



100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Teresa K. Schmittberger
Direct Dial: 717.237.5270
Direct Fax: 717.260.1688
tschmittberger@mwn.com

November 19, 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; Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669 and P-2011-2273670

Dear Secretary Chiavetta:

Enclosed please find the original and three (3) copies of the Petition for Appeal of Staff Action and, in the Alternative, Reconsideration of the Secretarial Letter Approving the Default Service Plan Compliance Filing of the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company submitted on behalf of Met-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 letter and Petition for Appeal, 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

- c: Chairman Robert F. Powelson (via Hand Delivery)
- Vice Chairman John F. Coleman, Jr. (via Hand Delivery)
- Commissioner James H. Cawley (via Hand Delivery)
- Commissioner Wayne E. Gardner (via Hand Delivery)
- Commissioner Pamela A. Witmer (via Hand Delivery)
- Administrative Law Judge Elizabeth H. Barnes (via e-mail and Hand Delivery)
- Certificate of Service

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**PETITION FOR APPEAL OF STAFF ACTION AND, IN THE ALTERNATIVE,
RECONSIDERATION OF SECRETARIAL LETTER APPROVING THE
DEFAULT SERVICE PLAN COMPLIANCE FILING OF THE METROPOLITAN
EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA
POWER COMPANY, AND WEST PENN POWER COMPANY**

I. Introduction

Pursuant to Sections 5.44(a) and 5.572(a) of the Commission's Regulations, the Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group, and West Penn Power Industrial Intervenors (collectively, the "Industrial Customer Groups") hereby file this Petition for Appeal and, in the Alternative, Reconsideration ("Petition") requesting review and/or reconsideration of the Staff decision to approve the Default Service Plan ("DSP") Compliance Filing of the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (collectively, the "Companies").

As set forth below, the Industrial Customer Groups filed Comments on September 17, 2012, in response to the Companies' Compliance Filing ("Sept. 17 Comments") contesting the Companies' interpretation of the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Final Order in the Companies' DSP proceeding ("Aug. 16 Order"),¹ as reflected in the Companies' Compliance Filing submission. Specifically, the Industrial Customer Groups

¹ *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, *et al.*, Opinion and Order (Aug. 16, 2012).

submitted that the Companies' proposed collection of Regional Transmission Expansion Plan ("RTEP") costs and Transmission Enhancement costs ("TEC") through non-bypassable riders was inconsistent with the PUC's Aug. 16 Order. The Industrial Customer Groups' Comments have been reinforced by subsequent Commission precedent in both the Companies' DSP proceeding (*i.e.*, the Sept. 27 Order)² and PECO Energy Company's ("PECO") DSP proceeding (*i.e.*, the Oct. 12 Order).³ Because this Commission precedent indicates agreement with the Industrial Customer Groups' Comments with respect to the Compliance Filing (*i.e.*, that the Companies should not be permitted to collect RTEP and TEC costs through non-bypassable riders), the Industrial Customer Groups respectfully request that the Commission review and reverse the Staff determination, or in the alternative, grant reconsideration of this determination.

In support of this Petition, the Industrial Customer Groups state as follows:

II. Procedural Background

1. Pursuant to the Commission's Aug. 16 Order, the Companies filed their DSP Compliance Filing on September 6, 2012.

2. Among other things, the Companies' Compliance Filing provided for the collection of RTEP and TEC costs by the Companies via non-bypassable riders.⁴ In earlier aspects of the Companies' DSP proceeding, RTEP and TEC costs, along with Network Integration Transmission Service, were collectively referred to as Non-Market Based ("NMB") Transmission costs by the Commission and other parties. *See, e.g.*, Aug. 16 Order, p. 67.

² *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, *et al.*, Opinion and Order (Sept. 27, 2012) (hereinafter "Sept. 27 Order") (denying Petition for Reconsideration and Rehearing requesting a non-bypassable collection of Generation Deactivation costs).

³ *Petition of PECO Energy Company for Approval of its Default Service Program II*, Opinion and Order, Docket No. P-2012-2283641 (Oct. 12, 2012) (hereinafter "Oct. 12 Order") (approving PECO's DSP and denying requests for PECO to recover NMB Transmission costs via non-bypassable rider).

⁴ Compliance Filing, Volume III, Exhibit J (Met-Ed Rider R, p. 204; Penelec Rider R, p. 210; Penn Power Default Service Support Rider, p. 62.2; West Penn Default Service Support Rider, p. 37).

3. Pursuant to 52 Pa. Code § 5.592(c), on September 17, 2012, the Industrial Customer Groups filed Comments explaining that the Companies misinterpreted the Commission's Aug. 16 Order. The Industrial Customer Groups contended that the Aug. 16 Order provided for the continued collection of all NMB Transmission costs, including RTEP and TEC costs, as well as Generation Deactivation and Unaccounted for Energy costs, by the customers' load-serving entity ("LSE").⁵ The Aug. 16 Order allowed for one minor exception with respect to the Penn Power service territory for reasons discussed more fully in the Industrial Customer Groups' Sept. 17 Comments and in Section IV, *infra*. A copy of the Industrial Customer Groups' Comments is attached as "Appendix A" for the Commission's reference.

4. On September 27, 2012, the Commission issued a subsequent Order on *Reconsideration in the Companies' DSP proceeding denying the request of Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc., Exelon Generation Company, LLC, and Exelon Energy Company* to allow for the collection of Generation Deactivation costs through non-bypassable riders. As a basis for this denial, the PUC explained that the Commission had rejected the non-bypassable collection of NMB Transmission costs and Generation Deactivation costs in its Aug. 16 Order. Sept. 27 Order, p. 4.

5. On October 12, 2012, in the Final Order of PECO's DSP proceeding, the Commission again held that NMB Transmission costs, including RTEP and TEC costs, should continue to be collected by customers' LSEs. Oct. 12 Order, p. 60.

6. Despite this consistent Commission precedent consistent with the Industrial Customer Groups' Sept. 17 Comments, on November 8, 2012, Commission Staff, without acknowledgement of this Commission precedent or the Industrial Customer Groups' Sept. 17

⁵ For example, Large Commercial and Industrial customers who receive generation supply from an EGS would continue to have these RTEP and TEC costs collected by their EGS.

Comments,⁶ approved the Companies' Compliance Filing via Secretarial Letter ("Nov. 8 Secretarial Letter"), which would allow for the collection of certain NMB Transmission costs, namely RTEP and TEC costs, via non-bypassable riders beginning June 1, 2013. A copy of the Nov. 8 Secretarial Letter is attached as "Appendix B" for the Commission's reference.

7. As a result, the Industrial Customer Groups request that the Commission review and reverse this Staff decision pursuant to 52 Pa. Code § 5.44(a), or in the alternative, grant reconsideration pursuant to 52 Pa. Code § 5.572(a), and hold that the Companies are prohibited from collecting RTEP and TEC costs via non-bypassable riders to ensure greater consistency in collection of RTEP and TEC costs across Pennsylvania's electric distribution companies.

III. Standard of Review

8. Section 5.44(a) of the Commission's regulations states that a party can appeal a Staff determination by filing a petition "within 20 days after service of notice of the action." 52 Pa. Code §5.44(a).⁷

9. Because the Nov. 8 Secretarial Letter does not refer to the availability of such an appeal, in the alternative, the Industrial Customer Groups seek reconsideration pursuant to Section 5.572(a) of the Commission's Regulations. The standards for granting a Petition for Reconsideration are set forth in *Duick v. PG&W*: reconsideration is appropriate when circumstances justify the Commission exercising its discretion to amend a prior Order, particularly when new arguments or circumstances have been overlooked or not addressed by the Commission. *Duick v. PG&W*, 56 Pa. P.U.C. 553, 559 (1982). A Secretarial Letter may be subject to reconsideration as the Commission has previously held that a Secretarial Letter has the

⁶ The Companies filed an Answer in response to the Industrial Customer Groups' Sept. 17 Comments, which the Nov. 8 Secretarial Letter similarly did not address.

⁷ Although the filing deadline pursuant to 52 Pa. Code § 5.44(a) is 20 days, the Industrial Customer Groups are filing this Petition in ten days in an effort to resolve this remaining DSP issue expeditiously.

same effect as a Final Order. *Pike County Light & Power v. Pa. P.U.C.*, 2007 WL 5065009, 1 (Oct. 26, 2007).

10. If deemed a Petition for Reconsideration, the Industrial Customer Groups must show that new arguments or circumstances overlooked by the Commission justify the Commission's reconsideration and reversal of the Nov. 8 Secretarial Letter. *See Duick*, 56 Pa. P.U.C. at 559. If deemed a Petition for Appeal, the Commission must show that a preponderance of evidence supports the review and reversal of the Secretarial Letter by the Commission. *See Yellow Cab Company of Pittsburgh v. Pa. P.U.C.*, 2011 WL 2113380, 1 (Apr. 14, 2011).

11. In addition to the reasons set forth in the Industrial Customer Groups' Sept. 17 Comments, compelling new circumstances justify the Commission's review, reconsideration, and reversal of this Staff decision. As discussed in Section IV, *infra*, the Industrial Customer Groups submit that either standard of review is satisfied.

IV. Basis for Appeal and Reconsideration

12. In the Sept. 17 Comments, the Industrial Customer Groups asserted that the Companies erred by including a non-bypassable collection of RTEP and TEC costs in their DSP Compliance Filing. Sept. 17 Comments, p. 2. Such a proposal conflicts with the Commission's Aug. 16 Order, which held that NMB Transmission costs should be collected by a customer's LSE, *i.e.*, the electric generation supplier for shopping customers and the electric distribution company for default service customers. The Industrial Customer Groups further explained that any confusion with respect to this collection may have been related to Penn Power's future non-bypassable collection of RTEP costs and other miscellaneous transmission-related costs also

beginning June 1, 2013, as approved in a separate proceeding.⁸ *Id.* at 5. As a result, the Industrial Customer Groups requested that the Commission reject the Companies' Compliance Filing with respect to RTEP and TEC cost collection.⁹ *Id.* at 6.

13. Soon after the Sept. 17 Comments were filed at the Commission, the Commission issued its Sept. 27 Order as part of the Companies' DSP proceeding. In this Order, the Commission explained, "In the *August 2012 Order*, we rejected both the recovery of NMB transmission charges and generation deactivation charges in the Companies' DSS Riders." Sept. 27 Order, p. 4. Subsequently, while denying reconsideration with respect to Generation Deactivation costs, the Commission reinforced this position, holding: "Consistent with the Commonwealth's continued migration to a more competitive retail market, we believe that these supply-related costs should remain with the EGS." *Id.* at 10. The Commission explicitly acknowledged both its prior denial of non-bypassable NMB Transmission cost collection in the same proceeding and further justified its denial by explaining that NMB Transmission costs should be collected by customers' LSEs. Accordingly, it is unreasonable to conclude that a month prior the Commission held that certain NMB Transmission costs should be collected via non-bypassable riders. Standing alone, the plain language of the Sept. 27 Order warrants reversal of the inconsistent Staff decision in the Nov. 8 Secretarial Letter.

14. Providing additional support of reversal is the Commission's Final Order in the subsequent PECO default service proceeding, which similarly rejected the non-bypassable collection of NMB Transmission costs, holding that customers should be charged by their LSEs

⁸ See *Petition of Pennsylvania Power Company For Approval of Default Service Program For Period from January 1, 2011, through May 31, 2013*, Opinion and Order, Docket No. P-2010-2157862, p. 20.

⁹ Also in the Sept. 17 Comments, the Industrial Customer Groups requested clarification with respect to language in certain aspects of the Companies' Compliance Filing related to transmission cost recovery and current customer protections. Sept. 17 Comments, pp. 6-12. The Nov. 8 Secretarial Letter also failed to address this supplemental issue.

for NMB Transmission costs. Oct. 12 Order, p. 60. Once again, the Commission rejected non-bypassable collection of all NMB Transmission costs, including RTEP and TEC costs. *Id.*

15. Despite this directly contrary Commission precedent, the Nov. 8 Secretarial Letter is silent with respect to the Industrial Customer Groups' Sept. 17 Comments, the Commission's Sept. 27 Order, and the Commission's Oct. 12 Order, all of which support the Industrial Customer Group's position that the Companies misinterpreted the Commission's Aug. 16 Order with respect to RTEP and TEC costs. The Secretarial Letter provides no explanation of this departure from precedent, nor does it address any arguments raised by the Industrial Customer Groups. Combined, the Sept. 17 Comments, Sept. 27 Order in the Companies' DSP proceeding, and Oct. 12 Order in PECO's DSP proceeding clearly provide a preponderance of evidence supporting the Industrial Customer Groups' position that the Companies misinterpreted the Aug. 16 Order. Accordingly, pursuant to 52 Pa. Code § 5.44(a), the Commission must review the Nov. 8 Secretarial Letter and reverse this directive, which would allow the Companies to collect RTEP and TEC costs via non-bypassable riders.¹⁰

16. In the alternative, the new circumstances presented by this subsequent Commission precedent warrant reconsideration of the Nov. 8 Secretarial Letter and reversal of this aspect of the Companies' Compliance Filing pursuant to 52 Pa. Code § 5.572(a). At the time of the Industrial Customer Groups' Sept. 17 Comments, neither the Sept. 27 Order nor the Oct. 12 Order had been issued by the Commission. Moreover, the failure to address either Order or the Sept. 17 Comments in the Nov. 8 Secretarial Letter further indicates the need for reconsideration. Failure to reconsider this Staff action would result in a patchwork of different

¹⁰ The only exception to this reversal would be the collection of non-bypassable costs approved as part of the separate Penn Power proceeding. See *Petition of Pennsylvania Power Company For Approval of Default Service Program For Period from January 1, 2011, through May 31, 2013*, Opinion and Order, Docket No. P-2010-2157862, p. 20.

requirements with respect to RTEP and TEC costs across the Commonwealth, a result which the Commission has evidenced a strong interest in avoiding. Based on this compelling new precedent and the potential that crucial arguments have been overlooked, it is imperative that the Commission reconsider the Nov. 8 Secretarial Letter to ensure that the Commission's intent has been properly interpreted, and the Companies are precluded from collecting RTEP and TEC costs from shopping customers.

WHEREFORE, the Industrial Customer Groups hereby respectfully request that the Pennsylvania Public Utility Commission: (1) review, or in the alternative, reconsider the Nov. 8 Secretarial Letter; (2) reverse the Staff determination of the Nov. 8 Secretarial Letter by confirming that RTEP and TEC costs may not be collected via non-bypassable riders; and/or (3) grant such other relief as the Commission deems reasonable.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

Susan E. Bruce (Pa. I.D. No. 80146)
Charis Mincavage (Pa. I.D. No. 82039)
Vasiliki Karandrikas (Pa. I.D. No. 89711)
Teresa K. Schmittberger (Pa. I.D. No. 311082)
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
717.232.8000 (p)

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

Dated: November 19, 2012

**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	:	

**COMMENTS OF THE MET-ED INDUSTRIAL USERS GROUP, PENELEC
INDUSTRIAL CUSTOMER ALLIANCE, PENN POWER USERS GROUP,
AND WEST PENN POWER INDUSTRIAL INTERVENORS
ON THE REVISED DEFAULT SERVICE PLAN COMPLIANCE FILING**

Susan E. Bruce (Pa. I.D. No. 80146)
Charis Mincavage (Pa. I.D. No. 82039)
Vasiliki Karandrikas (Pa. I.D. No. 89711)
Teresa K. Schmittberger (Pa. I.D. No. 311082)
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
717.232.8000 (p)
717.237.5300 (f)

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

Dated: September 17, 2012

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, "FE" or "Companies") filed their proposed default service plans ("DSPs") for the period of June 1, 2013, through May 31, 2015, at the Pennsylvania Public Utility Commission ("PUC" or "Commission"). As part of these DSPs, the Companies proposed collection of certain Non-Market Based Transmission ("NMB Transmission") charges via non-bypassable Default Service Support Riders ("DSSRs"). Over the subsequent nine months, many parties, including the Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), and West Penn Power Industrial Intervenors ("WPII") (collectively, the "Industrial Customer Groups"), litigated before the Commission this and other issues relating to the proposed DSPs.

On August 2, 2012, the PUC conducted a binding poll of the Companies' DSPs, followed by a Commission Order entered August 16, 2012 ("August 16 Order"), which indicated agreement with respect to the Industrial Customer Groups' positions on NMB Transmission charges. In the August 16 Order, the Commission explained its reasoning in depth regarding the denial of the Companies' NMB Transmission cost collection. Of particular relevance, the Commission held that the Network Integration Transmission Service cost "should continue to be collected by the EGSs instead of being collected for all customers through the DSS Rider." August 16 Order, p. 83. The Commission further explained that the Companies' proposed NMB Transmission collection "violates the principle of cost causation, creates perverse incentives for customers not to respond rationally to PJM rules and reduce their transmission obligations, and contradicts provisions of the Code and Competition Act." *Id.* at 77. The Commission directed

the Companies to submit revised DSPs in accordance with its Order. On September 7, 2012, the Companies filed revised DSPs, including tariff revisions (hereinafter, "Compliance Filing").¹ The Industrial Customer Groups submit these Comments in response to the Companies' revised DSPs.

As discussed below, the Industrial Customer Groups have several concerns regarding the revised DSPs. First, the Industrial Customer Groups submit that the Companies incorrectly interpreted the PUC's August 16 Order as allowing for the collection of a select group of NMB Transmission charges via the DSSRs. The Industrial Customer Groups submit that the Commission's August 16 Order denied the Companies' request to implement a non-bypassable collection of NMB Transmission charges, with the exception of Penn Power's current collection of certain previously-approved charges. See Section II. A., *infra*. Second, even assuming *arguendo* that the Commission intended to allow the Companies to collect certain NMB Transmission costs through the DSSRs, the Companies' Compliance Filing is too expansive in applying this collection to "any and all transmission costs," which is in direct violation of the PUC's August 16 Order. See Section II.B., *infra*. Moreover, it should be confirmed that Network Integration Transmission Service ("NITS") charges will not be collected via the Companies' DSSRs based on language removed from their Hourly Pricing Default Service Riders.

Third, again assuming *arguendo* that certain NMB Transmission collection is permitted, the PUC's August 16 Order specifically states that any such charges are to be collected from

¹ In addition to the Compliance Filing, on September 6, 2012, the Companies also filed to amend their Supplier Tariffs, *i.e.*, Met-Ed Tariff Electric Pa. P.U.C. No. S-1, Penelec Tariff Electric Pa. P.U.C. No. S-1, Penn Power Tariff Electric Pa. P.U.C. No. S-1, and West Penn Tariff Electric Pa. P.U.C. No. 2S. The Industrial Customer Groups oppose this filing to the extent that it conflicts with the Comments herein.

customers based upon the one coincident peak ("1-CP") allocation methodology;² however, the Companies' Compliance Filing is unclear with respect to that directive, only noting that the costs will be calculated based on the Network Service Peak Load ("NSPL"). While further review may indicate that the NSPL reference was intended to comport with the 1-CP directive provided by the Commission, clarification is required, especially with respect to any tariff language, to eliminate customer confusion and ensure that customers are charged for any transmission-related costs collected through a non-bypassable charge on a 1-CP basis, consistent with the customer's contribution to the transmission peak. *See* Section II.C., *infra*.

II. COMMENTS

A. **The Companies Have Incorrectly and Inappropriately Interpreted the Commission's August 16 Order To Allow for the Collection of Non-Market Based Transmission Costs via Default Service Support Riders.**

Currently, Met-Ed, Penelec, and Penn Power have DSSRs in their tariffs that impose certain non-bypassable charges on customers. *See* August 16 Order, pp. 63-66. As part of this proceeding, the Companies requested that West Penn implement a DSSR and that all of the Companies be permitted to collect the following NMB Transmission charges via the DSSRs: (1) NITS charges; (2) Regional Transmission Expansion Plan ("RTEP") charges; and (3) Expansion costs. *See* Direct Testimony of Charles V. Fullem, FE Statement No. 7, p. 8. During the course of this proceeding, certain Electric Generation Suppliers ("EGSs") proposed, and the Companies agreed, to include the collection of the following charges through the DSSRs: (1) Generation Deactivation charges; and (2) Unaccounted-for Energy Costs ("UFE"). *See* August 16 Order, pp. 78-81. One EGS also suggested the inclusion of Economic Load Response ("ELR") charges for

² As discussed more fully in Section II.A., *infra*, the Industrial Customer Groups submit that the Commission's intention with respect to Ordering Paragraph No. 17 of the August 16 Order, which references the 1-CP requirement, was for the limited purpose of recognizing the current collection by Penn Power of RTEP costs and to allow for the continuance of this cost collection by only Penn Power.

collection through the DSSRs; however, the Companies did not agree with this proposal. *See id.* at 84.

In its August 16 Order, the Commission first reviewed FE's initial requests for the collection of NITS, RTEP, and Expansion costs. In this review, the PUC determined to "grant the Exceptions of the Industrials, and reject the ALJ's recommendation to adopt the Companies' proposed allocation of NMB transmission charges." *Id.* at 78. The PUC then reviewed the EGSSs' request to include Generation Deactivation Charges and UFE costs. Based upon this review, the Commission decided to "also reject the inclusion of generation deactivation and UFE costs within the DSS Riders...." *Id.* at 81. The Commission reasoned that collection of such costs through non-bypassable riders would interrupt long-term shopping contracts, may force contract negotiations, and increase the likelihood of double cost collection. *See id.* The Commission noted that the Industrial Customer Groups opposed this collection for the same reasons that apply to all other NMB Transmission costs. *Id.* Finally, the PUC reviewed the request to include ELR costs in the DSSR and determined that "these charges are market-based and should not be included within the non-bypassable Rider." *Id.* at 86.

Based upon the aforementioned, the Commission's Order clearly reflects the PUC's intent to restrict the collection of any NMB Transmission charges via the DSSR. The same reasoning to reject UFE, generation deactivation, and ELR charges applies to all other transmission-related costs, a sentiment which is explicit in the Commission's Order. *See id.* at 81. Unfortunately, the Companies' Compliance Filing does not adhere to the requirements of the August 16 Order. Rather, in the Compliance Filing, the Companies have modified each of their DSSRs to allow for the collection of certain NMB Transmission charges. Specifically, the Compliance Filing provides for DSS rates to be calculated as follows:

$$\text{DSS rate} = [\text{UE} + \text{TSC1} + \text{NMB} + \text{RE} + \text{CEC}] \times [1/(1-T)]$$

Compliance Filing, Volume III, Exhibit J (Met-Ed Rider R, p. 204; Penelec Rider R, p. 210; Penn Power Default Service Support Rider, p. 62.2; West Penn Default Service Support Rider, p. 37) (emphasis added).³ The "NMB" component is defined as "the charge to be applied to Delivery Service Customers served under this rider for Non-Market Based Services Transmission Charge costs incurred by the Companies." *Id.* at 206; 212; 62.5; 37. The forecasted NMB Transmission charges, which will be used to calculate the NMB charge under the DSSR, are defined "to include costs for PJM Regional Transmission Enhancement Plan charges, PJM Expansion Cost Recovery, as well as any other FERC-approved PJM transmission charges that will not be reconciled through the Company's Hourly Pricing Default Service Rider." *Id.* On this basis, under the Companies' Compliance Filing, the Companies are collecting the NMB Transmission charges that they originally sought to collect (*i.e.*, RTEP and Expansion Costs) even though the PUC's August 16 Order rejected the Companies' proposal. Based on this language, even NITS could be collected via the Companies' DSSRs, an issue that will be discussed in greater detail in Section II.B., *infra*.

Because the Companies' Compliance Filing does not seem to conform to the Commission's intent under the August 16 Order, the Industrial Customer Groups have endeavored to determine under what basis FE has sought to include NMB Transmission costs in the DSSRs. The Industrial Customer Groups believe the Companies may have misinterpreted the PUC's Ordering Paragraph No. 17, which notes that the "costs of the remaining components

³ The calculation of Penn Power's DSSR is slightly different due to the fact that Penn Power was permitted to collect certain Midwest Independent System Operator ("MISO") Transmission Expansion and PJM Integration charges during its last DSP proceeding. See *Petition of Pennsylvania Power Company For Approval of Default Service Program For Period from January 1, 2011, through May 31, 2013*, Opinion and Order, Docket No. P-2010-2157862, p. 20 ("Penn Power Order"). In addition, per the Commission-approved Joint Petition for Settlement of Penn Power's last DSP proceeding, Penn Power will begin collecting RTEP costs via its DSSR on June 1, 2013. See *id.*

of the Non-Market Based Transmission Charge included within the Default Service Supply Riders, are to be allocated based upon the one coincident peak allocation methodology...." August 16 Order, p. 162. As noted previously, Penn Power, as part of a previous DSP proceeding, was granted the ability to collect RTEP, MISO Transmission Expansion, and PJM Integration costs via its DSSR. See Penn Power Order, p. 20. As such, the Commission's Ordering Paragraph No. 17 reflects and continues to allow this collection by Penn Power with the caveat that it occur on a 1-CP basis. Contrary to the Companies' broad reading of the Commission's Order, FE should not be permitted to implement its original proposal (or any variation thereto) to collect NMB Transmission charges (*i.e.*, NITS, RTEP, and Expansion costs) through its DSSRs.

But for the collection of Generation Deactivation charges and UFE costs (which the Companies did not originally propose) and ELR costs (which the Companies opposed), the Compliance Filing is generally reflective of FE's original proposal to collect NMB Transmission charges through non-bypassable DSSRs.⁴ In light of the Commission's rejection of the Companies' proposal, the Companies must be required to revise their Compliance Filing to remove the aforementioned costs from the DSSRs.

B. Assuming *Arguendo* that the Companies Are Permitted To Collect Certain NMB Transmission Charges through Default Service Support Riders, the Companies' Compliance Filing Is Too Broadly Worded and Possibly In Direct Conflict with the Commission's Express Rejection of the Collection of NITS Through the Default Service Support Riders.

Even assuming, *arguendo*, that the Companies may be permitted to collect certain NMB Transmission costs through the DSSRs (*i.e.*, RTEP and Expansion costs), the Companies' Compliance Filing is too broadly worded where it allows for the collection of any and all

⁴ The issue of NITS collection will be addressed more fully in Section II.B., *infra*.

transmission costs (including, possibly, future costs imposed by PJM of which the parties are not currently aware) and may contravene the PUC's rejection of the collection of NITS charges through the DSSRs. As such, the Companies' Compliance Filing must be clarified to comply with the Commission's August 16 Order.

As noted previously, the Companies' Compliance Filing proposes to collect "NMB" Transmission costs via the DSSRs. The Compliance Filing defines NMB charges as forecasted costs to "include costs for PJM Regional Transmission Enhancement Plan charges, PJM Expansion Cost Recovery, as well as any other FERC-approved PJM transmission charges that will not be reconciled through the Company's Hourly Pricing Default Service Rider." *See* Compliance Filing, Volume III, Exhibit J (Met-Ed Rider R, p. 206; Penelec Rider R, p. 212; Penn Power Default Service Support Rider, p. 62.5; West Penn Default Service Support Rider, p. 37).

The language "as well as any other FERC-approved PJM transmission charges" is extremely broad and too forward-looking. Specifically, under this language, the Companies could decide on a unilateral basis to include a new charge allocated by PJM as a "transmission" charge without any type of PUC approval. Such unilateral decision-making would: (1) deprive parties of their due process rights to argue against the inclusion of such costs; (2) remove such costs from the PUC's oversight; (3) create significant customer confusion if customers are not aware of the Companies' collection of these charges; and (4) cause the possibility of double-collection if a customer's EGS also attempts to collect these costs from a customer on a direct pass-through basis.

Moreover, the broad language in the DSSRs could arguably apply to the NITS charge, as the DSSRs would provide for the collection of "any other FERC-approved transmission

charges" that would not be reconciled through the Companies' Hourly Pricing Default Service Riders. *Id.* (emphasis added). Changes made by the Companies to their Hourly Pricing Default Service Riders underscore this possibility.

By way of example, Met-Ed's⁵ current Rider O provides that customers receiving default service under the Hourly Pricing Default Service Rider (*i.e.*, Rider O) will be billed for usage based upon the following calculation:

Hourly Pricing Service Charges = Hourly Pricing Energy Charges
+ Hourly Pricing Capacity/AEPS/Other Charge
+ Hourly Pricing Administrative Charge
+ **Hourly Pricing Network Integration Transmission Service Charge**
+ Hourly Pricing Reconciliation Charge.

See Metropolitan-Edison Company Tariff, Electric Pa. P.U.C. No. 51, p. 188 (emphasis added).

In addition to the NITS charge being directly within the calculation of the Hourly Pricing Service Charge, Met-Ed's Rider O defines the NITS charge as "representing the costs of Network Integration Transmission Service incurred by the Company as set forth in the PJM Open Access Transmission Tariff and any direct transmission owner charges imposed by PJM as a result of providing Hourly Pricing Service under this tariff." *Id.* at 189. In other words, Met-Ed's current tariff clearly provides that NITS charges are collected by the EDC only from default service customers.

Pursuant to the Companies' Compliance Filing,⁶ however, the formula for determining the charges to be collected from Hourly Pricing Default Service customers has been modified as follows:

⁵ The Companies' Hourly Pricing Default Service Riders are all substantially similar, with the exception of West Penn, with respect to the language regarding the current collection of NITS charges. *See* Met-Ed Rider O; Penelec Rider O; Penn Power Hourly Pricing Default Service Rider. West Penn's Hourly Pricing Rider was modified to be identical to the other Companies' Hourly Pricing Default Service Riders during the instant proceeding. For efficiency purposes, the Industrial Customer Groups will use the language of Met-Ed's Rider O for illustrative purposes.

Hourly Pricing Service Charges = Hourly Pricing Energy Charges
+ Hourly Pricing Capacity/AEPS/Other Charge
+ Hourly Pricing Administrative Charge
+ Hourly Pricing Reconciliation Charge

See Compliance Filing, Volume III, Exhibit I, Met-Ed Rider O, p. 188. In this revised formula, NITS charges have been completely removed. Moreover, the definition of "NITS" has been eliminated altogether from Rider O.⁷ Although removal of the NITS charge from Hourly Pricing Default Service Riders may be explainable by the Companies, *e.g.*, if the charge will be applied by wholesale suppliers instead, it is unclear from the Compliance Filing how the Companies will be collecting NITS costs from non-shopping customers, as well as whether the Companies intend to collect NITS costs from shopping customers.⁸

As part of the Commission's August 16 Order, the PUC specifically reviewed the appropriateness of the collection of NITS costs through the DSSRs, as proposed by the Companies. See August 16 Order, pp. 82-83. As part of this review, the Commission determined that "NITS costs are directly related to the transmission service offered to customers and should continue to be collected by the EGSs instead of being collected for all customers through the DSS Rider as proposed by the Companies." *Id.* at 83.

As noted previously, the Industrial Customer Groups submit that the PUC's August 16 Order intended for the Companies to remove any and all NMB costs from the DSSRs, with the exception of Penn Power's previously approved collection of RTEP, MISO Transmission Expansion, and PJM Integration charges. If, however, the Commission did intend to allow for

⁶ Again, because the language of all of the Companies' Hourly Pricing Default Service Riders is the same for this purpose, the Industrial Customer Groups merely cite to Met-Ed's tariff for ease of reference.

⁷ Because the Companies' redlined version compares the Companies' initially proposed tariff filing in this DSP proceeding with the currently proposed compliance filing tariff, the elimination of NITS from the Hourly Pricing Default Service Rider in use by Met-Ed today does not appear as part of redlined changes to the Rider.

⁸ In addition, even if the Companies do not intend to collect NITS costs via the DSSRs at this time, the broad language of the Compliance Filing would possibly allow for a unilateral decision by the Companies to do so at a later date.

the collection of certain costs through the DSSRs, it is clear that the Commission did not intend to allow for a broad reaching and open-ended collection of all possible transmission costs. Because the Companies' Compliance Filings seem to suggest that any and all other transmission costs would be collected via the DSSRs, the Commission must require modifications to adhere to the Commission's plain language in this proceeding. In addition, because the Commission explicitly did not allow for the collection of NITS costs through the Companies' DSSRs, the Companies must clarify the method of NITS collection and confirm that NITS costs will not be collected via the DSSRs.

C. Assuming *Arguendo* That The Commission Intended To Allow the Companies To Collect Certain NMB Transmission Charges Through the Default Service Support Riders, the Compliance Filing Does Not Clearly Reflect the Commission's Directive To Collect These Costs Based Upon a Customer's Individual One Coincident Peak.

Although the Commission's August 16 Order contains a paragraph indicating that the costs of remaining NMB Transmission charges included within the DSSRs "are to be allocated based upon the one coincident peak allocation methodology," as discussed more fully in Section II.A., *supra*, the Industrial Customer Groups submit that this reference to "remaining NMB transmission charges" was to reflect the current collection by Penn Power of certain previously approved costs. *See* August 16 Order, p.162; *see also* Penn Power Order, p. 20. If, however, the Companies' overly broad interpretation is to be accepted, the PUC's requirement to collect these costs on a 1-CP basis is clear. Unfortunately, FE's Compliance Filing does not ensure such a clear allocation and collection of these costs.

As part of the Companies' original DSP filing, the Companies sought to allocate the costs of the NMB Transmission charges to each customer class based upon the entirety of the customer class's demand during the 1-CP, *i.e.*, the class's contribution to the Network Service

Peak Load. The Companies then sought to collect these costs from customers based upon each customer's individual monthly distribution demand. August 16 Order, p. 70. While the Industrial Customer Groups supported the Companies' allocation to the customer classes, the Industrial Customer Groups opposed the Companies' proposed collection from customers as unjust, unreasonable, and contrary to cost causation principles. Specifically, the Industrial Customer Groups noted that, under the Companies' proposal, NMB Transmission costs would not be based upon an individual customer's transmission obligation, but rather, would be calculated based upon a customer's monthly distribution demand. Such a process would not preserve adequate market signals and result in potential cross-subsidization within the customer class. *Id.* at 76.

Upon review, the Commission rejected the Companies' proposed collection of NMB Transmission charges, and as discussed previously, specifically noted that any such charges should be collected from customers based upon a customer's individual 1-CP methodology. *See* August 16 Order, pp. 77 and 161-62; *see also* Section II.A., *supra* (explaining the Industrial Customer Groups' position with respect to this ordering language).

Unfortunately, the Companies' Compliance Filing does not provide clear language ensuring that the collection of any permitted NMB Transmission costs would occur based upon an individual customer's 1-CP. Rather, the Companies' proposed language, as part of its DSSRs, notes that "the kW under this rider shall be the Network Service Peak Load ("NSPL"), as calculated by the Company in accordance with PJM rules and requirements." *See* Compliance Filing, Volume III, Exhibit J (Met-Ed Rider R, p. 203; Penelec Rider R, p. 209; Penn Power Company Default Service Support Rider, p. 62.1; West Penn Default Service Support Rider, p. 39). Similarly, under the NMB subsection of this portion of the tariff, the NMB Rates for the

Large Commercial and Industrial Customer ("C&I") Groups are listed as "dollar per kW NSPL." *Id.* at 208; 214; 62.5A; 37.

In other words, the Companies' proposed tariff language could be construed to suggest that the Companies will not be billing Large C&I customers on an individual customer 1-CP basis, but rather, on the same customer class average basis (*i.e.*, the Network Service Peak Load). Because such a cost collection raises the same significant issues involving market price signals and intra-class subsidization raised by the Industrial Customer Groups, the Companies' proposed Compliance Filing must be rejected, and the Companies must be required to revise these provisions (assuming *arguendo* that the collection of such NMB Transmission charges is appropriate) to ensure these costs are collected on an individual customer 1-CP basis, consistent with the Commission's express directive.

In the event that the Companies' Compliance Filing is intended to allocate costs as intended by the Commission's August 16 Order, the language of the proposed DSSRs is not clear. As such, at a very minimum, the Companies must be required to modify their proposed tariff language to avoid any customer confusion upon implementation of these tariff provisions so that it is clear that the customers will be charged based on their individual contribution to the Network Service Peak Load (*i.e.*, 1-CP basis).

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 adopt the foregoing Comments and require the Companies to modify their Compliance Filing consistent with the recommendations set forth herein.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

Susan E. Bruce (Pa. I.D. No. 80146)
Charis Mincavage (Pa. I.D. No. 82039)
Vasiliki Karandrikas (Pa. I.D. No. 89711)
Teresa K. Schmittberger (Pa. I.D. No. 311082)
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
717.232.8000 (p)

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

Dated: September 17, 2012



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

November 8, 2012

Docket No. P-2011-2273650
P-2011-2273668
P-2011-2273669
P-2011-2273670

RICHARD D'ANGELO
MANAGER RATES & REGULATORY AFFAIRS
FIRST ENERGY
2800 POTTSVILLE PIKE
PO BOX 16001
READING PA 19612-6001

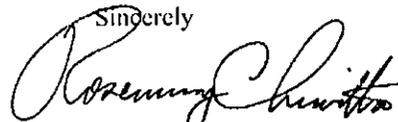
Re: Revised Default Service Plan Compliance Filing;
Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and
West Penn Power Company

Dear Mr. D' Angelo:

On September 6, 2012, Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power), and West Penn Power Company (West Penn; and collectively the Companies) filed a revised default service plan in compliance with the Commission's Opinion and Order at the above docketed case, entered August 16, 2012. In addition, and also consistent with the Commission's Opinion and Order, Met-Ed filed Supplement No. 1 to Tariff Electric -Pa. P.U.C. No. S-1 to become effective on June 1, 2013, Penelec filed Supplement No. 1 to Tariff Electric -Pa. P.U.C. No. S-1 to become effective on June 1, 2013, Penn Power filed Supplement No. 1 to Tariff Electric -Pa. P.U.C. No. S-3 to become effective on June 1, 2013 and West Penn filed Supplement No. 3 to Tariff Electric -Pa. P.U.C. No.2 S to become effective on June 1, 2013.

Commission Staff has reviewed the revised default service plan and tariff revisions and found that suspension or further investigation does not appear warranted at this time. Therefore, in accordance with 52 Pa. Code, the revised default service plan is approved and the supplements will become effective by operation of law according to the effective dates. However, this is without prejudice to any formal complaints timely filed against said tariff revisions.

If you have any questions in this matter, please contact Marissa Boyle, Bureau of Technical Utility Services, at 717-787-7237 or maboyle@pa.gov.

Sincerely

Rosemary Chiavetta
Secretary

cc: ALL PARTIES OF RECORD

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).

VIA E-MAIL AND FIRST-CLASS MAIL

Charles Shields
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commerce Keystone Building
400 North Street, 2nd Floor
P.O. Box 3265
Harrisburg, PA 17105-3265
chshields@pa.gov
sgranger@pa.gov

Daniel G. Asmus
Assistant Small Business Advocate
Office of Small Business Advocate
1102 Commerce Building
300 North Second Street
Harrisburg, PA 17101
dasmus@pa.gov

Darryl A. Lawrence
Aron J. Beatty
Tanya J. McCloskey
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Forum Place
Harrisburg, PA 17101
dlawrence@paoca.org
abeatty@paoca.org
tmccloskey@paoca.org
eshoen@paoca.org

Bradley A. Bingaman
Tori L. Giesler
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001
bbingaman@firstenergycorp.com
tgiesler@firstenergycorp.com

Thomas P. Gadsden
Kenneth M. Kulak
Anthony D. DeCusatis
Catherine G. Vasudevan
Morgan Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
tgadsden@morganlewis.com
kkulak@morganlewis.com
adecusatis@morganlewis.com
cvasudevan@morganlewis.com

Daniel Clearfield
Jeffrey J. Norton
Deanne M. O'Dell
Carl R. Shultz
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
dclearfield@eckertseamans.com
jnorton@eckertseamans.com
dodell@eckertseamans.com
cshultz@eckertseamans.com

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

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Amy Hamilton
Exelon Business Services Co., LLC
300 Exelon Way
Kennett Square, PA 19348
amy.hamilton@exeloncorp.com

Amy M. Klodowski
First Energy Solutions Corp.
800 Cabin Hill Drive
Greensburg, PA 15601
aklodow@firstenergycorp.com

Todd S. Stewart
Hawke McKeon & Sniscak LLP
100 North 10th Street
P.O. Box 1778
Harrisburg, PA 17105
tsstewart@hmslegal.com

Michael A. Gruin
Stevens & Lee
17 North Second Street, 16th Floor
Harrisburg, PA 17101
mag@stevenslee.com
lre@stevenslee.com

Thomas T. Niesen
Charles E. Thomas, III
Thomas, Long, Niesen & Kennard
212 Locust Street
PO Box 9500
Harrisburg, PA 17108
tniesen@thomaslonglaw.com
cet3@thomaslonglaw.com

Benjamin L. Willey
Law Offices of Benjamin L. Willey
7272 Wisconsin Avenue, Suite 300
Bethesda, MD 20814
blw@bwilleylaw.com
ssp@bwilleylaw.com

Brian J. Knipe
Buchanan Ingersoll & Rooney, PC
17 North Second Street, 15th Floor
Harrisburg, PA 17101
brian.knipe@bipc.com

Trevor D. Stiles
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202
tstiles@foley.com
tmullooly@foley.com

Divesh Gupta
Constellation Energy
100 Constellation Way, Suite 500C
Baltimore, MD 21202
divesh.gupta@constellation.com
david.fein@constellation.com

Matthew I. Kahal
Steven L. Estomin
Exeter Associates, Inc.
10480 Little Patuxent Parkway, Suite 300
Columbia, MD 21044
mkahal@exeterassociates.com
sestomin@exeterassociates.com

Patrick M. Cicero
Harry S. Geller
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pciceropulp@palegalaid.net
hgellerpulp@palegalaid.net

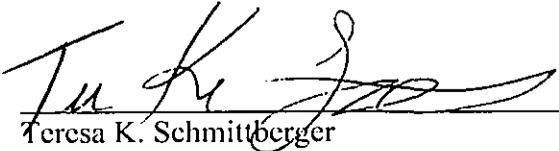
Robert D. Knecht
Industrial Economics Incorporated
2067 Massachusetts Avenue
Cambridge, MA 02140
rdk@indecon.com

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Thomas J. Sniscak
William E. Lehman
Hawke McKeon & Sniscak LLP
100 North Tenth Street
PO Box 1778
Harrisburg, PA 17105
tjsniscak@hmslegal.com
welchman@hmslegal.com
jlcris@aol.com



Teresa K. Schmittberger

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

Dated this 19th day of November, 2012, at Harrisburg, Pennsylvania