

**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 :**

**OFFICE OF SMALL BUSINESS ADVOCATE
STATEMENT IN SUPPORT OF JOINT
PETITION FOR PARTIAL SETTLEMENT**

I. INTRODUCTION

The Small Business Advocate is authorized and directed to represent the interests of small business consumers in proceedings before the Pennsylvania Public Utility Commission (“Commission”) under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50. In order to discharge this statutory duty, the Office of Small Business Advocate (“OSBA”) is participating as a party to this proceeding to ensure that the interests of small business customers of PECO Energy Company (“PECO” or the “Company”) are adequately represented and protected.¹

II. PROCEDURAL HISTORY

On March 10, 2014, PECO filed with the Commission the Petition of PECO Energy Company for Approval of Its Default Service Program for the Period From June 1, 2015

¹ PECO’s non-residential procurement groups are defined on the basis of peak load, rather than by rate class. The Small Commercial procurement group is defined as all non-residential customers with peak demands less than 100 kW. The Medium Commercial procurement group is defined as all non-residential customers with peak demands greater than or equal to 100kW, but less than 500 kW. For the purposes of this proceeding, the OSBA considers customers in PECO’s Small Commercial and Medium Commercial procurement groups to constitute small business customers whose interests the OSBA is authorized and directed to protect.

Through May 31, 2017 (“Petition”). The Petition seeks approval of PECO’s proposed third Default Service Program (“DSP III”) to secure default service supply for the Company’s customers for the period from June 1, 2015, through May 31, 2017.

On March 28, 2014, the OSBA intervened and filed an Answer in this proceeding in order to protect the interests of the Company’s Small Commercial and Medium Commercial customers.

Answers were also filed by the Office of Consumer Advocate (“OCA”) and the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (“CAUSE-PA”) on April 1, 2014.

Petitions to Intervene were filed by CAUSE-PA, NextEra Power Marketing, LLC (“NextEra”), Philadelphia Area Industrial Energy Users Group (“PAIEUG”), FirstEnergy Solutions Corp. (“FES”), Interstate Gas Supply, Inc. (“IGS”), Direct Energy Services, LLC (“Direct Energy”), Retail Energy Supply Association (“RESA”), Noble Americas Energy Solutions LLC (“Noble”), and PECO Energy Suppliers Group (“PESG”).

This matter was assigned to Administrative Law Judge (“ALJ”) Cynthia Williams Fordham who held a telephonic prehearing conference on April 10, 2014, at which time a procedural schedule and discovery modifications were established, all petitions to intervene were granted, and PECO’s motion for a protective order was granted.

The OSBA submitted the Rebuttal Testimony and Surrebuttal Testimony of Brian Kalcic on June 26, 2014, and July 9, 2014, respectively.

An evidentiary hearing was held in Philadelphia on July 17, 2014 (the “Hearing”). PECO presented oral rejoinder testimony and certain witnesses for the parties were cross-examined. The parties agreed to waive cross-examination of other witnesses prior to the hearings and they

were excused from appearing. The testimony and exhibits of the parties were entered into the record.

The OSBA filed its Main Brief on August 5, 2014, pursuant to the procedural schedule. Briefs were also filed by PECO, RESA, OCA, PAIEUG, Noble, and NextEra.

Subsequent to the filing of Main Briefs, the parties engaged in further settlement discussions and were able to agree on a partial settlement, reserving only two issues for litigation, Medium Commercial class procurement and recovery of certain PJM charges. On August 18, 2014, the parties notified ALJ Fordham of the partial settlement-in-principle and requested that the date for reply briefs be extended until September 4, 2014.

The OSBA actively participated in the negotiations that led to the proposed partial settlement (“Partial Settlement”), and is a signatory to the Joint Petition for Partial Settlement (“Joint Petition”). The OSBA submits this statement in support of the Joint Petition.

III. STATEMENT IN SUPPORT

With respect to those issues of concern to the OSBA, the OSBA has no objections to PECO’s DSP III plan as initially proposed. Specifically, the OSBA agrees with the Company’s proposal to: (1) use one-year, overlapping, fixed price full requirements (“FPFR”), load following contracts to acquire default service supply for Small Commercial default service customers; (2) use six-month FPFR, load following contracts without overlap to acquire default service supply for Medium Commercial default service customers; and (3) reconcile default service costs and revenues on a semi-annual basis.

Because the Joint Petition resolves the issue of Small Commercial procurement and reconciliation of default service costs and revenues consistent with PECO’s initial proposal, and

explicitly reserves for litigation the issue of Medium Commercial procurement, the OSBA determines that the Joint Petition is in the best interest of PECO's small business customers.

**A. Issue of Medium Commercial Procurement is Reserved for Litigation
(Joint Petition ¶¶25-28)**

The issue of Medium Commercial procurement has been explicitly reserved for litigation. The OSBA maintains that PECO's initial proposal to procure Medium Commercial default service supply through 6-month FPFR contracts should be approved. The OSBA's support of the Partial Settlement should in no way imply agreement with or adoption of RESA's proposal with respect to Medium Commercial class procurement (*i.e.*, 3-month FPFR contracts for customers without interval meters with a transition to 100% hourly pricing as interval meters are installed).

If the Commission disagrees with the OSBA and determines that hourly pricing for Medium Commercial customers is appropriate, the Partial Settlement merely outlines the timing and logistics agreed upon by the parties for implementation of hourly pricing. This agreement on timing and logistics should in no way prejudice the OSBA's (or any other party's) litigation position that hourly pricing for Medium Commercial class procurement is contrary to the statutory default service standard and prior Commission orders. Although the OSBA strongly objects to hourly pricing for Medium Commercial customers, if the Commission directs otherwise, hourly pricing should be implemented in a feasible manner. Therefore, because the Partial Settlement explicitly reserves the issue of Medium Commercial class procurement for litigation and provides a feasible method of implementation of hourly pricing in the event that the Commission disagrees with the OSBA, the Partial Settlement is in the best interest of PECO's Medium Commercial customers.

B. Acquisition of Small Commercial Class Default Service Supply Through One-Year, Overlapping FPFR Contracts (Joint Petition ¶¶23-24)

Consistent with the OSBA's position, the Partial Settlement adopts PECO's proposal to implement the same Small Commercial procurement plan as approved by the Commission in DSP II,² namely, one-year, FPFR, load following contracts awarded on the basis of an RFP-based procurement. Supply would be acquired via four separate solicitations beginning in Winter 2015 and ending in Fall 2016, with contracts laddered (overlapping) on a six-month basis and all procurement taking place no more than four months prior to delivery of energy.³ This agreed upon procurement plan for the Small Commercial procurement group provides reasonable price stability for Small Commercial default service customers, while still permitting default service rates to reasonably reflect current market prices and promote competition.

DSP II made a major change from DSP I, which had used primarily a mix of one-year and two-year FPFR products to acquire default service supply for Small Commercial customers. In DSP II, the Company made a shift away from an emphasis on price stability by proposing only one-year FPFR contracts, arguing that because competitive retail markets serving Small Commercial customers have developed substantially since the start of DSP I, these customers did not require as much price stability in their default service rates in DSP II. Therefore, PECO's proposed modifications in DSP II were intended to deemphasize price stability in favor of making Small Commercial default service rates more reflective of current market prices. By keeping the same Small Commercial procurement plan in DSP III as in DSP II, PECO continues its goal of carefully balancing market reflective rates with price stability.

² *Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P-2012-2283641, Opinion and Order entered October 12, 2012 ("DSP II Final Order").

³ OSBA Statement No. 2 at 2.

In contrast, RESA proposed to introduce 90-day products to the Small Commercial supply portfolio, 25 percent at the start of DSP III and then transitioning to 75 percent by the end of the DSP III period.⁴ Supply would be acquired via seven separate solicitations beginning in Winter 2015 and ending in Winter 2017.⁵ RESA's primary objective was to make the Small Commercial default service supply even more market-based and market-responsive. RESA alleged that this approach would better support retail competition and was more consistent with Commission policy.⁶ However, RESA's proposal to introduce 90-day products to the Small Commercial default service supply portfolio would subject customers to unreasonable price instability in pursuit of a more market-reflective and market-responsive default service rate, which is in direct contravention of Act 129's objectives.

Because the Partial Settlement adopts PECO's Small Commercial procurement plan of overlapping, one-year FPFR contracts, which properly balance the concerns of price stability and market reflective rates, and rejects RESA's proposal, the OSBA determines that it is in the best interests of PECO's Small Commercial default service customers.

**C. Semi-Annual Reconciliation of Default Service Costs and Revenues
(Joint Petition ¶44)**

The Partial Settlement also adopts PECO's proposal to reconcile Small Commercial and Medium Commercial default service rates on a semi-annual basis in order to minimize distortions in the Price to Compare ("PTC"), which the OSBA supports.⁷ Currently, the Company reconciles default service costs on a quarterly basis. Default service over- and under-

⁴ RESA St. 1 at 16.

⁵ See RESA Exhibit RJH-2.

⁶ RESA Statement No. 1 at 16.

⁷ OSBA Statement No. 2 at 2.

collections tend to be consistently over or under across given time periods within the course of a full year.⁸ As a result, such differences are naturally offsetting to some degree over a 12-month period. Due to the offsetting nature of over- and under-collections, PECO shows that a properly structured semi-annual reconciliation process will eliminate some non-market based swings in default service rates that would otherwise occur if the Company were to continue to reconcile rates on a quarterly basis.⁹ Therefore, semi-annual reconciliation will result in a PTC more reflective of PECO's actual costs and is thus in the best interests of PECO's Small Commercial and Medium Commercial customers.

D. Judicial Efficiency

Lastly, a partial settlement of the issues in this proceeding avoids the litigation of certain complex, competing proposals and reduces the possibly significant costs of further administrative proceedings. Such costs are borne not only by the parties, but ultimately by the Company's customers as well. Limiting the issues for litigation of this matter will serve judicial efficiency, and will allow the OSBA to more efficiently employ its resources in other areas.

⁸ OSBA Statement No. 2 at 2.

⁹ *Id.*

IV. CONCLUSION

For the reasons set forth in the Joint Petition, as well as the additional factors enumerated in this statement, the OSBA supports the Joint Petition and respectfully requests that ALJ Fordham and the Commission approve the Partial Settlement in its entirety without modification.

Respectfully submitted,


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