**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition of Metropolitan Edison Company :

Pennsylvania Electric Company, Pennsylvania : M-2013-2341990

Power Company, and West Penn Power Company : M-2013-2341991

for Approval of their Smart Meter Deployment : M-2013-2341993

Plan : M-2013-2341994

**SCHEDULING ORDER**

On October 15, 2008, Act 129 was signed into law and was codified as part of the Public Utility Code, 66 Pa. C.S. § 2806.1 et seq. The Commission issued its Implementation Order to establish standards and provide guidance for implementing the requirements of Act 129 on June 24, 2009. In compliance with Section 2807(f) of the Code, 66 Pa. C.S. § 2807(f), the FirstEnergy Companies (FirstEnergy or Companies) filed a Joint Petition for Approval of Smart Meter Technology Procurement and Installation Plan (SMIP) on August 14, 2009. The Joint Settlement provided for a deceleration in the deployment of smart meters from the schedule originally proposed by the Companies.

The Commission adopted ALJ Susan Colwell’s Initial Decision dated January 29, 2010, and approved the Joint Settlement by Order entered June 30, 2011 at Docket No. M-2009-2123951. On May 25, 2012, the Companies requested filing deadline extension by a deployment plan until the end of 2012 in order to allow for testing and analysis of smart meter technology. The Commission granted this request by Secretarial Letter dated June 28, 2012. Thereafter, the Companies filed a Joint Petition for Approval of Smart Meter Technology Procurement and Installation Plan on December 31, 2012. Notice of the above-referenced Smart Meter Deployment Plan appeared in the January 19, 2013 Pennsylvania Bulletin with a comment period ending on February 8, 2013. 43 *Pa.Bull.* 419.

A prehearing conference was held on February 19, 2013 and the following counsel was present. Daniel G. Asmus, Esq., for the Office of Small Business Advocate (OSBA); Teresa Schmittberger, Esq., for Met-Ed Industrial Users Group (MEIUG), Penelec Industrial Customer Alliance (PICA), West Penn Power Industrial Intervenors (WPPII), and Penn Power Users Group (PPUG), referred to collectively as (the Industrial Users); John F. Povilaitis, Esq., for FirstEnergy; Candis Tunilo, Esq., for the Office of Consumer Advocate (OCA); and Deanne M. O’Dell, Esq., for Direct Energy Services, LLC (Direct Energy).

The following matters were addressed: (1) consolidation of the dockets for one hearing; (2) petitions to intervene; (3) a procedural schedule; (4) service of documents; (5) discovery matters; and (6) a protective order. These matters are discussed below.

Consolidation

Each of the four Companies has a separate docket number because of anticipated separate compliance filings in the future among the four companies. The Companies requested in their prehearing memorandum that the four docket numbers be consolidated to one evidentiary hearing. There was no objection to this request at the prehearing conference. Accordingly, the request is granted in the interest of judicial efficiency.

Petitions to Intervene

Notices of Intervention were filed by the Office of Consumer Advocate (OCA) and the Office of Small Business Advocate (OSBA).

Petitions to Intervene were timely filed by Industrial Users and Direct Energy. The Commission's Rules of Practice and Procedure permit petitions to intervene. 52 Pa. Code §§ 5.71-5.76 The provision at 52 Pa. Code § 5.72 governs what entities are eligible to intervene in a proceeding and states as follows:

**§ 5.72. Eligibility to intervene.**

(a) Persons. A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

(1) A right conferred by statute of the United States or of the Commonwealth.

(2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.

(3) Another interest of such nature that participation of the petitioner may be in the public interest.

(b) Commonwealth. The Commonwealth or an officer or agency thereof may intervene as of right in a proceeding subject to paragraphs (1)-(3).

Allowance of intervention is a matter within the discretion of the Commission. *City of Pittsburgh v. Pennsylvania Pub. Util. Comm'n*, 33 A.2d 641 (Pa. Super. 1943); *N.A.A.C.P., Inc. v. Pennsylvania Pub. Util. Comm'n*, 290 A.2d 704 (Pa. Cmwlth. 1972).

At the prehearing conference, counsel for FirstEnergy indicated there were no company objections to either the petition to intervene filed by Direct Energy Services, LLC or the Industrial Users. I find the Petitioners’ interests in this proceeding are of such a nature that intervention is necessary and appropriate to the administration of the statute under which the proceedings are brought. Therefore, these petitions shall be granted and they shall be given intervenor status. In accordance with 52 Pa.Code § 5.71, OCA and OSBA are authorized by statute to participate in this proceeding.

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| Procedural Schedule  The procedural schedule is as follows:   |  |  | | --- | --- | |  |  | | |  | | --- | | SCHEDULE  Intervenors’ Direct Testimony April 1, 2013  Rebuttal Testimony April 22, 2013  Surrebuttal Testimony May 3, 2013 (noon)  Discovery responses on surrebuttal testimony May 7, 2013 (4:00 p.m.)  Evidentiary Hearing/ oral rejoinder May 8-9, 2013  Main briefs May 24, 2013  Reply briefs/comments and/or revised plan June 3, 2013 | |  | |  |
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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.

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 two (2) days prior to the hearing.

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.

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.

Location and start time of hearing

The hearing will begin at 10:00 a.m. on Wednesday, May 8, 2013 in Hearing Room No. 3, at the Commonwealth Keystone Building, in Harrisburg, PA, and will continue through Thursday, May 9, 2013 if necessary.

Transcript turnaround time

The transcript turnaround time is three (3) days.

Public Input hearings

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

Discovery matters

The parties agreed to modify the discovery rules set forth in the Commission’s regulations due to the time constraints applicable to this proceeding. There was some dispute between OCA and the Companies as to how that modification should be. The Companies preferred a 14-day instead of 10-day turnaround deadline for responses to formal discovery questions on the Companies’ direct testimony. I agreed with the Companies’ position as this case is technically complex. Additionally, I agreed with the Companies’ suggestion to shorten their response time to interrogatories on their rebuttal testimony to eight calendar days.

The parties agreed at the prehearing conference that Intervenors could have until May 7th at 4 p.m. to respond to discovery requests on surrebuttal testimony.

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 February 19, 2013, forward are as follows:

1. The response period for replying to written interrogatories, requests for production and requests for admissions regarding the Companies’ direct testimony is fourteen (14) calendar days of receipt or the party’s best effort.

2. The response period for replying to written interrogatories, requests for production and requests for admission regarding Intervenor Direct Testimony and Rebuttal Testimony shall be due within eight (8) calendar days of service.

3. Discovery regarding surrebuttal testimony served by May 3, 2013, shall be due by 4:00 p.m. on May 7, 2013.

4. 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.

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

6. 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.

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

8. Requests for admissions be deemed admitted unless answered within seven (7) calendar days or objected to within five (5) days of service.

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

10. 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.

11. 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.

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

13. Reasonable on-the-record data requests shall be served on a best effort basis and shall be answered within five (5) calendar days.

Protective Order

A Proposed Protective Order was filed by the Companies on February 27, 2013 and was signed and entered by me on the same date because the parties appearing at the prehearing conference had reached a consensus regarding the protective order.

Settlement

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.

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THEREFORE,

IT IS ORDERED:

1. That the procedural schedule is as follows.

|  |  |
| --- | --- |
| Intervenors’ Direct Testimony April 1, 2013  Rebuttal Testimony April 22, 2013  Surrebuttal Testimony May 3, 2013 (noon)  Discovery responses on surrebuttal testimony May 7, 2013 (4:00 p.m.)  Evidentiary Hearing/ oral rejoinder May 8-9, 2013  Main briefs May 24, 2013  Reply briefs/comments and/or revised plan June 3, 2013 |  |
|  |  |

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 February 19, 2013, forward are as follows:

a. The response period for replying to written interrogatories, requests for production and requests for admissions regarding the Companies’ direct testimony is fourteen (14) calendar days of receipt or the party’s best effort.

b. The response period for replying to written interrogatories, requests for production and requests for admission regarding Intervenor Direct Testimony and Rebuttal Testimony shall be due within eight (8) calendar days of service.

c. Discovery regarding surrebuttal testimony served by May 3, 2013, shall be due by 4:00 p.m. on May 7, 2013.

d. 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.

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

f. 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.

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

h. Requests for admissions be deemed admitted unless answered within seven (7) calendar days or objected to within five (5) days of service.

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

j. 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.

k. 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.

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

m. Reasonable on-the-record data requests shall be served on a best effort basis and shall be answered within five (5) calendar days.

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: Direct Energy Services LLC, the Med-Ed Industrial Users Group; Penelec Industrial Customer Alliance; Penn Power Users Group; and West Penn Power Industrial Intervenors are hereby granted.

7. That for the purposes of an evidentiary hearing to be held on May 8-9, 2013, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993 and M-2013-2341994 are hereby consolidated.

Date: March 4, 2013

Elizabeth H. Barnes

Administrative Law Judge

**M-2013-2341990, M-2013-2341991, M-2013-2341993, and M-2013-2341994**

**Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of their Smart Meter Deployment Plan.**

**Revised 2/28/2013**

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