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May 11, 2020

VIA eFILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re: Petition of PECO Energy Company for Approval of Its Default Service Program for the Period from June 1, 2021 through May 31, 2025
Docket No. P-2020-3019290

Dear Secretary Chiavetta:

Attached please find **PECO Energy Company's Motion in Limine to Establish the Scope of the Public Input Hearing** in the above-captioned proceeding. As evidenced by the attached Certificate of Service, a copy is being served upon Administrative Law Judge Eranda Vero, and all parties of record.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Kenneth M. Kulak

KMK/tp
Enclosures

c: Per Certificate of Service (w/encls.)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF ITS :
DEFAULT SERVICE PROGRAM FOR : **Docket No. P-2020-3019290**
THE PERIOD FROM JUNE 1, 2021 :
THROUGH MAY 31, 2025 :

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of **PECO Energy Company's Motion in Limine to Establish the Scope of the Public Input Hearing** on the following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

VIA ELECTRONIC MAIL

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Dated: May 11, 2020

Counsel for PECO Energy Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF PECO ENERGY :
COMPANY FOR APPROVAL OF ITS :
DEFAULT SERVICE PROGRAM FOR : DOCKET NO. P-2020-3019290
THE PERIOD FROM JUNE 1, 2021 :
THROUGH MAY 31, 2025 :**

**PECO ENERGY COMPANY’S
MOTION *IN LIMINE* TO ESTABLISH
THE SCOPE OF THE PUBLIC INPUT HEARING**

I. INTRODUCTION AND OVERVIEW

Pursuant to 52 Pa. Code § 5.103, PECO Energy Company (“PECO” or the “Company”) hereby moves for an Order establishing the scope of the public input hearing proposed in the above-captioned proceeding. This proceeding is related to PECO’s proposed fifth Default Service Program (“DSP V”) in accordance with PECO’s responsibilities under the Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2801 et seq. (the “Competition Act”), as the default service provider for its certificated service territory for the period June 1, 2021 to May 31, 2025. Public input testimony in this default service proceeding, which is statutorily limited in subject matter and time,¹ should be limited to the topics identified in Appendix A to this Motion to facilitate both robust public participation and the efficient and effective development of the record.

II. RELEVANT BACKGROUND

Under the Competition Act, PECO, as a Pennsylvania electric distribution company (“EDC”) and default service provider, has a fundamental obligation to provide competitively

¹ See 66 Pa. C.S. § 2807(e)(3.6) (defining the standards for Pennsylvania Public Utility Commission (“Commission” or “PUC”) approval of a default service provider’s “competitive procurement plan” and setting a nine-month statutory timeline for the issuance of a final order in default service cases).

procured, reliable electric generation service to default service customers at the “least cost to customers over time.”² On March 13, 2020, PECO filed the above-captioned petition requesting that the Commission approve DSP V in accordance with 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.

On April 18, 2020, the *Pennsylvania Bulletin* published the Commission’s Notice setting a deadline for filing protests, complaints or petitions to intervene by May 1, 2020, and scheduling a Prehearing Conference for May 5, 2020, before Administrative Law Judge (“ALJ”) Eranda Vero. Petitions to Intervene were filed by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), the Philadelphia Area Industrial Energy Users Group (“PAIEUG”), Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (“TURN et al.”), Calpine Retail Holdings, LLC (“Calpine”), StateWise Energy Pennsylvania LLC and SFE Energy Pennsylvania, Inc., the Electric Supplier Coalition³ and the Environmental Stakeholders.⁴

By letter dated April 29, 2020, an interfaith group POWER requested that the PUC hold a public input hearing in PECO’s DSP V proceeding and expressed its interest in seeing PECO include more solar energy in its default service supply portfolio as part of this proceeding. In its Prehearing Conference Memorandum filed on May 4, 2020, the Office of Consumer Advocate (“OCA”) supported the use of “smart” public input hearings to allow customers to testify regarding PECO’s proposed DSP V without having to obtain representation, submit written

² 66 Pa. C.S. § 2807(e)(3.1)-(3.2), (3.4).

³ The Electric Supplier Coalition’s members are 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.

⁴ The Environmental Stakeholders are Clean Air Council, Sierra Club/PA Chapter and Philadelphia Solar Energy Association.

testimony and participate in technical evidentiary hearings. The Environmental Stakeholders, in turn, requested at least two public input hearings to provide a forum for customer input in this proceeding on the types of energy procured by PECO during DSP V, including the amount of renewable energy and distributed solar generation.

A telephonic Prehearing Conference was held on May 5, 2020. Counsel for PECO, the statutory parties, and the interveners attended the conference. Dr. Stephen Greenspan of POWER and Linnea Bond and Gregory Holt of Earth Quaker Action Team also called in to observe the proceedings and participate in discussions about the proposed public input hearings. After a lengthy discussion regarding public input hearings, including the use of videoconferencing technology in light of the COVID-19 pandemic, the ALJ established a target date of June 9, 2020, for a virtual public input hearing and adopted the procedural schedule proposed by PECO in its Prehearing Conference Memorandum. The ALJ further directed the parties to confer about a public input hearing topics list.

On May 8, 2020, PECO informed the ALJ that the parties were not able to reach an agreement on guidance for the public about the topics that are appropriate for a public input hearing in a default service proceeding. For the reasons explained below, the ALJ should enter an Order adopting the form of public hearing notice attached in Appendix A, which identifies the topics relevant to the key components of DSP V and excludes issues related to distribution service, base rates and other subject matters, which are outside the scope of default service proceedings.

III. THE ALJ SHOULD EXERCISE THE AUTHORITY GRANTED BY THE COMMISSION'S REGULATIONS TO EXCLUDE SUBJECT MATTERS FROM THE PROPOSED PUBLIC INPUT HEARING THAT ARE OUTSIDE THE SCOPE OF THIS PROCEEDING

The Commission's regulations at 52 Pa. Code § 5.403(a) grant presiding officers "all necessary authority to control the receipt of evidence," including "[r]uling on the admissibility of evidence" and "[c]onfining the evidence to the issues in the proceeding." Administrative Law Judges have employed this power, with the Commission's approval and affirmation, to exclude evidence that is outside the permissible scope of a proceeding and, in that way, to focus the evidence on the matters properly at issue.⁵ The Commission's policy statement on public input hearings in rate cases at 52 Pa. Code § 69.321(e) makes clear that on-the-record testimony at public input hearings must be "relevant, material and competent" to be considered as evidence by the presiding officer or PUC.

Presiding officers have properly applied their authority to limit the scope of testimony in public input hearings. For example, in *Pickford, et al. v. Pennsylvania-American Water Company*,⁶ the Administrative Law Judge issued an order that precluded testimony and discussion of the health effects of chemicals that were regulated by the Pennsylvania Department of Environmental Protection, not the Commission, despite assertions by complainants that the

⁵ See, e.g., *Pa. P.U.C. v. Pennsylvania-American Water Co.*, Docket No. R-00932670 et al., 1994 Pa. PUC LEXIS 120 (Final Order entered July 26, 1994), at *158 ("The ALJ concluded as follows: 'I agree with OTS that the issues raised by OCA are outside the scope of this investigation. . . .' We conclude that the ALJ properly found the matters raised by the OCA to be better placed in the pending rulemaking proceeding."); *Re Gas Cost Rate No. 5*, 57 Pa. P.U.C. 158 (1983) ("The testimony stricken by the ALJ addresses, in part, matters broader than the scope of the instant proceeding."); See also *Joint Application of PECO Energy Company and Public Service Electric and Gas Company For Approval of the Merger of Public Service Enterprise Group, Inc. with and into Exelon Corp.*, Docket No. A-110550F0160 (Initial Decision entered Apr. 25, 2005, at 8-9) (denying a Petition to Intervene where, among other things, the issues sought to be raised by petitioner were outside the scope of that proceeding); *Re Structural Separation Of Bell Atlantic-Pennsylvania, Inc. Retail And Wholesale Operations*, Docket No. M-00001353, 2000 Pa. PUC LEXIS 59 (Final Order entered Sept. 28, 2000), at *7-9 (affirming the decision of the Administrative Law Judge in that case to exclude certain evidence as "beyond the scope of the proceeding").

⁶ Initial Decision, *Pickford v. Pennsylvania-American Water Company*, Docket Nos. C-20078029 et al., 2009 Pa. PUC LEXIS 182 (Pa. PUC 2009).

use of those chemicals for drinking water disinfection by a regulated water utility constituted inadequate service.⁷ The Commission concluded that the Administrative Law Judge properly limited the scope of the public input hearing and also determined correctly that certain testimony about the water utility's choice of treatment alternatives was inadmissible hearsay or outside the permissible scope of lay opinion, and the Commonwealth Court affirmed the Commission's conclusions.⁸

PECO agrees with the ALJ and other parties that customers should be given a reasonable opportunity to provide input on PECO's proposed DSP V. In light of the prehearing memoranda filed by the parties, however, PECO believes 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.⁹ These issues are not relevant to the standards that PECO's DSP V must meet, and PECO therefore requests that the ALJ provide specific guidance to the public as to the issues that are within the scope of the upcoming public input hearing and those issues that are excluded from this proceeding.

Such specific guidance is appropriate for several reasons. First, the primary issue before the Commission 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*

⁷ A copy of the Public Hearing Notice is included as Appendix B to this Motion.

⁸ *Pickford v. Pennsylvania-American Water Company*, Docket Nos. C-20078029 et al., 2009 Pa. PUC LEXIS 1239 (Opinion and Order entered May 14, 2009), at *20-22, *aff'd*, *Pickford v. Pub. Util. Comm'n*, 4 A.3d 707, 715 (Pa. Cmwlth. 2010).

⁹ See Prehearing Conference Memorandum of Environmental Stakeholders, p. 1 (listing issues that include "the potential contribution of distributed solar as a means of increasing reliability in PECO's service territory" and "the proportion of renewable energy included in the proposed DSP V"). While POWER is not a party to this proceeding, it does intend to participate in the public input hearing and has stated that it is "deeply concerned" that PECO's procurement of power "through traditional fossil fuel power plants and the bare minimum through solar contracts" raises "reliability concerns." See Letter of Dr. Stephen Greenspan to Rosemary A. Chiavetta, Sec'y, Pa. Pub. Util. Comm'n, dated Apr. 29, 2020. POWER also appears to be seeking to introduce testimony regarding "unfair burdens on communities that live near fossil generation plants." *Id.*

supply, not distribution service.¹⁰ 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 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. Notably, the Commission recently reviewed the adequacy of PECO's provision of distribution service in 2018 in a base rate proceeding and approved a comprehensive settlement with an increase in distribution rates after customers had the opportunity to testify at five public input hearings in PECO's service territory.¹¹

Second, as a default service proceeding, this case is subject to the statutory timeline imposed by 66 Pa. C.S. § 2807(e)(3.6).¹² The challenges of creating a complete and well-developed evidentiary record on the complex and technical issues that are properly within the scope of this default service proceeding should not be heightened by interjecting extraneous issues that will complicate the hearing and lead to additional and unnecessary post-hearing litigation.

¹⁰ See 66 Pa. C.S. § 2807(e)(3.7); see also 66 Pa. C.S. § 2807(e)(3.6) ("The default service provider shall file a plan for competitive procurement with the commission and obtain commission approval of the plan considering the standards in paragraphs [2807(e)](3.1), (3.2), (3.3) and (3.4) before the competitive process is implemented.").

¹¹ See *Pa. PUC v. PECO Energy Co.*, Docket Nos. R-2018-3000164 et al. (Opinion and Order entered Dec. 20, 2018). An appeal of the Commission's decision relating to PECO's allocation of indirect costs between distribution service and default service is pending before the Commonwealth Court. See *NRG Energy, Inc. v. Pa. Pub. Util. Comm'n*, Case No. 58 CD 2019.

¹² See fn. 1, *supra*.

IV. CONCLUSION

For the reasons set forth above, the ALJ should issue an Order approving the proposed form of public notice attached as Appendix A to this Motion.¹³

Respectfully submitted,



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Dated: May 11, 2020

For PECO Energy Company

¹³ The proposed notice in Appendix A includes instructions for use of the WebEx platform for inclusion in a Public Input Hearing Notice if such notice must be issued before resolution of this Motion.

APPENDIX A

PUBLIC INPUT HEARING NOTICE

PECO Energy Company (“PECO”) has filed with the Pennsylvania Public Utility Commission a Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2021 through May 31, 2025. The Petition seeks Commission approval of PECO’s proposal to purchase electric generation supply in order to provide electric generation to customers who do not choose an electric generation supplier (“EGS”) or who contract with an EGS and the EGS does not provide the service. A copy of PECO’s Petition is available for review by members of the public on PECO’s website at:

<https://www.peco.com/MyAccount/MyBillUsage/Pages/Filings.aspx>.

This is to inform you that a Public Input Hearing on the Petition will be held on **June 9, 2020**, from *[start time to be inserted]* to *[end time to be inserted]*. The Public Input Hearing will be conducted using the WebEx video conferencing platform. You may register to participate in the Public Input Hearing on the following website:

<https://morganlewis.webex.com/morganlewis/onstage/g.php?MTID=e7e2ff54f8b1d5fbb0b1e3b822027a18b>

On the website, you will be requested to provide your name, address, e-mail address, telephone number, and organization (if any). After you register, you will receive a confirmation e-mail with a link to join the Public Input Hearing. You can test your computer system in advance at the following link:

<https://www.webex.com/test-meeting.html/>

In order to participate in the Public Input Hearing, you must register by **June 5, 2020**. If you intend to offer written materials to the Commission at the public input hearing, you must e-mail those materials to *[Commission e-mail address to be specified]* no later than **June 4, 2020**. If you are unable to participate

using the WebEx platform or do not wish to do so, you may dial into the Public Input Hearing by calling the following telephone number and entering the access code shown below:

Telephone Number: 1-877-310-7479

Access Code: 667 191 011

The presiding Administrative Law Judge has directed that the following topics are within the scope of the Public Input Hearing:

1. PECO's proposed default service procurement and implementation plan, including procurement classes, program terms, supply portfolios, contingency plans, supply master agreement, independent evaluator, and procurement rules;
2. PECO's proposed procurement of solar alternative energy credits to satisfy the Company's obligations under the Alternative Energy Portfolio Standards Act, including its requests for proposals and solar alternative energy credits purchase agreements;
3. PECO's proposed default service rate designs and cost recovery mechanisms, including time-of-use rate options and recovery of PJM transmission-related charges;
4. PECO's proposal to permit shopping by customers participating in PECO's Customer Assistance Program; and
5. PECO's proposed retail market enhancements, including continuation of its standard offer customer referral.

Testimony regarding alternatives to PECO's proposals may be offered, but the following topics are not within the scope of the proceeding:

1. Distribution system reliability and service quality issues, including individual customer distribution system reliability matters (e.g., outages) and issues relating to the potential contribution of distributed generation to distribution system reliability;
2. Proposals to change PECO's distribution service base rates; and
3. Proposals to change PECO's tariff, rules and conditions of service not included in PECO's default service filing (including interconnection and net metering).

Presiding: Administrative Law Judge Eranda Vero

[Commission address to be specified]

If you are a person with a disability, and you wish to participate in the Public Input Hearing, the Public Utility Commission may be able to make arrangements for your special needs. Please call the scheduling office at the Public Utility Commission at least three (3) business days prior to your hearing: • Scheduling Office: 717-787-1399 • AT&T Relay Service number for persons who are deaf or hearing-impaired: 1-800-654-5988

APPENDIX B

**Public Input Hearing On
Pennsylvania-American Water Company's (PAWC)
Plans to Convert to Chloramine Disinfection**

The Pennsylvania Public Utility Commission (PUC) will hold a public hearing relating to complaints that have been filed in connection with PAWC's proposal to change its disinfection process to chloramination. This proposal has been approved by the Pennsylvania Department of Environmental Protection, but has not yet been implemented by the company.

Please note that this hearing can address only those issues that are currently pending before the Public Utility Commission. Therefore, testimony concerning the Department of Environmental Protection and its notice procedures and determinations (including those regarding the effect on public health) will not be permitted.

No testimony or discussion of the health effects of chloramines – since this issue is addressed by DEP – will be allowed.

The Public Input Hearing will be held:

Wednesday, October 22, 2008 at 9 a.m.

Camp Hill Borough Hall
2145 Walnut Street
Camp Hill, PA 17011

If you have questions about this hearing or about this case, contact the Office of Consumer Advocate toll-free at 1-800-684-6560 or by e-mail at consumer@paoca.org or you can contact PAWC, Terry Maenza, 610-670-7789 ext. 123, terry.maenza@amwater.com.