



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

ATTORNEYS AT LAW

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

July 17, 2024

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 of June 1, 2025 through May 31, 2029; Docket No. P-2024-3046008;
BRIEF OF AMICUS CURIAE AMERICAN POWER & GAS OF PENNSYLVANIA, LLC

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Brief of *Amicus Curiae* American Power & Gas of Pennsylvania, LLC in the above-captioned matter. A copy of this Brief has been served as indicated on the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions, please feel free to contact me.

Very truly yours,

Todd S. Stewart
Counsel for American Power & Gas of Pennsylvania, LLC

TSS/jld

Enclosure

cc: Administrative Law Judge Arlene Ashton (via electronic mail - aashton@pa.gov)
Administrative Law Judge Eranda Vero (via electronic mail - evero@pa.gov)
Per Certificate of Service

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 MAIL ONLY

Kenneth M. Kulak
Brooke E. McGlinn
Maggie E. Curran
Morgan, Lewis & Bockius LLP
2222 Market Street
Philadelphia, PA 19103-3007
Ken.kulak@morganlewis.com
Brooke.mcglinn@morganlewis.com
Maggie.curran@morganlewis.com
Counsel for PECO Energy Company

Jack R. Garfinkle, Esquire
Adesola K. Adegbesan, Esquire
PECO Energy Company
2301 Market Street
P.O. Box 8699
Philadelphia, PA 19103-2921
Jack.garfinkle@exeloncorp.com
Adesola.adegbesan@exeloncorp.com
Counsel for PECO Energy Company

Charis Mincavage
Adeolu A. Bakare
McNees Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
cmincavage@mcneeslaw.com
abakare@mcneeslaw.com
*Counsel for Philadelphia Area Industrial
Energy Users Group*

Rebecca Lyttle, Esquire
Steven C. Gray, Esquire
Office of Small Business Advocate
555 Walnut Street
Forum Place, 1st Floor
Harrisburg, PA 17101
relyttle@pa.gov
sgray@pa.gov

Barrett Sheridan, Esquire
Andrew J. Zerby, Esquire
Office of Consumer Advocate
555 Walnut Street
Forum Place, 5th Floor
Harrisburg, PA 17101
OCA2024PECODSP@paoca.org

Karen O. Moury, Esquire
Deanne M. O'Dell, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
kmoury@eckertseamans.com
dodell@eckertseamans.com
*Counsel for NRG Energy, Inc. and the Retail
Energy Supply Association*

Devin McDougall, Esquire
Supervising Senior Attorney
Clean Energy Program
Earthjustice
1617 John F. Kennedy Blvd., Suite 2020
dmcdougall@earthjustice.org
Counsel for Energy Justice Advocates

Lauren M. Burge, Esquire
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
lburge@eckertseamans.com
*Counsel for NRG Energy, Inc. and the Retail
Energy Supply Association*

John F. Lushis, Jr.
Norris McLaughlin, P.A.
515 W. Hamilton Street, Suite 502
Allentown, PA 18101
jlushis@norris-law.com
Counsel for Calpine Retail Holdings, LLC

Daniela Rakhlina-Powsner, Esquire
Robert W. Ballenger, Esquire
Joline R. Price, Esquire
Vikram A. Patel, Esquire
Community Legal Services, Inc.
1424 Chestnut Street
Philadelphia, PA 19102
drakhlinapowsner@clsphila.org
rballenger@clsphila.org
jprice@clsphila.org
vpatel@clsphila.org
*Counsel for the Tenant Union Representative
Network and the Coalition for Affordable
Utility Services and Energy Efficiency in
Pennsylvania*

Alexander Judd
Day Pitney LLP
225 Asylum Street
Hartford, CT 06103
ajudd@daypitney.com
*Counsel for Constellation NewEnergy, Inc. and
Constellation Energy Generation, LLC*

Zachary M. Fabish, Senior Attorney
Sierra Club
50 F. Street, NW, 8th Floor
Washington, D.C. 20001
Zachary.fzbish@sierraclub.org
Counsel for Energy Justice Advocates

Logan Welde
Senior Staff Attorney
Clean Air Council
1617 John F. Kennedy Blvd. Suite 1130
Philadelphia, PA 19103
lwelde@cleanair.org
Counsel for Energy Justice Advocates

Elizabeth J. Sher, Esquire
One Jefferson Road
Parsippany, NJ 07054-2891
esher@daypitney.com
*Counsel for Constellation NewEnergy, Inc. and
Constellation Energy Generation, LLC*

Sophia Browning
Day Pitney LLP
555 11th Street NW
Washington, DC 20004
sbrowning@daypitney.com
*Counsel for Constellation NewEnergy, Inc. and
Constellation Energy Generation, LLC*



Todd S. Stewart

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for :
Approval of Its Default Service Program for : Docket No. P-2024-3046008
the Period of June 1, 2025 through May 31, :
2029 :

**BRIEF OF *AMICUS CURIAE*
AMERICAN POWER & GAS OF PENNSYLVANIA**

NOW COMES American Power & Gas of Pennsylvania, LLC (“AP&G”), an Electric Generation Supplier¹, pursuant to the Regulations of the Pennsylvania Public Utility Commission (“Commission”)², and hereby submits this Brief, *amicus curiae*, in the above-captioned matter. As a supplier licensed to serve eligible customers in the PECO service territory, AP&G has an interest in the continuation of PECO’s Standard Offer Program, (“SOP”) that cannot be represented by any other party to this matter and it believes that its views on the changes to the SOP as described in the Petition for Approval of a Non-Unanimous Settlement, are different than those of the settling parties and should be heard by the Commission. This brief is limited to the single issue of the proposed modifications to PECO’s SOP as found in paragraphs 63 and 64 of the Petition for Approval of Non-Unanimous Settlement (“Settlement”).

¹ 66 Pa. C.S. § 2803. AP&E is licensed to serve residential customers in the PECO service territory. See *License Application of American Power & Gas of Pennsylvania, LLC*, Docket No. A-2013-2355561 (Order entered July 16, 2013).

² 52 Pa. Code § 5.502(e).

I. INTRODUCTION

AP&G contends that the proposed modifications to PECO's SOP³ are contrary to the express requirements imposed by the Commission in its prior orders in generic proceedings and in a recent PPL Default Service matter where the Commission unambiguously rejected an effort by the same parties to inject a similar requirement into PPL's SOP program. The proposed changes--to require that SOP customers affirmatively consent to remain on a renewable contract despite receiving the same notices as other customers--would differ from the treatment of all other customers and is neither warranted nor wise. There is no evidence in this record to support any finding sufficient to justify any changes in the SOP, and in particular, there is no evidence to support the notion that customers are not making choices as their initial contracts end. To the contrary, evidence from the PPL case suggests the opposite.⁴

1. SOP Program

The stated purpose of SOP programs is to “enhance choice and facilitate the development of retail markets through the increased participation of residential and small commercial customers in the retail electricity market.”⁵ The SOP is a Commission-approved offering made to customers of a standard product, that contains various enhancements/restrictions regarding price and terms of service. Under the program, when customers contact PECO under certain conditions, such as complaints of high bills or similar scenarios, the PECO representative will ask the customer if they are interested in a program to provide a discounted rate, if the customer agrees, the call is transferred to a third party for explanation and potential enrollment. The customer, assuming they

³ Settlement, ¶s 63-64.

⁴ *Petition of PPL Electric Utilities Corporation for Approval of Its Default Service Plan for the Period June 1, 2021, through May 31, 2025*, Docket No. P-2020-3019356 (Opinion and Order entered December 17, 2020), slip op. at 92-102 (“PPL”).

⁵ PPL at 92-93.

consent to participate, is enrolled with a supplier that has agreed to provide the customer with a rate that is a 7% off of the then-effective price to compare (“PTC”). After that interaction, apart from receiving the discounted rate, the customer is treated in the same way as other customers and subject to the same rules and requirements. These requirements were established in the Commission’s Retail Markets Investigation.⁶

In this matter, PECO’s witness, Ms. Sulama Dalessio, testified in support of continuing the SOP, unaltered.⁷ She argued that the program was in the public interest, even though it was not a guaranteed savings program. The purpose of the program is to introduce customers to shopping, and the responsibilities that go along with it, including paying attention to notices, and making choices, which the evidence suggests customers are doing. Evidence from the PPL matter show that customers do react, if not immediately, to higher prices and most will switch to another provider or to default service if the SOP renewal price is higher than market.⁸ One important factor for PECO is that its SOP treats customers at the end of their contracts just like every other customer who shops. Ms. Dalessio, notes that in the PPL case, the Commission found no evidence to support customer harm from this arrangement.⁹

2. The Settlement

The Settlement at ¶ 64 proposes to modify the SOP so that all SOP contracts executed after June 1, 2025, would require that customers automatically return to default service at the end of their SOP contracts, unless the customer affirmatively elects to remain with the SOP provider. This is the very same modification that the Commission rejected in PPL.¹⁰ The Settlement proposes

⁶ *Investigation of Pennsylvania’s Retail Electric Market: Intermediate Work Plan*, Docket No I-2011-2237952 (Final Order Entered March 2, 2012).

⁷ PECO Statement 1-R at 21:14.

⁸ *Id.*

⁹ *Id.* at 23.

¹⁰ *PPL* at 92-102.

this modification without any support in the record. There is no data to show that PECO SOP customers are being harmed by participating in the market like other customers. There is simply the opinions of OCA's witness that customers should never pay a price higher than the price to compare, which ignores the simple fact that in a competitive market, any single price is valid. Despite the regulatory requirements¹¹ that give the price to compare a more esteemed image in the eyes of OCA's witness, Ms. Alexander,¹² the PTC is but a single price in a range of prices from which willing purchasers can choose. Under OCA's rationale, no customer should be allowed to "shop" unless the supplier rate is at all times less than the PTC. That is not what the law requires and not what the Commission has required.

3. The SOP Provision of the Settlement is Contrary to the Law and the Public Interest and Must be Rejected.

The Commission first introduced the SOP program in the Retail Markets Investigation ("RMI") and it has been upheld ever since.¹³ In the *PPL* case the Commission stated clearly that once a customer is enrolled with an EGS in the SOP, it is like any other customer who engages in the competitive market.¹⁴ What that means is that the EGS is responsible for the relationship, for the notices that are sent prior to contract expiration, for properly notifying the customer of proposed changes to terms or conditions during the fixed term of the contract. If a customer lingers on the SOP rate past its expiration, it is nonetheless shielded, like other customers, from any early termination fees for cancelling the follow-on contract. That means that if a customer does not pay attention initially and ends up on a follow-on rate that is higher than they want to pay, they can

¹¹ Primarily that it is reconciled and so never an "at risk" rate, nor one that recovers all the costs categories that retail supply offers must recover.

¹² OCA Statement No. 2, pp. 5-11.

¹³ *Investigation of Pennsylvania's Retail Electric Market: Intermediate Work Plan*, Docket No I-2011-2237952 (Final Order Entered March 2, 2012).

¹⁴ *PPL* at p. 94.

shop the market and move to a more favorable rate without penalty. The data from PPL supports the notion that in PPL's territory at least, this did happen, but that most of those customers (80%) stayed in the market and did not go back to default service.¹⁵

The intent of the SOP program was to provide customers with an incentive to participate in the competitive market in the form of the 7% discount. But it was never intended to coddle those customers. To do so would not teach the lesson that in the competitive market, customers are in charge of their own destiny and must read notices and make choices. The OCA characterizes this learning as harm, even though most of the SOP customers remain in the competitive market. In PPL the Commission found no evidence in PPL's statistics showing that a small minority of customers remained with the SOP supplier at rates higher than the PTC to constitute harm.¹⁶ In this case, there is no data.¹⁷ With respect to the OCA, there is nothing other than their argument that competition in general and SOP in particular are broken because customers can pay more than the price to compare. The "evidence" that OCA submits is that customers do pay more than the price to compare even though there are always prices available in the market that are below the price to compare.¹⁸ However, the market is working as it should when customers are able to choose products they want, for reasons of their own, regardless of what the price to compare is.

The law requires that customers have choice of a wide variety of products, it does not mandate that all customers pay the same rate or that customers not be offered rates that are higher or lower than other rates, regardless of who is offering those other rates.¹⁹ In other words, the law requires competition for electric generation supply.

¹⁵ PPL at p. 98.

¹⁶ PPL at 97-98.

¹⁷ OCA St. No. 2, p. 12.

¹⁸ RESA St. No. 1.

¹⁹ 66 Pa.C.S. § 2802(13).

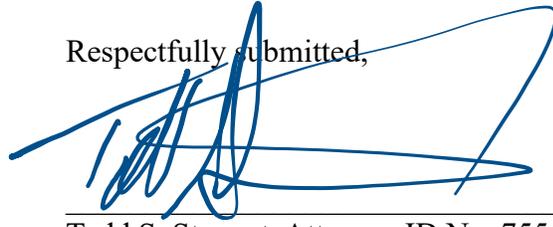
The particular modification at issue, requiring affirmative consent to continue with the SOP provider, would make it less likely that SOP customers would remain with their SOP supplier and would disincent suppliers from participating in the program because they would be less likely to retain the customers regardless of the rate they would propose. Such a requirement would be the polar opposite of how contracts are renewed now, where customers can be required to take action to avoid a contract from automatically renewing. Neither the Settlement nor the record of this matter provide any actual evidence that would justify such a radical departure. The Settlement's proposal to modify the SOP should therefore be rejected as not in the public interest and as being plainly contrary to the law and longstanding Commission precedent.

II. CONCLUSION

As demonstrated herein, the modification to PECO's SOP program that would require affirmative consent of a customer before continuing to receive service under a renewal agreement are contrary to longstanding Commission policy, and contrary to the only evidence on record anywhere regarding the efficacy of such requirements. Likewise, the proposed modifications are not supported by substantial evidence.²⁰ The proposal clearly will restrict shopping by forcibly returning customers to default service and yet there is no evidence to substantiate any harm that such restriction is intended to remedy. Likewise, there is no evidence in the record that the proposed measure will actually remedy any harm. Moreover, the modifications requiring affirmative consent would treat SOP customers differently from all other shopping customers, without having articulated a single reasonable reason for doing so. The proposed modifications must be rejected.

²⁰ *Retail Energy Supply Association v. Pa. P.U.C.*; 185 A.3d at 1206, 1228 (2018, Pa. Cmwlt.).

Respectfully submitted,



Todd S. Stewart, Attorney ID No. 75556
Hawke McKeon & Sniscak LLP
100 N 10th Street
Harrisburg, PA 17101
(717) 236-1300
(717) 236-4841 (fax)
tsstewart@hmslegal.com

*Counsel for American Power & Gas of
Pennsylvania, LLC*

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