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May 31, 2012

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

**VIA HAND DELIVERY**

**RE: Implementation of Act 11 of 2012; Docket No. M-2012-2293611**

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission an original and fifteen (15) copies of the Comments of Citizens' Electric Company of Lewisburg, Wellsboro Electric Company and Valley Energy, Inc. on Tentative Implementation Order in the above-referenced proceeding.

Please date stamp the extra copy of this transmittal letter and the Comments, and kindly return them to our messenger for our filing purposes. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By   
Adeolu A. Bakare

Counsel to Citizens' Electric Company of Lewisburg,  
Wellsboro Electric Company and Valley Energy, Inc.

Enclosures

- c: Commission's Act 11 Resource Account ([ra-Act11@pa.gov](mailto:ra-Act11@pa.gov))
- David Screven, Esq. ([dscreven@pa.gov](mailto:dscreven@pa.gov))
- Louise Fink Smith, Esq. ([finksmith@pa.gov](mailto:finksmith@pa.gov))
- Ms. Erin Laudenslager ([elaudensla@pa.gov](mailto:elaudensla@pa.gov))
- Mr. Gene Cree, Citizens' Electric Company of Lewisburg (via First-Class Mail and E-Mail)
- Mr. Eric Winslow, Citizens' Electric Company of Lewisburg (via First-Class Mail and E-Mail)
- Mr. Craig Eccher, Wellsboro Electric Company (via First-Class Mail and E-Mail)

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Implementation of Act 11 of 2012

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Docket No. M-2012-2293611

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**COMMENTS OF CITIZENS' ELECTRIC COMPANY OF LEWISBURG, WELLSBORO  
ELECTRIC COMPANY AND VALLEY ENERGY, INC.  
ON  
TENTATIVE IMPLEMENTATION ORDER**

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**I. INTRODUCTION**

On May 11, 2012 the Pennsylvania Public Utility Commission (“PUC” or “Commission”) issued a Tentative Implementation Order in the above-captioned docket (“Tentative Order”). Act 11 of 2012 (“Act 11”) amends the Chapters 3, 13, and 33 of the Pennsylvania Public Utility Code to (1) allow jurisdictional utilities to apply a fully projected test year to support rate increase requests; (2) allow wastewater utilities to allocate a portion of their revenue requirement to the combined wastewater and water utility customer base; and (3) allow water utilities, wastewater utilities, electric distribution companies (“EDCs”), natural gas distribution companies (“NGDC”), or city natural gas distribution operations to petition for a distribution system improvement charge (“DSIC”). The Tentative Order sets forth the Commission's proposed guidelines for implementation of the ratemaking provisions of Act 11 in Chapters 3 and 13 of the Public Utility Code.

Prior to issuing the Tentative Order, the Commission held a working group meeting to solicit stakeholder input on implementation of the DSIC under Act 11. The working group participants commented on various terms of Act 11 and a Draft Model Tariff previously

circulated by Commission staff. Following the April 5 working group meeting, Commission staff invited participants to submit informal comments for consideration in preparing the Tentative Order. Citizens' Electric Company of Lewisburg ("Citizens"), Wellsboro Electric Company ("Wellsboro"), and Valley Energy, Inc. ("Valley") (collectively the "Companies") participated in the working group and provided informal comments on April 16, 2012. The Companies also complied with a request from Commission staff to aggregate customer-oriented and industry-oriented comments on the Draft Model Tariff. Pursuant to this request, the Companies engaged in collaborative discussions under the leadership of the Energy Association of Pennsylvania ("EAP") to develop a joint mark-up of the Draft Model Tariff. The EAP also submitted the joint mark-up to Commission staff on April 16, 2012. At this time, following the Commission's entry of the Tentative Order, Citizens', Wellsboro, and Valley hereby provide the following Comments addressing select terms and provisions related to the implementation of the DSIC under Act 11.<sup>1</sup>

## **II. COMMENTS**

As indicated above, Act 11 expands the DSIC formerly available to water utilities pursuant to Section 1307(g) of the Public Utility Code. 66 Pa. C.S. § 1307(g) (repealed 2012). Under Sections 66 Pa. C.S. §§ 1350 – 1360, water utilities, wastewater utilities, EDCs and NGDCs are now eligible to petition for a DSIC. In expanding eligibility for the DSIC, Act 11 also introduces new qualification standards. Utilities petitioning to implement a DSIC must first develop and submit a Long-Term Infrastructural Improvement Plan ("LIIP") pursuant to Section 1352. 66 Pa. C.S. § 1352. Only after submitting a LIIP does a utility become eligible to file a

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<sup>1</sup> In addition to filing these Comments, the Companies also join in the Comments contemporaneously submitted by the EAP.

petition for a DSIC. 66 Pa. C.S. § 1352(a). If the Commission approves a requested DSIC, it must periodically review the submitted LIIP to determine compliance and shall terminate a DSIC upon a determination of noncompliance by the responsible utility. Section 66 Pa. C.S. § 1352(b).

Citizens', Wellsboro, and Valley are concerned that an overly rigid interpretation of Act 11 may frustrate the objectives of the Act, particularly with regards to the operations of smaller utilities. Smaller distribution utilities face various operational challenges that may significantly affect planned infrastructural improvements. For example, unexpected events such as storms, failed equipment, contractor unavailability, or customer-requested improvements can divert the employee resources available for planned infrastructural improvement projects in comparison to larger utilities. Small utilities do not possess the economies of scale enjoyed by larger utilities in the Commonwealth. While all utilities must manage available resources, smaller utilities remain particularly sensitive to unanticipated events. Similarly, some planned projects may be contingent on upgrades in the customer's side of the meter, which may be delayed by the customer due to budgetary or operational issues.

With pre-determined resources to allocate towards operations, smaller utilities often modify planned capital projects to address unexpected opportunities to save costs or unexpected emergencies requiring immediate attention. For example, smaller utilities often invest in unplanned infrastructural improvements to capitalize on municipal projects, traffic accidents, or other events providing ready access to plant facilities. The cost savings resulting from replacing facilities exposed by unplanned or externally-funded projects may divert equipment and employee resources away from previously planned projects. The planned project would generally remain on the agenda, but the implementation and completion dates may vary significantly from the smaller company's original projections.

To ensure that smaller utilities realize the benefits of a DSIC, the Commission should adopt flexible standards for initial and subsequent review of the LIIPs. The Companies also encourage the Commission to examine Section 1352(b)(2) of the Public Utility Code to provide some general guidance as to the standards to be applied in determining whether a utility has failed to comply with its LIIP. The Companies recommend that the Commission promulgate regulations clarifying that a utility operating under a Commission-approved DSIC is entitled to notice and opportunity to be heard prior to conclusion of any action to revoke a DSIC under 66 Pa. C.S. § 1352(b)(2). To foster adoption of the DSICs as contemplated by the General Assembly in Act 11, the Companies further recommend that the Commission clarify that Section 1352(b)(2) should be interpreted to allow for reasonable deviation from submitted and approved LIIPs where a utility identifies operational, financial, or other justifications for deviating from its approved LIIP.

In addition to the above concerns, the Companies respectfully request that the Commission remain generally cognizant of the limited resources available to smaller utilities in adopting regulations for implementation of Act 11. To the extent that any approved regulations impose unduly burdensome requirements upon smaller utilities applying for a DSIC, the Companies reserve all rights to request waivers as necessary.

**WHEREFORE,** Citizens' Electric Company of Lewisburg, Wellsboro Electric Company, and Valley Energy, Inc. request that the Pennsylvania Public Utility Commission consider and reflect these Comments to the Tentative Implementation Order.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By  \_\_\_\_\_

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