

November 29, 2021

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

VIA ELECTRONIC FILING

**Re: Policy Proceeding – Utilization of Storage Resources as Electric Distribution Assets;
Docket No. M-2020-3022877**

Dear Secretary Chiavetta:

Please find enclosed for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the Comments of the Industrial Energy Consumers of Pennsylvania, in the above-referenced matter.

This document was filed electronically with the Commission on this date. All parties are being served a copy of this document in accordance with the enclosed Certificate of Service.

Please contact me if you have any questions concerning this filing.

Sincerely,

SPILMAN THOMAS & BATTLE, PLLC

By 

Derrick Price Williamson
Barry A. Naum

BAN/sds
Enclosures

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Joseph Cardinale, Law Bureau (via E-mail)
David Edinger, Bureau of Technical Utility Services (via E-mail)
Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Policy Proceeding – Utilization of Storage : Docket No. M-2020-3022877
Resources as Electric Distribution Assets :

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the following parties to this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by participant).

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Dated: November 29, 2021

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Policy Proceeding – Utilization of Storage : **Docket No. M-2020-3022877**
Resources as Electric Distribution Assets :

COMMENTS OF
INDUSTRIAL ENERGY CONSUMERS OF PENNSYLVANIA

On August 28, 2021, the Pennsylvania Public Utility Commission's ("PUC" or "Commission") Secretarial Letter in the above-referenced docket was published in the *Pennsylvania Bulletin*. The Secretarial Letter requested that interested parties submit responses to directed questions and Comments within 30 days of its publication in the *Pennsylvania Bulletin*, or by September 27, 2021. On September 14, 2021, the Commission issued a Secretarial Letter extending the deadline to November 29, 2021.

The Industrial Energy Consumers of Pennsylvania ("IECPA")¹ is an association of energy-intensive industrial consumers of electricity taking service from regulated utilities in Pennsylvania, including Duquesne Light Company ("Duquesne"); Metropolitan Edison Company ("Met-Ed"); PECO Energy Company ("PECO"); Pennsylvania Electric Company ("Penelec"); Pennsylvania Power Company ("Penn Power"); PPL Electric Utilities Corporation ("PPL"); and West Penn Power Company ("West Penn"). IECPA offers these brief, general Comments in response to the August Secretarial Letter in the above-referenced matter on issues of particular importance to its

¹ For the purpose of this matter, IECPA's membership consists of: Air Products & Chemicals, Inc.; AK Steel Corporation; Arconic, Inc.; Benton Foundry, Inc.; Carpenter Technology Corporation; Cleveland-Cliffs Inc.; East Penn Manufacturing Company; Keystone Cement Company; Knouse Foods Cooperative, Inc.; Linde Inc.; Marathon Petroleum Corporation; Proctor & Gamble Paper Products Company; and United States Gypsum Company.

members. Specifically, IECPA will address certain targeted questions presented by the Commission with the Secretarial Letter. The fact that IECPA does not address each and every matter raised by Secretarial Letter should not be construed as either support or opposition to those issues as stated in the Secretarial Letter, and IECPA reserves the right to respond to other Comments as they pertain to any element of the Secretarial Letter.

Question 1: What are the parameters that would allow for the use of energy storage on the distribution grid?

IECPA has reviewed the various Comments initially offered by the various stakeholders in the first round of Comments in this docket. Based on those Comments, and IECPA's own knowledge, there appears to be substantial question regarding the precise nature and characteristics of energy storage technology and the function that such technology plays, or may play, on the energy grid both in Pennsylvania and on a national scale. Some stakeholders tend to view energy storage technology as serving a fundamental "generation" role in the provision of power, while others acknowledge that this technology does have some characteristics of "distribution" and even "transmission," while still others -- primarily the Electric Distribution Companies ("EDCs") -- surmise that energy storage technology fulfills a fourth role that is outside of traditional generation, distribution, and transmission. This remains a critical question; as with all emerging technology, properly defining the characteristics and role(s) that energy storage technology plays will determine how this technology can or should be employed properly to the benefit of the Pennsylvania public.

IECPA acknowledges that energy storage assets may provide a variety of benefits to the distribution grid, including reliability and resiliency solutions; however, IECPA believes that many of these functions fundamentally remain in the realm of generation related to the bulk power

system² (and to a lesser degree, transmission, particularly as it relates to resiliency and reliability solutions), functions that are primarily within the jurisdiction of the Federal Energy Regulatory Commission ("FERC").³

Moreover, these solutions can also be provided by customers behind-the-meter, much in the way that behind-the-meter energy efficiency and demand response measures contribute to the reduction of electric generation. Therefore, IECPA further submits that the Commission should prioritize the facilitation of behind-the-meter energy storage assets, whether owned by customers or third-party providers; and to that extent, IECPA submits that there should be no size limitations imposed upon those measures.

Question 4: Who should own an energy-storage asset? EDCs, third-party vendors, or some combination of both?

As noted above, IECPA tends to view energy storage technology as primarily being a generation asset, irrespective of some limited characteristics that may equate to distribution or transmission service, or some other form of service. If the Commission finds that energy storage technology is fundamentally a generation asset providing generation service, then under the framework of Pennsylvania's restructuring under the Competition Act, EDCs should not be permitted to own such technology. As such, only third-parties (including end user customers) would own and operate such technology, and they would be free to bilaterally contract with EDCs to provide such service to the EDCs' *default service* customers.

² Section 215(a)(1) of Federal Power Act ("FPA) defines the "bulk power system" as "(A) facilities and control systems necessary for operating an interconnected electric energy transmission network (or any portion thereof); and (B) electric energy from generation facilities needed to maintain transmission system reliability" but "*does not include* facilities used in the local distribution of electric energy." 16 U.S.C. § 824o(a)(1) (2018) (emphasis added).

³ *Mandatory Reliability Standards for the Bulk-Power System*, Order No. 693, 72 FR 16,416, FERC Stats. & Regs. ¶ 31,242, *order on reh'g*, 120 FERC ¶ 61,053 (2007).

To that end, irrespective of what the Commission ultimately decides regarding the fundamental nature and characteristics of this technology, nothing should prevent any third parties -- including EDC customers -- from investing in and owning energy storage assets. That said, if EDCs are permitted to own such technology, *such ownership should not be transmuted into the provision of a monopoly service*; rather, and consistent with the goals of the Competition Act, the market should continue to dictate the availability of energy storage technology and set the stage for its continued development. IECPA is not concerned with EDCs entering that market, to the degree that they can legally do so outside of providing generation service, but under no circumstances should EDCs be provided the ability or power to control that market or any specific element of it.

To the Commission's further directed question as to whether EDCs should be permitted to participate in the wholesale market, or what the "primary function" of third-party owners should be in the wholesale market, IECPA urges the Commission to be mindful of the jurisdictional limitations on state efforts to restrict wholesale market participation by electric storage resources located behind a retail meter or on the distribution system.

In FERC Order No. 841,⁴ FERC stated that "an electric storage resource that injects electric energy back to the grid for purposes of participating in an [Regional Transmission Organization ("RTO")/Independent System Operator ("ISO")] market engages in a sale of electric energy at wholesale in interstate commerce. As a result, such an electric storage resource must fulfill certain responsibilities set forth in the FPA and the Commission's rules and regulations."⁵ FERC

⁴ *Electric Storage Participation in Markets Operated by Regional Transmission Organizations and Independent System Operators*, Order No. 841, 162 FERC ¶ 61,127 (2018) ("Order No. 841-A"), *order on reh'g*, Order No. 841-A 167 FERC ¶ 61,154 (2019) ("Order No. 841-A").

⁵ Order No. 841 at P 30 (emphasis added) (citations omitted).

expressly rejected the notion that states can "decide whether [electric storage resources] in their state that are located behind a retail meter or on the distribution system are permitted to participate in the RTO/ISO markets."⁶

The United States Court of Appeals for the District of Columbia Circuit ("D.C. Circuit") affirmed FERC's pronouncements on these matters, explaining that states may not block wholesale market participation "through conditions on the receipt of retail service" or impose any "condition[] aimed *directly* at the RTO/ISO markets, even if contained in the terms of retail service."⁷ The D.C. Circuit went on to explain that "[a]ny State effort that aims directly at destroying FERC's jurisdiction by 'necessarily deal[ing] with matters which directly affect the ability of the [Commission] to regulate comprehensively and effectively' over that which it has exclusive jurisdiction 'invalidly invade[s] the federal agency's exclusive domain.'"⁸

Accordingly, the Commission must not seek to restrict wholesale market participation by third-party electric storage resources located behind a retail meter or on the distribution system.

Question 6: What cost recovery mechanisms should be implemented for the ownership and operation of energy-storage assets?

As previously noted, if energy storage assets are considered to be exclusively "generation" assets for purposes of employment by EDCs, then such assets (and more specifically, the cost of an EDC contracting with a third-party vendor) can only be recovered in rates from default service customers. That rate recovery should be pursued in connection with each EDC's Section 1308 base rate filing and any additional default service-related proceedings.

⁶ Order No. 841-A at P 9.

⁷ *Nat'l Ass'n of Regulatory Util. Comm'rs v. FERC*, 964 F.3d 1177, 1187 (2020) ("NARUC") (citing Order No. 841 at P 41).

⁸ NARUC at 1188 (citation omitted).

IECPA likewise submits that if any legitimate distribution or transmission function is identified for energy storage assets then the Section 1308 base rate process is the most appropriate venue for EDCs to seek cost recovery. IECPA does not believe that the economic characteristics of energy storage technology warrant automatic adjustment clause treatment under Section 1307 or any other form of extraordinary rate relief. Specifically, energy storage assets are static resources that do not, or should not, require significant investment that cannot be adequately recovered through the traditional base rate process. To the extent investment in these assets is required, such investment likely would be confined to an initial capital cost and relatively minimal operations and maintenance costs going forward. IECPA submits that these costs should be easily identifiable in a Section 1308 filing and should not be subject to an automatic adjustment clause.

While the Commission may be correct that these resources require energy to charge and consume more energy than they dispense, those factors pertaining to energy consumption and dispensing are, or should be, relatively known quantities that the EDCs can readily account for in their Section 1308 test year calculations. These are not like other costs that may fluctuate significantly over a period of time arguably requiring periodic reconciliation and true-up. Furthermore, Pennsylvania customers are already strapped with a wide array of automatic adjustment clause surcharges that make discernment of price signals and other critical evaluations of consumption very difficult. There is no reason at present to exacerbate that condition by permitting yet another surcharge for such investments.


As a final note, IECPA submits that to the extent EDCs are permitted to own energy storage assets for use on their system, such assets may be receiving compensation for their participation in the wholesale market.

If so, then the EDCs should be precluded from recovering any costs for these assets if they have received any compensation from the wholesale market.⁹ This is consistent with the general principle of the wholesale markets that prevents double recovery of benefits both at the wholesale and retail level. To the extent that EDCs are able to properly receive retail revenues from energy storage asset participation on the wholesale market that is not already recognized for compensation at the wholesale level, then IECPA recommends that these revenues should certainly be used to offset the costs to the EDCs of these investments and credited to customers for this purpose.

As a final note related to customer-owned or third-party contracted behind-the-meter energy storage technology, IECPA notes that the benefits of such behind-the-meter assets contribute to reduced energy consumption on the EDCs' systems. As such, to the extent that customers are able to provide behind-the-meter energy storage and provide offsets to energy or demand contributions to the EDCs' systems after accounting for the energy consumption required to charge these assets, then those benefits should be credited against Act 129 Energy Efficiency and Conservation charges and likewise counted by the EDCs' against their energy reduction targets.

⁹ See, e.g., *PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,049, PP 5, 19-20, 256 (2019) (FERC order accepting PJM's proposed "participation model that facilitates the participation of electric storage resources in the PJM capacity, energy, and ancillary services markets" in response to Order No. 841's "require[ment] that each RTO/ISO establish a participation model that ensures eligibility to participate in the RTO/ISO markets and that compensates electric storage resources for the wholesale services they provide in the same manner as other resources that provide these services") (citing Order No. 841 at P 52).

Respectfully submitted,

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