

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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March 2, 2017

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
Commonwealth Keystone Bldg.  
400 North Street  
Harrisburg, PA 17120

RE: Petition of Metropolitan Edison Co.  
for Approval of a DSIC  
Docket Nos. P-2015-2508942,  
C-2016-2531040

Petition of Pennsylvania Power Co.  
for Approval of a DSIC  
Docket Nos. P-2015-2508931,  
C-2016-2531054

Petition of Pennsylvania Electric Co.  
for Approval of a DSIC  
Docket Nos. P-2015-2508936,  
C-2016-2531060

Petition of West Penn Power Co.  
for Approval of a DSIC  
Docket Nos. P-2015-2508948,  
C-2016-2531019

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Prehearing Memorandum in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Erin L. Gannon

Erin L. Gannon

Senior Assistant Consumer Advocate

PA Attorney I.D. # 83487

E-Mail: EGannon@paoca.org

Attachment

cc: Honorable Joel H. Cheskis  
Certificate of Service

\*230128

CERTIFICATE OF SERVICE

Petition of Metropolitan Edison Co. for Approval of a Distribution System Improvement Charge	:	Docket Nos.	P-2015-2508942, C-2016-2531040
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Petition of West Penn Power Co. for Approval of a Distribution System Improvement Charge	:	Docket Nos.	P-2015-2508948, C-2016-2531040

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Prehearing Memorandum, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 2<sup>nd</sup> day of March, 2017.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Daniel G. Asmus  
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/s/ Erin L. Gannon  
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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Metropolitan Edison Co. for Approval of a Distribution System Improvement Charge	:	Docket Nos.	P-2015-2508942, C-2016-2531040
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PREHEARING MEMORANDUM  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. Section 333 and the Prehearing Conference Order issued by Administrative Law Judge Joel Cheskis on February 27, 2017, the Office of Consumer Advocate (OCA) provides the following:

I. BACKGROUND

On February 16, 2016, the Companies filed individual Petitions requesting approval to establish and implement a Distribution System Improvement Charge (DSIC) to become effective as of July 1, 2016.

On February 26, 2016, the OCA filed Answers and Formal Complaints in response to the Companies' Petitions. On March 7, 2016, Citizens for Pennsylvania's Future (PennFuture) and the Environmental Defense Fund (EDF) jointly filed Petitions to Intervene. On the same date, the Met-Ed Industrial Energy Users Group (MEIUG), the Penelec Industrial Customer Alliance

(PICA), the Penn Power Users Group (PPUG) and the West Penn Power Industrial Intervenors (WPPII) filed a Petition to Intervene and Answer with respect to the Petition of the Company that serves their respective members. On March 9, 2016, the OSBA filed a Notice of Appearance and Intervention in each of the Companies' cases as well as Answers to each of the Petitions. On the same date, The Pennsylvania State University (PSU) filed a Petition to Intervene in West Penn's case. On April 1, 2016, AK Steel Corporation filed a Petition to Intervene in West Penn's case. Two customers filed Formal Complaints on April 4, 2016 and April 18, 2016, respectively.

On June 9, 2016, the Commission entered four Opinions and Orders in which it approved a DSIC for each Company subject to recoupment and/or refund pending final resolution of matters referred to the Office of Administrative Law Judge for hearings. The issues identified for hearings were the following:

- a. Whether certain customers taking service at transmission voltage rates should be included under the DSIC;
- b. Whether other customers should also be exempt from the DSIC;
- c. If revenues associated with the riders in [the Company's] tariff are properly included as distribution revenues;
- d. The Petition for Intervention of MEIUG, PICA, PPUG, WPPII;
- e. The Joint Petition for Intervention of the Citizen's for Pennsylvania's Future and the Environmental Defense Fund; and
- f. The Joint Motion to Compel of the Citizen's for Pennsylvania's Future and the Environmental Defense Fund and the Commission waives the fifteen (15) day timeframe restriction set forth in 52 Pa. Code § 5.342.

On July 25, 2016, EDF/PennFuture filed a joint Notice of Withdrawal from each of the Companies' proceedings.

This matter was assigned to Administrative Law Judge Joel H. Cheskis (ALJ). On August 11, 2016, the ALJ issued a Consolidation Order to consolidate the Petition and Complaint cases. Consistent with the Scheduling Order issued on August 12, 2016, the parties participated in discovery and settlement discussions and provided periodic status reports on those discussions to the ALJ. Met-Ed, Penelec, Penn Power, West Penn, OCA, OSBA, MEIUG, PICA, PPUG and WPPII reached a settlement agreement addressing the issues referred for hearings by the Commission's June 9, 2016 DSIC Orders (Joint Petition for Settlement of Pending Issues).<sup>1</sup> The Joint Petition was filed on February 2, 2017.

In the proposed Settlement, the parties recognized that DSIC-related issues were being considered in the Companies' consolidated base rate cases at Docket Nos. R-2016-2537349 (Met-Ed), R-2016-2537342 (Penelec), R-2016-2537355 (Penn Power) and R-2016-2537359 (West Penn). The proposed settlement, therefore, did not extend to or resolve any additional issues that the Commission might subsequently assign to this proceeding.

On January 19, 2017, the Commission issued an Order in the consolidated base rate proceedings, which referred to this proceeding the contested issue regarding the impact of recently enacted Act 40, codified at 66 Pa. C.S. § 1301.1, on the calculation of the DSIC, specifically, with regard to Accumulated Deferred Income Taxes (ADIT). The Commission also transferred to this proceeding parts of the base rate case record pertaining to this issue.<sup>2</sup> Pa. P.U.C. v. Met-Ed et al., Docket Nos. R-2016-2537342 et al., Order at 38-40, 42 (Jan. 19, 2017).

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<sup>1</sup> PSU and AK Steel Corporation are not Joint Petitioners but do not oppose the proposed settlement.

<sup>2</sup> On February 3, 2017, the OCA filed a Petition seeking clarification that its surrebuttal testimony on the would also be transferred. On February 9, 2017, the Commission entered an Order granting reconsideration pending review of, and consideration of, the merits. On February 10, 2017, the Companies filed a letter stating they had no objection to the OCA's Petition.

By letters filed on February 14 and 15, 2017, the OCA notified the Presiding Officer and parties that it intended to present testimony in this proceeding by a new witness, Ralph Smith, who presented testimony on behalf of the OCA in the base rate case.

The OCA now files this Prehearing Memorandum to set forth the procedure and issues that the OCA submits are relevant to this proceeding.

## II. ISSUES

Act 40 took effect on August 11, 2016 and applies to all cases where the final order is entered into after its effective date. 66 Pa. C.S. § 1301.1. In the Companies' consolidated base rate proceedings, the OCA took the position that Act 40 requires income tax deductions and credits to be included in the computation of the DSIC. The OCA specifically addressed the inclusion of ADIT, which pertains to federal income tax deductions and credits. State income tax deductions and credits were not addressed in the context of the base rate case.

In the interest of administrative efficiency, further development of the record is appropriate to address how state income tax deductions and credits should be reflected in the DSIC calculation if the OCA prevails on the legal issue whether Act 40 requires the inclusion of ADIT in the DSIC calculation. Accordingly, in addition to the testimony that has been referred to this proceeding from the consolidated base rate proceeding, the OCA anticipates providing testimony and briefs addressing the following:

1. The basis for including state income tax deductions and credits related to DSIC investment in the calculation of the DSIC, if the Commission determines that federal income tax deductions and credits related to DSIC investment should be included.
2. Modifications to the DSIC calculation required to include state income tax deductions and credits.

The OCA's proposed schedule for submission of supplemental testimony is attached as Appendix A.

The underlying legal issue whether Act 40 requires income tax deductions and credits to be included in the computation of the DSIC has been addressed by the parties to the consolidated base rate proceeding, in the parts of the record that have been referred to this DSIC proceeding. The OCA requests that the Presiding Officer wait to issue a decision on this matter until the record is developed on the related Act 40/state income tax issue.

The other issues that were raised in the DSIC proceeding regarding the application and calculation of the DSIC (whether the DSIC should apply to certain customers and whether the Companies properly included revenues associated with riders in the DSIC calculation) are addressed within the Joint Petition for Settlement of Pending Issues filed on February 2, 2017. The OCA submits that the matters addressed in the Settlement are independent from the Act 40/federal and state income tax issues and are ripe for decision.

### III. WITNESSES

The OCA intends to present the supplemental Direct and Surrebuttal testimony, as may be necessary, of Ralph Smith regarding the accounting and policy issues identified above. Mr. Smith will present testimony in written form and will also attach various exhibits, documents, and explanatory information, which will assist in the presentation of the OCA's case. His contact information is as follows:

Ralph Smith  
Larkin and Associates, PLLC  
15728 Farmington Road  
Livonia, Michigan 48154

Telephone: 734-522-3420  
E-mail: [rsmithla@aol.com](mailto:rsmithla@aol.com)



IV. PROPOSED SCHEDULE

The OCA will work with the parties to develop a litigation schedule that is acceptable to the ALJ and parties. The OCA's proposed litigation schedule is attached hereto as Appendix A and was developed in cooperation with the First Energy companies.

V. SETTLEMENT

The OCA is willing to participate in settlement discussions, to the extent possible within the litigation timeframe.

VI. PROPOSED REVISED RULES FOR DISCOVERY

The OCA's proposed revisions to the rules for discovery were adopted by the Presiding Officer in his Scheduling Order issued on August 12, 2017. The OCA requests that these revisions continue for the remainder of the proceeding.

VII. SERVICE ON THE OCA

The OCA will be represented in this proceeding by Senior Assistant Consumer Advocates Erin L. Gannon and Darryl A. Lawrence. Two copies of all documents should be served on the OCA as follows:

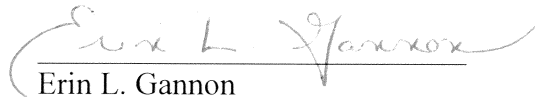
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In order to expedite the resolution of this proceeding, the OCA requests that copies of all interrogatories, testimony, and answers to interrogatories be mailed directly to the expert witness(es) responsible for the area of the case, as well as mailing a copy to counsel for the OCA. The OCA also requests that emails containing any interrogatory responses be emailed directly to the expert witness(es).

Ralph Smith [rsmithla@aol.com](mailto:rsmithla@aol.com)

Respectfully Submitted,



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DATE: March 2, 2017  
224376

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OFFICE OF CONSUMER ADVOCATE  
PROPOSED LITIGATION SCHEDULE

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OCA Supplemental Direct	March 21, 2017
Company Supplemental Rebuttal	April 13, 2017
OCA Supplemental Surrebuttal	May 1, 2017
Company Supplemental Rejoinder	May 5, 2017
Hearings in Harrisburg	May 12, 2017