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May 1, 2013

VIA eFILING

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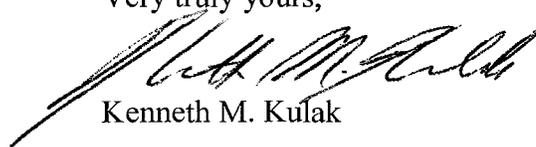
**Re: Joint Petition Of Metropolitan Edison Company, Pennsylvania Electric Company,
 Pennsylvania Power Company and West Penn Power Company For Approval Of Their
 Default Service Programs
 Docket No. P-2011-2273650, Docket No. P-2011-2273668,
 Docket No. P-2011-2273669 and Docket No. P-2011-2273670**

Dear Secretary Chiavetta:

Enclosed for filing are the **Reply Comments of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company Regarding Their Second Revised Default Service Plan Retail Market Enhancement Programs** (the "Reply Comments") in the above-captioned proceeding.

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

Very truly yours,


Kenneth M. Kulak

KMK/tp
Enclosures

c: Per Certificate of Service

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Moscow New York Palo Alto Paris Philadelphia Pittsburgh Princeton San Francisco Tokyo Washington Wilmington

**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 **Reply Comments of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company Regarding Their Second Revised Default Service Plan Retail Market Enhancement Programs** upon the following persons, in the matter specified below, in accordance with the requirements of 52 Pa. Code § 1.54:

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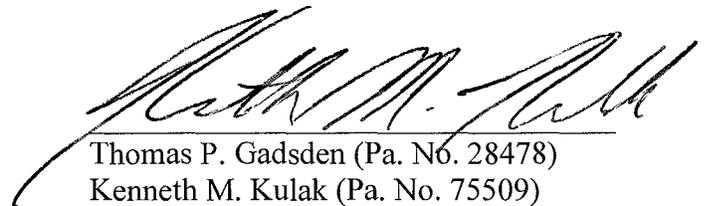
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Dated: May 1, 2013

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY COMMENTS OF METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY,
PENNSYLVANIA POWER COMPANY AND
WEST PENN POWER COMPANY REGARDING
THEIR SECOND REVISED DEFAULT SERVICE PLAN
RETAIL MARKET ENHANCEMENT PROGRAMS**

I. INTRODUCTION

Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”) and West Penn Power Company (“West Penn”) (collectively, or any combination of the foregoing, the “Companies”) hereby reply to Comments filed by the Office of Consumer Advocate (“OCA”) with respect to the Companies’ Second Revised Default Service Plan Retail Market Enhancement Programs (“Second Revised RME Programs”) and recovery of program costs.

The Second Revised RME Programs were filed on April 16, 2013 pursuant to the Pennsylvania Public Utility Commission’s (“Commission” or the “PUC”) Order entered on February 15, 2013 in this proceeding (“February 15 Order”). By that Order, the Commission decided that retail market enhancement program (“RME Program”) costs should be recovered from electric generation supplier (“EGS”) participants and from residential and small

commercial customers eligible to participate in those programs.¹ The specific measures for cost recovery approved by the Commission were delineated in the February 15 Order, as follows:

Based on the record before us, we are persuaded that a very reasonable accommodation of all the Parties' positions should be incorporated into this resolution. 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.

See February 15 Order, p. 14.²

In accordance with the Commission's directives in the February 15 Order regarding RME Program cost recovery, the Second Revised RME Programs incorporate the addition of an EGS participant fee not to exceed \$30 per referred customer, with any unrecovered program costs collected through the Companies' non-bypassable Default Service Support Charge Riders to be applied to the bills of residential and small commercial customers eligible to participate in the CRP. In addition, the Companies updated cost projections for the CRP to \$38.58 per customer,

¹ Previously, on November 14, 2012, the Companies filed a Joint Petition for Approval of Revised Default Service Plan – Retail Market Enhancement Programs (“Revised RME Programs”) in compliance with the Commission’s Order entered on August 16, 2012 (“August 16 Order”). By that Order, the Commission approved, with modifications, Default Service Programs for the period from June 1, 2013 to May 31, 2015 (“DSPs”) that the Companies had filed on November 17, 2011, and directed the Companies to submit new proposals for various elements of their RME Programs, including proposals for cost recovery. *See* August 16 Order, pp. 161-162.

² The February 15 Order was clarified by a subsequent Commission Opinion and Order entered on April 4, 2013 (the “Clarification Order”). In the Clarification Order (pp. 10-11), the Commission explained that the allocation of CRP program costs that are not recovered from EGSs is limited to customer classes that are eligible to participate in the program (i.e., residential and small commercial but not industrial customers).

based on the program design previously approved by the Commission in the August 16 and February 15 Orders.³

On April 26, 2013, the OCA submitted Comments raising concerns regarding the Commission-approved mechanism to recover the costs of the Companies' CRP. The Companies submit these Reply Comments to respond to the issues raised by the OCA.⁴

II. REPLY TO COMMENTS

In its Comments (pp. 4, 6-8), the OCA first contends that, given the proposed delay in the start of the CRP, the Second Revised RME Programs should not be approved until the Companies redesign the CRP to ensure that customers are not responsible for any costs incurred to implement the CRP over the \$30 per enrolled customer cap for EGSs. In essence, the OCA reasserts its prior argument in this proceeding that CRP and other RME Program costs should be allocated exclusively to EGSs, which was already considered and rejected by the Commission in the February 15 Order (pp. 12-14).

In directing the Companies to select one of two approved mechanisms to recover any "remaining costs" above the \$30 per enrolled customer for EGSs from residential and small commercial customers, the Commission made it abundantly clear that the costs of the CRP could exceed the capped EGS amount. February 15 Order, p. 14. In reaching the conclusion that

³ The Second Revised RME Programs reflect all of the other revisions set forth and made final by the February 15 Order and the Commission's April 4, 2013 Final Order on Reconsideration suspending implementation of retail opt-in ("ROI") programs, including: (1) a revised time-of-use ("TOU") aggregation agreement reflecting the ability of customers to designate a specific EGS as their TOU provider if the customer requests a specific EGS; (2) removal of the ROI Aggregation Program from the Companies' DSPs; and (3) elimination of the form of Consumer Contract and Disclosure Statement (Appendix B) from the CRP Agreement. *See* August 16 Order, pp. 103-104; February 15 Order, p. 14.

⁴ The OCA's Comments support the Companies' suspension of the ROI Aggregation Program and proposal to revise the start date for the Customer Referral Program ("CRP") from June 1, 2013 to August 1, 2013. *See* Office of Consumer Advocate, *Comments on the Second Revised Default Service Plan – Retail Market Enhancements* (filed Apr. 26, 2013), p. 5 ("OCA Comments"). Therefore, the Companies are not responding to those issues raised in the OCA's Comments.

customers should pay for the remaining costs that exceed the EGS participation cost, the Commission specifically found that RME Programs have “the potential to benefit residential and small commercial customers who avail themselves of the myriad of EGS offers.” *Id.* There was no ambiguity regarding customer responsibility for those remaining costs and, if there were, it was incumbent on the OCA to request clarification or reconsideration of the February 15 Order, which it did not do. Nor did the OCA file an appeal of the Commission’s decision directing allocation of RME Program costs, in part, to customers.

The OCA also claims that the Companies have made no showing that the CRP costs have been minimized or are reasonable and cites to statements by other EDCs (i.e., Duquesne Light Company (“Duquesne”) and PPL Electric Utilities Corporation (“PPL”) in their default service proceedings that they expect to operate their standard offer customer referral programs within the \$30 cap established by the February 15 Order and in PECO Energy Company’s default service proceeding. OCA Comments, pp. 7-8. In fact, both Duquesne’s and PPL’s proposed cost recovery mechanisms would collect any actual program implementation costs over the \$30 cap from customers eligible to participate through a non-bypassable charge – just like the Companies’ proposal.⁵

In addition, according to the OCA, Duquesne proposed a revised customer referral program that can be implemented within the \$30 per-customer cost parameter, under which the utility’s customer service representative would provide an overview of the program and then

⁵ See Duquesne Light Company, *Revised Retail Market Enhancement Program Design and Cost-Recovery Proposal*, Docket No. P-2012-2301664 (filed Mar. 11, 2013), p. 16 (“Any excess costs above the amounts collected in supplier fees will be recovered from customers through a non-bypassable charge effective September 1, 2014, with a true up to the non-bypassable charge at the end of DSP VI”); PPL Electric Utilities Corporation, *Reply Comments of PPL Electric Utilities Corporation Regarding the Revised Opt-In and Standard Offer Programs*, Docket No. P-2012-2302074 (filed Mar. 26, 2013) (“PPL Comments”), pp. 7-8; *Id.* at 9-11. Notably, PPL’s assumption that it can operate a customer referral program cost within the \$30 cap is contingent upon it entering an arrangement with a third party vendor. See PPL Comments, pp. 9-11.

transfer interested customers to the participating EGSs for further explanation of the program and enrollment. The OCA states that Duquesne's model will greatly reduce the expense of the program and will result in more efficient processes that may better accustom customers to the competitive retail market experience. OCA Comments, p. 8. However, there is no evidence on the record with respect to the direct transfer of referred customers to EGSs, including the cost to implement information technology changes to support Duquesne's approach and EGSs' ability to handle the volume of calls that may be referred as part of the CRP.

Contrary to the OCA's assertions, the estimated cost of the RME Programs was addressed in the evidentiary phase of this proceeding. *See, e.g.*, OCA St. 2, pp. 6-7 (setting forth the Companies' estimates of the costs of each of the RME Programs and specifically raising cost as an issue); Dominion St. R-1, p. 11 (stating that EGSs might decline to participate in the Retail Enhancement Programs if the costs they were asked to bear were too high). The OCA had ample opportunity to raise factual issues about the cost of implementing the CRP during the evidentiary phase of this case, at which time it could have presented evidence of an alternative CRP design that would contain costs to \$30 per customer or another level of costs.

Having waived the opportunity to explore these cost issues during the litigation phase of this case, when all parties could have tested the OCA's assertions and presented responsive evidence, the OCA cannot simply interject new factual arguments at this late stage. The OCA's tactic violates principles of fundamental fairness and, for that reason, any reliance by the Commission on the non-record evidence presented in the OCA's Comments would be precluded by Section 504 of Pennsylvania's Administrative Agency Law and the Commission's own

regulations.⁶ Accordingly, the positions and arguments advanced by the OCA on the basis of non-record factual averments improperly introduced in its Comments should be rejected.

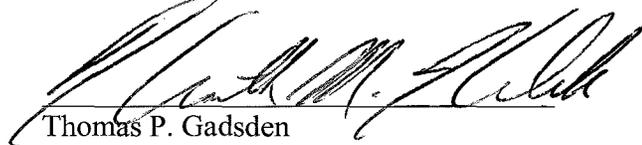
The OCA also argues that if customers are responsible for any portion of the CRP costs, the second Commission-approved methodology that divides costs not collected from EGS participant fees between EGSs through a discount on purchased EGS receivables (“POR”) and default service customers should be utilized. The OCA stated that this methodology was preferable to the Companies’ selected option of a non-bypassable charge to both default service and shopping customers, which the Commission expressly approved in the February 15 Order (p. 14). The OCA, however, does not explain how the methodology combining the POR discount and a charge to residential and small commercial default service customers is more reasonable or less harmful to customers.

⁶ See *Kowenhoven v. County of Allegheny*, 901 A.2d 1003, 1010 (Pa. 2006) (holding that an agency’s adjudication is not valid, under 2 Pa.C.S. § 504, unless the adjudication is based on a record created after the parties have been given reasonable notice and the opportunity to be heard); 52 Pa. Code § 5.431(b) (“After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion.”).

III. CONCLUSION

For the reasons set forth above, the Second Revised RME Programs conform fully to the February 15 Order and, therefore, the Commission should enter an Order approving the Second Revised RME Programs.

Respectfully submitted,



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