

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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December 20, 2016

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

Re: Petition of PECO Energy Company
For Approval of its Default Service Program for the
Period from June 1, 2017 through May 31, 2019
Docket No. P-2016-2534980

Dear Secretary Chiavetta:

Attached for electronic filing please find a corrected version of the Office of Consumer Advocate's Petition for Reconsideration and/or Clarification in the above-referenced proceeding. The Office of Consumer Advocate has corrected the document and attached a verification to the filing. The document is the same in all other respects.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in cursive script that reads "Christy M. Appleby".

Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824

Attachment

cc: Honorable Cynthia Williams Fordham, ALJ
ra-OSA@pa.gov (email only)
Certificate of Service

227984

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company :
For Approval of its Default Service :
Program for the Period Service Plan : Docket No. P-2016-2534980
For the Period from June 1, 2017 Through :
May 31, 2019 :

PETITION OF THE
OFFICE OF CONSUMER ADVOCATE
FOR RECONSIDERATION AND/OR
CLARIFICATION

The Office of Consumer Advocate (OCA) hereby submits this Petition for Reconsideration and/or Clarification pursuant to Sections 5.572 and 5.41 of the Public Utility Commission’s (Commission) regulations. 52 Pa. Code §§ 5.572, 5.41. The OCA requests that the Commission reconsider its Opinion and Order (Order) of December 8, 2016, in the above-captioned case. Specifically, the OCA requests that the Commission reconsider its determination to not address the merits of the CAP Shopping Plan in the PECO DSP IV proceeding. In the alternative, the OCA respectfully requests that the Commission clarify the procedural process for consideration of the DSP IV CAP Shopping Plan in the PECO DSP II remand proceeding at Docket No. P-2012-2283641.¹

I. INTRODUCTION

On December 8, 2016, the Commission issued its Order regarding PECO’s DSP IV Plan in the above-captioned docket, Docket No. P-2016-2534980. Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2017 through

¹ The OCA notes that the OCA’s request for reconsideration is limited to issues related to the development of a CAP Shopping Plan. The OCA does not seek reconsideration of any other aspect of PECO’s DSP IV Plan.

May 31, 2021, Docket No. P-2016-2534980, Order (December 8, 2016) (PECO DSP IV Order).

In this proceeding, a record was developed, and legal briefing was conducted, regarding the impact of unrestricted CAP customer shopping. Proposals were presented to address the harms presented by CAP customer shopping without necessary protective measures. In the PECO DSP IV Order, the Commission declined to address the CAP Shopping Plan issue that had been fully briefed in the case. Instead, the Commission determined:

Because PECO's 2016 CAP Rule Change Filing is still pending before this Commission, we do not believe it appropriate for us to decide issues relating to the ability of PECO's CAP customers to shop in this DSP IV proceeding, particularly as we are awaiting the receipt of comments from the parties in the DSP II proceeding. Rather, we intend to fully address the matter of CAP shopping in PECO's service territory in the context of the remanded proceeding under PECO's DSP II docket, wherein we will consider PECO's 2016 CAP Rule Change Filing.

PECO DSP IV Order at 62.

With regard to the procedural status of the CAP Shopping issue, the Commission stated that "we intend to fully address the matter when we consider PECO's 2016 CAP Rule Change Filing." PECO DSP IV Order at 61. The Commission noted that it would consider the DSP IV record as part of its review, as follows:

Although we decline, at this time, to address the CAP shopping issue and the proposals set forth herein, we wish to make clear that we have every intention of fully considering the positions of all interested parties, including all parties to this proceeding, regarding PECO's 2016 CAP Rule Change Filing and the ability of PECO's CAP customers to shop for competitive generation supply. As set forth in the May 2016 Secretarial Letter and the November 2016 Secretarial Letter, PECO's CAP Rule Change Filing is subject to public comment. CAUSE/TURN and all other interested stakeholders will be free to present their positions on PECO's CAP shopping plan through the submission of comments to the 2016 CAP Rule Change Filing at Docket No. P-2012-2283641. In addition, we will take official notice of the documents constituting the record in this proceeding when we consider PECO's 2016 CAP Rule Change Filing in this proceeding at Docket No. P-2012-2283641, pursuant to 52 Pa. § 5.406 relating to public documents, 52 Pa. Code § 5.408 relating to official and judicial notice of fact.

We find that this process will address the due process concerns of CAUSE-TURN.

PECO DSP IV Order at 62.

The OCA respectfully requests reconsideration of this determination and/or clarification regarding the process to address CAP Shopping in the PECO DSP II proceeding at Docket No. P-2012-2283641. The PECO DSP IV Order references the Secretarial Letter issued on November 18, 2016 in the remand of PECO's DSP II proceeding and that official notice of PECO DSP IV proceeding will be taken in the DSP II proceeding.² See, PECO DSP IV Order at 61-62; Petition of PECO Energy Company for Approval of its Default Service Program, Docket No. P-2012-2283641, Secretarial Letter (November 18, 2016)(Secretarial Letter). The Secretarial Letter limited the scope of the DSP II proceeding to the rule change and not to a full consideration of the issue. In contrast, PECO's DSP IV proceeding was a fully litigated proceeding that provides a full and complete record for DSP IV. The OCA respectfully submits that the Commission may have overlooked the limitations of the DSP II proceeding and should reconsider its deferral of a decision or establish a formal procedure for full consideration of these important issues.

If the Commission does not reconsider its Order to defer a decision, the OCA submits that the Commission should clarify the procedure to be used to reach a final decision. In its Reply Comments in DSP II, the OCA recommended that the Commission consolidate the two proceedings and refer the matter back to ALJ Fordham for a decision on the merits. The ALJ has heard the evidence in both proceedings and received the legal briefs. The ALJ can render a decision for the Commission's consideration on the merits.

² The OCA notes that Comments on the proposed rule revision were filed on December 2, 2016, six days prior to the issuance of the Commission's December 8 PECO DSP IV Order and as a result, parties could not have been aware of the scope of the record under consideration in preparation of those Comments. Reply Comments were filed on December 12, 2016.

II. STANDARD OF REVIEW

The standard for reconsideration is found in the Public Utility Code at Section 703(f), 66 Pa. C.S. § 703(f), which provides that a party must file for reconsideration within 15 days after the service of the order. See also, 52 Pa. Code § 5.572. The Commission set forth the standards for granting a petition for reconsideration in Duick v. Pennsylvania Gas and Water Co., 56 Pa. PUC 53 (1985):

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad Company case, wherein it was stated that “[p]arties..., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them...” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

Duick v. Pennsylvania Gas and Water Co., 56 Pa. PUC at 559 (quoting Pennsylvania R.R. Co. v. Pa. PUC, 118 Pa. Super. 380, 170 A. 850 (1935).

In this Petition, the OCA raises points not previously heard or considered by the Commission and that the Commission may have overlooked. For the reasons set forth below, the OCA submits that the standard for reconsideration and/or clarification before this Commission has been met.

III. RECONSIDERATION AND/OR CLARIFICATION

In its PECO DSP IV Order, the Commission adopts ALJ Fordham’s Recommended Decision and declines to address the merits of the CAP Shopping Plan issues that had been fully litigated and briefed in the PECO DSP IV proceeding. PECO DSP IV Order at 61-62. The

Commission instead refers the matter to the remand of the PECO DSP II proceeding at Docket No. P-2012-2283641. PECO DSP IV Order at 61-62. In its Order, the Commission states that in the PECO DSP II proceeding, the Commission will take official notice of the documents constituting the record in PECO's DSP IV proceeding and will fully consider the positions of interested parties. PECO DSP IV Order at 62. The Commission, however, appears to overlook the limitations of the DSP II proceeding, and it does not state how it intends to take notice of the DSP IV record and documents, or what procedure it intends to utilize to consider those positions.

The Secretarial Letter in the PECO DSP II proceeding was issued on November 18, 2016, twenty days prior to the Commission's issuance of the December 8 PECO DSP IV Order and provides for the opportunity to provide Comments and Reply Comments. The Secretarial Letter focused on the issues related to "PECO's proposed rule revision." Secretarial Letter at 2. PECO's proposed rule revision was a tariff filing that prohibited Electric Generation Suppliers from charging a cancellation or termination fee to CAP customers. Given the limitations of the DSP II proceeding, which the Commission may have overlooked, the OCA requests that the Commission reconsider its decision to address this issue as part of the DSP II proceeding. The DSP IV proceeding provides full updated information and a complete record for review. The OCA submits that the DSP IV proceeding is ripe for a decision on the merits.

In the alternative, the OCA respectfully requests that the Commission clarify and set forth a procedure for full consideration of the evidence in both dockets. As noted, the DSP II proceeding is limited in scope and evidence. It is not clear how the Commission intends to consider the substantial evidence that has been developed in DSP IV. The OCA submits that the Commission should clarify the procedure. As set forth in the OCA's Reply Comments in the DSP II proceeding, the OCA recommends that the Commission consolidate the two proceedings

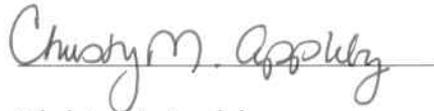
and refer the matter back to ALJ Fordham for a decision on the merits. See, 52 Pa. Code § 5.81. Of critical note, ALJ Fordham has heard all of the evidence presented in the testimony and the hearings of both proceedings, reviewed the record, and the briefs filed in both proceedings. The ALJ is well-positioned to establish findings of fact and to make a recommendation on the merits. After issuance of a Recommended Decision, the parties will then have a full opportunity to file Exceptions and Reply Exceptions on the merits.

For the reasons set forth above, the OCA submits that the Duick standard for reconsideration and/or clarification of the Commission's PECO DSP IV Order has been met. Duick at 559. The OCA respectfully requests that the Commission reconsider its determination to defer a decision in the DSP IV proceeding and instead, rule on the merits of CAP Shopping in the DSP IV docket. In the alternative, the OCA respectfully requests that the Commission consolidate the two proceedings and refer the matter back to ALJ Fordham for a decision on the merits.

IV. CONCLUSION

For these reasons, the Office of Consumer Advocate respectfully requests that the Commission reconsider and/or clarify its decision as set forth above.

Respectfully Submitted,



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DATE: December 19, 2016
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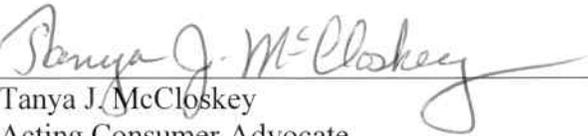
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For Approval of its Default Service	:	
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For the Period from June 1, 2017 Through	:	
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VERIFICATION

I, Tanya J. McCloskey, verify that the Petition of the Office of Consumer Advocate for Reconsideration and/or Clarification was prepared by me or under my direct supervision, and is true and correct to the best of my knowledge, information and belief. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Counsel for the Office of Consumer Advocate


Tanya J. McCloskey
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DATE: December 20, 2016
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company :
For Approval of its Default Service :
Program for the Period Service Plan : Docket No. P-2016-2534980
For the Period from June 1, 2017 Through :
May 31, 2019 :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Petition for Reconsideration and/or Clarification, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 19th day of December 2016.

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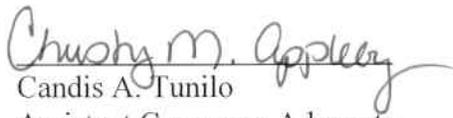
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