

STEVENS & LEE
LAWYERS & CONSULTANTS

17 North Second Street
16th Floor
Harrisburg, PA 17101
(717) 234-1090 Fax (717) 234-1099
www.stevenslee.com

DIRECT DIAL: (717) 255-7365
EMAIL: MAG@STEVENSLEE.COM
Direct Fax: (610) 988-0852

August 5, 2009

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

Re:

Metropolitan Edison Company (Met-Ed) EE&C Plan- Docket No. M-2009-2092222
Pennsylvania Electric Company (Penelec) EE&C Plan - Docket No. M-2009-2112952
Pennsylvania Power Company (Penn Power) EE&C Plan - Docket No. M-2009-2112956

Dear Secretary McNulty:

On behalf of Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec") and Pennsylvania Power Company ("Penn Power"), enclosed please find an Answer Opposing the Petition to Intervene filed by Constellation New Energy in the above-referenced proceeding. This Answer was electronically filed today.

If you have questions, please do not hesitate to contact me.

Sincerely,

STEVENS & LEE



Michael A. Grain

MAG/kdd
Enclosures

cc: ALJ David Salapa
Certificate of Service

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A PROFESSIONAL CORPORATION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Metropolitan Edison Company Energy :
Efficiency and Conservation Plan : Docket No. M-2009-2092222

Pennsylvania Electric Company Energy :
Efficiency and Conservation Plan : Docket No. M-2009-2112952

Pennsylvania Power Company Energy :
Efficiency and Conservation Plan : Docket No. M-2009-2112956

**METROPOLITAN EDISON COMPANY
PENNSYLVANIA ELECTRIC COMPANY AND
PENNSYLVANIA POWER COMPANY'S
ANSWER OPPOSING THE PETITION TO INTERVENE OF CONSTELLATION
NEW ENERGY, INC.**

Pursuant to 52 Pa. Code §5.66, Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”) and Pennsylvania Power Company (“Penn Power”) (collectively referred to as the “FirstEnergy Companies”) by and through its attorneys, Stevens & Lee, hereby files the Answer Opposing the Petition to Intervene of Constellation New Energy, Inc.. (“Constellation”). In support of this Answer, the FirstEnergy Companies aver as follows:

I. SUMMARY OF OPPOSITION

The Petition of Constellation, filed and dated August 3, 2009 is clearly untimely and should be rejected. Moreover, Constellation’s untimely Petition is “defective on its face” because it fails to comply with the Commission’s Rules of Practice and Procedure and provide reasonable grounds for Petitioner’s failure to intervene earlier in these

proceedings as required by 52 PA Code § 1.15. Finally, Constellation has set forth no right or interest which warrants their intervention.

II. BACKGROUND

1. On July 1, 2009, Met Ed, Penelec and Penn Power filed their Energy Conservation and Efficiency (“EE&C”) plans with the Commission pursuant to the Commission’s orders and Act 129, along with their Testimony in support of the plans. The Met-Ed, Penelec and Penn Power EE&C Plans and Testimony were assigned individual docket numbers and published on the Commission’s website. Also on July 1, 2009, Met Ed, Penelec and Penn Power filed a joint petition for consolidation of the proceedings.

2. By Notice dated July 2, 2009, the Commission scheduled a Prehearing Conference for this matter on July 29, 2009 at 9:30 a.m. in Hearing Room 3, Commonwealth Keystone Building in Harrisburg and assigned Administrative Law Judge David A. Salapa to preside. The Notice of the Prehearing Conference was published on the Commission’s website and publicly available.

3. ALJ Salapa issued a Prehearing Conference Order on July 8, 2009. The Prehearing Conference Order was published on the Commission’s website under the dockets corresponding to the First Energy Company EE&C Plan proceedings. The Prehearing Conference Order established a July 29, 2009 deadline for the timely filing of petitions to intervene and stating:

Parties shall be limited to those persons or entities who file a petition to intervene pursuant to 52 Pa. Code §5.71-76 (or a notice of intervention for those entities with a statutory right of participation pursuant to 52 Pa. Code §5.72(b) (4)) on or before July 29, 2009, and who attend the initial prehearing conference. After the prehearing conference, intervention is

limited to those persons or entities granted party status pursuant to 52 Pa. Code §§5.71-5.76. Petitions to intervene, if not untimely, or otherwise 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.¹

4. On Saturday, July 25, 2009 the Commission filed Notice of the filing of the EE&C Plans of the FirstEnergy Companies in the Pennsylvania Bulletin and specifically provided that: “Petitions for Intervention should be filed with the Secretary and a copy served on the Administrative Law Judge on or before July 29, 2009.”²

5. On July 29, 2009 ALJ Salapa conducted a prehearing conference in this case in which counsel for the FirstEnergy Companies and counsel for various intervenors were present. Members of the law firm representing Constellation were present at the prehearing conference.³ The intervention deadline was specifically discussed at the Prehearing Conference. During the Conference, Counsel for the FirstEnergy Companies stated:

“Our concern, Your Honor, is that the intervention date as published in the “Bulletin” and in Your Honor’s Order remain the same, that today is the deadline for intervention in this proceeding.”⁴

III. ARGUMENT

6. The Petition of Constellation, filed and dated August 3, 2009 (5 days after the deadline for seeking intervention) is clearly untimely. The July 8, 2009 Prehearing Conference Order of ALJ Salapa clearly establishes that July 29, 2009 is the deadline for the timely filing of petitions to intervene in this proceeding. Moreover, the

¹ PREHEARING CONFERENCE ORDER, July 8, 2009 at pages 1-2.

² 39 Pa.B. 4404, July 25, 2009.

³ Constellation is represented by Blank Rome, LLC, who also represents Field Diagnostic Services, Inc., who has intervened in this matter.

⁴ Tr. at 38.

Commission's Notice published in the Pennsylvania Bulletin establishes that Petitions for Intervention should be filed with the Secretary and a copy served on the Administrative Law Judge on or before July 29, 2009. Petitioner and its counsel clearly knew, or should have known, that the instant petition filed on August 3, 2009 would be untimely; however, Petitioner fails to provide any reasonable explanation for its untimely filing.

7. The Commission's regulations clearly establish an obligation to provide reasonable grounds for Petitioner's failure to timely intervene in this proceeding. 52. Pa Code §1.15(a) (1) provides:

(1) Except as otherwise provided by statute, whenever under this title or by order of the Commission, or notice given thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, by the Commission, the presiding officer or other authorized person, for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended. **Upon motion made after the expiration of the specified period, the act may be permitted to be done where reasonable grounds are shown for the failure to act.** (EMPHASIS ADDED)

8. The Petitioner does not provide any reasonable grounds for its failure to file a Petition for Intervention prior to the clearly enunciated deadline for doing so. Petitioner's failure to provide any reasonable grounds for its untimely filing causes the Petition of Constellation for intervention in this proceeding to be defective on its face. Accordingly, Petitioner's Petition to Intervene is untimely and defective should be denied.

9. Constellation is represented by experienced PUC counsel, and Constellation itself is a sophisticated enterprise that has participated in many Commission proceedings before.

10. Constellation and its counsel clearly have experience in navigating the Commission's website dockets, based upon their active participation in prior Commission proceedings. With the docket numbers of the FirstEnergy EE&C plans published on the website for weeks, ALJ Salapa's July 8, 2009 Prehearing Conference Order was easily locatable and readily available to them.

11. Constellation does not deny that it was fully aware of the deadline for intervention. Yet Constellation does not set forth any reasonable grounds for its failure to file its Petition for Intervention until 5 days after the deadline.

12. Constellation's excuse for the un-timeliness of its Petition is that it was "internally weighing conflicts with respect to participating in this proceeding given the necessary cost and time commitment". Constellation's excuse is not reasonable, and certainly is not the type of excuse that would permit a late-filed intervention, especially in a proceeding with such a compressed schedule. Furthermore, a serious question is raised by the fact that Constellation did not file its Petition to intervene until 5 days after the Prehearing Conference, even though attorneys from the firm representing Constellation were present at the Prehearing Conference, and could have easily reminded Constellation of the deadline. The issue of the deadline for intervention was discussed at length at the prehearing conference, and knowing the importance that was placed on the deadline, Constellation should not have waited 5 additional days to file its Petition.

13. The prehearing conference order established an intervention deadline for a reason. This proceeding is moving forward on an extremely truncated litigation schedule. The proceeding involves highly complex and technical issues. Based on the number of intervenors who filed their interventions by the deadline, a carefully crafted schedule of

testimony, public input hearings, and discovery modifications was agreed upon.

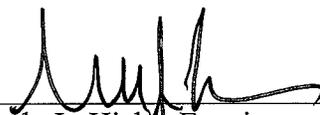
Discovery is underway, and public input hearings have already been held. An informal technical presentation was made to the intervenors to explain FirstEnergy's EE&C plans and models in great detail. Initial settlement discussions have taken place with multiple parties. Constellation's unreasonably late-filed intervention will now bring new issues to the table, in the middle of the shortened litigation schedule, after many of the parties have already exchanged information and attempted to narrow the issues in dispute.

14. Constellation had plenty of notice and opportunity to intervene in this proceeding before it was underway. Constellation has given no legitimate or reasonable excuse for its failure to intervene by the deadline. Constellation's Petition to Intervene is therefore defective, untimely, and should be denied.

WHEREFORE, for all of the foregoing reasons, Met-Ed, Penelec and Penn Power respectfully request that Constellation's Petition to Intervene be denied.

Respectfully submitted,

Dated: August 5, 2009



Renardo L. Hicks, Esquire

PA ID No. 40404

Stevens & Lee

17 North Second Street, 16th Floor

Harrisburg, PA 17101

717-255-7364 - Telephone:

610-988-0851 - Fax

rlh@stevenslee.com

Counsel for Metropolitan Edison Company

Pennsylvania Electric Company

and Pennsylvania Power Company

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Metropolitan Edison Company Energy and Conservation Plan	:	Docket No. M-2009-2092222
	:	
Pennsylvania Electric Company and Conservation Plan	:	Docket No. M-2009-2112952
	:	
Pennsylvania Power Company and Conservation Plan	:	Docket No. M-2009-2112956

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Answer to Petition to Intervene by first class mail and electronic mail upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 and 1.55.

CANDIS A TUNILO ESQUIRE
AARON BEATTY ESQUIRE
TANYA MCCLOSKEY ESQUIRE
OFFICE OF CONSUMER ADVOCATE
5TH FLOOR FORUM PLACE
555 WALNUT STREET
HARRISBURG PA 17101-1923

DANIEL G ASMUS ESQUIRE
OFFICE OF SMALL BUSINESS ADVOCATE
1102 COMMERCE BUILDING
300 NORTH SECOND STREET
HARRISBURG PA 17101

CHARLES DANIEL SHIELDS ESQUIRE
CARRIE B WRIGHT ESQUIRE
PA PUC OFFICE OF TRIAL STAFF
PO BOX 3265
HARRISBURG PA 17105-3265

LILLIAN S HARRIS ESQUIRE
HAWKE MCKEON & SNISCAK LLP
100 NORTH TENTH STREET
HARRISBURG PA 17105

HARRY S GELLER ESQUIRE
118 LOCUST STREET
HARRISBURG PA 17101

ASPASSIA STAEVSKA ESQUIRE
SCOTT PERRY ESQUIRE
DEPT OF ENVIRONMENTAL PROTECTION
400 MARKET STREET
9TH FLOOR
HARRISBURG PA 17101-2301

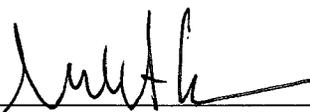
BARRY NAUM ESQUIRE
CHARIS MINCAVAGE ESQUIRE
SHELBY A LINTON-KEDDIE ESQUIRE
MCNEES WALLACE & NURICK
100 PINE STREET
PO BOX 1166
HARRISBURG PA 17108

CHRISTOPHER A SHARP ESQUIRE
CHRISTOPHER A LEWIS ESQUIRE
MELANIE J TAMBOLAS ESQUIRE
BLANK ROME LLP
ONE LOGAN SQUARE
130 NORTH 18TH STREET
PHILADELPHIA PA 19103-6998

KEVIN J MOODY ESQUIRE
ECKERT SEAMANS CHERIN & MELLOTT
213 MARKET STREET
18TH FLOOR
HARRISBURG PA 17101

VASILI KARANDRIKAS
MCNEES WALLACE & NURICK
100 PINE ST
HARRISBURG, PA 17108

LEE HARTZ
NATIONAL FUEL GAS
PO BOX 2081
ERIE, PA 16512



Michael Gruin

Dated: August 5, 2009