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March 1, 2012

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

VIA FEDERAL EXPRESS

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

**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 Dismiss FirstEnergy's Objections and Compel Response to Its Set III Interrogatories to FirstEnergy**, in the above-captioned matter.

As indicated on the enclosed Certificate of Service, copies have been served upon all active parties.

Rosemary Chiavetta, Secretary
March 1, 2012
Page 2

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**

MAR 1 2012

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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
	:		

**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 DISMISS FIRSTENERGY'S OBJECTIONS
AND COMPEL RESPONSE TO SET III INTERROGATORIES**

Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (collectively, the "Companies") submit this Answer in opposition to the Motion of the Retail Energy Supply Association ("RESA") to Dismiss FirstEnergy's Objections and Compel Response to Set III Interrogatories (the "Motion") served by RESA on February 24, 2012. For the reasons set forth below and in the Companies' Objections served on February 21, 2012,¹ RESA's Motion should be dismissed and the Companies' Objections should be granted.

I. SUMMARY

In its Set III interrogatories, RESA seeks to obtain information on the winning default service suppliers from the Companies' default service procurements during their first default

¹ 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, dated February 21, 2012. A copy of the Objections is attached as Attachment 1 to this Answer.

service programs (“DSP 1”). Specifically, in RESA Set III-2, RESA requests the names and percentages of default service supply won by each supplier:

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.

As explained in the Companies’ Objections, the Companies’ default service supply auction procurements are governed by rules (the “Auction Rules” or “Rules”) approved by the Commission.² These Rules, which were developed with and are administered by an independent evaluator approved by the Commission (NERA Economic Consulting, Inc. (“NERA”)), include extensive confidentiality provisions which prevent the Companies (and NERA) from releasing information provided by bidders, including bidder identity and the amount of awarded supply. A copy of these confidentiality provisions is included as Appendix B to Attachment I to this Answer. In relevant part, the Auction Rules provide:

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. . .

² See Docket Nos. P-2009-2093053 and P-2009-2093054 (Met-Ed and Penelec) (Order entered November 6, 2009) (“*Met-Ed/Penelec DSP Order*”); Docket No. P-2010-2157862 (Penn Power) (Order entered October 21, 2010) (“*Penn Power DSP Order*”). West Penn Power procures its wholesale default supply through a request for proposals process, not an auction process, and there is no load cap on its procurements. See Docket No. P-00072342 (Order entered July 25, 2008) (approving West Penn default service supply plan).

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 ... 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.

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... 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.

See Exhibit 1, Sections X.3.1-X.3.3.³

³ A full copy of the Auction Rules is available on the Companies' procurement website at [www.https://www.firstenergycorp.com/upp/pa/power_procurements/auction/supplier_documents.html](https://www.firstenergycorp.com/upp/pa/power_procurements/auction/supplier_documents.html).

In light of the Rules, and the lack of relevance of the information requested by RESA to this proceeding, the Companies objected to RESA's interrogatory. RESA now proposes to revise its interrogatory to request that the Companies identify bidders not by name but by a unique identifier (e.g., "Supplier 1," "Supplier 2"), with an additional indication as to whether the supplier is an affiliate of the Companies. *See* Motion, p. 3.

In its Motion, RESA argues that this information is necessary for consideration of the Companies' proposed "load cap" in this proceeding. The load cap, which is administered by NERA in each procurement, precludes any one supplier from obtaining more than a specific percentage of the default service supply available in each procurement in order to ensure supplier diversity. The Commission explained the function of a load cap in the *Met-Ed/Penelec DSP Order*:

The level at which the load cap is set must balance supplier diversity and achieving the lowest price in the supply auctions. All other things being equal, supplier diversity would mitigate the impact on customers of a supplier's default. However, a load cap would also limit the amount of default generation supply that the lowest cost bidder can provide, which would necessarily increase the total average cost to serve default load.

See Met-Ed/Penelec DSP Order, p. 16 (quoting Recommended Decision, entered Sept. 2, 2009); *see also id.* at 17 (approving 75% load cap and rejecting RESA proposal for lower load cap, stating that "[w]e agree with the Companies that the ALJ carefully balanced the competing interest of supplier diversity and attaining the lowest cost bids possible.").

The default service supply auction procurements for DSP 1, about which RESA now seeks to inquire, were conducted in strict compliance with the Commission-approved Auction Rules, as the independent evaluator validated and as the Commission confirmed by approving

the auction results. Consequently, there is no basis for RESA to contend that the highly confidential information it now seeks is needed to confirm whether the 75% load cap was observed in prior auctions – clearly it was.

Additionally, there is no valid basis for RESA to contend that releasing highly confidential historical information and, thereby, compromising the integrity of the auction process, is justified in order to determine whether, or by how much, each winning bidder's share of the DSP 1 load was below the 75% load cap. The Commission approved the historical 75% load cap because it had expressly determined that it was consistent with a proper "balance" of "supplier diversity" and "achieving the lowest cost" if one winning bidder were to supply up to 75% of default load. Releasing highly confidential historical bidding information in order to second-guess the Commission's previously-approved load cap serves no purpose other than to satisfy RESA's curiosity or, possibly, to provide RESA what it perceives as a competitive advantage. Neither is a proper purpose of discovery. With regard to the former purpose, Administrative Law Judges in another case, in granting objections to interrogatories, correctly noted that "the standard for discovery is relevance, not curiosity." *See Pa. P.U.C. v. Pennsylvania-American Water Company*, Docket No. R-2011-2232243, Order on Motion to Compel of Administrative Law Judges Angela T. Jones and Eranda Vero (July 21, 2011), pp. 21-22. With regard to the latter purpose, the auction rules imposed a cloak of confidentiality specifically to prevent parties from "mining" historical data to try to obtain a competitive advantage that would compromise the integrity of future auction processes. *See* footnote 2, *supra*, and authorities cited therein.

Moreover, the number of winning bidders and their shares of load obtained in the historical DSP 1 auctions provide nothing of probative value for purposes of evaluating the load

cap in this proceeding. Each auction is conducted according to the approved rules for that auction, and compliance with those rules is validated by the independent evaluator. The time-specific factual scenarios and market forces that may have existed in the past have a large – and potentially overriding – influence on the results of the historical auctions. Those factual scenarios and market forces are not static – indeed, change is a virtual certainty. Consequently, RESA’s arguments fail for the additional reason that past performance is no indication of future results. In short, the historical data cannot possibly predict likely future outcomes.

In that same vein, RESA has failed to show how the specific amounts that suppliers have won in prior procurements is relevant to any consideration of the Companies’ proposed load cap in this proceeding. As the Commission explained, the function of a load cap is to “balance” supplier diversity (i.e., the number of suppliers) and the total amount a supplier can provide, which can affect a supplier’s price. The question in determining the proper load cap – as reflected in the Commission’s consideration of different load cap levels in the *Met-Ed/Penelec Order* – is whether the load cap level is set to attract a sufficient number of bidders who can provide least-cost supply. *See id.* (adopting 75% load cap based in part on experience in Ohio even though specific amounts of load served by individual bidders was unknown). In short, it is the total number of bidders participating in the auction that determines the competitiveness of the auction process, and not the number of bidders that succeed in winning a share of the total load. The size of the pool of participants generates vigorous competition. Conversely, no valid conclusions concerning the competitiveness of an auction can be drawn from the number of bidders that actually win a share of the load being supplied.

RESA submits that the overriding concern for strict confidentiality that was incorporated in the Auction Rules could somehow be addressed if the Companies were to provide the

requested information without supplier names but, instead, with a unique identifier for each supplier (e.g., “Supplier 1”). The Company disagrees and would not acquiesce to produce the requested information on that basis for several reasons. First, nothing in the Commission-approved Auction Rules suggests that the Companies should or could disclose specific bidder information in this fashion. Second, contrary to RESA’s contentions, its proposed compromise would not maintain anonymity or confidentiality and, perhaps worse, creates the potential for misperceptions about who each unnamed supplier may be. Thus, recipients of the information produced on an allegedly anonymous basis either (1) could determine the identity of the supplier *from the load share information either alone or augmented by clues obtained from other information in the recipient’s hands*, or (2) attempt a game of “guess who” and make erroneous assumptions about who the suppliers might be – mistaken information that, if acted upon, conceivably could skew the results of future auctions. Third, to the extent that the Companies would be required to identify the affiliation of a supplier, as RESA also proposes, such identification would effectively reveal the identity of the supplier, which, despite RESA’s claims to the contrary, would be in direct contravention of the Auction Rules’ confidentiality directives. In short, identifying “affiliation” is tantamount to explicitly revealing the identity of a winning bidder and its share of default load, which the Auction Rules do not permit – a restriction that RESA tacitly acknowledges by its proposed, but defective, compromise of substituting an anonymous identifier for a supplier’s actual name.

Notably, after its approval of the Companies’ default service programs, the Commission issued a secretarial letter specifically delineating the limited type of information that must be provided with respect to a procurement:

. . . The Commission has become aware of the need to provide guidance relating to the release of default service auction results and the creation of default service rate calculation models. Specifically, we understand that electric generation suppliers (EGSs) participating in the CHARGE forum have advocated for consistency and transparency in these areas, and the Office of Consumer Advocate has echoed this sentiment. While electric distribution companies (EDCs) have expressed the need for some flexibility due to operational limitations and differences among their default service plans, we understand that they are generally amenable to providing this information in a consistent and transparent manner and require some guidance from the Commission. . . .

. . . [T]he Commission believes that all EDCs should release, for each procurement class, the weighted average winning price for each individual solicitation of the following products:

- full requirements (including the percentage of total load each full requirements tranche represents)
- block
- hourly
- alternative energy credits
- any other product types

The Commission further notes that such releases should take place within a maximum of 15 calendar days from the closing of each solicitation and to adhere to this format on an ongoing basis.

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) (“Secretarial Letter”).

In light of (1) the clear and explicit directives in the Auction Rules and the Secretarial Letter delineating the limited information that should be released following a default service supply procurement; and (2) the lack of relevance of the requested information to the issues in this case, RESA’s Motion should be denied.

II. RESPONSES TO NUMBERED PARAGRAPHS OF MOTION TO COMPEL

1. Denied. By way of further response, the statutory provision of the Pennsylvania Public Utility Code cited by RESA, Section 2811(e), addresses the Commission's authority with respect to proposed mergers, consolidations of utilities or electric generation suppliers, or disposition of utility or electric generation supplier assets or securities, in which the Commission may consider whether a proposed transaction is likely to result in anticompetitive or discriminatory conduct. That is not the legal standard for approval of a default service plan, which is governed by 66 Pa. C.S. Section § 2807(e)(3.6). Under Section 2807(e)(6), the Commission is required to consider whether a default service plan is consistent with a variety of requirements, including whether a default service plan will result in a competitively procured prudent mix of supply contracts to ensure "least cost over time" to customers. If, based on its review of the information provided by the Independent Evaluator, the Commission has reason to believe that one or more participants in the default service procurements may have engaged in anticompetitive behavior, the Commission may seek additional information and/or initiate an investigation at that time.

2. Admitted.

3. It is denied that the number of **winning** bidders determines the competitiveness of the procurement process and/or the need for load caps if wholesale suppliers are free to participate, and in fact are participating in the auction. By way of further response, the Companies note, as the Commission concluded in the *Met-Ed/Penelec DSP Order*, that a lower load cap (such as that advocated by RESA in the *Met-Ed/Penelec* proceeding) may not be consistent with "least cost over time". See *Met-Ed/Penelec DSP Order*, p. 18.

4. Admitted in part. While RESA seeks information and data that is available, the Rules approved by the Commission provide that the information sought is confidential and cannot be provided. The remainder of paragraph 4 is denied.

5. Denied for the reasons set forth in Section I, which are incorporated by reference.

6. Denied for the reasons set forth Section I and in answer to paragraphs 1 and 5, which are incorporated by reference. By way of further answer, it is denied that the presence of one or two winning bidders implies either “dominance” of the procurement process or the existence or exercise of “excessive or unlawful market power.” In any event, the information cited by RESA is already made available to the Commission.

7. Admitted that the Companies object to the disclosure requested by RESA under the Auction Rules; otherwise denied. By way of further response, the Companies state that the Auction Rules explicitly **do** provide for confidentiality, and the Commission has already determined the information that must be disclosed after procurements in order to satisfy the public interest in the Secretarial Letter.

8. Denied as stated. In the FirstEnergy-Allegheny merger proceeding, the Companies agreed to provide certain bidder information after June 1, 2013 to **the statutory parties** – the Office of Consumer Advocate, Office of Small Business Administration, and the Office of Trial Staff (now Bureau of Inspections and Enforcement).⁴ To the extent the statutory

⁴ See Joint Petition for Partial Settlement, *Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Company and Trans-Allegheny Interstate Line Company*, Docket Nos. A-2010-2176520, A-2010-2176732 (filed Oct. 25, 2010), ¶ 53.

parties then determine to use any portion of that information in a Commission proceeding, the information will be subject to an “appropriate” confidentiality agreement. Those agreements have not yet been developed.

9. Denied. By way of further response, the existence of the protective order in this proceeding does not provide an independent basis for the Companies to disclose confidential information under the Auction Rules.

II. CONCLUSION

WHEREFORE, for the foregoing reasons, the Administrative Law Judge should deny RESA's Motion and issue an Order directing that the Companies are not required to furnish answers to the Interrogatory.

Respectfully submitted,



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

Dated: March 1, 2012

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Attachment I

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

**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.

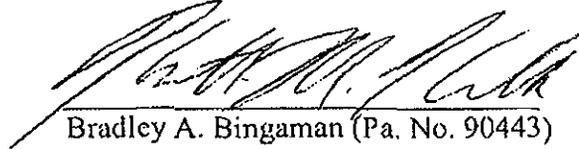
5. The Companies also object to RESA Set III Interrogatory No. 2 because it seeks information that is not relevant to this proceeding. In particular, the names of past successful auction bidders and the percentage of the available load that each supplier was awarded will have no effect on the procurement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



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

Dated: February 21, 2012

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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”.

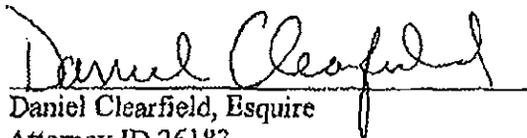
16. The terms “relates to” or “relating to” mean referring to, concerning, responding to, containing, regarding, discussing, describing, reflecting, analyzing, constituting, disclosing, embodying, defining, stating, explaining, summarizing, or in any way pertaining to.

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

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Dated: February 13, 2012

APPENDIX B

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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

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.

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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	:	

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 Dismiss FirstEnergy's Objections and Compel Response to Its Set III Interrogatories to FirstEnergy**, 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: March 1, 2012

