**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities Corporation :

For an Evidentiary Hearing on the Energy : P-2012-2320369

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.*

PPL Electric Utilities (PPL) filed a Petition for an Evidentiary Hearing on August 20, 2012. The petition was assigned Docket No. P-2012-2320369. The petition for an evidentiary hearing was assigned to the Office of Administrative Law Judge with a certified record deadline of November 2, 2012. On August 20, 2012, the Companies also filed a petition for reconsideration of the Commission’s Implementation Order, which is currently pending before the Commission.

An Initial Prehearing Conference was held on September 10, 2012. I noted the appearance of Andrew S. Tubbs, Esquire, Paul E. Russell, Esquire and David B. MacGregor, Esquire on behalf of PPL; Shaun A. Sparks, Esquire and Krystle J. Sacavage, Esquire on behalf of the PA Statewide Evaluator; Jeffrey J. Norton, Esquire on behalf of Comverge, Inc.; Harry S. Geller, Esquire on behalf of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA); Craig R. Burgraff, Esquire on behalf of Sustainable Energy Fund; Zachary Fabish, Esquire on behalf of the Clean Air Council & Sierra Club; Heather M. Langeland, Esquire on behalf of PennFuture; and Pamela Polacek, Esquire on behalf of PPL Industrial Customer Alliance (PPLICA). Joseph L. Vullo, Esquire was not present but I noted that he submitted an uncontested petition for intervention on behalf of Community Action Association of PA s/k/a CAPP.

The following matters were addressed: (1) coordination of the evidentiary hearing with PECO Energy Company’s (PECO) and the FirstEnergy Companies’ evidentiary hearings; (2) a motion for *ad hac 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 PECO’s and FirstEnergy Companies’ evidentiary hearings

PPL agreed to hold its evidentiary hearing on October 18, one day before the FirstEnergy Companies’ hearing on October 19 in order to conserve the resources of other parties and in the interest of judicial efficiency. The Statewide Evaluator requested consolidation of hearing dates into subsequent days because his witnesses are located in various parts of the country. The PPL hearing will be scheduled for October 18, 2012, under a separate hearing notice in order to accommodate certain parties’ requests that the hearings be consolidated as much as possible and at least held on subsequent days.

Motion for Admission Pro Hac Vice

On August 30, 2012, Joseph O. Minott, Esquire filed a Motion for Admission Pro Hac Vice moving for admission of candidate Zachary M. Fabish to represent the Clean Air Council and Sierra Club in the above-captioned proceeding. There was no objection to this Motion at the prehearing conference. Accordingly, it shall be granted.

Petitions to Intervene

I received several petitions to intervene in this case including:

CAPP (Community Action Association of PA)

CAUSE-PA

Clean Air Council/Sierra Club

PPLICA

Citizens for Pennsylvania’ Future (PennFuture)

Comverge, Inc.

Sustainable Energy Fund

PPL objected to Clean Air Council’s (CAC) and Sierra Club’s (Petitioners) Petition to Intervene arguing that their intervention does not comply with the Commission’s regulations regarding petitions to intervene and that they have failed to allege sufficient facts to support their standing to participate in this proceeding.

The Commission’s regulations provide that a petition to intervene may be filed by a person claiming an interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding. 52 Pa. Code § 5.72(a). A petition to intervene must set out clearly and concisely the facts from which the alleged intervention right or interest can be determined, and the grounds of the proposed intervention. 52 Pa. Code § 5.73(a). PPL asserts CAC and Sierra Club have no direct interest in this proceeding, they are neither customers of PPL, nor do they list in their petition to intervene any customers residing in PPL’s service territory that have CAC or Sierra Club membership.

Petitioners respond that the total number of CAC members in Pennsylvania is 4,598 and that some of these members (at least 40) reside in PPL’s service territory, including: Brooks Mountcastle and Evan Pappas, who reside in Harrisburg, PA. Further, the total number of Sierra Club members residing within PPL’s service territory is at least 2,154 members.

Further CAC has averred in its petition that it is a non-profit organization dedicated to the public interested, specifically regarding matter involving clean air, and the Sierra Club is a national non-profit organization designed to protect the environment and promote responsible use of the Earth’s resources and ecosystems. Petitioners are concerned the issues in the instant evidentiary hearing will affect the interests of their respective members and may impact the safety, reliability, cleanliness and affordability of PPL’s public utility services. Changes to targets for energy consumption reduction will affect air quality, public health, energy conservation efforts, prices, reliability, and the availability and quality of energy savings programs and incentives.

I find Sierra Club and CAC have standing to intervene in this proceeding as they have a sufficient number of members located within the service territory of PPL, and they have stated grounds adequately related to the scope of the proceeding. Therefore, the Petitioners shall be given intervenor status.

PPL objected to Comverge, Inc.’s petition to intervene. However, subsequent to the prehearing conference on September 11, 2012, Comverge, Inc. and PPL submitted a letter stating that Comverge, Inc. agrees to limit its participation in the proceeding to the issues raised by PPL in its Petition for an Evidentiary Hearing on the Energy Benchmarks Established for the Period June 1, 2013 through May 31, 2016 and PPL agrees to withdraw its objection to Comverge, Inc.’s Petition to Intervene. Accordingly, Comverge, Inc. will be given intervenor status.

There was no objection to PPLICA’s, PennFuture’s, CAUSE-PA’s or CAPP’s Petitions to Intervene; accordingly, they 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:

|  |  |
| --- | --- |
| Companies’ Direct Testimony | September 28, 2012 |
| Other Parties’ Direct Testimony | October 12, 2012 |
| Oral Rebuttal Testimony/Evidentiary Hearing(s) | October 18, 2012 |
| Main Briefs | October 26, 2012 |
| Reply Briefs | October 31, 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 PPL 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 at least three (3) 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 10:00 a.m. on Thursday, October 18, 2012 in Hearing Room No. 5, at the Commonwealth Keystone Building, in Harrisburg, PA.

Transcript turnaround time

The transcript turnaround time is three (3) days. N.T. 18.

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. N.T. 16–18. 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 20, 2012, forward are as follows:

1. The response period for replying to written interrogatories, requests for production and requests for admissions is ten (10) calendar days of receipt or the party’s best effort except that during the period between October 12 – 18, 2012, answers to interrogatories shall be served in-hand within four (4) calendar days of service of the interrogatories.

2. Objections to written interrogatories, requests for production and requests for admission are to be communicated orally to the party serving the interrogatory within three (3) calendar days of service; unresolved objections shall be served in writing within five (5) days of service of interrogatories. The parties are directed to confer, by telephone or e-mail, and attempt to resolve the objections.

3. Answers to motions to dismiss objections and/or direct the answering of interrogatories to be filed within three (3) days of service of such motions.

4. Rulings over such motions to be issued, if possible, within seven (7) days of filing of the motion.

5. Responses to requests for document production, entry for inspection or other purposes to be served in-hand within ten (10) calendar days.

6. Requests for admission be deemed admitted unless answered within ten (10) days or objected to within five (5) days of service.

7. Responses to interrogatories served after noon on Friday will be due as if served the following Monday.

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

PPL indicated it did not have a proposed protective order at this time.

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.

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THEREFORE,

IT IS ORDERED:

1. That the procedural schedule is as follows:

|  |  |
| --- | --- |
|  |  |
| Companies’ Direct Testimony | September 28, 2012 |
| Other Parties’ Direct Testimony | October 12, 2012 |
| Oral Rebuttal Testimony/Evidentiary Hearing(s) | October 18, 2012 |
| Main Briefs | October 26, 2012 |
| Reply Briefs | October 31, 2012 |

2. 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.

3. 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.

4. That the discovery rules for this proceeding, from September 20, 2012, forward are as follows:

a. The response period for replying to written interrogatories, requests for production and requests for admissions is ten (10) calendar days of receipt or the party’s best effort except that during the period between October 12 – 18, 2012, answers to interrogatories shall be served in-hand within four (4) calendar days of service of the interrogatories.

b. Objections to written interrogatories, requests for production and requests for admission are to be communicated orally to the party serving the interrogatory within three (3) calendar days of service; unresolved objections shall be served in writing within five (5) days of service of interrogatories. The parties are directed to confer, by telephone or e-mail, and attempt to resolve the objections.

c. Answers to motions to dismiss objections and/or direct the answering of interrogatories to be filed within three (3) days of service of such motions.

d. Rulings over such motions to be issued, if possible, within seven (7) days of filing of the motion.

e. Responses to requests for document production, entry for inspection or other purposes to be served in-hand within ten (10) calendar days.

f. Requests for admission be deemed admitted unless answered within ten (10) days or objected to within five (5) days of service.

g. Responses to interrogatories served after noon on Friday will be due as if served the following Monday.

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.

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

6. That the Petitions to Intervene filed by: the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA); Citizens for Pennsylvania’s Future (Penn Future); Clean Air Council and Sierra Club; Community Action Association of Pennsylvania (CAAP); the PPL Industrial Customer Alliance (PPLICA); the Sustainable Energy Fund; and Comverge, Inc. are hereby granted.

7. 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 20, 2012

Elizabeth H. Barnes

Administrative Law Judge

**P-2012-2320369 Petition of PPL Electric Utilities Corporation**

***rEVISED 9/20/12***

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