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

Trustees of the University of Pennsylvania : C-2018-3001636

:

v. :

:

PECO Energy Company :

# **PREHEARING ORDER #2**

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 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.A. § 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.[[2]](#footnote-2)

No party opposed the Petitions to Intervene filed by Walmart, Tesla, TURN et. al., IBEW, CAUSE-PA, and CAAP. Accordingly, we granted these parties’ Petitions during the prehearing conference and memorialized their status as Intervenors in our May 10, 2018, Prehearing Order #1.

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.

On May 16, 2018, the DVRPC filed a letter with the Commission requesting to withdraw its Petition to Intervene.

On May 16, 2018, PECO filed its Answers to the Petitions to Intervene of RESA and NRG.

On May 23, 2018, NRG filed a response to PECO’s Answer of PECO Energy Company to the Petition to Intervene of NRG Energy, Inc.

On May 24, 2018, RESA filed a response to PECO’s Answer of PECO Energy Company to the Petition to Intervene of the Retail Energy Supply Association.

DISCUSSION

Regarding eligibility to intervene in proceedings before the Commission, the Commission’s regulations provide:

**§ 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 or interest may be one of the following:

(1) A right conferred by statute of the United States or of the Commonwealth.

(2) An interest which may be directly 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.

(b) *Commonwealth*. The Commonwealth or an officer or agency thereof may intervene as of right in a proceeding subject to subsection (a)(1)—(3).

(c) *Supersession*. Subsections (a) and (b) supersede 1 Pa. Code § 35.28 (relating to eligibility to intervene).

52 Pa.Code § 5.72.

"The interest of a petitioner seeking intervention must be direct and immediate." [*Re Pennsylvania Power & Light Company*, 50 Pa. PUC 38, 40 (1976).](https://www.lexis.com/research/buttonTFLink?_m=5078c8bdce65b9df7770391072034e45&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2009%20Pa.%20PUC%20LEXIS%20246%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=8&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b50%20Pa.%20PUC%2038%2cat%2040%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=2&_startdoc=1&wchp=dGLzVzk-zSkAA&_md5=d5e6db824c37e5efc42b37779eb040ef)  
  
 To possess standing, a party must have an interest in the controversy that is distinguishable from the interest shared by other citizens. [*Sierra Club v. Hartman*, 529 Pa. 454, 605 A.2d 309 (1992)](https://www.lexis.com/research/buttonTFLink?_m=213dc75a8da2b4db48dafdbd1b6eb57a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b903%20A.2d%20117%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=58&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b529%20Pa.%20454%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzt-zSkAW&_md5=1ffdf6ec22b455e234f27a1f3718aa97). A party possesses standing if he has a "substantial, direct, and immediate interest" in the subject matter of the litigation. [*Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975)](https://www.lexis.com/research/buttonTFLink?_m=213dc75a8da2b4db48dafdbd1b6eb57a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b903%20A.2d%20117%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=59&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b464%20Pa.%20168%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzt-zSkAW&_md5=94cef63fb336019adb37b14d9d2ca237).

“An association, as a representative of its members, may have standing to bring a cause of action even in the absence of injury to itself; the association must allege that at least one of its members is suffering immediate or threatened injury as a result of the challenged action." See [*Malt Beverages Distribs. Ass'n v. Pa. Liquor Control Bd.*, 881 A.2d 37, 41 (Pa. Cmwlth. 2005)](https://www.lexis.com/research/buttonTFLink?_m=213dc75a8da2b4db48dafdbd1b6eb57a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b903%20A.2d%20117%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=63&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b881%20A.2d%2037%2c%2041%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzt-zSkAW&_md5=3758f8a7b8b86bb4ce770be178a7a1a2), petition for allowance of appeal denied, [895 A.2d 1264 (Pa. 2006)](https://www.lexis.com/research/buttonTFLink?_m=213dc75a8da2b4db48dafdbd1b6eb57a&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b903%20A.2d%20117%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=64&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b586%20Pa.%20775%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=1&_startdoc=1&wchp=dGLbVzt-zSkAW&_md5=450c0acbfd1dc4313f091873e067bb29); *quoting* *Pennsylvania Sch. Bds. Ass'n v. Commonwealth Ass'n of Sch. Adm'rs, Teamsters Local 502*, 696 A.2d 859 (Pa. Cmwlth. 1997); see also *The Unified Sportsmen of Pennsylvania v. The Pennsylvania Game Commission et al*., 903 A.2d 117 (Pa.Cmwlth. 2006); *Pennsylvania Academy of Chiropractic Physicians v. Commonwealth of Pennsylvania, Department of State, Bureau of Professional & Occupational Affairs*, 564 A.2d 551 (Pa. Cmwlth. 1989).

Even in the absence of injury to itself, [however], an association may have standing solely as the representative of its members. The possibility of such representational standing, however, does not eliminate or attenuate the constitutional requirement of a case or controversy. The association must allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit. So long as this can be established, and so long as the nature of the claim and of the relief sought does not make the individual participation of each injured party indispensable to proper resolution of the cause, the association may be an appropriate representative of its members, entitled to invoke the court's jurisdiction.

[*Warth v. Seldin*, 422 U.S. 490, 511, 95 S.Ct. 2197, 2211, 45 L.Ed.2d 343, 362 (1975)](https://www.lexis.com/research/buttonTFLink?_m=6cbe0fdd4195d96840e56187ef084eb0&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b290%20Pa.%20Super.%20365%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=11&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b422%20U.S.%20490%2c%20511%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=10&_startdoc=1&wchp=dGLbVzt-zSkAW&_md5=f1ff6c50fd42e6894d316b1e876da8a3) (citations omitted); see also [*Boston Stock Exchange v. State Tax Commission*, 429 U.S. 318, 97 S.Ct. 599, 50 L.Ed.2d 514 (1977)](https://www.lexis.com/research/buttonTFLink?_m=6cbe0fdd4195d96840e56187ef084eb0&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b290%20Pa.%20Super.%20365%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=12&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b429%20U.S.%20318%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=10&_startdoc=1&wchp=dGLbVzt-zSkAW&_md5=aaeb19f2c13d61e1b9039fb657baad11);  [*Tripps Park Civic Association v. Pa. Pub. Util. Comm'n*, 415 A.2d 967 (Pa. Cmwlth. 1980)](https://www.lexis.com/research/buttonTFLink?_m=6cbe0fdd4195d96840e56187ef084eb0&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b290%20Pa.%20Super.%20365%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=13&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b42%20Pa.%20Commw.%20317%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=10&_startdoc=1&wchp=dGLbVzt-zSkAW&_md5=10639743c7bd9fed05aee58ec9cdb1ea); [*Concerned Taxpayers v. Commonwealth of Pennsylvania*, 382 A.2d 490 (Pa. Cmwlth. 1978)](https://www.lexis.com/research/buttonTFLink?_m=6cbe0fdd4195d96840e56187ef084eb0&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b290%20Pa.%20Super.%20365%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=14&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b33%20Pa.%20Commw.%20518%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=10&_startdoc=1&wchp=dGLbVzt-zSkAW&_md5=aaf1e0c66089fe9b744bdb63e65049ae).

**RESA**

In its Petition to Intervene, RESA described itself as a trade association of power marketers, independent power producers, and a broad range of companies within the Mid-Atlantic marketplace, each of whom support the electric services industry and seek to develop a more competitive power industry. RESA noted that its members are licensed to sell electric energy in the markets of Pennsylvania’s major electric distribution companies (EDCs), including PECO’s service territory.

RESA identified the following issues that it wants to address through this proceeding:

1. The proposed Electric Vehicle Direct Current Fast Charger Pilot Rider;
2. PECO’s initiatives to improve the direct billing relationship it has with its distribution customers;
3. PECO’s proposed modifications to net metering eligibility;
4. PECO’s proposed allocation of costs to distribution functions that are related to the provision of default service and should be removed from distribution charges; and
5. Proposals to streamline the interconnection process for distributed generation technologies.

RESA noted that, with members operating in PECO’s service territory, it is concerned about the potential anti-competitive impacts that may result from efforts of PECO to utilize ratepayer funded resources to offer value-added, generation-related products and services that are more appropriately offered in the competitive market. RESA maintained that PECO’s proposed allocation of costs to distribution functions for functions that are related to the provision of default service need to be analyzed to ensure that the cost allocation does not negatively impact the ability of electric generation suppliers (EGSs) to present competitive products to consumers in PECO’s service territory.

RESA indicated that its interests in this proceeding are unique from, and not adequately represented by, other parties that may seek to intervene, including individual EGSs or other organizations interested in electric competition in Pennsylvania in general and in PECO’s service territory in particular. RESA explained that this is because it represents the interests of a diverse and broad group of electric generation suppliers in general, and not the interests of any individual member. RESA maintained that its intervention is in the public interest, as it will enable it to contribute the unique perspectives and insights of a trade association representing multiple EGSs and complete presentation of the issues to be addressed in this proceeding.

On May 16, 2018, PECO filed its Answer to RESA’s Petition to Intervene. PECO objected, generally, on the grounds that RESA is attempting to interject into this case, which is statutorily limited in subject matter and time, alleged interests that should not be considered in this electrical base rate proceeding. PECO Answer to RESA at 1. PECO indicated that these issues include PECO’s “initiatives to improve the direct billing relationship [PECO] has with its distribution customers” as well as RESA’s “concerns” that PECO is offering “value added” products, issues that PECO noted RESA is already addressing in the Supplier Consolidated Billing (SCB) *en banc* proceeding initiated by the Commission.[[3]](#footnote-3) PECO asserted that RESA is already offering its views and arguments on these issues in the SCB proceeding. PECO Answer to RESA at 4. PECO maintained that permitting RESA to pursue these same issues with a smaller group of stakeholders and one EDC is likely to lead to results that are inconsistent with the *en banc* proceeding, especially in light of the seven-month statutory deadline for the issuance of a final order set out in Section 1308(d).[[4]](#footnote-4) PECO Answer to RESA at 4.

In response to the RESA identified issue regarding “proposals to streamline the interconnection process for distributed generation technologies,” PECO noted that its witness, Mr. Schlessinger, testified that PECO is proposing certain clarifying changes to net metering provisions, and also described PECO’s fulfillment of its commitment to revise terms and conditions for the interconnection of customer-sited distributed generation in accordance with the settlement of its 2015 electric base rate proceeding, as well as improvements PECO has already implemented to streamline the distributed generation interconnection process. PECO further noted that it has not made any “proposals” to further streamline the interconnection process for distributed generation in this proceeding. PECO asserted that, to the extent RESA is seeking to introduce new proposals, it does not believe that such interests provide a valid basis for intervention in this distribution base rate proceeding. PECO maintained that the challenges of creating a complete and well-developed evidentiary record on the issues that are properly within the scope of this base rate proceeding should not be heightened by interjecting entirely new proposals relating to distributed generation that will not receive proper consideration under a litigation schedule that was not designed or intended to accommodate them. PECO Answer to RESA at 5.

PECO has requested that we limit the scope of RESA’s participation in this proceeding to the following issues:

1. PECO’s proposed Electric Vehicle Direct Current Fast Charger Pilot Rider;
2. The allocation of costs between PECO’s distribution and default service functions;
3. PECO’s proposed changes to net metering tariff provisions; and
4. The Company’s fulfillment of commitments made in the settlement of its 2015 electric base rate proceeding concerning the interconnection of distributed generation, and other existing interconnection improvements discussed in the direct testimony of PECO witnesses Schlessinger and Innocenzo.

PECO Answer to RESA at 7.

On May 24, 2018, RESA filed a Reply to PECO’s Answer. RESA maintained that it has met the standards for intervention. RESA further maintained that it has a substantial and direct interest in this proceeding and the outcome of the proceeding will be binding on RESA and its members serving in PECO’s service territory. RESA asserted that its intervention is in the public interest as its participation will provide unique perspectives and insights of a trade association representing multiple EGSs and not the specific view of any individual member. RESA further asserted that it is necessary for it to have a full and fair opportunity to avail itself of the discovery process to determine the full scope of issues that may directly impact RESA and to bring those issues to the attention of the Commission as appropriate in the context of any testimony RESA elects to submit. RESA Reply at 3.

RESA explained that it is a trade association that includes EGSs, many of whom are Pennsylvania licensed EGSs authorized to sell electric energy in the markets of Pennsylvania’s major EDCs, including PECO’s service territory. RESA argued that PECO’s distribution rate case potentially presents issues that may directly impact the functioning of Pennsylvania’s competitive retail energy market which is at the very core of its interests. RESA noted that, beyond PECO’s case-in-chief, other parties may raise issues that directly impact RESA, and limiting the scope of RESA’s intervention at this stage denies RESA the opportunity to respond to the relevant proposals of the other parties. RESA further argues that this would also deny the Commission a full record that includes all relevant viewpoints to rely upon in making its final decision in this proceeding. Accordingly, RESA asserted that its substantial and direct interest in this proceeding satisfies the standards to grant RESA’s Petition to Intervene without restrictions. RESA Reply at 3-4.

RESA further argued that PECO has not identified a valid basis for restricting RESA’s participation in this proceeding. RESA noted that it specifically identified in its Petition the issue of “PECO’s initiatives to improve the direct billing relationship it has with its distribution customers.” In response to PECO’s claims that RESA should be precluded from participating in the topic of PECO’s billing relationship with its distribution customers because the Commission has initiated an *en banc* proceeding to consider SCB and because RESA has submitted comments on the “direct billing relationship” between EDCs and their customers in the SCB proceeding, RESA noted that it didn’t even mention or refer to SCB in its Petition to Intervene. RESA noted that it stated in its Petition that it is concerned with “PECO’s initiatives to improve the direct billing relationship it has with its distribution customers.” RESA specifically noted that PECO identified numerous initiatives to improve its direct relationship with customers in its rate case filing but has not demonstrated a single legitimate reason as to why RESA should be precluded from weighing in on these initiatives. Moreover, RESA asserted that it is concerned with the proper allocation of the costs associated with PECO’s billing initiatives as the recovery of costs associated with those initiatives could potentially impact the retail market and the ability of EGSs to offer competitive products in PECO’s service territory. RESA argued that it should not be prohibited from providing insight on these issues. RESA Reply at 5-6.

In response to PECO’s request to limit RESA’s participation on the issue of PECO’s “proposals to streamline the interconnection process for distributed generation technologies” to whether PECO fulfilled its “commitments made in the settlement of its 2015 electric base rate proceeding concerning the interconnection of distributed generation and other existing interconnection improvements,” RESA argued that PECO is again attempting to limit the scope of RESA’s participation in this proceeding without a legitimate, valid basis. RESA asserted that the interconnection process PECO seeks to have approved by the Commission as a part of this proceeding is of significant interest to it and limiting its’ ability to review this issue to prior PECO commitments is an unreasonable narrowing of an issue that will deprive the Commission of the benefit of RESA’s perspective. Accordingly, RESA requests that the Commission grant its Petition to Intervene without limitation. RESA Reply at 6-7.

In this instance, PECO is seeking to limit the scope of RESA’s intervention in this proceeding to the issues identified in its Answer. PECO did not indicate that it is seeking to prevent RESA’s intervention entirely. As RESA’s Petition to Intervene is unopposed, we find that RESA has established standing to intervene in this base rate case, and their intervention will be granted.

Regarding PECO’s request to limit the scope of RESA’s intervention in this proceeding to the issues identified in its Answer, we will deny that request. The Commission, in its April 19, 2018, Order, instituted an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase. By that same Order, the Commission also directed that the investigation include consideration of the lawfulness, justness and reasonableness of PECO’s existing rates, rules, and regulations. With the Commission Order in mind, the issues raised by RESA in its Petition to Intervene appear to fall within the scope of the issues to be considered in this proceeding.

Furthermore, PECO is not without remedy as this case proceeds. For example, in the event that RESA serves a discovery request that falls outside the scope of this proceeding, PECO may file an objection in accordance with Commission regulations. Likewise, in the event that RESA serves testimony that raises an issue that is irrelevant or beyond the scope of this proceeding, PECO may file a Motion to Strike that testimony.

Accordingly, we will grant RESA’s Petition to Intervene in this proceeding without limitation.

**NRG**

In its Petition to Intervene, NRG indicated that it has four affiliate companies[[5]](#footnote-5) that are licensed by the Commission as EGSs and are providing electricity or electric generation supply services to retail customers in PECO’s service territory. NRG asserted that, due to its four affiliates supplying electric generation services to retail customers in PECO’s service territory, it has a substantial and direct interest in participating in this proceeding.

NRG identified the following issues that it wants to pursue through the review of discovery responses:

1. PECO’s proposed Electric Vehicle Direct Current Fast Charger Pilot Rider;
2. Several initiatives that PECO has implemented to improve the direct billing relationship it has with its distribution customers;
3. Proposed modifications to net metering eligibility;
4. PECO’s proposed allocation of costs to distribution functions that are related to the provision of default service and should be removed from distribution charges; and
5. Proposals to streamline the interconnection process for distributed generation technologies.

NRG submitted that no other party can or will adequately protect its interests in this proceeding. NRG asserted that, as its retail companies are actively participating as EGSs in PECO’s service territory, there are barriers to competition presented when PECO takes measures to strengthen its role as the customer’s “energy company” and offers ratepayer-subsidized value-added services to its distribution customers that are more appropriately delivered by private competitive markets. NRG further asserted that, to the extent that PECO is allocating costs to distribution functions that are related to the provision of default service, its price to compare does not reflect such costs and is artificially low, making it more difficult for NRG’s affiliate EGSs to present competitive offers to consumers.

NRG maintained that, through its exploration of the issues it has identified and others that it addresses as additional information is reviewed in this proceeding, the Commission can best serve the public interest through the development of a more complete record.

On May 16, 2018, PECO filed the Answer of PECO Energy Company to the Petition to Intervene of NRG Energy, Inc. PECO objected, generally, on the grounds that NRG is attempting to interject into this case, which is statutorily limited in subject matter and time, alleged interests that should not be considered in this electrical base rate proceeding. PECO Answer to NRG at 1. PECO indicated that these issues include PECO’s “initiatives to improve the direct billing relationship [PECO] has with its distribution customers” and PECO’s “measures to strengthen its role as the customer’s ‘energy company,’” issues that PECO noted NRG is already addressing in the SCB *en banc* proceeding initiated by the Commission.[[6]](#footnote-6) PECO asserted that NRG is already offering its views and arguments on these issues in the SCB proceeding. PECO Answer to NRG at 4. PECO maintained that permitting NRG to pursue these same issues with a smaller group of stakeholders and one EDC is likely to lead to results that are inconsistent with the *en banc* proceeding, especially in light of the seven-month statutory deadline for the issuance of a final order set out in Section 1308(d).[[7]](#footnote-7) PECO Answer to NRG at 4-5.

Moreover, PECO averred that the issues NRG asserts it wants to examine in this proceeding are identical to the issues presented by RESA in its Petition to Intervene. Since NRG is a member of RESA, PECO has requested that we either deny NRG’s Petition to Intervene in this proceeding, or limit NRG’s discovery to requests that are not duplicative of discovery by RESA. PECO Answer to NRG at 1-2.

In response to the NRG identified issue regarding “proposals to streamline the interconnection process for distributed generation technologies,” PECO noted that its witness, Mr. Schlessinger, testified that PECO is proposing certain clarifying changes to net metering provisions, and also described PECO’s fulfillment of its commitment to revise terms and conditions for the interconnection of customer-sited distributed generation in accordance with the settlement of its 2015 electric base rate proceeding, as well as, improvements PECO has already implemented to streamline the distributed generation interconnection process. PECO further noted that it has not made any “proposals” to further streamline the interconnection process for distributed generation in this proceeding. PECO asserted that, to the extent NRG is seeking to introduce new proposals, it does not believe that such interests provide a valid basis for intervention in this distribution base rate proceeding. PECO maintained that the challenges of creating a complete and well-developed evidentiary record on the issues that are properly within the scope of this base rate proceeding should not be heightened by interjecting entirely new proposals relating to distributed generation that will not receive proper consideration under a litigation schedule that was not designed or intended to accommodate them. PECO Answer to NRG at 6.

Lastly, PECO indicated that the specific issues NRG wants to examine in this proceeding are identical, nearly word-for-word, to the issues presented in the Petition to Intervene of RESA, whose membership includes NRG. PECO Answer to NRG at 1, 6. PECO has requested that, in the event we determine that NRG’s interests are not sufficiently represented by RESA in this proceeding, we limit NRG’s participation to the same issues that PECO has proposed for RESA:

1. PECO’s proposed Electric Vehicle Direct Current Fast Charger Pilot Rider;
2. The allocation of costs between PECO’s distribution and default service functions;
3. PECO’s proposed changes to net metering tariff provisions; and
4. The Company’s fulfillment of commitments made in the settlement of its 2015 electric base rate proceeding concerning the interconnection of distributed generation, and other existing interconnection improvements discussed in the direct testimony of PECO witnesses Schlessinger and Innocenzo.

Additionally, due to NRG’s membership in RESA, PECO has requested that we limit NRG’s discovery in this proceeding to discovery that does not duplicate discovery by RESA. PECO Answer to NRG at 6-7.

On May 23, 2018, NRG filed a Reply to PECO’s Answer. NRG maintained that it has met the legal standards for intervention. NRG reiterated that it has four affiliate companies that are licensed by the Commission as EGSs and providing electricity or electric generation supply services to retail customers in PECO’s service territory. As a result of these activities, NRG maintained that it has a substantial and direct interest in this proceeding, through which distribution charges will be set and other PECO proposals will be examined. NRG asserted that through exploration of the issues that have been preliminarily identified by NRG and others that it addresses as additional information is reviewed in this proceeding, the Commission can best serve the public interest through the development of a more complete record. NRG Reply at 3.

Additionally, NRG asserted that RESA does not represent NRG, and that NRG’s membership in RESA provides no assurance that NRG’s interests will be sufficiently represented through RESA’s participation in this proceeding. NRG noted that RESA, in its Petition to Intervene at page 1, footnote 1, indicated that the comments expressed in the filing represent the position of RESA but may not represent the views of any particular member of the association. NRG further noted that RESA explained in its Petition to Intervene at paragraph 6 that the association’s interests are unique from and not adequately represented by other parties that may seek to intervene, including individual EGSs, because RESA represents the interests of a diverse and broad group of EGSs in general, and not the interests of any individual member. Accordingly, NRG asserted that, given its role of serving retail customers in PECO’s service territory through four affiliate EGSs, NRG is entitled to pursue its own issues with the assistance of its consultants, and to advance its own positions without having to negotiate or collaborate with other EGSs who are members of RESA. NRG Reply at 4-5.

NRG further asserted that it is premature to limit the issues NRG may raise. NRG noted that PECO did not cite any case law in support of its position that the scope of NRG’s participation in this proceeding should be so narrowly and unduly restricted, or restricted at all at this time. NRG noted that, although PECO believes that NRG’s interest in this proceeding is to explore the implementation of SCB, SCB did not appear in its Petition to Intervene or Prehearing Memorandum. NRG explained that, and as noted in its Petition to Intervene, it is concerned that PECO’s billing initiatives, which appear to be subsidized by distribution charges imposed on ratepayers, are further exacerbating the situation caused by PECO’s monopoly billing status. NRG maintained that it should not be prohibited from examining these issues, particularly in light of the potential subsidization and their possible negative effect on the retail market. NRG argued that, to the extent that it serves discovery or makes proposals in testimony that PECO believes exceed the scope of a base rate proceeding, PECO should raise its objections at that time. NRG asserted that the mere mention of an issue in a Petition to Intervene does not make it “evidence” or justify the exclusion of entire topics from discovery or testimony. NRG Reply at 6-7.

Lastly, NRG argued that it is premature to limit NRG’s discovery rights. NRG noted that Commission regulations allow parties to obtain discovery regarding any matter which is relevant to the subject matter involved in the pending action, and that the information must be produced if it appears reasonably calculated to lead to the discovery of admissible evidence.[[8]](#footnote-8) NRG further noted that there is no provision in the regulations to prohibit a party from asking questions that have already been posed by another party. NRG posited that, to the extent that NRG serves discovery requests that PECO views as being duplicative of discovery propounded by RESA, PECO has the option of serving objections based on any of the grounds set forth in the Commission’s regulations. NRG argued that the mere possibility that NRG might ask a question that PECO views as duplicative of a RESA discovery request does not support taking preemptive action now.

Essentially, PECO has objected to NRG’s intervention on the basis that NRG is a member of RESA and RESA has raised identical issues in this proceeding. However, NRG was correct to point out that RESA, in footnote 1 in its Petition to Intervene, stated that “[t]he comments expressed in this filing represent the position of [RESA] as an organization but may not represent the views of any particular member of the Association.” RESA Petition to Intervene at 1. Through this representation, RESA acknowledges that its interests may not align with NRG’s interests in this proceeding. Thus, denying NRG’s intervention on the basis that it is a member of RESA could lead to the preclusion of and/or prejudice to NRG’s interests in this case. Moreover, we are satisfied that NRG provided sufficient information regarding its members and their interests to satisfy the requirements of 52 Pa.Code § 5.72. Accordingly, we will grant NRG’s Petition to Intervene.

Regarding PECO’s request that we limit NRG’s discovery in this proceeding to requests that are non-duplicative of discovery by RESA and relate only to the issues identified in its Answer, we will deny that request. As we previously noted regarding RESA’s Petition to Intervene, the Commission, in its April 19, 2018, Order, instituted an investigation into the lawfulness, justness, and reasonableness of the proposed rate increase. By that same Order, the Commission also directed that the investigation include consideration of the lawfulness, justness and reasonableness of PECO’s existing rates, rules, and regulations. With the Commission Order in mind, the issues raised by NRG in its Petition to Intervene appear to fall within the scope of the issues to be considered in this proceeding. In the event that NRG serves a discovery request that falls outside the scope of this proceeding or would constitute a violation of Commission regulations, PECO may file an objection in accordance with Commission regulations. In the event that RESA serves testimony that raises an issue that is irrelevant or beyond the scope of this proceeding, PECO may file a Motion to Strike that testimony.

Accordingly, we will grant NRG’s Petition to Intervene in this proceeding without limitation.

# ORDER

THERERFORE,

IT IS ORDERED:

1. That the Petition to Intervene filed by Retail Energy Supply Association (RESA) on May 4, 2018 is granted without limitation; and
2. That the Petition to Intervene filed by NRG Energy, Inc. (NRG) on May 4, 2018, is granted without limitation.

Date: June 1, 2018 /s/

Christopher P. Pell

Deputy Chief Administrative Law Judge

/s/

F. Joseph Brady

Administrative Law Judge

Pennsylvania Public Utility Commission v. PECO Energy Company

Docket Number R-2018-3000164

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1. PECO’s proposed rate increase reflects $71 million savings in 2019 from changes in the Federal Income Tax Law, effective January 1, 2018. [↑](#footnote-ref-1)
2. Due to a conflict, Joseph Vullo, Esq., counsel for CAAP, was excused from attending the Prehearing Conference. [↑](#footnote-ref-2)
3. See Notice of *En Banc* Hearing on Supplier Consolidated Billing, Docket No. M-2018-2645254 (Notice issued March 27, 2018). [↑](#footnote-ref-3)
4. 66 Pa.C.S. § 1308(d). [↑](#footnote-ref-4)
5. The four EGSs are *Reliant Energy Northeast LLC d/b/a NRG Home and NRG Business*, *Green Mountain Energy Company*, *Energy Plus Holding LLC*, and *Independence Energy Group d/b/a Cirro Energy*. [↑](#footnote-ref-5)
6. See Notice of *En Banc* Hearing on Supplier Consolidated Billing, Docket No. M-2018-2645254 (Notice issued March 27, 2018). [↑](#footnote-ref-6)
7. 66 Pa.C.S. § 1308(d). [↑](#footnote-ref-7)
8. 52 Pa. Code § 5.321(c). [↑](#footnote-ref-8)