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APR 10 2012

April 10, 2012

VIA FEDERAL EXPRESS

PA PUBLIC UTILITY COMMISSION  
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Pennsylvania Public Utility Commission  
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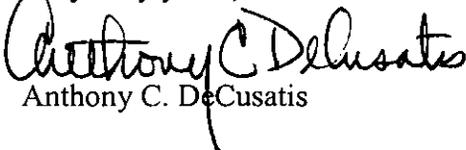
**Re: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs  
Docket No. P-2011-2273650, Docket No. P-2011-2273668,  
Docket No. P-2011-2273669 and Docket No. P-2011-2273670**

Dear Secretary Chiavetta:

Enclosed for filing are an original and three copies of a **Motion on behalf of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to Strike Portions of the Surrebuttal Testimony of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania** in the above-captioned matter.

As evidenced by the attached Certificate of Service, the Motion has been served on all parties of record as well as Administrative Law Judge Barnes.

Very truly yours,

  
Anthony C. DeCusatis

ACD/tp  
Enclosures

c: Per Certificate of Service (w/encls.)

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**APR 10 2012**

**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 :**

**MOTION ON BEHALF OF METROPOLITAN EDISON COMPANY,  
PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA  
POWER COMPANY AND WEST PENN POWER COMPANY TO STRIKE PORTIONS  
OF THE SURREBUTTAL TESTIMONY OF THE COALITION FOR AFFORDABLE  
UTILITY SERVICES AND ENERGY EFFICIENCY IN PENNSYLVANIA**

Pursuant to 52 Pa. Code § 5.103, Metropolitan Edison Company (“Met-Ed), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”) and West Penn Power Company (“West Penn”) (collectively, the “Companies”) move to strike two portions of Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”) Statement No. 1-SR, namely, page 10, line 17, through page 11, line 10, and page 12, line 16, through page 14, line 11 (the “Contested Portions”). In the Contested Portions of CAUSE-PA Statement No. 1-SR, CAUSE-PA’s witness proposes, for the first time in this proceeding, that the Commission require the Companies to make fundamental changes to their Customer Assistance Programs (“CAPs”), which are part of their approved Universal Service Plans (“USPs”). The Contested Portions of CAUSE-PA Statement No. 1-SR should not be admitted because, by such testimony, CAUSE-PA is trying to expand the permissible scope of this proceeding to interject issues that are far beyond the consideration and approval of the Companies’ respective default service plans (“DSP II Plans”). In addition to being outside the scope of this proceeding, such issues, even if they could be raised in this proceeding at all – and clearly, they cannot – should have been part of CAUSE-PA’s case-in-chief and not presented

belatedly and improperly as surrebuttal testimony.

## I. INTRODUCTION

On November 17, 2011, the Companies filed the above-referenced Joint Petition requesting that the Pennsylvania Public Utility Commission (“Commission”) approve their respective DSP II Plans, which are designed to ensure that default service customers have access to an adequate and reliable supply of generation at the least cost over time. On or about December 19, 2011, CAUSE-PA filed an answer to the Joint Petition.

In accordance with the litigation schedule adopted by Administrative Law Judge Elizabeth H. Barnes (the “ALJ”) in her December 22, 2011 Scheduling Order, on February 17, 2012, CAUSE-PA served CAUSE-PA Statement No. 1, the direct testimony of Carol J. Biedrzycki, and accompanying exhibits. Ms. Biedrzycki made several recommendations regarding the retail market enhancements that the Companies proposed as part of their respective DSP II Plans. On March 16, 2012, the Companies served rebuttal testimony, which included testimony responding to the specific recommendations made in Ms. Biedrzycki’s direct testimony. *See* Met-Ed/Penelec/Penn Power/West Penn Statement No. 7-R (Rebuttal Testimony of Charles V. Fullem).

On April 4, 2012, CAUSE-PA served CAUSE-PA Statement No. 1-SR, which is the surrebuttal testimony of Carol J. Biedrzycki, and an accompanying exhibit. In the Contested Portions of that testimony, Ms. Biedrzycki proposes, for the first time, that the Commission should require the Companies to fundamentally change the structure of their CAP programs to adopt a “percentage of income” model (*see* CAUSE-PA St. 1-SR, p. 10, lines 18-19) and to substantially revise their existing, approved “tariffs, universal service plans, and operational systems” to eliminate any possibility that CAP customers could “shop” for generation as all of the Companies’ other customers are permitted to do (*see* CAUSE-PA St. 1-SR, p. 12, lines 18-20).

and p. 13, lines 8-9). For the reasons set forth above and as more fully explained hereinafter, the Contested Portions of CAUSE-PA Statement No. 1-SR should be stricken.

**II. THE CONTESTED PORTIONS OF CAUSE-PA STATEMENT NO. 1-SR SHOULD NOT BE ADMITTED**

**A. The Administrative Law Judge Has The Authority To Deny Admission Of Testimony That Is Outside The Scope Of This Proceeding**

The Commission's regulations at 52 Pa. Code § 5.403(a) grant presiding officers "all necessary authority to control the receipt of evidence," including "[r]uling on the admissibility of evidence" and "[c]onfining the evidence to the issues in the proceeding." ALJs have employed this power, with the Commission's approval and affirmation, to exclude evidence that is outside the permissible scope of a proceeding and, in that way, to focus the evidence on the matters properly at issue. *See, e.g., Re Gas Cost Rate No. 5*, 57 Pa. P.U.C. 158 (1983) ("The testimony stricken by the ALJ addresses, in part, matters broader than the scope of the instant proceeding."); *Pa. P.U.C. v. Pennsylvania-American Water Co.*, 1994 Pa. PUC LEXIS 120 (Final Order entered July 26, 1994) at \*158 ("The ALJ concluded as follows: 'I agree with OTS that the issues raised by OCA are outside the scope of this investigation. . . .' We conclude that the ALJ properly found the matters raised by the OCA to be better placed in the pending rulemaking proceeding."). *See also Re Structural Separation Of Bell Atlantic-Pennsylvania, Inc. Retail And Wholesale Operations*, 2000 Pa. PUC LEXIS 59 (Final Order entered September 28, 2000) at \*7-9 (affirming the decision of the Administrative Law Judge in that case to exclude certain evidence as "beyond the scope of the proceeding"); *Joint Application of PECO Energy Company and Public Service Electric and Gas Company For Approval of the Merger of Public Service Enterprise Group, Inc. with and into Exelon Corp.*, Docket No. A-110550F0160 (Initial Decision entered April 25, 2005 at pp. 8-9) (denying a Petition to Intervene where, among other

things, the issues sought to be raised by petitioner were outside the scope of the proceeding or not within the Commission's jurisdiction).

**B. The ALJ Should Exercise The Authority Granted By The Commission's Regulations To Exclude the Contested Portions of CAUSE-PA Statement No. 1-SR**

In the Contested Portions of CAUSE-PA Statement No. 1-SR, Ms. Biedrzycki proposed that the Commission require the Companies to make two significant changes to the fundamental structure of their CAPs. First, she proposed that participating low income customers should only pay a percentage of their income for electric service instead of the existing Commission-approved approach, whereby CAP customers pay the difference between their total bill and the monthly CAP subsidy credit determined based on gross income and energy consumption. CAUSE-PA Statement No. 1-SR, p. 10. Second, Ms. Biedrzycki proposed that the Companies should be required to modify their "tariffs, universal service plans, and operational systems" to bar low-income customer shopping in any manner. *Id.* at 12-14.

By the Contested Portions of CAUSE-PA Statement No. 1-SR, CAUSE-PA is seeking to interject into *this* proceeding exactly the kinds of issues for which the Commission established the triennial review of universal service programs and funding. Notably, the Commission recently issued a Final Order with respect to the Companies' most recent Three-Year Plans, covering the years 2012-2014, in which, after evaluating the Companies' entire portfolio of universal service programs, it concluded that those programs comply with the Commission's requirements and approved the plans contingent upon the filing of second amended Plans to reflect the Commission's modifications set forth in the Final Order.<sup>1</sup> A compliance filing was made on March 30, 2012 reflecting these modifications. West Penn's existing USP was also

<sup>1</sup> *Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company's Universal Service and Energy Conservation Plan for 2012-2014 Submitted in Compliance With 52 Pa. Code §§ 54.74 and 62.4*, Docket No. M-2011-2231038, Final Order entered March 1, 2012, p. 30.

previously approved and, more importantly, on February 6, 2012, West Penn filed an Amended Universal Service and Energy Conservation Plan for Program Years 2011, 2012 and 2013, which has been docketed by the Commission at M-2010-2207924. Thus, CAUSE-PA is attempting to raise CAP-related issues for West Penn in this case while, at the same time, another proceeding has been established by the Commission for the express purpose of addressing precisely those kinds of issues.

Triennial review proceedings, such as those recently concluded for Met-Ed, Penelec and Penn Power and the one recently initiated for West Penn, are the appropriate venue for the Commission to address fundamental programmatic changes such as those Ms. Biedrzycki has proposed in her surrebuttal testimony. As the Commission itself has made clear, any programmatic concerns regarding universal service programs should be addressed as part of those comprehensive proceedings.<sup>2</sup> Furthermore, if CAUSE-PA believes that some remedial action should be taken outside the three-year plan process, then the proper way to invoke the Commission's jurisdiction is to initiate a complaint proceeding. In a properly initiated complaint proceeding, the parties can adduce evidence to enable the Commission to determine whether any remedial action is necessary.

In summary, the sole purpose of the Contested Portions of CAUSE-PA's Statement No. 1-SR is to propose a general restructuring of the Companies' low-income programs that were recently evaluated and approved by the Commission or, in West Penn's case, are already the

<sup>2</sup> The Commission has emphasized the importance of conducting a single, comprehensive evaluation of low-income programs within the established triennial review process for individual three-year universal service plans. *See Proposed Rulemaking Relating to Universal Service and Energy Conservation Reporting Requirements, 52 Pa. Code §§ 54.71- 54.78 (electric); §§ 62.1-62.8 (natural gas) and Customer Assistance Programs, §§ 76.1 – 76.6*, Docket No. L-00070186 (Proposed Rulemaking Order adopted August 30, 2007) (“... the Commission determined that the review of the adequacy of universal service funding for each company would be accomplished on a case-by-case basis in conjunction with the established triennial review of the company's universal service program under 52 Pa. Code §§ 54.74 and 62.4.”).

subject of another on-going proceeding at a separate docket. Consequently, the Contested Portions of the testimony are outside the scope of this proceeding and should be excluded.

**C. The Contested Portions of Ms. Biedrzycki's Surrebuttal Testimony Should Have Been Raised in CAUSE-PA's Case-in-Chief**

The Contested Portions of CAUSE-PA Statement No. 1-SR do not rebut any opinion, position or statement in Mr. Fullem's rebuttal testimony, nor do they dispute any factual averment made by Mr. Fullem. To the contrary, those portions of Ms. Biedrzycki's surrebuttal testimony were submitted for the clear purpose of proposing, for the first time in this proceeding, that the Companies be required to make fundamental changes to: (1) the basic structure of their CAP (i.e., to adopt a "straight percentage of income payment" model); and (2) CAP eligibility requirements (i.e., to exclude low-income customers that choose to shop pursuant to Commission approved tariffs that, until now, have not been questioned by any party).

The Commission's regulations at 52 Pa. Code § 5.243(e) provide that "[a] party will not be permitted to introduce evidence during a rebuttal phase which: . . . (2) *Should have been included in the party's case-in-chief . . .*" (Emphasis added.). The Contested Portions of Ms. Biedrzycki's testimony are not "rebuttal" and, therefore, they should not be permitted into the record at this late stage of the proceeding in this case.

**III. CONCLUSION**

For the reasons set forth above, the ALJ should issue an order finding and determining that the Contested Portions of CAUSE-PA Statement No. 1-SR should not be admitted into the evidentiary record in this case because they address matters that are outside the scope of this proceeding, attempt to raise issues that should properly be addressed at other Commission dockets or in a separately-initiated proceeding, attempt to interject issues and subjects that should

have been raised – if at all – in CAUSE-PA’s case-in-chief and, therefore, do not constitute proper surrebuttal testimony.

Respectfully submitted,



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Dated: April 10, 2012

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

I hereby certify and affirm that I have this day served copies of the **Motion on behalf of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to Strike Portions of the Surrebuttal Testimony of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania** upon the following persons, in the matter specified below, in accordance with the requirements of 52 Pa. Code § 1.54:

**VIA ELECTRONIC MAIL AND FIRST CLASS MAIL**

Honorable Elizabeth H. Barnes  
Administrative Law Judge  
Pennsylvania Public Utility Commission  
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400 North Street  
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Dated: April 10, 2012

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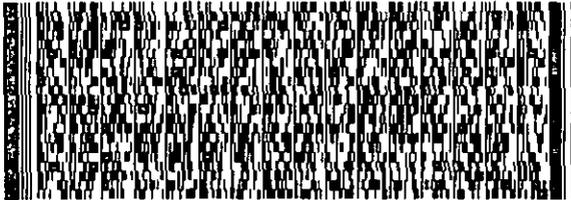
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