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March 1, 2021

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor  
Harrisburg, PA 17120

**Re: Proposed Implementation of Act 114 of 2020  
Docket No. M-2020-3023323**

Dear Secretary Chiavetta:

Pursuant to the Pennsylvania Public Utility Commission's Order dated January 14, 2021 in the above-captioned proceeding, enclosed herewith for filing are the *Comments of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company*.

Please contact me if you have any questions regarding this matter.

Very truly yours,



Tori L. Giesler

kbw  
Enclosures

c: As Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Proposed Implementation of Act 114 of 2020** : **Docket No. M-2020-3023323**  
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**COMMENTS OF METROPOLITAN EDISON COMPANY,  
PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER  
COMPANY, AND WEST PENN POWER COMPANY**

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**I. INTRODUCTION**

On January 14, 2021, the Pennsylvania Public Utility Commission (“Commission” or “PUC”) entered a Tentative Implementation Order in this proceeding.<sup>1</sup> Therein, the Commission, *inter alia*, requested that interested persons submit comments within 30 days of the Order’s publication in the *Pennsylvania Bulletin* regarding the PUC’s proposed interpretation and implementation of sections 10 and 14 of Act 114 of 2020 (“Act 114”).<sup>2</sup> Publication occurred on January 30, 2021, thereby making March 1, 2021 the filing deadline for comments.<sup>3</sup> Pursuant to the comment period prescribed in the Commission’s Order, Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”), and West Penn Power Company (“West Penn”) (collectively, the “Companies”) hereby respectfully submit these *Comments*.

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<sup>1</sup> *Proposed Implementation of Act 114 of 2020*, Tentative Implementation Order, Docket No. M-2020-3023323 (entered January 14, 2021) (“Order” or “Tentative Implementation Order”).

<sup>2</sup> 72 P.S. §§ 1 *et seq.*

<sup>3</sup> 51 Pa. Bull. 667 (January 30, 2021).

## II. BACKGROUND

Pennsylvania Governor Tom Wolf signed Act 114 into law on November 23, 2020.<sup>4</sup> Among other things, Act 114 amends the Fiscal Code by establishing geographical limits on energy resources that qualify as Tier II resources under the Alternative Energy Portfolio Standards Act (“AEPS Act”).<sup>5</sup> The PUC’s administrative responsibilities for implementing the provisions of Act 114 can be found in sections 10 and 14 of Act 114. Those sections amend the provisions of the Fiscal Code relating to the AEPS Act by adding sections 1728-E and 1799.10-E, respectively. Section 1728-E expands the definition of “Customer Generator” in section 2 of the AEPS Act to include net-metered Alternative Energy Systems (“AESs”) “owned, operated or supporting the Department of Military and Veterans Affairs on property owned or leased and operated by the Department with a nameplate capacity not to exceed the Department’s annual electric needs to support the Department’s facilities on its property.”<sup>6</sup> Among other things, section 1799.10-E modifies section 4 of the AEPS Act to limit the eligibility of Tier II AESs to those that meet the requirements of the 4 subparagraphs set forth in section 1799.10-E(a)(1) as of the effective date of Act 114 (i.e., November 23, 2020). Section 1799.10-E also establishes certain exceptions to this general limitation.

On January 14, 2021, the Commission entered this Order in the above-captioned proceeding. Therein, the Commission provides its proposed interpretation and implementation of sections 1728-E and 1799.10-E, respectively, including the prescribed exceptions set forth in section 1799.10-E regarding the general, newly established limitation to the use of Alternative Energy Credits (“AECs”) from out-of-state AESs to meet the compliance requirements under the

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<sup>4</sup> Act 114, P.L. 1140, No. 114 (2020).

<sup>5</sup> 73 P.S. §§ 1648.1 *et seq.*

<sup>6</sup> Act 114, P.L. 1140, No. 114, sec. 1728-E, § 2 (2020).

AEPS Act. One such exception is set forth in section 1799.10-E(a)(2)(ii). It grandfathers Tier II AESs with a written, binding contract that had received a Pennsylvania certification as an AES eligible to meet Tier II share requirements prior to November 23, 2020, the effective date of Act 114. The Commission proposes to limit this contract exception to only those out-of-state facilities that are already certified as a Tier II AES and that have contracts for the sale of Tier II AECs with a Pennsylvania electric distribution company (“EDC”) or an electric generation supplier (“EGS”) serving Pennsylvania customers.<sup>7</sup>

### **III. COMMENTS**

The Companies wish to take this opportunity to thank the Commission for providing interested stakeholders this chance to comment on the PUC’s proposed interpretation and implementation of sections 1728-E and 1799.10-E, respectively, of Act 114. Generally speaking, the Companies believe the Commission’s Order proposes to reasonably interpret and implement Act 114. Therefore, the Companies will not address herein seriatim each of the proposals provided in the PUC’s Order. Instead, these *Comments* will address singularly those discrete proposals for which the Companies have a question or concern. They are as follows:

#### **A. Section 1728-E**

Section 1728-E expands the definition of “Customer Generator” in section 2 of the AEPS Act to include new AESs. Section 2 of the AEPS Act defines a “Customer Generator” as a “nonutility owner or operator of a net-metered distributed generation system with a nameplate capacity of not greater than 50 kilowatts if installed at a residential service location or not larger than 3,000 kilowatts at other service locations.”<sup>8</sup> However, customers may exceed the 3,000 kilowatt limit by an additional 2,000 kilowatts (up to a maximum of 5 megawatts) “if they make

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<sup>7</sup> Tentative Implementation Order, Docket No. M-2020-3023323, at 11.

<sup>8</sup> *Id.* at 2.

their systems available to operate in parallel with the electric utility during grid emergencies as defined by the regional transmission organization or, under certain prescribed conditions, where a microgrid is in place for the primary or secondary purpose of maintaining critical infrastructure.”<sup>9</sup>

Specifically, section 1728-E provides:

The definition of “customer-generator” in Section 2 of the act of November 30, 2004 (P.L. 1672, No. 213), known as the Alternative Energy Portfolio Standards Act, shall include net-metered distributed generation systems owned, operated or supporting the Department of Military and Veterans Affairs on property owned or leased and operated by the Department with a nameplate capacity not to exceed the Department’s annual electric needs to support the Department’s facilities on its property.

Act 114, P.L. 1140, No. 114, sec. 1728-E, § 2 (2020). The Commission proposes to interpret this section to mean the Department of Military and Veterans Affairs (“DMVA”) is authorized to “own or operate net-metered distributed generation systems with a nameplate capacity that does not exceed the annual electric needs of the DMVA’s facilities on its respective property.”<sup>10</sup>

The Companies do not find the Commission’s interpretation of section 1728-E objectionable, per se. As stated previously, the extant definition of “Customer Generator” set forth in section 2 of the AEPS Act allows a customer’s net-metered distributed generation system to exceed the prescribed 3,000 kilowatt limit (up to a maximum of 5 MW) under certain prescribed conditions. Because that portion of the definition is unaltered by section 1728-E, DMVAs will possess this same ability, which the Companies do not find to be inherently problematic. However, in light of the safety, reliability, and operational requirements that EDCs must consider when evaluating interconnection requests, the Companies do not want section 1728-E’s revisions to the definition of “Customer Generator” to be misconstrued as conferring an absolute right upon

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<sup>9</sup> *Id.*

<sup>10</sup> Tentative Implementation Order, Docket No. M-2020-3023323, at 3.

DMVAs—and an obligation upon EDCs—to interconnect AESs with a 5 MW nameplate capacity that are “owned, operated, or supporting” DMVAs.<sup>11</sup> As is the case today with all Customer Generators intending to pursue net-metering opportunities in accordance with the AEPS Act, an interconnection request can be granted by an EDC only if it first determines that the safety and reliability of its distribution system will not be imperiled by such a grant.<sup>12</sup> EDCs must retain the ability to deny interconnection requests from DMVAs that will compromise their ability to provide safe and reliable service to their customers. Accordingly, the Companies request that the Commission affirmatively state in its Final Implementation Order that EDCs will in fact still possess this same capability with respect to requests by DMVAs to interconnect AESs, regardless of whether the facility in question otherwise complies with the newly revised definition of “Customer Generator” or the interpretation thereof provided in the Commission’s forthcoming Final Implementation Order.

**B. Section 1799.10-E**

With limited exceptions, section 1799.10-E(a)(1) seeks to close the Commonwealth’s borders to energy derived from AESs located outside of the geographical boundaries of Pennsylvania when it comes to satisfying compliance requirements under the AEPS Act. To this end, section 1799.10-E(a) of Act 114 provides:

(1) Notwithstanding Section 4 of the act of November 30, 2004 (P.L. 1672, No. 213), known as the Alternative Energy Portfolio Standards Act, in order to qualify as an alternative energy source eligible to meet the Tier II share of this Commonwealth’s compliance requirements under Section 3(c) of the Alternative Energy Portfolio Standards Act and to qualify for Tier II Alternative Energy Portfolio credits, each Tier II source must do one of the following:

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<sup>11</sup> Act 114, P.L. 1140, No. 114, sec. 1728-E, § 2 (2020).

<sup>12</sup> 52 PA Code § 75.37(c)(4) (2020) (“Unless an EDC determines and demonstrates that a small generator facility cannot be interconnected safely and reliably, the EDC shall approve the interconnection request form subject to [certain enumerated conditions].”)

(i) Directly deliver the electricity it generates to a retail customer of an electric distribution company or to the distribution system operated by an electric distribution company operating within this Commonwealth and currently obligated to meet the compliance requirements contained under the Alternative Energy Portfolio Standards Act.

(ii) Be directly connected to the electric system of an electric cooperative or municipal electric system operating within this Commonwealth.

(iii) Connect directly to the electric transmission system at a location that is within the service territory of an electric distribution company operating within this Commonwealth.

(iv) Generate electricity at generation units whose construction and operation is subject to and complies with permits issued by the Department of Environmental Protection of the Commonwealth under the Act of January 8, 1960 (1959 P.L. 2119, No. 787), known as the Air Pollution Control Act, or the Act of July 7, 1980 (P.L. 380, No. 97), known as the Solid Waste Management Act.

Act 114, P.L. 1140, No. 114, sec. 1799.10-E(a), § 4 (2020). In other words, section 1799.10-E(a)(1) limits the eligibility of Tier II AESs to those that satisfy the requirements of subparagraphs (i) through (iv).

There are, however, exceptions to section 1799.10(E)(a)'s general prohibition against the use of out-of-state alternative energy resources for Tier II compliance. One such exception is put forth in section 1799.10-E(a)(2)(ii), which provides—

(2) Nothing under this section or section 4 of the Alternative Energy Portfolio Standards Act shall affect any of the following:

.....

(ii) Certification of a Tier II source with a binding written contract for the sale and purchase of alternative energy credits derived from Tier II energy sources for the remaining term of the contract as of the effective date of this section, but only until the current term of the contract terminates.

Act 114, P.L. 1140, No. 114, sec. 1799.10-E(a)(2)(ii), § 4 (2020). The Commission proposes to construe section 1799.10-E(b) in a manner that limits the applicability of this contract exception.

Section 1799.10-E(b) reads as follows:

- (b) **Applicability.** – This section shall apply to contracts entered into or renewed on or after the effective date of this section.

Act 114, P.L. 1140, No. 114, sec. 1799.10-E(b), § 4 (2020). In its Order, the Commission proposes to interpret this subsection as “limiting the eligibility of systems certified under the contract exception in subsection 1799.10-E(a)(2)(ii) to the duration of the contract for the sale and purchase of AECs where the contract was entered into prior to November 23, 2020”.<sup>13</sup> The Commission also proposes to prohibit a Tier II AES owner from extending the eligibility of its facilities through the renewal of original or subsequent contracts. However, the PUC proposes to allow AECs generated and transferred to an EDC or EGS prior to contract expiration to remain eligible for use by that EDC or EGS to satisfy their Tier II share requirements in accordance with 52 Pa. Code § 75.69. Moreover, the Commission proposes to implement subsection 1799.10-E(b) by directing EDCs or EGSs that seek to use Tier II AECs generated after November 2020 from AESs sourced outside of the Commonwealth, and that were acquired through contracts entered into prior to November 23, 2020 to meet their Tier II share requirements, to file a Petition with the PUC after the entry of its Final Implementation Order in this docket.<sup>14</sup>

Currently, the Companies estimate that they have sufficient supply of compliant Tier II RECs sourced within the geographic boundaries of the Commonwealth to meet their annual Tier II share requirements in the near term. However, if this were to change in the future, the need may arise for the Companies to acquire grandfathered Tier II AECs to meet compliance targets.

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<sup>13</sup> Tentative Implementation Order, Docket No. M-2020-3023323, at 11.

<sup>14</sup> *Id.*

As a whole, the Companies do not take issue with the Commission's proposed interpretation and implementation of section 1799.10-E. However, the Companies seek clarity from the PUC regarding how best to ensure compliance with its proposed interpretations regarding the eligibility requirements of out-of-state AECs for use by EDCs and EGSs in fulfillment of their Tier II share obligations. Specifically, there is no clear indication from the PA State Number that an AEC generated outside of the Commonwealth of Pennsylvania that is listed in the PJM Interconnection, LLC's ("PJM") Environmental Information Services Generation Attribute Tracking System ("GATS") can be used to satisfy Pennsylvania's AEPS requirements. Currently, the only way to know if an AEC has been grandfathered is to review all of the PUC Orders in which the Commission has approved a Petition from an out-of-state Tier II generator seeking Pennsylvania certification as an AES eligible to meet Tier II share requirements. This is also the only way at present to ascertain the expiration date of grandfathered out-of-state AECs.

One way that would better enable EDCs and EGSs to verify grandfathered, out-of-state Tier II AECs would be to have GATS generate a unique PA State Number that identifies grandfathered Tier II AECs. When the out-of-state Tier II AECs are no longer eligible for use by EDCs or EGSs for purposes of AEPS compliance, GATS can remove the PA State Number, at which point those AECs could no longer be used to meet Tier II share requirements. This will eliminate the current need for EDCs and EGSs to maintain a list of grandfathered projects outside of GATS.

**IV. CONCLUSION**

The Companies appreciate being given this opportunity to provide comments in response to the Order and respectfully request that the Commission use the recommendations provided herein to inform the decisions reflected in its forthcoming Final Implementation Order.

Respectfully submitted,

Dated: March 1, 2021



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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Proposed Implementation of Act 114 of 2020** : **Docket No. M-2020-3023323**  
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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by first class mail, as follows:

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Dated: March 1, 2021

  
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