



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

February 22, 2001

A-110550F0147

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DOCUMENT
FOLDER

REP

**PECO Energy Company Competitive Default Service Program Bidding:
Joint Petition for partial Settlement and approval of Competitive Default Service
Coordination Agreement filed by PECO Energy Company and Green Mountain Energy
Company.**

To Whom It May Concern:

This is to advise you that the Commission in Public Meeting on February 21,
2001 in the above-entitled proceeding has adopted an Order.

An Order has been enclosed for your records.

Very truly yours,

James J. McNulty
Secretary

DOCKETED

FEB 26 2001

smk
Enclosure
cert. Mail

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg PA 17105-3265

Public Meeting held February 21, 2001

Commissioners Present:

-John M. Quain, Chairman
Robert K. Bloom, Vice-Chairman
Nora Mead Brownell
Aaron Wilson, Jr.
Terrance J. Fitzpatrick

DOCUMENT
FOLDER

PECO Energy Company Competitive Default
Service Program Bidding:
Joint Petition For Partial Settlement and
Approval Of Competitive Default Service
Coordination Agreement Filed by PECO
Energy Company and Green Mountain
Energy Company

Docket No. A-110550 F0147

DOCKETED

FEB 26 2001

ORDER

BY THE COMMISSION:

Before us for consideration is a Joint Petition for Partial Settlement and Approval of Competitive Default Service Coordination Agreement filed by PECO Energy Company (PECO) and Green Mountain Energy Company, Inc. (Green Mountain) (Joint Petitioners). For reasons discussed herein, the Commission will approve the Joint Petition and the proposed CDS Agreement.

DISCUSSION

I. PROCEDURAL HISTORY

On December 19, 2000, PECO and Green Mountain filed a Joint Petition for Partial Settlement (Joint Petition) and Approval of Competitive Default Service Coordination Agreement (CDS Agreement). On that date, copies of the Joint Petition were served on interested parties to PECO's Restructuring and Merger proceedings. On January 3, 2001, New Power Company, Inc. (New Power) filed a letter with the Commission complaining that it had not yet been served with a copy of the Joint Petition. On January 22, 2001, New Power filed an Answer and New Matter to the Joint Petition (New Power Answer). On February 1, 2001, PECO and Green Mountain filed a Joint Response to New Power's Answer.

II. PLEADINGS

A. Joint Petition and CDS Agreement

The Joint Petition with the attached Green Mountain CDS Agreement was filed pursuant to Paragraph 52b of PECO's Joint Petition for Settlement of the Merger of the Newly Formed Holding Company and Unicom Corporation (Merger Settlement) which modified the Joint Petition for Settlement of its Application for Approval of a Plan of Corporate Restructuring, including the Creation of a Holding Company (Restructuring Settlement). Pursuant to the CDS Agreement, Green Mountain will provide Competitive Default Service (CDS) to an additional

50,000 PECO customers. Joint Petitioners contend that this CDS program will further stimulate the development of the competitive market in Pennsylvania.

The CDS customers to be served by Green Mountain will be randomly selected and the terms of service, including the opt-out provision, will be identical to those previously approved by this Commission by Order entered on November 30, 2000 at this docket in the CDS Agreement between New Power and PECO.

There are a few differences between the two agreements:

- (1) That service is to begin with the first meter reading date following April 1, 2001;
- (2) That there will be no further assignment of CDS customers during the term of the CDS Agreement; and
- (3) That the amount of the additional security required under Section 18b will be adjusted proportionately to the number of customers assigned.

The Joint Petitioners state that the CDS Agreement complies with the requirements set forth in the Company's Restructuring Settlement at Docket No. R-00973953 as modified by its Merger Settlement. Under the CDS Agreement, Green Mountain will offer Rate R CDS customers a discount of 2.02% off of PECO's shopping credit and Rate RH CDS customers a discount of 1.2%. The CDS Agreement has the following major components:

- Green Mountain will provide no less than two percent (2%) of its offered energy supply for CDS from renewable sources as required by Paragraph 38b of the Restructuring Settlement.
- Green Mountain will provide electric generation supply to CDS customers at the above discounted prices from the period commencing on the first meter reading date occurring after April 1,

2001 through the last meter reading date occurring prior to February 1, 2004 ("CDS Term").

- The Company will assign to CDS 50,000 residential customers. The customers assigned will be randomly selected from non-shopping residential customers, meaning those who have not chosen an alternative electric generation supplier (EGS). Customers so assigned to CDS shall have the right to opt out of participating in CDS-and, at any time during the CDS Term, may also return to PECO or switch to another EGS without penalty or charge.
- There will be no further assignment of CDS customers to Green Mountain during the term of the CDS Agreement.
- PECO will provide consolidated billing for all CDS customers.

In accordance with the Merger Settlement, the CDS Agreement establishes an implementation schedule designed to transfer all CDS Customers as of the respective customer's April 1, 2001 meter reading date.

The Joint Petitioners state that the CDS Agreement is contingent upon approval by the Commission without modification. If the Commission rejects the CDS Agreement, the Agreement will automatically terminate. If the Commission approves the CDS Agreement with modifications to any terms or conditions or the addition of any conditions, either Joint Petitioner may elect to withdraw from the Agreement.

Upon Commission approval of the CDS Agreement and the expiration of any period for appeal of that approval, Green Mountain will promptly withdraw any pending challenge to the Commission's approval of the PECO-New Power CDS Agreement and will waive its rights to subsequent challenges to that approval.

The Joint Petitioners also request that the Commission rule on the following issues:

- Whether Green Mountain, by reason of the exercise of its rights and performance of its obligations as a CDS Provider, would be a public utility within the meaning of 66 Pa. C.S. § 102, or would only be subject to those rules and regulations applicable to an EGS within the meaning of 66 Pa. C.S. § 2803, as modified by the CDS Agreement?
- Whether the proposed operational procedures contained in Exhibit A to the CDS Agreement are consistent with those provisions of the competitive safeguards and/or code of conduct set forth at 52 Pa. Code § 54.122?

B. New Power Answer

In its answer, New Power claims that it had still not received proper service of the Joint Petition, but filed its answer to preserve its rights to participate in this proceeding. New Power's concern about service is based upon the omission of its counsel from the certificate of service.

New Power disagrees with assertion by Joint Petitioners that approval of the proposed CDS Agreement would extend the price advantages of CDS to an additional 50,000 customers and further stimulate the competitive market in Pennsylvania. New Power complains that there is no guarantee that Pennsylvania consumers will get the best price and the market will be benefited when a bidder who lost in the competitive auction process is permitted to make a side deal with the utility awarding the CDS contract.

New Power disputes that the proposed contract between PECO and Green Mountain complies with the requirements set forth in the PECO's Restructuring Settlement as modified by the Merger Settlement because the proposed contract is not authorized by the Settlements. New Power claims that the proposed contract *contradicts these Settlements*.

In New Matter, New Power expands its argument. New Power argues that under the Restructuring Settlement, PECO was to “serve as provider of last resort for all retail customers in its service territory that do not choose or cannot choose to purchase power from alternative suppliers.” Restructuring Settlement at ¶38. New Power continues that the Restructuring Settlement established two exceptions to the requirement that PECO serve as provider of last resort.

First, PECO was required to assign twenty percent of all of its residential customers “to a provider of last resort default supplier other than PECO that will be selected on the basis of a Commission-approved energy and capacity market price bidding process.” Restructuring Settlement, ¶38. New Power claims that PECO complied with this requirement by entering into the CDS contract with New Power on November 30, 2000.

Second, New Power claims that the Restructuring Settlement provided for “market share thresholds for random assignment of non-shopping customers to alternative Electric Generation Suppliers (EGSs) and PECO-affiliated or divisional EGSs.” Restructuring Settlement, ¶ 39. New Power argues that the Restructuring

Settlement does not provide any other exception to the requirement that PECO will “serve as the provider of last resort”.

New Power claims that a third exception to PECO’s acting as a PLR was established in the Merger Settlement. This exception requires PECO to assign customers at random to all EGSs serving residential or commercial customers up to 35% market share if less than 35% of customers are shopping with an alternative supplier as of January 1, 2001. New Power claims that this exception does not apply to the proposed Green Mountain CDS Agreement as the Merger Settlement indicates that customers are to be assigned to all licensed suppliers and not to one supplier.

New Power also claims that the Commission cannot approve the contract because it represents a modification of the Restructuring and Merger Settlements. New Power states that nothing in the Settlements allows PECO to contract with and assign customers to, a CDS provider after it has assigned twenty percent of its residential customers to a CDS provider, i.e. New Power.

New Power finally argues that the Commission should not approve the proposed CDS contract between PECO and Green Mountain because it would deprive New Power of a valuable part of its bargain that it negotiated with PECO in good faith. New Power claims that the Settlements require that if PECO selects one CDS provider to serve 20% of its CDS customers, said provider shall be the sole CDS contractor with PECO.

C. Joint Response of PECO and Green Mountain

As to New Power's claims about improper service, PECO and Green Mountain note that a copy of the Joint Petition was hand delivered to New Power's Counsel on December 19, 2000. They contend that actual service of the Joint Petition cures the oversight of New Power's counsel being omitted from the certificate of service.

PECO and Green Mountain contend that, contrary to New Power's claim, there is sufficient controversy in this proceeding to warrant a settlement. PECO and Green Mountain point to Green Mountain's Petition of Reconsideration that was filed to the Commission November 30, 2000 order approving the New Power CDS Program. PECO and Green Mountain state that the Commission has not yet ruled upon the merits of the Petition for Reconsideration, and that, even if the Commission were to rule against Green Mountain's Petition, Green Mountain would still have the right to appeal that ruling. Those rights create a risk of loss for all parties and would require time and resources to pursue. In an effort to avoid extended litigation, and consistent with the longstanding Commission preference for negotiated settlements, PECO and Green Mountain attempted to resolve their dispute by proffering a valid settlement agreement for Commission approval.

PECO and Green Mountain claim that the proposed Green Mountain CDS Agreement does not violate the Restructuring Settlement or the Merger Settlement. They also claim that much of New Power's argument is based on the

assumption that implementing the Green Mountain CDS Agreement will require the Commission to amend the PECO Restructuring Settlement or the Merger Settlement. However, PECO and Green Mountain note that the PUC-approved New Power CDS Agreement already varies from the Settlements. The Settlements allow for the assignment of 20% of PECO's shopping and non-shopping residential customers to an alternative CDS provider, whereas the New Power CDS Agreement assigns approximately 22% of only non-shopping customers to New Power. They argue that approval of the New Power Agreement by the Commission establishes PECO's ability to exceed the Settlements' minimum CDS terms and provide additional benefits to consumers.

As to the Settlements' market threshold requirements, PECO and Green Mountain state that one must understand what the Settlements were intended to accomplish, and who the Settlements were intended to benefit. PECO and Green Mountain contend that the threshold requirements were simply methods of helping to ensure that the competitive retail market for electricity would become established in Pennsylvania. These were essentially minimum actions and checkpoints that all parties agreed were appropriate measures to advance competition. No party to the Settlements ever took the position that PECO was prohibited from taking additional steps to help promote competition.

PECO and Green Mountain argue that PECO, having met the minimum settlement obligations, chose to go beyond those requirements to assist the development of the marketplace. In fact, they note that PECO agreed to:

- Randomly assign only non-shopping customers to CDS, rather than both shopping and non-shopping, to increase the likelihood of a successful CDS program.
- Award New Power a contract for 22% of its residential CDS customers, thus exceeding the minimum 20% that the Settlement required.
- Award Green Mountain a CDS agreement for 50,000 of its residential non-shopping customers, thus exceeding the minimum 20% that the Settlement required.

PECO and Green Mountain contend that there is nothing in either Settlement that prohibits PECO from proposing the Green Mountain CDS Program subject to Commission approval.

PECO and Green Mountain state that the Green Mountain CDS Agreement is unrelated to the Settlements' 35% market share threshold requirement. Rather, as explicitly stated in PECO and Green Mountain's Joint Settlement Petition, the Green Mountain CDS Agreement was filed to address the concerns raised by Green Mountain's Petition for Reconsideration. Notably, without including any of Green Mountain's 50,000 CDS customers, as of January 1, 2001, PECO had already exceeded the 35% market share threshold requirement for all of its customer classes.

PECO and Green Mountain also contend that their proposed CDS agreement does not undermine the open bidding process. PECO met, and in fact exceeded, the minimum CDS transfer requirements through its CDS Agreement with New Power. The open bidding process was followed, and resulted in a winning bid by New Power and discounted prices for customers. In the case of the

Green Mountain CDS Agreement, it is claimed that PECO did not engage in a new open bidding process, but merely to settle a contested proceeding. This CDS Agreement mirrors the approved New Power CDS Agreement in all substantive terms.

Finally, PECO and Green Mountain state that the Green Mountain CDS Agreement does not deprive New Power of any of the value of the New Power CDS Agreement. New Power's CDS Agreement does not purport to give any exclusivity to New Power, nor does New Power cite any contract term that granted it such exclusivity.

III. RESOLUTION

A. Certificate of Service

As a preliminary matter, we will rule on the alleged failure of PECO and Green Mountain to *properly serve New Power with a copy of the Joint Petition*. We note that *despite the omission of New Power's counsel from the Certificate of Service, actual delivery of the Joint Petition was timely made to New Power's Counsel which cures whatever technical defects in service that may have occurred*. We also note that New Power has not articulated any adverse effect resulting from the omission of the name of its counsel from the Certificate of Service.

B. PECO-Green Mountain CDS Agreement

We have reviewed the Joint Petition, the Green Mountain CDS Agreement, and the subsequent filings made by PECO, Green Mountain and New Power. The nature of this filing requires that the Commission first determine whether the public interest is furthered by this settlement. See Pennsylvania Public Utility Commission v. C.S. Water and Sewer Associates, 74 Pa. P.U.C. 767 (1991), Pennsylvania Public Utility Commission v. Philadelphia Electric Co., 60 Pa. P.U.C. 1 (1985).

The Joint Petitioners urge that the Commission approve the Joint Petition as being in the public interest because it eliminates the risks of litigation for all parties and the expenditure of time, resources and expense involved in pursuing litigation and any subsequent appeals resulting from the Green Mountain Petition for Reconsideration. Moreover, the Joint Petitioners contend that the proposed Green Mountain CDS Program is consistent with the New Power CDS program and that it furthers the goals envisioned for CDS programs under the Restructuring and Merger Settlements. The Joint Petitioners also contend that the Joint Petition is not inconsistent with the Commission regulations at 52 Pa. C.S. §5.231.

We agree that the proposed Joint Petition promotes the public interest in that it eliminates further litigation of Green Mountain's Petition for Reconsideration, thus, clearing the way for the implementation of both the New Power CDS Program and the Green Mountain CDS Program. We also find that the public interest is served by the opportunity for additional PECO customers to

participate in a CDS program. We believe that this second CDS program will ultimately benefit the development of the retail electric generation market in PECO's service territory.

Also, we rule that the Joint Petition and the Green Mountain CDS Agreement are not inconsistent with either the Restructuring or the Merger Settlements. In the Green Mountain CDS Agreement, it is clear that while PECO will be assigning 50,000 of its non-shopping customers to the Green Mountain CDS Program, it will continue to serve as PLR for these customers so that these customers can opt out of the CDS program and return to PLR service at any time. Thus, PECO will still retain its obligation to provide PLR service to its customers.

We also rule that there is nothing in either the Restructuring or the Merger Settlement that prohibits our approval of this Joint Petition and the Green Mountain CDS Program. The facts demonstrate that PECO, with the Commission approval, had already exceeded the Settlements' 20% threshold requirements for CDS by assigning 22% of its non-shopping customers to the New Power CDS Program. We do not see this 20% threshold as a barrier that would prevent this Commission from approving the transfer of 50,000 additional customers to the Green Mountain CDS Program. -

As to New Power's argument regarding the 35% customer shopping threshold at ¶52 (c) of the Merger Settlement (Restructuring Settlement, ¶39 (a)), we note that as of January 1, 2001, PECO had already exceeded the 35% market share threshold requirement for all of its customer classes. Therefore, the random

assignment of customers to all licensed suppliers as envisioned by those settlement provisions has been rendered inoperative.

The Green Mountain CDS Program for 50,000 customers grew out of the settlement of a contested proceeding. We do not see that the competitive bid process through which New Power was awarded its CDS Program for 299,300 customers is compromised in anyway by establishment of this additional CDS program.

Finally, we reject New Power's argument that it will somehow be damaged by our approval of the Green Mountain CDS Agreement because New Power will be deprived of the exclusive nature of the bargain that it had struck with PECO in negotiating its own CDS Agreement. As we noted in our order approving the PECO-New Power CDS Program, the Merger Settlement language at paragraph 52.b gives PECO discretion to negotiate a CDS agreement with one or more CDS suppliers. November 30, 2000 Order at p. 22. Clearly, the Merger Settlement did not contemplate that PECO would enter into an exclusive arrangement with one supplier, and thus, New Power could not have had a reasonable expectation of exclusivity in regard to its CDS program.

C. Specific Rulings

In our November 30, 2000 order approving the PECO-New Power CDS Agreement, we ruled on two of the three issues raised by the Joint Petitioners¹. Consistent with our prior rulings, we will state that by reason of the exercise of its rights and performance of its obligations as a CDS Provider, Green Mountain will not be considered a “public utility” within the meanings of 66 Pa. C.S. § 102 (relating to definitions). Instead, Green Mountain will be subject to those rules and regulations applicable to an electric generation supplier within the meanings of 66 Pa. C.S. § 2803 (relating to definitions), as modified by the CDS Agreement.

We also have examined the proposed operational procedures contained in Exhibit A to the CDS Agreement and note that they are identical to those presented in the PECO-New Power CDS Agreement. Accordingly, consistent with our prior ruling, we rule that they are consistent with those provisions of the competitive safeguards and/or code of conduct set forth in 52 Pa. Code §54.122.

D. Consumer Issues

To avoid customer confusion which resulted from the implementation of the PECO-New Power CDS Program, we will direct that both PECO and Green Mountain engage in customer information/customer education activities prior to the customer selection process and the mailing of the initial welcome package to PECO customers selected to participate in the program. PECO and Green

Mountain are directed to work with the Commission's Bureau of Consumer Services and Community Relations Liaison, and the Office of Consumer Advocate to develop materials that fully explain the customer selection process and the benefits of participation in the CDS program.

In the customer selection process, we will also direct that PECO not include in the selection pool of Green Mountain CDS Program participants those customers that had been selected for the New Power CDS Program, but who had opted out or dropped out of that program.

In order to provide accurate and understandable information about the CDS program to customers in PECO's service territory, we will direct that all customer information mailings and notices relating to the CDS program be provided to BCS for its review. When finalized, such customer information mailings or notices shall be provided to BCS no later than five working days before the proposed distribution dates.

We also direct that bills for those customers enrolled in the CDS program shall be conspicuously labeled "Competitive Default Service" or with such other name that may be adopted for the program. The purpose of this label is to allow customers when contacting PECO or the Commission to inform the customer service representative whether they are with the CDS program or the EGS under the typical supplier agreement. This will help PECO and the BCS properly classify the contact as being EGS or CDS related. PECO is also directed to

¹ We note that no comments were filed in opposition to any of the Joint Petitioners' requested rulings.

place the Commission's toll-free number on CDS customer information notices with the direction that customers may contact the Commission by calling 888-PUC-FACT or 888-782-3228.

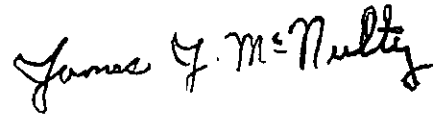
Finally, to insure that customers are not disadvantaged by their participation in the CDS program, we direct PECO to negotiate payment arrangements for customer CDS balances pursuant to Commission regulations at 52 Pa. Code § 56.97 (b)(relating to procedures upon ratepayer or occupancy contact prior to termination) and § 56.151(3)(relating to utility company dispute procedures - general rule); THEREFORE,

IT IS ORDERED:

1. That the Joint Petition for Partial Settlement and Approval of Competitive Default Service Coordination Agreement filed by PECO Energy Company and Green Mountain Energy Company is approved.

2. That a copy of this order be served on all parties of record.

By the Commission,

A handwritten signature in cursive script that reads "James J. McNulty".

James J. McNulty
Secretary

(SEAL)

ORDER ADOPTED: February 21, 2001

ORDER ENTERED: FEB 22 2001

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MESSENGER

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this _____ day of _____, 2001,

the undersigned, as evidence by execution hereof, acknowledges receipt and accepts service of COPY ORDER an official Commission document entered, issued, or otherwise promulgated under date of FEBRUARY 22, 2001 at Docket No. A-110550F0147 on behalf of:

BERNARD A RYAN ESQUIRE
PA SMALL BUSINESS ADVOCATE

OFFICE OF SMALL
BUSINESS ADVOCATE

FEB 23 2001

RECEIVED

DOCUMENT
FOLDER

D. Pauger

Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU FILE RETENTION SECTION
PA PUBLIC UTILITY COMMISSION
2ND FLOOR COMMONWEALTH KEYSTONE OFFICE BUILDING
HARRISBURG PA 17105-3265

SECRETARY'S BUREAU
D.P.U.C.

01 FEB 27 PM 3:11

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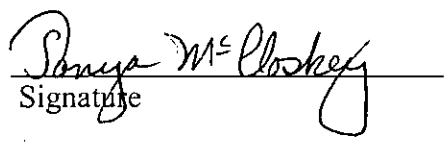
ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 23rd day of February, 2001,

the undersigned, as evidence by execution hereof, acknowledges receipt and accepts service of COPY ORDER an official Commission document entered, issued, or otherwise promulgated under date of FEBRUARY 22, 2001 at Docket No. A-110550F0147 on behalf of:

TANYA J MCCLOSKEY ESQUIRE
PA OFFICE OF CONSUMER ADVOCATE

RECEIVED
01 FEB 26 PM 4:01
PA.P.U.C.
SECRETARY'S BUREAU


Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

SECRETARY'S BUREAU FILE RETENTION SECTION
PA PUBLIC UTILITY COMMISSION
2ND FLOOR COMMONWEALTH KEYSTONE OFFICE BUILDING
HARRISBURG PA 17105-3265

DOCUMENT
FOLDER

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 22nd day of February, 2001,

the undersigned as evidence by execution hereof, acknowledges receipt and accepts service of **COPY ORDER** an official Commission document entered, issued, or otherwise promulgated under date of **FEBRUARY 22, 2001** at Docket No. **A-110550F0147** on behalf of:

KENNETH MICKENS ESQUIRE
PA PUC OFFICE OF TRIAL STAFF

Elaine C. Meisinger
Signature

Kindly sign and date this acceptance of service and acknowledgement of receipt, and, return the same for filing to:

To: → SECRETARY'S BUREAU FILE RETENTION SECTION
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PA PUC TRIAL STAFF

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 26 day of February, 2001,

the undersigned, as evidence by execution hereof, acknowledges receipt and accepts service of **COPY ORDER** an official Commission document entered, issued, or otherwise promulgated under date of **FEBRUARY 22, 2001** at Docket No. **A-110550F0147** on behalf of:

HONORABLE ALLYSON Y SCHWARTZ
PENNSYLVANIA SENATE

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