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December 3, 1998

James McNulty, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Room B-18, North Office Building
Harrisburg, PA 17105-3265

**DOCUMENT
FOLDER**

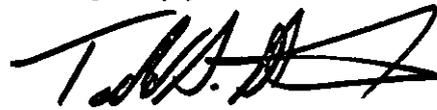
RE: Application of PECO Energy Company for Approval of its Restructuring Plan Under Section 2806 of the Public Utility Code, et al.; Docket Nos. R 00973953 and P-00971265; **PROPOSAL OF MAPSA RELATED TO THE COMPETITIVE PROVIDER OF LAST RESORT IN PECO ENERGY SERVICE TERRITORY**

Dear Secretary McNulty:

Enclosed, please find an original and fifteen (15) copies of the Mid-Atlantic Power Supply Association's Proposal and Comments related to the competitive Provider of Last Resort in PECO Energy service territory.

If you have any questions regarding this matter, please direct them to me. Thank you.

Very truly yours,



Todd S. Stewart

Counsel for the Mid-Atlantic
Power Supply Association

cc: John C. Miller, Jr., Bureau of CEEP

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKETED
DEC 07 1998

Application of PECO Energy Company for :
Approval of its Restructuring Plan Under : Docket Nos. R-00973953
Section 2806 of the Public Utility Code, et al. : P-00971265

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**PROPOSAL OF MAPSA RELATED TO THE
COMPETITIVE PROVIDER OF LAST RESORT
IN PECO ENERGY SERVICE TERRITORY**

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The Mid-Atlantic Power Supply Association ("MAPSA") hereby files its Proposal and Comments to the Commission's Tentative Order in the above-captioned matter dated October 20, 1998.

I. Introduction

The PECO Energy Settlement ("Settlement") provides for a competitive supplier of last resort ("CDS") to be selected through a competitive bidding process to serve "On January 1, 2001, 20% of all of PECO's residential customers" (Paragraph 38a). The Commission has initiated this proceeding to establish the terms and conditions of CDS.

Before the Commission attempts to resolve the multitude of specific issues relating to CDS service, MAPSA believes that the Commission need to answer a more fundamental policy decision: **what is the correct bidding framework?** After selecting the proper framework, the Commission should then drive down into the details with CDS service.

The Settlement bidding framework is most concisely categorized as a “CDS price bid” model; the CDS provider is selected by the lowest residential rate bid.¹ After reflecting on the evolving marketplace and the desires of the parties to the Settlement, MAPSA proposes that the Commission adopt an alternative bidding framework – a Stranded Cost Buydown model (“SCB”). MAPSA believes that the SCB model, as described below, will more clearly and fully fulfill the goals of the Commission in reducing rates for consumers and implementing a competitive electricity market.

It is important to note that nothing in the Settlement prohibits the Commission from approving the MAPSA proposal. In fact, it is clear from the Settlement language that the CDS process was clearly too complicated to codify during the negotiations, and as such, the Commission was to develop procedures for the selection of the CDS provider.

Most importantly, MAPSA believes that its proposal allows all residential consumers to receive the value from CDS service. The MAPSA proposal would also simplify how the Commission selects the CDS provider. Finally, MAPSA’s proposal continues to promote competitive markets consistent with the Commission’s previous actions.

II. MAPSA Proposal

The Settlement originally contemplates that the CDS provider will be selected by the Commission based upon the prices offered in the bid process. All other terms and conditions related to CDS service were to be structured in this proceeding. Under this mechanism, any CDS customer who does not select an Electric Generation Supplier (“EGS”) would “receive service

¹ Interestingly, nothing in the Settlement requires that the Commission select the bidder with the lowest price, although all else being equal, it is reasonable to assume that the Commission would select the lowest price bid.

from its CDS on the same terms and conditions and at the same rate available to other CDS customers” (Paragraph 38c). PECO Energy in its role as Provider of Last Resort (“PLR”) would then be allowed to re-price, at its option, its PLR service such that the rate PECO Energy charged was no less than the CDS rate and no more than a rate determined by a pre-established formula (Paragraph 38e(i) and 38e(ii)).

MAPSA proposes, however, that the Commission utilize a different selection process. The CDS provider should be selected in a process where potential CDS providers can bid a dollar amount that is used to buydown stranded costs associated with the residential rate class. MAPSA refers to this process as a Stranded Cost Buydown model (“SCB”). To effectuate this process, the Commission would establish that the terms, conditions, and rates for CDS service are *exactly identical in all regards* as service provided by PECO Energy PLR found in the Settlement and subsequent Commission orders.

Given that framework for CDS service, the potential CDS providers would bid a single dollar amount of money to earn the ability to serve the 20% of residential customers assigned to CDS service. The pre-qualified bidder offering the highest amount of money wins the opportunity. Where the price bid model attempts to lower rates for only certain customers, MAPSA’s SCB model allows all residential consumers to receive a rate discount because the CTC rate would be reduced to offset the prepayment of stranded costs.

MAPSA is proposing a SCB model instead of a price bid model for the following reasons.

1. *Simpler decision process for PUC to implement.*

The SCB model is a much simpler administrative process for the Commission to undertake. A SCB process could administratively take the following form: (1) the rate for CDS

service would be established at the rate set for PECO Energy PLR service determined in the Settlement for the year of CDS service; (2) the terms and conditions for CDS service would follow the regulations assigned to PECO Energy PLR service as defined by the Commission, including the recently issued PLR Marketing Code of Conduct; (3) potential CDS providers would bid a dollar (\$) amount to provide service to provide service for the CDS customers.

As important, the analysis of the competitive bids for the Commission is straight-forward – highest dollar amount bid from a pre-qualified provider is awarded the CDS service. Under the price bid model, the Commission may have to deliberate between alternative rate designs coupled with differing rates. The Commission, therefore, would be required to recognize the competing interests with alternative proposals and identify the “best” option.

2. *Knowledge of CDS Service maximizes consumer value.*

When the Commission establishes the terms, conditions, and rates before the bidding process, potential CDS providers have a better understanding of how their bids will be evaluated by the Commission, and therefore, allows all potential CDS providers to understand clearly the opportunity, and hence, maximize the CDS bids. Clearly, decision making under certainty allows CDS bidders to offer higher bids than if they are bidding in an environment of uncertainty.

Additionally, the SCB structure gives the Commission the knowledge to determine how much value is retained by PECO Energy in its residual PLR role. If the amount is significant, or if PECO Energy continues to promote its PLR service, the Commission may determine that it is appropriate to go beyond 20% for the CDS service. In fact, the Settlement does not limit the CDS to 20%, it only guarantees that 20% will be served by the CDS. The Commission could agree to increase this amount, or otherwise structure the CDS service to increase the bid from the SCB.

3. All residential consumers benefit.

Under the MAPSA proposal, the winning bidder will pay their bid amount directly to PECO Energy to reduce the residential customer class' stranded costs. PECO Energy will credit the bid amount fully to the stranded costs for the year of CDS service, and then recalculate the CTC rate (or ITC rate) to represent the lower stranded cost revenue requirement for that year. MAPSA proposes that this reduction in the CTC rate would not increase the Shopping Credit rate. Every residential customer will see a uniform rate reduction with this proposal.

On the other hand, there is no guarantee that all residential consumers will benefit under the price bid model. In fact, there is a strong likelihood that multiple PLR rates will exist within the PECO Energy service territory, one provided by the CDS supplier and one provided by PECO Energy.

While the price bid model was initially designed to ensure that non-shopping customers received a rate which approximated the "market price," the goal was clearly to ensure that the PLR does capture "above market value" from this incumbency position. Under the SCB model, the above market value is "returned" to residential consumers by buying down their share of stranded costs.

4. Pro-competition "Shopping Credit Model" is continued.

The MAPSA proposal also extends the Commission's pro-competitive Shopping Credit structure. Rather than simply reducing the customer's economic incentive to shop by lowering the price to compare, the SCB model provides rate relief to all residential consumers and promotes competition. The SCB model provides consumers with the ability to do even better through switching to a competitive supplier, moving toward the day when they do not need to be a PLR, either PECO Energy or a CDS.

III. Specific Comments on Commission's Proposal

The following comments incorporate MAPSA's proposal on the SCB structure. MAPSA reserves the right to offer additional comments on the detailed issues if the Commission subsequently determines to adopt a price bid model.

1. Pre Qualification of CDS Bidders.

PQ1: MAPSA suggests that the Commission modify this section to read "All interested CDS bidders will prepare a pre-qualification package and submit that package to the Commission no later than seven (7) months prior to the initiation of CDS service." This modification recognizes that the CDS bid will occur every year through 2009, rather than only once.

This modification addresses the annual bid nature of on-going CDS service.

PQ2(a): No comments.

PQ2(b): MAPSA suggests that the Commission provide for the opportunity that an affiliated company to meet this obligation.

PQ2(c): MAPSA suggests that this creditworthiness report may include information on both the bidder and relevant affiliated companies.

PQ2(d): MAPSA suggests that the "generation portfolio" could include generating assets owned in whole or in part by an affiliated company, financial instruments such as futures and options, and contractual rights to energy and generating capacity.

MAPSA wants to ensure that the Commission not limit CDS provision to companies that own generation.

PQ2(e): MAPSA suggests that the plan for ensuring that the renewable conditions of the settlement are met may include cost information which supports an initial renewables

percentage below the 2 percent threshold. The Settlement language discusses that “2% of its offered energy supply” must come from renewable. MAPSA suggests that “offered energy supply” means that the obligation is to deliver 2% of total energy delivered under CDS service (in kwh).

MAPSA seeks clarification related to the renewable obligation to ensure that all CDS bidders operate under similar responsibilities.

PQ2(f): MAPSA suggests that the Commission impose an obligation on CDS bidders to provide evidence that the bidder has direct experience in the competitive marketing of retail energy services, including the acquisition and servicing of residential customers in at least one jurisdiction.

MAPSA recommends that this obligation will ensure that the CDS provider has operated in residential markets prior to assuming this responsibility.

PQ3: MAPSA suggests that the Commission provide for the opportunity that an affiliated company to meet this obligation.

PQ4(a): MAPSA suggests that the Commission modify this section to read “A description of any and all information or pending litigation by a domestic federal, state or local jurisdiction relating to respondent, any guarantor, any officer, director or member thereof, or any affiliate engaged in the production, transportation or marketing of natural gas or electricity.”

PQ4(b): MAPSA suggests that the Commission modify this section to read “A list of all felony convictions within the last five years relating to respondent, any guarantor, any officer, director, partner or member thereof, or any affiliate engaged in the production, transportation or marketing of natural gas or electricity.”

PQ4(c): MAPSA suggests that the Commission modify this section to read “A list of all civil penalties, judgments, consent decrees or other sanctions within the last five years, as a result of any violation of any law, rule, regulation or ordinance in connection with its business activities relating to respondent, any guarantor, any officer, director, partner or member thereof, or any affiliate engaged in the production, transportation or marketing of natural gas or electricity.”

PQ4(d): MAPSA suggests that the Commission modify this section to read “A list of all actions occurring within the last five years which have resulted in revocations or suspension of any permit or authority to do business in any domestic jurisdiction relating to respondent, any guarantor, any officer, director, partner or member thereof, or any affiliate engaged in the production, transportation or marketing of natural gas or electricity.”

PQ4(e): MAPSA suggests that the Commission modify this section to read “A list of all actions within the last five years that have resulted in the barring from public bidding related to respondent, any guarantor, any officer, director, partner or member thereof, or any affiliate engaged in the production, transportation or marketing of natural gas or electricity.”

PQ4(f): MAPSA suggests that the Commission modify this section to read “A list of all bankruptcy proceedings within the last five years related to respondent, any guarantor, any officer, director, partner or member thereof, or any affiliate engaged in the production, transportation or marketing of natural gas or electricity.”

PQ5: No comments.

PQ6: No comments.

PQ7: No comments.

PQ8: No comments.

PQ9: No comments.

2. Selection of CDS Provider.

S1: MAPSA suggests that the Commission modify this section to read “Four (4) months prior to the initiation of CDS service, the pre-qualified bidders will submit firm dollar amount bids which recognize all statutory and regulatory obligations of CDS service, which is will be payable to PECO fifteen (15) days prior to the initiation of CDS service. In submitting a bid, the CDS agrees to reliably provide provider-of-last-resort service to the CDS customers of PECO Energy’s residential, residential heating and residential off-peak customers under the terms, conditions, and rates defined for CDS service. The CDS provider agrees that it has a sufficient generation portfolio of owned and contracted generation, contracted energy, and financial instruments such as futures contracts, energy call options and capacity call options to perform such service. The CDS provider must arrange for all necessary transmission service to PECO Energy’s distribution facilities. The CDS must agree to face penalties, fines, or other remedies as the Commission sees fit if the CDS fails to meet these obligations. To accomplish this, the CDS should be required to file all standard EDC reports which discuss customer care responsiveness, and any other report required by the Commission. The CDS will not receive additional obligations during the service period, nor will it be subject to new regulations that alter in a material fashion the economics of providing CDS service.”

MAPSA recommends these changes to incorporate the SCB proposal. In addition, these changes more clearly define the rules for providing service under CDS. Finally, this proposal

limits the Commission from imposing new material obligations on the CDS provider during the service year.

S2. MAPSA suggests that the Commission modify this section to read “The term of CDS service covers the period from January 1, xxxx 12:01am through January 31, xxxx+1 11:59pm. Service shall be initiated for any customer on CDS service following the scheduled PECO Energy meter read date within January xxxx. Service shall be concluded for any customer on CDS service following the scheduled PECO Energy meter read date within January xxxx+1. PECO Energy shall provide to any CDS provider at least five (5) days notice to the CDS on its load obligation.”

These changes define more precisely the term of service for CDS. In addition, PECO Energy is required to provide updated load obligation to the CDS in a reasonable time.

S3. MAPSA suggests that the Commission modify this section to read “The rates for each residential category shall be established at the rate structure incorporated within the Joint Settlement. If PECO Energy reduces the rate structure incorporated within the Joint Settlement, or if PECO Energy establishes a single rate for each rate schedule as provided for in the Settlement (paragraph 38 (e)), the CDS provider must modify its rates to be identical to such approved modifications.”

These changes are fundamental to the SCB structure – pricing the CDS service at the Settlement rates.

S4. Delete.

This term is no longer necessary.

S5. No comment.

S6. No comment.

S7. MAPSA suggests that the Commission modify this section to read “No later than three (3) months prior to the initiation of CDS service, the Commission’s Bureau of Audits will recommend to the Commission the winning bidder. The Commission shall enter an order awarding the right to serve the CDS market to this bidder at its next Public Meeting.”

These changes provide clarification to the CDS process.

S8. MAPSA suggests that the Commission add this section to read “No later than five (5) months prior to the initiation of CDS service, the Commission’s Bureau of Audits, with the cooperation of PECO Energy, will randomly select 20% of PECO Energy’s residential customers to be served by the CDS. The pre-qualified bidders should have access to general information related to the customers randomly selected, specifically the number of CDS customers by rate class and rate strata, the number of CDS customers who have previously selected an Electric Generation Supplier, and 12 months of energy usage for each CDS customer. All bidders shall provide an affidavit that this information shall only be used to evaluate and determine the bid.”

This addition supports the ability of the pre-qualified bidders to evaluate the CDS service and maximizes the value the CDS bidders will offer. More importantly, this information is currently available to PECO Energy PLR, and this allows equal treatment for equal service.

3. Terms and Conditions of Service.

T1. MAPSA suggests that the Commission clarify that the term “at any time” should be consistent with other terms the Commission has established for customer switching

incorporated within the PECO Energy Supplier Tariff or Commission regulation, including providing adequate notice to the CDS. Furthermore, the customer must be required to initiate the switch with the new supplier, including with the PECO Energy PLR.

This modification will allow the CDS and PECO Energy to have reasonable procedures to process the switch (e.g., at the next meter read).

T2. MAPSA suggests that the Commission modify this section to read “No later than twenty (20) days prior to the initiation of CDS service, the CDS will be responsible for notification of customers of their selection in the random lottery, the terms and conditions of CDS including (a) the ability to stay or switch to an Electric Generation Supplier, (b) the opportunity to be re-assigned to PECO Energy PLR service (although no requirement for a check off box) with a clear explanation of what a customer needs to do to return to PECO Energy PLR.”

These changes clarify the obligations of the CDS service. These changes also restrict the use of the check off box, which only confuses consumers and reduces the value bidders will have on the CDS service.

T3. MAPSA suggests that the Commission modify this section to read “The CDS provider is responsible for all administrative costs of assigning the customer to CDS service and switching the customer to CDS service. PECO Energy shall establish, in conjunction with the EDEWG, a standard transaction to support CDS transactions. PECO Energy shall not provide any further notice, nor shall the ten-day waiting period apply when the CDS customer receives service from the CDS provider.”

This language clarifies the certain elements of current Commission regulations and ensures that EDI transactions are established to reduce the problems with the CDS customers.

T4. No comment.

T5. MAPSA suggests that the Commission add language which reads “A CDS provider has the ability to terminate customers after all regulations have been followed. The physical termination will come through a PECO EDC employee at no cost to the CDS.”

This language allows the CDS provider to utilize the tools of a regulated utility to ensure payment. This is critical to ensure that the CDS provider maximizes the bid process. The Commission must recognize that the CDS is identical in role and responsibility and in rights.

T6. - MAPSA suggests that the Commission modify this section to read “The CDS provider must provide a single bill according to the EGS Consolidated Billing process established in the Joint Settlement.”

This change recognizes that the CDS is identical in all respects to the PECO Energy PLR. A default customer can not have an “option” for billing service, independent of the provider of default provider. More importantly, the CDS provider must remove any remaining credit risk for PECO Energy EDC, so providing the customer with billing options makes no sense. While this language is in conflict with the Joint Settlement, the Commission should recognize that this customer option is antithetical to CDS.

T7. MAPSA suggests that the Commission delete the language “to the extent it is providing services funded by these unbundled costs.”

This change works in conjunction with T6 related to billing services. If the CDS has the credit risk, clearly the CDS provider is providing these services.

T8. MAPSA suggests that the Commission modify this section to read “The CDS provider will be required to insert into the CDS customer’s bill information related to the customer’s electric service from either PECO Energy EDC which has been previously approved by the Commission, or the Commission .

This modification limits the ability of PECO Energy EDC to include information which could be economically burdensome to the CDS and/or could provide an indirect opportunity to create or maintain marketing awareness for unregulated PECO Energy affiliates.

T9. No comment.

T10. Delete.

T11. MAPSA suggests that the Commission modify this section to read “The Bureau of Audits shall restock the CDS customers whenever the number of residential customers served through CDS service has fallen below 17% according to Section S8. This restocking shall restore the number of customers to the 20% level.

T12. MAPSA wants to clarify its understanding of the phrase “number of customers served by the CDS provider”. CDS service is better understood as stand-by service. The CDS provider guarantees that any and all customers assigned to their service will receive electric energy and capacity for their full requirements whenever the customer has not made other arrangements with an EGS, or the EGS has, for whatever reason, not supplied the customer with the necessary energy supplies. Therefore, MAPSA recognizes that the only way that the number of customers being served by the CDS could fall below 17% is if over 3% of randomly assigned customers were selecting to return to PECO Energy PLR service. MAPSA believes that the Commission should clarify if there is another definition, or a different interpretation.

T13. MAPSA recommends that the Commission modify this proposal to be consistent with S1 which limits new material obligations.

T14. No comment.

T15. No comment.

T16. No comment.

T17. No comment.

T18. No comment.

T19. MAPSA suggests that the Commission add this section to read “The CDS providers is entitled to receive from PECO Energy the appropriate amount of billing and collection credits for providing billing and collection services. The CDS shall charge the ratepayers for these services at PECO Energy’s PLR rates established in its EDC tariff. To the greatest extent practicable, the CDS billing format should mimic PECO Energy’s PLR billing format.”

This new language clarifies that the CDS will not be disadvantaged versus any other EGS in providing billing and customer care services. This language also clarifies the billing format to ensure customers understand their choices.

T20. MAPSA suggests that the Commission add this section to read “PECO EDC shall establish data protocols and information exchange which allow the CDS to be treated identically to the PECO Energy PLR in all regards.”

Nothing should disadvantage the CDS versus PECO Energy PLR service. If the PECO Energy PLR is not utilizing an external interface to the PECO Energy EDC, the CDS does not need to use an external interface. Otherwise the similar rate is not sufficient to support the CDS service.

MAPSA appreciates this opportunity to provide its Proposal and Comments on the Competitive process for CDS service in PECO's service territory.

Respectfully submitted,



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Counsel for Mid-Atlantic Power
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DATED: December 3, 1998

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December 9, 1998

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Re: Competitive Provider-of-Last-Resort , ¶ 38
PECO Joint Petition for Full Settlement
Docket Nos. R-00973953 and P-00971265

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Dear Secretary McNulty:

In view of the issues raised by the various comments filed by interested parties concerning the structure of PECO's Competitive Default Service ("CDS"), MAPSA requests that the Commission provide the parties with the opportunity to file reply comments. MAPSA also requests that the Commission defer action until after the parties and the Commission have had a chance to meet and discuss these issues.

Reply comments are absolutely critical given the different approaches advanced in the comments. MAPSA suggests that the Commission's task of resolving this matter would be made much easier by scheduling a technical conference to address the threshold issues of "retail PLR" v. "wholesale PLR" and "CDS price bid model" v. "Stranded Cost Buydown model", after which the specific terms and conditions of PLR service could be considered. MAPSA is not suggesting Paragraph 38 be reopened, merely that the issues raised by the comments be addressed in a cooperative manner.

Since CDS does not begin until January 1, 2001 in PECO's service territory, MAPSA believes that no party could reasonably object if the Commission's resolution of this matter is delayed slightly beyond January 1, 1999, especially in view of the more time-sensitive matters requiring the Commission's attention to ensure successful implementation of direct access on

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January 1, 1999. Therefore, MAPSA requests that Commission issue an Order or Secretarial Letter allowing the parties to file reply comments and scheduling a technical conference to address the issues.

Very truly yours,

A handwritten signature in black ink, appearing to read "Todd S. Stewart". The signature is stylized with a large, sweeping flourish at the end.

Todd S. Stewart
Counsel for MAPSA

cc: Chairman John Quain
Vice Chairman Robert K. Bloom
Commissioner David W. Rolka
Commissioner Nora Mead Brownell
Commissioner Aaron Wilson, Jr.
John C. Miller, Jr., CEEP
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December 10, 1998

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James J. McNulty, Secretary
Pennsylvania Public Utility Commission
North Office Building, Room B-20
Harrisburg, PA 17105-3265

Re: **PECO Joint Petition for Full Settlement (Competitive Provider-Of-Last-Resort Paragraph No. 38) Docket Nos. R-00973953 and P-00971265**

Dear Mr. McNulty:

Enclosed are an original and 15 copies of the Reply of PECO Energy Company To Comments of The Office Of Consumer Advocate And Mid-Atlantic Power Supply Association in the above-referenced docket. As proof of filing, please return a date-stamped copy of this letter in the enclosed return envelope.

Sincerely,

Mary McFall Hopper

MMH/mtg

EEF

Enclosures

cc: John C. Miller, Jr., P.E.
Bureau of Conservation, Economics and Energy Planning

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ORIGINAL
BEFORE THE

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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DEC 10 1998

**RE: PECO JOINT PETITION FOR :
FULL SETTLEMENT :**

**(COMPETITIVE :
PROVIDER-OF-LAST RESORT :
PARAGRAPH NO. 38) :**

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

Docket Nos. R-00973953 and P-00971265

**REPLY OF PECO ENERGY COMPANY
TO COMMENTS OF
THE OFFICE OF CONSUMER ADVOCATE
AND MID-ATLANTIC POWER SUPPLY ASSOCIATION**

Paul R. Bonney
Mary McFall Hopper
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Dated: December 10, 1998

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I. INTRODUCTION

Pursuant to the Public Utility Commission's ("PUC" or "Commission") Tentative Order entered on October 20, 1998, various parties submitted Comments on the Commission's proposed "Rules For Competitive Default Service," which are intended to set forth standards for the implementation of Paragraph No. 38 of the *Joint Petition For Full Settlement Of PECO Energy Company's Restructuring Plan* ("Joint Petition").^{1/} PECO Energy Company ("PECO" or the "Company") herein submits its Replies to the Comments submitted by the Office of Consumer Advocate ("OCA") and the Mid-Atlantic Power Supply Association ("MAPSA").

II. OVERVIEW

It is essential that the Commission clearly focus on three fundamental concepts that should guide its development of standards for implementing competitive default service ("CDS") pursuant to Paragraph No. 38 of the Joint Petition. First, the purpose of developing such standards is to implement the agreement reached by the parties to the Full Settlement, as set forth in Paragraph No. 38 of the Joint Petition. The Commission should reject the invitation of the OCA and MAPSA to develop a new and different concept of CDS service from that delineated in the Joint Petition. Second, the Commission's standards should be consistent with the principle, embedded in the understanding of the parties set forth in the Joint Petition, that the CDS provider will step into the shoes of the Electric Distribution Company ("EDC") and will provide all of the services pertaining to the provision of electric service by a Provider-Of-Last-Resort ("PLR"). The

^{1/} PECO filed Comments on December 1, 1998, which was the deadline established by the Commission.

CDS provider should not be permitted to pick and choose which of the EDC's PLR functions it will provide and which it will push back to the EDC. Finally, the Commission should recognize that it is developing general standards for the implementation of CDS that define the substance of the CDS provider's responsibilities, obligations and procedures for fulfilling the PLR function. The Commission need not develop a procedure manual or a set of detailed instructions for the provision of CDS at this stage of the proceeding. As the Commission recognized in the Tentative Order (Annex A, Section T18, at p. 18), those kinds of details will be fleshed out through the Commission's on-going implementation of the CDS process.

III. REPLIES

A. The Joint Petition Requires An Energy And Capacity Market Price Bidding Process.

MAPSA has used the Commission's request for comments as an opportunity to propose an entirely new approach to the bidding process for CDS (MAPSA Comments, pp. 2-6). Despite its agreement to the Full Settlement, MAPSA has decided that it would now prefer to bid a fixed amount for the right to provide CDS to 20% of PECO's customers at rates identical to those charged by PECO for PLR service. The payment would initially be made to PECO, but would be refunded to PECO's residential customers as a reduction in the competitive transition charge ("CTC").

MAPSA's proposal cannot be implemented. The Joint Petition states that residential customers assigned to CDS "will be selected on the basis of a Commission-approved energy and capacity market price bidding process." Any deviation from the bidding process specified in the

Joint Petition is contrary to, and violates, the terms of the Full Settlement. The Commission is powerless at this stage to make unilaterally a substantive change in the Full Settlement.

MAPSA claims that its proposed "stranded cost buydown" bidding method has the advantage of being "simpler" to implement because the Commission need only select the bidder offering the "highest dollar amount." However, MAPSA implies a more complicated process for implementing the energy and capacity market price bidding process than is warranted. As both MAPSA and the OCA acknowledge, the energy and market price bidding process requires the submission of bids that mirror PECO's existing rate design (MAPSA Comments, p. 10, ¶ S-3; OCA Comments, p. 10). Accordingly, the comparison of bid proposals to PECO's existing rates is not unduly complicated and will not present any insurmountable obstacles to implementing the Joint Petition's requirements.

B. CDS Bidders Cannot Pick And Choose The PLR Functions They Will Or Will Not Furnish.

The OCA acknowledges that the Full Settlement requires that the successful CDS bidder provide all customer care functions including "billing and metering, payment arrangements [and] Chapter 56 compliance" (pp. 8-9). The OCA is clearly correct in this regard. Under the terms of the Joint Petition, the successful CDS bidder must assume the obligation to provide all PLR functions that would be supplied by the EDS, as spelled out in greater detail in PECO's Comments (pp. 6-7). However, the OCA also suggests that if customer care functions and Chapter 56 requirements "are too onerous to produce successful bids at or below the rate cap, the Commission may need to modify the CDS program." In that regard, the OCA proposes an

alternative bid structure that does not require the provision of all customer care functions and might consist of a bid for generation service only (OCA Comments, p. 8).² The OCA's suggestion should be rejected by the Commission. As the OCA acknowledged, the Full Settlement requires that the CDS provider assume all of the duties, obligations and rights of the EDC as PLR (Joint Petition, ¶ 38.c., at p. 34). The Full Settlement does not authorize a CDS bidder to treat the panoply of customer services as a menu from which it may make selections based on its own capabilities or projections of profitability. The OCA's approach would be an invitation for improper "cream skimming."

C. The CDS Provider Should Be Responsible For Collection Of Delinquent Accounts, Including Physical Termination.

Both the OCA and MAPSA propose that the physical termination of service to customers for non-payment or any other reason should be done by the EDC at the request of the CDS provider (OCA Comments, p. 5; MAPSA Comments, p. 13). As explained in detail in PECO's Comments (pp. 3-5), the physical termination of customers is an integral part of the PLR function. There are no legal, logistical or procedural obstacles to the CDS satisfying this obligation. If the CDS provider is to obtain the revenues associated with customer care functions, including, billing and collection, it cannot throw the responsibility for physical termination back to the EDC. Significantly, the OCA seems to recognize that if physical terminations are not retained as a CDS

² The OCA acknowledges that the CDS provider should receive the unbundled revenues set forth in Appendix J to the Joint Petition only to the extent that it actually provides PLR customer care functions. Accordingly, any diminution of the customer care functions assumed by the CDS would affect the level of Appendix J revenues it receives, as also explained in Sections C and E, *infra*.

as a CDS responsibility, the revenues associated with physical termination should not go to the CDS provider (*see* OCA Comments, p. 6). However, MAPSA's Comments imply that the CDS provider would be entitled to the entire portable "credit" for CDS customers, even if it does not furnish all PLR service (*see* Section E., *infra.*).

The OCA has also proposed an alternative whereby delinquent customers would be "returned" to the EDC, which would be responsible for the associated arrearage and collection efforts, including possible physical termination in accordance with Chapter 56 (OCA Comments, p. 6). This proposal is also contrary to the explicit terms of the Joint Petition, which provides that the CDS should receive a cross-section of PECO's customers, including low-income and inability-to-pay customers (*see* Joint Petition, ¶ 38.a.). Leaving delinquent customers as the responsibility of the EDC is entirely contrary to the concept of the CDS provider assuming full responsibility for PLR functions and would place a disproportionate burden on PECO. The OCA recognizes that, under the alternative it has suggested, revenues associated with collection, service termination and uncollectible expense would not flow to the CDS. However, that is an insufficient justification to deviate from the terms of the Joint Petition and to impose the entire responsibility for delinquencies upon PECO.

D. The Responsibility For Universal Service Programs, Including LIURP and CAP, Should Be Assumed By The CDS Provider.

Universal service programs, including LIURP and CAP, are also a fundamental part of the EDC/PLR function. There is no reason to sever these programs from the PLR functions that would be transferred to the CDS provider. The administration and delivery of these programs is

properly retained by the service provider that represents that single point of contact with the customer and, thereby, bears the responsibility for billing customers. The CDS provider cannot treat the PLR function as a menu from which it may choose only those services it can furnish easily or profitably.

E. MAPSA's Proposed Change To Paragraph T7 Of Annex A Should Be Rejected.

Paragraph T7 of Annex A provides:

Revenues equal to the amount of the unbundled Chapter 56 billing and collection costs, uncollectible expense, and universal service costs shall be portable with customers randomly assigned to the CDS provider and shall be provided to the CDS provider to the extent it is providing services funded by these unbundled costs.

MAPSA proposes deleting from the preceding standard the words "to the extent it is providing services funded by these unbundled costs." MAPSA seems to be suggesting, by its proposed modification, that a CDS provider could furnish less than all of the services catalogued in Paragraph T7 and yet receive the entire portable "credit" identified in Appendix J to the Joint Petition. The error and unfairness of such a proposal is manifest on its face. PECO believes that the Full Settlement requires the CDS provider to furnish all customer care and other functions of a PLR. Under those circumstances, the CDS provider would be entitled to the entire "credit." However, the CDS provider cannot pick and choose the services it will provide and still receive the entire "credit." Yet, MAPSA seems to be setting itself up for exactly that treatment, which should be soundly rejected by the Commission.

F. Restoration Of The 20% CDS Customer Level Should Be Done In Conformity With The Terms Of The Joint Petition.

Both the OCA and MAPSA propose modifications to the terms of the Joint Petition with respect to procedures for restoring the 20% level of customers allocated to the CDS. The Joint Petition (§ 38.c.) states that if the residential customers served by the CDS provider fall below 17% of PECO's residential customer base, additional customers would be assigned to the CDS to restore the 20% level by randomly selecting customers from among those served by EGSs other than PECO. Despite having agreed to the Full Settlement, the OCA has decided that the foregoing provision might create a disincentive for potential CDS bidders. On that basis alone, it suggests that the Commission unilaterally change the Joint Petition to provide that the restoration shall occur from a "slice" of all of PECO's residential customers, rather than as specified in the Joint Petition. The OCA's proposal, if adopted, would represent an improper, unilateral modification of the Joint Petition with respect to a term that all parties accepted as a result of arm-length negotiations. The OCA's proposal should be rejected.

MAPSA has proposed two interrelated changes, consisting of a new Paragraph S8 to Annex A and modification of the Commission's Paragraph T11 (MAPSA Comments, pp. 11 and 14). MAPSA's proposal for Paragraph T11 reads: "The Bureau of Audits shall restock the CDS customers whenever the number of residential customers serviced through CDS service has fallen below 17% according to section S8. This restocking shall restore the number of customers to the 20% level." Section S8, which MAPSA proposes to add to Annex A, is a description of the random selection process to be used for the initial selection of 20% of PECO's residential

customers to be assigned to CDS service and, therefore, specifies that such customers shall be "randomly selected."

MAPSA's Comments propose two substantial deviations from the express terms of the Joint Petition. First, like the OCA, MAPSA's proposed changes do away with the negotiated provision that the restoration to the 20% level shall be selected from customers "served by EGSs other than PECO" (Joint Petition, ¶ 38.c.). For the reasons explained above, such a modification is improper and should not be adopted. Second, MAPSA's proposed changes to Paragraph T11 will authorize the CDS restoration "whenever the number of residential customers . . . has fallen below 17%." The Joint Petition provides in ¶ 38.c. that the restoration would occur on an annual basis. In addition to contravening the terms of the Joint Petition, MAPSA's proposal would require an on-going true-up of CDS customers against the 20% benchmark and multiple allocations of customers to the CDS provider throughout the year. This process would be administratively cumbersome if not totally unworkable.

G. The OCA's Recommendation That The PUC Prohibit The Promotion And Marketing Of PLR Service Is Contrary To The PUC's PLR Guidelines And Should Be Rejected.

At pages 15-16 of its Comments, the OCA has attempted to introduce into this proceeding various standards for PLR service that were proposed in its Comments submitted to the Commission at Docket No. M-00960890.F0017, wherein the Commission developed Interim Guidelines for PLR service. For the most part, the summary of the OCA's Comments reiterates general principles applicable to PLR service or repeats principles explained elsewhere in the OCA's Comments on CDS. However, the OCA has used this device as an opportunity to urge the

Commission to adopt a general prohibition on the promotion or marketing of PLR service (OCA Comments, p. 16). The OCA offered a similar proposal in its comments to the Commission on the Interim Guidelines. The proposal was rejected by the Commission in its Interim Guidelines issued on November 19, 1998, which reaffirmed the Commission's position that EDCs have the right to market and promote PLR service (*see* Interim Guideline Nos. 4 and 6).

Moreover, the OCA's proposed prohibition of PLR marketing and promotion is contrary to Commission Orders entered in PECO's Restructuring proceeding, which held that non-ratepayer-funded promotional advertising is permissible:

In order to avoid any misunderstanding on this point, we repeat: PECO is free to address any issue whatsoever . . . in any manner it chooses, to any or all of its customers. In no way will this Commission restrain PECO's right to speak or compel it to speak.

Order on Compliance Filing, Docket No. R-00973953 (February 5, 1998), p. 49.

Any utility or supplier is free to promote themselves and their product as they deem fit, using their own funds. Consumers have the right to receive both objective and promotional commercial information and to be protected from false or misleading advertising.

Order on Revised Compliance Filing, Docket No. R-00973953 (February 26, 1998), pp. 26-27.

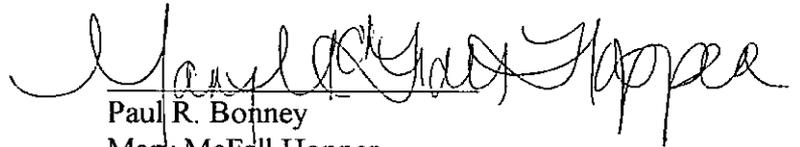
These provisions of the February 5 and 26, 1998 Orders were incorporated by reference into the Joint Petition (¶ 41 at p. 41) and represent a part of the Full Settlement. Therefore, the OCA's proposal to ban PLR advertising would violate the terms of the Full Settlement. For all of these reasons, the Commission should once again affirmatively endorse its prior holdings, as set

forth in the aforementioned Orders, and incorporated in the Full Settlement, affirming the right of PECO to market, promote and advertise PLR service.

IV. CONCLUSION

The Comments of the OCA and MAPSA, identified above, should not be adopted by the Commission in developing standards for the implementation of CDS pursuant to Paragraph 38 of the Joint Petition.

Respectfully submitted,



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Dated: December 10, 1998



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ORIGINAL

December 11, 1998

James J. McNulty, Secretary
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Re: Competitive Provider of Last Resort, ¶38 of
PECO Joint Petition For Settlement,
Docket Nos. R-00973953 and P-00971265

Dear Secretary McNulty:

The Office of Consumer Advocate (OCA) is in receipt of the letter of MAPSA requesting an opportunity for the filing of Reply Comments in the above-captioned proceeding. As MAPSA notes, several different approaches of the Competitive Default Service (CDS) have been raised in the Comments of the parties, and the Commission's consideration of these important issues would be furthered by an opportunity for Reply Comments.

The OCA agrees with MAPSA and supports its request for an opportunity for all parties to file Reply Comments. As the OCA has noted on several occasions, the definition and development of provider of last resort service, including competitive provider of last resort service, are extremely important issues for consumers. The OCA submits that all approaches to the provision of competitive default service should be thoroughly explored. The OCA submits that given the fact that CDS will not be initiated in PECO Energy's service territory until January 1, 2001, sufficient time exists for Reply Comments and continuing consideration of this matter. The OCA would also support the scheduling of a technical conference, or a collaborative process to attempt to design a competitive default service that is likely to succeed in bringing benefits to consumers.

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FOLDER

James J. McNulty
December 11, 1998
Page 2

If you have any questions regarding the OCA's position, please feel free to contact me at any time.

Sincerely,



Tanya J. McCloskey
Assistant Consumer Advocate

cc: Honorable John Quain, Chairman
Honorable Robert K. Bloom, Vice Chairman
Honorable David W. Rolka, Commissioner
Honorable Nora Mead Brownell, Commissioner
Honorable Aaron Wilson, Jr., Commissioner
John C. Miller, Jr., Bureau of CEEP
Bohdan R. Pankiw, Chief Counsel, Law Bureau
All parties of Record