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July 9, 2012

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA HAND DELIVERY

RE: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of Their Default Service Plans; Dockets No. P-2011-2273650, P-2011-2273668, P-2011-2273669 and P-2011-2273670

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission are the original and nine (9) copies of the Reply Exceptions of the Med-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), and West Penn Power Industrial Intervenors ("WPPII") in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this transmittal letter and Reply Exceptions, and kindly return them to our messenger for our filing purposes.

Sincerely,

McNEES WALLACE & NURICK LLC

By 
Teresa K. Schmittberger

Counsel to the Met-Ed Industrial Users Group,
Penelec Industrial Customer Alliance,
Penn Power Users Group, and West Penn Power
Industrial Intervenors

TKS/sar
Enclosures

c: Administrative Law Judge Elizabeth H. Barnes (via e-mail and Hand Delivery)
Cheryl Walker Davis, Director, Office of Special Assistants
(with CD-ROM via Hand Delivery)
Certificate of Service

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**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	:	

**REPLY EXCEPTIONS OF THE MET-ED INDUSTRIAL USERS GROUP,
THE PENELEC INDUSTRIAL CUSTOMER ALLIANCE,
THE PENN POWER USERS GROUP, AND
THE WEST PENN POWER INDUSTRIAL INTERVENORS**

Air Liquide Industrial U.S. LP
Air Products & Chemicals, Inc.
American Refining Group Inc.
Appleton Papers Inc.
ATI Allegheny Ludlum Corporation
Carpenter Technology Corporation
Dixie Consumer Products, LLC, Lehigh Valley
E.I. du Pont de Nemours & Co., Inc.
East Penn Manufacturing Company
Electralloy, a G.O. Carlson, Inc., Co.
Ellwood National Steel
Ellwood Quality Steel
Erie Forge & Steel, Inc.
Ervin Industries
Exide Technologies, Inc.
Farmers Pride, Inc.
Glen-Gery Corporation
Harley-Davidson Motor Company - York Division
Knouse Foods Cooperative, Inc.

Latrobe Specialty Steel Company
Lehigh Specialty Melting Inc. (Whemco)
Magnesita Refractories Co.
MERSEN USA St Marys-PA Corporation
Occidental Chemical Corporation
Pittsburgh Glass Works
PPG Industries, Inc.
Procter & Gamble Paper Products Company
RH Sheppard Co., Inc. - Foundry Division
Royal Green LLC
Sheetz, Inc.
Standard Steel
Sweet Street Desserts, Inc.
Team Ten, LLC - American Eagle Paper Mills
The Plastek Group
Tray-Pak Corporation
U.S. Silica Company
Wegmans Food Markets, Inc.
World Kitchen LLC

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Dated: July 9, 2012

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I. INTRODUCTION

On November 17, 2011, the Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power"), and West Penn Power Company ("West Penn") (collectively, "Companies"), filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") a Joint Petition for approval of their Default Service Plans ("DSPs") for the period of June 1, 2013, through May 31, 2015. On December 19, 2011, the Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), the Penn Power Users Group ("PPUG"), and, separately, the West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrial Customer Groups"), filed Petitions to Intervene and Answers in Opposition to certain of the Companies' proposals contained in the Joint Petition.

The Commission assigned this proceeding to Administrative Law Judge ("ALJ") Elizabeth H. Barnes, who established a procedural schedule that included the submission of Main Briefs ("M.B.") and Reply Briefs ("R.B."). On June 15, 2012, the PUC issued ALJ Barnes' Recommended Decision ("R.D.") in this proceeding. Exceptions ("Exc.") were due on June 25, 2012.¹ The Industrial Customer Groups file these Replies to Exceptions to oppose certain other parties' Exceptions related the ALJ's R.D.

¹ The Industrial Customer Groups filed Exceptions on June 25, 2012, and received Exceptions from the following parties: the Companies, the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Retail Energy Supply Association ("RESA"), Dominion Retail, Inc., ("Dominion"), FirstEnergy Solutions Corp., and Constellation Energy Commodities Group, Inc., and Constellation NewEnergy, Inc. (jointly, "Constellation"). On June 26, 2012, the PUC notified parties that they could submit supplemental Exceptions in addition to their Exceptions. The Industrial Customer Groups only received supplemental Exceptions from Penn State University.

II. REPLY EXCEPTIONS

1. **Reply to Companies' Exception No. 1: The Administrative Law Judge Correctly Determined that the Collection of a Market Adjustment Charge Would Violate the Public Utility Code.**

The Companies except to the ALJ's well-reasoned finding that the Companies may not impose a Market Adjustment Charge ("MAC") on residential and commercial default service customers. *See Companies Exc.*, pp. 6-18. To defend the MAC, the Companies generally repeat their arguments from their Main and Reply Briefs.² The ALJ properly rejected these arguments as inconsistent with the Public Utility Code and regulations. Because the conclusions of the ALJ are just and reasonable with respect to this issue, the Commission must reject the Companies' Exceptions and accept the ALJ's recommendation to deny the MAC.

The ALJ correctly found that the MAC, a proposed bypassable \$5.00 per MWh charge imposed on residential and commercial default service customers, would be an unjust and unreasonable default service cost element. *See R.D.* at 56. Citing the Electricity Generation Customer Choice and Competition Act ("Competition Act"), the ALJ states that the Companies are permitted "full recovery of all costs of providing default service on a dollar-for-dollar basis through an automatic adjustment charge." 66 Pa. C.S. § 2807(e). Because the Companies do not propose to utilize the MAC to recover any default service-related costs, all profits resulting from the MAC would be in violation of this statute. *See Industrial Customer Groups R.B.*, p. 14.

Ignoring this explicit precedent, the Companies assert that they should receive a "return" as default service providers. *See Companies Exc.*, p. 13. The Companies allege that this return

² In Exceptions, the Companies, RESA, and Dominion each took issue with the ALJ's recommendation to deny the MAC for similar reasons. *See Companies Exc.*, pp. 6-18; *see also RESA Exc.*, pp. 18-24, *see also Dominion Exc.*, pp. 6-7. Rather than addressing each of their arguments separately, the Industrial Customer Groups oppose all of these MAC Exceptions for the reasons set forth in Replies to Exceptions 1 and 2.

is proper because other jurisdictions, specifically Maryland, New Jersey, and Texas, have approved similar adders associated with default service. *See id.* at 9. As explained by the Industrial Customer Groups and endorsed by the ALJ, however, the statutory schemes of other jurisdictions are irrelevant because the Pennsylvania Public Utility Code prohibits such a return. *See R.D.* at 57; *see also* Industrial Customer Groups R.B., fn 8.

Along the same lines, the Companies posit that electric generation suppliers ("EGSs") would be discouraged from acting as future default service providers, as indicated as a possibility within the Commission's regulations, without the potential for a profit adder. *See* Companies Exc., p 10; *see also* 52 Pa. Code § 54.183(c). Here again, the Companies' support for the MAC is based on an extraneous hypothetical regarding EGSs rather than legal requirements that bind the Companies as electric distribution companies ("EDCs"). *See* Industrial Customer Groups R.B., p. 14. EDCs are the current statutory default service providers, and, as such, they are required to offer default service via a "least cost over time" methodology. *See id.*; *see also* 66 Pa. C.S. § 2807(e). As such, they may only recover their actual costs incurred while providing default service. *See R.D.* at 56. The recovery of a return from default service customers does not comport with this "least cost over time" requirement. *See* Industrial Customer Groups R.B., p. 14. Any considerations related to EGSs acting as default service providers should be reserved for future proceedings when actual EGSs' costs for providing such service could be scrutinized by the Commission. *See id.*

To contend with the likelihood that the Commission would reject the idea of EDCs receiving a return for default service, the Companies supplement their position by stating that the MAC would collect reasonable default service costs because it compensates the Companies for risks associated with their provision of default service. Companies Exc., pp. 6 and 14. However,

the Companies never quantify these supposed default service risks, which range from claims of creditworthiness to goodwill. *See id.* The Companies' inability to quantify the costs of these purported risks that would be collected via the MAC is the final indication that the MAC is no more than a return on profit for the Companies. *See Industrial Customer Groups M.B.*, p. 35-36.

For the foregoing reasons, the Companies should not be permitted to collect a MAC from residential and default service customers. The MAC does not reimburse the Companies for their reasonable default service costs, but instead provides the Companies with an increased profit while providing no additional benefit to customers. *See Industrial Customer Groups R.B.*, p. 14. Because the MAC would collect an unjust and unreasonable profit adder prohibited by the Public Utility Code, the Commission must adopt the ALJ's findings and deny the MAC.

2. **Reply to RESA's Exception Nos. 3 and 4: The Administrative Law Judge Correctly Determined that the Collection of a Market Adjustment Charge Is An Unreasonable Competitive Market Enhancement.**

In addition to being an invalid profit collection mechanism, the MAC cannot operate as a retail market enhancement. Although the Companies claim that the MAC would encourage shopping, the MAC would instead have an adverse effect on the competitive market. *See Industrial Customer Groups M.B.*, p. 38. Moreover, despite unsubstantiated contentions by RESA to the contrary, the MAC should not be used as a cost collection device for other retail market enhancements. Instead, the Commission should conclude that the ALJ properly recommended rejecting the MAC as serving no market enhancement purpose.

The ALJ correctly found that the imposition of a MAC on default service customers would increase the price of EGS offers to competitive supply customers, particularly with respect to those customers "who accept a percent-off-the-default service price offering." R.D. at 56. This position is supported by the record in this proceeding, which indicates that EGSs likely would raise their prices in response to a higher price-to-compare ("PTC"). *See Industrial*

Customer Groups M.B., p. 38. Although RESA ultimately concludes that EGS prices would not increase as a result of the MAC, RESA admits that EGSs consider the default service price when determining their competitive offerings. *See* RESA Exc., p. 21 ("EGSs do more than compete against the PTC."). Thus, it is reasonable for the ALJ to conclude that EGSs would raise their prices in response to higher EDC prices. *See* Industrial Customer Groups R.B. p. 15; *see also* R.D. at 56. Because the MAC could distort prices within the competitive market, the MAC must not be imposed on default service customers.³ *See id.*

RESA further proposes that the MAC should be imposed on default service customers⁴ in order to charge them for other retail enhancement costs (*e.g.*, the costs associated with maintaining the opt-in auction). RESA Exc., p. 23. The ALJ correctly rejects this proposal, noting in the R.D. that EGSs, as the entities benefiting from the increased customer base produced by retail enhancements, should finance the opt-in auction. *See* R.D. at 117. Based on the ALJ's conclusion regarding the proper cost allocation for retail enhancements, it would be inappropriate for *any* customers to remit costs for the opt-in auction via the MAC.

Because the imposition of a MAC could adversely impact the electric prices for both default service and competitive supply customers, the MAC should not be used as a market enhancement device. Moreover, it is unreasonable to use such a mechanism to collect the

³ In addition, the MAC would not motivate shopping among default service customers who are only receiving default service while switching between EGSs. *See* Industrial Customer Groups M.B., p. 38.

⁴ On a related note, RESA's contention that default service customers should remit costs via the MAC because distribution, generation, and transmission costs are not unbundled is unfounded and inaccurate. *See* RESA Exc., pp. 19-20. RESA cannot point to any aspect of the record that supports this contention. *See id.* Because the purpose of the Competition Act was to unbundle distribution, generation, and transmission, and the Companies no longer offer generation and transmission service to competitive supply customers, RESA's contention, and any deductions from it, should be disregarded. *See* 66 Pa. C.S. § 2802(14).

costs of other market enhancements. Accordingly, the Commission should accept the ALJ's recommendation and deny the MAC.

3. **Reply to Constellation's Exception No. 1: The Administrative Law Judge Correctly Denied the Collection of Economic Load Response Costs Through the Companies' Non-Bypassable Default Service Support Riders.**

Constellation excepted to the ALJ's recommendation that the Commission deny the collection of economic load response ("ELR") costs through the Companies' non-bypassable Default Service Support Riders. Constellation Exc., p. 3. Although the Industrial Customer Groups agree with the ALJ's recommendation with respect to ELR costs, the Industrial Customer Groups would deny the collection for alternate reasons. While the ALJ concluded that ELR costs were "market-based," the Industrial Customer Groups believe the collection of transmission costs, market-based or non-market based ("NMB"), from shopping customers should remain the responsibility of EGSs. *See* R.D. at 73; *cf.* Industrial Customer Groups Exc., pp. 12-20. Otherwise, Large C&I customers would face a number of transitional issues, including double collection of ELR costs and interference with private contract negotiations. *See* Industrial Customer Groups Exc., pp. 12-20. As a result, the Commission should deny the Companies' collection of ELR costs from Large C&I customers.

Rather than repeat arguments from the aforementioned Exceptions in their entirety, the Industrial Customer Groups would refer the Commission to its Exception Nos. 3 and 4. *Id.* The position within these Exceptions with respect to other NMB Transmission costs are equally applicable to ELR costs. Because ELR costs are currently collected by EGSs, if Constellation's proposal were adopted, Large C&I customers would lose their ability to negotiate pricing arrangements regarding these costs. *See* Industrial Customer Groups Exc., p. 12; *see also* Industrial Customer Groups R.B., p. 31. In addition, Large C&I customers would be forced to renegotiate their contracts to remove these costs to guard against double ELR cost collection by

both EDCs and EGSs. *See* Industrial Customer Groups Exc., p. 12; *see also* Industrial Customer Groups R.B., p. 31. This interference with private contracting is especially burdensome for Large C&I customers, who are the largest proponents of shopping and expend significant resources tailoring their electric products to meet their individual needs. *See* Industrial Customer Groups R.B., p. 24.

Accordingly, the Industrial Customer Groups agree with the ALJ's recommendation that ELR costs should not be collected by the EDCs; however, as discussed more fully throughout this proceeding, the Industrial Customer Groups submit that none of the proposed NMB Transmission costs should be collected by the EDCs.⁵ Industrial Customer Groups Exc., pp. 1-23. If, however, the Commission believes that such change in collection would be beneficial for the residential and small commercial customer classes, the Industrial Customer Groups then submit that the Commission should approve a carve-out for Large C&I customers, which would permit them to continue to be charged for ELR costs by their EGSs, due to the unique needs and circumstances surrounding this class of customers. Industrial Customer Groups M.B., pp. 40-62; Industrial Customer Groups R.B., pp. 16-31; Industrial Customer Groups Exc., pp. 1-23.

⁵ The Industrial Customer Groups take no position regarding the ALJ's reasoning on this issue; however, the Industrial Customer Groups would reiterate that if the Commission agrees that NMB Transmission costs should be collected by the Companies, then at least Network Integration Transmission Service ("NITS") costs, as the central component of a customer's transmission service, should remain the responsibility of EGSs. Industrial Customer Groups Exc., p. 22.

III. CONCLUSION

WHEREFORE, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Penn Power Users Group, and the West Penn Power Industrial Intervenors respectfully request that the Pennsylvania Public Utility Commission deny the aforementioned Exceptions and accept the Exceptions and Reply Exceptions of the Industrial Customer Groups.

Respectfully submitted,

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Dated: July 9, 2012

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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