**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 :

**SCHEDULING ORDER**

On August 3, 2012, the Commission entered an Implementation Order regarding the *Energy Efficiency and Conservation Program* at Docket Nos. M-2012-2289411 and M-2008-2069887. The Commission established energy efficiency (“EE”) (but not peak demand reduction (“PDR”)) benchmarks for the period June 1, 2013 through May 31, 2016 (“Phase II Period”). The Commission gave the electric distribution companies until August 20, 2012, within which time to accept the Commission’s proposed consumption reduction benchmarks, or to file a petition for an evidentiary hearing, otherwise the energy efficiency benchmarks would be deemed accepted. *Id.*

Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power), and West Penn Power Company (West Penn) (collectively “the Companies”) jointly filed a Petition for an Evidentiary Hearing as well as a Petition for Reconsideration on August 20, 2012. The petition was assigned four separate docket numbers by the Secretary’s Bureau as follows: 1) P-2012-2320450 (Met-Ed); 2) P-2012-2320468 (Penelec); 3) P-2012-2320480 (Penn Power); and 4) P-2012-2320484 (West Penn). The petition for an evidentiary hearing was assigned to the Office of Administrative Law Judge with a certified record deadline of November 2, 2012. The matter was assigned to Administrative Law Judge Elizabeth H. Barnes.

 On August 20, 2012, the Companies also filed a petition for reconsideration of the Commission’s Implementation Order arguing that they needed more time to prepare for the benchmarks issue, and requesting the evidentiary hearing be held at the same time an evidentiary hearing regarding their EE&C Plans (Phase II) after November 1, 2012.

 An Initial Prehearing Conference was held on September 10, 2012. I noted the appearance of John F. Povalaitis, Esquire, Counsel for Met Ed, Penelec, Penn Power and West Penn; Christy M. Appleby, Esquire and Candis A. Tunilo, Esquire on behalf of the Office of Consumer Advocate (OCA); Shaun A. Sparks, Esquire and Krystle J. Sacavage, Esquire on behalf of the PA Statewide Evaluator; Harry S. Geller, Esquire on behalf of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA); Teresa Schmittberger, Esquire on behalf of the Med-Ed Industrial Users Group (MEIUG), Penelec Industrial Customer Alliance (PICA), Penn Power Users Group (PPUG), and West Penn Power Industrial Intervenors (WPPII); Zachary Fabish, Esquire on behalf of the Clean Air Council & Sierra Club; and Heather M. Langeland, Esquire on behalf of PennFuture. Joseph L. Vullo, Esquire was not present but I noted that he submitted an uncontested petition for intervention on behalf of Community Action Association of PA s/k/a CAPP.

The following matters were addressed: (1) coordination of the evidentiary hearing with PECO Energy Company’s (PECO) and PPL Electric Utilities Corporation’s (PPL) evidentiary hearings; (2) a motion for *ad hac vice* admission; (3) petitions to intervene; (4) a procedural schedule; (5) service of documents; (6) discovery matters; and (7) a protective order. These matters are discussed below.

Coordination of case with PPL’s and PECO’s evidentiary hearings

 Although there was one joint petition for evidentiary hearing, the Secretary’s Bureau gave each of the four FirstEnergy Companies a separate docket number because of anticipated separate compliance filings in the future among the four companies. These docket numbers were assigned regarding the respective companies as follows: Met–Ed (P-2012-2320450); Penelec (P-2012-2320468); Penn Power (P-2012-2320480); and West Penn (P-2012-2320484). At the prehearing conference, upon the ALJ’s recommendation, the parties agreed to consolidate the four dockets to one hearing in the interest of judicial efficiency. N.T. 9-10.

 Although PECO’s evidentiary hearing was scheduled for October 3, 2012 under a separate scheduling order dated September 13, 2012, the timeline for PECO’s hearing is more expedited because it involves different issues and direct testimony has already been submitted by PECO. N.T. 10-11.

 The Companies’ consolidated hearing in the instant case will be scheduled for October 19, 2012, per the Companies’ request. At the prehearing conference, counsel for the Companies stated it was not certain how many witnesses it would have at a hearing; therefore, I am scheduling the hearing from 10:00 a.m. – 4:00 p.m. in Harrisburg, PA. The Statewide Evaluator requested consolidation of hearing dates into subsequent days because his witnesses are located in various parts of the country. The PPL hearing will be scheduled for October 18, 2012, under a separate scheduling order to accommodate the parties’ requests that the hearings be held on subsequent days. N.T. 10-11.

Motion for Admission Pro Hac Vice

 On August 30, 2012, Joseph O. Minott, Esquire filed a Motion for Admission Pro Hac Vice moving for admission of candidate Zachary M. Fabish to represent the Clean Air Council and Sierra Club in the above-captioned proceeding. There was no objection to this Motion at the prehearing conference. Accordingly, it shall be granted.

Petitions to Intervene

 I received several petitions to intervene in this case including:

CAPP (Community Action Association of PA)

CAUSE-PA

Clean Air Council/Sierra Club

Met-Ed Industrial Users Group

Penelec Industrial Customer Alliance

Penn Power Users Group

West Penn Industrial Intervenors

Citizens for Pennsylvania’ Future (PennFuture)

There was no objection to any of the above parties intervening in this matter. Accordingly, their petitions shall be granted and they shall have status as Intervenors. In accordance with 52 Pa.Code § 5.71, OCA is authorized by statute to participate in this proceeding. The Statewide Evaluator filed a notice of appearance.

Procedural Schedule

 The procedural schedule is as follows:

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|  |  |
|  |  |
| Companies’ Direct Testimony  | September 28, 2012 |
| Other Parties’ Direct Testimony  |  October 12, 2012 |
| Oral Rebuttal Testimony/Evidentiary Hearing(s)  |  October 19, 2012 |
| Main Briefs  |  October 31, 2012 |
| Certification of Record  |  November 2, 2012 |
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 The above filing dates are all in-hand dates (by 4:30 p.m.) to the parties and the presiding officer. All parties are reminded to serve the presiding officer with all filed documents, and to provide the presiding officer with an e-version in Word 2003. N.T. 12-13.

 A settlement conference between the parties without the presence of an ALJ shall take place on Tuesday, October 16, 2012. N.T. 13.

Identification of witness order

 Counsel for the Companies will coordinate the order of witnesses and estimated time for cross-examination by each party, and will supply a copy of the witness order to me at least one (1) day prior to the hearing. N.T. 17.

Service of documents

 Service of documents by e-mail (by 4:30 p.m.) on the due date will be considered in-hand service, if a hard copy is sent by the following day via first class mail. The parties are in agreement though that discovery documents served after 12:00 p.m. (noon) on a Friday shall be deemed served on the following business day (i.e. Monday). The service list is attached to this Scheduling Order. N.T. 17.

Timing of motions or objections with respect to prepared written testimony

 Motions or objections with respect to written testimony must be presented in writing and provided to the parties and the presiding officer no later than 24 hours prior to the date that the witness is scheduled to testify. N.T. 17.

Location and start time of hearing

 The hearing will begin at 10:00 a.m. on Friday, October 19, 2012 in Hearing Room No. 2, at the Commonwealth Keystone Building, in Harrisburg, PA.

Transcript turnaround time

 The transcript turnaround time is three (3) days. N.T. 18.

Public Input hearings

 The OCA indicated that it was not necessary to schedule public input hearings in this proceeding. N.T. 13.

Discovery matters

 The parties were in agreement with a modification of the discovery rules set forth in the Commission’s regulations due to the time constraints that could be applicable to this proceeding. N.T. 14–17. I note that service of objections is not required upon the Administrative Law Judge; however, it is required upon the parties. Accordingly, the discovery rules for this proceeding, from September 18, 2012, forward are as follows:

1. The response period for replying to written interrogatories, requests for production and requests for admissions is ten (10) calendar days of receipt or the party’s best effort except that during the period between October 12 – 18, 2012, answers to interrogatories shall be served in-hand within four (4) calendar days of service of the interrogatories.

2. Objections to written interrogatories, requests for production and requests for admission are to be communicated orally to the party serving the interrogatory within three (3) calendar days of service; unresolved objections shall be served in writing within five (5) days of service of interrogatories. The parties are directed to confer, by telephone or e-mail, and attempt to resolve the objections.

3. Answers to motions to dismiss objections and/or direct the answering of interrogatories to be filed within three (3) days of service of such motions.

4. Rulings over such motions to be issued, if possible, within seven (7) days of filing of the motion.

5. Responses to requests for document production, entry for inspection or other purposes to be served in-hand within ten (10) calendar days.

6. Requests for admission be deemed admitted unless answered within ten (10) days or objected to within five (5) days of service.

7. Responses to interrogatories served after noon on Friday will be due as if served the following Monday.

8. If the last day for filing or serving any document or taking any action required by these modified discovery procedures falls on a weekend or holiday, then the permissible time for filing such document or taking such action shall be extended to the next business day.

9. Pursuant to 52 Pa. Code § 5.341(b), neither discovery requests nor responses thereto are to be served on the Commission or the ALJ, although a certificate of service may be filed with the Commission’s Secretary.

10. Discovery requests, motions to compel and responses are to be served electronically as well as on paper.

Protective Order

 Counsel for the Companies stated that he would assemble and file a draft protective order if requested in the future.

Settlement

 There is a settlement conference scheduled for October 16, 2012, in this case. The parties are reminded that if a settlement is reached, they should file a petition for settlement as well as individual parties’ statements in support of the settlement petition. Additionally, it may be necessary to enter written testimony and other evidence into the record with a settlement petition, in order to provide the Commission with enough evidence to support findings that the proposed settlement is in the public’s interest and in accordance with the Public Utility Code. Evidence may be moved into the record with a written verification, or with the testimony of a live witness attesting to the truthfulness of the testimony offered. Any settlement petitions are to be filed in hard copy as well as in a CD in searchable PDF format. In addition, any settlement petitions are to be delivered to me in hard copy as well as electronically in Word format.

Official Service List

 The official service list is enclosed with this Order. Additional counsel or technical advisors may be included on an e-mail service list upon request. Thus far, the e-mail distribution list includes the following counsels’ and prospective witnesses’ e-mail addresses. This list is subject to change as the litigation progresses.

John.povilaitis@bipc.com

kjkolich@firstenergycorp.com

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joe\_minott@cleanair.org

jlvullo@aol.com

 THEREFORE,

IT IS ORDERED:

1. That the procedural schedule is as follows:

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| --- | --- |
|  |  |
|  |  |
| Companies’ Direct Testimony  | September 28, 2012 |
| Other Parties’ Direct Testimony  |  October 12, 2012 |
| Oral Rebuttal Testimony/Evidentiary Hearing(s)  |  October 19, 2012 |
| Main Briefs  |  October 31, 2012 |
| Certification of Record  |  November 2, 2012 |
|  |  |

 2. That all discovery requests and responses will be served in-hand or via electronic mail, with hard copies of the documents sent via First Class Mail.

 3. That service of documents by e-mail (by 4:30 p.m.) on the due date will be considered in-hand service, if a hard copy is sent by the following day via first class mail. The service list is attached to this Scheduling Order.

 4. That the discovery rules for this proceeding, from September 18, 2012, forward are as follows:

a. The response period for replying to written interrogatories, requests for production and requests for admissions is ten (10) calendar days of receipt or the party’s best effort except that during the period between October 12 – 18, 2012, answers to interrogatories shall be served in-hand within four (4) calendar days of service of the interrogatories.

b. Objections to written interrogatories, requests for production and requests for admission are to be communicated orally to the party serving the interrogatory within three (3) calendar days of service; unresolved objections shall be served in writing within five (5) days of service of interrogatories. The parties are directed to confer, by telephone or e-mail, and attempt to resolve the objections.

c. Answers to motions to dismiss objections and/or direct the answering of interrogatories to be filed within three (3) days of service of such motions.

d. Rulings over such motions to be issued, if possible, within seven (7) days of filing of the motion.

e. Responses to requests for document production, entry for inspection or other purposes to be served in-hand within ten (10) calendar days.

f. Requests for admission be deemed admitted unless answered within ten (10) days or objected to within five (5) days of service.

g. Responses to interrogatories served after noon on Friday will be due as if served the following Monday.

h. If the last day for filing or serving any document or taking any action required by these modified discovery procedures falls on a weekend or holiday, then the permissible time for filing such document or taking such action shall be extended to the next business day.

i. Pursuant to 52 Pa. Code § 5.341(b), neither discovery requests nor responses thereto are to be served on the Commission or the ALJ, although a certificate of service may be filed with the Commission’s Secretary.

j. Discovery requests, motions to compel and responses are to be served electronically as well as on paper.

 5. That directives regarding other matters including: identification of witness order, motions, and settlement petitions are adopted as referenced in this Order.

 6. That the Petitions to Intervene filed by: the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA); Citizens for Pennsylvania’s Future (Penn Future); Clean Air Council and Sierra Club; Community Action Association of Pennsylvania (CAAP); the Med-Ed Industrial Users Group (MEIUG); Penelec Industrial Customer Alliance (PICA); Penn Power Users Group (PPUG); and West Penn Power Industrial Intervenors (WPPII) are hereby granted.

 7. That Zachary Max Fabish, Esquire, counsel for Clean Air Council and Sierra Club is granted leave to participate in these proceedings *pro hac vice*.

 8. That a Settlement Conference shall take place between the parties on Tuesday, October 16, 2012.

Date: September 18, 2011

 Elizabeth H. Barnes

 Administrative Law Judge