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January 31, 2022

VIA eFILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17105-3265

**Re: Petition of Metropolitan Edison Company for Approval of a Distribution System Improvement Charge – Docket No. P-2015-2508942
Office of Consumer Advocate v. Metropolitan Edison Company
Docket No. C-2016-2531040**

**Re: Petition of Pennsylvania Electric Company for Approval of a Distribution System Improvement Charge – Docket No. P-2015-2508936
Office of Consumer Advocate v. Pennsylvania Electric Company
Docket No. C-2016-2531060**

**Re: Petition of Pennsylvania Power Company for Approval of a Distribution System Improvement Charge – Docket No. P-2015-2508931
Office of Consumer Advocate v. Pennsylvania Power Company
Docket No. C-2016-2531054**

**Re: Petition of West Penn Power Company for Approval of a Distribution System Improvement Charge – Docket No. P-2015-2508948
Office of Consumer Advocate v. West Penn Power Company
Docket No. C-2016-2531019**

Dear Secretary Chiavetta:

On behalf of **Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company**, enclosed is the **Petition for Interlocutory**

Morgan, Lewis & Bockius LLP

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
January 31, 2022
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Review and Answer to a Material Question (the “Petition”), for filing in the above-captioned matters.

Copies of the Petition have been served upon Deputy Chief Administrative Law Judge Joel H. Cheskis and all parties of record, as indicated on the attached Certificate of Service.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kenneth M. Kulak". The signature is written in a cursive style with a large initial 'K'.

Kenneth M. Kulak

KMK/tp
Enclosures

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

DB1/ 127223516.1

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Metropolitan Edison Company : **P-2015-2508942**
for Approval of a Distribution System :
Improvement Charge :

Office of Consumer Advocate : **C-2016-2531040**
v. :
Metropolitan Edison Company :

Petition of West Penn Power Company : **P-2015-2508948**
for Approval of a Distribution System :
Improvement Charge :

Office of Consumer Advocate : **C-2016-2531019**
v. :
West Penn Power Company :

Petition of Pennsylvania Electric : **P-2015-2508936**
Company for Approval of a Distribution :
System Improvement Charge :

Office of Consumer Advocate : **C-2016-2531060**
v. :
Pennsylvania Electric Company :

Petition of Pennsylvania Power Company : **P-2015-2508931**
for Approval of a Distribution System :
Improvement Charge :

Office of Consumer Advocate : **C-2016-2531054**
v. :
Pennsylvania Power Company :

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of the **Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Interlocutory Review and Answer to a**

Material Question, on the following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

VIA ELECTRONIC MAIL

The Honorable Joel H. Cheskis
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*Counsel for Metropolitan Edison Company,
Pennsylvania Electric Company, Pennsylvania
Power Company and West Penn Power Company*

Dated: January 31, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of Metropolitan Edison Company for
Approval of a Distribution System Improvement
Charge** :
: **Docket No. P-2015-2508942**
:

Office of Consumer Advocate :
v. : **Docket No. C-2016-2531040**
Metropolitan Edison Company :

**Petition of Pennsylvania Electric Company for
Approval of a Distribution System Improvement
Charge** :
: **Docket No. P-2015-2508936**
:

Office of Consumer Advocate :
v. : **Docket No. C-2016-2531060**
Pennsylvania Electric Company :

**Petition of Pennsylvania Power Company for
Approval of a Distribution System Improvement
Charge** :
: **Docket No. P-2015-2508931**
:

Office of Consumer Advocate :
v. : **Docket No. C-2016-2531054**
Pennsylvania Power Company :

**Petition of West Penn Power Company for
Approval of a Distribution System Improvement
Charge** :
: **Docket No. P-2015-2508948**
:

Office of Consumer Advocate :
v. : **Docket No. C-2016-2531019**
West Penn Power Company :

**PETITION OF METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC
COMPANY, PENNSYLVANIA POWER COMPANY AND WEST PENN POWER COMPANY
FOR INTERLOCUTORY REVIEW AND ANSWER TO A MATERIAL QUESTION**

Pursuant to 52 Pa. Code § 5.302(a), Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”) and West Penn Power Company (“West Penn”) (individually, a “Company” and collectively, the “Companies”) hereby file this Petition for Interlocutory Review and Answer to a Material Question (“Petition”), and in support thereof, aver as follows:

1. This remand proceeding arises from the decision of the Supreme Court of Pennsylvania issued on July 21, 2021¹ construing Section 1301.1(a) of the Public Utility Code.² While the Pennsylvania Public Utility Commission (“Commission” or “PUC”) has initiated remand proceedings in the above-captioned dockets, the Court’s decision necessarily impacts the terms of the Model Tariff that the PUC adopted, pursuant to the directive in Section 1353(b)(1), in its Implementation Order for Act 11 of 2012³ and, therefore, has implications for all Pennsylvania utilities that employ a Distribution System Improvement Charge (“DSIC”).

2. The Companies’ existing PUC-approved DSIC Riders incorporate the terms of the Model Tariff. Under the Court’s interpretation of Section 1301.1(a) in *McCloskey/FirstEnergy*, the formula for calculating quarterly DSIC updates would need to be supplemented by adding variables for accumulated deferred federal income taxes and certain state tax attributes related to incremental increases in DSIC-eligible property. As a result, changes to the DSIC Riders approved in this case would necessarily effect a revision of the PUC’s Model Tariff. Consequently, a decision in this remand proceeding would not be restricted to the Companies.

3. The Commission should not make a decision with such far-reaching implications for all Pennsylvania utilities in a proceeding that involves only the Companies. Before adopting the Implementation Order and Model Tariff, the Commission granted all interested parties, including entities that might employ a DSIC, notice and an opportunity to be heard. The PUC should follow the same procedure here and initiate a generic proceeding at Docket No. M-2012-2293611 (the same docket at which the Implementation Order was issued) to consider revisions to the Model Tariff and, by extension, to the DSIC Riders of entities that employ a DSIC, as may be required to comply with *McCloskey/FirstEnergy*. When the generic proceeding is initiated, the remand in this docket should

¹ *McCloskey v. Pa. P.U.C.*, 255 A.3d 416 (Pa. 2021) (hereafter, *McCloskey/FirstEnergy*).

² 66 Pa.C.S. § 1301.1.

³ Final Implementation Order, *Implementation of Act 11 of 2012*, Docket No. M-2012-2293611 (Aug. 2, 2012), pp. 30-31 and Appendix A (Model Tariff).

be referred to, and consolidated with, that proceeding. Thus, the PUC could conduct a generic proceeding and reasonably comply with the Pennsylvania Supreme Court's Order for the Companies.

4. For the foregoing reasons, the Companies request that the Commission undertake interlocutory review and ask that the following material question be answered in the affirmative:

In order to provide all interested parties notice and an opportunity to be heard, as due process requires, should the Commission initiate a generic proceeding within 60 days from a determination on this material question at Docket No. M-2012-2293611 for the purpose of revising the Model Tariff adopted in its Implementation Order entered at that docket number on August 2, 2012, to comply with Section 1301.1(a) of the Pennsylvania Public Utility Code as interpreted by the Pennsylvania Supreme Court in *McCloskey v. Pa. P.U.C.*, 255 A.3d 416 (Pa. 2021) and refer to that generic proceeding the remand proceedings for Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company, at Docket Nos. P-2015-2508942, P-2015-2508936, P-2015-2508931 and P-2015-2508948, respectively?

5. Granting interlocutory review and answering the foregoing material question will avoid delay and the unnecessary expenditure of resources by the parties to resolve an issue that the PUC, at the conclusion of a Company-specific proceeding, may decide should be addressed in a generic, state-wide proceeding.⁴

Respectfully submitted,



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

Dated: January 31, 2022

⁴ Counsel for the other parties to the remand proceeding have informed the Companies that they either do not object to the Petition or take no position on the material question presented.