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September 28, 2015

VIA UNITED PARCEL SERVICE

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

Re: ***Submission of the Electronic Data Exchange Working Group's Web Portal Working Group's Solution Framework for Historical Interval Usage and Billing Quality Interval Usage; Docket No. M-2009-2092655***

Dear Secretary Chiavetta:

Enclosed please find the Answer of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to the Petition for Clarification and/or Reconsideration of NRG Retail Affiliates in the above-referenced matter. Please date stamp the enclosed extra copy and return it in the postage-prepaid envelope provided.

This document has been served upon the parties as evidenced by the enclosed Certificate of Service.

Please contact me if you have any questions.

Very truly yours,

Tori L. Giesler

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Enclosures

c: As Per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Submission of the Electronic Data Exchange Working Group's Web Portal Working Group's Solution Framework for Historical Interval Usage and Billing Quality Interval Usage	:	**Docket No. M-2009-2092655**

ANSWER OF METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER COMPANY AND WEST PENN POWER COMPANY TO THE PETITION FOR CLARIFICATION AND/OR RECONSIDERATION OF NRG RETAIL AFFILIATES

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code § 5.572(e), Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power") and West Penn Power Company ("West Penn") (collectively, the "Companies") hereby submit this Answer to the Petition for Clarification and/or Reconsideration ("Petition") of NRG Retail Affiliates ("NRG") in the above-captioned proceeding.

I. INTRODUCTION

On April 23, 2015, the Pennsylvania Public Utility Commission ("Commission") issued a Tentative Order at the above-captioned docket ("Tentative Order") outlining a proposal for the development of an electric distribution company ("EDC") -provided standardized solution for the acquisition of historical interval usage and billing quality interval usage ("BQIU") data through a secure web portal. The Tentative Order sought comments from interested parties on the proposal, which comments were submitted on May 26, 2015 by a variety of EDCs, industry groups, customer groups, and electric generation suppliers ("EGSs"). Following consideration of those comments, the Commission issued a Final Order on the proposal on September 3, 2015 ("Final

Order"). The Final Order prescribed the development of this web portal solution to take place in two phases, with a Single User - Multiple Request ("SU-MR") version to be implemented no later than eight months from the entry of the Final Order, and System-to-System ("StS") functionality to be implemented no later than twelve months following the entry of the Final Order. The Final Order also directed that the specifics of the StS model are to be developed by reconvening the Web Portal Working Group for further discussion and subsequent recommendations to the Commission.

On September 18, 2015, NRG filed its Petition seeking a Commission grant of reconsideration and/or clarification and, more specifically, a directive that EDCs be required to implement an interim solution referred to as the "Rolling EGS 10-day" solution in order to facilitate the transfer of BQIU data, to be available no later than December 31, 2015. NRG went on to argue that the Commission should find merit in this request on the basis that absent this data being provided, EGSs are disadvantaged against the EDCs' current provision of offerings under Act 129-mandated energy efficiency and conservation ("EE&C") programs, which NRG has construed to be in contradiction to requirements under the Electricity Generation Competition and Deregulation Act ("Competition Act").

Not only does NRG fail to demonstrate any reasonable basis upon which it meets the established standard for reconsideration, but this argument, if accepted, would fly in the face of both legislative intent and construct as well as the Commission's stated vision of EE&C offerings under today's statutory design. The Companies are committed to providing access to customer usage data as technologies are deployed and it becomes available, consistent with all statutory and Commission directives. However, NRG's Petition raises both a question of reasonableness of timelines in light of the current limited availability of this data, as well as concerns with respect to NRG's characterization of programs tied to statutory mandates and penalties to EDCs as

"competitive" offerings from which EDCs presumably derive value – an argument that should be flatly rejected.

II. ARGUMENT

NRG's Petition Fails To Meet The Legal Standard For Reconsideration And Ignores Significant Timing Considerations

In its Petition, NRG asserts that it has met the legal standard for reconsideration, noting that "[p]arties cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them." Petition at 8. NRG acknowledges this, despite the fact that NRG and several of its EGS counterparts raised this very same proposal in their comments filed on May 26, 2015, which proposal was explicitly rejected. For NRG to now complain that the Commission did not consider this option, which the Commission clearly not only considered but also rejected, as evidenced by its discussion on pp. 9 and 15-19 of its Final Order, is simply incorrect. NRG goes on to note that, under the standards established by *Dulick*,[1] a petition for reconsideration must plead newly discovered evidence, allege errors of law, or a change in circumstances. However, nowhere in NRG's petition is there a citation of how any of these three criteria have been met in this instance.

Instead, NRG attempts to distinguish its request from those issues squarely decided within the confines of the comment process resolved by the Final Order. Specifically, NRG asserts that because the Commission does not provide direction as to the development of an "Active EGS rolling 10-day" solution, which differs from that of either the SU-MR or StS models that were ultimately directed by the Commission in its Final Order, reconsideration is warranted. As discussed above, the Commission specifically rejected the request made by certain of the EGSs, including NRG, to mandate the "Active EGS 10-day" solution, and has instead established a

[1] *Dulick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553 (1982).

procedure through which the solution to provide the very data sought by NRG will be determined. The simple fact that NRG is not satisfied with the timeline directed for this solution, or the particular form it will take, does not constitute having met the standard for reconsideration.

Furthermore, responses to NRG's Petition are due on or before Monday, September 28, 2015. Even if reconsideration were granted on October 1, 2015, substantive directives modifying the Final Order would not likely be issued prior to the Commission's next scheduled meeting of October 22, 2015. This would effectively provide two months, once any additional directives are received, for EDCs to design, program, test and implement an entirely new data access solution. This is simply not possible, regardless of the number or cost of resources that an EDC could dedicate to such a project. Furthermore, most of the EDCs in Pennsylvania, including the Companies, will not themselves have access to the data to be provided through such a solution by the deadline requested. In fact, the Companies do not expect to have this data become available until the start of 2019, a fact recognized by NRG in its Petition. Therefore, to require EDCs to implement such a solution outside the timeframe required by the Commission, even if possible, would demand postponement other planned projects and diversion of resources all to create a data transfer model that will sit dormant for several years to come.

NRG's Contentions That EGSs Must Be Empowered To Compete Against Statutorily Mandated EE&C Programs Is Wrong As A Matter Of Law And Raises An Issue That Is Outside The Scope Of This Proceeding

NRG also contends that the Commission "may not have considered" that the "Rolling Option" it endorses is necessary to address a purported "unfair competitive advantage" that EDCs obtain the way they use billing data to implement their Commission-approved Act 129 EE&C programs. As with other arguments in the Petition, however, NRG does not acknowledge that it raised the same issue in Comments to the Tentative Order, where it argued that "EGSs are the entities best suited to deliver the value-added products and services to consumers that are enabled

with the deployment of smart meter technology," and recommended that the Commission redefine the role of EDCs such that "EDCs should not be encouraged or permitted to develop and offer value-added products and services that leverage smart meter technology." In light of NRG's prior comment – which the Commission considered and obviously rejected – NRG's claim that EDCs get an alleged "competitive advantage" with respect to Commission-approved Act 129 EE&C programs is neither "new" nor "novel" and, therefore, does not provide any valid basis for the Commission to grant reconsideration of its Final Order. Moreover, the Commission should reject these arguments because they reflect NRG's conception of the EE&C process and EDCs' role in it that are wrong as a matter of law.

At the outset, it must be emphasized that EDCs do not offer Act 129 EE&C programs to "compete" with EGSs, as NRG erroneously asserts. Although NRG cites selective provisions of the Competition Act as alleged support for its arguments, it ignores a fact of overriding legal significance. The Pennsylvania legislature passed Act 129, and the Governor signed it, well after the passage and implementation of the Competition Act.

Section 2806.1, which Act 129 added to the Public Utility Code, does not prohibit EGSs from offering "value added products and services," including EE&C measures. However, as NRG simply ignores, Section 2806.1 places a significant statutory mandate on EDCs, from which EGSs are totally absolved. Specifically, Section 2806.1 imposes directly on EDCs, and requires the Commission to continue to impose, specific targets for EDCs to reduce electric consumption and peak demand. Section 2806.1 also requires that EDCs file detailed plans identifying with specificity the measures they will impose to achieve targeted customer usage reductions. It also requires the Commission to review those plans in detail and approve them before they become effective – or dictate modifications as the Commission concludes may be necessary to achieve the goals of Act 129.

Finally, and most importantly, Section 2806.1(g) requires EDCs to achieve their targeted usage reductions within a statutorily imposed cost cap and, at the same time, Section 2806.1(h) imposes substantial penalties, up to $20 million, for not achieving their required reductions by specific deadlines. In other words, while limiting how much EDCs may expend to achieve mandated usage reductions, Section 2806.1 subjects them to significant penalties if they do not reach their mandated reductions by specific points in time.

As the foregoing summary of key Section 2806.1 provisions makes clear, EDCs did not adopt EE&C programs in an attempt to "[exploit] their monopoly positions to offer EDC branded value-added products and services." EDCs do not "brand" anything. They notify customers of the availability of EE&C measures in the manner required under Commission-approved plans for implementing those measures. Moreover, EDCs are restricted to recovering only their actual costs to implement mandated EE&C programs – unless they spend above their cost cap, which would leave them at risk of being in a net loss position. Therefore, EDCs do not earn any profit on their efforts. In short, Section 2806.1 imposes significant burdens on EDCs, subjects them to risks of loss and substantial (up to $20 million) penalties, and provides no rewards of any kind; if EDCs do everything right, the best they can achieve is avoidance of a penalty and recovery of most – but not necessarily all – of the costs of implementing statutorily mandated EE&C programs.

In light of the usage reductions imposed by Section 2806.1 and the risk of substantial penalties for failing to achieve those mandated usage reductions, there is no basis for NRG's contentions that EDCs are providing EE&C measures to augment their bottom line or that they are "exploiting their monopoly positions" by simply doing what Act 129 contemplates and requires. Similarly, NRG is simply wrong in asserting that EE&C plans, which are developed and implemented with comprehensive Commission oversight and approval, are legally flawed unless those plans place EGSs on exactly the same footing as Conservation Service Providers ("CSP").

While NRG made those claims in the context of its request for specific forms of access to customer usage data, its argument appears to extend beyond data access to other matters that lie at the core of EDCs' Commission-approved EE&C plans. In that light, NRG's claim that EGSs are entitled to "a fair and equal opportunity to develop and offer competing value-added products and services" is both fundamentally incorrect and deeply troubling in several respects, particularly given NRG's misperception of what constitutes "fair and equal" under the circumstances present here.

First, it is hardly a "fair and equal opportunity" for EGSs to offer "competing value-added products and services" if they, unlike EDCs, have no obligation to achieve specific usage reductions by prescribed deadlines; are not restricted by mandated cost caps; and are not subjected to penalties if they miss their usage reduction targets. EGSs are free to "cherry pick" the usage reduction opportunities that provide the greatest reductions at the least effort and lowest cost. This not only maximizes the business opportunities and profits for EGSs, it does so at the expense of EDCs. It makes EDCs' targeted reductions much harder to achieve, while keeping the same cost caps in place and continuing to subject EDCs to penalties for failing to achieve those reductions. Under these circumstances, what NRG characterizes as "fair and equal" treatment for itself would create the very real potential for confiscatory treatment of EDCs by requiring them to hit targets that have become unachievable and subjecting them to penalties when they fall short.

Second, and in stark contrast to NRG's claims, Section 2806.1 creates and defines the role of CSPs as the primary providers of services needed to implement Act 129-mandated EE&C measures. Section 2806.1 is silent with regard to EGSs providing such services. But, at the same time, there is nothing in that section that prohibits EGSs from obtaining Commission certification as CSPs in order to participate in EDCs' Commission approved EE&C plans.

Third, Section 2806.1 creates a separate, self-contained, competitively-neutral process that gives any company wanting to provide EE&C measures a "fair and equal opportunity" to compete

to do so. Section 2806.1(a)(6) requires all EDCs to "competitively bid all contracts with conservation service providers," and that requirement is repeated in Section 2806.1(b)(1)(i)(E). Additionally, Section 2806.1(a)(8) requires Commission review of "all proposed contracts prior to the execution of the contract with conservation service providers." Section 2806.1(m) requires that CSPs have "no direct or indirect ownership, partnership or other affiliated interest with an electric distribution company." Consequently, existing, Commission-approved EE&C plans provide fair, competitively-neutral means for those wishing to offer energy efficiency and conservation measures within the context of EDCs' EE&C plans to be able to do so.

NRG's contentions, viewed in their broader context, claim a right for EGSs to compete not against CSPs – who were selected on the basis of statutorily imposed, Commission supervised, competitively neutral bidding processes – but against the entire EE&C concept as envisioned and carefully delineated in Act 129. Thus, NRG is promoting an entirely new vision for providing EE&C measures to customers that would, in effect, displace EDCs as the principal administrators of Act 129-compliant EE&C plans in their respective service areas. NRG's vision for providing EE&C measures would render meaningless the multiple provisions of Section 2806.1 that define the special role of CSPs in implementing EE&C plans, establish a competitively neutral process for CSP selection, and give the Commission authority to review and approve contracts with CSPs. That simply cannot be done without a legislative change that radically restructures Section 2806.1. In fact, the Commission already concluded as much in its Final Order in Investigation of Pennsylvania's Retail Electricity Market End State of Default Service. In that case, NRG argued that "EGSs are well-equipped at competitively offering such programs and services and, as such, should be the sole parties offering such programs." The Commission rejected NRG's position, stating:

> The Commission maintains its position that the provision of EE&C programs be retained by the EDCs. As stated in its Tentative Order, the Commission believes that the EDC-provision of EE&C programs allows for widespread outreach to the majority of Pennsylvania's retail electric customers.

Even more importantly, NRG's contentions are totally inconsistent with the penalty provisions of Section 2806.1. NRG cannot claim a right to become the principal provider of EE&C measures – thereby effectively displacing the current statutory role of CSPs – while EDCs remain subject to significant penalties if they do not achieve mandated usage reductions that, under those circumstances, would be a function of factors outside their control. Making EDCs the guarantors of mandated usage reductions while, at the same time, removing from them the full authority to implement plans and measures that could achieve those reductions, is a "Catch-22" that violates due process, subjects EDCs to confiscatory regulatory requirements and, therefore, would not withstand legal scrutiny. Thus, the comprehensive re-interpretation of EDCs' role in the EE&C process that NRG envisions could not possibly be implemented without statutory changes that, at a minimum, eliminate the penalty provisions currently embedded in Section 2806.1.

In addition to the legal obstacles discussed above, NRG's attempt to raise, in this case, issues about the fundamental nature of the EE&C process is procedurally flawed and should be rejected for that reason as well. The FirstEnergy companies have now submitted two phases of EE&C plans that were reviewed and approved by the Commission. The broader issues, like those necessarily implicated by that NRG's proposals, about the role of EDCs and CSPs in implementing Act 129-mandated EE&C plans, the competitive nature of the CSP selection process, the duties and responsibilities of EDCs and the extent to which they can or should be held responsible for achieving targeted usage reductions while taking away the means for them to do so, are all issues that could have been raised in prior Act 129 implementation or EE&C plan approval proceedings. They certainly do not belong here. This proceeding has a narrowly-defined goal related to

technical data access issues and, therefore, has employed a streamlined procedural process to achieve that goal in a timely and expeditious fashion. Fundamental issues about the nature of the EE&C process are not, and were never intended to be, part of this case. Moreover, the process under which this case has proceeded is ill-equipped to tackle those issues. Accordingly, NRG's attempt to interject in this case, by means of a Petition for Reconsideration no less, broad issues about the nature of the EE&C process and EDCs and CSP role in that process should be rejected on that basis as well.

WHEREFORE, for the reasons stated above, the Companies respectfully request that the Commission deny the Petition for Clarification and/or Reconsideration of the NRG Affiliates consistent with the reasons outlined in this Answer. Alternatively, the Companies request that it be made clear that to the extent the Petition is granted, any directives stemming therefrom do not apply to those companies whose smart meter data will not be available in advance of the deadlines established by the Commission's September 3, 2015 Final Order.

Respectfully submitted,

Dated: September 28, 2015

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Submission of the Electronic Data Exchange Working Group's Web Portal Working Group's Solution Framework for Historical Interval Usage and Billing Quality Interval Usage	:	**Docket No. M-2009-2092655**

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the Answer of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to the Petition for Clarification of NRG Retail Affiliates upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 5.61 (relating to service by a participant).

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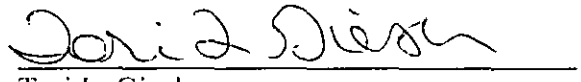
Dated: September 28, 2015



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