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May 31, 2012

VIA OVERNIGHT DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Implementation of Act 11 of 2012
Docket No. M-2012-2293611

Dear Secretary Chiavetta:

Pursuant to the May 10, 2012 Tentative Implementation Order in the above-referenced docket, enclosed please find an original and three (3) copies of the **Comments of PECO Energy Company**.

Kindly return a time-stamped copy of this letter in the self-addressed envelope that is enclosed. Please do not hesitate to contact me should you have any questions regarding this filing.

Very truly yours,


Jack R. Garfinkle
JG/adz

Enclosures

Via Electronic Mail
cc: Act 11 Resource Account
David Screven
Louise Fink Smith
Erin Laudenslager

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MAY 31 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

IMPLEMENTATION OF ACT 11 OF 2012 : DOCKET NO. M-2012-2293611

**COMMENTS OF PECO ENERGY COMPANY
TO THE COMMISSION'S
MAY 10, 2012 TENTATIVE IMPLEMENTATION ORDER**

I. INTRODUCTION

PECO Energy Company (“PECO” or the “Company”) hereby submits its comments to the Pennsylvania Public Utility Commission’s (“PUC” or the “Commission”) May 10, 2012 Tentative Implementation Order at Docket No. M-2012-2293611 (“Tentative Order”), wherein the Commission sets forth proposed procedures, guidelines and draft tariff language to govern its implementation of certain provisions of Act 11 of 2012 (“Act 11”).

Act 11, which was signed into law on February 14, 2012, amended Chapters 3 and 13 of the Public Utility Code (66 Pa.C.S. §§ 101 *et seq.*) in three principal respects: (1) it authorized utilities to utilize a “fully projected future test year” in calculating their revenue requirement/cost of service for ratemaking purposes; (2) it permitted utilities providing both water and wastewater service to allocate a portion of their wastewater revenue requirement to their combined customer base if in the public interest; and (3) it extended to wastewater, electric delivery and natural gas distribution companies the opportunity to implement a distribution system improvement charge (“DSIC”).

The May 10, 2012 Tentative Order is devoted almost entirely to a discussion of item (3) above, namely the use by non-water utilities of the DSIC. Accordingly, the comments that follow address issues related to that aspect of Act 11. PECO notes, however, that the prospective use of a fully projected future test year could have an even greater and arguably more far-ranging

effect on Pennsylvania’s ratemaking practices. PECO therefore assumes that a separate proceeding will soon be launched to establish appropriate rules and filing requirements for use of a fully projected test year and looks forward to working with the Commission and interested stakeholders on that initiative.¹

II. COMMENTS

PECO’s comments generally track, by Code Section, the Tentative Order’s analysis of Act 11’s DSIC provisions.

A. Section 1352 (Long-Term Infrastructure Improvement Plan)

With limited exception not applicable to PECO², Act 11 requires companies to file a “long-term infrastructure improvement plan” in order to qualify for DSIC approval. At pages 7-10 of the Tentative Order, the Commission describes the type of information that must be included in such plans and sets forth the Commission’s expectations in terms of what those data should show. The Commission also encourages utilities to file their long-term plans in advance of actually petitioning for DSIC recovery to reduce the scope of issues to be addressed when the latter filing is made (Tentative Order, p. 10).

PECO has three suggestions regarding this section. First, PECO believes that there is no need for utilities to provide extensive data regarding components of their distribution systems for which they are not seeking DSIC recovery. Indeed, it could prove extremely burdensome to do so. Accordingly, the description of the first infrastructure improvement plan “element” at the top of page 8 of the Tentative Order should be aligned with the actual language of the statute and include the phrase “for which the utility [will] seek recovery under this subchapter.” *See* Section

¹ PECO provides neither water nor wastewater service and, consequently, takes no position with respect to issues that may arise concerning item (2).

² Section 1360 authorizes the Commission to accept a long-term infrastructure improvement plan filed by a water utility prior to Act 11’s effective date.

1352(a)(1). In like fashion, the reference to “all distribution plant” in the second sentence of the ensuing paragraph should also be clarified to encompass only property for which DSIC treatment is sought.

Second, at page 9 of the Tentative Order, the Commission properly recognizes that some utilities have already taken “significant steps” to address their aging infrastructure and that such efforts should be taken into account in the Commission’s evaluation of their long-term infrastructure improvement plans. PECO agrees and, at this juncture, simply requests that any “baseline” established for purposes of measuring the Company’s “historic level of capital improvement” predate its Gas Division’s implementation of the Pipeline Replacement and Performance Plan (“PRP Plan”) previously discussed with the Commission at its *Round Table on Strategies and Options for Gas Infrastructure Maintenance* on June 2, 2011,³ so as to avoid penalizing PECO inadvertently.

Third, it would be helpful if the Commission were to provide some further guidance regarding the process it will employ in reviewing utilities’ long-term infrastructure improvement plans. For example, at the top of page 10 of the Tentative Order, the Commission observes that Act 11 authorizes it to order a new or revised plan if the as-filed plan is “not adequate.” But, the Tentative Order does not indicate what standards will be applied in determining a plan’s “adequacy.” In addition, the Tentative Order is silent on how long the plan approval process could reasonably be expected to take. While the Commission understandably might be reluctant to commit to a specific review period, it would nonetheless assist utilities that intend to submit

³ Under PECO’s PRP Plan, the Company intends to increase its Gas Division’s capital budget to repair and replace cast iron and bare steel mains and services from \$14 million per year to approximately \$34 million per year. At this level of investment, PECO estimates that it will be able to: (i) replace all of its high-priority mains and services in approximately 10 years; and (ii) replace or repair all of its cast iron and bare steel mains in 30 years. See Comments of PECO Energy Company filed on January 13, 2012 in Docket No. M-2011-2271982.

DSIC applications to know that the Commission would strive to process their infrastructure improvement plan filings in, say, ninety days.

B. Section 1354 (Customer Notice)

Act 11 requires utilities to notify customers: (1) when they make their initial DSIC filing; (2) when the Commission acts on that filing; and (3) when quarterly adjustments to the DSIC are made, but leaves the form of notice to be utilized up to the Commission. This issue is then addressed at page 7 of the model tariff, as follows:

D. Customer Notice: Customers shall be notified of changes in the DSIC by including appropriate information on the first bill they receive following any change. An explanatory bill insert shall also be included with the first billing.

PECO is concerned that the first sentence could be construed as mandating the use of “bill messaging,” i.e., the inclusion of language in the message box on a customer’s bill. In some instances, that may be an appropriate vehicle. However, with the increasing volume of information that energy companies are required to provide their customers, PECO, on occasion, has encountered space limitations that would make it difficult and potentially more costly to produce a quarterly DSIC notice on the bill itself. PECO therefore requests that utilities be given the flexibility to determine how best to notify customers of quarterly DSIC changes and, to that end, proposes that the following alternative language be inserted in the model tariff:

D. Customer Notice: For the initial DSIC filing, customers will be noticed by bill insert. Following the initial notice, changes to the DSIC rate may be noticed through the use of either bill messaging or bill inserts.

C. Section 1357 (Computation Of Charge)

1. Equity Return Rate

Act 11 defines the DSIC as a charge designed to recover “the reasonable and prudent costs incurred to repair, improve or replace eligible property that is part of the utility’s distribution system” (66 Pa.C.S. § 1351). Section 1357, in turn, recognizes that such costs

include a pre-tax return and goes on to provide that, if less than two years have elapsed since the entry of a final order in the utility's "most recent fully litigated base rate proceeding," the equity component of the DSIC charge shall be the equity return rate approved in that case.

At page 15 of the Tentative Order, the Commission describes a "fully litigated base rate proceeding" as one in which "all revenue requirement issues were addressed and adjudicated by the Commission in a final rate order." On that basis, the Commission concludes that "a full or partial settlement of a base rate case would not qualify." At the same time, however, the Commission invites comments on whether a stipulated cost of equity from a settled rate case nonetheless could be used for DSIC purposes (Tentative Order, p. 15, fn. 5).

PECO believes that the phrase "fully litigated base rate proceeding" need not be construed as narrowly as implied by the Tentative Order. Whether "all revenue requirement issues" were specifically adjudicated by the Commission in a prior rate proceeding is irrelevant to the question of whether the equity return rate a utility proposes to use for DSIC purposes is reasonable. If a specific return rate has been reviewed by the Commission and found appropriate for use in the DSIC calculation, that is all that should matter.

When a full or partial settlement of a base rate proceeding is reached, the terms on which the parties agree are memorialized, typically in a joint petition for settlement of rate investigation, and are presented to the presiding Administrative Law Judge and subsequently the Commission for their review. If either the ALJ or the Commission concludes that a stipulated cost of equity is too high (or too low), it is free to reject the proposed settlement or approve it with that term excised. Indeed, a stipulated equity return rate finding in a settled rate case will likely receive far more Commission attention than the default equity rate published in the most recent "Quarterly Report on the Earnings of Jurisdictional Utilities," *See* 66 Pa.C.S.C. §

1357(b)(3), which, while released by the Commission, typically bears the disclaimer that it “does not represent the views of the [PUC] or of any individual Commissioner or Commissioners.”

To rule that a stipulated equity return rate cannot qualify for DSIC purposes would also run counter to the Commission’s long-standing policy promoting settlements. *See* 52 Pa. Code §§ 5.231 and 69.401. For that reason, in water utility rate proceedings, the Commission has consistently approved settlements that included provisions stipulating to the use of specific equity return rates in future DSIC filings. *See, e.g., Pa. P.U.C. v. Aqua Pennsylvania, Inc.*, Docket No R-00051030 (June 22, 2006) (Ordering Paragraph 9 at page 8: “That for the period the Settlement Rates are in effect, a 10.6% rate of return on common equity shall be used by Aqua Pennsylvania, Inc. for Distribution System Improvement Charge (“DSIC”) purposes in lieu of the equity return rate(s) calculated in the Commission’s Quarterly Earnings Reports”).⁴

In short, PECO submits that where the parties to a base rate proceeding stipulate to the use of a specific equity return rate in future DSIC filings and where non-stipulating parties are provided an opportunity to oppose that provision and where the stipulated return rate is subject to the Commission’s review and approval, Section 1357(b)(2)’s “fully litigated base rate proceeding” standard has been satisfied.

2. Accumulated Deferred Income Taxes

At page 16 of the Tentative Order, the Commission notes that its proposed model tariff retains the factors that have been successfully utilized by water companies to calculate the DSIC over the past fifteen years and that it does not introduce additional revenue requirement components, such as accumulated deferred income taxes, which the Commission characterizes as

⁴ Notably, Section 1358(a)(2) grandfathers all pre-existing “practices and procedures” of water companies utilizing a DSIC “unless specifically amended or revoked by the Commission.” This strongly suggests that the Legislature was not troubled by the use, for DSIC purposes, of stipulated equity return rates agreed to in settled base rate proceedings.

“unnecessary complexities.” PECO fully supports the Commission’s decision not to further complicate the DSIC calculation.

3. Seasonality

PECO commends the Commission for acknowledging that some utilities’ revenue streams are seasonal in nature and recognizing the potential impact this could have on DSIC recovery. PECO fully supports the model tariff language which provides an option of basing quarterly revenues on either the summation of projected revenues for the applicable three-month period or one-fourth of the utility’s projected annual revenues. This option will enable such utilities to “smooth out” any significant changes in revenue which might otherwise impact the DSIC.

III. CONCLUSION

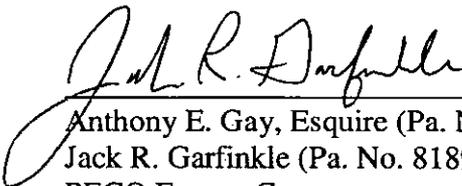
PECO appreciates the opportunity to comment on these important issues and asks that the Commission consider its comments. PECO looks forward to continuing to work with the Commission and other stakeholders as this matter progresses.

Respectfully submitted,

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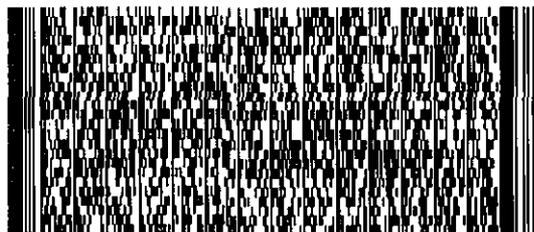
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