

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2018-3000164
Office of Consumer Advocate	:	C-2018-3001112
Office of Small Business Advocate	:	C-2018-3001043
Philadelphia Area Industrial Energy Users Group	:	C-2018-3001471
Trustees of the University of Pennsylvania	:	C-2018-3001636
	:	
v.	:	
	:	
PECO Energy Company	:	

PREHEARING ORDER #1

On March 29, 2018, PECO Energy Company (PECO) filed proposed Tariff Electric-Pa. P.U.C. No. 6 to become effective May 28, 2018. Tariff No. 6 sets forth proposed rates designed to produce an increase in PECO's annual distribution revenue of approximately \$82 million¹, or 2.2% on the basis of total Pennsylvania jurisdictional operating revenue.

On April 4, 2018, Carrie B. Wright, Esq., entered a Notice of Appearance on behalf of the Commission's Bureau of Investigation and Enforcement (I&E).

On April 9, 2018, the Office of Small Business Advocate (OSBA) filed a Verification, Public Statement, a Notice of Appearance on behalf of Elizabeth Rose Triscari, Esq., and a formal Complaint. The Complaint was docketed at C-2018-3001043.

On April 10, 2018, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed a Petition to Intervene in this proceeding.

¹ PECO's proposed rate increase reflects \$71 million savings in 2019 from changes in the Federal Income Tax Law, effective January 1, 2018.

On April 12, 2018, the Office of Consumer Advocate (OCA) filed a Public Statement, a Notice of Appearance on behalf of Christy M. Appleby, Esq., Hayley Dunn, Esq., and Aron J. Beatty and a formal Complaint. The Complaint was docketed at C-2018-3001112.

On April 17, 2018, the International Brotherhood of Electrical Workers, Local 614 (IBEW) filed a Petition to Intervene in this proceeding.

By Order entered April 19, 2018, the Pennsylvania Public Utility Commission (Commission) instituted an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase. Pursuant to Section 1308(d) of the Public Utility Code, 66 Pa. C.S.A. § 1308(d), Tariff Electric-Pa. P.U.C. No. 6 was suspended by operation of law until December 28, 2018, unless permitted by Commission Order to become effective at an earlier date. In addition, the Commission ordered that the investigation include consideration of the lawfulness, justness and reasonableness of PECO's existing rates, rules, and regulations. The matter was assigned to the Office of Administrative Law Judge for the prompt scheduling of hearings culminating in the issuance of a Recommended Decision.

In accordance with the Commission's April 19, 2018, Order, the matter was assigned to Deputy Chief Administrative Law Judge Christopher P. Pell and Administrative Law Judge F. Joseph Brady.

On April 23, 2018, the Community Action Association of Pennsylvania (CAAP) filed a Petition to Intervene in this proceeding.

On April 26, 2018, the Philadelphia Area Industrial Energy Users Group (PAIEUG) filed a formal Complaint. The Complaint was docketed at C-2018-3001471.

In compliance with the Commission's April 19, 2018 Order, PECO filed Supplement No. 1 to Tariff Electric No. 6 on April 27, 2018 to reflect the suspension of Tariff No. 6 until December 28, 2018.

On April 27, 2018, the Delaware Valley Regional Planning Commission (DVRPC) filed a Petition to Intervene in this proceeding.

On May 2, 2018, the Trustees of the University of Pennsylvania (UPenn) filed a formal Complaint. The Complaint was docketed at C-2018-3001636.

On May 3, 2018, the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (collectively, TURN et al.) filed a Petition to Intervene in this proceeding.

On May 3, 2018, Tesla, Inc. (Tesla) filed a Petition to Intervene in this proceeding.

On May 3, 2018, Wal-Mart Stores East, LP and Sam's East, Inc. (collectively, Walmart) filed a Petition to Intervene in this proceeding.

On May 4, 2018, the Retail Energy Supply Association (RESA) filed a Petition to Intervene in this proceeding.

On May 4, 2018, NRG Energy, Inc. (NRG) filed a Petition to Intervene in this proceeding.

In accordance with a Prehearing Conference Order dated April 20, 2018, PECO, I&E, OSBA, OCA, CAUSE-PA, IBEW, CAAP, PAEIUG, DVRPC, UPenn, TURN, et. al., Tesla, Walmart, NRG, and RESA submitted prehearing memoranda to the presiding officers.

A dual location Prehearing Conference was held on May 8, 2018. Counsel for PECO, I&E, OSBA, OCA, CAUSE-PA, IBEW, PAEIUG, DVRPC, UPenn, TURN, et. al., Tesla, Walmart, NRG, and RESA participated.²

² Due to a conflict, Joseph Vullo, Esq., counsel for CAAP, was excused from attending the Prehearing Conference.

This order sets forth the procedural matters addressed at the prehearing conference.

ORDER

THEREFORE,

IT IS ORDERED:

1. That pursuant to 52 Pa. Code §§ 5.32 and 5.61, complaints filed against the pending general rate increase, despite receiving a separate docket number, are considered to be docketed with the proceeding and need not be consolidated with the Commission's investigation or answered by respondent.
2. That the Petitions to Intervene of Walmart, Tesla, TURN et. al., IBEW, CAUSE-PA, and CAAP, being unopposed, are granted.
3. That PECO must file its written answer/objections to the Petitions to Intervene of RESA, NRG, and DVRPC by the close of business on Wednesday, May 16, 2018.
4. That RESA, NRG, and DVRPC must file their responses to PECO's answers/objections to their respective Petitions to Intervene by the close of business on Thursday, May 24, 2018.
5. That going forward, petitions to intervene, if not defective on their face, shall be deemed granted if not objected to within three business days after filing. If objected to, such pleadings will be addressed by order.
6. That the parties of record as of this date are PECO, I&E, OSBA, OCA, CAUSE-PA, IBEW, CAAP, PAEIUG, UPenn, TURN, et. al., Tesla, and Walmart.

7. That: service on respondent PECO shall be made on Mr. Diaz, Mr. Garfinkle, Mr. Williams, Mr. Swerling, Mr. Kulak, Mr. DeCusatis and Ms. Vasudevan; service on I&E shall be made on Ms. Wright; service on OSBA shall be made on Ms. Triscari, service on OCA shall be made on Ms. Appleby, Ms. Dunn, and Mr. Beatty; service on CAUSE-PA shall be made on Mr. Cicero, Ms. Marx, and Mr. Morris; service on IBEW shall be made on Mr. Rubin and Mr. Joyce; service on CAAP shall be made on Mr. Vullo; service on PAEIUG shall be made on Ms. Mincavage, Mr. Bakare, and Ms. Hylander; service on UPenn shall be made on Mr. Zambito, Mr. Nase, and Mr. Petyk; service on TURN et. al. shall be made on Ms. Price and Mr. Ballenger; service on Tesla shall be made on Mr. Hammond; that service on Walmart shall be made on Mr. Wagner, Ms. Evers and Mr. Gruin; that service on the DVRPC shall be made on Mr. Clark; that service on NRG shall be made on Ms. Moury; and that service on RESA shall be made on Ms. O'Dell and Ms. Stoner.

8. That the parties may arrange service amongst themselves as they agree.

9. That parties may serve documents electronically by 4:30 p.m. to meet any required due date, with hard copy to follow by regular first-class mail, with the provision that large documents not able to be transmitted electronically may be hand-delivered to the parties located in Harrisburg on the due date and received the next business day by parties located outside Harrisburg.

10. That our informal e-mail distribution list is as follows. Any changes or corrections should be communicated to us, via e-mail as soon as possible. Please include our legal assistants, Diane Harvell and Pam McNeal on anything you send to us.

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11. That discovery shall be conducted according to the Commission's rules and regulations at 52 Pa. Code § 5.321 *et seq*, subject to the following modifications:

a. Answers to written interrogatories are to be served in-hand within ten (10) calendar days of service of the interrogatories.

b. Objections to interrogatories are to be communicated orally within three (3) days of service; unresolved objections are to be served on the Administrative Law Judges in writing within five (5) days of service of the interrogatories.

c. Motions to dismiss objections and/or direct the answering of interrogatories are to be filed within three (3) calendar days of service of written objections.

d. Answers to motions to dismiss objections and/or directing the answering of interrogatories shall be filed within three (3) calendar days of service of such motions.

e. Responses to requests for documents production, entry for inspection, or other purposes are to be served in-hand within ten (10) calendar days of service.

f. Requests for admission are deemed admitted unless answered within ten (10) calendar days or objected to within five (5) calendar days of service.

g. When an interrogatory, request for production, request for admission or motion is served after 12:00 p.m. on a Friday or the day before a holiday, the appropriate response period is deemed to start on the next business day.

h. Interrogatories, requests for production and requests for admissions that are objected to but which are not made the subject of a motion to compel will be deemed withdrawn.

i. Pursuant to 52 Pa. Code §5.341(b), neither discovery requests nor responses thereto are to be served on the Commission or the Administrative Law Judges, although a certificate of service may be filed with the Commission's Secretary.

j. Discovery requests, motions to compel and responses are to be served electronically as well as on paper.

12. The parties should cooperate and exchange information on an informal basis. The parties shall cooperate rather than engage in numerous or protracted discovery disagreements that require our participation to resolve. All motions to compel shall contain a certification by counsel setting forth the specific actions the parties have undertaken to resolve their discovery disputes informally. If a motion to compel does not contain this certification, we shall contact the parties and direct them to resolve the matter informally and provide the certification if they are unsuccessful. There are limitations on discovery and sanctions for abuse of the discovery process. 52 Pa.Code §§ 5.361, 5.371-5.372.

13. That the following schedule is adopted:

Prehearing conference	May 8, 2018
Public Input Hearings	June 6-14, 2018
Non-Company Direct	June 26, 2018
Rebuttal Testimony	July 24, 2018
Surrebuttal Testimony	August 8, 2018
Oral Rejoinder Outline	August 16, 2018
Hearings/Rejoinder	August 20-22, 2018
Close of Record	August 22, 2018
Main Briefs	September 7, 2018
Reply Briefs	September 17, 2018 (12:00 p.m.)

14. That the August 20-22, 2018 hearings will be held in Harrisburg. The initial day will commence at 10:00 a.m.; subsequent days may start at 9:00 a.m. Parties will complete the daily witness listing and cross-examination grid as directed.

15. That PECO's Motion for Protective Order (attached to PECO's prehearing memorandum as Exh. C) pursuant to 52 Pa. Code § 5.362, being unopposed, is granted.

16. That any motions with respect to, or objections to, written testimony must be presented in writing no later than three days prior to the day that the witness sponsoring that testimony is scheduled to testify. Answers to such motions or objections may be filed within three days or sooner if circumstances warrant. Oral motions, other than for good cause, shall not be accepted.

17. In accordance with the schedule set forth above, main briefs must be filed with the Secretary of the Commission and received in-hand by all parties no later than 4:30 p.m. on the date listed; reply briefs must be filed with the Secretary and received in-hand by all parties no later than 12:00 p.m. on the date listed.

18. That an original copy of all briefs must be filed with the Secretary, in accordance with 52 Pa. Code § 5.502(b), and one copy served on each of the presiding officers and the other parties no later than 4:30 p.m. on the dates listed. Service can be made electronically, with a hard-copy received in hand on the next business day.³ 52 Pa. Code § 5.501(e) requires that "[b]riefs shall be as concise as possible."

19. That all briefs shall comply with the requirements of 52 Pa. Code §§ 5.501 and 5.502, and in addition to the mandatory contents set forth in 52 Pa. Code § 5.501(a), all main briefs, regardless of length, must contain:

³ Parties are directed to e-mail us a copy of their as-filed briefs in a WORD-formatted document in addition to ADOBE or other compatible PDF format. The format of the briefs served electronically on the parties may be as requested by the parties.

- A. A table of contents;
- B. A history of the proceeding;
- C. A discussion;
- D. Proposed findings of fact (with record citations to transcript pages or exhibits where supporting evidence appears);
- E. Proposed conclusions of law (with citations to supporting statutes, regulations or relevant case law); and
- F. Proposed ordering paragraphs specifically identifying the relief sought.

20. That all briefs are to comply with the “Special Instructions for Briefs and Exceptions in Major General Rate Increase Proceedings” attached as Appendix A to this Order.

21. That the parties are to confer amongst themselves in an attempt to resolve all or some of the issues associated with this proceeding. The parties are reminded it is the Commission’s policy to encourage settlements. 52 Pa. Code §5.231(a). The parties are strongly urged to seriously explore this possibility. If a settlement is reached, a joint settlement petition executed by representatives of all parties to be bound thereby, together with statements in support of settlement by all signatory parties, must be filed with the Secretary for the Commission and served on the presiding officer.

22. That the parties shall comply with the procedural rules and regulations discussed herein.

Date: May 10, 2018

_____/s/
Christopher P. Pell
Deputy Chief Administrative Law Judge

_____/s/
F. Joseph Brady
Administrative Law Judge

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APPENDIX A

Special Instructions for Briefs and Exceptions
in Major General Rate Increase Proceedings

1. Each brief shall follow the general organization shown in the attached standardized format.
2. Each brief shall contain a table of contents with page references to a summary of argument and to each topic addressed in the argument.
3. Adjustments contained in each brief shall:
 - a. be based on a specific test year, to be selected before the close of the record;
 - b. be complete and self contained, include accurate reference to the appropriate record sources, be on a before-income-tax basis (never on a net income or revenue requirement basis) and be on a consistent jurisdictional basis (if record support cannot be located, the adjustment may/will be rejected);
 - c. be detailed to demonstrate the step-by-step calculation of that adjustment together with appropriate accurate record references (once again, if the record support cannot be located for the necessary steps, the adjustment may/will be rejected);
 - d. include concomitant rate base, revenue, expense, depreciation expense, and tax (i.e., taxes other, State Income, and Federal Income) adjustments set forth, together with the details of their calculation;

- e. include within the brief calculations which are the basis for proposed adjustments, but which are incomplete in the record.
4. Tables showing all proposed rate base and income adjustments, organized as shown in the attached Table I and Table II, shall be submitted with each brief which includes such adjustments.
- a. The starting point of Table I “Income Summary” shall be the utility’s final *pro forma* showing at present rates. The ALJ shall specify the starting point to be the most recent update admitted into evidence. The update, admission, and ALJ ruling shall be cited on the table.
 - b. The effect of deferred or accrued taxes on the various tax adjustments presented in Table II “Summary of Adjustments” shall be indicated by a footnote.
5. The following schedules shall be submitted with each brief:
- a. A schedule showing the precise derivation of any adjustment to proposed cash working capital allowance.
 - i. The schedule describing an adjustment to a Utility’s claim for Cash Working Capital shall separately list (1) adjustments originating from Table II “Summary of Adjustments” and (2) adjustments resulting from the

proposed revenue increase. Any effect on deferred and/or accrued taxes shall be shown in a separate column or footnote.

- ii. Net Revenue and Expense Lag Days for all Cash Working Capital Adjustments shall be calculated to at least one decimal place.
 - b. A schedule showing all tax and jurisdictional allocation factors utilized (any deviations from standard or obvious factors should be explained on the schedule or in the brief);
 - c. A schedule listing, for the party or parties filing the brief, each exhibit or other document admitted into the record, along with the date the document was identified and the date the document was admitted.
6. Rate structure proposals shall be reasonably specific and explicit, shall, as appropriate, refer accurately to record support and shall be summarized at the end of the "Rate Structure" topic heading of each brief.
 7. Parties shall, as feasible and appropriate, discuss alternative rate design proposals for overall rate increases at and below the requested increase.
 8. The Commission requires, in all electric utility rate proceedings, subsequent to its Order at Docket No. I-900005, entered December 1, 1993, that issues of demand-side management and integrated resource planning be addressed.

9. Regarding the filing of exceptions, the following instructions are provided:
 - a. Each exception shall be separately identified and, as necessary, discussed.
 - b. Each exception shall include, before any discussion is provided, the following elements (see examples attached):
 - i. a reference to the relevant part of the Recommended Decision, at least to the relevant pages;
 - ii. a reference to related discussions in the excepting party's brief and, as appropriate, to other briefs; and
 - iii. a concise statement of the exception.
 - c. The exceptions shall follow the order of presentation provided in the table of contents to the Recommended Decision.
 - d. If a party takes exception concerning a topic not included within the Recommended Decision or the table of contents thereto, the appropriate exception shall be included at the end of the appropriate major topic heading (such as "Rate Base" or "Expenses").
 - e. If a party seeks to correct computations associated with the Recommended Decision, replacement computations, with source references to briefs or the record, shall be provided.

Standardized Brief Format for
General Rate Increase Proceedings

- I. Introduction
- II. Summary of Argument
- III. Rate Base
 - A. Fair Value
 - B. Plant in Service
 - C. Depreciation Reserve
 - D. Additions to Rate Base
 - E. Deductions from Rate Base
 - F. Conclusion
- IV. Revenues
- V. Expenses
- VI. Taxes
- VII. Rate of Return
- VIII. Miscellaneous Issues
- IX. Rate Structure
 - A. Cost of Service
 - B. Revenue Allocation.
 - C. Tariff Structure
 - D. Summary and Alternatives
- X. Conclusion

Note: Appropriate modifications may be made. For instance, a party might add "Affiliated Interest Expenses" as a major topic heading or might brief only rate structure and not use other topic headings. A summary and alternatives should be provided under "Rate Structure" but the "Rate Base" and "Rate Structure" formats shown may be modified, as appropriate. Additional subheadings should be used, as appropriate.

TABLE I
INCOME SUMMARY
(\$000)

	<u>Pro Forma</u> <u>Present</u> <u>Rates</u> \$	<u>Recommende</u> <u>d</u> <u>Adjustments</u> \$	<u>Adjusted</u> <u>Present</u> <u>Rates</u> \$	<u>Revenue</u> <u>Adjustment</u> \$	<u>Total</u> <u>Allowable</u> <u>Revenues</u> \$
Operating Revenues	_____	_____	_____	_____	_____
Deductions: O&M Expenses Depreciation Taxes: State Federal Other	_____	_____	_____	_____	_____
Total Deductions	_____	_____	_____	_____	_____
Net Income Available for Return	=====	=====	=====	=====	=====
	=		=	=	=
Rate Base					=====
					=
Recommende d Rate of Return					=====
					=

TABLE II
SUMMARY OF ADJUSTMENTS
(\$000)

<u>Recommended Adjustment</u>	<u>Exhibit Reference</u>	<u>Rate Base Effect</u>	<u>Revenue Effect</u>	<u>Expense Effect</u>	<u>Depreciation Effect</u>	<u>Effect Upon Taxes Other</u>	<u>State Tax Effect</u>	<u>Federal Tax Effect</u>
	_____	_____	_____	_____	_____	_____	_____	_____
	-	-	-	-	-	-	-	-
Total Adjustments		=====	=====	=====	=====	=====	=====	=====
			=	=	=	=		=
Company Rate Base	_____							
	-							
Recommended Rate Base	=====							
	=							

Examples of Specific Exceptions

1. Staff excepts to the ALJ's rejection of the Staff (and OCA.) rate case expense adjustment. See R.D., pp. 31-2; Staff brief, pp. 54-5; OCA brief, pp. 98-9. The \$128,000 adjustment, based on a filing once every four years and on disallowance of certain expenses, should be accepted.

2. The Company excepts to the adoption of the OCA revenue adjustment. See R.D., pp. 28-30; Company brief, pp. 56-9; Company reply brief, p. 12. This adjustment was based on unreasonable projections of industrial consumption (see OCA brief, p. 84). The Company projection, as modified at Company St. 14, pp. 11-12, should be used.

3. OCA excepts to the ALJ's failure to address, and accept, its weather adjustment to revenues. See OCA brief, pp. 21-4; OCA reply brief, p. 12.

4. Corrections to calculations underlying salary increases (R.D., p. 41), force reductions (R.D., pp. 48-9) and tax normalization (R.D., pp. 61-2) are offered and explained at Appendix B.