



COMMONWEALTH OF PENNSYLVANIA

April 24, 2013

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 the Third Revised Default Service Plan Compliance Filing, 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 APPROVAL OF ITS DEFAULT : Docket No. P-2012-2283641
SERVICE PROGRAM :**

**COMMENTS OF
THE OFFICE OF SMALL BUSINESS ADVOCATE
ON THIRD 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 and to submit proposals, in collaboration with electric generation suppliers (“EGSs”) and other interested parties, addressing certain retail market enhancement program (“RME Program”) issues.

The Company filed a Petition for Clarification and Reconsideration on October 31, 2012 (“Clarification Petition”). The Commission subsequently entered an Opinion and Order on November 21, 2012 (“Clarification Order”) in response to the Clarification Petition.

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.

On December 11, 2012, the Company submitted its Revised Default Service Plan Compliance Filing (“Revised Plan”), which reflected 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 RME Programs. Among other things, the Revised Plan provided that small commercial customers (defined by the DSP II Order as those with peak loads under 25 kW) would be eligible for the Retail Opt-In Program (“ROI Program”). Under the Revised Plan, small commercial customers were not eligible for the Standard Offer Program, consistent with the DSP II Order.

After the collaborative discussions and the filing of PECO’s Revised Plan, the Retail Energy Supply Association (“RESA”) filed a Petition for Reconsideration *Nunc Pro Tunc* or for Amendment of the Commission’s DSP II Order, seeking to make small commercial customers eligible to participate in the Standard Offer Program in addition to the ROI Program.

The OSBA and PECO objected to RESA’s Petition as untimely and lacking in evidentiary record support. RESA had not raised small commercial eligibility for the Standard Offer Program in testimony or evidentiary hearings, but rather did so after the close of the record for the first time in Exceptions. RESA also did not file the petition until sixty-three days after entry of the DSP II Order and after the collaborative discussions concluded.

The Commission granted RESA’s petition in part by order dated February 14, 2013, directing that small commercial customers (under 25 kW) be eligible for the Standard Offer Program (“February 14 Order”).

Also on February 14, 2013, the Commission issued an order on PECO’s Revised Plan directing PECO to file a second revised plan within 60 sixty days.

On February 28, 2013, PECO filed its Second Revised Default Service Plan Compliance Filing ("Second Revised Plan").

The OSBA and OCA submitted Comments addressing the cost recovery of RME Programs in the Second Revised Plan, to which PECO filed reply comments. A Commission Order on the Second Revised Plan is still pending.

The Commission subsequently issued a Tentative Order on Reconsideration on March 14, 2013, announcing its proposed plan to suspend implementation of ROI Programs for PECO and other large electric distribution companies ("EDCs"). Comments were filed by interested parties and on April 4, 2013, the Commission issued a Final Order ("ROI Suspension Order") directing PECO and the other EDCs to suspend implementation of their ROI Programs and to submit any necessary conforming revisions to their default service plans.

PECO submitted a Third Revised Default Service Plan Compliance Filing ("Third Revised Plan") on April 15, 2013, pursuant to the ROI Suspension Order. In addition to including revisions to suspend the ROI Program as directed by the Commission, PECO proposed to change the definition of small commercial customers for purposes of eligibility in the Standard Offer Program from that which was approved in the Commission's DSP II Order (under 25kW) to that contained in PECO's existing tariff (under 100 kW). The OSBA submits the following comments in response to that requested change.

II. COMMENTS

The OSBA continues to be troubled by the due process issues that have arisen in this proceeding. First, the Commission unexpectedly granted RESA's petition to amend the DSP II Order to allow small commercial customers to participate in the Standard Offer Program, an issue raised for the first time after the close of the record (in Exceptions), with no opportunity for parties to address factual issues that RESA chose not to pursue in testimony or at evidentiary hearings, and without even a tentative order and comment period.¹

The Commission did, however, acknowledge the procedural issues associated with RESA's petition. The Order granting such petition states in relevant part:

Although we are granting RESA's Petition in part and amending our [DSP II Order], we acknowledge the arguments of PECO and the OSBA regarding the *procedural irregularities* employed by RESA in this proceeding. RESA failed to raise this issue during the evidentiary phase of this proceeding, and then failed to file a timely petition for reconsideration of the [DSP II Order].²

Despite these "procedural irregularities," the Commission concluded that the rationale and the record evidence that supported the inclusion of small business customers in PECO's ROI Program could be extrapolated to support the Commission's decision to include these customers in the Standard Offer Program as well.³ That rationale, quoted in the February 14 Order, is as follows:

On review, we shall grant RESA's Exception with respect to the inclusion of small commercial customers in the Opt-In Program. We agree with RESA that the relatively small number of customers

¹ The Commission deemed RESA's late-filed petition and answers to it as constituting adequate notice and opportunity to respond. *February 14 Order* at 13.

² *Id.* at 16 (emphasis added).

³ *Id.*

involved, and the need to increase the shopping statistics for small commercial customers, support the inclusion of small commercial customers *less than 25 kW*. This conclusion is consistent with the decision that we reached in the *FE DSP Order*. Although we acknowledge that the inclusion of small commercial customers will add some complexity to administration of the Opt-In Program, we are not persuaded that the added complexity is insurmountable, or that it should outweigh the benefits that will flow to this discrete group of customers through inclusion in the Program. *We agree with RESA's observation that customers with loads below 25 kW constitute a discrete subset of the commercial class that is relatively small and manageable.*⁴

Notably, this rationale is premised on the definition of small commercial customers being those with loads below 25 kW. At no time during this proceeding has any party, including PECO, ever advocated that small commercial customers be defined for purposes of RME Program eligibility in any other way.

However, now we find PECO proposing that small commercial customers be defined as customers with peak load demands of 100 kW or less, consistent with the Company's existing tariff. PECO claims that using the under 25 kW definition, which was previously advocated by RESA in the late stages of this proceeding and then approved by the Commission, would create significant additional IT expenses. Now is not the appropriate time for PECO to raise this issue. It should have been raised during the evidentiary phase of this proceeding giving parties the chance to conduct discovery, submit responsive testimony, cross-examine witnesses, and brief the issue.

To be fair, the OSBA acknowledges that PECO did not have the opportunity to timely raise the issue of the additional IT expense of including small business customers (under 25 kW) in the Standard Offer Program, because RESA did not propose it until after the close of the

⁴ *February 14 Order* at 13 (emphasis added).

record and the Commission did not approve it until after PECO had already submitted its Revised Plan.⁵ PECO's request to change the definition of small commercial customers in its Third Revised Plan is just another example of the due process issues that arise when "procedural irregularities" occur.⁶

The OSBA represents a large constituency with extremely limited resources. Its effectiveness depends on the level playing field afforded by every party having to play by the same rules, so as to preserve every party's due process rights.

Fortunately, in this one specific instance, approving PECO's request without adequate due process is not likely to harm small commercial customers. After informal discussions with PECO, the OSBA has determined that approval of PECO's request will actually benefit small commercial customers by avoiding the significant additional costs that would be necessary to include only small commercial customers with loads 25 kW and below in the Standard Offer Program. For that limited and pragmatic reason, the OSBA does not object to the change requested in PECO's Third Revised Plan with respect to the definition of small commercial customers.

⁵ PECO and other parties also did not have the opportunity to submit evidence of the complexity of designing and marketing a "standard offer" to small commercial customers given their diverse and varying load profiles.

⁶ Nor is the OSBA persuaded by PECO's argument that its proposed definition is consistent with the Commission's decision to allow commercial customers in the smallest existing rate classes of Pennsylvania Power Company and West Penn Power Company (50kW and 100kW, respectively) to participate in the Standard Offer Programs of those companies. In those default service cases, unlike in PECO's, it was timely proposed in direct testimony that RME Programs be applied to commercial customers under 25kW, or in the alternative, the smallest existing commercial rate class, thereby giving the parties an opportunity to submit testimony in response and brief the issue. *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, *et al.*, (Opinion and Order entered September 27, 2012), at 10 (*citing* RESA Statement 2 at 15-17).

III. CONCLUSION

In view of the foregoing, the OSBA respectfully requests that the Commission approve PECO's proposal to define small commercial customers as non-residential customers with a peak load demand of 100 kW or below for the purposes of eligibility in the Standard Offer Program.

Respectfully submitted,



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Dated: April 24, 2013

**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 the Third Revised Default Service Plan Compliance Filing, 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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