**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Metropolitan Edison Company :

for Approval of its Act 129 Phase II : M-2012-2334387

Energy Efficiency and Conservation Plan :

:

Petition of Pennsylvania Electric Company :

For Approval of its Act 129 Phase II : M-2012-2334392

Energy Efficiency and Conservation Plan :

:

Petition of Pennsylvania Power Company :

For Approval of its Act 129 Phase II : M-2012-2334395

Energy Efficiency and Conservation Plan :

:

Petition of West Penn Power Company :

For Approval of its Act 129 Phase II : M-2012-2334398

Energy Efficiency and Conservation Plan :

**SCHEDULING ORDER**

On August 3, 2012, the Commission entered an Implementation Order regarding the *Energy Efficiency and Conservation Program* at Docket Nos. M-2012-2289411 and M-2008-2069887. The Commission established energy efficiency (“EE”) (but not peak demand reduction (“PDR”)) benchmarks for the period June 1, 2013 through May 31, 2016 (“Phase II Period”). The Implementation Order adopted an Energy Efficiency Conservation (EE&C) plan approval process which included referring plans filed in November, 2012 to an Administrative Law Judge for an evidentiary hearing within 65 days after the plan is filed, after which, the parties will have 10 days to file briefs. The electric distribution company (EDC) then has 10 days to submit a revised plan or reply comments or both. The ALJ will then certify the record to the Commission. *Id.* at 61-62.

Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power), and West Penn Power Company (West Penn) (collectively “the Companies”) each timely filed a petition for approval of their Act 129 Phase II Energy Efficiency and Conservation Plans on November 13, 2012. Notice of the petitions was published in the *Pennsylvania* Bulletin on December 1, 2012, with a comment period ending December 21, 2012. 42 *Pa.B.* 7372. Additionally, the petitions are posted on the Commission’s website at <http://www.puc.pa.gov>. The petitions were assigned to Administrative Law Judge Elizabeth H. Barnes.

An Initial Prehearing Conference was held on December 19, 2012. I noted the appearance of John F. Povalaitis, Esquire, and Lauren Lepkoski, Esquire, Counsel for Met Ed, Penelec, Penn Power and West Penn; Christy M. Appleby, Esquire and Candis A. Tunilo, Esquire on behalf of the Office of Consumer Advocate (OCA); Harry S. Geller, Esquire on behalf of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA); Teresa Schmittberger, Esquire on behalf of the Med-Ed Industrial Users Group (MEIUG), Penelec Industrial Customer Alliance (PICA), Penn Power Users Group (PPUG), and West Penn Power Industrial Intervenors (WPPII); Heather M. Langeland, Esquire on behalf of PennFuture; Joseph L. Vullo, Esquire on behalf of Community Action Association of PA s/k/a CAPP (CAPP); Daniel G. Asmus, Assistant 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); Julia A. Conover, Esquire on behalf of UGI Utilities, Inc. – Gas Division, UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc. (UGI); and Barry A. Naum, Esquire, on behalf of Wal Mart Stores East and Sam’s East, Inc. (Wal-mart).

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; and (6) a protective order. These matters are discussed below.

Consolidation

Each of the four Companies’ Petitions has a separate docket number because of anticipated separate compliance filings in the future among the four companies. These docket numbers were assigned regarding the respective companies as follows: 1) Met-Ed, M-2012-2334387; 2) Penelec, M-2012-2334392; 3) Penn Power, M-2012-2334395; and 4) West Penn, M-2012-2334398.

On November 13, 2012, the Companies filed a *Joint Petition for Consolidation of Proceedings and Approval of Energy Efficiency and Conservations Plans Phase II of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company Plan and West Penn Power Company*. 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 17, 2012. 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:

UGI Utilities Inc. – Gas Division, UGI Penn Natural Gas, Inc. and UGI Central Penn Gas, Inc. (UGI)

The Pennsylvania State University

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

CAPP (Community Action Association of PA)

CAUSE-PA

Met-Ed Industrial Users Group

Penelec Industrial Customer Alliance

Penn Power Users Group

West Penn Industrial Intervenors

Citizens for Pennsylvania’ Future (PENNFUTURE)

At the prehearing conference, there was no objection to any of the above parties intervening in this matter. Accordingly, their petitions shall be granted and they shall have status as intervenors. In accordance with 52 Pa.Code § 5.71, OCA and OSBA are authorized by statute to participate in this proceeding.

Subsequent to the Prehearing Conference held in this case on December 19, 2012 and before the expiration of the twenty day intervention period on December 21, 2012, one additional entity, Comverge, Inc., filed a Petition to Intervene.

I electronically notified counsel that they would have until December 26, 2012, to file an answer to the petition to intervene, given the compressed time frame of this proceeding. No objections were received.

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).

Comverge Inc.’s eligibility to intervene in this proceeding is governed by 52 Pa. Code § 5.72(a)(2) since Comverge 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 Comverge Inc. a right to intervene pursuant to 52 Pa. Code § 5.72(a)(1). Comverge Inc.’s interests in this proceeding are of such a nature that intervention is necessary and appropriate to the administration of the statute under which the proceedings are brought. Therefore, it shall be granted intervenor status.

Procedural Schedule

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| The procedural schedule is as follows:   |  |  | | --- | --- | |  |  | | |  | | --- | | SCHEDULE  Companies’ Direct Testimony November 13, 2012  Prehearing Conference December 19, 2012  Deadline for Answers/Petitions to Intervene/Comments December 21, 2012  Other Parties’ Direct Testimony January 8, 2013  Outline of issues for oral rebuttal exchanged between parties January 16, 2013  Evidentiary Hearing/ oral rebuttal January 17, 2013  Main briefs January 28, 2013  Reply briefs/comments and/or revised plan February 6, 2013  ALJ certifies record February 7, 2013  Commission decision March 14, 2013 | |  | |  |
|  |  |
|  |  |

|  |  |
| --- | --- |
|  |  |

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 2003.

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 two (2) days 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.

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 24 hours prior to the date that the witness is scheduled to testify.

Location and start time of hearing

The hearing will begin at 10:00 a.m. on Thursday, January 17, 2013 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. There was some dispute between OCA and the Companies as to how that modification should be. The Companies preferred a 10-day instead of 7-day turnaround deadline for responses to formal discovery questions because of the holidays. However, I agreed with OCA’s position that as the entire procedural schedule is expedited, and since Intervenors are under a 5-6 day time constraint to answer interrogatories, OCA’s request is reasonable. However, I agreed with the Companies position that answers to discovery on Intervenor direct testimony should be served on a best effort basis by noon on January 14, 2013, but no later than January 15, 2013, informally to the extent feasible, and that reasonable on-the-record data requests should be served on a best effort basis. I note that service of objections is not required upon the Administrative Law Judge; however, it is required upon the parties. Accordingly, the discovery rules for this proceeding, from December 19, 2012, forward are as follows:

1. The response period for replying to written interrogatories, requests for production and requests for admissions is ten (7) calendar days of receipt or the party’s best effort.

2. Objections to written interrogatories, requests for production and requests for admission are to be communicated orally to the party serving the interrogatory within three (3) calendar days of service; unresolved objections shall be served in writing within five (5) days of service of interrogatories. The parties are directed to confer, by telephone or e-mail, and attempt to resolve the objections.

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) days of service of such motions.

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

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

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

8. Responses to interrogatories served after noon on Friday will be due as if served the following Monday.

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.

12. Answers to discovery on Intervenor direct testimony shall be served on a best effort basis by noon on January 14, 2013, but no later than January 15, 2013, informally to the extent feasible, and reasonable on-the-record data requests shall be served on a best effort basis.

Protective Order

A Proposed Protective Order was filed by the Companies on December 14, 2012. Twenty days have elapsed without any party objecting to the draft order. Accordingly, it shall be signed and entered under separate 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.

Official Service List

The official service list is enclosed with this Order. Additional counsel or technical advisors may be included on an e-mail service list upon request. 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.

[John.povilaitis@bipc.com](mailto:John.povilaitis@bipc.com)

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

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

[dasmus@pa.gov](mailto:dasmus@pa.gov)

[morrow@ugicorp.com](mailto:morrow@ugicorp.com)

[jaconover@hmslegal.com](mailto:jaconover@hmslegal.com)

[kjmckeon@hmslegal.com](mailto:kjmckeon@hmslegal.com)

[cmarfaa@hmslegal.com](mailto:cmarfaa@hmslegal.com)

[tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)

[welehman@hmslegal.com](mailto:welehman@hmslegal.com)

[bnaum@spillmanlaw.com](mailto:bnaum@spillmanlaw.com)

[dwilliamson@spillmanlaw.com](mailto:dwilliamson@spillmanlaw.com)

[langeland@pennfuture.org](mailto:langeland@pennfuture.org)

[cappleby@paoca.org](mailto:cappleby@paoca.org)

[ctunilo@paoca.org](mailto:ctunilo@paoca.org)

[cmincavage@mwn.com](mailto:cmincavage@mwn.com)

[sbruce@mwn.com](mailto:sbruce@mwn.com)

[tschmittberger@mwn.com](mailto:tschmittberger@mwn.com)

[vkarandrikis@mwn.com](mailto:vkarandrikis@mwn.com)

[pulp@palegalaid.net](mailto:pulp@palegalaid.net)

[jlvullo@aol.com](mailto:jlvullo@aol.com)

[rdk@indecon.com](mailto:rdk@indecon.com)

[jnorton@eckertseamans.com](mailto:jnorton@eckertseamans.com)

[cshultz@eckertseamans.com](mailto:cshultz@eckertseamans.com)

THEREFORE,

IT IS ORDERED:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| |  |  | | --- | --- | | 1. That the procedural schedule is as follows: |  | | |  | | --- | | Companies’ Direct Testimony November 13, 2012  Prehearing Conference December 19, 2012  Deadline for Answers/Petitions to Intervene/Comments December 21, 2012  Other Parties’ Direct Testimony January 8, 2013  Outline of issues exchanged between parties January 16, 2013  Evidentiary Hearing/ oral rebuttal January 17, 2013  Main briefs January 28, 2013  Reply briefs/comments and/or revised plan February 6, 2013  ALJ certifies record February 7, 2013  Commission decision March 14, 2013 | |  | | |  |
|  |  |

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 December 19, 2012, forward are as follows:

a. The response period for replying to written interrogatories, requests for production and requests for admissions is ten (7) calendar days of receipt or the party’s best effort.

b. Objections to written interrogatories, requests for production and requests for admission are to be communicated orally to the party serving the interrogatory within three (3) calendar days of service; unresolved objections shall be served in writing within five (5) days of service of interrogatories. The parties are directed to confer, by telephone or e-mail, and attempt to resolve the objections.

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) days of service of such motions.

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

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

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

h. Responses to interrogatories served after noon on Friday will be due as if served the following Monday.

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.

l. Answers to discovery on Intervenor direct testimony shall be served on a best effort basis by noon on January 14, 2013, but no later than January 15, 2013, informally to the extent feasible, and reasonable on-the-record data requests shall be served on a best effort basis.

5. That directives regarding other matters including: identification of witness order, motions, and settlement petitions are adopted as referenced in this Order.

6. That the Petitions to Intervene filed by: the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania; Citizens for Pennsylvania’s Future; Comverge, Inc.; Community Action Association of Pennsylvania; the Med-Ed Industrial Users Group; Penelec Industrial Customer Alliance; Penn Power Users Group; and West Penn Power Industrial Intervenors; The Penn State University; UGI Utilities Inc.-Gas Division, UGI Penn Natural Gas, Inc., and UGI Central Penn Gas, Inc.; and Wal Mart Stores East, LP and Sam’s East, Inc. are hereby granted.

Date: December 28, 2012

Elizabeth H. Barnes

Administrative Law Judge

**M-2012-2334387 – PETITION OF METROPOLITAN EDISON COMPANY**

**M-2012-2334392 – PETITION OF PENNSYLVANIA ELECTRIC COMPANY**

**M-2012-2334395 – PETITION OF PENNSYLVANIA POWER COMPANY**

**M-2012-2334398 – PETITION OF WEST PENN POWER COMPANY**

***Revised 12/20/12***

KATHY JO KOLICH ESQUIREFIRSTENERGY SERVICE COMPANY76 SOUTH MAIN STREETAKRON OH 44308**330.384.4580e-serve**

LAUREN M LEPKOSKI ESQUIRE

FIRSTENERGY SERVICES CO2800 POTTSVILLE PIKEPO BOX 19612READING PA 19612**610.921.6203e-serve**

JOHN F POVILAITIS ESQUIREBUCHANAN INGERSOLL AND ROONEY PC409 NORTH SECOND STREET SUITE 500HARRISBURG PA 17101-1357**717.237.4825e-serve**

DANIEL G ASMUS ESQUIREASSISTANT SMALL BUSINESS ADVOCATE

OFFICE OF SMALL BUSINESS ADVOCATE300 NORTH SECOND STREET SUITE 1102HARRISBURG PA 17101**717.783.2525**CHRISTY M APPLEBY ESQUIRECANDIS A TUNILO ESQUIRE

ASSISTANT CONSUMER ADVOCATE

OFFICE OF CONSUMER ADVOCATE555 WALNUT STREET

FIFTH FLOOR FORUM PLACEHARRISBURG PA 17101-1923**717.783.5048**

HARRY S GELLER EXECUTIVE DIRECTORPATRICK M CICERO ESQUIRE

PA UTILITY LAW PROJECT118 LOCUST STREETHARRISBURG PA 17101**717.232.2719e-serve**

HEATHER M LANGELAND ESQUIRE

PENNFUTURE

REGIONAL ENTERPRISE TOWER

425 SIXTH AVENUE SUITE 2770

PITTSBURGH PA 15219

**412.258.6680**

**e-serve**

TERESA K SCHMITTBERGER ESQUIRECHARIS MINCAVAGE ESQUIRE

SUSAN BRUCE ESQUIRE

VASILIKI KARANDRIKAS ESQUIRE

MCNEES WALLACE AND NURICK LLC100 PINE STREETPO BOX 1166HARRISBURG PA 17108**717.237.5270**

**e-serve**

JOSEPH L VULLO ESQUIRE

BURKE VULLO REILLY ROBERTS

1460 WYOMING AVENUE

FORTY FORT PA 18704

**570.288.6441**

THOMAS J SNISCAK ESQUIREHAWKE MCKEON AND SNISCAK LLP100 N TENTH STHARRISBURG PA 17101**717.236.1300e-serve**

BARRY A NAUM ESQUIREDERRICK PRICE WILLIAMSON ESQUIRE

SPILMAN THOMAS & BATTLE PLLCSUITE 1011100 BENT CREEK BLVDMECHANICSBURG PA 17050**717.795.2742e-serve**

KEVIN MCKEON ESQUIRE

JULIA A CONOVER ESQUIRE

CHRISTOPHER M ARFAA ESQUIREHAWKE MCKEON & SNISCAKP O BOX 1778

100 NORTH TENTH STREETHARRISBURG PA 17101**717.236.1300**

MARK C MORROW ESQUIREUGI CORPORATION460 NORTH GULPH ROADKING OF PRUSSIA PA 19406**610.768.3628e-serve**

JEFFERY J NORTON ESQUIREECKERT SEAMANS CHERIN & MELLOTT LLC213 MARKET STREET 8TH FLOORHARRISBURG PA 17101**717.237.6000**