



January 7, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

**RE: Petition of PECO Energy Company for Approval of Its Act 129 Phase IV
 Energy Efficiency and Conservation Plan / Docket No. M-2020-3020830**

Secretary Chiavetta:

Enclosed for filing please find a Prehearing Conference Memorandum, on behalf of Natural Resources Defense Council, in the above-captioned proceeding.

Copies will be circulated in accordance with the attached Certificate of Service.

Sincerely,

/s/ James M. Van Nostrand

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Enclosures

cc: Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for :
Approval of its Act 129 Phase IV Energy : M-2020-3020830
Efficiency and Conservation Plan :

**PREHEARING CONFERENCE MEMORANDUM
OF NATURAL RESOURCES DEFENSE COUNCIL**

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*Counsel to Natural Resources Defense
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DATE: January 7, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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OF NATURAL RESOURCES DEFENSE COUNCIL**

Pursuant to 52 Pa.Code § 5.221 - § 5.223 and the Prehearing Conference Order (“Order”) issued December 30, 2020 by Deputy Chief Administrative Law Judge Mark A. Hoyer (“Judge Hoyer”), Natural Resources Defense Council (“NRDC”) hereby submits this Prehearing Conference Memorandum.

I. Procedural Background

On November 30, 2019, PECO Energy Company (“PECO”) submitted its *Petition for Approval of Its Act 129 Phase IV Energy Efficiency and Conservation Plan* (“Phase IV Plan”). The Phase IV Plan was filed pursuant to Act 129 of 2008 (“Act 129”), P.L. 1592, 66 Pa.C.S. §2806.1 and 2806.2, and the Commission’s Implementation Order entered on June 18, 2020 at Docket No. M-2020-3015228.

On December 1, 2020, the filing was posted to the Commission’s website. Thirty-three days after filing, on January 2, 2021, a formal Public Notice of the PECO Phase IV Plan was published in the *Pennsylvania Bulletin*, 51 Pa.B. 116, and established January 22, 2021 as the due date for filing responsive pleadings, comments and recommendations. The publication of the Formal Notice also triggered the twenty (20)

day period for parties to seek intervention in the proceeding, which ends on January 22, 2021.

Petitions to Intervene were filed by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), NRDC, and Philadelphia Area Industrial Energy Users Group (“PAIEUG”). Notices of Intervention were filed by the Office of Consumer Advocate (“OCA”) and the Office of Small Business Advocate (“OSBA”).

On December 30, 2020, Judge Hoyer issued a Notice of Prehearing Conference setting the prehearing conference date and a Prehearing Conference Order directing the parties to file prehearing conference memoranda. On January 6, 2021, the Commission issued a Judge Addition Notice advising the parties that Administrative Law Judge Emily DeVoe would be joining Judge Hoyer on the case.

II. Proposed Procedural Schedule

According to an email from Judge Hoyer to several parties on December 28, (1) an evidentiary hearing in this case must be scheduled for the week of either January 11th or January 18th, (2) briefs will be due Friday, January 29th, and (3) a revised plan and/or comments must be filed and served by February 10, 2021 so that the record can be certified to the Commission on February 11, 2021. Counsel for PECO has proposed a hearing date of January 22, 2021, which would accommodate the parameters outlines by Judge Hoyer.

This schedule apparently was developed to accommodate a Commission-imposed deadline for issuance of an order on or before 120 days after filing of the Phase IV Plan. Although 66 Pa.C.S. 2806.1(e) provides a 120-day period for litigation of Phase I EE&C

Plans, that deadline does not apply to Phase IV Plans. Nor does imposition of the 120-day limit make sense given the inexplicable 14-day delay between when the Official Notice should have been published in the Pennsylvania Bulletin—December 19, 2020—and the actual day it was published—January 2, 2021. NRDC cannot agree to any procedural schedule that calls for hearings to occur on the day of the deadline for intervention in the proceeding (January 22, 2021).

NRDC submits that litigation in this proceeding should not begin until after January 22, 2021, following the 20-day timeframe for formal Answers established by the Commission in its Implementation Order and published in the Pennsylvania Bulletin on January 2, 2021. (See 51 Pa.B. 116, see also Implementation Order at 87-88). Starting litigation in this proceeding before expiration of the 20-day period for formal Answers would be prejudicial to all parties, who would not have the opportunity to respond to unsworn Comments and formal Answers through testimony. It would also be prejudicial to potential additional litigants, who would be foreclosed from participating in litigation. Delaying the commencement of litigation until after January 22 would acknowledge (albeit without sufficiently addressing) the fundamental due process issues associated with holding a hearing before the deadline for submitting interventions in the case.

III. Proposed Plan and Schedule for Discovery

NRDC is not aware of any proposals by counsel for PECO for a schedule and process for discovery that would depart from the schedule and process provided in the Commission's procedural rules. NRDC is willing to discuss modifications to those practices at the prehearing conference.

IV. Proposed Witnesses and Subject of Testimony

NRDC anticipates addressing the following subjects in testimony. (The following is a preliminary list of subjects and NRDC reserves the right to modify this list as it determines appropriate to represent its interests and as warranted by information gained through discovery.)

- Projected performance and budget of programs and components. NRDC will examine savings, participation, and budgets for the proposed EE&C programs and components.
- Program comprehensiveness. NRDC's review will include identifying further opportunities for comprehensive savings under the EE&C Plan. NRDC will also consider the equity of savings opportunities across rate classes.
- Fuel switching. NRDC will review offerings for fuel switching measures and their impacts on energy savings and emissions.
- Reporting practices. NRDC will consider changes in reporting practices to improve the transparency of the EE&C programs.
- Program design and analysis framework. NRDC will consider changes to benefit cost analysis and funding to better support EE&C programs and to align outcomes with other public policy goals.

NRDC has engaged Synapse Energy Economics, Inc. to provide analysis and expert testimony in this proceeding, and the witnesses will include Alice Napoleon, Courtney Lane, and Kenji Takahashi.

V. Designation of Lead Representative for Prehearing Conference

NRDC hereby designates James M. Van Nostrand as lead representative for the Prehearing Conference.

VI. Settlement

NRDC expresses its willingness to participate in settlement discussions in this proceeding, and supports inclusion of a designated date for Settlement Discussions in the procedural schedule.

VII. Conclusion

NRDC appreciates the opportunity to submit this Prehearing Conference Memorandum and looks forward to further discussion of the issues presented herein at the Prehearing Conference.

Respectfully submitted this 7th day of January, 2021.

/s/ James M. Van Nostrand

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CERTIFICATE OF SERVICE

Petition of PECO Energy Company for :
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Efficiency and Conservation Plan :

I hereby certify that this day I served a copy of Natural Resources Defense Council’s Prehearing Conference Memorandum in accordance with the requirements of 52 Pa. Code § 1.54 and consistent with the Commission’s March 20 Emergency Order at Docket M-2020-3019262.

Via Electronic Mail

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Date: January 7, 2021

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