**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 :

**INTERIM ORDER**

**PERMITTING JOHN BEVEC AND**

**SUNRISE ENERGY TO PARTICIPATE AS INTERVENORS**

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.

Prehearing Memoranda were filed by the Company, OCA, OSBA, I&E, CAUSE-PA, MEIUG, PICA, WPPII, Shipley, PSU, ExGen, Constellation, RESA, NRG, Bevec, Sunrise, and Calpine on January 20, 2022. [[2]](#footnote-2)

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.

At the prehearing conference, the Parties agreed upon a Discovery and litigation schedule and other procedural issues. In addition, 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, and memorialized in the Prehearing Order entered on January 25, 2022. 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. A discussion was also held at the Prehearing Conference regarding the scheduling of a public input hearing and no Party requested that a public input hearing be scheduled and 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.

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, a Protective Order was entered on January 26, 2022.

On January 20, 2022, the Company filed a Motion For Consolidation of the four proceedings into a single proceeding. The Motion For Consolidation was discussed at the Prehearing Conference held on January 21, 2022 and no objection was raised.

In the Motion For Consolidation, the Company explained that the Joint Petition was assigned four docket numbers, one for each Company: P-2021-3030012 (Met-Ed);

P-2021-3030013 (Penelec); P-2021-3030014 (Penn Power); and P-2021-3030021(West Penn).[[3]](#footnote-3)

The Company explained that its proposed Programs contain coordinated procurement plans, contingency plans, rate design changes and tariffs. In addition, the Companies have proposed a single set of master protocols and agreements for default service supply procurement, long-term solar energy and solar photovoltaic alternative energy credit procurement, and their customer referral programs during the DSP VI term. Thus, the Company asserted each Company’s Program involves a substantial number of common questions of law and fact.

On January 26, 2022, an interim order was entered consolidating the Petitions filed at Docket Numbers P-2021-3030012, P-2021-3030013, P-2021-3030014 and

P-2021-3030021 for the purpose of conducting one evidentiary hearing and to issue one initial decision to address all of the matters properly raised in this proceedings.

On February 7, 2022, the Company filed an Answer and New Matter To The Petition To Intervene Of John Bevec and Sunrise Energy, LLC (Petitioners), pursuant to the 52 Pa. Code § 5.66. The Company asserted that Petitioners are attempting to interject into this case, which is statutorily limited in subject matter and time, alleged interests that are outside the scope of this default service proceeding and therefore should not be considered. Specifically, the Company asserts these issues include: (1) the definition of “customer-generator” under the Alternative Energy Portfolio Standards (AEPS) Act, which has recently been litigated by Sunrise Energy, LLC’s president David 1 See 66 Pa. C.S. § 2807(e)(3.6)(3.7) and (3.8) (describing the Commission’s review of a default service provider’s “competitive procurement plan” and providing that if the Commission fails to issue a final order within nine months of the date that the plan is filed, the plan shall be deemed to be approved); (2) whether a particular facility owned by Sunrise Energy, LLC qualifies as a customer-generator and may sell “excess generation” to West Penn at the “full retail value” under West Penn’s net metering tariff, which is currently being litigated by Sunrise Energy, LLC in the Court of Common Pleas of Washington County ; and (3) the use of FirstEnergy Service Company (“FESC”) employees as counsel and witnesses for the Companies in the proceeding and as implementors of default service programs, which has been raised by Sunrise in the case before the Court of Common Pleas and also is not prohibited by Pennsylvania Public Utility Commission (“Commission”) regulations.

The Company avers that the Petitioners are looking for a “second bite at the apple” through their intervention in this proceeding.

The Company argues that the undersigned presiding officer has express authority under the Commission’s regulations to limit the participation of intervenors, and requests that the undersigned limit the scope of Petitioners’ intervention to issues that are properly addressed in the context of this default service proceeding and thereby facilitate the creation of a complete and well-developed evidentiary record within the Commission review period provided by

66 Pa. C.S. § 2807(e)(3.6).

The Company avers that the Joint Petition requests that the Commission approve their sixth Default Service Programs (the “Program(s)” or “DSP VI”), which are designed to procure a prudent mix of long-term, short-term and spot market generation supplies and ensure that default service customers have access to an adequate and reliable supply of generation at the least cost over time for the period beginning June 1, 2023. Among other things, the Joint Petition addresses how the Companies will satisfy the AEPS Act obligations associated with default service supply.

The Company avers that the Petition to Intervene filed by John Bevec and Sunrise Energy, LLC on January 18, 2022, explains that Mr. Bevec is served by West Penn and that Sunrise owns a commercial solar facility also served by West Penn. The Petition identifies several alleged “operative facts warranting intervention” including: (1) the Joint Petition’s failure to discuss “the recovery of the cost of excess energy purchased from renewable energy systems pursuant to the AEPS act;” (2) the representation of the Companies by FESC, an entity “that is not regulated by the [Commission]”; (3) the submission of sworn testimony by FESC employees “despite having presented no evidence that they are in any way affiliated with the [Companies]”; and (4) the Joint Petition’s failure to discuss how the Companies will implement their Programs “considering that most, if not all, of the [Companies’] managerial and administrative tasks are carried out by FESC, which is not a regulated utility”.

The Petition claims that Mr. Bevec and Sunrise Energy, LLC have a significant interest in the outcome of the Joint Petition because West Penn may be “double billing” for energy. They further contend that Met-Ed, Penelec and Penn Power may engage in the same practices “because they are controlled and/or operated by FESC and/or FirstEnergy Corporation.” The Company concluded that several of Petitioners’ alleged interests are not within the scope of this proceeding in light of other litigation or are otherwise irrelevant to the implementation of DSP VI and therefore do not provide a basis for their request to intervene.

In its New Matter, The Company averred that Sunrise Energy, LLC president David Hommrich challenged the overall validity of several Commission net-metering regulations in Commonwealth Court. The Company avers that on May 12, 2020, the Commonwealth Court found that certain regulations, including the definition of “customergenerator,” were beyond the scope of the Commission’s authority. The Company avers that Sunrise Energy, LLC has initiated litigation in the Court of Common Pleas of Washington County seeking a finding that Sunrise is entitled to net meter as a customergenerator under the AEPS Act and an order for West Penn to pay damages to Sunrise related to its solar facility in Washington County, Pennsylvania. According to the Company, Sunrise raised issues concerning the use of FESC employees by West Penn. The Company averred that Fact discovery has closed and Sunrise has filed a motion for partial summary judgment.

According to the Company, the Petitioners are trying to interject in this case the following issues which are outside the scope of a default service proceeding : (1) the definition of “customer-generator” under the AEPS Act, the Commission’s regulations and/or each Company’s net metering tariff; (2) whether any particular renewable energy system, including any system owned by Sunrise Energy, LLC, qualifies as a “customer-generator” under the AEPS Act, the Commission’s regulations and/or each Company’s net metering tariff; and (3) the use of FESC employees as counsel and witnesses for the Companies in this proceeding and as implementors of default service programs.

The Company requests that the scope of the intervention of Mr. Bevec and Sunrise Energy, LLC in this proceeding be limited to exclude: (1) issues concerning the definition of “customergenerator” under the AEPS Act, the Commission’s regulations and/or each Company’s net metering tariff; (2) issues concerning whether any particular renewable energy system, including any system owned by Sunrise Energy, LLC, qualifies as a “customer-generator” under the AEPS Act, the Commission’s regulations and/or each Company’s net metering tariff.

On February 11, 2022, John Bevec and Sunrise Energy, LLC, filed its Reply to New Matter. Petitioners averred they are making no attempt to "interject" any tangential issues concerning definitions of "customer-generator" and the ability of Sunrise to utilize net metering. According to Petitioners, those questions have been in answered in *Hommrich v. Pennsylvania Public Utilities Commission, Inc.,* 231 A.3d 1027, 1039-1040 (Pa.Cmwlth 20201), aff d, 245 A.3d 637 (Pa. 2021).

Instead, Petitioners aver they are concerned as to whether the EDCs are appropriately addressing cost recovery in accordance with the Pennsylvania Alternative Energy Portfolio Standards Act (the AEPS act) 73 P.S. 1648.1, *et seq.* For instance, Petitioners aver the EDCs' respective Petitions reference only costs associated with solar photovoltaic alternative energy credits (SPAECS) to energy purchased in relation to future Power Purchase Agreements (PPAs). However, Petitioners aver the Company in its Joint Petition is silent on the recovery of other costs associated with the implementation of the AEPS Act.

Specifically, Petitioners aver, the EDCs do not address the recovery of the cost of excess energy purchased from renewable energy systems pursuant to the AEPS Act.

Moreover, Petitioners aver the actual EDCs themselves are silent in their respective Petitions. According to Petitioners, most if not all, evidence offered in support of the respective Petitions is provided by First Energy Service Company (FESC) and outside witnesses.

As Petitioners aver, Title 52 Pa. Code § 5.72 outlines who may intervene:

[a] petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought.

Section 5.72 continues by stating intervenor status is appropriate for those "which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding." 52 Pa.Code. § 5.72(a)(2). As ratepayers and customer-generators, Petitioners argue they have standing in this proceeding.

Petitioner admits that David Hommrich filed a declaratory judgment action against the Pennsylvania Public Utility Commission (Commission) in the Commonwealth Court's original jurisdiction to challenge several PUC regulations. According to Petitioners, this action did not include any discussion of cost recovery under the AEPS Act. Petitioners further aver that they did not state in their Petition that they were seeking any interpretation of the definition of customer-generator and Sunrise's qualification as one, as these issues have been decided. Petitioners aver they are not attempting to relitigate issues upon which they have already been successful. Rather, Petitioners aver they are seeking answers concerning the respective EDCs' methods and analysis of cost recovery to ensure that they comply with the representations in the respective EDS s' Petitions.

Petitioners admit that Sunrise has raised the issues concerning the use of FESC employees by West Penn Power, because, according to Petitioners, West Penn, an EDC that is regulated by the PUC, appears to operate through either FESC or First Energy. These latter two companies are not regulated by the PUC. Petitioners admit that fact discovery has closed, and that Sunrise filed a Motion for Partial Summary Judgment in that case.

Petitioners, John Bevec and Sunrise Energy LLC, request that an order be entered granting Petitioners full status as intervenors in this proceeding with active party status.

**52 Pa. Code § 5.75. Notice, service and action on petitions to intervene, provides, in pertinent part, as follows:**

1. *Notice and service*. Petitions to **intervene**, when tendered to the Commission for filing, must show service thereof upon all parties to the proceeding in conformity with § 1.54 (relating to service by a party).
2. *Action on petitions*. As soon as practicable after the expiration of the time for filing answers to petitions as provided in § 5.66 (relating to answers to petitions to **intervene**), the Commission or presiding officer will grant or deny the petition in whole or in part or may, if found to be appropriate authorize limited participation.
3. *Rights upon grant of petition*. Admission as an intervenor will not be construed as recognition by the Commission that the intervenor has a direct interest in the proceeding or might be aggrieved by an order of the Commission in the proceeding. Intervenors are granted no rights which survive discontinuance of a case.

 Based upon the aforesaid and under the circumstances, the following interim order will be entered.

 THEREFORE,

 IT IS ORDERED:

1. That John Bevec and Sunrise Energy LLC, shall be permitted to intervene in this proceeding, subject to the terms of these ordering paragraphs.
2. That the scope of participation of John Bevec and Sunrise Energy LLC, as intervenors, and the parties in this proceeding shall be limited to the subject matter set by statute in default service proceedings.
3. That with regard to the broad claims raised by John Bevec and Sunrise Energy LLC, with regard to the use of FirstEnergy Service Company (FESC) employees as counsel and witnesses for the Companies in the proceeding, any specific claims may be timely raised in this proceeding in appropriate Motions, requests for relief or objections, or such claims will be waived.
4. That the Parties may file any appropriate Motions in Limine or any other appropriate requests for relief consistent with the terms set forth in this order.

Date: February 28, 2022 /s/

 Jeffrey 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 Prehearing Order entered on January 25, 2022 inadvertently stated that CPower filed a Prehearing Memorandum. [↑](#footnote-ref-2)
3. The Joint Petition was assigned four docket numbers for compliance filings and other such administrative purposes. [↑](#footnote-ref-3)