

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

INITIAL DECISION

Before
Mark A. Hoyer
Deputy Chief Administrative Law Judge

INTRODUCTION

This decision grants the unopposed motion to dismiss these proceedings as moot.

HISTORY OF THE PROCEEDINGS

On June 9, 2016, the Pennsylvania Public Utility Commission (Commission) entered Orders separately 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).¹ In the Orders, the Commission determined that the petitions comply with the requirements of Act 11 of 2012 (Act 11) and the Commission's Final Implementation Order implementing Act 11. *Implementation of Act 11 of 2012*, Docket No. M-2012-2293611 (Order entered Aug. 2, 2012). The Commission found the petitions to be consistent with applicable law and Commission policy and allowed the tariffs to go into effect on July 1, 2016. The Commission, however, also referred the matters to the Office of Administrative Law Judge (OALJ) for hearing and preparation of a recommended decision regarding various issues raised in response to the petitions.

The ensuing consolidated proceeding culminated in an Opinion of the Pennsylvania Supreme Court dated July 21, 2021. In that 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." Subsequently, the matters were referred to the OALJ.

On January 31, 2022, the companies filed a Petition for Interlocutory Review and Answer to Material Question (Petition) in this remand proceeding.

¹ On December 7, 2023, the Commission approved the consolidation of the aforementioned companies into a single operating company and they are now known as FirstEnergy Pennsylvania Electric Company. Met-Ed, Penelec, West Penn and Penn Power will collectively be referred to as FirstEnergy in this decision.

On February 24, 2022, the Commission entered an Opinion and Order addressing the Petition. The Commission found that the companies established that some harm would result to other utilities and stakeholders that would not be reparable through the normal avenue of relief available within the context of this remand proceeding. The Commission directed the establishment of a generic proceeding to address calculation revisions to the Model Tariff and any issues resulting from the required revisions within the existing generic proceeding at Docket No. M-2012-2293611. The Commission denied the companies' request to refer this pending remand proceeding to the generic proceeding. Instead, the Commission ordered this remand proceeding to be held in abeyance pending the outcome of the issues resolved in the generic proceeding.

On October 27, 2022, the Commission entered an order in *Distribution System Improvement Charge Implementation Order* to address all issues pertaining to the distribution system charge calculations required in the Pennsylvania Supreme Court's decision in *McCloskey v. Pa. Pub. Util. Comm'n*, 255 A.3d 416 (Pa. 2021), Docket No. M-2012-2293611 (*Supplemental Implementation Order*). The *Supplemental Implementation Order* revised the Model Tariff. Each of the companies filed a *pro forma* tariff supplement (DSIC Rider) using the revised Model Tariff attached to the *Supplemental Implementation Order* as a guide. These DSIC Riders were approved by Secretarial Letter for each company at Docket Nos. M-2022-3037012 (Met-Ed), M-2022-3037013 (Penelec), M-20223037015 (Penn Power) and M-2022-3037016 (West Penn). The companies' revised DSIC Riders became effective January 1, 2023.

Meanwhile, on November 10, 2022, the Office of Consumer Advocate (OCA) filed a Petition for Clarification and Reconsideration of October 22, 2022 Order (the *Supplemental Implementation Order*).

On March 2, 2023, the Commission entered an Opinion and Order denying OCA's Petition for Clarification and Reconsideration of October 22, 2022 Order at

Docket No. M-2012-2293611. Since the Commission previously denied the companies' request to refer this pending remand proceeding to the generic proceeding at M-2012-2293611, the March 2, 2023 Opinion and Order did not address this remand proceeding.

The undersigned e-mailed the parties subsequent to the entry of the Commission's March 2, 2023 Opinion and Order. Based upon the informal responses received, the undersigned directed the parties to file status reports on or before June 16, 2023. Both FirstEnergy and OCA filed status reports detailing the lengthy procedural history and their respective arguments concerning the current status of this remand proceeding.

A telephone conference convened as scheduled on August 8, 2023 to discuss OCA's request to commence discovery and the status of this proceeding.

The undersigned ordered at the August 8, 2023 conference that discovery be permitted for a period of 90 days, except on issues related to refunds, and that the parties shall file a status report with the Commission's Secretary's Bureau within 60 days. The undersigned also ordered that the modifications to the discovery rules ordered previously in this proceeding are rescinded.

On December 12, 2023, counsel for FirstEnergy filed a Joint Status Report. The Joint Status Report was submitted on behalf of FirstEnergy and OCA. The Joint Status Report provided as follows:

The OCA and FirstEnergy have conferred further regarding the status of this proceeding in light of the Supplemental Implementation Order entered in Docket No. M-2012-2293611 on October 22, 2022, and the discovery produced by FirstEnergy, and agree that no further action is required because the Commission has disposed of the matter remanded by the Pennsylvania Supreme Court on a

generic basis. As such, the OCA and FirstEnergy now jointly request that these dockets be marked closed. Counsel for FirstEnergy and the OCA have communicated with counsel for all other parties to these proceedings and no other party has any objection to this request.

Joint Status Report, pp. 2-3.

No motion or other pleading was filed at that time seeking dismissal of these petitions as moot or seeking any other appropriate relief.

On January 10, 2025, counsel for OCA, Darryl A. Lawrence, Esquire, filed a certificate of satisfaction stating that the formal complaints OCA filed at Docket No. C-2016-2531040 (Metropolitan Edison Company), Docket No. C-2016-2531060 (Pennsylvania Electric Company), Docket No. C-2016-2531054 (Pennsylvania Power Company) and Docket No. C-2016-2531019 (West Penn Power Company) have been satisfied pursuant to 52 Pa.Code § 5.24.

On January 16, 2025, the undersigned issued a second interim order requiring Petitioners to file an appropriate motion or pleading seeking relief from the Commission by January 31, 2025 or, alternatively, that the parties to this proceeding confer and agree to three potential dates for a status conference to discuss the disposition of this proceeding and provide these dates to the undersigned by January 31, 2025.

On January 21, 2025, Steven C. Gray, Esquire, filed a Notice of Appearance on behalf of the Office of Small Business Advocate (OSBA). Also on January 21, 2025, Attorney Gray filed a Withdrawal of Appearance withdrawing the appearance of Sharon E. Webb, Esquire, on behalf of the OSBA.

On February 4, 2025, a Further Telephonic Status Conference Notice was served scheduling a conference for February 19, 2025.

On February 6, 2025, Kurt J. Boehm, Esquire, filed a Notice of Withdrawal of AK Steel Corporation. No objections to the withdrawal were filed.

The status conference was held as scheduled on February 19, 2025.

On March 3, 2025, FirstEnergy filed and served a Motion to Dismiss Proceedings as Moot with a Notice to Plead attached thereto. No responsive pleadings were filed.

The record is hereby closed.

DISCUSSION

The mootness doctrine requires that an actual controversy exist at all stages of review, not merely when the complaint is filed. *In re Gross*, 382 A.2d 116 (Pa. 1978), citing G. Gunther Constitutional Law 1578 (9th ed. 1975). An issue can become moot due to an intervening change in the applicable law. *Conti v. Pa. Dep't of Labor & Industry*, 175 A.2d 56 (1961). Exceptions to the mootness doctrine are where an alleged harm is capable of repetition, yet evading review. *In re Seegrift*, 539 A.2d 799 (Pa. 1988); or where a question of great public importance is presented, *In re Gross, supra*.

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 on May 8, 2023, OCA asked for the opportunity to propound discovery and conduct further proceedings regarding inclusion of additional federal income tax deductions in DSIC calculations. As discussed at a telephonic conference held on August 8, 2023, the undersigned permitted discovery for a period of 90 days, except on issues related to refunds. Following informal discussions regarding discovery, OCA served written interrogatories on the companies on September 7, 2023. The companies provided responses on September 27, 2023. 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 December 12, 2023, counsel for FirstEnergy filed a Joint Status Report. The Joint Status Report was submitted on behalf of FirstEnergy and OCA. The Joint Status Report provided as follows:

The OCA and FirstEnergy have conferred further regarding the status of this proceeding in light of the Supplemental Implementation Order entered in Docket No. M-2012-2293611 on October 22, 2022, and the discovery produced by FirstEnergy, and agree that no further action is required because the Commission has disposed of the matter remanded by the Pennsylvania Supreme Court on a generic basis. As such, the OCA and FirstEnergy now jointly request that these dockets be marked closed. Counsel for FirstEnergy and the OCA have communicated with counsel for all other parties to these proceedings and no other party has any objection to this request.

Joint Status Report, pp. 2-3.

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

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

There are no issues to be addressed in this proceeding and no party objects to the instant motion. Accordingly, the motion to dismiss this proceeding as moot is granted and the dockets are ordered to be closed below.

CONCLUSIONS OF LAW

1. The mootness doctrine requires that an actual controversy exist at all stages of review, not merely when the complaint is filed. *In re Gross*, 382 A.2d 116 (Pa. 1978), citing G. Gunther Constitutional Law 1578 (9th ed. 1975).

2. There are no issues to be addressed in this proceeding and this proceeding is moot.

ORDER

THEREFORE,

IT IS ORDERED:

1. That the Motion to Dismiss Proceedings as Moot filed by FirstEnergy Pennsylvania Electric Company at Docket Nos. P-2015-2508942, P-2015-250936, P-2015-250948, and P-2015-250931 is hereby granted.

2. That the proceedings at Docket Nos. P-2015-2508942, P-2015-250936, P-2015-250948, and P-2015-250931 are hereby dismissed as moot.

3. That the Formal Complaints filed by the Office of Consumer Advocate at Docket Nos. C-2016-2531040, C-2016-2531019, C-2016-2531060, and C-2016-2531054 are satisfied.

4. That the Secretary mark Docket Nos. P-2015-2508942, P-2015-250936, P-2015-250948, P-2015-250931, C-2016-2531040, C-2016-2531019, C-2016-2531060, and C-2016-2531054 closed.

Date: March 26, 2026

_____/s/
Mark A. Hoyer
Deputy Chief Administrative Law Judge