**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 :

# **INITIAL DECISION GRANTING THE JOINT**

# **PETITION FOR LEAVE TO WITHDRAW**

Before

Cynthia Williams Fordham

Administrative Law Judge

Eranda Vero

Administrative Law Judge

INTRODUCTION

This Initial Decision grants the Joint Petition for Leave to Withdraw PECO Energy Company’s Petition for (1) Approval of its Microgrid Integrated Technology Pilot Plan and (2) Issuance of a Declaratory Order Regarding the Recovery of Microgrid Costs, at Docket No. P-2016-2546452, and PECO Energy Company’s Application for Construction of Microgrid Distributed Energy Resources Fueled by Natural Gas, at Docket No. A-2016-2546450.

History of the Proceeding

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)

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 requested 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 distributed energy resources (“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. PECO submitted Direct Testimony with its Petition and Application.

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, at 46 *Pa.B.* 2928. 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.

The prehearing conference was held as scheduled on June 22, 2016. Present through counsel were PECO, I&E, OCA, OSBA, Direct Energy, PAIEUG and RESA. At the prehearing conference, PECO’s Motion for a Protective Order was granted, the Petitions to Intervene filed by PAIEUG, Direct Energy and RESA were granted, discovery rules were adopted, and a litigation and briefing schedule was established. The actions taken at the prehearing conference were memorialized in our Order dated July 13, 2016.

The OCA, the OSBA, I&E, and RESA filed Direct Testimony on August 4, 2016, opposing the Microgrid Pilot and Application, and PECO submitted Rebuttal Testimony on August 25, 2016, in accordance with the procedural schedule.

On September 7, 2016, counsel for PECO contacted the presiding officers. He stated that based on a review of the testimony and discussions with other parties, PECO would like to file supplemental testimony to present several changes to its Microgrid Pilot design. The other parties did not object to PECO’s request. By Order dated September 15, 2016, we granted PECO’s request and revised the procedural schedule to allow for the filing of PECO’s Supplemental Direct Testimony and other parties’ Surrebuttal Testimony and response to Supplemental Direct.

In accordance with the revised procedural schedule, PECO filed its Supplemental Direct Testimony on September 16, 2016, while OCA, OSBA, I&E, and RESA filed their respective surrebuttal testimony on October 5, 2016.

By e-mail dated October 13, 2016, PECO’s counsel informed us that the parties had agreed to a withdrawal of PECO’s Microgrid Petition and Application and participation in a collaborative to address microgrid deployment and issues raised in these filings. In light of this agreement, the parties requested a suspension of the evidentiary hearings pending the filing of the petition for leave to withdraw the pleadings. By e-mail dated October 13, 2016, we granted the parties’ request to suspend the evidentiary hearings scheduled to take place on October 18-19,

2016.

On October 27, 2016, PECO, OCA, OSBA, I&E, PAIEUG and RESA (“Joint Petitioners”) filed a Joint Petition for Leave to Withdraw Pleadings to Permit Microgrid Collaborative Process (“Joint Petition”). The Joint Petitioners averred that Direct Energy does not oppose the Point Petition.

The record in this matter consists of the 17-page transcript from the prehearing conference, PECO’s filings, the other parties’ pleadings, our Orders, and the Joint Petition. The record closed on October 27, 2016.

For the reasons set forth below, the Joint Petition is granted.

FINDINGS OF FACT

1. On May 18, 2016, PECO filed a Petition for (1) Approval of its Microgrid Integrated Technology Pilot Plan and (2) Issuance of a Declaratory Order Regarding the Recovery of Microgrid Costs, and the related Application.
2. Notice of the Petition and Application filings was published in the *Pennsylvania Bulletin* on June 4, 2016.
3. The deadline for filing formal protests, petitions to intervene and answers was June 20, 2016.
4. On June 7, 2016, OSBA filed a Notice of Intervention, Public Statement, Notice of Appearance and an Answer.
5. A Prehearing Order was issued on June 10, 2016.
6. On June 14, 2016, a Notice of Appearance was filed by counsel for I&E.
7. On June 20, 2016, OCA filed a Notice of Intervention, Public Statement and an Answer.
8. On June 20, 2016, PAIEUG filed a Petition to Intervene and an Answer.
9. On June 20, 2016, RESA and Direct Energy filed Petitions to Intervene.
10. A prehearing conference was held on Wednesday, June 22, 2016, at 2:00 p.m.
11. The litigation schedule established at the prehearing conference was memorialized in the Order dated July 13, 2016.
12. By Order dated September 15, 2016, the litigation schedule was revised in order to allow for the filing of PECO’s Supplemental Direct Testimony and other parties’ Surrebuttal Testimony and response to Supplemental Direct.
13. On October 27, 2016, PECO, OCA, OSBA, I&E, PAIEUG and RESA filed a Joint Petition for Leave to Withdraw Pleadings to Permit Microgrid Collaborative Process.
14. Direct Energy did not object to the Joint Petition for Leave to Withdraw.
15. The evidentiary hearings scheduled for October 18-19, 2016 were cancelled.

DISCUSSION

The Commission’s Rules of Practice and Procedure at 52 Pa.Code § 5.94 permit parties to withdraw pleadings in a contested proceeding. The provision at 52 Pa.Code § 5.94(a) allows withdrawal of pleadings by filing, with the Commission and service to parties, a petition for leave to withdraw the pleading. The petition is granted only by permission of the presiding officer or the Commission. The presiding officer or Commission must consider the petition, any objections thereto and the public interest in determining whether to permit withdrawal of the pleading.

In their Joint Petition, PECO, I&E, OCA, OSBA, PAIEUG and RESA averred that after due consideration of the testimony filed in this proceeding, they have concluded that the public interest would be best served by a withdrawal of PECO’s Microgrid Pilot and Application Filings and participation in a collaborative process to discuss future deployment of microgrids in PECO’s service territory. All Joint Petitioners agree that a stakeholder collaboration outside of a contested proceeding would facilitate discussion of the issues raised by the parties in this proceeding and better address questions concerning future microgrid deployment. In addition, the Joint Petitioners agree that statements made or positions taken in the collaborative will be without prejudice to any position which any of the Joint Petitioners may advance in future proceedings. The Joint Petitioners believe that termination of these proceedings prior to hearings and subsequent briefing will conserve the resources of each party, which may then be used to prepare for and participate in the proposed collaborative process.

The only party in these proceedings which did not join the Joint Petition, Direct Energy, has indicated that it does not object to the Joint Petition.

The Commission has no interest in mandating that the parties continue litigation of these matters when they have indicated that collaboration outside of a contested proceeding would facilitate discussion of the issues raised by the parties in this proceeding and better address questions concerning future microgrid deployment. Thus, proceeding to hearing would not be in the public interest.

The withdrawal will eliminate the need for litigation and save resources that would have been used if the case had been fully litigated. The undersigned have concluded that withdrawal of the application is fair, reasonable and in the public interest. Accordingly, the Joint Petition to Withdraw the Microgrid Pilot and the related Application is granted.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter in this proceeding. 66 Pa.C.S. § 1103.

2. A party can petition to withdraw a pleading in a contested proceeding pursuant to 52 Pa.Code § 5.94.

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

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Joint Petition for Leave to Withdraw PECO Energy Company’s Petition for (1) Approval of its Microgrid Integrated Technology Pilot Plan and (2) Issuance of a Declaratory Order Regarding the Recovery of Microgrid Costs, at Docket No. P-2016-2546452; and PECO Energy Company’s Application for Construction of Microgrid Distributed Energy Resources Fueled by Natural Gas, at Docket No. A-2016-2546450, is granted.

2. That these cases be marked closed.

Date: November 22, 2016 /s/

Cynthia Williams Fordham

Administrative Law Judge

/s/

Eranda Vero

Administrative Law Judge

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)