**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held April 14, 2011

Commissioners Present:

Robert F. Powelson, Chairman

John F. Coleman, Jr., Vice Chairman

Tyrone J. Christy, Statement

Wayne E. Gardner

James H. Cawley

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| Petition of PECO Energy Company for Approval of its Initial Dynamic Pricing and Customer Acceptance Plan | M-2009-2123944 |

**OPINION AND ORDER**

**BY THE COMMISSION**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of the Office of Consumer Advocate (OCA) filed on March 7, 2011, to the Recommended Decision (R.D.) of Administrative Law Marlane R. Chestnut (ALJ), issued on February 23, 2011. Reply Exceptions were filed by PECO Energy Company (PECO); the Office of Small Business Advocate (OSBA); and Direct Energy Services, LLC (Direct Energy) on March 14, 2011. Also before the Commission is the Joint Petition for Partial Settlement (Settlement) filed on January 28, 2011.

# I. Background

Act 129 of 2008 (Act 129) was signed into law on October 15, 2008, and took effect thirty days thereafter on November 14, 2008. Act 129 has several goals including reducing energy consumption and demand. Among other things, the Act amended the Public Utility Code (Code), 66 Pa. C.S. §§ 101 *et seq*., to require the Pennsylvania electric distribution companies (EDCs) with 100,000 or more customers to file smart meter technology procurement and implementation plans (smart meter plans) which include time-of–use (TOU) rates and real-time price plans. 66 Pa. C.S. § 2807(f). Act 129 also required that default service providers file by January 1, 2010, or the end of the EDCs’ generation rate cap,[[1]](#footnote-1) whichever is later, one or more TOU rates and real-time price plans. The Commission is required to approve or modify the TOU rates and real-time price plans within six months of the EDC’s filing. 66 Pa. C.S. § 2807(f)(5).

On June 24, 2009, the Commission entered an Order[[2]](#footnote-2) (*Implementation Order*) which, *inter alia*, established standards that each smart meter plan must meet and provided guidance on the procedures to be followed for submittal, review and approval of all aspects of each smart meter plan. The *Implementation Order* also established minimum smart meter capabilities and provided guidance on the Commission’s expectations for deployment of smart meters.

By Order entered May 6, 2010[[3]](#footnote-3) *(May 6, 2010 Order),* The Commission approved PECO’s initial Smart Meter Technology Procurement and Installation Plan (Smart Meter Plan). On October 28, 2010, PECO filed the next phase of its Smart Meter Plan through the instant Petition for Approval of its Initial Dynamic Pricing and Customer Acceptance Plan (Petition). As set out in the Petition, PECO intends to test two initial dynamic pricing options, Critical Peak Pricing (CPP) and TOU pricing to determine effective combinations of rate design, technology, marketing and educational strategies for customers. PECO explained that it will use this “test and learn” approach to allow for the “successful deployment of dynamic rates . . . and will add to the general body of knowledge about customer acceptance of dynamic pricing rates.” Petition at 2.

# II. History of the Proceeding

On October 28, 2010, PECO filed with the Commission the instant Petition. Specifically the Petition requested that the Commission: (1) find that the Dynamic Pricing Plan satisfies the requirements of 66 Pa. C.S. § 2807(f)(1)-(f)(3); (2) approve the procurement of 600,000 smart meters by PECO during the 30-month grace period established in the *Implementation Order*; (3) approve PECO’s proposed tariff provisions and recovery of Dynamic Pricing Plan costs through the company’s Generation Supply Adjustment (GSA) filings; and (4) approve PECO’s proposed incremental charges for installation of individual smart meters in advance of system-wide deployment pursuant to 66 Pa. C.S. § 2807(f)(2)(i). Petition at 1.

By Secretarial Letter issued November 4, 2010, the Commission directed that notice of the petition be published in the November 13, 2010 *Pennsylvania Bulletin.*  40 *Pa. B.* 6619. The Commission further directed that parties seeking to intervene must file the appropriate notices/petitions on or before November 29, 2010, and referred the Petition to the Office of Administrative Law Judge for expedited resolution.

On November 29, 2010, Direct Energy, the Philadelphia Area Industrial Energy Users Group (PAIEUG)[[4]](#footnote-4) and the Retail Energy Supply Association (RESA) each filed a Petition to Intervene. Also on November 29, 2010, the OCA filed an Answer and the OSBA filed a Protest and Verification. The Office of Trial Staff (OTS) filed a Notice of Appearance on December 1, 2010.

On December 8, 2010, the ALJ issued a Protective Order and on December 9, 2010, she issued a Prehearing Order that granted the various Petitions to Intervene, addressed various other procedural issues, and established a litigation schedule that included evidentiary hearings to be held on January 20-21, 2011. Direct testimony was filed by PECO and the OCA, PECO filed rebuttal testimony and the OCA filed surrebuttal testimony. On December 21, 2010, RESA filed a Petition to Withdraw Intervention.

As a result of negotiations, Parties advised the ALJ that they had reaches a settlement of all but one of the issues and that cross-examination of the proposed witnesses was not necessary. Based on these representations, the ALJ cancelled the hearings scheduled for January 20 and 21, 2011. R.D. at 3.

On January 28, 2011, PECO, the OCA and the OSBA (Settling Parties) filed a Joint Petition for Partial Settlement (Settlement). The Settling Parties represented in the Settlement that the other parties (the OTS, PAIEUG and Direct Energy) did not oppose the Settlement. The Settling Parties each submitted Statements in Support of the Settlement with the Settlement. As discussed *infra*, the Settlement reserves the issue of the allocation of the administrative costs of the Dynamic Pricing Plan for further litigation. Also on January 28, 2011, PECO, the OCA, the OSBA, the OTS, PAIEUG and Direct Energy filed a Stipulation and Motion for Admission of Testimony and Exhibits.

Main Briefs on the reserved issue of cost allocation were filed by PECO, the OCA, the OSBA and PAIEUG on January 28, 2011. Reply Briefs were filed by PECO, the OCA, the OSBA and Direct Energy on February 3, 2011. The ALJ closed the record on February 4, 2011.

By Recommended Decision issued February 23, 2011, the ALJ recommended, *inter alia*, that the Settlement be approved and that the administrative costs assigned to each default service procurement class should be recovered only from the default service customers in those classes through PECO’s GSA charge. R.D. at 20-23. The OCA filed Exceptions to the Recommended Decision on March 7, 2011, and PECO, the OSBA and Direct Energy filed Reply Exceptions on March 14, 2011.

# III. Discussion

## Burden of Proof

Section 332(a) of the Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). The term “preponderance of the evidence” means that one party has presented evidence that is more convincing, by even the smallest amount, than the evidence presented by the other party. *Se-ling Hosiery v. Margulies,* 364 Pa. 45, 70 A.2d 857 (1950). In this instance, PECO has the burden of proof.

## Relevant Requirements of Act 129

### Time-of-Use Rates and Real-Time Price Plans

Act 129 requires electric distribution companies and default service providers, such as PECO, to submit “one or more proposed time-of-use rates and real-time price plans” for customers who have smart meters. 66 Pa. C.S. § 2807(f)(5). Act 129 defines “time-of-use rate” as “[a] rate that reflects the costs of serving customers during different time periods, including off-peak and on-peak periods, but not as frequently as each hour.” 66 Pa. C.S. § 2801.1(m) “Real-time price” is defined as “[a] rate that directly reflects the different cost of energy during each hour.” *Id*. PECO stated that it is proposing to offer two different rate options as part of the Dynamic Pricing Plan to satisfy the requirements of Act 129: CPP and TOU pricing. PECO Statement in Support at 2.

PECO explained that CPP features a discounted flat rate for all kWh consumed other than when critical days are called (fifteen days per summer), and a discounted off-peak rate for the other hours of the year. On critical days, customers will pay a premium for all kWh used during a 4-hour peak period. Under TOU pricing, each weekday is divided into peak and off-peak periods, and customers pay a discounted rate for off-peak usage and a higher rate for peak usage relative to PECO’s standard, non-time-differentiated tariff. The peak period is defined as between 2:00 p.m. and 6:00 p.m. on non-holiday summer weekdays (June through September). Residential customers not enrolled in the company’s Customer Assistance Program (CAP) will be eligible for both CPP and TOU rates; small and medium commercial and industrial (C&I) customers will be eligible for the CPP rate only. *Id.* at 2.

PECO further stated that, “PECO’s Plan, as modified by the Settlement, will implement a robust and balanced ‘test and learn’ approach to determine effective combinations of dynamic rate design, technology, marketing and educational strategies for its customers. The lessons learned from this initial testing will allow for the successful broad-scale deployment of dynamic rates throughout the company’s service territory and will add to the general body of knowledge about customer acceptance of dynamic pricing rates.” *Id*. at 2.

The ALJ concluded that PECO’s approach is reasonable given that dynamically priced rates for service will be a new type of offering for PECO’s residential and small C&I customers. R.D. at 11. We agree. It is essential that default service providers develop the appropriate combination of marketing and educational strategies that will attract customers to the program and cost-based rate designs that will induce participating customers to alter their consumption patterns. PECO’s Dynamic Pricing Plan should provide valuable insights into the design and implementation of successful load management rate programs and should be adopted, subject to the modifications discussed *infra*.

### Availability of Rate Options

Act 129 requires that the default service provider shall offer the TOU rates and real-time price plan to all customers that have been offered smart meter technology under 66 Pa. C.S. § 2807(f)(2)(iii). 66 Pa. C.S. § 2807(f)(5). Section 2807(f)(2)(iii) requires EDCs to furnish smart meter technology in accordance with a depreciation schedule not to exceed fifteen years.

In its Petition, PECO explained that it proposes to package the CPP and TOU rate options with different combinations of marketing, education and enabling technology “in order to understand the effect on enrollment of each feature, including the rate itself.” Only customers in the “test and learn” population (estimated to be between 150,000 and 200,000 customers) will be offered the opportunity to enroll in these options proactively, although any customer with a smart meter installed may request to be placed on a dynamic rate. Petition at 6-7. Since all customers with a smart meter may participate in the CPP and TOU rate options proposed by the instant Petition and since PECO will offer TOU rates and real-time price plans for all customers with smart meters concurrent with the system-wide deployment of smart meters, we find that the Petition complies with the availability requirement of 66 Pa. C.S. § 2807(f)(5).

### Annual Reports to the Commission

Act 129 also requires that the default service provider shall submit an annual report “to the price programs and the efficacy of the programs in affecting energy demand and consumption and the effect on wholesale market prices.” 66 Pa. C.S.   
§ 2807(f)(5). PECO explained that, in addition to the organized stakeholder process, it will prepare two reports for the Commission. First, PECO will submit an interim report at the end of 2013 that will present the “test and learn” results to date, for customer acceptance and demand response. A final report planned for December 2014 will summarize key findings; provide insight concerning why some offerings were more effective than others; and will present PECO’s recommended combinations of rates, technologies, promotional strategies and customer education efforts that will be offered to all smart meter customers. Petition at 6-7 and PECO Exh. No. 12 at 4.

Customer solicitations for dynamic pricing are scheduled to begin in the fall of 2012. PECO Exh. No. 1 at 4. Therefore, we find that PECO’s proposal to file annual reports approximately one and two years after initial implementation of its dynamic rate programs would comply with the reporting requirements of 66 Pa. C.S.   
§ 2807(f)(5).

## Terms of the Settlement

Pursuant to our Regulations at 52 Pa. Code § 5.231, it is the Commission’s policy to promote settlements. The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, M-00031768 (Order entered January 7, 2004); *Pa. PUC v. C S Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985).

The following discussion is intended to be a summary of the terms of the Settlement and, accordingly, not every detail has been reflected. Consequently, the omission of any details of the Settlement should not be interpreted as amending the provisions of the Settlement.

### PJM’s Proposed New Demand Response Product

The OCA’s witness Hornby testified that shortly after PECO filed the instant Petition, PJM submitted a petition to the Federal Energy Regulatory Commission on December 2, 2010, to create two new additional demand response products. The OCA was concerned that the peak period PECO has proposed for the CPP may not cover all or most of the hours in which the system peak will occur in the future. The OCA recommended that PECO should evaluate the implications of PJM’s proposed changes in its selection of peak periods for the CPP and TOU rates. OCA St. 1 at 15-17.

In response to the OCA’s concerns, PECO stated that it used historical load data regarding system load and energy prices to determine the timing of the peak period for the proposed CPP and TOU rates and it did not take into account the pending PJM proposal. PECO explained that it regarded the PJM petition as “premature” and if approved, would not be available for use by customers until June 2014.

PECO St. 1-R at 2-3.

The Settlement provides that PECO will monitor PJM’s request and, if the products are approved and impact PECO’s peak periods in 2014 or beyond, PECO will propose appropriate adjustments to the Dynamic Pricing Plan after consultation with the stakeholders. Settlement ¶ 9.A. at 4. We concur with the ALJ that this is a reasonable approach that addresses the valid concern raised by the OCA while continuing to determine peak periods through analysis of actual data which are currently available. R.D. at 12.

### Stakeholder Involvement and Consideration of Other Dynamic Rates

In its Petition, PECO stated that it will keep stakeholders and the Commission informed regarding Plan implementation through periodic meetings and annual reporting. PECO pledged to continue to organize stakeholder update and feedback sessions in order to share information about the status of Plan implementation as well as results from the “test and learn” process. Petition at 7. OCA witness Brockway expressed a concern that the Plan limited the functions of the stakeholder process to one of information instead of collaboration. OCA St. No. 2 at 13.

In our *May 6, 2010 Order,* the Commission adopted the stakeholder process whereby, *inter alia*, PECO would meet with stakeholders no less than two times per year through 2012. The stakeholder meeting would address, at the minimum eight specific subject areas delineated in the Settlement Petition of PECO’s Smart Meter Plan.  
*May 6, 2010 Order* at 9-10. The instant Settlement provides that PECO will continue the stakeholder process as the implementation of the Dynamic Pricing Plan moves forward. Settlement ¶ 9.B. at 4. The Settlement also provides that PECO will consider other forms of dynamic pricing, such as the Peak Time Rebate approach suggested by the OCA. PECO will report to the Parties, its stakeholder group and the Commission regarding its evaluation of other dynamic rate options. *Id.* ¶ 9.H. at 7.

In its Statement in Support, the OCA stated that the provisions of the Settlement “will allow for a robust process, encourage a two-way dialogue and allow for a better-informed process for both stakeholders and the company.” The OCA explained that these goals were achieved in PECO’s Energy Efficiency and Conservation (EE&C) and Smart Meter collaborative and it believes that the inclusion of dynamic pricing in this collaborative will build on this success. OCA Statement in Support at 8. We agree with the OCA that continuing and expanding the stakeholder process established for the EE&C and Smart Meter Plans to address dynamic pricing can only enhance these initiatives. Therefore, the provisions set forth in Paragraphs 9.B. and 9.H. of the Settlement are adopted.

### Additional TOU Test Cells

PECO’s Plan is designed to test individually a variety of elements, including rate design, promotional strategy and technology. PECO will test various combinations of these elements for their effectiveness. For example, to determine customer preferences regarding rate design (CPP vs. TOU), the Plan offers one randomly selected group of customers the CPP rate with a sign-up incentive and another randomly selected group the TOU rate with the same incentive while holding constant all the other features of the marketing offers to both groups. In addition, as originally filed, the Plan would test other non-rate design features (e.g., marketing and promotion materials) to test cells populated by customers enrolled in the CPP rate so that the non-rate design testing could isolate such features without introducing rate design as a variable. PECO St. 2 at 16-20; PECO St. 2-R at 3-4.

The OCA’s witness Hornby expressed a concern that PECO’s Plan did not place equal emphasis on testing CPP and TOU rate options. Mr. Hornby testified that “TOU has the potential to be much more cost-effective than CPP from a Total Resource Cost perspective because it has the potential to produce a much larger aggregate reduction in peak demand . . . because many more customers are likely to enroll in TOU than in CPP.” OCA St. 1 at 9-10.

Under the Settlement, PECO agreed to add five additional test cells populated by customers enrolled in the TOU rate. Settlement ¶ 9.C. at 4. As stated by PECO in its Statement in Support at 5-6, “[t]his will allow the company to compare certain features across different rate designs and will contribute additional findings to the ‘test and learn’ process.” In its Statement in Support at 6, OCA explained that, “[t]he addition of TOU test cells will also allow the company to better identify pricing offers that it can deploy system-wide at a relatively low cost in order to ensure cost-effectiveness over time.” We agree with PECO and the OCA that these five additional cells will expand the scope of tested options that will be utilized to determine the key drivers of customer acceptance and effective utilization of dynamic rate programs.

### Customer Protection and Payment Arrangements

As part of the Plan’s “test and learn” approach, some customers would be offered bill protection features that protect them from paying more than they would have paid under the company’s otherwise applicable rates for default service for the same number of kWh during their first year on the dynamic rates. PECO stated that it is also committed to work with interested stakeholders to develop appropriate messaging to be used with marketing, educational and enrollment materials to help customers understand the potential implications of accepting a dynamic rate offer. PECO Statement of Support at 6.

The OCA’s witness Brockway testified that the objectives of dynamic pricing should not be achieved at the expense of consumers’ quality of life and access to electricity. Mr. Brockway argued that PECO’s Plan offered inadequate protection to its customers and proposed, *inter alia*, that customers be afforded a payment plan if they fall into arrears while participating in the dynamic pricing pilot. OCA St. No. 2 at 5-6. In response to the OCA’s concerns, PECO proposed that the eligibility criteria for payment arrangements should be extended for customers faced with higher peak or critical peak period bills. PECO also proposed that residential customers, who were not eligible for payment arrangements under existing Commission rules, would not be eligible for CPP or TOU rates. PECO St. 1-R at 4.

Under the Settlement, residential customers who are currently in default on a payment arrangement or who are currently making payments subject to a payment arrangement will not be eligible for CPP or TOU rates. However, if PECO is contacted by a residential customer who has enrolled in CPP or TOU rates and is experiencing difficulty making timely bill payments, PECO will take the following steps:

1. Move the customer to a separate research test cell focused on payment troubled customers.
2. Offer the customer first year bill protection for the entire first twelve months on the CPP or TOU rate if the customer is not already enrolled in a test cell that offers it.
3. Offer the customer a payment plan specific to any arrearages incurred while enrolled in the plan that is suitable under the company’s guidelines for payment arrangements for the customer’s circumstance.
4. Prior to the expiration of the bill protection feature, communicate and discuss with the customer whether to remain on the CPP or TOU rate given the payment problems encountered by the customer.

Settlement ¶ 9.B. at 5.

The OCA stated that these “substantial” protections will enable customers to try the dynamic rates without fear of unnecessary disconnection and will protect customers from the situation in which their experience under the TOU and CPP rate diminishes their access to utility service on a going forward basis. OCA Statement of Support at 4. PECO stated that, in addition to the supplemental protection for residential customers, the Settlement provides a new opportunity for PECO to test the bill protection feature and gather data specific to payment troubled customers. We concur with PECO and the OCA. The provisions added by the Settlement will protect customers from the potential risks of participating in the TOU and CPP and provide valuable experience on the effects of these protections on dynamic price participation.

### Surveys

In its initial filing, PECO explained that the use of surveys was one of several key components of the Plan’s “rigorous measurement and evaluation strategy.” PECO St. No. 2 at 22-23. The OCA addressed the importance of collecting information about vulnerable populations to see how those types of customers will be affected by dynamic pricing. The OCA identified those customers with advanced age or low income, those who were dissuaded from enrolling in TOU or CPP service and those who dropped out of these rates after enrolling. OCA St. 2 at 11-12.

To address the OCA’s concerns, the Settlement provides that PECO will:

1. Ask a representative sample of customers who decided against enrolling in the program the reasons for their decision and will prepare a report summarizing the result.
2. Monitor drop-out rates and work with the stakeholder group to determine whether surveying those customers should be done.
3. Perform a survey of, or conduct a focus group with, vulnerable customers in the pilot program to better understand their experiences.
4. Work with the stakeholder group to determine if there is other information that should be collected as part of this process.

Settlement ¶ 9.E. at 5-6.

## We believe that it is essential that customers that the OCA has identified as “vulnerable” be able to realize the savings that should result from participating in a load management rate program. We concur that the additional surveys included in the Settlement should be adopted because they will allow PECO to gather information on the relationships between the experiences of vulnerable customers and the proposed dynamic pricing options. This information should facilitate necessary changes to the pricing options and other Plan components going forward.

### Methodology for Calculating Tariff Riders

In his testimony, the OCA’s witness Hornby stated that PECO’s exhibit in support of its Petition describes the general method through which these dynamic rates will be set, but does not describe the exact method. He recommended that PECO revise its tariffs to include a detailed description of the methodology for calculating the rates. OCA St. No. 1 at 18-19.

As indicated in the Settlement and reflected in the tariffs included with the Settlement, each CPP and TOU rider contains a specific formula that sets forth how each rate is to be calculated. Settlement ¶ 9.B. at 7 and Exhibit No. 1. We agree with the OCA that these formulas are essential from both a regulatory perspective and to provide transparency for customers so they understand the rates they are being charged.

### Sourcing and Pricing Generation Supply

The Parties to the Settlement agree that this is the appropriate venue to determine CPP and TOU rate design and sourcing issues for the period from the Plan inception through the end of PECO’s currently approved default service plan (“stub period” through May 31, 2013). The Settlement provides that, for this stub period, PECO will utilize the methodology described in Appendix A to calculate the CPP and TOU rates. The Settlement also provides that PECO will not perform any reconciliation between projected revenues and revenues actually billed resulting from changes in load or shifts in demand for pilot program participants. PECO will also will forego recovery of any revenue collection shortfall associated with plan participants and will reflect changes in usage patterns with respect to its dynamic pricing programs in its future rate proceedings. Settlement ¶ 9.G. at 6-7. PECO explained that it accepted these conditions because it believes that the potential for under-recovery of revenue will be insignificant given the short duration of the stub period and the low number of customers expected to enroll during the stub period. PECO St. No. 4-R at 4.

We agree with the Settling Parties. Given the expected low enrollment during the stub period, we will adopt interim CPP and TOU rate design by this Opinion and Order for the period from the plan inception through May 31, 2013.

### Allocation of Plan Development Costs

The Company estimates that the instant Plan, based on a “test and learn” population of approximately 150,000 to 200,000 customers, will cost about $11.6 million. Petition at 9. These costs are being incurred for design and development, marketing, incentives, call center training, web design, communication, measurement and evaluations, and overall project management. PECO St. 4 at 8-9. The Plan costs are eligible for funding under matching grants received by PECO under the U.S. Department of Energy Smart Grid Investment Program. PECO estimates that the application of this grant money will reduce Plan costs through 2013 by approximately 48% from $11.6 million to $6.0 million. Petition at 9 and PECO St. No. 4, Exh. WJP-1B.

PECO proposed that the balance of Plan costs be recovered from Default Service Procurement Classes 1 (residential), 2 (small commercial and industrial), and 3 (medium C&I) through PECO’s Generation Supply Adjustment (GSA) mechanism. Customers in Procurement Class 4 (large C&I) will not be assigned any costs because customers in this class are not eligible to participate in the Plan’s dynamic rates. To the extent that there are costs that are directly attributable to a particular class, those costs will be directly assigned. PECO proposed that common costs be assigned based on the percentage of each procurement class’s projected GSA sales. *Id*. at 8-9.

We concur with the terms of the Settlement that costs should be directly assigned to a particular class to the extent they are directly attributable and that all common costs be assigned based on the percentage of each procurement class’s projected GSA sales. However, the Parties have excluded from the Settlement the issue of whether Plan costs should be collected from only default service (non-shopping customers) or both shopping and non-shopping customers. This issue is the subject of Exceptions and Reply Exceptions and will be addressed *infra.*

## Contested Issue – Allocation of Costs to Non-Shopping Customers

Initially, we are reminded that we are not required to consider expressly or at great length each and every contention raised by a party to our proceedings. *University of Pennsylvania, et al. v. Pa. PUC*, 485 A.2d 1217, 1222 (Pa. Cmwlth. 1984). Any exception or argument that is not specifically addressed herein shall be deemed to have been duly considered and denied without further discussion.

PECO explained that in its original Smart Meter filing, it requested that Dynamic Pricing Plan costs be recovered through the smart meter cost recovery mechanism proposed as part of PECO’s Smart Meter Plan. PECO averred that in several recent Orders,[[5]](#footnote-5) the Commission has found that dynamic rates are appropriately recovered through default service cost recovery mechanisms. PECO stated that in light of these Orders, PECO now proposes to recover its Dynamic Pricing Plan Costs through its GSA cost recovery mechanism. PECO St. No. 4 at 9-10.

The OCA’s witness Hornby testified that PECO’s proposal to recover all costs of its Plan from default service customers through the GSA is not consistent with the principals of cost causation and is not equitable. Mr. Hornby pointed out that only 18% of costs that PECO will incur to implement the Plan are incentives to customers to enroll in CPP and TOU. Mr. Hornby stated that the remaining costs are associated with a pilot that will collect information that will benefit all customers in each rate class, including customers receiving default service and competitive energy service. Mr. Hornby explained that PECO customers will have better information on which to base their assessment of pricing offers of Electric Generation Suppliers (EGSs) and EGSs will have better information in which to design and promote their pricing offers. Mr. Hornby also argued that default service customers did not cause PECO to incur these Plan costs, the cause of these costs is PECO’s need to comply with Act 129. OCA St. No. 1 at 19-20.

In her Recommended Decision, the ALJ concurred with the OCA that one of the reasons that PECO adopted the “test and learn” approach was to generate information about customer behavior and dynamic rate pricing. The ALJ noted that PECO’s own witness agreed that the lessons learned will raise awareness of other choices and products that EGSs can compete with. The ALJ also noted that PECO will produce a final, publicly available report that describes the results of the research, which could be beneficial to all interested stakeholders and third party suppliers. R.D. at 19.

However, the ALJ found that this generalized benefit to all customers is speculative and unquantifiable and unsupported by the record in this proceeding. In recognition of the Commission’s prior decisions, *supra*, the ALJ found that to accept the OCA’s proposal would require shopping customers to pay for a program in which they cannot participate. The ALJ cited the OSBA’s witness Knecht’s rebuttal testimony at OSBA St. No. 1 at 3 where he stated, “[t]o the extent these shopping customers are already paying for the administrative costs incurred by their own electric generation suppliers (EGSs) related to dynamic pricing or other innovative rates, the shopping customers will end up paying twice.” R.D. at 19.

The ALJ stated, while there will be some movement of customers who may change their supply sources, so that they may be default service or shopping customers at any point in time, the fact remains that the Dynamic Pricing Plan was developed for the purpose of offering dynamic pricing options to default service customers only. The ALJ cited 66 Pa. C.S. § 2807(f)(5) which states in part, “. . . a default service provider shall submit to the commission one or more proposed time-of-use rates and real-time price plans. . . . The default service provider shall offer the time-of-use rates and real-time price plan to all customers that have been provided with smart meter technology . . .” The ALJ concluded that “[c]learly, the legislature intended – and the Commission recognized – that the dynamic pricing options were to be an element of default service and not a rate option offered as part of transmission or distribution service.” R.D. at 19-20.

In its Exceptions, the OCA argues that the record in this proceeding supports the Commission reaching a different conclusion than in the PPL and Duquesne TOU proceedings. The OCA states that Duquesne already had a TOU plan in place as part of its Default Service Plan and its proposal to include its costs as part of its Consumer Education Surcharge is a completely different mechanism than the one at issue in this proceeding. The OCA avers that in the PPL TOU proceeding, no evidence was presented regarding the benefits of the PPL TOU rate to all customers. The OCA submits that the PPL TOU program was not a pilot program to test initial dynamic pricing rates in order to understand how to cost-effectively enroll customers and to examine the load impacts of different dynamic rates and technology options. OCA Exc. at 6-7.

In its Reply Exceptions, the OSBA argues that Act 129 makes a distinction between the costs that PECO can recover as a default service provider and the cost it may recover as an EDC. The OSBA submits that 66 Pa. C.S. § 2807(e)(3.9) provides for the recovery of costs incurred by default service providers to satisfy the requirements of Section 2807 whereas 66 Pa. C.S. §§ 2807(f)(7) and 2806(k)(1) provide for the recovery smart meter costs and EE&C costs by EDCs. The OSBA avers, *inter alia*, that   
66 Pa. C.S. § 2807(f)(5) expressly imposes the obligation of dynamic pricing on default service providers. OSBA R. Exc. at 8-11.

We concur that results of PECO’s Dynamic Pricing Plan *may* provide information that may assist EGSs as well as other EDCs in developing dynamic rate offerings. However, we agree with the ALJ that the extent to which other energy suppliers may benefit from this information is speculative and cannot be quantified. We also concur with the OCA that PECO’s Dynamic Pricing Plan differs from the TOU proposals submitted by Duquesne and PPL, cited *supra*. Nevertheless, these differences do not overcome the fact that PECO’s Dynamic Pricing Plan is being offered only to default service customers in response to PECO’s statutory requirements under 66 Pa. C.S.   
§ 2807(f)(5) as a default service provider, not an EDC. Consistent with the definitions set forth in 66 Pa. C.S. § 2803, a default service provider “provides generation service to retail customers” and an EDC provides “facilities for the jurisdictional transmission and distribution of electricity to retail customers.” Consequently, the costs of the Dynamic Pricing Plan should only be recovered from PECO’s default service customers that receive generation service and not from the shopping customers that only receive jurisdictional transmission and distribution service. Therefore, we shall adopt PECO’s proposal to recover the costs incurred to implement PECO’s initial Dynamic Pricing Plan, as modified by the Settlement, through its GSA mechanism and the Exceptions of the OCA are denied.

As noted in the Settlement at Paragraph 9.I., the allocation of costs adopted as a result of the Settlement and this Opinion and Order is only applicable to the instant Dynamic Pricing Plan. The Commission, or any Party, may pursue other cost allocations if there are significant modifications to the Plan or as PECO proposes broad-scale development of its dynamic rates.

## Tariff Implementation

The tariffs included as part of PECO’s Dynamic Pricing Plan currently contain placeholder rates, and therefore, do not contain any numeric rates. These tariffs were included as Exhibit 1 to the Settlement and will be effective June 1, 2012. The actual CPP and TOU rate premiums and discounts that will be implemented beginning on June 1, 2012, will be calculated based on future energy and capacity procurement costs using the methodology included as Exhibit 2 to the Settlement. PECO stated that it will file updated tariff pages by April 1 of each year that will include the applicable capacity prices and forward energy prices from the default service procurement corresponding to the PJM year beginning June 1. PECO also stated that the CPP and TOU rates will be adjusted on a quarterly basis to reflect any changes in the baseline GSA price. PECO   
St. No. 4 at 4-5. Accordingly, we shall adopt the proposed tariffs without actual per kWh rates, subject to the filing of actual rates with the Commission sixty days prior to the effective date of any new or revised tariff.

## Continuation of this Proceeding

In Ordering Paragraph No. 7 to the Recommended Decision, the ALJ directed that “upon acceptance and approval by the Commission of the tariff and tariff supplements filed by PECO Energy Company consistent with this Order, this proceeding at Docket No. M-2009-2123944 shall be marked closed.” R.D. at 23. This Commission’s review of the various facets of PECO’s Smart Meter Plan at Docket No. M-2009-2123944 is likely to continue into the future as PECO’s Smart Meter Plan evolves. Therefore, we are adopting the Recommended Decision with the exception of Ordering Paragraph No. 7.

# IV. Conclusion

Consistent with the discussion *supra*, and based upon our review of the record before us; the supporting statements of PECO, the OCA, and the OSBA; and the Recommended Decision of the ALJ; we conclude that the Petition for Approval of PECO’s Dynamic Pricing Plan, as amended by the Settlement, is in the public interest; and is in accord with the orders, rules and regulations of this Commission and the provisions of the Public Utility Code. **THEREFORE,**

**IT IS ORDERED:**

#### That the Exceptions of the Office of Consumer Advocate to the Recommended Decision of Administrative Law Judge Marlane R. Chestnut are denied.

#### That the Recommended Decision of Administrative Law Judge Marlane R. Chestnut issued February 23, 2011, is adopted, except that this proceeding at Docket No. M-2009-2123944 shall remain open.

1. That the Joint Petition for Partial Settlement filed by the PECO Energy Company, the Office of Consumer Advocate and the Office of Small Business Advocate is granted.
2. That the Petition for Approval of PECO Energy Company’s Initial Dynamic Pricing and Customer Acceptance Plan is granted, as amended by the Joint Petition for Partial Settlement filed by the PECO Energy Company, the Office of Consumer Advocate and the Office of Small Business Advocate.
3. That upon entry of this Opinion and Order, PECO Energy Company shall be permitted to file a tariff supplement in substantially the same form as the tariff supplement attached as Exhibit 1 to the Joint Petition for Partial Settlement filed by the PECO Energy Company, the Office of Consumer Advocate and the Office of Small Business Advocate.
4. That at least sixty (60) days prior to the effective dates of the Critical Peak Price Rider and the Residential Time-of-Use Rider attached as Exhibit 1 to the Joint Petition for Partial Settlement filed by the PECO Energy Company, the Office of Consumer Advocate and the Office of Small Business Advocate; PECO Energy Company shall file with the Commission tariffs that contain the actual rates per kilowatt hour to be charged under those tariffs.
5. That the rates contained in the tariffs filed pursuant to Ordering Paragraph No. 6, *supra*, shall be calculated utilizing the methodology set forth in Exhibit 2 to the Joint Petition for Partial Settlement filed by the PECO Energy Company, the Office of Consumer Advocate and the Office of Small Business Advocate.
6. That PECO Energy Company shall file detailed calculations with its tariff filed pursuant to Ordering Paragraph No. 6, *supra*, which shall demonstrate to this Commission's satisfaction that the filed rates comply with the methodology set forth in Exhibit 2 to the Joint Petition for Partial Settlement filed by the PECO Energy Company, the Office of Consumer Advocate and the Office of Small Business Advocate.
7. That any directive, requirement, disposition or the like contained in the body of this Opinion and Order that is not subject to an individual Ordering paragraph, shall have the full force and effect as if fully contained in this part.



**BY THE COMMISSION**,

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: April 14, 2011

ORDER ENTERED: April 15, 2011

1. PECO’s generation rate caps expired on December 31, 2010. [↑](#footnote-ref-1)
2. *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009). [↑](#footnote-ref-2)
3. *Petition of PECO Energy Company for Approval of its Smart Meter Technology and Procurement Plan,* Docket No. M-2009-2123944 (Order entered May 6, 2010). [↑](#footnote-ref-3)
4. For the purpose of this proceeding, the members of PAIEUG, listed on Appendix A to its Petition to Intervene are Air Liquide Industrial U.S., LP, the Boeing Company, Building Owners & Managers Association of Philadelphia, Drexel University, Franklin Mills Associates Limited Partnership, GlaxoSmithKline, Jefferson Health System, Kimberly-Clark Corporation, Merck & Co., Inc., Sanofi-Aventis, Saint Joseph’s University, Temple University and Villanova University. [↑](#footnote-ref-4)
5. *Pa. PUC. v. PPL Electric Utilities Corporation*, Docket No.   
   R-2009-2122718 (Order entered March 9, 2010), *Petition of* *Duquesne Light Co. for Approval of a Time-of-Use Plan*, Docket No. P-2009-2149807 (Order entered June 23, 2010); *Petition of PECO Energy Company for Approval of its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of Compact Fluorescent Lamp Program*, Docket No. M-2009-2093215 (Order entered February 17, 2010). [↑](#footnote-ref-5)