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

:

v. :

:

PECO Energy Company :

# **BRIEFING ORDER**

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 million[[1]](#footnote-1), 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.

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. § 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.

No party opposed the Petitions to Intervene filed by Walmart, Tesla, TURN *et. al.*, IBEW, CAUSE-PA, and CAAP.[[2]](#footnote-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]](#footnote-3)

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

On May 18, 2018, the Laborers International Union of North America, Local 57 (LIUNA) filed a Petition to Intervene in this proceeding.

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.

On June 26, 2018, West Norriton Township filed a formal Complaint. The Complaint was docketed at C-2018-3003149.

By Initial Decision dated July 3, 2018, and issued on July 25, 2018, we granted DVRPC’s and UPenn’s respective Petitions for Leave to Withdraw.

Separately on July 3, 2018, ChargePoint, Inc. (ChargePoint) filed a Petition to Intervene in this proceeding.[[4]](#footnote-4) Separately on that date, Reizdan B. Moore, Esq., on behalf of ChargePoint, filed a Motion for Admission *Pro Hac Vice*, pursuant to 52 Pa.Code §§ 1.22 and 1.23 and Pa. B.A.R. 301(a), on behalf of Scott Dunbar, Esq., requesting that he be admitted for purposes of representing ChargePoint in this proceeding.[[5]](#footnote-5)

On July 17, 2018, RESA filed with the Commission its Petition for Leave to Withdraw Intervention in this matter.

On July 18, 2018, West Norriton Township filed with the Commission a letter requesting to withdraw its Complaint in this proceeding.

By Initial Decision dated August 3, 2018, and issued on August 9, 2018, we granted RESA’s and West Norriton Township’s respective Petitions for Leave to Withdraw.

On August 13, 2018, we e-mailed the parties the cross-examination matrix for the hearings in this proceeding. We directed the parties to complete the cross-examination matrix and return it to us by 12:00 p.m. on August 15, 2018.

On August 15, 2018, Craig Williams, Esq., Counsel for PECO, contacted us on behalf of all the parties to inform us that the parties had reached a settlement on all but one issue. The remaining dispute concerned NRG’s opposition to PECO’s allocation of certain indirect costs to residential distribution service and the effect of reallocating those costs to residential default service, with a commensurate reduction in the level of residential distribution charges. Mr. Williams advised that the parties had waived cross-examination on all witnesses with two exceptions: NRG intended to cross examine PECO Witness Alan B. Cohn and PECO intended to cross examine NRG Witness Chris Peterson.[[6]](#footnote-6) Mr. Williams further advised that the parties anticipated that only one hearing day would be necessary, and requested that the hearing be held on Tuesday, August 21, 2018. We subsequently emailed the parties to advise that the hearing would be held on Tuesday, August 21, 2018, and that the hearings scheduled for Monday, August 20, 2018 and Wednesday, August 22, 2018, were cancelled.

Also on August 15, 2018, LIUNA filed with the Commission its Petition for Leave to Withdraw Intervention in this matter.

The evidentiary hearing was held as scheduled on August 21, 2018. During the hearing, PECO presented its witness’ rejoinder testimony, and also made its witness available for cross examination by NRG. NRG also presented its witness for cross-examination. All other party witnesses were excused from appearing at the hearing since no parties requested to cross examine them, and also because we did not have questions for them. PECO, OCA, I&E, OSBA, CAUSE-PA, CAAP, PAIEUG, TURN et al., Tesla, Walmart, NRG, ArcelorMittal and ChargePoint each moved to have their witnesses’ testimonies and exhibits entered into the record. As there were no objections, all parties’ testimony and/or exhibits were admitted into the record during the hearing.

Also during the hearing, the parties advised us that they would submit their joint petition for partial settlement and statements in support of the partial settlement by Tuesday, August 28, 2018.

The parties were reminded at the end of the hearing that briefs must be filed according to the schedule established in our Prehearing Order. We also advised the parties that we would subsequently issue a briefing order.

THEREFORE,

IT IS ORDERED:

1. That the parties joint petition for partial settlement and statements in support of the partial settlementare due on or before Tuesday, August 28, 2018;
2. That any party not joining in the joint petition for partial settlement, in whole or in part, must submit a letter on or before Tuesday, August 28, 2018, indicating their position on the settlement[[7]](#footnote-7);
3. That Main Briefs of the parties on the remaining unresolved issue are due on or before Friday, September 7, 2018;
4. That the Reply Briefs are due on or before Monday, September 27, 2018;
5. That the briefs must substantially comply with the Commission's regulations at 52 Pa.Code §§ 5.501, 5.502;
6. That the briefs must contain: (a) a concise statement or counter-statement of the case; (b) an argument, with sufficient citations to record evidence, preceded by a summary; (c) a conclusion with requested relief; (d) proposed Findings of Fact, together with page references to statements of testimony and exhibits; (e) proposed Conclusions of Law, together with legal citations and (f) proposed Ordering Paragraphs;
7. That Rate Case Tables will be electronically provided to the parties to use, if at all necessary, to address the unresolved issue in this case;
8. That the parties shall file the original copy of the Main Brief with the Commission no later than 4:00 p.m. on the date due;
9. That the parties shall file the original copy of the Reply Brief with the Commission no later than 12:00 p.m. on the date due.
10. That any brief not filed and served on or before the dates set forth above will not be accepted except by special permission;
11. That the parties are required, within thirty (30) days after the final hearing, to either eFile with or provide to the Secretary’s Bureau a Compact Disc (CD) containing all testimony and exhibits identified and admitted into the record during the proceeding, consistent with the Commission’s Implementation Order, dated January 10, 2013, at Docket No. M-2012-2331973;
12. That the parties are advised not to include any extra-record evidence in their briefs;
13. That if a brief contains a citation to an unreported decision which is not available on LEXIS or the Commission’s website, a copy of that unreported decision must be appended to the brief; and
14. That the parties are reminded that they are 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.

Date: August 23, 2018 /s/

Christopher P. Pell

Deputy Chief Administrative Law Judge

/s/

F. Joseph Brady

Administrative Law Judge

**R-2018-3000164 - PA PUBLIC UTILITY COMMISSION v. PECO ENERGY COMPANY**

**SERVICE LIST**

(*Revised August 13, 2018)*

\*Romulo L. Diaz, Jr. Esquire

\*Jack R. Garfinkle, Esquire

W. Craig Williams, Esquire

\*Michael S. Swerling

PECO Energy Company

2301 Market Street

P.O. Box 8699

Philadelphia, PA 19101

**215.841.5974**

***\*\*\*Accepts E-Service***

Kenneth M. Kulak, Esquire

Anthony C. DeCusatis, Esquire

Catherine G. Vasudevan Esquire

Brooke E. McGlinn Esquire

Morgan, Lewis & Bockius LLP

1701 Market Street

Philadelphia, PA 19103

**215.963.5384**

***Accepts E-Service***

Carrie B. Wright, Esquire

Bureau of Investigation & Enforcement

Pennsylvania Public Utility Commission

Post Office Box 3265

Harrisburg, PA 17105-3265

**717.783.6156**

***Accepts E-Service***

Elizabeth Rose Triscari, Esquire

Office of Small Business Advocate

300 North Second Street - Suite 202   
Harrisburg, PA  17101

**717.783.2525**

\*Christy M. Appleby, Esquire

\*Hayley Dunn, Esquire

Aron J. Beatty, Esquire

Office of Consumer Advocate

555 Walnut Street, 5th Fl, Forum Place

Harrisburg, PA 17101-1923

**717.783.5048**

***\*\*Accepts E-Service***

Patrick M. Cicero, Esquire

\*Elixabeth R. Marx, Esquire

Kadeem G. Morris, Esquire

118 Locust Street

Harrisburg, PA 17101

**717.236.9486**

***\*Accepts E-Service***

*Counsel for the Coalition for Affordable*

*Utility Services and Energy Efficiency*

*in Pennsylvania*

Scott J. Rubin, Esquire

333 Oak Lane

Bloomsburg, PA 17815

**570.387.1893**

***Accepts E-Service***

*Counsel for the International*

*Brotherhood of Electrical Workers,*

*Local 614*

Charles T. Joyce, Esquire

Spear Wilderman, P.C.

230 South Broad Street, Suite 1400

Philadelphia, PA 19102

**215.732.0101**

***Accepts E-Service***

*Counsel for the International*

*Brotherhood of Electrical Workers,*

*Local 614*

Joseph L. Vullo Esquire

Burke Vullo Reilly Roberts

1460 Wyoming Avenue

Forty Fort PA 18704

570-288-6441

***Accepts E-Service***

*Representing Community Association of Pennsylvania*

Charis Mincavage, Esquire

Adeolu Bakare, Esquire

Alessandra Hylander, Esquire

100 Pine Street

P.O. Box 1166

Harrisburg, PA 17108-1166

***Accepts E-Service***

*Counsel for the Philadelphia Area*

*Industrial Energy Users Group*

Joline Price Esquire

Robert W. Ballenger Esquire

COMMUNITY LEGAL SERVICES

1424 Chestnut Street

PHILADELPHIA PA 19102

**215-981-3756**

***Accepts E-Service***

*Turn et al.*

Mark Hammond Esquire

Land Air Water Legal Solutions LLC

1000 Westlakes Drive

SUITE 150

BERWYN PA 19312

**610-898-3854**

***Accepts E-Service***

*Counsel for Tesla, Inc.*

Donald R. Wagner Esquire

Linda R. Evers Esquire

Michael A Gruin Esquire

Stevens & Lee

111 N Sixth Street

READING PA 19601

**610.478.2216**

***Accepts E-Service***

*Counsel for Wal-Mart Stores East, LP, et al.*

Karen O. Moury Esquire

Deanne M. O’Dell Esquire

Eckert Seamans

213 Market Street

Harrisburg, PA 17101

**717.237.6036**

***Accepts E-Service***

*Counsel for NRG Energy, Inc. and Retail Energy Supply Association*

Eckert Seamans Cherin & Mellott, LLC

213 Market Street, 8th Floor

Harrisburg, PA 17101

*Counsel for the Retail Energy*

*Supply Association*

Mark Belland, Esquire

[mbelland@obbblaw.com](mailto:mbelland@obbblaw.com)

O’Brien, Belland & Bushinsky, LLC

500-506 North 6th Street

Philadelphia, PA 19123

*Counsel for Laborers International*

*Union of North America, Local 57*

Charles E. Thomas, III, Esquire

[Cet3@tntlawfirm.com](mailto:Cet3@tntlawfirm.com)

Thomas, Niesen & Thomas, LLC

212 Locust Street, Suite 302

Harrisburg, PA 17101

*Counsel for Calpine Energy*

*Solutions, LLC*

Derrick Price Williamson, Esquire

[dwilliamson@spilmanlaw.com](mailto:dwilliamson@spilmanlaw.com)

Barry A. Naum, Esquire

[bnaum@spilmanlaw.com](mailto:bnaum@spilmanlaw.com)

Spilman Thomas & Battle, PLLC

1100 Bent Creek Boulevard, Suite 101

Mechanicsburg, PA 17050

*Counsel for ArcelorMittal USA LLC*

Reizdan B. Moore, Esquire

[Reizdan.moorelaw@comcast.net](mailto:Reizdan.moorelaw@comcast.net)

Reizdan B. Moore, LLC

3544 N. Progress Avenue, Suite 108

Harrisburg, PA 17110

*Counsel for ChargePoint, Inc.*

Scott F. Dunbar, Esquire

[sdunbar@keyesfox.com](mailto:sdunbar@keyesfox.com)

Keyes & Fox LLP

1580 Lincoln St., Suite 880

Denver, CO 80203

*Counsel for ChargePoint, Inc.*

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. [↑](#footnote-ref-1)
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. [↑](#footnote-ref-2)
3. By Prehearing Order # 2 issued on June 1, 2018, we granted NRG’s and RESA’s Petitions to Intervene. [↑](#footnote-ref-3)
4. Pursuant to paragraph #5 of our Prehearing Order #1 issued on May 10, 2018, ChargePoint’s Petition to Intervene was deemed granted as there were no objections to its Petition within three calendar days of filing. [↑](#footnote-ref-4)
5. By Order dated July 24, 2018, we granted the Motion for Admission *Pro Hac Vice*. [↑](#footnote-ref-5)
6. The parties subsequently submitted a completed cross-examination matrix indicating the same on August 15, 2018. [↑](#footnote-ref-6)
7. We note that during the August 21, 2018 evidentiary hearing, we advised NRG that it was permitted to state its position on the settlement in its Main Brief. [↑](#footnote-ref-7)