**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

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| Commissioners Present:Robert F. Powelson, ChairmanJohn F. Coleman, Jr., Vice ChairmanWayne E. GardnerJames H. CawleyPamela A. Witmer |  |
| Petition of PECO Energy Company for Approval of its Act 129 Phase II Energy Efficiency and Conservation Plan | M-2012-2333992 |

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Joint Petition to Modify Procedural Schedule (Petition), filed by PECO Energy Company (PECO); the Office of Consumer Advocate (OCA); the Office of Small Business Advocate (OSBA); the City of Philadelphia (City); the Philadelphia Area Industrial Energy Users Group (PAIEUG); Wal-Mart Stores East, LP and Sam’s East, Inc. (collectively, Wal-Mart); Citizens for Pennsylvania’s Future (PennFuture); and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) (collectively, Joint Petitioners); on December 5, 2012. The Petition seeks to modify the procedural schedule for this proceeding, which was established in *Energy Efficiency and Conservation Program*, Docket Nos.
M-2012-2289411 and M-2008-2069887 (Order entered August 3, 2012) (*Phase II Implementation Order*). Considering that the Petition seeks a change to a prior Order of the Commission, the Petition will be treated as a Petition for Modification or Amendment pursuant to Section 703 of the Public Utility Code (Code), 66 Pa. C.S. § 703, and Section 5.572 of our Regulations, 52 Pa. Code § 5.572.

**Background**

On October 15, 2008, House Bill 2200 was signed into law as Act 129 with an effective date of November 14, 2008. Among other requirements, Act 129 directed that Energy Efficiency and Conservation (EE&C) Programs be developed by each of the Commonwealth’s largest electric distribution companies (EDCs) and be approved by the Commission. Specifically, Act 129 required each EDC with at least 100,000 customers to adopt a plan to reduce energy demand and consumption within its service territory. Initially, the Act required each affected EDC to adopt a plan to reduce electric consumption by at least one percent of its expected consumption for June 1, 2009 through May 31, 2010, by May 31, 2011. By May 31, 2013, the total annual weather-normalized consumption was to be reduced by a minimum of three percent. Also, by May 31, 2013, peak demand was to be reduced by a minimum of four-and-a-half percent of each EDC’s annual system peak demand in the 100 hours of highest demand, measured against the EDC’s peak demand during the period of June 1, 2007 through May 31, 2008.

On January 15, 2009, the Commission adopted an Implementation Order at Docket No. M-2008-2069887 (*Phase I Implementation Order*) which established the standards each plan must meet, and which provided guidance on the procedures to be followed for submittal, review and approval of all aspects of the EE&C plans. The Commission subsequently approved an EE&C plan (and, in some cases, modifications to the plan) for each affected EDC.

 Another requirement of Act 129 directs the Commission to evaluate the costs and benefits of the adopted EE&C Program by November 30, 2013, and every five years thereafter. The Act provides that the Commission must adopt additional incremental reductions in consumption and peak demand if the benefits of the EE&C Program exceed its costs. In accordance with that directive, the Commission issued a Secretarial Letter on March 1, 2012, at Docket No. M-2012-2289411 seeking comments on several issues related to the design and implementation of any future phase of the EE&C Program, and whether additional incremental consumption and peak demand reduction targets would be adopted. On May 10, 2012, in response to the comments received pursuant to the Secretarial Letter, the Commission issued a Tentative Implementation Order (*Phase II* *Tentative Implementation Order*) to begin the process of evaluating the costs and benefits of the initial EE&C Plans and the possible establishment of new reduction targets. In the *Phase II* *Tentative Implementation Order*, the Commission found that the benefits of a Phase II Act 129 Program will exceed the costs. Therefore, the Commission proposed the adoption of additional required incremental reductions in consumption for another program term and sought additional comments on its specific proposals.

Subsequently, in response to the comments filed pursuant to the *Phase II* *Tentative Implementation Order*, on August 2, 2012, the Commission adopted the *Phase II Implementation Order* that established the standards each plan must meet (including the additional incremental reductions in consumption that each EDC must meet) and provided guidance on the procedures to be followed for submittal, review and approval of all aspects of EDC EE&C plans.

On August 20, 2012, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (FirstEnergy) filed Petitions for Reconsideration and Clarification of the *Phase II Implementation Order.* Also, on August 20, 2012, PPL Electric Utilities Corporation (PPL) filed a Petition for Reconsideration of the *Phase II Implementation Order*. On August 30, 2012, the Commission granted the Petitions filed by FirstEnergy and PPL pending further review of, and consideration on, the merits. The OCA filed separate Answers to the FirstEnergy and PPL Petitions on August 30, 2012, and on the same date, CAUSE-PA filed a Response to PPL’s Petition.

On September 4, 2012, PECO filed a Motion for Leave to File a Motion for Reconsideration and a Petition for Reconsideration of the *Phase II Implementation Order.* On September 13, 2012, the Commission adopted an Order granting PECO’s Motion for Leave to File a Motion for Reconsideration. On September 19, 2012, the Clean Air Council and the Sierra Club (CAC/SC) filed an Answer to PECO’s Petition for Reconsideration.

By Reconsideration Order entered September 27, 2012, at Docket Nos.
M-2012-2289411 and M-2008-2069887 (*Phase II Reconsideration Order*), the Commission denied the Petitions for Reconsideration and Clarification filed by FirstEnergy and the Petitions for Reconsideration filed by PPL and PECO.

Within the *Phase II Implementation Order*, the Commission tentatively adopted EDC-specific consumption reduction targets varying from a high of 2.9% for PECO to a low of 1.6% for West Penn Power Company. The *Phase II Implementation Order* provided that these targets would become final for any covered EDC that did not petition the Commission for an evidentiary hearing by August 20, 2012. On August 20, 2012, PECO filed a Petition for an Evidentiary Hearing on the Energy Efficiency Benchmarks Established for the Period June 1, 2013 through May 31, 2016 (Benchmark Petition, and the matter was assigned to the Office of Administrative Law Judge. A hearing was held and briefs were submitted. By Order Certifying the Record dated November 2, 2012, the Administrative Law Judge provided a history of this proceeding; delineated the transcripts, statements and exhibits admitted into the record; and certified the record to the Commission for consideration and disposition. By Order entered December 6, 2012, the Commission, *inter alia,* reaffirmed the three-year, 2.9% energy efficiency Phase II reduction target established for PECO Energy Company in the Phase II Implementation Order.

**Joint Petition**

The Petition notes that the *Phase II Implementation Order* states at pages 61-62 (note omitted):

The Commission will publish a notice of each proposed plan in the *Pennsylvania Bulletin* within 20 days of its filing. In addition, the Commission will post each proposed plan on its website. An answer along with comments and recommendations are to be filed within 20 days of the publication of the notice in the *Pennsylvania Bulletin*. Each plan will be referred to an Administrative Law Judge (ALJ), who will establish a discovery schedule and hold a public input hearing(s) in the EDC’s service territory upon request of any party, as well as an evidentiary hearing(s) on issues related to the EDC’s EE&C plan. Such hearings are to be completed on or before the 65th day after a plan is filed, after which, the parties will have 10 days to file briefs. The EDC will then have 10 days to submit a revised plan or reply comments or both. The ALJ will then certify the record to the Commission.

The Petition states that PECO filed its Phase II EE&C Plan (Plan) on November 1, 2012, but the *Pennsylvania Bulletin* notice of that filing was not published until thirty days later, on December 1, 2012. Joint Petition at ¶¶ 7 and 11. Noting that a hearing must be held within sixty-five days of the date the Plan was filed, the Petitioners express concern that “the parties will have a very compressed timeframe within which to complete all discovery comments and testimony.” *Id*. at ¶ 12. They therefore request a modification of the procedural schedule set forth in the *Phase II Implementation Order*, as it pertains to the instant proceeding.

**Discussion**

We note that any issue that we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. [Consolidated Rail Corp. v. Pa. PUC, 625 A.2d 741 (Pa. Cmwlth. 1993);](/research/buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also* see, generally, [University of Pennsyl­vania v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984).](/research/buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

The Code establishes a party’s right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. § 703(f) and § 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision. The standards for granting a Petition for Reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Company*, 1982 Pa. PUC Lexis 4, \*12-13 (1982):

A petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsyl­vania Railroad Company case, wherein it was said that: “[p]arties . . . , cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them . . .” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considera­tions which appear to have been overlooked or not addressed by the Commission.

We find that the *Duick* standards are satisfied due to circumstances occurring after the entry of the *Phase II* *Implementation Order*. Specifically, the *Pennsylvania Bulletin* notice of PECO’s Plan filing was not published according to the timeline specified in the *Phase II* *Implementation Order*. We will therefore reconsider that timeline for this case; nothing in this Opinion and Order shall be construed as modifying the procedural schedule for any other Act 129 Phase II EE&C Plan proceeding.

The Parties offer two proposals for modifying the procedural schedule in this proceeding. These proposals are as follows:

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| ***Phase II Implementation Order*** | **Proposal 1** | **Proposal 2** |
| *Date* | *Event* | *Date* | *Event* | *Date* | *Event* |
|  |  | December 20, 2012 | Filing of Other Party Direct Testimony | December 20, 2012 | Filing of Other Party Direct Testimony |
| January 4, 2013 | Evidentiary Hearing | January 4, 2013 | Filing of Rebuttal Testimony | January 4, 2013 | Oral Rebuttal/Evidentiary Hearing |
|  |  | January 8, 2013 | Evidentiary Hearing |  |  |
| January 14, 2013  | Filing of Briefs | January 15, 2013 | Filing of Briefs | January 14, 2013 | Filing of Briefs |
| January 24, 2013 | Filing of PECO’s Reply Comments/Revised Plan | January 24, 2013 | Filing of PECO’s Reply Comments/Revised Plan | January 24, 2013 | Filing of PECO’s Reply Comments/Revised Plan |
| January 28, 2013 | Certification of the Record | January 28, 2013 | Certification of the Record | January 28, 2013 | Certification of the Record |
| February 28, 2013 | Issuance of Commission Order | February 28, 2013 | Issuance of Commission Order | February 28, 2013 | Issuance of Commission Order |

We find that Proposal 1is preferable because it permits the Parties to file written rebuttal testimony and then prepare for a subsequent evidentiary hearing. We believe the slight delay in holding an evidentiary hearing is outweighed by the benefits of this approach in developing the factual record. Additionally, we believe the advantages of this approach, in terms of developing the evidentiary record, outweigh the slight decrease in the time available for the Parties to draft and file post-hearing submissions.

We acknowledge, however, that the time period for filing Answers, comments and recommendations to PECO’s Plan has not yet expired. As a result, other Parties may come forward with objections to the proposed modification of the procedural schedule in this case. We will therefore tentatively modify the procedural schedule in this proceeding, consistent with Proposal 1 above, subject to the right of any Party to submit comments on this modification. Comments will be considered timely if filed on or before December 21, 2012 (the last day to file an answer, comments and recommendations). If no comments are timely filed, this Order’s tentative modification of the procedural schedule shall become final without further action of the Commission. If comments are timely filed, the Commission will promptly issue a final Order addressing the procedural schedule in this proceeding.

**Conclusion**

For the reasons set forth above, we shall grant the Joint Petition and tentatively modify the procedural schedule for this proceeding, as set forth in the *Phase II Implementation Order*, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Joint Petition to Modify Procedural Schedule, filed on December 5, 2012 by PECO Energy Company; the Office of Consumer Advocate; the Office of Small Business Advocate; the City of Philadelphia; the Philadelphia Area Industrial Energy Users Group; Wal-Mart Stores East, LP; Sam’s East, Inc.; Citizens for Pennsylvania’s Future; and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania; is tentatively granted.

2. That the procedural schedule for this proceeding is tentatively modified as follows:

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| *Date* | *Event* |
| December 20, 2012 | Filing of Other Party Direct Testimony |
| January 4, 2013 | Filing of Rebuttal Testimony |
| January 8, 2013 | Evidentiary Hearing |
| January 15, 2013 | Filing of Briefs |
| January 24, 2013 | Filing of PECO’s Reply Comments/Revised Plan |
| January 28, 2013 | Certification of the Record |
| February 28, 2013 | Issuance of Commission Order |

3. That any Party to this proceeding may file comments on the procedural schedule tentatively adopted herein. Comments will be considered timely if filed on or before December 21, 2012. If no Comments are filed, the procedural schedule set forth in Ordering Paragraph No. 2 shall become final without further action by this Commission. If Comments are filed, the Commission will promptly issue a final Order addressing the procedural schedule in this proceeding.

4. That, in all other respects, this Commission’s Opinion and Order in *Energy Efficiency and Conservation Program*, Docket Nos. M-2012-2289411 and
M-2008-2069887 (Order entered August 3, 2012), shall remain in full force and effect.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: December 14, 2012

ORDER ENTERED: December 14, 2012