

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy :
For an Evidentiary Hearing on the Energy : P-2012-2320334
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-2012-2320334 (the “PECO 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, PECO Energy (“PECO”) petitioned the Commission for an evidentiary hearing concerning the Implementation Order; this petition was docketed in the above-captioned PECO Docket.

In its Petition, PECO requested an evidentiary hearing to address two limited matters: the allocation of funds for direct load control and other demand response programs, and the Commission’s statement of allowable spending. PECO Petition at 4, 8.

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 PECO 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.

On September 4, 2012, PECO filed an untimely petition for reconsideration of the Implementation Order, along with a concurrent motion for leave to file the petition untimely. That same day, the Commission issued an order in Docket Nos. M-2012-2289411 and M-2008-2069887, granting PECO's 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

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.

B. Coordination of these Cases with Petitions for Evidentiary Hearings by PPL Electric Utilities Company and the First Energy Companies

The Petitioner-Intervenors prefer that the cases of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (collectively, “the First Energy Companies”), and PPL Electric Utilities Company, and PECO 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 and/or PPL 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 PECO to potentially weaken the requirements of the Order.

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 docket go forward, it is likely that it could be resolved through legal briefing without a hearing.

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 PECO, 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.

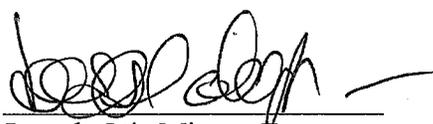
H. Other Matters that May Aid in Expediting the Orderly Conduct and Disposition of the Proceeding and the Furtherance of Justice

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 PECO, 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 PECO, PPL Electric Utilities Company, and the First Energy Companies—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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