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May 31, 2012

**VIA FEDEX OVERNIGHT**

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

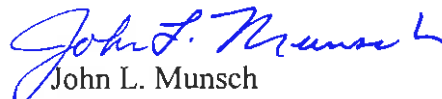
**Re: Implementation of Act 11 of 2012;  
Docket No. M-2012-2293611**

Dear Secretary Chiavetta:

Enclosed please find an original and three copies of Comments of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company concerning the Commission's Tentative Implementation Order entered May 11, 2012 for the implementation of Pennsylvania's Act 11 of 2012. Electronic copies of the Comments are provided to Commission staff and Act 11 Resource Account as requested in the Tentative Implementation Order.

This submission is filed by express delivery and the filing date is deemed to be today.

Very truly yours,

  
John L. Munsch  
Attorney

JLM:dml

Enclosures

cc: [ra-Act11@pa.gov](mailto:ra-Act11@pa.gov)  
David Screven  
Louise Fink Smith  
Erin Laudenslager

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Implementation of Act 11 of 2012** : **M-2012-22993611**

**Comments of Metropolitan Edison Company, Pennsylvania Electric Company,  
Pennsylvania Power Company and West Penn Power Company To the Tentative  
Implementation Order Entered May 11, 2012**

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Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (“Companies”) submit Comments to the above-docketed Tentative Implementation Order (“Tentative Order”) entered May 11, 2012, by the Pennsylvania Public Utility Commission. The Tentative Order initiated a period for Comments by interested parties concerning the Commission’s proposed procedures and guidelines to carry out the ratemaking provisions of Act 11.<sup>1</sup> Act 11 provides, among other things, that electric utilities may implement a distribution system improvement charge (“DSIC”) to recover costs to improve or replace certain distribution facilities. The Tentative Order provided that Comments are due May 31, 2012.

The Companies appreciate the opportunity to provide their comments on the Commission’s Tentative Order. The implementation of a DSIC process for electric utilities may be an important change in Pennsylvania ratemaking for electric utilities and should be implemented upon an open process for comment by interested stakeholders.

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<sup>1</sup> Act 11 of 2012 amends Chapters 3, 13 and 33 of Title 66 of the Pennsylvania Consolidated Statutes. In particular Act 11 amends Chapter 13, 66 Pa.C.S §1350 *et seq.* to allow for implementation of a distribution system improvement charge.

**A. The Tentative Order recognizes that utilities that have appropriate infrastructure investment should be eligible for DSIC.**

The Tentative Order states that the Commission expects that a long-term infrastructure plan will allow utilities to maintain an acceleration of infrastructure replacement over historical averages, and that companies that have already increased investment should indicate how the DSIC will maintain or augment such investment. Act 11 does not impose a requirement for any particular level of investment or infrastructure replacement as a prerequisite for seeking to use the ratemaking tools authorized by the Act. The language in the Act that controls the issue is the requirement that a utility submit proof “that demonstrates that a distribution system improvement charge is in the public interest and will facilitate utility compliance” so as to maintain adequate, safe and reliable service as set forth in the current statute, and as set forth in Commission regulations and Orders, and in other federal and state requirements relating to the provision of safe and reliable service. 66 Pa.C.S. § 1353 (b) (2). Act 11 does not provide that a utility may not employ a DSIC unless there is acceleration over some historical investment level. Rather, the language concerning acceleration of infrastructure replacement is contained in Section 1352, outlining the components of a long-term infrastructure improvement plan, not in Section 1353 that outlines the prerequisites for a DSIC. Further, the “acceleration” language in Section 1352 does not provide for a rigid showing of acceleration over a prior period, but only that replacement of aging facilities will be accelerated – meaning more immediate than in the absence of a DSIC.

Some utilities may already be making the optimum level of investment in distribution infrastructure even if not showing an increase over prior levels. A utility in such a position

should not be prohibited from employing a DSIC as such a prohibition may discourage, or at least not encourage, further infrastructure improvement.

**B. The customer notice provisions of the Tentative Order should be revised to be consistent with the Model Tariff.**

Act 11 requires notice to customers regarding the filing and disposition of a DSIC. The Model Tariff provides that customers shall be notified of any changes in the DSIC in their first bill following these changes, and that an explanatory insert shall be included in the first billing. The discussion of customer notice in the Tentative Order is somewhat unclear, stating that there may be a mix of communications. To eliminate any confusion, the Final Order should follow the straightforward language in the Model Tariff: “Customers shall be notified of changes in the DSIC by including appropriate information on the first bill they receive following any change. An explanatory bill insert shall also be included with the first billing.” The Companies interpret the language to require that an explanatory bill insert must accompany the first billing of a DSIC, and that changes to the DSIC rate thereafter only require a notice on the bill itself, not a bill insert.

**C. Act 11 does not prohibit use of a stipulated cost-of-equity from a settlement of a rate case.**

The Tentative Order provides guidance regarding the DSIC calculation, but concludes that the cost of equity used in a DSIC calculation can only come from a rate proceeding if the proceeding is fully litigated, not if it is subject to a full or partial settlement. The Commission invited comments on whether a stipulated cost of equity can be used under the Act.

The Act does not prohibit use of a stipulated cost of equity from a rate case settlement. The Companies suggest that if a stipulated cost of equity may not be used utilities would be discouraged from entering rate case stipulations and settlements. Such a prohibition of the use of rate case stipulations would encourage litigation contrary to the Commission's policy supporting settlement of disputes and major rate cases. The Final Order should provide that the Commission may use a stipulated cost of equity in calculating a DSIC.

**D. The Tentative Order provides appropriate guidance regarding accumulated deferred income taxes and seasonality in calculating quarterly revenues.**

As discussed in the Comments submitted by the Energy Association of Pennsylvania the Tentative Order states that the Model Tariff adopts a deduction from original cost for accumulated depreciation associated with the eligible property placed in service during the prior three-month period, but does not include a provision for accumulated deferred income taxes. On the latter issue, the Tentative Order explains that attempting to account for accumulated deferred income taxes would add unnecessary complexities because it would require consideration of other adjustments that would also be considered in a base rate proceeding. This interpretation is appropriate because the rationale for a DSIC is to streamline recovery of infrastructure investments and avoid the regulatory lag associated with rate cases.


In addition, the Tentative Order (p. 16) recognizes that some utilities' revenue streams vary significantly depending on the season. To account for this seasonality, the Model Tariff provides utilities the option of basing quarterly revenues on either the summation of projected revenues for the applicable three-month period or one-fourth of the projected annual revenues, subject to

annual reconciliation and audit. Act 11 does not prohibit accounting for seasonality in this way, and such a policy is necessary to avoid adverse impacts on customers and utilities.

**E. Conclusion**

The Companies submit that Act 11 provides an important change in ratemaking for Pennsylvania electric utilities through the statutory enabling of a DSIC mechanism. The Companies suggest that the Commission should proceed to implement DSIC process provided in Act 11 to encourage long-term infrastructure improvement in Pennsylvania. The Companies look forward to working with the Commission and stakeholders toward a successful implementation of Act 11 in keeping with the goals of Act 11.

Respectfully submitted,

  
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