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May 16, 2012

**Via Hand Delivery**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor (filing room)  
Harrisburg, PA 17120

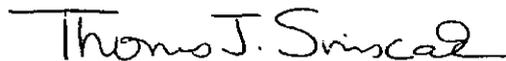
Re: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs; Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670; **REPLY BRIEF**

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission an original and nine (9) copies of the Reply Brief of The Pennsylvania State University in the above-captioned matter. Copies have been served in accordance with the attached Certificate of Service.

Should you have any questions or comments, please feel free to contact me directly.

Very truly yours,



Thomas J. Sniscak  
William E. Lehman

*Counsel for The Pennsylvania State University*

TJS/WEL/das

Enclosures

cc: Honorable Elizabeth H. Barnes, Administrative Law Judge  
Per Certificate of Service

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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	:		P-2011-2273669
West Penn Power Company for	:		P-2011-2273670
Approval of Their Default Service Programs	:		

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**REPLY BRIEF OF  
THE PENNSYLVANIA STATE UNIVERSITY**

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Before Administrative Law Judge  
Elizabeth H. Barnes

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*Counsel for  
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DATED: May 16, 2012

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## **I. INTRODUCTION**

The Pennsylvania State University (“PSU”) hereby submits its Reply Brief on Issue II(E)(2), Solar Photovoltaic Requirements, in opposition to the position taken and arguments presented by West Penn Power Company on that issue.

## **II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS**

### **E. AEPS Requirements**

#### **2. Solar Photovoltaic Requirements**

Presently for West Penn Power Company (“West Penn”), large users through their EGS are responsible for procuring 100% of SPAECs to meet requirements under the Alternative Energy Portfolio Standards Act (“AEPS”), 73 P.S. §§ 1648.1 *et seq.* West Penn argues in its Main Brief that it must change the status quo for procurement of SPAECs so it will procure 40% of SPAECs and the customer via its EGS 60% because of a mandate from the Pennsylvania Public Utility Commission (“Commission”) Order approving the settlement of the FirstEnergy-Allegheny Merger. (West Penn Main Brief at 25) As discussed below, however, the Merger Settlement Agreement and Commission Order approving it do not require West Penn to procure 40% of SPAECs.

In essence, West Penn has relied upon that *alleged* Commission mandate as a substitute for suitable reasons or evidence for changing the West Penn status quo. In this record, there is absolutely no evidence adduced by West Penn – who bears the burden of proof – that the status quo fails to discharge the AEPS obligations. Simply put, there is nothing broke that needs fixed.

West Penn’s Main Brief does not cite the precise language of the Merger Settlement Agreement it relies upon for its conclusion that it is obligated to procure 40% of SPAECs. Rather it summarizes or revises the Merger Settlement Agreement to extend the requirement to West Penn when it clearly does not. Specifically, the Merger Settlement Agreement that the Commission approved, in part states, “post-merger FirstEnergy EDCs that *have* an existing SPVRC Rider will propose in the default service filings for the period beginning June 1, 2013, to procure 40% of their solar requirements for the period 2011 through 2021 using long-term contracts of 10 years in length ...”<sup>1</sup> Importantly, West Penn did not have an SPVRC Rider at the time the Merger Settlement Agreement was approved so it was not included in the “FirstEnergy EDCs” referenced. FirstEnergy/West Penn’s attempt here to amend the language to which was agreed from “have” to “will have” should be rejected on its face. Moreover, even if the Merger Settlement Agreement did apply to West Penn on this issue – which it does not – West Penn’s implication that the alleged Merger Settlement Agreement mandate it must procure 40% is preclusive on the parties, is also incorrect as the Merger Settlement Agreement states: “nothing herein shall be construed as prohibiting the Signatory Parties from opposing, or recommending changes in, those filings with regard to SPAECs, ...”<sup>2</sup>

The record is clear that large shopping customers would have to renegotiate their EGSs contracts in order to implement the 40% SPAECs procurement and cost allocation. (RAIS St. No. 1, p. 10) The record also shows this will add to confusion for customers attempting to confirm that their EDCs and EGSs are collecting the correct percentages of

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<sup>1</sup> Reference Companys’ Exhibit DWS-7, p.12 (emphasis added).

<sup>2</sup> *Id.*

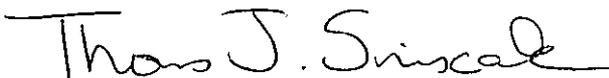
SPAECs that qualify under the AEPS. *Id.* PSU, as a large West Penn shopping customer, agrees that there are more detriments than benefits under West Penn's proposal to change the status quo.

FirstEnergy and West Penn have offered no reason other than the alleged merger mandate to support for changing the status quo for SPAECs procurement at West Penn. Simply put, their apparent desire for administrative convenience certainly does not outweigh the interests of large customers in continuing the status quo, particularly where West Penn adduced no evidence that the status quo fails to satisfy AEPS requirements. Thus, West Penn's revisionist reading of the Merger Settlement Agreement and preference for administrative convenience is no substitute for sufficient evidence to show that the change in status quo is necessary or warranted, or in the public interest.

In sum, West Penn bears the burden of proof to show that the rate or tariff revisions it proposes are just and reasonable under 66 Pa.C.S. §§ 315(a) and 1301, and here it has not done so. PSU respectfully requests that Your Honor and the Commission reject the change for SPAECs procurement for West Penn, and that the status quo continue. Additionally, PSU also submits that the West Penn status quo should be maintained for the additional reasons identified by The West Penn Power Industrial Intervenors in its Main Brief.

In the alternative, if the Commission were to change the status quo for SPAECs, which it should not, it should be done prospectively and existing contracts should be grandfathered and subject to the status quo.

Respectfully submitted,



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DATED: May 16, 2012

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**CERTIFICATE OF SERVICE**

Docket Nos. P-2011-2273650, P-2011-2273668,  
P-2011-2273669, and P-2011-2273670

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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**AND ELECTRONIC MAIL**

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