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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

DOCKETED
MAR 14 2000

Application of PECO Energy Company :
Pursuant to Chapters 11, 19, 21, 22 and 28 of :
the Public Utility Code for Approval of (1) a : Docket No.
Plan of Corporate Restructuring, Including :
the Creation of a Holding Company and (2) : A-00110550F0147
the Merger of the Newly Formed Holding :
Company and Unicom Corporation :

ORDER GRANTING PROTEST AND PETITION TO INTERVENE
OF NEWENERGY EAST, L.L.C.

Pleadings

On February 18, 2000, NewEnergy East, L.L.C. (NewEnergy) filed a Protest and Petition to Intervene (Protest) in this proceeding pursuant to "5.51 et seq." and "§5.71 et seq." Protest at 1, 5. NewEnergy identified itself as a licensed Electric Generation Supplier (EGS) which uses PECO Energy Company's (PECO) distribution system to sell retail electricity to business and residential customers in PECO's service territory. Protest at 3-4.

In support of its Protest, NewEnergy alleged that its interests are different than that of other parties to this proceeding because it depends on PECO to provide transmission and distribution (T&D) services for NewEnergy's customers. Protest at 4. For that reason, NewEnergy stated, it is necessary that it be allowed to intervene in this case in order to ensure, inter alia; (1) the integrity and reliability of PECO's T&D system; (2) that PECO provides T&D services to NewEnergy's customers in a fair and nondiscriminatory manner; (3) that PECO does not favor its own EGS in its allocation of T&D services; (4) that PECO does not increase the cost of its T&D services; (5) that any savings resulting from the merger are used to decrease the cost of T&D services to an

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appropriate extent; and (6) that the Pennsylvania market for retail electric services remains open to “vigorous” competition. Protest at 3-5.

On March 2, 2000, PECO filed a “Motion to Strike And/Or Dismiss The Protest and Petition to Intervene of NewEnergy East, L.L.C.” (Motion).

In support of its Motion, PECO argued that:

(1) NewEnergy failed to demonstrate “good cause” or state a cause or excuse for its failure to file a protest or petition to intervene in this matter by December 20, 1999, as directed by the Commission in its notice which appeared in the Pennsylvania Bulletin on December 4, 1999;

(2) Permitting NewEnergy to intervene at this time would be disruptive to the administration of this proceeding and prejudicial to PECO and potentially the other parties because: (a) a prehearing conference was held on January 20, 2000, during which a procedural schedule was established; (b) settlement discussions among all parties was held on March 1 and 2, 2000; and (c) extensive discovery by numerous parties has already been conducted; and

(3) NewEnergy’s interests as an EGS and user of PECO’s transmission and distribution system are adequately represented by existing parties to this proceeding including the Mid-Atlantic Power Supply Association (MAPSA), which is a trade association of competitive EGSs.

Motion at 2-5.

Analysis

Before me for consideration is a protest and petition to intervene filed by NewEnergy. The Commission’s regulations regarding protests to an application provide as follows in pertinent part:

§5.51. Protest to an application.

(a) A person objecting to the approval of an application under consideration by the Commission may file a protest to the application.

* * *

§5.52. Content of a protest to an application.

(a) A protest to an application shall on its face set out clearly and concisely the facts from which the alleged or right of the protestant can be determined, the grounds of the protest and the facts establishing protestant's standing to protest.

52 Pa. Code §§5.51(a) and 5.52(a). In regard to petitions to intervene, the Commission's regulations provide as follows in pertinent part:

§5.72. Eligibility to intervene.

(a) *Persons.* A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right of interest may be one of the following:

* * *

(2) An interest which may be directed affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.

(3) Another interest of such nature that participation of the petitioner may be in the public interest.

* * *

§5.73. Form and content of petitions to intervene.

(a) Petitions to intervene shall set out clearly and concisely the facts from which the nature of the alleged right or interest of the petitioner can be determined, the grounds of the proposed intervention, and the position of the petitioner in the proceeding, so as fully and completely to advise the participants and the Commission as to the specific issues of fact or law to be raised or controverted.

* * *

§5.74. Filing of petitions to intervene.

(a) Petitions to intervene and notice of intervention may be filed following the filing of an application, petition, complaint or other document seeking Commission action, but no later than the date fixed for the filing of petitions to intervene in an order or notice with respect to the proceedings or, except for good cause shown, the date fixed for filing protests as published in the *Pennsylvania Bulletin*. Intervention will not be permitted once an evidentiary hearing has concluded absent extraordinary circumstances.

* * *

§5.75. Notice, service and action on petitions to intervene.

* * *

(b) *Action on petitions.* As soon as practicable after the expiration of the time for filing answers to petitions as provided in §5.66 (relating to answers to petitions to intervene), the Commission or presiding officer will grant or deny the petition in whole or in part or may, if found to be appropriate, authorize limited participation. Admission as an intervenor will not be construed as recognition by the Commission that the intervenor has a direct interest in the proceeding or might be aggrieved by an order of the Commission in the proceeding. No petitions to intervene may be filed or will be acted upon during a hearing unless permitted by the Commission or presiding officer after opportunity for all parties to object.

52 Pa. Code §§5.72-5.75 (emphasis supplied). The Commission's notice published in the Pennsylvania Bulletin on December 4, 1999, required NewEnergy, as well as all other entities interested in participating in these proceedings as formal parties, to file a protest or petition to intervene by December 20, 1999. NewEnergy failed to follow the Commission's directive. It did not file its protest and petition to intervene until February 18, 2000.

NewEnergy also failed to follow the Commission's regulations which required it to show "good cause" for its failure to file a petition to intervene by the deadline stated in the Pennsylvania Bulletin. See, 52 Pa. Code §5.74(a). In fact, NewEnergy failed to provide any cause or reason whatsoever.

However, I find that NewEnergy has shown an interest in this proceeding which may not be adequately represented by existing participants. NewEnergy's interest in this proceeding is summarized above, and the issues which it seeks to address are set forth in paragraphs 15-21 in its Protest. While there are other EGSs participating in this proceeding, it is unclear at this juncture which issues, if any, raised by NewEnergy, the other EGSs will be addressing or the degree of attention they will give to those issues if they do address them. Written intervenor direct testimony has yet to be filed in this case.¹ For the above reasons, I believe that it is in the public interest to allow NewEnergy's intervention in this proceeding.

Therefore, NewEnergy will be allowed to join this proceeding "in progress." It must abide by the schedule and procedures already established in this proceeding as set forth in my Prehearing Order dated January 28, 2000. In addition, it must abide by all other prior and future orders of the Commission and the presiding officer.

I do not believe that either PECO or the other parties will be prejudiced by NewEnergy's intervention in this proceeding under the conditions I have set forth above. I also note that hearings have not yet been held in this proceeding.²

¹ Written intervenor direct testimony is due in-hand on March 24, 2000.

² Public input hearings are scheduled for March 27-31, 2000 and April 4, 2000. Evidentiary hearings are scheduled for April 25-28, 2000.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Protest and Petition to Intervene of NewEnergy East, L.L.C. is granted subject to the conditions set forth herein.
2. That NewEnergy East, L.L.C. shall abide by the schedule and procedures already established by the presiding officer in this proceeding.
3. That NewEnergy East, L.L.C. shall abide by all prior and future orders of the Commission and the presiding officer in this proceeding.

March 8, 2000
DATE

Charles E. Rainey Jr.
CHARLES E. RAINEY, JR.
Administrative Law Judge

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