

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities Corporation :
For an Evidentiary Hearing on the Energy : P-2012-2320369
Efficiency Benchmarks Established for the Period :
June 1, 2013 through May 31, 2016 :

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

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 Docket No. P-2012-2320369 (the "PPL Docket"), 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, PPL Electric Utilities Corporation ("PPL") petitioned the Commission for an evidentiary hearing concerning the Implementation Order; this petition was docketed in the above-captioned PPL Docket.

In its Petition, PPL stated that the reduction target in the Implementation Order "is reasonably achievable," and that it was only requesting an evidentiary hearing "as a protective measure." PPL Petition at 5. PPL further stated that it was concurrently filing a petition for

reconsideration of the Implementation Order, and that if that petition for reconsideration was granted, “there [would] be no need for the evidentiary hearing” PPL requested. *Id.* at 5-6.

On August 29, 2012, a Prehearing Conference Order was issued in the above-captioned docket, 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 PPL Docket, noting that resolution of the docket 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 that petition 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 PPL’s petition for reconsideration.¹

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

Coordination of hearings in this docket with hearings in other evidentiary hearing dockets before the Commission would best preserve the resources of the Parties and the Commission.

¹ This order additionally granted the Petitions for Reconsideration and Clarification, filed jointly by Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company.

Additionally, because PPL has petitioned for evidentiary hearing only “as a protective measure,” and has stated that “there [would] be no need for the evidentiary hearing” if its petition for reconsideration were granted (PPL Petition at 5-6), there does not seem to be any need for this docket to go forward at all. Closing this docket would likely best serve judicial economy.

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 or withdrawal of the First Energy 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 PPL to potentially weaken the requirements of the Order.

However, as noted above, PPL has indicated that this proceeding would be unnecessary if their petition for review were granted; since it has been granted, this docket could and should be resolved by PPL withdrawing its 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 PPL has not yet indicated what if any grounds it has 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 PPL, 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 docket. Because the evidentiary hearing fundamentally involves questions of evidence, the parties must

be afforded ample opportunity to explore and develop that evidence to assure the just resolution of the docket.

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 docket 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 PPL, 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 PPL, the First Energy Companies, PECO Energy 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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