**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held August 8, 2019

Commissioners Present:

Gladys Brown Dutrieuille, Chairman

David W. Sweet, Vice Chairman

Norman J. Kennard

Andrew G. Place

John F. Coleman, Jr.

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| PECO Energy Company’s Pilot Plan for an Advance Payments Program and Petition for Temporary Waiver of Portions of the Commission’s Regulations with Respect to that Plan | P-2016-2573023 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Stay (Petition for Stay) filed on July 3, 2019, by the Coalition for Affordable Utility Services and Energy Efficiency (CAUSE-PA) and Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al*.) (collectively, CAUSE-PA and TURN *et al*., the Joint Petitioners), seeking a stay of the Commission’s Opinion and Order entered June 18, 2019 (*June 18 Order*), relative to the above-captioned proceeding.

On July 3, 2019, the same date as the Petition for Stay was filed, the Joint Petitioners and the Office of Consumer Advocate (OCA) filed separate Petitions for Reconsideration of the *June 18 Order*.

On July 11, 2019, the Commission entered an Opinion and Order in the above-captioned proceeding (*July 11 Order*), granting reconsideration of the *June 18 Order*, within the meaning of Pa. R.A.P. Rule 1701(b)(3), pending review of, and consideration on, the merits of the Petitions for Reconsideration.

On July 15, 2019, PECO Energy Company (PECO), in relevant part, filed its Answer to the Petition for Stay, stating that it does not object to the requested stay of the *June 18 Order* until such time as the Commission enters an Order on Reconsideration that sets a new timeline for a future PECO compliance filing.

**Discussion**

**Legal Standards**

When considering petitions to stay the effect of Commission Orders, the Commission has adopted the standards set forth in *Pennsylvania Public Utility Commission v. Process Gas Consumers Group*, 502 Pa. 545, 467 A.2d 805 (1983) (*Process Gas*). To meet the standards set forth in *Process Gas*, a petitioner must:

1. Make a strong showing of likelihood to prevail on the merits;
2. Show that denial of relief will cause irreparable injury;
3. Show that the issuance of a stay will not substantially harm other interested parties in the proceedings; and
4. Show that the issuance of a stay will not adversely affect the public interest.

502 Pa. at 552-553, 467 A.2d at 808-809. The Court held that these criteria “[require] the Court to balance the interests of all parties, and the public where applicable, and [require] the applicant to demonstrate a probability of success on the merits.” *Id*. at 809. The Court also held that the applicant’s requirement to demonstrate a likelihood to prevail on the merits “should not be an inflexible rule” but, instead, “must be considered and weighed relative to the other three criteria.” *Id*. at n.8.

The Commission has previously concluded that, pursuant to the guidance in *Process Gas*, the likelihood “to prevail on the merits” is “not applicable” to a request for a stay directed to the Commission where the Commission has already had an opportunity to rule on the substantive facts at issue and such ruling is pending appeal (or reconsideration). *See* *Pa. PUC v. UGI Corp*., 57 Pa. P.U.C. 83, \*88-89 (1983); *see also Implementation of Act 40 of 2017, Petition of Cypress Creek Renewables, LLC for a Stay or Supersedeas of the Commission’s Final Implementation Order Entered May 3, 2018,* Docket No. M-2017-2631527, 2018 WL 3740734 (Opinion and Order entered August 2, 2018) (finding that “the first prong of the four-part test of whether a stay, requiring the petitioner to make a strong showing that he is likely to prevail on the merits, is applicable in a matter where the Commission has not had an opportunity to rule on the substantive facts at issue.”) Thus, “[I]n deciding whether to stay one of our orders pending appeal, this Commission should not indulge in a further review of the case. Rather, this Commission should concentrate solely on the effect our order will have pending appeal.” *See Pa. PUC v. UGI Corp*., 57 Pa. P.U.C. at \*89.

Under appropriate circumstance and depending upon the specific facts in each individual case, we may decide to stay an order even though all the aforementioned criteria may not be met. *Id*.

**Disposition**

In the *June 18 Order*, PECO was permitted to file a voluntary pilot plan in compliance with the *June 18 Order* which would establish a modified prepaid metering pilot program consistent with the modifications set forth in the *June 18 Order*. If the modifications set forth in the *June 18 Order* were acceptable to PECO, PECO was ordered to file its voluntary compliance filing within sixty (60) days of the *June 18 Order*, or by August 19, 2019.[[1]](#footnote-2) *June 18 Order* at 87, 89, Ordering Paragraph No. 7. However, should PECO decide not to file a compliance plan within this sixty-day timeframe, we ordered that the docket be closed by Secretarial Letter. *June 18 Order* at 91, Ordering Paragraph No. 9.

The two Petitions for Reconsideration filed on July 3, 2019, by the OCA and the Joint Petitioners, as noted above, address numerous pilot program components that need to be addressed in PECO’s compliance filing. The Commission will not have reviewed and resolved those substantive issues in time for PECO to integrate the Commission’s forthcoming Order on Reconsideration and still make a compliance filing by August 19, 2019. Therefore, in order to make best use of the time and resources of all Parties and the Commission in the instant case, we shall stay the implementation of the *June 18 Order* until such time that a final Order is entered that resolves the issues raised in the Petitions for Reconsideration and potentially establishes a new timeline for a future PECO compliance filing.

We find that the issuance of the stay, until such time an Order on Reconsideration is entered in this docket, will avoid potential irreparable harm to PECO’s residential customers and will not substantially harm the interests of the Parties in this proceeding or the public.

**Conclusion**

In accordance with the foregoing discussion, we are persuaded that a stay of the Opinion and Order entered June 18, 2019, in Docket No. P-2016-2573023, is warranted, until such time an Order on Reconsideration is entered in this docket; **THEREFORE,**

**IT IS ORDERED:** That the Petition for Stay filed on July 3, 2019 by CAUSE-PA and TURN *et al*., is hereby granted, until such time an Order on Reconsideration is entered in Docket No. P-2016-2573023.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: August 8, 2019

ORDER ENTERED: August 8, 2019

1. Since August 17, 2019, which is sixty days from the date of entry of the *June 18 Order*, falls on a Saturday, the deadline moves to the following business day or Monday, August 19, 2019. 52 Pa. Code § 1.12(a). [↑](#footnote-ref-2)