

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

 @pa_oca

 /pennoca

FAX (717) 783-7152
consumer@paoca.org

February 10, 2022

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

Re: Petition of Metropolitan Edison Company for
Approval of a Distribution System Improvement Charge
Docket Nos. P-2015-2508942
C-2016-2531040

Petition of Pennsylvania Electric Company for
Approval of a Distribution System Improvement Charge
Docket Nos. P-2015-2508936
C-2016-2531060

Petition of Pennsylvania Power Company for
Approval of a Distribution System Improvement Charge
Docket Nos. P-2015-2508931
C-2016-2531054

Petition of West Penn Power Company for
Approval of a Distribution System Improvement Charge
Docket Nos. P-2015-2508948
C-2016-2531019

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Brief Supporting the Petition for Review and Answer to Material Question.

Copies have been served per the attached 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

Enclosures:

cc: The Honorable Joel H. Cheskis (**email only**)
Office of Special Assistants (**email only**: ra-OSA@pa.gov)
Certificate of Service

*324030

CERTIFICATE OF SERVICE

Re: Petition of Metropolitan Edison Co. for Approval : Docket Nos. P-2015-2508942,
of a Distribution System Improvement Charge : C-2016-2531040
:
Petition of Pennsylvania Electric Co. for Approval : Docket Nos. P-2015-2508936,
of a Distribution System Improvement Charge : C-2016-2531060
:
Petition of Pennsylvania Power Co. for Approval : Docket Nos. P-2015-2508931,
of a Distribution System Improvement Charge : C-2016-2531054
:
Petition of West Penn Power Co. for Approval : Docket Nos. P-2015-2508948,
of a Distribution System Improvement Charge : C-2016-2531019

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Brief Supporting the Petition for Review and Answer to Material Question, 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 10th day of February 2022.

SERVICE BY E-MAIL ONLY

Richard A. Kanaskie, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120
rkanaskie@pa.gov

Erin K. Fure, Esquire
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place
Harrisburg, PA 17101-1923
efure@pa.gov

Kenneth M. Kulak, Esquire
Brooke E. McGlinn, Esquire
Morgan Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
ken.kulak@morganlewis.com
brooke.mcglinn@morganlewis.com
Representing FirstEnergy Companies

David F. Boehm, Esquire
Kurt J. Boehm, Esquire
Boehm Kurtz & Lowry
36 E Seventh Street, Suite 1510
Cincinnati, OH 45202
dboehm@bkllawfirm.com
kboehm@bkllawfirm.com
Representing AK Steel Corporation

SERVICE BY E-MAIL ONLY (continued)

Charis Mincavage, Esquire
Susan E. Bruce, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108
cmincavage@mcneeslaw.com
sbruce@mcneeslaw.com
*Counsel for Met-Ed Industrial Users Group,
Penelec Industrial Coalition Penn Power
Users Group*

Thomas J. Sniscak, Esquire
Whitney E. Snyder, Esquire
Bryce R. Beard, Esquire
Hawke McKeon & Sniscak LLP
100 North 10th Street
Harrisburg, PA 17101
tjsniscak@hmslegal.com
wesnyder@hmslegal.com
brbeard@hmslegal.com
Representing The PA State University

Tori L. Giesler, Esquire
Darshana Singh, Esquire
FirstEnergy Service Corporation
2800 Pottsville Pike
Reading, PA 19612-6001
tgiesler@firstenergycorp.com
singhd@firstenergycorp.com

/s/ Erin L. Gannon
Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Harrison W. Breitman
Assistant Consumer Advocate
PA Attorney I.D. # 320580
E-Mail: HBreitman@paoca.org

Darryl A. Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

Counsel for:
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: February 10, 2022
*321976

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
Petition of Pennsylvania Electric Co. for Approval of a Distribution System Improvement Charge	:	Docket Nos. P-2015-2508936, C-2016-2531060
Petition of Pennsylvania Power Co. for Approval of a Distribution System Improvement Charge	:	Docket Nos. P-2015-2508931, C-2016-2531054
Petition of West Penn Power Co. for Approval of a Distribution System Improvement Charge	:	Docket Nos. P-2015-2508948, C-2016-2531019

BRIEF OF THE OFFICE OF CONSUMER ADVOCATE
IN SUPPORT OF METROPOLITAN EDISON CO., PENNSYLVANIA ELECTRIC CO.,
PENNSYLVANIA POWER CO. AND WEST PENN POWER CO. PETITION

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Darryl A. Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

Harrison W. Breitman
Assistant Consumer Advocate
PA Attorney I.D. # 320580
E-Mail: HBreitman@paoca.org

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: February 10, 2022

Counsel for:
Patrick M. Cicero
Acting Consumer Advocate

Pursuant to 52 Pa. Code § 5.302(b), the Office of Consumer Advocate (OCA) hereby files this Brief in support of the Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co. and West Penn Power Co. (collectively, FirstEnergy) Petition for Interlocutory Review and Answer to a Material Question (Petition) filed on January 31, 2022 in this proceeding.

In its Petition, FirstEnergy asked the Commission to grant interlocutory review and answer the following question in the affirmative:

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?

Petition at 3.

As discussed below, the OCA supports FirstEnergy's Petition because it would provide certainty and avoid duplicative litigation regarding existing and proposed Distribution System Improvement Charge (DSIC) rates for other Pennsylvania utilities, across all industries.

Section 1301.1 of the Public Utility Code applies to cases in which a final order is entered after August 12, 2016. 66 Pa. C.S. § 1301.1. Section 1301.1 changes the calculation of income tax expense in rates. The application of this provision to increase base rates for utilities filing consolidated tax returns, by removing parent and affiliate income tax deductions and tax losses from in the computation of income tax expense, has been addressed by the Commission

and Commonwealth Court.¹ *Pa. P.U.C. v. UGI Utilities, Inc. – Electric Div.*, No. R-2017-2640058, Order (Oct. 25, 2018), *aff’d*, *McCloskey v. Pa. P.U.C.*, 225 A.3d 192, 210-212 (Pa. Cmwlth. Ct. 2020).

The legal question whether application of Section 1301.1 requires a change to the calculation of DSIC rates, to include income tax deductions and credits to reduce the rates, has been resolved by the Pennsylvania Supreme Court. *McCloskey v. Pa. P.U.C.*, 255 A.3d 416 (Pa. 2021) (*McCloskey 2021*). The instant proceeding directly follows as a remand from *McCloskey 2021*, which involved the four FirstEnergy companies, Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co. and West Penn Power Co., and Newtown Artesian Water Company (Newtown).² The Court remanded those five proceedings to the Commission for the purpose of requiring the First Energy companies and Newtown to revise their tariffs and DSIC calculations to comply with Section 1301.1.³ *McCloskey 2021* at 437.

Currently, twenty-six utilities, including the five utilities that are the subject of these remand proceedings, have Commission approval to charge DSIC rates.⁴ As a practical matter, the Commission’s determination of what specific changes are required to include income tax deductions in the DSIC calculation may impact all Pennsylvania utilities that charge a DSIC.

¹ Section 1301.1(a) provides, in relevant part, that “If an expense or investment is not allowed to be included in a public utility’s rates, the related income tax deductions and credits, including tax losses of the public utility’s parent or affiliated companies, shall not be included in the computation of income tax expense to reduce rates.” 66 Pa. C.S. § 1301.1(a).

² The Newtown remand proceeding is docketed as R-2017-2624240. That proceeding has been stayed pending the conclusion of the FirstEnergy remand proceeding. *Pa. P.U.C. v. Newtown Artesian Water Co.*, No. R-2017-2624240, Order Staying Proceeding at 4-5 (Nov. 19, 2021).

³ In those underlying proceedings, the Commission did not reach the question of how the income tax deductions should be included in the DSIC calculation. *Petitions of Metropolitan Edison Co., West Penn Power Co., Petition of Pennsylvania Electric Co., and Pennsylvania Power Co. for Approval of a Distribution System Improvement Charge*, Nos. P-2015-2508942, P-2015-2508948, P-2015-2508936, P-2015-2508931, Order at 42 (Apr. 19, 2018). While that issue was addressed by OCA and utility witnesses, the primary focus was on the legal question whether Section 1301.1(a) applied to the DSIC rate. *Id.* at 36-43; OCA St. S-Supp. at 1; OCA St. 1SR-Supp at 3-9; *see also Pa. P.U.C. v. Newtown Artesian Water Co.*, No. R-2017-2624240, Order at 44 (Apr. 26, 2018). Thus, additional details regarding the necessary changes to the Companies’ tariffs and DSIC calculations remain to be addressed.

⁴ Attachment A contains a current list of the utilities with approved DSIC calculations and tariffs.

The statutory DSIC provisions that control the process for Commission approval of a DSIC were implemented in a series of implementation orders on a generic basis, including the approval of a Model Tariff. *Implementation of Act 11 of 2012*, Docket No. M-2012-2293611, Final Implementation Order, App. A (Aug. 2, 2012). As such, the OCA submits that it is appropriate for the necessary changes to be addressed in a generic proceeding rather than within this proceeding addressing only the FirstEnergy companies. This would serve to allow all stakeholders to participate in a decision that has implications for utilities in all industries. Significantly, it would also create a proceeding through which all existing DSIC tariffs and rates can be brought into compliance with Section 1301.1(a). The OCA submits that this would be a more efficient use of the Commission and stakeholder's resources than individually and separately addressing compliance with Section 1301.1(a) for each utility employing a current and future DSIC.

The OCA also supports the request for the Commission to initiate a generic proceeding within 60 days from a determination on this material question. Section 1301.1 became effective in August 2016. 66 Pa. C.S. § 1301.1(c). Since then, utilities have charged DSIC rates that were not calculated in compliance with Section 1301.1. Where this caused overcollections, refunds may be due. The necessary changes to the DSIC computation and the procedure for calculating refunds and crediting customers should be determined without unreasonable delay to cease overcollections, minimize amounts to be refunded, provide certainty for impacted utilities, and afford relief to customers. To this end, the OCA submits that all stakeholders will benefit from timely initiation of a generic proceeding.

WHEREFORE, the Office of Consumer Advocate supports the Petition filed by Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co. and West Penn Power Co. and respectfully submits that the Commission should grant the Petition and answer the question in the affirmative.

Respectfully Submitted,



Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Counsel for:
Patrick M. Cicero
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

February 10, 2022
323508

Utilities with an Approved DSIC Calculation and Tariff

	Utility Name	PUC Docket No.	Industry
1.	Aqua Pennsylvania, Inc. (formerly Philadelphia Suburban Water Co.)	P-00961036	Water
2.	Aqua Pennsylvania Wastewater, Inc. (formerly Little Washington Wastewater Co.)	P-2013-2366873	Wastewater
3.	Columbia Gas of Pennsylvania, Inc.	P-2012-2338282	Gas
4.	Columbia Water Co.	P-00021979	Water
5.	Duquesne Light Co.	P-2016-2540046	Electric
6.	Metropolitan Edison Co.	P-2015-2508942	Electric
7.	Newtown Artesian Water Co.	R-00984322	Water
8.	PECO Energy Co.	P-2013-2347340	Gas
9.	PECO Energy Co.	P-2015-2471423	Electric
10.	Pennsylvania-American Water Co.	P-00961036	Water
11.	Pennsylvania-American Water Co.	P-2014-2431005	Wastewater
12.	Pennsylvania Electric Co.	P-2015-2508936	Electric
13.	Pennsylvania Power Co.	P-2015-2508931	Electric
14.	Peoples Gas Co. (formerly Peoples TWP)	P-2013-2344595	Gas
15.	Peoples Natural Gas Co.	P-2013-2344596	Gas

	Utility Name	PUC Docket No.	Industry
16.	Peoples Natural Gas Co. – Equitable Division (formerly Equitable Gas Co.)	P-2013-2342745	Gas
17.	Philadelphia Gas Works	P-2012-2337737	Gas
18.	Pittsburgh Water & Sewer Authority	P-2020-3019019	Water
19.	Pittsburgh Water & Sewer Authority	P-2020-3019019	Wastewater
20.	PPL Electric Utilities Corp.	P-2012-2325034	Electric
21.	SUEZ Water Pennsylvania Inc. (formerly United Water Pennsylvania, Inc.)	R-00984265	Water
22.	UGI Central (formerly UGI Central Penn Gas, Inc.)	P-2013-2398835	Gas
23.	UGI South (formerly UGI Utilities, Inc.)	P-2013-2398833	Gas
24.	UGI North (formerly UGI Penn Natural Gas, Inc.)	P-2013-2397056	Gas
25.	West Penn Power Co.	P-2015-2508948	Electric
26.	The York Water Co.	P-00963810	Water