

Morgan Lewis

Anthony C. DeCusatis

Of Counsel
+1.215.963.5034
anthony.decusatis@morganlewis.com

April 25, 2016

VIA eFILING

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

**Re: Petition of Metropolitan Edison Company for Approval To Establish and Implement A Distribution System Improvement Charge
Docket No. P-2015-2508942**

**Re: Petition of Pennsylvania Electric Company for Approval To Establish and Implement A Distribution System Improvement Charge
Docket No. P-2015-2508936**

**Re: Petition of Pennsylvania Power Company for Approval To Establish and Implement A Distribution System Improvement Charge
Docket No. P-2015-2508931**

**Re: Petition of West Penn Power Company for Approval To Establish and Implement A Distribution System Improvement Charge
Docket No. P-2015-2508948**

Dear Secretary Chiavetta:

Enclosed for filing is the **Answer of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company in Opposition to the Motion to Compel of the Environmental Defense Fund and Citizens for Pennsylvania's Future** (the "Answer") in the above-captioned matters. Please note that the Answer is being filed at each of the above-referenced docket numbers.

Copies of the Answer have been served in the manner and on the persons set forth in the enclosed Certificate of Service.

Very truly yours,


Anthony C. DeCusatis

c: Per Certificate of Service (w/encls).

Morgan, Lewis & Bockius LLP

1701 Market Street
Philadelphia, PA 19103-2921
United States

T +1.215.963.5000
F +1.215.963.5001

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF METROPOLITAN
EDISON COMPANY FOR APPROVAL
TO ESTABLISH AND IMPLEMENT A
DISTRIBUTION SYSTEM
IMPROVEMENT CHARGE** : **Docket No. P-2015-2508942**
:
:
:
:
:

**PETITION OF PENNSYLVANIA
ELECTRIC COMPANY FOR
APPROVAL TO ESTABLISH AND
IMPLEMENT A DISTRIBUTION
SYSTEM IMPROVEMENT CHARGE** : **Docket No. P-2015-2508936**
:
:
:
:
:

**PETITION OF PENNSYLVANIA
POWER COMPANY FOR APPROVAL
TO ESTABLISH AND IMPLEMENT A
DISTRIBUTION SYSTEM
IMPROVEMENT CHARGE** : **Docket No. P-2015-2508931**
:
:
:
:
:

**PETITION OF WEST PENN POWER
COMPANY FOR APPROVAL TO
ESTABLISH AND IMPLEMENT A
DISTRIBUTION SYSTEM
IMPROVEMENT CHARGE** : **Docket No. P-2015-2508948**
:
:
:
:
:

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of the **Answer of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to the Motion to Compel of the Environmental Defense Fund and Citizens for Pennsylvania's Future** on the following persons in the manner specified in accordance with the requirements of 52 Pa. Code § 1.54:

VIA ELECTRONIC MAIL & FIRST CLASS MAIL

Johnnie E. Simms
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
josimms@pa.gov

Erin L. Gannon
Darryl Lawrence
Office of Consumer Advocate
555 Walnut Street
Fifth Floor, Florum Place
Harrisburg, PA 17101-1923
egannon@paoca.org
dlawrence@paoca.org

Daniel G. Asmus
Office of Small Business Advocate
Commerce Tower, Suite 202
300 North Second Street
Harrisburg, PA 17101
dasmus@pa.gov

Susan Bruce
Charis Mincavage
Teresa K. Schmittberger
Alessandra L. Hylander
McNees Wallace & Nurick LLC
P.O. Box 1166
100 Pine Street
Harrisburg, PA 17108-1166
sbruce@mwn.com
cmincavage@mwn.com
tschmittberger@mwn.com
ahylander@mwn.com
*Counsel for Met-Ed Industrial Users Group,
Penelec Industrial Customer Alliance,
Penn Power Users Group and West Penn
Power Industrial Intervenors*

George Jugovic, Jr.
200 First Avenue, Suite 200
Pittsburgh, PA 15222
gjugovic@pennfuture.org
Counsel for PennFuture

John Finnigan
Environmental Defense Fund
128 Winding Brook Lane
Terrace Park, OH 45174
jfinnigan@edf.org
Counsel for Environmental Defense Fund

Thomas J. Sniscak
Christopher M. Arfaa
William E. Lehman
Hawke, McKeon & Sniscak LLP
P.O. Box 1778
100 North Tenth Street
Harrisburg, PA 17105-1778
tjsniscak@hmslegal.com
cmarfaa@hmslegal.com
welehman@hmslegal.com
*Counsel for Pennsylvania State University
(For the West Penn proceeding only)*

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

VIA FIRST CLASS MAIL

E. McCauley
2550 State Route 49 E
Westfield, PA 16950

Respectfully submitted,



John L. Munsch
FirstEnergy Service Company
800 Cabin Hill Drive
Greensburg, PA 15601
jmunsch@firstenergycorp.com

Anthony C. DeCusatis
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
anthony.decusatis@morganlewis.com

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

Dated: April 25, 2016

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF METROPOLITAN
EDISON COMPANY FOR APPROVAL
TO ESTABLISH AND IMPLEMENT A
DISTRIBUTION SYSTEM
IMPROVEMENT CHARGE** : : **Docket No. P-2015-2508942**

**PETITION OF PENNSYLVANIA
ELECTRIC COMPANY FOR
APPROVAL TO ESTABLISH AND
IMPLEMENT A DISTRIBUTION
SYSTEM IMPROVEMENT CHARGE** : : **Docket No. P-2015-2508936**

**PETITION OF PENNSYLVANIA
POWER COMPANY FOR APPROVAL
TO ESTABLISH AND IMPLEMENT A
DISTRIBUTION SYSTEM
IMPROVEMENT CHARGE** : : **Docket No. P-2015-2508931**

**PETITION OF WEST PENN POWER
COMPANY FOR APPROVAL TO
ESTABLISH AND IMPLEMENT A
DISTRIBUTION SYSTEM
IMPROVEMENT CHARGE** : : **Docket No. P-2015-2508948**

**ANSWER OF
METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY,
PENNSYLVANIA POWER COMPANY AND WEST PENN POWER COMPANY
IN OPPOSITION TO THE MOTION TO COMPEL OF
THE ENVIRONMENTAL DEFENSE FUND AND
CITIZENS FOR PENNSYLVANIA’S FUTURE**

Pursuant to 66 Pa.C.S § 333(d) and 52 Pa. Code §§ 1.12(a) and 5.342(g)(1), Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”) and West Penn Power Company (“West Penn”) (collectively, or any combination of the foregoing, the “Companies”) submit this Answer to the Motion to Compel

filed jointly by the Environmental Defense Fund (“EDF”) and Citizens for Pennsylvania’s Future (“PennFuture”) (“EDF/PennFuture”).

I. INTRODUCTION AND OVERVIEW

EDF and PennFuture filed their Motion to Compel in response to Objections lodged by the Companies on April 8, 2016 to EDF’s Interrogatories (Set I)¹ The Companies object to EDF’s Interrogatories on the principal grounds that they inquire into areas that are outside the scope of this proceeding. A copy of the Companies’ Objections is attached to this Answer as Appendix A and incorporated herein by reference.²

The EDF Interrogatories consist of twenty questions that seek information about the Companies’ installation and operation of “Volt/VAR control equipment” (No. 5), including, among other things, the “management process, policy, objectives and procedures for . . . Volt/VAR management” (No. 9); “planning or decision-making for installing integrated Volt/VAR equipment” (No. 10); and any reductions in operating expenses, energy usage, peak demands and “greenhouse gas emissions” that may have resulted from deploying Volt/VAR equipment (*see* Nos. 1-3, 11-16 and 19-20).

EDF’s Interrogatories were issued in furtherance of the New Matter (denominated a “Second Defense”) in the EDF/PennFuture Answers to the above-captioned Petitions. In their New Matter, EDF/PennFuture contend that the Companies’ Petitions for approval to establish a Distribution System Improvement Charge (“DSIC”) should be “dismissed” because the

¹ Although EDF alone issued the Interrogatories, EDF and PennFuture have filed a joint Motion to Compel.

² The Companies’ Objections consist of three sections. In Section I, the Companies provide an overview of the reasons why EDF’s Interrogatories are improper and objectionable (Objections, pp. 1-3). In Section II, the Companies provide important background information and set forth the relevant procedural history, including a summary of the Companies’ opposition to the EDF/PennFuture Petitions to Intervene in this proceeding and the Companies’ Replies to New Matter in the EDF/PennFuture Answers to the above-captioned Petitions (Objections, pp. 3-9). In Section III, the Companies set forth a detailed explanation of the bases for their objections and provide the legal authority that supports their position (Objections, pp. 9-11).

Companies “failed to establish” that they “will use the eligible property to perform Volt/VAR Control.”³ The Companies filed Replies to the New Matter on March 24, 2016 in which they explained that EDF/PennFuture did not state any valid legal basis for denying the Companies’ Petitions. In particular, the Companies explained that: (1) the Pennsylvania Public Utility Commission (“PUC” or the “Commission”) had already issued a Final Order approving the Companies’ Long-Term Infrastructure Improvement Plans (“LTIIPs”)⁴ and, therefore, EDF/PennFuture were making an unlawful collateral attack on that Order⁵; and (2) neither Section 1353 of the Public Utility Code⁶ nor any order of the Commission requires an electric distribution company to deploy “Volt/VAR” control equipment as a condition precedent to implementing a DSIC, and the Commission has previously approved DSIC tariffs for electric companies that have not done so.⁷

The Companies objected to EDF’s Interrogatories because: (1) EDF’s Petitions to Intervene have not been granted – in fact, they are opposed by the Companies⁸ – and, therefore,

³ EDF/PennFuture Answer, p. 4.

⁴ *Petition Of Metropolitan Edison Company For Approval Of Its Long-Term Infrastructure Improvement Plan*, Docket No. P-2015-2508942, *Petition Of Pennsylvania Electric Company For Approval Of Its Long-Term Infrastructure Improvement Plan*, Docket No. P-2015-2508936; *Petition Of Pennsylvania Power Company For Approval Of Its Long-Term Infrastructure Improvement Plan*, Docket No. P-2015-2508931; *Petition Of West Penn Power Company For Approval Of Its Long-Term Infrastructure Improvement Plan*, Docket No. P-2015-2508948 (Final Order entered Feb. 11, 2016), p. 3 (hereafter, the “LTIIP Order”).

⁵ *See Implementation of Act 11 of 2012 – Final Implementation Order*, Docket No. M-2012-2293611 (Aug. 2, 2012) (hereafter “*Final Implementation Order*”), p. 29 (“Both the long-term infrastructure plan and the [prior] base rate case would have been subject to Commission scrutiny and, therefore, we conclude that [a] DSIC filing should not be an opportunity for parties to revisit matters decided in those filings.”)

⁶ 66 Pa.C.S. § 1353. Section 1353 specifies the requirements of a Petition for approval to establish a DSIC.

⁷ *See, e.g., Petition Of PECO Energy Company For Approval Of Its Electric Long Term Infrastructure Improvement Plan And To Establish A Distribution System Improvement Charge For Its Electric Operations*, Docket Nos. P-2015-2471423 and C-2015-2476587 (Final Order entered Oct. 22, 2015); *Petition Of PPL Electric Utilities Corporation For Approval Of A Distribution System Improvement Charge*, Docket Nos. P-2012-2325034 and C-2013-2345750 *et al.* (May 23, 2013).

⁸ From their Joint Petitions to Intervene, it is clear that EDF/PennFuture are seeking intervention to raise the same issue they articulated in the New Matter of their Answer and, thereby, attempt to interject into these proceedings the same matters that are the subject of EDF’s objectionable Interrogatories. Consequently, the EDF/PennFuture Petitions to Intervene do not state a valid basis for intervention and should not be granted, as

EDF is not a party and does not have the right to issue discovery; (2) the EDF Interrogatories double-down on EDF's and PennFuture's improper attempt to collaterally attack the *LTIIIP Order* by inquiring into matters that were decided by that Order; and (3) the EDF Interrogatories reflect EDF's and PennFuture's erroneous assumption that an electric distribution utility cannot implement a DSIC unless it demonstrates that it has deployed or will deploy "Volt/VAR" control equipment. As a consequence, EDF's Interrogatories do not relate in any way to the sole issue presented by the Companies' Petitions to establish a DSIC, namely, whether their proposed DSIC Riders comply with the Model Tariff adopted in the Commission's Final Order implementing Act 11 of 2012.⁹ Accordingly, EDF's Interrogatories inquire into matters that are outside the scope of these proceedings, are improper, and should be dismissed.

II. SUMMARY OF THE FACTS, LAW AND OTHER INFORMATION RELEVANT TO THE COMPANIES' OBJECTIONS

Because the Companies' Objections (Appendix A) provide the relevant background and procedural history, that discussion will not be repeated at length. Rather, the key facts needed to understand the Companies' Objections in context are summarized below.

- On October 19, 2015, each Company filed a Petition For Approval Of Its Long-Term Infrastructure Improvement Plan ("LTIIIP Petitions"). The Companies served copies of those Petitions and the accompanying LTIIIPs upon the parties to their prior base rate proceedings, including EDF and PennFuture.
- Other parties filed an answer (Office of Small Business Advocate) or comments (the Office of Consumer Advocate ("OCA") and certain industrial customer

explained in detail in the Answers to the EDF/PennFuture Petitions to Intervene that the Companies filed on March 24, 2016.

⁹ *Final Implementation Order*, p. 29.

groups) to the Petitions, which were served on EDF and PennFuture.¹⁰ Neither EDF nor PennFuture filed an answer or comments with respect to any of the Petitions.

- On February 11, 2016, the Commission issued the *LTIIP Order* approving each of the Companies' LTIIPs. In that Order, the Commission determined that “[t]he FirstEnergy Companies’ proposed LTIIPs appear to demonstrate their associated expenditures are reasonable, cost effective, and designed to ensure and maintain efficient, safe, adequate, reliable, and reasonable service to their customers.” The Commission also found that the Companies’ LTIIPs “conform to the requirements of Act 11 and our *Final Implementation Order*.”
- In the *Final Implementation Order* (p. 21), the Commission recommended that utilities obtain its approval of their LTIIPs before filing a Petition to implement a DSIC in order to “*reduce the scope of issues in the DSIC petition and expedite the process of getting this new rate mechanism in place*” (emphasis added). In short, all issues pertaining to a utility’s LTIIP should be addressed and resolved in the proceeding for approval of its LTIIP.¹¹
- On February 16, 2016, the Companies filed Petitions for approval to implement the DSIC Riders appended to their Petitions and, thereby, establish DSICs to become effective on July 1, 2016. Pursuant to the *Final Implementation Order*, discussed above, the issue presented by the Companies’ DSIC Petitions is whether

¹⁰ The Companies filed Replies to the OCA’s Comments, which were also served on EDF and PennFuture. The Companies also responded to the Commission’s Secretarial Letter issued on December 11, 2015 seeking additional information related to their LTIIPs.

¹¹ See *Final Implementation Order*, p. 29.

their proposed DSIC Riders conform to the Model Tariff adopted by the Commission and are consistent with the applicable terms of that Order.

- On March 7, 2016, EDF/PennFuture jointly filed Petitions to Intervene. On March 24, 2016, the Companies filed Answers opposing each of those Petitions on the grounds that the issue EDF and PennFuture were seeking to raise by their intervention (i.e., the same issue presented in the New Matter of their Answer, discussed below) was barred by the *LTIIP Order* and outside the scope of this proceeding.
- On March 11, 2016, EDF/PennFuture jointly filed Answers to the Companies' DSIC Petitions. As previously explained, in the New Matter (titled "Second Defense") of each of their Answers, EDF and PennFuture expressed the basis for their intervention and their opposition to the Companies' Petitions, as follows:

The Company's Petition should be dismissed because the Company has failed to establish that it will use the eligible property to perform Volt/VAR Control; therefore, the DSIC charge is not in the public interest and will not result in the provision and maintenance of adequate, efficient, safe, reliable and reasonable service.

- On March 24, 2016, the Companies filed Replies to the New Matter contained in the EDF/PennFuture Answers. In their Replies, the Companies explained that the alleged basis for dismissal advocated by EDF/PennFuture is improper and invalid for two principal reasons:
 - (1) EDF and PennFuture are attempting an improper collateral attack on the *LTIIP Order*, which found and determined that the Companies' LTIIPs

are “adequate and sufficient to ensure and maintain adequate, efficient, safe, reliable and reasonable service . . .”¹²

(2) Neither Section 1353 of the Public Utility Code, the *Final Implementation Order* nor the Commission’s orders approving DSICs for other electric utilities requires that “eligible property” must include equipment to “perform Volt/VAR Control.” And, the Commission has approved DSIC riders for other electric utilities without requiring that their eligible property include such projects.

- On March 29, 2016, EDF served its Interrogatories (Set I).
- On April 8, 2016, the Companies served their Objections to EDF’s Interrogatories (Set I). The bases for the Companies’ Objections are summarized in Section I, *supra*, and are set forth in detail in Paragraph Nos. 12-17 of those Objections. As explained in Paragraph No. 17 of the Objections, the EDF Interrogatories inquire into matters that are entirely outside the scope of these proceedings and, therefore, are improper.¹³
- On April 18, 2016, EDF and PennFuture filed their joint Motion to Compel.

III. THE EDF/PENNFUTURE MOTION TO COMPEL SHOULD BE DENIED

As explained previously, the Companies’ Interrogatories – like their Replies to the EDF/PennFuture New Matter and their Answers opposing the EDF/PennFuture Petitions to

¹² 66 Pa.C.S. § 1352(a)(7).

¹³ *See, e.g., 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 Sept. 28, 2000) (affirming the Administrative Law Judge’s decision to reject evidence as “beyond the scope of the proceeding.”); *Pa. P.U.C. v. Pennsylvania-American Water Co.*, Docket Nos. R-00932670, et al., 1994 Pa. PUC LEXIS 120 at *158 (Order entered July 26, 1994) (“The ALJ concluded as follows: ‘I agree with OTS that the issues raised by OCA are outside the scope of this investigation. . . .’”); *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.”).

Intervene – rest on three fundamental propositions: (1) issues pertaining to the “eligible property” in the Companies’ LTIIPs, which will be the basis for the fixed costs to be recovered in their respective DSICs, were decided with finality in the *LTIIP Order*; (2) EDF/PennFuture’s contention that the Companies’ DISC Petitions should be “dismissed” because they “failed to establish” that they will “use the eligible property to perform Volt/VAR Control” is an improper collateral attack on the *LTIIP Order*, which foreclosed that issue; and (3) nothing in Section 1353, the *Final Implementation Order* or PUC Orders approving DSIC Petitions for other companies states an electric utility cannot establish a DSIC unless its “eligible property” includes equipment for “Volt/VAR control.”

In their Motion to Compel, EDF and PennFuture acknowledge and essentially concede the three fundamental propositions described above.¹⁴ In fact, EDF/PennFuture not only agree that “eligible property” contained in electric utilities’ LTIIPs need not include “voltage optimization” projects, they contend that such projects may not meet the statutory definition of “eligible property.”¹⁵ And, in so doing, EDF/PennFuture implicitly acknowledge that any issues pertaining to the contents of the Companies’ LTIIPs should have been raised in the earlier LTIIP proceeding and, therefore, were foreclosed by the *LTIIP Order*.¹⁶

EDF/PennFuture apparently now recognize that their original argument for trying to raise issues related to “Volt/VAR control” in this proceeding is invalid. Therefore, they are attempting an entirely new approach in their Motion to Compel. Specifically, EDF/PennFuture now contend that the Commission should exercise its “discretion” to determine whether a “rate”

¹⁴ Motion to Compel, p. 6.

¹⁵ The Companies do not agree with this sweeping averment by EDF/PennFuture, nor is such agreement necessary to sustain the Companies’ position. It is sufficient that EDF/PennFuture concede that there is no requirement that “eligible property” must include such projects.

¹⁶ *Id.*

is “just and reasonable” in order to refuse to approve the Companies’ DSIC Riders unless each Company “commits to using voltage optimization when the new LTIP equipment is installed.”¹⁷ EDF/PennFuture’s argument should be rejected for two principal reasons.

First, the criteria that must be satisfied to establish the justness and reasonableness of a DSIC were expressly delineated by the Pennsylvania legislature through its enactment of Act 11. The LTIP and DSIC provisions of the Act 11 were adopted for the express purpose of incentivizing utilities to accelerate their investments in the specific categories of infrastructure improvements catalogued in Section 1351 of the Public Utility Code. Subsequent sections require a utility, as a condition of availing itself of a DSIC, to obtain approval of an LTIP containing information that demonstrates it is accelerating its investment in specific categories of plant; that its proposed repairs, improvements and replacements “will ensure and maintain adequate, efficient, safe, reliable and reasonable service”; and that the expenditures to implement the LTIP are “cost effective.”¹⁸ Section 1353 sets forth the detailed information that must be submitted to establish a DSIC.¹⁹ Section 1357 sets forth the precise elements that must be used to determine the costs that are recoverable under a DSIC and provides the formula for calculating the DSIC rate.²⁰ Section 1358 contains extensive customer protections, including a “cap” on the DSIC rate; criteria for resetting the DSIC to zero; and periodic audit and reconciliation requirements.²¹ Most important, the DSIC allows a utility to recover only its actual “fixed costs” determined strictly in accordance with the statutory criteria dictated by Section 1357.

¹⁷ Motion to Compel, p. 7.

¹⁸ 66 Pa.C.S. § 1352(a).

¹⁹ 66 Pa.C.S. § 1353.

²⁰ 66 Pa.C.S. § 1357.

²¹ 66 Pa.C.S. § 1358.

Simply stated, by enacting Act 11, the legislature conclusively determined that a DSIC that complies with the very precise statutory criteria set forth in Subchapter B of Chapter 13 of the Public Utility Code is just and reasonable. Indeed, that is precisely what this Commission held in a prior decision approving the DSIC of Columbia Gas of Pennsylvania, Inc., stating: “[T]hrough the enactment of Act 11, the General Assembly intended to establish a surcharge mechanism to produce just and reasonable rates without the need for the type of comprehensive and detailed analysis required in a base rate proceeding under Section 1308(d) of the Code.”²² The Commission’s decision was affirmed by the Commonwealth Court of Pennsylvania, which found that, given the precise terms and extensive customer protections incorporated in the DSIC provisions of Act 11, the “overall effect of the calculated DSIC rate was just and reasonable.”²³ Thus, contrary to EDF/PennFuture’s contentions, Act 11 does not grant some unstated, additional overlay of “discretion” for the Commission to simply refuse to comply with its clear statutory directives. In fact, there is no support for EDF/PennFuture’s position in the provisions of Section 1355, which specifically delineates the scope of the Commission’s review of a DSIC Petition.

Second, if EDF/PennFuture’s argument were given any credence, proceedings to establish, implement or update a DSIC would invite extensive, open-ended litigation. A party with *any* alleged grievance – even one unrelated to the DSIC itself, which is the case here – would have a license to seek redress in a DSIC proceeding on the grounds that the Commission has “discretion” to disapprove a DSIC unless that grievance is addressed. Expanding the scope of DSIC proceedings in that fashion is antithetical to the purpose for which the DSIC was

²² *Petition of Columbia Gas of Pennsylvania, Inc. for Approval of its Long-Term Infrastructure Improvement Plan; Petition of Columbia Gas of Pennsylvania, Inc. for Approval of a Distribution System Improvement Charge*, Docket No. P-2012-2338282 (May 22, 2014), pp. 35-36 (hereafter, “*Petition of Columbia Gas*”).

²³ *McCloskey v. Pa. P.U.C.*, 127 A.3d 860, 871 (Pa. Cmwlth. 2015).

authorized.²⁴ It would also directly contradict this Commission's prior holding in *Petition of Columbia Gas* where it stated: "As we indicated in our *Final Implementation Order*, we believe that the DSIC is intended to be a straight-forward mechanism that is easy to calculate and audit, and does not require a full rate case analysis."²⁵ For that reason, the Commission rejected the OCA's attempt to interject a more complicated calculation of the effect of deferred taxes on the DSIC rate, finding that it would be "inconsistent" with the goal of implementing a "straight-forward" rate adjustment mechanism and would lead to litigating issues in a DSIC proceeding that should be considered, if at all, in another venue.²⁶ In so doing, the Commission reiterated that Act 11 was "intended to establish a surcharge mechanism to produce just and reasonable rates without the need for the type of comprehensive and detailed analysis required in a base rate proceeding" and concluded that the DSIC provisions, taken as a whole, "will ensure that customers will not be charged DSIC rates that are unjust or unreasonable."

EDF/PennFuture also assert that "[t]his proceeding is the only opportunity" to raise the issue of whether the Companies are properly deploying Volt/VAR optimization control equipment (Motion to Compel, pp. 7-8). Given the many procedural vehicles at their disposal under the Public Utility Code, including filing a complaint or petitioning for initiation of a Commission investigation, this statement is erroneous on its face. Moreover, EDF was a signatory to the Joint Petition for Partial Settlement of Rate Investigation for each of the Companies in their 2014-2015 base rate cases and, as part of those settlements, each Company agreed to host an "informational meeting" with representatives of EDF and any interested

²⁴ See *Final Implementation Order*, p. 57 ("Act 11 is designed to achieve the infrastructure improvements in a manner as expeditious, reasonable, prudent and fiscally conservative as possible.")

²⁵ *Petition of Columbia Gas*, p. 35.

²⁶ *Id.*

statutory parties to address a number of specified topics, including “Volt/VAR best practices.”²⁷

Thus, there was a preexisting forum for EDF to bring to the attention of the Companies the issues of interest to EDF/PennFuture.

In summary, the Commission, with the affirmance of the Commonwealth Court, has already rejected attempts, like EDF/PennFutures’ here, to interject into DSIC proceedings issues that are outside the four corners of the DSIC requirements set forth in Sections 1353-1354 of the Public Utility Code. EDF/PennFuture’s Motion to Compel is directly contrary to those prior holdings and, therefore, should be denied.

IV. AVERMENTS IN THE MOTION TO COMPEL THAT MET-ED AND ITS OHIO AFFILIATES RENEGED ON COMMITMENTS TO DEPLOY VOLTAGE OPTIMIZATION TECHNOLOGY ARE SIMPLY WRONG

EDF and PennFuture allege that FirstEnergy Corp. (“FirstEnergy”), to obtain a Department of Energy (“DOE”) grant to conduct a “voltage optimization pilot” in the service areas of The Cleveland Electric Illuminating Company (“CEI”) and Met-Ed, represented that, if the pilot were “successful,” voltage optimization technology would be deployed throughout those companies’ service territories.²⁸ As the purported basis for those allegations, EDF/PennFuture reference a 2009 Smart Grid Modernization Initial Project Plan (“2009 Plan”) that was submitted to the Public Utilities Commission of Ohio (“PUCO”).²⁹ EDF/PennFuture further allege that FirstEnergy issued a “final report” to DOE “detailing” the “successful results” of the pilot, but provide neither a copy of any “final report” nor a citation that might identify the document on which they purport to rely. Based on that series of unsupported averments, EDF/PennFuture accuse FirstEnergy of violating a “commitment” it allegedly made to

²⁷ See, e.g., *Pa. P.U.C. v. Pennsylvania Electric Co.*, Docket Nos. R-2014-2428743 *et al.*, Recommended Decision (Mar. 9, 2015), p. 25.

²⁸ Motion to Compel, pp. 4-6.

²⁹ Motion to Compel, p. 5 and fn. 3.

“Pennsylvania and Ohio regulators” and the DOE to “fully” implement voltage optimization technology.³⁰

While none of the foregoing averments by EDF/PennFuture are relevant to any issue in this case, they are, nonetheless, serious accusations to which the Companies feel compelled to respond.³¹ Every material element of EDF’s and PennFuture’s accusations is incorrect.

The Study Of Voltage Optimization Was Only A Small Part Of The DOE Grant.

FirstEnergy received DOE funding relating to a number of smart grid modernization technologies, including, among other things, advanced metering infrastructure (“AMI”) and distribution automation. Contrary to the impression created by EDF/PennFuture’s Motion to Compel, the pilot study of voltage optimization was only a part – and a small part – of the work funded by the DOE grant.

FirstEnergy Did Not Make A “Commitment” To Implement Voltage Optimization Across The Service Territories Of Its Utility Subsidiaries. EDF/PennFuture contend that “FirstEnergy stated that it planned to expand installations and operation [of voltage optimization technology] across FirstEnergy’s territories, if the pilot program was successful.”³² In the 2009 Plan, FirstEnergy did *not* make any commitment or representation to expand the deployment of voltage optimization technology beyond the scope of its “pilot.” To the contrary, FirstEnergy set forth the areas that required further study and analysis, including, among others, technical feasibility and economic justification (i.e., whether the benefits of deploying such technology could justify its cost).³³ In short, until those studies and analyzes are completed – and they have

³⁰ *Id.* at 6.

³¹ Notably, this is the first time the Companies or FirstEnergy have learned of EDF/PennFuture’s contentions about alleged “violations” of “commitments” with regard to implementing voltage optimization technology.

³² Motion to Compel, p. 5.

³³ *See* 2009 Plan, pp. 1, 4.

not been, as explained below – FirstEnergy would not, and did not, commit to any deployment of voltage optimization beyond the scope of its pilot.

There Is No Basis For EDF/PennFuture’s Claims Concerning A “Final Report” “Detailing” the “Successful Results” Of The Pilot. EDF/PennFuture allege the existence of a so-called “final report” “detailing” the “successful results” of the DOE-funded pilot. They neither provide such a “report” nor offer any citation where it might be found. The Companies are unaware of any “final report” like the one that EDF/PennFuture purport to rely upon.

Contrary To EDF/PennFuture’s Averments, The Pilot Study Is Still A Work In Progress, As The PUCO Is Well Aware From A 2014 Filing Made By FirstEnergy’s Ohio Utilities. The pilot study being conducted by CEI has not been completed and, in fact, is still a work in progress, as evidenced by the Application filed by CEI and its Ohio utility affiliates in 2014 for the express purpose of obtaining PUCO approval for additional cost recovery to continue to study volt/VAR optimization technologies and distribution automation.³⁴ In that Application, CEI explained that the DOE grant funded *only one year* of data collection for the volt/VAR optimization study and, therefore, further funding was needed to continue the study for *another five years* in order to develop a better understanding of the technology’s “capabilities for reliability and demand response.”³⁵ The PUCO granted that Application in an Order issued on May 28, 2015, with no mention of any prior “commitment” to expand volt/VAR technologies beyond the scope of the pilot nor any indication that CEI or any other FirstEnergy company had violated any “commitment” respecting volt/VAR optimization technology.³⁶ In like fashion, in

³⁴ *Application for Cost Recovery to Complete Studies Related to the Ohio Site Deployment of the Smart Grid Modernization Initiative*, Case No. 09-1820 (Public Utilities Commission of Ohio, December 22, 2014) (hereafter, “*Application for Cost Recovery*”).

³⁵ *Id.* at 1-2.

³⁶ *Application for Cost Recovery, Finding and Order* (May 28, 2015).

the context of another recent case, CEI and its Ohio affiliates agreed to file a Grid Modernization Business Plan that would set forth “future initiatives” to be considered for possible implementation after the PUCO reviews and approves the plan.³⁷ Notably, volt/VAR optimization technology is one of the initiatives highlighted for further consideration³⁸ – i.e., clear evidence that there was no prior commitment to implement volt/VAR optimization technology and that such technology is subject to further review by FirstEnergy and approval by the PUCO. The PUCO approved the agreement for subsequent filing of the Grid Modernization Business Plan and, once again, did not refer to any prior “commitment” to expand volt/VAR technology nor suggest that a prior “commitment” had been violated.³⁹

Met-Ed Did Not Make Any “Commitment” To This Commission Regarding The Deployment Of Volt/VAR Optimization Technology. EDF/PennFuture allege Met-Ed violated a prior commitment to this Commission to deploy volt/VAR optimization technology but offer no evidence of any such commitment having been made. In fact, no such evidence exists. Met-Ed did not make such a “commitment” to this Commission and, therefore, could not have “violated” a commitment it did not make.

DOE Reviewed And Approved FirstEnergy’s Use Of Its Grant Funding. DOE reviewed FirstEnergy’s use of its grant funding and approved all of the related disbursements with no finding that FirstEnergy failed to comply with the terms and conditions of FirstEnergy’s application for that grant. EDF/PennFuture’s allegation that FirstEnergy violated a prior “commitment” to DOE is totally meritless.

³⁷ *Application to Provide for a Standard Service Offer Pursuant to O.R.C. 4928.143 in the Form of an Electric Security Plan*, Case No. 14-1297 (Public Utilities Commission of Ohio), Third Supplemental Stipulation and Recommendation, p. 9. (hereafter, “*Application – Electric Security Plan*”)

³⁸ *Id.*

³⁹ *Application – Electric Security Plan*, Opinion and Order (March 31, 2016).

Simply stated, FirstEnergy did not violate any commitment to this Commission, the PUCO or DOE regarding the deployment of volt/VAR optimization technology. The Commission should disregard EDF/PennFuture's intemperate accusations, which have no factual basis and, in any event, are not relevant to any issue in this case.

WHEREFORE, the EDF/PennFuture Motion to Compel should be denied and the Objections of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to the EDF Interrogatories (Set I) should be granted.

Respectfully submitted,



John L. Munsch (PA No. 31489)
Metropolitan Edison Company
Pennsylvania Electric Company
Pennsylvania Power Company
West Penn Power Company
800 Cabin Hill Drive
Greensburg, PA 15601
(724) 838-6210
jmunsch@firstenergycorp.com

Anthony C. DeCusatis (PA No. 25700)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
(215) 963-5034
anthony.decusatis@morganlewis.com

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

Dated: April 25, 2016

APPENDIX A

The Companies' Objections To EDF's Interrogatories

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF METROPOLITAN
EDISON COMPANY FOR APPROVAL
TO ESTABLISH AND IMPLEMENT A
DISTRIBUTION SYSTEM
IMPROVEMENT CHARGE** : : **Docket No. P-2015-2508942**

**PETITION OF PENNSYLVANIA
ELECTRIC COMPANY FOR
APPROVAL TO ESTABLISH AND
IMPLEMENT A DISTRIBUTION
SYSTEM IMPROVEMENT CHARGE** : : **Docket No. P-2015-2508936**

**PETITION OF PENNSYLVANIA
POWER COMPANY FOR APPROVAL
TO ESTABLISH AND IMPLEMENT A
DISTRIBUTION SYSTEM
IMPROVEMENT CHARGE** : : **Docket No. P-2015-2508931**

**PETITION OF WEST PENN POWER
COMPANY FOR APPROVAL TO
ESTABLISH AND IMPLEMENT A
DISTRIBUTION SYSTEM
IMPROVEMENT CHARGE** : : **Docket No. P-2015-2508948**

**OBJECTIONS OF
METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY,
PENNSYLVANIA POWER COMPANY AND WEST PENN POWER COMPANY
TO THE INTERROGATORIES (SET I) OF
THE ENVIRONMENTAL DEFENSE FUND**

Pursuant to 66 Pa.C.S § 333(d) and 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”) (collectively, or any combination of the foregoing, the “Companies”) hereby object to the Interrogatories (Set I) propounded by the Environmental Defense Fund (“EDF”) on March 29, 2016. A copy of the EDF Interrogatories is attached hereto as Appendix A and incorporated herein by reference.

I. SUMMARY AND OVERVIEW

As explained more fully below, Citizens for Pennsylvania's Future ("PennFuture") and EDF (collectively, "PennFuture/EDF") jointly filed Petitions to Intervene in each of the above-referenced proceedings, to which the Companies, on March 24, 2016, filed Answers opposing their intervention. The Pennsylvania Public Utility Commission ("PUC" or the "Commission") has not acted upon PennFuture/EDF's Petitions to Intervene, and neither is a party to the above-referenced proceedings. Therefore, as a non-party, EDF may not issue discovery in this case.

In addition to the foregoing defect, EDF's Interrogatories are improper and should be stricken because they inquire into matters that are outside the scope of this proceeding and, in so doing, are a further effort by EDF to collaterally attack the Final Order issued by the Commission on February 11, 2016, approving the Long-Term Infrastructure Improvement Plans ("LTIIPs") of the Companies.¹

The impropriety of EDF's Interrogatories is underscored by the New Matter (captioned a "Second Defense") in PennFuture/EDF's Answers to the Companies' Petitions. In their New Matter, PennFuture/EDF stated that their purpose for intervening is to challenge the contents of the Companies' LTIIPs because each of the Companies "failed to establish that it will use the eligible property to perform Volt/VAR Control."² In their Replies to PennFuture/EDF's New Matter, the Companies explained that: (1) PennFuture/EDF's opposition to the Companies' Petitions for Approval to Establish and Implement a Distribution System Improvement Plan is an

¹ *Petition Of Metropolitan Edison Company For Approval Of Its Long-Term Infrastructure Improvement Plan*, Docket No. P-2015-2508942, *Petition Of Pennsylvania Electric Company For Approval Of Its Long-Term Infrastructure Improvement Plan*, Docket No. P-2015-2508936; *Petition Of Pennsylvania Power Company For Approval Of Its Long-Term Infrastructure Improvement Plan*, Docket No. P-2015-2508931; *Petition Of West Penn Power Company For Approval Of Its Long-Term Infrastructure Improvement Plan*, Docket No. P-2015-2508948 (Final Order entered Feb. 11, 2016), p. 3 (hereafter, the "LTIIP Order").

² See "Second Defense" set forth in PennFuture/EDF Answers, filed on March 11, 2016, to the Companies' Petitions for Approval to Establish and Implement a Distribution System Improvement Charge, which were filed and served on February 16, 2016.

improper collateral attack on the Commission's LTIIP Order; (2) nothing in Section 1353 of the Public Utility Code³ or in any Commission order implementing that section requires that "eligible property" must include equipment that will "perform Volt/VAR Control"; and (3) the Commission has approved numerous distribution system improvement charge ("DSIC") riders for other electric companies without requiring that their eligible property include any "Volt/VAR Control" projects.

EDF's Interrogatories double-down on its improper attempt to collaterally attack the LTIIP Order by asking twenty questions that pertain, in various respects, to "Volt/VAR control," "Volt/VAR control equipment," and "Volt/VAR management." EDF's Interrogatories do not relate in any way to the sole issue presented by the Companies' Petitions to establish a DSIC, namely, whether their proposed DSIC Riders comply with the Model Tariff adopted in the Commission's Final Order implementing Act 11 of 2012.⁴ Accordingly, EDF's Interrogatories are objectionable and should be stricken.

II. INTRODUCTION, BACKGROUND AND PROCEDURAL HISTORY

1. On October 19, 2015 – approximately six months before the Companies filed their Petitions for approval to establish a DSIC – each Company filed a Petition For Approval Of Its Long-Term Infrastructure Improvement Plan ("LTIIP Petitions") to which its Long-Term Infrastructure Improvement Plan ("LTIIP") was appended. The Companies served copies of their LTIIP Petitions and LTIIPs upon the parties to their prior base rate proceedings, including, in each instance, PennFuture and EDF.

³ 66 Pa.C.S. § 1353. Section 1353 specifies the requirements of a Petition for approval to establish a DSIC.

⁴ *Implementation of Act 11 of 2012 – Final Implementation Order*, Docket No. M-2012-2293611 (Aug. 2, 2012) (hereafter "*Final Implementation Order*").

2. Comments on the LTIIP Petitions of Met-Ed, Penelec and West Penn were filed by the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance and the West Penn Power Industrial Intervenors, respectively, which are *ad hoc* groups of industrial customers (hereafter, the “Industrials”). The Office of Consumer Advocate (“OCA”) filed comments on the LTIIP Petitions of all the Companies. The Office of Small Business Advocate filed Answers and Notices of Intervention as to each Company filing. PennFuture and EDF did not file either comments upon, or an Answer to, any of the Companies’ LTIIP Petitions.

3. The Industrials’ comments noted that they did not oppose the Companies’ LTIIPs but reserved “their right to raise and address cost recovery and allocation issues” in subsequent proceedings to establish a DSIC. The OCA’s comments recommended that the Commission ask the Companies to provide additional information to ensure that their LTIIPs “accelerated infrastructure repair and replacement in a cost effective manner as required by Act 11.”⁵ The Companies filed Replies to the OCA’s Comments, which were also served on PennFuture and EDF.

4. On December 11, 2015, the Commission issued a Secretarial Letter requesting additional details: (1) to assess the extent to which the initiatives in the Companies’ LTIIPs represented an acceleration of repair and replacement of their distribution infrastructure; (2) to support the cost-effectiveness of those projects; and (3) to determine the LTIIPs’ impact on projected reliability performance as measured by the SAIDI and SAIFI indices.⁶ On January 8, 2016, the Company submitted responses containing the information requested in the Commission’s Secretarial Letter, which were posted on the Commission’s website at the above-referenced docket numbers.

⁵ See LTIIP Order, p. 3.

⁶ LTIIP Order, p. 4.

5. On February 11, 2016, the Commission issued the LTIIIP Order, by which it approved the Companies' LTIIIPs, as follows:

LTIIIP SUMMARY

The Commission reviewed the eight required elements for each FirstEnergy Company Petition for Approval of their LTIIIPs and any resulting Petition comments. The FirstEnergy Companies' proposed LTIIIPs appear to demonstrate their associated expenditures are reasonable, cost effective, and designed to ensure and maintain efficient, safe, adequate, reliable, and reasonable service to their customers.

CONCLUSION

The Commission finds that the FirstEnergy Companies' Long-Term Infrastructure Improvement Plans and the manner in which they were filed conform to the requirements of Act 11 and our Final Implementation Order. The plans, as approved herein, are designed to maintain safe, adequate and reliable service and, as such, the FirstEnergy Companies shall be required to comply with the infrastructure replacement schedule and elements of each plan. **THEREFORE,**

IT IS ORDERED:

1. That the Petition for Approval of Long-Term Infrastructure Improvement Plan (LTIIIP) filed by Metropolitan Edison Company is approved, consistent with this Order.
2. That the Petition for Approval of Long-Term Infrastructure Improvement Plan (LTIIIP) filed by Pennsylvania Electric Company is approved, consistent with this Order.
3. That the Petition for Approval of Long-Term Infrastructure Improvement Plan (LTIIIP) filed by Pennsylvania Power Company is approved, consistent with this Order.
4. That the Petition for Approval of Long-Term Infrastructure Improvement Plan (LTIIIP) filed by West Penn Power Company is approved, consistent with this Order.

6. In the LTIIIP Order, the Commission discussed its examination of the types and ages of eligible property encompassed by each Company's LTIIIP and included tables identifying and describing each of the many infrastructure initiatives the Companies proposed to undertake under their respective LTIIIPs.⁷ Pursuant to Section 1352 of the Public Utility Code⁸ and the Commission's *Final Implementation Order*, the Commission stated as follows:

Upon review of FirstEnergy's LTIIIPs and all supplemental information filed, the Commission finds the schedule for planned repair and replacement of eligible property requirements of the Final Implementation Order has been fulfilled. The Commission acknowledges the level of detail contained within the LTIIIPs conforms to Commission requirements and is presented in a manner that allows for complete and efficient review of, and reference to, these materials.

7. The Companies obtained Commission approval of their LTIIIPs before filing their Petitions to establish DSICs in order to comply with the Commission's guidance in the *Final Implementation Order*, where the Commission stated as follows:

Finally, we recommend that utilities . . . file their respective long-term infrastructure improvement plans in advance of filing a DSIC petition. If the LTIIIP is, upon review, approved by the Commission, *this can reduce the scope of issues in the DSIC petition* and expedite the process of getting this new rate mechanism in place.⁹

Thus, the *Final Implementation Order* makes it clear that all issues pertaining to a utility's LTIIIP are to be addressed and resolved in the proceeding for approval of its LTIIIP.

8. As previously noted, on February 16, 2016, the Companies filed their Petitions requesting approval to file the DSIC Riders appended to their Petitions as Exhibits KMS-2 for

⁷ LTIIIP Order, pp. 9-12 and Appendix A.

⁸ 66 Pa.C.S. § 1352(a)(1).

⁹ *Final Implementation Order*, p. 21.

each Company and, thereby, establish DSICs to become effective on July 1, 2016. As required by 66 Pa.C.S. § 1353(b)(3) and the *Final Implementation Order*, the Companies appended copies of their previously-approved LTIIPs to their Petitions (Exhibits KMS-1 for each Company).

9. On March 7, 2016, PennFuture and EDF jointly filed Petitions to Intervene with respect to each Company's Petition. The Companies filed Answers opposing each of those Petitions.

10. As previously noted, on March 11, 2016, PennFuture and EDF jointly filed their Answers ("PF/EDF Answers") to the Companies' Petitions to establish a DSIC. The PF/EDF Answers are divided into two parts, captioned First Defense (p. 2) and Second Defense (p. 4). The First Defense contains responses that affirm or deny the averments in each numbered paragraph of the Companies' DSIC Petitions. The Second Defense in each of the PF/EDF Answers sets forth new matter consisting of a specific request that each Petition be "dismissed," as follows:

The Company's Petition should be dismissed because the Company has failed to establish that it will use the eligible property to perform Volt/VAR Control; therefore, the DSIC charge is not in the public interest and will not result in the provision and maintenance of adequate, efficient, safe, reliable and reasonable service.

11. In their Replies to the New Matter in the PF/EDF Answers, the Companies denied the averments of the "Second Defense" and explained that the alleged basis for "dismissal" advocated by PennFuture/EDF is improper and invalid for two principal reasons.

a. PennFuture and EDF are attempting an improper collateral attack on the Commission's LTIIP Order. By that Order, the Commission approved the Companies' LTIIPs and, thereby, found and determined that they are "adequate and sufficient to ensure and maintain

adequate, efficient, safe, reliable and reasonable service . . .”¹⁰ The *Final Implementation Order* also speaks directly to this point by describing what it is that the Commission approves when it approves a utility’s LTIP:

In order to qualify for DSIC recovery, Section 1352 requires that a utility submit a LTIP for Commission approval. *See* 66 Pa. C.S. § 1352(a). This provision ensures that the quarterly DSIC repairs, improvements, and replacements to eligible property are being made consistent with a LTIP that has carefully examined the utility’s current distribution infrastructure, including its elements, age, and performance and that also reflects reasonable and prudent planning of expenditures over the course of many years to replace and improve aging infrastructure in order to maintain the safe, adequate, and reliable service required by law. *See* 66 Pa. C.S. § 1501.¹¹

In short, the LTIP Order conclusively foreclosed PennFuture and EDF from raising the issue they offered as a purported reason to “dismiss” the Companies’ DSIC Petitions. The proffered issue relates solely to the nature of the projects to be included in an electric utility’s LTIP and, because the Commission previously approved the Companies’ LTIPs, that issue has been decided and is not within the scope of this proceeding.

b. There is nothing in Section 1353 of the Public Utility Code, the *Final Implementation Order* or the Commission’s orders approving DSICs for other electric utilities that states an electric utility cannot establish and implement a DSIC unless its “eligible property” includes equipment that will “perform Volt/VAR Control.”¹² Additionally, the Commission has

¹⁰ 66 Pa.C.S. § 1352(a)(7).

¹¹ *Final Implementation Order*, p. 11.

¹² *See, e.g., Petition Of PECO Energy Company For Approval Of Its Electric Long Term Infrastructure Improvement Plan And To Establish A Distribution System Improvement Charge For Its Electric Operations*, Docket Nos. P-2015-2471423 and C-2015-2476587 (Final Order entered Oct. 22, 2015); *Petition Of PPL Electric Utilities Corporation For Approval Of A Distribution System Improvement Charge*, Docket Nos. P-2012-2325034 and C-2013-2345750 et al (May 23, 2013).

approved DSIC riders for other electric utilities without requiring that their eligible property include any “Volt/VAR Control” projects.¹³

III. OBJECTIONS TO EDF’S INTERROGATORIES (SET I)

12. As explained in Section I, above, PennFuture/EDF filed Petitions to Intervene in the proceedings on the Companies’ DSIC Petition, and the Companies have opposed their intervention in this case for the reasons set forth in detail in their Answers filed on March 24, 2016.¹⁴ The Commission has not acted upon the PennFuture/EDF Petitions to Intervene. Accordingly, neither Penn Future nor EDF is a party to any of the Companies’ DSIC proceedings. Because EDF is not a party, it is not entitled to issue discovery in any form at this time.

13. In addition to the foregoing defect, all of the Interrogatories in EDF Set I are improper and should be stricken because they do not relate to the sole issue presented by the Companies’ DSIC Petitions, namely, whether their proposed DSIC Riders conform to the Model Tariff adopted by the Commission in its *Final Implementation Order* and are consistent with the other applicable terms of that Order. To the contrary, as previously noted in Section I, *supra*, the EDF Interrogatories represent a further improper collateral attack on the Commission’s final LTIIP Order by inquiring into matters pertaining to the contents of the Companies’ LTIIPs that were foreclosed by the Commission decision in that Order. For example, EDF’s interrogatories seek information relating to the Companies’ installation and operation of “Volt/VAR control

¹³ *Id.*

¹⁴ The Companies explained that, as the Commission has previously ruled, the scope of the proceedings on petitions to implement a DSIC is limited to determining whether their proposed DSIC riders conform to the Model Tariff adopted by the Commission in its *Final Implementation Order* and are consistent with the other applicable terms of that Order. PennFuture/EDF’s proposed intervention is improper and should not be granted because their Petitions to Intervene, like their Answers to the Companies’ DSIC Petitions, make it clear that they are seeking intervention in order to interject issues that are outside the scope of this proceeding. *See* Paragraph Nos. 5-9 of the Companies’ Answers to the PennFuture/EDF Petitions to Intervene.

equipment” (No. 5); their “use [of] integrated Volt/VAR management for any of [their] distribution feeders or substations” (No. 7); the “management process, policy, objectives and procedures for . . . Volt/VAR management” (No. 9); and “planning or decision-making . . . for installing integrated Volt/VAR equipment” (No. 10).

14. Other interrogatories in Set I are even further outside the scope of this proceeding. Those questions inquire into matters totally extraneous to these proceedings, such as:

- Department of Energy grants for “pilot programs” (Nos. 1, 2, 3 and 4);
- Reductions in operating expenses, “energy usage,” “peak demand,” “feeder losses” and “greenhouse gas emissions” achieved by “Volt/VAR control,” “Voltage Optimization,” or “Volt/VAR management” (*see* Nos. 1, 2, 3, 11, 12, 15, 16, 19 and 20);
- Whether “Volt/VAR management” has “led to improved system power factor” (No. 13);
- Whether the Companies have “reduced voltage variation in distribution feeders” from “Volt/VAR management” (No. 14); and
- Whether the Companies use Volt/VAR related savings to “participate in any PJM conservation programs” and “revenue” from such participation.

15. Section 333(d) of the Public Utility Code¹⁵ 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.

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

¹⁵ 66 Pa.C.S. § 333(d) (emphasis added).

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.)

17. 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 Section 333(d) of the Public Utility Code and the Commission's regulations. See Paragraph Nos. 15 and 16, *supra*. Accordingly, for the reasons set forth in Sections I and II, above, and Paragraph Nos. 13 and 14, *supra*, the EDF Interrogatories inquiry into matters that are entirely outside the scope of the proceedings on the Companies' DSIC Petitions – indeed, they represent an unlawful collateral attack on the final LTIIP Order – and, therefore, are improper and should be stricken. See, e.g., *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 Sept. 28, 2000) (affirming the Administrative Law Judge's decision to reject evidence as “beyond the scope of the proceeding.”); *Pa. P.U.C. v. Pennsylvania-American Water Co.*, Docket Nos. R-00932670, *et al.*, 1994 Pa. PUC LEXIS 120 at *158 (Order entered July 26, 1994) (“The ALJ concluded as follows: ‘I agree with OTS that the issues raised by OCA are outside the scope of this investigation. . . .’ ”); *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.”).

WHEREFORE, the Objections of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to the EDF Interrogatories (Set I) should be granted.

Respectfully submitted,



John L. Munsch (PA No. 31489)
Metropolitan Edison Company
Pennsylvania Electric Company
Pennsylvania Power Company
West Penn Power Company
800 Cabin Hill Drive
Greensburg, PA 15601
(724) 838-6210
jmunsch@firstenergycorp.com

Anthony C. DeCusatis (PA No. 25700)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
(215) 963-5034
anthony.decusatis@morganlewis.com

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

Dated: April 8, 2016

APPENDIX A

EDF Interrogatories (Set I)

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Metropolitan Edison Company	: Docket Nos.	M-2015-2508942
Petition of Pennsylvania Electric Company	:	M-2015-2508936
Petition of Pennsylvania Power Company	:	M-2015-2508931
Petition of West Penn Power Company	:	M-2015-2508948

INTERROGATORIES OF
ENVIRONMENTAL DEFENSE FUND
SET I

Pursuant to 52 Pa. Code § 5.341, Environmental Defense Fund hereby propounds the following Interrogatories to Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, "FirstEnergy") to be answered by those officers, employees, agents, or contractors who have knowledge of the requested facts and who are authorized to answer on behalf of the Company. Each interrogatory is to be verified by the responding witness in accordance with 52 Pa. Code §5.342(a)(6).

DATED: March 29, 2016

Instructions

- 1) These interrogatories shall be construed as a continuing request. The Respondent is obliged to change, supplement and correct all answers to interrogatories to conform to available information; including such information as first becomes available to the Respondent after the answers hereto are filed.
- 2) Restate the interrogatory immediately preceding each response.
- 3) Identify the name, title, and business address of each person(s) providing each response.
- 4) Provide the date on which the response was created.
- 5) Divulge all information that is within the knowledge, possession, control, or custody of Respondent or may be reasonably ascertained thereby. The term "Metropolitan Edison Company", "Pennsylvania Electric Company", "Pennsylvania Power Company", "West Penn Power Company", collectively, "FirstEnergy", or "the Companies", or "you," as used herein includes FirstEnergy or the Companies, its attorneys, agents, employees, contractors, or other representatives to the extent that the Company has the right to compel the action requested therein.
- 6) Provide a verification by the responsible witness that all facts contained in the response are true and correct to the best of the witness' knowledge, information and belief.
- 7) As used herein, but only to the extent not protected by 52 Pa. Code Section 5.323, the word "document" or "workpaper" includes, but is not limited to, the original and all copies in whatever form, stored or contained in or on whatever media or medium including computerized memory, magnetic, electronic, or optical media, regardless of origin and whether or not including additional writing thereon or attached thereto, and may consist of:
 - a) notations of any sort concerning conversations, telephone calls, meetings or other communications;
 - b) bulletins, transcripts, diaries, analyses, summaries, correspondence and enclosures, circulars, opinions, studies, investigations, questionnaires and surveys;
 - c) worksheets, and all drafts, preliminary versions, alterations, modifications, revisions, changes, amendments and written comments concerning the foregoing.

Interrogatories

1. Did the Company apply to the Department of Energy to fund a pilot program in various service territories, including its Metropolitan Edison service area, for various smart grid technologies, including Volt/VAR control or Voltage Optimization?
2. Produce a copy of all documents sent to or received from the Department of Energy related to this pilot program.
3. Produce a copy of all documents relating to the voltage reductions, energy savings, peak demand reductions, operating cost savings or greenhouse gas emission reductions from this pilot program.
4. Was the pilot program successful?
5. Has the Company continued to operate the Volt/VAR control equipment for this pilot program continuously, from the date the equipment initially became operational, through the present date?
6. If the answer to the preceding interrogatory is in the negative, please list any time periods during which the equipment was not in operation, and the reason the equipment was not in operation.
7. Does the Company currently use integrated Volt/VAR management for any of its distribution feeders or substations?
8. If the answer to the preceding interrogatory is in the affirmative, please state how many distribution feeders and how many substations (including the total number

of distribution feeders and substations) where the Company uses integrated Volt/VAR management.

9. Please describe the Company's management process, policy, objectives and procedure for practicing integrated Volt/VAR management.
10. Please provide any documents created during the past five years reflecting the Company's planning or decision-making, including cost/benefit analysis, for installing integrated Volt/VAR equipment.
11. How much in energy usage reductions has the Company received on the distribution grid to date from integrated Volt/VAR management?
12. How much energy usage savings has been achieved by customers to date from integrated Volt/VAR management?
13. as the Company's Volt/VAR management led to improved system power factor and, if so, how much has the system power factor improved due to Volt/VAR management?
14. Has the Company's Volt/VAR management reduced voltage variation in the distribution feeders and, if so, how much has the voltage variation been reduced due to Volt/VAR management?
15. Has the Company's Volt/VAR management reduced peak load and, if so, how much has the peak load been reduced due to Volt/VAR management?
16. Has the Company's Volt/VAR management reduced feeder losses and, if so, how much have feeder losses been reduced due to Volt/VAR management?

17. Has the Company's Volt/VAR management improved the Company's reliability scores and, if so, by how much?
18. Has the Company used the load reductions resulting from Volt/VAR management to participate in any PJM conservation programs and, if so, how much revenue has the Company earned from the PJM conservation programs?
19. Has the Company's Volt/VAR management reduced greenhouse gas emissions and, if so, how much?
20. Has the Company's Volt/VAR management reduced operating costs and, if so, how much?

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), via email and first class mail, upon the persons listed below:

<p>Darryl A. Lawrence Erin L. Gannon Office of Consumer Advocate 555 Walnut Street Forum Place, 5th Floor Harrisburg, PA 17101-1923 <i>Counsel for Office of Consumer Advocate</i> dlawrence@paoca.org egannon@paoca.org</p>	<p>Johnnie E. Simms Deputy Chief Prosecutor Bureau of Investigation & Enforcement PO Box 3265 Commonwealth Keystone Building 400 North Street, 2nd Floor West Harrisburg, PA 17105-3265 josimms@pa.gov</p>
<p>Charles E. Thomas, III Thomas, Niesen & Thomas, LLC 212 Locust Street, Suite 600 Harrisburg, PA 17101 <i>Counsel for Noble Americas Energy Solutions LLC</i> cet3@tntlawfirm.com</p>	<p>John L. Munsch FirstEnergy Service Company 800 Cabin Hill Drive Greensburg, PA 15601 <i>Counsel for West Penn Power Company</i> jmunsch@firstenergycorp.com</p>
<p>Anthony C. DeCusatis Morgan, Lewis & Bockius LLP 1701 Market Street Philadelphia, PA 19103-2921 <i>Counsel for West Penn Power Company</i> adecusatis@morganlewis.com</p>	<p>Daniel G. Asmus Office of Small Business Advocate 300 North Second Street, Suite 202 Harrisburg, PA 17101 dasmus@pa.gov</p>
<p>Thomas T. Niesen Thomas, Niesen & Thomas, LLC 212 Locust Street, Suite 600 Harrisburg, PA 17101 <i>Counsel for Pennsylvania Rural Electric Association and Allegheny Electric Cooperative, Inc.</i> tniesen@tntlawfirm.com</p>	<p>David F. Boehm Boehm, Kurtz & Lowrey 36 East Seventh Street, Suite 1510 Cincinnati, OH 45202 <i>Counsel for AK Steel Corp.</i> dboehm@bkllawfirm.com</p>

<p>David J. Dulick Pennsylvania Rural Electric Association Allegheny Electric Cooperative, Inc. 212 Locust Street P.O. Box 1266 Harrisburg, PA 17108-1266 <i>Counsel for Pennsylvania Rural Electric Association and Allegheny Electric Cooperative, Inc.</i> david_dulick@prea.com</p>	<p>Thomas J. Sniscak William E. Lehman Hawke McKeon & Sniscak, LLP 100 N. 10th Street P.O. Box 1778 Harrisburg, PA 17105-1778 <i>Counsel for Pennsylvania State University</i> tjsniscak@hmslegal.com</p>
<p>Donald R. Wagner Linda R. Evers Michael A. Guin Stevens & Lee 111 N. Sixth Street Reading, PA 19601 <i>Counsel for Wal-Mart Stores East, LP and Sam's East, Inc.</i> drw@stevenslee.com lre@stevenslee.com mag@stevenslee.com</p>	<p>Susan E. Bruce Vasiliki Karandrikas Teresa K. Schmittberger Elizabeth P. Trinkle Charis Mincavage McNees Wallace & Nurick LLC 100 Pine Street, 2nd Floor Harrisburg, PA 17120 <i>Counsel for West Penn Industrial Intervenors</i> sbruce@mwn.com vkandrikas@mwn.com tschmittberger@mwn.com etrinkle@mwn.com cmincavage@mwn.com</p>

/s/ George Jugovic, Jr.

George Jugovic, Jr.

Date: March 29, 2016

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PETITION OF METROPOLITAN
EDISON COMPANY FOR APPROVAL
TO ESTABLISH AND IMPLEMENT A
DISTRIBUTION SYSTEM
IMPROVEMENT CHARGE** : : **DOCKET NO. P-2015-2508942**

**PETITION OF PENNSYLVANIA
ELECTRIC COMPANY FOR
APPROVAL TO ESTABLISH AND
IMPLEMENT A DISTRIBUTION
SYSTEM IMPROVEMENT CHARGE** : : **DOCKET NO. P-2015-2508936**

**PETITION OF PENNSYLVANIA
POWER COMPANY FOR APPROVAL
TO ESTABLISH AND IMPLEMENT A
DISTRIBUTION SYSTEM
IMPROVEMENT CHARGE** : : **DOCKET NO. P-2015-2508931**

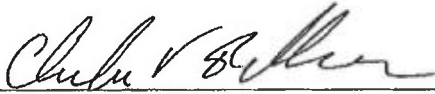
**PETITION OF WEST PENN POWER
COMPANY FOR APPROVAL TO
ESTABLISH AND IMPLEMENT A
DISTRIBUTION SYSTEM
IMPROVEMENT CHARGE** : : **DOCKET NO. P-2015-2508948**

VERIFICATION

I, Charles V. Fullem, hereby state that the facts set forth in the Answer of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, the "Companies") to the Motion to Compel filed by the Environmental Defense Fund and Citizens for Pennsylvania's Future in the above-referenced matters are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing, if any, in these matters. I understand that the

statements herein are made subject to the penalties of 18 Pa. C.S. § 4904, relating to unsworn
falsification to authorities.

Date: April 22, 2016



Charles V. Fullem