

Legal Department
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March 22, 2016

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

RE: PECO Energy Company Universal Service and Energy Conservation Plan
for 2016-2018 Submitted in Compliance with 52 Pa. Code §§ 54.74 and
62.4
Docket No. M-2015-2507139

Dear Ms. Chiavetta:

Enclosed for filing with the Commission is *Answer of PECO Energy Company to Petition to Intervene of CAUSE-PA* in the matter referenced above.

Very truly yours,



Ward L. Smith
Counsel for PECO Energy Company

WS/ab
Enclosure

cc: Joline Price Esquire
Elizabeth R. Marx, Esquire
Patrick M. Cicero, Esquire

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PECO Energy Company
Universal Service and Energy Conservation Plan for
2016-2018 Submitted in Compliance with 52 Pa. Code
§§ 54.74 and 62.4.

Docket No. M-2015-2507139

Answer of PECO Energy Company
To Petition to Intervene of CAUSE-PA

I. Introduction and Argument

On March 3, 2016, PECO received by U.S. mail the Petition to Intervene of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) in this matter.¹

PECO has no objection to CAUSE-PA filing Comments in this docket, as indeed it did on March 16, 2016. If the Commission ultimately sets this matter for an on-the-record hearing, PECO also does not intend to object to CAUSE-PA’s intervention in that on-the-record proceeding. But it is premature to grant CAUSE-PA’s Petition to Intervene at this time, because there is no on-the-record proceeding in which to intervene. Indeed, PECO is not aware of any other occasion on which an entity has filed a Petition to Intervene at the Comment stage of a proceeding. Certainly, no other Petitions to Intervene were filed in this docket.

The impetus for CAUSE-PA’s Petition to Intervene may not be fully apparent on the face of the Petition itself. However, the filing of the Petition to Intervene can be understood by noting that, with the Petition, CAUSE-PA contemporaneously served extensive discovery on PECO probing into multiple aspects of PECO’s 2016-18 Three-Year Plan. Indeed, the discovery served by CAUSE-PA was substantially more extensive than the seventeen questions posed by the Commission itself in the Tentative Order.

¹ PECO also received email service on February 29, 2016.

PECO believes that CAUSE-PA correctly concluded that discovery is only available to entities that have been granted party status,² and thus quickly sought party status in the belief that it would then have the right to serve discovery on PECO during the Comment stage of this docket.

PECO believes that is an incorrect view. The Commission's discovery rules, 52 Pa. Code §5.321, state that discovery is available only after one of three triggering events, none of which have occurred in this docket. 52 Pa. Code §5.321(a) (Scope), sets forth the three events that trigger the beginning of discovery:

(a) *Applicability.* This subchapter applies to a proceeding in which:

- (1) A complaint, protest or other adverse pleading has been filed.
- (2) The Commission institutes an investigation.
- (3) The Commission institutes an on-the-record proceeding.

No "complaint, protest, or other adverse pleading" has been filed in this docket. This matter was docketed using an "M-" designation; Commission investigations are docketed using the "I-" designation. And the Commission has not referred this matter to the Office of Administrative Law Judge for an on-the-record proceeding.³ The right to discovery has therefore not attached to this docket, and there is no on-the-record proceeding in which to intervene.

² See 52 Pa. Code §5.341(a): "Subject to the limitations provided by § 5.361 (relating to limitation of scope of discovery and deposition), a party may serve upon another party written interrogatories"

³ PECO also notes that party status will not actually be conferred on CAUSE-PA until after the Commission issues an order granting its Petition to Intervene. The Commission's intervention rules, 52 Pa. Code §5.71(a)(2), state in relevant part that: "Participation in a proceeding as an intervenor may be initiated as follows: 2) By order of the presiding officer or the Commission upon grant of a petition to intervene." While that order can come from the Commission itself, typically such orders are issued by the presiding Administrative Law Judge, which again suggests that Petitions to Intervene are appropriate for on-the-record proceedings, but not before.

Moreover, even if the Petition to Intervene is granted at this time, the timing sequence set forth in the Commission's regulations renders any discovery useless for the Comment or Reply Comment period. The Tentative Order allowed 30 days total for Comments and Reply Comments. The Commission's regulations allow

II. Conclusion

For these reasons, PECO submits that it is premature to grant CAUSE-PA's Petition to Intervene until such time, if any, that the Commission refers this matter to the Office of Administrative Law Judge for an on-the-record proceeding. PECO therefore respectfully requests that the Commission either defer consideration of the Petition until such events occur, or deny the Petition outright as being premature.

Respectfully submitted,



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PECO 20 days to answer the Petition to Intervene and then, if the Commission were to grant party status to CAUSE-PA, PECO would have 20 days from that point to answer discovery. Even on that optimistic timing scenario, the Reply Comment period would close 10 days before PECO would be required to answer discovery. This timing sequence underscores that Petitions to Intervene and discovery are not appropriate at the Comment stage.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PECO Energy Company	:	
Universal Service and Energy Conservation Plan for	:	M-2015-2507139
2016-2018 Submitted in Compliance with 52 Pa. Code	:	
§§ 54.74 and 62.4	:	

CERTIFICATE OF SERVICE

I, Ward L. Smith, hereby certify that I have this day served a copy of the Answer of PECO Energy Company to Petition to Intervene of CAUSE-PA parties via e-mail and postage prepaid to:

Pennsylvania Utility Law Project
Joline Price Esquire
Elizabeth R. Marx, Esquire
Patrick M. Cicero, Esquire
118 Locust Street
Harrisburg, PA 17101

Dated at Philadelphia, Pennsylvania, March 22, 2016



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