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July 25, 2022

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

**Re: Petition Requesting Initiation of a Proceeding on Federal Funding  
Opportunities for Utilities Under the Infrastructure Investment and  
Jobs Act; Docket No. ~~C-2021-3024913~~**

Dear Secretary Chiavetta:

P-2022-3032929-AEL-7/26/22

Enclosed please find the Answer of West Penn Power Company, Metropolitan Edison Company, Pennsylvania Power Company, and Pennsylvania Electric Company to the Complaint of the Office of Consumer Advocate, the Office of Small Business Advocate, and The Pennsylvania Utility Law Project. This document has been served on the Complainant as shown in the Certificate of Service.

Please contact me if you have any questions regarding this matter.

Very truly yours,



Tori L. Giesler

kbw  
Enclosures

c: As Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition Requesting Initiation of a Proceeding on :  
Federal Funding Opportunities for Utilities :  
Under the Infrastructure Investment and Jobs :           Docket No. P-2022-3032929  
Act :**

**ANSWER OF WEST PENN POWER COMPANY, METROPLITAN EDSION  
COMPANY, PENNSYLVINA POWER COMPANY, AND PENNSYLVANIA ELECTRIC  
COMPANY TO THE COMPLAINT OF THE OFFICE OF CONSUMER ADVOATE,  
THE OFFICE OF SMALL BUSINESS ADVOCATE, AND THE PENNSYLVANIA  
UTILITY LOW PROJECT**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

AND NOW, West Penn Power Company, Metropolitan Edison Company, Pennsylvania Power Company, and Pennsylvania Electric Company (the “Companies”), by and through Tori L. Giesler, file their answer to the above-captioned Petition Requesting Initiation of a Proceeding on Federal Funding Opportunities for Utilities under the Infrastructure Investment and Jobs Act (“Petition”) filed on June 10, 2022<sup>1</sup> filed by the Office of Consumer Advocate, the Office of Small Business Advocate (“OSBA”), and the Pennsylvania Utility Law Project (“PULP”) (collectively, the “Advocates”) pursuant to Section 5.61 of the Commission’s regulations, 52 Pa. Code § 5.61. In their Petition, the Advocates seek Pennsylvania Public Utility Commission (“Commission”) oversight of individual electric utility and water utility company decisions to apply for federal funding through the initiation of a formal proceeding. The formal proceeding would serve two purposes. First, public utilities would be required to file reports related to their efforts, both already

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<sup>1</sup> The Petition was served via email on June 10, 2022 on the Energy Association of Pennsylvania, the OSBA, PULP, the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation & Enforcement (“I&E”), the Pennsylvania Telephone Association and the York Water Company as the representative of the Pennsylvania Chapter of the National Association of Water Companies. Because service was not made initially on various public utilities which would be impacted by the outcome sought by the Advocates, improper service was “corrected” with the issuance of a Secretarial Letter dated June 23, 2022 served on all Pennsylvania jurisdictional fixed utilities, setting a response deadline of July 25, 2022.

taken and planned, to apply for federal funds available under the Infrastructure Investment and Jobs Act Pub. L. No. 117-58, 135 Stat. 429 (2021) (“IIJA”). As proposed, the reports would be required to include the purposes for which utilities are seeking funding, the status of any submitted or planned applications, and the conditions that must be met to obtain the federal funding.<sup>2</sup> Second, the proceeding is proposed to establish a means by which public utilities’ plans would be reviewed via public comments to: (1) identify all possible programs under the IIJA available to the utilities; (2) recommend actions utilities should take related to those programs; and (3) recommend actions the Commission should initiate to ensure utility “application, receipt, and deployment of available federal funds.”<sup>3</sup>

Overall, the Advocates ask the Commission to exercise its supervisory authority to manage and steer the internal decision-making process of electric and water utilities regarding whether to apply for a variety of federal funding to use in specific capital investments identified under the IIJA. The Companies are excited about IIJA funding opportunities that will benefit their customers and the communities they serve, and have already been active in understanding, planning, and taking actions to prepare for these programs in an effort to help attract and utilize these federal resources. However, as articulated more fully herein, the Companies respectfully request that the Commission deny the Advocates’ request to initiate a formal proceeding for purposes of overseeing federal grant opportunities for Pennsylvania public utilities under the recently enacted federal IIJA.

As detailed below, the Companies propose instead to provide the Commission and designated stakeholders periodic written reports on IIJA grant application opportunities and progress. This proposed approach would not only provide the Commission and stakeholders with transparency and timely, accurate information, it would allow the Commonwealth’s utilities the

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<sup>2</sup> Petition at p. 5.

<sup>3</sup> *Id.*

flexibility needed to evaluate, process, and file IJJA grant applications as funding opportunities arise over the five-year period in which IJJA funds will be distributed. Notably, the first funding opportunities activating IJJA spending have already begun to open up this year. Additionally, to support the work of the Companies to attract IJJA resources to Pennsylvania and to signal to IJJA grant decision-makers that Pennsylvania appreciates the opportunities offered by the available funding and is coordinating with its utility company grant applicants, the Companies respectfully request the Commission grant all jurisdictional public utilities the authority to establish regulatory assets in which to record incremental IJJA expenditures, as further explained below. Finally, the Companies ask that the Commission consider this response and alternate proposal in an expeditious fashion – such as during its next available public meeting – so that the Companies and their peer utilities may continue without interruption the important work of evaluating and pursuing IJJA grant funding opportunities without delay or disruption.

#### **I. Response to the Public Advocates' Petition**

The Companies have always been and remain willing to work cooperatively with the Commission and all stakeholders, including the Advocates, in discussing ways in which to take advantage of funding opportunities that both benefit utility customers and align with state goals. Indeed, the Companies are actively monitoring developments and/or preparing to pursue IJJA funding. The Companies have reviewed the Petition carefully and, while they appreciate the concerns the Advocates raise regarding opportunities for IJJA funding and the need for transparency and stakeholder input, a full docketed proceeding as the Petition seeks is not the best or most efficient way to accomplish those objectives. To the contrary, this proposal will likely hinder the ability of the Commonwealth's utilities to pursue grant opportunities as they arise, reducing potential federal funding for the Commonwealth, its residents, and businesses. While the Commission may ultimately deem additional reporting to be beneficial, the fully

docketed proceeding that the Petition seeks is simply not needed or appropriate, as such a proceeding could negatively impact the grant application process.

Furthermore, the IIJA is already creating multiple, concurrent opportunities for shaping and applying for vital funding that would supplement governmental and utility-invested capital and operating costs for critical and innovative utility infrastructure projects, including for grid transformation initiatives, that will drive enhanced customer benefits and support state goals. Although exciting, the Commission and all stakeholders must recognize that the grant application process requires quick action, nimbleness, and flexibility by applicants and partners – which is not compatible with full administrative proceedings. Requiring utilities to be engaged in a regulatory proceeding of the kind proposed by the Advocates while simultaneously reviewing and pursuing grant opportunities could cause undue delay and jeopardize chances to receive awards in what is a highly competitive process.

Finally, the Advocates’ request fails to appreciate that many of the materials that it is seeking to have the state’s utilities file in a public docket for stakeholder review and input may contain sensitive and proprietary business information. The Companies are concerned that easy access by the public to such information would likely result in other IIJA grant applicants around the country usurping such information to pursue the same limited number of grants, which could in turn lead to missed opportunities for Pennsylvania and its utilities to the detriment of its communities, residents, and businesses.

## **II. The Companies’ Alternative Proposal**

The Companies appreciate that many stakeholders have an interest in the IIJA and the ways in which Pennsylvania’s utilities may seize opportunities that it presents, particularly in helping the state meet new and existing policy directions. For that reason, the Companies propose a solution to ensure that designated stakeholders are kept informed of IIJA

developments while providing the Commonwealth’s utilities the flexibility needed to take full advantage of available opportunities as they arise. Specifically, the Companies propose that instead of a fully docketed proceeding, the utilities could provide regular written IJIA grant application reports to the Commission and designated stakeholders (including the Advocates) on a designated timeframe (i.e., quarterly). These reports could include the following information that on an as-needed basis: (1) funding for which the utility has applied; (2) purposes for which the funding is intended to be used; (3) status of funding applications; and (4) conditions that must be met to obtain the funding.<sup>4</sup> In addition, in future rate case proceedings, the Companies would commit to including information as to whether a particular planned project has IJIA funding implications.

The Companies respectfully suggest that the approach outlined above is more likely than the Advocates’ proposed proceeding to drive benefits for the state and ratepayers by best enabling Pennsylvania’s utilities to compete for and win IJIA funding over the next several years.

### **III. Cost Recovery**

As noted above, the IJIA grant process is highly competitive. Supportive regulatory action from the Commission would provide an important signal to decision-makers at the federal level of the Commonwealth of Pennsylvania’s seriousness about supporting public utility efforts to move forward with transformative IJIA projects. Cost recovery of utility expenditures utilized to support grant opportunities – *e.g.*, utility investments to meet match requirements for certain grants – is a key example. Although pre-determined certainty of cost

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<sup>4</sup> Notably, this approach was found to have merit and was adopted on June 30, 2022 in response to a comparable petition filed by the Maryland Office of People’s Counsel by the Maryland Public Service Commission. *Federal Grant Opportunities For Utilities Under the Infrastructure Investment and Jobs Act*, Docket No. PC56, Order No. 90272 (Order on Petition issued on June 30, 2022).

recovery is not expected, the Companies would welcome Commission affirmation of a mechanism to ensure that additional cost outlays (which are likely to be in the millions of dollars) are acceptable and that the funding of grant applicant matching commitments is presumed reasonable, subject to a later prudency review in a future rate proceeding. This could take the form of the Commission authorizing the Companies to each establish an IIJA-specific regulatory asset to track IIJA-related costs and any related savings (similar to what the Commission authorized for COVID-19-related costs incurred and savings realized).<sup>5</sup> With such a mechanism in place, the utilities could demonstrate in the competitive grant process a supportive regulatory environment and a cooperation between the Commonwealth and its utilities that will position Pennsylvania's utilities well to pursue grant opportunities vis-a-vis applicants from other states. The reporting that the Commission would require on costs placed in a regulatory asset would also ensure prompt, transparent disclosure of a utility's IIJA efforts to all stakeholders, including the Advocates. The Companies believe it is appropriate to record these incremental expenditures in a regulatory asset until IIJA expenditures can be considered in a future rate proceeding.<sup>6</sup>

#### **IV. Conclusion**

WHEREFORE, for the reasons outlined above, West Penn Power Company, Metropolitan Edison Company, Pennsylvania Power Company, and Pennsylvania Electric Company hereby respectfully request that the Commission: (1) deny the Advocates' Petition;

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<sup>5</sup> Expenses deferred in a regulatory asset would include incremental costs such as operations and maintenance expenses, depreciation expense, and property taxes. Savings realized and deferred in a regulatory asset would include reductions in costs due to the application of IIJA funding to projects already included in a utility's base distribution rates. A regulatory asset will allow utilities to expediently execute projects, while deferring expenses incurred and savings realized for a future prudency review.

<sup>6</sup> Much like the Companies' alternative reporting proposal, the Maryland Public Service Commission also found merit in this approach and adopted a comparable proposal for affected Maryland utilities through its June 30, 2022 Order.

(2) consider instead the implementation of an IIJA reporting process consistent with the proposal discussed herein; and (3) authorize affected public utilities to each establish a regulatory asset in which to record any incremental IIJA costs incurred. The Companies suggest that in the interest of timeliness and efficiency and given the rapidly developing IIJA grant process, these matters be heard by the Commission at its next available public meeting.

Dated: July 25, 2022

Respectfully submitted,



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Act :**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the Answer of West Penn Power Company, Metropolitan Edison Company, Pennsylvania Power Company, and Pennsylvania Electric Company to the Formal Complaint of the Office of Consumer Advocate, the Office of Small Business Advocate, and The Pennsylvania Utility Law Project upon the individual listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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