**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for (1) Approval : P-2016-2546452

of its Microgrid Integrated Technology Pilot Plan :

and (2) Issuance of a Declaratory Order Regarding :

the Recovery of Microgrid Costs :

Application for Construction of Microgrid : A-2016-2546450

Distributed Energy Resources Fueled by Natural Gas :

**PREHEARING ORDER #2**

On October 22, 2015, the Commission approved PECO Energy Company’s (“PECO”) electric Long-Term Infrastructure Improvement Plan (“LTIIP”) to invest an additional $274 million over a five-year period (2016 through 2020) for infrastructure improvements designed to enhance reliability by strengthening and modernizing PECO’s electric distribution system.[[1]](#footnote-1) In its LTIIP, PECO indicated that it intended to develop one or more microgrid projects in the 2017-2020 period.[[2]](#footnote-2)

A microgrid is a group of interconnected loads and distributed energy resources (“DERs”) which can operate both in parallel with the larger distribution system and as a self-supplying island. PECO indicates that microgrids offer a variety of benefits to utility customers, including enhanced distribution system reliability and resiliency.

Consistent with its electric LTIIP, PECO is proposing to develop and deploy a community microgrid in Concord Township, Pennsylvania (“Concord Township Project” or “Project”) which will be integrated with PECO’s distribution system. The Project will focus on improving the distribution system’s ability to sustain and recover from adverse events (including severe weather) and on providing reliable access to essential services during power outages. The information produced by the Project, in turn, will be shared with the Commission and other stakeholders through annual reporting to facilitate the successful deployment of additional microgrids and DERs in the Commonwealth.

On May 18, 2016, PECO filed a Petition (“Petition”) and the related Application (“Application”) as the basis for PECO’s Microgrid Integrated Technology Pilot (“Microgrid Pilot” or “Pilot”) in which PECO will construct, own and operate a community microgrid in its service territory. In the Petition, PECO requests that the Commission: (1) approve PECO’s Microgrid Pilot as being in the public interest; and (2) issue a declaratory order that PECO may seek to recover the costs of the Pilot that are not recoverable through its electric Distribution System Improvement Charge (“DSIC”) in a future distribution base rate case filed under Section 1308 of the Pennsylvania Public Utility Code (“Public Utility Code”), 66 Pa.C.S. § 1308. Since PECO is proposing to construct, own and operate DERs to power the proposed microgrid, which will include natural gas engines, PECO also filed the Application to request approval to construct generation fueled by natural gas in accordance with Section 519 of the Public Utility Code, 66 Pa.C.S. § 519.

On May 25, 2016, PECO filed correspondence explaining that it proposed a detailed schedule for consideration of both its Petition and Application and requested a Commission decision by February 2017. PECO noted that Section 519(d) provides that “[if] the commission fails to approve or disapprove an [application under Section 519] within six months of the date on which the application is filed, it shall be lawful for the affected utility to construct the proposed electric generating unit as though the commission had approved the application.” PECO waived its right to a decision within six months of the filing of the Application and requested that the Commission consider the schedule in the filing for both the Petition and Application.

Notice of the Petition and Application filings was published in the *Pennsylvania Bulletin* on June 4, 2016. The deadline for filing formal protests, petitions to intervene and answers was June 20, 2016.

The Office of Small Business Advocate (“OSBA”), through its counsel, filed a Notice of Intervention, Public Statement and Notice of Appearance on June 7, 2016. In addition, OSBA filed an Answer on June 7, 2016.

A Prehearing Order was sent to the parties on June 10, 2016.

On June 14, 2016, Phillip C. Kirchner, Prosecutor, filed a Notice of Appearance on behalf of the Commission’s Bureau of Investigation and Enforcement (“I&E”).

The Philadelphia Area Industrial Energy Users Group (“PAIEUG”), through its counsel, filed a Petition to Intervene and Answer on June 20, 2016.

The Office of Consumer Advocate (“OCA”), through its counsel, filed a Notice of Intervention, Public Statement and an Answer on June 20, 2016.

Direct Energy Services, LLC (“Direct Energy”), through its counsel, filed a Petition to Intervene on June 20, 2016.

The Retail Energy Supply Association (“RESA”), through its counsel, filed a Petition to Intervene on June 20, 2016.

Prior to the prehearing conference, the following parties filed Prehearing Memoranda: PECO, I&E, OCA, OSBA, Direct Energy, PAIEUG and RESA.

A prehearing conference was held on Wednesday, June 22, 2016, at 2:00 p.m. Counsel for the following parties participated: PECO, I&E, OCA, OSBA, Direct Energy, PAIEUG and RESA.

Since there were no objections to the Petitions to Intervene, the petitions filed by the following entities were granted: PAIEUG; Direct Energy and RESA.

The following procedural schedule was established:

May 18, 2016 Petition Filing

June 22, 2016 Prehearing Conference

August 4, 2016 Other Parties’ Direct Testimony Due

August 25, 2016 Rebuttal Testimony Due

September 8, 2016 Surrebuttal Testimony Due

September 12-14, 2016 Oral Rejoinder and Hearings

October 6, 2016 Initial Briefs

October 20, 2016 Reply Briefs

December 8, 2016 Recommended Decision

February 2017 Commission Order

All proposed dates for submission of testimony and briefs are for “in-hand” delivery, which may be satisfied by an e-mail or fax copy of the relevant documents.

Since there was no opposition to the language in the Protective Order, the Protective Order was granted. (Attached as Appendix A)

The parties agreed to the discovery modifications in ordering paragraph 7.

Any documents filed in this proceeding should be served on us at the Philadelphia office and the active participants. 52 Pa.Code § 154(a) and (d). Our contact information is:

Administrative Law Judge Cynthia Williams Fordham

Administrative Law Judge Eranda Vero

Pennsylvania Public Utility Commission

801 Market Street, Suite 4063

Philadelphia, PA 19107

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Since documents can be submitted to the presiding officers and the participants by e-mail, e-mail addresses will be included on the counsel service list. Please check the list for omissions and errors and contact our office to make corrections. Our e-mail addresses are [cfordham@pa.gov](mailto:cfordham@pa.gov) and [evero@pa.gov](mailto:evero@pa.gov) .

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Petition to Intervene filed by the Philadelphia Area Industrial Energy Users Group is granted.
2. That the Petition to Intervene filed by the Direct Energy Services, LLC, is granted.
3. That the Petition to Intervene filed by the Retail Energy Supply Association is granted.
4. That PECO waived its right to a decision within six months of the filing of the Application as provided in Section 519 of the Public Utility Code, 66 Pa.C.S. § 519.
5. The procedural schedule is as follows:

May 18, 2016 Petition Filing

June 22, 2016 Prehearing Conference

August 4, 2016 Other Parties’ Direct Testimony Due

August 25, 2016 Rebuttal Testimony Due

September 8, 2016 Surrebuttal Testimony Due

September 12-14, 2016 Oral Rejoinder and Hearings

October 6, 2016 Initial Briefs

October 20, 2016 Reply Briefs

December 8, 2016 Recommended Decision

February 2017 Commission Order

1. All proposed dates for submission of testimony and briefs are for “in-hand” delivery, which may be satisfied by an e-mail or fax copy of the relevant documents.
2. That discovery shall be conducted according to the Commission’s rules and regulations pursuant to 52 Pa. Code § 5.342(d), subject to the following modifications:
   * + - 1. Answers to written interrogatories are to be served in-hand within ten (10) calendar days of service of the interrogatories.
         2. 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.
         3. 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.
         4. 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.
         5. 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.
         6. Requests for admission are deemed admitted unless answered within ten (10) calendar days or objected to within five (5) calendar days of service.
         7. 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.
         8. 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.
         9. 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.
         10. Discovery requests, motions to compel and responses are to be served electronically as well as on paper.

8. That PECO’s Motion for a Protective Order is granted.

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

Date: July 13, 2016 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Cynthia Williams Fordham

Administrative Law Judge

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Eranda Vero

Administrative Law Judge

Petition of PECO Energy Company for (1) Approval of its Microgrid Integrated Technology : Pilot Plan and (2) Issuance of a Declaratory Order Regarding the Recovery of Microgrid Costs

Docket No. P-2016-2546452

Application for Construction of Microgrid Distributed Energy Resources Fueled by Natural Gas Docket No. A-2016-2546450

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***(Retail Energy Supply Association &Direct Energy Services, LLC)***

**APPENDIX A**

**BEFORE the  
pennsylvania public utility commission**

|  |  |  |
| --- | --- | --- |
| **PETITION OF PECO ENERGY COMPANY FOR: (1) APPROVAL OF ITS MICROGRID INTEGRATED TECHNOLOGY PILOT PLAN AND (2) ISSUANCE OF A DECLARATORY ORDER REGARDING THE RECOVERY OF MICROGRID COSTS** | : : : : :  :  : | **DOCKET NO. P-2016-2546452** |
| **APPLICATION FOR CONSTRUCTION OF MICROGRID DISTRIBUTED ENERGY RESOURCES FUELED BY NATURAL GAS** | : :  :  : | **DOCKET NO. A-2016-2546450** |

**PROTECTIVE ORDER**

**IT IS ORDERED THAT**:

* 1. This Protective Order is hereby GRANTED and shall establish procedures for the protection of all materials and information identified in Paragraphs 2 and 3 below, which are or will be filed with the Commission, produced in discovery, or otherwise presented during the above-captioned proceeding and all proceedings consolidated with it. All persons now or hereafter granted access to the materials and information identified in Paragraph 2 of this Protective Order shall use and disclose such information only in accordance with this Order.
  2. The information subject to this Protective Order is all correspondence, documents, data, information, studies, methodologies and other materials, whether produced or reproduced or stored on paper, cards, tape, disk, film, electronic facsimile, magnetic or optical memory, computer storage devices or any other devices or media, including, but not limited to, electronic mail (e-mail), furnished in this proceeding that the producing party believes to be of a proprietary or confidential nature and are so designated by being stamped “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” protected material. Such materials are referred to in this Order as “Proprietary Information.” When a statement or exhibit is identified for the record, the portions thereof that constitute Proprietary Information shall be designated as such for the record.
  3. For purposes of this Protective Order there are two categories of Proprietary Information: “CONFIDENTIAL” and “HIGHLY CONFIDENTIAL” protected material. A producing party may designate as “CONFIDENTIAL” those materials that are customarily treated by that party as sensitive or proprietary, that are not available to the public, and that, if generally disclosed, would subject that party or its clients to the risk of competitive disadvantage or other business injury. A producing party may designate as “HIGHLY CONFIDENTIAL” those materials that are of such a commercially sensitive nature, relative to the business interests of parties to this proceeding, or of such a private or personal nature, that the producing party determined that a heightened level of confidential protection with respect to those materials is appropriate. The parties shall endeavor to limit the information designated as “Highly confidential” protected material.
  4. Subject to the terms of this Protective Order, Proprietary Information shall be provided to counsel for a party who meets the criteria of a “Reviewing Representative” as set forth below. Such counsel shall use or disclose the Proprietary Information only for purposes of preparing or presenting evidence, testimony, cross examination or argument in this proceeding. To the extent required for participation in this proceeding, such counsel may allow others to have access to Proprietary Information only in accordance with the conditions and limitations set forth in this Protective Order.
  5. Information deemed “CONFIDENTIAL” shall be provided to a “Reviewing Representative.” For purposes of “CONFIDENTIAL” Proprietary Information, a “Reviewing Representative” is a person who has signed a Non-Disclosure Certificate and is:
     1. A statutory advocate, or an attorney for a statutory advocate pursuant to 52 Pa. Code § 1.8 or an attorney who has formally entered an appearance in this proceeding on behalf of a party;
     2. An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph (i) above;
     3. An expert or an employee of an expert retained by a party for the purpose of advising that party or testifying in this proceeding on behalf of that party; or
     4. Employees or other representatives of a party to this proceeding who have significant responsibility for developing or presenting the party’s positions in this docket.
  6. Information deemed “HIGHLY CONFIDENTIAL” protected material shall be provided to a Reviewing Representative, provided, however that a Reviewing Representative, for purposes of “HIGHLY CONFIDENTIAL” protected material, is limited to a person who has signed a Non-Disclosure Certificate and is:
     1. A statutory advocate, or an attorney for a statutory advocate, pursuant to 52 Pa. Code § 1.8 or an attorney who has formally entered an appearance in this proceeding on behalf of a party;
     2. An attorney, paralegal, or other employee associated for purposes of this case with an attorney described in subparagraph (i);
     3. An outside expert or an employee of an outside expert retained by a party for the purposes of advising that party or testifying in this proceeding on behalf of that party; or
     4. A person designated as a Reviewing Representative for purposes of Highly Confidential protected material pursuant to paragraph 11.

Provided, further, that in accordance with the provisions of Sections 5.362 and 5.365(e) of the Commission’s Rules of Practice and Procedure (52 Pa. Code §§ 5.362, 5.365(e)) any party may, by objection or motion, seek further protection with respect to HIGHLY CONFIDENTIAL protected material, including, but not limited to, total prohibition of disclosure or limitation of disclosure only to particular parties.

* 1. For purposes of this Protective Order, a Reviewing Representative may not be a “Restricted Person” absent agreement of the party producing the Proprietary Information pursuant to Paragraph 11. A “Restricted Person” shall mean: (a) an officer, director, stockholder, partner, or owner of any competitor of the parties or an employee of such an entity if the employee’s duties involve marketing or pricing of the competitor’s products or services or advising another person who has such duties; (b) an officer, director, stockholder, partner, or owner of any affiliate of a competitor of the parties (including any association of competitors of the parties) or an employee of such an entity if the employee’s duties involve marketing or pricing of the competitor's products or services or advising another person who has such duties; (c) an officer, director, stockholder, owner, agent (excluding any person under Paragraph 6.i or 6.ii), or employee of a competitor of a customer of the parties or of a competitor of a vendor of the parties if the Proprietary Information concerns a specific, identifiable customer or vendor of the parties; and (d) an officer, director, stockholder, owner or employee of an affiliate of a competitor of a customer of the parties if the Proprietary Information concerns a specific, identifiable customer of the parties; provided, however, that no expert shall be disqualified on account of being a stockholder, partner, or owner unless that expert’s interest in the business would provide a significant motive for violating the limitations of permissible use of the Proprietary Information. For purposes of this Protective Order, stocks, partnership or other ownership interests valued at more than $10,000 or constituting more than a 1% interest in a business establish a significant motive for violation. A “Restricted Person” shall not include an expert for the Office of Small Business Advocate or Office of Consumer Advocate.
  2. If an expert for a party, another member of the expert’s firm or the expert’s firm generally also serves as an expert for, or as a consultant or advisor to, a Restricted Person (other than an expert or expert firm retained by the Office of Small Business Advocate or Office of Consumer Advocate), that expert must: (1) identify for the parties each Restricted Person and all personnel in or associated with the expert’s firm that work on behalf of the Restricted Person; (2) take all reasonable steps to segregate those personnel assisting in the expert’s participation in this proceeding from those personnel working on behalf of a Restricted Person; and (3) if segregation of such personnel is impractical, the expert shall give to the producing party written assurances that the lack of segregation will in no way adversely affect the interests of the parties or their customers. The parties retain the right to challenge the adequacy of the written assurances that the parties’ or their customers’ interests will not be adversely affected. No other persons may have access to the Proprietary Information except as authorized by order of the Commission.
  3. Reviewing Representatives qualified to receive “HIGHLY CONFIDENTIAL” protected material may discuss HIGHLY CONFIDENTIAL protected material with their client or with the entity with which they are employed or associated, to the extent that the client or entity is not a “Restricted Person,” but may not share with, or permit the client or entity to review or have access to, the HIGHLY CONFIDENTIAL protected material. Counsel for the Office of Consumer Advocate and Office of Small Business Advocate may share Proprietary Information with the Consumer Advocate and Small Business Advocate, respectively, without obtaining a Non-Disclosure Certificate from these individuals, provided however, that these individuals otherwise abide by the terms of the Protective Order.
  4. Proprietary Information shall be treated by the parties and by the Reviewing Representative in accordance with the terms of this Protective Order, which are hereby expressly incorporated into the certificate that must be executed pursuant to Paragraph 12(a). Proprietary Information shall be used as necessary, for the conduct of this proceeding and for no other purpose. Proprietary Information shall not be disclosed in any manner to any person except a Reviewing Representative who is engaged in the conduct of this proceeding and who needs to know the information in order to carry out that person’s responsibilities in this proceeding.
  5. Reviewing Representatives may not use anything contained in any Proprietary Information obtained through this proceeding to give any party or any competitor of any party a commercial advantage. In the event that a party wishes to designate as a Reviewing Representative a person not described in paragraph 6 (i) through (iii) above, the party must first seek agreement to do so from the party providing the Proprietary Information. If an agreement is reached, the designated individual shall be a Reviewing Representative pursuant to Paragraph 6 (iv) above with respect to those materials. If no agreement is reached, the party seeking to have a person designated a Reviewing Representative shall submit the disputed designation to the presiding Administrative Law Judges for resolution.
  6. (a) A Reviewing Representative shall not be permitted to inspect, participate in discussions regarding, or otherwise be permitted access to Proprietary Information pursuant to this Protective Order unless that Reviewing Representative has first executed a Non-Disclosure Certificate in the form provided in Appendix A, provided, however, that if an attorney or expert qualified as a Reviewing Representative has executed such a certificate, the paralegals, secretarial and clerical personnel under his or her instruction, supervision or control need not do so. A copy of each executed Non-Disclosure Certificate shall be provided to counsel for the party asserting confidentiality prior to disclosure of any Proprietary Information to that Reviewing Representative.

(b) Attorneys and outside experts qualified as Reviewing Representatives are responsible for ensuring that persons under their supervision or control comply with the Protective Order.

* 1. The parties shall designate data or documents as constituting or containing Proprietary Information by stamping the documents “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL” protected material. Where only part of data compilations or multi-page documents constitutes or contains Proprietary Information, the parties, insofar as reasonably practicable within discovery and other time constraints imposed in this proceeding, shall designate only the specific data or pages of documents which constitute or contain Proprietary Information. The Commission and all parties, including the statutory advocates and any other agency or department of state government will consider and treat the Proprietary Information as within the exemptions from disclosure provided in the Pennsylvania Right-to-Know Act (65 P.S. § 67.101 *et seq.*) until such time as the information is found to be non-proprietary.
  2. Any public reference to Proprietary Information by a party or its Reviewing Representatives shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to understand fully the reference and not more. The Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review.
  3. Part of any record of this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, testimony, cross examination, argument, and responses to discovery, and including reference thereto as mentioned in paragraph 15 above, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Protective Order, either through the agreement of the parties to this proceeding or pursuant to an order of the Commission.
  4. The parties shall retain the right to question or challenge the confidential or proprietary nature of Proprietary Information and to question or challenge the admissibility of Proprietary Information. If a party challenges the designation of a document or information as proprietary, the party providing the information retains the burden of demonstrating that the designation is appropriate.
  5. The parties shall retain the right to object to the production of Proprietary Information on any proper ground, and to refuse to produce Proprietary Information pending the adjudication of the objection.
  6. Within 30 days after a Commission final order is entered in the above-captioned proceeding, or in the event of appeals, within thirty days after appeals are finally decided, the receiving party, upon request, shall either destroy or return to the parties all copies of all documents and other materials not entered into the record, including notes, which contain any Proprietary Information. In its request, a providing party may specify whether such materials should be destroyed or returned. In the event that the materials are destroyed instead of returned, the receiving party shall certify in writing to the providing party that the Proprietary Information has been destroyed. In the event that the materials are returned instead of destroyed, the receiving party shall certify in writing to the providing party that no copies of materials containing the Proprietary Information have been retained.

Date: June 22, 2016 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Cynthia Williams Fordham

Administrative Law Judge

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Eranda Vero

Administrative Law Judge

**BEFORE the  
pennsylvania public utility commission**

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| **PETITION OF PECO ENERGY COMPANY FOR: (1) APPROVAL OF ITS MICROGRID INTEGRATED TECHNOLOGY PILOT PLAN AND (2) ISSUANCE OF A DECLARATORY ORDER REGARDING THE RECOVERY OF MICROGRID COSTS** | : : : : :  : | **DOCKET NO. P-2016-2546452** |
| **APPLICATION FOR CONSTRUCTION OF MICROGRID DISTRIBUTED ENERGY RESOURCES FUELED BY NATURAL GAS** | : :: | **DOCKET NO. A-2016-2546450** |

**NON-DISCLOSURE CERTIFICATE**

TO WHOM IT MAY CONCERN:

The undersigned is the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the receiving party).

The undersigned has read and understands the Protective Order deals with the treatment of Proprietary Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Order, which are incorporated herein by reference.

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| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ SIGNATURE |
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| \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  EMPLOYER |
| DATE: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

1. *See Petition of PECO Energy Co. For Approval Of Its Long-Term Infrastructure Improvement Plan And To Establish A Distribution System Improvement Charge For Its Electric Operations*, Docket No. P-2015- 2471423 (Order entered Oct. 22, 2015) (“LTIIP Order”). [↑](#footnote-ref-1)
2. *See* LTIIP Order at 7. [↑](#footnote-ref-2)