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August 14, 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 Columbia Gas of Pennsylvania, Inc. 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 COLUMBIA GAS  
OF PENNSYLVANIA, INC.**

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 their attorneys, Stevens & Lee, hereby file this Answer Opposing the Petition to Intervene of Columbia Gas of Pennsylvania, Inc. (“Columbia” or “Petitioner”). In support of this Answer, the FirstEnergy Companies aver as follows:

**I. SUMMARY OF OPPOSITION**

The Petition of Columbia, filed and dated August 12, 2009 is extremely untimely and should be rejected. Columbia’s late-filed attempt to intervene was filed 43 days after the filing of the FirstEnergy Companies Act 129 Energy Efficiency and Conservation (“EE&C”) Plans, 14 days after the original established date for timely filing of interventions in this proceeding and 5 days after the established deadline for the filing of

comments and testimony by interveners in this proceeding. Moreover, Columbia'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 timely intervene in these proceedings as required by 52 PA Code § 1.15.

Furthermore, while the Petitioner claims a right to intervene by virtue of being a customer of Met-Ed and because of overlap in service territories,<sup>1</sup> it is clear from the Petition that the Petitioner seeks to intervene in this proceeding for the sole purpose of addressing the issue of "fuel substitution." Specifically, Petitioner states that it seeks to intervene in this matter "so that the use of additional fuel substitution measures in Met-Ed's Plan, particularly natural gas, is given due consideration."<sup>2</sup> This is not a legitimate interest that warrants intervention in this proceeding. The ALJ has already issued two separate Orders that clearly indicated that the issue of "fuel substitution" is not to be addressed in this proceeding, because no "fuel substitution" measures are presented or proposed by the FirstEnergy Companies in their EE&C Plans.

## **II. BACKGROUND**

1. On July 1, 2009, Met Ed, Penelec and Penn Power filed their EE&C 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.

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<sup>1</sup> Petition to Intervene of Columbia Gas dated August 12, 2009 at page 2, paragraph 5.

<sup>2</sup> Id at pages 3-4, paragraph 8.

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, 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 made 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 First Energy 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.<sup>4</sup>

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."<sup>5</sup>

4. On July 29, 2009 ALJ Salapa conducted a prehearing conference in this case. While Columbia was not represented by counsel at that proceeding, the subject of

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<sup>4</sup> PREHEARING CONFERENCE ORDER, July 8, 2009 at pages 1-2.

<sup>5</sup> 39 Pa.B. 4404, July 25, 2009.

intervention was addressed and included in the transcript of that proceeding. At the July 29, 2009 Prehearing Conference, Counsel for the FirstEnergy Companies stated:

“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.”<sup>6</sup>”

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 Columbia 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.<sup>7</sup>

6. Subsequently, on August 7, 2009, ALJ Salapa issued an Order which granted the Petitions to Intervene of several additional parties, including several Petitions that were filed after the July 29, 2009 deadline.<sup>8</sup>

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<sup>6</sup> Tr. at 38.

<sup>7</sup> *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.

<sup>8</sup> *ORDER GRANTING PETITIONS TO INTERVENE OF REPRESENTATIVE CAMILLE GEORGE, COMPERIO ENERGY LLC, D/B/A CLEARCHOICE ENERGY, PEOPLES NATURAL GAS COMPANY D/B/A DOMINION PEOPLES, NATIONAL FUEL GAS DISTRIBUTION CORPORATION, ENERNOC, INC. AND CONSTELLATION NEW ENERGY, INC.*, August 7, 2009

7. While ALJ Salapa granted the late-filed Petitions to Intervene of several parties, due to an apparent conflict in the July 8, 2009 prehearing order, he only did so because he treated the petitions to intervene as timely since they were filed prior to the date set for filing answers, comments or recommendations in this proceeding. See August 7, 2009 Order, at p. 6.

8. ALJ Salapa's August 7, 2009 Order also reiterated that "It is not reasonable to expect Met Ed, Penelec and Penn Power 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." See August 7, 2009 Order, at p. 7.

#### **ARGUMENT**

9. The Petition of Columbia, filed and dated August 12, 2009 is severely untimely, and should be denied. Columbia's Petition was filed 14 days after the original July 29, 2009 intervention deadline established by the July 8, 2009 Prehearing Conference Order. Moreover, unlike other late-filed Petitions to Intervene that were granted, Columbia's Petition was filed 5 days *after* the deadline for filing answers, comments or recommendations in this proceeding. ALJ Salapa's August 7, 2009 Order made it clear that August 7, 2009 was the absolute latest date that petitions to intervene would be accepted in this proceeding.

10. Interestingly, while the Petitioner acknowledges that the instant petition, filed on August 12, 2009 is untimely<sup>9</sup>, Petitioner fails to even attempt to provide

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<sup>9</sup> Petition to Intervene of Columbia Gas dated August 12, 2009 at page 3, paragraph 5.

“reasonable grounds” for the untimely filing of its Petition to intervene in these proceedings.

11. 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 reasonable grounds for its untimely filing causes the Petition of Columbia for intervention in this proceeding to be defective on its face. Accordingly, Petitioner’s untimely and defective Petition to Intervene should be denied.

12. Columbia is a sophisticated enterprise that has actively participated in Commission proceedings before. Petitioner clearly has experience in navigating the Commission’s website dockets, based upon its active participation in prior Commission proceedings. The docket numbers of the FirstEnergy EE&C plans have been published on the Commission’s website for weeks, and ALJ Salapa’s July 8, 2009 Prehearing Conference Order and August 7, 2009 Order Granting Interventions were easily locatable and readily available to Columbia as well.

13. While ALJ Salapa granted some Petitions to Intervene that were filed after the original July 29, 2009 deadline, he only did so because those Petitions were filed before the August 7, 2009 deadline for filing answers, comments or recommendations in

this proceeding. By contrast, Columbia's Petition was clearly not filed prior to the August 7, 2009 deadline for filing answers, comments or recommendations in this proceeding, and therefore the same leeway that was afforded to other late-filing interveners cannot be afforded to Columbia.

14. Columbia's admitted untimely filing combined with its failure to set forth any reasonable grounds for its failure to file its Petition for Intervention until after the deadline, should result in the denial of its Petition to intervene.

15. The Prehearing Conference Order of ALJ Salapa established an intervention deadline and schedule for submissions for a reason. This proceeding is moving forward on an extremely truncated litigation schedule. Based upon the number of Intervenors who filed their interventions by the deadline, a carefully crafted schedule of testimony, public input hearings and discovery modifications was established. Discovery is well underway, public input hearings have already been held and Intervener testimony and comments have already been filed pursuant to the established schedule. Columbia's unreasonably late-filed intervention is nothing more than "piling on" – as they attempt to join others attempting to insert issues into these proceedings which have already been addressed by the presiding ALJ.

16. In addition to being blatantly and unreasonably untimely, Columbia's Petition to Intervene must be denied because it has already been determined that the sole basis for Columbia's intervention (fuel substitution concerns) is not within the scope of this proceeding. ALJ Salapa's made clear and precise conclusions on the subject of fuel substitution in his July 31, 2009 Order and his August 7, 2009 Order. In those Orders, ALJ Salapa stated: "It is not reasonable to expect Met Ed, Penelec and Penn Power 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.**” (Emphasis Added).

17. Notwithstanding ALJ Salapa’s precise conclusion that the issue of “fuel-switching” has been deferred to another proceeding, Columbia states a desire to “intervene in this matter so that the use of additional fuel substitution measures in Met-Ed’s Plan, particularly natural gas, is given due consideration.”<sup>10</sup> It is also worth noting that this averment in the Columbia Petition is nearly identical to the alleged interest expressed by National Fuel Gas (NFG) in its Petition to intervene in this proceeding. NFG averred that it desired 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 consideration.”<sup>11</sup>

18. This Commission should conclude that Columbia has not stated a legitimate “right or interest” that warrants intervention in this proceeding, as required under the Commission’s regulations at 52 Pa Code §5.72. Because Columbia has not averred any legitimate right or interest in this proceeding, and because Columbia has not provided any reasonable grounds for filing its Petition to Intervene long after the last deadline for intervening, the Commission should deny Columbia’s Petition.

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<sup>10</sup> Id at pages 3-4, paragraph 8.

<sup>11</sup> Petition to Intervene of the NFGDC, July 31, 2009 at paragraphs 18-21.

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

Respectfully submitted,

Dated: August 14, 2009



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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

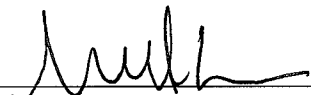
Metropolitan Edison Company Energy and Conservation Plan	:	Docket No. M-2009-2092222
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Pennsylvania Electric Company and Conservation Plan	:	Docket No. M-2009-2112952
	:	
Pennsylvania Power Company and Conservation Plan	:	Docket No. M-2009-2112956

**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.

<p>CANDIS A TUNILO ESQUIRE AARON BEATTY ESQUIRE TANYA MCCLOSKEY ESQUIRE OFFICE OF CONSUMER ADVOCATE 5<sup>TH</sup> FLOOR FORUM PLACE 555 WALNUT STREET HARRISBURG PA 17101-1923</p>	<p>BARRY NAUM ESQUIRE CHARIS MINCAVAGE ESQUIRE SHELBY A LINTON-KEDDIE ESQUIRE VASILI KARANDRIKAS MCNEES WALLACE &amp; NURICK 100 PINE STREET PO BOX 1166 HARRISBURG PA 17108</p>
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<p>CHARLES DANIEL SHIELDS ESQUIRE CARRIE B WRIGHT ESQUIRE PA PUC OFFICE OF TRIAL STAFF PO BOX 3265 HARRISBURG PA 17105-3265</p>	<p>KEVIN J MOODY ESQUIRE ECKERT SEAMANS CHERIN &amp; MELLOTT 213 MARKET STREET 18<sup>TH</sup> FLOOR HARRISBURG PA 17101</p>
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THEODORE GALLAGHER, ESQ NISOURCE COROPORATE SERVICES CO. 501 TECHNOLOGY DR. CANONSBURG, PA 15317	

  
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 Michael Gruin

Dated: August 14, 2009