

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	Docket No.	R-00038102
Office of Consumer Advocate	:		R-00038102C0001
Eric Joseph Epstein	:		R-00038102C0002
	:		
v.	:		
	:		
PECO Energy Company	:		

DOCKETED
MAY 12 2003

PREHEARING ORDER #2

DOCUMENT

A telephonic prehearing conference in this case was held on April 28, 2003 at 10:00 a.m. Present telephonically were respondent PECO Energy Company (PECO); the Philadelphia Area Industrial Energy Users Group (PAIEUG); the Office of Consumer Advocate (OCA); the Office of Trial Staff (OTS); and Eric Epstein (Epstein).

In accordance with Prehearing Order #1, dated March 28, 2003, I received Prehearing Memoranda from PECO, PAIEUG, OCA, OTS and Mr. Epstein.

This Order discusses the procedural matters addressed at the prehearing conference.

1. The Petition to Intervene filed by PAIEUG on March 5, 2003 was granted.

2. Petitions to intervene and motions for admission pro hac vice, if not defective on their face, shall be deemed granted if not objected to within three business days after filing. If objected to, such pleadings will be addressed by order.

3. Pursuant to 52 Pa. Code §5.61(d), no answer is required for complaints that may be docketed with this proceeding.

4. Pursuant to 52 Pa. Code §1.55, each party - active and inactive - shall be limited to one entry on the service list, although there can be more than one name listed.

5. Pursuant to 52 Pa. Code §1.54(d), participants can be considered to active or inactive. Active parties will receive all documents and must copy all other active parties (and any inactive party that requests it from that party) on documents they send to the Commission or the presiding officer. They are expected to attend hearings, present witnesses and conduct discovery and cross-examination. Inactive parties will receive only hearing notices and orders. Briefs, reply briefs, exceptions, reply exceptions and other pleadings may be filed by both active and inactive parties.

Given the small number of parties to date, it is not necessary to develop an inactive party service list. Should the number of parties increase, then it may be necessary to revisit this issue. At this point, the active parties are PECO, OCA, OTS, PAIEUG and Mr. Epstein. Any party that files a petition to intervene and was not present at the first prehearing conference can be granted active party status only upon written request to the presiding officer.

6. My e-mail distribution list is as follows. Any changes should be communicated to me, via e-mail, as soon as possible.

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7. Pursuant to 52 Pa. Code §5.342(d), the Commission's regulations relating to discovery are modified as follows:

- A. That an active participant's answers to written interrogatories shall be served within ten business days of receipt of the interrogatories, unless receipt occurs on a Friday, Saturday, Sunday, or holiday, in which case the answers shall be served within ten business days of the first day after receipt that is not a Friday, Saturday, Sunday, or holiday.
- B. That objections to interrogatories are to be communicated orally to the propounder of the interrogatory within two business days of receipt and in writing within four business days of receipt of the interrogatory.
- C. That motions to compel answers to written interrogatories that have been objected to and answers to motions to compel shall be filed with the Commission and served on me within three business days of receipt of the objections or motion to

compel, unless receipt occurs on a Friday, Saturday, Sunday, or holiday, in which case the motion to Compel or answer to motion to compel shall be filed and served within three business days of the first day after receipt that is not a Friday, Saturday, Sunday, or holiday.

- D. Interrogatories which are objected to but which are not made the subject of a motion to compel will be deemed withdrawn.
- E. That requests for admissions shall be deemed admitted unless answered or objected to within five business days of receipt of the written request for admissions, unless receipt occurs on a Friday, Saturday, Sunday, or holiday, in which case the answers or objections shall be served within five business days of the first day after receipt that is not a Friday, Saturday, Sunday, or holiday.
- F. Responses to requests for document production, entry for inspection, or other purposes must be served in-hand within five business days.

8. Pursuant to 52 Pa. Code §5.341(b), neither interrogatories nor responses are to be served on the Commission or the presiding officer, although a certificate of service may be filed with the Commission's Secretary.

The parties are expected to resolve discovery issues among themselves; motions to compel should be filed only after such efforts have failed. Also, where possible, interrogatories are to be provided on diskette or electronically as well as on

paper. In addition, the parties are urged to use alternative means of discovery such as discovery conferences or depositions.

9. The parties are to confer among themselves in an attempt to resolve all or some of the issues associated with the company's filing.

10. The parties are directed to produce a standardized issue listing, which is to be used by all parties in their testimony and briefs.

11. The following litigation and briefing schedule was adopted:

2 nd settlement conference	Week of May 5, 2003
3 rd settlement conference	Week of June 9, 2003
PECO, direct testimony	July 30, 2003
Non-company parties, direct testimony	August 29, 2003
All parties, rebuttal testimony	September 26, 2003
All parties, surrebuttal testimony	October 22, 2003
Outline brief PECO oral rejoinder	October 29, 2003
Hearings	November 18-19, 2003
Main briefs	March 9, 2004
Reply briefs	March 30, 2004
Recommended Decision	May 11, 2004
End suspension	June 30, 2004

12. In accordance with the schedule listed above, testimony is to be served and received in-hand by the parties no later than 4:30 p.m. on the dates listed. Parties are directed to also serve their testimony electronically on other parties. Do not file your testimony with the Commission, although you may file a certificate of service. Do not fax or e-mail testimony to me.

All active participants are directed to comply with the provisions of 52 Pa.Code §5.243(e) which prohibits the introduction of evidence during rebuttal or

surrebuttal which should have been included in the active participant's case-in-chief or which substantially varies from the active participant's case-in-chief, unless the evidence is introduced in support of a proposed settlement.

13. Testimony should be premarked with numerical, sequential statement numbers. All statements must list on the cover sheet the issues addressed in that statement.

14. All hearings will be held in Harrisburg and will commence each day at 10:00 a.m., unless changed by the presiding officer.

15. In accordance with the schedule listed above, briefs must be filed with the Secretary, in accordance with 52 Pa. Code §5.502(a), and received in-hand by me and all parties no later than 4:30 p.m. on the dates listed. In addition, each party is directed to e-mail its briefs to all active parties and me, and to include a copy on disk (in Word 2002 or a compatible format) with the briefs filed with the Secretary. If you do not e-mail your briefs to me, please include a copy on disk.

16. Each brief, regardless of length, shall comply with the requirements of 52 Pa.Code §§5.501 and 5.502 and, in addition to the mandatory contents set forth in 52 Pa.Code §5.501(a), must contain:

- A. a table of contents;
- B. a statement of the questions involved;
- C. proposed findings of fact with references to transcript pages or exhibits where supporting evidence appears;

- D. a summary sentence, in the form of a proposed holding, at the end of each issue discussed;
- E. proposed conclusions of law with references to supporting statute or regulation provisions or supporting case law citation; and
- F. proposed ordering paragraphs specifically identifying the relief sought.

Date: May 1, 2003



MARLANE R. CHESTNUT
Administrative Law Judge

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