**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**

**GRANTING IN PART AND DENYING IN PART THE MOTION TO DISMISS THE JOINT PETITIONERS OBJECTIONS FILED BY**

**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.

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

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.

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.

On February 11, 2022, John Bevec and Sunrise Energy, LLC, filed their Reply to New Matter. 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).

On February 28, 2022, an interim order was entered permitting the filing of 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, on or before March 1, 2022 at

4 p.m. In addition, the Parties were encouraged to confer and resolve the issues raised in the Motion and all scheduling and discovery disputes. The Company timely filed a responsive pleading opposing the Motion.

On March 2, 2022, an interim order was entered directing Sunrise and Bevec to serve all discovery that it believes is necessary to prepare its Second Direct Testimony no later than March 4, 2022; requiring Sunrise and Bevec to file its Second Direct Testimony no later than March 18, 2022; and providing the Companies with an opportunity to file supplemental rebuttal testimony in response to the issues presented by Sunrise and Bevec in its Second Direct Testimony no later than March 31, 2022.

On March 9, 2022, the Company filed Objections of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to the Interrogatories (Set 1) of Sunrise Energy, LLC and John Bevec. The Company argued that the First Set of Interrogatories (Set I), Nos. 24 through 28, propounded by Sunrise and Bevec on March 4, 2022, are not relevant to any matters properly at issue in this proceeding.

On March 11, 2022, Sunrise and Bevec filed its Motion to Dismiss the Joint Petitioners' Objections and Direct Them to Answer the Interrogatories and Produce Documents.

The Discovery Requests in dispute provide as follows:

24. Please provide, by JP, how many net metering and interconnection applications were received annually for the last 4 years.

1. Please provide, by JP, the number of JP personnel involved in the processing of net metering and interconnection applications per year for the last 4 years.
2. Please provide the person-hours it takes to approve or reject a net metering application. If it varies, please provide a range of time.
3. Please provide the person-hours it takes to approve or reject an interconnection application. If it varies, please provide a range.
4. Please provide, for each JP, the number of personnel available to process net metering and interconnection applications.

The Company objects to Sunrise/Bevec Interrogatory (Set I) No. 24, arguing the question inquires into subjects that are not relevant to any matters properly at issue in this proceeding. The Company avers this proceeding involves the Companies’ request for approval of their Default Service Programs, which include their proposals to procure default service generation supplies on behalf of their default service customers, satisfy AEPS Act obligations associated with default service supply, and recover the costs of providing default service.

The Company asserts the receipt, processing, approval or rejection of any net-metering or interconnection applications received by a Company are unrelated to the Companies’ plan to procure default service generation supplies and satisfy associated AEPS Act requirements. The Company further asserts that excess energy from a customer-generator under a Company’s net-metering tariff is not used to serve default service load and the Companies do not take title to any associated alternative energy credits (AECs) or otherwise use such AECs to satisfy AEPS Act requirements associated with default service supply. The Company further argues the receipt, processing, approval or rejection of any net-metering or interconnection applications received by a Company are unrelated to the Companies’ plan to recover default service costs in accordance with statutory and Commission default service requirements. The Company asserts that costs associated with these activities are not recovered through any Company’s Price to Compare Default Service Rate Rider or Hourly Pricing Default Service Rider, and that the receipt, processing, approval or rejection of any net-metering or interconnection applications received by a Company are not within the scope of statutory and Commission default service requirements. The Company further argues the inquiry into the number of net-metering or interconnection applications received by a Company is irrelevant to this proceeding because it is unrelated to any aspect of the Companies’ Programs or any Commission requirement applicable to the Companies’ Programs.

With regard to Sunrise and Bevec Interrogatory (Set I) No. 25, the Company makes a similar argument as set forth above and argues the inquiry into the number of personnel involved in the processing of net-metering or interconnection applications received by a Company is irrelevant to this proceeding because it is unrelated to any aspect of the Companies’ Programs or any Commission requirement applicable to the Companies’ Programs.

With regard to Sunrise and Bevec Interrogatory No. 26 – No. 28, the Company makes a similar argument as set forth above and essentially argues that these discovery requests are irrelevant to this proceeding because it is unrelated to any aspect of the Companies’ Programs or any Commission requirement applicable to the Companies’ Programs.

Sunrise and Bevec argue that the Companies, in their role as electric distribution companies (EDCs), are obliged to comply with all relevant obligations of the Alternative Energy Portfolio Standards Act (AEPS Act or Act). According to Sunrise and Bevec, included in those obligations is the mandate in Section 3 of the Act which states, in part, as follows:

[A]fter the cost-recovery period, any direct or indirect costs for the purchase

by electric distribution [companies] of resources to comply with this section,

including, but not limited to, the purchase of electricity generated from

alternative energy sources, payments for alternative energy credits. cost

of credits banked, payments to any third party administrators for

performance under this act and costs levied by a regional transmission

organization to ensure that alternative energy sources are reliable, shall be

recovered on a full and current basis pursuant to an automatic energy

adjustment clause under 66 Pa.C.S. 1307 as a cost of generation supply

under 66 Pa.C.S. 2807. 73 P.S. 1648.3(a)(3)(ii) (emphasis added).

Sunrise and Bevec argue the use of the phrase "any direct or indirect" by the General Assembly makes the legislative intent clear, that “Every cost***”*** to purchase resources to comply with Section 3 of the Act must be recovered from ratepayers. Sunrise and Bevec aver that, by everything the Company has proposed to date, it seems the Company believes they are only obliged to capture the costs of Alternative Energy Credits (AECs), which is just one of the resource categories described in the quote above (payments for alternative energy credits). Sunrise and Bevec argue the Company further ignores "the purchase of electricity generated from alternative energy sources" language and argue most, if not all, of the resource categories have both direct and indirect costs.

Sunrise and Bevec aver that the Company has historically captured AEPS Act expenses via the Price to Compare (PTC) or the Hourly Pricing (HP) formula. They assert, that embedded in the formulas for each of these default service rates is a component for AEPS Act expenses. Sunrise and Bevec assert the calculation of default service rates is central to any default service plan, and as such, any interrogatories or requests for document production related to information, or that could lead to information, concerning the direct or indirect costs of resources for the AEPS Act are not only within the scope of permissible discovery and also relevant to a just outcome for ratepayers and customer-generators.

Sunrise and Bevec argue Interrogatory No. 24 is requesting information concerning the number of net metering applications received for the past four years. They aver the General Assembly was clear when it insisted that any direct or indirect costs of resources purchased for compliance with Section 3 of the AEPS Act must be recovered and the administrative costs to process net metering and interconnection applications are, or should be, substantial.

Sunrise and Bevec further argue that the Companies service territories comprise more than half of the state of Pennsylvania, and the proliferation of alternative energy systems must come with internal costs for the their processing those applications. These costs, according to Sunrise and Bevec, must be recovered in order to be compliant with the Act. They argue administrative costs are direct (or at the very least indirect) costs of both AEC procurement and alternative energy (AE) purchases and are included in the list of resources whose costs must be recovered under the Act. Sunrise and Bevec conclude that these administrative costs must be considered either direct or indirect costs of resource procurement.

Sunrise and Bevec argue that Interrogatory No. 25 is seeking identification of personnel who are involved in processing net metering and interconnection applications, which they argue is also relevant to the PTC. Likewise, Sunrise and Bevec argue Interrogatory Nos. 26-28 are seeking a time calculation of person-hours involved in reviewing and acting on these applications, necessary and essential to determine if the Company is fully compliant with the AEPS Act pursuant to its cost recovery mandate.

On March 15, 2022, the Companies filed their Answer in opposition to the Motion of John P. Bevec and Sunrise Energy, LLC to Dismiss Objections and Direct the Companies to Answer Interrogatories and Produce Documents.

The Company explained that under Section 3 of the AEPS Act,[[2]](#footnote-2) the Companies are required to procure a percentage of electricity sold to retail customers in Pennsylvania from alternative energy sources as defined in the AEPS Act. Compliance with this requirement for each Company is measured using alternative energy credits (AECs). An AEC is equal to one megawatt-hour of qualified alternative energy generation, and may be self-generated or purchased, traded and owned separately from the underlying energy that generates the credit.[[3]](#footnote-3) As default service providers, the Companies argue they are required to identify the means by which AEPS requirements will be met in their default service programs (the Programs) in accordance with the regulations of the Pennsylvania Public Utility Commission (the Commission).[[4]](#footnote-4)

As in their past Commission-approved Programs, the Companies explain they are proposing to continue to satisfy most of their AEPS Act requirements in this sixth default service program (DSP VI) through the solicitation of default service supply from wholesale suppliers. Specifically, winning suppliers of full-requirements default service products in the Companies’ service territories will be responsible for delivering AECs to meet all AEPS requirements associated with the energy supplied to default service customers, with two exceptions. First, in the first year of DSP VI, Met-Ed, Penelec, and Penn Power will continue to allocate solar photovoltaic AECs (SPAECs) procured under existing long-term contracts that expire on May 31, 2024 to default service suppliers and electric generation suppliers (EGSs) in the Companies’ service territories on a load ratio basis. Second, the SPAECs that the Companies purchase through new competitively-procured agreements with solar projects will be allocated to default service suppliers in proportion to the amount of residential load served over the course of the energy year by each supplier.[[5]](#footnote-5)

Separately, the Company explains, Section 5 of the AEPS Act addresses the interconnection of “customer-generators,” which are nonutility owners and operators of distributed generation systems with generating capacity of less than five megawatts.[[6]](#footnote-6) Under Section 5 and the Commission’s net metering regulations (which are separate from its default service regulations), a customer-generator receives “full retail value” for “excess generation” that may be produced.[[7]](#footnote-7)

The Company notes that in Interrogatories No. 24-28 of Sunrise and Bevec’s Set I interrogatories, Sunrise and Bevec seek information on the Companies’ processing of “net metering and interconnection” applications for customer-generators, requesting the number of such applications the Companies have received, the number of personnel involved in approval or rejection of those applications, and the person-hours required for approval or rejection of net-metering and interconnection applications by each Company. Sunrise and Bevec assert that they are entitled to this information to determine whether the Companies are “fully compliant” with the AEPS Act.[[8]](#footnote-8)

According to Sunrise and Bevec, the “logic” of their claim is “simple”, if the Companies did not incur costs relating to the information Sunrise and Bevec seeks to discover, the Companies could not purchase alternative energy or AECs from customer-generators. As a result, those costs “must be considered direct or indirect costs of resource procurement” and associated information subject to discovery as part of a default service proceeding.[[9]](#footnote-9)

In support of their claim, Sunrise and Bevec highlight the language of Section 3(a)(ii) of the AEPS Act, which provides that:

After the cost recovery period, any direct or indirect costs for the purchase by electric distribution of resources to comply with this section, including, but not limited to, the purchase of electricity generated from alternative energy sources, payments for alternative energy credits, cost of credits banked, payments to any third party administrators for performance under this act and costs levied by a regional transmission organization to ensure that alternative energy sources are reliable, shall be recovered on a full and current basis pursuant to an automatic energy adjustment clause under 66 Pa.C.S. § 1307 as a cost of generation supply under 66 Pa.C.S. § 2807.[[10]](#footnote-10)

Relying on this statutory language, Sunrise and Bevec contend that “[t]he General Assembly was clear when it insisted that any direct or indirect costs of compliance with Section 3 of the Act must be recovered.”[[11]](#footnote-11)

The Company argues that Section 3 is not a general cost recovery mechanism for all costs that electric distribution companies may incur under the AEPS Act. By its explicit terms, the Companies argue, it is only for compliance with the percentage requirements for alternative energy *set forth in Section 3 of the AEPS Act.*Because the Companies do not procure energy or AECs from net metered customer-generators to meet AEPS Act Section 3 requirements as default service providers, the Companies’ processing of net metering and interconnection applications, and any associated costs, under Section 5 of the AEPS Act are irrelevant to the Companies’ Programs. Furthermore, the Companies argue the costs associated with the processing of net metering and interconnection applications are not recovered through the Companies’ default service rates.[[12]](#footnote-12)

In short, the Companies argue Sunrise/Bevec improperly conflate the obligations to procure alternative energy and AECs under Section 3 of the AEPS Act with the provisions governing the interconnection and compensation of customer-generators under Section 5. The Companies conclude that the information relating to net metering and interconnection of customer-generators requested by Sunrise/Bevec is not relevant to this default service proceeding as it is not associated with the Companies’ Programs to procure default service generation supply, satisfy associated AEPS requirements, or meet any other default service requirement. Sunrise/Bevec’s Motion should be denied.

Neither party provided any authority, other than their interpretation of the Act, to support their respective positions.

Section 333(d) of the Public Utility Code states, in pertinent part, as follows:

Interrogatories**. –** Any party to a proceeding may serve written interrogatories upon any other party for purposes of discovering *relevant*, unprivileged information.

66 Pa.C.S. § 333(d).

The Commission’s regulations at 52 Pa. Code § 5.321© define the permissible scope of discovery in proceedings before the Commission as follows:

*Scope.* Subject to this subchapter, a party may obtain discovery regarding any matter, not privileged, *which is relevant to the subject matter involved in the pending action*, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, content, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of a discoverable matter. It is not ground for objection that the information sought will be inadmissible at hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence. (Emphasis added.)

The Commission’s regulations at 52 Pa. Code § 5.361(a) further limit the scope of permissible discovery to exclude discovery which:

* + 1. Is sought in bad faith.
    2. Would cause unreasonable annoyance, embarrassment, oppression, burden or expense to the deponent, a person or party.
    3. Relates to matter which is privileged
    4. Would require the making of an unreasonable investigation by the deponent, a party or witness.

As to Interrogatory No. 28, there is no basis to conclude that the requested information is relevant or is reasonably calculated to lead to the production of admissible evidence.

With regard to Interrogatory Nos. 24-27, although this order shall not be construed as a determination that the requested information is relevant, the discovery requests may lead to the production of relevant or discoverable or admissible evidence and will be permitted.

Based upon the arguments presented by the parties and under the circumstances presented in this proceeding, the following order will be entered.

THEREFORE,

IT IS ORDERED:

1. That the Motion to Dismiss the Joint Petitioners' Objections and Direct Them to Answer the Interrogatories and Produce Documents regarding Interrogatory Numbers 24, 25, 26 and 27 is granted.
2. That the Objections to Interrogatory Numbers 24, 25, 26 and 27 are denied.
3. That the Motion to Dismiss the Joint Petitioners' Objections and Direct Them to Answer the Interrogatories and Produce Documents regarding Interrogatory Number 28 is denied.
4. That the Objections to Interrogatory Number 28 are granted.
5. On or before March 18, 2022, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company shall serve upon counsel for Intervenors, John P. Bevec and Sunrise Energy, LLC , full and complete responses to Interrogatory Numbers 24, 25, 26 and 27.
6. On or before March 18, 2022, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company shall file a certificate of Service regarding service of the discovery responses ordered herein.

Date: March 16, 2022 /s/

Jeffrey A. Watson

Administrative Law Judge

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KENNETH M KULAK ESQUIRECATHERINE G VASUDEVAN ESQUIREBROOKE E MCGLINN ESQUIRE   
MORGAN LEWIS & BOCKIUS LLP1701 MARKET STREETPHILADELPHIA PA 19103-2921**215.963.5384215.963.5952215.963.5404**  
Accepts EService

DARSHANA SINGH ESQUIRETORI L GIESLER ESQUIRE  
FIRSTENERGY SERVICE COMPANY2800 POTTSVILLE PIKEREADING PA 19612-6001**610.212.8331  
610.921.6658** Accepts EService

ELIZABETH R MARX ESQUIRELAUREN BERMANJOHN SWEET LEGAL COUNSELRIA PEREIRA ATTORNEYPA UTILITY LAW PROJECT118 LOCUST STREETHARRISBURG PA 17101**717.236.9486717.710.3825  
717.710.3837717.710.3839**  
Accepts EService

DARRYL A LAWRENCE ESQUIRECHRISTY APPLEBY ESQUIRE  
HARRISON W BREITMAN ESQUIREOFFICE OF CONSUMER ADVOCATE5TH FLOOR FORUM PLACE555 WALNUT STREET HARRISBURG PA 17101-1923**717.783.5048**Accepts EService

CHARIS MINCAVAGE ESQUIREMCNEES WALLACE & NURICK100 PINE STREETPO BOX 1166HARRISBURG PA 17108**717.237.5437**Accepts EService

MICHAEL GIANANTONIOROBERT PEIRCE & ASSOCIATES707 GRANT ST  
125 GULF TOWERPITTSBURGH PA 15219**412.281.7229**Accepts EService

TODD S STEWART ESQUIRETHOMAS J SNISCAK ESQUIREHAWKE MCKEON AND SNISCAK LLP100 NORTH TENTH STREETHARRISBURG PA 17101**717.236.1300**Accepts EService

COLLEEN KARTYCHAK ASSISTANT MANAGERCONSOLIDATED EDISON SOLUTIONS INC100 SUMMIT LAKE DRVALHALLA NY 10595**412.913.8407**Accepts EService

KENNETH D SCHISLER VP OF REGULATORY AFFAIRSENERWISE GLOBAL TECHNOLOGIES LLC D/B/A CPOWER1001 FLEET STREET SUITE 400BALTIMORE MD 21202**410.656.2391**  
Accepts EService

CHANDRA COLARESI SR SPECIALISTCPOWER ENERGY MANAGEMENT5633 WOODMONT STREETPITTSBURGH PA 15217**412.690.7125**Accepts EService

KAREN O MOURY ESQUIREECKERT SEAMANS213 MARKET STREETHARRISBURG PA 17101**717.237.6036**Accepts EService

ALLISON C KASTER RATE COUNSELPA PUC BIE LEGAL TECHNICALSECOND FLOOR WEST400 NORTH STREETHARRISBURG PA 17120**717.783.7998** Accepts EService

JOHN F LUSHIS ATTORNEYNORRIS MCLAUGHLIN PA515 WEST HAMILTON STREETSUITE 502ALLENTOWN PA 18101**610.391.1800**Accepts EService

MICHAEL A GRUIN ESQUIRESTEVENS & LEE16TH FLOOR17 NORTH SECOND STREETHARRISBURG PA 17101**717.255.7365** Accepts EService

DAVID BERGER ATTORNEYLAPUTKA LAW OFFICE LLC1344 W HAMILTON STALLENTOWN PA 18102610.477.0155Accepts EService

ERIN FUREOFFICE OF SMALL BUSINESS ADVOCATEFORUM PLACE555 WALNUT STREET 1ST FLOORHARRISBURG PA 17101**717.783.2525**EFURE@PA.GOV

JAMES H LASKEY ESQUIRE

NORRIS MCLAUGHLIN

400 CROSSING BLVD

BRIDGEWATER TOWNSHIP NJ 08807

**908.252.4221**

[Jlaskey@norris-law.com](mailto:Jlaskey@norris-law.com)

*Representing Calpine Retail Holdings LLC*

BRIAN R GREEN ESQUIRE

4908 MONUMENT AVENUE

RICHMOND VA 23230

**804.672.4542**

[bgreene@greenehhurlocker.com](mailto:bgreene@greenehhurlocker.com)

*Representing Enerwise Global Technologies LLC d/b/a CPower Energy Management*

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. *See* 73 P.S. § 1648.3 and related provisions of 66 Pa.C.S §§ 2813-2814. [↑](#footnote-ref-2)
3. *See* 73 P.S. § 1648.3(e)(4)(ii). [↑](#footnote-ref-3)
4. 52 Pa. Code § 54.185(e)(1). [↑](#footnote-ref-4)
5. *See 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, P-2021-3030013, P-2021-3030014, P-2021-3030021, ¶ 26. [↑](#footnote-ref-5)
6. 73 P.S. § 1648.5; *see also* 73 Pa. St. § 1648.1 (definitions). [↑](#footnote-ref-6)
7. 73 P.S. §1648.5; *see generally* 52 Pa. Code § 75.11 *et seq*. [↑](#footnote-ref-7)
8. Motion, p. 4. [↑](#footnote-ref-8)
9. *Id.*, p. 3. [↑](#footnote-ref-9)
10. 73 Pa. Stat. § 1648.3(a)(3)(ii). [↑](#footnote-ref-10)
11. Sunrise/Bevec Motion, p. 3. [↑](#footnote-ref-11)
12. *See* Objections, ¶ 13. [↑](#footnote-ref-12)