

Daniel Clearfield
717.237.7173
dclearfield@eckertseamans.com

February 24, 2012

Via Electronic Filing

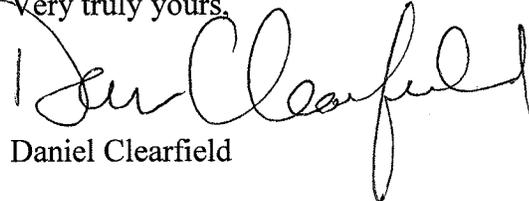
Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

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 Dismiss FirstEnergy's Objections and Compel Response to its Set III Interrogatories to FirstEnergy 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,



Daniel Clearfield

DC/lww
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 Dismiss FirstEnergy's Objections and Compel Response to Set III Interrogatories upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email & First Class Mail Only

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.
Harry S. Geller, Esq. Pennsylvania Utility
Law Project
118 Locust T.
Harrisburg, PA 17101-1414
pulp@palegalaid.net
HGellerPULP@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
mag@stevenslee.com

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


Daniel Clearfield, Esq.

Thomas J. Sniscak, Esq.
William E. Lehman, Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth St.
PO Box 1778
Harrisburg, PA 17105-1778
tjsniscak@hmslegal.com
welehman@hmslegal.com

Dated: February 24, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**THE RETAIL ENERGY SUPPLY ASSOCIATION'S
MOTION TO DISMISS FIRSTENERGY'S OBJECTIONS AND COMPEL RESPONSE
TO ITS SET III INTERROGATORIES
TO FIRSTENERGY**

Pursuant to 52 Pa. Code § 5.342, the Amended Scheduling Order of December 29, 2011, the Retail Energy Supply Association (“RESA”) hereby moves to dismiss the Objections of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company (collectively “FirstEnergy” or “the Companies”)¹ and compel them to answer RESA Interrogatory No. 2 of Set III of the Interrogatories and Requests for Document Production (collectively, “Interrogatories”) from RESA to FirstEnergy.²

I. SUMMARY

The Commission has consistently approved of load caps for default service procurements, including for some of the Companies. Load caps have been approved to help to insure diversity of supply in the wholesale auctions, thereby promoting more robust competition. FirstEnergy has proposed the continuation of the load caps in this proceeding. Interrogatory No. 2 of Set III primarily requests information so that RESA can examine the effect that load caps have had on the Companies’ default service procurement auctions. This data will, in turn, inform RESA’s

¹ A copy of said Objections is attached as “Exhibit A”.

² See Appendix A to “Exhibit A”.

recommendations regarding whether any changes in load cap levels or structure are required. This information will show if one or two suppliers, including any affiliates of the Companies, have dominated the procurement process used by the Companies in the wholesale auctions conducted during the existing default service period. If one or a small number of suppliers has consistently dominated the wholesale auctions, this could justify more robust load caps. If an affiliate of the Companies has been one of largest winning bidders, this could indicate that existing code of conduct or bidding rules need to be reexamined to prevent such market domination.

Thus, the information requested is highly relevant to an important issue in the proceeding. RESA is willing to accept the requested information with the names of the suppliers redacted – as long as (a) the successful wholesale auction bidders are consistently identified by a codename (such as “Supplier 1,” “Supplier 2”) and (b) there is an identification of any affiliated suppliers (such as “Affiliated Supplier 1”). This concession mitigates any concerns related to the protection of the identity of the names of the successful wholesale auction bidders. If need be, RESA would not object to the information being provided under the Protective Order extant in the proceeding.

II. THE SPECIFIC GROUNDS TO DISMISS OBJECTIONS AND COMPEL RESPONSE TO THE INTERROGATORIES

1. Approval of the Companies’ proposed default service programs requires the Commission to find that the programs will not result in the exercise of unlawful market power, anticompetitive or discriminatory behavior or otherwise prevent ratepayers from realizing the “benefits of a properly functioning and workable competitive retail electricity market.” *See* 66 Pa C.S. § 2811(e).

2. In this proceeding, FirstEnergy is proposing a 75% load cap across all auction products in each auction.³ In discovery responses in this proceeding, the Companies stated: “The basis for the 75% limit was the load cap approved by the Commission for the default service plans of Met-Ed and Penelec at Docket Nos. P-2009-2093053 and P-2009-2093054.”⁴

3. The determination of whether there should be load caps, and if so, the appropriate cap, can be very fact and condition specific. Circumstances exist where a load cap, either improperly set or existing at all, can drive up the price of power by permitting one or two firms to dominate the auctions.

4. RESA’s Interrogatory Set III, No. 2 is narrow, and not overly complex or detailed. It seeks readily available factual information and data related to the auction procurement process used by FirstEnergy. Interrogatory No. 2 provides:

For each company and for each auction held during the current default service plan period, provide the names of the successful wholesale auction bidders and the percentage of the available load that each supplier was awarded.

5. RESA is willing to accept the requested information with the names of the successful wholesale auction bidders redacted – as long as (a) the successful wholesale auction bidders are consistently identified by a codename (such as “Supplier 1,” “Supplier 2”) and (b) there is an identification of any affiliated suppliers (such as “Affiliated Supplier 1”). The use of codenames will protect the identity of the successful wholesale auction bidders and, therefore, will mitigate any concerns of FirstEnergy (and the bidders themselves) related to the disclosure of the names of the successful wholesale auction bidders.

³ See Section 4.2 of Met-Ed/Penelec/Penn Power/West Penn Exhibit BAM-I (Bidding Rules), which is an Exhibit to the direct testimony of Dr. Bradley Miller (Met-Ed/Penelec/ Penn Power/ West Penn Statement No. 5).

⁴ FirstEnergy Response to RESA Interrogatory Set II, No. 3; FirstEnergy Response to OSBA Interrogatory Set I, No. 5. It should be noted the Commission approved a load cap of approximately 67% (2/3 of the number of tranches) for suppliers under a default service plan for Pennsylvania Power Company. *Petition of Pennsylvania Power Company for Approval of Interim POLR Supply Plan*, Docket No. P-00052188, Order entered April 28, 2006.

6. The successful bidder load information is relevant in determining if load caps should continue to exist in the Companies' next default service procurement plans and if so, at what level. Such information when coupled with a consistent codename for the successful wholesale auction bidders will enable the Commission to determine if one or two suppliers have dominated the procurement process, which could lead to excessive or unlawful market power. This, in turn, will inform the nature and level of load caps or other provisions that RESA might recommend that the Commission require as part of the Companies' wholesale auctions for default service. Thus, it is clear that the requested information is relevant to issues raised by the default service wholesale power procurement plans proposed by the Companies.

7. The Companies object to the disclosure based on the Auction Rules. But, disclosure of the requested information is not prohibited by the Companies' Auction Rules.⁵ The interrogatory is not requesting any bidding information – merely aggregate data on winning bidders. Section X.3.2 of the Companies' Auction Rules confirms that “absolute protection from public disclosure of the Bidder's data and information filed in response to an Auction cannot be provided and is not intended.” And, even if the provisions in the Auction Rules could be read as requiring confidentiality, it should be obvious that the Commission-approved Auction Rules were never intended to prevent the disclosure of information and data in subsequent proceedings before the Commission. Non-disclosure of the requested information is contrary to the public interest because the Companies are proposing a continuation of the 75% load caps that were established in prior default service proceedings. Now that the Companies have experience with load caps, their actual experience should be reviewed to determine if the proposed load caps are justified and reasonable and/or if other provisions should be required by the Commission.

⁵ See Appendix B to “Exhibit A”.

8. Disclosure of the requested information (as redacted in accordance with Paragraph 5 above) would not harm the competitive interests of the winning wholesale suppliers. In fact, in the Companies' merger proceeding, the Companies actually agreed to provide similar information for service rendered after June 1, 2013, subject to the appropriate confidentiality agreements, including:

(d) The results of the procurement processes, including the winning bidders, the number of tranches won, and the average winning price; and

(e) A cumulative summary showing the market shares of default Service power suppliers.⁶

9. To the extent that the Companies still fear the release of "confidential" information, RESA submits that the existing Protective Order guards against the improper use of information and data provided thereunder and restricts the disclosure of such confidential or highly confidential information. So, disclosure under the existing Protective Order should mitigate any remaining concerns about the release of the information requested by Interrogatory No. 2.

⁶ See Para. 53 of the Joint Petition for Partial Settlement for a Certificate of Public Convenience Approving Change of Control, dated October 25, 2010, attached hereto as Exhibit "A."

III. CONCLUSION

WHEREFORE, RESA requests that Your Honor and the Pennsylvania Public Utility

Commission:

- (1) grant this Motion to Compel;
- (2) dismiss FirstEnergy's objections to the Set III, Interrogatory No. 2 by RESA;
- (3) compel FirstEnergy to answer said Interrogatory and produce all information to RESA under the Protective Order within seven (7) days; and
- (4) grant any other relief deemed appropriate.

Respectfully submitted,



Daniel Clearfield, Esquire
Attorney ID 26183

Deanne M. O'Dell, Esquire
Attorney ID 81064

Carl R. Shultz, Esquire
Attorney ID 70328

Eckert Seamans Cherin & Mellott, LLC

213 Market St., 8th Floor

Harrisburg, PA 17101

717.237.6000

Fax 717.237.6019

Attorneys for the Retail Energy Supply Association

Dated: February 24, 2012

EXHIBIT A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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	:	

**OBJECTIONS OF
METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY,
PENNSYLVANIA POWER COMPANY,
AND WEST PENN POWER COMPANY**

**To The Interrogatories (Set III)
Of The Retail Energy Supply Association**

Pursuant to 66 Pa.C.S. § 333(d) and 52 Pa. Code § 5.342, Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”), and West Penn Power Company (“West Penn”) (each individually a “Company” and, collectively, the “Companies”) hereby object to Set III Interrogatory No. 2 propounded by the Retail Energy Supply Association (“RESA”) on February 13, 2012. A copy of RESA’s Interrogatories (Set III) is attached as Appendix A.

OBJECTIONS TO RESA SET III INTERROGATORY NO. 2

1. RESA Set III Interrogatory No. 2 states as follows:

For each company and for each auction held during the current default service plan period, provide the names of the successful wholesale auction bidders and the percentage of the available load that each supplier was awarded.

2. The Companies object to RESA Set III Interrogatory No. 2 because it seeks information or other documents that Met-Ed, Penelec and Penn Power may not disclose under their Auction Process and Rules for the procurement of default service supply (the "Auction Rules") approved by the Pennsylvania Public Utility Commission (the "Commission") for use in each Company's current default supply procurements.¹

3. Under the Auction Rules, a bidders' data and information filed in response to an auction may be disclosed only if required by a federal, state or local agency (including the Commission) or a court of competent jurisdiction. *See* Section X.3.3 (Fixed Auction Rules for Met-Ed, Penelec and Penn Power); Section X.3.3 (Hourly Auction Rules for Met-Ed, Penelec and Penn Power).² In accordance with the Commission's October 12, 2010 Secretarial Letter governing disclosure of default service solicitation results, the Independent Evaluator for each Company's auction does release certain specific information about the results of a procurement, including the average weighted price of winning bids, but other information is not made publicly available.

4. RESA Set III Interrogatory No. 2 requests information about the Companies' default service auctions that cannot be released under the Auction Rules. In particular, for each Company and each auction held during the current default service plan period, the Interrogatory

¹ *See* Docket Nos. P-2009-2093053 and P-2009-2093054 (Met-Ed and Penelec) (Order entered November 6, 2009); Docket No. P-2010-2157862 (Penn Power) (Order entered October 21, 2010).

² Copies of Section X.3.3 of the Fixed Auction Rules for Met-Ed, Penelec and Penn Power and Section X.3.3 of the Hourly Auction Rules for Met-Ed, Penelec and Penn Power are attached as Appendix B. These Rules have been updated for bidders with the Independent Evaluator to reflect the Commission's Secretarial Letter regarding disclosure of Default Service Solicitation Results. *See* Secretarial Letter, *Re: Disclosure of Default Service Solicitation Results and Creation of a Default Service Rate Calculation Model*, Docket No. M-2009-2082042 (October 12, 2010).

seeks the names of successful bidders and the percentage of the available load that each supplier was awarded.³ Given the confidentiality provisions of the Auction Rules, the Companies cannot produce this information even under the “Confidential Information” or “Highly Confidential Information” provisions of the protective order and therefore object to Set III Interrogatory No. 2.

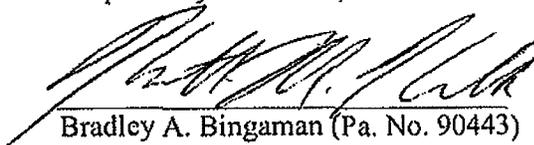
5. The Companies also object to RESA Set III Interrogatory No. 2 because it seeks information that is not relevant to this proceeding. In particular, the names of past successful auction bidders and the percentage of the available load that each supplier was awarded will have no effect on the procurement plans proposed by the Companies in this proceeding for the upcoming default service plan period.

³ The Companies note that West Penn procures default service supply through requests for proposals (“RFPs”), not auctions, and that Met-Ed, Penn Power, and Penelec also procure block energy contracts through RFPs. While Interrogatory Set No. 2 asks only about auctions, confidentiality provisions also govern the Companies’ RFP results.

CONCLUSION

WHEREFORE, for the foregoing reasons, the objections of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to RESA's Set III Interrogatory No. 2 should be granted, and the ALJ should issue an Order directing that the Companies are not required to furnish answers to the Interrogatory.

Respectfully submitted,



Bradley A. Bingaman (Pa. No. 90443)
Tori L. Giesler (Pa. No. 207742)
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001
Phone: (610) 921-6203

Thomas P. Gadsden (Pa. No. 28478)
Kenneth M. Kulak (Pa. No. 75509)
Anthony C. DeCusatis (Pa. No. 25700)
Catherine G. Vasudevan (Pa. No. 210254)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Phone: (215) 963-5234

*Counsel for Metropolitan Edison
Company, Pennsylvania Electric
Company, Pennsylvania Power Company
and West Penn Power Company*

Dated: February 21, 2012

APPENDIX A

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**THE RETAIL ENERGY SUPPLY ASSOCIATION'S INTERROGATORIES
ADDRESSED TO FIRSTENERGY, SET III**

Pursuant to 52 Pa. Code §§ 5.341, 5.342 and 5.349, the Retail Energy Supply Association ("RESA") hereby propounds the following interrogatories and requests for documents upon the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company (collectively "FirstEnergy" or "the Companies") to be answered by those officers, employees or agents of FirstEnergy as may be cognizant of the requested information and who are authorized to answer on behalf of FirstEnergy. These interrogatories and requests for documents are propounded on a continuing basis so as to require you to submit supplemental answers and/or documents should additional information become known that would have been includable in your answers and document production had they been known or available, or should information and/or documents supplied in the answers or production prove to be incorrect or incomplete. RESA reserves the right to propound additional interrogatories and to request additional documents as and if additional information is required. In accordance with 52 Pa. Code §§ 5.342(d) and 5.349(d), the interrogatories are to be answered in writing under oath and documents are to be furnished and served in-hand upon the undersigned within the time period prescribed by the Commission for the above-referenced dockets.

Additional Instructions

1. Unless otherwise indicated, the time period for all requests is 2005 to the present.

2. If you object to any part of an interrogatory or request, answer all parts of such interrogatories or requests to which you do not object, and as to each part to which you do object, separately set forth the specific basis for the objection.

3. If you claim any form of privilege or other protection from disclosure as a ground for withholding information responsive to an interrogatory or request for production or any part thereof, contained in a non-written communication, state the following with respect to the non-written communication:
 - (i) the date thereof;
 - (ii) the identity of each of the participants in the non-written communication;
 - (iii) the identity of each person present during all or any part of the non-written communication;
 - (iv) a description of the non-written communication which is sufficient to identify the particular communication without revealing the information for which a privilege or protection from non-disclosure is claimed;
 - (v) the nature of your claim of non-discoverability (e.g. attorney-client privilege); and
 - (vi) each and every fact on which you rest your claim of privilege or other protection from disclosure, stated with sufficient specificity to permit RESA to make a full determination as to whether your claim is valid.

4. If you claim any form of privilege or other protection from disclosure as a ground for withholding information responsive to an interrogatory or request or any part thereof, contained in a document, set forth with respect to the document:

- (i) the date and number of pages;
- (ii) the identity of the author(s) or preparer(s);
- (iii) the identity of the addressee, if any;
- (iv) the title;
- (v) the type of tangible thing (e.g. letter, memorandum, telegram, chart, report, recording disc);
- (vi) the subject matter (without revealing the information as to which privilege or protection from non-disclosure is claimed);
- (vii) the identity of each person who has received the document or to whom knowledge of the contents of the document was communicated;
- (viii) the identity of the present custodian(s);
- (ix) the nature of your claim of non-discoverability (e.g. attorney-client privilege); and
- (x) each and every fact on which you rest your claim of privilege or other protection from disclosure, stated with sufficient specificity to permit RESA to make a full determination as to whether your claim is valid.

5. If you claim any form of privilege or other protection from disclosure, otherwise than as set forth in Instructions 3 and 4, as a ground for not answering any interrogatory or request or any part thereof, set forth:

- (i) the nature of your claim as to non-discoverability; and
- (ii) each and every fact on which you rest your claim or privilege or other protection from disclosure, stating such facts with sufficient specificity to permit RESA to make a full determination as to whether your claim is valid.

6. If you know of any document, communication or information but cannot give the specific information or the full information called for by a particular interrogatory or request, so state and give the best information you have on the subject and identify every person you believe to have the required information.

7. The singular form of a noun or pronoun shall be considered to include within its meaning the plural form of the noun or pronoun, and vice versa; the masculine form of a pronoun shall be considered to include also within its meaning the feminine and neuter forms of the pronoun, and vice versa; and the use of any tense of any verb shall be considered to include also within its meaning all other tenses of the verb. In each instance, the interrogatory or request shall be construed so as to require the most inclusive answer or production.

8. Please attach written material to any answer for which written material is requested and/or available. If such written material is not available, state where it may be obtained. Label the written material with the number of the interrogatory to which it pertains.

9. On each Interrogatory response list the name and title of the person or persons who prepared the response or who is responsible for the information contained therein.

Definitions

As used in these Interrogatories and Requests for Production of Documents, the following terms have the meaning as set forth below:

1. The term "FirstEnergy" or "the Companies" means the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company and any affiliate or subsidiary, unless the context indicates otherwise.

2. The term "you" means Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company and any agent or representative of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company.

3. The term "our client" means RESA collectively, unless the context indicates otherwise.

4. "List", "describe", "explain", "specify" or "state" means to set forth fully, in detail, and unambiguously each and every fact of which FirstEnergy or its agents or representatives have knowledge which is relevant to the answer called for by the interrogatory.

5. The terms "document" or "documents" as used herein has the same meaning and scope as in Rule 4009 of the Pennsylvania Rules of Civil Procedure and includes, without limitation, any writings and documentary material of any kind whatsoever, both originals and copies (regardless of origin and whether or not including additional writing thereon or attached thereto), and any and all drafts, preliminary versions, alterations, modifications, revisions, changes and written comments of and concerning such material, including but not limited to: correspondence, letters, memoranda, notes, reports, directions, studies, investigations, questionnaires and surveys, inspections, permits, citizen complaints, papers, files, books, manuals, instructions, records, pamphlets, forms, contracts, contract amendments or supplements, contract offers, tenders, acceptances, counteroffers or negotiating agreements, notices, confirmations, telegrams, communications sent or received, print-outs, diary entries, calendars, tables, compilations, tabulations, charts, graphs, maps, recommendations, ledgers, accounts, worksheets, photographs, tape recordings, movie pictures, videotapes, transcripts, logs, workpapers, minutes, summaries, notations and records of any sort (printed, recorded or

otherwise) of any oral communication whether sent or received or neither, and other written records or recordings, in whatever form, stored or contained in or on whatever medium including computerized or digital memory or magnetic media that:

- (a) are now or were formerly in your possession, custody or control; or
- (b) are known or believed to be responsive to these interrogatories, regardless of who has or formerly had custody, possession or control.

6. The term "date" means the exact day, month and year, if ascertainable, or if not, the best approximation thereof, including relationship to other events.

7. The term "person" or "persons" means and includes any individual, committee, task force, division, department, company, contractor, state, federal or local government agency, corporation, firm, association, partnership, joint venture or any other business or legal entity.

8. The terms "identify" and "identity" when used with reference to a natural person mean to state his or her full name, present or last known address, present or last known telephone number, present or last known place of employment, position or business affiliation, his or her position or business affiliation at the time in question, and a general description of the business in which he or she is engaged.

9. The terms "identify" and "identity" when used with respect to any other entity mean to state its full name, the address of its principal place of business and the name of its chief executive officers.

10. The terms "identify" and "identity" with respect to a document mean to state the name or title of the document, the type of document (e.g., letter, memorandum, telegram, computer input or output, chart, etc.), its date, the person(s) who authored it, the person(s) who signed it, the person(s) to whom it was addressed, the person(s) to whom it was sent, its general

subject matter, its present location, and its present custodian. If any such document was but is no longer in the possession of FirstEnergy or subject to its control, state what disposition was made of it and explain the circumstances surrounding, and the authorization, for such disposition, and state the date or approximate date thereof.

11. The terms "identify" and "identity" with respect to any non-written communication mean to state the identity of the natural person(s) making and receiving the communication, their respective principals or employers at the time of the communication, the date, manner and place of the communication, and the topic or subject matter of the communication.

12. The term "oral communication" means any utterance heard, whether in person, by telephone, or otherwise.

13. The term "identify the sources" means to identify and specify all documents and non-written communications upon which you rely in support of the allegation, contention, conclusion, position or answer in question, to state the references drawn from each such source upon which you rely in support of such allegation, contention, conclusion, position or answer and to identify all individuals whom you know to be knowledgeable with respect to the subject matter of such allegation, contention, conclusion, position or answer. Where a source is a public record (e.g., a newspaper, trade journal, judicial or administrative opinion), a quotation and page reference of the material relied upon shall be supplied.

14. The term to "state the basis" for an allegation, contention, conclusion, position or answer means (a) to identify and specify the sources therefore, and (b) to identify and specify all facts on which you rely or intend to rely in support of the allegation, contention, conclusion, position or answer, and (c) to set forth and explain the nature and application to the relevant facts

of all pertinent legal theories upon which you rely for your knowledge, information and/or belief that there are good grounds to support such allegation, contention, conclusion, position or answer.

15. The terms "and" and "or" have both conjunctive and disjunctive meanings as necessary to bring within the scope of the interrogatories and request any information or documents that might otherwise be construed to be outside their scope; "all" and "any" mean both "each" and "every".

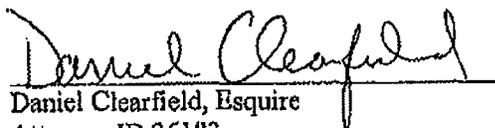
16. The terms "relates to" or "relating to" mean referring to, concerning, responding to, containing, regarding, discussing, describing, reflecting, analyzing, constituting, disclosing, embodying, defining, stating, explaining, summarizing, or in any way pertaining to.

17. The term "including" means "including, but not limited to."

INTERROGATORIES

1. Re: Response to OSBA, Set I, No. 4 (b & c):
 - (a) Please provide all documents on which you relied in formulating your answer.
 - (b) Provide an explanation of how the data provided in (a) above leads to the conclusion stated in this answer.
2. For each company and for each auction held during the current default service plan period, provide the names of the successful wholesale auction bidders and the percentage of the available load that each supplier was awarded.

Respectfully submitted,



Daniel Clearfield, Esquire
Attorney ID 26183
Deanne M. O'Dell, Esquire
Attorney ID 81064
Carl R. Shultz, Esquire
Attorney ID 70328
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101
717.237.6000
Fax 717.237.6019

Dated: February 13, 2012

APPENDIX B

Excerpt of Fixed Auction Rules For Met-Ed, Penelec and Penn Power

Article X. Reserved Rights

X.1. Non-Binding Auction

- X.1.1. The PaPUC reserves the right to withdraw or terminate a solicitation, at any time prior to the execution of the Default Service SMAs, without any liability or responsibility by the PaPUC, the Companies, or the Independent Evaluator to any Bidder or any other party, for reasonable cause including, but not limited to, adverse statutory changes or interpretations, issuance of new PaPUC orders or regulations, or extraordinary circumstances that preclude these Fixed Auction Rules from being implemented in substantially the manner described within the Companies' Default Service Programs.
- X.1.2. The Companies and the Independent Evaluator reserve the right to reject Proposals for a solicitation that are incomplete, or do not conform to the requirements of these Fixed Auction Rules, or are submitted beyond the deadline for submission.

X.2. Proposals Become the Companies' Property

- X.2.1. All Proposals submitted by Bidders for a solicitation will become the exclusive property of the Companies upon the receipt of such document(s).

X.3. Confidentiality

- X.3.1. The Companies and the Independent Evaluator will consider all data and information provided by Bidders for a solicitation to be confidential and will attempt to limit their disclosure to the public in accordance with the provisions of this section. The Companies will also take reasonable action to ensure that their employees, representatives and agents authorized to consider and evaluate all Proposals protect the confidentiality of such data and information. The Evaluation Team will be provided

access to the Bidder's Proposals on a need-to-know basis. Each member of the Evaluation team will be required to sign a Confidentiality Statement, in the form of Appendix 14, prior to opening any Proposals and commencing the evaluation thereof.

X.3.2. However, absolute protection from public disclosure of the Bidders' data and information filed in response to an Auction cannot be provided and is not intended. For example, the Independent Evaluator may provide access to the Bidders' data and information to staff from the PaPUC in order to allow the PaPUC to consider the results of a solicitation. As directed by the PaPUC, the Independent Evaluator will release, for each product procured through each Auction, the final Auction price as well as the percentage of load represented by each tranche. The Independent Evaluator will issue an announcement on behalf of the Companies with this information and the announcement will also be posted to the web-based data room. Unless directed otherwise by the PaPUC, this announcement will be issued no later than fifteen (15) days from the close of the solicitation. The Companies will also post a default service rate calculation model to show the build-up, including formulas, of each individual component that translates the Auction results into retail default service rates. This calculation model will reflect the default service rate for the upcoming period. The calculation model is for illustrative purposes only and is not meant to represent an official estimate or projection for the Price to Compare. Furthermore, the Companies, or the Independent Evaluator on behalf of the Companies may, with approval from the PaPUC, release additional information at some point in time after approval by the PaPUC of the results of a solicitation; in that case, the Independent Evaluator will give notice of any planned release of information by the Companies. By submitting a Proposal in a solicitation, a Bidder acknowledges and agrees to the confidentiality provisions set forth herein, as well as any limitations thereto.

X.3.3. The Bidders' data and information filed in response to the Fixed Auction will be disclosed if required by any federal, state or local agency (including, without limitation,

the PaPUC) or by a court of competent jurisdiction. However, the Companies will notify the Bidder in advance of such disclosure and cooperate with such Bidder, to the extent deemed reasonable by the Companies, and at the expense of the Bidder, to prevent the disclosure of such materials. In any event, the Companies, their employees, and agents will not be responsible to the Bidders or any other party or liable for any disclosure of such designated materials before, during or subsequent to an Auction. Notwithstanding the above, the Companies reserve the right to use and communicate publicly and/or to third parties any and all information/data submitted in any Proposal in all proceedings before the PaPUC and the courts, if necessary, without the prior consent/approval of, or notice to, any such Bidder.

Excerpt of Hourly Auction Rules For Met-Ed, Penelec and Penn Power

Article X. Reserved Rights

X.1. Non-Binding Auction

- X.1.1. The PaPUC reserves the right to withdraw or terminate a solicitation, at any time prior to the execution of the Default Service SMAs, without any liability or responsibility by the PaPUC, the Companies, or the Independent Evaluator to any Bidder or any other party, for reasonable cause including, but not limited to, adverse statutory changes or interpretations, issuance of new PaPUC orders or regulations, or extraordinary circumstances that preclude these Hourly Auction Rules from being implemented in substantially the manner described within the Companies' Default Service Programs.
- X.1.2. The Companies and the Independent Evaluator reserve the right to reject Proposals for a solicitation that are incomplete, or do not conform to the requirements of these Hourly Auction Rules, or are submitted beyond the deadline for submission.

X.2. Proposals Become the Companies' Property

- X.2.1. All Proposals submitted by Bidders for a solicitation will become the exclusive property of the Companies upon the receipt of such document(s).

X.3. Confidentiality

- X.3.1. The Companies and the Independent Evaluator will consider all data and information provided by Bidders for a solicitation to be confidential and will attempt to limit their disclosure to the public in accordance with the provisions of this section. The Companies will also take reasonable action to ensure that their employees, representatives and agents authorized to consider and evaluate all Proposals protect the confidentiality of such data and information. The Evaluation Team will be provided access to the Bidder's Proposals on a need-to-know basis. Each member of the

Evaluation team will be required to sign a Confidentiality Statement, in the form of Appendix 14, prior to opening any Proposals and commencing the evaluation thereof.

X.3.2. However, absolute protection from public disclosure of the Bidders' data and information filed in response to an Auction cannot be provided and is not intended. For example, the Independent Evaluator may provide access to the Bidders' data and information to staff from the PaPUC in order to allow the PaPUC to consider the results of a solicitation. As directed by the PaPUC, the Independent Evaluator will release, for each product procured through each Auction, the final Auction price as well as the percentage of load represented by each tranche. The Independent Evaluator will issue an announcement on behalf of the Companies with this information and the announcement will also be posted to the web-based data room. Unless directed otherwise by the PaPUC, this announcement will be issued no later than fifteen (15) days from the close of the solicitation. The Companies will also post a default service rate calculation model to show the build-up, including formulas, of each individual component that translates the Auction results into retail default service rates. This calculation model will reflect the default service rate for the upcoming period. The calculation model is for illustrative purposes only and is not meant to represent an official estimate or projection for the Price to Compare. Furthermore, the Companies, or the Independent Evaluator on behalf of the Companies may, with approval from the PaPUC, release additional information at some point in time after approval by the PaPUC of the results of a solicitation; in that case, the Independent Evaluator will give notice of any planned release of information by the Companies. By submitting a Proposal in a solicitation, a Bidder acknowledges and agrees to the confidentiality provisions set forth herein, as well as any limitations thereto.

X.3.3. The Bidders' data and information filed in response to the Hourly Auction will be disclosed if required by any federal, state or local agency (including, without limitation, the PaPUC) or by a court of competent jurisdiction. However, the Companies will notify

the Bidder in advance of such disclosure and cooperate with such Bidder, to the extent deemed reasonable by the Companies, and at the expense of the Bidder, to prevent the disclosure of such materials. In any event, the Companies, their employees, and agents will not be responsible to the Bidders or any other party or liable for any disclosure of such designated materials before, during or subsequent to an Auction. Notwithstanding the above, the Companies reserve the right to use and communicate publicly and/or to third parties any and all information/data submitted in any Proposal in all proceedings before the PaPUC and the courts, if necessary, without the prior consent/approval of, or notice to, any such Bidder.