

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Metropolitan Edison Company,	:	
Pennsylvania Electric Company, Pennsylvania	:	P-2012-2320450
Power Company and West Penn Power Company	:	P-2012-2320468
For an Evidentiary Hearing on the Energy	:	P-2012-2320480
Efficiency Benchmarks Established for the Period	:	P-2012-2320484
June 1, 2013 through May 31, 2016	:	

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**CLEAN AIR COUNCIL AND SIERRA CLUB'S  
PREHEARING CONFERENCE MEMORANDUM**

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Clean Air Council (“Council”) and the Pennsylvania Chapter of the Sierra Club (“Sierra Club”) (collectively, “Petitioner-Intervenors”), on behalf of their respective members and the public interest, in response to the Prehearing Conference Order in Dockets Nos. P-2012-2320450, P-2012-2320468, P-2012-2320480, and P-2012-2320484 (the “First Energy Dockets”), state the following:

**Background**

On August 3, 2012, the Pennsylvania Public Utility Commission issued its Implementation Order, setting forth the implementation program for Phase II implementation of Act 129, Pennsylvania’s energy efficiency law. On August 20, 2012, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (collectively, “the First Energy Companies”) jointly petitioned the Commission for an evidentiary hearing concerning the Implementation Order; these petitions were docketed in the above-captioned First Energy Dockets.

In their joint petition, the First Energy Companies did not state any particularized grounds for seeking an evidentiary hearing, aside from a wish to “preserve their rights,” and indeed, noted that they would withdraw the joint petition if a pending joint petition for Reconsideration and Clarification of the Implementation Order filed by the First Energy Companies were granted, or if they determined that the benchmarks in the Implementation Order were, in fact, reasonable to First Energy after all. First Energy Joint Petition at 3; *id.* at 3 n.4.

On August 29, 2012, a Prehearing Conference Order was issued in the above-captioned dockets, directing the parties to appear for an initial prehearing conference on Monday, September 10, 2012. This Order further directed the parties to submit a Prehearing Conference Memorandum addressing certain subjects to be considered at the prehearing conference.

On August 30, 2012, Petitioner-Intervenors petitioned for intervention into the four First Energy Dockets, noting that resolution of the dockets reasonably may be expected to impact the safety, reliability, cleanliness, and affordability of public utility services impacting Petitioner-Intervenors’ membership. For example, changes to allowable spending and targets for energy consumption reduction will affect air quality, public health, energy conservation efforts, energy prices, grid reliability, and the availability and quality of certain energy savings programs and incentives. Resolution of those petitions for intervention is still pending.

Also on August 30, 2012, the Commission issued an order in Docket Nos. M-2012-2289411 and M-2008-2069887, granting the First Energy Companies petition for reconsideration.

**Petitioner-Intervenors’ Responses to Questions Posed by the Commission**

The Petitioner-Intervenors believe that the following represents an appropriate way forward for this docket.

*A. Consolidation of the Above-Referenced Docket Numbers or Coordination of Hearings*

The First Energy Dockets should be consolidated into a single docket to be resolved jointly. The First Energy Companies petitioned for an evidentiary hearing jointly, apparently share the same concerns, and indeed, are represented by the same attorney. First Energy Companies Petition at 2. Consolidation of the above-captioned dockets would thus serve judicial economy and preservation of all parties' resources by avoiding needless duplication of proceedings.

*B. Coordination of These Cases with Petitions for Evidentiary Hearings by PPL Electric Utilities Company and PECO Energy Company*

The Petitioner-Intervenors prefer that the cases of the First Energy Companies, PECO Energy Company, and PPL Electric Utilities Company continue to be treated as three separate dockets given the distinct issues raised in each petition. However, this is contingent upon other preferences stated herein being met, namely the consolidation of the FirstEnergy dockets and the reliance on legal briefs without hearings, in light of resource constraints and the expedited timeline. The Petitioner-Intervenors may also wish to reconsider their position on this issue should any of the petitions for evidentiary hearings be withdrawn or denied due to the granting of petitions for reconsideration.

*C. Whether the Evidentiary Hearings Should Be Held Separately, but Back-to-Back*

If hearings are to be held separately, they should be scheduled back-to-back, as this would help to conserve the parties' and the Commission's resources.

*D. The Possibility of Settlement of the Proceeding, Subject to the Commission's Approval*

Petitioner-Intervenors do not see much possibility of settling this Proceeding. The Petitioner-Intervenors believe that the Implementation Order should go forward without

modification, and thus are opposed to attempts by parties such as the First Energy Companies to potentially weaken the requirements of the Order.

The Petitioner-Intervenors do note, however, that the First Energy Companies have previously indicated that they would withdraw their petition for evidentiary hearing if their Petition for Reconsideration and Clarification of the Implementation Order was granted. Since it has been granted, the above-captioned dockets could and should be resolved by the First Energy Companies withdrawing their joint petition.

*E. Whether the Matter Should Be Decided Upon Legal Briefs, or Whether a Hearing Is Necessary*

The Petitioner-Intervenors believe that, should the above-captioned dockets go forward, it is likely that they could be resolved through legal briefing without a hearing. However, given that the First Energy Companies have not yet indicated what if any grounds they have for seeking evidentiary hearing, the Petitioner-Intervenors believe that the necessity of a hearing will ultimately depend on the issues raised.

*F. The Procedural Schedule for a Hearing, Should One Be Required*

It is unlikely that a hearing would be required to resolve the above-captioned dockets. If, consequent to issues raised by the First Energy Companies, a hearing is required, the Petitioner-Intervenors believe that equal amounts of hearing time should be granted to all parties admitted to the docket, to ensure that adequate exploration of the issues is afforded. Opportunities to examine and cross-examine witnesses should also be incorporated.

*G. Arrangements for the Submission of Direct Testimony of Witnesses, and for Submission in Advance of Hearing Written Requests for Information*

Direct testimony of witnesses should be submitted as far as possible before hearings, to enable parties to fully develop relevant evidence and to ensure that any hearings, should they be

required, may be conducted smoothly and effectively. Flexibility should be employed in management of submission of written requests for information, with the potential for multiple rounds of written discovery incorporated in the management of the above-captioned dockets. Because these dockets are intended to fundamentally involve questions of evidence, the parties must be afforded ample opportunity to explore and develop that evidence to assure the just resolution of these dockets.

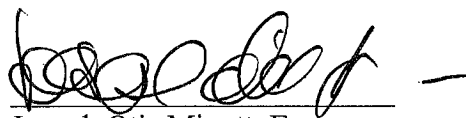
*H. Other Matters that May Aid in Expediting the Orderly Conduct and Disposition of the Proceeding and the Furtherance of Justice*

In addition to the concerns expressed above, the Petitioner-Intervenors state that, should the above-captioned dockets go forward, it is important to ensure that all parties have ample opportunity to develop the evidentiary record for the Commission. There is a risk of severe information asymmetry if the parties are not given sufficient opportunity to probe and examine the evidence proffered by the First Energy Companies, and this asymmetry would work to the detriment of a full and fair determination by the Commission.

Further, given the numerous dockets opened as a result of the First Energy Companies, PECO Energy Company, and PPL Electric Utilities Company—both for evidentiary hearings and for review of the Implementation Order—it is critical that the scope and issues in each docket be demarcated and strictly limited from the outset of the proceedings, to limit confusion and duplication of efforts, and to preserve the parties' and the Commission's resources.

Respectfully submitted,

Date: September 7, 2012



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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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