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|  | **PENNSYLVANIA**  **PUBLIC UTILITY COMMISSION**  **Harrisburg, PA 17105-3265** |  |

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|  | Public Meeting held October 8, 2020 |
| Commissioners Present: |  |

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| Gladys Brown Dutrieuille, Chairman | | |
| David W. Sweet, Vice Chairman | | |
| John F. Coleman, Jr. | |
| Ralph V. Yanora | |
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| Petition of PPL Electric Utilities Corporation for Waiver of the Standard Interconnection Agreement Form  Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standard Interconnection Application Forms | P-2020-3021913  M-00051865 |

**ORDER**

**BY THE COMMISSION:**

PPL Electric Utilities Corporation (PPL or Petitioner) recently filed a Petition with the Commission pursuant to 52 Pa. Code § 5.41 requesting that the Commission approve a waiver of the use of its standardized interconnection agreement form for proposed interconnection projects. The Petition was filed on September 14, 2020, seeking a waiver from using the Commission‑adopted standardized interconnection agreement form to accommodate a request by the Department of Conservation and Natural Resources (DCNR) to modify two sections of the existing standardized terms and conditions in the interconnection agreement.

The Commission will grant the Petition as set forth in this Order. Furthermore, to avoid the need for the filing and review of similar petitions in the future, the Commission will approve modifications to the language of the standard interconnection agreement form as set forth in this Order for state agencies governed by and subject to the same laws as those at issue in this Order.

**PPL’s Petition**

PPL states that it received a Level 2 interconnection application from DCNR to interconnect a 32.4 kW solar photovoltaic system at Weiser State Forest in Columbia County, Pennsylvania. PPL asserts that it uses the standard application and agreement forms adopted by the Commission for interconnection projects. *See Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standard Interconnection Application Forms,* Docket No. M-00051865 (Order entered February 27, 2009) (*AEPS Act Implementation Order*). PPL states that the DCNR requested modifications to the sections of the interconnection agreement addressing Indemnification (Section 9) and Limitation of Liability (Section 10). The specific modifications requested by PPL through its Petition are as follows:[[1]](#footnote-1)

9) RESERVED. ~~Indemnification. The Parties shall at all times indemnify, defend, and save the other Party harmless from, any and all damages, losses, claims, including claims and actions relating to injury to or death of any person or damage to property, demand, suits, recoveries, costs and expenses, court costs, attorney fees, and all other obligations by or to third parties, arising out of or resulting from the other Party's action or inactions of its obligations under these terms and conditions on behalf of the indemnifying Party, except in cases of gross negligence or intentional wrongdoing by the indemnified Party.~~

10) Limitation of Liability. Each party’s liability to the other party for any loss, cost, claim, injury, liability, or expense, excluding payment of any ~~including reasonable~~ attorney’s fees, relating to or arising from any act or omission in its performance of these terms and conditions, shall be limited to the amount of direct damage actually incurred. ~~In no event shall either party be liable to the other party for any indirect, incidental, special, consequential, or punitive damages of any kind whatsoever.~~

DCNR has represented that these modifications are necessary to ensure adherence to 1 Pa. C.S. § 2310, which states that the Commonwealth, its officers, and its employees are subject to sovereign immunity, unless such immunity is specifically waived by the General Assembly. As an agency of the Commonwealth, this provision is applicable to DCNR.

PPL asserts that identical issues were previously considered by the Commission at Docket No. P-2011-2238314, *Petition of Metropolitan Edison Company for Waiver of Standard Interconnection Application and Agreement Forms* (Order dated October 28, 2011), and Docket No. P-2019-3011599, *Petition of West Penn Power Company for Waiver of Standard Interconnection Application and Agreement Forms* (Order dated August 8, 2019).[[2]](#footnote-2)

**DISCUSSION**

To begin with, as this Petition involves the Commission approved Standard Interconnection Agreement that was adopted by the Commission through the *AEPS Act Implementation Order* at Docket No. M-00051865 and the same or similar law and issues relating to State agency liability, we find that it is reasonable and prudent to consolidate this Order with our Order at Docket No. M-00051865 that adopted the Standard Interconnection Agreement pursuant to 52 Pa. Code § 5.81(a).

Regarding the Petitioner’s request to revise the Standard Interconnection Agreement, the Commission notes that it has exclusive regulatory jurisdiction over the implementation of public utilities and, where possible, seeks to establish statewide standardization of all facets of public utility operations. Through its *AEPS Act Implementation Order*, the Commission established standardized interconnection application and agreement forms in accordance with the *Alternative Energy Portfolio Standards Act of 2004*, 73 P.S. §§ 1648.1-1648.8, and the Commission’s corresponding regulations at 52 Pa. Code §§ 75.1-75.51. The standard application and agreement forms are intended to be used for all levels of review for proposed interconnection projects. The Commission directed that the standard interconnection application and agreement forms be used by jurisdictional electric distribution companies (EDCs) for processing interconnection requests brought under the Commission’s regulations at 52 Pa. Code

§§ 75.1-75.51.[[3]](#footnote-3)

The interconnection agreements for Levels 1‑4 contain specific limitations on indemnification and liability. In addition, the agreements for Levels 2-4 contain specific terms regarding the laws and regulations applicable to the agreement. Since the Commission approved the provisions set within these standardized forms and directed their use by EDCs for all levels of interconnection projects, the Commission is the appropriate forum for Petitioners to seek permission to deviate from use of the standardized interconnection agreement forms.

DCNR made it known to PPL that it requested the above modifications in an effort to comply with 1 Pa. C.S. § 2310, which states that the Commonwealth of Pennsylvania, its officials, and its agencies are entitled to statutory sovereign immunity. DCNR is a state agency of the Commonwealth of Pennsylvania tasked with maintaining and preserving the 116 state parks; managing the 2.1 million acres of state forest land; providing information on the state’s ecological and geologic resources; and establishing community conservation partnerships with grants and technical assistance to benefit rivers, trails, greenways, local parks and recreation, regional heritage parks, open space, and natural areas under the *Conservation and Natural Resources Act*, 71 P.S. §§ 1340.101, *et. seq*. Thus, DCNR is a Commonwealth agency for purposes of the *Sovereign Immunity Act*. 42 Pa. C.S. §§ 8521-8528. As a result, DCNR is insulated from liability, except in certain specified circumstances where the General Assembly has waived sovereign immunity protection. *See* 42 Pa. C.S. §§ 8521(a), 8522(a)-(b).

Based upon a review of this Commission’s prior approval of the above-cited similar waiver requests as well as relevant case law regarding sovereign immunity, we agree that it is appropriate to remove the Indemnification provision and modify the Limitation of Liability provision of the standardized interconnection agreement as requested by DCNR. Retaining the indemnification clause in the standardized interconnection agreement with DCNR would have the effect of placing the Commonwealth, its assets, and the Pennsylvania General Fund at risk, because it would expose the Commonwealth to liability for tort actions beyond what is statutorily allowed. The purpose of sovereign immunity is to provide special protection against the loss of assets held in common for many people, specifically Pennsylvania citizens, now and in the future, for the performance of vital government functions.

We note that, under the *Sovereign Immunity Act*, there are certain specified circumstances in which the General Assembly has waived sovereign immunity protection. 42 Pa. C.S. §§ 8521(a), 8522(a)-(b). The exceptions to sovereign immunity under the *Sovereign Immunity Act* are to be strictly construed and are the only instances where immunization from liability for Commonwealth agencies is waived. *See* 42 Pa. C.S. §§ 8521(a), 8522(a)-(b). No exception enumerated in the *Sovereign Immunity Act* applies to instances where a state agency enters into an interconnection project with a public utility and, therefore, no exception applies to PPL’s interconnection project agreements with DCNR. Moreover, nothing in the Procurement Code generally addresses tort liability and we decline to read such an exception therein. Accordingly, we find that requiring DCNR to execute the standardized interconnection agreement form that retains the Indemnification and Limitation of Liability provisions as is would constitute an impermissible waiver of sovereign immunity. For these reasons, the Commission will approve the modifications requested by Petitioner.

As noted by Petitioner, the Commission has approved these same changes to the Standard Interconnection Agreements to accommodate prior requests by DCNR. The Commission also notes that no party has filed an objection to the changes proposed for the standard Interconnection Agreement in each of the prior proceedings, and no party filed an objection in the present proceedings. Accordingly, the Commission finds it reasonable and appropriate to amend the Commission’s February 27, 2009, Order at Docket No. M‑00051865 relating to the Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standard Interconnection Application Forms, pursuant to our authority under Section 703(g) of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 703(g).

Specifically, the Commission approves the modifications to the language of Sections 9 and 10 of the standard interconnection agreement as set forth in this Order as an approved amendment to the Standard Interconnection Application Forms for state agencies governed by and subject to the same state laws as those at issue herein (the *Sovereign Immunity Act*. 42 Pa. C.S. §§ 8521-8528).

**CONCLUSION**

For the foregoing reasons, the Commission finds that the Petitioner’s reasons for seeking waiver of the standard interconnection agreement are valid. Accordingly, we find it is in the public interest to grant this Petition. We also find that it is reasonable and appropriate to amend the Commission’s February 27, 2009, Order at Docket No. M‑00051865 relating to the Implementation of the Alternative Energy Portfolio Standards Act of 2004: Standard Interconnection Application Forms, by approving modifications to the Standard Interconnection Agreement Forms as set forth in this Order as approved amendments to said forms;

**THEREFORE,**

**IT IS ORDERED:**

1. That the proceedings docketed at P-2020-3021913 and M-00051865 shall be consolidated, pursuant to 52 Pa. Code § 5.81(a).

2 That the Petition of PPL at Docket No. P‑2020‑3021913 for Waiver of the Standardized Interconnection Agreement Form established by the Commission in the proceeding at Docket No. M‑00051865 is granted in accordance with this Order.

3. That the Commission approves the modifications to the language of Sections 9 and 10 of the standard interconnection agreement as set forth in this Order as an approved amendment to the Standard Interconnection Application Forms for state agencies governed by and subject to the same state laws as those at issue herein (the *Sovereign Immunity Act*. 42 Pa. C.S. §§ 8521-8528).

4. That a copy of this Order be served on the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, all jurisdictional electric distribution companies, and the Pennsylvania Department of Conservation and Natural Resources.

5. That the Secretary cause a copy of this Order to be published in the *Pennsylvania Bulletin*.

6. That the matters at Dockets No. P-2020-3021913 and M-00051865 be marked closed.

**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: October 8, 2020

ORDER ENTERED: October 8, 2020

1. PPL Petition at 2-3 (¶8). [↑](#footnote-ref-1)
2. In these proceedings, Metropolitan Edison Company (Met-Ed) and West Penn Power Company (West Penn) requested that the Commission authorize Met-Ed and West Penn to remove and modify the same language identified herein within a DCNR interconnection agreement. The Commission approved the proposed modifications to the indemnification and limitation of liability provisions in both proceedings. [↑](#footnote-ref-2)
3. *AEPS Act Implementation Order* at 7-8 (Ordering Paragraph No. 5). [↑](#footnote-ref-3)