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August 5, 2016

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

**RE: Stephen and Diane Van Schoyck v. PECO Energy Company
Docket No. C-2015-2478239**

Dear Ms. Chiavetta:

Enclosed for filing is PECO's Energy Company's Motion to Establish a Procedural Schedule.

Very truly yours,

Ward L. Smith
Counsel for PECO Energy Company



WS/ab
Enclosure

cc: Christopher P. Pell, ALJ
Darlene D. Heep, ALJ
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

STEPHEN AND DIANE VAN SCHOYK
COMPLAINANT

v.

PECO ENERGY COMPANY
RESPONDENT

:
:
:
:
:
:
:

Docket No. C-2015-2478239

NOTICE TO PLEAD

Pursuant to the discovery modifications in this case, you are hereby notified that you must reply to this Motion to Establish a Procedural Schedule within 3 days. You must provide a full copy of answer to counsel for PECO and to the Commission and the Administrative Law Judges.

File with:

Rosemarie Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Second Floor
Harrisburg, PA 17120

With a copy to:

Ward L. Smith
PECO Energy Company
2301 Market Street, S-23
Philadelphia, PA 19103

Dated at Philadelphia, PA, August 5, 2016



Ward L. Smith
Counsel for PECO Energy Company
2301 Market Street S-23
Philadelphia, PA 19101-8699
215-841-6863
Ward.Smith@exeloncorp.com

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Stephen and Diane Van Schoyck	:	
	:	
v.	:	C-2015-2478239
	:	
PECO Energy Company	:	

**PECO Energy Company's
Motion to Establish a Procedural Schedule**

Although this matter has been set for hearing, no prehearing order has been issued, and therefore no procedural schedule has been set. PECO has reviewed the procedural schedule established in the Prehearing Orders of one of the parallel AMI cases -- *Randall/Albrecht v. PECO* -- and has prepared a proposed schedule that tracks the procedure set forth in *Randall/Albrecht*. PECO provided this proposed schedule to Complainants on July 19, 2016 but has received no comments or feedback on this proposal. PECO therefore proposes adoption of the schedule set forth below, and in support thereof states as follows:

1. This matter has been set for hearing on October 24-28, 2016.
2. No Prehearing Order establishing a procedural schedule has been issued in this docket.
3. A Prehearing Order establishing a procedural schedule was issued in a parallel AMI case -- *Randall/Albrecht v PECO*, C-2016-2537666.

4. PECO applied the *Randall/Albrecht* procedural schedule to the *Van Schoyck* hearing dates, and created the following proposed procedural schedule:

- Expert witness id – complete
- Monday, September 5: exchange expert reports
- Wednesday, September 16: ask final discovery
- Monday, September 26: discovery closes
- Tuesday, Oct. 4: settlement conference
- Monday, Oct. 10: exchange exhibits
- Wednesday, Oct. 19: stipulations

5. On July 19, 2016, PECO sent this proposed schedule to Complainants, requesting their comments or agreement. A copy of PECO's July 19, 2016 email is attached as Exhibit 1.

6. On July 19, 2016, Mr. Lanza replied by email: "We would like to discuss the schedule for these cases and other issues with you soon. I will confer with Steve and we will circle back to you shortly." A copy of Mr. Lanza's July 19, 2016 email is attached as Exhibit 2.

7. On July 19, 2016, PECO replied with a request for a date for such discussion, inquiring and stating: "When can we expect that discussion to occur? I realize that you likely have matters other than discovery that you want to roll into the discussion, but you are now deeply overdue on discovery answers – and even on updates on the status of discovery matters We need to hear from you this week [that is, by July 22] on discovery, even if the other agenda items need more time to ripen." A copy of PECO's July 19 email is attached as Exhibit 3.

8. PECO received no response to this request. On July 28, 2016 PECO sent Complainant's counsel an email with the subject line: "pls call me." It stated: "Ed: Pls call me. I'm going to have to start filing motions in the next day or so unless I hear something substantive from you ASAP. Please call me. 267-324-8426." A copy of PECO's July 28 email is attached as Exhibit 4. The number provided in the email was to Mr. Smith's cell phone.

9. On July 28, 2016, Mr. Lanza replied by email: "Ward, no need to file the motions. I'll call you tomorrow. Thanks." A copy of Mr. Lanza's July 28, 2016 email is attached as Exhibit 5.

10. On Friday, July 29, 2106 at 4:00 p.m., Mr. Lanza called Mr. Smith's office phone and left a message with PECO administrative staff that he had called.

11. On Friday, July 29, 2016 at 4:30 p.m., Mr. Smith returned Mr. Lanza's call. There was no answer, and Mr. Lanza's voice mail box was full. PECO therefore sent the following email to Complainant's counsel: "Ed: I see that I missed your call at 4:00. I just tried to leave you a voice message – you voice mail is full. Please call me back on my cell phone – 267-324-8426. I really need to talk today or this weekend." A copy of PECO's July 29 email is attached as Exhibit 6.

12. As of the date of the filing of the instant Motion, an additional seven days have passed since PECO's most recent request for discussion on scheduling issues. Complainant's counsel has not contacted Mr. Smith to discuss the scheduling matters at issue through email or phone.¹

¹ Mr. Lanza did communicate with Ms. Lee by email on several occasions during that week to coordinate the relocation of the Tucker meter.

13. PECO's proposed schedule is based upon the schedule ordered by Your Honors in *Randall/Albrecht*, and is thus presumptively reasonable.

14. Complainants have had ample opportunity to comment on or object to the proposed schedule.

15. PECO respectfully submits that it has exhausted all reasonable efforts to resolve this scheduling issue informally between the parties.

WHEREFORE:

PECO respectfully requests that Your Honors issue an Order adopting the schedule set forth above.

Respectfully submitted,

August 5, 2016

Ward Smith
Assistant General Counsel
PECO Energy Company
215-841-6863
ward.smith@exeloncorp.com

Exhibit 1

Smith, Ward L:(PECO)

From: Smith, Ward L:(PECO)
Sent: Tuesday, July 19, 2016 5:05 PM
To: 'Edward Lanza'; 'Steve Harvey'
Cc: Lee, Shawane L.:(PECO); 'Tom Watson'; 'Curt Renner'
Subject: Van Schoyck v PECO C-2015-2478239
Attachments: C2478239_Expert_Witness_Testimony.pdf; VanSchoyck - Expert ID.PDF; c2537666_Phg_Ord.pdf

Counsel:

The purpose of this email is to discuss interim scheduling issues in the *Van Schoyck* matter.

As you know, in their April 8, 2016 Prehearing Order, the ALJs previously set forth a schedule for this proceeding that was predicated on the previously scheduled but now inoperative July 26-27 hearing dates. That schedule was:

May 19: Settlement discussions (we had a couple of discussions, but remain open to more)
May 24: Expert witness identification (we exchanged expert witness identification on this date per the schedule. See attached).
May 31: Dispositive Motions
July 12: Exhibit exchange
July 22: Stipulations

On April 19, we jointly proposed that the above schedule be superceded by the following schedule for the exchange of written testimony:

Van Schoyck Direct – June 9
PECO Rebuttal – June 30
Van Schoyck Surrebuttal – July 18
Hearing – July 26-27

As you know, that schedule also became inoperative.

On June 21, by email, the ALJs informed us that we would not be using written testimony in *Van Schoyck* and that "Prehearing Orders in *Van Schoyck* and *Randall* will contain deadlines for exchange of expert reports."

We subsequently received a new Prehearing Order in *Randall* (attached), but not *Van Schoyck*. We could just ask the ALJs to issue a template Prehearing Order #2 in *Van Schoyck* based on the *Randall* template, but I would prefer to translate the *Randall* template to a concrete schedule, and then jointly propose those dates.

The *Randall* prehearing has six key deadlines, each designated as "x days before hearing." Based on the *Randall* instructions that we have a ten-day return on discovery and that "the timing of discovery requests must allow time for responses" prior to the end of the discovery period, I've interpolated an additional deadline for the final day to pose discovery. That results in the following:

70 days: expert witness id

50 days: exchange expert reports

40 days: ask final discovery (really, 10 days prior to close of discovery, which itself can vary with weekends; interposed by me)

30 days: discovery closes

20 days: settlement conference

15 days: exhibit exchange

5 days: stipulations

If I make that concrete for *Van Schoyck*, based on the scheduled October 23 start of hearings, and taking into consideration the days on which the deadline falls on a weekend, we get the following:

Expert witness id – complete

Monday, September 5: exchange expert reports

Wednesday, September 16: ask final discovery

Monday, September 26: discovery closes

Tuesday, Oct. 4: settlement conference

Monday, Oct. 10: exchange exhibits

Wednesday, Oct. 19: stipulations

May I have your comments and concurrence at your earliest convenience?

Ward

Exhibit 2

Smith, Ward L:(PECO)

From: Edward Lanza <ed@lanzafirm.com>
Sent: Tuesday, July 19, 2016 5:58 PM
To: Steve Harvey; Smith, Ward L:(PECO)
Cc: Lee, Shawane L:(PECO); Tom Watson; Curt Renner
Subject: RE: Van Schoyck v PECO C-2015-2478239

Thanks, Ward.

We would like to discuss the schedule for these cases and other issues with you soon. I will confer with Steve and we will circle back shortly.

Ed

THE LANZA FIRM, LLC
P.O. Box 61336
Harrisburg, PA 17106-1336
(717) 576-2696

----- Smith, Ward L:(PECO) wrote -----

Counsel:

The purpose of this email is to discuss interim scheduling issues in the *Van Schoyck* matter.

As you know, in their April 8, 2016 Prehearing Order, the ALJs previously set forth a schedule for this proceeding that was predicated on the previously scheduled but now inoperative July 26-27 hearing dates. That schedule was:

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Exhibit 3

Smith, Ward L:(PECO)

From: Smith, Ward L:(PECO)
Sent: Tuesday, July 19, 2016 8:15 PM
To: 'Edward Lanza'; 'Steve Harvey'
Cc: Lee, Shawane L.:(PECO); 'Tom Watson'; 'Curt Renner'
Subject: RE: Van Schoyck v PECO C-2015-2478239

Ed:

Thanks.

When can we expect that discussion to occur?

I realize that you likely have matters other than discovery that you want to roll into the discussion, but you are now deeply overdue on discovery answers – and even on updates on the status of discovery answers -- in *Van Schoyck*, *Murphy*, and *Randall/Albrecht*. We need to hear from you this week on discovery, even if the other agenda items need more time to ripen.

W

From: Edward Lanza [<mailto:ed@lanzafirm.com>]
Sent: Tuesday, July 19, 2016 5:58 PM
To: Steve Harvey; Smith, Ward L:(PECO)
Cc: Lee, Shawane L.:(PECO); Tom Watson; Curt Renner
Subject: RE: Van Schoyck v PECO C-2015-2478239

Thanks, Ward.

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THE LANZA FIRM, LLC
P.O. Box 61336
Harrisburg, PA 17106-1336
(717) 576-2696

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Exhibit 4

Smith, Ward L:(PECO)

From: Smith, Ward L:(PECO)
Sent: Thursday, July 28, 2016 2:21 PM
To: 'Edward Lanza'
Subject: pls call me

Ed:

Pls call me. I'm going to have start filing motions in the next day or so unless I hear something substantive from you ASAP. Please call me.

267-324-8426

W

Exhibit 5

Smith, Ward L:(PECO)

From: Edward Lanza <ed@lanzafirm.com>
Sent: Thursday, July 28, 2016 7:15 PM
To: Smith, Ward L:(PECO)
Subject: RE: pls call me

Ward,
No need to file motions.
I'll call you tomorrow.
Thanks,

Ed

THE LANZA FIRM, LLC
P.O. Box 61336
Harrisburg, PA 17106-1336
(717) 576-2696

----- Smith, Ward L:(PECO) wrote -----

Ed:

Pls call me. I'm going to have start filing motions in the next day or so unless I hear something substantive from you ASAP. Please call me.

267-324-8426

W

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Exhibit 6

Smith, Ward L:(PECO)

From: Smith, Ward L:(PECO)
Sent: Friday, July 29, 2016 4:33 PM
To: 'Edward Lanza'
Subject: Pls call

Ed:

I see that I missed your call at 4:00. I just tried to leave you a voice message – your voice mail is full.

Please call back on my cell phone. 267-324-8426. I really need to talk today or this weekend.

W

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

STEPHEN AND DIANE VAN SCHOYK	:	
COMPLAINANT	:	Docket No. C-2015-2478239
v.	:	
	:	
PECO ENERGY COMPANY	:	
RESPONDENT	:	


CERTIFICATE OF SERVICE

I, Ward L. Smith, hereby certify that I have this day served a copy of PECO'S Energy Company's Motion to Establish a Procedural Schedule in the above matter upon all interested parties via e-mail and postage prepaid to:

Via Electronic Mail
Ed Lanza, Esquire
The Lanza Firm, LLC
P.O. Box 61336
Harrisburg, PA 17106

Via Electronic Mail
Stephen G. Harvey
Steve Harvey Law, LLC
1880 John F. Kennedy Blvd., Ste. 1715
Philadelphia, PA 19103

Dated at Philadelphia, Pennsylvania, August 5, 2016



Ward L. Smith
Counsel for PECO Energy Company
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(215) 841-6863
Fax: 215.568.3389
Ward.Smith@exeloncorp.com