**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission : R-2021-3024601

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:

Office of Consumer Advocate : C-2021-3025195

Office of Small Business Advocate : C-2021-3025083

Philadelphia Area Industrial Energy :

Users Group : C-2021-3025657

:

v. :

:

PECO Energy Company-Electric Division :

PREHEARING ORDER #1

On March 30, 2021, PECO Energy Company-Electric Division (PECO or Company) pursuant to Section 1308 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 1308, filed a proposed Tariff Electric – Pa. P.U.C. No. 7 (Tariff No. 7). Tariff No. 7 sets forth proposed rates designed to produce an increase in the Company’s annual distribution revenue of approximately $246 million based on data for a fully projected future test year ending December 31, 2022. This request would result in an increase in residential customer’s bills using 700 kWh from $100.29 to $109.97/month (9.65%). Tariff No. 7 contains revisions in, additions to, and deletions from, certain Rules and Regulations, rate schedules and riders in the Company’s currently effective tariff, and an effective date of May 29, 2021.

On May 6, 2021, the Pennsylvania Public Utility Commission (Commission or PUC) ordered the proposed Tariff Electric- Pa. P.U.C. No. 7 suspended by operation of law until December 29, 2021, unless otherwise directed by Order of the Commission.

The Commission’s Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance. Three formal complaints have been filed: The Office of Consumer Advocate (OCA); the Office of Small Business Advocate (OSBA); and the Philadelphia Area Industrial Energy Users Group (PAIEUG).

In addition, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), Tenant Union Representative Network (TURN), the Clean Energy Advocates, Calpine Retail Holdings LLC (Calpine), Retail Energy Supply Association and NRG Energy, Inc. (RESA/NRG) and the National Railroad Passenger Corporation (Amtrak) filed Petitions seeking to intervene in this proceeding.[[1]](#footnote-1)

The matter was assigned to the Office of Administrative Law Judge (OALJ), Administrative Law Judge Marta Guhl, to schedule such hearings as necessary to develop a record in this proceeding.

A Prehearing Conference Order was issued on May 6, 2021, scheduling a telephonic prehearing conference on Tuesday, May 11, 2021, at 10:00 a.m. The Prehearing conference was held as scheduled. Participating were:

PECO Jennedy Johnson, Esq.

OCA Laura Antinucci, Esq.

I&E Carrie Wright, Esq

OSBA Erin Fure, Esq.

PAIEUG Teresa Harrold, Esq.

TURN Josie Pickens, Esq.

CAUSE-PA John Sweet, Esq.

AMTRAK Robert Weishaar, Jr., Esq.

CALPINE John Lushis, Esq.

James Laskey, Esq.

CLEAN ENERGY ADVOCATES Devin McDougall, Esq.

RESA/NRG Sarah Stoner, Esq.

This order sets forth the procedural matters addressed at the prehearing conference.

ORDER

THEREFORE,

IT IS ORDERED:

1. That pursuant to 52 Pa. Code §§ 5.32 and 5.61, complaints filed in the instant matter are considered docketed with the proceeding and need not be consolidated with the Commission’s investigation or answered by Respondent. The following Complaints have been filed:

Office of Consumer Advocate C-2021- 3025195

Office of Small Business Advocate C-2021- 3025083

Philadelphia Area Industrial Energy

User Group C-2021- 3025657

2. That the Petition to Intervene of CAUSE-PA filed on April 12, 2021, is granted.

3. That the Petition to Intervene of TURN filed on April 22, 2021, is granted.

4. That the Petition to Intervene of Amtrak filed on May 10, 2021, is granted.

5. That the Petition to Intervene of Calpine filed on May 10, 2021, is granted.

6. That the Petition to Intervene of the Clean Energy Advocates filed on May 10, 2021, is granted.

7. That the Petition to Intervene of RESA/NRG filed on May 10, 2021, is granted.

8. That the parties of record as of this date are PECO, I&E, OCA, OSBA, PAIEUG, CAUSE-PA, TURN, RESA/NRG, the Clean Energy Advocates, Amtrak, and Calpine.

9. That the Motion for *Pro Hac Vice* Admission of Cody T. Murphey, Esquire, filed by RESA/NRG on May 10, 2021, is granted.

10. That parties to be officially served are listed on the attached service list. Please direct any changes, corrections or additions to Athena DelVillar, Legal Assistant, at [sdelvillar@pa.gov](mailto:sdelvillar@pa.gov).

11. That e-mail distribution list is as follows. Any changes or corrections should be communicated to me, via e-mail (mguhl@pa.gov) as soon as possible. Please include my legal assistant, Ms. Athena DelVillar (sdelvillar@pa.gov), on anything you send to me.

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|  |  |  |
| ALJ | ALJ Guhl | mguhl@pa.gov |
| ALJ | Athena DelVillar | sdelvillar@pa.gov |

12. That any Complaints filed by customers and other parties that are not yet docketed as a result of the Governor’s COVID-19 Proclamation of Disaster Emergency will be addressed when those Complaints are docketed and available.

13. That parties may arrange service among themselves as they agree. Pursuant to 52 Pa.Code § 5.154(c), the parties are permitted without further order to limit the service of documents to parties who indicate that they do not wish to be served with such documents. Parties should review the Pre-hearing Memoranda and comply with the Service of Documents requests therein.

14. That parties may serve documents electronically by 4:30 p.m. to meet any required due date, with hard copy to follow by regular first-class mail.

15. That pursuant to 52 Pa.Code § 5.342(d), the Commission’s regulations relating to discovery are modified as proposed by PECO and upon agreement of the parties as follows:

(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 Judge 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 Judge, although a certificate of service may be filed with the Commission’s Secretary.

(10) The parties are reminded that 52 Pa.Code § 1.35(c)(1) provides that a signature on a document filed with the Commission constitutes a certificate by the individual that the document is “well grounded in fact and is warranted by existing law” and is not “interposed for an improper purpose, such as to harass or cause unnecessary delay or needless increase in the cost of litigation,” and that violations are subject to the sanctions listed in 52 Pa.Code § 1.35(c)(2).

(11) The parties are directed to cooperate and exchange information on an informal basis. The parties are encouraged to resolve discovery issues among themselves; motions to compel should be filed only after such efforts have failed. All motions to compel must contain a certification of counsel of the informal discovery undertaken and their efforts to resolve their discovery disputes informally. In addition, the parties are urged to use alternative means of discovery such as discovery conferences or depositions. There are limitations on discovery and sanctions for abuse of the discovery process. 52 Pa.Code §§ 5.361, 5.371-5.372.

16. That the following schedule is adopted[[2]](#footnote-2):

Public Input Hearings June 8, 2021, 1pm & 6 pm

June 9, 2021, 1pm &6pm

Non-Company Direct Testimony June 28, 2021

Rebuttal Testimony July 22, 2021

Subrebuttal Testimony August 5, 2021

Oral Rejoinder Testimony

and Hearings August 11-13, 2021

Record Closes August 13, 2021

Main Briefs September 3, 2021

Reply Briefs September 13, 2021

17. That the parties comply with the Commission’s requirements for the preparation and service of written testimony. 52 Pa.Code § 5.412. These include, but are not limited to, the requirement that written testimony must be accompanied by all exhibits to which it relates. Written testimony shall be marked with numerical, sequential statement numbers. Oral direct, rebuttal or surrebuttal testimony or witnesses not identified in a party’s prehearing memorandum shall not be permitted, except by permission for good cause.

18. PECO filed a Motion for Protective Order on May 17, 2021. Any responses to the Motion must be filed by Monday, May 24, 2021. Parties may email the presiding officer if they have no objection.

19. Walmart filed a Petition to Intervene on May 14, 2021. Any response to the Petition must be filed by Monday, May 24, 2021. Parties may email the presiding officer if they have no objection.

20. ChargePoint, Inc. filed a Petition to Intervene and Motion for Admission *Pro Hac Vice* on May 18, 2021. Any response to the Petition and Motion must be filed by Monday, May 24, 2021. Parties may email the presiding officer if they have no objection.

21. That any current parties must file any Motions for Admission *Pro Hac Vice* for counsel by Wednesday, May 26, 2021.

22. That the parties shall comply with the provisions of 52 Pa.Code § 5.243(e)which prohibit the introduction of evidence during rebuttal which should have been included in the party’s case-in-chief or which substantially varies from the party’s case-in-chief, unless the party is introducing evidence in support of a proposed settlement.

23. That the evidentiary hearings will be held telephonically.

24. That the parties shall stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties and conserve precious administrative hearing resources. 52 Pa.Code §§ 5.232 and 5.234. All stipulations entered into by the parties shall be reduced to writing, signed by the parties to be bound thereby, and moved into the record during the hearings in this case. An exception to this requirement may occur when circumstances of time and expediency warrant. If so, an oral presentation of a stipulation is permissible, if it is followed by a reduction to writing as herein directed.

25. That the evidentiary hearings in this matter constitute formal legal proceedings and will be conducted in accordance with the Commission’s Rules of Administrative Practice and Procedure, as well as the rules of evidence as applied to administrative hearings.

26. That parties serving pre-served testimony in proceedings pending before the Commission pursuant to 52 Pa.Code § 5.412(f) shall be required, within thirty (30) days after the final hearing in an adjudicatory proceeding to either eFile with or provide to the Secretary’s Bureau a Compact Disc (CD) containing all testimony furnished to the court reporter during the proceeding, consistent with the Commission’s Implementation Order, dated January 10, 2013, at Docket No. M-2012-2331973.

27. Motions with respect to objections to written testimony must be presented in writing no later than three days prior to the date the witness sponsoring the testimony is scheduled to testify. Answers to such motions may be filed within three days or sooner if circumstances warrant. Oral motions other than for good cause will not be accepted.

28. That the parties must comply with 52 Pa.Code §§5.501, *et* *seq*., regarding the preparation and filing of briefs. Service can be made electronically by no later than 4:30 p.m. on the dates listed, with a hard copy received in hand on the next business day. Parties are directed to e-mail to the undersigned a copy of as-filed briefs in ADOBE or other compatible PDF format in addition to a WORD-formatted document. The format of the briefs served electronically on the parties may be as requested by the parties.

29. Rate tables submitted by the parties MUST be in a uniform format consistent with the Commission’s Bureau of Technical Utility Services (TUS) template tables, which will be provided in a separate email from the presiding officer.

30. That all main briefs, regardless of length, must contain:

(1) A table of contents;[[3]](#footnote-3)

(2) A history of the proceeding;

(3) A discussion;

(4) Proposed findings of facts (with record citations to transcript pages, written testimony pages or exhibits where supporting evidence appears);

(5) Proposed conclusions of law (with citations to supporting statutes, regulations or relevant case law); and

(6) Proposed ordering paragraphs specifically identifying the relief sought.

Note: 52 Pa.Code § 5.501(e) requires that “Briefs shall be as concise as possible.” Page limitations on briefs will be discussed on or before the last day of hearing.

31. That if a party does not file a reply brief, it will be assumed that the party does not dispute the assertions, contentions or arguments made by the other parties in their main briefs. While it is not necessary in a reply brief to repeat a particular argument or discussion contained in the main brief, the reply brief should note where the responsive argument is located in the main brief and how it responds to the other parties’ assertions, contentions, or arguments.

32. That any brief not filed and served on or before the date fixed therefore will not be accepted for filing, except by permission for good cause.

33. That the parties are to confer among themselves in an attempt to resolve all or some of the issues associated with these Complaints. The parties are reminded it is the Commission’s policy to encourage settlements. 52 Pa.Code § 5.231(a). The parties are strongly urged to seriously explore this possibility. A joint settlement petition executed by representatives of all parties to be bound thereby, together with statements in support of settlement by all signatory parties, must be filed with the Secretary for the Commission and served on the undersigned.

34. That any provision of this prehearing order may be modified upon motion and good cause shown by any party in interest in accordance with 52 Pa.Code § 5.223(a).

Date: May 20, 2021 /s/

Marta Guhl

Administrative Law Judge

**R-2021-3024601 - PA PUBLIC UTILITY COMMISSION v. PECO ENERGY COMPANY -ELECTRIC DIVISION**

*Revised: 5/19/21*

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1. Walmart Inc. and ChargePoint Inc. filed Petitions to Intervene after the prehearing conference held on May 11, 2021. [↑](#footnote-ref-1)
2. Testimony shall not be filed with the Commission at the time of service, but parties may file a certificate of service. [↑](#footnote-ref-2)
3. In addition, each reply brief must contain a table of contents. All briefs must contain references to the record to support their arguments. [↑](#footnote-ref-3)