2772

Legal Department

Exelon Business Services Company
2301 Market Street/S23-1
P.O. Box 8699
Philadelphia, PA 19101-8699

Telephone 215.841.4000
Fax 215.568.3389
www.exeloncorp.com

Exelon.
Business Services Company

Direct Dial: 215 841 4220

October 31, 2011

VIA ELECTRONIC MAIL

The Honorable Chairman Silvan B. Lutkewitte, III
Independent Regulatory Review Commission
333 Market Street, 14th Floor
Harrisburg, PA 17101

RE: Natural Gas Distribution Companies and the Promotion of Competitive Retail Markets
PUC Docket L-2008-2069114
IRRC No. 2772; Regulation 57-269

Dear Chairman Lutkewitte:

Enclosed for filing are the **"Comments Of PECO Energy Company To The Pennsylvania Public Utility Commission's Resubmitted Revised Final Rulemaking Order Setting Forth Proposals, In Part, To Reformulate The Price To Compare And Adopt Permanent Rules For Voluntary Purchase Of Receivable Programs"** in the above-captioned docket. This matter is currently set for IRRC review on Thursday, November 3, 2011.

Sincerely,

Michael S. Swerling
Counsel for PECO Energy Company

MSS:mb
Enclosure

RECEIVED
IRRC
2011 OCT 31 P 3:34

BEFORE THE
INDEPENDENT REGULATORY REVIEW COMMISSION

Natural Gas Distribution	:	Docket No. L-2008-2069114
Companies and Promotion of	:	
Competitive Retail Markets	:	IRRC No. 2772

COMMENTS OF PECO ENERGY COMPANY TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION'S RESUBMITTED REVISED FINAL RULEMAKING ORDER SETTING FORTH PROPOSALS, IN PART, TO REFORMULATE THE PRICE TO COMPARE AND ADOPT PERMANENT RULES FOR VOLUNTARY PURCHASE OF RECEIVABLE PROGRAMS

After the Independent Regulatory Review Commission ("IRRC") disapproved the Pennsylvania Public Utility Commission's ("Commission") Revised Final Rulemaking Order[1] ("Revised Final Order" or "final-form regulation") on August 25, 2011, the Commission opted to resubmit the filing to the IRRC without any further revisions. Thus, on October 13, 2011, the Commission resubmitted its final-form regulation with an accompanying letter explaining why, in the Commission's opinion, IRRC's disapproval was unwarranted.

In accordance with Section 5.1(j) of the Pennsylvania Regulatory Review Act, PECO Energy Company ("PECO") hereby files these comments with the IRRC in response to the Commission's resubmitted final-form regulation and maintains that IRRC's disapproval was warranted and justified.

[1] Rulemaking Re: Natural Gas Distribution Companies and Promotion of Competitive Retail Markets, Docket No. L-2008-2069114.

I. INTRODUCTION

On February 23, 2011, the Commission entered a Final Rulemaking Order, which adopted additions to the Natural Gas Supply Customer Choice Regulations at 52 Pa. Code Chapter 62, *Subchapter G. Natural Gas Distribution Companies And Competition.* According to the Commission, natural gas competition will benefit from a "reformulation of the price to compare (PTC) to better reflect the gas commodity costs incurred by the incumbent natural gas distribution companies (NGDCs), [and an] adoption of permanent rules for voluntary purchase of receivables (POR) programs to facilitate market entry by natural gas suppliers (NGS)." (Final Order at 1).

The Final Order adopted a number of changes, including the addition of several new items which would inappropriately require NGDCs to: 1) include fixed procurement costs in the PTC – thereby increasing costs to default service customers; 2) include the E-factor (recovery for over and under collections of the Purchased Gas Cost rates) in the PTC – thereby creating more complexity and instability for customers; and 3) recover incremental implementation costs for POR programs through a discount – thereby conflicting with PECO's "zero discount" Commission-approved POR program.

The Commission issued a Secretarial Letter on June 9, 2011, in response to input received from the IRRC and the comments submitted by various stakeholders to the IRRC. In the letter, the Commission explained that it made some further revisions to Annex A of the rulemaking and invited parties to comment one last time.

The Commission entered its Revised Final Rulemaking Order on June 23, 2011. The IRRC considered and disapproved the Commission's Revised Final Order at its August 25, 2011 Public Meeting. On October 13, 2011, the Commission resubmitted its final-form regulation without any revisions. The Commission also submitted an accompanying letter explaining why the Commission believed that no further revisions were needed.

PECO largely supports the Commission's efforts to increase retail competition in the natural gas market. However, PECO believes that the Commission's resubmitted Revised Final Order will continue to unfairly shift costs to non-shopping customers, make the PTC confusing and volatile for customers, and conflict with PECO's Commission approved "zero discount" POR program. PECO has reviewed and fully supports the Comments filed by the Energy Association of Pennsylvania ("EAP") to the IRRC on October 27, 2011. In addition to the comments filed by the EAP, PECO provides the following comments.

II. COMMENTS

IRRC IS CORRECT IN ITS ASSESSMENT THAT THE COMMISSION'S FINAL-FORM REGULATION WOULD CAUSE ADVERSE EFFECTS ON COMPETITION AND CLARITY

The Commission's October 13, 2011 letter indicates that including procurement costs in base rates is contrary to the Competition Act's prohibition against cross subsidization. PECO disagrees with this characterization and believes that including "unavoidable" procurement costs in the PTC will unfairly increase costs for default service customers. Including the E-factor in the PTC will add to customer confusion surrounding competition.

A. Unfair Increase of Costs to Default Service Customers:

The Commission claims that by keeping procurement costs (minus storage and transportation costs) in base rates, shopping customers are "double paying" for procurement costs because they pay for both PECO and supplier procurement costs. The Commission feels that shoppers should only pay for their supplier's procurement costs. The problem with this analysis is that it ignores certain other "unavoidable" procurement costs (acquisition, management and administrative costs), which the NGDC and only the NGDC[2] must incur for both default service customers and also pursuant to the SOLR function. In essence, by allowing shoppers to avoid paying for the SOLR option (option to choose to return to the NGDC at any time or return because of a supplier failure to deliver) these costs are unfairly distributed among the remaining default service customers. It is unclear why the Commission advocates that default service customers should subsidize the SOLR function/option for shopping customers, but PECO feels that such a practice is contrary to the intent of the Competition Act because it results in cross-subsidization – default service customers paying for the SOLR function that benefits shopping customers.

The Commission's plan to allow this type of unfair subsidization to the extent that a NGDC can prove the case for a waiver is contrary to the intent of the Competition Act and does not provide enough guaranteed protection for the default service customers. This approach places the burden on the NGDC to demonstrate that significant incremental procurement costs are being incurred for shopping customers pursuant to the SOLR function. True and fair competition would dictate that "unavoidable" procurement costs, especially those related to

---

[2] 66 Pa.C.S. § 2207(a)(2) states:

For purposes of this section, a supplier of last resort is a natural gas distribution company or natural gas supplier which is designated by the commission to provide natural gas supply service with respect to one or more of the following services:

(i) natural gas supply services to those customers who have not chosen an alternative natural gas supplier or who choose to be served by their supplier of last resort;

(ii) natural gas supply services to those customers who are refused supply service from a natural gas supplier; or

(iii) natural gas supply services to those customers whose natural gas supplier has failed to deliver its requirements.

No customer shall have more than one supplier of last resort designated for any of the services set forth in this paragraph.

acquisition and management costs, remain in base rates so that shopping customers pay their fair share of the procurement costs related to the SOLR function.

B. Increased customer confusion:

The Commission proposed that the E-factor be included in the PTC. Including the E-factor in the PTC will ultimately confuse customers who utilize the PTC in choosing their supplier. For instance, customers will believe that they are avoiding PECO's PTC when they sign up with a competitive supplier. However, these customers will not avoid the E-factor because they will still be required to pay it according to PECO's Migration Rider. Such an approach is confusing, complex and prone to customer disputes because it will send false price signals to customers who shop.

APPLICATION OF 52 PA. CODE § 62.224 TO PECO'S APPROVED PURCHASE OF RECEIVABLES PROGRAM

The Commission's October 13, 2011 letter indicates that no issues exist as to the Purchase of Receivable aspect of the proposed regulations. PECO would like to clarify that the proposed Purchase of Receivable regulations will negatively impact PECO's Commission-approved zero discount Purchase of Receivables Program.

On November 20, 2009, PECO filed the *Petition of PECO Energy Company for Approval of its Natural Gas Supplier Purchase of Receivables Program* ("Petition" or "Gas POR Program") at Docket P-2009-2143588. In its Petition, PECO requested, in part, that the Commission permit PECO: (i) to purchase the Low Volume Transportation ("LVT") customer receivables of natural gas suppliers ("NGSs") participating in PECO's consolidated natural gas distribution company ("NGDC") billing option for basic natural gas supply services in PECO's service territory, with zero discount and without recourse by PECO to those NGSs for receivables that PECO cannot collect; (ii) to recover uncollectible expense associated with NGS receivables through its distribution rates or through a non-bypassable, non-reconcilable default service support rider which the Company may introduce in a future rate case; (iii) to defer the recovery of the information technology ("IT") costs and other costs of implementing the Gas POR Program from all LVT customers until a specific recovery mechanism is approved in PECO's next base rate case. (Petition at 1).

By Order entered November 8, 2010, the Commission approved the Gas POR Program as modified by the Joint Petition for Partial Settlement ("Joint Petition"). The terms and conditions of the Joint Petition were developed between parties representing residential customers (the "Office of Consumer Advocate"), small businesses (the "Office of Small Business Advocate"), and natural gas suppliers and marketers ("Direct Energy Services, LLC"; "Interstate Gas Supply, Inc."; and "Dominion Retail, Inc."). Accordingly, it constitutes a carefully crafted package representing reasonable negotiated compromises on the issues raised in the proceeding.

Under the terms of the Joint Petition, PECO will utilize a 1% discount on purchased NGS receivables to reduce the balance of the implementation costs until the conclusion of PECO's first distribution rate case following the implementation of the Gas POR Program.[3] In PECO's first distribution base rate case following the implementation of the Program, if any implementation costs remain unrecovered, PECO will propose a mechanism to recover the remaining implementation costs as a charge to LVT customers (both shopping and non-shopping) and/or as a charge to NGSs serving LVT customers in the form of a future discount on purchased receivables (at least 1% until the remaining costs are recovered). (Order at 14.) The Joint Petition also provides that PECO is authorized to defer any unrecovered implementation costs (and any associated depreciation), without interest, until the first distribution rate case following implementation of the POR when a recovery mechanism is provided for. (Order at 14-

[3] See the Commission's Opinion and Order ("Order") at 14, which was entered on November 8, 2010.

15.) In approving these cost recovery provisions, the Commission rejected Exceptions filed by the Office of Trial Staff ("OTS") that argued a higher discount rate (5%) should be used to avoid "fully subsidizing" NGSs. (Order at 36-39).

PECO believes the approved cost recovery provisions are in the public interest because they appropriately support the development of retail competition. The use of a modest NGS receivables discount will ensure that suppliers are contributing to the costs of the Gas POR Program. The deferral mechanism ensures that PECO will recover implementation costs associated with this voluntary program with a return on capital costs, but also provides flexibility to assign those costs either to NGSs or LVT customers when the actual costs are known and further reduced through the POR discount.

PECO acknowledges that its Gas POR Program is not entirely consistent with the newly proposed POR regulations at 52 Pa. Code § 62.224. Because the Gas POR Program does not have a defined length of term, the Company would be required to implement significant conforming changes within 36 months of the effective date of the new regulations, including changes that would preclude the possibility of recovering incremental implementation costs from LVT customers through base rates. *See* 52 Pa. Code § 62.224. The incremental costs to implement a POR program in conformity with the proposed regulations could be significant. Consequently, if such incremental implementation costs must be recovered by a discount to purchased receivables, the discount could be so large that it would not be economically feasible for NGSs to participate in the POR program at all. In its September 9, 2010 comments, PECO requested that the proposed regulations provide flexibility regarding cost recovery, and not mandate the use of a discount. (Comments at 4). PECO renews its request for flexibility in these comments, and respectfully submits that it should not be forced now to unravel an already approved program that is based on a meaningful, Commission-sanctioned, settlement between diverse parties.

Should the Commission determine that PECO must make some conforming changes in light of the new regulations, PECO believes that the implementation cost recovery component of the Gas POR Program should remain unchanged because it provides needed flexibility in light of current shopping levels in PECO's territory.

III. Conclusion

It is PECO's position that the Commission's Revised Final Order will unfairly shift costs to non-shopping customers, make the PTC confusing and volatile for customers, and conflict with PECO's Commission approved "zero discount" POR program.

Respectfully submitted

Dated: October 31, 2011

/Michael S. Swerling / RAS

Michael S. Swerling, Esq.
Counsel for PECO Energy Company
2301 Market Street, S23-2
Philadelphia, PA 19101
(215) 841-4220
michael.swerling@exeloncorp.com