**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held September 23, 2010

Commissioners Present:

James H. Cawley, Chairman

Tyrone J. Christy, Vice Chairman

John F. Coleman, Jr.

Wayne Gardner

Robert F. Powelson

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| Petition of PECO Energy Company for Expedited Approval of its Default Service Program and Rate Mitigation Plan | P-2008-2062739 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Commission for consideration is the Petition for Expedited Approval of Early Filing of the Alternative Energy Portfolio Supply (AEPS) Charge and Release of Default Service Procurement Results (Petition) filed by PECO Energy Company (PECO) on September 10, 2010. In its Petition, PECO asserts that all necessary Parties to the primary docket in this matter have been served and no Party objects to the relief requested. Petition at 4.

**History of the Proceeding**

On September 10, 2008, PECO filed for approval of its proposed program for procurement of default service supply pursuant to the Section 2807(e)(3.1) of the Public Utility Code (Code), 66 Pa. C.S. § 2807(e)(3.1). Eventually, PECO and the Parties to that proceeding entered into a settlement, which the Commission approved in the Opinion and Order entered on June 2, 2009, at this docket (*Default Service Order*).[[1]](#footnote-1)

On September 10, 2010, PECO filed this Petition pursuant to Section 703(g) of the Code (relating to modification of Commission Orders) and Section 5.41 of this Commission’s Regulations, 52 Pa. Code § 5.41 (relating to Petitions).[[2]](#footnote-2) PECO seeks two specific forms of relief. First, PECO seeks a one-time waiver of the provision in PECO’s current electric tariff in order to advance the date for filing of its first AEPS charge. Second, PECO seeks to amend the settlement approved in the *Default Service Order* to advance the date for the release of default service supply procurement results. Petition at 1. PECO asserts that all Parties to the settlement approved by the *Default Service Order* as well as the one Party which did not sign the settlement, but did not object, have no objections to the relief requested.

**Discussion**

Section 703(g) of the Public Utility Code (Code), 66 Pa. C.S. § 703(g), relating to rescission and amendment of orders, establishes a party’s right to seek relief following the issuance of a final Commission decision. Such requests for relief must be consistent with Section 5.572(b) of our Regulations, 52 Pa. Code § 5.572(b), relating to petitions for relief following the issuance of a final decision. Also, the standards for our consideration of a petition for relief following the issuance of a final decision are well settled. *See Duick v. PG&W*, 56 Pa. P.U.C. 553 (1982) (*Duick*).

Under the standards set forth in *Duick*, a petition filed under Section 703(g) of the Code may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations that appear to have been overlooked or not addressed by the Commission. *Duick* at 559. It has also been held that, because a grant of relief on such petitions may result in the disturbance of final orders, it should be granted judiciously and only under appropriate circumstances. *West Penn Power v. Pa. Public Utility Commission*, 659 A.2d 1055 (Pa. Cmwlth. 1995), *petition for allowance of appeal denied*, No. 576 W.D., Allocatur Docket (April 9, 1996); *City of Pittsburgh v. PennDOT*, 490 Pa. 264, 416 A.2d 461 (1980).

We also note that any issue that we do not specifically address has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider, expressly or at length, each contention or argument raised by the parties. *Wheeling & Lake Erie Railway Co.* *v. Pa. PUC*, 778 A.2d 785, 794 (Pa. Cmwlth. 2001), *see also*, *generally*, *Univ. of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

In its Petition, PECO states that under its current tariff, the AEPS charge must be filed each year on April 1, with the exception of the first year, when the filing must be made on November 10, 2010. Petition at 2. PECO also states that the *Default Service Order* approved a provision which requires that PECO release the default service procurement results thirty (30) days after the solicitation, or twenty-one (21) days before the supply period starts, whichever comes earlier. *Id*. at 3. PECO further notes that the Generation Supply Adjustment (GSA) is comprised of many different cost elements, including the AEPS charge and the default service supply prices which are obtained through the default service procurements. Pursuant to PECO’s current tariff, the GSA must be filed at least forty-five (45) days before its effective date. *Id.*

In support of its requested relief, PECO states:

7. PECO seeks to file its next GSA on October 14, 2010, in order to make important default service rate information available to customers and EGSs as early as possible before the effective date of the GSA (January 1, 2011) following the expiration of PECO’s existing generation rate caps. In order to calculate the GSA, the Company must include the AEPS charge and the default service supply prices obtained from the default service procurements to date under the Settlement.

8. As explained *supra*, pursuant to PECO’s current tariff, its first AEPS charge filing must be made on November 1, 2010.

9. In accordance with the Settlement, PECO is also scheduled to conduct its next default service supply solicitation on September 22, 2010. Under the Settlement, PECO may release the procurement results no earlier than 30 days after that solicitation, or October 22, 2010.

10. PECO has determined that it will be able to file its GSA on October 14, 2010, one month earlier than the time permitted under its tariff. However, in order to permit this filing, a one-time waiver of the November 1, 2010 AEPS charge filing date must be granted and Exhibit G of the Settlement must be amended to provide that procurement results may be released earlier.

Petition at 4.

PECO states that the specific amendment to be made to Exhibit G of the settlement approved by the *Default Service Order* should read as follows, with the amended language in italics: “The information is released 30 days after the solicitation, or 21 days before the supply period starts, whichever comes earlier, *except that fall 2010 procurement results may be released 21 days after the solicitation*.” Petition at 4.

The Petition before us clearly meets the standards set forth in *Duick*. The circumstances described by PECO were clearly overlooked and not addressed in the *Default Service Order*. We also agree with PECO on the merits of the Petition. It is clearly in the interests of the retail competitive market in PECO’s service territory to make the GSA available to all market participants as soon as possible. On this basis, we shall approve PECO’s Petition.

PECO has also declared that it will continue to work through CHARGE[[3]](#footnote-3) to develop a common statewide policy for the release of electric distribution company default service procurement results for subsequent PECO procurements. We encourage PECO to pursue this avenue. Our review of the circumstances described in the Petition raises concerns that the particular issue here may be repeated over time. If that is borne out, the relief requested here will not solve the problem going forward. Accordingly, we encourage PECO to continue its work with CHARGE and, if necessary, pursue more lasting modifications to the *Default Service Order*.

**Conclusion**

For the foregoing reasons, we will grant the Petition filed by PECO; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Expedited Approval of Early Filing of Early Filing of the AEPS Charge and Release of Default Service Procurement Results, filed by PECO Energy Company on September 10, 2010, at this docket is granted.

2. That PECO Energy Company is granted a one-time waiver of PECO Energy Company’s current electric tariff provision relating to the filing date of its first Alternative Energy Portfolio Supply charge so as to provide that the charge may be filed on or before October 14, 2010.

3. That PECO Energy Company’s Settlement approved by our Opinion and Order entered at this docket on June 2, 2009, at the last sentence found at Paragraphs 1, 2 and 3 of Exhibit G to that Settlement, is amended to read: “The information is released 30 days after the solicitation, or 21 days before the supply period starts, whichever comes earlier, except that fall 2010 procurement results may be released 21 days after the solicitation.”

4. That this proceeding is closed.

** BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: September 23, 2010

ORDER ENTERED: September 23, 2010

1. There was one Party which was not a signatory to the settlement, but did not raise any objections. [↑](#footnote-ref-1)
2. Our review of PECO’s Petition indicates that the relief requested seeks amendment of a prior Commission Order. Accordingly, we will deem the Petition as filed under Subsections 5.572(a) and (d) of our Regulations, 52 Pa. Code §§ 5.572(a) and (d) (relating to petitions for relief following final decisions). [↑](#footnote-ref-2)
3. CHARGE is the acronym for “Committee for Handling Activities for Retail Growth in Electricity.” CHARGE operates under the auspices of the Commission’s Office of Competitive Markets Oversight, which works to improve the retail energy markets in the Commonwealth. [↑](#footnote-ref-3)