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September 10, 2012

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

VIA FEDERAL EXPRESS

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 please find the original Answer of Med-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), and West Penn Power Industrial Intervenors ("WPPII") to the Petition for Reconsideration 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 letter and kindly return it to our messenger for our filing purposes.

Sincerely,

McNEES WALLACE & NURICK LLC

By


Teresa K. Schmittberger

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

TKS/sar

c: Administrative Law Judge Elizabeth H. Barnes (via e-mail and Federal Express)
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

| | | |
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| 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 | : | |

**ANSWER OF THE MET-ED INDUSTRIAL USERS GROUP,
THE PENELEC INDUSTRIAL CUSTOMER ALLIANCE,
THE PENN POWER USERS GROUP, AND
THE WEST PENN POWER INDUSTRIAL INTERVENORS
TO PETITION FOR REHEARING AND RECONSIDERATION**

Pursuant to the Pennsylvania Public Utility Commission's ("Commission" or "PUC") regulations at 52 Pa. Code § 5.572(e), the Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), and West Penn Power Industrial Intervenors ("WPPII") (collectively, the "Industrial Customer Groups")¹ hereby submit this Answer in Opposition to the Petition for Rehearing and Reconsideration of Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc., (jointly, "Constellation"), Exelon Generation Company, LLC, and Exelon Energy Company (jointly, "Exelon") (collectively, "CNE"), which was filed on August 31, 2012. Specifically, the Petition requests that the Commission grant rehearing and reconsideration to approve the collection of

¹ Throughout this proceeding, MEIUG, PICA, PPUG, and WPPII have collectively referred to themselves as the "Industrial Customer Groups." For reasons that have not been clearly explained, CNE has unilaterally chosen to change this designation to the "Shopping Industrials." Because the Industrial Customer Groups have members receiving default service, CNE's designation is inappropriate, improper, and factually incorrect. For these reasons, MEIUG, PICA, PPUG, and WPPII will continue to refer to themselves collectively as the Industrial Customer Groups.

generation deactivation costs through the non-bypassable Default Service Support Riders (“DSSRs”) of the Metropolitan Edison Company, Pennsylvania Electric Company, Penn Power Company, and West Penn Power Company (collectively, the “Companies”). As set forth below, CNE’s Petition for Rehearing and Reconsideration should be denied for several reasons.

First, CNE has not met the standard for rehearing as CNE has not presented any “newly discovered evidence.” *See* Section I.A., *infra*. Second, CNE has not met the standard for reconsideration of the PUC’s decision, PUC’s decision as CNE has not presented any new and novel arguments not previously heard or considerations the PUC has overlooked. *See* Section I.B., *infra*. Finally, even if the Commission were to determine that CNE’s claims regarding a purported increase in generation deactivation charges requires a modification of the Commission’s original findings, none of the alternatives presented by CNE are just, reasonable, and appropriate. As discussed more fully in Section II, *infra*, CNE’s first and second alternatives fail to comport with the transitional issues raised by the Industrial Customer Groups. Moreover, while the third alternative (allowing for generation deactivation charge collection only from default service customers) may resolve transitional issues, it is inconsistent with the intent of the Competition Act. As such, the Commission must deny CNE’s request for rehearing and reconsideration.

I. CNE’s Petition Fails To Meet the Commission’s Standard for Rehearing and Reconsideration.

As correctly noted by CNE, *Duick v. Pa. Gas & Water Co.* (“Duick”) sets forth the standard for rehearing and reconsideration. 56 Pa. P.U.C. 553 (1982). Specifically, a Petition for Rehearing may be granted for the introduction of newly discovered evidence not discoverable through the exercise of due diligence prior to the close of the record. *Id.* at 559. Similarly, a

Petition for Reconsideration may be granted for new and novel arguments not previously heard or which appear to have been overlooked by the Commission. *Id.* CNE's Petition for Rehearing and Reconsideration fails on both counts.

A. CNE's Petition Fails to Meet Commission's Standard for Rehearing

Initially, CNE fails to present any new evidence that was not discoverable prior to the close of the record. CNE seeks to justify the collection of generation deactivation via the Companies' DSSRs by claiming that "new" evidence has come to light warranting this collection. To the contrary, CNE merely repeats evidence and arguments contained in its Main and Reply Briefs. For example, CNE explains that these charges are imposed to ensure system reliability when a generator is retiring in the PJM Interconnection, LLC, ("PJM") region. CNE Petition, pp. 7-8. Identical information is included in Exelon's Main Brief. Exelon M.B., pp. 3-4. Moreover, CNE summarizes elements of Exelon's testimony during the proceeding, which was already thoroughly evaluated by the Commission. CNE Petition, pp. 9-10.

CNE's purported "new evidence" merely identifies the generation deactivation costs that have been imposed by PJM. CNE Petition, pp. 11-12. However, the identification of generation deactivation costs fails to qualify as new evidence. It is clear from the record in this proceeding that generation deactivation costs can occur at any time. *See* Exelon St. 1 at 2-3. The Commission was well aware of this fact when it determined that EGSs should continue to collect these costs from their customers. As a result, the occurrence of these costs is already known to the Commission.

Assuming *arguendo* that these costs are deemed relevant by the Commission, it is important to note that generation deactivation costs are constantly changing and affecting different areas, which is an inherent aspect of generation deactivation costs. CNE already

established this fact in Exelon's Main Brief. *See Exelon M.B.*, p. 3. In this instance, the generation deactivation costs identified by CNE would only impact certain parts of the Companies' service territories, specifically Penn Power and West Penn. *See id.* The portion of these costs affecting customers of the Companies will also be reduced based on the spreading of these costs across different EDCs' service territories. *See id.* Moreover, the comprehensive list of PJM retirements referred to by CNE identifies only a few instances when generation deactivation costs could affect the Companies' service territories.² As a result, this evidence, while already discussed during the course of the proceeding, has little weight.

In another instance, CNE refers to Ohio where electric distribution companies ("EDCs") are collecting generation deactivation costs through non-bypassable riders. CNE Petition, p. 12. This argument was similarly set forth in Exelon's Main Brief. *Exelon M.B.*, p. 4. As stated in briefs, the collection of transmission costs in Ohio has no bearing on the collection in Pennsylvania, considering the differing statutory schemes. *See Industrial Customer Groups M.B.*, p. 59. As a result, this argument lacks merit and identifies no new evidence.

For the foregoing reasons, CNE does not meet the Commission's *Duick* standard for rehearing because no new evidence has been identified related to generation deactivation costs.

B. CNE's Petition Fails To Meet the Standard for Reconsideration

CNE does not make any novel arguments related to generation deactivation costs that were overlooked by the Commission; thus, CNE has not satisfied the standard for reconsideration. In its Petition, CNE discusses the arguments previously made related to non-market based transmission ("NMB Transmission") charges that were addressed repeatedly

² Future Deactivations, PJM Interconnection, LLC (<http://pjm.com/planning/generation-retirements/~media/planning/gen-retire/pending-deactivation-requests.ashx>).

during the course of the proceeding. For example, CNE expresses concern regarding the potential risk premiums imposed by EGSs, and minimizes the impact of contract renegotiation. CNE Petition, pp. 13 and 16. Neither of these arguments are novel; as a result, these items are not subject to continued debate at this stage of the proceeding.

Moreover, the Commission clearly and cogently determined in its Order that the difficulties created by the EDCs' collection of generation deactivation costs outweigh any benefits that arguably may be created by transferring cost responsibility for generation deactivation costs. *See* Commission Order, p. 81. Specifically, the Commission held that the collection of generation deactivation charges through non-bypassable riders: (1) forced contract renegotiation; (2) risked double collection of generation deactivation costs by both EGSs and EDCs; and (3) increased the risk for customers. Commission Order, p. 81. As a result, it is clear that the Commission did not overlook any of the arguments set forth by CNE.

Because the Commission already fully considered CNE's concerns related to contracting and risk in its Order, CNE fails to meet the Duick standard for reconsideration.

II. CNE's First and Second Proposals Regarding Generation Deactivation Costs Must Be Rejected Pursuant to the Commission Order

Although CNE does not identify any new evidence or novel arguments, CNE presents three solutions that it recommends the Commission adopt in lieu of the directives in the PUC Order. CNE's first and second proposals should be rejected outright by the Commission as inconsistent with the Commission's Order. CNE's third proposal could be adopted because it does not conflict with the Order; however, the Industrial Customer Groups continue to oppose it on the basis that it is inconsistent with the Competition Act.

A. CNE's First Proposal Regarding Generation Deactivation Costs Must Be Rejected Pursuant to the Commission Order

CNE's first proposal states that generation deactivation costs should be collected by the Companies for all customers after a one-year transition period. This first proposal should be rejected for the following reasons.

First and foremost, this proposal should be rejected as inconsistent with the Commission's Order. The collection of generation deactivation costs through a non-bypassable rider is rejected by the Commission under all circumstances. A one-year transition period, as proposed by CNE, will not alleviate any of the Commission's concerns related to contract renegotiation, double collection, and increased risk. *See* CNE Petition, p. 11. The transition period would merely postpone these concerns for one year.

Equally important, CNE's proposal would not address the cost causation and customer choice concerns presented by the Industrial Customer Groups. If the Companies were to begin collecting generation deactivation charges, it is unclear whether these charges would or even could be collected based on a customer's one coincident peak demand, consistent with cost causation principles. *See, e.g.,* Industrial Customer Groups Exc., p. 2. The Companies' collection of generation deactivation from all customers would also eliminate shopping customers' ability to receive competitive transmission products including generation deactivation costs. *See id.* at 13. As a result, customers would no longer have the opportunity to negotiate freely in the competitive market with respect to transmission-related costs. *See id.*

Thus, CNE's first proposal should be rejected as inconsistent with the Commission's Order, and in violation of principles of cost causation and customer choice.

B. CNE's Second Proposal Regarding Generation Deactivation Costs Must Be Rejected Pursuant to the Commission Order

CNE's second proposal should be rejected because it too calls for the collection of generation deactivation costs via non-bypassable DSSRs, which is denied in the Commission Order. This second proposal would present continued concerns related to cost causation under the ICP methodology, grandfathering, and customers with multiples sites. As shown below, CNE's second proposal should be rejected.

Although generation deactivation costs would not be collected by the Companies for Large Commercial and Industrial ("C&I") customers who are currently shopping, it is unclear how these costs would be collected once Large C&I customers' contracts expire. As a result, *Large C&I customers could face all of the foregoing cost causation, customer choice, and transitional concerns after contract expiration, discussed supra.*

Moreover, Large C&I customers often receive service at different sites, each of which could be affected differently by CNE's proposal. Large C&I customers with smaller accounts could have generation deactivation costs collected by both EDCs and EGSs depending on location and size of the account. In addition, if a Large C&I customer opens up a new account, it would be forced to be charged for generation deactivation by the Companies rather than its EGS, in contrast with its sites under current contract with EGSs. These inconsistencies would be *highlighted as Large C&I customers attempt to determine whether they are being charged for generation deactivation based on the one coincident peak, consistent with cost causation principles and the Commission's Order. See, e.g., Industrial Customer Groups Exc., p. 2; Order, p. 77.* Moreover, these differences would affect all future contracting and procurement efforts by

these customers. The Commission Order clearly intends for such confusion to be avoided. *See* Order, p. 81.

Finally, residential and small commercial customers, including the smaller sites of Large C&I customers, have all the same concerns related to renegotiation, double collection, and increased risk as Large C&I customers if generation deactivation costs are suddenly collected by EDCs. The Commission Order found that these concerns warranted rejection of any collection of generation deactivation costs by the Companies. As a result, CNE's second proposal should be rejected for similar reasons to CNE's first proposal.

C. While CNE's Third Proposal May Be Preferable to the First Two Proposals, It Fails to Address Retail Market Developments.

If the Commission were to be persuaded by the arguments about generation deactivation charges, which the Industrial Customer Groups submit it should not, CNE's third proposal is the only proposal that may be workable, because it only affects default service customers. Under the third proposal, CNE proposes that the Companies collect generation deactivation charges instead of default service suppliers; however, EGSs would continue to collect these costs from shopping customers.

While the Industrial Customer Groups are not actively opposed to the proposal, this proposal would detract from steps in the competitive market to increase suppliers' responsibilities related to providing generation and transmission service to customers. If suppliers are truly committed to assuming at some point the role of default service provider and/or eliminating the EDC in the default service provider role, it is counterintuitive to the Industrial Customer Groups that the EGSs would no longer provide any element of transmission service to customers. The Electricity Generation Customer Choice and Competition Act

("Competition Act") explicitly provides for the unbundling of generation, transmission, and distribution, and any steps to continue to place EDCs in the role of providing both distribution and transmission service are inconsistent with the Competition Act and take away from progress already made in the retail competitive market. *See* 66 Pa. C.S. § 2804(3). As a result, although the Industrial Customer Groups do not oppose CNE's third proposal, it cannot be supported for the foregoing reasons.

In summary, the Commission has already considered and rejected CNE's proposal to modify the collection of generation deactivation charges via the Companies' non-bypassable DSSRs. *CNE's Petition for Rehearing and Reconsideration should be denied on its merits.*

WHEREFORE, the Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group, and West Penn Power Industrial Intervenors hereby request that the Commission deny CNE's Petition for Rehearing and Reconsideration.

Respectfully submitted,

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Dated: September 10, 2012

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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Dated this 10th day of September, 2012, at Harrisburg, Pennsylvania

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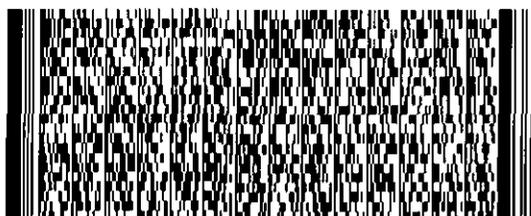
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