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March 4, 2013

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

VIA ELECTRONIC FILING

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 of the Petition for Clarification and/or Reconsideration of the Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), the Penn Power Users Group ("PPUG"), and the 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. Thank you.

Sincerely,

McNEES WALLACE & NURICK LLC

By 
Teresa K. Schmittberger

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

TKS/sar

c: Administrative Law Judge Elizabeth H. Barnes (via e-mail and First Class Mail)
Certificate of Service

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CERTIFICATE OF SERVICE

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

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Dated this 4th day of March, 2013, at Harrisburg, Pennsylvania

**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	:	

**PETITION FOR CLARIFICATION AND/OR RECONSIDERATION OF THE
MET-ED INDUSTRIAL USERS GROUP, PENELEC INDUSTRIAL
CUSTOMER ALLIANCE, PENN POWER USERS GROUP, AND
WEST PENN POWER INDUSTRIAL INTERVENORS**

Pursuant to Sections 703(f) and (g) of the Pennsylvania Public Utility Code, and Section 5.572 of the Pennsylvania Public Utility Commission's ("PUC" or Commission") regulations, 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") file this Petition for Clarification and/or Reconsideration of the Opinion and Order of the Commission entered February 15, 2013, in the above-captioned proceeding ("Revised DSP Order"). 66 Pa. C.S. §§ 703(f)-(g); 52 Pa. Code § 5.572.

I. INTRODUCTION

1. On November 17, 2011, Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power"), and West Penn Power Company ("West Penn") (collectively, the "Companies") filed with the Commission a Joint Petition for Approval of their Default Service Programs ("DSPs"). *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West*

Penn Power Company for Approval of Their Default Service Programs; Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 (Nov. 17, 2011) (hereinafter, "Nov. 17, 2011, Petition"). The Industrial Customer Groups filed a Petition to Intervene and Answer on December 19, 2011, and the Industrial Customer Groups actively participated in this proceeding, which included evidentiary hearings and the filing of briefs.

2. On August 16, 2012, the Commission issued an Opinion and Order approving certain aspects of the Companies' DSPs, but directing the parties to convene a collaborative to, *inter alia*, develop a proposal "regarding how EGSs will pay for the Standard Offer Customer Referral Program and the redesigned ROI Aggregation Program."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, P-2011-2273668, P-2011-2273669, P-2011-2273670, Opinion and Order (Aug. 16, 2012) (hereinafter, "Original DSP Order").

3. Following several collaborative meetings among stakeholders related to RME cost recovery and program design, the Companies submitted their revised DSPs to the Commission on November 14, 2012 ("Revised DSPs"). In response to the Revised DSPs, the Retail Energy Supply Association ("RESA"); Dominion Retail, Inc. ("Dominion"); Washington Gas Energy Services ("WGES"); FirstEnergy Solutions Corp. ("FES"); the Office of Consumer Advocate ("OCA"); and the Office of Small Business Advocate ("OSBA") filed Comments and/or Reply Comments. In addition, the Industrial Customer Groups filed Reply Comments in response to the request of RESA to impose equal cost sharing for RME programs on both EGSs

¹ The Standard Offer Customer Referral Program and ROI Aggregation Program will be referred to jointly throughout the instant Petition as "Retail Market Enhancement ("RME") programs."

and "distribution customers."² The Industrial Customer Groups' Reply Comments supported the Revised DSP's proposal to allocate all RME program costs to EGSs or, alternatively, proposed that any collection of RME program costs from customers must exclude customers ineligible to participate in such programs, specifically Large Commercial and Industrial ("C&I") customers. Industrial Customer Group Reply Comments, pp. 4-5.

4. On February 15, 2013, the Commission issued the Revised DSP Order approving the Companies' Revised DSPs with certain modifications. With regards to cost recovery for RME programs, the Commission denied the Companies' original proposal and determined that a "reasonable accommodation of all the party's positions should be incorporated into this resolution." Revised DSP Order, p. 14. To that end, the Commission developed the following cost recovery methodologies for the Companies' RME programs:

As to the Opt-In Aggregation Program, we agree with RESA that a fee of the lesser of one dollar per assigned customer or actual program costs to EGS participants is appropriate. Any remaining costs should be recovered in either one of two ways: (1) through a non-bypassable surcharge, as proposed by RESA; or (2) shared with fifty percent from the purchase of receivables (POR) discount and fifty percent from residential and small commercial default service customers.

As to the CRP, we agree with RESA that a fee of the lesser of thirty dollars per customer or actual costs per referred customer is appropriate. Any remaining costs should be recovered in either one of two ways: (1) through a non-bypassable surcharge, as proposed by RESA; or (2) shared with fifty percent from the POR discount and fifty percent from residential and small commercial default service customers.

² *Reply Comments of the Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group, and West Penn Power Industrial Intervenors* (Dec. 20, 2012) (hereinafter, "Industrial Customer Group Reply Comments"); see also *Retail Electric Supply Association Comments to Revised Default Service Plan Retail Market Enhancement Programs* (Dec. 10, 2012), p. 7 (hereinafter, "RESA Comments").

Revised DSP Order, p. 14. The Commission's resolution bifurcates RME program cost recovery into two phases. The first phase allows the Companies to recover a fixed fee from EGSs, while the second phase provides options for recovering additional RME program costs. The second phase authorizes the Companies to split recovery of RME program costs in excess of the applicable fixed fee, with 50% allocated to EGSs and 50% allocated to residential and small commercial customers. *Id.* Alternatively, the second phase also allows the Companies to choose a "non-bypassable surcharge, as proposed by RESA" for recovery of RME program costs over the applicable fixed fee. *Id.*

5. The Industrial Customer Groups are concerned that the language authorizing the Companies to implement a non-bypassable surcharge based on RESA's proposals in this proceeding may be unclear and could lead to the recovery of these costs from Large C&I customers. Although the record in this proceeding indicates that RESA proposed a non-bypassable surcharge applicable only to customers eligible to participate in the Companies' RME programs, the Commission's reference to RESA's proposal fails to explicitly acknowledge this limitation. Without a clear determination as to the applicability of the non-bypassable surcharge, the Revised DSP Order may result in RME program charges to customers that are ineligible to participate in the programs, such as Large C&I customers.

6. Because of the issues noted above, and for reasons discussed more fully herein, the Industrial Customer Groups respectfully submit this Petition for Clarification and/or Reconsideration of the Revised DSP Order.

II. LEGAL STANDARDS

7. Section 703(g) of the Public Utility Code authorizes the Commission to reopen the record in a proceeding to clarify or reconsider a prior Order. *See* 66 Pa. C.S. § 703(g). Similarly, Section 5.572 of the Commission's Regulations sets for the procedures for petitioning for clarification or reconsideration of a Commission Order.

8. The Commission further enumerated its standard for clarifying or reconsidering orders in *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559 (1982). In pertinent part, the Commission stated that a "petition for reconsideration, under the provisions of 66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part," and that the Commission "expect[s] to see raised in such petitions... new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission." *Duick*, 56 Pa. P.U.C. at 559. Although *Duick* addressed a petition for reconsideration, the Commission subsequently held that "a petition for clarification must meet the same standard as a petition for reconsideration." *Petition of PECO Energy Company for Approval of its Revised Electric Purchase of Receivables Program (Office of Small Business Advocate Petition for Clarification of 06/18/10 Commission Order)*; Opinion and Order, Docket No. P-2009-2143607, 2010 WL 3418419 (Pa.P.U.C. Aug. 24, 2010).

9. In this instance, the Revised DSP Order does not explicitly state whether the authorized "non-bypassable" charge should apply to Large C&I customers. Moreover, if the Commission does intend for this non-bypassable charge to apply to Large C&I customers, the Revised DSP Order fails to address why Large C&I customers should remit costs for programs in which they are unable to participate. In other words, the aforementioned concerns may have

been inadvertently overlooked by the Commission, and this Petition seeks amendment of the Revised DSP Order by the PUC in order to address and clarify this argument. Therefore, the Industrial Customer Groups submit that the standards of *Duick* have been satisfied, as applicable to petitions for clarification and petitions for reconsideration.

10. As such, the Industrial Customer Groups respectfully request that the Commission exercise its discretion to grant this Petition for Clarification and/or Reconsideration and amend the Revised DSP Order as necessary to: (1) clarify that the Revised DSP Order authorizes recovery of RME program costs, including costs recovered through a non-bypassable surcharge, only from customers eligible to participate in the programs; or (2) reconsider the Revised DSP Order to ensure that RME program costs, including costs recovered through a non-bypassable surcharge, are recovered only from the residential and small commercial customers eligible to participate in the RME programs. The Industrial Customer Groups also reserve the right to pursue an appeal of any and all issues previously raised in its briefs, regardless of whether those items are discussed herein.

III. ARGUMENT

A. **The Commission Should Clarify Its Revised DSP Order to Confirm that Any Recovery of RME Program Costs from Customers Must Be Limited to Only Those Customers Eligible to Participate in the RME Programs.**

11. The language of the Revised DSP Order could raise questions with respect to the PUC's intent as it pertains to cost recovery of the Companies' RME programs. As described more fully in Paragraph 4, *supra*, the Commission developed a two-phase methodology for recovering RME program costs reflecting elements of proposals from various parties. Revised DSP Order, p. 14. The first phase authorizes the Companies to recover a maximum per customer charge from EGSs. *Id.* For the Opt-In program, the Companies may charge EGSs participating

in the program up to \$1/customer. For the Standard Offer program, the Companies may charge EGSs up to \$30/customer. *Id.*

12. For the second phase, the Commission adopts the same methodology for both programs. If the Companies' costs exceed the applicable maximum per customer fee, the Companies may recover additional costs through either: (1) a non-bypassable surcharge; or (2) a 50% shared allocation between a Purchase of Receivable ("POR") Discount and residential and small commercial customers. *Id.*

13. Of concern to the Industrial Customer Groups, the Commission's proposed cost recovery method includes the potential for recovery of RME program costs through a non-bypassable surcharge, but fails to explicitly limit application of the surcharge to residential and small commercial customers.³ Rather, the Revised DSP Order notes only that the non-bypassable surcharge should be approved "as proposed by RESA." Revised DSP Order, p. 14. Importantly, the record in this proceeding demonstrates that the non-bypassable surcharge proposed by RESA was not intended to be applied to Large C&I customers because these customers are ineligible to participate in the RME programs and have achieved significant shopping levels. In order to ensure, however, that these costs are collected correctly, the Industrial Customer Groups submit that the PUC must clarify this language to note that the "non-bypassable" charge is non-bypassable only as applicable to shopping and non-shopping residential and small commercial customers.

14. While parties have expressed various opinions regarding the appropriate structure for recovery of the Companies' RME program costs, no party, including RESA, disputes that

³ Although this Petition for Clarification and/or Reconsideration addresses the Revised DSP Order's failure to exclude Large C&I customers from recovery of RME program costs, the Industrial Customer Groups continue to concur with the OCA's assessment that all RME program costs are appropriately recovered from EGSs. See Industrial Customer Group Reply Comments, p. 4.

Large C&I customers cannot participate in the Companies' RME programs and therefore should not pay costs associated with such programs. Specifically, RESA's witness explained:

RESA believes that the best approach would be for the costs of the auction and other retain market enhancements to be recovered either through the MAC, paid only by default service customers. If the MAC is not adopted, then the costs should be recovered or through a non-bypassable charge applied to all such as the DSS, which would be applied to all customers in the *eligible* customer class.⁴

Surrebuttal Testimony of Christopher Kallaher, RESA Statement No. 2-SR (hereinafter, "RESA St. No. 2-SR"), p. 21. (emphasis added). This eligibility requirement is further reiterated by RESA's witness specifically with respect to the Standard Offer program: "the costs of this program should be recovered from the proceeds of the MAC or from a non-bypassable charge on all *affected* distribution customers." RESA St. No. 2-SR, p. 27 (emphasis added).

15. Despite the unrebutted and uncontested record evidence establishing that Large C&I customers are ineligible for the Companies' RME programs and appropriately excluded from any recovery of such costs, the Revised DSP Order does not clearly exclude Large C&I customers from the non-bypassable charge authorized therein, but rather, simply provides only that the Companies may opt to recover certain RME program costs through a non-bypassable charge, as proposed by RESA.

16. Because the Revised DSP Order does not specifically exempt Large C&I customers from the non-bypassable surcharge, RME program costs could be unjustly and unreasonably allocated to Large C&I customers, who would not receive any of the accompanying benefits of the programs. The Industrial Customer Groups submit that RESA's proposed non-bypassable recovery of RME program costs was limited to eligible customer

⁴ The MAC was ultimately rejected as part of the Commission's Original DSP Order issued August 16, 2012. Original DSP Order, p. 62.

classes, *i.e.*, residential and small commercial customers. *See* RESA St. No 2-SR, pp. 21 and 27. By adopting the non-bypassable surcharge as proposed by RESA, the Revised DSP Order appears to implicitly exempt Large C&I customers from the surcharge; however, to avoid unjust and unreasonable charges to Large C&I customers, the Commission should explicitly confirm that RME program costs should not be recovered from Large C&I customers.

17. Therefore, the Industrial Customer Groups respectfully request that the Commission clarify its Revised DSP Order to clearly note that the non-bypassable surcharge component does not apply to Large C&I customers for purposes of any recovery of RME program costs.

B. Alternatively, the Commission Should Reconsider Its February 15 Order and Modify the Findings As Necessary to Ensure that RME Program Costs Are Not Recovered From Large Commercial and Industrial Customers Who are Ineligible to Participate In the RME Programs.

18. As indicated above, the applicability of the non-bypassable surcharge authorized by the Revised DSP Order appears to require only clarification to confirm the apparent exemption of Large C&I customers. In the event, however, that the Commission did not intend such exemption (*i.e.*, by eliminating Large C&I customers from any non-bypassable collection), the Industrial Customer Groups respectfully request that the Commission reconsider its decision and prohibit recovery of RME program costs from Large C&I ratepayers who are ineligible to participate in the RME programs.

19. As the record established throughout this proceeding confirms, Large C&I customers are ineligible to participate in the Companies' Opt-In or Standard Offer programs. *See, e.g.*, Original DSP Order, pp. 101-154. Moreover, the Large C&I retail market is substantially developed, obviating any need for such programs as relating to Large C&I customers. Industrial Customer Group Reply Comments, p. 5; *see also Joint Petition of*

Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of Their Default Service Programs; Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670, Petition to Amend the Commission's August 12, 2012 Order and the November 8, 2012 Secretarial Letter Approving Default Service Procurement Bidding Rules (Feb. 28, 2013) (hereinafter, "Feb. 28 2013, Petition"). Therefore, any recovery of RME program costs from Large C&I customers would constitute unjust and unreasonable rates, particularly with regard to the significant majority of Large C&I customers that are already taking competitive supply from EGSs.

20. Allowing the Companies to recover RME program costs from Large C&I customers contradicts the fundamental purpose of the programs. As stated in the Revised DSP Order, "these programs have the potential to benefit all residential and small commercial customers who avail themselves of the myriad of EGS offers." Revised DSP Order, p. 14. Because the RME programs target residential and small commercial customers, Large C&I customers are appropriately excluded from participation. *See, e.g.*, Original DSP Order, pp. 101-154. Significantly, no party to this proceeding, neither the Companies nor the EGSs that addressed RME program cost recovery issues, argued that Large C&I customers should be eligible to participate in RME programs. Because Large C&I customers are excluded from participation in the RME programs, cost causation principles demand that the Commission also exempt Large C&I customers from paying the costs of such programs.

21. Aside from eligibility issues, Large C&I customers would not benefit from the purpose behind RME programs because shopping has already fully penetrated the Large C&I retail market. Although the Revised DSP Order references general benefits resulting from robust competitive retail markets, the record in this proceeding suggests that such benefits are limited to

residential and small commercial customers. Revised DSP Order, p. 14; *but cf.* Feb. 28, 2013, Petition, p. 7. The record indicates that between 88.4% and 97.6% of the Large C&I class load in the Companies' service territories is already served by competitive supply. *See* Feb. 28, 2013, Petition, n. 4. The prevalence of retail shopping demonstrates that the Large C&I retail market in the Companies' service territories is highly developed and sophisticated, rendering the underlying objectives of RME programs moot. Therefore, with regards to Large C&I customers, "participation in RME programs would not contribute to the development of robust competitive markets envisioned by the Commission." Industrial Customer Group Reply Comments, p. 5.

22. More specifically, there are no practical benefits related to RME programs to be gained from the Large C&I class. With approximately 90% of the Large C&I load currently procured through competitive supply, it cannot reasonably be suggested that Large C&I customers lack knowledge or understanding of competitive options. *See* Feb. 28, 2013, Petition, n. 4. Moreover, allocating RME program costs to all Large C&I customers to stimulate shopping among the remaining 10% of the Large C&I customer load remaining on default service would upend cost causation principles.

23. For the reasons expressed above, the Commission should recognize the circumstances of Large C&I customers with regards to RME programs and modify the Revised DSP Order to reflect the ineligibility of Large C&I customers to participate in the Companies' RME programs and/or the robust and developed Large C&I retail market in the Companies' service territories. Applying a non-bypassable surcharge for recovery of RME program costs would unreasonably require all Large C&I customers to subsidize programs benefitting only residential and small commercial customers. Further, the goals of the Companies' RME programs are already realized within the robust Large C&I retail market. Additionally, applying

the non-bypassable charge to the vast majority of Large C&I customers that are already active and engaged retail market participants similarly violates cost causation principles and fails to meaningfully contribute to the further development of competitive markets.

24. To ensure that the Commission's resolution for recovering RME program costs complies with cost causation principles and the Commission's obligation to approve just and reasonable rates, the Industrial Customer Groups respectfully request that the Commission reconsider any decision that would authorize a non-bypassable surcharge for recovery of RME programs costs from Large C&I customers.

IV. CONCLUSION

WHEREFORE, the Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power Users Group, and West Penn Power Industrial Intervenors respectfully request that the Pennsylvania Public Utility Commission: (1) clarify that its Opinion and Order issued on February 15, 2013, in the above-captioned proceeding is not intended to have Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company recover costs associated with their Retail Market Op-In Programs or Standard Offer Programs from Large Commercial and Industrial Customers through any means, including, but not limited to, a non-bypassable surcharge; or (2) reconsider and modify the Opinion and Order to specifically preclude Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company from recovering costs associated with their Retail Market Op-In Programs or Standard

Offer Programs from Large Commercial and Industrial Customers through any means, including, but not limited to, a non-bypassable surcharge.

Respectfully submitted,

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Dated: March 4, 2013