

# Morgan Lewis

**Anthony C. DeCusatis**

Of Counsel  
+1.215.963.5034  
anthony.decusatis@morganlewis.com

August 15, 2016

**VIA eFILING**

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


**Re: Pennsylvania Public Utility Commission**  
**v.**  
**Metropolitan Edison Company**  
**Docket No. R-2016-2537349**

Dear Secretary Chiavetta:

Enclosed for filing in the above-captioned matter is the **Motion of Metropolitan Edison Company to Strike the Direct Testimony of the Environmental Defense Fund and Citizens for Pennsylvania's Future.**

As evidenced by the attached Certificate of Service, copies of the Motion will be served on Administrative Law Judge Mary D. Long and all parties.

Very truly yours,

  
Anthony C. DeCusatis

c: Per Certificate of Service (w/ends.)

**Morgan, Lewis & Bockius LLP**

1701 Market Street  
Philadelphia, PA 19103-2921  
United States

**T** +1.215.963.5000  
**F** +1.215.963.5001

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY  
COMMISSION**

v.

**METROPOLITAN EDISON COMPANY**

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Docket No. R-2016-2537349

**CERTIFICATE OF SERVICE**

I hereby certify and affirm that I have this day served a copy of the Motion of **Metropolitan Edison Company to Strike the Direct Testimony of the Environmental Defense Fund and Citizens for Pennsylvania's Future**, on the following persons, in the manner specified below, in accordance with the requirements of 52 Pa. Code § 1.54.

**VIA ELECTRONIC AND FIRST CLASS MAIL**

Honorable Mary D. Long  
Administrative Law Judge  
Office of Administrative Law Judge  
Pennsylvania Public Utility Commission  
Pittsburgh District Office, Piatt Place  
301 5th Avenue, Suite 220  
Pittsburgh, PA 15222  
[malong@pa.gov](mailto:malong@pa.gov)

Darryl A. Lawrence  
Lauren M. Burge  
David T. Evrard  
Candis A. Tunilo  
Harrison W. Breitman  
Office of Consumer Advocate  
555 Walnut Street  
5th Floor, Forum Place  
Harrisburg, PA 17101-1923  
[2016FIRSTENERGYRATECASES@paoca.org](mailto:2016FIRSTENERGYRATECASES@paoca.org)

Allison C. Kaster  
Senior Prosecutor  
Gina L. Lauffer  
Prosecutor  
Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
Commerce Keystone Building  
400 North Street, 2nd Floor  
Harrisburg, PA 17105-3265  
[akaster@pa.gov](mailto:akaster@pa.gov)  
[ginlauffer@pa.gov](mailto:ginlauffer@pa.gov)

Daniel G. Asmus  
Office of Small Business Advocate  
Commerce Tower, Suite 202  
300 North Second Street  
Harrisburg, PA 17101  
[dasmus@pa.gov](mailto:dasmus@pa.gov)

Susan E. Bruce  
Charis Mincavage  
Vasiliki Karandrikas  
Kenneth Stark  
Allesandra L. Hylander  
McNees, Wallace & Nurick, LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
[sbruce@mcneeslaw.com](mailto:sbruce@mcneeslaw.com)  
[cmincavage@mcneeslaw.com](mailto:cmincavage@mcneeslaw.com)  
[vkandrikas@mcneeslaw.com](mailto:vkandrikas@mcneeslaw.com)  
[kstark@mcneeslaw.com](mailto:kstark@mcneeslaw.com)  
[ahylander@mcneeslaw.com](mailto:ahylander@mcneeslaw.com)  
*Counsel for MEIUG, PICA and WPPH*

Joseph Otis Minott  
Ernest Logan Welde  
Clean Air Council  
135 South 19th Street, Suite 300  
Philadelphia, PA 19103  
[joe\\_minott@cleanair.org](mailto:joe_minott@cleanair.org)  
[lwelde@cleanair.org](mailto:lwelde@cleanair.org)  
*Counsel for Clean Air Council  
(Electronic Mail only)*

Joline Price  
Elizabeth R. Marx  
Patrick M. Cicero  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101  
[pulp@palegalaid.net](mailto:pulp@palegalaid.net)  
*Counsel for Coalition for Affordable  
Utility Services and Energy Efficiency  
in Pennsylvania*

Scott J. Rubin  
333 Oak Lane  
Bloomsburg, PA 17815-2036  
[scott.j.rubin@gmail.com](mailto:scott.j.rubin@gmail.com)  
*Counsel for IBEW Local 459*

Jeffrey D. Cohen  
Erik Derr  
Keenan Cohen & Merrick, P.C.  
One Pitcarin Place, Suite 2400  
165 Township Line Road  
Jenkintown, PA 19046  
[jcohen@freightlaw.com](mailto:jcohen@freightlaw.com)  
*Counsel for North American  
Hoganas Holdings, Inc.*

David F. Boehm  
Michael L. Kurtz  
Boehm, Kurtz & Lowry  
36 East Seventh Street, Suite 1510  
Cincinnati, OH 45202  
[dboehm@BKLawfirm.com](mailto:dboehm@BKLawfirm.com)  
[mkurtz@BKLawfirm.com](mailto:m Kurtz@BKLawfirm.com)  
*Counsel for AK Steel Corporation*

Derrick Price Williamson  
Barry A. Naum  
Spilman Thomas & Battle, PLLC  
1100 Bent Creek Boulevard, Suite 101  
Mechanicsburg, PA 17050  
[dwilliamson@spilmanlaw.com](mailto:dwilliamson@spilmanlaw.com)  
[bnaum@spilmanlaw.com](mailto:bnaum@spilmanlaw.com)  
*Counsel for Wal-Mart Stores East, LP  
and Sam's East, Inc.*

George Jugovic, Jr.  
Chief Counsel  
Citizens for Pennsylvania's Future  
200 First Avenue, Suite 200  
Pittsburgh, PA 15222  
[jugovic@pennfuture.org](mailto:jugovic@pennfuture.org)  
*Counsel for Citizens for Pennsylvania's  
Future & Environmental Defense Fund  
(Electronic Mail only)*

Thomas J. Sniscak  
Hawke McKeon & Sniscak LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
[tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)  
*Counsel for The Pennsylvania State  
University*

Mary Ellen McConnell  
2278 Ragged Mountain Road  
Clearville, PA 15535  
*(Via First Class Mail only)*

Robert Altenburg  
Director, PennFuture Energy Center  
Citizens for Pennsylvania's Future  
610 North Third Street  
Harrisburg, PA 17101  
[altenburg@pennfuture.org](mailto:altenburg@pennfuture.org)  
*Counsel for Citizens for  
Pennsylvania's Future  
(Electronic Mail only)*

John Finnigan  
Lead Attorney  
Environmental Defense Fund  
128 Winding Brook Lane  
Terrace Park, OH 45174  
[jfinnigan@edf.org](mailto:jfinnigan@edf.org)  
*Counsel for Environmental Defense Fund*

Ronald Gassmann  
P.O. Box 5131  
New Castle, PA 16105  
*(Via First Class Mail only)*

Respectfully submitted,



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Thomas P. Gadsden (Pa. No. 28478)  
Anthony C. DeCusatis (Pa. No. 25700)  
Catherine G. Vasudevan (Pa. No. 210254)  
Brooke E. McGlinn (Pa. No. 204918)  
Morgan, Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
215.963.5234 (bus)  
215.963.5001 (fax)  
[thomas.gadsden@morganlewis.com](mailto:thomas.gadsden@morganlewis.com)  
[anthony.decusatis@morganlewis.com](mailto:anthony.decusatis@morganlewis.com)  
[catherine.vasudevan@morganlewis.com](mailto:catherine.vasudevan@morganlewis.com)  
[brooke.mcglinn@morganlewis.com](mailto:brooke.mcglinn@morganlewis.com)

*Counsel for Metropolitan Edison Company*

Dated: August 15, 2016

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY  
COMMISSION**

v.

**METROPOLITAN EDISON COMPANY**

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**Docket No. R-2016-2537349**

**NOTICE TO PLEAD**

Pursuant to 52 Pa. Code § 5.103(b) and (c), you are hereby notified to file a written response to the following Motion of Metropolitan Edison Company within the time period specified in 52 Pa. Code § 5.103(c) or such shorter time as the presiding Administrative Law Judge may specify.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY  
COMMISSION**

v.

**METROPOLITAN EDISON COMPANY**

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**Docket No. R-2016-2537349**

**MOTION OF METROPOLITAN EDISON COMPANY TO STRIKE  
THE DIRECT TESTIMONY OF THE ENVIRONMENTAL DEFENSE FUND AND  
CITIZENS FOR PENNSYLVANIA’S FUTURE**

**I. INTRODUCTION AND OVERVIEW**

Pursuant to 52 Pa. Code § 5.103, Metropolitan Edison Company (“Met-Ed” or the “Company”) moves to strike the entirety of: (1) the Direct Testimony of Michael Murray<sup>1</sup> submitted on behalf of the Environmental Defense Fund (“EDF”) and Citizens for Pennsylvania’s Future (“PennFuture”) (the “Murray Direct Testimony”); and (2) the Direct Testimony of Paul Alvarez<sup>2</sup> submitted on behalf of EDF<sup>3</sup> (the “Alvarez Direct Testimony”).<sup>4</sup>

The Murray Direct Testimony and Alvarez Direct Testimony should be stricken and the proposals set forth therein should be excluded from consideration in this proceeding. By such testimony, EDF and PennFuture are trying to interject into this case, which is statutorily limited

<sup>1</sup> Mr. Murray’s Direct Testimony has not been pre-marked with a statement number.

<sup>2</sup> Mr. Alvarez’s Direct Testimony has not been pre-marked with a statement number.

<sup>3</sup> Although the cover page for Mr. Alvarez’s testimony identifies both EDF and PennFuture, his testimony (p. 1) states that he is testifying on behalf of EDF only.

<sup>4</sup> If this Motion is granted, the Secretary will need to physically “strike” the Murray Direct Testimony and the Alvarez Direct Testimony from this docket because, contrary to 52 Pa. Code § 5.412(f), EDF and PennFuture filed those statements with the Secretary notwithstanding the regulation’s requirement that copies of written testimony should only be “served” on the presiding officer and the parties.

in subject matter and time,<sup>5</sup> proposals that are not properly considered in a base rate proceeding but, instead, should be raised only in the context of generic, statewide proceedings where all interested parties have proper notice and an opportunity to participate. Additionally, the issues EDF and PennFuture seek to introduce are the subject of existing regulations, orders and administrative guidelines, which EDF and PennFuture are attempting impermissibly to collaterally attack in this case.

Additionally, given the litigation schedule adopted for this case, with evidentiary hearings scheduled to begin on September 6, 2016, Met-Ed requests that the Administrative Law Judge exercise the authority granted by 52 Pa. Code §5.103(c) to order that an Answer to this Motion shall be due in seven days. Seven days is ample time for an Answer to be prepared and filed, and the requested modification in the time for submitting an Answer will make it possible for the Administrative Law Judge to issue a ruling on this Motion before hearings are scheduled to begin.

## **II. RELEVANT BACKGROUND**

On April 28, 2016, Met-Ed filed with the Pennsylvania Public Utility Commission (“Commission”) Supplement No. 23 to Met-Ed’s Tariff Electric – Pa. P.U.C. No. 52 (“Supplement No. 23”) which reflects an increase in annual distribution revenues of \$140.2 million, or 9.53% of its total electric operating revenues. By Order issued June 9, 2016, the Commission instituted a formal investigation to determine the lawfulness, justness and reasonableness of Met-Ed’s existing and proposed rates, rules and regulations. Accordingly, Supplement No. 23 was suspended by operation of law until January 27, 2017.

<sup>5</sup> See 66 Pa.C.S. §1308(d) defining a “general rate increase” and setting a statutory timeline for the issuance of a final order in such cases (“If, however, such an order has not been made at the expiration of such seven-month period, the proposed general rate increase shall go into effect at the end of such period . . .”).

In accordance with the litigation schedule adopted by Administrative Law Judge Mary D. Long (the “ALJ”) in her June 22, 2016 Prehearing Order (Revised Litigation Schedule), on July 21, 2016, EDF and PennFuture served direct testimony. The Murray Direct Testimony sets forth proposals regarding customer and third-party access to individual customers’ energy usage data. The Alvarez Direct Testimony proposes the reporting on and expansion of integrated Volt/VAR Control projects and demand-side resources. For the reasons set forth below, the Murray Direct Testimony and Alvarez Direct Testimony should be stricken in their entirety.

**III. THE MURRAY DIRECT TESTIMONY AND ALVAREZ DIRECT TESTIMONY SHOULD BE STRICKEN AND THE PROPOSALS SET FORTH THEREIN SHOULD BE EXCLUDED FROM THIS PROCEEDING**

**A. The Administrative Law Judge Has The Authority To Deny Admission Of Testimony That Is Outside The Scope Of This Proceeding**

The Commission’s regulations at 52 Pa. Code § 5.403(a) grant presiding officers “all necessary authority to control the receipt of evidence,” including “[r]uling on the admissibility of evidence” and “[c]onfining the evidence to the issues in the proceeding.” ALJs have employed this power, with the Commission’s approval and affirmation, to exclude evidence that is outside the permissible scope of a proceeding and, in that way, to focus the evidence on the matters properly at issue.<sup>6</sup>

<sup>6</sup> See, e.g., *Re Gas Cost Rate No. 5*, 57 Pa. P.U.C. 158 (1983) (“The testimony stricken by the ALJ addresses, in part, matters broader than the scope of the instant proceeding.”); *Pa. P.U.C. v. Pennsylvania-American Water Co.*, 1994 Pa. PUC LEXIS 120 (Final Order entered July 26, 1994) at \*158 (“The ALJ concluded as follows: ‘I agree with OTS that the issues raised by OCA are outside the scope of this investigation. . . .’ We conclude that the ALJ properly found the matters raised by the OCA to be better placed in the pending rulemaking proceeding.”). See also *Re Structural Separation Of Bell Atlantic-Pennsylvania, Inc. Retail And Wholesale Operations*, 2000 Pa. PUC LEXIS 59 (Final Order entered September 28, 2000) at \*7-9 (affirming the decision of the Administrative Law Judge in that case to exclude certain evidence as “beyond the scope of the proceeding”); *Joint Application of PECO Energy Company and Public Service Electric and Gas Company For Approval of the Merger of Public Service Enterprise Group, Inc. with and into Exelon Corp.*, Docket No. A-110550F0160 (Initial Decision entered April 25, 2005 at pp. 8-9) (denying a Petition to Intervene where, among other things, the issues sought to be raised by petitioner were outside the scope of that proceeding).



For example, in 2015, EDF submitted the testimony of Dick Munson in a distribution base rate proceeding of PPL Electric Utilities Corporation (“PPL”) at Docket No. R-2015-2469275 et al. Mr. Munson’s testimony addressed, among other things, access to energy usage data for customers and authorized third parties and performance metrics and reporting requirements for Integrated Volt/VAR Control projects, i.e., the very same issues that Messrs. Murray and Alvarez seek to litigate in this proceeding. PPL moved to strike that statement as beyond the scope of a distribution base rate case and, on July 14, 2015, Administrative Law Judge Susan D. Colwell granted PPL’s request (“PPL Order”). *See* PPL Order, Ordering Paragraphs 4-6. A copy of the PPL Order is attached as Appendix A to this Motion.

**B. The ALJ Should Exercise The Authority Granted By The Commission’s Regulations To Exclude The Murray Direct Testimony**

Mr. Murray’s proposals are summarized by subtopic below:

**Customer Access to Energy Usage.** Mr. Murray proposes that Met-Ed provide customers with access to “backhaul” information through the utility website and real-time information directly from home/premises area network (“HAN”) radios (p. 3). He recommends that Met-Ed provide a “binding cost estimate” for Green Button Connect, which relates to the transmission of backhaul data. (pp. 3-4). Mr. Murray also urges the Commission to adopt the “Open Data Access Framework” being considered in Illinois on a statewide basis in Pennsylvania (p. 4).

**Third Party Access to Energy Usage and Customer Authorization.** Mr. Murray proposes that customers be able to “easily share” their usage data with third parties, such as energy management service providers and advocates for a “third-party led” customer consent process that does not require the customer to interact directly with the utility (pp. 3-5).

**Third Party Breaches of Customer Privacy.** If a third party breaches privacy obligations with regard to customer energy usage data, Mr. Murray recommends that the Commission: (1) make clear that the utility is not liable for acts committed by the third party; and (2) order the utility to cease providing data to that third party (pp. 5-6).

Mr. Murray's testimony and the proposals set forth therein should be excluded from this proceeding for at least five reasons:

First, there is nothing in Met-Ed's proposed – or for that matter, its existing – rates, rules or terms of service that pertain to the matters EDF and PennFuture are seeking to interject in this case through Mr. Murray's testimony. As such, those topics are not relevant to revenue requirement, rate structure and rate design, which properly encompass the principal scope of a general base rate proceeding. Furthermore, as a general base rate proceeding, this case is subject to the statutory timeline imposed by 66 Pa.C.S. § 1308(d). *See* footnote 4, *supra*. The challenges of creating a complete and well-developed evidentiary record on the issues that are properly within the scope of this base rate proceeding should not be heightened by interjecting factually complex, but entirely extraneous, issues like those Mr. Murray seeks to introduce. By the same token, issues concerning customer and third-party access to customer usage data and protecting the privacy of customer data would not receive the thoughtful consideration they deserve if they are forced into a litigation schedule that was not designed or intended to accommodate them. Indeed, these factors were specifically relied upon by Judge Colwell in the PPL Order (p. 10) as a principal reason for striking Mr. Munson's testimony in that case.

Second, customer and third-party access to customer usage information raises issues of statewide significance including, for example, the protection of customer privacy and the uniformity of processes and procedures required to meet the needs of energy generation suppliers

(“EGSs”) that offer their products to customers of multiple utilities across the Commonwealth. As a consequence, proposals like Mr. Murray’s should be considered only in the context of a generic, statewide proceeding that is properly identified (and captioned) as the vehicle for reaching regulatory decisions that affect the interests of stakeholders in the service territories of multiple utilities. Clearly, a general base rate case does not satisfy those criteria because customers and other possible stakeholders will intervene – or not – based on their perception of the effect that proposed changes in rates and tariff rules may – or may not – have upon them.

It would be unfair to assume, contrary to fact, that interested parties will be on inquiry notice that a base rate proceeding for a utility – from which they may not even receive service – could produce regulatory mandates directly affecting their personal or business interests. For precisely that reason, fundamental principles of due process dictate that Mr. Murray’s proposals should be considered only in the context of generic, statewide proceedings that, from their initiation, properly identify the subject areas they will address. In that way, all interested parties will have reasonable notice that administrative action is contemplated that could affect them, and they will be afforded a reasonable opportunity to participate.<sup>7</sup> Moreover, only by establishing a proceeding that encourages the participation of all interested parties will the Commission obtain the full range of views needed to produce a well-developed record as the basis for an informed and well-reasoned decision supported by substantial evidence.

Third, the Commission has already undertaken several inclusive, broad-based initiatives at other dockets designed and intended to specifically address data access issues for **all**

<sup>7</sup> Significantly, even Mr. Murray tacitly acknowledges the generic, state-wide nature of the issues he is trying to interject in this case by framing his recommendations on an industry-wide basis. See, for example, Mr. Murray’s statement at page 5, lines 5-6: “One solution is for the Commission to require *utilities* to accept a third party-submitted form requesting access to usage data” (emphasis added). Similarly, Mr. Murray cites cases in Texas, California and Illinois that addressed third-party access issues. However, those cases were, respectively, two state-wide “rulemaking” proceedings and a state-wide generic investigation. Mr. Murray provided no authority for considering such issues in the base rate case of a single electric distribution company.

Pennsylvania electric distribution companies (“EDCs”) with Act 129 smart meter obligations. The minimum capabilities of smart meters, including capabilities related to data collection, were established in the Commission’s Smart Meter Implementation Order.<sup>8</sup> The sharing of data with third parties has been the focus of the Commission and stakeholders for several years.

For example, in 2012, the Commission directed the Electronic Data Exchange Working Group (“EDEWG”) to convene a web portal working group (“WPWG”) to develop standardized solutions for third-party acquisition of a customer’s usage data.<sup>9</sup> On September 3, 2015, the Commission entered a Final Order (the “September 2015 Order”) directing EDCs with smart meter obligations to implement certain third-party access solutions that were developed as part of the WPWG’s efforts.<sup>10</sup> A June 30, 2016 Order in that same docket (the “June 2016 Order”) adopted implementation standards for those solutions. EDF, in conjunction with “Mission: data Coalition” (a coalition of technology companies), filed comments that were considered in that docket. Of particular note, Mission:data Coalition contended that the solutions were inadequate because they did not provide a platform for the transmission of data to third parties that are not licensed EGSs or conservation service providers (“CSPs”).<sup>11</sup> The Commission responded that unlicensed third parties should not be granted access through the approved solutions except as agents of an EGS or CSP contracted by an EDC because the Commission’s regulations regarding the confidentiality of customer information, 52 Pa. Code § 54.8 and § 54.43(d), only apply to

<sup>8</sup> *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009).

<sup>9</sup> *See Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered December 6, 2012).

<sup>10</sup> *Submission of the Electronic Data Exchange Working Group’s Web Portal Working Group’s Solution Framework for Historical Interval Usage and Billing Quality Interval Use*, Docket No. M-2009-2092655 (Final Order entered September 3, 2015)

<sup>11</sup> September 2015 Order, pp. 13-14; June 2016 Order, pp. 9-11.

EDCs and licensed EGSs.<sup>12</sup> The Commission reserved the right to revisit third party access at a future point in time, if “any changes occur or a process for licensing third parties is implemented.”<sup>13</sup> Clearly, the Commission was contemplating such additional consideration in another general proceeding intended for all interested stakeholders, not in a base rating proceeding for a particular utility.

In both the September 2015 Order and the June 2016 Order, the Commission explained that non-EGS/CSP third parties, with appropriate customer consent, may access data through customer portals and/or their own equipment.<sup>14</sup> The Commission also rejected arguments made by the Mission:data Coalition to implement a “Green Button” solution in that proceeding.<sup>15</sup> Finally, the Commission addressed the management of customer authorizations, a concern raised by Mr. Murray in this proceeding, by affirming that it is the responsibility of the EGS, not the EDC, to manage EGS receipt of appropriate customer authorizations.<sup>16</sup>

Notably, the fact that EDF could raise its concerns in other Commission-initiated forums dedicated to addressing such issues was other reason Mr. Munson’s testimony was stricken in the PPL case: “However, I will not permit the re-litigation of issues which are presently pending before this Commission in another proceeding.” PPL Order, p. 10. As explained above, EDF and PennFuture have those opportunities and, in fact, EDF and the Mission:data Coalition participated in Commission proceedings at other dockets to raise some of the same proposals offered in Mr. Murray’s testimony.

<sup>12</sup> *Id.*

<sup>13</sup> September 2015 Order, p. 14; see also June 2016 Order, p. 11. Notably, there have not been “any changes” since the Commission entered its Order, as Mr. Murray appears to concede.

<sup>14</sup> September 2015 Order, p. 14; June 2016 Order, p. 11.

<sup>15</sup> September 2015 Order, pp. 6-7.

<sup>16</sup> September 2015 Order, p. 14.

Fourth, as noted earlier, existing Commission regulations already address privacy obligations of EDCs and EGSs with respect to customer data and information. *See* 52 Pa. Code § 54.8 and § 54.43(d). Any proposal to modify these provisions, including expanding their scope to include additional third-party entities, could not be considered without first satisfying the formal notice and comment requirements imposed by the Commonwealth Documents Law<sup>17</sup> and the requirement for review by the Independent Regulatory Review Commission imposed by the Regulatory Review Act.<sup>18</sup>

Finally, consistent with the Smart Meter Implementation Order, Met-Ed has developed, and received Commission approval of, a Smart Meter Procurement Plan<sup>19</sup> and a Smart Meter Deployment Plan.<sup>20</sup> As part of those proceedings, Met-Ed specifically addressed smart meter data collection and sharing capabilities, participating parties had the opportunity to review and respond to those capabilities, and final plans were approved by the Commission. Specifically, Met-Ed's smart meters will have the capability to make unvalidated meter data available in near real-time to those customers with compatible HAN technology, while validated data will be made available the next day for all customers through the Company's website. The customer, or third parties approved by the customer, will be able to obtain this meter data through these means. The Company's Revised Deployment Plan (p. 42) specifically states that it will not be providing customers with HAN technology, instead leaving such devices to the competitive

<sup>17</sup> 45 P.S. §1201 et seq.

<sup>18</sup> *See* 71 P.S. §745.5(a)

<sup>19</sup> *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company and Pennsylvania Power Company for Approval of Smart Meter Technology Procurement and Installation Plan*, Docket No. M-2009-2123950 (Order entered June 9, 2010).

<sup>20</sup> *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Smart Meter Deployment Plan*, Docket Nos. M-2013-2341990, M-2013-2341991, M-2013-2341993, and M-2013-2341994 (Order approving Revised Deployment Plan entered June 25, 2014).

market. A base rate proceeding is simply not the appropriate proceeding to propose changes to Met-Ed's Commission-approved plan that was developed and approved in a separate docket. *See* PPL Order, p. 10.

**C. The ALJ Should Exercise The Authority Granted By The Commission's Regulations To Exclude The Alvarez Direct Testimony**

Mr. Alvarez's proposals are summarized by subtopic below:

**Integrated Volt/VAR Controls ("IVVC").** Mr. Alvarez asks the Commission to require the Company to submit a report describing: (1) IVVC costs to date and resulting deferred capital investments and reductions in energy, peak demand, and greenhouse gas emissions; and (2) a cost/benefit analysis and implementation plan for installing IVVC on remaining circuits and substations. He further proposes that Met-Ed report average voltage and power factor, by treated circuit, on annual basis. Finally, Mr. Alvarez makes a general recommendation that the Commission incentivize utilities to take energy conservation measures, such as IVVC, which could otherwise harm revenues (p. 6).

**Integrated Resource Planning.** Mr. Alvarez proposes that Met-Ed submit a report to the Commission and stakeholders describing: (1) current practices to implement demand side resources; and (2) additional practices to be implemented to expand use of demand-side resources (p. 11).

Mr. Alvarez's testimony and the proposals set forth therein should be excluded from this proceeding for four principal reasons:

First, there is nothing in Met-Ed's proposed or existing rates, rules or terms of service that pertain to the proposals advanced by EDF in Mr. Alvarez's testimony. As explained in Section III.B *supra*, base rate proceedings should be appropriately focused to allow an adequate record to be developed on issues relevant to base rates. Although Mr. Alvarez has offered

somewhat more discussion of what IVVC entails than Mr. Munson did in the PPL case, his testimony, nonetheless, provides no valid reason to interject issues pertaining to IVVC – or integrated resource planning – in a distribution base rate case. Thus, Mr. Alvarez’ testimony suffers from the same fatal defect that caused Judge Colwell to strike Mr. Munson’s testimony on IVVC, where she held: “The abbreviated direct testimony fails to establish this recommendation as a legitimate issue for further scrutiny in this case.” PPL Order, p. 10.

Second, demand-side resource requirements for Met-Ed and other EDCs have already been established by the energy efficiency and conservation (“EE&C”) provisions of Act 129, 66 Pa.C.S. § 2806.1, and several Commission orders, the most recent of which is for Phase III of the statewide EE&C program.<sup>21</sup> On November 23, 2015, Met-Ed filed a proposed Phase III EE&C plan detailing its programs for reducing consumption and demand over the next five years. EDF and PennFuture jointly filed comments in response to the plan, but did not advocate for additional IVVC investment.<sup>22</sup> On March 10, 2016, the Commission approved a final Phase III Plan for Met-Ed.<sup>23</sup> In addition, pursuant to the Commission’s Phase III Implementation Order, Met-Ed will submit semi-annual and annual reports detailing the progress of its Phase III Plan. Thus, Met-Ed’s current and future demand-side resource plans have already been developed as part of a process in which EDF and PennFuture participated, and the Company’s plan and progress reports are publicly available. It would be improper to modify the content of Met-Ed’s

<sup>21</sup> *Energy Efficiency and Conservation Program*, Docket No. M-2014-2424864 (Final Order entered June 19, 2015)

<sup>22</sup> Mr. Alvarez states that other EDCs have pursued IVVC as part of earlier EE&C plans (p. 5).

<sup>23</sup> *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Consolidation of Proceedings and Approval of Act 129 Phase III Energy Efficiency and Conservation Plans*, Docket Nos. M-2015-2514767, M-2015-2514768, M-2015-2514769 and M-2015-2514772 (Order entered March 10, 2016).



plan or reporting requirements as part of a base rate proceeding and, in fact, there is no authority to do so.

Third, Met-Ed has already reported metrics related to its IVVR investment as part of the DOE Smart Grid Modernization Initiative, including: Metric 17 (Voltage and VAR Controls); Metric 18 (Grid assets that are monitored, controlled, or automated); and Metric 20 (Improvement in line loss reductions enabled by smart grid technology). These reports are publicly available for review by EDF or any other interested stakeholder.

Finally, the implementation of new utility incentives for energy conservation measures is appropriately considered only in the context of a generic, statewide proceeding that will allow for the participation of all interested stakeholders. Mr. Alvarez admits as much by praising the Commission's recent En Banc hearing on alternative ratemaking (p. 6).

In sum, the Alvarez Direct Testimony focuses exclusively on matters which are not properly addressed in a general base rate proceeding, and, therefore, the Alvarez Direct Testimony should be stricken in its entirety and the proposals set forth therein should be excluded from consideration in this case.

#### **IV. REQUEST FOR MODIFICATION IN TIME FOR ANSWERING AND REQUEST FOR EXPEDITED RULING**

The Commission's regulation at 52 Pa. Code § 5.103(c) provides that Answers to Motions are due in twenty days from service of a Motion unless the presiding Administrative Law Judge establishes a different time for submitting an Answer. Met-Ed respectfully requests that Administrative Law Judge Long exercise the authority granted by 52 Pa. Code §5.103(c) to require an Answer to this Motion within seven days of the date of service, or by August 22, 2016, 2016. Given the discrete issue of limited scope raised for decision by this Motion, seven

days is ample time for the preparation and submission of an Answer.<sup>24</sup> Because the procedural schedule established in this case provides for evidentiary hearings to begin on September 6, 2016, providing seven days for filing and serving an Answer to this Motion will make it possible for the Administrative Law Judge to issue a ruling before evidentiary hearings commence and, if possible, by August 31, 2016, in order to provide parties sufficient time to prepare for hearings based on that ruling.

## V. CONCLUSION

For the reasons set forth above, the ALJ: (1) should set seven days as the time for filing an Answer to this Motion; and (2) issue an order finding and determining that the Murray and Alvarez Direct Testimony should not be admitted into the evidentiary record and that the proposals set forth therein should be excluded from consideration in this case. As explained previously in this Motion, the statements of Mr. Murray and Mr. Alvarez relate to matters that are outside the scope of this proceeding and raise issues that should properly be addressed in separately-initiated, generic proceedings of statewide scope that afford proper notice and opportunity to be heard to all potentially interested parties. Moreover, EDF's and PennFuture's proposals also constitute improper collateral attacks on existing regulations, orders and other Commission guidelines and seek to interject into this case matters addressed by the Commission

<sup>24</sup> Indeed, given the fact that a Motion to Strike was filed and granted in the PPL, EDF certainly should have anticipated, and been preparing for, a similar Motion being filed here given the similarity of the EDF/PennFuture testimony in this case to the EDF testimony in the PPL case.

in other dockets. For the reasons set forth in Section IV, above, Met-Ed requests that the Administrative Law Judge issue a ruling in advance of the commencement of evidentiary hearings in this case and, if possible, by August 31, 2016.

Respectfully submitted,



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Tori L. Giesler (Pa. No. 207742)  
FirstEnergy Service Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, PA 19612-6001  
Phone: 610.921.6658  
Fax: 610.939.8655  
[tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)

Thomas P. Gadsden (Pa. No. 28478)  
Anthony C. DeCusatis (Pa. No. 25700)  
Catherine G. Vasudevan (Pa. No. 210254)  
Brooke E. McGlinn (Pa. No. 204918)  
Morgan Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
215.963.5234 (bus)  
215.963.5001 (fax)  
[thomas.gadsden@morganlewis.com](mailto:thomas.gadsden@morganlewis.com)  
[anthony.decusatis@morganlewis.com](mailto:anthony.decusatis@morganlewis.com)  
[catherine.vasudevan@morganlewis.com](mailto:catherine.vasudevan@morganlewis.com)  
[brooke.mcglinn@morganlewis.com](mailto:brooke.mcglinn@morganlewis.com)

*Counsel for Metropolitan Edison Company*

Dated: August 15, 2016

**APPENDIX A**

**PPL ORDER**

Sixth Prehearing Order, issued July 14, 2015, at Docket Nos.  
R-2015-2469275 *et al.*

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	R-2015-2469275
Office of Consumer Advocate,	:	C-2015-2475448
Office of Small Business Advocate	:	C-2015-2478277
PP&L Industrial Customer Alliance	:	C-2015-2480265
C. Wintermeyer	:	C-2015-2485827
Cathleen A. Woomert	:	C-2015-2484588
Michael B. Young	:	C-2015-2485860
Joseph E. McAndrew	:	C-2015-2489524
	:	
v.	:	
	:	
PPL Electric Utilities Corporation	:	
	:	
PPL Electric Utilities Corporation	:	
Petition for a Waiver of the Distribution	:	P-2015-2474714
System Improvement Charge Cap of 5%	:	
of Billed Revenues	:	

**ORDER GRANTING THE PETITION TO INTERVENE OF THE ENVIRONMENTAL  
DEFENSE FUND, GRANTING THE MOTION FOR ADMISSION PRO HAC VICE OF  
MICHAEL PANFIL AND JOHN FINNEGAN, AND GRANTING THE MOTION IN  
LIMINE OF PPL ELECTRIC UTILITIES CORPORATION TO STRIKE THE DIRECT  
TESTIMONY OF DICK MUNSON AND TO EXCLUDE THE ISSUES RAISED  
THEREIN**

**Sixth Prehearing Order**

**HISTORY OF THE PROCEEDING**

On March 31, 2015, PPL Electric Utilities Corporation (PPL Electric or Company) filed Supplement No. 179 to Tariff Electric – Pa. PUC No. 201, containing proposed changes in rates, rules, and regulations calculated to produce approximately \$167.5 million in additional annual revenues based upon data for a fully projected future test year ending December 31, 2016. This proposed rate change represents an average increase in the Company's

distribution rates of approximately 18.5%, which equates to an average increase in total rates (distribution, transmission, and generation charges) of approximately 3.9%. Supplement No. 179 was proposed to take effect on June 1, 2015. The filing was suspended by Commission Order entered April 23, 2015.

Formal complaints against this proposed tariff have been filed by: the Office of Consumer Advocate (OCA), the Office of Small Business Advocate (OSBA), PP&L Industrial Customer Alliance (PPLICA), D. Wintermeyer, Cathleen A. Woomert, Thomas B. Young, and Joseph McAndrew.

Prior to the prehearing conference, petitions to intervene were filed by the Commission on Economic Opportunity (CEO), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), the Clean Air Council, Sustainable Energy Fund (SEF), the Alliance for Solar Choice (TASC), and Eric Joseph Epstein. The Commission's Bureau of Investigation and Enforcement (I&E) filed a Notice of Appearance.

Motion for admission pro hac vice was filed by Joseph Minnott, attorney for the Alliance for Solar Choice, seeking admission for David R. Wooley and Jacob J. Schlesinger.

On April 22, 2015, a Notice was issued which scheduled the prehearing conference for Thursday, May 7, 2015. A prehearing conference order (First Prehearing Order) was also issued on April 22, 2015, which directed the litigating parties to file and serve their prehearing memos on or before Friday, May 1, 2015 on or before noon. Prehearing memos were filed by the following: PPL Electric, OCA, OSBA, I&E, PPLICA, CEO, SEF, Clean Air Council, TASC, CAUSE-PA, and Mr. Epstein.

The prehearing conference was held as scheduled on May 7, 2015. The following attended: David B. MacGregor, Esq., Paul E. Russell, Esq., and Christopher T. Wright, Esq., for PPL Electric; Darryl Lawrence, Esq., Hobart Webster, Esq., and Lauren Birge, Esq., for OCA; Richard Kanaskie, Esq., Gina L. Lauffer, Esq., and Kenneth R. Stark, Esq., for I&E; Steven C. Gray, Esq., for OSBA; Joseph Vullo, Esq., for CEO; Adeolu Bakare, Esq., for PPLICA; Kenneth

L. Mickens, Esq., for SEF, Logan Welde, Esq., and Joseph O. Minott, Esq., for the Clean Air Council; Mr. Minott also appeared on behalf of the Alliance for Solar Choice, along with David R. Wooley, Esq.; Elizabeth Marx appeared on behalf of CAUSE-PA, and Mr. Epstein appeared pro se.

The petitions to intervene filed by CAUSE-PA, CEO, SEF, and Mr. Epstein were unopposed and were granted in the ordering paragraphs of the Scheduling Order.

Two petitions to intervene were opposed by the Company for lack of standing. The petition to intervene filed by the Clean Air Council faced the objections of the Company for failure to aver by name their members who are PPL Electric customers, and the petition to intervene filed by TASC faced the objections of the Company for failure to identify which members provide service within PPL Electric's service territory. Both TASC and the Clean Air Council were given five business days from the date of issuance of this Order to file and serve amended petitions with the requested information. The Company was given five business days from the date of the filing of the amended petitions to respond.

On May 12, 2015, Natural Resources Defense Council (NRDC) filed a Notice of Intervention. As notices of intervention can only be filed by statutory advocates, and all others must file either a petition or a complaint, the NRDC filing was treated as a petition.

On May 13, 2015, the Clean Air Council filed its Amended Petition to Intervene, and on May 14, 2015, TASC filed its Amended Petition to Intervene. No response was filed. Counsel for PPL Electric indicated by email that no opposition would be filed to any of the three outstanding petitions to intervene. Therefore, the three petitions were granted by Order issued May 28, 2015.

On June 1, 2015, the Keystone Energy Efficiency Alliance (KEEA) Energy Education Fund filed a Petition to Intervene, and no party filed opposition to the Petition. The Petition was granted by Order dated June 22, 2015 (Fifth Prehearing Order).

On June 19, 2015, the Motion for Admission Pro hac Vice, Notice of Appearance, Petition to Intervene of Environmental Defense fund and the Prehearing Memorandum on Behalf of Environmental Defense Fund (EDF or Petitioner) was filed and served. As there was no indication that the Petitioner had obtained the agreement of other parties to its Petition to Intervene, the full time for response was required to run prior to my addressing the Petition. 52 Pa.Code § 5.61(a). On June 23, 2015, EDF served the Direct Testimony of Dick Munson.

On July 10, 2015, PPL Electric filed its Answer in Objections to the Petition to Intervene of Environmental Defense Fund and Motion in Limine to Exclude Environmental Defense Fund's Testimony and to Limit the Scope of the Evidentiary Hearing.

On July 10, 2015, EDF filed its Response.

There being no provision in the rules for further filings on this issue, the EDF's Petition to Intervene with its Motion for Admissions Pro Hac Vice, and PPL Electric's Motion in Limine are ripe for disposition.

## DISCUSSION

### **Petition to Intervene**

The EDF avers that it "engages in policy development, public education, litigation and other actions to achieve its goals, including the promotion of clean energy resources and technologies," Petition ¶2. It identifies four individuals with addresses in PPL Electric's service territory and avers that the four individuals are customers of PPL Electric. Petition ¶1. Petitioner claims that it has a right and interest in assuring that safe, reliable, clean and affordable public utility service, and participation in these Proceedings is an appropriate way to protect these rights and interest. Petition ¶6.



PPL Electric argues that the Petition should be denied or, in the alternative, participation should be limited to exclude EDF's proposals and its direct testimony stricken as beyond the proper scope of the proceeding.

Commission regulations provide:

**§ 5.72. Eligibility to intervene.**

(a) *Persons.* A petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought. The right or interest may be one of the following:

(1) A right conferred by statute of the United States or of the Commonwealth.

(2) An interest which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.

(3) Another interest of such nature that participation of the petitioner may be in the public interest.

(b) *Commonwealth.* The Commonwealth or an officer or agency thereof may intervene as of right in a proceeding subject to subsection (a)(1)—(3).

(c) *Supersession.* Subsections (a) and (b) supersede 1 Pa. Code § 35.28 (relating to eligibility to intervene).

52 Pa.Code § 5.72.

"The interest of a petitioner seeking intervention must be direct and immediate."

*Re Pennsylvania Power & Light Company*, 50 Pa. PUC 38, 40 (1976).

To possess standing, a party must have an interest in the controversy that is distinguishable from the interest shared by other citizens. *Sierra Club v. Hartman*, 529 Pa. 454, 605 A.2d 309 (1992). A party possesses standing if he has a "substantial, direct, and immediate

interest" in the subject matter of the litigation. *Wm. Penn Parking Garage, Inc. v. City of Pittsburgh*, 464 Pa. 168, 346 A.2d 269 (1975). PPL Electric avers that EDF has failed to identify an interest which surpasses the common interest of all citizens, and that it has failed to state an interest which is not already represented adequately by other parties, as the NRDC, CAC, TASC and KEEA all state similar interests. Therefore, the interests of EDF are not unique and not a sound basis for the grant of intervention. PPL Electric Answer at pp. 5-6.

EDF responds that it has established that it has members in the PPL Electric service territory and that they have an interest in clean energy issues. Further, intervention had already been granted in other Commission electric distribution company base rate cases, as well as PECO's, now pending. Response of EDF at 1-2. In addition, EDF claims, different environmental groups emphasize different issues.

An association, as a representative of its members, may have standing to bring a cause of action even in the absence of injury to itself; the association must allege that at least one of its members is suffering immediate or threatened injury as a result of the challenged action." *Malt Beverages Distribs. Ass'n v. Pa. Liquor [\*123] Control Bd.*, 881 A.2d 37, 41 (Pa.Cmwlt. 2005), petition for allowance of appeal denied, 586 Pa. 775, 895 A.2d 1264 (2006); *The Unified Sportsmen of Pennsylvania v. The Pennsylvania Game Commission et al.*, 903 A.2d 117 Pa.Cmwlt. 2006), 2006 Pa. Commw. LEXIS 397; *see also Pennsylvania Academy of Chiropractic Physicians v. Commonwealth of Pennsylvania, Department of State, Bureau of Professional & Occupational Affairs*, 564 A.2d 551 (Pa.Cmwlt. 1989) 1989 Pa. Commw. LEXIS 648.

Even in the absence of injury to itself, [however], an association may have standing solely as the representative of its members. The possibility of such representational standing, however, does not eliminate or attenuate the constitutional requirement of a case or controversy. The association must allege that its members, or any one of them, are suffering immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit. So long as this can be established, and so long as the nature of the claim and of the relief sought does not make the individual participation of each injured party indispensable to

proper resolution of the cause, the association may be an appropriate representative of its members, entitled to invoke the court's jurisdiction.

*Warth v. Seldin*, 422 U.S. 490, 511, 95 S.Ct. 2197, 2211, 45 L.Ed.2d 343, 362 (1975) (citations omitted). See also *Boston Stock Exchange v. State Tax Commission*, 429 U.S. 318, 97 S.Ct. 599, 50 L.Ed.2d 514 (1977); *Tripps Park Civic Association v. Pa. Pub. Util. Comm'n*, 415 A.2d 967 (Pa.Cmwlt. 1980); *Concerned Taxpayers v. Commonwealth of Pennsylvania*, 382 A.2d 490 (Pa.Cmwlt.1978).

The EDF, having identified members who are ratepayers of the utility, have established standing to intervene in a base rate case, and intervention will be granted.

#### **Motion in Limine to Exclude EDF Testimony and to Limit the Scope of the Evidentiary Hearing**

PPL Electric states that the EDF advances three proposals: (1) that PPL Electric be required to undertake a cost-benefit analysis of providing usage data to customers and third parties and be required to submit a proposal to provide detailed energy usage data to customers and third parties; (2) that PPL Electric be required to use 21 environmental and performance metrics to ensure that its distribution facilities are performing as expected and customers are receiving the full benefits of grid modernization investments; and (3) that PPL Electric be required to report on the performance of its Integrated Volt/VAR Control projects and its future plans for full deployment. These, PPL Electric argues, are not properly within the scope of this base rate case but should be addressed in a statewide proceeding that affords all relevant parties the opportunity to participate.

These are three proposals which, PPL Electric argues, are not related to anything in PPL Electric's proposed or existing tariff rules, rates, or services. Rather, the determination of what usage data should be provided to customers and third parties is a statewide issue as the requirements must be uniform among EDCs. To this end, the Commission has adopted regulations and guidelines regarding access to customer data and the protection of customer information. *Re Standards for Electronic Data Transfer and Exchange*, Docket No.

M-00960890F0015 (June 18, 1998); *Smart Meter Procurement and Installation*, Docket No. M-2009-2092655 (Order entered June 24, 2009); *Smart Meter Procurement and Installation Plan*, Docket No. M-2009-2092655 (July 8, 2011); *Interim Guidelines for Eligible Customer Lists*, Docket No. M-2010-2183412 (November 15, 2011); *Submission of the Electronic Data Exchange Working Group's Web Portal Working Group's Solution Framework for Historical Interval Usage and Billing Quality Interval Usage*, Docket No. M-2009-2092655 (April 23, 2015); 52 Pa.Code §§ 54.8-54.122. PPL Electric states that this is essentially a request to amend the Commission's existing regulations, orders and guidelines, which should not be permitted outside a statewide process. PPL Electric Answer at 7-8.

Similarly, PPL Electric charges, the proposed environmental and performance metrics and Integrated Volt/VAR Control project reporting requirements would, in effect, be an amendment to the Commission's Electric Reliability Standards. PPL Electric Answer at 8-9. Any determination of additional performance metrics would be across the state, not just in one EDC's service territory.

EDF responds that it is raising issues which are quite different from those raised by the other parties, which supports its intervention, and asks that it be permitted full participation. The data access, environmental and performance metrics, and Volt/VAR are all service issues, which are properly raised in a base rate case. EDF states that, while they may be the subject of other proceedings, those simply establish minimum standards. Nothing prohibits PPL from offering service to its customers in excess of the minimum standards. Response at 4.

A review of Mr. Munson's Direct Testimony reveals that he presents three numbered issues. His first issue is "Access to Energy Usage Data," in which he advocates for the increased access of actual usage to the customer in shorter intervals, in order to motivate customers to amend their usage more effectively. He advocates the use of in-home displays, web portals, and prepaid metering programs, as well as an Open Access Data Framework as the basis for sharing that information with authorized third parties. Munson Direct, pp. 2-6.

A similar issue was raised as part of the Company's recent Smart Meter Plan, and my Initial Decision in that case included the following language:

. . . the Company will be bound by a Commission initiative presently underway. The electronic data exchange working group (EDEWG) convened a web portal working group (WPWG) to develop standardized solutions for the acquisition of both the historical interval usage (HIU) and billing quality interval use (IU) data via a secure web portal, under Commission Order entered December 6, 2012, in this docket. On February 17, 2015, a final version of the document titled "Pennsylvania Web Portal Working Group Solutions Framework" was filed, which purportedly outlines the portal solution that would permit third parties such as EGSs and Conservation Service Providers (CSPs) to acquire data within 48 hours of daily meter reads. Commission review of this document will occur at a public meeting. The outcome of this proceeding will likely determine the direction of this issue.

Ideally, the Commission's scrutiny will result in regulations, which are the appropriate way to implement a statute. The parties' failure to mention the ongoing Commission initiative is understood because a search of the Commission's regulations would not result in finding them. Rather, the process is one that the Commission uses when the directions in a new statute require Commission guidance before regulations can be promulgated, and where the Commission institutes a regulatory process afterwards to ensure the due process rights of all involved.

In the meantime, the Company will be expected to comply with whatever outcome that the EDEWG recommends and the Commission approves at Docket No. M-2009-2092655, and there appears to be a recommendation pending at this time. The Commission's Final Order in that matter may be available to provide guidance for the disposition of this issue by the time the Commission issues its Final Order in the present case, but it is not available at this time. Accordingly, the parties who seek to be involved in the development of that process should look to that docket, and that the Company develop its Plan in accordance with Commission guidelines.

*Petition of PPL Electric Utilities Corporation for Approval of its Smart Meter Technology Procurement and Installation Plan, Docket No. M-2014-2430781 (Initial Decision issued*

April 30, 2015, case pending before the Commission on exceptions).

There is an ongoing proceeding before this Commission which addresses the functions of PPL Electric's proposed metering system. That proceeding was public and included other parties who fully litigated the case. The present base rate case is to set rates, and all intervenors are permitted and even encouraged to pursue all issues regarding the rates of this Company. However, I will not permit the re-litigation of issues which are presently pending before this Commission in another proceeding.

Similarly, each EDC in this Commonwealth is subject to performance metrics which were set according to regulations. Any challenge to these metrics must be done by formal complaint in a separate proceeding where it could be given sufficient time to develop a full and complete record, not rushed into the last few weeks before the formal hearings set for a base rate investigation. The Company and other parties will not be required to address the issue of performance metrics in the last few weeks before the hearing.

The third stated issue – that PPL Electric be required to report on its Integrated Volt/VAR control projects – has not been developed or supported sufficiently for even a superficial introduction of it, let alone a meaningful evaluation. There is not so much as an explanation of what a Volt/VAR control project is, let alone whether it could possibly be relevant to this proceeding. The abbreviated direct testimony<sup>1</sup> fails to establish this recommendation as a legitimate issue for further scrutiny in this case.

Consequently, the Direct Testimony of Dick Munson is stricken.

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<sup>1</sup> Q: Do you have any recommendation regarding integrated Volt/VAR controls?

A: Yes. I recommend that the Company report on the performance of its Integrated Volt/Var Control projects and its future plans for full deployment." The complete Direct of Munson at 7-8 on this topic.

**Motion for admission pro hac vice**

Counsel Heather Langeland moves for the admission pro hac vice of Michael Panfil and John Finnegan. Having set forth the necessary information to support her Motion, and no party having objected to the motion, it is granted as unopposed.

**ORDER**

THEREFORE,

IT IS ORDERED:

1. That the Petition to Intervene of the Environmental Defense Fund is granted.
2. That the Motion of Heather Langeland for the admissions pro hac vice of Michael Panfil and John Finnegan is granted.
3. That the service list be amended to include Michael Panfil and John Finnegan.
4. That the Motion In Limine of PPL Electric Utilities Corporation to exclude the testimony of Dick Munson is granted.
5. That the Direct Testimony of Dick Munson is stricken.

6. That the issues raised by the Environmental Defense Fund in the Direct Testimony of Dick Munson are excluded from the scope of the evidentiary hearings in this case.

Dated: July 14, 2015

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Susan D. Colwell  
Administrative Law Judge



**R-2015-2469275 - PA PUBLIC UTILITY COMMISSION v.PPL ELECTRIC UTILITIES CORPORATION**

**Revised 7/14/2015**

DAVID B MACGREGOR ESQUIRE  
POST & SCHELL PC  
FOUR PENN CENTER  
1600 JOHN F KENNEDY BOULEVARD  
PHILADELPHIA PA 19103-2808  
**215.587.1197**

MICHAEL W. GANG ESQUIRE  
CHRISTOPHER T WRIGHT ESQUIRE\*  
POST & SCHELL PC  
17 NORTH SECOND STREET 12<sup>TH</sup> FLOOR  
HARRISBURG PA 17101-1601  
**717.731.1970**  
*Accepts E-service\**

PAUL E RUSSELL ESQUIRE\*  
KIMBERLY A KLOCK ESQUIRE  
PPL ELECTRIC UTILITIES CORPORATION  
TWO NORTH NINTH STREET  
ALLENTOWN PA 18101  
**610.774.4254**  
*Accepts E-service\**

DARRYL A. LAWRENCE ESQUIRE  
LAUREN M ESQUIRE  
HOBART J WEBSTER ESQUIRE  
OFFICE OF CONSUMER ADVOCATE  
5<sup>TH</sup> FLOOR FORUM PLACE  
555 WALNUT STREET  
HARRISBURG PA 17101-1923  
**717.783.5048**  
*Accepts E-service*  
**C-2015-2475448**

PATRICK M. CICERO ESQUIRE  
ELIZABETH R MARX ESQUIRE  
118 LOCUST STREET  
HARRISBURG PA 17101  
Accepts E-service  
**717.232.2719**  
*Accepts E-service*  
Representing CAUSE-PA

JOSEPH L VULLO ESQUIRE  
1460 WYOMING AVENUE  
FORTY FORT PA 18704  
**570.288.6441**  
*Accepts E-service*  
Representing Commission on Economic  
Opportunity

STEVEN C GRAY ESQUIRE  
OFFICE OF SMALL BUSINESS ADVOCATE  
300 NORTH SECOND STREET SUITE 202  
HARRISBURG PA 17101  
**717.783.2525**  
**C-2015-2478277**

RICHARD A KANASKIE ESQUIRE  
GINA L LAUFFER ESQUIRE  
KENNETH R STARK ESQUIRE  
BUREAU OF INVESTIGATION &  
ENFORCEMENT  
PUBLIC UTILITY COMMISSION  
SECOND FLOOR WEST  
400 NORTH STREET  
HARRISBURG PA 17120  
**717.783.6184**  
*Accepts E-service*

ADEOLU A BAKARE ESQUIRE  
PAMELA C POLACEK ESQUIRE  
MCNEES WALLACE & NURICK LLC  
100 PINE STREET  
PO BOX 1166  
HARRISBURG PA 17108-1166  
**717.237.5290**  
**717.237.5368**  
*Accepts E-service*  
*Representing PPLICA*  
**C-2015-2480265**

KENNETH L. MICKENS ESQUIRE  
316 YORKSHIRE DRIVE  
HARRISBURG PA, 17111  
**717.343.3338**  
*Accepts E-service*  
*Representing Sustainable Energy Fund*

JOSEPH OTIS MINOTT ESQUIRE  
BENJAMIN Z HARTUNG  
LOGAN WELDE ESQUIRE  
CLEAN AIR COUNCIL  
135 S 19<sup>TH</sup> STREET SUITE 300  
PHILADELPHIA PA 19103  
**215.567.4004**  
*Accepts e-Service*

ERIC EPSTEIN  
4100 HILLSDALE RD  
HARRISBURG PA 17112  
**717.635.8615**  
*Accepts E-service*

SARAH C STONER ESQUIRE  
DANIEL CLEARFIELD ESQUIRE  
DEANNE M O'DELL ESQUIRE  
ECKERT SEAMANS  
213 MARKET STREET  
8TH FLOOR  
HARRISBURG PA 17101  
**717.237.7175**  
*Accepts E-service*

MARK SZYBIST ATTORNEY  
NATURAL RESOURCES DEFENSE  
COUNCIL  
1152 15TH ST NW  
SUITE 300  
WASHINGTON DC 20005  
**202.289.2422**  
*Accepts E-service*  
Representing Natural Resources Defense  
Council

CATHLEEN A WOOMERT  
81 MAPLE RIDGE RD  
MILLVILLE PA 17846  
**570.458.6326**  
*Accepts E-service*  
**C-2015-2484588**

DAVID WOOLEY ESQUIRE  
KEYES, FOX, & WEIDMAN LLP  
436 14<sup>TH</sup> STREET. SUITE 1305  
OAKLAND CA 94612  
**510.314.8207**  
*Accepts e-Service*  
Representing Alliance for Solar Choice

JACOB SCHLESINGER ESQUIRE  
KEYES, FOX, & WEIDMAN LLP  
16 MARKET SQUARE, SUITE 400  
DENVER CO 80202  
**910.531.2525**  
*Accepts E-service*  
Representing Alliance for Solar Choice

MICHAEL B YOUNG  
185 CONSTITUTION AVE  
WILKES BARRE PA 18706-4152  
**570.606.8361**  
**C-2015-2485860**

MR D WINTERMEYER  
1406 CARLISLE ROAD  
CAMP HILL PA 17011  
**C-2015-2485827**

**JOSEPH MCANDREW**  
**85 WEST CHESTNUT STREET**  
**MACUNGIE PA 18062**  
**C-2015-2489524**

**JOHN FINNEGAN ESQUIRE**  
**128 WINDING BROOK LANE**  
**TERRACE PARK OHIO 45174**  
**513 226 9558**

**MICHAEL PANFIL ESQUIRE**  
**175 CONNECTICUT AVE NW SUITE 600**  
**WASHINGTON DC 20009**