**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 :

**ORDER CERTIFYING RECORD TO THE COMMISSION**

HISTORY OF THE PROCEEDING

 On August 3, 2012, the Commission entered an Implementation Order with respect to the *Energy Efficiency and Conservation Program* at Docket Nos. M-2012-2289411 and M-2008-2069887 (*Implementation Order*). In the *Implementation Order*, the Commission stated that tentative consumption reduction targets would become final for any electric distribution company (EDC) that did not petition the Commission for an evidentiary hearing by August 20, 2012. PECO Energy Company (PECO or Company) filed a Petition for an Evidentiary Hearing on August 20, 2012, which was assigned to Administrative Law Judge (ALJ) Elizabeth H. Barnes at Docket No. P-2012-2320334. The general plan approval timeline in the *Implementation Order* was modified through that separate proceeding.

 On November 1, 2012, the Commission issued a Secretarial Letter notifying

EDCs that it would accept Phase II Energy Efficiency and Conservation (EE&C) plans on either November 1, 2012 or November 15, 2012 due to Hurricane Sandy and the need for EDC personnel to focus on storm response duties.

 On November 1, 2012, PECO filed a Petition for Approval of the Company's Phase II Energy Efficiency and Conservation Plan (Phase II Plan or Plan). PECO asserted that the Phase II Plan is intended to reduce energy consumption in compliance with the requirements of Act 129 of 2008, 66 Pa.C.S. § 2806.1 (Act 129 or the Act) and the Commission's *Implementation Order*. In sum, PECO asked that the Commission issue an Order: (1) approving PECO's Phase II EE&C Plan and finding that the Plan satisfies the requirements of 66 Pa.C.S. § 2806.1(b)(1) and the Phase II *Implementation Order*; (2) approving PECO's proposed tariff provisions to implement a Section 1307 surcharge to recover Phase II Plan costs; (3) approving Phase II treatment for certain Phase I projects; and (4) approving the contract between PECO and JACO Environmental.

 On November 21, 2012, both a Hearing Notice and a standard form Prehearing Conference Order was issued in this case.

 On November 21, 2012, the Philadelphia Area Industrial Energy Users Group (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, Wal-Mart Stores East, L.P. and Sam’s East, Inc. (Walmart) filed a Petition to Intervene in this case. On November 28, 2012, the Office of Consumer Advocate (OCA) filed a Public Statement and Notice of Intervention in this case. On November 29, 2012, Citizens for Pennsylvania’s Future (PennFuture) filed a Petition to Intervene in this case. There were no objections to the Petitions to Intervene, and they were granted.

 A Prehearing Conference was held on Friday, November 30, 2012. That hearing was convened to discuss procedural issues relative to the Commission’s *Implementation Order*, to determine the further course of this proceeding, and to rule on the various Petitions to Intervene submitted up to that date.

 The Prehearing Conference was presided over by the undersigned with ALJ Elizabeth Barnes observing and was attended by counsel for: PECO, the OCA, the Office of Small Business Advocate (OSBA), PennFuture, PAIEUG, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), the City of Philadelphia, and Wal-Mart (Walmart).[[1]](#footnote-1)

 The parties discussed at some length the time constraints imposed by the directory language of the *Implementation Order* and the possible due process issues related thereto. Given that the Notice of this proceeding would not be published in the *Pennsylvania Bulletin* until December 1, 2012, with a twenty day comment/intervention period thereafter and the necessity of a hearing by January 4, 2013, PECO and the parties very generously indicated that they would afford flexibility to future 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 is beyond the authority of an ALJ to modify a Commission-directed procedural schedule. It was left to the parties to decide whether to petition the Commission for modification of the procedural schedule. Also discussed was the OCA and CAUSE-PA support for a public input hearing, but ultimately a public input hearing was not requested. After the Prehearing Conference, the Petitions to Intervene in this case filed by the City of Philadelphia, Penn Future, PAIEUG, and WalMart were granted in the Second Prehearing Order which was issued November 30, 2012. A 46 page transcript of the Prehearing Conference was filed by the court reporter on December 3, 2012.

 On December 4, 2012, a Third Prehearing Order was issued in this case granting the Petition to Intervene of CAUSE-PA.

 Also on December 4, 2012, the parties to this proceeding filed a Joint Petition to Modify the Procedural Schedule with the Commission.

 On December 5, 2012, the Office of Small Business Advocate (OSBA) filed a Notice of Intervention in this proceeding.

 On December 14, 2012, the Commission adopted and entered an Opinion and Order tentatively granting the Joint Petition to Modify the Procedural Schedule.

 On December 19, 2012, Comverge, Inc., (Comverge) filed a Petition to Intervene in this case.

 On December 27, 2012, a Fourth Prehearing Order was issued granting the unopposed Petition to Intervene of Comverge.

 On December 28, 2012, a Hearing Notice was issued setting January 9, 2013, as the date for the evidentiary hearing in this case, consistent with the Commission’s December 14, 2012 Opinion and Order.

 On January 2, 2013, I issued the Fifth Prehearing Order in this case explaining my opinion expressed at the Prehearing Conference that “comments” have no place in the evidentiary record in this case, concluding that I would only consider including “comments” in the certified record if they were introduced at hearing by a party to the proceeding with an authenticating witness made available for cross-examination.

 On January 9, 2013, a hearing was held at the office of the Commission in Harrisburg, Pennsylvania. The hearing was attended by PECO, the OCA, the OSBA, PennFuture, PAIEUG, CAUSE-PA, the City of Philadelphia, WalMart and Comverge. A 75 page transcript was filed by the court reporter on January 10, 2013.

 On January 14, 2013, I issued an Order admitting the testimony of Comverge’s witness, Raymond G. Berkebile, into the record. Main Briefs were filed on January 15, 2013 by PECO, PAIEUG, Comverge, the OCA, CAUSE-PA, PennFuture, and the City of Philadelphia. WalMart and the OSBA filed letters stating that they would not be filing briefs PECO’s Reply Brief and the Revised Phase II Energy Efficiency and Conservation Plan was filed on January 24, 2013.

 THERFORE:

 IT IS ORDERED THAT THE FOLLOWING DOCUMENTS COMPRISE THE EVIDENTIARY RECORD IN THIS CASE:

 1. PECO Energy Company’s Petition for Approval of the Company's Phase II Energy Efficiency and Conservation Plan filed November 1, 2012, at Docket No. M-2012-2333992.

 2. The Prehearing Conference Order issued November 21, 2012.

 3. The Hearing Notice issued on November 22, 2012.

 4. The Philadelphia Area Industrial Energy Users Group’s Petition to Intervene filed November 21, 2012.

 5. The City of Philadelphia’s Petition to Intervene filed November 27, 2012.

 6. Wal-Mart Stores East, L.P. and Sam’s East, Inc. Petition to Intervene filed November 28, 2012.

 7. The Office of Consumer Advocate’s Public Statement and Notice of Intervention filed November 28, 2012.

 8. Citizens for Pennsylvania’s Future Petition to Intervene filed November 29, 2012.

 9. The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania Petition to Intervene filed December 3, 2013.

 10. The transcript of the Prehearing Conference held November 30, 2012, consisting of pages 1-46, and ALJ Attachment No. 1, the Letter of Rosemary Chiavetta, Secretary of the Commission, dated November 1, 2012.

 11. The Second Prehearing Order dated November 30, 2012.

 12. The Third Prehearing Order dated December 4, 2012.

 13. The Joint Petition to Modify the Procedural Schedule as filed by the parties on December 4, 2012.

 14. The Notice of Intervention filed by the Office of Small Business Advocate on December 5, 2012.

 15. The Commission’s Opinion and Order of December 14, 2012, at this docket, tentatively granting the Joint Petition to Modify the Procedural Schedule.

 16. The Petition to Intervene filed by Comverge, Inc., on December 19, 2012.

 17. The Fourth Prehearing Conference Order dated December 27, 2013.

 18. The Hearing Notice issued December 28, 2012.

 19. The Fifth Prehearing Order issued January 2, 2013.

 20. The transcript of the evidentiary hearing held January 9, 2013, consisting of pages 47 through 122.

 21. The submissions of PECO Energy Company, entitled as follows:

PECO Statement No. 1 Direct Testimony of Frank J. Jiruska, Director of Energy and Marketing Services for PECO

PECO Statement No. 2 Direct Testimony of Toben E. Galvin, Associate Director in the Energy Practice of Navigant Consulting, Inc.

Exhibit TEG-1 Resume of Toben E. Galvin

PECO Statement No. 3 Direct Testimony of Richard A. Schlesinger, PECO Manager of Retail Rates

Exhibit RAS-1 Proposed revisions to the Electric Service Tariff

Exhibit RAS-2 Program costs by rate class

Exhibit RAS-3 Calculations of the levelized cost recovery charge by rate

Class

Exhibit RAS-4 Responses to the Commission filing requirements at 52 Pa.

Code § 53.52

PECO Statement No. 1-S Frank J. Jiruska

PECO Exhibit FJJ-1 PECO Mass Market DLC Program TRC Test Results

PECO Exhibit FJJ-2 Avoided Energy, Capacity and Transmission and Distribution Costs

PECO Exhibit FJJ-3 PECO Mass Market DLC Program TRC Sensitivity

PECO Exhibit FJJ-4 PECO Mass Market DLC Program Estimated Annual Costs

PECO Statement No 1-R Frank J. Jiruska

Confidential Appendix B to PECO Exhibit 1

 22. The submissions of the Philadelphia Area Industrial Energy Users Group, entitled as PAIEUG Cross Examination Exhibits 1-4

 23. The submissions of Citizens for Pennsylvania’s Future, entitled as:

Penn Future Cross Examination Exhibit 1-1 through 6

Penn Future Cross Examination Exhibit 1-1 Revised

 24. PECO/ and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania Exhibit 1, that being a Stipulation.

 25. The submission of the City of Philadelphia, entitled as City of Philadelphia Statement No. 1, the testimony of Paul Kohl, and Exhibits PK-1, PK-2 and PK-3.

 26. The submission of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, entitled as CAUSE-PA Statement 1, Direct Testimony of Mitch Miller with Exhibit MM-1.

 27. The submission of the Office of the Consumer Advocate, entitled Direct Testimony of Christina R. Mudd.

 28. List of Phase II EE&C Plan Testimony and Exhibits and acronyms and definitions supplied by PECO at the evidentiary hearing of January 9, 2013 and marked as ALJ-1.

 29. Order of January 14, 2013 admitting the testimony of Raymond G. Berkebile into the record and the submission of Comverge, Inc., entitled Direct Testimony of Raymond G. Berkebile.

 30. Main Briefs filed on January 15, 2013, by: PECO, PAIEUG, Comverge, the OCA, CAUSE-PA, PennFuture, and the City of Philadelphia.

 31. Reply Brief and the Revised Phase II Energy Efficiency and Conservation Plan on January 24, 2013 by PECO Energy Company.

Dated: January 28, 2013

 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.**

***Revised 1/28/13***

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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, 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. I stated that “Comments,” would not be part of the certified record in this case. [↑](#footnote-ref-1)