**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for Approval :

of its Act 129 Energy Efficiency and Conservation : M-2009-2093215

Plan and Expedited Approval of its Compact :

Fluorescent Lamp Program :

**ORDER CERTIFYING THE RECORD**

On July 1, 2009, PECO Energy Company (PECO or petitioner) filed with the Pennsylvania Public Utility Commission(Commission) 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 the Energy Efficiency and Conservation Plan (EE&C Plan), which is designed to reduce energy consumption and demand in its service territory in accordance with the requirements of Act 129, 66 Pa.C.S.A.§2806.1, and the Implementation Orders entered January 16, 2009 and May 28, 2009 by the Commission at Docket No. M-2008-2069887, *Energy Efficiency and Conservation Program*.

Specifically, PECO requested that the Commission: (1) find that the EE&C Plan satisfies the requirements of 66 Pa.C.S.A.§2806.1(b)(1)(i)(A)-(K), including the requirement to provide programs to achieve or exceed the energy savings and demand reductions mandated by Act 129; (2) approve PECO’s proposed compact fluorescent lamp (CFL) program on an expedited basis; (3) approve tariff provisions to implement the EE&C Plan, including a Section 1307(g) surcharge to recover EE&C Plan costs; and (4) approve the contract between PECO and Global Energy Partners, LLC, a conservation service provider (CSP). As explained in the Petition, the EE&C Plan is a comprehensive package of energy efficiency and demand response measures designed to meet Act 129’s mandated energy savings and peak demand reductions, in compliance with the schedule and cost limitations contained in Act 129.

Included with the Petition in Volume I were the direct testimony and associated exhibits of (1) Frank J. Jiruska, PECO’s Director of Energy and Marketing Services (PECO St. 1 and Exh. FJJ-1), (2) Gregory A. Wikler, Global Energy Partners, LLC, Vice-President (PECO St. 2 and Exh. GAW-1) and (3) Richard A. Schlesinger, PECO’s Principal Rate Administrator (PECO St. 3 and Exhs. RAS-1 through RAS-4). Volume II contained the EE&C Plan, with Appendices A-E (Volume III),[[1]](#footnote-2) Appendices F1-F8 (Volume IV) and Appendix F9 (Volume V).

The Petition was served on each Commissioner, as well as on the Commission’s Office of Trial Staff (OTS), the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), and other interested entities. PECO requested that the Commission publish notice of the filing in the July 18, 2009 *Pennsylvania Bulletin*, which was done at 39 Pa.B. 4196 (July 18, 2009). Notice to the public also was provided through published notices in all major newspapers serving PECO’s service territory, issuance of a press release to all major media in the service territory and the posting of the entire filing on the company’s website.

By Notice dated July 2, 2009, a prehearing conference was scheduled to be held in Harrisburg on July 27, 2009 and the matter was assigned to me. I issued a Prehearing Conference Order on July 2, 2009 which directed the parties to comply with various procedural requirements, contained the litigation and briefing schedule and provided that intervention would be limited to those persons or entities granted party status or with a statutory right of intervention.

On July 7, 2009, the OCA filed a Notice of Intervention and Public Statement. A Notice of Appearance (for Richard Kanaskie, Esq. and Carrie Wright, Esq.) was filed on July 8, 2009 by OTS. A Notice of Intervention, Public Statement, and Notice of Appearance (for Daniel Asmus, Esq.) was filed on July 21, 2009 by OSBA.

Petitions to Intervene were filed by Commonwealth of Pennsylvania, Department of Environmental Protection (DEP) (July 16, 2009); the Philadelphia Area Industrial Energy Users Group (PAIEUG) (July 20, 2009);[[2]](#footnote-3) The Reinvestment Fund (TRF) (July 22, 2009); Tenant Union Representative Network (TURN) and Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance) (collectively, TURN/ AA) (July 23, 2009)[[3]](#footnote-4); Pennsylvania Association of Community Organizations for Reform Now (ACORN) (July 24, 2009); Citizens for Pennsylvania’s Future (PennFuture), Joy Bergey, Christine Knapp, and Henry Rowan (collectively, PennFuture et al.), who also filed a Protest (July 24, 2009), the City of Philadelphia (Philadelphia) (July 24, 2009); Field Diagnostics Services, Inc. (FDSI) (July 27, 2009); Direct Energy Business, LLC (Direct Energy) (July 27, 2009); Pennsylvania Rep. Mark Cohen (July 30, 2009); EnerNOC, Inc. (EnerNOC) (August 3, 2009); and Constellation NewEnergy, Inc. (Constellation) (August 3, 2009). As none of the various Petitions was opposed, intervention was permitted. [[4]](#footnote-5)

The prehearing conference was held in Harrisburg on July 27, 2009. Present and participating through counsel were PECO, OTS, OCA, OSBA, PAIEUG, DEP, TRF, TURN/AA, Philadelphia, ACORN, PennFuture at al., and FDSI. As set out in Prehearing Order #1, dated July 30, 2009, the Petitions to Intervene were granted, the service list was developed, the schedule directed by the Commission was discussed and other procedural matters were addressed. I issued a separate protective order, also dated July 30, 2009.

The public input hearing was held as scheduled on July 29, 2009 at the Philadelphia Free Library. Seven customers testified. Several statements and exhibits (Karton St. 1, Spielvogel Exh. 1 and Cohen Exh. 1) were admitted into the record.

On July 31, 2009, PECO filed and served the supplemental testimony and exhibits of Mr. Wikler (PECO St. 2S and Exhs. GAW-1-S through GAW-8-S) and Alan Cohn, PECO’s Manager of Revenue Analysis (PECO St. 4S and Exhs. ABC-1-S and 2-S).

Also on July 31, 2009, PECO, OCA, OTS, TRF, PennFuture et al., FDI, ACORN and the City of Philadelphia filed a Joint Petition for Partial Settlement (Joint Petition) asking that the Commission approve on an expedited basis the company’s proposed CFL program. It was represented in the Joint Petition that the remaining parties of record at that time (OSBA, PAIEUG, TURN/AA, Direct Energy and DEP) did not oppose the Joint Petition.

By Revised Order Certifying Record Regarding the Joint Petition for Partial Settlement dated August 4, 2009, I certified the record (the company’s Act 129 filing, including the supplemental testimony and exhibits, the transcripts of the July 27, 2009 prehearing conference and the July 29, 2009 public input hearing and the statements and exhibits admitted into the record at that hearing) so that the Commission could consider the Joint Petition.

On August 5, 2009, PennFuture et al. filed a Notice of Appearance for John K. Baillie, Esq.

At its August 6, 2009 Public Meeting, the Commission tentatively approved the Joint Petition, pending receipt of the comments and answers to the Act 129 Petition on August 7, 2009. By Opinion and Order entered August 18, 2009, the Commission determined that no comments or answers had been filed that were in opposition or would otherwise warrant the delay in the implementation of PECO’s proposed CFL program and therefore approved the Joint Petition, reserving the issues relating to the CFL Program that were not addressed by the Joint Petition (the issues of the cost recovery mechanism and the actual cost recovery from ratepayers, as well as any prospective recommendations).

Pursuant to the schedule established by the Commission, answers, comments and written testimony were filed and/or served on August 7, 2009. OCA filed Comments and served the direct testimony of Richard S. Hahn, La Capra Associates, Principal (OCA St. 1 and Exh. RSH-1); OTS filed Comments and served the direct testimony of Christine S. Wilson, CPA, PUC, Auditor (OTS St. 1 and Exh. OTS-1) and Gary Yocca, PUC Fixed Utility Financial Analyst Supervisor (OTS St. 2 and Exh. OTS-2); OSBA served the direct testimony of Robert Knecht, Industrial Economics, Incorporated, Principal and Treasurer (OSBA St. 1 and Exhs. IEc-1 and IEc-2); the City of Philadelphia served the direct testimony of William E. Toffey, City of Philadelphia, City Energy Manager (Phila. St. 1) and Joseph M. Doyle, City of Philadelphia, Chief Traffic Engineer (Phila. St. 2); DEP filed Comments and served the direct testimony of Maureen Guttman, AIA, Governor’s Green Government Council, Executive Director (DEP St. 1); ACORN served the direct testimony of Ian Phillips, PA ACORN, Legislative Director (ACORN St. 1); TRF served the direct testimony of Robert G. Sanders, TRF Energy Group, Managing Director (TRF St. 1 and Exhs. RGS-1 through RGS-5); and FDSI served the direct testimony of Todd Michael Rossi, Ph.D., Field Diagnostic Services, Inc., President (FDSI St. 1 and Exhs. A, B and C).

In addition, Comments were filed by PennFuture et al., EnerNOC (who also filed an Answer), TURN/AA, and PAIEUG. Non-parties who filed Comments included Green Condominium Initiative (GCI), Richard Karton (who had also testified at the public input hearing), Envinity, Inc., PA Home Energy, AFC First Financial Corporation (on behalf of Keystone HELP) and Keystone Energy Efficiency Alliance.

On August 13, 2009, PECO filed and served certain revised tariffs included in Exh. RAS-5.

Due to the cooperation among the parties, it was determined that two hearing days were unnecessary and the hearing scheduled for August 17, 2009 was cancelled.

The hearing on August 18, 2009 was held as scheduled. All parties other than EnerNOC and Constellation were present and participated through counsel. PECO presented as witnesses Mr. Jiruska and Mr. Schlesinger, each of whom presented additional oral rejoinder testimony and exhibits (Exhs. RAS-5, FJJ-2 and FJJ-3), were cross-examined and sponsored their respective statements and exhibits, all of which were admitted into the record. DEP presented Ms. Gutman, who was cross-examined and sponsored her statement (DEP St. 1), which was admitted into the record. Upon the presentation of affidavits regarding the adoption of their respective comments, statements and exhibits, admitted into the record without cross-examination were the statements and exhibits of OCA witness Hahn, OTS witness Wilson, OSBA witness Knecht, Philadelphia witnesses Toffey and Doyle, ACORN witness Phillips, TRF witness Sanders and FDSI witness Rossi. TURN/AA presented an affidavit from Philip Lord, TURN’s Executive Director, who adopted the comments previously filed as his testimony (designated as TURN/AA Comments and Exh. PL-1). OTS witness Yocca was presented to sponsor his testimony and exhibit. OCA introduced into the record OCA X-Exhs. 1 and 2 during the cross-examination of PECO witnesses Jiruska and Schlesinger. TRF introduced into the record TRF X-Exh. 1 during its cross-examination of Mr. Jiruska.

On August 25, 2009, I issued an order (Order Admitting Documents into the Record) which admitted into the record TURN/AA Comments 1 (which had inadvertently not been admitted into the record at the August 18, 2009 hearing) and Cohen Exh. 2, corrected interrogatory responses which had been supplied by PECO after the hearing.

On August 25, 2009, Susan Bruce, Esq., and Vasiliki Karandrikas, Esq., withdrew their appearances on behalf of EnerNOC. An Entry of Appearance for Scott DeBroff , Esq., and Alicia Petersen, Esq. to represent EnerNOC was filed and served August 25, 2009.

In accordance with the schedule, Main Briefs were filed and served on August 28, 2009 by PECO, OCA, OTS, OSBA, PAIEUG, TURN/AA, TRF, DEP, ACORN, Philadelphia, EnerNOC, FDSI and Rep. Cohen.

Reply Briefs were filed and served on September 8 or 9, 2009[[5]](#footnote-6) by PECO, OTS, OSBA, ACORN, the City of Philadelphia, TRF, PAIEUG and EnerNOC.

By letter dated September 9, 2009, PAIEUG noted that portions of EnerNOC’s Reply Brief (pp. 5-10) contained an argument in response to positions taken by another party in another utility’s Act 129 proceeding; I allowed EnerNOC to file a revised reply brief, which it did on September 11, 2009.

The record closed on September 11, 2009.

The August 4, 2009 Revised Certification Order admitted into the record the company’s Act 129 filing (PECO Exh. 1), including the supplemental testimony and exhibits. The record therefore will consist of those documents and the transcripts of the July 27, 2009 prehearing conference and the July 29, 2009 public input hearing and the statements and exhibits admitted into the record at that hearing, as well as the exhibits and statements admitted into the record at the August 18, 2009 hearing and the August 25, 2009 Order Admitting Documents into the Record.[[6]](#footnote-7)

I would like to take this opportunity to commend all of the counsel and witnesses who appeared in this proceeding. They exhibited the highest level of professionalism, and were able to function cooperatively and effectively under a very difficult schedule.

THEREFORE,

IT IS ORDERED:

1. That the record in this proceeding consists of the following transcripts, statements and exhibits:

A) The transcripts of the prehearing conference held on July 27, 2009, the public input hearing held on July 29, 2009 and the evidentiary hearing held on August 18, 2009 at Docket No. M-2009-2093215;

B) PECO Exh. 1, the 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 and all attachments, consisting of Vols. I through V, filed by PECO Energy Company on July 1, 2009 (Vol. III is marked confidential and not to be made part of the public file);

C) The testimony and associated exhibits of (1) Frank J. Jiruska, PECO’s Director of Energy and Marketing Services (PECO St. 1 and Exh. FJJ-1 through FJJ-3), (2) Gregory A. Wikler, Global Energy Partners, LLC, Vice-President (PECO Sts. 2 and 2S and Exhs. GAW-1 and GAW-1-S through GAW-8-S); (3) Richard A. Schlesinger, PECO’s Principal Rate Administrator (PECO St. 3 and Exhs. RAS-1 through RAS-5); and (4) Alan B. Cohn, PECO’s Manager of Revenue Analysis (PECO St. 4S and Exhs. ABC-1-S and 2-S) submitted by PECO Energy Company;

D) The testimony and associated exhibits of Richard S. Hahn, La Capra Associates, Principal (OCA St. 1 and Exhs. RSH-1 and RSH-2) and OCA X-Exam. Exhs. 1 and 2 submitted by the Office of Consumer Advocate;

E) The testimony and associated exhibits of Christine S. Wilson, CPA, PUC, Auditor (OTS St. 1, Appendix A and OTS Exh. 1) and Gary L. Yocca, PUC, Fixed Utility Financial Analyst Supervisor (OTS St. 2 and OTS Exh. 2) submitted by the Office of Trial Staff;

F) The testimony and associated exhibits of Robert Knecht, Industrial Economics, Incorporated, Principal and Treasurer (OSBA St. 1 and Exhs. IEc-1 and IEc-2) submitted by the Office of Small Business Advocate;

G) The testimony and associated exhibits of William E. Toffey, City of Philadelphia, City Energy Manager (Phila. St. 1) and Joseph M. Doyle, City of Philadelphia, Chief Traffic Engineer (Phila. St. 2) submitted by the City of Philadelphia;

H) The testimony of Maureen Guttman, AIA, Governor’s Green Government Council, Executive Director (DEP St. 1) submitted by Commonwealth of Pennsylvania, Department of Environmental Protection;

I) The testimony of Ian Phillips, PA ACORN, Legislative Director (ACORN St. 1) submitted by Pennsylvania Association of Community Organizations for Reform Now;

J) The testimony and associated exhibits of Robert G. Sanders, TRF Energy Group, Managing Director (TRF St. 1 and Exhs. RGS-1 through RGS-5) and TRF X-Exam Exh. 1submitted by The Reinvestment Fund;

K) The testimony and associated exhibits of Todd Michael Rossi, Ph.D., Field Diagnostic Services, Inc., President (FDSI St. 1 and Exhs. A, B, and C) submitted by Field Diagnostics Services, Inc.;

L) The comments of Philip Lord, Tenant Union Representative Network, Executive Director (TURN/AA Comments and Exh. PL-1) submitted by Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia;

M) Cohen Exhs. 1 and 2, submitted by Pennsylvania Rep. Mark Cohen;

N) Spielvogel Exh. 1, submitted by Lawrence Spielvogel; and

O) Karton Exh. 1, submitted by Richard Karton.

2. That the record at Docket No. M-2009-2093215 is certified to the Pennsylvania Public Utility Commission for its consideration.

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| Date: | September 14, 2009 |  |  |
|  |  |  | Marlane R. Chestnut  Administrative Law Judge |

**APPENDIX A**

# **PECO Act 129**

Docket No. M-2009-2093215

# **Statements and Exhibits**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Date | Party | Caption | Description | Exhibits/Attachments | Admitted |
| 7/1/09 | PECO | Filing | 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 |  | 8/4/09Cert. Order |
|  |  | PECO Exh. 1 | Filing: Includes Vols. I - V |  |  |
|  |  | Vol. I |  |  | 8/4/09  Cert. Order |
|  |  | Petition |  |  | 8/4/09  Cert. Order |
|  |  | St. 1 | Direct: Frank J. Jiruska, PECO, Director of Energy and Marketing Services | Exh. FJJ-1 | 8/4/09  Cert. Order |
|  |  | St. 2 | Direct: Gregory A. Wikler, Global Energy Partners, LLC, Vice-President | Exh. GAW-1 | 8/4/09  Cert. Order |
|  |  | St. 3 | Direct Richard A. Schlesinger, PECO, Principal Rate Administrator | Exhs. RAS-1 through RAS-4 | 8/4/09  Cert. Order |
|  |  | Vol. II | EE&C Plan |  | 8/4/09  Cert. Oder |
|  |  | Vol. III (confidential and public versions) | EE&C Plan Appendices A-E |  | 8/4/09  Cert. Order |

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| --- | --- | --- | --- | --- | --- |
|  |  | Vol. IV | EE&C Plan Appendices F1-F8 |  | 8/4/09  Cert. Order |
|  |  | Vol. V | EE&C Plan Appendix F9 |  | 8/4/09  Cert. Order |
|  |  |  |  |  |  |
| 7/29/09 | (public input) | Karton St. 1 | Statement of Richard Karton |  | 7/27/09 |
| 7/29/09 | (public input) | Spielvogel Exh. 1 | Exhibit of Lawrence G. Spielvogel, PE |  | 7/27/09 |
| 7/29/09 | (public input) | Cohen Exh. 1 | Exhibit of Rep. Mark Cohen |  | 7/27/09 |
| 7/31/09 | PECO | PECO St. 2S | Supplemental testimony: Gregory A. Wikler | Exhs. GAW-1-S through GAW-8-S | 8/4/09Cert. Order |
| 7/31/09 | PECO | PECO St. 4S | Supplemental testimony: Alan B. Cohn, PECO, Manager of Revenue Analysis | Exhs. ABC-1-S and ABC-2-S | 8/4/09Cert. Order |
|  |  |  |  |  | ------------- |
| 8/7/09 | OCA | OCA St. 1 | Direct testimony: Richard S. Hahn, La Capra Associates, Principal 8/17/09: Clarification | Exh. RSH-1 | 8/18/09\* |
| 8/7/09 | OCA |  | Comments |  | ---------- |
| 8/7/09 | OTS | OTS St. 1 | Direct testimony: Christine S. Wilson, CPA, PUC, Auditor Appendix A | Exh. OTS-1 | 8/18/09 |
|  | OTS | OTS St. 2 | Direct testimony: Gary L. Yocca, PUC, Fixed Utility Financial Analyst Supervisor | Exh. OTS-2 | 8/18/09 |
| 8/7/09 | OTS |  | Comments |  | ------------ |
| 8/7/09 | OSBA | OSBA St. 1 | Direct testimony: Robert Knecht, Industrial Economics, Incorporated, Principal and Treasurer | Exhs. IEc-1 and IEc-2 | 8/18/09\* |
| 8/7/09 | Phila | Phila St. 1 | Direct testimony: William E. Toffey, City of Philadelphia, City Energy Manager |  | 8/18/09\* |
| 8/7/09 | Phila | Phila St. 2 | Direct testimony: Joseph M. Doyle, City of Philadelphia, Chief Traffic Engineer |  | 8/18/09\* |
| 8/7/09 | DEP | DEP St. 1 | Direct testimony: Maureen Guttman, AIA, Governor’s Green Government Council, Executive Director |  | 8/18/09 |

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| 8/7/09 | DEP |  | Comments |  | ----------- |
| 8/7/09 | PennFuture et al. |  | Comments |  | ----------- |
| 8/7/09 | ACORN | ACORN St. 1 | Direct testimony: Ian Phillips, PA ACORN, Legislative Director |  | 8/18/09\* |
| 8/7/09 | TRF | TRF St. 1 | Direct testimony: Robert G. Sanders, TRF Energy Group, Managing Director | Exhs. RGS-1 through RGS-5 | 8/18/09\* |
| 8/7/09 | EnerNOC |  | Answer and Comments |  |  |
| 8/7/09 | FDSI | FDSI St. 1 | Direct testimony: Todd Michael Rossi, Ph.D., Field Diagnostic Services, Inc., President | Exhs. A, B and C | 8/18/09\* |
| 8//7/09 | TURN AA | Comments | Philip Lord, Tenant Union Representative Network, Executive Director |  | 8/25/09 Order |
| 8/7/09 | PAIEUG | Answer and Comments |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
| 8/18/09 | OCA | X-Exh. 1 | Jiruska: Consumption forecast |  | 8/18/09 |
|  | OCA | X- Exh. 2 | Jiruska, Schlesinger: Interrogatory responses |  | 8/18/09 |
| 8/18/09 | OCA | Exh. RSH-2 | Hahn clarification |  | 8/18/09 |
| 8/18/09 | PECO | Exhs. FJJ-2, FJJ-3 | Jiruska additional exhibits (rejoinder) |  | 8/18/09 |
| 8/18/09 | TRF | X-Exh.1 | Jiruska |  | 8/18/09 |
| 8/18/09 | PECO | Exh. RAS-5 | Schlesinger rejoinder (revised tariffs) |  | 8/18/09 |
| 8/18/09 | TURN/AA | Exh. PL-1 | Interrogatory responses |  | 8/18/09 |
|  |  |  |  |  |  |
| 8/25/09 | Cohen | Exh. 2 | Interrogatory responses |  | 8/25/09 Order |

Nonparty comments: Green Condominium Initiative, Envinity, Inc., PA Home Energy, Keystone Energy Efficiency Alliance, Keystone HELP

\* Admitted by affidavit; no cross-examination

Petition of PECO Energy Company Energy for Approval of its Act 129 Energy Efficiency and Conservation Plan and Expedited Approval of its Compact Fluorescent Lamp Program

Docket Number M-2009-2093215

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1. Vol. III was provided in confidential and public versions. [↑](#footnote-ref-2)
2. For the purpose of this proceeding, the members of PAIEUG, listed on Attachment A to its Petition to Intervene, are Air Liquide Industrial U.S., LP, The Boeing Company, Buckeye Partners, L.P., ConocoPhillips Trainer Refinery, Drexel University, Franklin Mills Associates Limited Partnership, GlaxoSmithKline, Jefferson Health System, Kimberly-Clark Corporation, Merck & Co., Inc., Saint Joseph’s University, Sanofi-Aventis, Temple University and Villanova University. I informed all parties that my daughter was currently employed by Merck as a chemical engineer; no party objected to my continued participation in this proceeding. [↑](#footnote-ref-3)
3. TURN/AA was previously referred to in this proceeding as TURN et al. [↑](#footnote-ref-4)
4. On July 13, 2009, a Petition to Intervene was filed by UGI Utilities, Inc. – Gas Division (UGI) and UGI Central Penn Gas, Inc. (CPG) (collectively, UGI distribution companies), which was withdrawn by letter dated July 28, 2009. A letter purporting to be a petition to intervene filed on July 27, 2009 by E Cubed Company, LLC (E Cubed) on behalf of National Association of Energy Service Companies (NAESCO) and other entities was denied by Initial Decision dated August 10, 2009. [↑](#footnote-ref-5)
5. Because of some understandable confusion occasioned by the September 7, 2009 holiday, reply briefs were deemed timely if filed on either September 8 or 9, 2009. [↑](#footnote-ref-6)
6. A listing of the statements and exhibits admitted into the record is appended to this Recommended Decision as Appendix A. [↑](#footnote-ref-7)