

Jeffrey J. Norton
717.237.7192
jnorton@eckertseamans.com

February 7, 2012

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company,
Pennsylvania Power Company and West Pen Power Company for Approval of Their
Default Service Programs,
Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669 and P-20112273670

Dear Secretary Chiavetta:

On behalf of the Retail Energy Supply Association ("RESA") enclosed for filing is the original of its Motion to Modify Procedural Schedule along with the electronic filing confirmation with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Very truly yours,



Jeffrey J. Norton

JJN/jls
Enclosure

cc: Hon. Elizabeth Barnes w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of RESA's Motion to Modify Procedural Schedule upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email and/or First Class Mail

Charles D. Shields, Esq.
PA Public Utility Commission
Bureau of Investigation & Enforcement
PO Box 3265
Harrisburg, PA 17101-3265
cshields@pa.gov

Aaron Beatty, Esq.
Darryl Lawrence, Esq.
Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, PA 17101-1923
abeatty@pa.gov
dlawrence@pa.gov

Brian J. Knipe, Esq.
Buchanan Ingersoll & Rooney PC
17 North Second St., 15th Floor
Harrisburg, PA 17101-1503
Brian.knipe@bipc.com

Daniel Asmus, Esq.
Office of Small Business Advocate
1102 Commerce Building
300 N. Second St.
Harrisburg, PA 17101
dasmus@pa.gov

Thomas P. Gadsden, Esq.
Kenneth M. Kulak, Esq.
Morgan, Lewis & Bockius
1701 Market St.
Philadelphia, PA 19103-2921
tgadsden@morganlewis.com
kkulak@morganlewis.com

Charis Mincavage, Esq.
Susan Bruce, Esq.
McNees Wallace & Nurick LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166
cmincavage@mwn.com
sbruce@mwn.com

Regina L. Matz, Esq.
Thomas, Long, Niesen & Kennard
212 Locust St., Suite 500
PO Box 9500
Harrisburg, PA 17108
rmatz@thomaslonglaw.com

Bradley A. Bingaman, Esq.
Tori Geisler, Esq.
FirstEnergy Service Company
2800 Pottsville Pike
PO Box 16001
Reading, PA 19612-6001
bbingaman@firstenergycorp.com
tgiesler@firstenergy.com

Patrick M. Cicero, Esq.
Pennsylvania Utility Law Project
118 Locust T.
Harrisburg, PA 17101-1414
pulp@palegalaid.net

Benjamin L. Willey, Esq.
7272 Wisconsin Ave., Suite 300
Bethesda, MD 20814
ssp@bwilleylaw.com

Michael A. Gruin, Esq.
Stevens & Lee
17 North Second St., 16th Fl.
Harrisburg, PA 17101

Todd S. Stewart, Esq.
Hawke McKeon & Sniscak LLP
100 N. Tenth St.
PO Box 1778
Harrisburg, PA 17105
tsstewart@hmslegal.com

Divesh Gupta, Esq.
Managing Counsel – Regulatory
Constellation Energy
100 Constellation Way, Suite 500C
Baltimore, MD 21202
Divesh.gupta@constellation.com

Trevor D. Stiles, Esq.
Foley & Lardner LLP
777 E. Wisconsin Ave.
Milwaukee, WI 53202
tstiles@foley.com



Jeffrey J. Norton, Esq.

Dated: February 7, 2011

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Programs	:	Docket Nos.	P-2011-2273650 P-2011-2273668 P-2011-2273669 P-2011-2273670
---	---	-------------	--

**MOTION OF THE RETAIL ENERGY SUPPLY ASSOCIATION
TO MODIFY PROCEDURAL SCHEDULE**

I. INTRODUCTION

Pursuant to 1 Pa. Code § 5.103, the Retail Energy Supply Association (“RESA”)¹ respectfully requests that Administrative Law Judge (“ALJ”) Elizabeth Barnes modify the litigation procedural schedule set forth in her December 22, 2011 Scheduling Order and stay the filing of further direct testimony with respect to the “competitive enhancements” that are the subject of the Pennsylvania Public Utility Commission’s (“PUC” or “Commission”) December 16, 2011 Tentative Order, until after the PUC enters its Final Order on or about March 1, 2012. As the Final Order will directly affect the nature and structure of competitive enhancements, such as opt-in auctions and customer referral plans, it is necessary for Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company (collectively “FirstEnergy” or “the Companies”) and the other various parties participating in the proceeding to submit testimony responding to the Order so that a full and

¹ RESA’s members include: Champion Energy Services, LLC; ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holding, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

complete record, consistent with the PUC's directives, can to be developed. Accordingly, RESA requests that the non-EDC testimony on competitive enhancements² be held in abeyance until: 1) the PUC issues its Final Order (scheduled for March 1); 2) FirstEnergy submits supplemental testimony explaining how it proposes to change its existing proposals due to the Final Order or, if it proposes not to change its proposals, the compelling reasons for not modifying its position. After that testimony is submitted, RESA suggests that the other parties be given a reasonable time period in which to submit responsive testimony. RESA is not requesting that all testimony be held in abeyance, on February 17th, but both FirstEnergy and the other parties should be permitted subsequently to supplement their position on FirstEnergy's default service procurement plan to the extent necessary in light of the PUC's competitive enhancement Final Order and the competitive enhancements implemented pursuant thereto.

In support of this motion, RESA states as follows:

II. ARGUMENT

1. On November 17, 2011, FirstEnergy filed its default service plan proposals. FirstEnergy also filed discovery responses and testimony by seven (7) witnesses during the period December 2011 through February, 2012.

2. As part of its proposal, FirstEnergy proposed several so called "competitive enhancements". They are: 1) Opt-In Aggregation Program; 2) Customer Referral Program; 3) Outsourcing of Retail Generation Supply for TOU Customers (for Penn Power and WestPenn Power only); 4) Removal of Non-Market Based Services from PTC; and 5) Bypassable adder.

² The recommended enhancements included the following: 1) removal of non-market based services from price-to-compare; 2) bypassable adder; 3) customer referral program and opt-in auction; and 4) bid-out Act 129-mandated time-of-use rates for PennPower and West PennPower residential customers.

3. On December 16, 2011 the PUC entered a “Tentative Order” that *inter alia*, established an “Intermediate Work Plan,” to “improve the current retail electricity market.”³ The Tentative Order directed EDCs to implement several different competition enhancing steps (“competitive enhancements”) and directed that two of the competitive enhancements be developed in the EDC’s default service proceedings: a “Standard Offer Customer Referral Program” and an Opt-In Auction.⁴ The Tentative Order stated, “To the extent that an EDC chooses to deviate from these guidelines, we expect the differences to be justified by operation constraints, supported by evidence produced during the default service plan proceedings.”⁵

4. While FirstEnergy’s plan includes proposals for these competitive enhancements, some key details are significantly different than those directed in the Commission’s Tentative Order. For example, the PUC Tentative Order calls for an opt-in auction term of six (6) to twelve (12) months⁶, while the First Energy proposal calls for a twenty four (24) month opt-in auction term. Also, for the Standard Offer Customer Referral Program, the PUC Tentative Order calls for a percentage off an EDC’s PTC for a stated period of time.⁷ FirstEnergy proposed that it conduct a Weekly Customer Referral Solicitation to determine the lowest fixed price offering.⁸ These proposed changes by FirstEnergy materially diverge from the PUC’s Tentative Order. Once the PUC issues its Final Order, there may be additional items that First Energy must correct.

5. The Commission issued the Intermediate Work Plan as a Tentative Order to give stakeholders an opportunity to comment and suggest changes. Once the Tentative Order

³ *Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan*, I-2011-2237952 Tentative Order (December 16, 2011) (“T.O.” or “Tentative Order”).

⁴ T.O., at 20-23.

⁵ Id. at 20.

⁶ Id. at 29.

⁷ T.O. at 20.

⁸ C. Fullem testimony at 31

becomes final, however, each EDC will be subject to the requirement that they include within their plans competitive enhancements with the terms and conditions recommended by the PUC, or explain what good reason they have for not doing so.

6. Up until recently, it was not clear that the PUC would issue a Final Order in time to have its final decisions on the competitive enhancements incorporated into the record of this proceeding (without taking some special action such as reopening the record). However, on February 1, 2012, the Director of Operations Karen Moury, informed participants in the Retail Markets Investigation (“RMI”) conference call that on March 1, 2012, the Commission is scheduled to enter a Final Order on the Intermediate Work Plan for the Default Service Implementation Programs.

7. According to its original December 22, 2011 Procedural Schedule, RESA’s Direct Testimony will be due on February 17, 2012. The parties now know that the PUC will issue a Final Order after that date. It is in everyone’s interest to have a full and complete record on these issues. Therefore, it is logical for all testimony to be held in abeyance until the PUC enters its Final Order.

8. RESA submits that FirstEnergy and the parties have an obligation to either conform their competitive enhancements to the PUC’s soon to be Final Order or to present compelling reasons, and evidence to support those reasons, why the FirstEnergy plan should diverge from the PUC’s recommendations. Since this proceeding is in the relatively early stages, the record should reflect a full and complete discussion of the PUC directed competitive enhancements and, to the extent that any party wishes to diverge from these directives, it must provide specific policy or factual reasons for such a divergence.

9. Accordingly, RESA requests that the ALJ order FirstEnergy to supplement its default service plans, its testimony and discovery responses, on competitive enhancements, to be consistent with the upcoming Commission Final Order. If First Energy takes the position that it does not wish to change its proposals, it should set forth compelling reasons why it chooses not to follow the Commission's Final Order of March 1, 2012.

10. Once The Commission enters its Final Order on March 1, 2012, the parties will be better able to follow the Commission's directives and quickly provide its direct testimony on competitive enhancements consistent with the Commission's Order. Since the time period change will only be for a short period, FirstEnergy and the other parties shall not suffer any material prejudice. The Commission and the parties should still be able to meet its nine-month litigation time frame commitment, as set forth in 66 Pa.C.S. §2807(e)(3.6), to resolve this matter.

11. The slight procedural schedule modifications will allow the parties to proceed efficiently, uniformly and consistently with the Commission's upcoming March 1, 2012 Final Order. All parties will then be able to follow the same direction from the Commission's upcoming Order. Throughout its December 16, 2011 Tentative Order on the proposed intermediate work plan, the Commission expressed its preference for uniformity to simplify and make implementation easier. Such uniformity will be fair and enable RESA and other parties to better prepare and offer appropriate and relevant testimony and discovery responses.

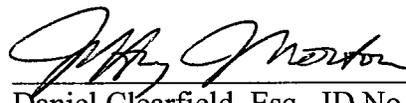
12. RESA is not requesting that all testimony be held in abeyance, on February 17th, but both FirstEnergy and the other parties should be permitted subsequently to supplement their position on FirstEnergy's default service procurement plan to the extent necessary in light of the PUC's competitive enhancement Order and the competitive enhancements implemented pursuant thereto.

12. Finally, given the current deadlines under the litigation schedule, RESA requests that Judge Barnes order FirstEnergy to expeditiously respond to the instant Motion to Modify Litigation Schedule within a short period of the filing and service of the instant Motion.

III. CONCLUSION

For the foregoing reasons, RESA respectfully requests that Administrative Law Judge Barnes modify the procedural schedule in her December 22, 2011 Scheduling Order by holding in abeyance all further direct testimony on competitive enhancements under the December 16, 2011 Tentative Order until the Commission enters its Final Order on March 1, 2012. In addition, RESA requests that Judge Barnes order FirstEnergy within fourteen (14) days of the entry of the Commission's Final Order, to supplement their default service plans, testimony and discovery responses, especially on competitive enhancements, to be consistent with the Commission's Final Order on March 1, 2012. If First Energy objects to supplementing its default service plans, testimony and discovery responses, First Energy should set forth compelling reasons why it chooses not to follow the Commission's Final Order of March 1, 2012.

Respectfully Submitted,



Daniel Clearfield, Esq., ID No. 26183
Jeffrey J. Norton, Esq., ID No. 39241
Deanne M. O'Dell, Esq., ID No. 81064
Eckert Seamans Cherin & Mellot, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
(717) 237-6000

Dated: February 7, 2012

Attorneys for Retail Energy Supply
Association