

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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April 10, 2015

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

Re: Petition of PECO Energy Company (Electric
Operations) for Approval to Establish a
Distribution System Improvement Charge
Docket No. P-2015-2471423

Dear Secretary Chiavetta:

Attached for electronic filing is the Office of Consumer Advocate's Answer in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in cursive script that reads "Erin L. Gannon".

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Attachment

cc: Office of Administrative Law Judge
Office of Special Assistants
Certificate of Service

*205087

CERTIFICATE OF SERVICE

Re: Petition of PECO Energy Company :
(Electric Operations) for Approval of :
a Distribution System Improvement : Docket No. P-2015-2471423
Charge :

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

Dated this 10th day of April 2015

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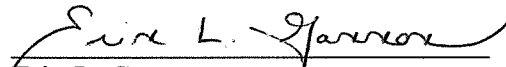
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PECO Energy Company (Electric :
Operations) for Approval of a Distribution : Docket No. P-2015-2471423
System Improvement Charge :

ANSWER OF THE OFFICE OF CONSUMER ADVOCATE
TO THE
PETITION OF PECO ENERGY COMPANY

I. INTRODUCTION

Pursuant to Section 5.61 of the Pennsylvania Code, 52 Pa. Code § 5.61, the Office of Consumer Advocate (OCA) provides the following Answer to the Petition of PECO Energy Company (PECO or Company) for Approval of a Distribution System Improvement Charge (DSIC) for its electric operations. Through its Petition, PECO seeks permission to implement a surcharge of up to 5% on all customers under Section 1353 of the Public Utility Code, 66 Pa. C.S. § 1353. This surcharge would recover return and depreciation on certain plant placed in service between base rate filings. As set forth more fully below, the Company's Tariff Supplement attached to the Petition is or may be contrary to Pennsylvania statute, case law, and established Public Utility Commission policy. The Commission should deny PECO's Petition as filed. The OCA requests that the Commission suspend the Company's proposed tariff and order a full hearing and investigation pursuant to the OCA complaint filed at this docket against the Petition and Tariff Supplement.

II. THE OCA'S ANSWER

This is a request by a utility to implement a DSIC under a new statute and the Commission's Final Implementation Order.¹ PECO's proposed DSIC allows the utility to increase rates for service and presents several important issues. For the reasons discussed below, the Petition should be denied and the proposed Tariff Supplement should be rejected as filed. This matter should be referred to the Office of Administrative Law Judge for development of an evidentiary record.

While the OCA continues to review PECO's filing, the OCA has identified the following preliminary concerns with the proposed surcharge:

1. The proposed DSIC computation, by ignoring the balance of accumulated deferred income taxes associated with DSIC investments, will allow the Company to earn a return on an investment balance that exceeds PECO's actual investment in DSIC eligible plant.
2. The calculation of the state income tax component of the DSIC revenue requirement determination requires further examination to ensure that it is consistent with the actual taxes paid doctrine. If the Company's gross-up for pre-tax return in the DSIC computation does not recognize the flow-through of state income tax deductions associated with investments recovered through the DSIC, the DSIC rate will allow recovery of taxes that PECO will not pay.

¹ Implementation of Act 11 of 2012, Docket No. M-2012-2293611, Order (Aug. 2, 2012) (Final Implementation Order).

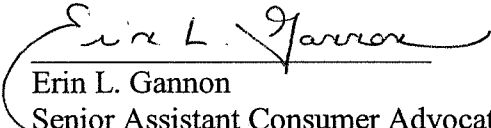
The OCA's first concern is the Company's failure to reflect accumulated deferred income taxes (ADIT) in its calculation of the DSIC. *Tariff Electric – Pa. P.U.C. No. X (2.D. Formula)*. The DSIC is intended to be an exception to the prohibition against single-issue ratemaking; however, that single issue must be calculated fairly and correctly. To make the DSIC calculation correct (to allow recovery only for costs actually incurred by the utility), the rate base on which the pretax return is calculated must reflect an offset for accumulated deferred income taxes. If the balance of ADIT is not recognized, PECO will be allowed to earn a return on DSIC plant as if all of that plant was paid for with investor-supplied capital when, in fact, it was partially paid for with zero cost capital in the form of ADIT. The calculation of investment on which PECO is entitled to earn a return for DSIC purposes should be no different than how the balance would be calculated for purposes of base rates. That is, the eligible balance should equal plant less accumulated depreciation on that plant less ADIT associated with that plant.

The OCA is also reviewing the Company's calculation of state income taxes in the DSIC revenue requirement determination to ensure that ratepayers receive the full benefit of tax deductions. If these deductions are not recognized in PECO's DSIC calculations, the DSIC revenue requirement will be overstated because state income taxes will be included on total net income even though the Company will pay state income taxes on only a portion of the income generated by DSIC revenues. The actual taxes paid doctrine provides that a utility is only permitted to charge rates which reflect its actual tax expense for any given year. *Barasch v. Pa. P.U.C.*, 507 Pa. 496, 491 A.2d 94 (1985); *Pittsburgh v. Pa. P.U.C.*, 182 Pa. Super. 551, 128 A.2d 372 (1956); *Public Systems v. F.E.R.C.*, 709 F.2d 73, 76 (6th Cir.1983).

III. CONCLUSION

The surcharge proposed by PECO is contrary to Pennsylvania case law, as well as several well-established principles of sound ratemaking. The surcharge as proposed would also constitute bad regulatory policy. The OCA respectfully requests that the Commission deny the Company's Petition as filed, suspend the proposed tariff and order a full hearing and investigation pursuant to the OCA complaint filed at this docket.

Respectfully submitted,


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