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April 19, 2016

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

VIA ELECTRONIC FILING

**RE: Petition of Pennsylvania Electric Company for Approval to Establish and
Implement a Distribution System Improvement Charge;
Docket No. P-2015-2508936**

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission the Motion for Leave to Amend Answer and Petition to Intervene and Answer of the Penelec Industrial Customer Alliance ("PICA") in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to these proceedings are being duly served.

Very truly yours,

McNEES WALLACE & NURICK LLC

By

A handwritten signature in cursive script that reads 'Alessandra L. Hylander'.

Alessandra L. Hylander

Counsel to the Penelec Industrial Customer Alliance

/mas

Enclosures

c: Administrative Law Judge Charles E. Rainey, Jr. (via e-mail and First-Class 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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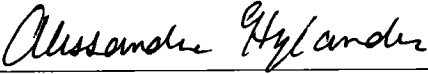
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Alessandra L. Hylander

Counsel to the Penelec Industrial Customer Alliance

Dated this 19th day of April, 2016, at Harrisburg, Pennsylvania

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Pennsylvania Electric Company for :
Approval to Establish and Implement : Docket No. P-2015-2508936
a Distribution System Improvement Charge :

**MOTION FOR LEAVE TO AMEND THE ANSWER OF
THE PENELEC INDUSTRIAL CUSTOMER ALLIANCE**

TO THE HONORABLE, THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 5.61(a) of the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Regulations, 52 Pa. Code § 5.61(a), Penelec Industrial Customer Alliance ("PICA") filed an Answer in response to the above-captioned Petition of the Pennsylvania Electric Company (the "Company"). Pursuant to Sections 5.103(a)-(b) and 5.91 of the PUC's Regulations, 52 Pa. Code §§ 5.103(a)-(b), 5.91(c), PICA hereby files this Motion for Leave to Amend its Answer submitted in response to the above-captioned Petition of the Company. In support thereof, PICA avers as follows:

1. The Company filed the above-captioned Petition on February 16, 2016, requesting that the Commission approve establishment and implementation of a Distribution System Improvement Charge ("DSIC") on certain customers within the Company's service territory.
2. In response to the Company's Petition, PICA filed a Petition to Intervene and Answer on March 7, 2016.
3. On March 24, 2016, the Company filed its Answer and Reply to New Matter, respectively, to PICA's Petition to Intervene and Answer.
4. At this time, PICA would like to amend its Answer to address additional facts within the Company's filing. The Company requested approval of its proposed DSIC without the

benefit of a hearing, and thus PICA is compelled to ensure that the record is clear. Therefore, PICA moves to amend its Answer to fully address crucial issues in this proceeding.

5. A motion for leave to amend a pleading is only required under certain limited circumstances (which do not apply here). 52 Pa. Code § 5.92(b). Otherwise, a party may amend its pleadings at any time during a proceeding. *See* 52 Pa. Code § 1.81(a); *see also* 1 Pa. Code § 33.41; 52 Pa. Code § 5.91. Thus, while PICA has the discretion to amend its pleading at any time during the course of this proceeding, PICA submits this Motion out of an abundance of caution.

6. Section 5.91 of the Commission's regulations allow for the "modification of or supplement to an application, complaint, petition or other pleading." 52 Pa. Code § 5.91(a). Further, Section 1.81 of the PUC's Rules of Administrative Practice and Procedure states, "[a]n amendment to a submittal or pleading may be tendered for filing at any time and will be deemed filed in accordance with § 1.11 (relating to date of filing) unless the Commission otherwise orders." 52 Pa. Code § 1.81(a); *see also* 1 Pa. Code § 33.41. Under these regulations, PICA's right to amend its Answer at this time is indisputable.

7. Section 5.91(c) of the Commission's regulations notes that a party may amend its pleading unless it is "within 5 days preceding the commencement of or during a hearing" and that party lacks permission to amend from the Commission or the presiding officer. 52 Pa. Code § 5.91(c). No presiding officer has been assigned to this proceeding, and therefore no hearing date is established. As a hearing date is not established in this proceeding, PICA's Motion is not impacted by this provision.

8. In general, the Commission's regulations do not require parties to file motions to amend their pleadings. The only circumstances under which the Commission specifically

requires a motion to amend pleadings is described within Section 5.92(b) of the Commission's regulations: "[a]mendments of the pleadings as may be necessary to cause them to conform to the evidence and to raise new issues may be made upon motion of a party at any time during the hearing as set forth in § 5.102 [of the Commission's Regulations] (relating to motions for summary judgment and judgment on the pleadings)." 52 Pa. Code § 5.92(b). This regulation only requires a motion to amend pleadings where new evidence is raised during the course of a hearing that a party would like to include within its pleading. PICA does not raise new evidence, but rather clarifies why existing evidence in the Company's Petition warrants further inquiry by the Commission into the Company's filing. Although PICA is not required to submit a motion to amend its Answer, and, therefore, could amend its Answer without such Motion, PICA is submitting this Motion to resolve any doubt regarding its authority to amend.

9. Section 5.92(c) of the Commission's regulations indicates that when a pleading is amended to conform to evidence, the Commission will consider whether the amendment would prejudice "the public interest or the rights of a party." 52 Pa. Code § 5.92(c). PICA submits that the Commission is not required to engage in this analysis at this early stage in the proceeding. PICA nonetheless avers that its proposed amended Answer in this proceeding would not prejudice the Company, as this proceeding is still in its initial stage (in fact, parties just began exchanging discovery), and the Company will have an opportunity to respond to the additional facts contained herein.

10. Pennsylvania court precedent also supports permitting PICA to amend its Answer at this time. The Commonwealth Court will generally grant leave to amend pleadings absent surprise or prejudice to the nonmoving party. *Weaver v. Franklin Cnty.*, 918 A.2d 194, 203 (Pa. Commw. Ct. 2007) ("Amendments are liberally permitted in order to allow full development of a

party's theories and averments"), *appeal denied*, 931 A.2d 660, 660 (Pa. 2007); *see also Unified Sportsmen of Pa. v. Pa. Game Comm'n.*, 903 A.2d 117, 127 (Pa. Commw. Ct. 2006) ("Where the law may permit recovery under some theory, leave to amend should be liberally granted"); *Piehl v. City of Phila.*, 601 Pa. 658, 672 (2009) (citing *Connor v. Allegheny Gen. Hosp.*, 461 A.2d 600, 602 (Pa. 1983) (Amendments are "liberally granted at any stage of the proceedings unless there is an error of law or resulting prejudice to an adverse party"))).

11. Prejudice "must be more than a mere detriment to the other party because any amendment requested certainly will be designed to strengthen the legal position of the amending party and correspondingly weaken the position of the adverse party." *Id.* (citing *MacGregor v. Medig Inc.*, 576 A.2d 1123, 1126 (Pa. Super. Ct. 1990)). Prejudice to the opposing party, "to be sufficient to warrant a court denying a party leave to amend a pleading, must stem from the delay in raising the defense and prejudice to the substantive position of the adverse party." *James A. Mann, Inc. v. Upper Darby School Dist.*, 513 A.2d 528, 531 (Pa. Commw. Ct. 1986). The "mere fact that the adverse party has expended time and effort in preparing to try a case against the amending party is not such prejudice as to justify denying the amending party leave to amend." *Capobianchi v. BIC Corp.*, 666 A.2d 344, 346 (Pa. Super. Ct. 1995).

12. The Company is neither "surprised nor prejudiced" by PICA's amended Answer. *See, e.g., Weaver*, 918 A.2d at 203. PICA is raising additional probative facts that PICA submits are necessary for the Commission to resolve the Company's Petition. PICA is amending its Answer at an early stage of the proceeding, before an initial prehearing conference and only at the beginning of the discovery phase. Therefore, PICA's amended Answer would cause no prejudice to the Company and is consistent with Commonwealth Court precedent.

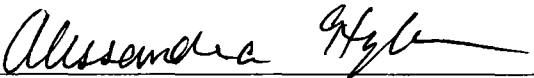
13. The Pennsylvania Rules of Civil Procedure also support PICA's Motion in the above-referenced proceeding. While the Pennsylvania Rules of Civil Procedure are not binding upon the Commission, PICA recognizes that the Commission "can and [has] found reference to them helpful for guidance." *AT&T Comm. of Pa. v. Armstrong Tel. Co.*, 2009 Pa. PUC LEXIS 1752, *18; *see also Farrugio's Bristol and Phila. Auto Express, Inc. v. St. Johnsbury Trucking Co., Inc.*, 1989 Pa PUC LEXIS 73, *19. Under Rule 1033 of the Pennsylvania Rules of Civil Procedure, "[a] party, either by filed consent of the adverse party or by leave of court, may at any time change the form of action, correct the name of a party or amend his pleading." Pa. R. Civ. P. 1033. Therefore, PICA's amended Answer would be appropriate pursuant to the Pennsylvania Rules of Civil Procedure.

14. As there is no justification for refusing amendment of PICA's Answer, the Commission should permit PICA to amend its Answer.

WHEREFORE, in the interests of justice and the absence of prejudice or surprise to the Company, PICA respectfully requests that the Commission grant its Motion for Leave to Amend its Answer and accept PICA's amended Answer submitted herewith.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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Counsel to the Penelec Industrial Customer Alliance

Dated: April 19, 2016

AFFIDAVIT

COMMONWEALTH OF PENNSYLVANIA)
) ss:
COUNTY OF DAUPHIN)

Alessandra Hylander, being duly sworn according to law, deposes and says that she is Counsel to the Penelec Industrial Customer Alliance, and that in this capacity she is authorized to and does make this affidavit for them, and that the facts set forth in the foregoing Petition and Answer are true and correct to the best of her knowledge, information and belief.

Alessandra Hylander

Alessandra Hylander

SWORN TO and subscribed

before me this 19th day

of April, 2016.

Mary A. Sipe

Notary Public

(SEAL)

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Mary A. Sipe, Notary Public
City of Harrisburg, Dauphin County
My Commission Expires March 19, 2017

APPENDIX A

PENELEC INDUSTRIAL CUSTOMER ALLIANCE

American Refining Group Inc.
Appvion, Inc.
Electralloy, a G.O. Carlson, Inc., Co.
Ellwood National Steel
Erie Forge & Steel, Inc.
Glen-Gery Corporation
Indiana Regional Medical Center
Pittsburgh Glass Works
Sheetz, Inc.
Standard Steel
Team Ten, LLC - American Eagle Paper Mills
The Plastek Group
The Proctor & Gamble Paper Products Co.
U.S. Silica Company
Wegmans Food Markets, Inc.