



Todd S. Stewart
Office: 717 236-1300 x242
Direct: 717 703-0806
tsstewart@hmslegal.com

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

August 5, 2014

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

RE: Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2015 through May 31, 2017; Docket No. P-2014-2409362; **MAIN BRIEF OF NEXTERA ENERGY POWER MARKETING, LLC**

Dear Secretary Chiavetta:

Enclosed for electronic filing with the Commission is the Main Brief of NextEra Energy Power Marketing, LLC in the above-captioned docket. Copies of the Brief have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions with regard to this filing, please do not hesitate to contact me.

Very truly yours,

Todd S. Stewart
Counsel for NextEra Energy Power Marketing, LLC

TSS/jld

Enclosures

cc: Honorable Cynthia Williams Fordham (via overnight delivery)
Per Certificate of Service

MAILING ADDRESS: P.O. BOX 1778 HARRISBURG, PA 17105

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

VIA ELECTRONIC & FIRST CLASS MAIL

Honorable Cynthia Williams Fordham
Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107
cfordham@pa.gov

Candis A. Tunilo, Esquire
Christy M. Appleby, Esquire
Lauren M. Burge, Esquire
Office of Consumer Advocate
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101-1923
CTunilo@paoca.org
cappleby@paoca.org
lburge@paoca.org

Elizabeth Rose Triscari, Esquire
Office of Small Business Advocate
Commerce Building, Suite 1102
300 N. Second Street
Harrisburg, PA 17101
etriscari@pa.gov

Johnnie E. Simms, Esquire
PA Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265
josimms@pa.gov

Charis Mincavage, Esquire
Adeolu A. Bakare, Esquire
McNees Wallace & Nurick, LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166
cmincavage@mwn.com
abakare@mwn.com
*Counsel for Philadelphia Area Industrial Energy
Users Group "PAIEUG"*

Michael A. Gruin, Esquire
Stevens & Lee
17 North Second Street, 16th floor
Harrisburg, PA 17101
mag@stevenslee.com
*Counsel for PECO Energy Suppliers Group
(PSEG)*

Patrick M. Cicero, Esquire
Harry S. Geller, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@palegalaid.net
*Counsel for Coalition for Affordable Utility
Services and Energy Efficiency in Pennsylvania
(CAUSE-PA)*

Amy Klodowski, Esquire
800 Cabin Hill Drive
Greensburg, PA 15601
aklodow@firstenergy.com
Counsel for FirstEnergy Solutions Corp.

Anthony Gay, Esquire
Romulo L. Diaz, Esquire
W. Craig Williams, Esquire
Exelon Business Services Company
2301 Market Street, S23-1
PO Box 8699
Philadelphia, PA 19101-8699
Anthony.gay@exeloncorp.com
Romulo.Diaz@exeloncorp.com
Craig.Williams@exeloncorp.com
Counsel for PECO Energy Company

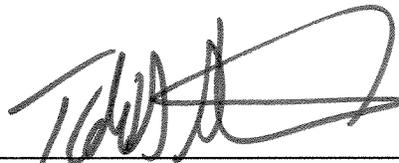
David P. Zambito, Esquire
Cozen O'Connor
305 North Front Street, Suite 400
Harrisburg, PA 17101
dzambito@cozen.com
Counsel for FirstEnergy Solutions Corp.

Dan Clearfield, Esquire
Deanne O'Dell, Esquire
Sarah C. Stoner, Esquire
Eckert, Seamans, Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
dclearfield@eckertseamans.com
dodell@eckertseamans.com
sstoner@eckertseamans.com
*Counsel for Retail Energy Supply Association
& Direct Energy Services, LLC*

Charles E. Thomas, III, Esquire
Thomas, Long, Niesen & Kennard
212 Locust Street, Suite 500
PO Box 9500
Harrisburg, PA 17108-9500
cet3@tntlawfirm.com
*Counsel for Noble Americas Energy
Solutions LLC*

Thomas P. Gadsden, Esquire
Kenneth M. Kulak, Esquire
Brooke E. McGlenn, Esquire
Morgan, Lewis, & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
tgadsden@morganlewis.com
kkulak@morganlewis.com
bmcglenn@morganlewis.com
Counsel for PECO Energy Company

Becky Merola
Government Affairs East
Noble Americas Energy Solution LLC
5325 Sheffield Avenue
Powell, OH 43065
bmerola@noblesolutions.com
Counsel for Noble Americas Energy



Thomas J. Sniscak
Todd S. Stewart
Judith D. Cassel
*Counsel for NextEra Energy Power
Marketing, LLC*

DATED: August 5, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY COMPANY :
FOR APPROVAL OF ITS DEFAULT : DOCKET NO. P-2014-2409362
SERVICE PROGRAM FOR THE PERIOD :
FROM JUNE 1, 2015 THROUGH MAY 31, 2017 :**

**MAIN BRIEF OF
NEXTERA ENERGY POWER MARKETING, LLC**

Todd Stewart
Attorney I.D. No. 75556
Hawke McKeon & Sniscak LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105-1778
Telephone: 717-236-1300
Facsimile: 717-236-4841
tsstewart@hmslegal.com

*Counsel for NextEra Energy Power
Marketing, LLC*

DATED: August 5, 2014

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I. INTRODUCTION AND PROCEDURAL HISTORY

PECO filed its default service plan on March 10, 2014. That plan includes, as Exhibit JJM-2, a new set of contract obligations and rules for wholesale suppliers. PECO's proposal is to impose these obligations in a newly developed uniform Supplier Master Agreement ("SMA") as though it were *fait accompli*, requiring no further support. In particular, the uniform SMA increases the credit standard for banks or financial institutions that are able to provide credit support for suppliers participating in the wholesale auctions.

NextEra Energy Power Marketing LLC ("NEPM") is a wholesale supplier and has participated in multiple wholesale auctions in Pennsylvania as well as other jurisdictions. NEPM's interest in this matter, therefore, is its belief that this proposed change will be detrimental to the wholesale market dynamics, wholesalers, and most importantly, end use customers.

Accordingly, on March 27, 2014, NEPM filed a Petition to Intervene in this matter. NEPM's Intervention was granted by the presiding ALJ via her Prehearing Order #2 dated April 14, 2014.

NEPM presented the testimony of a single witness, Sean Cheslock, who is responsible for the credit arrangements that are the subject matter of NEPM's concerns with PECO's proposal. Mr. Cheslock presented both direct and surrebuttal statements. Mr. Cheslock's testimony was admitted into the record by stipulation.

II. PROPOSED FINDINGS OF FACT

1) In this case, PECO has proposed to use a newly created Uniform Supplier Master Agreement ("SMA") developed by the Commission's Office of Competitive Market Oversight

(“OCMO”) Procurement Working Group which included all of the EDCs and Commission staff. (PECO’s Statement No. 2, 15:14-18).

2) “PECO’s Uniform SMA differs from the Uniform SMA submitted to the Commission only in the addition of PECO’s name where appropriate and several minor, non-substantive corrections.” (PECO’s St. No. 2, 15:1-4).

3) PECO proposed security requirements for suppliers, found at Section 6.7 of the SMA, that would provide for a default service supplier to employ, if required: “A standby revocable letter of credit acceptable to the Company, in its sole discretion, issued by a bank or other financial institution within minimum “A”, or unsecured debt rating (or, if unavailable, corporate issuer rating discounted one notch) from S&P, or an “A2” from Moody’s.” (Exhibit JJM-2, p. 46.)

4) PECO’s filing proposes to raise the minimum credit rating of the current default service plan which are A-/A3 and to increase its requirements to A/A2 for banks or financial institutions that issue Letters of Credit (“LOC”) on behalf of suppliers who provide wholesale services described in the standard Supplier Master Agreement. (NEPM Statement No. 1, p. 2:4-6).

5) NEPM’s witness, Mr. Cheslock, testified that the A-/A3 standard is commonplace in the wholesale energy trading business and is essentially the industry standard for credit purposes. In fact, the Edison Electric Institute Master Power Purchase Agreement uses the A-/A3 standard. (NEPM St. No. 1, 2:11-18).

6) Increasing the credit standards for issuers of LOC will reduce the number of banks or other financial institutions that will be able to provide LOC to suppliers willing to participate in the wholesale auctions, this will potentially increase costs and limit the universe of

providers of LOC thus potentially limiting the number of wholesale bidders willing or able to participate in default service auctions, which make those auctions less competitive. (NEPM St. No. 1, 3:1-11).

7) PECO offered no evidence as to why the increase from the A-/A3 standard to an A/A2 standard was necessary (e.g., increased defaults, etc.) and merely pointed out that the higher standard is used in New Jersey's BGS auction. This simply is not evidence of any need to increase the requirement. (PECO St. No. 2-R, 14:2-11).

8) There is no evidence that any Pennsylvania wholesale supplier has failed and then its resulting in LOC provider also failed, which would indicate that the current A-/A3 standard that was used up until this year is working fine in this regard. (NEPM St. No. 2-R, p. 1:21-26).

9) Witness Cheslock stated that based upon his experience, "there is no material benefit to PECO from raising the minimum credit rating required for issuers of LOC." (NEPM St. No. 1-SR, pp. 2-3).

10) Witness Cheslock also pointed out, that the corporate average cumulative default rate from the years 1981 through 2013 for entities with an S&P "A" rating was .07% and was .08% from companies with an "A-" rating. This one hundredth of one percent difference shows that not only are such defaults rare, but that there is very little difference in the default rate for entities with "A" versus "A-". On the other hand, the number of providers of LOC that would be excluded based upon that the restriction is substantial. (NEPM St. No. 1-SR, p. 2:1-3:6.)

III. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

A. Summary of Briefing Party's Position

NEPM's position in this case is straightforward and simple—up to this point in time, the credit standard for banks or issuers of LOC as security for suppliers participating in PECO's default service auctions (as provided in PECO's Supplier Master Agreement) has been A-/A3.

PECO has now proposed, for the first time, to raise that standard to A/A2. PECO has offered no evidence whatsoever to suggest that there is an actual necessity for the change. The whole of the “evidence” offered by PECO is that this change was discussed as part of a Commission sponsored working group under the Office of Competitive Market Oversight. Moreover, Witness McCawley testified that the higher standard is used in one other wholesale auction and that auction does not seem to have any problem attracting wholesale bidders, even though that auction is in a different state and is conducted using a completely different set of parameters.

There is no justification for increasing the credit worthiness standard in light of the evidence presented by Witness Cheslock that tightening the standards has the likelihood of both increasing the costs to wholesale suppliers and thereby increasing the bid prices and also reducing the number of suppliers thus, reducing the competitiveness of the auctions--neither of which benefits customers. Accordingly, the alleged facts from that other jurisdiction are irrelevant at best.

At bottom, there is unrefuted evidence that increasing the credit requirements is likely to reduce the number of issuers that are available to provide LOCs thereby tightening the market and the result causing the increased likelihood of increased costs, and decreased supplier participation. PECO has failed utterly to carry its burden of proving the need to change the standard from its previously approved Supplier Master Agreement (“SMA”) and, therefore, its attempt to change it here should be rejected.

B. Residential Class Procurement

1. Term Length and Type of Supply Contracts

N/A

2. Procurement Schedule

N/A

C. Small Commercial Class Procurement

N/A

D. Medium Commercial Class Procurement

(including potential Medium Commercial customer migration to hourly-pricing)

N/A

E. Large Commercial and Industrial Class Procurement

(including potential procurements relating to Medium Commercial customers)

N/A

F. Extension of Supply Contracts Beyond May 31, 2017

N/A

G. Contingency Plans

N/A

H. Uniform Supply Master Agreement

1. Burden of Proof.

As the proponent of a rule or order, PECO bears the burden of proving that its proposed default service plan is in the public's best interest, 66 Pa. C.S. § 332(a), and that all of its proposals satisfy the Pennsylvania Public Utility Code, 66 Pa. C.S. §§ 2807(e), *et seq.*, the Commission's Default Service Regulations, 52 Pa. Code § 54.181, *et seq.*, as well as the Commission's recent guidance in its Retail Markets Investigation proceedings. *Investigation of Pennsylvania's Retail Electricity Market; Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 2, 2012) ("*IWP Order*").

The term "burden of proof" means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1954) and *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. P.U.C. 300 (1976). The term "preponderance of the

evidence” means that one party must present evidence that is more convincing, even by the smallest amount, than the evidence presented by the other parties.

Due to the complexity of this matter and the diversity of issues, it is not possible to make a blanket statement as to PECO’s satisfaction of the burden of proof. However, it is clear that PECO’s apparent desire to implement the new Uniform SMA as though it were required by rule or regulation and thus requires no support or showing the necessity for doing so, is not sufficient to meet its burden of proving that the uniform SMA is just or reasonable. In fact, PECO did not even address the need for any change in the security requirements in its direct case, thus failing utterly to support the change. Likewise, the single question and answer on the subject in PECO’s rebuttal testimony did not, and cannot, support any basis of need for a change. There simply is no basis to conclude that PECO has carried its burden of proof.

2. PECO has failed to carry its burden of proving that the uniform SMA’s credit provisions are just or reasonable.

It is clear from the record in this case that PECO has presented no evidence to substantiate the need for a change in the credit rating requirements for providers of LOCs to support wholesale suppliers in the supplier of last resort auction via the Supplier Master Agreement. That is, there is no basis to justify the change from the current A-/A3 requirement to the newly proposed A/A2 requirement. As the proponent of a rule or order, and as the party seeking to change the *status quo* established in its prior SMAs, PECO bears the burden of proof that the change is just and reasonable. It has failed to provide any support whatsoever for this change, other than to suggest that it was developed by a Commission sponsored working group.

Rather, it appears that PECO is treating the uniform Supplier Master Agreement as if it were a regulatory requirement, without considering that it still has the burden of supporting it, which it has failed to do. In contrast, NEPM has provided evidence that shows the change in the

standard will likely lessen the number of available providers of LOCs and will likely increase the costs of obtaining LOCs for wholesale suppliers thus, and necessitating that those wholesale suppliers increase their bids into these auctions in order to recover those costs. (NEPM St. No 1, 3:1-11). Moreover, the lack of competitiveness of the market for providing LOCs could further restrict the number of potential bidders into these auctions. (NEPM St. No. 1-SR, 2:1-3:6). All of this, in light of the fact that there is no evidence whatsoever that any wholesale supplier has ever defaulted, nor that any supplier LOC after that default has subsequently defaulted and failed to live up to the terms of the LOC. (NEPM St. No.1, 1:24-2:2). What this means is that PECO's proposed change is a solution in search of a problem.

Lacking any evidence to suggest that there is a need to increase the credit worthiness standard and in light of the fact that there is substantial evidence of record showing the potential harm from such a change, it is clear that PECO has failed to prove the need for the change, and has likewise failed to rebut the evidence showing that the change is likely to be detrimental. Therefore, there is no choice but to reject PECO's proposed change in the SMA and to require that PECO maintain the status quo, which is A-/A3 standard, which allows for the broadest participation of suppliers without compromising the security of the wholesale suppliers or their credit backers. Accordingly, NEPM respectfully submits that PECO's proposed Supplier Master Agreement in Paragraph 6.7 must be returned to the *status quo* of to A-/A3 in light of its failure to carry its burden of proof.

I. Other Procurement and Implementation Plan Requirements
(e.g., Competitive Procurement Process, AEPS Compliance and Independent Evaluator)

N/A

IV. RATE DESIGN AND COST RECOVERY

J. Summary of Briefing Party's Position

N/A

K. Reconciliation of Default Service Costs and Revenues

N/A

L. Recovery of Certain PJM Charges

N/A

V. STANDARD OFFER PROGRAM

M. Summary of Briefing Party's Position

N/A

N. Operational Changes

N/A

O. Implementation Costs

N/A

P. Standard Offer Program Collaborative

N/A

VI. OTHER ISSUES

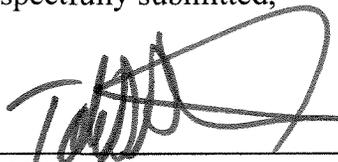
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VII. CONCLUSION

PECO has failed to carry its burden of proving the need to change the status quo and to raise the credit standard from A-/A3 to A/A2. There is no evidence of any default at the lower standard, no evidence that increasing the standard is more likely to prevent defaults, and no evidence of any default in Pennsylvania. In short, there is no need to change the standard. When

coupled with the actual evidence that was presented by Witness Cheslock on the likelihood of increased costs and decreased supplier participation, it is clear that PECO's proposed change is unwarranted and potentially detrimental. The conclusion is clear, PECO's proposed change to the SMA must be rejected.

Respectfully submitted,



Todd Stewart
Attorney I.D. No. 75556
Hawke McKeon & Sniscak LLP
100 North Tenth Street
P.O. Box 1778
Harrisburg, PA 17105-1778
Telephone: 717-236-1300
Facsimile: 717-236-4841
tsstewart@hmslegal.com

*Counsel for NextEra Energy Power
Marketing, LLC*

DATED: August 5, 2014