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February 15, 2012

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FEB 15 2012

VIA FEDERAL EXPRESS

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
P.O. Box 3265
400 North Street
Harrisburg, PA 17105-3265

**PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU**

**Re: 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 No. P-2011-2273650, Docket No. P-2011-2273668,
Docket No. P-2011-2273669 and Docket No. P-2011-2273670**

Dear Secretary Chiavetta:

Enclosed for filing are an original and three copies of the **Answer of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to the Motion of the Retail Energy Supply Association ("RESA") to Modify Procedural Schedule**, in the above-captioned matter.

As indicated on the enclosed Certificate of Service, copies have been served upon Administrative Law Judge Barnes and all active parties.

Rosemary Chiavetta, Secretary
February 15, 2012
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Also enclosed is an extra copy of the Answer, which we request that you time-stamp it and return it in the envelope provided.

Sincerely,

Handwritten signature of Thomas P. Gadsden in black ink.

Thomas P. Gadsden

TPG/ap
Enclosures

c: Per Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

JOINT PETITION OF METROPOLITAN :
EDISON COMPANY, PENNSYLVANIA : DOCKET NOS. P-2011-2273650
ELECTRIC COMPANY, PENNSYLVANIA : P-2011-2273668
POWER COMPANY AND WEST PENN : P-2011-2273669
POWER COMPANY FOR APPROVAL OF : P-2011-2273670
THEIR DEFAULT SERVICE PROGRAMS :

ANSWER OF METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA
POWER COMPANY AND WEST PENN POWER COMPANY TO THE
MOTION OF THE RETAIL ENERGY SUPPLY ASSOCIATION
TO MODIFY PROCEDURAL SCHEDULE

On February 7, 2012, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, the "Companies") were served with a document captioned *Motion of the Retail Energy Supply Association to Modify Procedural Schedule* (the "Motion"). For the reasons set forth herein, the Companies respectfully submit that the relief sought by the Retail Energy Supply Association ("RESA") is untimely and inappropriate and that its Motion should therefore be denied.

I. INTRODUCTION

In accordance with the litigation schedule agreed to by the parties to the above-docketed matter, including RESA, and memorialized in Administrative Law Judge ("ALJ") Barnes' December 22, 2011 Scheduling Order, non-Company direct testimony is due to be filed on or before February 17, 2012. Through its Motion, RESA seeks to be excused from complying with this directive as it relates to any testimony it might choose to file with respect to so-called "competitive enhancements." In support of this extraordinary request, RESA asserts that the Commission may enter a Final Order on the Office of Competitive Market Oversight's ("OCMO") intermediate work plan on or about March 1, 2012 that addresses competitive

enhancement issues; that such Order **may** make recommendations that are inconsistent with positions taken by the Companies in their November 17, 2011 Default Service Program filing; and that the Companies **may** be required to either revise their proposals or explain why they have not.

RESA's Motion is both premature and inappropriate. First, there is no assurance that the Commission will act on this matter at its March 1, 2012 public meeting or that it will enter an Order that says what RESA assumes it will. Established litigation schedules should not be modified based on such speculation. Second, even if the Commission were to issue the Order envisioned by RESA and do so on or about March 1, 2012, any party seeing a need to address such an Order could take it up at that time through available and proper administrative and procedural methods, including the possibility of addressing that Order through its testimony due in accordance with the already-established procedural schedule.

Finally, RESA is guilty of overreaching when it suggests that the Commission's forthcoming Final Order warrants a delay in RESA's response to all of the Companies' proposed competitive enhancements, including "1) removal of non-market based services from price-to-compare; 2) bypassable adder; . . . and 4) bid-out Act 129-mandated time-of-use rates for Penn Power and West Penn Power residential customers" (Motion, p. 2, fn. 2). Unlike the Opt-In Aggregation and Customer Referral Programs, none of these three "competitive enhancements" were addressed in the Commission's December 16, 2011 Tentative Order and, as such, there is no reason to believe they will be addressed in the Commission's Final Order. Indeed, it would be entirely inappropriate if they were.

II. ARGUMENT

1. It is admitted that the Companies filed their proposed Default Service Programs on November 17, 2011 and, in the intervening months, have submitted the testimony of seven witnesses and responded to numerous discovery requests. More specifically, the Companies served their direct testimony on December 20, 2011. Under the litigation schedule approved by ALJ Barnes, RESA and the other parties were given approximately two months (i.e., until February 17, 2012) to prepare and submit responsive testimony.

2. It is admitted that the Companies have proposed the five competitive enhancements identified by RESA in its Motion. However, as noted *supra*, only the first two -- the Opt-In Aggregation Program and the Customer Referral Program -- were addressed by the Commission in its December 16, 2011 Tentative Order.

3. The Companies respectfully submit that the Tentative Order speaks for itself. By way of further answer, the Companies aver that it was widely recognized when the Tentative Order was entered that a Final Order could be issued during the pendency of this proceeding. Accordingly, RESA could have raised the timing issue that purportedly now troubles it when the parties gathered at the Prehearing Conference on December 22, 2011.

4. It is denied that the Companies' proposed Opt-In Aggregation and Customer Referral Programs "materially diverge" from the Tentative Order. To the contrary, the type of differences cited by RESA in its Motion, even if they remained following the Commission's issuance of a Final Order, could easily be addressed and, if necessary, could be "corrected" through appropriate administrative and procedural mechanisms, including in rebuttal testimony or in brief and, in any event, clearly do not warrant changes in the litigation schedule previously agreed to by the parties.

5. Denied as stated. There is no way of definitely knowing when or whether the Commission will issue a final order or provide the specific terms and conditions that should be incorporated into customer aggregation and/or referral programs or, alternatively, will accord default service providers with the flexibility they may need to tailor such programs to their individual circumstances.

6. While it is admitted that the Director of Operations has stated that the Commission may issue a Final Order on the OCMO's intermediate work plan on March 1, 2012, the Commission's issuance of such an order on a certain date is purely speculative.

7. It is admitted that RESA's direct testimony is due to be filed on or before February 17, 2012. It is also admitted that the Commission's Final Order on the OCMO's intermediate work plan will likely not be issued until after that date. It is denied that it is either "logical" or "in everyone's interest" to hold the filing of competitive enhancement testimony in abeyance pending the issuance of the Final Order.

8. Denied for the reasons set forth in Paragraphs 4 and 5, *supra*.

9. Paragraph 9 of the Motion constitutes a request for relief to which a specific response is not required. By way of further answer, the Companies respectfully submit that, to the extent necessary, they will respond to the Final Order at the appropriate time and in a manner that clearly makes known to the Commission any areas of disagreement the Companies may have with it.

10. Denied, as stated, for the reasons set forth in Paragraph 5, *supra*. In addition, because the timing of the issuance of the Final Order is not guaranteed and because RESA has failed to propose an alternative litigation schedule, there is no way of determining whether the Companies and/or other parties would "suffer any material prejudice" or whether the nine-month

statutory deadline for resolution of this matter could be met if the current litigation schedule is abandoned. Indeed, the only guidance RESA offers is the recommendation, set forth in the Conclusion to its Motion, that the ALJ “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 . . .” (p. 6). If RESA’s proposal were adopted, the Companies assume that other parties would require several weeks to respond to any such supplemental testimony and discovery responses and that sufficient time would then need to be set aside to allow the Companies and other parties to prepare rebuttal and, ultimately, surrebuttal testimony. How all of this might impact the existing hearing and briefing schedule is unknown.

11. It is denied that RESA has proposed “slight procedural schedule modifications.” To the contrary, and as explained in Paragraph 10, *supra*, RESA has not provided the ALJ with an alternative litigation schedule. RESA’s remaining observations regarding the need for “uniformity” seem irrelevant to the issue at hand and, therefore, are denied as stated.

12. Denied for the reasons set forth in Paragraphs 1-11, *supra*.

12. (Sic). RESA’s request that the parties be directed to expeditiously respond to its Motion was granted by the ALJ’s February 9, 2012 Order setting a due date of February 15, 2012 for answers or objections.

III. CONCLUSION

For the reasons set forth herein, the Companies request that RESA's Motion to Modify Procedural Schedule be denied.

Respectfully submitted,



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Dated: February 15, 2012

VERIFICATION

I, Charles V. Fullem, hereby state that the facts set forth in the attached Answer are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).

Date: 2/14/2012

Charles V. Fullem

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOINT PETITION OF METROPOLITAN :
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ELECTRIC COMPANY, PENNSYLVANIA : P-2011-2273668
POWER COMPANY AND WEST PENN : P-2011-2273669
POWER COMPANY FOR APPROVAL OF : P-2011-2273670
THEIR DEFAULT SERVICE PROGRAMS :

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served copies of the **Answer of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to the Motion of the Retail Energy Supply Association to Modify Procedural Schedule**, upon the following persons, in the matter specified below, in accordance with the requirements of 52 Pa. Code § 1.54:

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Dated: February 15, 2012

