

# Morgan Lewis

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January 20, 2022

## **VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17105-3265

**Re: 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 and P-2021-3030021**

Dear Secretary Chiavetta:

Enclosed for filing is the **Prehearing Conference Memorandum of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of Their Default Service Programs** (“Prehearing Memorandum”).

Copies of the Prehearing Memorandum have been served on Administrative Law Judge Jeffrey A. Watson and the parties listed on the enclosed Certificate of Service in the manner indicated.

If you have any questions, please do not hesitate to contact me directly at 215.963.5384.

Very truly yours,



Kenneth M. Kulak

Enclosures

c: Per Certificate of Service

DB1/ 126968287.1

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>JOINT PETITION OF</b>	<b>:</b>	<b>DOCKET NO. P-2021-3030012</b>
<b>METROPOLITAN EDISON COMPANY,</b>	<b>:</b>	
<b>PENNSYLVANIA ELECTRIC</b>	<b>:</b>	<b>DOCKET NO. P-2021-3030013</b>
<b>COMPANY, PENNSYLVANIA POWER</b>	<b>:</b>	
<b>COMPANY, AND WEST PENN POWER</b>	<b>:</b>	<b>DOCKET NO. P-2021-3030014</b>
<b>COMPANY, FOR APPROVAL OF</b>	<b>:</b>	
<b>THEIR DEFAULT SERVICE</b>	<b>:</b>	<b>DOCKET NO. P-2021-3030021</b>
<b>PROGRAMS</b>	<b>:</b>	

**CERTIFICATE OF SERVICE**

I hereby certify and affirm that I have this day served copies of the **Prehearing Conference Memorandum on behalf of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company** on the persons listed below, in the manner specified in accordance with the requirements of 52 Pa. Code § 1.54:

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Dated: January 20, 2022

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>JOINT PETITION OF METROPOLITAN</b>	<b>:</b>	
<b>EDISON COMPANY, PENNSYLVANIA</b>	<b>:</b>	<b>DOCKET NOS. P-2021-3030012</b>
<b>ELECTRIC COMPANY, PENNSYLVANIA</b>	<b>:</b>	<b>P-2021-3030013</b>
<b>POWER COMPANY AND WEST PENN</b>	<b>:</b>	<b>P-2021-3030014</b>
<b>POWER COMPANY FOR APPROVAL OF</b>	<b>:</b>	<b>P-2021-3030021</b>
<b>THEIR DEFAULT SERVICE PROGRAMS</b>	<b>:</b>	

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**PREHEARING CONFERENCE MEMORANDUM OF  
METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY,  
PENNSYLVANIA POWER COMPANY AND WEST PENN POWER COMPANY**

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**I. INTRODUCTION**

Pursuant to the January 3, 2022 Prehearing Conference Order issued by Administrative Law Judge Jeffrey Watson (the “ALJ”) and the Pennsylvania Public Utility Commission’s (“Commission”) regulations at 52 Pa. Code § 5.222(d), Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”) and West Penn Power Company (“West Penn”) (each individually a “Company” and collectively, the “Companies”) hereby submit their Prehearing Conference Memorandum in the above-referenced proceedings.

**II. HISTORY OF THE PROCEEDING**

On December 14, 2021, the Companies filed the above-captioned joint petition (the “Joint Petition”) requesting that the Commission approve their sixth Default Service Programs (the “Program(s)” or “DSP VI”), which are designed to procure a prudent mix of long-term, short-term and spot market generation supplies and ensure that default service customers have

access to an adequate and reliable supply of generation at the least cost over time for the period beginning June 1, 2023. The Companies currently provide default service pursuant to Commission-approved default service programs (“DSP V Programs”) that will expire on May 31, 2023.<sup>1</sup>

The Joint Petition requests that the Commission approve the proposed Programs, including the Companies’ procurement plans, contingency plans, rate design changes and tariffs, and a *pro forma* supplier master agreement (“SMA”), for default supply service for the period beginning June 1, 2023 through May 31, 2027. The Companies also request that the Commission specifically find, pursuant to 66 Pa.C.S. § 2807(e)(3.7), that: (1) the Programs include prudent steps necessary to negotiate favorable generation supply contracts; (2) the Programs include prudent steps necessary to obtain least-cost generation supply on a long-term, short-term and spot market basis; and (3) neither the Companies nor their affiliates have withheld from the market any generation supply in a manner that violates federal law.

The Joint Petition was served on the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), the Commission’s Bureau of Investigation and Enforcement (“I&E”), PJM Interconnection, L.L.C. (“PJM”), Met-Ed Industrial Users Group (“MEIUG”), Penelec Industrial Customer Alliance (“PICA”) and West Penn Power Industrial Intervenors (“WPII”) (collectively, the “Industrials”), the Retail Energy Supply Association (“RESA”), the Pennsylvania State University (“PSU”), the Coalition for Affordable Utility

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<sup>1</sup> See *Joint Petition of Metro. Edison Co., Pennsylvania Elec. Co., Pennsylvania Power Co., and West Penn Power Co. for Approval of their Default Serv. Programs for the Period Beginning June 1, 2019 through May 31, 2023*, Docket Nos. P-2017-2637855, et al. (Opinion and Order entered Sept. 4, 2018) (“September 2018 Order”). In the September 2018 Order, the Commission approved a partial settlement of the Companies’ DSP V proceeding (“DSP V Settlement”) and resolved the remaining contested issues, including the residential procurement schedule, continuation of each Company’s Customer Referral Program (“CRP”), and shopping by customers enrolled in each Company’s Customer Assistance Program (“CAP”). On February 28, 2019, the Commission entered a Final Order (“February 2019 Order” and together with the September 2018 Order, the “DSP V Orders”) adopting rules and procedures for the CAP shopping programs approved in the September 2018 Order and revising the Companies’ CRP scripts.

Service and Energy Efficiency in Pennsylvania (“CAUSE-PA”), and all electric generation suppliers (“EGSs”) registered to provide service in the Companies’ service territories. In addition, notice of the Companies’ filing was published in the *Pennsylvania Bulletin* on January 1, 2022. As of this date, the Companies have been served with a Notice of Appearance by I&E; an Answer and Notice of Intervention by the OCA; an Answer, Notice of Intervention and Notice of Appearance by OSBA; and Petitions to Intervene by CAUSE-PA, Enerwise Global Technologies (d/b/a CPower Energy Management), Exelon Generation Company, LLC and Constellation NewEnergy, Inc., the Industrials, John Bevec and Sunrise Energy, LLC, PSU, RESA and NRG Energy, Inc., and Shipley Choice LLC (d/b/a Shipley Energy).

### **III. STATEMENT OF ISSUES**

The issue before the Commission is whether the Programs are in the public interest and are consistent with the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2801, et seq. (the “Competition Act”), as amended by Act 129 of 2008 (“Act 129”), the Commission’s default service regulations at 52 Pa. Code §§ 54.181-54.189 (“Regulations”), the Commission’s Policy Statement on Default Service at 52 Pa. Code §§ 69.1801-1817 (“Policy Statement”), and the Commission’s Orders in its *Investigation of Pennsylvania’s Retail Electricity Market* at Docket I-2011-2237952.<sup>2</sup>

As explained in the Joint Petition and supporting testimony filed therewith, the Companies are proposing limited changes to their existing, Commission-approved DSP V Programs. The principal components of the Programs are described below.

On February 26, 2019, the Commission entered an Order at Docket No. M-2019-3007101 to initiate an investigation of potential opportunities to better reflect wholesale cost causation in

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<sup>2</sup> See *Investigation of Pennsylvania’s Retail Elec. Mkt.: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered Mar. 2, 2012); *Investigation of Pennsylvania’s Retail Elec. Mkt.: End State of Default Serv.*, Docket No. I-2011-2237952 (Order entered Feb. 15, 2013) (“End State Order”).

default service rates and incentivize customer behavior to lower peak demand. The Commission subsequently ended that proceeding and issued a Secretarial Letter (the “January 20 Secretarial Letter”) requesting that electric distribution companies (“EDCs”) address six topics in upcoming default service program (“DSP”) filings.<sup>3</sup> As described in Met-Ed/Penelec/Penn Power/West Penn Exhibit JMS-1, the Companies have addressed those topics in their direct testimony in this proceeding.

**A. Default Service Product and Procurement Class Design**

The Companies have proposed to continue the use of three default service procurement classes: residential, commercial, and industrial. While the default service product specifications are customized for each procurement class, the generation supply for all classes will consist of full-requirements, load-following energy and energy-related products, except for residential class default service load served by the Companies’ proposed long-term solar procurement.

During DSP VI, the Companies will continue to support the development of the Pennsylvania solar industry by procuring – through multi-year, fixed-price power purchase agreements (“PPAs”) – the energy and solar photovoltaic alternative energy credits (“SPAECs”) generated by one or more new in-state solar photovoltaic projects with total solar generating capacity of at least 7 MW and up to 20 MW. The winning project(s) will be selected through a competitive procurement process. The energy generated by the selected project(s) will be paired with spot purchases to satisfy a fixed quantity of residential default service load.

**B. Procurement Methodology and Contingency Plans**

The Companies propose to procure their full-requirements default service products through simultaneous, multiple-round, descending-price clock auctions similar to those being

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<sup>3</sup> *Investigation into Default Serv. and PJM Interconnection, LLC Settlement Reforms*, Docket No. M-2019-3007101 (Secretarial Letter issued Jan. 23, 2020).

used by the Companies under their current DSP V Programs with two changes to provide additional protections against supplier default. Specifically, the Companies are proposing to impose a credit-based tranche cap and to reduce the load cap to 40% on an aggregated load basis across all products in each fixed-price auction.

The Companies propose that CRA International, Inc. d/b/a Charles River Associates (“CRA”) continue to serve as the independent third-party evaluator for the Companies’ default supply procurements. In addition, the Companies propose contingency plans consistent with its current DSP V Programs to cover supply deficiencies resulting from: (i) an individual solicitation that is not fully subscribed; (ii) the Commission’s rejection of bid results from a solicitation; (iii) a winning supplier default. For DSP VI, the Companies are also proposing a contingency plan in the event PJM does not conduct a base residual auction in time for default service suppliers to incorporate capacity prices into their bids.

The request for proposals (“RFP”) for the solar PPAs will use a two-part, competitive bid process in which bidders are first qualified and then permitted to submit a bid. Consistent with the competitive procurement process the Companies are currently using for SPAECs, an independent third-party evaluator (The Brattle Group) will participate throughout the entire procurement process and submit the RFP results for Commission review and approval. If an RFP bid is accepted and approved, the winning bidder will be required to enter into the PPA provided in Appendix 1 to the solar RFP with each Company.

In the event that the Companies’ proposed long-term solar procurement is not fully subscribed, the Companies will develop and file a RFP with the Commission to procure SPAECs for a five-year period in an amount designed to satisfy up to an estimated 32% of the solar requirements under the Alternative Energy Portfolio Standards (“AEPS”) Act, 73 P.S. § 1648.1,

et seq., for the Companies' residential default service load. If the RFP is undersubscribed, the Companies will procure SPAECs at then-current market prices to meet any SPAEC shortfall.

**C. Supplier Master Agreement**

Pursuant to the End State Order, the Commission's Office of Competitive Market Oversight created a procurement collaboration working group that was tasked with formulating, among other things, a uniform supplier master agreement for use on a statewide basis. This uniform SMA was adopted for use in the Companies default supply procurements beginning June 1, 2017. The Companies are proposing to continue the use of their current Commission-approved SMAs, with modifications to reflect changes the Companies are proposing for DSP VI in the areas of AEPS compliance, protections against supplier default, and contingency planning.

**D. AEPS Act Requirements**

The Companies propose to satisfy most of their AEPS requirements as part of the solicitation process to obtain generation supplies for default service. Winning suppliers of full-requirements default service products in the Companies' service territories will be responsible for meeting all Tier I and Tier II requirements, including solar photovoltaic requirements, with two exceptions. First, in the first year of DSP VI, Met-Ed, Penelec, and Penn Power will continue to allocate SPAECs obtained through existing long-term contracts that expire on May 31, 2024 to default service suppliers and EGSs on a load ratio basis. Second, the SPAECs that the Companies purchase through their proposed solar PPAs will be allocated to default service suppliers in proportion to the amount of residential load served over the course of the energy year.

**E. Rate Design and Tariff Changes**

The Companies propose to recover default service costs primarily through two default

service riders: the Price to Compare Default Service Rate (“PTC”) Rider and the Hourly Pricing Default Service (“HP”) Rider. The Companies currently recover the cost of providing default service to the residential and commercial classes through the PTC Riders. The Companies currently recover the cost of default service for commercial and industrial customers with demand 100 kW and above through their HP Riders. The Companies propose to maintain the same rate design for their PTC and HP Riders approved by the Commission in DSP V, with the modifications described below.

Under DSP V, the Companies adjust default service rates under the PTC Riders each quarter. In accordance with the January 2020 Secretarial Letter, the Companies considered a six-month, instead of three-month, adjustment schedule for default service rates based on the history of the Companies’ PTC. Based on this assessment, the Companies found that six-month PTC changes will provide benefits to customers, including additional price stability. Thus, for DSP VI, the Companies are proposing to modify the PTC Riders to adjust rates semi-annually, instead of on a quarterly basis. The Companies also propose limited tariff revisions to align their PTC Riders and HP Riders with the DSP VI procurement plans.

The Companies currently have Default Service Support (“DSS”) Riders that impose non-bypassable charges to recover costs such as non-market based transmission charges (“NMB Charges”).<sup>4</sup> The Companies will continue to assume responsibility for NMB Charges for both default service suppliers and EGSs that serve load in the Companies’ service areas and recover the associated costs from customers through the DSS Riders. Met-Ed and Penelec propose to

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<sup>4</sup> The NMB Charges component of the Companies’ existing DSS Riders includes: Regional Transmission Expansion Plan (“RTEP”) charges; Expansion Cost Recovery Charges; Reliability Must Run/generation deactivation charges associated with generating plans for which specific RMR charges begin after July 24, 2014; historical out-of-market tie line, generation, and retail customer meter adjustments; unaccounted for energy; or any Federal Energy Regulatory Commission (“FERC”) approved reallocation of PJM RTEP charges related to Docket No. EL05-121-009.

remove the Non-Utility Generation (“NUG”) charges component of their DSS Riders because all NUG contracts have expired and the NUG Charge Riders are no longer active.

Met-Ed, Penelec and Penn Power propose to recover the costs of procuring SPAECs associated with legacy contracts that expire in 2024 through their existing non-bypassable Solar Photovoltaic Requirements Charge Rider applicable to all rate schedules.

The PTC, HP, and SPVRC Riders currently include “E” factor reconciliation mechanisms. Currently, the Companies compare their actual default service supply costs to the revenue that is billed to customers under the PTC and HP Riders and reconcile the differences in these amounts quarterly, which means that any over-or-under difference will be refunded or recovered beginning three months after the end of the quarter that gave rise to the difference. This timing, in combination with billing cycle lag (the time between when default service supply costs are incurred and revenue to pay those costs is billed) can produce significant fluctuations in the PTC that are not directly related to the underlying cost of default service supply. The Companies are proposing to reconcile the over-and-under-collection component of the PTC and HP Riders on a semi-annual basis to reduce potentially significant fluctuations in default service rates and provide better information for customer shopping decisions.

Finally, each Company currently offers an optional time-of-use (“TOU”) pricing rate to residential customers and, in compliance with their commitments in the DSP V Settlement, the Companies propose to implement new TOU rates for residential and small commercial customers in this proceeding to comply with Act 129 and Commission requirements.<sup>5</sup> The TOU

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<sup>5</sup> Since the Commission first approved the Companies’ Time of Use Default Service Riders, the scope of an EDC’s obligation to offer TOU rates to default service customers was the subject of litigation before the Commission and Commonwealth Court. *See Petition of PPL Elec. Utils. Corp. for Approval of a New Pilot Time-of-Use Program*, Docket No. P-2013-2389572 (Order entered Sept. 11, 2014) (holding that Act 129 did not require PPL Electric Utilities Corp. (“PPL”) to offer TOU rates directly to customer-generators); *Dauphin Cty. Indus. Dev. Auth. v. Pa. P.U.C.*, 123 A.3d 1124, 1136 (Pa. Cmwlth. 2015) (“*DCIDA*”) (holding that Act 129 does not authorize default service providers to delegate the obligation to offer TOU rates to customers with smart meters to EGSs); *Petition of*

rates will differentiate prices across three periods (peak, off-peak and super off-peak) that are constant throughout the year based on price multipliers designed to encourage shifting of customer usage from the higher-cost peak period to lower-cost off-peak periods. Under the Companies' proposed rate design, eligible default service customers will pay a discounted rate for off-peak usage and a higher rate for peak usage relative to the applicable Company's standard PTC Rider rate.

The Companies defined the proposed peak period as 2 p.m. to 9 p.m. on weekdays based on PJM zonal load data and energy prices over a five-year historic period (2016-2020). Consistent with the January 2020 Secretarial Letter, the Companies' proposed TOU rates include a super off-peak pricing period from 11 p.m. to 6 a.m. every day to encourage electric vehicle charging during overnight low-priced energy hours based on the Companies' system load patterns. The Companies are also proposing TOU pricing multipliers that will remain constant during the DSP VI term. These multipliers reflect the ratios calculated from average PJM zone spot market prices, as well as the cost of capacity during peak hours. The Companies will calculate the TOU rates on a semi-annual basis, synchronized with the PTC Rider adjustment periods, using the methodology described by the Companies' witness Patricia M. Larkin.

#### **F. Customer Referral Program**

Each Company currently has a CRP for residential and small commercial customers and proposes to continue offering the CRP from June 1, 2023 to May 31, 2027. Consistent with the current CRPs and the Companies' existing tariffs, the Companies propose to continue to recover CRP costs through an EGS participant fee not to exceed \$30 per enrolled customer with any

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*PPL Elec. Utils. Corp. for Approval of a New Pilot Time-of-Use Program*, Docket Nos. P-2013-2389572 and M-2016-2578051 (Secretarial Letter issued Apr. 6, 2017) ("April 2017 Secretarial Letter") (proposing a TOU design for PPL in accordance with the *DCIDA* decision and noting that the proposed TOU design "may provide future guidance to all EDCs" for incorporation into their own TOU proposals in their individual default service proceedings).

remaining program costs recovered through the Companies' applicable DSS Riders.

**G. Purchase of Receivables Clawback Charge**

Consistent with the Commission's Policy Statement at 52 Pa. Code § 69.1814, each of the Companies agreed to provide, and the Commission approved, purchase of receivables ("POR") programs for residential and small commercial accounts served by EGSs. Under each of the Companies' existing POR programs, residential and commercial accounts receivable are purchased from participating EGSs at a zero discount rate, which eliminates the risk to EGSs of uncollectible accounts expense associated with serving residential and small commercial customers.

In DSP IV and DSP V, the Commission approved a POR "clawback charge" designed to collect a portion of uncollectible accounts expense from those EGSs whose pricing practices are driving significantly higher write-offs in comparison to other EGSs due to the types of offers those EGSs make to customers. The clawback charge is assessed to EGSs whose write-offs as a percentage of revenues are 200% higher than their peers and whose average price per kWh is greater than 150% of the average PTC of the applicable Company.

Consistent with the September 2018 Order, the Companies extended their pilot of the POR clawback charge for the four-year period beginning with the twelve-months ended August 31, 2018 and continuing annually through August 31, 2021. The charge has been effective in achieving the Companies' goal of reducing the uncollectible accounts expense that would otherwise have to be collected from the Companies' customers through retail rates. Accordingly, the Companies propose to continue the clawback charge as a permanent part of their POR programs.

## **H. CAP Customer Shopping**

Prior to their DSP V Programs, the Companies allowed CAP customers to shop in the competitive market without restriction. However, effective June 1, 2019, the Companies implemented CAP shopping rules that limit the terms of offers from EGSs in accordance with the Commission's direction in the DSP V Orders. On the same day as the February 2019 Order, the Commission issued a Policy Statement on Electric Customer Assistance Program Participant Shopping designed to set guidelines for CAP participants shopping with EGSs.<sup>6</sup> In the Proposed Policy Statement Order, the Commission outlined uniform CAP shopping policies and requirements for Pennsylvania EDCs.<sup>7</sup> For DSP VI, the Companies are proposing to continue the CAP shopping programs approved in the DSP V Orders that are consistent with the guidelines provided in the Proposed Policy Statement Order.

## **I. THIRD-PARTY DATA ACCESS TARIFF**

The Commission recently directed the Law Bureau, Bureau of Technical Utility Services, and Office of Competitive Market Oversight to initiate a new proceeding to determine if a safe, acceptable path exists for registered conservation service providers and other third parties to potentially gain access to customer data electronically from EDC data systems, with customer consent.<sup>8</sup> However, in light of the increasing number and variety of requests the Companies are receiving and the time that is likely needed to complete such proceedings, the Companies believe

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<sup>6</sup> See *Elec. Distribution Co. Default Serv. Plans – Customer Assistance Program Shopping*, Docket No. M-2018-3006578 (Proposed Policy Statement and Order entered Feb. 28, 2019) (“Proposed Policy Statement Order”). The Commission has not yet issued a final CAP shopping policy statement.

<sup>7</sup> The CAP shopping requirements include: (1) a CAP shopping product rate at or below the EDC's PTC for the duration of the contract; (2) a prohibition in EGS-CAP customer contracts against fees unrelated to the provision of electric generation service, including early termination and cancellation fees; and (3) specific options for CAP customers upon expiration of the current contract period, who may (i) enter into another contract with their existing EGS with the same CAP protections, (ii) switch to another supplier offering a contract with the same CAP protections, or (iii) return to default service. Proposed Policy Statement Order at 5, 9-10.

<sup>8</sup> *License Application of Enerwise Global Technologies, LLC d/b/a CPower for Approval to Offer, Render, Furnish, or Supply Elec. or Elec. Generation Servs.*, Docket No. A-2019-3009271 (Opinion and Order entered Oct. 7, 2021).

that a structured framework governing electronic access to the Companies' customer usage and usage-related data by third parties that are not licensed EGSs is appropriate to create now. Accordingly, the Companies are proposing new tariffs governing access to customer data by non-EGS entities in this proceeding.

#### IV. WITNESSES

The Companies have submitted direct testimony and exhibits sponsored by the witnesses identified below. The Companies may present additional witnesses to address the direct testimony of other parties; however, such witnesses cannot be identified until the direct testimony of such parties is reviewed and evaluated.

- **Joanne M. Savage** is employed by FirstEnergy Service Company as the Director of the Rates and Regulatory Affairs Department – Pennsylvania. Her business address is 2800 Pottsville Pike, Reading, Pennsylvania 19612. In Met-Ed/Penelec/Penn Power/West Penn Statement No. 1, Ms. Savage provides a summary of the Programs and describes: (i) compliance with Commission directives and settlement commitments arising from the Companies' DSP V proceeding; (ii) customer benefits and notice; (iii) the DSP VI term; (iv) the continuation of the Customer Referral Programs; (v) the POR clawback charge; and (v) CAP participant shopping rules.
- **James H. Catanach** is employed by FirstEnergy Service Company as a Manager for the Regulated Commodity Sourcing Department. His business address is 2800 Pottsville Pike, Reading, Pennsylvania 19612. In Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, Mr. Catanach provides testimony concerning: (i) the proposed default service products; (ii) procurement process and schedule; (iii) compliance with

the AEPS Act; (iv) long-term solar procurement; and (v) the credit-related enhancements.

- **Wanyun Zhong** is employed by FirstEnergy Service Company as a Business Analyst for the Regulated Commodity Sourcing Department. Her business address is 2800 Pottsville Pike, Reading, Pennsylvania 19612. In Met-Ed/Penelec/Penn Power/West Penn Statement No. 3, Ms. Zhong provides testimony concerning the Companies' proposed SMAs and contingency plans.
- **James D. Reitzes**, Ph.D., and **Nicholas E. Powers**, Ph.D., are each a Principal of The Brattle Group. Their business address is 1850 M Street NW, Suite 700 North, Washington, DC 20036. In Met-Ed/Penelec/Penn Power/West Penn Statement No. 4, Drs. Reitzes and Powers discuss the proposed procurement of electric generation service for default service customers and explains why the nature of the products being procured, as well as the procurement method itself, will produce the “least cost over time” and satisfy other applicable provisions of Act 129.
- **Patricia M. Larkin** is employed by FirstEnergy Service Company as an Analyst – Rates and Regulatory Affairs – Pennsylvania. Her business address is 2800 Pottsville Pike, Reading, Pennsylvania 19612. In Met-Ed/Penelec/Penn Power/West Penn Statement No. 5, Ms. Larkin describes the Companies' proposed rate design and cost recovery plan, including new TOU rate options.
- **Tiffanne L. Cowan** is employed by FirstEnergy Service Company as the Manager, Regulated Settlements. Her business address is 76 South Main Street, Akron, Ohio 44308. In Met-Ed/Penelec/Penn Power/West Penn Statement No. 5, Ms. Cowan discusses the Companies' peak load contribution and network service peak load cost

allocation calculations and why the cost allocation is used, as well as the Companies' proposed Third-Party Data Access Tariffs.

## **V. CONSOLIDATION**

The Companies believe that the four dockets assigned to this matter should be consolidated pursuant to 52 Pa. Code § 5.81 because the proceedings involve common questions of law and fact. Concurrent with this Prehearing Conference Memorandum, the Companies are filing a Motion for Consolidation of these proceedings.

## **VI. PROCEEDING SCHEDULE**

In their Joint Petition, the Companies proposed a schedule for the proceeding, but have revised that schedule in light of the briefing deadlines proposed by the ALJ on January 12, 2022 and subsequent discussions with the parties. After consultation with the parties, the Companies offer the following revised schedule:

Other Parties' Direct Testimony	February 25, 2022
Rebuttal Testimony	March 24, 2022
Surrebuttal Testimony	April 7, 2022
Rejoinder Outline	April 12, 2022
Oral Rejoinder and Hearings	April 13-14, 2022
Main Briefs	May 6, 2022
Reply Briefs	May 16, 2022
Recommended Decision	July 1, 2022
Commission Order	August 25, 2022

## **VII. DISCOVERY**

The Companies propose that the ALJ issue a Protective Order in the form attached hereto as Appendix A, which is similar to the Protective Order entered in the Companies' DSP V

proceeding. In addition, the discovery modifications proposed by the OCA in its Prehearing Conference Memorandum are acceptable to the Companies with one addition. Specifically, the Companies propose that discovery requests, motions to compel and responses must be served electronically and will only be served on paper upon request.

### **VIII. SETTLEMENT**

The Companies are willing to pursue with the parties the possible stipulation of individual issues and/or more far-ranging settlement discussions that might lead to a comprehensive resolution of this matter.

**IX. CONCLUSION**

**WHEREFORE**, the Companies respectfully submit this Prehearing Conference Memorandum.

Respectfully submitted,



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*Counsel for Metropolitan Edison Company,  
Pennsylvania Electric Company, Pennsylvania  
Power Company and West Penn Power  
Company*

Dated: January 20, 2022

**APPENDIX A**

**PROPOSED PROTECTIVE ORDER**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>JOINT PETITION OF METROPOLITAN</b>	<b>:</b>	
<b>EDISON COMPANY, PENNSYLVANIA</b>	<b>:</b>	<b>DOCKET NOS. P-2021-3030012</b>
<b>ELECTRIC COMPANY, PENNSYLVANIA</b>	<b>:</b>	<b>P-2021-3030013</b>
<b>POWER COMPANY AND WEST PENN</b>	<b>:</b>	<b>P-2021-3030014</b>
<b>POWER COMPANY FOR APPROVAL OF</b>	<b>:</b>	<b>P-2021-3030021</b>
<b>THEIR DEFAULT SERVICE PROGRAMS</b>	<b>:</b>	

**PROTECTIVE ORDER**

IT IS HEREBY ORDERED THAT:

1. This Protective Order is granted with respect to all materials identified in Ordering Paragraph Nos. 2 and 3, below, which are filed with the Commission, produced in discovery or otherwise presented during the above-captioned proceedings. All persons now, and hereafter, granted access to the information identified in Ordering Paragraph Nos. 2 and 3 shall use and disclose such information only in accordance with this Order.

2. The information subject to this Order includes all correspondence, documents, data, studies, methodologies, and all other materials or information that any party or an affiliate of any party (“the producing party”) furnishes in this proceeding pursuant to filing, discovery or evidentiary procedures, or otherwise may provide as a courtesy to other active parties in this proceeding, which are claimed to be of a security-sensitive, proprietary or other confidential nature and which are designated “CONFIDENTIAL INFORMATION” or “HIGHLY CONFIDENTIAL INFORMATION”. Such materials are referred to in this Order as “Proprietary Information.”

3. For purposes of this Protective Order there are two categories of Proprietary Information: “CONFIDENTIAL INFORMATION” and “HIGHLY CONFIDENTIAL INFORMATION.” A producing party may designate as “CONFIDENTIAL INFORMATION” materials concerning electric service facilities, inspection or maintenance practices or policies that may be security-sensitive, proprietary or otherwise confidential, and any other information that is either specified as confidential by its terms or pertains to business practices, operations or financial matters that are commercially sensitive or that is ordinarily considered and treated as confidential by the producing party. A producing party may designate as “HIGHLY CONFIDENTIAL INFORMATION” those materials that the producing party deems to be of such a commercially sensitive nature, relative to the business interests of itself or other parties to this proceeding, or of such a private or personal nature, that the producing party determined that a heightened level of confidential protection with respect to those materials is appropriate. The parties shall endeavor to limit the information designated as “HIGHLY CONFIDENTIAL INFORMATION.”

4. Confidential Information shall be disclosed solely to the Commission, its Staff, counsel to the parties in this proceeding, parties’ employees, officers and members (as applicable) who are directly responsible for reviewing, preparing or presenting evidence, cross-examination or argument in this proceeding and outside expert consultants retained by the parties’ counsel for this proceeding. Confidential Information shall be specifically marked “CONFIDENTIAL INFORMATION.”

5. Highly Confidential Information shall be provided solely to other parties’ counsel. Such highly sensitive information may be copied only for the limited purpose of review by a party’s expert or consultant in this case. Such specific prohibition from copying such Highly

Confidential Information shall be clearly designated on the face of the information. In such cases, the producing party shall permit other parties' counsel to take custody of such Highly Confidential Information, provided that it shall not be copied, except as provided for in this Ordering Paragraph, and shall be returned or destroyed as provided for in Ordering Paragraph No. 11, below. The producing party may designate certain Highly Confidential Information that, absent the express agreement of the producing party, may not be viewed by the employees of an inspecting party who are involved in competitive activities or by employees of an outside expert or consultant that provide services to any person or entity involved in such competitive activities. Further, in accordance with the provisions of Sections 5.362 and 5.431(e) of the Commission's Rules of Practice and Procedure (52 Pa. Code §§ 5.362, 5.431(e)) and Sections 2209(f)(3) and 2811(c)(3) of the Public Utility Code (66 Pa.C.S. §§ 2209(f)(3), 2811(c)(3)), any party may, by objection or motion, seek further protection with respect to Highly Confidential Information, including, but not limited to, total prohibition of disclosure or limitation of disclosure only to particular parties. Highly Confidential Information shall be specifically marked "HIGHLY CONFIDENTIAL INFORMATION – DO NOT COPY OR DISTRIBUTE EXCEPT IN ACCORDANCE WITH PROTECTIVE ORDER."

6. Proprietary Information shall be made available to the Commission and its Staff for use in this and any related proceeding and for all internal Commission analyses, studies or investigations related to the same. For purposes of filing, to the extent that Proprietary Information is placed in the Commission's report folders, testimony folders or other document folders, such information shall be separately bound, conspicuously marked, and accompanied by a copy of this Order. The Proprietary Information shall be considered and treated as "confidential proprietary information" as defined in The Pennsylvania Right-to-Know Law, 65

P.S. § 67.101, et seq. Public inspection of the Proprietary Information shall be permitted only in accordance with this Protective Order.

7. Proprietary Information shall be made available only as permitted by this Order and only for purposes of reviewing, preparing or presenting evidence, cross-examination or argument in this proceeding. No counsel, expert, employee, officer or member (as applicable) will be afforded access to Proprietary Information until a signed acknowledgement of this Protective Order in the form attached to this Order, from each such individual, has been returned to the producing party. In recognition of the unique status of all I&E expert witnesses in this proceeding as full time Commonwealth employees, an acknowledgement signed by the I&E Prosecutor and returned to the producing party also binds all I&E expert witnesses to all requirements of this Order, thereby eliminating the necessity for each assigned I&E expert witness to provide an individually signed acknowledgement. In addition to the I&E personnel identified above, Proprietary Information shall also be made available to the statutory Consumer Advocate and Small Business Advocate to the extent required and for the limited purpose of participation in the above-captioned proceedings. No other persons may have access to the Proprietary Information, except as specifically authorized by further order of the Commission or the Administrative Law Judge. No person may be entitled to receive, or if afforded access to any Proprietary Information shall possess, use or disclose Proprietary Information for the purpose of business or competition or any purpose other than the preparation for, and conduct of, this proceeding or any administrative or judicial review thereof.

8. The producing parties shall designate data or documents as constituting or containing Confidential Information or Highly Confidential Information by affixing an appropriate stamp or typewritten designation on all such data or documents. Where only part of

a compilation or multi-page document constitutes or contains Confidential Information or Highly Confidential Information, the producing party shall designate only the specific data or pages of documents which constitute or contain Confidential Information or Highly Confidential Information. Upon request from another party, the producing party shall produce a redacted (public) version of any such partially confidential compilation or multi-page document within a reasonable period of time.

9. Any public reference to Proprietary Information by the Commission or by counsel or persons afforded access thereto shall be to the title or exhibit reference in sufficient detail to permit persons with access to the Proprietary Information to understand the reference fully and not more. Proprietary Information shall remain a part of the record, to the extent admitted, for all purposes of administrative or judicial review. Part of any record of this proceeding containing Proprietary Information, including but not limited to all exhibits, writings, direct testimony, cross-examination, argument, and responses to discovery, and including reference thereto as mentioned in the above Ordering Paragraphs, shall be sealed for all purposes, including administrative and judicial review, unless such Proprietary Information is released from the restrictions of this Order, either through the agreement of the parties or pursuant to a further order of the Administrative Law Judge or the Commission.

10. The parties affected by the terms of this Order shall retain the right to question or challenge the confidential nature of the Proprietary Information; to question or challenge the admissibility of Proprietary Information; to refuse or object to the production of Proprietary Information on any proper ground, including but not limited to irrelevance, immateriality, or undue burden; and to seek additional measures of protection of Proprietary Information beyond those provided in this Order. If a challenge is made to the designation of a document or

information as Proprietary Information, the party claiming that the information is proprietary or otherwise confidential retains the burden of demonstrating that the designation is necessary and appropriate.

11. Upon completion of this proceeding, including any administrative or judicial review, all copies of all documents and other materials, including notes, whether written or oral, which contain any Proprietary Information, shall be immediately returned to the party furnishing such Proprietary Information or destroyed. This provision, however, shall not apply to the Commission or its Staff, the Office of Consumer Advocate, the Office of Small Business Advocate, or any other party receiving the consent of the producing party; except, however, that Highly Confidential Information provided to any party pursuant to Ordering Paragraph No. 5, above, shall be returned to the producing party or destroyed in all cases. In the event that a party elects to destroy all copies of documents and other materials containing Proprietary Information instead of returning the copies to the producing party, upon written request of the producing party, that party shall certify in writing to the producing party that all copies of the documents and other materials containing Proprietary Information have been destroyed.

Date: \_\_\_\_\_

\_\_\_\_\_  
Jeffrey Watson  
Administrative Law Judge

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

<b>JOINT PETITION OF METROPOLITAN</b>	<b>:</b>	
<b>EDISON COMPANY, PENNSYLVANIA</b>	<b>:</b>	<b>DOCKET NOS. P-2021-3030012</b>
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<b>POWER COMPANY FOR APPROVAL OF</b>	<b>:</b>	<b>P-2021-3030021</b>
<b>THEIR DEFAULT SERVICE PROGRAMS</b>	<b>:</b>	

TO WHOM IT MAY CONCERN;

The undersigned is the expert, counsel, employee, member or officer of  
\_\_\_\_\_ (the retaining party).

The undersigned has read and understands the Protective Order issued in the above-captioned proceeding deals with the treatment of Proprietary Information. The undersigned agrees to be bound by, and comply with, the terms and conditions of said Order. The undersigned agrees that any Proprietary Information shall be used or disclosed only for purposes of preparation for, and conduct of the above-captioned proceeding, and any administrative or judicial review thereof, and shall not be disclosed or used for purposes of business or competition.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Address

Date: \_\_\_\_\_

\_\_\_\_\_  
Employer