

**STATE OF NEW YORK
PUBLIC SERVICE COMMISSION**

**Proceeding on Motion of the Commission as to the Rates,
Charges, Rules and Regulations of Pennsylvania Electric
Company for Electric Service**

Case 11-E-0594

STATEMENT IN SUPPORT OF JOINT PROPOSAL

Pennsylvania Electric Company (“Penelec” or “Company”) hereby submits its Statement in Support of the Joint Proposal by and between Penelec and the Department of Public Service Staff (“Staff”) that was filed with the New York State Public Service Commission (“Commission”) on February 22, 2012, in Case 11-E-0594.¹ The Joint Proposal resolves all issues regarding the revised tariff leaves and supporting materials that Penelec filed with the Commission on October 28 and November 9, 2011, requesting approval of the Company’s proposal to transition its default service customers to market-based generation supply rates (collectively, the “Filing”). For the reasons set forth herein, Penelec respectfully urges the Commission to find that the Joint Proposal is in the public interest and adopt it, without modification.

BACKGROUND

In its Filing, Penelec requested approval of a transition to market-based default service supply rates for the Company’s Waverly District by bringing the pricing methodology for generation rates more closely in line with the procurement approach used to provide supply to all

¹ Case 11-E-0594, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Pennsylvania Electric Company for Electric Service, Joint Proposal (filed February 22, 2012).

of Penelec's service territory, including its Waverly District, as well as all other New York electric utilities, to recover this pass-through cost. Because the Company estimated that an immediate and full transition to market-based rates on June 1, 2012 could result in material bill increases, Penelec proposed to apply a declining customer credit over a three-year period to mitigate the anticipated impact, while deferring unrecovered costs for future recovery. In its Filing, Penelec also requested approval of certain changes to the terms and conditions of the Penelec P.S.C. No. 6 – Electricity tariff (“Tariff”), and to implement a Temporary State Assessment Surcharge (“TSAS”) Rider.

On December 21, 2011, Penelec filed with the Commission a *Notice of Impending Settlement Negotiations* pursuant to 16 N.Y.C.R.R. § 3.9.

On January 10, 2012, Penelec and Staff discussed a comprehensive settlement of the Filing at the Commission's offices in Albany, New York and via conference call. Settlement negotiations continued via conference call held on January 19, 2012.

On February 22, 2012, Penelec and Staff (the “Signatory Parties”) executed and filed the Joint Proposal, which presents a comprehensive resolution of all proposals advanced by the Company in its Filing.

SUMMARY OF THE JOINT PROPOSAL

The methodology that Penelec proposed in the Filing is consistent with the pricing approach taken by other New York electric utilities and previously has been approved for the Company in Pennsylvania by the Pennsylvania Public Utility Commission (“PaPUC”).² Although Penelec's original proposal adequately balanced utility and customer interests, the

² Docket Nos. P-2009-2093053 and P-2009-2093054, Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Programs, Opinion and Order (issued November 6, 2009).

Company engaged with Staff in settlement negotiations intended to achieve a comprehensive resolution of all issues presented in its Filing. The resolution achieved through the Joint Proposal represents an efficient and cost-effective allocation of Company and Staff resources, and also avoids incurring the substantial cost of litigation. The Joint Proposal provides that Penelec will achieve the transition to market-based rates by limiting bill increases to 12% or less on a class-average basis during the period June 1, 2012 through May 31, 2014. (*See, e.g.*, Joint Proposal, Appendix A, Page 5.) The Joint Proposal further provides that the deferred balance would earn a return of 10.01% and, on June 1, 2014, the Company would begin amortizing that balance over a four-year period. (Joint Proposal at 6.) This would result in a shorter overall transition period (including amortization) and consequently, lower costs. (Joint Proposal, Appendix B, Page 2.)

To ensure that the potential bill impact associated with the transition to market-based generation supply rates is moderated for all Penelec customers, the Joint Proposal incorporates a declining block rate design to all customers taking electric service under Service Classification (“S.C.”) No. 3 – General Service – Secondary. As set forth in the Joint Proposal, this rate design would limit the total bill impact experienced by any individual customer to no more than 1.6 times the class average bill impact. (Joint Proposal at 5-6.)

The Joint Proposal adopts Penelec’s proposal to replace its Competitive Transition Charge with a NUG Charge Rate Rider (the “NUG Rider”) or NUG Adjustment Clause. The non-bypassable NUG Charge would be calculated at the end of each NUG reconciliation year ended on March 31, 2012. The Company would recover, or refund, the difference between NUG contract costs and the market price of generation via the NUG Charge

on an annual basis. In contrast, the rate allowance for NUG costs currently is adjusted every five years.

The Joint Proposal also adopts the Company's proposal to charge customers for default service through a Price to Compare ("PTC") Default Service Rider that would recover the cost of energy and capacity, transmission, ancillary services, and Network Integration Transmission Service via a PTC Default rate. The actual cost to provide default service would be reconciled with the default service revenue billed to retail customers over the prior twelve-month period, and over- or under-collections would be refunded or recovered with carrying charges during the following twelve-month period.

In its Filing, Penelec also proposed to implement a TSAS Rider to recover all funds paid by the Company to the State of New York pursuant to the Commission order in Case 09-M-0311,³ as well as to implement certain other Tariff changes.⁴ In the Joint Proposal, the Signatory Parties agree that Penelec instead will submit a compliance filing in Case 09-M-0311 to propose the implementation of a TSAS Rider to recover the TSAS on a prospective basis only.⁵ The Signatory Parties accepted the remaining Tariff changes proposed in the Filing.

³ Case 09-M-0311, Implementation of Chapter 59 of the Laws of 2009 Establishing a Temporary Annual Assessment Pursuant to Public Service Law § 18-a(6), Order Implementing Temporary State Assessment (issued June 19, 2009).

⁴ Specifically, Penelec proposed to: (a) unbundle Private Outdoor Lighting Service and Municipal Street Lighting Service to allow those customers to procure their commodity from an entity other than Penelec; (b) update the details regarding where Penelec customers can obtain service applications and information; (c) remove Rule 26, and all references thereto, from the Tariff; and (d) update certain provisions of S.C. 3, 4 and 5 so that the applicable "Minimum Charge" includes "plus energy changes stated in or calculated by an applicable Rider."

⁵ Penelec made this compliance filing on February 29, 2012 in Case 09-M-0311. The compliance filing includes revisions to Original Leaf No. 134 (i.e., Rider D – Temporary State Assessment Surcharge Rider) included with the Filing, which will supersede those original leaves when approved by the Commission.

The terms and conditions summarized above reflect compromises among the Signatory Parties on issues that are the result of negotiated agreements and concessions by the Signatory Parties and, as such, are predicates for support of the Joint Proposal by Penelec and Staff. Accordingly, each Signatory Party reserved the right to withdraw its support if any of the terms of the Joint Proposal are modified or rejected. (Joint Proposal at 9.) Therefore, the Joint Proposal should be approved in its entirety without modification. This Statement in Support sets forth the basis and rationale for the Company's agreement with the Joint Proposal and the Company's recommendation to the Commission that it adopt the Joint Proposal's terms and conditions without modification.

ARGUMENT

THE JOINT PROPOSAL IS IN THE PUBLIC INTEREST AND SHOULD BE APPROVED WITHOUT MODIFICATION

The Commission should adopt the Joint Proposal because it satisfies the criteria adopted by the Commission in Opinion 92-2 for establishing the reasonableness of parties' agreements and recommendations on utility rate matters,⁶ and is in the public interest. In Opinion 92-2, the Commission enumerated criteria for judging whether a joint proposal is in the public interest. In considering whether or not a joint proposal is in the public interest, the Commission evaluates certain criteria, including: (a) whether the agreement balances the interests of customers and the utility; (b) whether the agreement produces a result consistent with the range of possible outcomes that may have resulted from litigation of the issues resolved by

⁶ Case 90-M-0255, Proceeding on Settlement Procedures and Guidelines, Opinion 92-2 (issued March 24, 1992).

negotiation; and (c) is consistent with Commission policies.⁷ The Commission also reviews the extent to which an agreement is supported by generally adverse parties, “giv[ing] weight ... to the fact that a settlement has been agreed to by all parties, including normally adversarial ones...”⁸ Recognizing that the criteria to be evaluated in this analysis “do not lend themselves to codification,”⁹ the Commission will evaluate and balance each of these criteria in the context of an entire agreement. The recommendations set forth in the Joint Proposal satisfy these criteria and are in the public interest.

A. The Joint Proposal Balances Customer and Company Interests

While the proposals set forth by Penelec in its Filing considered and accounted for the customer impact that may result from market-based supply rates by including a gradual transition to moderate that impact, Penelec agreed to extend the customer safeguards in consideration for settlement of the issues in this proceeding. Such balance is achieved by modifying the proposals set forth in the Filing in a manner that preserves the moderation of bill impacts proposed by Penelec, reduces overall costs of the transition to market-based generation supply rates, and authorizes the Company to update certain Tariff provisions.

Penelec currently recovers its supply costs via a fixed-price generation rate that has been in effect, unchanged, since January 1, 2001.¹⁰ In 2009, however, the PaPUC authorized

⁷ Id. at 30 and Appendix B, p. 8.

⁸ Id. at 30-31 and Appendix B, p. 8.

⁹ Id. at 30.

¹⁰ Case 00-E-1672, Pennsylvania Electric Company filed tariff amendments to establish a retail access program in its Waverly, New York service territory, Order (issued December 21, 2000).

Penelec to transition its Pennsylvania customers to market-based rates.¹¹ Since that transition, Penelec has procured generation supply, including for customers served in its Waverly District, via a process that is monitored closely by the PaPUC on an ongoing basis. Penelec's New York customers, however, have continued to pay a fixed generation rate that often has been less than the market cost of supply. Thus, Penelec's New York customers have benefited from the Company's delayed transition to market-based supply rates in its Waverly District.

Recognizing that an immediate transition to market-based rates could result in material bill increases, Penelec proposed to phase-in the transition via declining customer credits, with unrecovered costs deferred for future recovery. This proposal was designed to limit the bill increase for a 500 kWh-per-month residential customer to no more than 15%.

The Signatory Parties modified that proposal in a manner that benefits customers while satisfying the underlying premise of Penelec's proposal. The Joint Proposal recommends a rate design that limits bill increases for almost all customers to 12% or less, applies a 10.01% interest rate to the deferred balance, and shortens the amortization period to four years. The agreement reached by the Signatory Parties, therefore, would result in a smaller deferred balance as compared to the proposal set forth in the Filing. Further, to ensure that the potential bill impact associated with the transition to market-based generation supply rates is moderated for all Penelec customers, the Joint Proposal recommends that Penelec apply a declining block rate design to all customers taking electric service under S.C. 3. This rate design limits the total bill

¹¹ Docket Nos. P-2009-2093053 and P-2009-2093054, Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Programs, Opinion and Order (issued November 6, 2009).

impact experienced by any individual customer in that service classification to no more than 1.6 times the class-average bill impact.¹²

The Joint Proposal also resolves other issues raised in the Filing. Penelec proposed to implement a TSAS Rider to recover all funds paid by the Company to the State of New York pursuant to the Commission order in Case 09-M-0311.¹³ The Signatory Parties agreed that the Company instead would recover its TSAS expense on a prospective basis only.¹⁴

Further, the Joint Proposal adopts Penelec's proposal to replace its Competitive Transition Charge with a NUG Rider or NUG Adjustment Clause that would recover, or refund, the difference between NUG contract costs and the market price of generation via the NUG Charge on an annual basis. In contrast, the rate allowance for NUG costs currently is adjusted every five years. If adopted by the Commission, this recommendation would ensure that, to the greatest extent practicable, the Company does not retain more, or recover less, NUG costs than are incurred during the course of a year.

The Joint Proposal, therefore, strikes a fair and reasonable balance between customer and utility interests. With respect to customer interests, the Joint Proposal secures material cost savings and moderates bill impacts to the greatest extent practicable. With respect to utility interests, the Joint Proposal would authorize Penelec to recover its generation supply costs in a manner that is consistent with the methodology applied to its customers in Pennsylvania as well as with other electric utilities in New York State, and also would improve

¹² As described herein, Penelec's support for these recommendations is conditioned on the Joint Proposal being adopted without modification.

¹³ Case 09-M-0311, supra, Order Implementing Temporary State Assessment.

¹⁴ The Signatory Parties also agreed that Penelec will seek to implement the TSAS Rider via a compliance filing in Case 09-M-0311.

the Company's ability to manage its regulatory assets by shortening the amortization period arising from application of the customer credits (while decreasing total costs to customers).

B. The Recommendations of the Joint Proposal Are Within The Range Of Potential Litigated Outcomes, And Are Consistent With Commission Policies

The agreement memorialized in the Joint Proposal is within the range of outcomes that may have resulted from litigation of the proposals set forth in the Filing. Penelec considered the potential outcomes associated with such litigation when determining whether to enter the Joint Proposal. Although Penelec continues to believe that the proposals set forth in its Filing are reasonable and would be in the public interest if adopted without modification, the Company recognized the various uncertainties associated with a litigated outcome, and the potential changes to its proposals that could be imposed after litigation of the issues presented in the Filing. The Company also recognized the benefit to it and its customers in avoiding the cost of litigating the issues that have been resolved in the Joint Proposal. The fact that the Joint Proposal is the product of interdependent concessions and agreements made by parties (*i.e.*, Staff and a utility) that typically are adversarial in the context of a rate proceeding, and that the agreement is unopposed by any party, weighs in favor of adopting the Joint Proposal.¹⁵

Staff presumably determined that the modified transition to market-based generation supply rates it secured through negotiation is superior to alternate outcomes that may have resulted from litigation of those issues. Through negotiation and collaboration, Staff and Penelec crafted a transition to market-based generation supply rates that moderates the impact to customers, reduces overall phase-in costs, and shortens the time to complete the transition and

¹⁵ Case 90-M-0255, *supra*, Opinion 92-2 at 30-31 and Appendix B at 8 (noting that the Commission will “give weight ... to the fact that a settlement has been agreed to by all parties, including normally adversarial ones...”).

amortize deferred costs associated with same. Although this result is consistent with a potential outcome from litigation of these issues in this proceeding, it is unlikely that litigation would have achieved a result that balances customer and utility interests as effectively or in as cost-effective a manner because the collaboration and communication made possible by confidential settlement negotiations would not have occurred in the context of litigation.

The recommendations set forth in the Joint Proposal also are consistent with the long-standing approach used by other New York utilities. The State’s electric utilities have procured supply from the wholesale marketplace for years. The transition to market-based rates recommended in the Joint Proposal, if adopted, would result in a procurement and cost recovery process similar to those employed by other State electric utilities. For example, the Commission has approved tariffs for electric utilities that provide for pass-through recovery of costs incurred by procuring supply from the wholesale market.¹⁶ A transition to market-based rates also is intended to, and would, encourage customers to seek competitive supply alternatives from energy service companies. Such encouragement of retail access has been a key pillar of Commission policy for many years.¹⁷

Further, the Commission has a long-standing practice of mitigating rate impacts by levelizing or phasing-in rate increases, or by the use of rate moderators such as available customer credits. For example, the Commission: (a) authorized Central Hudson Gas & Electric

¹⁶ See, e.g., Niagara Mohawk Power Corporation d/b/a National Grid P.S.C. No. 220 – Electricity, Rule 46; Consolidated Edison Company of New York, Inc. (“Con Edison”) P.S.C. No. 10 – Electricity, Rule 25.

¹⁷ See, e.g., Cases 94-E-0952 *et al.*, In the Matter of Competitive Opportunities Regarding Electric Service, Opinion No. 96-12, Opinion and Order Regarding Competitive Opportunities for Electric Service (issued May 20, 1996) at 25-26 (stating that “[o]ur vision for the future of the electric industry ... includes ... increased consumer choice of supplier and service company ...”).

Corporation to phase-in a series of electric rate increases by use of declining customer credits;¹⁸ (b) approved a three-year rate plan for Con Edison that included a series of leveled rate increases and a pass-back of customer credits during the first rate year to moderate the impact to customers;¹⁹ and (c) adopted a series of leveled electric and gas rate increases, paired with the use of customer credits, to moderate the impact to electric and gas customers of New York State Electric & Gas Corporation and Rochester Gas and Electric Corporation.²⁰ Consistent with this ratemaking approach, the Joint Proposal would phase-in the transition to market-based rates over a period of years by application of declining customer credits.

The Joint Proposal is consistent with the range of possible litigated outcomes in this proceeding, represents a comprehensive agreement by parties that normally are adversarial and is unopposed, and is consistent with major Commission ratemaking policies. It is, therefore, consistent with the settlement guidelines described by the Commission in its Opinion 92-2, and is in the public interest.

¹⁸ Cases 08-E-0887 *et al.*, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Central Hudson Gas & Electric Corporation for Electric Service, Order Adopting Recommended Decision with Modifications (issued June 22, 2009) at 5.

¹⁹ Case 09-E-0428, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of Consolidated Edison Company of New York, Inc. for Electric Service, Order Establishing Three-Year Electric Rate Plan (issued March 26, 2010) at 9.

²⁰ Cases 09-E-0715 and 09-G-0716, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York State Electric & Gas Corporation for Electric and Gas Service, and Cases 09-E-0717 and 09-G-0718, Proceeding on Motion of the Commission as to the Rates, Charges, Rules and Regulations of New York State Electric & Gas Corporation for Electric and Gas Service, Order Establishing Rate Plan (issued September 21, 2010) at 12.

CONCLUSION

For the foregoing reasons, Penelec urges the Commission to find that the terms and conditions of the Joint Proposal are consistent with the settlement guidelines it established in Opinion 92-2 and in the public interest, and to adopt the Joint Proposal without modification.

Dated: March 1, 2012
Albany, New York

Respectfully submitted,



S. Jay Goodman, Esq.
Leonard H. Singer, Esq.
Couch White, LLP
Attorneys for Pennsylvania Electric
Company
540 Broadway, P.O. Box 22222
Albany, New York 12201-2222
(518) 426-4600