

**H**awke  
  **M**cKeon &  
   **S**niscak LLP  
**ATTORNEYS AT LAW**

Thomas J. Sniscak  
(717) 236-1300 x224  
tjsniscak@hmslegal.com

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

June 26, 2012

Via Hand Delivery

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor (filing room)  
Harrisburg, PA 17120

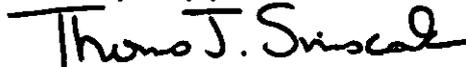
Re: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs; Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670; **EXCEPTION TO RECOMMENDED DECISION**

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission an original and nine (9) copies of The Pennsylvania State University's Exception to the Recommended Decision in the above-captioned matter. Copies have been served in accordance with the attached Certificate of Service.

Should you have any questions or comments, please feel free to contact me directly.

Very truly yours,



Thomas J. Sniscak  
William E. Lehman

*Counsel for The Pennsylvania State University*

TJS/WEL/bes

Enclosures

cc: Honorable Elizabeth H. Barnes, Administrative Law Judge (by hand delivery and e-mail)  
Per Certificate of Service

RECEIVED  
2012 JUN 26 PM 4: 04  
PA PUBLIC  
SECRETARY'S BUREAU

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Petition of Metropolitan Edison	:	Docket Nos.	P-2011-2273650
Company, Pennsylvania Electric Company,	:		P-2011-2273668
Pennsylvania Power Company and	:		P-2011-2273669
West Penn Power Company for	:		P-2011-2273670
Approval of Their Default Service Programs	:		

---

EXCEPTION OF  
THE PENNSYLVANIA STATE UNIVERSITY

---

RECEIVED  
2012 JUN 26 PM 1:02  
SECRETARY'S BUREAU

Thomas J. Sniscak, Attorney I.D. 33891  
William E. Lehman, Attorney I.D. 83936  
Hawke McKeon & Sniscak LLP  
100 North Tenth Street  
P. O. Box 1778  
Harrisburg, PA 17105-1778  
(717) 236-1300  
[tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)  
[welehman@hmslegal.com](mailto:welehman@hmslegal.com)

*Counsel for  
The Pennsylvania State University*

DATED: June 26, 2012

## I. INTRODUCTION AND REQUEST TO FILE EXCEPTION NUNC PRO TUNC

The Pennsylvania State University (“PSU”) hereby submits its limited Exception to the Recommended Decision (“RD”) dated June 15, 2012 of Administrative Law Judge (“ALJ”) Elizabeth H. Barnes on Issue II(5)(b), Solar Photovoltaic Requirements, according to the RD’s outline.

PSU requests leave to submit its Exception a day later due to service problems by the Commission or the US Mail, and due to the resultant impact of the materially shortened Exception period originally set in this matter. Specifically, Counsel for PSU did not receive service by email<sup>1</sup> or hard copy of the 140 page RD which was dated or released on Friday June 15, 2012. The accompanying Secretarial Letter set an Exception period of 10 calendar days or by June 25, 2012. That is much shorter than the typical 20 or 15 days for Exceptions. PSU’s counsel became aware of the RD and the short Exception period on the due date when emails had been circulated by parties regarding extending the page limit for Exceptions. Less than one day was insufficient to discuss the matter with PSU, and to decide to file and prepare an Exception.

To PSU’s knowledge, only a small fraction of the parties have taken a position on the Solar Photovoltaic Credits issue: the Joint Petitioners, RESA, and West Penn Power Industrial Intervenors (“WPPII”). Those parties have indicated no objection to PSU’s request, and PSU thanks them for their consideration. PSU submits that permitting PSU to submit its limited Exception will not cause any party substantive harm. Indeed, PSU received this day an email notification sent to all parties by the Office of Special Assistants moving the deadline for

---

<sup>1</sup> Notices, rulings and information regarding issues and briefing were handled ably and promptly by the ALJ in this matter via email to the parties. It appears that said office does not handle the actual service of the RD though. It is respectfully submitted that the Commission should adopt a rule or policy that where it substantially lessens an Exception and Reply Exception period, that it serve a copy of the RD and Secretarial Letter via email as did the ALJ with any significant developments during the case.

Exceptions to June 29, 2012 for parties wishing to file additional Exception points, and July 6 instead of July 2 for Reply Exceptions.

PSU's Exception will follow the outline section used in the RD.

## II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

### 5. AEPS Requirements

#### b. Solar Photovoltaic Requirements (pages 39-42 of the RD)

#### **PSU EXCEPTION 1: The First Energy Merger Does Not Mandate West Penn To Change The Status Quo Nor Is It A Substitute For Evidentiary Support.**

Presently for West Penn Power Company ("West Penn"), large users through their EGS are responsible for procuring 100% of SPAECs to meet requirements under the Alternative Energy Portfolio Standards Act ("AEPS"), 73 P.S. §§ 1648.1 *et seq.* West Penn argued, and the ALJ erred in accepting, that it must change the status quo for procurement of SPAECs so it will procure 40% of SPAECs and the customer via its EGS 60% because of a mandate from the Pennsylvania Public Utility Commission ("Commission") Order approving the settlement of the FirstEnergy-Allegheny Merger. (West Penn Main Brief at 25; RD at 40) As discussed below, however, the Merger Settlement Agreement and Commission Order approving it do not require West Penn to procure 40% of SPAECs.

In essence, West Penn has argued and the ALJ has accepted that *alleged* Commission mandate as a substitute for suitable reasons or evidence for changing the West Penn status quo. In this record, there is absolutely no evidence adduced by West Penn – who bears the burden of proof – that the status quo fails to discharge the AEPS obligations in any way. West Penn did not establish that the status quo could not accomplish the hedging or different contract terms West Penn claims may result. Simply put, there is nothing broke that needs fixed.

The RD does not cite the precise language of the Merger Settlement Agreement it relies upon for its conclusion that West Penn is obligated to procure 40% of SPAECs. Examination of that language shows it does not extend any such obligation to West Penn. Specifically, the Merger Settlement Agreement that the Commission approved, in pertinent part states:

...post-merger FirstEnergy EDCs that *have* an existing SPVRC Rider will propose in the default service filings for the period beginning June 1, 2013, to procure 40% of their solar requirements for the period 2011 through 2021 using long-term contracts of 10 years in length ...<sup>2</sup>

Importantly, West Penn *did not have* an SPVRC Rider at the time the Merger Settlement Agreement was approved so it was not included in the “FirstEnergy EDCs” referenced. It is error for the RD to amend the language to which was agreed and approved by the Commission from “have” to “will have.” Moreover, even if the Merger Settlement Agreement did apply to West Penn on this issue – which it does not – West Penn’s implication that the alleged Merger Settlement Agreement mandate that it must procure 40% and is preclusive on the parties, is also incorrect as the Merger Settlement Agreement states: “nothing herein shall be construed as prohibiting the Signatory Parties from opposing, or recommending changes in, those filings with regard to SPAECs ...”<sup>3</sup>

The record is clear that large shopping customers would have to renegotiate their EGSs contracts in order to implement the 40% SPAECs procurement and cost allocation. (RAIS St. No. 1, p. 10) The record also shows this will add to confusion for customers attempting to confirm that their EDCs and EGSs are collecting the correct percentages of SPAECs that qualify under the AEPS. *Id.* PSU, as a large West Penn shopping customer, agrees that there are more detriments than benefits under West Penn’s proposal to change the status quo.

---

<sup>2</sup> Reference Companys’ Exhibit DWS-7, p.12 (emphasis added).

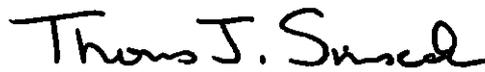
<sup>3</sup> *Id.*

FirstEnergy and West Penn have offered no reason other than the alleged merger mandate to support changing the status quo for SPAECs procurement at West Penn. Administrative convenience certainly does not outweigh the interests of large customers in continuing the status quo, particularly where West Penn adduced no evidence that the status quo fails to satisfy AEPS requirements or that the status quo is incapable of hedging or mixing contract lengths.

In sum, West Penn bears the burden of proof to show that the rate or tariff revisions it proposes are just and reasonable under 66 Pa.C.S. §§ 315(a) and 1301, and here it has not done so. PSU respectfully requests that the Commission reject the change for SPAECs procurement for West Penn, and that the status quo continue.

In the alternative, if the Commission were to change the status quo for SPAECs, which it should not, it should be done prospectively and existing contracts should be grandfathered and subject to the status quo.

Respectfully submitted,



Thomas J. Sniscak, Attorney I.D. 33891  
William E. Lehman, Attorney I.D. 83936  
Hawke McKeon & Sniscak LLP  
100 North Tenth Street  
P. O. Box 1778  
Harrisburg, PA 17105-1778  
(717) 236-1300  
[tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)  
[welehman@hmslegal.com](mailto:welehman@hmslegal.com)

*Counsel for:*  
*The Pennsylvania State University*

RECEIVED  
2012 JUN 26 PM 4:01  
PA PUBLIC  
SECRETARY'S BUREAU

Dated: June 26, 2012

**CERTIFICATE OF SERVICE**

Docket Nos. P-2011-2273650, P-2011-2273668,  
P-2011-2273669, and P-2011-2273670

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

**VIA HAND DELIVERY**  
**(with CD containing Exception)**

Cheryl Walker Davis, Director  
Office of Special Assistants  
Pennsylvania Public Utility Commission  
400 North Street, 3<sup>rd</sup> Floor  
Harrisburg, PA 17120

RECEIVED  
2012 JUN 26 PM 4:01  
PA PUBLIC UTILITIES  
SECRETARY'S BUREAU

**VIA FIRST CLASS U.S. MAIL**  
**AND ELECTRONIC MAIL**

Tanya J. McCloskey, Esquire  
Darryl A. Lawrence, Esquire  
Aron J. Beatty, Esquire  
Office of Consumer Advocate  
555 Walnut Street  
5<sup>th</sup> Floor, Forum Place  
Harrisburg, PA 17101-1923  
[tmccloskey@paoca.org](mailto:tmccloskey@paoca.org)  
[dlawrence@paoca.org](mailto:dlawrence@paoca.org)  
[abeatty@paoca.org](mailto:abeatty@paoca.org)  
[cshoen@paoca.org](mailto:cshoen@paoca.org)

Daniel G. Asmus, Esquire  
Sharon E. Webb, Esquire  
Office of Small Business Advocate  
Suite 1102, Commerce Building  
300 North Second Street  
Harrisburg, PA 17101  
[dasmus@pa.gov](mailto:dasmus@pa.gov)  
[swebb@pa.gov](mailto:swebb@pa.gov)

Charles D. Shields, Esquire  
Bureau of Investigation & Enforcement  
Pennsylvania Public Utility Commission  
Commerce Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
P.O. Box 3265  
Harrisburg, PA 17105-3265  
[cshields@pa.gov](mailto:cshields@pa.gov)  
[sgranger@pa.gov](mailto:sgranger@pa.gov)

Thomas P. Gadsden, Esquire  
Kenneth M. Kulak, Esquire  
Anthony C. DeCusatis, Esquire  
Catherine G. Vasudevan, Esquire  
Morgan Lewis & Bockius LLP  
1701 Market Street  
Philadelphia, PA 19103-2921  
[tgadsden@morganlewis.com](mailto:tgadsden@morganlewis.com)

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

Benjamin L. Willey, Esquire  
Law Offices of Benjamin L. Willey, LLC  
7272 Wisconsin Avenue, Suite 300  
Bethesda, MD 20814  
[blw@bwilleylaw.com](mailto:blw@bwilleylaw.com)  
[ssp@bwilleylaw.com](mailto:ssp@bwilleylaw.com)

*Counsel for YCSWA*

Jeanne J. Dworetzky  
Exelon Business Services Company  
2301 Market Street, S23-1  
P.O. Box 8699  
Philadelphia, PA 19101-8699  
[Jeanne.dworetzky@exeloncorp.com](mailto:Jeanne.dworetzky@exeloncorp.com)

*Counsel for PECO Energy Co.*

Daniel Clearfield, Esquire  
Deanne M. O'Dell, Esquire  
Carl R. Shultz, Esquire  
Jeffery J. Norton, Esquire  
Eckert Seamans Cherin & Mellot, LLC  
213 Market Street, 8<sup>th</sup> Floor  
P.O. Box 1248  
Harrisburg, PA 17101  
[dclearfield@eckertseamans.com](mailto:dclearfield@eckertseamans.com)  
[dodell@eckertseamans.com](mailto:dodell@eckertseamans.com)  
[cshultz@eckertseamans.com](mailto:cshultz@eckertseamans.com)  
[jnorton@eckertseamans.com](mailto:jnorton@eckertseamans.com)

*Counsel for RESA and  
Direct Energy Services, LLC*

Michael A. Gruin, Esquire  
Stevens & Lee  
17 North Second Street, 16<sup>th</sup> Floor  
Harrisburg, PA 17101  
[mag@stevenslee.com](mailto:mag@stevenslee.com)

*Counsel for WGES*

Patrick M. Cicero  
Harry S. Geller  
Pennsylvania Utility Law Project  
118 Locust Street  
Harrisburg, PA 17101  
[pulp@palegalaid.net](mailto:pulp@palegalaid.net)

*Counsel for CAUSE-PA*

Charis Mincavage, Esquire  
Susan E. Bruce, Esquire  
Vasiliki Karandrikas, Esquire  
Teresa K. Schmittberger, Esquire  
McNees, Wallace & Nurick, LLC  
100 Pine Street  
P.O. Box 1166  
Harrisburg, PA 17108-1166  
[cmincavage@mwn.com](mailto:cmincavage@mwn.com)  
[sbruce@mwn.com](mailto:sbruce@mwn.com)  
[vkandrikas@mwn.com](mailto:vkandrikas@mwn.com)  
[tschmittberger@mwn.com](mailto:tschmittberger@mwn.com)

*Counsel for  
MEIUG/PICA/PPUG and WPPII*

Divesh Gupta, Esquire  
Managing Counsel/Regulatory  
Constellation Energy  
100 Constitution Way, Suite 500C  
Baltimore, MD 21202  
[Divesh.gupta@constellation.com](mailto:Divesh.gupta@constellation.com)

*Counsel for Constellation NewEnergy, Inc.  
and Constellation Energy Commodities  
Group, Inc.*

Thomas McCann Mullooly, Esquire  
Trevor D. Stiles, Esquire  
Foley & Lardner LLP  
777 East Wisconsin Avenue  
Milwaukee, WI 53202  
[tmullooly@foley.com](mailto:tmullooly@foley.com)  
[tstiles@foley.com](mailto:tstiles@foley.com)

*Counsel for Exelon Generation Co., LLC  
and Exelon Energy Company*

Todd S. Stewart, Esquire  
Hawke McKeon & Sniscak LLP  
P.O. Box 1778  
100 North Tenth Street  
Harrisburg, PA 17105-1778  
[Tsstewart@hmslegal.com](mailto:Tsstewart@hmslegal.com)

*Counsel for Dominion Retail, Inc.*

RECEIVED  
2012 JUN 26 PM 4:01  
SECRETARY'S BUREAU

Amy M. Klodowski, Esquire  
FirstEnergy Solutions Corp.  
800 Cabin Hill Drive  
Greensburg, PA 15601  
[aklodow@firstenergycorp.com](mailto:aklodow@firstenergycorp.com)

*Counsel for FirstEnergy Solutions Corp.*

Bradley A. Bingaman, Esquire  
Tori L. Geisler, Esquire  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, PA 19612-6001  
[bbingaman@firstenergycorp.com](mailto:bbingaman@firstenergycorp.com)  
[tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)

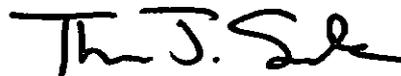
*Counsel for FirstEnergy Service Company*

Brian J. Knipe, Esquire  
Buchanon Ingersoll & Rooney, PC  
17 North Second Street, 15<sup>th</sup> Floor  
Harrisburg, PA 17101-1503  
[Brian.knipe@bipc.com](mailto:Brian.knipe@bipc.com)

*Counsel for FirstEnergy Solutions Corp.*

Charles E. Thomas, III, Esquire  
Thomas T. Niesen, Esquire  
Thomas, Long, Niesen & Kennard  
212 Locust Street  
P.O. Box 9500  
Harrisburg, PA 17108-9500  
[cet3@thomaslonglaw.com](mailto:cet3@thomaslonglaw.com)  
[tniesen@thomaslonglaw.com](mailto:tniesen@thomaslonglaw.com)

*Counsel for ARIPPA*



---

Thomas J. Sniscak  
William E. Lehman

Dated this 26<sup>th</sup> day of June, 2012

RECEIVED  
2012 JUN 26 PM 4:01  
PA T J U  
SECRETARY'S BUREAU