**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Energy Efficiency and Conservation : Docket No. M-2020-3015228

Program :

Petition of PPL Electric Utilities for : Docket No. M-2020-3020824

Approval of its Act 129 Phase IV Energy :

Efficiency and Conservation Plan :

Petition of PECO Energy Company for : Docket No. M-2020-3020830

Approval of its Act 129 Phase IV Energy :

Efficiency and Conservation Plan :

Petition of Duquesne Light Company for : Docket No. M-2020-3020818

Approval of its Act 129 Phase IV Energy :

Efficiency and Conservation Plan :

Petitions of Metropolitan Edison Company, : Docket No. M-2020-3020820

Pennsylvania Electric Company, Pennsylvania : Docket No. M-2020-3020821

Power Company, and West Penn Power : Docket No. M-2020-3020822

Company for Approval of their Act 129 : Docket No. M-2020-3020823

Phase IV Energy Efficiency and Conservation :

Plans :

**ORDER DENYING THE JOINT EXPEDITED MOTION FOR EXTENSION OF PROCEDURAL SCHEDULE**

On November 30, 2020, petitions to approve their Phase IV Energy Efficiency and Conservation Plans (EE&C) were filed by PPL Electric Utilities (PPL), PECO Energy Company (PECO), Duquesne Light Company (Duquesne Light), Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Power Company (collectively FirstEnergy Companies). The Public Utility Code provides that EE&C plans are to be approved or disapproved by the Commission within 120 days of submission. 66 Pa.C.S. § 2806.1(e)(2). The Commission’ s order implementing the Phase IV EE&C programs provides that the Commission would rule on the programs by March 2021. See*, Implementation Order Re Energy Efficiency and Conservation Program*, M-2020-3015228 (Order entered June 18, 2020) (*Implementation Order*) at 89.

On January 8, 2021, Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), Natural Resources Defense Council (NRDC), Office of Consumer Advocate (OCA), Office of Small Business Advocate (OSBA), Commission on Economic Opportunity (CEO), Community Action Association of Pennsylvania (CAAP), Sustainable Energy Fund of Central Pennsylvania, and Tenant Union Representative Network (collectively Joint Movants) filed a Joint Expedited Motion for Extension of Procedural Schedule (Motion) pursuant to the Commission’s Emergency Order issued on March 20, 2020. In their Motion, Joint Movants request that the procedural schedule established by the presiding administrative law judges be extended by fourteen (14) days, the length of time corresponding with the delay of publication of the proposed EE&C plans in the *Pennsylvania Bulletin*.

In their Motion, Joint Movants state that all of the parties and all of the electric distribution companies either support or do not oppose the Motion, with the exception of Duquesne Light Company, who does not object to an extension of the procedural schedule but opposes extending the deadline for a final Commission order approving the EE&C plans beyond March 30, 2021. Motion at 2.

In an Emergency Order dated March 20, 2020, consistent with Governor Tom Wolf’s Proclamation of Disaster Emergency for the COVID-19 pandemic (most recently renewed on November 24, 2020), the Commission stated as follows in pertinent part:

Similar to other actions where we have delegated various duties to Commission bureaus, we now delegate the authority to determine the suspension, extension, waiver or change of any regulatory, statutory or procedural deadlines to individual Commission Bureau Directors whose bureaus are tasked with matters before the Commission. Each Bureau Director will make decisions regarding the necessity of modifying such deadlines. Modifications may result from a request by a party or the tribunal/bureau staff itself. These modifications will be treated as an action of staff and will be reviewable by the Commission pursuant to 52 Pa.Code § 5.44 (regarding petitions for reconsideration from actions of the staff).

In addition, stakeholders are advised that the Commission reserves the right during this emergency period to waive any statutory or regulatory deadline for action *sua sponte*, without request by any other party, in any proceeding in which it has determined that strict adherence to an established deadline will interfere with its ability to administer the Public Utility Code.

**Suspension, extension, waiver or change of any regulatory, statutory or procedural deadlines shall not exceed ninety (90) days except upon expedited certification of the question by the Chief Administrative Law Judge or Bureau Director to the Commission.**

For example, in pending rate case litigation, the Chief Administrative Law Judge is authorized to establish reasonable deadlines under the circumstances after consideration of the positions of the parties and the presiding Administrative Law Judge. The Chief Administrative Law Judge’s decision would then be subject to review by the Commission. Similarly, in uncontested proceedings, e.g. the filing of an annual universal service report, the utility may request an extension of time to file the report. The Bureau Director is hereby authorized to grant a reasonable extension of time for the filing of that report subject to review by the Commission.

Under the Proclamation of Disaster Emergency, it is both necessary and appropriate to provide this flexibility to ensure operations continue as smoothly as possible and to prevent any regulatory statute or rule prescribing procedures for the conduct of Commission business from unreasonably interfering with the public interest.

*Emergency Order Re Suspension of Regulatory and Statutory Deadlines; Modification to Filing* *and Service Requirements*, M-2020-3019262 (March 20, 2020) at 2-3 (emphasis in original).

In support of their Motion, Joint Movants state that under the Implementation

Order governing Phase IV EE&C plans, notice of the proposed plans were to have been published in the *Pennsylvania Bulletin* by December 19, 2020, twenty (20) days after being filed with the Commission on November 30, 2020. However, notice of the proposed plans was not published in the *Pennsylvania Bulletin* until January 2, 2021. Motion at 2-3.

Joint Movants note that the Public Utility Code and the Implementation Order

provide that the Commission is to issue final orders regarding the proposed EE&C plans within 120 days of the filing of the plans, or by March 30, 2021. Joint Movants indicate that the 14 days lost in the late publication of notice of the proposed EE&C plans in the *Pennsylvania Bulletin* has adversely impacted the procedural schedule in each case. Joint Movants assert that the procedural schedules established by the assigned administrative law judges to allow the Commission to meet the statutory deadline for final orders does not afford the parties adequate time to litigate the cases and denies them due process. Motion at 1-9.

By Prehearing Order issued on January 8, 2021, Deputy Chief Administrative Law Judge Mark Hoyer and Administrative Law Judge Emily DeVoe (ALJs), established the following procedural schedule:

|  |  |
| --- | --- |
| Date | Event |
| January 14, 2021 | Service of Other parties’ Direct Testimony |
| January 20, 2021 | Service of Rebuttal Testimony |
| January 22, 2021 | Filing and Service of Comments |
| January 22, 2021 at 10:00 a.m. | Telephone Evidentiary Hearing |
| January 29, 2021 | Filing and Service of Briefs |
| February 10, 2021 | Filing and Service of Reply Comments, Revised Phase IV EE&C Plan, and Close of the Record |
| February 11, 2021 | Certification of the Record |

Joint Movants note that notice of the proposed EE&C plans published in the

*Pennsylvania Bulletin* on January 2, 2021, gave interested persons or entities 20 days from the date of publication, or by January 22, 2021 to file responsive pleadings with the Commission.[[1]](#footnote-1) Joint Movants indicate that those persons or entities intervening on January 22, 2021, will be entering the case behind the litigation schedule, which has written direct testimony of other parties due by January 13 or 14, 2021. Joint Movants also note that evidentiary hearings are scheduled for January 21, 2021 in the case of PPL Electric Utilities, and for January 22, 2021 for the FirstEnergy Companies, Duquesne Light Company, and PECO Energy Company. Motion at 3-5.

Joint Movants also argue that the Commission is not precluded from extending the statutory deadline provided in 66 Pa.CS. § 2806.1(e) because the statute is directory rather than mandatory in nature. Joint Movants assert that, “Clearly, the section of the statute regarding a 120 day timetable, rather than a 134 day timetable as requested herein, is not essential to compliance with the statute, and therefore, lack of strict compliance is not fatal to this Petition.” Motion at 6.

In their Motion, Joint Movants provided the following chart based on the guidelines provided in the *Implementation Order*, which shows the procedural deadlines if notice of the proposed EE&C plans were timely published in the *Pennsylvania Bulletin*; and the procedural deadlines extended by 14 days:

|  |  |  |
| --- | --- | --- |
|  | **Original Deadline** | **New Deadline (+14 days)** |
| Plan Filing | November 30, 2020 | November 30, 2020 |
| Publication in *Pa. Bulletin* | December 19, 2020 (19 days from filing) | January 2, 2021 (actual publication date; 33 days from filing) |
| Evidentiary Hearings | February 3, 2021  (65 days from filing) | February 17, 2021  (79 days from filing) |
| Commission decision | March 30, 2021  (120 days after filing)  Nearest Public Meeting Dates: March 25 / April 15 | April 13, 2021  (134 days after filing)  Nearest Public Meeting Dates: March 25 / April 15 |
|  |  |  |

On January 11, 2021, the ALJs issued an Interim Order Directing Parties to Respond to Joint Expedited Motion and OALJ’s Proposed Revised Schedule (Interim Order). In their Interim Order the ALJs directed the parties to file by the close of business on Wednesday, January 13, 2021, any response to the Motion, including any response to the Joint Movants proposed procedural schedule. The ALJs also directed the parties to file any response to the ALJs’ proposed revised procedural schedule.

The ALJs’ proposed revised procedural schedule is as follows:

|  |  |
| --- | --- |
|  | **OALJ’s Proposed Revised Schedule** |
| Evidentiary Hearings on or before | February 8, 2021 |
| Briefs filed on or before | February 18, 2021 |
| Reply comments/revised plan | March 1, 2021 |
| Certification of Record | March 2, 2021 |
|  |  |

In support of their proposed revised procedural schedule, the ALJs state as follows:

The Joint Movants’ proposed plan would require an extension of the Implementation Order’s deadline regarding the completion of evidentiary hearings and would make it unlikely that the Commission could meet the statutory deadline of March 30, 2021, considering that certification of the record would occur on March 10, 2021, and the last public meeting date in March 2021 is March 25, 2021. The Commission would only have 15 days between the certification of the record on March 10, 2021 and the public meeting on March 25, 2021.

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Under the OALJ’s Proposed Revised Schedule, the evidentiary hearings would occur 70 days after the filing of the EE&C plan, which is still after the 65-day deadline set by the Implementation Order, but it would give the Commission additional time between the certification of the record on March 2, 2021 and the public meeting on March 25, 2021. The Commission would have 23 days versus the 15 days it would have if the record is certified on March 10, 2021 under the Joint Movants’ proposal.

*Interim Order* at 5-6.

Timely responses to the Interim Order were filed by FirstEnergy Companies, PPL, Duquesne Light, CAUSE-PA,[[2]](#footnote-2) PECO, OCA, OSBA, Industrial Energy Consumers of Pennsylvania (IECPA), Sustainable Energy Fund of Central Eastern Pennsylvania (SEF) and NRDC.

OCA in its letter responses regarding the PECO, Duquesne Light, FirstEnergy Companies, and PPL proceedings states that it continues to support a 14-day extension of the procedural schedule consistent with the Motion.

OSBA states that it supports a 21-day extension of the procedural schedule in light of a second notice of the Phase IV EE&C plans being published in the *Pennsylvania Bulletin* on January 9, 2021.

In all other responses, the parties agree with the ALJs’ proposed revised procedural schedule in regard to briefs being filed on or before February 18, 2021, reply comments/revised plan filed March 1, 2021, and certification of the record on March 2, 2021. Some parties propose different evidentiary hearing dates than what the ALJs propose. The ALJs propose evidentiary hearings on or before February 8, 2021. And some parties propose specific dates for written testimony. The ALJs’ proposed revised procedural schedule does not include the dates that written testimony is to be submitted.

After consideration of the positions of the parties and the presiding administrative law judges, I will deny Joint Movants’ Motion. I find reasonable under the circumstances the proposed revised procedural schedule of the ALJs which has evidentiary hearings on or before February 8, 2021; briefs filed on or before February 18, 2021; reply comments/revised plan on March 1, 2021; and certification of the record on March 2, 2021. The ALJs are to take into consideration the positions of the parties in establishing reasonable deadlines for the submission of written testimony.

Any party dissatisfied with my resolution of this matter may, as set forth in 52 Pa.Code §§ 1.31 and 5.44, file a Petition for Reconsideration from Staff Action with the Commission within twenty (20) days from the date of service of this Order. The Petition shall be sent via email or e-filing only. The email should be addressed to: [rchiavetta@pa.gov](mailto:rchiavetta@pa.gov). If no timely request is made, this Order will be deemed a final action of the Commission.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Joint Expedited Motion for Extension of Procedural Schedule of Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, Natural Resources Defense Council, Office of Consumer Advocate, Office of Small Business Advocate, Commission on Economic Opportunity, Community Action Association of Pennsylvania, Sustainable Energy Fund of Central Pennsylvania, and Tenant Union Representative Network, is denied.
2. That the proposed revised procedural schedule of the administrative law judges is to be followed in each of the Phase IV Energy Efficiency and Conservation Plan cases.
3. That evidentiary hearings are to be held on or before February 8, 2021.
4. That briefs are to be filed on or before February 18, 2021.
5. That reply comments/revised plans are to be filed by March 1, 2021.
6. That the record is to be certified by March 2, 2021.
7. That the administrative law judges are to take into consideration the positions of the parties in establishing reasonable deadlines for the submission of written testimony.
8. That any party dissatisfied with my resolution of this matter may, as set forth in 52 Pa.Code §§ 1.31 and 5.44, file a Petition for Reconsideration from Staff Action with the Commission within twenty (20) days from the date of service of this Order. The Petition shall be sent via email or e-filing only. The email should be addressed to: [rchiavetta@pa.gov](mailto:rchiavetta@pa.gov). If no timely request is made, this Order will be deemed a final action of the Commission.

Date: January 14, 2021 /s/

Charles E. Rainey Jr.

Chief Administrative Law Judge

**M-2020-3020818 - PETITION OF DUQUESNE LIGHT COMPANY FOR APPROVAL OF ITS ACT 129 PHASE IV ENERGY EFFICIENCY AND CONSERVATION PLAN**

**M-2020-3020820, M-2020-3020821, M-2020-3020822, M-2020-3020823 JOINT PETITION FOR CONSOLIDATION AND APPROVAL OF THE ACT 129 PHASE IV ENERGY EFFICIENCY AND CONSERVATION PLAN OF METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER COMPANY, AND WEST PENN POWER COMPANY**

**M-2020-3020824 - PETITION OF PPL ELECTRIC UTILITIES CORPORATION FOR APPROVAL OF ITS ACT 129 PHASE IV ENERGY EFFICIENCY AND CONSERVATION PLAN**

**M-2020-3020830 - PETITION OF PECO ENERGY COMPANY FOR APPROVAL OF ITS ACT 129 PHASE IV ENERGY EFFICIENCY AND CONSERVATION PLAN**

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1. In a footnote, Joint Movants state, “For reasons that are unclear, notice of the proposed Phase IV Plans was again published today January 8 [sic]. 51 Pa.B. 252. The January 8 [sic] notice appears to be identical to the Notice, except that the former includes a hyperlink to each proposed plan, whereas the latter includes a link to a Commission page where all the plans are available. Like the Notice, the January 9 notice states that Answers and Comments are to be filed with the Commission within 20 days.” Motion at 3 n.4. The second notice was published on January 9, 2021. [↑](#footnote-ref-1)
2. CEO and CAAP did not file responses to the Interim Order but both parties join in the position of CAUSE-PA and its proposed schedule. [↑](#footnote-ref-2)