

**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	:	

**INITIAL DECISION GRANTING
PETITIONS FOR LEAVE TO WITHDRAW**

Before
Christopher P. Pell
Deputy Chief Administrative Law Judge

and

F. Joseph Brady
Administrative Law Judge

INTRODUCTION

This Initial Decision grants both the Delaware Valley Regional Planning Commission's Petition for Leave to Withdraw its Intervention filed on April 27, 2018, and the Trustees of the University of Pennsylvania's Petition for Leave to Withdraw its Complaint filed on May 2, 2018.

HISTORY OF THE PROCEEDING

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% of PECO's 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.

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, Esq., 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.

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

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.

No party opposed the Petitions to Intervene filed by Walmart, Tesla, TURN et. al., IBEW, CAUSE-PA, and CAAP.² Accordingly, we granted these parties' Petitions during the prehearing conference and memorialized their status as Intervenors in our May 10, 2018, Prehearing Order #1.³

On May 16, 2018, the DVRPC submitted a letter to our attention requesting to withdraw its Petition to Intervene.⁴

On June 20, 2018, UPENN filed with the Commission its Petition of the Trustees of the University of Pennsylvania for Leave to Withdraw Its Rate Complaint.

DVRPC's and UPENN's respective Petitions for Leave to Withdraw are ripe for disposition.

² During the Prehearing Conference, PECO indicated that it intended to file answers to the Petitions to Intervene filed by RESA, NRG, and DVRPC. We instructed PECO to file its answers to all three Petitions with the Commission's Secretary by the close of business on May 16, 2018.

³ By Prehearing Order # 2 issued on June 1, 2018, we granted NRG's and RESA's Petitions to Intervene.

⁴ Since it was not evident from this letter whether it had been filed with the Secretary's Bureau, we forwarded this document to the Secretary's Bureau to be filed at Docket No. R-2018-3000164. Additionally, this letter will be treated as DVRPC's Petition for Leave to Withdraw its Petition to Intervene. 52 Pa.Code § 1.2.

DISCUSSION

This matter is a contested proceeding to determine the lawfulness, justness, and reasonableness of PECO's proposed rate increase and its existing rates, rules and regulations.

In a letter dated May 16, 2018, Roger E. Clark, Esq., counsel for DVRPC, indicated that the DVRPC reached an agreement with PECO regarding the streetlighting issues that were the focus of its interests in this proceeding. Accordingly, Mr. Clark indicated that the DVRPC wishes to withdraw from this proceeding.

David Zambito, Esq., counsel for UPenn, indicated in UPenn's Petition for Leave to Withdraw that, based on recent discussions with PECO, UPenn believes that its concerns have been adequately addressed. Accordingly, UPenn indicated that it no longer wishes to incur the time and expense of prosecuting its Complaint, and that it believes its interests are adequately represented by other parties to this proceeding.

Commission regulations regarding the withdrawal of pleadings in a contested proceeding provide, in pertinent part, the following:

[a] party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve it upon the other parties. The petition must set forth the reasons for the withdrawal. A party may object to the petition within 10 days of service. After considering the petition, an objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted.

52 Pa.Code § 5.94(a). Commission regulations define a "pleading" as "[a]n application, complaint, petition, answer, motion, preliminary objection, protest, reply, order to show cause, new matter and reply to new matter or other similar document filed in a formal proceeding."

52 Pa.Code § 1.8.

DVRPC has indicated that it has resolved the concerns that were the focus of its interests in this proceeding and that it wants to withdraw its Petition to Intervene. Similarly,

UPenn has indicated that it believes that its concerns have been adequately addressed and that it wants to withdraw its Complaint against PECO's proposed rate increase.

The 10-day periods to object to DVRPC's and UPenn's Petitions to Withdraw have concluded and no party has objected to their respective Petitions. Under the circumstances, granting their respective requests to withdraw from this proceeding is in the public interest since the costs of the Commission and the other parties will be curtailed if any further consideration of DVRPC's Petition to Intervene and UPenn's Complaint in this matter ceases. Accordingly, DVRPC's Petition for Leave to Withdraw its Intervention and UPenn's Petition for Leave to Withdraw its Complaint are granted.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties to and subject matter of this proceeding. 66 Pa.C.S.A. § 701.

2. The Commission's Rules of Practice and Procedure at 52 Pa.Code § 5.94(a) permit parties to withdraw pleadings in a contested proceeding by permission of the presiding officer or Commission.

3. In determining whether to permit withdrawal of the pleading, the presiding officer or Commission must consider the petition, any objections thereto and the public interest. 52 Pa.Code § 5.94(a).

4. Granting the Delaware Valley Regional Planning Commission's withdrawal request is in the public interest.

5. Granting the Trustees of the University of Pennsylvania's withdrawal request is in the public interest.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Delaware Valley Regional Planning Commission's Petition for Leave to Withdraw its Intervention filed at Docket No. R-2018-3000164 is granted;
2. That the Petition to Intervene filed by the Delaware Valley Regional Planning Commission at Docket No. R-2018-3000164 is withdrawn;
3. That the Trustees of the University of Pennsylvania's Petition for Leave to Withdraw its Complaint filed at Docket No. R-2018-3000164 and C-2018-3001636 is granted;
4. That the Complaint of the University of Pennsylvania filed at Docket No. R-2018-3000164 and C-2018-3001636 is withdrawn; and
5. That the Secretary's Bureau shall mark Docket No. C-2018-3001636 as closed.

Date: July 3, 2018

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

_____/s/
F. Joseph Brady
Administrative Law Judge