 25kW) eligible for the Opt-In Program.

At the late date of December 14, 2012, the Retail Energy Supply Association ("RESA") filed a Petition for Reconsideration *Nunc Pro Tunc* or for Amendment of the Commission's Opinion and Order of October 12, 2012 ("RESA Petition") seeking to also make small business customers (under 25 kW) eligible for the Standard Offer Program. The OSBA is filing an

² DSP II Order at 85-86.

Answer to the RESA Petition concurrently with these comments and requests that it be fully incorporated herein. That Answer explains in detail why the RESA Petition is procedurally improper, factually flawed, lacks record support, and would be a denial of due process if granted.

3. The OSBA also agrees with PECO's Revised Plan in that it proposes recovery of RME Program costs solely from EGSs. Throughout this proceeding, the OSBA has argued that it would be inequitable to recover RME Program costs from all distribution customers because this would require default service customers to share the cost of retail market enhancements while shopping customers remain exempt from contributing toward the RFP-related costs of default service. Cost-sharing should be a two-way street to avoid cross-subsidization. Since PECO's RFP-related procurement costs are the sole responsibility of default service customers, RME Program costs should be the sole responsibility of shopping customers (passed on through their EGSs).³

Moreover, the OSBA agrees with PECO that the costs of these programs should only be recovered from the EGSs who will benefit from the programs, consistent with the Commission's directive in the Intermediate Work Plan Final Order. In the Final Order, the Commission correctly concluded, "In the Commission's view, having the participating EGSs pay for the auction implementation is a prudent way to recover the auction costs, given that the participating EGSs are the entities reaping the possible customer acquisition benefits resulting from the auction."⁴

³ OSBA Main Brief at 17-19, OSBA Reply Brief at 7-9, OSBA Reply Exceptions at 5-8.

⁴ *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 1, 2012) at 78.

The OSBA acknowledges that the Commission's Clarification Order explained that the Commission intended "any discussion among the interested Parties regarding the development of a plan to address RME Program cost recovery include *consideration of the possibility* that customers as well as EGSs may be responsible for some program costs."⁵ The parties participating in the collaborative meetings did as directed by the Commission and considered the possibility, but could not reach a consensus. However, given the *de minimus* nature of the total costs associated with the Opt-In Program, *i.e.*, approximately *one dollar per customer* to cover the costs of randomly assigning participating customers to EGSs, along with printing and mailing suppliers' offers, the OSBA suggests that there is no compelling reason to assign any portion of Opt-In Program costs to customers.⁶

⁵ Clarification Order at 15 (emphasis added).

⁶ Revised Plan at 10.

III. CONCLUSION

In view of the foregoing, the OSBA respectfully requests that the Commission approved the Revised Plan without modification.

Respectfully submitted,


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For:

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Dated: December 27, 2012

**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 Comments, 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:

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