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January 6, 2022

VIA eFILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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Harrisburg, PA 17105-3265

**Re: Petition of Metropolitan Edison Company for Approval of a Distribution System Improvement Charge, Docket No. P-2015-2508942
Office of Consumer Advocate v. Metropolitan Edison Company
Docket No. C-2016-2531040**

**Re: Petition of Pennsylvania Electric Company for Approval of a Distribution System Improvement Charge, Docket No. P-2015-2508936
Office of Consumer Advocate v. Pennsylvania Electric Company
Docket No. C-2016-2531060**

**Re: Petition of Pennsylvania Power Company for Approval of a Distribution System Improvement Charge, Docket No. P-2015-2508931
Office of Consumer Advocate v. Pennsylvania Power Company
Docket No. C-2016-2531054**

**Re: Petition of West Penn Power Company for Approval of a Distribution System Improvement Charge, Docket No. P-2015-2508948
Office of Consumer Advocate v. West Penn Power Company
Docket No. C-2016-2531019**

Dear Secretary Chiavetta:

On behalf of **Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company**, enclosed is the **Third Further Prehearing Conference Memorandum** for filing in the above-captioned matters.

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
January 6, 2022
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Copies of the Prehearing Memorandum have been served upon Deputy Chief Administrative Law Judge Joel H. Cheskis and all parties of record, as indicated on the attached Certificate of Service.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kenneth M. Kulak". The signature is written in a cursive style with a large initial 'K'.

Kenneth M. Kulak

KMK/tp
Enclosures

c: Per Certificate of Service (w/encls.)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Metropolitan Edison Company : P-2015-2508942
for Approval of a Distribution System :
Improvement Charge :

Office of Consumer Advocate : C-2016-2531040
v. :
Metropolitan Edison Company :

Petition of West Penn Power Company for : P-2015-2508948
Approval of a Distribution System :
Improvement Charge :

Office of Consumer Advocate : C-2016-2531019
v. :
West Penn Power Company :

Petition of Pennsylvania Electric Company : P-2015-2508936
for Approval of a Distribution System :
Improvement Charge :

Office of Consumer Advocate : C-2016-2531060
v. :
Pennsylvania Electric Company :

Petition of Pennsylvania Power Company : P-2015-2508931
for Approval of a Distribution System :
Improvement Charge :

Office of Consumer Advocate : C-2016-2531054
v. :
Pennsylvania Power Company :

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of the **Third Further Prehearing Conference Memorandum of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company** on the

following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

VIA ELECTRONIC MAIL

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Dated: January 6, 2022

DB1/ 126651529.1

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Metropolitan Edison Company for :
Approval of a Distribution System Improvement : **Docket No. P-2015-2508942**
Charge :

Office of Consumer Advocate :
v. : **Docket No. C-2016-2531040**
Metropolitan Edison Company :

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

Office of Consumer Advocate :
v. : **Docket No. C-2016-2531060**
Pennsylvania Electric Company :

Petition of Pennsylvania Power Company for :
Approval of a Distribution System Improvement : **Docket No. P-2015-2508931**
Charge :

Office of Consumer Advocate :
v. : **Docket No. C-2016-2531054**
Pennsylvania Power Company :

Petition of West Penn Power Company for :
Approval of a Distribution System Improvement : **Docket No. P-2015-2508948**
Charge :

Office of Consumer Advocate :
v. : **Docket No. C-2016-2531019**
West Penn Power Company :

**THIRD FURTHER PREHEARING CONFERENCE MEMORANDUM OF
METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC
COMPANY, PENNSYLVANIA POWER COMPANY AND WEST PENN
POWER COMPANY**

January 6, 2022

THIRD FURTHER PREHEARING CONFERENCE MEMORANDUM

I. INTRODUCTION

This Prehearing Conference Memorandum is being submitted on behalf of Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”) and West Penn Power Company (“West Penn”) (individually, a “Company” and collectively, the “Companies”) pursuant to the Third Further Prehearing Order issued by Deputy Chief Administrative Law Judge Joel H. Cheskis (the “ALJ”) on December 9, 2021.

II. HISTORY OF THE PROCEEDING

This remand proceeding arises from the decision of the Supreme Court of Pennsylvania issued on July 21, 2021¹ addressing a question of statutory construction involving Section 1301.1(a) of the Public Utility Code.² While the Pennsylvania Public Utility Commission (“Commission” or “PUC”) has initiated remand proceedings in the above-captioned dockets, the Court’s decision necessarily impacts the terms of the Model Tariff that the PUC adopted in its Implementation Order for Act 11 of 2012 entered August 2, 2012³ and, therefore, has implications for all Pennsylvania utilities that employ a Distribution System Improvement

¹ *McCloskey v. Pa. P.U.C.*, 255 A.3d 416 (Pa. 2021) (hereafter, *McCloskey/FirstEnergy*).

² 66 Pa.C.S. § 1301.1. Hereafter, all references to a “Section” are to sections of the Pennsylvania Public Utility Code (“Code”), 66 Pa.C.S. §§ 101 et seq., unless stated or the context indicates otherwise.

³ *Implementation of Act 11 of 2012*, Docket No. M-2012-2293611 (Aug. 2, 2012) (“Final Implementation Order”), pp. 30-31 and Appendix A (Model Tariff) to that Order.

Charge (“DSIC”). The prior history of the proceedings culminating in the Court’s decision are summarized below.

The Commission’s Approval Of The Companies’ DSIC Riders And The OCA’s Challenges. On February 16, 2016, the Companies petitioned the Commission to approve changes to their existing tariffs in the form of riders (“DSIC Riders”) incorporating the terms of the Model Tariff. The Office of Consumer Advocate (“OCA”), Office of Small Business Advocate and a group of industrial customers participated in the ensuing proceeding. On June 9, 2016, the Commission entered Orders finding that the Companies’ DSIC Riders conformed to the terms of the Model Tariff and, therefore, approved the DSIC Riders subject to further consideration of certain additional implementation issues referred to the Office of Administrative Law Judge, which were subsequently resolved by settlement.⁴ No party contended that the DSIC formula should be amended to include incremental changes in accumulated deferred federal income taxes (“ADFIT”) and the state tax deductions for accelerated depreciation because, at that time, the issue had been resolved by the Commission and the Commonwealth Court in prior proceedings.⁵ Three days after the Companies’ DSIC Approval Orders were entered, Act 40 of 2016 (“Act 40”) added Section 1301.1 to the Code.

⁴ *Petitions of Metropolitan Edison Co., Pennsylvania Elec. Co. Pennsylvania Power Co. and West Penn Power Co. for Approval of a Distribution Sys. Improvement Charge*, Docket Nos. P-2015-2508942 *et al.* consolidated with *Office of Consumer Advocate v. Metropolitan Edison Co., Pennsylvania Elec. Co. Pennsylvania Power Co. and West Penn Power Co.*, Docket Nos. C-2016-2531040 *et al.* (Opinions and Orders entered Jun. 9, 2016) (“DSIC Approval Orders”).

⁵ *See Petition of Columbia Gas of Pennsylvania, Inc. for Approval of a Distribution Sys. Improvement Charge*, Docket No. P-2012-2338282 (Opinion and Order entered May 22, 2014) (“Columbia Gas Order”), *aff’d*, *McCloskey v. Pa. P.U.C.(Columbia)*, 127 A.3d 860 (Pa. Cmwlth. 2015) (“*McCloskey/Columbia*”). *McCloskey/Columbia* was an appeal from a Commission Order approving a DSIC for Columbia Gas of Pennsylvania, Inc. Similar issues were also decided in an unreported opinion issued the same day in the OCA’s appeal from a Commission Order approving a DSIC for Little Washington Wastewater Company. *McCloskey v. Pa. P.U.C.*, No. 1358 C.D. 2014 (Nov. 3, 2015).

On April 28, 2016, the Companies each filed proposed increases in base rates pursuant to Section 1308(d) of the Code. The Companies' rate increase filings were consolidated at PUC Docket Nos. R-2016-2537349 *et al.* After Act 40 was enacted, the OCA submitted testimony in those cases contending that Section 1301.1(a) required the PUC to revise the Companies' previously-approved DSIC Riders to adopt the tax-related terms the Commission declined to adopt in the prior proceedings. The Companies submitted testimony opposing that change, and the issues were extensively briefed.

On January 19, 2017, the Commission entered its Opinion and Order in the Companies' base rate proceedings.⁶ That order concluded the base-rate aspect of the proceeding by approving a settlement among the parties. In the same order, the Commission referred issues concerning the impact, if any, of Act 40 on the previously-approved DSIC Riders to consolidated Docket Nos. P-2015-2508942 *et al.*, which was the same docket in which the DSIC Approval Orders had been entered.

In an Opinion and Order entered April 19, 2018 in this consolidated proceeding ("April 2018 Order"), the PUC rejected the OCA's proposals to add elements to the DSIC formula for ADFIT and state tax depreciation deductions.⁷ In the April 2018 Order the Commission held that Act 40 did not change the terms of the DSIC and so it did not opine on any issues concerning how it might implement the OCA's proposals for recognizing incremental ADFIT and state tax attributes in quarterly calculations of DSIC charges.

Appeals of the April 2018 Order and Subsequent Remand to the Commission. The OCA appealed the April 2018 Order to the Commonwealth Court. In an Opinion and Order

⁶ *Pa. P.U.C. v. Metropolitan Edison Co. et al.*, Docket Nos. R-2016-2537349, et al., 2017 WL 395349 at *23-25 (Jan. 19, 2017).

⁷ April 2018 Order, pp. 25-29.

entered July 11, 2019, the Commonwealth Court reversed the April 2018 Order based on its finding Section 1301.1 applied to the DSIC and altered the manner in which the DSIC had been previously calculated.⁸ The Companies and the PUC each filed petitions seeking the Pennsylvania Supreme Court’s review of the Commonwealth Court’s Opinion, which were granted. After briefing and oral argument, the Court, by a 5-2 split decision, affirmed the Commonwealth Court’s Opinion and entered an accompanying Order remanding the cases to the Commission “for the purpose of requiring [the Utilities] to revise their tariffs and Distribution System Improvement Charge calculations in accordance with Section 1301.1(a) of the Public Utility Code, 66 Pa.C.S. § 1301.1.” On December 9, 2021, a Further Call-In Telephonic Prehearing Conference Notice and the Third Further Prehearing Order were issued.

III. RESPONSES TO PARAGRAPH 7 OF THE PREHEARING ORDER

A. Service List (Prehearing Order, ¶ 7.a.)

Pursuant to 52 Pa. Code § 1.55, the Companies hereby designate the following individual for the service list in this proceeding:

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⁸ See *McCloskey v. Pa. P.U.C.*, 219 A.3d 1216, 1225 (Pa. Cmwlth. 2019).

Parties are requested to also serve documents on the following attorneys as a courtesy:

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B. Witnesses (Prehearing Order, ¶ 8.b.)

If written testimony is needed, the Companies currently expect to present testimony by Kimberlie L. Bortz to explain how the Companies' DSIC Riders should be revised to comply with Section 1301.1. Ms. Bortz is employed by FirstEnergy Service Company as a Rates Advisor. Her business address is 2800 Pottsville Pike, Reading, Pennsylvania 17055 and her phone number is 610-921-6717. While the Companies can foresee calling Ms. Bortz as the Companies' witness, they are not able to determine their final list of all witnesses until they obtain and review the other parties' direct testimony. Accordingly, in the event written testimony may be required, the Companies reserve the right to amend their list of witnesses as they determine necessary or appropriate to address issues as they develop over the course of this proceeding.

C. Statement of Issues (Prehearing Order, ¶ 8.c.)

The Companies' existing DSIC Riders⁹ incorporate the terms of the Model Tariff established by the Commission in its Final Implementation Order. The Model Tariff was approved pursuant to Section 1353(b)(1) of the Code, which directs that “[a] petition for commission approval of a distribution system improvement charge shall include . . . [a]n initial tariff that complies with a model tariff adopted by the commission.”

Section 2.D. of the Companies' DSIC Riders includes the following formula for calculating quarterly updates¹⁰ to the DSIC that was obtained from the Model Tariff:

$$\text{DSIC} = \frac{((\text{DSI} * \text{PTRR}) + \text{Dep} + e) \times 1 / (1 - T)}{\text{PQR}}$$

Where:

- DSI = Original cost of eligible distribution system improvement projects net of accrued depreciation.
- PTRR = Pre-tax return rate applicable to DSIC-eligible property.
- Dep = Depreciation expense related to DSIC-eligible property.
- e = Amount calculated (+/-) under the annual reconciliation feature or Commission audit, as described below.
- PQR = Projected quarterly revenues for distribution service (including all applicable clauses and riders) from existing customers, excluding customers served under Company's Rate Schedule TP, plus revenue from any customers which will be acquired by the beginning of the applicable service period.
- T = Pennsylvania gross receipts tax rate in effect during the billing month, expressed in decimal form.

Additionally, Section 2.B.2. of the DSIC Riders incorporates the language of the Model Tariff, which, in turn, tracks Section 1357(b) of the Code, and states as follows:

Pre-tax return: The pre-tax return shall be calculated using the statutory state and federal income tax rates, the Company's actual

⁹ The DSIC Riders to the Companies' tariffs are designated Rider R to Met-Ed's and Penelec's tariffs and Riders O and N, respectively, to Penn Power's and West Penn's tariffs.

¹⁰ The DSIC is updated on a quarterly basis to reflect eligible plant additions placed in service during the three-month periods ending one month prior to the effective date of each DSIC update. The effective dates of each update in the DSIC are January 1, April 1, July 1 and October 1. *See* DSIC Riders, Section 2.A.

capital structure and actual cost rates for long-term debt and preferred stock as of the last day for the three-month period ending one month prior to the effective date of the DSIC and subsequent updates.

Pursuant to the Pennsylvania Supreme Court's Order, this case was remanded to the Commission to require the Companies "to revise their tariffs and Distribution System Improvement Charge calculations in accordance with Section 1301.1(a) of the Public Utility Code, 66 Pa.C.S. § 1301.1." Therefore, the purpose of this proceeding is to develop revisions to the DSIC formula in the Companies' respective DSIC Riders to implement the provisions set forth in the first and third sentences of Section 1301.1(a), which state, respectively, as follows:

If an expense or investment is allowed to be included in a public utility's rates for ratemaking purposes, the related income tax deductions and credits shall also be included in the computation of current or deferred income tax expense to reduce rates.

* * *

The deferred income taxes used to determine the rate base of a public utility for ratemaking purposes shall be based solely on the tax deductions and credits received by the public utility and shall not include any deductions or credits generated by the expenses or investments of a public utility's parent or any affiliated entity.

Under the interpretation of Section 1301.1(a) adopted by the Pennsylvania Supreme Court, the formula for calculating quarterly updates of the DSIC would need to be supplemented by adding variables for: (1) the state income tax effects of book-tax timing differences created by placing in service eligible property included in the DSIC calculation (pursuant to the first sentence of Section 1301.1(a)); and (2) ADFIT that reflects the book-tax timing differences created by placing in service eligible property included in the DSIC calculation (pursuant to the third sentence of Section 1301.1(a)).

In base rate proceedings, the state tax effects of book-tax timing differences are flowed-through (i.e., are not normalized for ratemaking purposes) in determining a utility's base rate

revenue requirement. Using the base rate procedure as an analogy to implement the Court's directive, the applicable state tax effects of book-tax timing differences would be reflected in determining the pre-tax return on the original cost of eligible property included in the DSIC calculation.

In base rate proceedings, ADFIT is deducted from rate base in determining a utility's base rate revenue requirement. Using the base rate procedure as an analogy to implement the Court's directive, ADFIT would be deducted from the total eligible property included in the DSIC calculation.

Following the analogous procedures used in base rate proceeding, the principal issue to be addressed by the Pennsylvania Supreme Court's Order on remand is how to revise the formula for calculating the DISC to reflect, to a reasonable degree of accuracy: (1) the effect on quarterly DSIC calculations of pre-tax return of the state income tax impact of tax-book timing differences related to eligible property; and (2) the adjustment to original cost necessary to reflect changes in ADFIT related to the Company's property. Given the purpose for which the DSIC was created and how it is designed to operate,¹¹ the revisions to the DISC formula that are adopted should not require unduly complicated computations and should permit reasonable review and audit of DSIC charges and their supporting calculations. Consequently, the Companies have identified the following sub-issues at this time for consideration and resolution in this case:

¹¹ See Section 1353(a), stating that the DSIC was established "to provide for the timely recovery of the reasonable and prudent costs incurred to repair, improve or replace eligible property in order to ensure and maintain adequate, efficient, safe, reliable and reasonable service." See also *McCloskey*, 255 A.3d at 420 ("The DSIC rate adjustment process was intended to reduce this regulatory lag and provide a streamlined rate adjustment process between the more complex base rate proceedings."); *McCloskey v. Pa. P.U.C. (Columbia Gas)*, 127 A.3d 860, 870 (Pa. Cmwlth. 2015) (Subchapter B of Chapter 13 of the Code created "a simplified framework . . . for a DSIC calculation").

- Should quarterly recalculations of the DSIC be based on estimates of ADFIT and state tax effects of tax-book timing differences that reflect reasonable assumptions regarding the tax depreciable lives of eligible property and the amount of eligible property that will qualify for repair deductions?
- Alternatively, should estimates of ADFIT, state tax effects of tax-book timing differences and the portion of eligible property that qualifies for repair deductions that are used to calculate quarterly DSIC charges be reconciled to the actual values of those items reported in subsequently-filed federal and state income tax returns for the relevant accounting periods, with associated excesses or deficiencies in the Companies' fixed costs to be reflected in the e-factor of subsequent DSIC calculations?
- To what extent should the Commission balance the costs (in terms of the time, resources and administrative burdens on the parties and the Commission's staff) to achieve incremental increases in the precision of the tax calculations against the benefits to be derived from avoiding a complex DSIC formula that would be difficult and time-consuming to calculate, review and audit?

The issues and sub-issues presented by the Court's remand will have effects beyond the revision of the Companies' DSIC Riders and would directly affect all Pennsylvania utilities (electric, natural gas, water and wastewater) that employ the DSIC. As explained above, the Companies' DSIC Riders incorporate the DSIC formula that the Commission approved in the Implementation Order, where it adopted the Model Tariff. Additionally, Section 1353(a)(1) provides that utilities requesting approval to implement a DSIC should adopt the terms of a previously-approved Model Tariff. The statutory provisions that control the process for PUC approval of a DSIC were properly implemented by the Implementation Order on a generic state-

wide basis, just as Section 1353(a)(1) contemplates. Consequently, within the statutory and regulatory framework established pursuant to Subchapter B of Chapter 13, a decision in this remand proceeding would not be restricted to the Companies alone. As both a legal and practical matter, any changes to the DSIC Riders and the DSIC formula approved in this case would necessarily effect a revision of the PUC's Model Tariff.

The Commission should not make a decision with such far-reaching implications for all Pennsylvania utilities in a proceeding that involves only the Companies.¹² Before adopting the Implementation Order, the Commission granted all interested parties, including entities that might employ a DSIC, notice and an opportunity to be heard.¹³ It should follow the same procedure here. Specifically, the Commission should initiate a generic proceeding at Docket No. M-2012-2293611 (the same docket at which the Implementation Order was issued) to consider revisions to the Model Tariff and, by extension, to the DSIC Riders of entities that employ a DSIC, as may be required to comply with the Pennsylvania Supreme Court's Order in *McCloskey/FirstEnergy*. At the time the generic proceeding is initiated, the remand in this docket should be referred to, and consolidated with, the generic proceeding. Thus, the Commission could conduct a generic proceeding and reasonably comply with the Pennsylvania Supreme Court's Order for the Companies.

The ALJ can present this issue to the Commission through a process authorized by the Commission's regulations. Specifically, 52 Pa. Code § 5.305 permits a presiding officer to certify a question for interlocutory review by the Commission, as follows:

¹² The universe of entities that employ the DSIC includes a city natural gas distribution operation (*see* Section 1351) and a second-class city authority (*see* Section 3205(b)). It also extends to municipally-owned utility systems that furnish service outside their municipal boundaries. *See* Section 1301(a)(1)).

¹³ The Commission followed the same process before adopting its Supplemental Implementation Order, entered September 21, 2016, at the same docket number as the Implementation Order.

§ 5.305. Interlocutory review of a material question submitted by a presiding officer.

(a) During the course of a proceeding, a presiding officer may certify to the Commission for review and answer a material question which has arisen or is likely to arise. The question will be accompanied by the following:

(1) An explanation of the compelling reasons why interlocutory review will prevent prejudice or expedite the conduct of the proceeding.

(2) A statement as to whether a stay of the proceedings has been placed in effect.

(3) An extract from the record that will assist the Commission.

(b) A copy of the question certified and the accompanying information will be served on the parties at the same time it is submitted to the Commission.

(c) Within 7 days of service of the certification, each party may submit a brief directed to the Commission addressing the merits of the question for which an answer is requested and whether a stay of proceedings is required to protect the substantial rights of a party. The brief may not exceed 15 pages.

(d) Additional briefs will not be permitted unless directed by the Commission.

(e) Within 30 days of receipt of the certified question, the Commission will, without permitting oral argument, do one of the following:

(1) Continue, revoke or grant a stay of proceedings.

(2) Determine that the certification was improper and return the matter to the presiding officer for resolution.

(3) Answer the certified question.

(f) Failure of the Commission to act upon a certified question within 30 days of its receipt will be deemed to be an affirmation of the decision of the presiding officer.

The Companies propose that ALJ hold the current proceeding in abeyance and certify to the Commission the following question:

In order to provide all interested parties notice and an opportunity to be heard, as due process requires, should the Commission initiate a generic proceeding within 60 days from a determination

on this material question at Docket No. M-2012-2293611 for the purpose of revising the Model Tariff adopted in its Implementation Order entered at that docket number on August 2, 2012, to comply with Section 1301.1(a) of the Pennsylvania Public Utility Code as interpreted by the Pennsylvania Supreme Court in *McCloskey v. Pa. P.U.C.*, 255 A.3d 416 (Pa. 2021) and refer to that generic proceeding the remand proceedings for Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company, at Docket Nos. P-2015-2508942, P-2015-2508936, P-2015-2508931 and P-2015-2508948, respectively?

The Companies have communicated their proposal to counsel for the OCA and the other parties to the remand proceeding and they do not object to the request for certification of the foregoing material question.

Delay and the unnecessary expenditure of resources by the parties, the ALJ and the Commission would be avoided by obtaining an answer to the certified question. Moving forward with the remand proceeding in the current posture could force the parties to embark on litigation to resolve an issue that the Commission ultimately decides should have been addressed in a generic, state-wide proceeding. Indeed, that outcome is likely where, as here, the issues to be resolved will affect all Pennsylvania utilities and deciding those issues in a company-specific proceeding would produce a final order susceptible to attack on due process grounds by parties that did not receive notice and a reasonable opportunity to be participate.¹⁴ The end result could be the need for a complete do-over, with the associated delay and redundant expenditure of money and resources. At a minimum, the Commission should be given the chance to decide whether a generic proceeding would be appropriate before this proceeding continues on a path to possible litigation. Section 5.305 furnishes an approved process to allow the Commission to sort

¹⁴ *Pa. Coal Mining Ass'n v. Pa. Ins. Dept.*, 370 A.2d 685, 692 (Pa. 1977) (“Notice is the most basic requirement of due process [citations omitted].”).

out these kinds of issues before time, money and other resources are needlessly expended.

D. Statement of Evidence (¶ 7.d.)

As set forth Section II.B, *supra*, the Companies expect to present a witness to explain how the Companies' DSIC Riders should be revised to comply with Section 1301.1 if written testimony is required in this proceeding. If a generic proceeding, as discussed in Section III.C., *supra*, is not initiated, the Companies believe there may be an opportunity to reach agreement on revisions to the Companies' DSIC Riders to comply with Section 1301.1 and the Pennsylvania Supreme Court's Order, or to substantially reduce the contested issues, without the necessity for extensive formal litigation. Accordingly, if the process proposed in Section III.C. for obtaining Commission approval to initiate a generic proceeding is not adopted, the Companies request that the ALJ hold in abeyance establishing a procedural schedule so that the parties can be provided a reasonable opportunity to conduct settlement discussions.

IV. CONCLUSION

WHEREFORE, the Companies submit this Third Further Prehearing Conference Memorandum in compliance with the Third Further Prehearing Order in this case and

respectfully request that the ALJ accept the proposal set forth in Section III.C. above for the further conduct of this proceeding.

Respectfully submitted,



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Dated: January 6, 2022

*Counsel for Metropolitan Edison Company,
Pennsylvania Electric Company, Pennsylvania
Power Company and West Penn Power Company*

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