**BEFORE THE**

**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Metropolitan Edison Company for : P-2021-3030012

Approval of Its Default Service Plan for the Period :

From June 1, 2023 through May 31, 2027 :

Petition of Pennsylvania Electric Company for : P-2021-3030013

Approval of Its Default Service Plan for the Period :

From June 1, 2023 through May 31, 2027 :

Petition of Pennsylvania Power Company for : P-2021-3030014

Approval of Its Default Service Plan for the Period :

From June 1, 2023 through May 31, 2027 :

Petition of West Penn Power Company for : P-2021-3030021

Approval of Its Default Service Plan for the Period :

From June 1, 2023 through May 31, 2027 :

**PREHEARING ORDER**

**NOTE: Please read this document in its entirety as it provides important information about this case.**

On December 14, 2021, the Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power), and West Penn Power Company (West Penn) (collectively, the Company or Companies) petitioned the Pennsylvania Public Utility Commission (PUC or Commission) for approval of a proposed plan for the terms and conditions under which the Companies would supply default service from June 1, 2023, through May 31, 2027.[[1]](#footnote-1) The Petition was filed pursuant to Pennsylvania’s Electricity Generation Customer Choice and Competition Act at 66 Pa. C.S. § 2801, Act 129 of 2008, the Commission’s default service regulations at 52 Pa. Code §§ 54.181-54.190, and the Commission’s default service policy statement at 52 Pa. Code §§ 69.1801-1817.

On December 23, 2021, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), filed a Petition to Intervene.

Notice of the Companies’ filing was published in the Pennsylvania Bulletin on January 1, 2022.

On January 3, 2022, the Commission issued a Pre-Conference Hearing Notice, scheduling a pre-hearing conference for Friday, January 21, 2022. On the same day, a Prehearing Conference Order was entered requiring parties to file a Prehearing Conference Memorandum on or before Thursday, January 20, 2022.

On January 13, 2022, the Office of Consumer Advocate (OCA) filed its Notice of Intervention and Public Statement in response to the Companies’ Petition.

On January 14, 2022, the Met-Ed Industrial Users Group (MEIUG), the Penelec Industrial Customer Alliance (PICA), and the West Penn Power Industrial Intervenors (WPPII) (collectively, the Industrials), filed Joint Petitions to Intervene.

On January 17, 2022, Joint Petitions to Intervene were filed by John Bevec (Bevec) and Sunrise Energy LLC (Sunrise).

On January 18, 2022, the Office of Small Business Advocate (OSBA) filed Answers, Notices of Appearance, Notices of Intervention, and Public Statements at the above-captioned dockets.

On January 18, 2022, Petitions to Intervene were filed by the Retail Energy Supply Association (RESA) and NRG Energy’s Inc. (NRG).

On January 18, 2022, Petitions to Intervene were filed by Shipley Choice, LLC d/b/a Shipley Energy (Shipley).

On January 18, 2022, the Pennsylvania State University (PSU) filed a Petition to Intervene.

On January 18, 2022, a Petition to Intervene was filed by Enerwise Global Technologies d/b/a CPower Energy Management (CPower). Michael A. Gruin, Esquire filed a Notice of Appearance on behalf of CPower on January 21, 2022.

On January 18, 2022, a Petition to Intervene was filed by Exelon Generation LLC (ExGen) and Constellation New Energy Inc (Constellation).

On January 19, 2022, the Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission filed a Notice of Appearance.

On January 20, 2022, Calpine Retail Holdings LLC (Calpine) filed a Petition to Intervene.

On January 20, 2022, an Application to Practice Pro Hac Vice of John M. White was filed on behalf of ExGen and Constellation.

On January 20, 2022, the Company filed a Motion to Consolidate the four proceedings into a single proceeding.

On January 20, 2022, the Company filed a prehearing Memorandum. Attached to the Prehearing Memorandum was a Protective Order proposed by the Company.

Prehearing Memoranda were filed by the Company, OCA, OSBA, I&E, CAUSE-PA, MEIUG, PICA, WPPII, Shipley, PSU, ExGen, Constellation, CPower, RESA, NRG, Bevec, Sunrise, and Calpine on January 20, 2022.

The Prehearing Conference was convened as scheduled on January 21, 2021. The Company, OCA, OSBA, I&E, CAUSE-PA, MEIUG, PICA, WPPII, Shipley, PSU, ExGen, Constellation, CPower, RESA, NRG, Bevec, and Sunrise attended and were represented by legal counsel. Calpine also attended the Prehearing Conference.

The parties discussed a variety of matters detailed below.

**Litigation Schedule**

The Parties agreed upon the following litigation schedule:

|  |  |
| --- | --- |
| Other Parties Direct Testimony | February 25, 2022 |
| Rebuttal Testimony | March 24, 2022 |
| Surrebuttal Testimony  Rejoinder Outline  Oral Rejoinder and Evidentiary Hearings[[2]](#footnote-2) | April 7, 2022  April 12, 2022  April 13-14, 2022 |
| Main Briefs | May 6, 2022 |
| Reply Briefs | May 16, 2022 |
| Recommended Decision | July 1, 2022 |
| Public Meeting | August 25, 2022 |

Any Joint Settlement Petition and Statements in Support of Settlement shall be filed no later than the due date for the filing of Reply Briefs in this proceeding.

The parties are reminded of the Commission’s requirements for the preparation and filing of written testimony. 52 Pa.Code §§ 5.412 and 5.412a. Written testimony must be accompanied by all exhibits to which it relates. Technical terms and concepts are to be clearly defined and explained in the testimonies and briefs. **No written testimony will be admitted into evidence unless accompanied by a verification or affidavit of the witness**.

Active parties serving prepared testimony in proceedings pending before the Commission pursuant to 52 Pa.Code § 5.412(f) shall be required, within thirty (30) days after the final hearing in an adjudicatory proceeding, to e-file with the Secretary’s Bureau a copy of all testimony furnished to the court reporter during the proceeding consistent with 52 Pa.Code § 5.412a.

The above-stated dates are in-hand dates for service on the active parties and the undersigned. The undersigned agrees to accept email transmission of such material, so long as the subject email is received by 4:00 p.m. on the due date. The email address of the undersigned is [jeffwatson@pa.gov](mailto:jeffwatson@pa.gov) and Nick Miskanic, Legal Assistant is [nmiskanic@pa.gov](mailto:nmiskanic@pa.gov).

Evidentiary hearings will begin promptly at **10:00 a.m. on April 13 and 14, 2022.** The active parties must confer before commencement of the hearings to schedule their witnesses so as to avoid “holes” or “dead time” during the hearings.

**Parties and Petitions to Intervene**

The Petitions to Intervene filed by CAUSE-PA, MEIUG, PICA, WPPII, Shipley, PSU, ExGen, Constellation, CPower, RESA, NRG, and Calpine were granted by the undersigned ALJ at the prehearing conference, without objection. The Company indicated it intended to file a responsive pleading to the Petitions to Intervene filed by Bevec and Sunrise on or before February 7, 2022.

**Public Input Hearing**

A discussion was held at the Prehearing Conference regarding the scheduling of a public input hearing in this proceeding. No Party requested that a public input hearing be scheduled. The Parties were requested to advise the undersigned ALJ as soon as possible in the event that any Party should request a public input hearing in this proceeding.

**Filing and Service**

Filings in this case may be made by e-filing with the Secretary’s Bureau. Filings may not be made by emailing or faxing the Secretary’s Bureau. Filings may not be made through the undersigned or his office.

Once a filing has been made, the document must then be served upon the undersigned and every other person appearing on the most recent party’s list provided by the Commission.

The undersigned may be served by email. Furthermore, everyone at the prehearing conference agreed to be served by email. Therefore, service by the Commission, the active parties, and protestants should be made by email, unless otherwise required or agreed by the Parties.

**Discovery**

The parties shall engage in informal discovery whenever and wherever possible in an attempt to resolve any discovery disputes amicably. 52 Pa.Code § 5.322. If this process fails, the parties have recourse under the Commission’s procedures for formal discovery. 52 Pa.Code §§ 5.321, *et* *seq,* with the amended deadlines set by this Order. The parties must not send the Presiding ALJ discovery material or cover letters, unless attached to a motion to compel. **All motions to compel must contain a certification of the informal discovery undertaken and the parties’ efforts to resolve their discovery disputes informally.** If a motion to compel fails to contain such certification, the Presiding ALJ will contact the parties and direct them to pursue informal discovery.

In addition, the Parties agreed to utilizing the modified discovery deadlines in this proceeding as follows:

1. Answers to interrogatories be served in-hand within ten (10) days of service of the interrogatories.
2. Objections to interrogatories be communicated orally within three (3) days of service; unresolved objections be served to the ALJ in writing within five (5) days of service of interrogatories.
3. Motions to dismiss objections and/or direct the answering of interrogatories be filed within three (3) days of service of written objections.
4. Answers to motions to dismiss objections and/or direct the answering of interrogatories be filed within three (3) days of service of such motions.
5. Responses to requests for document production, entry for inspection, or other purposes be served in-hand within ten (10) calendar days.
6. Requests for admission be deemed admitted unless answered within ten (10) days or objected to within five (5) days of service.
7. Discovery requests served after 4:30 p.m. Monday through Thursday or after   
   12:00 p.m. on a Friday or the day preceding a holiday shall be deemed to have been served on the next business day.
8. Discovery requests, motions to compel, and responses must be served electronically and will only be served on paper upon request.

**Protective Order**

The parties are directed to familiarize themselves with 52 Pa.Code § 5.362 (Protective orders), § 5.365 (Orders to limit availability of proprietary information), and § 102.4(h) (Challenge procedures to confidentiality designation) regarding the preparation and filing of a motion for a protective order, where applicable.

On January 20, 2022, the Company filed a prehearing Memorandum. Attached to the Prehearing Memorandum was a Protective Order proposed by the Company. The proposed protective Order was addressed at the prehearing conference and no objection was raised. Accordingly, the Protective Order proposed by the Company will be granted.

**Settlement**

The parties are reminded it is the Commission’s policy to encourage settlements. 52 Pa.Code § 5.231(a). The parties are strongly urged to seriously explore this possibility.

In the event that the active parties reach a partial or non-unanimous full settlement is achieved, the active parties should be prepared to proceed on the first scheduled day of hearing.

In the event that that the active parties reach a full unanimous settlement, the active parties should notify the presiding ALJ as soon as possible prior to the scheduled evidentiary hearings.

If the active parties reach a full unanimous settlement, they may choose to convene on April 13, 2022, as scheduled and offer their written testimonies and exhibits on the record. Testimonies and exhibits may be admitted into the record upon oral motion as long as the other active parties waive cross-examination of the witness and an appropriate verification has been filed with the Commission’s Secretary’s Bureau.

If the active parties reach a full unanimous settlement, they may request that the ALJ cancel the evidentiary hearings. Such a request should be made as soon as possible prior to the scheduled hearings, but no later than **4:00 p.m. on April 11, 2022**. The ALJ will not cancel the evidentiary hearings unless and until the active parties file a fully-executed joint stipulation for the admission of evidence with the Secretary’s Bureau. The stipulation must include: (1) a stipulation that all active parties waive cross-examination of all witnesses, (2) a list of all testimonies and exhibits to be admitted into the record, either embedded within the stipulation or attached to the stipulation, and (3) a stipulation that the testimonies and exhibits to be admitted into the record are admissible and should be admitted. If such a stipulation is filed, the ALJ may issue an Order adopting the stipulation, admitting the evidence into the record, cancelling the evidentiary hearings, and ordering the active parties to file their testimonies and exhibits, with appropriate verifications, with the Commission’s Secretary’s Bureau along with a copy of the Order. The proposed stipulation shall also be provided to the ALJ in WORD format.

**Stipulations**

If settlement is not feasible, the parties are encouraged to stipulate to any matters they reasonably can in order to expedite this proceeding, lessen the burden of time and expenses in litigation on all parties, and conserve precious administrative hearing resources. 52 Pa.Code §§ 5.232 and 5.234.

All stipulations entered into by the active parties must be reduced to writing, signed by the active parties to be bound thereby, and moved into the record either orally at an evidentiary hearing or through a motion filed with the Secretary’s Bureau.

**Cross-Examination**

Friendly cross-examination or cumulative cross-examination during the evidentiary hearings will not be permitted. 52 Pa.Code §§ 5.76 & 5.243.

**Briefs**

The parties must comply with 52 Pa.Code §§ 5.501, *et* *seq*., regarding the preparation and filing of briefs. Page limitations on briefs will be discussed on or before the last day of hearing. The parties shall submit an electronic copy of all briefs to the Presiding ALJ **in a *Microsoft Office Word*format.**

Any Briefs or Settlement Petitions filed in this case shall clearly set forth, in the text of the document, and not as a reference to an exhibit or other document, the essential terms of the Settlement.

Any Joint Settlement Petition and Briefs shall include proposed findings of fact, proposed conclusions of law, proposed ordering paragraphs and a procedural history, with specific citations to the record, where applicable. In the event of a settlement or the filing of Briefs, the Parties shall agree upon a list of common issues which the Parties shall utilize in the organization of the settlement petition and all statements in support of settlement in these proceedings. All issues addressed in the settlement petition and statements in support of settlement and briefs shall be structured so that all parties’ statements in support of settlement and the settlement petition discuss identical issues as identified by the parties.

**Modification**

Any of the provisions of this Prehearing Order may be modified upon motion and good cause shown by any party in interest.

**Miscellaneous**

1. The Parties are directed to provide my Legal Assistant Nick Miskanic at [nmiskanic@pa.gov](mailto:nmiskanic@pa.gov), by email, with a copy of any emails provided to me and any documents that any Party may file with the Secretary’s Bureau in this proceeding. The Parties are also requested but not required to provide me with paper copies of all filings made in this proceeding by first class mail, if possible. In addition, it is requested that service of pleadings, testimony and briefs provided to the undersigned presiding officer electronically, include an electronic copy in WORD format. If you email my Legal Assistant any communication, documents or correspondence, you must also send a copy to all parties in this case. **The Office of Administrative Law Judge presently may not have access to regular mail because access to our offices may be limited due to the COVID-19 pandemic, although I do attempt to access my regular as often as circumstances permit. Accordingly, all parties are encouraged to sign-up for efiling and eservice. Please visit the Commission’s website at** [www.puc.pa.gov](http://www.puc.pa.gov) **for instructions.**
2. You must serve me directly with a copy of any document that you file in this proceeding. If you send me any communication, correspondence or document, you must send a copy to all other Parties. For your convenience, a copy of the Commission’s current service list of the Parties to this proceeding is enclosed with this Order.
3. If you, or anyone you plan to call as a witness on your behalf, have a limited ability to speak or understand English or are deaf or hearing-impaired, a qualified interpreter can be provided upon your request. If you want an interpreter, please contact the Scheduling Office immediately, and at least ten (10) days before any scheduled proceeding or Hearing to make your request.

Scheduling Office: (717) 787-1399

AT&T Relay Service number for persons who are deaf or hearing-impaired:

1‑800‑654‑5988

1. Commission policy promotes settlements. 52 Pa.Code § 5.231(a).Theparties should talk and attempt to resolve any outstanding or anticipated issues, as well as a possible settlement of this case. Even if you are unable to settle this case, you may still resolve questions or issues during your talks. All pleadings provided to the undersigned ALJ shall include an electronic version prepared in Microsoft Word format.

Date: January 25, 2022  /s/

Jeffrey A. Watson

Administrative Law Judge

**P-2021-3030012 et al – Petition of Metropolitan Edison Company for approval of Default Service Program et al**

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1. *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-2021-3030012, *et al.* (Dec. 14, 2021) (Joint Petition or DSP VI). [↑](#footnote-ref-1)
2. The Parties agreed to a telephonic evidentiary hearing and to accommodate the scheduling of a Shipley witness. [↑](#footnote-ref-2)