

PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17105-3265

**Petition of PECO Energy Company
for Approval of its Default Service Program**

**Public Meeting held December 4, 2014
2409362-OSA
Docket Nos. P-2014-2409362**

STATEMENT OF COMMISSIONER GLADYS M. BROWN

Before the Commission for consideration and disposition is the Petition of PECO Energy Company for Approval of its Default Service Program for the period of June 1, 2015 through May 31, 2017.

On August 28, 2014, the Parties to this proceeding filed a Joint Petition for Partial Settlement. The Parties failed to settle on terms for two specific issues. The first issue relates to whether PECO should assume responsibility for PJM charges for the Network Integration Transmission Surcharge (NITS) for all customer load, both shopping and non-shopping, and recover those costs through a non-bypassable transmission charge.

On September 30, 2014 Administrative Law Judge (ALJ) Cynthia Williams Fordham issued a Recommended Decision which recommended approval of the Partial Settlement and, *inter alia*, denied the proposal by the Retail Energy Supply Association (RESA) to incorporate NITS into a non-bypassable charge. Exceptions and Reply Exceptions were filed by numerous Parties in response to the Recommended Decision. In the decision, the ALJ ultimately recommends not incorporating NITS into a non-bypassable surcharge. The ALJ posits that “[s]ince RESA has failed to explain how this would be implemented and how it is preferable to PECO’s proposal, this proposal should not be implemented.”

It is my opinion that the collection of non-market based charges such as NITS in a competitively-neutral manner can work to benefit consumers by reducing the risk-premiums that EGSs and wholesale generation providers embed in their prices. This is particularly relevant for EGSs given the Commission’s recently issued Guidelines on fixed price products at Docket Number M-2013-2362961. As RESA points out in its Exceptions, requiring the EDCs to assume the cost responsibility associated with these non-market based PJM charges for all load removes additional costs from the price customers will pay. This is the case because, unlike an EGS, an EDC is permitted to recover on a full and current basis all reasonable costs incurred to provide default service.

The second issue which was not settled regards procurement of default service supply for the Medium Commercial class. PECO initially proposed structuring this class’ default service through six-month fixed price full requirements contracts. However, PECO later indicated supporting the implementation of hourly-priced default service for Medium Commercial customers during the term of this default service plan, to the extent interval meter installation

permits. PECO apparently proffered this change to comply with the Commission's direction in the *Investigation of Pennsylvania's Retail Electricity Market; end State of Default Service*, Docket No. I-2011-2237952 at 31-32 (February 15, 2013) (*RMI Order*), that customers with interval meters and peak demands above 100 kW be moved to hourly-priced default service. I wish to note that the *RMI Order* recognized that the Commission was treading a fine line between setting market-reflective competitive policies and complying with the prudent mix procurement language in Act 129¹ of 2008:

While the Commission is steadfast in its view that our decisions to permit spot market approaches in specific situations are appropriate, we are concerned that a general pronouncement directing a 90-day product for residential and small business customers **and an hourly LMP product for "medium" C&I customers may raise legal questions about compliance with the above-referenced provisions of the Competition Act.** To avoid any legal uncertainty, the Commission would prefer to pursue legislative amendments that clearly provide the authority to approve default service plans containing products that more closely resemble current market conditions at the time of delivery.

(*RMI Order* at 45, footnote omitted, emphasis added). As noted in the *RMI Order*, this Commission is a creature of the Legislature and, as such, is well-served to ensure that the General Assembly is supportive of our overall policy on matters as important as the retail market for electricity. The then sitting Commission which approved the *RMI Order* stated its intent to seek legislative changes that afford the Commission the flexibility to make this kind of questionable policy change. Those legislative changes have not yet been made; therefore, I had to weigh this issue carefully.

I would be remiss not to mention that the Commonwealth Court has since ruled that this Commission acted within the bounds of Act 129 when the Commission approved Pike County Electric Company's 100% spot market procurement in its last default service filing. *Popowsky v. Pa. PUC*, 71 A.3d 1112 (Pa. Cmwlth. 2013), *appeal den.*, 2013 Pa. Lexis (2013). However, the court in *Popowsky* also found that the Commission's approval of a spot market only procurement in light of the prudent mix standard was lawful since the Commission properly considered the possibility of including short-term contracts (including financial hedges) and determined it was not prudent to do so. *Popowsky*, 71 A. 3d 1112, 1118. As acknowledged by the court in *Popowsky*, "the Preamble to Act 129 indicates that price stability was one of the goals to be achieved by that act, and that price instability was one of the harms the act was intended to ameliorate ..." 71 A.3d 1112, 1117. The court ultimately determined that the Commission had not discounted the importance of price stability, and that the Commission concluded that the additional benefits of a financial hedge would not be justified by the additional costs. 71 A.3d 1112, 1118.

¹ 66 Pa. Cons. Stat § 2807(e)(3.2) (*hereinafter* Act 129 or Section 2808(e)(3.2)) (2008 Pa. Session Laws page no. 970)(amending 66 Pa. Cons. Stat § 2807(e)(2)-(3)(1996)).

Having voiced this concern, I will submit that the partial Settlement does succeed to establish a default service plan that satisfies the procurement requirements under Act 129, specifically, Section 2807(e) of the Public Utility Code, 66 Pa. C.S. § 2807(e). This provides that a default service provider must procure electric power via a prudent mix of spot market, short term, and long-term contracts designed to ensure adequate and reliable service at the least cost to customers over time.² PECO's proposed default service plan includes spot market products in the residential, medium commercial, and large commercial and industrial portfolio, short-term contracts in the residential and small commercial portfolio, and long-term contracts in residential, medium commercial, and large commercial portfolio.³ The mix of contracts is by no means an exact science but, I note that if the default service plans that were in place during the recent polar vortex had been priced solely on short term or hourly contracts, default service customers would have been exposed to extreme pricing volatility.

Because PECO's overall plan includes a prudent mix sufficient to satisfy Section 2807(e) of the Code, and the Court's ruling in *Popowsky*, I will vote to approve the hourly-priced default service for the Medium Commercial customers. I note that none of the default service plans that I have voted on during my tenure include "new" long-term contracts, only long-term contracts inherited from previous default service plans. These grandfathered contracts will eventually expire. I wish to clarify that, in my opinion, it will be incumbent upon the EDCs and this Commission to carefully consider long-term contracts of four to twenty year terms, consistent with Section 2807(e) of the Code, in future default service plans unless the Legislature decides otherwise.

As such, I will vote to approve PECO's default service programs as outlined in the partial Settlement but, note that it is my position that NITS should be included in the non-bypassable transmission charge.

December 4, 2014
Date


Gladys M. Brown, Commissioner

² For the purposes of Section 2807(e)(3.2), electric power includes not only electric generation supply but also Alternative Energy Portfolio Standards credits.

³ The residential portfolio includes a five year block product, as described on page 8 of PECO's Statement in Support of the Joint Petition. Additionally, any products that are not full requirements will be allocated a portion of the alternative energy credits PECO has previously procured, including a 10-year contract for solar credits approved by the Commission at Docket P-2009-2094494.