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VIA eFILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
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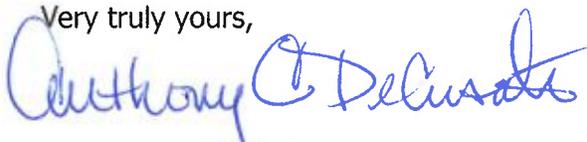
Re: Pennsylvania Public Utility Commission
v.
Metropolitan Edison Company
Docket No. R-2016-2537349

Dear Secretary Chiavetta:

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

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

Very truly yours,



Anthony C. DeCusatis

Enclosures

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

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**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 copies of the **Answer of Metropolitan Edison Company to the Motion to Compel 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.

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Dated: August 22, 2016

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION**

v.

METROPOLITAN EDISON COMPANY

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Docket No. R-2016-2537349

**ANSWER OF METROPOLITAN EDISON COMPANY TO
THE JOINT MOTION TO COMPEL OF
THE ENVIRONMENTAL DEFENSE FUND AND
CITIZENS FOR PENNSYLVANIA’S FUTURE**

I. INTRODUCTION AND OVERVIEW

Pursuant to 52 Pa. Code § 333(d), 52 Pa. Code §§ 1.12(a) and 5.342(g)(1), and the Prehearing Order entered on June 22, 2016, Metropolitan Edison Company (“Met-Ed” or the “Company”) submits this Answer to the Motion to Compel filed jointly by the Environmental Defense Fund (“EDF”) and Citizens for Pennsylvania’s Future (“PennFuture”) (“EDF/PennFuture”).

EDF and PennFuture filed their Motion to Compel in response to Objections lodged by the Company on August 15, 2016 to EDF’s First Set of Interrogatories (“EDF Interrogatories”).¹ The Company objects to the EDF Interrogatories on the principal grounds that they inquire into areas that are outside the scope of this proceeding. A copy of the Company’s Objections is attached to this Answer as Appendix A and incorporated herein by reference. The Company’s Objections set forth in detail the reasons why the EDF Interrogatories are improper and should be dismissed. The Company’s Objections also set forth the relevant procedure history and

¹ Although EDF alone issued the Interrogatories, EDF and PennFuture have filed a joint Motion to Compel.

background,² which, therefore, will not be repeated in this Answer.

The EDF Interrogatories consist of twenty questions that seek information about the Company's installation and operation of "Volt/VAR control equipment" (No. 5), including, among other things, the "management process, policy, objectives and procedures for . . . Volt/VAR management" (No. 9); the number of "distribution feeders" and "substations" where "Volt/VAR management" is used (No. 8); "documents" reflecting the "planning or decision-making for installing integrated Volt/VAR equipment" (No. 10); voltage "variation" (No. 14) and "feeder losses" (No. 16) affected by "Volt/VAR management"; and reductions in "greenhouse gas emissions" that may result from deploying volt/VAR equipment (No. 19).

Met-Ed objects to the EDF Interrogatories on the same basis set forth in its Motion to Strike the Direct Testimony of EDF witness Paul Alvarez, which was filed contemporaneously with its Objections. In summary, the Company moved to strike Mr. Alvarez's direct testimony because it attempts to interject issues related to *inter alia* "Integrated Volt/VAR Controls" ("IVVC") that are entirely outside the scope of a base rate proceeding.³ Significantly, and as explained in detail in the Company's Objections, Mr. Alvarez concedes that the Pennsylvania Public Utility Commission ("PUC" or the "Commission") has only considered such issues in proceedings to approve the Energy Efficiency and Conservation ("EE&C") Plans of electric distribution companies pursuant to 66 Pa.C.S. § 2806.1 – not in any base rate case.⁴ EDF had ample opportunity to offer its IVVC recommendations in the proceeding on Met-Ed's most

² Met-Ed Objections, pp. 2-3.

³ With specific reference to 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" as well as 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, annually. Alvarez Direct Testimony, pp. 5-6.

⁴ Direct Testimony of Paul Alvarez, p. 5. See Met-Ed Objections, pp. 1-2.

recent EE&C Plan filing made in November 2015. In fact, EDF filed comments in that case, but did not raise any IVVC issues at that time.⁵ On March 10, 2016, the Commission approved a final Phase III EE&C Plan for Met-Ed.⁶ Under these circumstances, EDF's attempt to interject IVVC issues into this proceeding, where they do not belong, is an unlawful collateral attack on the Commission's Order approving Met-Ed's EE&C Plan. Moreover, there is no authority for the Commission to modify the content of Met-Ed's EE&C Plan as part of a base rate proceeding.⁷ EDF's bold attempt to "forum shop" should be rejected.

Furthermore, by November 2015 when Met-Ed filed its Phase III EE&C Plan, EDF had been put on notice that IVVC-related issues are not properly raised in a base rate case because its attempt to do so in the 2015 distribution base rate case of PPL Electric Utilities Corporation ("PPL") generated a Motion to Strike its testimony. As explained in Met-Ed's Motion to Strike, in July 2015, Administrative Law Judge Susan D. Colwell granted PPL's Motion and held that IVVC and related subjects are not "a legitimate issue for further scrutiny" in a base rate proceeding.⁸

The EDF Interrogatories, summarized above and attached to Met-Ed's Objections, seek detailed information about IVVC-related matters and, therefore, are objectionable for all the same reasons Mr. Alvarez's direct testimony should be stricken.⁹ The EDF Interrogatories are

⁵ See Met-Ed Objections, pp. 5-6.

⁶ *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).

⁷ See 66 Pa.C.S. § 2806.1(e). Section 2806.1(e) provides the only statutory authority for the Commission to approve an EE&C plan and makes clear that final approval must occur within the time frame set forth in the statute.

⁸ *Pa. P.U.C. v. PPL Elec. Utilities Corp.*, Docket No. R-2015-2469275 et al. (Sixth Prehearing Order issued July 15, 2015) (hereafter, the "PPL Order"). A copy of the PPL Order is provided as Appendix A to Met-Ed's Motion to Strike.

⁹ See Met-Ed Objections, pp. 4-5.

objectionable for the addition reason that many of them inquire into matters that are outside the scope of Mr. Alvarez's direct testimony.¹⁰ Because the time for filing direct testimony has passed, the new issues that EDF is trying to probe in its Interrogatories could not lawfully be interjected in this proceeding at this time, even if Mr. Alvarez's direct testimony were admissible.¹¹ As a consequence, the EDF Interrogatories are not material to any issue that could properly be raised in this case at this time.

II. THE EDF/PENNFUTURE MOTION TO COMPEL SHOULD BE DENIED

The EDF/PennFuture Motion to Compel – like their joint Answer to Met-Ed's Motion to Strike – fails to provide any valid reason why the IVVC issues probed in the EDF Interrogatories and addressed in Mr. Alvarez's direct testimony are properly raised *in a base rate case*. While EDF and PennFuture assert in both documents that they think IVVC is potentially beneficial and they would like to see it pursued – presumably by all electric distribution companies (“EDCs”) and not just by Met-Ed – they do not explain why their sweeping recommendations should be considered in a base rate case for a single EDC. In fact, the one regulatory opinion quoted in their Motion to Compel¹² was entered by the Massachusetts Department of Public Utilities (“DPU”) at the conclusion of a multi-year, generic, state-wide investigation culminating in its decision to require that all electric utilities in Massachusetts submit ten-year forward-looking Grid Modernization Plans.¹³ Obviously, there is no valid reason to conclude that the DPU's

¹⁰ See Met-Ed Objections, pp. 5-6.

¹¹ 52 Pa. Code § 5.243(e)(2) (“A party will not be permitted to introduce evidence during a rebuttal phase which: . . . (2) Should have been included in the party's case-in-chief.”)

¹² See Motion to Compel, p. 3.

¹³ *Investigation by the Department of Public Utilities on its own Motion into Modernization of the Electric Grid*, , D.P.U. 12-76-B (Opinion entered June 12, 2014), p. 2 (“This Order requires *each electric distribution company to submit a ten-year grid modernization plan ('GMP')* outlining how the company proposes to make measurable progress towards the following grid modernization objectives: (1) reducing the effects of outages; (2) optimizing demand, which includes reducing system and customer costs; (3) integrating distributed resources; and (4) improving workforce and asset management.”) (Emphasis added.)

decision can be, or should be, replicated in a base rate case for a single utility in Pennsylvania. None of the arguments advanced by EDF/PennFuture provide any basis for granting their Motion to Compel.

A. The Defects In EDF/PennFuture’s Position That Led To Judge Colwell Striking EDF’s Direct Testimony In PPL’s 2015 Base Rate Case Were Not Remedied By The Submission Of Mr. Alvarez’s Direct Testimony

In their Answer to the Company’s Motion to Strike, EDF/PennFuture try to distinguish Judge Colwell’s Order striking, *inter alia*, EDF’s testimony on volt/VAR control because, in PPL’s 2015 case, EDF presented only “abbreviated direct testimony” on that subject while, in this case, it offers the direct testimony of Mr. Alvarez “explaining what IVVC is and EDF’s recommendations in this area.”¹⁴

EDF and PennFuture miss the point entirely. While Mr. Alvarez’s direct testimony contains a somewhat more fulsome explanation of IVVC and its potential to reduce electric usage and demand, he does not respond to the critical point that lies at the core of Judge Colwell’s decision and Met-Ed’s Motion to Strike and Objections. Specifically, neither Mr. Alvarez, in his direct testimony, nor EDF/PennFuture, in their Motion to Compel and Answer to the Motion to Strike, address why the issues Mr. Alvarez seeks to interject are properly raised in a base rate case for a single EDC. In fact, contrary to EDF’s and PennFuture’s contentions, Mr. Alvarez’s direct testimony actually affirms the rationale that underlies both Judge Colwell’s decision and Met-Ed’s Motion and Objections. The two instances he cites for IVVC use by Pennsylvania EDCs¹⁵ reflect proposals by PECO Energy Company and West Penn Power Company for the limited application of IVVC as part of their respective Phase I EE&C Plans

¹⁴ See EDF/PennFuture Answer to Motion to Compel, unnumbered pages 4-5.

¹⁵ Alvarez Direct Testimony, p. 5.

filed in compliance with Section 2806.1. IVVC was not an issue in a base rate case for either company.

Significantly, Mr. Alvarez recommends that Met-Ed conduct “a cost/benefit analysis” for system-wide deployment of IVVC. Yet, Mr. Alvarez, EDF and PennFuture all ignore the fact that cost/benefit analyses are comprehensively employed in EE&C proceedings held under Section 2806.1 to review and approve EDCs’ EE&C Plans. For that reason, the Commission, through the work of its specially-appointed State-Wide Evaluator, developed criteria for cost/benefit analysis under the “Total Resource Cost” test for each EE&C measure. In short, by adding Section 2806.1 to the Public Utility Code through the enactment of Act 129 of 2008, the Legislature created the statutory and regulatory framework for considering recommendations like Mr. Alvarez’s and for addressing the kinds of issues EDF’s Interrogatories seek to probe. Historical practice – evidenced by Mr. Alvarez’s own testimony – supports that approach. And, there is no precedent for considering such recommendations in a base rate case. Indeed, the extant precedent, namely, Judge Colwell’s decision in PPL’s 2015 case, contradicts the EDF/PennFuture position.

B. EDF/PennFuture Err In Contending That Met-Ed’s Argument For Considering EDF’s IVVC Recommendation In EE&C Proceedings Is Based On Its Erroneous Belief That IVVC Is Only Effective In Reducing “Peak Demand”

Attempting to argue that EE&C proceedings may not be an appropriate forum for considering IVVC recommendations, EDF/PennFuture contend¹⁶ (and repeat in their Answer to the Motion to Strike¹⁷) that EDCs’ EE&C Plans filed in compliance with Section 2806.1 address only “peak demand,” while IVVC can be used for reducing both peak demand and overall energy

¹⁶ See Motion to Compel, p. 3.

¹⁷ See Answer to Motion to Strike, unnumbered page 3.

usage. Of course, their contention is wrong. EE&C Plans address electric usage reductions as well as peak demand reductions,¹⁸ and the Company never said otherwise.

Similarly, contrary to contentions in both the EDF/PennFuture Motion to Compel and Answer to the Company's Motion to Strike, Met-Ed did not base its argument that EDF's IVVC recommendations are more properly considered in EE&C proceedings (and not in a base rate case) on an assumption that IVVC technology is only capable of reducing "peak demand."¹⁹ The Company does not dispute that IVVC may have the potential to reduce *both* peak demand and overall electric consumption. However, even beginning from that premise, EDF's recommendations are not properly addressed in a base rate case. And, EE&C proceedings are a logical alternative forum. Nothing set forth in the EDF/PennFuture Motion to Compel or Answer to the Motion to Strike refutes that fundamental point.²⁰

¹⁸ 66 Pa.C.S. § 2806.1(c).

¹⁹ See Met-Ed Objections, p. 5 ("Whether IVVC constitutes a sound and cost-effective measure *for reducing electric usage or peak demand* involves a complex cluster of issues that should properly be raised in proceedings under Section 2806.1 in connection with electric utilities' proposed EE&C Plans." (Emphasis added, footnote omitted.) See also Met-Ed Motion to Strike, p. 11 ("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.") (Emphasis added.)

²⁰ As best the Company can determine, it appears that EDF and PennFuture misconstrue Met-Ed's references to "demand-side" resources (see Met-Ed Motion to Strike, p. 11) to mean that Met-Ed considers IVVC effective only in reducing "peak demand" and not electric "usage." As a review of the Company's Objections and Motion to Strike clearly shows, however, Met-Ed never said that. More importantly, the Company never made the straw-man argument that EDF and PennFuture knock down in their Motion to Compel and Answer. It is well-accepted that "demand-side resources" refers to the range of solutions capable of reducing peak demand *and* energy consumption (i.e., "demand-side resources" is a term that encompasses everything that is not a "supply-side" solution, namely, generation). This is evident from the way the term "demand-side resources" has been used in various proceedings before this Commission. See Testimony of Sonny Popowsky Consumer Advocate of Pennsylvania submitted in *Special En Banc Hearing On Alternative Energy, Energy Conservation And Efficiency And Demand Side Response*, Docket No. M-00061984 (November 19, 2008) ("It is clear from the Declaration of Policy, and the provisions of Act 129, that the General Assembly intends for Pennsylvania's electric distribution companies to provide least cost service to their customers through a combination of supply-side and *demand-side resources*." (Emphasis added.))

C. Averments In The Motion To Compel That Met-Ed And Its Ohio Affiliates Reneged On Commitments To Deploy Voltage Optimization Technology Are Simply Wrong

EDF and PennFuture allege that FirstEnergy Corp. (“FirstEnergy”), in order to obtain a Department of Energy (“DOE”) grant for a “voltage optimization pilot” in the service areas of The Cleveland Electric Illuminating Company (“CEI”) and Met-Ed, represented that, if the pilot were “successful,” voltage optimization technology would be deployed throughout those companies’ service territories.²¹ As the purported basis for those allegations, EDF/PennFuture reference a 2009 Smart Grid Modernization Initial Project Plan (“2009 Plan”) that was submitted to the Public Utilities Commission of Ohio (“PUCO”).²² EDF/PennFuture further allege that FirstEnergy issued a “final report” to DOE “detailing” the “successful results” of the pilot. However, they provide neither a copy of any “final report” nor a citation to the alleged document. Based on that series of unsupported averments, EDF/PennFuture accuse FirstEnergy of violating a “commitment” it allegedly made to “Pennsylvania and Ohio regulators” and to DOE to “fully” implement voltage optimization technology.²³

While none of the foregoing averments by EDF/PennFuture provide any justification for considering EDF’s IVVC recommendations in a base rate case, they are, nonetheless, serious accusations to which the Company feels compelled to respond. Every material element of EDF’s and PennFuture’s accusations is incorrect.

The Study Of Voltage Optimization Was Only A Small Part Of The DOE Grant.

FirstEnergy received DOE funding relating to a number of smart grid modernization technologies, including, among other things, advanced metering infrastructure (“AMI”) and

²¹ Motion to Compel, pp. 4-6.

²² Motion to Compel, p. 5 and fn. 3.

²³ Motion to Compel, p. 6.

distribution automation. Contrary to the impression created by EDF/PennFuture's Motion to Compel, the pilot study of voltage optimization was only a part – and a small part – of the work funded by the DOE grant.

FirstEnergy Did Not Make A “Commitment” To Implement Voltage Optimization Across The Service Territories Of Its Utility Subsidiaries. EDF/PennFuture contend that “FirstEnergy stated that it planned to expand installations and operation [of voltage optimization technology] across FirstEnergy's territories, if the pilot program was successful.”²⁴ In the 2009 Plan, FirstEnergy did *not* make any commitment or representation to expand the deployment of voltage optimization technology beyond the scope of its “pilot.” To the contrary, FirstEnergy set forth the areas that required further study and analysis, including, among others, technical feasibility and economic justification (i.e., whether the benefits of deploying such technology could justify its cost).²⁵ In short, until reliable results are obtained from those studies and analyzes, FirstEnergy would not, and did not, commit to deploy voltage optimization beyond the scope of its pilot.

There Is No Basis For EDF/PennFuture's Claims Concerning A “Final Report” “Detailing” the “Successful Results” Of The Pilot. EDF/PennFuture allege the existence of a so-called “final report” “detailing” the “successful results” of the DOE-funded pilot. As previously mentioned, they did not provide a copy of the “report” or a citation where it might be found. The Companies are unaware of any “final report” like the one that EDF/PennFuture purport to rely upon.

Contrary To EDF/PennFuture's Averments, The Pilot Study Is On-Going, As The PUCO Is Well Aware From A 2014 Filing Made By FirstEnergy's Ohio Utilities. The pilot

²⁴ Motion to Compel, p. 5.

²⁵ See 2009 Plan, pp. 1, 4.

study being conducted by CEI has not been completed and, in fact, is still on-going, as evidenced by the Application filed by CEI and its Ohio utility affiliates in 2014 for the express purpose of obtaining PUCO approval for additional cost recovery to continue to study volt/VAR optimization technologies and distribution automation.²⁶ In that Application, CEI explained that the DOE grant funded *only one year* of data collection for the volt/VAR optimization study and, therefore, further funding was needed to continue the study for *another five years* in order to develop a better understanding of the technology’s “capabilities for reliability and demand response.”²⁷ The PUCO granted that Application in an Order issued on May 28, 2015, with no mention of any prior “commitment” to expand volt/VAR technologies beyond the scope of the pilot nor any indication that CEI or any other FirstEnergy company had violated any “commitment” respecting volt/VAR optimization technology.²⁸

In like fashion, in the context of another recent case, CEI and its Ohio affiliates agreed to file a Grid Modernization Business Plan that would set forth “future initiatives” to be considered for possible implementation after the PUCO reviews and approves the plan.²⁹ Notably, volt/VAR optimization technology is one of the initiatives mentioned for further consideration³⁰ – i.e., clear evidence that there was no prior commitment to implement volt/VAR optimization technology and that such technology is subject to further review by FirstEnergy and approval by the PUCO. The PUCO approved the agreement for subsequent filing of the Grid Modernization

²⁶ *Application for Cost Recovery to Complete Studies Related to the Ohio Site Deployment of the Smart Grid Modernization Initiative*, Case No. 09-1820 (Public Utilities Commission of Ohio, December 22, 2014) (hereafter, “*Application for Cost Recovery*”).

²⁷ *Id.* at 1-2.

²⁸ *Application for Cost Recovery*, Finding and Order (May 28, 2015).

²⁹ *Application to Provide for a Standard Service Offer Pursuant to O.R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297 (Public Utilities Commission of Ohio), Third Supplemental Stipulation and Recommendation, p. 9. (hereafter, “*Application – Electric Security Plan*”)

³⁰ *Id.*

Business Plan and, once again, did not refer to any prior “commitment” to expand volt/VAR technology nor suggest that a prior “commitment” had been violated.³¹

Met-Ed Did Not Make Any “Commitment” To This Commission Regarding The Deployment Of Volt/VAR Optimization Technology. EDF/PennFuture allege Met-Ed violated a prior commitment to this Commission to deploy volt/VAR optimization technology but offer no evidence of any such commitment having been made. In fact, no such evidence exists. Met-Ed did not make such a “commitment” to this Commission and, therefore, could not have “violated” a commitment it did not make.

DOE Reviewed And Approved FirstEnergy’s Use Of Its Grant Funding. DOE reviewed FirstEnergy’s use of its grant funding and approved all of the related disbursements with no finding that FirstEnergy failed to comply with the terms and conditions of FirstEnergy’s application for that grant. EDF/PennFuture’s allegation that FirstEnergy violated a prior “commitment” to DOE is totally meritless. Furthermore, while there is no question that FirstEnergy adhered to the terms of the DOE grant application, even if there were, those matters are solely within the purview and oversight of DOE and are not an issue this Commission has any jurisdiction or authority to address or to decide, in any event.

Simply stated, FirstEnergy did not violate any commitment to this Commission, the PUCO or DOE regarding the deployment of volt/VAR optimization technology. The Commission should disregard EDF/PennFuture’s accusations, which have no factual basis and, in any event, are not relevant to any issue in this case.

³¹ *Application – Electric Security Plan, Opinion and Order (March 31, 2016).*

D. The Limitation Of Liability Provision Of Met-Ed's Tariff Does Not Provide Any Reason To Address IVVC Issues In This Case

EDF/PennFuture contend that their broad-ranging recommendations regarding system-wide deployment of IVVC technology should be addressed in this case because Met-Ed's tariff – like that of virtually every electric utility in Pennsylvania or, for that matter, nation-wide – contains a limitation of liability provision that mentions (in addition to a host of other factors) “high or low voltage, spikes [and] surges.”³² That argument is so tenuous that even to state it illuminates its lack of substance. Moreover, even EDF cannot claim that full-scale, system-wide deployment of IVVC – even if it were achievable anytime soon – would eliminate the possibility of “high or low voltage, spike [and] surges” in the future, let alone have any impact on Met-Ed's revenue requirement in this case.

E. The “Just and Reasonable Test” Is Entirely Inapplicable Where, As Here, A Party Is Seeking To Interject Into A Base Rate Case Issues That (1) Are Unrelated To Determining Revenue Requirement In That Case; And (2) Can (And Should) Be Addressed At Another Docket

EDF/PennFuture contend that the Commission should exercise its “discretion” to determine whether a “rate” is “just and reasonable” in order allow EDF to pursue its recommendation regarding the deployment of IVVC technology in this case.³³ They cite the Pennsylvania Supreme Court's decision in *Popowsky v. Pa. P.U.C.*³⁴ as alleged support for their argument.

Nothing in *Popowsky* or in the authorities on which the Court relied in that opinion supports the EDF/PennFuture position. The “balance between interests of ratepayers and utilities” discussed in *Popowsky* and its predecessors pertains to the application of traditional

³² Motion to Compel, pp. 6-7.

³³ Motion to Compel, pp. 7-8.

³⁴ *Popowsky v. Pa. P.U.C.*, 542 Pa. 99, 665 A.2d 808 (1995)

ratemaking principles by a regulatory agency in setting rates. Thus, in *Popowsky* itself, the issue the Court decided was whether the Commission had properly applied the “used and useful” principle in allowing a utility to recover the costs of decommissioning a nuclear power plant that was retired prematurely.³⁵ In similar fashion, *Barasch v. Pa. P.U.C.*,³⁶ on which the *Popowsky* court relied, decided whether a utility could recover from its customers costs it incurred to partially construct a nuclear power plant that was cancelled before it was completed and placed into service. In both *Popowsky* and *Barasch*, there was a direct, immediate and quantifiable nexus between the issue requiring “balance” and the traditional components of the ratemaking formula. That is not the case here.

If the EDF/PennFuture “just and reasonable” argument were given any credence, base rate proceedings would invite extensive, open-ended litigation on virtually any subject. It would always be possible for a proponent to create the kind of attenuated daisy-chain that EDF/PennFuture have constructed to show that, if their assumptions are accepted at face value, there is a possibility that their recommendations could reduce an EDC’s costs at some point in the future. That has never been the test for determining whether an issue is properly within the scope of a base rate case, and it should not be the test employed now.

EDF/PennFuture also assert that “[t]his proceeding is the only opportunity” to raise the issue of whether the Companies are properly deploying IVVC.³⁷ Given the prior opportunity to raise IVVC issues in Met-Ed’s Phase III EE&C Plan proceeding and the many procedural vehicles at their disposal under the Public Utility Code, including filing a complaint or petitioning for initiation of a Commission investigation, this statement is erroneous on its face.

³⁵ 542 Pa. at 105, 665 A.2d at 810.

³⁶ *Barasch v. Pa. P.U.C.*, 516 Pa. 142, 532 A.2d 325 (1987), *aff’d* 488 U.S. 299 (1989).

³⁷ Motion to Compel, p. 8.

Furthermore, for all the reasons set forth in Met-Ed's Motion to Strike,³⁸ which are incorporated herein, if the kinds of recommendations that Mr. Alvarez is making are to be considered, the appropriate forum is a generic, state-wide proceeding that will allow for adequate and appropriate notice to, and participation by, all interested stakeholders, including other EDCs. Mr. Alvarez admits as much by praising the Commission's recent En Banc hearing on alternative ratemaking as an appropriate procedural vehicle.³⁹

³⁸ See Motion to Strike, pp. 6 and 12.

³⁹ See Alvarez Direct Testimony, p. 6.

III. CONCLUSION

WHEREFORE, for the reasons set forth above and in Metropolitan Edison Company's Objections to EDF's First Set of Interrogatories and its Motion to Strike the direct testimony of Paul Alvarez, the EDF/PennFuture Motion to Compel should be denied and Metropolitan Edison Company's Objections to EDF's First Set of Interrogatories should be granted.

Respectfully submitted,



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Dated: August 22, 2016

APPENDIX A

**OBJECTIONS OF METROPOLITAN EDISON COMPANY
TO EDF'S FIRST SET OF INTERROGATORIES**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

PENNSYLVANIA PUBLIC UTILITY COMMISSION	:	
	:	
	:	
v.	:	Docket No. R-2016-2537349
	:	
METROPOLITAN EDISON COMPANY	:	

**OBJECTIONS OF METROPOLITAN EDISON COMPANY TO
THE FIRST SET OF INTERROGATORIES OF
THE ENVIRONMENTAL DEFENSE FUND**

I. INTRODUCTION AND OVERVIEW

Pursuant to 52 Pa. Code § 333(d), 52 Pa. Code § 5.342, and the Prehearing Order entered on June 22, 2016, Metropolitan Edison Company (“Met-Ed” or the “Company”) objects to the First Set of Interrogatories propounded by the Environmental Defense Fund (“EDF”) on August 10, 2016 (“EDF Interrogatories”). A copy of the EDF Interrogatories is attached as Appendix A to these Objections and incorporated herein by reference.

Met-Ed objects to the EDF Interrogatories on the same basis set forth in its Motion to Strike the Direct Testimony of EDF witness Paul Alvarez, which is being filed contemporaneously with these Objections. In summary, the Company is moving to strike Mr. Alvarez’s direct testimony because it attempts to interject issues related to *inter alia* “Integrated Volt/VAR Controls” (“IVVC”) that are entirely outside the scope of a base rate proceeding. Notably, Mr. Alvarez concedes that the Pennsylvania Public Utility Commission (“PUC” or the “Commission”) has only considered such issues in proceedings to approve the Energy Efficiency and Conservation (“EE&C”) Plans of electric distribution companies pursuant to 66 Pa.C.S. §

2806.1 -- not in any base rate case.¹ EDF had ample opportunity to raise IVVC issues in connection with Met-Ed's most recent EE&C Plan filing made in November 2015 and, in fact, filed comments in that case, but did not raise any IVVC issues at that time. By that time, EDF had been put on notice that IVVC-related issues are not properly raised in a base rate case because its attempt to interject the same subject in the 2015 distribution base rate case of PPL Electric Utilities Corporation ("PPL") generated a Motion to Strike its testimony. As explained fully in Met-Ed's Motion to Strike, in July 2015, Administrative Law Judge Susan D. Colwell granted PPL's Motion and held that IVVC and related subjects are not "a legitimate issue for further scrutiny" in a base rate proceeding.²

The EDF Interrogatories seek detailed information about IVVC-related matters and, therefore, are objectionable for all the same reasons Mr. Alvarez's direct testimony should be stricken. The EDF Interrogatories are also objectionable because they inquire into matters that are outside the scope of Mr. Alvarez's direct testimony. Because the time for filing direct testimony has come and gone, the new issues that EDF is trying to probe in its Interrogatories could not lawfully be interjected in this proceeding at this time, even if Mr. Alvarez's direct testimony were admissible.³ As a consequence, the EDF Interrogatories are not material to any issue that could properly be raise in this case at this time.

II. RELEVANT BACKGROUND

1. On April 28, 2016, Met-Ed filed 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

¹ Direct Testimony of Paul Alvarez, p. 5.

² *Pa. P.U.C. v. PPL Elec. Utilities Corp.*, Docket No. R-2015-2469275 et al. (Sixth Prehearing Order issued July 15, 2015) (hereafter, the "PPL Order"). A copy of the PPL Order is provided as Appendix A to Met-Ed's Motion to Strike.

³ 52 Pa. Code § 5.243(e)(2) ("A party will not be permitted to introduce evidence during a rebuttal phase which: . . . (2) Should have been included in the party's case-in-chief.")

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.

2. 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 served the direct testimony of Mr. Alvarez.⁴

3. Mr. Alvarez asks the Commission to require the Company to submit a report describing: (1) IVVC costs to date and resulting "deferred capital investments" as well as 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, annually.

4. As previously explained, Met-Ed is filing a Motion to Strike all of EDF's direct testimony, including Mr. Alvarez's statement.

5. On August 10, 2016 – only seven calendar days before rebuttal testimony is due to be filed in this case – EDF served its Interrogatories attached as Appendix A. Met-Ed objects to the EDF Interrogatories for the reasons summarized above and set forth below.

III. OBJECTIONS TO THE EDF INTERROGATORIES

6. The EDF Interrogatories consist of twenty questions that seek information about the Company's installation and operation of "Volt/VAR control equipment" (No. 5), including, among other things, the "management process, policy, objectives and procedures for . . .

⁴ Mr. Alvarez states (p. 1) he is testifying only on behalf of EDF. EDF and Citizens for Pennsylvania's Future ("Penn Future") also jointly served the direct testimony of Michael Murray. Met-Ed's Motion to Strike covers both Mr. Alvarez's and Mr. Murray's direct testimony.

Volt/VAR management” (No. 9); the number of “distribution feeders” and “substations” where “Volt/VAR management” is used (No. 8); “documents” reflecting the “planning or decision-making for installing integrated Volt/VAR equipment” (No. 10); voltage “variation” (No. 14) and “feeder losses” (No. 16) affected by “Volt/VAR management”; and reductions in “greenhouse gas emissions” that may result from deploying Volt/VAR equipment (No. 19).

7. All of the EDF Interrogatories are improper and objectionable because they seek to inquire into matters that are not within the scope of a distribution base rate proceeding. In that regard, the bases for the Company’s objections to the EDF Interrogatories are fundamentally the same as those set forth in its Motion to Strike Mr. Alvarez’s direct testimony and consist of the following:

(a) There is nothing in Met-Ed’s proposed or existing rates, rules or terms of service that pertain to subjects and issues into which the EDF Interrogatories inquire. As a distribution base rate proceeding, the scope of this case principally encompasses revenue requirement, rate structure and rate design and is subject to the statutory timeline imposed by 66 Pa.C.S. § 1308(d). The challenges of creating a well-developed evidentiary record on issues properly within the scope of a base rate case should not be heightened by interjecting factually complex but extraneous issues like those embedded in Mr. Alvarez’s direct testimony and the EDF Interrogatories. This factor played an important part in Judge Colwell’s decision to strike EDF’s direct testimony addressing, among other things, IVVC issues in PPL’s 2015 case.⁵ As Judge Colwell determined, EDF “fail[ed] to establish” that its recommendations regarding IVVC are “a legitimate issue for further scrutiny” in a base rate case.⁶ Judge Colwell’s findings

⁵ See PPL Order, p. 5.

⁶ *Id.*

highlight all of the sound and valid reasons to grant both the Company's objections and its Motion to Strike in this case.

(b) Mr. Alvarez's direct testimony provides no valid reason for IVVC issues to be considered in a distribution base rate case like this one. Whether IVVC constitutes a sound and cost-effective measure for reducing electric usage or peak demand involves a complex cluster of issues that should be properly be raised in proceedings conducted under Section 2806.1 in connection with electric utilities' proposed EE&C Plans.⁷ Those proceedings are held pursuant to express statutory authority for the specific purpose of addressing the kinds of issues that are the focus of the EDF Interrogatories. As a consequence, proceedings held pursuant to Section 2806.1 are initiated only after adequate notice and opportunity to participate have been assured for all of the stakeholders that may have an interest in the adoption of cost-effective measures for reducing electric usage and peak demand. The same cannot be said about a base rate case like this one when IVVC issues are interjected without prior notice to all potentially interested parties.

(c) Dismissing the EDF Interrogatories – and striking Mr. Alvarez's direct testimony – does not foreclose EDF from raising IVVC issues in a proper proceeding. EDF had ample opportunity to raise IVVC issues in connection with Met-Ed's Phase III EE&C Plan, which was filed on November 23, 2015. In fact, EDF filed joint comments with Penn Future on Met-Ed's Phase III EE&C Plan in that proceeding but did not propose additional IVVC measures or raise any other issues related to IVVC in those comments. On March 10, 2016, the

⁷ As noted previously, Mr. Alvarez's own testimony correctly states that the only time the Commission considered IVVC-related issues was in proceedings conducted under Section 2806.1 in connection with the EE&C Plans of two other utilities.

Commission approved a final Phase III Plan for Met-Ed.⁸ Under these circumstances, EDF's attempt to interject IVVC issues into this proceeding – where they do not belong – constitutes an unlawful collateral attack on the Commission's Order approving Met-Ed's EE&C Plan. EDF's bold attempt to “forum shop” should be rejected. Furthermore, it would be highly improper to, in effect, modify the content of Met-Ed's approved EE&C Plan as part of a base rate proceeding and, in fact, there is no authority to do so.

8. The EDF Interrogatories are also improper because they seek to probe new factual matters that are outside the scope of Mr. Alvarez's direct testimony (*e.g.*, Met-Ed's “management process, policy, objectives and procedures” pertaining to “Volt/VAR management” and operational information about the facilities of Met-Ed “Volt/VAR management” is used). In short, EDF is attempting to expand the scope of its already improper direct testimony in violation of the previously established litigation schedule, which required all direct testimony to be served by July 22, 2016. In addition, allowing EDF to broaden the scope of its case in chief in this manner is contrary to the Commission regulations for the presentation of evidence. Specifically, 52 Pa. Code § 5.243(e)(2) provides that “[a] party will not be permitted to introduce evidence during a rebuttal phase which: . . . [s]hould have been included in the party's case-in-chief.” EDF could not introduce into the record the new information sought in its Interrogatories without running afoul of that regulation. Simply stated, the fact that EDF has belatedly decided that it did not cover all the subjects it would have liked to in its case in chief does not give it authority to augment its direct testimony at this stage of the proceeding. Doing so would violate Met-Ed's due process rights to adequate notice and a reasonable

⁸ *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 No. M-2015-2514767, M-2015-2514768, M-2015-2514769 and M-2015-2514772 (Order entered March 10, 2016).

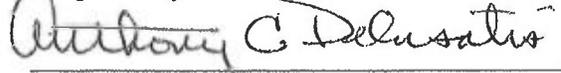
opportunity to respond in addition to contravening the Commission's regulations, which are designed to avoid just such due process transgressions.

9. The scope of permissible discovery in a proceeding before the Commission is limited to subjects that are relevant to matters properly at issue in such proceeding, as provided in Section 333(d) of the Public Utility Code and the Commission's regulations. Accordingly, for the reasons set forth above, the EDF Interrogatories inquiry into matters that are entirely outside the scope of Met-Ed's distribution base rate proceeding and, therefore, are improper and should be stricken. *See, e.g., Re Structural Separation of Bell Atlantic-Pennsylvania, Inc. Retail and Wholesale Operations*, Docket No. M-00001353, 2000 Pa. PUC LEXIS 59 at *7-9 (Order entered Sept. 28, 2000) (affirming the Administrative Law Judge's decision to reject evidence as "beyond the scope of the proceeding."); *Pa. P.U.C. v. Pennsylvania-American Water Co.*, Docket Nos. R-00932670, *et al.*, 1994 Pa. PUC LEXIS 120 at *158 (Order entered July 26, 1994) ("The ALJ concluded as follows: 'I agree with OTS that the issues raised by OCA are outside the scope of this investigation. . . .'"); *Re Gas Cost Rate No. 5*, 57 Pa. P.U.C. 158, 160 (1983) ("The testimony stricken by the ALJ addresses, in part, matters broader than the scope of the instant proceeding.").

IV. CONCLUSION

WHEREFORE, the Objections of Metropolitan Edison Company should be granted and the EDF Interrogatories should be stricken.

Respectfully submitted,



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