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

West Norriton Township : C-2018-3003149

:

v. :

:

PECO Energy Company :

# **PREHEARING ORDER #4**

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.

By Prehearing Order #2 dated June 1, 2018, we granted NRG’s and RESA’s Petitions to Intervene.

On June 12, 2018, PECO filed the Motion of PECO Energy Company for Leave to File the Supplemental Direct Testimony of Richard A. Schlesinger.

By Prehearing Order #3 dated June 26, 2018, we granted PECO’s Motion.

On June 26, 2018, West Norriton Township filed a formal Complaint. The Complaint was docketed at C-2018-3003149.

The Commission’s regulations concerning representation and notice of appearance are set forth in 52 Pa.Code §§ 1.21-1.24. The Commission’s regulations require partnerships, corporations, other business organizations, trusts, associations, agencies, political subdivisions and government entities to be represented by attorneys in adversarial proceedings before the Commission. 52 Pa.Code §§ 1.21-1.23.

The Commission regulations at 52 Pa.Code §§ 1.21-1.24 provide in pertinent part:

**§ 1.21. Appearance**

(a) Individuals may represent themselves.

(b) Except as provided in subsection (a), persons in adversarial proceedings shall be represented in accordance with § 1.22 (relating to appearance by attorneys and legal intern). For purposes of this section, any request for a general rate increase under §1307(f) or §1308(d) of the act (relating to sliding scale of rates; adjustments; and voluntary changes in rates) shall be considered to be an adversarial proceeding.

**§ 1.24. Notice of appearance or withdrawal.**

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(b) *Attorneys*.

(1) *Appearance by initial pleading*. An attorney who signs an initial pleading in a representative capacity shall be considered to have entered an appearance in that proceeding.

(2) *Appearance in all other instances*. An attorney shall file with the Secretary a written notice of appearance.

(i) *Content of notice*. Initial pleadings, entries of appearance and notices of withdrawal must include:

(A) The attorney’s name, mailing address and electronic mailing address, if available.

(B) Pennsylvania attorney identification number or, if not licensed in this Commonwealth, identification of the jurisdictions in which the attorney is licensed to practice law.

(C) Telephone number and telefacsimile number, if applicable.

(D) The name and address of the person represented.

(ii) *Filing*.

(A) *Appearance*. The notice of appearance shall be served on the parties to the proceeding, and a certificate of service shall be filed with the Secretary.

In 52 Pa.Code § 1.8, the term “adversarial proceeding” is defined as “[a] proceeding initiated by a person to seek authority, approvals, tariff changes, enforcement, fines, remedies or other relief from the Commission which is contested by one or more other persons and which will be decided on the basis of a formal record.” Additionally, the term “person” is defined as “individuals, corporations, partnerships, associations, joint ventures, other business organizations, trusts, trustees, legal representatives, receivers, agencies, governmental entities, municipalities or other political subdivisions.” *Id*.

This matter meets the definition of an “adversarial proceeding” as PECO’s requested rate increase has been contested by a number of parties. West Norriton Township is a governmental entity and as such, the Commission’s regulations require that it be represented by an attorney in this proceeding.[[3]](#footnote-3) It is not apparent from West Norriton Township’s Complaint that it is represented by an attorney in this matter. It is important to note that the absence of an attorney where one is required actually deprives the forum, the Commission in this instance, of jurisdiction to adjudicate the matter.[[4]](#footnote-4)

# ORDER

THERERFORE,

IT IS ORDERED:

1. That West Norriton Township have an attorney licensed to practice law in the Commonwealth of Pennsylvania enter an appearance to represent it in this proceeding on or before the close of business on July 17, 2018; and
2. That if West Norriton Township fails to have an attorney licensed to practice law in the Commonwealth of Pennsylvania enter an appearance to represent it in this proceeding on or before the close of business on July 17, 2018, the Complaint shall be subject to dismissal.

Date: July 3, 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. We note that paragraph 6 of our April 20, 2018, Prehearing Conference Order advised the parties that if you are a partnership, corporation, trust, association, or governmental entity or subdivision, you must have an attorney licensed to practice law in the Commonwealth of Pennsylvania, or admitted *Pro Hac Vice*, represent you in this proceeding. [↑](#footnote-ref-3)
4. *See McCain v. Curione, Pa. Board of Probation and Parole*, 527 A.2d 591 (Pa.Cmwlth. 1987) (Commonwealth Court was without jurisdiction to consider arguments and motions); *Spirit of the Avenger Ministriese v. Commonwealth*, 767 A.2d 1130 (Pa.Cmwlth.Ct. 2001) (appeal quashed because the court was without jurisdiction to consider the claims raised by a person not licensed to practice law in Pennsylvania). [↑](#footnote-ref-4)