**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company :

for Approval of its Act 129 Phase II : M-2012-2333992

Energy Efficiency and Conservation Plan :

**SECOND PREHEARING ORDER**

In accordance with the provisions of 52 Pa. Code § 5.483, the purpose of this Order is to confirm certain agreements among the parties and related rulings made during the Prehearing Conference in this case on Friday, November 30, 2012. That hearing was convened to discuss procedural issues relative to the Commission’s Implementation Order of August 3, 2012, at *Energy Efficiency and Conservation Program*, Docket No. M-2012-2289411 (Order entered August 3, 2012) (*Implementation Order*), to determine the further course of this proceeding, and to rule on the various Petitions to Intervene submitted to date.

The Prehearing Conference was presided over by the undersigned with Administrative Law Judge (ALJ) Elizabeth Barnes observing, and was attended by counsel for: PECO Energy Company (PECO), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), Citizens for Pennsylvania’s Future (PennFuture), the Philadelphia Area Industrial Energy Users Group (PAIEUG), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), the City of Philadelphia, and Wal-Mart Stores East, L.P. and Sam’s East, Inc. (Walmart).[[1]](#footnote-1)

A. *Implementation Order* Requirements

The Commission’s *Implementation Order* contains the following directory language:

Specifically, for Phase II, we adopt the following EE&C plan approval process:

The Commission will publish a notice of each proposed plan in the Pennsylvania Bulletin within 20 days of its filing. In addition, the Commission will post each proposed plan on its website. An answer along with comments and recommendations are to be filed within 20 days of the publication of the notice in the Pennsylvania Bulletin. Each plan will be referred to an Administrative Law Judge (ALJ), who will establish a discovery schedule and hold a public input hearing(s) in the EDC’s service territory upon request of any party, as well as an evidentiary hearing(s) on issues related to the EDC’s EE&C plan. Such hearings are to be completed on or before the 65th day after a plan is filed, after which, the parties will have 10 days to file briefs. The EDC will then have 10 days to submit a revised plan or reply comments or both. The ALJ will then certify the record to the Commission.

The Commission will approve or reject all or part of a plan at public meeting within 120 days of the EDC’s filing. The Commission will provide a detailed rationale for rejecting all or part of a plan. Thereafter, the EDC will have 60 days from the entry date of the order to file a revised plan that addresses the identified deficiencies. This revised plan is to be served on OCA, the Office of Small Business Advocate (OSBA), the Commission’s Bureau of Investigation & Enforcement (I&E) and all other parties to the EDC’s EE&C plan filing, who, along with other interested parties, will have ten days to file comments on the revised plan, with reply comments due ten days thereafter. The Commission will approve or reject a revised plan at a public meeting within 60 days of the EDC’s revised plan filing. This process will be repeated until a complete plan receives Commission approval.

*Implementation Order* at 61-62.

The parties discussed at some length the time constraints imposed by the directory language and the possible due process issues related thereto. Given that the Notice of this proceeding will not be published in the *Pennsylvania Bulletin* until December 1, 2012, with a twenty day comment/intervention period thereafter, the necessity of a hearing by January 4, 2013 has the potential of affecting orderly discovery for the current parties and placing future intervenors at a disadvantage. PECO and the parties very generously indicated that they would afford flexibility to such intervenors in terms of discovery. However, the issue remained as to whether the schedule as imposed by the *Implementation Order* was still practicable given the late publication date in the *Pennsylvania Bulletin*. I found those concerns well-placed but advised the parties that it beyond the authority of an ALJ to modify a Commission-directed procedural schedule. That being said, I suggested that the parties discuss a joint motion or joint petition for modification of the procedural schedule, keeping in place the January 28, 2013 certification date for transmittal of the record in this proceeding to the Commission. The parties agreed to discuss this possibility and to report back to me.

B. PUBLIC INPUT HEARING

As noted in footnote 1, KEEA is not an active party in this proceeding at this time but expressed an interest in filing comments for consideration by the Commission. Active participation in this proceeding requires representation by counsel as required by 52 Pa. Code

§ 1.22, and the submission of testimony. “Comments,” will not be part of the certified record in this case. While it was strongly recommended to KEEA and any party similarly situated to retain counsel and to participate in this case, the opportunity for sworn testimony at a public input hearing by non-parties was also discussed, and indeed, the *Implementation Order* does contemplate the possibility of a public input hearing. The OCA and CAUSE-PA expressed support for a public input hearing, and the parties agreed to discuss a potential date for a public input hearing and to report back to me.

C. DISCOVERY AND SERVICE MODIFICATIONS

The parties discussed and agreed to changes to the Commission’s rules of discovery, and I include, below, some standard modifications now current in Commission proceedings. Specifically:

(1) The parties will use their best efforts to respond to discovery and any appropriate motions at a pace faster than the Commission’s existing rules for rate cases. See e.g. 52 Pa. Code §5.342(d).

(2) Any discovery served after 12:00 p.m. on a Friday will be deemed to have been served on the following business day for the purpose of tracking due dates.

(3) All testimony and briefs shall be due in-hand on or before 4:00 p.m. on the date due.

(4) Service shall be accomplished electronically, so long as a hard copy arrives by first class mail to counsel and the Presiding Officer as soon as possible thereafter.

D. PETITIONS TO INTERVENE

On November 21, 2012, PAIEUG filed a Petition to Intervene in this case. On November 27, 2012, the City of Philadelphia filed a petition to Intervene in this case. On November 28, 2012, Walmart filed a Petition to Intervene in this case. On November 28, 2012, the OCA filed a Public Statement and Notice of Intervention in this case. On November 29, 2012, PennFuture filed a Petition to Intervene in this case. There were no objections to the Petitions to Intervene noted, above, and they are granted.

E. E-SERVICE LIST

The following attorneys have been designated to receive all documents from me. Please note that this is the ALJ’s e-service list, NOT the Commission’s official service list:

Jack Garfinkle, Esq. PECO Energy Company

Anthony Gay, Esq.

Aron Beatty, Esq. Office of Consumer Advocate

Daniel G. Asmus, Esq. Office of Small Business Advocate

Scott Schwarz, Esq. City of Philadelphia

Adelou Bakare PAIEUG

Heather Langeland PennFuture

Harry S. Geller, Esq. CAUSE-PA

Patrick Cicero, Esq.

Barry Naum, Esq. Walmart

Derrick Williamson, Esq.

THEREFORE,

IT IS ORDERED:

1. That as soon as practicable, the parties will file with the Secretary of the Commission a Joint Petition for Modification of the Procedural Schedule in this case, setting forth in detail their proposed schedule, including a date(s) for an evidentiary hearing but preserving the original date for certification of the record, January 28, 2013.

2. That the parties will advise the Presiding Officer, as soon as practicable, whether a public input hearing is needed in this case, and if so, a range of dates available so that a public hearing may be scheduled.

3. That the Commission’s rules of discovery are hereby modified in accordance with the revisions set forth above in Part C.

4. That the following individuals are designated to receive service of documents from the undersigned for their respective clients:

Jack Garfinkle, Esq. PECO Energy Company

Anthony Gay, Esq.

Aron Beatty, Esq. Office of Consumer Advocate

Daniel G. Asmus, Esq. Office of Small Business Advocate

Scott Schwarz, Esq. City of Philadelphia

Adelou Bakare PAIEUG

Heather Langeland PennFuture

Harry S. Geller, Esq. CAUSE-PA

Patrick Cicero, Esq.

Barry Naum, Esq. Walmart

Derrick Williamson, Esq.

5. That the request of the Keystone Energy Efficiency Alliance (KEEA) to be an inactive party is granted, and KEEA will be carried on the service list solely for the limited purpose of receiving copies of all Orders from the Presiding Officer. Parties are not required to serve KEEA at this time, but should KEEA elect to file a Petition to Intervene in this case, that Petition should be conditioned upon acceptance of the record as it stands up to that point.

6. That the Petitions to Intervene in this case filed by the City of Philadelphia, Citizens for Pennsylvania’s Future, the Philadelphia Area Industrial Energy Users Group, and Wal-Mart Stores East, L.P. and Sam’s East, Inc. are granted.

Dated: November 30, 2012

Dennis J. Buckley

Administrative Law Judge

**P-2012-2333992 - Petition of Peco Energy Company for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan.**

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1. Attending in an observational capacity was a member of the Keystone Energy Efficiency Alliance (KEEA). KEEA asked to be an inactive party at this point but may intervene as a full participant. [↑](#footnote-ref-1)