



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

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OCTOBER 27, 2000

A-110550 F.0147

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DOCKETED
NOV 02 2000

Application of PECO Energy Company pursuant to Chapters 11, 19, 21, 22 and 28 of the Public Utility Code for approval of a Plan of Corporate Restructuring, including the creation of a Holding Company and Unicom Corporation; PECO Energy Company Competitive Default Service Program Bidding:

To Whom It May Concern:

DOCUMENT
FOLDED

This is to advise you that the Commission in Public Meeting on October 25, 2000 in the above-entitled proceeding has adopted an Order.

An Order has been enclosed for your records.

Very truly yours,

James J. McNulty
Secretary

smk
Enclosure
cert. Mail

PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA. 17105-3265

Public Meeting held October 25, 2000

Commissioners Present:

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

Application of PECO Energy Company Pursuant
to Chapters 11, 19, 21, 22 and 28 of the Public
Utility Code for Approval of a Plan of Corporate
Restructuring, Including the Creation of a
Holding Company and Unicom Corporation;
PECO Energy Company Competitive Default
Service Program Bidding:

Docket Number:
A-110550F. 0147

DOCUMENT
FOLDER

ORDER

DOCKETED
NOV 02 2000

Before the Commission is a petition filed by Shell Energy Services
Company, L.L.C. (Shell Energy) for reconsideration of a Secretarial Letter issued
August 22, 2000 that rejected as non-conforming the bid Shell Energy submitted
for the PECO Energy Company's Competitive Default Supply Program (PECO
Energy's CDS Program). For reasons set forth in the body of this order, the
petition for reconsideration is denied.

Background

PECO Energy's CDS Program was established by the Joint Petition for Settlement approved by the Commission in the PECO Energy's Restructuring case. Order entered April 29, 1999 at Docket No. R-00973953 and P-00971265. The program was subsequently replaced by PECO Energy's CDS Lite program as outlined in the Joint Petition for Settlement in PECO Energy's Application for Approval of Corporate Restructuring, Including the Creation of a Holding Company and (2) the Merger of the Newly Formed Holding Company with Unicom Corporation. Order entered June 22, 2000 at Docket No. A-110550F0147 (PECO Energy/ Unicom Merger Settlement).

On April 6, 2000 PECO Energy issued its Request for Proposals (RFP) to provide 20% of its residential load with generation service for its CDS Lite program. The RFP listed specific provisions related to the Qualifications of Bidders, Terms and Conditions of Service, and Selection of a CDS Provider. A successful bidder would need to satisfy these provisions.

On June 1, 2000, Shell Energy submitted a bid for PECO Energy's CDS Program.

On July 31, 2000, the Commission issued a Secretarial letter to Shell Energy¹. The letter informed Shell Energy that its bid did not conform to the bid

¹ A copy of this letter was sent to PECO Energy.

qualifications contained in the RFP. The letter also informed Shell Energy that it had 72 hours to inform Commission staff whether it would be willing to revise its proposal to meet the bid qualifications. It further informed Shell Energy that if it did not agree to modify its proposal, it would have an opportunity to participate in bilateral negotiations with PECO Energy pursuant to the terms of the PECO Energy/Unicom merger agreement.

Shell Energy agreed to re-submit its bid and filed a second bid with the Commission. On August 17, 2000, Commission Staff provided Shell Energy with a listing of provisions in the second bid that still did not conform to the April 6, 2000 RFP. Petition, Exhibit C. On August 18, 2000, a conference call was held with Shell Energy, Commission Staff and Office of Consumer Advocate (OCA) participating. Another conference call was held between OCA and Shell Energy on August 22, 2000 wherein Shell Energy attempted to demonstrate the qualifications of its August 11, 2000 bid. Petition, p. 7.

On August 22, 2000, a Secretarial Letter was issued that informed Shell Energy that its second bid did not conform with the RFP to provide PECO Lite CDS service and was being rejected. The letter listed specific areas that were not in conformance with the RFP: inadequacy of the plan to secure generation and capacity to insure reliability; refusal to abide by the Code of Conduct; refusal to provide creditworthiness documents and the inclusion of an overly broad force majeure clause. The Secretarial Letter further informed Shell Energy of the

opportunity to enter into bilateral negotiations with PECO Energy pursuant to the PECO Energy /Unicom Merger Settlement.

On August 25, 2000, Shell Energy wrote a letter to Secretary McNulty requesting guidance as to the method by which further Commission review of its bid could be obtained. On August 31, 2000, the Commission Secretary issued a Secretarial Letter that advised Shell Energy that it intended to treat its letter as a request for reconsideration, but explained that to perfect the filing that the letter must be served on the OCA, the Office of Trial Staff (OTS) and the Office of Small Business Advocate (OSBA), and PECO Energy Company and other parties who were signatories to the settlements of the PECO Energy Restructuring and the PECO Energy/Unicom Merger Proceedings.

On September 6, 2000, Shell Energy filed a Petition for Reconsideration in the above-captioned proceedings seeking reconsideration of the Commission's August 22, 2000 Secretarial Letter that rejected as non-conforming Shell Energy bid for PECO Energy's CDS Bid. It requested that the Commission find that its bid was conforming and that it was entitled to be awarded the contract for generation for PECO Energy's CDS program. The petition was served on PECO Energy, OCA, OSBA and OTS.

On September 18, 2000, PECO Energy filed an answer to Shell Energy's petition. On September 22, 2000, Shell Energy filed a response to PECO Energy's answer.

Shell Energy's Petition

In its petition, Shell Energy requests that the Commission reconsider its August 22, 2000 Secretarial letter rejecting its bid for PECO Energy's CDS Program. In its petition, Shell Energy claims that it complied with each of the Commission's requirements for Competitive Default Service as contained in PECO Energy's April 6, 2000 Request for Proposal. It states that it had filed a conforming bid to provide generation and capacity, will abide by the code of conduct, has agreed to a commercially reasonable "force majeure" clause, will accommodate changes in the CDS as set forth in PECO Energy/Unicom Settlement and has provided detailed and appropriate financial information, all in accordance with the RFP. Shell Energy claims that a careful examination of its August 11, 2000 bid and the subsequent negotiations and commitments it made concerning its bid, compels the conclusion that Shell Energy's bid conformed in all material respects with the RFP, and that it is entitled to be awarded the right to provide CDS. Petition, pp. 1-2. Shell Energy then states that this right is subject to successful EDI integration testing, establishment of data protocols and information exchange with PECO Energy, and the finalization of a definitive agreement between the parties approved by the Commission. Petition, p. 2.

Shell Energy then states that PECO Energy has begun bilateral negotiations with other suppliers and it is concerned that this negotiation process will undercut its ability to enforce its rights under the RFP as the qualifying bidder. Shell Energy requests expedited review of its petition. Shell Energy then requests that

the Commission stay bilateral negotiations to the extent necessary to preserve Shell Energy's rights under the RFP.

PECO Energy's Answer

In its answer to Shell Energy's petition, PECO Energy states that Shell Energy's bid, even as further revised pursuant to discussions with PECO Energy, the OCA and the Commission Staff did not conform in all material respects with the April 6, 2000 Request for Proposal. In particular, Paragraph 18 of Shell Energy's petition did not address the concerns regarding Shell Energy's proposal at Appendix A, Section E (1) entitled the "Effects of Changes in Laws Governmental Authorities." That provision constituted, in effect, a broad reopener, as it would allow Shell Energy to revise the terms and conditions of its CDS service in the event of any change in applicable PJM business rules or in PECO Energy's tariff, that made the provision of CDS less profitable for Shell Energy. PECO Energy quotes from Shell Energy's bid as follows: "In the event of any changes in regulations, policies or legislations by local, state or federal authorities, including any a) any changes in applicable tariffs, rules or protocols established by ISOs, RTOs or PECO . . . ; or c) any other action that would adversely affect the economics of the CDS proposal or the ability to provide benefits to CDS customers, Shell Energy reserves the right to revise the terms and conditions of its CDS service." PECO Energy states that Shell Energy's clarification "that it not increase CDS rates above the then applicable PECO

Energy shopping credit for CDS term or exercise the same rights as PECO Energy under Section 38(e) of the 1998 Settlement and its current tariff without seeking Commission approval” does not address the Commission’s concern stated in the Secretarial letter that Appendix A, Section E (1) provides Shell Energy with a regulatory out in the event that PJM Operating Rules change in any way.

PECO Energy then clarifies that the “non-starter list” at Appendix C of Shell Energy’s petition was not a PECO Energy list, but rather reflected the concerns of the Commission staff and OCA. PECO Energy explains that the list was given to Shell Energy to help them respond to those areas of concern.

PECO Energy then states that it has received three generally conforming bids as a result of the bilateral CDS negotiation process, and that it has already initiated the second phase of the bilateral process by scheduling conference calls and face-to face meeting with each of the bidders. Based on these calls and meetings and a further evaluation of each bilateral CDS bid, PECO Energy will then select one bidder with whom the Company will negotiate a definitive CDS Bilateral Agreement. PECO Energy states that any bilateral agreement will be submitted to the Commission for its review and approval before October 9, 2000. For this reason, PECO Energy states that the process should be allowed to continue.

Shell Energy's Response

In its response, Shell Energy claims that PECO Energy in its Answer at p. 2 raises only one issue that could prevent the Commission from granting Shell Energy the contract and that is the provision in its bid related to "Effect of Changes in Laws / Governmental Authority." Appendix A, Section E (1). To address this concern, Shell Energy withdraws this section of its bid and Paragraph 18 of its petition.

DISCUSSION

The Public Utility Code establishes a party's right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §703(f) and (g), relating to rehearings, rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572(b) of our Regulations, 52 Pa. Code §5.572(b), relating to petitions for relief following the issuance of a final decision. The standards for a petition for relief following a final decision were addressed in Duick v. PG&W, 56 Pa. PUC 553 (1982), (Duick).

Pursuant to Duick, a petition for reconsideration under Subsection 703(g), however, may properly raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Furthermore, such petitions are likely to succeed only when they raise "new and novel arguments" not previously heard or considerations which appear to have been overlooked or not addressed by us. (Duick, p. 559). AT&T v. Pa. Public Utility

Commission, 568 A.2d 1362 (Pa. Cmwlth. 1990), further elucidated the standards for rehearing, reconsideration, revision, or rescission.

Our review of Shell Energy's petition and the record discloses no new information or novel arguments that would cause this Commission to reconsider the rejection of Shell Energy's bid for the PECO Energy's CDS program.

Accordingly, Shell Energy has not satisfied the Duick standards for the Commission to grant its petition for reconsideration.

Notwithstanding our petition for reconsideration, we have reviewed the record below and believe that Shell Energy has not demonstrated that it has satisfied the requirements of the RFP and did not qualify to be awarded the bid for the PECO Energy CDS Program.

Because of the importance of maintaining reliability of service for CDS customers, it is critical that the winning CDS bidder be able to demonstrate the ability to procure generation and capacity. Accordingly, provision Q.2 of the RFP's Qualifications Section states that the qualification package must at minimum include:

- c) a description of the CDS bidders' proposed plan to provide the generation necessary to provide CDS.

Appendix A, p. 1.

In its petition, Shell Energy states that after its first bid was rejected, "it contacted Commission staff to discuss modifying its bid to meet all qualifications of the RFP". Petition, p.6. Shell Energy also stated that it had received a list of the top eleven reasons that the Commission Staff believed that its proposal did not

conform to the RFP. Petition, p. 6. Shell Energy also stated that it participated in a conference call on August 18, 2000 with Commission staff, OCA and PECO Energy to discuss the list² of “non-starters” and “areas of concerns”. Shell Energy states that at the same time, it provided the Commission with a confidential letter with detailed information regarding its CDS load analysis, pricing projections and supply plan as well as its financial backing. Petition, pp. 6-7.

We have reviewed Shell Energy’s bid package and the confidential material that it submitted and we find that Shell Energy has not demonstrated that it had an adequate plan in place to procure generation and capacity to serve PECO Energy’s CDS customers in a reliable manner. Therefore, we will deny the instant petition.

As a final matter, we wish to emphasize that Shell Energy was treated in a fair and non-discriminatory manner throughout the process. This bidding process, was developed by the parties in settlement discussions, and as such, is not governed by the Commonwealth Procurement Code³. However, throughout the process, the Commission has endeavored to maintain the principles of fairness. Like other bidders, Shell Energy was given the opportunity to submit a second bid for PECO Energy’s CDS program, and then, on August 9 was given explicit direction by Commission Staff as to how the bid needed to be revised to conform to the RFP’s requirements. Shell Energy’s account of interactions with Commission Staff and the OCA after its second bid was filed and before the bid

² This list had been prepared by Commission Staff and not PECO Energy.

³ 62 Pa. Code §§ 101, et seq.

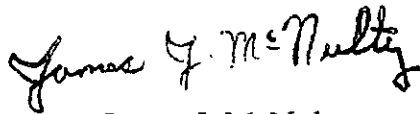
was rejected demonstrates that Shell Energy was given ample opportunity to explain the provisions of its bid. Clearly, Shell Energy was given as much, if not more attention and assistance as any other bidder in this process.

In light of the disposition of Shell Energy's petition, it is unnecessary for the Commission to rule on its request for an order directing PECO Energy to halt bilateral negotiations with other suppliers; THEREFORE,

IT IS ORDERED:

That the Petition for Reconsideration of the Secretarial Letter Issued on August 22, 2000 filed by Shell Energy Services Co., L.L.C. is denied.

By the Commission,



James J. McNulty
Secretary

(SEAL)

Order Adopted: October 25, 2000

Order Entered: **OCT 27 2000**

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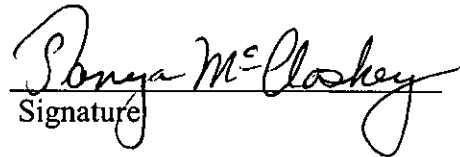
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HARRISBURG PA 17120
MESSENGER

ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 27th day of October, 2000,

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 OCTOBER 27, 2000 at Dock No. A-110550F.147 on behalf of:

TANYA J MCCLOSKEY
OFFICE OF CONSUMER ADVOCATE
FORUM
555 WALNUT STREET 5TH FLOOR
HARRISBURG PA 17101-1921


Signature

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

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PA PUBLIC UTILITY COMMISSION
B-20 NORTH OFFICE BUILDING
HARRISBURG PA 17105-3265

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AND NOW, to wit, this 27th day of Oct., 2000,

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 OCTOBER 27, 2000 at Dock No. A-110550F.147 on behalf of:

KENNETH MICKENS ESQUIRE
PA PUC OFFICE OF TRIAL
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TRIAL STAFF
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Elaine C. Messinger
Signature

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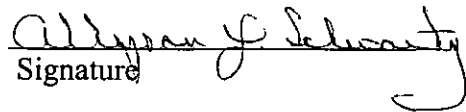
ACKNOWLEDGEMENT OF RECEIPT & ACCEPTANCE OF SERVICE

AND NOW, to wit, this 31 day of October, 2000,

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 OCTOBER 27, 2000 at Dock No. A-110550F.147 on behalf of:

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