**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PPL Electric Utilities Corporation :

Energy Efficiency and Conservation Plan : Docket No. M-2009-2093216

**SECOND PREHEARING CONFERENCE ORDER**

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 12, 2010.

First, we note that the schedule of this expedited proceeding is driven by the Secretarial letter of November 9, 2010, which contains a directive that the Office of Administrative Law Judge (OALJ) is to file a Recommended Decision (RD) in this matter by December 20, 2010. To that end, the following schedule is adopted:

A. LITIGATION SCHEDULE

November 12, 2010 Initial Prehearing Conference.

November 17, 2010 Initial and further Hearing (beginning at 10:00 a.m.)

November 19, 2010 Record closes.

November 30, 2010 All parties file and serve (in-hand) Main Briefs.

December 3, 2010 All parties file and serve (in-hand) Reply Briefs

All testimony and briefs shall be due on or before 4:00 p.m. on the dates listed above. Service on those due dates may be done electronically, so long as the hard copy arrives by first class mail as soon as possible thereafter.

The hearing of November 17, 2010, will convene at 10:00 a.m., in Hearing Room 1 of the Commission’s Harrisburg Offices.

With respect to calculating response times:

1. Any document received on a Saturday, Sunday or holiday shall be treated as though it was received on the following Monday or the next business day; and

2. Any document due on a Saturday, Sunday or holiday shall be treated as though it was due on the following Monday or the next business day.

We will accept service electronically and ask that the documents be formatted in WORD and EXCEL. In the event that your office cannot provide the documents in WORD and EXCEL, please notify us what word processing or spreadsheet formats are used. Keep in mind that any document received electronically may not match the originals in size and page numbers because of differences created by printers and margins on page set ups.

B. DISCOVERY

It is expected that 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).

C. SERVICE LIST

The following attorneys have been designated to receive all documents:

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This list comprises the service list for this proceeding unless and until otherwise modified by further Order.[[1]](#footnote-1)

D. Petition for Leave to Withdraw Intervention of ACORN

A Petition to Withdraw Intervention was filed by the Association of Community Organizations for Reform Now (ACORN) on October 18, 2010, in this proceeding. No opposition to the Petition has been raised by any party to this proceeding. Pursuant to 52 Pa. Code, § 5.75(d), the Petition to Withdraw Intervention filed by ACORN is granted as on April 1, 2010, ACORN dissolved and ceased to exist as an organization.

E. Petition to Intervene of Pennsylvania Communities Organizing for Change (PCOC)

A Petition to Intervene in this case was filed by Pennsylvania Communities Organizing for Change (PCOC) on October 18, 2010, pursuant to 52 Pa. Code § 5.71 *et seq*. In support of its Petition, PCOC argued that it is a not-for-profit advocacy and membership organization whose mission is to advocate on behalf of low and lower income utility customers. PCOC Petition to Intervene at ¶ 7. PCOC averred that many of its constituents reside within PPL’s service territory, are PPL customers, rely on PPL’s electric service and will be affected by the issues in this proceeding, including the costs and benefits of PPL’s Energy Efficiency and Conservation Plan. Thus, PCOC’s constituency has a direct, immediate, substantial and distinct interest in this proceeding. PCOC Petition to Intervene at ¶ 7. PCOC also cited the withdrawal of ACORN from this case as constituting “extraordinary circumstances” sufficient to justify PCOC’s intervention.[[2]](#footnote-2) PCOC Petition to Intervene at ¶ 8. PCOC stated that it intends to address the ongoing impact of PPL’s Act 129 Energy Efficiency and Conservation Plan on low income households and whether PPL’s measures comport with and satisfy Act 129 requirements. PCOC Petition to Intervene at ¶ 9.

On November 4, 2010, PPL filed an Answer to the Petition to Intervene of PCOC in which PPL objected to PCOC’s intervention on several grounds. In sum, PPL argues that PCOC has not supplied sufficient information as to its structure, membership and purpose, nor has it demonstrated an interest that may be directly affected which is not already adequately represented by existing participants and to which Petitioner may be bound by the actions of the Commission. PPL Answer of November 4, 2010, at 2-3, citing 52 Pa. Code § 5.72(a). PPL further argued that PCOC’s Petition to Intervene failed to set out, clearly and concisely, the facts from which the alleged intervention by right or interest can be determined, and that the grounds of the proposed intervention have not been established as required by Commission regulation. PPL Answer of November 4, 2010, at 3, citing 52 Pa. Code § 5.73(a). PPL also argues that PCOC’s Petition is deficient in that PCOC has failed to list the persons and entities comprising the represented group. PPL Answer of November 4, 2010, at 3-4, citing 52 Pa. Code § 5.73(b). PPL also objected to what PPL characterized as PCOC’s failure to describe the relationship between PCOC and the entity known as Action United, Inc. PPL Answer of November 4, 2010, at 4. PPL also pointed to the intervention of the OCA as the entity that PPL asserts represents residential customers, including the claimed constituency of PCOC. PPL Answer of November 4, 2010, at 2, 4.

On November 10, 2010, PCOC filed an Amended Petition to Intervene. In that Amended Petition, PCOC reiterated much of its justification set forth in the October 18, 2010 Petition to Intervene. However, PCOC listed four specific customers who as members of PCOC served by PPL, “permitted their identification in this proceeding and are representative of a larger segment of PCOC members who are PPL customers and will be affected by this proceeding.” PCOC Amended Petition to Intervene at ¶10, fn. 5.

On November 12, 2010, the OCA filed a Response in Support of PCOC’s Intervention. In that Response, the OCA argued that its participation in this case in no way diminishes PCOC’s right to intervene. OCA Response at 2, citing 71 P.S. § 309-6; and *South River Power Partners, L.P. v. Pa. PUC*, 673 A.2d 422 (Pa. Commw. 1996). The OCA also argued that the efforts of PCOC and the OCA are not duplicative, and their interests are not identical. OCA Response at 3. The OCA stated that the OCA and PCOC may have very different views with respect to whether PPL’s Energy Efficiency and Conservation Plan comports with the requirements of Act 129. OCA Response at 4. Referring to 52 Pa. Code § 5.72(a), the OCA persuasively argued that the Commission’s rules on standing are broad enough to allow PCOC’s participation in this case and stated that PCOC’s participation is in the public interest as no other party will duplicate the perspective held by PCOC. OCA Response at 4. The OCA contended that PPL’s interpretation of the Commission’s rules is narrow and disregards the flexibility and discretion afforded to the Commission in determining who has standing before it. OCA Response at 5-6, citing *Pennsylvania Natural Gas Association v. T.W. Phillips Gas & Oil Co*., 75 Pa. P.U.C. 598 (1999) and *Appalachian Gas Sales, Inc. v. Philadelphia Electric Co*., 67 Pa. P.U.C. 246 (1988).

Also on November 12, 2010, PPL filed an Answer to the Amended Petition to Intervene of PCOC. In its November 12, 2010 Answer, PPL reiterated in part its arguments from its earlier Answer of November 4, 2010, and argued that it is not clear whether members of PCOC are members of Action United, and *vice versa*, and PPL asserted that Action United is a fictitious name and not an entity incorporated under the laws of the Commonwealth of Pennsylvania. PPL Answer of November 12, 2010, at 3. PPL also denied that PCOC’s mission is to advocate on behalf of low and lower income persons for the purpose of access to affordable electric service, contending that anyone may join PCOC regardless of economic circumstances. PPL Answer of November 12, 2010, at 3, Appendix B. Citing the case of *Tripp Park v. Pa. PUC*, 415 A.2d 967 (Pa. Cmwlth. 1980), PPL argued that PCOC has failed to demonstrate that it will fairly and adequately represent those who have a sufficient interest in this proceeding, has failed to demonstrate that those entitled to complain are unable to adequately pursue their interests, and that PCOC has made no showing that allowance of PCOC’s participation will aid the Commission in the development of facts necessary for proper disposition of this proceeding. Again, PPL argued that PCOC has failed to demonstrate that its members are low income individuals whom PCOC is authorized to represent. PPL Answer of November 12, 2010, at 5-6.

Oral argument with respect to the issue of PCOC’s intervention was held at the prehearing conference of November 12, 2010, with PPL, PCOC and the OCA presenting their respective arguments on this issue.

In deciding this issue, we note that PPL’s arguments are not entirely without merit, and this Order should not be misconstrued as any sort of endorsement of PCOC’s standing in other proceedings.[[3]](#footnote-3) Indeed, we are concerned at the lack of definition that PCOC provided in its filings with respect to both a precise identification of its constituency and its relationship with Action United, Inc. In reaching our decision, we are primarily persuaded by the arguments and support of the OCA in favor of allowing the intervention of PCOC. We also take particular note of 52 Pa. Code § 5.72(a)(3), which states:

**§ 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:

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

This is broad discretion, indeed. While we are concerned at the lack of precision in PCOC’s filings, we find that PCOC has presented just enough in its Petition to Intervene and Amended Petition to Intervene to satisfy the broad requirements of 52 Pa. Code § 5.72. We want to hear from PCOC and its constituents in this proceeding.

**ORDER**

THEREFORE,

IT IS ORDERED:

1. That all testimony and briefs shall be distributed and a hearing held in accordance with the schedule set forth above in Part A.

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

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

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4. That the Petition to Withdraw Intervention filed by the Association of Community Organizations for Reform Now (ACORN) on October 18, 2010, is granted.

5. That the Petition to Intervene of Pennsylvania Communities Organizing for Change (PCOC) filed on October 18, 2010, and as amended on November 10, 2010, is granted.

Date: November 12, 2010

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Dennis J. Buckley

Administrative Law Judge

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Elizabeth H. Barnes

Administrative Law Judge

**M-2009-2093216 - Petition of PPL Electric Utilities Corporation For Approval of An Energy Efficiency and Conservation Plan**

*revised 9/14/09*

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1. We note that while UGI Utilities, Inc. (UGI), filed a document entitled Recommendations for Plan Improvement at this docket on October 15, 2010, and that UGI was duly notified of the date, time and place of the prehearing conference. UGI did not appear at the prehearing conference. [↑](#footnote-ref-1)
2. We note, however, that at the prehearing conference on November 12, 2010, counsel for PCOC stated that PCOC is not a “successor organization” to ACORN. November 12, 2010 Tr. at \_\_. [↑](#footnote-ref-2)
3. We note, however, that in the two other Act 129 cases referred to OALJ for expedited hearing, *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*, Docket No. M-2009-2093215, and *Petition of West Penn Power Company d/b/a Allegheny Power for Approval of its Energy Efficiency and Conservation Plan, Approval of Recovery of Costs Through a Reconcilable Adjustment Clause and Approval of Matters Relating to the Energy Efficiency and Conservation Plan*, Docket No. M-2009-2093218, PCOC’s intervention was not opposed and was granted. [↑](#footnote-ref-3)