



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH KEYSTONE BUILDING  
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

March 12, 2020

**Via Electronic Filing**

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

Re: Pennsylvania Public Utility Commission v.  
Citizens' Electric Company of Lewisburg, PA –  
Supplement No. 132 to Tariff Electric – Pa. PUC No. 14  
Docket No. R-2019-3008212  
**I&E Exceptions**

Dear Secretary Chiavetta,

Enclosed please find the Bureau of Investigation and Enforcement's (I&E) **Exceptions** for the above-captioned proceeding.

Copies are being served on parties of record as identified in the attached Certificate of Service. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

John M. Coogan  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney ID No. 313920  
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JMC/ac  
Enclosure

cc: Honorable Steven K. Haas (*ALJ, PUC Harrisburg*)  
Honorable Benjamin J. Myers (*ALJ, PUC Harrisburg*)  
Office of Special Assistants (*via E-Mail only RA-OSA@pa.gov*)  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2019-3008212
	:	
Citizens' Electric Company of Lewisburg, PA	:	
Supplement No. 132 to Tariff Electric –	:	
Pa. PUC No. 14	:	

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**EXCEPTIONS  
OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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John M. Coogan  
Prosecutor  
PA Attorney ID No. 313920

Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, Pennsylvania 17120

Dated: March 12, 2020

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## I. INTRODUCTION

The Bureau of Investigation and Enforcement (“I&E”) files the following Exceptions to the Recommended Decision of Administrative Law Judges Steven K. Haas and Benjamin J. Myers (“ALJs”) issued on February 28, 2020 in the above-captioned proceeding. I&E respectfully requests that its Exceptions be granted and that the referenced portions of the Recommended Decision be reversed or modified consistent with these Exceptions and the arguments made in I&E’s pre-served testimony and exhibits, Main Brief, and Reply Brief.

### A. Procedural Background

On July 1, 2019, Citizens’ Electric Company of Lewisburg, PA (“Citizens” or “Company”), filed Supplement No. 132 to Tariff Electric Pa. P.U.C. No. 14 to become effective August 30, 2019. Citizens’ used the Fully Projected Future Test Year (“FPFTY”) ending December 31, 2020 as the basis for its rate increase request.<sup>1</sup> The proposed tariff changes increase total annual operating revenues for electrical service by approximately \$792,246 (16.5%). I&E entered its appearance on July 19, 2019. The Office of Small Business Advocate (“OSBA”) entered its appearance on July 22, 2019. The Office of Consumer Advocate (“OCA”) filed a Formal Complaint on July 30, 2019.

On August 29, 2019, pursuant to 66 Pa. C.S. § 1308(d), the Commission ordered suspension of the proposed tariff changes until March 30, 2020, unless permitted by Commission Order to become effective at an earlier date. The Commission directed that

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<sup>1</sup> The Company used the following test years in its filing: FPFTY ends December 31, 2020, the future test year ended December 31, 2019, and the historic test year ended December 31, 2018. Citizens’ Statement No. 1, p. 2.

the case be assigned to the Office of Administrative Law Judge for Alternative Dispute Resolution, if possible, and scheduling of hearings as may be necessary for the Administrative Law Judge to render a Recommended Decision. On September 9, 2019, the Company filed a tariff suspension, voluntarily suspending its proposed tariff to April 29, 2020. A Prehearing Conference was held on September 13, 2019 at 10:00 a.m., before the ALJs. On October 2, 2019, the Company filed an additional tariff suspension, further voluntarily suspending its proposed tariff to May 1, 2020.

Pursuant to the procedural schedule agreed to at the Prehearing Conference, the parties exchanged direct, rebuttal, and surrebuttal testimony, as well as oral rejoinder outlines. I&E served the following testimony and exhibits:

- I&E Statement No. 1, I&E Exhibit No. 1 (Proprietary), I&E Statement No. 1-SR, and I&E Exhibit No. 1-SR, the prepared direct and surrebuttal testimony and exhibits of I&E witness D.C. Patel, who addressed the Company's operating and maintenance expenses, and overall revenue requirement;
- I&E Statement No. 2, I&E Exhibit No. 2, and I&E Statement No. 2-SR, the prepared direct and surrebuttal testimony and exhibit of I&E witness Anthony Spadaccio, who addressed the Company's rate of return request;
- I&E Statement No. 3, I&E Exhibit No. 3, I&E Statement No. 3-SR, and I&E Exhibit No. 3-SR the prepared direct and surrebuttal testimony and exhibits of I&E witness Ethan Cline, who addressed the Company's rate base and rate structure requests.

Full evidentiary hearings were held December 16 and 17, 2019, in Harrisburg.

I&E filed its Main Brief on January 8, 2020 and its Reply Brief on January 22, 2020

pursuant to the procedural schedule and ALJs' direction in this case.<sup>2</sup> Citizens', OCA, and OSBA also filed their Main Briefs and Reply Briefs on January 8, 2020 and January 22, 2020, respectively. On February 28, 2020, the ALJs issued their Recommended Decision. Pursuant to the Secretarial Letter filed March 6, 2020, I&E files these timely Exceptions.<sup>3</sup>

### **B. Summary of I&E Exceptions**

Regarding Citizens' rate filing, I&E recommended certain downward adjustments to operating and maintenance ("O&M") expenses, rejection of adjustments to return on equity ("ROE") for size and performance, and reporting on certain accounting forecasts. Although the ALJs recommended rejection of I&E's position on these issues,<sup>4</sup> I&E avers the ALJs erred because Citizens' did not meet its burden of proof by producing substantial evidence regarding the Company's O&M claims<sup>5</sup> and an adjustment to ROE for size and performance.<sup>6</sup> Additionally, the ALJs erred by rejecting modest reporting requirements fully within the Commission's authority to mandate, which would provide

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<sup>2</sup> The ALJs' original procedural schedule set January 6, 2020 as the due date for Main Briefs and January 17, 2020 as the due date for Reply Briefs. *Pa. P.U.C. v. Citizens Electric Company of Lewisburg*, Docket No. R-2019-3008212, Scheduling Order, p. 4 (September 16, 2019). Due to extensive errors with the hearing transcript requiring parties' review and submission of errata, the ALJs agreed to postpone the Main Brief due date to January 8, 2020 and Reply Brief due date to January 22, 2020. E-mail from ALJs to parties, December 31, 2019.

<sup>3</sup> By Secretarial Letter dated February 28, 2020, the Commission set the Exceptions due date as March 11, 2020 and the Reply Exceptions due date as March 18, 2020. On March 2, 2020, I&E filed a Petition for Extension of Time to File Exceptions and Reply Exceptions. The March 6, 2020 Secretarial Letter granted I&E's petition and extended the due date of Exceptions to March 13, 2020 and Reply Exceptions to March 23, 2020.

<sup>4</sup> The ALJs did accept some downward O&M adjustments recommended by I&E. These exceptions only discuss certain O&M adjustments recommended by I&E rejected by the ALJs.

<sup>5</sup> I&E notes its exceptions may need to be further adjusted if the Commission accepts the ALJs rejection of the Company's inflation adjustment. However, because I&E did not challenge the Company's inflation adjustment during the proceeding, I&E does not reflect removal of the inflation adjustment herein.

<sup>6</sup> To meet its burden of proof, Citizens' must produce substantial evidence. Recommended Decision, pp. 3-4 (citing *Lower Frederick Twp. Water Co. v. Pa. Pub. Util. Comm'n.*, 48 Pa. Cmwlth. 222, 226-227, 409 A.2d 505, 507 (1980); *Brockway Glass Co. v. Pa. Pub. Util. Comm'n.*, 63 Pa. Cmwlth. 238, 437 A.2d 1067 (1981)).

important information the Commission has expressed in interest in obtaining and many utilities have agreed to provide. Therefore, for the reasons explained fully below, I&E respectfully requests the Commission approve the following Exceptions.

## II. I&E EXCEPTIONS

### A. I&E Exception No. 1: The ALJs erred in their Cash Working Capital adjustment calculation in Table II

Recommended Decision: Pages 11-13, 43-44, Table II  
I&E Main Brief: Pages 10-11  
I&E Reply Brief: Pages 2-3

As a result of their O&M adjustments, the ALJs' calculate a downward adjustment to Cash Working Capital ("CWC") of \$5,005.<sup>7</sup> I&E avers the ALJs erred and, assuming the Commission accepts all of the ALJs' O&M recommendations,<sup>8</sup> the downward adjustment to CWC should be \$10,163. I&E does not dispute the ALJs' method of calculating CWC. The ALJs agreed with the uncontested position of Citizens', I&E, and OCA that CWC should be calculated using the 1/8 method, i.e., CWC is calculated as one-eighth of non-fuel operating costs.<sup>9</sup> Instead, I&E avers the ALJs inadvertently miscalculated the flow-through adjustment to CWC as a result of their O&M adjustments. At Table II, the ALJs calculate a recommended downward adjustment of \$81,300 to Citizens' O&M expenses. Accordingly, using the 1/8 method, Citizens' CWC claim should be reduced by \$10,163.<sup>10</sup> However, the ALJs calculate a downward adjustment to CWC of \$5,005. If the Commission accepts the ALJs' O&M

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<sup>7</sup> Recommended Decision, Table II.

<sup>8</sup> I&E excepts to two O&M recommendations (I&E Exceptions Nos. 2 and 3).

<sup>9</sup> Recommended Decision, pp. 11-13, 43-44.

<sup>10</sup>  $\$81,300 \div 8 = \$10,163$ .



recommendations in their entirety, the CWC claim should be adjusted downward by \$10,163, not \$5,005. However, if the Commission modifies the ALJs' recommendations based on parties' exceptions, the ALJs' CWC recommendation should be modified consistent with the 1/8 method.

**B. I&E Exception No. 2: The ALJs erred by recommending rejection of I&E's adjustment for Maintenance of Overhead Lines/Vegetation Management (Account 593)**

Recommended Decision: Pages 28-30  
I&E Main Brief: Pages 20-21  
I&E Reply Brief: Pages 11-12

The ALJs recommend that the Commission approve a total claim of \$489,816 for Maintenance of Overhead Lines/Vegetation Management Expense.<sup>11</sup> I&E avers the ALJs erred because the record still includes an overstatement of \$9,564 for this account for the expense subcategory "Material".<sup>12</sup> The ALJs state contractor costs related to the Emerald Ash Borer negate I&E's position that Material expense for the FPFTY is overstated by \$9,564.<sup>13</sup> However, I&E did not dispute the increase to the Contractor expense subcategory, but the FPFTY claim for the Material expense subcategory.<sup>14</sup> Although Citizens' witness John Kelchner claims Material and Contractor costs are "one and the same",<sup>15</sup> there is no clear substantiation or breakdown of Material expense to verify this claim. Additionally, if Material was simply a further subset of the Contractor subcategory, there would be no reason to include Material as a separate subcategory.

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<sup>11</sup> Recommended Decision, p. 30.

<sup>12</sup> This account includes multiple expense subcategories, including Labor, Overhead, Transportation, Material, and Contractor. See I&E Exhibit No. 1 (Proprietary), Schedule 6.

<sup>13</sup> Recommended Decision, p. 29.

<sup>14</sup> I&E Statement No. 1, pp. 17-18.

<sup>15</sup> See Citizens' Main Brief, p. 49.

Therefore, because Citizens' has not met its burden of proof demonstrating its claim for Material expense is justified, I&E continues to recommend a \$9,564 downwards adjustment to Citizens' Maintenance of Overhead Lines claim.

**C. I&E Exception No. 3: The ALJs erred by recommending rejection of I&E's adjustment for Rate Case Expense**

Recommended Decision: Pages 40-43

I&E Main Brief: Pages 23-25

I&E Reply Brief: Pages 13-14

The ALJs recommend that Citizens' request to normalize \$326,000 for Rate Case Expense over 36 months be approved.<sup>16</sup> I&E avers the ALJs erred because substantial evidence does not exist to support deviation from the Commission's practice of setting a normalization period for Rate Case Expense based on historic filing frequency. If a historic filing frequency is used, the normalization period should be set at 48 months.<sup>17</sup> Although the ALJs recognize the Commission's practice is to set a normalization period based on historic filing frequency, they believe a shorter normalization period is justified by Citizens' expenses relating to tree trimming, capital replacements, and other reliability enhancing projects, in addition to the Company's limited prospects for load growth.<sup>18</sup> The ALJs also discount the significance of the 75 month period between Citizens' prior two rate case filings, stating "traditionally, Citizens' files rate cases within a three-year window".<sup>19</sup>

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<sup>16</sup> Recommended Decision, pp. 42-43.

<sup>17</sup> I&E Main Brief, pp. 23-25. The time elapsed between Citizens' last four rate cases is 34 months, 75 months, and 37 months.

<sup>18</sup> Recommended Decision, p. 42.

<sup>19</sup> Recommended Decision, p. 43.

I&E avers these factors are not supported by substantial evidence and do not merit deviating from the Commission's endorsed practice of reviewing historical filing frequency. Tree trimming and normal capital replacements are routine operational costs, and the cost of such activities are normally forecast in the annual budget.<sup>20</sup> Additionally, the Recommended Decision provides allowance for additional tree trimming costs.<sup>21</sup> Citizens' claims of limited prospects for load growth and change in industry generally are conclusory statements that lack support. And finally, reliance on the time elapsed since the Company's last case (i.e., 37 months) is limited and not a representative consideration of the Company's overall recent historic filing record.<sup>22</sup>

The ALJs cite the Commission in *Pa. P.U.C. v. UGI Utilities, Inc. – Electric Division*<sup>23</sup> to support a normalization period based on future expectations.<sup>24</sup> However, the record justifying deviation from historic filing frequency was much more specific in *UGI Utilities, Inc. – Electric Division* than presented here. In *UGI Utilities, Inc. – Electric Division*, the Commission specifically found reference to \$8 million in annual spending for capital projects following the FPFTY would cause a \$3 million shortfall at the end of a three-year period.<sup>25</sup> By contrast, Citizens' has provided no quantifiable or otherwise specific bases or projections why its proposed normalization period of 36 months is appropriate. I&E therefore continues to recommend the Commission approve normalization of Citizens' Rate Case Expense with reference to its historical filing

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<sup>20</sup> I&E Statement No. 1-SR, p. 6.

<sup>21</sup> Recommended Decision, pp. 28-30.

<sup>22</sup> I&E Statement No. 1, p. 7.

<sup>23</sup> Docket No. R-2017-2640058, (Order Entered October 25, 2018) ("*UGI Utilities, Inc. – Electric Division*").

<sup>24</sup> Recommended Decision, p. 43.

<sup>25</sup> *UGI Utilities, Inc. – Electric Division*, p. 60.

frequency only, i.e., a 48-month average, resulting in a \$27,167 reduction to Rate Case Expense.

**D. I&E Exception No. 4: The ALJs erred by accepting a size adjustment and basing the Company's ROE on the higher end of the DCF range**

Recommended Decision: Pages 65-74  
I&E Main Brief: Pages 47-50  
I&E Reply Brief: Page 19

Although the ALJs agreed with I&E that use of the Discounted Cash Flow (“DCF”) and Capital Asset Pricing Model (“CAPM”) models are the appropriate methods to determine return on equity (“ROE”),<sup>26</sup> the ALJs erred by finding substantial evidence exists to merit a size adjustment and award Citizens’ an ROE at the highest point of a standard deviation range for the DCF analysis.<sup>27</sup> After review of the parties’ positions, the ALJs state they cannot conclude that size is or is not a risk for utilities.<sup>28</sup> Because the ALJs did not find utility-specific evidence exists to support a size adjustment, I&E avers Citizens’ has failed to meet its burden of proof justifying a size adjustment, and the Commission should reject a size adjustment inflating the results of a DCF analysis.

Although the ALJs did not find evidence of size risk for utilities, they did state “generally, size does seem to be a risk factor for companies”.<sup>29</sup> The ALJs credit such general size risk as justification to award a higher ROE for Citizens’.<sup>30</sup> However, I&E asserts any support for size risk generally should not constitute evidence for utility-specific size risk. The ALJs have already found they are unable to conclude whether size

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<sup>26</sup> Recommended Decision, p. 52.

<sup>27</sup> Recommended Decision, p. 74.

<sup>28</sup> Recommended Decision, p. 72.

<sup>29</sup> Recommended Decision, p. 72.

<sup>30</sup> Recommended Decision, pp. 72-74.

is a risk for utilities. Although the ALJs also state they cannot conclude size is not a risk for utilities, I&E avers, because Citizens' is the party with the burden of proof, the dispositive factor is that size risk for utilities has not been established. Additionally, the Commission in *UGI Utilities, Inc. – Electric Division* rejected a size adjustment and use of technical literature not specific to the regulated utility industry to support such adjustment.<sup>31</sup>

Besides Commission precedent, there are sound reasons to reject non-utility specific size adjustment analysis in utility rate making. Monopoly utilities are not subject to the same market-based risks facing competitive companies included in a general size adjustment analysis. Most utilities have a captive customer base, and if Citizens' faces difficulties or unforeseen risks, they may request higher rates to offset increased expenses. As demonstrated in the discussion regarding Rate Case Expenses, Citizens' already anticipates various challenges that it claims merit its return in approximately three years. Additionally, Citizens' rate filing is made on a FPFTY basis, and therefore certain forecasted expenses are already included in its request. Accordingly, I&E maintains size adjustment analysis for companies generally does not apply to utilities. Because Citizens' has not met its burden of proof to provide evidence a size adjustment exists for utility companies, a size adjustment to ROE should be rejected.

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<sup>31</sup> *UGI Utilities, Inc. – Electric Division*, p. 100.

**E. I&E Exception No. 5: The ALJs erred by awarding the Company a 25-basis point upward adjustment for management effectiveness**

Recommended Decision: Pages 75-77

I&E Main Brief: Pages 50-51

I&E Reply Brief: Page 20

The ALJs recommend that Citizens' receive a 25-basis point upward adjustment for management effectiveness.<sup>32</sup> Underlying its rationale, the ALJs state 66 Pa. C.S. § 523(a) "merely requires that the Commission consider a utility's efficiency, effectiveness and adequacy of service", and no particular remarkable or extraordinary level of operations or service is required to award an adjustment of management effectiveness.<sup>33</sup> Although Section 523 contains no mandate to award additional points, I&E avers the ALJs erred by finding substantial evidence exists to award Citizens' a 25 point increase to ROE. To the extent awarding ROE basis points is found appropriate, consistent with the Commission's decision in *UGI Utilities, Inc. – Electric Division*, the Commission should award no more than five basis points.<sup>34</sup> Although the Commission in *UGI Utilities, Inc. – Electric Division* found substantial evidence existed to award an upward adjustment to ROE for management effectiveness, it reduced the ALJs award from 20 points to 5 points, noting such adjustment is "reasonable, appropriate, and conservative based on Section 523 of the Code and better serves the public interest".<sup>35</sup> Citizens' has provided no evidence why specifically a 25 basis point upward adjustment is appropriate. Accordingly, I&E avers the Commission should reject a 25-basis point upward

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<sup>32</sup> Recommended Decision, p. 77.

<sup>33</sup> Recommended Decision, p. 77.

<sup>34</sup> See I&E Statement No. 2-SR, p. 26.

<sup>35</sup> *UGI Utilities, Inc. – Electric Division*, p. 115.

adjustment for Citizens’ and, if the Commission finds evidence merits an adjustment, the same rationale in *UGI Utilities, Inc. – Electric Division* should apply here to reduce the ALJs management effectiveness award.

**F. I&E Exception No. 6: The ALJs erred by denying I&E’s recommendation Citizens’ by required to provide certain accounting reports**

Recommended Decision: Pages 124-125  
I&E Main Brief: Pages 65-68  
I&E Reply Brief: Pages 24-25

The ALJs rejected I&E’s recommendation that Citizens’ be required to provide to the Commission’s Bureaus of Technical Utility Services (“TUS”) and I&E with an update to Citizens’ Exhibit\_(HSG-1), Schedule C3(R) no later than April 1, 2020, including actual capital expenditures, plant additions, and retirements by month for the twelve months ending December 31, 2019, followed by an additional update for actuals through December 31, 2020, no later than April 1, 2021.<sup>36</sup> Although the Commission has accepted this reporting requirement in many other rate proceedings,<sup>37</sup> the ALJs distinguish the current proceeding, stating previous occasions only reflect settlements, i.e., the utility voluntarily agreeing to the reporting requirement.<sup>38</sup>

Although Citizens’ has not agreed to this reporting requirement recommendation, I&E asserts it is within the public interest and the Commission’s discretion to require such reporting. The Public Utility Code provides the Commission broad power to require

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<sup>36</sup> Recommended Decision, pp. 124-125.

<sup>37</sup> See I&E Main Brief, p. 67, fn. 212.

<sup>38</sup> Recommended Decision, p. 125.

informational filings from utilities.<sup>39</sup> The ALJs agree with Citizens' that the Commission may include such requirements at such time it adopts comprehensive FPFTY regulations, but should not do so in this single instance.<sup>40</sup> I&E maintains the fact that there are no current regulations regarding the FPFTY does not preclude the Company from filing the requested updates. If anything, it demonstrates that this type of reporting is needed until such regulations are implemented.

Indeed, the Commission has indicated the need to ascertain the accuracy of the FPFTY projections, stating "Section 315(e) of the Code... authorizes a Commission audit of the FPFTY results after the fact to determine whether they were accurate..."<sup>41</sup> I&E's recommendation will provide an apples-to-apples comparison in a form directly corresponding to a schedule provided in the rate filing of what the Company is projecting and what actually will be in plant. Therefore, by adopting I&E's recommendation, TUS and I&E will have the information and opportunity required to review the accuracy of the Company's projections. Accordingly, I&E respectfully requests the Commission find the ALJs erred and require Citizens' provide reports as outlined in I&E's recommendation.

### **III. CONCLUSION**

For the reasons discussed herein, and as supported by the record in this proceeding, I&E respectfully requests that the Commission grant its Exceptions to the

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<sup>39</sup> 66 Pa. C.S. § 505.

<sup>40</sup> Recommended Decision, p. 124.

<sup>41</sup> *UGI Utilities, Inc. – Electric Division*, p. 26.



ALJs' Recommended Decision regarding adjustments to certain O&M expenses, ROE for size and performance, and reporting on certain accounting forecasts.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John M. Coogan', with a long horizontal flourish extending to the right.

John M. Coogan  
Prosecutor  
PA Attorney ID No. 313920

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Dated: March 12, 2020

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission

v.

Citizens' Electric Company of Lewisburg, PA  
Supplement No. 132 to Tariff Electric –  
Pa. PUC No. 14

Docket No. R-2019-3008212

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Exceptions** dated March 12, 2020, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

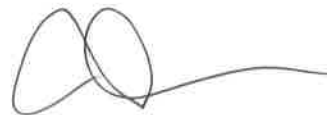
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