**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission, *et al.* : R-2016-2537349, *et al*.

:

v. :

:

Metropolitan Edison Company :

Pennsylvania Public Utility Commission, *et al.* : R-2016-2537352, *et al*.

:

v. :

:

Pennsylvania Electric Company :

Pennsylvania Public Utility Commission, *et al.* : R-2016-2537355, *et al*.

:

v. :

:

Pennsylvania Power Company :

Pennsylvania Public Utility Commission, *et al.* : R-2016-2537359, *et al*.

:

v. :

:

West Penn Power Company :

**PREHEARING ORDER (REVISED LITIGATION SCHEDULE)**

On April 28, 2016, Metropolitan Edison Company (Met-Ed), filed Supplement No. 23 to Met-Ed’s Tariff Electric – Pa. P.U.C. No. 52 proposing an annual increase in rates of $140.2 million (9.08%), with a proposed overall rate of return of 8.14% and an effective date of June 27, 2016.

On April 28, 2016, Pennsylvania Electric Company (Penelec), filed Supplement No. 23 to Penelec’ s Tariff Electric – Pa. P.U.C. No. 81 proposing an annual increase in rates of $158.8 million (10.94%), with a proposed overall rate of return of 8.58% and an effective date of June 27, 2016.

On April 28, 2016, Pennsylvania Power Company (Penn Power), filed Supplement No. 17 to Penn Power’ s Tariff Electric – Pa. P.U.C. No. 36 proposing an annual increase in rates of $42 million (8.43%), with a proposed overall rate of return of 8.7% and an effective date of June 27, 2016.

On April 28, 2016, West Penn Power Company (WPP), filed Supplement No. 10 to West Penn’s Tariff Electric – Pa. P.U.C. No. 38 and Supplement No. 15 to West Penn’s Tariff Electric – Pa. P.U.C. No. 40, proposing an annual increase in rates of $98.2 million (5.51%), with a proposed overall rate of return of 7.9% and an effective date of June 27, 2016.

Hereafter, where appropriate, Met-Ed, Penelec, Penn Power and WPP are referred to collectively as the “Companies.”

By order entered June 9, 2016, the Commission suspended the filings pursuant to Section 1308(d) of the Public Utility Code, until January 27, 2017, unless permitted by Commission Order to become effective at an earlier date.

To date, the Commission’s Bureau of Investigation and Enforcement (BIE) entered its appearance in these proceedings, while the Office of Consumer Advocate (OCA)[[1]](#footnote-1) and the Office of Small Business Advocate (OSBA) filed complaints.[[2]](#footnote-2) Formal complaints were also filed by West Penn Power Industrial Intervenors (WPII), C-2016-2549413; Met-Ed Industrial Users Group (MEIUG), C-2016-2549787; and Penelec Industrial Users Group (PICA), C-2016-2549792. Worthington Borough Street Lights and the following ratepayers have also filed formal complaints:

|  |  |  |
| --- | --- | --- |
| Complainant | Docket No. | Company |
| Janine and Jeff Ribblett | C-2016-2550110 | Penelec |
| Robert Redinger, Jr. | C-2016-2542278 | WPP |
| Jeanette Lippy | C-2016-2549370 | Met-Ed |
| Dennis P. Miller | C-2016-2551248 | Met-Ed |
| Kenneth C. Springirth | C-2016-2546231 | Penelec |
| Larry E. Cole | C-2016-2551244 | Penelec |
| Kenneth L. Hall | C-2016-2551643 | Penelec |
| Eric L. Hetrick | C-2016-2551297 | Penelec |
| Robert Moore | C-2016-2551236 | Penelec |
| Rebecca A Stiles | C-2016-2551244 | Penelec |
| Dr. Richard Collins | C-2016-2547484 | Penn Power |
| John S. McDowell | C-2016-2551614 | Penn Power |

The following entities filed petitions to intervene: Clean Air Council, IBEW, Local 459[[3]](#footnote-3), CAUSE-PA, Citizens for Penn Future, Wal-mart Stores East, LLP and Sam’s East, Inc.

A prehearing conference was held on Friday, June 17, 2016. Counsel for the Companies, the statutory parties, and the interveners attended the conference. Complainants WPII, MEIUG and PICA were also represented by counsel. Additionally ratepayers Jeanette Lippy and Richard Collins also appeared. This Order memorializes the matters decided and agreed upon by the parties attending the conference.

**Consolidation**

The Companies requested that all of the base rate dockets, as well as the formal complaints, be consolidated for the purposes of hearing, briefing and decision. Counsel explained that although each company has unique revenue requirements and proposed rates, the general approach to the development of these components is consistent across all four companies, and similar testimony would be presented by the same witness pertaining to all four companies. Counsel further represented that each witness’ written testimony would clearly set forth in separate sections testimony specifically pertains to a specific company, along with company-specific exhibits and schedules. Counsel also described a procedure for the presentation of testimony at the evidentiary hearings and briefs. BIE, OCA, OSBA, MEIUG, PICA and WPII explicitly supported the request. No other party objected.

The request to consolidate the base rate cases, along with the formal complaints will be granted. The Dockets at R-2016-2537349, R-2016-2537352, R-2016-2537355 and R‑2016-2537359 are hereby consolidated at Docket No. R-2016-2537349. Additionally the following complaints are hereby consolidated at Docket No. R-2016-2537349: C-2016-2543247; C-2016-2543266; C-2016-2543268; C-2016-2543315; C-2016-2544355; C-2016-2544356; C-2016-2544358; C-2016-2544359; C-2016-2549413; C-2016-2549787; C-2016-2549792; C-2016-2548424; C-2016-2550110; C-2016-2542278; C-2016-2551248; C-2016-2549370; C-2016-2546231; C-2016-2551244; C-2016-2551643; C-2016-2551207; C-2016-2551236; C-2016-2551244; C-2016-2547484; C-201602551614. In the event that additional formal complaints are filed by ratepayers, those complaints will automatically be consolidated with Docket No. R-2016-2537349, unless otherwise ordered.

Further, the parties shall notify me immediately in the event that an issue develops which relates to one company, but not the others which may make continued consolidation impractical.

**Petitions to Intervene**

Petitions to Intervene filed by Clean Air Counsel, IBEW, CAUSE-PA, Penn Future, Wal-mart Stores East, LLP and Sam’s East, Inc. were granted.

**Parties**

The parties are directed to monitor filings with the Commission’s Secretary’s Bureau and advise the undersigned of any additional formal complaints filed after the date of this Order.

**Litigation Schedule**

The parties agree upon the following litigation schedule:

|  |  |
| --- | --- |
| Date | Event |
| April 28, 2016 | Company Submission of Filing & Testimony |
| June 17, 2016 | Prehearing Conference |
| July 22, 2016 | Written Direct Testimony of All Other Parties Due In-Hand |
| August 17, 2016 | Written Rebuttal Testimony Due In-Hand |
| August 31, 2016 | Written Surrebuttal Testimony Due In-Hand |
| September 2, 2016 | Outline of Rejoinder |
| September 2, 2016 | Witness Schedule Due In-Hand |
| September 6-9, 2016 | Technical Evidentiary Hearings and oral rejoinder in Harrisburg  (beginning at 1:00 p.m. on September 6, 2016; and 9:00 a.m. on September 7-9, 2016) |
| September 30, 2016 | Main Briefs Due In-Hand |
| October 14, 2016 | Reply Briefs Due In-Hand or Submission of Joint Settlement Petition Executed By Representatives of All Parties, Together With All Parties’ Statements In Support of Settlement |

The parties are reminded of the Commission’s requirements for the preparation and filing of written testimony. 52 Pa.Code § 5.412. Written testimony must be accompanied by all exhibits to which it relates. Technical terms and concepts are to be clearly defined and explained in the testimonies and briefs. **The parties are to agree on a list of common acronym and use them consistently in all written testimony and briefs.**

No written testimony will be admitted into evidence unless accompanied by a verification of affidavit of the witness.

Parties serving prepared testimony in proceedings pending before the Commission pursuant to 52 Pa.Code § 5.412(f) shall be required, within thirty (30) days after the final hearing in an adjudicatory proceeding to either eFile with or provide to the Secretary’s Bureau a Compact Disc (CD) containing all testimony furnished to the court reporter during the proceeding.

The above-stated dates are in-hand dates for service on the parties and the Presiding Administrative Law Judge (ALJ). The parties and the Presiding ALJ agree to accept email transmission of such material, so long as the subject email is received by 4:30 p.m. on the date due and provided the email is followed the next business day by sending a hard copy of the same material via first-class mail postage prepaid to the parties designated on the Full Service List. The email address of the Presiding ALJ is: [malong@pa.gov](mailto:malong@pa.gov). The Presiding ALJ will not accept facsimile transmissions greater than ten pages in length without prior authorization. If in doubt, please call the office (412‑565-3550).

Hearings will begin promptly at each day. The parties must confer before commencement of the hearings to schedule their witnesses so as to avoid “holes” or “dead time” during the hearings. In the event that a partial settlement is achieved the parties should be prepared to proceed on the first scheduled day of hearing to present evidence on the non-resolved issues.

**Full Service List and Limited Service List**

Parties who did not attend the prehearing conference or inform the Presiding ALJ of their desire to participate on the full service are included on a limited service list for this case. Each party appearing on the limited service list will not be required to file and serve any documents in this case and the parties on the full service list will not be required to serve copies of their documents on those parties on the limited service list. Parties on the limited service list will receive copies of Orders, Hearing Notices, the Recommended Decision and the Commission’s Decision.

Parties included on the limited service list have the right to appear and testify at any Public Input Hearing scheduled in this case. **Persons testifying at a Public Input Hearing, however, will not be permitted to also testify at the technical evidentiary hearings.**

All parties who attended the prehearing conference will be included on the full service list except for Ms. Lippy and Dr. Collins who opted for a lesser degree of participation. Each party appearing on the full service listmust serve a copy of every document it files in this case, including, but not limited to discovery requests, motions, testimony, and briefs on every other party on the full service list in accordance with the schedule established at the prehearing conference. In addition, every document filed must be served on the presiding ALJ. Discovery requests and responses are not to be served on the Presiding ALJ unless attached to a motion to compel.

Any party may send to the Presiding ALJ a letter requesting to be moved from either the full service list to the limited service list, or to be moved from the limited service list to the full service list. Such changes will be effective as of the date of the order and will not apply to any document filed and served prior to the date of that order.

**Public Input Hearings**

Sufficient public interest has been identified to warrant holding public input hearings in Reading, East Stroudsburg, Erie, Butler, Greensburg, Washington, and State College. The parties will be notified of the schedule for these hearings at a later date.

**Issues**

In their respective prehearing memoranda, the parties identified various issues they may wish to pursue. The reader is directed to these documents to review a recitation of these issues. Additional issues may arise as the discovery process unfolds.

**Discovery**

The parties shall engage in informal discovery whenever and wherever possible in an attempt to resolve any discovery disputes amicably. 52 Pa.Code § 5.322. If this process fails, the parties have recourse to the Commission’s procedures for formal discovery, as herein modified. 52 Pa.Code §§ 5.321, *et* *seq*. The parties must not send the Presiding ALJ discovery material or cover letters, unless attached to a motion to compel. **All motions to compel must contain a certification of counsel of the informal discovery undertaken and their efforts to resolve their discovery disputes informally.** If a motion to compel fails to contain such certification, the Presiding ALJ will contact the parties and direct them to pursue informal discovery.

The parties agreed to the following modifications to the Commission’s procedures for formal discovery:

a. Answers to written interrogatories propounded in preparation of direct and rebuttal testimony shall be served in-hand within ten (10) calendar days of service. Answers to written interrogatories propounded in preparation of surrebuttal testimony shall be served in-hand within five (5) calendar days of service. Discovery propounded after 12:00 noon on a Friday will be deemed served on the next business day for purposes of determining the due date of the responses.

b. Objections to interrogatories shall be communicated orally within three (3) calendar days of service of the interrogatories; unresolved objections shall be served to the Presiding ALJ in writing within five (5) days of service of the interrogatories. Objections to interrogatories served on a Friday shall be communicated orally within four (4) calendar days, and unresolved objections shall be served to the Presiding ALJ in writing within six (6) days of service of the interrogatories.

c. Motions to dismiss objections and/or direct the answering of interrogatories shall be filed within three (3) calendar days of service of the written objections.

d. Answers to motions to dismiss objections and/or direct the answering of interrogatories shall be filed within three (3) calendar days of service of such motions.

e. Responses to requests for document production, entry for inspection, or other purposes must be served in-hand within ten (10) calendar days.

f. Requests for admissions will be deemed admitted unless answered within ten (10) calendar days or objected to within five (5) calendar days of service.

**Settlement and Stipulations**

The parties are reminded it is the Commission’s policy to encourage settlements. 52 Pa. Code §5.231(a). The parties are strongly urged to seriously explore this possibility. The parties shall notify the presiding ALJ on or before **12:00 p.m., on September 2, 2016,**  if they have resolved their dispute.

Submission of a Joint Settlement Petition executed by representatives of all parties, together with all parties’ Statements In Support of Settlement, must be filed with the Secretary for the Commission and received in-hand by the Presiding ALJ no later than the close of business on **October 14, 2016**.

If settlement is not feasible, the parties are encouraged to stipulate to any matters they reasonably can to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties and conserve precious administrative hearing resources. 52 Pa.Code §§ 5.232 and 5.234. All stipulations entered into by the parties must be reduced to writing, signed by the parties to be bound thereby, and moved into the record during the hearings in this case. An exception to this requirement may occur when circumstances of time and expediency warrant. If so, an oral presentation of a stipulation is permissible, if it is followed by a reduction to writing as herein directed.

**Cross-Examination**

Friendly cross-examination or cumulative cross-examination during hearings will not be permitted. 52 Pa.Code §§ 5.76 & 5.243.

**Briefs**

The parties must comply with 52 Pa.Code §§ 5.501, *et* *seq*., regarding the preparation and filing of briefs. Page limitations on briefs will be discussed on or before the last day of hearings. Where possible, the parties shall submit to the Presiding ALJ **one** hard copy of their briefs and one copy by email. If a party cannot provide a copy by email or on computer disk, it must submit two hard copies of briefs. The electronic version of a brief must be prepared on an IBM compatible system in *Microsoft Office Word 2010* format or in an earlier version of this software application. If in doubt, please call the office of the Presiding ALJ for clarification.

**IMPORTANT NOTICE**: All briefs **must** conform to the “Special Instructions for Briefs and Exceptions in Major General Rate Increase Proceedings,” which are attached hereto as Appendix A and incorporated herein by reference as fully as though they were set forth herein in detail. A party’s failure to follow these instructions in the smallest detail will result in non‑consideration of that party’s position, regardless of where the record may support it or the position of any other party to this proceeding. Your anticipated cooperation will be appreciated.

**Modification**

Any of the provisions of this Prehearing Order may be modified upon motion and good cause shown by any party in interest.

Date: June 22, 2016 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Mary D. Long

Administrative Law Judge

**R-2016-2537349 - PA PUBLIC UTILITY COMMISSION v. METROPOLITAN EDISON COMPANYR-2016-2537352 - PA PUBLIC UTILITY COMMISSION v. PENNSYLVANIA ELECTRIC COMPANY R-2016-2537355 - PA PUBLIC UTILITY COMMISSION v. PENNSYLVANIA POWER COMPANY**

**R-2016-2537359 - PA PUBLIC UTILITY COMMISSION v. WEST PENN POWER COMPANY**

*Revised 6-20-16*

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Special Instructions for Briefs and Exceptions

in Major General Rate Increase Proceedings

1. Each brief shall follow the general organization shown in the attached standardized format.

2. Each brief shall contain a table of contents with page references to a summary of argument and to each topic addressed in the argument.

3. Adjustments contained in each brief shall:

a. be based on a specific test year, to be selected before the close of the record;

b. be complete and self contained, include accurate reference to the appropriate record sources, be on a before-income-tax basis (never on a net income or revenue requirement basis) and be on a consistent jurisdictional basis (if record support cannot be located, the adjustment may/will be rejected);

c. be detailed to demonstrate the step-by-step calculation of that adjustment together with appropriate accurate record references (once again, if the record support cannot be located for the necessary steps, the adjustment may/will be rejected);

d. include concomitant rate base, revenue, expense, depreciation expense, and tax (i.e., taxes other, State Income, and federal Income) adjustments set forth, together with the details of their calculation;

e. include within the brief calculations which are the basis for proposed adjustments, but which are incomplete in the record.

4. Tables showing all proposed rate base and income adjustments, organized as shown in the attached Table I and Table II, shall be submitted with each brief which includes such adjustments.

a. The starting point of Table I “Income Summary” shall be the utility’s final pro forma showing at present rates. The ALJ shall specify the starting point to be the most recent update admitted into evidence. The update, admission, and ALJ ruling shall be cited on the table.

b. The effect of deferred or accrued taxes on the various tax adjustments presented in Table II “Summary of Adjustments” shall be indicated by a footnote.

5. The following schedules shall be submitted with each brief.

a. A schedule showing the precise derivation of any adjustment to proposed cash working capital allowance.

i. The schedule describing an adjustment to a Utility’s claim for Cash Working Capital shall separately list (1) adjustments originating from Table II “Summary of Adjustments” and (2) adjustments resulting from the proposed revenue increase. Any effect on deferred and/or accrued taxes shall be shown in a separate column or footnote.

ii. Net Revenue and Expense Lag Days for all Cash Working Capital Adjustments shall be calculated to at least one decimal place.

b. A schedule showing all tax and jurisdictional allocation factors utilized (any deviations from standard or obvious factors should be explained on the schedule on in the brief).

c. A schedule listing, for the party or parties filing the brief, each exhibit or other document admitted into the record, along with the date the document was identified and the date the document was admitted.

6. Rate structure proposals shall be reasonably specific and explicit, shall, as appropriate, refer accurately to record support and shall be summarized at the end of the “Rate Structure” topic heading of each brief.

7. Parties shall, as feasible and appropriate, discuss alternative rate design proposals for overall rate increases at and below the requested increase.

8. The Commission requires, in all electric utility rate proceedings, subsequent to its Order at Docket No. I-900005, entered December 1, 1993, that issues of demand-side management and integrated resource planning be addressed.

9. Regarding the filing of exceptions, the following instructions are provided:

a. Each exception shall be separately identified and, as necessary, discussed.

b. Each exception shall include, before any discussion is provided, the following elements (see examples attached):

i. a reference to the relevant part of the Recommended Decision, at least to the relevant pages;

ii. a reference to related discussions in the excepting party’s brief and, as appropriate, to other briefs; and

iii. a concise statement of the exception.

c. The exceptions shall follow the order of presentation provided in the table of contents to the Recommended Decision.

d. If a party takes exception concerning a topic not included within the Recommended Decision or the table of contents thereto, the appropriate exception shall be included at the end of the appropriate major topic heading (such as “Rate Base” or “Expenses”).

e. If a party seeks to correct computations associated with the Recommended Decision, replacement computations, with source references to briefs or the record, shall be provided.

Standardized Brief Format for

General Rate Increase Proceedings

I. Introduction

II. Summary of Argument

III. Rate Base

A. Fair Value

B. Plant in Service

C. Depreciation Reserve

D. Additions to Rate Base

E. Deductions from Rate Base

F. Conclusion

IV. Revenues

V. Expenses

VI. Taxes

VII. Rate of Return

VIII. Miscellaneous Issue

IX. Rate Structure

A. Cost of Service

B. Revenue Allocation

C. Tariff Structure

D. Summary and Alternatives

X. Conclusion

Note: Appropriate modifications may be made. For instance, a party might add “Affiliated Interest Expenses” as a major topic heading or might brief only rate structure and not use other topic headings. A summary and alternatives should be provided under “Rate Structure” but the “Rate Base” and “Rate Structure” formats shown may be modified, as appropriate. Additional subheadings should be used, as appropriate.

TABLE I

Income Summary

($000)

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | Pro Forma  Present  Rates | Recommended  Adjustments | Adjusted  Present  Rates | Revenue  Adjustment | Total  Allowable  Revenues |
|  | $ | $ | $ | $ | $ |

Operating Revenues

Deductions:

O&M Expenses

Depreciation

Taxes:

State

Federal

Other

Total Deductions

Net Income Available for Return

Rate Base

Recommended Rate of Return

TABLE II

Summary of Adjustments

($000)

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| Recommended  Adjustments | Exhibit  Reference | Rate  Base  Effect | Revenue  Effect | Expense  Effect | Depreciation  Effect | Effect  Upon  Taxes -  Other | State  Tax  Effect | Federal  Tax  Effect |
|  |  | $ | $ | $ | $ | $ | $ | $ |

Total Adjustments

Company Rate Base

Recommended Rate Base

Examples of Specific Exceptions

1. Staff excepts to the ALJ’s rejection of the Staff (and OCA) rate case expense adjustment. See R.D., pp. 31-2; Staff brief, pp. 54-5; OCA brief, pp. 98-9. The $128,000 adjustment, based on a filing once every four years and on disallowance of certain expenses, should be accepted.

2. The Company excepts to the adoption of the OCA revenue adjustment. See R.D., pp. 28-30; Company brief, pp. 56-9; Company reply brief, p. 12. This adjustment was based on unreasonable projections of industrial consumption (see OCA brief, p. 84). The Company projection, as modified at Company St. 14, pp. 11-12, should be used.

3. OCA excepts to the ALJ’s failure to address, and accept, its weather adjustment to revenues. See OCA brief, pp. 21-4; OCA reply brief, p. 12.

4. Corrections to calculations underlying salary increases (R.D., p. 41), force reductions (R.D., pp. 48-9) and tax normalization (R.D., pp. 81-2) are offered and explained at Appendix B.

1. OCA complaints are docketed as: C-2016-2543247 (Met-Ed); C-2016-2543266 (Penelec); C-2016-2543268 (Penn Power); C-2016-2543315 (WPP). [↑](#footnote-ref-1)
2. OSBA complaints are docketed as: C-2016-2544355 (Met-Ed); C-2016-2544356 (Penelec): C-2016-2544358 (Penn Power); C-2016-2544359 (WPP). [↑](#footnote-ref-2)
3. IBEW, Local 459 has only intervened in the Penelec rate case. [↑](#footnote-ref-3)