**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Metropolitan Edison Company :

for Approval of its Act 129 Phase III : M-2015-2514767

Energy Efficiency and Conservation Plan :

:

Petition of Pennsylvania Electric Company :

For Approval of its Act 129 Phase III : M-2015-2514768

Energy Efficiency and Conservation Plan :

:

Petition of Pennsylvania Power Company :

For Approval of its Act 129 Phase III : M-2015-2514769

Energy Efficiency and Conservation Plan :

:

Petition of West Penn Power Company :

For Approval of its Act 129 Phase III : M-2015-2514772

Energy Efficiency and Conservation Plan :

**SCHEDULING ORDER**

On June 19, 2015, the Commission entered an Implementation Order regarding the *Energy Efficiency and Conservation Program* at Docket No. M-2014-2424864. With this Implementation Order, the Commission tentatively adopted additional incremental reductions in electric consumption and peak demand for the period of June 1, 2016 through May 31, 2021. The Implementation Order sets forth an expedited litigation schedule so the Commission can approve or reject energy efficiency and conservation (EE&C) Phase III plans within 120 days of the filing date of the plans.

Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power), and West Penn Power Company (West Penn) jointly filed a Joint Petition for Consolidation of Proceedings and Approval of

Energy Efficiency and Conservation Plans Phase III on November 23, 2015.[[1]](#footnote-1) The Joint Petition was assigned four separate docket numbers by the Secretary’s Bureau as follows: 1) M-2015-2514767 (Met-Ed); 2) M-2015-2514768 (Penelec); 3) M-2015-2514769 (Penn Power); and 4) M-2015-2514772 (West Penn).

Notice of the petitions was published in the *Pennsylvania Bulletin* on December 12, 2015, with a comment period ending January 4, 2016. 45 *Pa.B.* 7078. The petitions were assigned to Administrative Law Judges Elizabeth H. Barnes and Steven Haas by Notice dated December 8, 2015. As stated in the Prehearing Conference Order dated December 18, 2015, ALJ Haas is no longer presiding.

On December 10, 2015, the Office of Consumer Advocate (OCA) filed its notice of intervention, public statement and notice of appearance.

On December 17, 2015, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed its petition to intervene.

On December 18, 2015, the Office of Small Business Advocate (OSBA) filed its notice of intervention, public statement and notice of appearance.

On December 29, 2015, the Companies filed a Joint Petition for a Protective Order.

On December 30, 2015, Wal-Mart Stores East, LP and Sam’s East, Inc. filed a joint petition to intervene. Also on December 30, 2015, CAUSE-PA filed a Letter in Lieu of Comments.

On January 4, 2016: 1) the Retail Energy Supply Association (RESA) filed a petition to intervene, comments and recommendations; 2) Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Penn Power Users Group, and the West Penn Power Industrial Intervenors filed a joint petition to intervene, answer and comments; 3) OCA filed comments; and 4) OSBA filed an Answer.

Comments were also filed by the following entities that did not appear at the prehearing conference including: PennFuture, Sierra Club, Environmental Defense Fund, Clean Air Council, EnergyHub, and Energy Efficiency For All.

An Initial Prehearing Conference was held on January 5, 2016. I noted the appearance of Kathy J. Kolich, Esquire, and John L. Munsch, Esquire, Counsel for Met Ed, Penelec, Penn Power and West Penn (the Companies); Darryl Lawrence, Senior Assistant Consumer Advocate on behalf of the Office of Consumer Advocate (OCA); Patrick M. Cicero, Esquire and Joline Price, Esquire on behalf of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA); Teresa Schmittberger, Esquire and Alessandria Hylander, Esquire on behalf of the Met-Ed Industrial Users Group (MEIUG), Penelec Industrial Customer Alliance (PICA), Penn Power Users Group (PPUG), and West Penn Power Industrial Intervenors (WPPII); Elizabeth Rose Triscari, Deputy Small Business Advocate on behalf of the Office of Small Business Advocate (OSBA); Thomas J. Sniscak, Esquire on behalf of The Pennsylvania State University (PSU); Barry A. Naum, Esquire, on behalf of Wal Mart Stores East and Sam’s East, Inc. (Wal-Mart); and Sarah C. Stoner, Esquire on behalf of the Retail Energy Supply Association (RESA).

The following matters were addressed: (1) consolidation of the dockets for one hearing; (2) petitions to intervene; (3) a procedural schedule; (4) service of documents; (5) discovery matters; (6) a protective order; and (7) a common briefing outline. These matters are discussed below.

Consolidation

At the prehearing conference the parties agreed to consolidate the four dockets to one hearing in the interest of judicial efficiency. The Companies’ consolidated hearing in the instant case will be scheduled for January 27, 2015. The hearing will be held from 10:00 a.m. – 4:00 p.m. in Hearing Room #2, Commonwealth Keystone Building, 400 North St., Harrisburg, PA.

Petitions to Intervene

The OCA and OSBA filed Notices of Intervention. I received several petitions to intervene prior to the prehearing conference including:

The Pennsylvania State University

Wal-Mart Stores East, LP and Sam’s East, Inc. (Walmart)

CAUSE-PA

Met-Ed Industrial Users Group

Penelec Industrial Customer Alliance

Penn Power Users Group

West Penn Industrial Intervenors

RESA

At the prehearing conference, there was one objection by the Companies to RESA’s petition to intervene; however, no objection to any of the other above parties intervening in this matter. The Companies object on the ground that RESA indicated it does not intend to participate and is relying on the comments submitted. Those comments are not subject to cross-examination and RESA’s issue deals with anti-competitiveness of the programs being provided by distribution companies as that pertains to competitive generation suppliers which is an issue not before the Commission. RESA responded that it does not intend to but it may file direct testimony. RESA’s primary concern is that the plans filed are competitively neutral.

In accordance with 52 Pa.Code § 5.71, OCA and OSBA are authorized by statute to participate in this proceeding.

The Commission's Rules of Practice and Procedure permit petitions to intervene. 52 Pa. Code §§ 5.71-5.76. The provision at 52 Pa. Code § 5.72 governs what entities are eligible to intervene in a proceeding and states as follows:

**§ 5.72. Eligibility to intervene.**

(a) Persons. A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

(1) A right conferred by statute of the United States or of the Commonwealth.

(2) 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.

(3) Another interest of such nature that participation of the petitioner may be in the public interest.

(b) Commonwealth. The Commonwealth or an officer or agency thereof may intervene as of right in a proceeding subject to paragraphs (1)-(3).

Allowance of intervention is a matter within the discretion of the Commission. *City of Pittsburgh v. Pennsylvania Pub. Util. Comm'n*, 33 A.2d 641 (Pa. Super. 1943); *N.A.A.C.P., Inc. v. Pennsylvania Pub. Util. Comm'n*, 290 A.2d 704 (Pa. Cmwlth. 1972).

RESA’s eligibility to intervene in this proceeding is governed by 52 Pa. Code § 5.72(a)(2) since RESA is not a Commonwealth agency pursuant to 52 Pa. Code §5.72(b) and a statute of either the United States or the Commonwealth does not confer on RESA a right to intervene pursuant to 52 Pa. Code § 5.72(a)(1). RESA’s interests in this proceeding are of such a nature that intervention is necessary and appropriate to the administration of the Act 129 statute under which the proceedings are brought. Therefore, it shall be granted intervenor status. As there is no objection to the other petitions to intervene, they shall be granted and all petitioners shall have status as intervenors.

Procedural Schedule

The parties agreed to the following procedural schedule.

Due Date

Other parties' direct testimony January 12, 2016 (noon)

Settlement Conference January 15, 2016 (9:00 a.m.)

Rebuttal testimony January 22, 2016

Outline of Rejoinder January 26, 2016 (noon)

Evidentiary Hearing January 27, 2016

Main briefs February 10, 2016

Reply comments/revised plan February 11, 2016

Record certification February 12, 2016

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.

Identification of witness order

Counsel for the Companies 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 one (1) day 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.

Per OSBA’s request, courtesy copies of documents including discovery, testimony and briefs should be served on OSBA’s witness, Robert D. Knecht, by hard copy delivery as well as electronic mail simultaneously with service upon the OSBA. Per OCA’s request, copies of all interrogatories, comments and answers to interrogatories should be mailed directly to the expert witness as well as counsel for OCA. 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.

[kjklaw@yahoo.com](mailto:kjkolich@firstenergycorp.com)

[jmunsch@firstenergycorp.com](mailto:jmunsch@firstenergycorp.com)

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rdk@indecon.com

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 close of business on January 25, 2016.

Location and start time of hearing

The hearing will begin at 10:00 a.m. on Wednesday, January 27, 2016 in Hearing Room No. 2, 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 agreed to modify the discovery rules set forth in the Commission’s regulations due to the time constraints applicable to this proceeding. Accordingly, the discovery rules for this proceeding, from January 7, 2016, forward are as follows:

1. Answers to written interrogatories shall be served in-hand within seven (7) calendar days of service.

2. Objections to written interrogatories shall be communicated orally within three (3) calendar days of the service of interrogatories; unresolved objections shall be served to the ALJ in writing within five (5) calendar days of service of the interrogatories.

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

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

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

6. Responses to requests for document production, entry for inspection or other purposes must be served in-hand within seven (7) calendar days.

7. Requests for admissions will be deemed admitted unless answered within seven (7) calendar days or objected to within five (5) calendar days of service.

8. Responses to interrogatories served after noon on Friday or the day before a holiday will be due as if served the following business day.

9. 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.

10. 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.

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

Protective Order

On January 7, 2016, the Companies e-mailed me a revised unopposed proposed protective order. A Protective Order will be issued separately from this Scheduling Order.

Settlement

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.

Common Briefing Format

The Companies e-mailed me a consensus common briefing outline on January 7, 2016. Said outline is adopted as Attachment A to this Order. While there is no requirement that the parties file briefs, those who do file briefs are required to follow this common outline. There is no requirement that all topics be addressed by all briefing parties, but the parties should adhere to the numbering in the common outline and indicate that topics not addressed are skipped.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the following litigation schedule is adopted:

Due Date

Other parties' direct testimony January 12, 2016 (noon)

Settlement Conference January 15, 2016 (9:00 a.m.)

Rebuttal testimony January 22, 2016

Outline for Rejoinder January 26, 2016 (noon)

Evidentiary Hearing January 27, 2016

Main briefs February 10, 2016

Reply comments/revised plan February 11, 2016

Record certification February 12, 2016

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 January 7, 2016, forward are as follows:

a. Answers to written interrogatories shall be served in-hand within seven (7) calendar days of service.

b. Objections to written interrogatories shall be communicated orally within three (3) calendar days of the service of interrogatories; unresolved objections shall be served to the ALJ in writing within five (5) calendar days of service of the interrogatories.

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

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

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

f. Responses to requests for document production, entry for inspection or other purposes must be served in-hand within seven (7) calendar days.

g. Requests for admissions will be deemed admitted unless answered within seven (7) calendar days or objected to within five (5) calendar days of service.

h. Responses to interrogatories served after noon on Friday or the day before a holiday will be due as if served the following business day.

i. 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.

j. 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.

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

5. Briefs must comply with 52 Pa. Code §§ 5.501 and 5.502, and shall

follow the common briefing outline, attached to this Scheduling Order as Attachment A. The numbering for sections not addresses by a party shall be included and marked as "not addressed."

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; the Retail Energy Suppliers Association, the Med-Ed Industrial Users Group; Penelec Industrial Customer Alliance; Penn Power Users Group; and West Penn Power Industrial Intervenors; The Penn State University; and Wal Mart Stores East, LP and Sam’s East, Inc. are hereby granted.

Date: January 7, 2016

Elizabeth H. Barnes

Administrative Law Judge

**ATTACHMENT A**

**Act 129**

**Generic Outline of Briefs**

1. Introduction
2. Procedural History
3. Description of EDC Plan
4. Legal Standards
5. Summary of Argument
6. Argument

A. Act 129 Conservation and Demand Reduction Requirements

1. Overall Conservation Requirements

2. Overall Demand Reduction Requirements

1. Requirements for a Variety of Programs Equitably Distributed
2. 3.5% Government/Non-Profit Requirement
3. Low Income Program Requirements
4. Comprehensive Program Requirements
5. Issues Relating to Individual Conservation and Demand Reduction Programs
   1. Residential

i. Low Income

* 1. Commercial
  2. Industrial

1. Proposals for Improvement of EDC Plan
   1. Residential

i. Low Income

* 1. Commercial
  2. Industrial

1. Cost Issues

1. Plan Cost Issues

2. Cost Effectiveness/Cost-Benefit Issues

3. Cost Allocation Issues

4. Cost Recovery Issues

1. CSP Issues
2. Implementation and Evaluation Issues
   1. Implementation Issues
   2. QA Issues
   3. Monitoring and Reporting Issues
   4. Evaluation Issues
3. Other Issues
4. Conclusion
5. Proposed Ordering Paragraphs

**PETITION OF:**

**M-2015-2514767 – METROPOLITAN EDISON COMPANY**

**M-2015-2514768 – PENNSYLVANIA ELECTRIC COMPANY**

**M-2015-2514769 – PENNSYLVANIA POWER COMPANY**

**M-2015-2514772 – WEST PENN POWER COMPANY - FOR APPROVAL OF ITS ACT  129 PHASE III ENERGY EFFICIENCY AND CONSERVATION PLAN.**

***Revised 1/8/16***

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***Accepts e-Service***

1. At the conference, the Companies indicated there were errors in the exhibits associated with Kevin Siedt’s written testimony, which were originally filed on November 23, 2015 with the Joint Petition for Approval. On or about January 6, 2016, the Companies filed revised exhibits of Kevin Siedt and provided hard copies to the parties and presiding officer. [↑](#footnote-ref-1)