



COMMONWEALTH OF PENNSYLVANIA

January 6, 2022

**E-FILED**

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

**Re: Petition of FirstEnergy Companies for Approval to Establish and Implement a Distribution System Improvement Charge, Consolidated / Docket No. P-2015-2508942, P-2015-2508936, P-2015-2508931, and P-2015-2508948**

Dear Secretary Chiavetta:

Enclosed for filing please find the Prehearing Memorandum, on behalf of the Office of Small Business Advocate (“OSBA”), in the above-captioned proceedings.

Copies will be served on all known parties in these proceedings, as indicated on the attached Certificate of Service.

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

Sincerely,

/s/ Erin K. Fure

Erin K. Fure  
Assistant Small Business Advocate  
Attorney ID No. 312245

*Enclosures*

cc: Parties of Record  
Robert D. Knecht

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Metropolitan Edison Company	:	
for Approval of a Distribution System	:	
Improvement Charge	:	P-2015-2508942
	:	
Office of the Consumer Advocate	:	
	:	
v.	:	C-2016-2531040
	:	
Metropolitan Edison Company	:	
	:	
Petition of West Penn Power Company	:	
for Approval of a Distribution System	:	
Improvement Charge	:	P-2015-2508948
	:	
Office of the Consumer Advocate	:	
	:	
v.	:	C-2016-2531019
	:	
West Penn Power Company	:	
	:	
Petition of Pennsylvania Electric Company	:	
for Approval of a Distribution System	:	
Improvement Charge	:	P-2015-2508936
	:	
Office of the Consumer Advocate	:	
	:	
v.	:	C-2016-2531060
	:	
Pennsylvania Electric Company	:	
	:	
Petition of Pennsylvania Power Company	:	
for Approval of a Distribution System	:	
Improvement Charge	:	P-2015-2508931
	:	
Office of the Consumer Advocate	:	
	:	
v.	:	C-2016-2531054
	:	
Pennsylvania Power Company	:	

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**OFFICE OF SMALL BUSINESS ADVOCATE  
PREHEARING MEMORANDUM**

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**I. INTRODUCTION**

The Office of Small Business Advocate (“OSBA”) is authorized to represent the interests of small business consumers of utility services before the Pennsylvania Public Utility Commission (“Commission”) pursuant to the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50 (“the Act”). In order to discharge this statutory duty, the Small Business Advocate deems it necessary to participate as a party to this proceeding. Representing the OSBA in this matter is Assistant Small Business Advocate Erin K. Fure.

Please address all correspondence as follows:

Erin K. Fure  
Assistant Small Business Advocate  
Office of Small Business Advocate  
555 Walnut Street, 1<sup>st</sup> Floor  
Harrisburg, Pennsylvania 17101  
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[efure@pa.gov](mailto:efure@pa.gov)

**II. FILING BACKGROUND**

On June 9, 2016, the Commission entered separate Orders approving petitions for a Distribution System Improvement Charge (“DSIC”) filed by Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), West Penn Power Company (“West Penn”) and Pennsylvania Power Company (“Penn Power”) (collectively, “First Energy” or the “Companies”). In its Opinions and Orders entered on June 9, 2016, the Commission noted that

several issues that had been raised during the DSIC proceeding would be reserved for decision at an adjudicated hearing.<sup>1</sup>

On August 10, 2016, a Prehearing Conference was held before Deputy Chief Administrative Law Judge (“ALJ”) Joel H. Cheskis.

On August 11, 2016, an Order was issued consolidating the formal complaints filed by the Office of Consumer Advocate (“OCA”) at each of the above-captioned dockets.

On August 12, 2016, a Scheduling Order was issued, which directed the parties to schedule two or more settlement conferences; the Order noted, however, that if settlement was not reached by September 19, 2016, a further prehearing conference would be scheduled. The parties filed status reports indicating that settlement discussions continued and that a further prehearing conference was not necessary.

On January 19, 2017, the Commission issued an Opinion and Order in the proceeding involving the Companies’ consolidated respective base rate filings. In that Opinion and Order, the Commission referred to the above-captioned proceeding the contested issue concerning the OCA’s claim with regard to the calculation of the Accumulated Deferred Income Tax (“ADIT”) and the Companies’ DSIC riders interpreting the recently enacted Act 40. The Commission also transferred to this proceeding various parts of the record from the base rate proceeding that pertained to ADIT issues. The Commission noted that a Recommended Decision had not yet been issued in the above-captioned proceeding and that there was adequate time to resolve the contested issue from the base rate proceeding within the context of this proceeding.

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<sup>1</sup> The OSBA filed its Answers, Notices of Intervention, Notices of Appearance, and Public Statements in response to the DSIC petitions on each of the above-captioned dockets on March 9, 2016.

A Joint Petition for Settlement of Pending Issues was filed by the parties on February 2, 2017, which did not address the ADIT and DSIC rider issues.

On March 6, 2017, a further Prehearing Conference was held to discuss how to address the ADIT issue referred to this case in the Commission's January 19, 2017 Opinion and Order. The parties agreed upon a procedural schedule at the March 6, 2017 Prehearing Conference, which was subsequently memorialized in a Briefing Order.

Following the submission of Main Briefs and Reply Briefs, a Recommended Decision was entered on July 16, 2017.

Following the submission of Exceptions and Reply Exceptions, the Commission issued an Opinion and Order on April 19, 2018. A Dissenting Statement was issued by Commissioner David W. Sweet on April 19, 2018.

The OCA appealed the April 19, 2018 decisions to the Commonwealth Court of Pennsylvania,<sup>2</sup> which reversed the Commission's decisions and remanded for the inclusion of federal and state income tax deductions and credits related to the DSIC investments in the DSIC calculations in accordance with Section 1301.1(a).

The Commonwealth Court's decision was reviewed by the Supreme Court of Pennsylvania, which ultimately entered an Opinion dated July 21, 2021.<sup>3</sup> In its Opinion, the Supreme Court determined to remand the matters to the Commission "for the purpose of requiring [the First Energy companies] to revise their tariffs and Distribution System Improvement Charge calculations in accordance with Section 1301.1(a) of the Public Utility Code, 66 Pa.C.S. § 1301.1."

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<sup>2</sup> McCloskey v. Pa. PUC, 219 A.3d 1216 (Pa. Cmwlth. 2019).

<sup>3</sup> McCloskey v. Pa. PUC, 255 A.3d 416 (Pa. 2021).

On October 27, 2012, Notice was issued that a telephonic Prehearing Conference was scheduled for December 2, 2021.

On November 10, 2021, undersigned counsel entered her appearance for the OSBA.

On November 22, 2021, Notice was issued that the December 2, 2021 telephonic Prehearing Conference was cancelled.

On December 9, 2021, Deputy Chief ALJ Cheskis issued an Order scheduling a further Prehearing Conference for January 13, 2022 at 10:00 a.m.

### **III. IDENTIFICATION OF WITNESSES AND TENTATIVE ISSUES**

Assisting in the development and presentation of the OSBA's case in this proceeding will be:

Robert D. Knecht  
5 Plymouth Road  
Lexington, MA 02421  
(781) 249-9461 (mobile)  
[rdk@indecon.com](mailto:rdk@indecon.com)

The OSBA will participate in the case to assure that the interests of small business customers of the Companies are adequately represented and protected.

As appropriate and necessary, the OSBA will investigate and analyze the claims and proposals of the Companies and other parties through discovery, through the cross-examination of witnesses appearing for those parties, through the filing of testimony, and through briefing. The OSBA will particularly focus on any issue where the impact on the interests of the Companies' small business consumers would be unjustifiably different than, or disproportionate to, the impact on another class of customers, or otherwise lacking in reasonableness or basic

fairness. The OSBA reserves the right to pursue additional issues as they arise throughout the proceeding.

**IV. SERVICE OF DOCUMENTS**

In accordance with 52 Pa. Code § 1.54(b)(3)(i), the OSBA agrees to accept electronic mail delivery of documents on the due date<sup>4</sup> as satisfying the in-hand requirement. The OSBA requests that electronic copies be provided to its witness identified above. The OSBA also requests that all parties serve an electronic copy of all interrogatory responses upon the OSBA and the OSBA witnesses identified above.

**V. DISCOVERY**

The OSBA does not propose any discovery modifications in this proceeding, but will work with the parties to develop any mutually agreeable discovery modifications.

**VI. SETTLEMENT**

The OSBA notes its willingness to enter into settlement discussions at the appropriate phase of this proceeding.

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<sup>4</sup> In accordance with 52 Pa. Code § 1.56(a)(5), documents must be received by 4:30 pm.

**VII. HEARING AND BRIEFING SCHEDULE**

The OSBA will cooperate with the other parties to develop a procedural schedule.

Respectfully submitted,

/s/ Erin K. Fure

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Erin K. Fure  
Assistant Small Business Advocate  
Attorney ID No. 312245

Commonwealth of Pennsylvania  
Office of Small Business Advocate  
555 Walnut Street, 1<sup>st</sup> Floor  
Harrisburg, PA 17101

Dated: January 6, 2022



**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>Petition of FirstEnergy Companies for</b>	<b>:</b>	<b>Docket Nos. P-2015-2508942</b>
<b>Approval to Establish and Implement a</b>	<b>:</b>	<b>P-2015-2508936</b>
<b>Distribution System Improvement</b>	<b>:</b>	<b>P-2015-2508931</b>
<b>Charge, Consolidated</b>	<b>:</b>	<b>P-2015-2508948</b>

**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing have been served via email (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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/s/ Erin K. Fure

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Erin K. Fure  
Assistant Small Business Advocate  
Attorney ID # 312245

Dated: January 6, 2022