

Phone: (215) 569-5794  
Fax: (215) 832-5794  
Email: [Sharp@Blankrome.com](mailto:Sharp@Blankrome.com)

November 12, 2010

**VIA FEDERAL EXPRESS**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor North  
Harrisburg, PA 17120

Re: **Petition of PECO Energy Company for Approval of Its Act 129  
Energy Efficiency and Conservation Plan  
Docket No. M-2009-2093215**

Dear Secretary Chiavetta:

On behalf of Constellation NewEnergy, Inc., enclosed for filing in the above-listed matter is a replacement Prehearing Memorandum. This document--timely e-filed on Tuesday, November 9, 2010--was incorrectly identified, and I was notified today that it was rejected for filing. I respectfully request that it be deemed filed on November 9, 2010, and apologize for any inconvenience.

Respectfully submitted,

  
Christopher R. Sharp

Enclosures

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Petition of PECO Energy Company for</b>	:	
<b>Approval of its Act 129 Energy</b>	:	
<b>Efficiency and Conservation Plan and</b>	:	<b>Docket No. M-2009-2093215</b>
<b>Expedited Approval of its Compact</b>	:	
<b>Fluorescent Lamp Program</b>	:	
	:	

**PREHEARING MEMORANDUM OF  
CONSTELLATION NEWENERGY, INC.**

In accordance with 52 Pa.C.S. § 5.222, Intervenor Constellation NewEnergy, Inc. submits the following Prehearing Memorandum:

**I. INTRODUCTION**

On or about July 1, 2009 PECO Energy Company (“PECO”) filed its “Petition of PECO Energy Company for Approval of its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of its Compact Fluorescent Lamp Program” (“Petition”), asking that the Commission approve its Energy Efficiency and Conservation Plan (“EE&C Plan”). Constellation intervened in that proceeding on August 3, 2009. By Order entered October 28, 2009, the Commission granted, in part, and denied, in part, PECO’s Petition, and directed PECO to file a Revised EE&C Plan, which it did, on December 23, 2009. By Order entered February 17, 2010, the Commission approved the Revised EE&C Plan.

On September 15, 2010, PECO filed an annual report and proposed changes to its Revised EE&C Plan as approved. A comment period followed, and the Commission has referred this matter to the OALJ for a hearing.

A Prehearing Conference Order was filed on November 4, 2010, scheduling a November 10, 2010 Prehearing Conference, and requiring filing of a Prehearing Memorandum no later than November 9, 2010.

## **II. IDENTIFICATION OF ISSUES**

Constellation is still reviewing PECO's annual report and proposed changes to its Revised EE&C Plan, and is in the process of identifying issues to address with respect to the Plan. In particular, Constellation intends to review and address, if necessary, any changes proposed by PECO or other parties in the context of this proceeding, which may relate to PECO's planned Residential and Commercial & Industrial Direct Load Control programs.

Constellation reserves the right to address other issues as it deems appropriate.

## **III. WITNESSES**

In the event that the procedural schedule is amended to incorporate more thorough proceedings regarding PECO's annual report and proposed changes, Constellation reserves the right to present direct, rebuttal, and surrebuttal fact and expert testimony, to the extent it deems necessary, in this proceeding. If the procedural schedule is amended in this way, Constellation would expect to present expert testimony by:

David I. Fein  
Vice President, Energy Policy  
Director of Retail Energy Policy  
Constellation Energy  
550 Washington St #300, St. 1100  
Chicago, Illinois 60661  
Telephone: (312) 704-8499  
david.fein@constellation.com

Constellation will notify the Judge and all parties of the identity of any additional witnesses it would intend to call, if applicable and necessary.

#### **IV. SERVICE ON CONSTELLATION**

Constellation consents to accept electronic delivery documents on the deadline for their filing, if followed by hard copy delivery by first class mail. Constellation respectfully requests that service be made to both Divesh Gupta and its counsel of record in this matter:

Christopher A. Lewis  
Christopher R. Sharp  
James M. Burlew  
Blank Rome, LLP  
One Logan Square  
Philadelphia, PA 19103  
Telephone: (215) 569-5793  
Facsimile: (215) 832-5793  
Lewis@blankrome.com  
Sharp@blankrome.com  
Bulew@blankrome.com

Divesh Gupta  
Senior Counsel  
Constellation Energy  
111 Market Place, Suite 500  
Baltimore, Maryland 21202  
Telephone: (410) 470-3158  
Facsimile: (443) 213-3556  
Divesh.gupta@constellation.com

#### **V. SETTLEMENT**

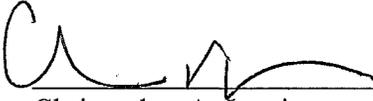
Constellation is amenable to meeting with PECO and all other parties for the purpose of discussing settlement of the entire matter or discrete issues.

#### **VI. LITIGATION SCHEDULE**

Constellation will cooperate with other parties to develop a schedule in this proceeding.

Respectfully submitted,

BLANK ROME LLP

By:  \_\_\_\_\_

Christopher A. Lewis  
Christopher R. Sharp  
One Logan Square  
Philadelphia, PA 19103  
Phone: (215) 569-5500  
Fax: (215) 569-5555

*Counsel to Intervenor  
Constellation NewEnergy, Inc.*

Dated: November 9, 2010

**CERTIFICATE OF SERVICE**

I hereby certify that this day I have served a true copy of the foregoing Prehearing Memorandum on behalf of Intervenor Constellation NewEnergy, Inc. upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code § 1.54.

**VIA E-FILING AND FEDERAL EXPRESS**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor North  
Harrisburg, PA 17120

A handwritten signature in cursive script that reads "Christopher Sharp /scc". The signature is written in black ink and is positioned above a horizontal line.

Christopher A. Lewis  
Christopher R. Sharp  
Blank Rome, LLP  
One Logan Square  
Philadelphia, PA 19103  
Telephone: (215) 569-5450  
Facsimile: (215) 832-5450  
Lewis@blankrome.com  
Sharp@blankrome.com

*Counsel to Intervenor  
Constellation NewEnergy, Inc.*

Dated: November 12, 2010