**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**

**SETTING DEADLINE TO FILE AND SERVE**

**OBJECTIONS/RESPONSIVE PLEADINGS TO MOTION TO**

**EXTEND TIME PERMITTED TO CONDUCT DISCOVERY**

**AND SUBMIT TESTIMONY OF JOHN BEVEC AND SUNRISE ENERGY LLC**

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.

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 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 Petition to Intervene avers, *inter alia*, 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.

On February 11, 2022, John Bevec and Sunrise Energy, LLC, filed their 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, John Bevec and Sunrise Energy, LLC 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.

John Bevec and Sunrise Energy, LLC admit that David Hommrich filed a declaratory judgment action against the 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.

On February 28, 2022, an interim order was entered permitting John Bevec and Sunrise Energy LLC, to intervene in this proceeding, subject to the terms set forth in the order.

On February 23, 2022, John Bevec and Sunrise Energy, LLC, filed a Motion to Extend Time Permitted to Conduct Discovery and Submit Testimony of John Bevec and Sunrise Energy, LLC (Motion). No Notice To Plead was attached to the Motion. The regulations provide a Party has 20 days to file a responsive pleading or objections to the Motion, or until March 15, 2022. Discovery is ongoing and the litigation schedule provides for the exchange of written direct testimony by February 25, 2022, well before the deadline to file responses and objections to the Motion for the requested extensions.

52 Pa. Code § 5.103, provides in pertinent part, that a request may be made by motion for relief desired, which must set forth the ruling or relief sought, and state the grounds therefor and the statutory or other authority upon which it relies. Written motions must contain a notice which states that a responsive pleading shall be filed within 20 days of the date of service of the motion. A party has 20 days from the date of service within which  to answer or object to a motion, unless the period of time is otherwise fixed by the Commission or the presiding officer.

In order to appropriately consider the Motion and any responses or objections to the Motion, the following order will be entered.

THEREFORE,

IT IS ORDERED:

1. That on or before March 1, 2022, at 4:00 p.m., any responsive pleading or Objection to the Motion to Extend Time Permitted to Conduct Discovery and Submit Testimony of John Bevec and Sunrise Energy, LLC, shall be filed and served upon the Parties in this proceeding and the undersigned presiding office by electronic mail.
2. That the Parties are encouraged to confer and resolve the issues raised in the Motion to Extend Time Permitted to Conduct Discovery and Submit Testimony of John Bevec and Sunrise Energy, LLC, and all scheduling and discovery disputes.

Date: February 28, 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)