

Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Tel: 215.963.5000
Fax: 215.963.5001
www.morganlewis.com

Morgan Lewis
C O U N S E L O R S A T L A W

Anthony C. DeCusatis
Of Counsel
215.963.5034
adecusatis@MorganLewis.com

October 6, 2014

VIA eFILING, eMAIL & FIRST CLASS MAIL

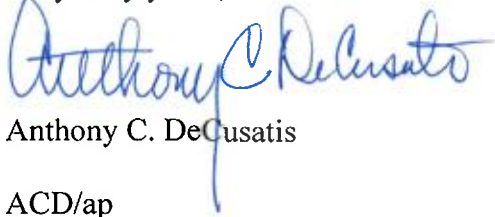
Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

Re: Pa. P.U.C. v. Metropolitan Edison Company – Docket No. R-2014-2428745
Pa. P.U.C. v. Pennsylvania Electric Company – Docket No. R-2014-2428743
Pa. P.U.C. v. Pennsylvania Power Company – Docket No. R-2014-2428744
Pa. P.U.C. v. West Penn Power Company – Docket No. R-2014-2428742

Dear Secretary Chiavetta:

In connection with the above-captioned matters, enclosed please find the **Answer of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to the Office of Consumer Advocate's Motion to Compel Answers to Its Interrogatories (Set II) Issued to Each of Those Companies.**

Very truly yours,



Anthony C. DeCusatis

ACD/ap
Enclosures

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION**

v.

**METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY,
PENNSYLVANIA POWER COMPANY AND
WEST PENN POWER COMPANY**

:
:
:
:
:
:
:
:
:
:
:

**Docket Nos. R-2014-2428745
R-2014-2428743
R-2014-2428744
R-2014-2428742**

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the **Answer of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to the Office of Consumer Advocate's Motion to Compel Answers to Its Interrogatories (Set II) Issued to Each of Those Companies** on the following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

**VIA ELECTRONIC MAIL
AND FIRST CLASS MAIL**

Honorable Dennis J. Buckley
Administrative Law Judge
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
400 North Street
P.O. Box 3265
Harrisburg, PA 17105
debuckley@pa.gov

Honorable Katrina Dunderdale
Administrative Law Judge
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
Pittsburgh District Office
Piatt Place
301 5th Avenue, Suite 220
Pittsburgh, PA 15222
kdunderdal@pa.gov

Darryl A. Lawrence
Kristine E. Robinson
Brandon J. Pierce
Lauren M. Burge
Office of Consumer Advocate
555 Walnut Street, 5th Floor, Form Place
Harrisburg, PA 17101-1923
dlawrence@paoca.org
krobinson@paoca.org
bpierce@paoca.org
lburge@paoca.org

Allison C. Kaster
Carrie B. Wright
Scott B. Granger
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
400 North Street
Harrisburg, PA 17120
akaster@pa.gov
carwright@pa.gov
sgranger@pa.gov

Daniel G. Asmus
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101
dasmus@pa.gov

Thomas J. Sniscak
Hawke, McKeon & Sniscak LLP
P.O. Box 1778
100 North Tenth Street
Harrisburg, PA 17105-1778
tjsniscak@hmslegal.com
Counsel for Pennsylvania State University

Charis Mincavage
Vasiliki Karandrikas
Teresa K. Schmittberger
Elizabeth P. Trinkle
Susan E. Bruce
McNees, Wallace & Nurick, LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
cmincavage@mwn.com
vkandrikas@mwn.com
tschmittberger@mwn.com
etrinkle@mwn.com
sbruce@mwn.com
*Counsel for MEIUG/PICA/PPUG
and WPPH*

David F. Boehm
Boehm, Kurtz & Lowry
36 East Seventh Street, Suite 1510
Cincinnati, OH 45202
dboehm@bkllawfirm.com
Counsel for AK Steel Corporation



Anthony C. DeCusatis (Pa. I.D. No. 25700)
Catherine G. Vasudevan (Pa. I.D. No. 210254)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
215.963.5234 (dir)
215.963.5001 (fax)
adecusatis@morganlewis.com
cvasudevan@morganlewis.com

*Counsel for Metropolitan Edison Company,
Pennsylvania Electric Company, Pennsylvania
Power Company and West Penn Power Company*

October 6, 2014

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION**

v.

**METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY,
PENNSYLVANIA POWER COMPANY AND
WEST PENN POWER COMPANY**

:
:
:
:
:
:
:
:
:
:

**Docket Nos. R-2014-2428745
R-2014-2428743
R-2014-2428744
R-2014-2428742**

**ANSWER OF
METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY,
PENNSYLVANIA POWER COMPANY,
AND WEST PENN POWER COMPANY**

**To The Office Of Consumer Advocate’s Motion To Compel Answers To
Its Interrogatories (Set II) Issued To Each Of Those Companies**

I. INTRODUCTION AND OVERVIEW

Pursuant to 52 Pa. Code § 5.342, Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”), and West Penn Power Company (“West Penn”) (each individually a “Company” and, collectively, the “Companies”) submit this Answer in opposition to the Office of Consumer Advocate’s (“OCA”) Motion to Compel answers to its Interrogatories (Set II) (“Set II”).

On September 8, 2014, the OCA served Set II on each of the Companies. The interrogatories in Set II request extensive, detailed, multi-year information about the Companies’ Customer Assistance Programs (“CAP”) and Low Income Home Energy Assistance Programs (“LIHEAP”); the customers that participated in, or received benefits under, those programs; and the programs’ structure and operation. On September 18, 2014, the Companies served

Objections to OCA Set II, a copy of which is attached to the OCA's Motion to Compel and an additional copy of which is attached as Appendix A to this Answer.

The gravamen of the Companies' Objections is that the interrogatories in Set II inquire into subjects and issues that are already being addressed by the Pennsylvania Public Utility Commission ("PUC" or the "Commission") in proceedings initiated specifically to consider the Companies' Universal Service and Energy Conservation Plans for the years 2015 through 2018.¹ Indeed, in a recent case involving PPL Electric Utilities ("PPL"), the Commission has clearly stated that it expects issues related to Universal Service to be addressed in the triennial review process and issues related to cost recovery to be addressed in proceedings under Section 1307(e), 66 Pa.C.S. § 1307(e), specifically designed to review the operation of the rate adjustment clauses embodied in Commission-approved Universal Service Charge ("USC") Riders:

The ALJ concluded that the Commission's institution of separate proceedings for these plans is indicative of a preference to address the issues within those proceedings. Therefore, the ALJ recommended that CEO's proposed increase in funding be denied. However, the ALJ encouraged CEO to participate in the triennial plan reviews. Id. at 46.

iii. Exceptions

In its Exceptions, CEO submits that the Commission has a statutory duty to ensure that a company's USPs are appropriately funded and available. Further, *CEO contends that a proceeding that results in a rate increase to low-income customers would require the Commission to determine the effect of the rate increase on whether those USPs are, or remain, appropriately funded and*

¹ *Metropolitan Edison Company Universal Service & Energy Conservation Plan for Years 2015-2018, Docket No. M-2014-2407729; Pennsylvania Electric Company Universal Service & Energy Conservation Plan for Years 2015-2018, Docket No. M-2014-2407730; Pennsylvania Power Company Universal Service & Energy Conservation Plan for Years 2015-2018, Docket No. M-2014-2407731; and West Penn Power Company Universal Service & Energy Conservation Plan for Years 2015-2018, Docket No. M-2014-2407728 (hereafter referred to as the "Companies' Triennial Universal Service Plan Proceedings.")*

available. CEO Exc. at 6. CEO alleges that to postpone consideration of universal service funding to a time after a rate increase takes effect, and to a non-adversarial proceeding, is contrary to the Commission's past practice and its statutory duty. *Id.*

PPL responds that the ALJ properly rejected CEO's proposal *because the USP costs are no longer recovered through base rates.* PPL R.Exc. at 22-23. I&E also supports the ALJ's recommendation on this issue. I&E R.Exc. at 14-15.

iv. Disposition

We agree with the ALJ, PPL and I&E on this issue. Recent Commission practice is to address all aspects of USPs through the triennial filing process and to collect all revenues through a rider to base rates. We believe this process has provided, and will continue to provide, the customers who rely upon USPs with appropriate funding levels on a timely basis. Accordingly, we deny the Exceptions of CEO on this issue.

Pa. P.U.C. v. PPL Elec. Utils. Corp., Docket No. R-2012-2290597 (Final Order entered Dec. 28, 2012) at 51.

Despite the OCA's protestation that answers to Set II are somehow necessary for its witnesses to analyze traditional base rate issues – principally, a proposed increase in the Companies' customer charges – the nature, scope, and granularity of the questions in Set II belie that argument, as evidenced by the short summary of typical interrogatories set forth in Paragraph No. 8 of the Companies' Objections. The OCA's assertion that an increase in the Companies' customer charges may have a disproportionate impact on low-usage customers – which, notably, are not coterminous with low-income customers – is far too thin a reed to support the massive weight of the 208 interrogatories addressed to all of the Companies' CAP and LIHEAP programs. In similar fashion, the OCA's contentions that Set II is appropriate to facilitate review of expenses claimed for recovery as part of the Companies' proposed rates or to analyze their existing – and previously approved – USC Riders are simply not correct. The

Companies have eliminated both Universal Service costs and revenues from their expense and revenue claims in this case expressly because those costs and revenues flow through USC Riders, which are separate, non-base rate recovery mechanisms.

Additionally, contrary to what the OCA's Motion suggests (i.e., that all four Companies have "filed for the approval of Universal Service Riders"), the existing USC Riders of Met-Ed, Penelec and Penn Power were previously approved by the Commission. And, although West Penn proposes to adopt a USC Rider in this case, it is requesting only that the Commission authorize exactly the same form of USC Rider it previously approved for Met-Ed and Penelec. Any charge imposed under an approved USC Rider for West Penn would be subject to the annual reconciliation, review and public hearing procedures of Section 1307(e). Moreover, West Penn is not proposing any changes in its Universal Service programs in this case.

Significantly, the OCA's Set II is only the tip of the iceberg. On September 17, 2014, the OCA served its Set V, which cumulatively propounds another 63 interrogatories, which request detailed, multi-year data pertaining to the costs recovered, and the revenues billed, under the Section 1307 adjustment clauses set forth in Met-Ed's, Penelec's and Penn Power's USC Riders. Set V also directs similar data requests to West Penn for costs that, if its USC Rider is approved, would be recovered under a Section 1307 adjustment clause.

On September 29, 2014, the Companies served Objections to OCA Set V. As explained in those Objections, the OCA's Sets II and V are the basis for the Company's global objection to the OCA's entire line of inquiry. If permitted, the OCA's discovery threatens to divert this proceeding from its proper scope and scale – i.e., an examination of existing and proposed base rates within the statutory period specified by 66 Pa.C.S. § 1308(d) – and convert it into an entirely different, much larger, and legally unsustainable case.

If permitted, the OCA's discovery would initiate a "case within a case" to embark on a comprehensive examination of the operation of the Companies' Universal Service programs (OCA Set II) and of the prudence and reasonableness of the costs incurred under those same programs (OCA Set V). As to the former line of inquiry, a full and fair opportunity for review exists within the context of the Companies' Triennial Universal Service Plan Proceedings, which is precisely where the PUC expects those issues to be addressed. As to the latter line of inquiry, it is equally clear that issues pertaining to the prudence, reasonableness and accuracy of costs claimed for recovery under USC Riders are to be addressed in the annual review and reconciliation process expressly designed to provide interested parties and the Commission a formal, precisely-focused venue to vet those issues. Removing Universal Service issues from the procedural context expressly designed to address them and interjecting those issues into a base rate case would significantly – and improperly – expand the scope of this proceeding and assure that neither Universal Service issues nor base rate issues will receive the attention they deserve.

II. ARGUMENT

The OCA advances four purported reasons for allowing it to embark on a comprehensive examination of Universal Service issues in this case: (1) that a detailed examination of Universal Service programs, costs and benefits is necessary to assess the implications of the Companies' proposed increases in their residential customer charges (Motion to Compel, p. 3); (2) that the questions in Set II are purportedly designed to facilitate the OCA's examination, in this case, of expenses incurred for the operation of the Companies' Universal Service programs (Motion to Compel, pp. 3-4, 6); (3) that the Companies allegedly put the operation of their Universal Service programs at issue by "fil[ing] for approval of Universal Service Riders" (Motion to Compel, pp. 3 and 5); and (4) that the Commission did not really mean what it said in *Pa. P.U.C. v. PPL Elec.*

Utils. Corp., because PPL's Universal Service programs were actually addressed in detail in that proceeding (Motion to Compel, pp. 4-5).² None of these contentions is correct.

Customer Charges. The OCA asserts that a "deep dive" into the Companies' Universal Service programs is necessary simply because the Companies proposed increases in their residential customer charges that are somewhat higher than the average increase for that class. It is unmentioned by the OCA that PPL proposed a significant increase in its residential customer charge in its 2012 base rate case, which was the apparent trigger for the CEO's proposals in that proceeding. And yet, the Administrative Law Judge and the Commission, which both approved PPL's proposed customer charges, did not find PPL's customer charge increase a valid justification for opening a wholesale examination of the operation, costs, or level of benefits under its Universal Service Programs. Moreover, OCA's argument simply attempts an end-run around the Commission directive to address Universal Service programs and program costs in the separate proceedings designed for those purposes. If accepted, the OCA's argument would make any rate change that allegedly has a disproportionate impact on lower-usage customers the reason to import the panoply of Universal Service issues into a base rate case. The Commission has clearly signaled that it has adopted a new approach, which will afford appropriate, undivided attention to Universal Service issues in the separate dockets where it expects those issues to be addressed.

Universal Service Costs. This is a base rate case and, as such, all of the costs recovered and revenues billed under the separate adjustment clauses in the Companies' USC Riders have

² Notably, the OCA struggles to make its point by reference, not to the Commission's final order, but to the Recommended Decision (*see* Motion to Compel, p. 5). However, upon examination, none of the references cited by the OCA support its position or its characterization of the text of the Recommended Decision, as explained below.

been removed from their claims, just as the Commission intended when it directed that Universal Service program costs are to be recovered under adjustment clauses set forth in separate riders.³ Moreover, West Penn has requested approval only to add a previously-approved form of USC Rider to its tariff.⁴ Once implemented, the operation of West Penn's USC Rider, including the reconciliation of Universal Service costs and revenues, would be subject to annual review and reconciliation under 66 Pa.C.S. § 1307(e) in the same fashion as the comparable riders of the other Companies. In short, the OCA is wrong to assert that Set II is necessary to examine "claimed expenses for universal service programs" (Motion to Compel, pp. 3-4).

Additionally, the OCA's argument that Set II is necessary to assess "claimed expenses for universal service programs" bears no reasonable relationship to the nature of the questions in that set. That argument – which is invalid for the reasons previously explained – simply cannot support the kind of questions in OCA Set II, which run far afield from what would be proper discovery even if Universal Service "expenses" had been "claimed" in this case.

The OCA's Contention That The Companies Are Seeking Approval of USC Riders.

The OCA makes this assertion at pages 3-4 of its Motion to Compel. However, it is perfectly clear – as the Companies explained in their direct testimony – that Met-Ed, Penelec and Penn Power already have Commission-approved USC Riders in their respective tariffs (Statement No.

³ *Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms*, Docket No. M-00051923, 2006 Pa. PUC LEXIS 108 (December 18, 2006), *21-33. *See also* 66 Pa. C.S. § 2804(8). *See also Pa. P.U.C. v. PPL Elec. Utils. Corp., supra* ("Recent Commission practice . . . is to collect all revenues through a rider to base rates.")

⁴ West Penn did note that, in the unlikely event the Commission were to reverse course and refuse to authorize a USC Rider, then the Commission could not expect West Penn to hereafter implement material changes in its Universal Service programs without allowing base rate recovery of any associated increases in the cost of those programs (Statement No. 3, page 38).

3, p. 33, lines 1-5) and are not proposing to establish a USC Rider for the first time in this case.⁵ As previously explained, West Penn is proposing to include in its tariff the same form of USC Rider previously approved for Met-Ed and Penelec, which is subject to the separate review and reconciliation provisions of Section 1307(e). Additionally, West Penn explained that Commission authorization of a USC Rider would give it the flexibility to propose changes, in the future, to its Universal Service programs to try to align benefits levels with those already approved for Met-Ed, Penelec and Penn Power. West Penn did not propose that possible changes in its Universal Service programs were part of this case. *See* Statement No. 3, p. 33, lines 17-21.

The OCA's Contention That *Pa. P.U.C. v. PPL Elec. Utils. Corp.* Does Not Mean What It Says. The OCA tries to minimize the significance of *Pa. P.U.C. v. PPL Elec. Utils. Corp.* by contending that: (1) it dealt only with the narrow issue of "increased funding of LIURP;" (2) that "PPL's rates, including the Universal Service Rider, were appropriately reviewed in that PPL proceeding;" and (3) the Administrative Law Judge "identified changes to the Universal Service Rider in that base rate proceeding as one of the 'major changes proposed by PPL Electric' " (Motion to Compel, p. 5).⁶

⁵ Penn Power is proposing two minor revisions to its USC Rider that would simply make it uniform with the existing Met-Ed and Penelec USC Riders by eliminating two provisions that were intended to be removed upon Penn Power's filing of a base rate case. *See* Statement No. 3, p. 24, lines 15-22.

⁶ The OCA also claims the Administrative Law Judge acknowledged that PPL's proposed customer charge increase would disproportionately affect "low-usage, low-income customers." Motion to Compel, p. 5. However, what the OCA cited was the Judge's repetition of the OCA's own averments and not any determination by the Judge that a change in the residential customer charge will support a wholesale examination of the operation of a utility's Universal Service programs or the importation of issues properly considered in the reconciliation and review of USC Rider costs and revenues under Section 1307(e).

None of the OCA's contentions support its position in this case. At the outset, the OCA's arguments are not based on the language of the Commission's final order itself. In fact, as the OCA's quotation from that order underscores, the Commission expressed its expectation that issues of Universal Service program structure and benefit levels will be addressed in the triennial review process and that issues of cost recovery will be considered in proceedings under Section 1307(e) to review the operation the USC Rider. *See Motion to Compel*, p. 5, quoting *Pa. P.U.C. v. PPL Elec. Utils. Corp.* at 51. The OCA, instead, focused on snippets from the Recommended Decision that, it alleged, contradict the Commission's express holding and purportedly evidence the fact that substantial issues pertaining to PPL's Universal Service program structure and costs were actually addressed in that case. Those contentions are simply not accurate. Moreover, the parts of the Recommended Decision cited in the Motion to Compel do not stand for the propositions for which they are offered.

In its Motion to Compel, the OCA cites pages 45 and 121-124 of the PPL Recommended Decision for the proposition that "PPL's rates, including the Universal Service Rider, were appropriately reviewed in that . . . proceeding." However, page 45 simply summarizes the back story of CEO's request to increase funding for low-income programs, which culminated in the Administrative Law Judge's conclusion that "[t]he Commission's institution of separate proceedings for these plans is indicative of its preference to address the issues in those proceedings" and that "CEO is encouraged to participate in the plan reviews and to make its concerns known there." Furthermore, pages 121-124 did not involve any review of "rates." Rather, they are the Judge's summary of largely unopposed technical changes in tariff rules and

certain riders.⁷ That portion of the Recommended Decision does not even purport to examine any aspect of the operation of, or costs incurred under, PPL's USC Rider. Additionally, the OCA errs in contending that PPL's proposed increase in its customer charge gave rise to a ruling from the Judge that low-income customers were disproportionately affected and, therefore, any issues as to Universal Service programs were fair game. The text at page 116 of the Recommended Decision cited by the OCA simply acknowledges the OCA's averments about the impact of the proposed increase, without even discussing the matter further. Significantly, the Administrative Law Judge and the Commission approved PPL's proposed residential customer charge of \$14.09 per month without addressing its Universal Service programs. *Pa. P.U.C. v. PPL Elec. Utils. Corp.* at 124-131.

Finally, the OCA relies heavily on authorities stating that matters are discoverable if they are "relevant to the subject matter involved in the pending action, or reasonably calculated to lead to the discovery of admissible evidence, and not privileged" (Motion to Compel, p. 8, citing *Rahn v. Pennsylvania-American Water Co.*, Docket No. C-20054919 (June 6, 2006)). The OCA's argument misses the point. The matters as to which it seeks discovery should not properly be part of this case. The OCA's discovery may well be appropriate in the proper case. And, in fact, that case – the Companies' Triennial Universal Service Plan Proceedings (*see* n. 1, *supra*) – is already underway. The OCA still has ample opportunity to participate actively in those proceedings, just as the Bureau of Investigation and Enforcement is currently doing (*see* Companies' Objections to Set II, pp. 3-4).

⁷ The sole reference to PPL's USC Rider (p. 122) was to identify three technical changes that no one opposed and the Judge approved without comment.

In that regard, it should again be emphasized that the Companies are not contending that the OCA is foreclosed from examining the issues suggested by its Set II (and Set V) discovery. To the contrary, the Companies have repeatedly noted that the separate proceedings the Commission has developed to address Universal Service programs and costs will provide the opportunity for a more focused inquiry and examination of those matters. Cramming Universal Service issues into a base rate proceeding, with the myriad of traditional base rate issues to be addressed within the constraints of Section 1308(d), will result in neither traditional base rate issues or Universal Service issues getting the attention they deserve. In fact, that rationale clearly appears to underlie the Commission's establishment of triennial reviews and its directive in *Pa. P.U.C. v. PPL Elec. Utils. Corp.* "to address all aspects of USPs through the triennial filing process."

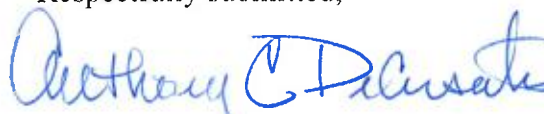
III. CONCLUSION

If permitted, the OCA's discovery embodied in its Set II – and Set V – Interrogatories would dramatically increase the scope and scale of these proceedings. The practical difficulties of such an expansion are apparent. More importantly, there is no valid basis for importing Universal Service issues into this case. There are other proper – indeed, much better – opportunities to address such issues in proceedings specifically designed and intended for that purpose. Adhering to the Commission's clear directive as set forth in *Pa. P.U.C. v. PPL Elec. Utils. Corp.* and elsewhere to take up Universal Service issues in the proper forum not only assures that Universal Service issues receive interested parties' undivided attention, but that base rate proceedings are not diverted from their proper focus.

WHEREFORE, for the reasons set forth above and in the Companies' Objections served on September 18, 2014, the objections of Metropolitan Edison Company, Pennsylvania Electric

Company, Pennsylvania Power Company and West Penn Power Company to OCA Interrogatories (Set II) should be granted, and an Order should be issued directing that the Companies are not required to furnish answers to those Interrogatories.

Respectfully submitted,



Tori L. Giesler (Pa. No. 207742)
Lauren M. Lepkoski (Pa. No. 94800)
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001

Thomas P. Gadsden (Pa. No. 28478)
Anthony C. DeCusatis (Pa. No. 25700)
Catherine G. Vasudevan (Pa. No. 210254)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921

*Counsel for Metropolitan Edison
Company, Pennsylvania Electric
Company, Pennsylvania Power Company
and West Penn Power Company*

Dated: October 6, 2014

APPENDIX A

OBEJCTIONS TO OCA INTERROGATORIES (SET II)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PENNSYLVANIA PUBLIC UTILITY
COMMISSION**

v.

**METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY,
PENNSYLVANIA POWER COMPANY AND
WEST PENN POWER COMPANY**

:
:
:
:
:
:
:
:
:
:
:

**Docket Nos. R-2014-2428745
R-2014-2428743
R-2014-2428744
R-2014-2428742**

**OBJECTIONS OF
METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY,
PENNSYLVANIA POWER COMPANY,
AND WEST PENN POWER COMPANY**

**To The Interrogatories (Set II) Issued To Each Of Those Companies
By The Office of Consumer Advocate**

Pursuant to 66 Pa.C.S. § 333(d) and 52 Pa. Code § 5.342, Metropolitan Edison Company (“Mct-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”), and West Penn Power Company (“West Penn”) (each individually a “Company” and, collectively, the “Companies”) hereby object to Interrogatories (Set II) (“Set II”) propounded by the Office of Consumer Advocate (“OCA”). Because each Company received the same 52 interrogatories (many with multiple subparts) comprising OCA Set II, the Objections are being submitted on behalf of all the Companies, and only one copy of Set II is attached as Appendix A.

As evidenced by Appendix A, the interrogatories in OCA Set II request extensive, detailed, multi-year information about the Companies’ Customer Assistance Programs (“CAP”) and Low Income Home Energy Assistance Programs (“LIHEAP”); the customers that participated in, or received benefits under, those programs; and the programs’ structure and

operation. The Companies object to OCA Set II because the interrogatories inquire into subjects and issues that are already being addressed by the Pennsylvania Public Utility Commission (“PUC” or the “Commission”) in proceedings initiated specifically to consider the Companies’ Universal Service and Energy Conservation Plans for the years 2015 through 2018.¹ The Commission has held that base rate proceedings are not the proper forum in which to raise issues related to Universal Service and that it expects those issues to be addressed in the triennial review process.² Set II evidences the OCA’s intent to pursue subjects and issues that are not properly within the scope of this proceeding. Consequently, discovery related to those subjects and issues should not be permitted in this case,³ and the OCA should take up issues relating to CAP and LIHEAP in the Companies’ Triennial Universal Service Plan Proceedings. The current status of those proceedings is addressed in Paragraph Nos. 1-3, below.

¹ *Metropolitan Edison Company Universal Service & Energy Conservation Plan for Years 2015-2018*, Docket No. M-2014-2407729; *Pennsylvania Electric Company Universal Service & Energy Conservation Plan for Years 2015-2018*, Docket No. M-2014-2407730; *Pennsylvania Power Company Universal Service & Energy Conservation Plan for Years 2015-2018*, Docket No. M-2014-2407731; and *West Penn Power Company Universal Service & Energy Conservation Plan for Years 2015-2018*, Docket No. M-2014-2407728 (hereafter referred to as the “Companies’ Triennial Universal Service Plan Proceedings.”)

² *Pa. P.U.C. v. PPL Elec. Utils. Corp.*, Docket No. R-2012-2290597 (Final Order entered Dec. 28, 2012) at p. 51 (“Recent Commission practice is to address all aspects of USPs through the triennial filing process and to collect all revenues through a rider to base rates.”) affirming Administrative Law Judge Susan D. Colwell’s Recommended Decision at 2012 Pa. PUC LEXIS 1757 *78 (“The Commission’s institution of separate proceedings for these [Universal Service] plans is indicative of its preference to address the issues within those proceedings. Therefore, CEO’s recommended increase in funding for these programs is denied. CEO is encouraged to participate in the triennial plan reviews and to make its concerns known there.”) A copy of the relevant portion of the Final Order is attached as Appendix B.

³ *See, e.g., Pa. P.U.C. v. Pennsylvania-American Water Co.*, Docket Nos. R-00932670, et al., 1994 Pa. PUC LEXIS 120 (Order entered July 26, 1994) (matters at issue at another docket were properly excluded from the proceeding, as to which they were only tangentially related).

There are sound practical reasons underlying the Commission's decision to draw a bright line between the triennial review process and base rate proceedings and to require that the structure, operation and benefit levels of Universal Service programs be addressed only in the former. Base rate proceedings, by their nature, involve numerous complex issues surrounding revenue requirement, cost of service and rate design, which must be addressed within the seven-month suspension period prescribed by Section 1308(d) of the Public Utility Code, 66 Pa.C.S. § 1308(d). Adding to the burden of a time-constrained base rate proceeding a host of Universal Service issues, which are qualitatively different from the issues inherent to the rate-setting process, does not make sense under any circumstances. And, it certainly does not make sense to try to squeeze those issues into a base rate case when, as here, other proceedings are already underway specifically designed to provide all parties a full and fair opportunity to vet Universal Service issues. Indeed, the triennial review process assures that Universal Service issues, which are the sole focus of such proceedings, receive the time and attention they deserve.

I. INTRODUCTION

1. On February 28, 2014, the Companies filed their Universal Service and Energy Conservation Plans for review by the Commission. On June 27, 2014, the Commission issued a Secretarial Letter in which it directed, generally, that all electric distribution companies ("EDCs") reconfigure the dates of their plans and, with specific reference to the Companies, that they add the year 2018 to their Universal Service and Energy Conservation Plans. On August 27, 2014, the Companies filed amended plans at the same docket numbers to include the year 2018. The Commission's Bureau of Investigation and Enforcement ("I&F") entered its appearance in each of the Companies' Triennial Universal Service Plan Proceedings.

2. The Companies' Triennial Universal Service Plan Proceedings have generated extensive, on-going data requests from I&E which address, among others, areas such as income guidelines, the methodology for customer enrollment and termination, procedures pertaining to "counseling letters," kWh eligibility thresholds, amounts of annual CAP credits, the breakdown of LIHEAP grants by income tier and account type, and criteria for selecting program contractors. The I&E data requests were issued in two sets on March 27, 2014 (Set I) and on May 7, 2014 (Set II). The Companies submitted four separate responses to each set on April 17 and May 21, 2014, respectively.

3. The OCA has not yet intervened in the Companies' Triennial Universal Service Plan Proceedings but has requested that the Companies serve copies of their responses to other parties' data request on the OCA. The Companies have fully complied with the OCA's request.

4. On August 4, 2014, the Companies filed tariffs setting forth proposing increases and changes in their distribution rates. With their respective tariffs, the Companies filed all the supporting data required by the Commission's regulations at 52 Pa. Code §§ 53.52 – 53.53, including the written direct testimony of ten witnesses. A summary of the reasons for the proposed rate increases is set forth in each Company's Statement of Reasons. The Companies did not propose any changes in their Universal Service programs in their respective base rate filings.

5. Met-Ed, Penelec and Penn Power each recover the costs of their Universal Service programs under Universal Service Cost Riders ("USC Riders"), which the Commission previously approved for those Companies, consistent with its policy that electric distribution

companies should recover all such costs “through a rider to base rates.”⁴ In its base rate filing, West Penn requested approval to implement a USC Rider in order to make its cost recovery for Universal Service programs consistent with that of Met-Ed, Penelec and Penn Power. In fact, West Penn’s proposed USC Rider was modeled after the Commission-approved USC Riders already in effect for Met-Ed and Penelec.⁵

6. West Penn explained further that once a Commission-approved reconcilable adjustment mechanism is in place to recover its Universal Service costs, it planned to seek subsequent Commission approval in an appropriate proceeding to modify its Universal Service programs to match the level of benefits being provided by the other Companies.⁶ To that end, in the Universal Service and Energy Conservation Plan submitted for review in the Companies’ Triennial Universal Service Plan Proceedings, West Penn proposed to revise the structure of its Universal Service programs to align with those of the other Companies. And, once a USC Rider has been approved in this case, West Penn intends to submit further proposed amendments for consideration as part of that proceeding to expand the level of benefits provided under its Universal Service programs to match those of the other Companies.

7. In summary, and to reiterate, nothing has been proposed in any Company’s base rate filing that would revise any aspect of its Universal Service programs, and those programs are

⁴ See *Pa. P.U.C. v. PPL Elec. Utils. Corp.*, *supra*.

⁵ See Met-Ed, Penelec, Penn Power, West Penn Statement No. 3, (hereafter, “Statement No. 3”), p. 33.

⁶ Statement No. 3, p. 34. West Penn also explained that, in the unlikely event the Commission departed from its established policy requiring that Universal Service program costs be recovered through a USC Rider, the Commission would have to include an appropriate level of such costs in West Penn’s base rates. See Statement No. 3, p. 38.

currently under review outside of this case in the Companies' Triennial Universal Service Plan Proceedings.

8. On September 8, 2014, the OCA issued Set II to each of the Companies. As previously explained, each Set II contains 52 questions, many with multiple subparts, requesting detailed information about the Company's Universal Service programs. Some sense of the nature and granularity of these questions is provided by, for example, Interrogatory Nos. 33, 34 and 35, which request the numbers of residential customers, "confirmed low-income customers," "estimated low-income customers," "LIHEAP recipients" and "CAP recipients" in "each county served by the Company" (No. 33), "each community served by the Company" (No. 34) and "each zip code served by the Company" (No. 35). In a similar vein, Interrogatory Nos. 47-50 incorporate Attachment 1 to Set II, which is a three-page Excel spreadsheet template. These questions ask the Companies to fill in the template with billing and usage (in 50 kW increments from 0 to 2501 kW) data, by month, for the most recent twelve months for each of the following populations: "residential customers that are confirmed low-income customers" (No. 47), "all Company residential customers" (No. 48), "all Company CAP participants" (No. 49), and "all Company LIHEAP recipients" (No. 50). Other interrogatories ask the Companies to answer hypothetical questions about the operation of their Universal Service programs (e.g., Nos. 16, 17, 19). These examples are simply a sampling of the detailed information requested by the interrogatories in Set II, all of which are available for review in Attachment A.

II. OBJECTIONS

9. Section 333(d) of the Public Utility Code states, in pertinent part, as follows:

Interrogatories. – Any party to a proceeding may serve written interrogatories upon any other party for purposes of discovering *relevant*, unprivileged information.

66 Pa.C.S. § 333(d) (emphasis added)

10. The Commission's regulations at 52 Pa. Code § 5.321(c) define the permissible scope of discovery in proceedings before the Commission as follows:

Scope. Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, *which is relevant to the subject matter involved in the pending action*, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. (Emphasis added.)

11. This proceeding involves the Companies' request to increase and change its distribution rates.⁷ As such, the principal focus of this proceeding is upon the components of the Companies' distribution base rate revenue requirements, the class allocation of the Companies' cost of service, and the appropriate rate structures. As previously explained, the Companies have not proposed any changes to their Universal Service programs and, in West Penn's case, expressly provided that changes, if or when they are proposed, would – and should – be

⁷ The Companies have also proposed to adopt uniform General Rules and Regulations in their respective tariffs. However, none of those proposed tariff changes affect the Companies' Universal Service programs or the benefits available or provided under those programs. See Statement No. 3, pp. 6-15.

submitted separately for Commission review, in a proceeding at another docket that is designed specifically to address changes in Universal Service plans.

12. The terms of the Companies' Universal Service programs and the level of benefits provided under those programs are not at issue in this case. As previously noted, the Companies' Universal Service programs are the subject of the Companies' Triennial Universal Service Plan Proceedings,⁸ and the Commission has previously held that all issues pertaining to Universal Service programs should be addressed in such proceedings, not in base rate cases.⁹

13. 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 66 Pa.C.S. § 333(d) and the Commission's regulations at 52 Pa. Code § 5.321(c). *See* Paragraph Nos. 7 and 8, above. It is well established that matters outside the scope of a proceeding cannot be "relevant" to that proceeding and, therefore, are not a valid subject for the introduction of evidence or the issuance of discovery. *See, e.g., 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."); *Pennsylvania-American Water Co. supra* at 158 ("The ALJ concluded as follows: 'I agree with OTS that the issues raised by OCA are outside the scope of this investigation. . . .'"); *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 September 28, 2000) (affirming the Administrative Law Judge's decision to reject evidence as "beyond the scope of the proceeding.").

⁸ See footnote 1, *supra*, and Paragraph Nos. 1-3.

⁹ See footnote 2, *supra*.

14. As explained previously, through its Set II, the OCA seeks to inquire into matters that are the subject of a separate, pending proceedings and, therefore, are not properly within the scope of this proceeding. Accordingly, OCA Set II does not constitute permissible discovery and should be stricken.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the objections of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to OCA Interrogatories (Set II) should be granted, and an Order should be issued directing that the Companies are not required to furnish answers to those Interrogatories.

Respectfully submitted,



Tori L. Giesler (Pa. No. 207742)
Lauren M. Lepkoski (Pa. No. 94800)
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001

Thomas P. Gadsden (Pa. No. 28478)
Anthony C. DeCusatis (Pa. No. 25700)
Catherine G. Vasudevan (Pa. No. 210254)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921

*Counsel for Metropolitan Edison
Company, Pennsylvania Electric
Company, Pennsylvania Power Company
and West Penn Power Company*

Dated: September 18, 2014