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August 5, 2009

Secretary James McNulty
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

Re:

Metropolitan Edison Company (Met-Ed) EE&C Plan- Docket No. M-2009-2092222
Pennsylvania Electric Company (Penelec) EE&C Plan - Docket No. M-2009-2112952
Pennsylvania Power Company (Penn Power) EE&C Plan - Docket No. M-2009-2112956

Dear Secretary McNulty:

On behalf of Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec") and Pennsylvania Power Company ("Penn Power"), enclosed please find an Answer Opposing the Petition to Intervene filed by National Fuel Gas Distribution Corporation in the above-referenced proceeding. This Answer was electronically filed today.

If you have questions, please do not hesitate to contact me.

Sincerely,

STEVENS & LEE



Michael A. Gruin

MAG/kdd
Enclosures

cc: ALJ David Salapa
Certificate of Service

Philadelphia • Reading • Valley Forge • Lehigh Valley • Harrisburg • Lancaster • Scranton
Williamsport • Wilkes-Barre • Princeton • Cherry Hill • New York • Wilmington

A PROFESSIONAL CORPORATION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Metropolitan Edison Company Energy :
Efficiency and Conservation Plan : Docket No. M-2009-2092222

Pennsylvania Electric Company Energy :
Efficiency and Conservation Plan : Docket No. M-2009-2112952

Pennsylvania Power Company Energy :
Efficiency and Conservation Plan : Docket No. M-2009-2112956

**METROPOLITAN EDISON COMPANY
PENNSYLVANIA ELECTRIC COMPANY AND
PENNSYLVANIA POWER COMPANY'S
ANSWER OPPOSING THE PETITION TO INTERVENE OF NATIONAL FUEL
GAS DISTRIBUTION CORP.**

Pursuant to 52 Pa. Code §5.66, Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”) and Pennsylvania Power Company (“Penn Power”) (collectively referred to as the “FirstEnergy Companies”) by and through its attorneys, Stevens & Lee, hereby files the Answer Opposing the Petition to Intervene of National Fuel Gas Distribution Corp. (“NFGDC”). In support of this Answer, the FirstEnergy Companies aver as follows:

I. SUMMARY OF OPPOSITION

The Petition of NFGDC, filed and dated July 31, 2009 is untimely and should be rejected. Moreover, NFGDC’s untimely Petition is “defective on its face” because it fails to comply with the Commission’s Rules of Practice and Procedure and provide

“reasonable grounds” for Petitioner’s failure to intervene earlier in these proceedings as required by 52 PA Code § 1.15.

Petitioner has no legitimate “right or interest” that warrants intervention in this proceeding because “fuel switching” or “fuel-substitution” measures are not proposed by the FirstEnergy Companies or presented as an issue in their EE&C plans. NFGDC’s request for leave to participate in this proceeding is based solely upon its desire to have gas fuel switching measures included in the Act 129 Energy Efficiency and Conservation (“EE&C”) plans of the FirstEnergy Companies, despite the fact that the presiding Administrative Law Judge has stated:

“...it is not reasonable to expect Met Ed and Penelec to expend resources responding to discovery regarding what is not in their proposed plans when the time period involved in this litigation is already short and the subject matter of fuel-switching has been deferred to another proceeding.¹”

II. BACKGROUND

1. On July 1, 2009, Met Ed, Penelec and Penn Power filed their energy conservation and efficiency plans with the Commission pursuant to the Commission’s orders and Act 129. The Met-Ed, Penelec and Penn Power EE&C Plans and Testimony were assigned individual docket numbers and published on the Commission’s website. Also on July 1, 2009, Met Ed, Penelec and Penn Power filed a joint petition for consolidation of the proceedings.

2. By notice dated July 2, 2009, the Commission scheduled a prehearing conference for this matter on July 29, 2009 at 9:30 a.m. in Hearing Room 3,

¹ *ORDER GRANTING PETITIONS TO INTERVENE OF UGI UTILITIES, INC.-GAS DIVISION, UGI PENN NATURAL GAS, INC. AND UGI CENTRAL PENN GAS, INC. AND DISMISSING THE REQUESTS*

Commonwealth Keystone Building in Harrisburg and assigned Administrative Law Judge David A. Salapa to preside. The Notice of the Prehearing Conference was published on the Commission's website and publicly available. ALJ Salapa issued a Prehearing Conference Order on July 8, 2009. The Prehearing Conference Order was published on the Commission's website under the dockets corresponding to the FirstEnergy Company EE&C Plan proceedings. The Prehearing Conference Order established a July 29, 2009 deadline for the timely filing of petitions to intervene and stating:

Parties shall be limited to those persons or entities who file a petition to intervene pursuant to 52 Pa. Code §5.71-76 (or a notice of intervention for those entities with a statutory right of participation pursuant to 52 Pa. Code §5.72(b) (4)) on or before July 29, 2009, and who attend the initial prehearing conference. After the prehearing conference, intervention is limited to those persons or entities granted party status pursuant to 52 Pa. Code §§5.71-5.76. Petitions to intervene, if not untimely, or otherwise defective on their face, shall be deemed granted if not objected to within three business days after filing. If objected to, such pleadings will be addressed by order.²

3. On Saturday, July 25, 2005 the Commission filed Notice of the filing of the EE&C Plans of the FirstEnergy Companies in the Pennsylvania Bulletin and specifically provided that: "Petitions for Intervention should be filed with the Secretary and a copy served on the Administrative Law Judge on or before July 29, 2009."³

4. On July 29, 2009 ALJ Salapa conducted a prehearing conference in this case. At the July 29, 2009 Prehearing Conference, Counsel for the FirstEnergy Companies stated:

TO INTERVENE OF COMPERIO ENERGY LLC D/B/A CLEARCHOICE ENERGY AND E CUBED COMPANY, LLC, at page 7, July 31, 2009.

² PREHEARING CONFERENCE ORDER, July 8, 2009 at pages 1-2.

³ 39 Pa.B. 4404, July 25, 2009.

“Our concern, Your Honor, is that the intervention date as published in the “Bulletin” and in Your Honor’s Order remain the same, that today is the deadline for intervention in this proceeding.”⁴”

5. On July 31, 2009 the presiding ALJ issued an *ORDER GRANTING PETITIONS TO INTERVENE OF UGI UTILITIES, INC.-GAS DIVISION, UGI PENN NATURAL GAS, INC. AND UGI CENTRAL PENN GAS, INC. AND DISMISSING THE REQUESTS TO INTERVENE OF COMPERIO ENERGY LLC D/B/A CLEARCHOICE ENERGY AND E CUBED COMPANY, LLC*. With respect to the subject of fuel substitution, which NFGDC seeks to examine in this proceeding, the ALJ stated:

However, ALJ Colwell also warned that a grant of intervention does not equal an open invitation to discovery. The usual rules of relevance are in effect, meaning that objections to discovery requests which are outside the scope of the plans and their development will be upheld. I agree with ALJ Colwell that it is not reasonable to expect Met Ed and Penelec to expend resources responding to discovery regarding what is not in their proposed plans when the time period involved in this litigation is already short and the subject matter of fuel-switching has been deferred to another proceeding.⁵

III. ARGUMENT

6. The Petition of NFGDC, filed and dated July 31, 2009 is untimely. The July 8, 2009 Prehearing Conference Order of ALJ Salapa clearly establishes that July 29, 2009 is the deadline for the timely filing of petitions to intervene in this proceeding. Moreover, the Commission’s Notice published in the Pennsylvania Bulletin establishes that Petitions for Intervention should be filed with the Secretary and a copy served on the Administrative Law Judge on or before July 29, 2009. The Petitioner knew, or should

⁴ Tr. at 38.

⁵ *ORDER GRANTING PETITIONS TO INTERVENE OF UGI UTILITIES, INC.-GAS DIVISION, UGI PENN NATURAL GAS, INC. AND UGI CENTRAL PENN GAS, INC. AND DISMISSING THE REQUESTS TO INTERVENE OF COMPERIO ENERGY LLC D/B/A CLEARCHOICE ENERGY AND E CUBED COMPANY, LLC* , at page 7, July 31, 2009.

have known, that the instant petition filed on July 31, 2009 would be untimely; however, Petitioner fails to provide any explanation for its untimely filing in its petition to intervene in this proceeding.

7. The Commission's regulations clearly establish an obligation to provide reasonable grounds for Petitioner's failure to timely intervene in this proceeding. 52. Pa Code §1.15(a) (1) provides:

(1) Except as otherwise provided by statute, whenever under this title or by order of the Commission, or notice given thereunder, an act is required or allowed to be done at or within a specified time, the time fixed or the period of time prescribed may, by the Commission, the presiding officer or other authorized person, for good cause be extended upon motion made before expiration of the period originally prescribed or as previously extended. **Upon motion made after the expiration of the specified period, the act may be permitted to be done where reasonable grounds are shown for the failure to act.** (EMPHASIS ADDED)

Petitioner's failure to provide any reasonable grounds for its untimely filing causes the Petition of NFGDC for intervention in this proceeding to be defective on its face.

Accordingly, Petitioner's untimely and defective Petition to Intervene should be denied.

8. NFGDC is a sophisticated enterprise that has actively participated in Commission proceedings before. NFGDC filed comments in the Commission's Act 129 Implementation proceeding at Docket No. M-2008-2069887. Petitioner clearly has experience in navigating the Commission's website dockets, based upon its active participation in prior Commission proceedings. With the docket numbers of the FirstEnergy EE&C plans published on the website for weeks, ALJ Salapa's July 8, 2009 Prehearing Conference Order was easily locatable and readily available to NFGDC.

9. NFGDC does not deny that it was fully aware of the deadline for intervention. Yet NFGDC does not set forth any reasonable grounds for its failure to file

its Petition for Intervention until after the deadline, as required by 52. Pa Code §1.15(a). NFGDC's reliance on 5.74(b) (1) is misplaced, because that rule was explicitly modified by the Prehearing Conference Order of ALJ Salapa, in light of the severely shortened litigation schedule that has been applied to EE&C proceedings.

10. The Prehearing Conference order established an intervention deadline for a reason. This proceeding is moving forward on an extremely truncated litigation schedule. The proceeding involves highly complex and technical issues. Based on the number of intervenors who filed their interventions by the deadline, a carefully crafted schedule of testimony, public input hearings, and discovery modifications was agreed upon. Discovery is underway, and public input hearings have already been held. An informal technical presentation was made to the intervenors to explain FirstEnergy's EE&C plans and models in great detail. Initial settlement discussions have taken place with multiple parties. NFGDC's unreasonably late-filed intervention will now bring new issues to the table, in the middle of the shortened litigation schedule, after many of the parties have already exchanged information and attempted to narrow the issues in dispute.

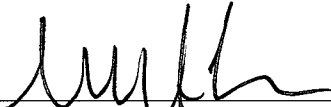
11. Petitioner has no legitimate "right or interest" that warrants intervention in this proceeding because "fuel switching" or "fuel-substitution" measures are not proposed by the FirstEnergy Companies or presented as an issue in their EE&C plans. Notwithstanding ALJ Salapa's clear and precise conclusions on the subject of fuel substitution in his July 31, 2009 Order as discussed above, Petitioner's desire to "intervene in this matter so that the use of additional fuel substitution measures in

Penelec's EE&C Plan, particularly natural gas, is given due consideration⁶ is simply not a legitimate "right or interest" that warrants intervention in this proceeding, as required under the Commission's regulations at 52 Pa Code §5.72. As ALJ Salapa concluded, it is simply "not reasonable to expect Met Ed and Penelec to expend resources responding to discovery regarding what is not in their proposed plans when the time period involved in this litigation is already short and the subject matter of fuel-switching has been deferred to another proceeding."⁷

WHEREFORE, for all of the foregoing reasons, Met-Ed, Penelec and Penn Power respectfully request that NFGDC's Petition to Intervene be denied.

Respectfully submitted,

Dated: August 5, 2009



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⁶ Petition to Intervene of the NFGDC, July 31, 2009 at paragraphs 18-21.

⁷ *ORDER GRANTING PETITIONS TO INTERVENE OF UGI UTILITIES, INC.-GAS DIVISION, UGI PENN NATURAL GAS, INC. AND UGI CENTRAL PENN GAS, INC. AND DISMISSING THE REQUESTS TO INTERVENE OF COMPERIO ENERGY LLC D/B/A CLEARCHOICE ENERGY AND E CUBED COMPANY, LLC*, at page 7, July 31, 2009.

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	:	
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	:	
Pennsylvania Power Company and Conservation Plan	:	Docket No. M-2009-2112956

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing Answer to Petition to Intervene by first class mail and electronic mail upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 and 1.55.

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Dated: August 5, 2009