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March 15, 2022

VIA ELECTRONIC FILING

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

**Re: Interstate Gas Supply, Inc. d/b/a IGS Energy, Direct Energy Services LLC, and Shipley Choice, LLC d/b/a Shipley Energy v. Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company
Docket Nos. C-2019-3013805, et al.**

Dear Secretary Chiavetta:

Enclosed for filing is the Answer of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company to the Joint Complainants' Motion for Expedited Treatment of Petition for Reconsideration, in the above-referenced proceeding. Copies are being provided per the attached Certificate of Service.

Respectfully submitted,



Devin Ryan
Principal

DR/kl
Enclosures

cc: Office of Special Assistants
Certificate of Service

CERTIFICATE OF SERVICE

Docket Nos. C-2019-3013805, C-2019-3013806, C-2019-3013807, C-2019-3013808

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Date: March 15, 2022



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Interstate Gas Supply, Inc. d/b/a IGS Energy,	:	
Direct Energy Services LLC, and Shipley	:	
Choice, LLC d/b/a Shipley Energy,	:	
	:	
Complainants,	:	Docket Nos. C-2019-3013805
	:	C-2019-3013806
v.	:	C-2019-3013807
	:	C-2019-3013808
Metropolitan Edison Company, Pennsylvania	:	
Electric Company, Pennsylvania Power	:	
Company, and West Penn Power Company,	:	
	:	
Respondents.	:	

**ANSWER OF METROPOLITAN EDISON COMPANY, PENNSYLVANIA
ELECTRIC COMPANY, PENNSYLVANIA POWER COMPANY, AND
WEST PENN POWER COMPANY TO
THE JOINT COMPLAINANTS' MOTION FOR EXPEDITED TREATMENT OF
PETITION FOR RECONSIDERATION**

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Date: March 15, 2022

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Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”), and West Penn Power Company (“West Penn Power”) (collectively, the “Companies”), pursuant to 52 Pa. Code §§ 5.61 and 5.103(c) hereby respectfully submit this Answer to the Motion for Expedited Treatment of Petition for Reconsideration (“Motion”) filed by Interstate Gas Supply, Inc. d/b/a IGS Energy, Direct Energy Services LLC, and Shipley Choice, LLC d/b/a Shipley Energy (“Joint Complainants”) with the Pennsylvania Public Utility Commission (“Commission”) on February 23, 2022. In their Motion, the Joint Complainants request expedited treatment of their Petition for Reconsideration and/or Reopening of the Record (“Petition”) that was filed with the Commission on September 10, 2021. The Joint Complainants’ Petition requested reconsideration and/or reopening of the record because the Joint Complainants allegedly had “new evidence” not considered by the Commission in its August 26, 2021 Opinion and Order dismissing the Joint Complainants’ Formal Complaints. Specifically, in their Petition, the Joint Complainants cited purported evidence that the Companies allow HomeServe USA (“HomeServe”) to bill for its non-commodity products and services on the Companies’ electric service bills.

As explained herein, the Joint Complainants’ Motion should be denied. The Motion inappropriately functions as an impermissible answer to the Companies’ Answer. Specifically, in their Motion, the Joint Complainants present substantive responses to the arguments set forth in the Companies’ Answer. For that reason alone, those substantive responses to the Companies’ Answer should be disregarded.

However, to the extent that the Joint Complainants’ substantive responses to the Companies’ Answer are considered, the Commission should reject them. Contrary to the baseless claims of the Joint Complainants, the Companies never made “misrepresentations” on the record

or engaged in efforts to “conceal” the truth. Through both this proceeding and other proceedings, the Companies openly provided information and materials to the Joint Complainants and their counsel about how HomeServe acts as a program administrator for the Companies’ “Line Protection” and “Total Repair Coverage” protection plans.

Moreover, in their Motion, the Joint Complainants fail to deny that their Petition has a fatal flaw—that the alleged “newly-discovered” evidence actually existed and was in the possession of the Joint Complainants, their counsel, or both and was obtainable through the exercise of due diligence before the record closed. Therefore, at the very least, the Joint Complainants’ Motion provides further evidence that the Petition should be denied.

Finally, as alleged support for their expedited treatment request, the Joint Complainants only present vague, unsubstantiated, and speculative claims of competitive harm. Such unsupported factual allegations cannot form the basis of the Commission’s decision to grant expedited treatment of the Petition.

Notwithstanding, the Companies do not oppose the Commission issuing its Opinion and Order ruling on the Joint Complainants’ Petition on an expedited basis, so long as the Commission: (1) disregards the Motion’s impermissible substantive responses to the arguments set forth in the Companies’ Answer; and (2) takes the time it needs to examine fully the arguments in the Joint Complainants’ Petition and the Companies’ Answer.

I. INTRODUCTION AND BACKGROUND

1. The Companies are public utilities that provide electric distribution and provider of last resort services in Pennsylvania subject to the regulatory jurisdiction of the Commission.

2. On October 25, 2019, the Joint Complainants filed the Formal Complaint that began this proceeding at the Commission.

3. The Companies filed their Answer and New Matter to the Formal Complaint on November 14, 2019.

4. The Joint Complainants' Answer to New Matter was submitted on December 4, 2019.

5. Administrative Law Judge ("ALJ") Joel Cheskis was assigned to this proceeding and issued a Prehearing Order on December 26, 2019, which scheduled a prehearing conference for February 3, 2020.

6. On January 24, 2020, the Retail Energy Supply Association ("RESA") filed a petition to intervene in the above-referenced proceeding.

7. A prehearing conference was held on February 3, 2020, which established, among other things, a procedural schedule.

8. On February 5, 2020, ALJ Cheskis issued a prehearing order setting forth the agreed upon procedural schedule.

9. On February 7, 2020, the OCA submitted its notice of intervention.

10. On March 24, 2020, the Joint Complainants submitted direct testimony in this proceeding.

11. The Companies and the OCA served their rebuttal testimony in this proceeding on May 13, 2020.

12. On May 27, 2020, the Companies and the Joint Complainants submitted surrebuttal testimony.

13. The parties engaged in discovery at various points in the proceeding before the evidentiary hearing.

14. A telephonic hearing was held in this matter on June 30, 2020, where additional hearing exhibits were admitted into the record.

15. On July 1, 2020, a Briefing Order was issued.

16. On August 18, 2020, the Companies, OCA, and Joint Complainants filed their Main Briefs.

17. On September 11, 2020, the Companies, OCA, and Joint Complainants filed their Reply Briefs.

18. On November 18, 2020, the Commission served the Initial Decision of ALJ Cheskis (“Initial Decision”), which sustained the Joint Complainants’ Formal Complaints.

19. On December 9, 2020, the Companies and OCA filed Exceptions to the Initial Decision.

20. On December 18, 2020, the Joint Complainants filed Replies to the Companies’ and OCA’s Exceptions.

21. On August 26, 2021, the Commission entered its Opinion and Order granting the Companies’ Exceptions, denying the OCA’s Exceptions, and dismissing the Joint Complainants’ Formal Complaints.

22. On September 10, 2021, the Joint Complainants filed their Petition for Reconsideration and/or Reopening of the Record.

23. On September 20, 2021, the Companies filed their Answer in opposition to the Petition.

24. On February 23, 2022, the Joint Complainants filed their Motion for Expedited Treatment of Petition for Reconsideration.

25. For the reasons explained below, the Joint Complainants’ Motion should be denied.

II. ARGUMENT

A. THE JOINT COMPLAINANTS' MOTION FUNCTIONS AS AN IMPERMISSIBLE ANSWER TO THE COMPANIES' ANSWER AND SHOULD BE DENIED FOR THAT REASON ALONE

26. The Commission should deny the Joint Complainants' Motion because the Motion inappropriately functions as an impermissible answer to the Companies' Answer.

27. The Commission's regulations do not permit the filing of an Answer to an Answer.¹

28. The only time that a party can file a response to an Answer is when the Answer requests affirmative relief or pleads New Matter.²

29. No such affirmative relief or New Matter was raised in the Companies' Answer to the Joint Complainants' Petition.

30. Yet, in their Motion, the Joint Complainants present substantive responses to the arguments set forth in the Companies' Answer.

31. Specifically, in response to the Companies' Answer, the Joint Complainants aver that:

- a. The other proceedings, in which the Companies provided information and materials about HomeServe to the Joint Complainants and their counsel well before the record closed in this proceeding, are "unrelated to the instant matter";
- b. The Companies' "contractual relationship" with HomeServe, which the Joint Complainants argue is allegedly based on "unsworn argument/extra-

¹ See *Boyer v. Pa. Elec. Co.*, 2021 Pa. PUC LEXIS 453, at *4 n.2 (Order entered Oct. 7, 2021) ("Under the Commission's procedural rules there is no provision for an 'Answer to an Answer.'"); *Buffaloe v. PECO Energy Co.*, 2010 Pa. PUC LEXIS 117, at *2 n.1 (Apr. 5, 2020) (Initial Decision) ("There is no regulatory provision for filing an answer to an answer."), *adopted without further action*, Docket No. F-2009-2142003 (Order entered May 27, 2010).

² See 52 Pa. Code § 5.63.

record evidence,” cannot exempt the Companies’ “billing for HomeServe’s third-party products and services from being discriminatory”;

- c. The Companies have “obfuscated the services” provided through HomeServe and have a “desire to conceal” their alleged “discriminatory conduct to maintain a market advantage”; and
- d. The arguments in the Companies’ Answer, including that the Joint Complainants “failed to meet the *Duick* standard³ for reconsideration, “lack all merit.”

32. As a result, by setting forth these substantive responses to the Companies’ Answer, the Joint Complainants’ Motion impermissibly functions as an Answer to the Companies’ Answer.

33. For that reason alone, the Commission should deny the Joint Complainants’ Motion or, at the very least, disregard the Joint Complainants’ inappropriate substantive responses to the Companies’ Answer.

B. THE AVERMENTS IN THE JOINT COMPLAINANTS’ MOTION HAVE NO MERIT AND SHOULD BE REJECTED

1. If the Commission Considers the Joint Complainants’ Substantive Responses to the Companies’ Answer, the Responses Lack Merit and Should Be Denied

34. To the extent that the Commission considers the Joint Complainants’ substantive responses to the Companies’ Answer, the Commission should reject those responses because they completely lack merit.

³ *Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553, 559, 1982 Pa. PUC LEXIS 4, at *11-12 (Order entered Dec. 17, 1982) (“*Duick*”).

35. The Joint Complainants erroneously assert that the Companies made “misrepresentations” on the record and engaged in efforts to “conceal” the truth. (Joint Complainants’ Motion, p. 3.)

36. In actuality, well before the record closed in this proceeding, the Companies provided information and materials to the Joint Complainants and their counsel about the Companies’ use of HomeServe as their program administrator for their “Line Protection” and “Total Repair Coverage” protection plans. (Companies’ Answer to Petition, pp. 7-9.)

37. Information and materials about the Companies’ use of HomeServe were disclosed to the Joint Complainants and their counsel as part of this proceeding and the Companies’ Default Service Plan V proceeding.⁴ (Companies’ Answer to Petition, pp. 7-9.)

38. Importantly, in their Motion, the Joint Complainants do not deny that the alleged “newly-discovered” evidence upon which they entirely base their Petition was in the Joint Complainants’ possession or obtainable through the exercise of due diligence before the record closed.

39. As such, the Joint Complainants effectively concede that their Petition is fatally flawed and does not meet the *Duick* standard for reconsideration and/or reopening the record. (Companies’ Answer to Petition, pp. 4-9) (explaining the *Duick standard* and how the Joint Complainants failed to meet it).

40. Thus, at the very least, the Joint Complainants’ Motion further establishes that that the Petition should be denied.

⁴ See *Joint Petition of Met. Edison Co., Pa. Elec. Co., Pa. Power Co., and West Penn Power Co. for Approval of Their Default Service Programs*, Docket Nos. P-2017-2637855, *et al.*

2. The Joint Complainants' Alleged Justifications for Expedited Treatment Are Vague, Unsubstantiated, and Speculative and, Therefore, Should Be Rejected

41. As the sole support for their expedited treatment request, the Joint Complainants present a series of vague, unsubstantiated, and speculative claims of competitive harm. (Joint Complainants' Motion, pp. 4-5.)

42. The Joint Complainants contend that: (1) “[e]very day that passes where FirstEnergy’s discriminatory and anti-competitive conduct is allowed by the Commission negatively impacts the Joint Complainants as well as the wider competitive market, suppliers, and ultimately the legislature’s intent at the core purpose of the Competition Act”; (2) “further delay of the resolution of the Petition has the potential to inhibit any new or innovative products and services from being offered”; and (3) “[f]urther delay in ruling on the Petition will also inhibit the offering of competitive products and services which in some cases could financially benefit the consumer.” (Joint Complainants’ Petition, p. 5.)

43. The first alleged harm is completely based on accepting the Joint Complainants’ position that the Companies have engaged in discriminatory and anti-competitive conduct.

44. However, as explained in the Companies’ Answer to the Petition, the Joint Complainants’ arguments are without merit because the Companies do not allow HomeServe to bill for its own non-commodity products and services on the Companies’ bills. (Companies’ Answer to Petition, pp. 9-11.)

45. As for the second and third alleged harms, the Joint Complainants fail to substantiate how they or others will be adversely affected without expedited treatment.

46. The Joint Complainants present vague and speculative contentions, such as how “further delay” could have “the potential to inhibit any new or innovative products and services

from being offered” and how other “competitive products and services . . . in some cases could financially benefit the consumer.” (Joint Complainants’ Petition, p. 5) (emphasis added).

47. The Commission should not rely on such vague, unsubstantiated, and speculative claims when deciding whether to grant expedited treatment of the Joint Complainants’ Petition.⁵

48. Moreover, if an expedited ruling on the Petition were truly necessary, the Joint Complainants would have requested expedited treatment when they originally filed their Petition on September 13, 2021, or soon after the Commission issued its Opinion and Order tolling the reconsideration period on September 15, 2021.

49. Notwithstanding, the Companies do not oppose the Commission issuing its Opinion and Order ruling on the Joint Complainants’ Petition on an expedited basis, so long as the Commission: (1) disregards the Motion’s impermissible substantive responses to the arguments set forth in the Companies’ Answer; and (2) takes the time it needs to examine fully the arguments in the Joint Complainants’ Petition and the Companies’ Answer.

⁵ *Pa. Bureau of Corrections v. City of Pittsburgh*, 532 A.2d 12, 14 (Pa. 1987) (holding that mere bald assertions, personal opinions, or perceptions, when not substantiated by facts, do not constitute evidence).

III. CONCLUSION

WHEREFORE, for all the foregoing reasons, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company respectfully request that the Pennsylvania Public Utility Commission deny the Motion for Expedited Treatment of Petition for Reconsideration filed by Interstate Gas Supply, Inc. d/b/a IGS Energy, Direct Energy Services LLC, and Shipley Choice, LLC d/b/a Shipley Energy.

Respectfully submitted,



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