**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy :

For an Evidentiary Hearing on the Energy : P-2012-2320334

Efficiency Benchmarks Established for the Period :

June 1, 2013 through May 31, 2016 :

**SCHEDULING ORDER**

On August 3, 2012, the Commission entered an Implementation Order regarding the *Energy Efficiency and Conservation Program* at Docket Nos. M-2012-2289411 and M-2008-2069887. The Commission established energy efficiency (“EE”) (but not peak demand reduction (“PDR”)) benchmarks for the period June 1, 2013 through May 31, 2016 (“Phase II Period”). The Commission gave the electric distribution companies until August 20, 2012, within which time to accept the Commission’s proposed consumption reduction benchmarks, or to file a petition for an evidentiary hearing, otherwise the energy efficiency benchmarks would be deemed accepted. *Id.*

PECO Energy Company (PECO) filed a Petition for an Evidentiary Hearing on August 20, 2012. The petition was assigned Docket No. P-2012-2320334. The petition for an evidentiary hearing was assigned to the Office of Administrative Law Judge with a certified record deadline of November 2, 2012.

 An Initial Prehearing Conference was held on September 10, 2012. I noted the appearance of Jack Garfinkle, Esquire, Anthony C. DeCusatis, Esquire, and Anthony Gay, Esquire on behalf of PECO Energy Company; Shaun Sparks, Esquire and Krystle J. Sacavage, Esquire from the Commission’s Law Bureau on behalf of the Statewide Independent Evaluator; Jeffrey J. Norton, Esquire on behalf of Comverge, Inc., Harry Geller, Executive Director PA Utility Law Project on behalf of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA); Heather Langeland, Esquire on behalf of Citizens for Pennsylvania’s Future (Penn Future); Jennedy S. Johnson, Esquire on behalf of the Office of Consumer Advocate (OCA); Zachary Max Fabish, Esquire on behalf of The Sierra Club and Council for Clean Air; Tishekia Williams, Esquire and Alan M. Seltzer, Esquire on behalf of Duquesne Light Company; and Charis Mincavage, Esquire on behalf of Philadelphia Area Industrial Energy Users Group (PAIEUG). Additionally, although attorney Joseph Vullo, Esquire did not appear, he did file a petition to intervene on behalf of Community Action Association of PA (CAPP).

The following matters were addressed: (1) coordination of the evidentiary hearing with five other electric distribution companies’ evidentiary hearings; (2) a motion for *ad hoc vice* admission; (3) petitions to intervene; (4) a procedural schedule; (5) service of documents; (6) discovery matters; and (7) a protective order. These matters are discussed below.

Coordination of case with PPL’s and FirstEnergy Companies’ evidentiary hearings

 As PECO has already submitted direct testimony and because its issues are different from PPL’s and the FirstEnergy Companies’ issues, the Company is on a different expedited timetable. Therefore, a separate hearing is scheduled regarding PECO’s petition for evidentiary hearing beginning at 9:00 a.m. on Wednesday, October 3, 2012, in Harrisburg, PA.

Motions for *Ad Hoc Vice* Admissions

 Joseph Otis Minott, Esquire, Executive Director of the Clean Air Council, filed a Motion for Admission *pro hac vice,* of Zachary Max Fabish, Esquire. As there was no objection at the prehearing conference, said motion shall be granted. Mr. Fabish shall be granted leave to participate in these proceedings *pro hac vice*.

Petitions to Intervene

 Notices or Petitions of Intervention were filed by the following parties.

CAUSE-PA

OCA

Duquesne Light Company

PennFuture

Clean Air Council and Sierra Club

Independent Statewide Evaluator

Comverge, Inc.

Philadelphia Area Industrial Energy Users Group (PAIEUG)

Community Action Association of PA (CAPP)

 There was no objection to any of the above parties intervening in this matter. Accordingly, their petitions shall be granted and they shall have status as Intervenors. In accordance with 52 Pa.Code § 5.71, OCA is authorized by statute to participate in this proceeding. The Statewide Evaluator filed a notice of appearance.

Procedural Schedule

 The procedural schedule is as follows:

|  |  |
| --- | --- |
| Prehearing Conference | September 10, 2012 |
| Other Party Direct Testimony | September 20, 2012 |
|  |  |
| Rebuttal Testimony | September 28, 2012 |
| Oral Rejoinder / Evidentiary Hearings | October 3, 2012 |
| Main Briefs | October 19, 2012 |
| Reply Briefs | October 30, 2012 |
|  |  |

 The above filing dates are all in-hand dates (by 4:30 p.m.) to the parties and the presiding officer. All parties are reminded to serve the presiding officer with all filed documents, and to provide the presiding officer with an e-version in Word 2003.

Identification of witness order

 Counsel for the PECO will coordinate the order of witnesses and estimated time for cross-examination by each party, and will supply a copy of the witness order to me approximately five (5) days prior to the hearing, or as soon thereafter as possible given that testimony is due five (5) days prior to the hearing.

Service of documents

 Service of documents by e-mail (by 4:30 p.m.) on the due date will be considered in-hand service, if a hard copy is sent by the following day via first class mail. The parties are in agreement though that discovery documents served after 12:00 p.m. (noon) on a Friday shall be deemed served on the following business day (i.e. Monday). The service list is attached to this Scheduling Order.

Timing of motions or objections with respect to prepared written testimony

 Motions or objections with respect to written testimony must be presented in writing and provided to the parties and the presiding officer no later than 24 hours prior to the date that the witness is scheduled to testify.

Location and start time of hearing

 The hearing will begin at 9:00 a.m. on Wednesday, October 3, 2012 at the Commonwealth Keystone Building, in Harrisburg, PA.

Transcript turnaround time

 The transcript turnaround time is three (3) days.

Public Input hearings

 The OCA indicated that it was not necessary to schedule public input hearings in this proceeding.

Discovery matters

 The parties were in agreement with a modification of the discovery rules set forth in the Commission’s regulations due to the time constraints that could be applicable to this proceeding. I note that service of objections is not required upon the Administrative Law Judge; however, it is required upon the parties. Accordingly, the discovery rules for this proceeding, from September 13, 2012, forward are as follows:

1. 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.

2. The response period for replying to written interrogatories, requests for production and requests for admissions is five (5) calendar days of receipt or the party’s best effort.

3. Objections to written interrogatories, requests for production and requests for admission are to be communicated orally to the party serving the interrogatory within one (1) calendar day of receipt and in writing within two (2) calendar days of receipt. The parties are directed to confer, by telephone or e-mail, and attempt to resolve the objections.

4. Motions to dismiss objections and to compel responses shall be filed with the Commission and served on Administrative Law Judge (ALJ) Elizabeth Barnes and the other parties within two (2) calendar days of receipt of the written objections. Answers to such motions shall be filed and served within two (2) calendar days after filing of the motion.

5. If the objections are not resolved, counsel will alert the Administrative Law Judge by e-mail of the need for a ruling, and a conference call shall be scheduled. The ALJ will make a ruling over the telephone and not reduce it to writing unless requested to do so.

6. 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.

7. Requests for admission shall be deemed admitted unless objected to within two (2) calendar days of service or answered within five (5) calendar days of service.

8. If the last day for filing or serving any document or taking any action required by these modified discovery procedures falls on a weekend or holiday, then the permissible time for filing such document or taking such action shall be extended to the next business day.

9. Pursuant to 52 Pa. Code § 5.341(b), neither discovery requests nor responses thereto are to be served on the Commission or the ALJ, although a certificate of service may be filed with the Commission’s Secretary.

10. Discovery requests, motions to compel and responses are to be served electronically as well as on paper.

Protective Order

 PECO requested I issue a protective order in the form attached to their Prehearing Memorandum as Exhibit B. As there was no objection at the prehearing conference to the protective order, the proposed order will be signed and entered separately.

Settlement

 There is no settlement conference scheduled in this case; however, the parties are reminded that if a settlement is reached, they should file a petition for settlement as well as individual parties’ statements in support of the settlement petition. Additionally, it may be necessary to enter written testimony and other evidence into the record with a settlement petition, in order to provide the Commission with enough evidence to support findings that the proposed settlement is in the public’s interest and in accordance with the Public Utility Code. Evidence may be moved into the record with a written verification, or with the testimony of a live witness attesting to the truthfulness of the testimony offered. Any settlement petitions are to be filed in hard copy as well as in a CD in searchable PDF format. In addition, any settlement petitions are to be delivered to me in hard copy as well as electronically in Word format.

Official Service List

 The official service list is enclosed with this Order. Additional counsel or technical advisors may be included on an e-mail service list upon request. Thus far, the e-mail distribution list includes the following counsels’ and prospective witnesses’ e-mail addresses. This list is subject to change as the litigation progresses.

shsparks@pa.gov

Dick.Spellman@gdsassociates.com

sgogte@nexant.com

pburns@nexant.com

twilliams@duqlight.com

langeland@pennfuture.org

jnorton@eckertseamans.com

cshultz@eckertseamans.com

Zachary.fabish@sierraclub.org

jjohnson@paoca.org

abeatty@paoca.org

Crandall@msbnrg.com

Alan.seltzer@bipc.com

Anthony.gay@exeloncorp.com

Jack.garfinkle@exeloncorp.com

tgadsden@morganlewis.com

kkulak@morganlewis.com

adecusatis@morganlewis.com

bleach@morganlewis.com

kribrown@pa.gov

cmincavage@mwn.com

sbruce@mwn.com

tschmittberger@mwn.com

pulp@palegalaid.net

abakare@mwn.com

joe\_minott@cleanair.org

jlvullo@aol.com

 THEREFORE,

IT IS ORDERED:

1. That the procedural schedule is as follows:

|  |  |
| --- | --- |
| Prehearing Conference | September 10, 2012 |
| Other Party Direct Testimony | September 20, 2012 |
|  |  |
| Rebuttal Testimony | September 28, 2012 |
| Oral Rejoinder / Evidentiary Hearings | October 3, 2012 |
| Main Briefs | October 19, 2012 |
| Reply Briefs | October 30, 2012 |

 3. That all discovery requests and responses will be served in-hand or via electronic mail, with hard copies of the documents sent via First Class Mail.

 4. That service of documents by e-mail (by 4:30 p.m.) on the due date will be considered in-hand service, if a hard copy is sent by the following day via first class mail. The service list is attached to this Scheduling Order.

 5. That the discovery rules for this proceeding, from September 13, 2012, forward are as follows:

a. 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.

b. The response period for replying to written interrogatories, requests for production and requests for admissions is five (5) calendar days of receipt or the party’s best effort.

c. Objections to written interrogatories, requests for production and requests for admission are to be communicated orally to the party serving the interrogatory within one (1) calendar day of receipt and in writing within two (2) calendar days of receipt. The parties are directed to confer, by telephone or e-mail, and attempt to resolve the objections.

d. Motions to dismiss objections and to compel responses shall be filed with the Commission and served on Administrative Law Judge Elizabeth Barnes and the other parties within two (2) calendar days of receipt of the written objections. Answers to such motions shall be filed and served within two (2) calendar days after filing of the motion.

e. If the objections are not resolved, counsel will alert the Administrative Law Judge by e-mail of the need for a ruling, and a conference call shall be scheduled. The ALJ will make a ruling over the telephone and not reduce it to writing unless requested to do so.

f. 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.

g. Requests for admission shall be deemed admitted unless objected to within two (2) calendar days of service or answered within five (5) calendar days of service.

h. If the last day for filing or serving any document or taking any action required by these modified discovery procedures falls on a weekend or holiday, then the permissible time for filing such document or taking such action shall be extended to the next business day.

i. Pursuant to 52 Pa. Code § 5.341(b), neither discovery requests nor responses thereto are to be served on the Commission or the ALJ, although a certificate of service may be filed with the Commission’s Secretary.

j. Discovery requests, motions to compel and responses are to be served electronically as well as on paper.

 6. That directives regarding other matters including: identification of witness order, motions, and settlement petitions are adopted as referenced in this Order.

 7. That the Petitions to Intervene filed by: the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA); Duquesne Light Company; Citizens for Pennsylvania’s Future (Penn Future); Clean Air Council and Sierra Club; Comverge, Inc.; Philadelphia Area Industrial Energy Users Group (PAIEUG); and Community Action Association of Pennsylvania (CAAP) are hereby granted.

 8. That Zachary Max Fabish, Esquire, counsel for Clean Air Council and Sierra Club is granted leave to participate in these proceedings *pro hac vice*.

Date: September 13, 2011

 Elizabeth H. Barnes

 Administrative Law Judge

**P-2012-2320334 Petition of PECO Energy Company**

 TISHEKIA WILLIAMS ATTORNEYDUQUESNE LIGHT COMPANY411 SEVENTH AVENUE16TH FLOORPITTSBURGH PA 15219412-393-1541 ALAN M. SELTZER, ESQUIRE

409 NORTH SECOND St SUITE 500

HARRISBURG PA 19103

717-237-4862

ANTHONY GAY ESQUIRE

JACK GARFINKLE ESQUIRE

PECO ENERGY COMPANY

2301 MARKET STREETPHILADELPHIA PA 19103215-841-4635

CHARIS MINCAVAGE, ESQUIRE

ADEOLU A. BAKARE, ESQUIREMCNEES WALLACE & NURICK100 PINE STREETPO BOX 1166HARRISBURG PA 17108-1166717.237.5368ZACHARY MAX FABISH ESQUIRE50 F STREET8TH FLOORWASHINGTON DC 20001202-675-7917

JOSEPH OTIS MINOTT EXECUTIVE DIRECTORCLEAN AIR COUNCIL135 S 19TH STREETSUITE 300PHILADELPHIA PA 19103215-567-4004

THOMAS P GADSDEN ESQUIRE

KENNETH KULAK ESQUIRE

ANTHONY DeCAUSATIS ESQUIRE

BROOKE LEASCH ESQUIREMORGAN LEWIS AND BOCKIUS LLP1701 MARKET STREETPHILADELPHIA PA 19103215-963-5234 HARRY S GELLER EXECUTIVE DIRECTORPATRICK M CICERO ESQUIRE

PA UTILITY LAW PROJECT118 LOCUST STREETHARRISBURG PA 17101717-232-2719

HEATHER LANGELAND, ESQUIRE

CITIZENS FOR PENNSYLVANIA'S FUTURE (PENNFUTURE)425 SIXTH AVENUE SUITE 2770

PITTSBURGH PA 15219412-258-668

AARON BEATTY, ESQUIREJENNEDY S JOHNSON ESQUIREOFFICE OF CONSUMER ADVOCATE5TH FLOOR FORUM PLACE555 WALNUT STREETHARRISBURG PA 17101717-783-5048

SHAUN SPARKS ESQUIRE

KRYSTLE J. SACAVAGE, ESQUIRE

PA PUBLIC UTILITY COMMISSION

BUREAU OF INVESTIGATION AND ENFORCEMENT

P O BOX 3265

HARRISBURG PA 17105-3265

Kriss Brown Esquire

Law Bureau

PA Public Utility Commission

400 North Street, Third Floor

PO Box 3265

Harrisburg, PA 17105-3265

JOSEPH L. VULLO, ESQUIRE

BURKE, VULLO, REILLY & ROBERTS

1460 WYOMING AVENUE

FORTY FORT, PA 18704

JEFFREY j. NORTON, ESQUIRE

ECKERT SEAMANS

213 MARKET STREEET 8TH FLOOR

HARRISBURG, PA 17101

717.237.7192