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May 2, 2018

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

VIA ELECTRONIC FILING

RE: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of Their Default Service Programs; Docket Nos. P-2017-2637855, P-2017-2637857, P-2017-2637858, P-2017-2637866

Dear Secretary Chiavetta:

Enclosed for electronic filing with the Pennsylvania Public Utility Commission, please find the Main Brief of the Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA") and the West Penn Power Industrial Intervenors ("WPPII") (collectively, the "Industrials") in the above-captioned docket.

We have served copies of this filing in accordance with the attached Certificate of Service. If you have any questions regarding this electronic filing, please contact the undersigned.

Sincerely,

McNEES WALLACE & NURICK LLC

By 
Alessandra L. Hylander

Counsel to the Met-Ed Industrial Users Group,
the Penelec Industrial Customer Alliance and
the West Penn Power Industrial Intervenors

Enclosure

c: Administrative Law Judge Mary D. Long (via e-mail and First-Class Mail)
Stephen Jakob, Bureau of Technical Utility Service (via e-mail)
Certificate of Service

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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Dated this 2nd day of May, 2018, at Harrisburg, Pennsylvania

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition of Metropolitan Edison Company,	:	
Pennsylvania Electric Company, Pennsylvania	:	Docket Nos. P-2017-2637855
Power Company, and West Penn Power	:	P-2017-2637857
Company for Approval of	:	P-2017-2637858
Their Default Service Programs	:	P-2017-2637866
	:	
	:	
	:	

**MAIN BRIEF OF THE MET-ED INDUSTRIAL USERS GROUP,
THE PENELEC INDUSTRIAL CUSTOMER ALLIANCE, AND
THE WEST PENN POWER INDUSTRIAL INTERVENORS**

Airgas USA, LLC
Appvion, Inc.
Carpenter Technology Corporation
East Penn Manufacturing Company
Electralloy, a G.O. Carlson, Inc., Co.
Ellwood National Steel
Erie Forge & Steel, Inc.
Ervin Industries
Glen-Gery Corporation
Hanover Foods Corporation
Indiana Regional Medical Center
Knouse Foods Cooperative, Inc.
Latrobe Specialty Metals
Lebanon Valley College

Lehigh Specialty Melting (Whemco)
Magnesita Refractories Co.
MERSEN USA St Marys-PA Corp.
Pittsburgh Glass Works
Royal Green LLC
Sheetz, Inc.
Standard Steel
Sweet Street Desserts, Inc.
Team Ten, LLC - American Eagle Paper Mills
The Plastek Group
The Proctor & Gamble Paper Products Co.
U.S. Silica Company
Wegmans Food Markets, Inc.

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Dated: May 2, 2018

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I. INTRODUCTION

On December 11, 2017,¹ the Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power"), and West Penn Power Company ("West Penn") (collectively, "Companies") petitioned the Pennsylvania Public Utility Commission ("PUC" or "Commission") for approval of a proposed plan for the terms and conditions under which the Companies would supply default service from June 1, 2019, through May 31, 2023 ("DSP V").² As discussed further in this Main Brief, the Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), and the West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrials") respectfully request that the Commission adopt the Joint Stipulation #1, entered into the record on April 10, 2018,³ and deny the Companies' request to implement a Bypassable Retail Market Enhancement Rate Mechanism ("PTC Adder").

II. PROCEDURAL HISTORY

In response to the Companies' request for approval of its proposed DSP V, on December 22, 2017, the Industrials filed a Joint Petition to Intervene in the above-referenced proceeding. In addition to the Industrials, the following parties intervened in this proceeding: the PUC's Bureau

¹ Although the Companies delivered the DSP V to the Commission on December 4, 2017, a copy of the filing was not posted on the docket for this proceeding until December 11, 2017. That copy of the filing was dated December 11, 2017.

² *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Docket Nos. P-2017-2637855, et al. (Dec. 4, 2017) (hereinafter referred to as "DSP V Joint Petition").

³ As discussed further in footnote 5 herein, the issue of responsibility for Network Integration Transmission Service ("NITS") cost recovery was not settled until May 1, 2018. Accordingly, NITS were not included in the list of resolved issues provided to ALJ Long in Joint Stipulation #1 at the hearing on April 10, 2018. Based upon conversations with other parties, the Industrials understand that the Joint Petition for Partial Settlement (which is to be filed on May 15, 2018) will include not only NITS, but also the other resolved issues set forth in Joint Stipulation #1.

of Investigation & Enforcement ("I&E"); the Office of Consumer Advocate ("OCA"); the Office of Small Business Advocate ("OSBA"); Calpine Energy Solutions, LLC; the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"); Constellation NewEnergy, Inc. and Exelon Generation Company, LLC (collectively, "Exelon"); NextEra Energy Marketing, LLC ("NextEra"); Direct Energy ("Direct"); the Pennsylvania State University ("PSU"); the Retail Energy Supply Association ("RESA"); and Respond Power, LLC ("Respond Power"). Also, Mr. Kenneth C. Springirth, a ratepayer, filed a formal Complaint at Docket No. C-2018-2641907 regarding the Companies' proposed DSP V. A Prehearing Conference was held on January 17, 2018, before Administrative Law Judge ("ALJ") Mary D. Long to grant intervention requests, establish a litigation schedule, and set forth rules for discovery, testimony, and briefs.

The Companies previously served their Direct Testimony on December 11, 2017. Accordingly, pursuant to the procedural schedule, on February 22, 2017, the following parties served Direct Testimony: CAUSE-PA; Exelon; I&E; Respond Power; RESA; OCA; and OSBA.⁴ On March 22, 2018, the Industrials served Rebuttal Testimony and received Rebuttal Testimony from the following parties: the Companies; I&E; CAUSE-PA; OSBA; OCA; RESA; PSU; and Calpine. On April 4, 2018, the Industrials received Surrebuttal Testimony from the following parties: the Companies; CAUSE-PA; I&E; OSBA; OCA; PSU; and RESA.

On April 10, 2018, the parties and ALJ Long convened at the PUC to conduct the evidentiary hearing in this matter. Because all parties waived their rights to cross examine witnesses, the evidentiary hearing was used to: (i) provide rejoinder testimony; (ii) enter preserved testimony and various stipulations into the record; and (iii) discuss other administrative

⁴ The Industrials did not serve Direct Testimony or Surrebuttal Testimony in this proceeding.

matters relating to the filing of briefs, reply briefs, and any statements in support of stipulations. In addition, although complete settlement could not be achieved in this proceeding, various parties were able to address and resolve specific issues of concern, including the following issues: (i) NITS charges; (ii) Non-Commodity Products; (iii) FERC 494 Settlement; (iv) Net Metering; and (v) Time-of-Use service.⁵ Pursuant to the procedural schedule set forth in this proceeding, the Industrials are filing this Main Brief to address those issues of concern for which resolution was not achieved among the parties.⁶

Through their DSP V Joint Petition and supporting documents, the Companies have proposed to implement a PTC Adder in order to incentivize residential customers receiving default service to instead "shop" for their electricity supply from a competitive electric generation supplier ("EGS"). Although the Companies are not proposing to charge the PTC Adder to large commercial and industrial ("Large C&I") customers,⁷ the Industrials are concerned about incorporating the adder into the DSP V from a policy perspective, including any implications that the adder could be broadened at some point to include Large C&I customers. As described in Section V, *infra*, the proposed PTC Adder is unjust and unreasonable because it would result in an artificially inflated default service price (also referred to as the Price to Compare or "PTC") due to the fact that it

⁵ Please note that the NITS issue was not settled until May 1, 2018, and, accordingly, NITS are not included in the list of resolved issues provided to ALJ Long in Joint Stipulation #1 at the April 10, 2018 hearing. Based upon conversations with other parties, the Industrials understand that the NITS issue will be added to Joint Petition for Partial Settlement that is to be filed on May 15, 2018. The Joint Petition for Partial Settlement will thus include not only NITS, but also the other resolved issues set forth in Joint Stipulation #1.

⁶ In e-mail correspondence dated May 1, 2018, ALJ Long granted a request to extend the deadline for filing Main Briefs to May 2, 2018.

⁷ The Companies do not propose to impose the PTC Adder on Large C&I customers. As correctly noted by the Companies, Large C&I customers generally shop in larger numbers and are more aware of their generation purchasing options. Therefore, this class of customers does not require additional incentives to shop for electricity. DSP V Joint Petition, p. 16; *see also* Met-Ed/Penelec/Penn Power/West Penn Statement No. 1, p. 25.

would increase default service prices without any cost-based justification. Furthermore, the Companies err in their rationale that the PTC Adder would incentivize residential default service customers to shop, as the Companies ignore the fact that some customers who receive default service may not be doing so by choice. Moreover, the proposed PTC adder would also hinder the ability of natural market forces to create a truly competitive market for generation. Accordingly, the Commission must reject the proposed PTC Adder.

III. DEFAULT SERVICE PLAN PORTFOLIO AND TERM

A. Residential Portfolio

The Industrials take no position on this issue at this time.

B. Commercial Portfolio

The Industrials take no position on this issue at this time.

C. Industrial Portfolio

The Industrials take no position on this issue at this time.

D. Procurement Classes

The Industrials take no position on this issue at this time.

E. Default Service Plan Term

The Industrials take no position on this issue at this time.

IV. PURCHASE OF RECEIVABLES CLAWBACK PROVISION

The Industrials take no position on this issue at this time.

V. BYPASSABLE RETAIL MARKET ENHANCEMENT RATE MECHANISM ("PTC ADDER")

A. The Companies Bear the Burden of Proving that their Proposed PTC Adder is Appropriate.

Section 332(a) of the Public Utility Code requires the following with regard to the burden of proof: "[e]xcept as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof." 66 Pa. C.S. § 332(a). In addition, under Section 315 of the Public Utility Code, "[i]n any proceeding . . . involving any proposed or existing rate of any public utility . . . the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility." *Id.* at § 315(a). Pursuant to Section 332(a) of the Public Utility Code, the "party seeking a rule or order from the Commission has the burden of proof" in a proceeding. In bearing that burden, that proponent must establish a case before an administrative tribunal using a preponderance of evidence as the requisite degree of proof. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The standard of preponderance of the evidence is defined as the greater weight of the evidence, in view of all of the facts and circumstances of the case. *See Selin Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 n.1 (Pa. 1950). Thus, as the proponents of implementation of a PTC Adder for purposes of DSP V, the Companies bear the burden of proving that the proposed PTC adder is just and reasonable. As explained further below, the Companies fail to meet this burden.

The PTC Adder is a surcharge that would be added to the Companies' default service rate "with the purpose of incentivizing non-shopping customers to participate in the retail market." Met-Ed/Penelec/Penn Power/West Penn Statement No. 1, at p. 25. The PTC Adder is based on the \$30 Customer Referral Program ("CRP") Charge to EGSs for each customer enrolled by an

EGS under the CRP. *Id.* That \$30 charge is then divided by an assumed EGS customer retention period of 24 months, resulting in a charge of \$1.25 per residential default service customer per month. *Id.* at pp. 25-26. The Companies then propose to divide that \$1.25 per month charge by the average residential usage for the four Companies to arrive at a per kWh charge which will be a component of the PTC Adder rate calculation. *Id.* at 26. That charge is proposed to remain constant during the four-year DSP V term. *Id.*

The Companies propose to only apply the PTC Adder to residential default service customers as those customers allegedly have the lowest level of customer shopping. DSP V Joint Petition, p. 16; *see also* Met-Ed/Penelec/Penn Power/West Penn Statement No. 1, p. 25 and Met-Ed/Penelec/Penn Power/West Penn Statement No. 1-R, p. 25. The Companies intend to return 95% of the revenues collected via the PTC Adder to all customers – shopping and non-shopping – via the Companies' non-bypassable Default Service Support Riders ("DSSRs"). Met-Ed/Penelec/Penn Power/West Penn Statement No. 1, p. 27. The remaining 5% of the revenues will be retained by the Companies in order to recover expenses associated with the PTC Adder. *Id.* Because the Companies have failed to provide any evidence that the PTC Adder is just, reasonable, and compliant with PUC rules and regulations, the Companies' proposal must be rejected. *See*, Section II, *supra*.

B. The Proposed PTC Adder Is Unjust, Unreasonable, and, as Such, Should Not Be Adopted.

Pursuant to the provisions of the Competition Act, an Electric Distribution Company ("EDC") must act as the provider of last resort ("POLR") (*i.e.*, the default service provider), unless and until the PUC approves another default service provider. 66 Pa. C.S. § 2802(16). As the statutorily-mandated default service provider, an EDC "shall have the right to recover on a full and

current basis, pursuant to a reconcilable automatic adjustment clause under section 1307 . . . all reasonable costs incurred under this section and a commission-approved competitive procurement plan." *Id.* § 2807(e)(3.9). Pursuant to Section 1307, the Commission will not approve proposed rates collected through automatic adjustment mechanisms if they are "unjust or unreasonable." *Id.* § 1307(a). As discussed more fully below, the proposed PTC Adder is unjust and unreasonable. The PTC Adder would create an artificially inflated pricing in the electricity marketplace and would unjustly and unreasonably apply to and penalize customers who typically shop for their energy supply but may be dropped to default service if their energy supply contracts with their EGSs unexpectedly terminate.⁸ Accordingly, the PUC must deny the PTC Adder.

The PUC will not approve a default service cost unless it qualifies as just and reasonable. 66 Pa. C.S. § 1307(a). As proposed by the Companies, the PTC Adder is an inappropriate mechanism for encouraging shopping among residential default service customers. The PTC adder is unjust and unreasonable because it would result in an artificially inflated default service price (the PTC) due to the fact that it would increase default service prices without any cost-based justification. Other parties have noted that FirstEnergy has provided little evidence or analysis that justifies the imposition of the proposed PTC Adder. *See, e.g.*, OSBA Statement No. 1, p. 14. Moreover, the Companies err in their rationale that the PTC Adder would incentivize residential default service customers to shop, as the Companies ignore the fact that some customers who receive default service may not be doing so by choice. For example, a customer may be in transition between EGS contracts or pursuing other competitive options after their EGS exits the

⁸ Aside from the Industrials, several other parties in this proceeding oppose the implementation of this PTC Adder because, among other things, the PTC Adder may increase the cost of electricity supplied to all residential customers as suppliers use the Price-to-Compare ("PTC") as a benchmark to set their prices. *See e.g.*, I&E Statement No. 1, p. 8; OCA Statement No. 1, p. 18, and OCA Statement No. 1, p. 13. Further, parties such as the OSBA share the Industrials' concern that the PTC Adder could be expanded to include the commercial and/or industrial classes. *See, e.g.*, OSBA Statement No. 1, p. 13.

market due to unforeseen circumstances, such as bankruptcy. Similarly, a customer may be taking default service due to an inability to find an EGS willing to serve or because the EGS has summarily returned the customer to default service. *See, e.g.*, OCA Statement No. 1, pp. 16-17 (noting that some customers may be put onto default service by the inability of their EGS to continue providing competitive service). For these customers, the PTC Adder is not only unjust and unreasonable, but it would not contribute to the Companies' stated purpose of facilitating shopping, as these customers would be inappropriately punished for receiving default service through no fault of their own.

Contrary to the intent of the Competition Act, the PTC Adder also interferes with competitive forces in the electric market. *See generally* 66 Pa. C.S. § 2802. Although it is possible that the PTC Adder could contribute to increased shopping activity, an artificially increased PTC could cause EGSs to increase their prices. Because EGSs would be trying to attract default service customers, it is reasonable to assume they would offer a price lower than the PTC, but perhaps not as low as their prices might be without the presence of the PTC Adder. Unlike other mechanisms for encouraging shopping, many of which were evaluated as part of the PUC's Retail Electricity Markets Investigation, the PTC Adder is an unjust and unreasonable means for facilitating the development of the competitive market.

An artificially inflated default service price, created by the PTC Adder, would not only punish default service customers, but also competitive supply customers who are offered higher rates by their EGSs in response to an artificial increase in the PTC. Furthermore, the PTC Adder would fail to address changes in shopping levels for those customers who are receiving default service through no choice of their own. As such, the PTC Adder must be rejected.

C. RESA's Proposed Modification to the Companies' PTC Adder Should Also Be Rejected.

RESA supports the Companies' PTC Adder in concept but proposes to modify its calculation. *See, e.g.*, RESA St. 1, pp. 23-26. The Industrials oppose a PTC Adder for the principles stated above, with or without modification. The PTC Adder is an unjust and unreasonable mechanism through which to incentivize shopping and, as such, should be rejected by the Commission.

D. Conclusion.

The Public Utility Code provides the PUC with jurisdiction to review the propriety of an EDC's request to collect costs incurred pursuant to an EDC's default service plan. Even if the Companies' argument that a PTC Adder would benefit the retail market, both legal and factual review indicates that the PTC Adder cannot be approved on that basis. The imposition of a PTC Adder to facilitate shopping is unjust and unreasonable. Assuming that the true purpose of the PTC adder is to encourage customers to shop, the Companies' proposal to implement the PTC Adder would prompt an unjust and unreasonable adder onto default service rates, which would inappropriately and artificially increase the Companies' PTC. As a result, the PTC Adder would be detrimental to both shopping and non-shopping customers, while also hindering the ability of natural market forces to create a truly competitive market for generation. As such, the PTC must be rejected.

VI. NON-COMMODITY BILLING

The Industrials take no position on this issue at this time.

VII. CUSTOMER REFERRAL PROGRAM

The Industrials take no position on this issue at this time.

VIII. CUSTOMER ASSISTANCE PROGRAM SHOPPING

The Industrials take no position on this issue at this time.

IX. NON-MARKET BASED CHARGES

As of May 1, 2018, the issue of Network Integration Transmission Service ("NITS") cost recovery has been added to the list of resolved issues that will be addressed in the Joint Petition for Partial Settlement (which is to be filed on May 15, 2018). Under the terms of the pending Joint Petition for Settlement, NITS cost collection will continue pursuant to the status quo (*i.e.*, EGSs and default suppliers will remain responsible for NITS cost collection). Therefore, NITS issues shall not be briefed by any of the parties in this proceeding.

X. TIME-OF-USE RATE

The Industrials take no position on this issue at this time.

XI. CONCLUSION

WHEREFORE, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, and the West Penn Power Industrial Intervenors respectfully request that the Pennsylvania Public Utility Commission approve without modification the Joint Stipulation #1⁹ and reject the Companies' proposal to implement a PTC Adder.

Respectfully submitted,

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Dated: May 2, 2018

⁹ Per footnotes 3 and 5 herein, the NITS issue will also be added to the list of resolved issues and addressed in the parties' forthcoming Joint Petition for Partial Settlement.

APPENDIX A

PROPOSED FINDINGS OF FACT

1. The Companies propose applying a Bypassable Retail Market Enhancement Rate Mechanism ("PTC Adder") to residential default service customers in order to purportedly incentivize those customers "shop" for their electricity supply from a competitive electric generation supplier ("EGS"). DSP V Joint Petition, p. 16; *see also, e.g.*, Met-Ed/Penelec/Penn Power/West Penn Statement No. 1, pp. 24-27.
2. The Companies do not propose to impose the PTC Adder on large commercial and industrial ("Large C&I") customers. As correctly noted by the Companies, Large C&I customers generally shop in larger numbers and are more aware of their generation purchasing options. Therefore, this class of customers does not require additional incentives to shop for electricity. DSP V Joint Petition, p. 16; *see also* Met-Ed/Penelec/Penn Power/West Penn Statement No. 1, p. 25.
3. The PTC Adder is based on the \$30 Customer Referral Program ("CRP") Charge to EGSs for each customer enrolled by an EGS under the CRP. Met-Ed/Penelec/Penn Power/West Penn Statement No. 1, p. 25. That \$30 charge is then divided by an assumed EGS customer retention period of 24 months, resulting in a charge of \$1.25 per residential default service customer per month. *Id.* at pp. 25-26. The Companies then propose to divide that \$1.25 per month charge by the average residential usage for the four Companies to arrive at a per kWh charge which will be a component of the PTC Adder rate calculation. *Id.* at 26. That charge is proposed to remain constant during the four-year DSP V term. *Id.*
4. The Companies intend to return 95% of the revenues collected via the PTC Adder to all customers – shopping and non-shopping – via the Companies' non-bypassable Default Service Support Riders ("DSSRs"). Met-Ed/Penelec/Penn Power/West Penn Statement No. 1 at p. 27. The remaining 5% of the revenues will be retained by the Companies in order to recover expenses associated with the PTC Adder. *Id.*
5. Customers may not be receiving default service by choice; an EGS bankruptcy, transition between EGSs, or a customer's inability to find an EGS willing to serve it could cause a customer to return to default service. *See, e.g.*, OCA Statement No. 1, pp. 16-17 (noting that some customers may be put onto default service by the inability of their EGS to continue providing competitive service).

APPENDIX B

PROPOSED CONCLUSION OF LAW

1. The Bypassable Retail Market Enhancement Rate Mechanism ("PTC Adder") is unjust and unreasonable because it would result in an artificially inflated default service price (due to the fact that it would increase that default service price without cost-based justification), ignores the fact that some customers who receive default service may not be doing so by choice, and inappropriately interferes with competitive forces in the electric market. 66 Pa. C.S. §§ 1307(a), 2802.

APPENDIX C

PROPOSED ORDERING PARAGRAPH

1. The Companies' request to impose a Bypassable Retail Market Enhancement Mechanism (*i.e.*, the "PTC Adder") is denied.