

# Morgan Lewis

**Kenneth M. Kulak**

Partner  
+1.215.963.5384  
Ken.kulak@morganlewis.com

March 3, 2025

## **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 please find

**Morgan, Lewis & Bockius LLP**

2222 Market Street  
Philadelphia, PA 19103-3007  
United States

**T** +1.215.963.5000  
**F** +1.215.963.5001

**Rosemary Chiavetta, Secretary**  
**Pennsylvania Public Utility Commission**  
**March 3, 2025**  
**Page 2**

a Notice to Plead (“Notice”) and Motion to Dismiss Proceedings as Moot (“Motion”) in the above captioned matters.

Copies of the Notice and Motion have been served upon Administration Law Judge Mark A. Hoyer 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/ap  
Enclosures

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

**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 **Notice to Plead**

**and Motion to Dismiss Proceedings as Moot** on the following persons in the matter specified

in accordance with the requirements of 52 Pa. Code § 1.54:

**VIA ELECTRONIC MAIL**

The Honorable Mark A. Hoyer  
Deputy Chief Administrator Law Judge  
PA Public Utility Commission  
Office of Administrative Law Judge  
301 Fifth Avenue  
Suite 220, Piatt Place  
Pittsburgh, PA 15222  
[mhoyer@pa.gov](mailto:mhoyer@pa.gov)

Darryl Lawrence  
Harrison W. Breitman  
Office of Consumer Advocate  
5th Floor, Forum Place  
555 Walnut Street  
Harrisburg, PA 17101-1923  
[dlawrence@paoca.org](mailto:dlawrence@paoca.org)  
[egannon@paoca.org](mailto:egannon@paoca.org)  
[hbreitman@paoca.org](mailto:hbreitman@paoca.org)  
*Counsel for the Office of Consumer Advocate*

Steven Gray  
Office of Small Business Advocate  
Forum Place – 1st Floor  
555 Walnut Street  
Harrisburg, PA 17101  
[sgray@pa.gov](mailto:sgray@pa.gov)  
*Counsel for the Office of Small Business Advocate*

Charis Mincavage  
Susan E. Bruce  
McNees Wallace & Nurick LLC  
100 Pine Street  
Harrisburg, PA 17108  
[cmincavage@mcneeslaw.com](mailto:cmincavage@mcneeslaw.com)  
[sbruce@mcneeslaw.com](mailto:sbruce@mcneeslaw.com)  
*Counsel for Met-Ed Industrial Users Group, Penelec Industrial Coalition Penn Power Users Group*

Thomas J. Sniscak  
William E. Lehman  
Whitney Snyder  
Hawke McKeon & Sniscak LLP  
100 North 10th Street  
Harrisburg, PA 17101  
[tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)  
[welehman@hmslegal.com](mailto:welehman@hmslegal.com)  
[wesnyder@hmslegal.com](mailto:wesnyder@hmslegal.com)  
*Counsel for The Pennsylvania State University*



---

Kenneth M. Kulak (Pa. I.D. No. 75509)  
Brooke E. McGlinn (Pa. I.D. No. 204918)  
Morgan, Lewis & Bockius LLP  
2222 Market Street  
Philadelphia, PA 19103-3007  
215.963.5384 (bus)  
215.963.5404 (bus)  
[ken.kulak@morganlewis.com](mailto:ken.kulak@morganlewis.com)  
[brooke.mcglinn@morganlewis.com](mailto:brooke.mcglinn@morganlewis.com)

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

Dated: March 3, 2025

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Metropolitan Edison Co. for Approval : Docket Nos. P-2015-2508942,  
of a Distribution System Improvement Charge : C-2016-2531040

Petition of Pennsylvania Electric Co. for Approval : Docket Nos. P-2015-2508936,  
of a Distribution System Improvement Charge : C-2016-2531060

Petition of Pennsylvania Power Co. for Approval : Docket Nos. P-2015-2508931,  
of a Distribution System Improvement Charge : C-2016-2531054

Petition of West Penn Power Co. for Approval : Docket Nos. P-2015-2508948,  
of a Distribution System Improvement Charge : C-2016-2531019

---

**NOTICE TO PLEAD**

---

**YOU ARE HEREBY NOTIFIED** that pursuant to 52 Pa. Code § 5.103(b), an Answer must be filed within twenty (20) days of the date of service of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company's **Motion to Dismiss Proceedings as Moot**, which is attached to this Notice, unless an earlier date is established.

Respectfully submitted,



Kenneth M. Kulak (Pa. No. 75509)  
Brooke E. McGlinn (Pa. No. 204918)  
Morgan, Lewis & Bockius LLP  
2222 Market Street  
Philadelphia, PA 19103-3007  
215.963.5384 (bus)  
[ken.kulak@morganlewis.com](mailto:ken.kulak@morganlewis.com)  
[brooke.mcglinn@morganlewis.com](mailto:brooke.mcglinn@morganlewis.com)

---

Tori L. Giesler (Pa. No. 207742)  
FirstEnergy Service Company  
2800 Pottsville Pike, P.O. Box 16001  
Reading, PA 19612-6001  
(610) 212-8331 (bus)  
[tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)

Dated: March 3, 2024

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Metropolitan Edison Co. for Approval : Docket Nos. P-2015-2508942,  
of a Distribution System Improvement Charge : C-2016-2531040

Petition of Pennsylvania Electric Co. for Approval : Docket Nos. P-2015-2508936,  
of a Distribution System Improvement Charge : C-2016-2531060

Petition of Pennsylvania Power Co. for Approval : Docket Nos. P-2015-2508931,  
of a Distribution System Improvement Charge : C-2016-2531054

Petition of West Penn Power Co. for Approval : Docket Nos. P-2015-2508948,  
of a Distribution System Improvement Charge : C-2016-2531019

---

**MOTION TO DISMISS PROCEEDINGS AS MOOT**

---

Pursuant to 52 Pa. Code § 5.103, 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”)<sup>1</sup> move to dismiss the above-captioned proceedings as moot.

These proceedings relate to the July 21, 2021 decision of the Supreme Court of Pennsylvania in *McCloskey v. Pennsylvania Public Utility Commission*, 255 A.3d 416 (Pa. 2021) (hereafter, “*McCloskey/FirstEnergy*”), construing Section 1301.1(a) of the Public Utility Code.<sup>2</sup> Under the Court’s interpretation of Section 1301.1(a) in *McCloskey/FirstEnergy*, the formula for calculating quarterly Distribution System Improvement Charge (“DSIC”) updates outlined in the

---

<sup>1</sup> On December 7, 2023, the Commission approved the consolidation of the Companies into a single operating company and are now known as FirstEnergy Pennsylvania Electric Company.

<sup>2</sup> 66 Pa.C.S. § 1301.1. Hereafter, all references to a “Section” are to sections of the Pennsylvania Public Utility Code (“Code”), 66 Pa.C.S. §§ 101 et seq., unless stated or the context indicates otherwise.

Model Tariff adopted by the Pennsylvania Public Utility Commission (“PUC” or the “Commission”) in its original DSIC Implementation Order<sup>3</sup> required revision.

As explained below, the Supplemental Implementation Order, unanimously approved by the PUC in a statewide proceeding at Docket No. M-2012-2293611 on October 27, 2022 (“*Supplemental Implementation Order*”), adopted revisions to the Model Tariff after *McCloskey/FirstEnergy*. Each of the Companies subsequently filed tariff changes consistent with the revised Model Tariff in separate dockets, and those tariff changes were approved by the Commission. The Office of Consumer Advocate (the “OCA”) filed certificates of satisfaction of its Formal Complaints in these proceedings, and the OCA and all other parties to this proceeding – the Office of Small Business Advocate (“the OSBA”), the Met-Ed Industrial Users Group, Penelec Industrial Coalition, the Penn Power Users Group, and The Pennsylvania State University (collectively, the “Parties”) – have no objection to this Motion. Accordingly, the Company-specific remand proceedings in these dockets are now moot and should be dismissed.

## I. BACKGROUND

The proceedings in each of these dockets were initiated after the Commission’s approval of each Company’s Long-Term Improvement Infrastructure Plans (“LTIIIPs”) on February 11, 2016 at Docket Nos. P-2015-2508942 (Met-Ed), P-2015-2508936 (Penelec), P-2015-2508931 (Penn Power), and P-2015-2508948 (West Penn). On February 16, 2016, the Companies petitioned the Commission to approve tariff riders (“DSIC Riders”) incorporating the terms of the Model Tariff to support each LTIIIP. The OCA, the OSBA, and a group of industrial customers participated in the ensuing proceedings. On June 9, 2016, the Commission entered

---

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

orders finding that the Companies' DSIC Riders conformed to the terms of the existing Model Tariff and approving the DSIC Riders.<sup>4</sup> Three days after entry of the DSIC Approval Orders, Act 40 of 2016 ("Act 40") added Section 1301.1 to the Code.

**The OCA's Subsequent Challenges to the DSIC Riders.** On April 28, 2016, the Companies filed proposed base rate increases pursuant to Section 1308(d).<sup>5</sup> After Act 40 was enacted, the OCA submitted testimony in the base rate cases contending that Section 1301.1(a) required the PUC to revise the DSIC Riders to recognize the tax-related terms that the Commission declined to adopt in the prior proceedings. The Companies submitted testimony opposing that change, and the issues were extensively briefed.

On January 19, 2017, the Commission entered an Opinion and Order concluding the base-rate aspect of the proceeding by approving a settlement among the parties.<sup>6</sup> In the same order, the Commission referred issues concerning the impact, if any, of Act 40 on the previously approved DSIC Riders to these dockets in which the DSIC Approval Orders had been entered. In its Opinion and Order entered April 19, 2018 ("April 2018 Order"), the PUC rejected the OCA's proposals to add elements to the DSIC formula for accumulated deferred income taxes and state tax depreciation deductions<sup>7</sup> because it found that Act 40 did not change the DSIC-specific Code sections that delineated the formula for calculating the DSIC.

---

<sup>4</sup> PUC approval was subject to consideration of peripheral implementation issues that were referred to the Office of Administrative Law Judge and subsequently resolved by settlement. *See Petitions of Metropolitan Edison Co., Pennsylvania Elec. Co., Pennsylvania Power Co. and West Penn Power Co, for Approval of a Distribution Sys. Improvement Charge*, Docket Nos. P-2015-2508942 et al. consolidated with *Office of Consumer Advocate v. Metropolitan Edison Co., Pennsylvania Elec. Co. Pennsylvania Power Co. and West Penn Power Co.*, Docket Nos. C-2016-2531040 et al. (Opinions and Orders entered June 9, 2016) ("DSIC Approval Orders").

<sup>5</sup> The Companies' rate increase filings were consolidated at PUC Docket Nos. R-2016-2537349 et al.

<sup>6</sup> *Pa. P.U.C. v. Metropolitan Edison Co.*, Docket Nos. R-2016-2537349, et al., 2017 WL 395349, at \*23-25 (Jan. 19, 2017).

<sup>7</sup> April 2018 Order, pp. 25-29.

**Appeals of the April 2018 Order and Subsequent Remand to the Commission.** The OCA appealed the April 2018 Order to the Commonwealth Court. In an Opinion and Order entered July 11, 2019, the Commonwealth Court reversed the April 2018 Order based on its finding that Section 1301.1 applied to the DSIC and should be construed to revise the instructions for calculating the DSIC set forth in Sections 1351 and 1357-58 of the Code.<sup>8</sup> The Companies and the PUC each filed petitions seeking the Pennsylvania Supreme Court’s review of the Commonwealth Court’s Opinion, which were granted. After briefing and oral argument, the Court, by a 5-2 decision, affirmed the Commonwealth Court’s Opinion and remanded the cases to the Commission “for the purpose of requiring [the 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.”

**The Remand Proceedings.** After the Pennsylvania Supreme Court issued its opinion and remand order, the Commission determined that a generic proceeding was the appropriate vehicle to address implementation of DSIC calculations in accordance with Section 1301.1(a) following the Companies’ Petition for Interlocutory Review seeking such relief. To that end, by Secretarial Letter issued April 22, 2022 at Docket No. M-2012-2293611 (“April 2022 Secretarial Letter”), the PUC solicited comments on the changes to the Model Tariff and, by extension, to the tariffs of utilities that employ a DSIC as may be required to comply with *McCloskey/FirstEnergy*.<sup>9</sup> As explained in the Secretarial Letter (p. 3), the principal changes to the DSIC formula set forth in the Model Tariff involved adding variables to the DSIC calculation to capture the effects of book-tax timing differences generated by utilities’ use of accelerated

---

<sup>8</sup> See *McCloskey v. Pa. P.U.C.*, 219 A.3d 1216, 1225 (Pa. Commw. Ct. 2019).

<sup>9</sup> April 2022 Secretarial Letter, p. 3.

forms of tax depreciation deductions. On October 27, 2022, the Commission issued the *Supplemental Information Order*, which incorporated a new model tariff.<sup>10</sup>

## **II. THESE PROCEEDINGS ARE MOOT BECAUSE THE COMPANIES HAVE COMPLIED WITH THE SUPPLEMENTAL IMPLEMENTATION ORDER**

In accordance with the *Supplemental Implementation Order* (p. 2), on December 1, 2022, the Companies filed revised DSIC Riders, which were approved by Secretarial Letter for each Company at Docket Nos. M-2022-3037012 (Met-Ed), M-2022-3037013 (Penelec), M-2022-3037015 (Penn Power) and M-2022-3037016 (West Penn). The Companies' revised DSIC Riders became effective January 1, 2023.

In its status update to Administrative Law Judge Mark A. Hoyer ("ALJ") on May 8, 2023, the OCA asked for the opportunity to propound discovery and conduct further proceedings regarding inclusion of additional federal income tax deductions in DSIC calculations.<sup>11</sup> As discussed at a telephonic conference held on August 8, 2023, the ALJ permitted discovery for a period of 90 days, except on issues related to refunds. Following informal discussions regarding the discovery, the OCA served written interrogatories on the Companies on September 7, 2023. The Companies provided responses on September 27, 2023. The OCA served additional written interrogatories on October 10, 2023, and the Companies provided responses on November 1, 2023. The discovery period closed on November 6, 2023.

On January 10, 2025, the OCA filed certifications pursuant to the Commission's regulations at 52 Pa. Code § 5.24 that its Formal Complaints in these proceedings are satisfied.

---

<sup>10</sup> See *Petition of the Pennsylvania Office of Consumer Advocate for Clarification and Reconsideration of the Pennsylvania Public Utility Commission's Supplemental Implementation Order entered October 27, 2022*, Docket No. M-2012-2293611 (Opinion and Order entered Mar. 2, 2023).

<sup>11</sup> See E-mail of Erin L. Gannon, Esq., Senior Assistant Consumer Advocate, Office of the Consumer Advocate, to Administrative Law Judge Mark A. Hoyer dated May 8, 2023.

As such, the Company-specific remand in each of the above-captioned dockets is now moot, and the Companies request that these dockets be marked closed. Counsel for the Companies has communicated with counsel for all other parties to these proceedings and no other party has any objection to this request.

### III. CONCLUSION

WHEREFORE, for the reasons stated above, the Companies respectfully request that the Administrative Law Judge and the Commission enter an Order dismissing these proceedings as moot and mark the above-captioned dockets as closed.

Respectfully submitted,



---

Tori L. Giesler (Pa. No. 207742)  
FirstEnergy Service Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, PA 19612-6001  
(610) 212-8331 (bus)  
[tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)

Kenneth M. Kulak (Pa. No. 75509)  
Brooke E. McGlinn (Pa. No. 204918)  
Morgan, Lewis & Bockius LLP  
2222 Market Street  
Philadelphia, PA 19103-2921  
215.963.5384 (bus)  
[ken.kulak@morganlewis.com](mailto:ken.kulak@morganlewis.com)  
[brooke.mcglinn@morganlewis.com](mailto:brooke.mcglinn@morganlewis.com)

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

Dated: March 3, 2025