

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for	:	
Approval of Its Default Service Program for	:	P-2020-3019290
the Period From June 1, 2021 Through	:	
May 31, 2025	:	

ORDER REGARDING MOTION IN LIMINE

On March 13, 2020, PECO Energy Company (PECO or Company) filed a Petition requesting that the Commission approve its fifth Default Service Program in accordance with its responsibilities as the default service provider for its certificated service territory for the period from June 1, 2021 through May 31, 2025, following the expiration of its current default service program. This filing was made in accordance with the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2801 et seq. (the Competition Act), the Commission’s default service regulations at 52 Pa. Code §§ 54.181-54.189, and the Commission’s Policy Statement on Default Service at 52 Pa. Code §§ 69.1801-1817.

Notice of PECO’s Petition and Prehearing Conference was published in the *Pennsylvania Bulletin* on April 18, 2020, 50 Pa.B. 2164. A deadline of May 1, 2020 was established for the filing of formal protests, petitions to intervene and answers. The prehearing conference was set for May 5, 2020.

The prehearing conference was held as scheduled. Participating through counsel were the following parties: PECO, Office of Consumer Advocate (OCA), Office of Small Business Advocate (OSBA), Clean Air Council Sierra Club/PA Chapter, and Philadelphia Solar Energy Association (collectively, the Environmental Stakeholders), Pennsylvania Public Utility Commission is the Prehearing Memorandum of the Philadelphia Area Industrial Energy Users Group (PAIEUG), The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), Calpine Retail Holdings, LLC (Calpine), NRG Energy, Inc., Direct

Energy Services LLC, Interstate Gas Supply, Inc. d/b/a IGS Energy, Vistra Energy Corp., Shipley Choice LLC, ENGIE Resources LLC and WGL Energy Services, Inc. (collectively, the Electric Supplier Coalition), The Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (collectively, TURN *et al.*), and StateWise Energy Pennsylvania LLC and SFE Energy Pennsylvania, Inc. (collectively, StateWise).¹ After a lengthy discussion regarding public input hearings, including the use of videoconferencing technology in light of the COVID-19 pandemic, I established a target date of June 9, 2020, for a virtual public input hearing and adopted the procedural schedule proposed by the parties.

Failing to reach an agreement with the other parties about the topics that are appropriate for a public input hearing in a default service proceeding, on May 11, 2020, PECO filed a Motion in Limine (Motion) seeking to establish the scope of the public input hearing.

In its Motion, PECO maintains that the prehearing memoranda filed by the parties in this proceedings have led PECO to believe that one or more parties may seek to use the public input hearing to introduce testimony unrelated to default service, including issues related to the reliability of PECO's distribution system. Motion, p. 5, citing the Prehearing Conference Memorandum of Environmental Stakeholders, p. 1, and the Letter of Dr. Stephen Greenspan to Rosemary A. Chiavetta, Sec'y, Pa. Pub. Util. Comm'n, dated Apr. 29, 2020. PECO argues that these issues are not relevant to the standards that the Company's DSP V must meet, and requests that specific guidance be provided to the public regarding the issues that are within the scope of the upcoming public input hearing and those issues that are excluded from this proceeding.

According to PECO, specific guidance is appropriate in order to focus the public input hearing on the primary issue before the Commission, which is whether PECO's DSP V procurement and implementation plan is designed to obtain a "prudent mix" of wholesale contracts to provide adequate and reliable *default service* supply, not distribution service. Motion, pp. 5-6; *see also* 66 Pa. C.S. § 2807(e)(3.7) and 66 Pa. C.S. § 2807(e)(3.6). In PECO's view, customer concerns and personal opinions about PECO's distribution system are not relevant to the Competition Act's standard for approval of a procurement plan for default

¹ Representatives from POWER and Earth Quaker Action Team also attended the Prehearing Conference, but they declined the offer to become active parties in this proceeding.

service, nor are customer concerns regarding PECO's distribution base rates or those portions of PECO's tariff and distribution rules and conditions of service that are not part of this proceeding.

Next, PECO argues that the challenges of creating a complete and well-developed evidentiary record of the issues that are properly within the scope of this proceeding should not be heightened by interjecting extraneous issues that will complicate the hearing and lead to additional and unnecessary post-hearing litigation.

By e-mail dated May 11, 2020, the parties were instructed to file answers to PECO's Motion by no later than 10:00 a.m., on Wednesday, May 13, 2020. TURN et al, CAUSE-PA, and Environmental Stakeholders filed responses objecting to the Motion. OCA and OSBA filed responses in which they indicated that they did not object to PECO's Motion.

The Commission's regulations regarding public input hearings in rate proceedings stress the importance of "the complete airing of concerns expressed, or issues raised by consumers." 52 Pa. Code § 69.321(c). The Commission has stated that wide public participation results in "greater public acceptance and legitimacy of the result" of its proceedings. *In re Duquesne Light Co.*, R-00974104, (Order entered September 15, 2000); 2000 Pa.PUC LEXIS 251. For purposes of public input, testimony should be considered within the scope of the proceeding if that testimony is relevant, broadly construed, to the matters included in the notice. Members of the public should be encouraged to participate and should be given the leeway to express their concerns, even though they may not be as well-versed in public utility policy as the parties and their witnesses.

I agree with the parties objecting to the Motion that lengthy and complex topic limitations could deter public participation, which is contrary to the purpose of a public hearing and contrary to the Commission's policy of encouraging public participation. While I appreciate PECO's concerns about keeping the public's statements within the scope of this default service proceeding, I find that advance topic limitation is a premature and unnecessary measure.

The Company, the other parties, and the presiding officer have at our disposal several other tools that allow for the creation of a clear and complete record of a public input hearing. The public can be informed about the scope of the default service proceeding through the presiding officer's and counsel's statements at the hearing, while irrelevant testimony can be kept off the record through objections or the presiding officer's own actions on a case by case basis.

Considering the above, no topic limitations shall be included in the Public Input Hearing Notice in the above-captioned matter.

THEREFORE,

IT IS ORDERED:

1. That the Motion in Limine filed by PECO Energy Company on May 11, 2020, at Docket No. P-2020-3019290 is denied.

Date: May 19, 2020

/s/
Eranda Vero
Administrative Law Judge

P-2020-3019290 - PETITION OF PECO ENERGY COMPANY FOR APPROVAL OF ITS
DEFAULT SERVICE PLAN FOR THE PERIOD FROM JUNE 1, 2021 THROUGH
MAY 31, 2025

Revised 05/12/20

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