

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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June 7, 2010

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

RE: Pennsylvania Public Utility Commission  
v.  
PECO Energy Company – Electric Division  
Docket No. R-2010-2161575

Dear Secretary Chiavetta:

Enclosed for filing is the Prehearing Memorandum of the Office of Consumer Advocate, in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Candis A. Tunilo".

Candis A. Tunilo  
Assistant Consumer Advocate  
PA Attorney I.D. # 89891

Enclosures

cc: Honorable Marlane R. Chestnut  
Honorable Christopher Pell

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changes, which would increase the rates for all customers. The proposed rates reflect an increase in overall annual revenues of \$316 million, or approximately 7.0% over the Company's annual revenues at present rates.

PECO Electric provides utility service to approximately 1.6 million retail customers in Philadelphia, Bucks, Chester, Delaware, Montgomery and York Counties in Southeastern Pennsylvania.

## II. HISTORY OF THE PROCEEDING

On April 20, 2010, the Office of Small Business Advocate (OSBA) filed a Formal Complaint, Public Statement and Notice of Appearance. On April 22, 2010, the Office of Trial Staff (OTS) filed a Notice of Appearance. On April 26, 2010, the OCA filed a Formal Complaint, Public Statement and Notice of Appearance. Formal Complaints were also filed by: Philadelphia Area Industrial Energy Users Group (PAIEUG); The Trustees of the University of Pennsylvania and The Hospital at the University of Pennsylvania (UPenn); and Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*). Petitions to Intervene were filed by the following: International Dark-Sky Association (IDA); International Brotherhood of Electrical Workers Local 614, AFL-CIO (Local 614); Dominion Retail, Inc. (Dominion); City of Philadelphia; Citizen's for Pennsylvania's Future, Joy Bergey, Christine Knapp, and Henry Rowan (Penn Future). Several formal complaints and protests were filed by PECO Electric customers as well.

By Order entered May 20, 2010, the Commission suspended the Company's proposed Supplement No. 2 pending investigation. The proceeding was assigned to Administrative Law Judges Marlane R. Chestnut and Christopher Pell (ALJs). A prehearing conference is scheduled for Wednesday, June 9, 2010.

### III. ISSUES AND SUB-ISSUES

Based upon a preliminary analysis of PECO Electric's base rate filing, the Office of Consumer Advocate has compiled a list of issues, which it anticipates will be included in its investigation of the Company's request. It is anticipated that issues in addition to those enumerated below may arise and may be pursued once the answers to the OCA's interrogatories have been received and analyzed. The OCA reserves the opportunity to present any new or unanticipated issues at such time.

As soon as the OCA has had the opportunity to review the answers to interrogatories, the OCA anticipates that informal discovery meetings can be scheduled, and potential settlement discussions may take place. At those meetings and discussions, the OCA will be able to narrow the scope of additional information requests. Once the discovery process is complete, the OCA will file direct testimony setting forth the specific issues to be addressed in this proceeding. At that time the OCA will also be able to make and to quantify its specific recommendations.

The list of issues and sub-issues set forth below will be analyzed and presented as appropriate by the OCA with the assistance of OCA's expert witnesses:

#### A. Rate of Return

The OCA will perform a detailed analysis of the cost of common equity claimed by PECO Electric. The OCA will carefully examine the Company's methodologies and supporting data used to develop its final cost of common equity claim of 11.75%. In particular, the OCA will review the cost of equity models and how they have been implemented and will evaluate the theoretical and empirical foundations of the proposed leverage adjustment to the equity cost rate. Further, the OCA will examine the Company's performance, which it asserts justifies rate of return at the top of its witness's cost of common equity range.

The OCA will examine the capital structure and long-term debt proposed by PECO Electric so as to determine if they are appropriate. The OCA will also examine the applicable rate of return, cost of equity and capital structure issues outlined in Appendix A to the Commission's Order entered May 20, 2010, in this matter.

B. Rate Base/Measure of Values

The OCA will examine the reasonableness and accuracy of the projections of PECO Electric pertaining to the utility plant in service at the time relevant to this proceeding including, but not limited to, whether the test year plant will be completed as claimed and whether retirements are accurately reflected. The OCA will review the Company's claim for plant additions during the future test year to determine if the Company has demonstrated that all such costs are prudently incurred. Further, the OCA will assess the Company's cash working capital claim. The OCA will also examine the applicable rate base issues outlined in Appendix A to the Commission's Order entered May 20, 2010, in this matter.

C. Revenues and Expenses

The OCA will review the reasonableness and accuracy of the Company's revenue annualizations and normalizations, consistent with appropriate levels of normalized customers and usage adjusted for known and certain rate year changes. The OCA will examine the appropriateness, reasonableness and accuracy of the Company's claims for wages and benefits, rate case expenses, service company charges, outside service, uncollectible accounts, pensions and OPEBs, as well as other categories of expenses. The OCA will also investigate the reasonableness of the Company's pro-forma income tax claims, including an investigation into the Company's adherence to the established precedent concerning consolidated tax savings. The

OCA will also examine the applicable revenue and expense issues outlined in Appendix A to the Commission's Order entered May 20, 2010, in this matter.

D. Rate Structure/Cost of Service/Rate Design

The OCA will examine PECO Electric's Class Cost of Service (cost allocations) with particular regard to appropriate and Commission-approved methods to allocate secondary lines, poles and transformers, and the proper recognition of weighting of various Customer Service, Accounting, and Information expenses between classes. The OCA will examine the Company's Class Revenue responsibility and apportionment of the revenue increase given cost of service results, as well as recognition of other relevant factors and ratemaking principles. Also, the OCA will examine the Company's proposed rate design, including the 65% increase to residential customer charge. With regard to the customer charge, the OCA will consider the Commission-approved methodology for determining "customer costs," proper economic pricing signals for the efficient use of electricity, conservation, revenue stability and risk reductions to PECO Electric, gradualism, and the impact on low users. The OCA will also examine the Company's proposal to unbundle all of its metering costs and include them in its Smart Meter Cost Recovery Rider and the Company's other proposed surcharges. The OCA will also examine the applicable rate structure, rate design and cost allocation issues outlined in Appendix A to the Commission's Order entered May 20, 2010, in this matter.

E. Universal Service Programs

The OCA will review the Company's proposed changes to its Customer Assistance Program and Universal Service Fund Charge. The OCA will also examine the applicable universal service issues outlined in Appendix A to the Commission's Order entered May 20, 2010, in this matter.

F. Other Issues

The OCA will examine the reasonableness and appropriateness of the Company's proposed tariff changes, any relevant issues that arise as a result of the Company's operations and will investigate to ensure that the Company is complying with all prior orders. The OCA will also examine the all issues outlined in Appendix A to the Commission's Order entered May 20, 2010, in this matter.

IV. WITNESSES

The OCA intends to present the direct, rebuttal, and surrebuttal testimony, as may be necessary, of the following witnesses in this proceeding. Each witness will present testimony in written form and will also attach various exhibits, documents, and explanatory information, which will assist in the presentation of the OCA's case. In order to expedite the resolution of this proceeding, the OCA requests that copies of all interrogatories, testimony, and answers to interrogatories be emailed directly to the expert witness(es) responsible for the area of the case, as well as emailing and mailing a copy to counsel for the OCA.

Accounting/Regulatory Policy:

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E-mail: [roger@fsconline.com](mailto:roger@fsconline.com)

The OCA specifically reserves the right to call additional witnesses, as necessary. As soon as OCA has determined whether an additional witness or witnesses will be necessary for any portion of its case, the Presiding Officers and all parties of record will be notified promptly.

#### V. EVIDENCE

The OCA will rely on the direct, rebuttal, and surrebuttal testimony of its expert witnesses as well as the testimony of the other parties to the proceeding. The OCA will present relevant exhibits to support its own testimony, including but not limited to, materials obtained from the Company through discovery and cross-examination. As described above, the OCA's witnesses will present testimony in the following areas: accounting and regulatory policy, rate of return, rate design and cost of service and universal service.

#### VI. PROCEDURAL RULES / DISCOVERY

The parties have agreed to the following discovery rules modifications:

1. 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.
2. The response period for replying to written interrogatories, requests for production and requests for admissions is ten (10) calendar days of receipt.

Responses may be served electronically but hard copies must follow by first-class mail, unless otherwise agreed to by the parties.

3. Objections to written interrogatories, requests for production and requests for admissions are to be communicated orally to the party serving the interrogatory within three (3) calendar days of receipt and in writing within five (5) calendar days of receipt. The parties are directed to confer, by telephone or e-mail, and attempt to resolve the objections.
4. Motions to dismiss objections and to compel response shall be filed with the Commission and served on the Administrative Law Judge and the other parties within three (3) calendar days of receipt of the written objections. Answers to such motions shall be filed and served within three (3) calendar days after filing of the motion.
5. If the objections are not resolved, counsel will alert the presiding officer by e-mail of the need for a ruling, and a conference call will be scheduled. The presiding officer will make a ruling over the telephone and not reduce it to writing unless requested to do so.
6. 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.
7. Requests for admission shall be deemed admitted unless objected to within five (5) calendar days of service or answered within ten (10) calendar days of service.
8. 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 Judge, although a certificate of service may be filed with the Commission's Secretary.
9. Discovery requests, motions to compel and responses are to be served electronically as well as on paper.

## VII. PUBLIC INPUT HEARINGS

OCA will work with the parties and the ALJs to develop a litigation schedule that is acceptable to the ALJs and active parties involved in this proceeding. To date, the OCA has received a request for a public input hearing in Ridley from Representative Bryan R. Lentz. The OCA has also received requests for public input hearings from consumers in: Doylestown, Hatboro, West Chester, Berwyn, King of Prussia and Eagleville.

VIII. SERVICE ON THE OFFICE OF CONSUMER ADVOCATE

The OCA will be represented in this case by Senior Assistant Consumer Advocate Tanya J. McCloskey and Assistant Consumer Advocate Candis A. Tunilo. Two copies of all documents should be served on the OCA as follows:

Candis A. Tunilo  
Assistant Consumer Advocate  
Office of Consumer Advocate  
555 Walnut Street  
Forum Place, 5<sup>th</sup> Floor  
Harrisburg, PA 17101-1923  
Telephone: (717) 783-5048  
Facsimile: (717) 783-7152  
E-mail: [CTunilo@paoca.org](mailto:CTunilo@paoca.org)

As a courtesy, the OCA would appreciate it if the following email address could also be included on any electronic correspondence: [JHorner@paoca.org](mailto:JHorner@paoca.org).

IX. PROPOSED SCHEDULE

The OCA is willing to participate in settlement conferences with the parties to this matter, whenever they may be scheduled. The parties have agreed to the following schedule<sup>1</sup>:

Non-Company Direct Testimony	July 7, 2010
Rebuttal Testimony	August 3, 2010
Surrebuttal Testimony	August 12, 2010
Rejoinder Outline	August 16, 2010 (morning)
Evidentiary Hearings (Philadelphia)	August 16-20, 2010
Close of Record*	August 20, 2010
Main Briefs	September 10, 2010
Reply Briefs	September 20, 2010
Recommended Decision*	October 31, 2010

\* These dates are taken from the ALJs' Prehearing Conference Order dated May 21, 2010.

Respectfully Submitted,



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Dated: June 7, 2010  
128135

<sup>1</sup> The OCA proposes that the schedule dates be "in-hand" and that electronic service on the due date will satisfy the "in-hand" requirement, where a hard copy is sent by first-class mail.

CERTIFICATE OF SERVICE

Pennsylvania Public Utility Commission	:	Docket No.	R-2010-2161575
Office of Consumer Advocate	:		C-2010-2172183
Office of Small Business Advocate	:		C-2010-2171342
Ryan Miller	:		C-2010-2167594
Craig Vorwald	:		C-2010-2171229
Tenant Union Representative Network	:		C-2010-2176148
and Action Alliance of Senior	:		
Citizens of Greater Philadelphia	:		
Philadelphia Area Industrial Energy	:		C-2010-2177849
User Group	:		
	:		
	:		
v.	:		
	:		
	:		
PECO Energy Company – Electric Division	:		

I hereby certify that I have this day served a true copy of the foregoing document, the Prehearing Memorandum of the Office of Consumer Advocate, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 7<sup>th</sup> day of June 2010.

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John Baillie, Senior Attorney  
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University of Pennsylvania*

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Collegetown, PA 19426  
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Cynthia Gallagher  
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Philadelphia, PA 19111  
Complaint No.: C-2010-2177260

Ryan Miller  
9912 Medway Road  
Philadelphia, PA 19115  
Complaint No.: C-2010-2167594



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