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March 4, 2013

VIA eFILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

**Re: Joint Petition Of Metropolitan Edison Company, Pennsylvania Electric Company,
 Pennsylvania Power Company and West Penn Power Company For Approval Of Their
 Default Service Programs
 Docket No. P-2011-2273650, Docket No. P-2011-2273668,
 Docket No. P-2011-2273669 and Docket No. P-2011-2273670**

Dear Secretary Chiavetta:

Enclosed for filing is the **Petition for Clarification or Reconsideration of the Commission's Order Entered February 15, 2013** (the "Petition") in the above-captioned proceeding.

As indicated on the enclosed Certificate of Service, copies of the Petition are being served on all active parties and the presiding Administrative Law Judge.

Very truly yours,


Anthony C. DeCusatis

ACD/tp
Enclosures

c: Per Certificate of Service

**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	:	

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served copies of the **Petition for Clarification or Reconsideration of the Commission's Order Entered February 15, 2013** upon the following persons, in the matter specified below, in accordance with the requirements of 52 Pa. Code § 1.54:

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Dated: March 4, 2013

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PETITION FOR CLARIFICATION OR RECONSIDERATION
OF THE COMMISSION’S ORDER ENTERED FEBRUARY 15, 2013**

I. INTRODUCTION AND OVERVIEW

Pursuant to 52 Pa. Code §§ 5.41 and 5.572, Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”) and West Penn Power Company (“West Penn”) (each individually a “Company” and, collectively, the “Companies”) request that the Pennsylvania Public Utility Commission (“PUC” or the “Commission”):

- (1) Clarify or reconsider, as applicable, its order entered February 15, 2013 (“February 15 Order”) to affirmatively approve the Revised Customer Referral Program Agreement, excluding Appendix B to that Agreement, to be entered into between the Companies and the electric generation suppliers (“EGSs”) that will participate in the Customer Referral Program;¹ and

¹ The Revised Customer Referral Program Agreement was submitted as Exhibit I to the Companies’ Revised Default Service Plan – Retail Market Enhancement Programs (hereafter, “Revised Default Service Plan – RME Programs”), which was filed with the Commission on November 14, 2012, pursuant to the Opinion and Order of the Commission entered August 16, 2012 in the above-captioned matter (hereafter, the “August 16 Order”).

(2) Clarify the February 15 Order by affirming that the date by which the Companies are required to submit modifications to their Revised DSP -- RME Programs to conform to the February 15 Order is “within sixty (60) days of the date of entry of [the February 15 Order],” (i.e., by April 16, 2013) as stated in Ordering Paragraph 2 thereof, and that Ordering Paragraph 2 supersedes the timeline for a “compliance filing” referenced in the Motion of Commissioner James H. Cawley, which was a precursor to the February 15 Order.

II. BACKGROUND

1. On November 17, 2011, the Companies filed a Joint Petition (“Joint Petition”) requesting that the Commission approve their proposed Default Service Plans (“DSPs”) and find that such DSPs satisfy the criteria set forth in 66 Pa.C.S § 2807(e)(3.7). The Companies’ DSPs contained all of the elements required by the Commission’s default service regulations (52 Pa. Code §§ 54.181 – 54.189). In addition, the DSPs contained the Companies’ proposed Retail Opt-In (“ROI”) and Customer Referral Programs (collectively, “Market Enhancement Programs”).²

2. The element of the Market Enhancement Programs set forth in the DSPs that is relevant to this Petition was the Companies’ proposal that EGSs participating in the ROI and Customer Referral Programs enter into, respectively, an Opt-In Aggregation Agreement and a Customer Referral Program Agreement (Companies’ Ex. CVF-10 and CVF-11). Each

² The Market Enhancement Programs were proposed on the basis of the Commission’s recommendations in its Tentative Order entered on October 14, 2011 in *Investigation of Pennsylvania’s Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952. Thereafter, on March 2, 2012, the Commission entered its Final Order in that proceeding, which altered some of the guidance and recommendations that the Commission had tentatively offered in the Tentative Order. See *Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 2, 2012). Accordingly, after the Companies had filed the Joint Petition and their accompanying direct testimony, they revised their proposed Market Enhancement Programs to reflect the modifications that the Final Order made to the Commission’s prior, tentative guidance and recommendations on retail market enhancement programs.

Agreement sets forth terms establishing the respective programs and defining the relationship of the Companies to EGSs participating in the respective programs. Appendix B to each Agreement consisted of a form Consumer Contract and Disclosure Statement that the Companies also proposed be entered into between each participating EGS and the customers they would serve under each of the Market Enhancement Programs. *Id.*

3. A witness on behalf of the Retail Energy Supply Association (“RESA”) submitted testimony opposing the Opt-In Aggregation Agreement (*see* RESA Sts. 2, pp. 24-25, and 2-SR, pp. 10-12), and RESA voiced similar opposition in its Main Brief (pp. 65-66) to the Administrative Law Judge (“ALJ”).³ However, RESA did not address, either in testimony or in its briefs, the Companies’ proposed Customer Referral Program Agreements.

4. In her Recommended Decision issued on June 15, 2012, the ALJ rejected RESA’s position concerning the proposed Opt-In Aggregation Agreements, finding that “uniform terms and conditions of service are essential” and recommending that the Companies’ proposed form Agreements “be approved for use in the Retail Opt-in Aggregation Program.” Recommended Decision, pp. 109-110. The ALJ did not explicitly address the proposed Customer Referral Program Agreements because no party had opposed them. She did, however, approve the Company’s Customer Referral Program in all respects material to this Petition. *See* Recommended Decision, pp. 118-132.

5. RESA took exception to the portion of the Recommended Decision rejecting its position that the Opt-In Aggregation Agreements should be eliminated from the Companies’ ROI Program. RESA Exceptions, p. 38. However, RESA did not take exception to the Customer

³ RESA did not address the issue in its Reply Brief.

Referral Program Agreements. Instead, in footnote 118 of its Exceptions, RESA asserted that the ALJ “did not recommend” adoption of the Companies’ Customer Referral Program Agreements. RESA Exceptions, p. 39. In their Reply to RESA’s Exceptions, the Companies responded to footnote 118 by explaining that RESA’s claim was inaccurate because: (1) the ALJ had recommended approval of the Companies’ proposed Customer Referral Program; (2) the Customer Referral Program Agreements were an integral part of that program; and (3) there was no need for the ALJ to write separately about, or to separately and explicitly approve, the Customer Referral Program Agreements because no one – including RESA – had objected to them. *See* Companies’ Reply to Exceptions, p. 39.

6. In the August 16 Order (p. 124), the Commission granted RESA’s Exception regarding the Opt-In Aggregation Program Agreement, stating: “We are persuaded by the arguments of RESA not to require all winning EGSs to sign the Companies’ proposed Opt-In Aggregation Agreement, which includes a Consumer Contract and Disclosure Statement.” However, the August 16 Order did not address RESA’s similar concerns with the Customer Referral Program Agreement and, as a consequence, the ALJ’s recommendation approving, *inter alia*, that aspect of the Customer Referral Program was implicitly adopted. *See* Ordering Paragraph 10: “That the Recommended Decision of Administrative Law Judge Elizabeth H. Barnes, issued June 15, 2012, is adopted as modified by this Opinion and Order.”

7. On November 14, 2012, the Companies filed with the Commission and served on the parties to this case their Revised Default Service Plan – RME Programs. In compliance with the August 16 Order, the Companies’ Revised Default Service Plan – RME Programs did not include an Opt-In Aggregation Program Agreement. However, because it is essential that the terms of such a program and the terms of the relationship between the Companies and

participating EGS be set forth with specificity, the Companies' Revised Default Service Plan – RME Programs included, as Exhibit A, a Revised Opt-In Aggregation Program Plan. The Revised Opt-In Aggregation Program Plan sets forth in detail the processes and procedures for implementing the ROI Program and the duties and obligations of the Companies and participating EGSs.

8. With regard to its Revised Customer Referral Program, the Companies' included in the Revised Default Service Plan – RME Program a Customer Referral Program Agreement that was modified to reflect the specific changes to the Customer Referral Program that the Commission approved in the August 16 Order. In all other respects, the Customer Referral Program Agreement was similar to the one submitted with the Companies' DSP. Based upon the prior procedural history and the relevant portions of the Recommended Decision and the August 16 Order summarized above, the Companies determined that submitting their proposed Customer Referral Program Agreement as part of the Revised Default Service Plan – RME Programs was necessary and appropriate.

9. By its Secretarial Letter issued on November 20, 2012, the Commission established December 10 and 20, 2012 as the dates for interested parties to submit comments and reply comments addressed to the Revised Default Service Plan – RME Programs. Several parties filed comments including RESA, which, among other things, opposed using the form of Consumer Contract and Disclosure Statement (i.e., the agreement between a participating EGS and the customers it would serve) set forth as Appendix B to the Companies' Customer Referral Program Agreement. RESA Comments, pp. 15-17. RESA did not expressly address the Customer Referral Agreement itself, which, as previously explained, defines the relationship

between the Companies and participating EGSs. The Companies filed a Reply to RESA's Comments in which they opposed RESA's position.⁴

III. REQUEST FOR CLARIFICATION OR RECONSIDERATION REGARDING THE COMPANIES' CUSTOMER REFERRAL PROGRAM AGREEMENTS

10. In the February 15 Order, the Commission considered RESA's comments and ruled that "an EGS can use their (sic.) own contract and disclosure statement while participating in the Standard Offer/CRP and is not required to utilize FirstEnergy's form of Consumer Contract and Disclosure Form." *Id.* at 10. Accordingly, the Commission directed the Companies to "remove the requirement from the RME Programs that EGSs participating in the Standard Offer/CRP must utilize FirstEnergy's form of Consumer Contract and Disclosure Statement."

A. Clarification

11. As previously explained, the Companies' proposed Consumer Contract and Disclosure Statement is Appendix B to the Customer Referral Program Agreement, i.e., a stand-alone document that is separate from the Customer Referral Program Agreement. Moreover, the Consumer Contract and Disclosure Statement was designed to set forth standard terms and conditions governing the relationship of EGSs participating in the Customer Referral Program and the customers they serve. The Customer Referral Program Agreement, on the other hand, was designed to delineate the elements of the Customer Referral Program and to define the

⁴ Specifically, RESA's contention that the ALJ had "ruled against requiring EGSs to use [the Companies'] form of standard contract and the Company never challenged that ruling" (RESA Comments, p. 16) was not correct, erroneously relied upon the ALJ's "ruling" on an entirely different issue, and neglected to mention RESA's acquiescence to the Companies' position in its testimony and briefs to the ALJ. *See* Companies' Reply Comments, pp. 23-24.

duties and obligations of the EGSs and Companies, as participants in and sponsors of, respectively, of the Customer Referral Program.

12. The February 15 Order disapproved the Companies' proposal to require participating EGSs to use the form of Consumer Contract and Disclosure Statement provided as Appendix B to the Customer Referral Program Agreement, and the Companies do not seek clarification or reconsideration of that holding. However, it does not appear that the February 15 Order disapproved the Companies' proposal to require EGSs to execute the Customer Referral Program Agreement, exclusive of Appendix B. In fact, the detailed processes and procedures for implementing the Customer Referral Program, including delineating the duties and obligations of the Companies and participating EGSs with respect to each element of the program, must be set forth in a document that binds the Companies and participating EGSs and has the Commission's approval.⁵ The Customer Referral Program Agreement meets those criteria. Nonetheless, it is possible that other parties could take a different view. Rather than ignoring the possibility for future controversy, the Companies hereby request that the Commission clarify the February 15 Order by affirming that the Customer Referral Program Agreement, from which Appendix B is excised, is approved and should be signed by the Companies and each EGS that participates in the Customer Referral Program.

B. Reconsideration

13. If the Commission concludes that the February 15 Order did not approve the Companies' use of the Customer Referral Program Agreements exclusive of Appendix B, and,

⁵ The Companies' Supplier Tariffs are not designed or intended to articulate and explain the numerous terms and conditions of the Customer Referral Program or any other Market Enhancement Program.

therefore, it cannot, by clarification, grant the affirmation the Companies request, then the Commission should reconsider that aspect of the Order.

14. As explained in Paragraph Nos. 11 and 12, above, it is critical that the processes and procedures for administering the Customer Referral Program, including a clear statement of the Companies' and participating EGSs' duties and obligations, be set forth in a binding document that the Commission has approved. The best means available to achieve that goal is the Customer Referral Program Agreement, excluding the now disapproved Appendix B. Accordingly, if the Commission does not affirm that the February 15 Order already approved the use of the Customer Referral Program Agreement, excluding Appendix B, then it should grant reconsideration and amend the February 15 Order to grant such approval.

IV. THE COMPANIES' REQUEST FOR CLARIFICATION AND/OR RECONSIDERATION SATISFIES THE APPLICABLE LEGAL STANDARD

15. This Commission has previously held that the standards for determining whether clarification or reconsideration is warranted are substantially similar and are set forth in *Duick v. Pa. Gas and Water Co.*, 56 Pa. P.U.C. 553 (1982):

The OCA's Petition was filed pursuant to 52 Pa. Code § 5.572, Petitions for Relief. This regulation encompasses "Petitions for Clarification," and, as with Petitions for Reconsideration, these are decided by the application of the standards set forth in *Duick v. Pennsylvania Gas and Water Co.*, Docket No. C-R0597001 *et al.*, 56 Pa. P.U.C. 553, 559 (1982) n1. Under the standards set forth in *Duick*, a Petition for Reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise "new and novel arguments" not previously heard or considerations that appear to have been overlooked or not addressed by the Commission. *Duick* at 559.

Application of PPL Elec. Util. Corp., Docket Nos. A-2009-2082652 et al., 2010 Pa. PUC LEXIS 1707 at 3-4 (Order entered April 22, 2010). See also *Energy Efficiency and Conservation Program*, Docket Nos. M-2008-2069887, 2009 Pa. PUC LEXIS 1158 at 3-4 (Order entered June 2, 2009).

16. For the reasons set forth in Section III, above, the Commission, applying the legal standard summarized in Paragraph 15, should grant the Companies' request for clarification and/or reconsideration. As previously explained, the Companies believe that the February 15 Order disapproved only the Companies' proposal to require the use of a standard Consumer Contract and Disclosure Statement (i.e., Appendix B to the Customer Referral Program Agreement) and did not disapprove the Companies' proposal to require EGSs to enter into the Customer Referral Program Agreement itself. However, the February 15 Order may not have set forth that determination with sufficient specificity to forestall possible future controversy and, for that reason, the Commission should issue an Order affirming its approval of the Customer Referral Program Agreement exclusive of Appendix B thereto.

17. Furthermore, if the Commission determines that it is unable to grant the clarification that the Companies request, then reconsideration is necessary and appropriate. It is clear from the February 15 Order that, in considering RESA's Comments and the Companies' Reply, the Commission focused upon the proposed Consumer Contract and Disclosure Statement to be entered into between EGS participants and the customers they serve. In so doing the Commission may have overlooked the need for a document that, with the Commission's prior approval, sets forth the processes and procedures for implementing the Customer Referral Program and defines the respective roles of the Companies and EGSs participating in that

program. The Commission can rectify that deficiency by granting reconsideration and approving the Customer Referral Program Agreements, exclusive of Appendix B.

V. THE COMPANIES' REQUEST FOR CLARIFICATION – DEADLINE FOR SUBMITTING MODIFICATIONS TO THE REVISED DEFAULT SERVICE PLAN – RME PROGRAMS

18. At the public meeting of the Commission held on February 14, 2013, Commissioner Cawley offered a Motion dealing with only one aspect of the ROI Program. Specifically, Commissioner Cawley moved that the Commission find that the “8-month fixed price” to be offered by EGSs participating in the ROI Program should be provided to enrolled customers of an EGS “at least 45 days prior to taking effect” and that those prices should be “submitted to the Commission no later than forty-five (45) days before offers are extended to [EGSs] customers.” The Motion further provided that the Companies should file a “compliance filing” “within 30 days,” but did not specify the starting point for that thirty-day period.

19. Commissioner Cawley’s Motion was unanimously adopted. The substantive terms of that Motion were ultimately incorporated in the February 15 Order which required the Companies to make several modifications to the Revised Default Service Plan – RME Programs in addition to the one identified by Commissioner Cawley. Ordering Paragraph 2 of the February 15 Order provides a specific, calculable date by which the Companies must comply with that Order: “A revised Default Service Plan Retail Market Enhancement Program incorporating these modifications is to be filed with the Commission within sixty (60) days of the date of entry of this Opinion and Order.”

20. The Companies ask the Commission to affirm that the timeline specified in the February 15 Order supersedes the compliance filing timeline referenced in Commissioner

Cawley's Motion and, therefore, the Companies may file a comprehensive set of modifications to their Revised Default Service Plan – RME Programs “within sixty (60) days of the date of entry” of the February 15 Order, or by April 16, 2013. This appears to be what the Commission intended and will avoid the needless complexity and possibility for confusion that could result from the piecemeal submission of modifications. Therefore, it is important that the Commission affirm that the sixty-day deadline in the February 15 Order is the one that applies to the submission of all modifications to the Companies' Revised Default Service Plan – RME Programs.

VI. CONCLUSION

WHEREFORE, for the foregoing reasons, the Commission should grant this Petition and should: (1) either clarify or reconsider its February 15 Order to affirm its prior approval, or to grant approval, of the Companies' proposed Customer Referral Program Agreements; and (2) grant further clarification of the February 15 Order to affirm that the deadline for submitting modifications to the Revised Default Service Plan – RME Programs set forth in Ordering

Paragraph 2 of that Order supersedes any inconsistent timelines suggested in Commissioner Cawley's Motion adopted at the February 14, 2013 public meeting.

Respectfully Submitted



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Dated: March 4, 2013