**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, THE MOTION TO EXTEND**

**TIME PERMITTED TO CONDUCT DISCOVERY AND**

**SUBMIT TESTIMONY OF 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.

On December 23, 2021, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), filed a Petition to Intervene.

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 13, 2022, the Office of Consumer Advocate (OCA) filed its Notice of Intervention and Public Statement in response to the Companies’ Petition.

On January 14, 2022, the Met-Ed Industrial Users Group (MEIUG), the Penelec Industrial Customer Alliance (PICA), and the West Penn Power Industrial Intervenors (WPPII) (collectively, the Industrials), filed Joint Petitions to Intervene.

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

On January 18, 2022, the Office of Small Business Advocate (OSBA) filed Answers, Notices of Appearance, Notices of Intervention, and Public Statements at the above-captioned dockets.

On January 18, 2022, Petitions to Intervene were filed by the Retail Energy Supply Association (RESA) and NRG Energy’s Inc. (NRG).

On January 18, 2022, Petitions to Intervene were filed by Shipley Choice, LLC d/b/a Shipley Energy (Shipley).

On January 18, 2022, the Pennsylvania State University (PSU) filed a Petition to Intervene.

On January 18, 2022, a Petition to Intervene was filed by Enerwise Global Technologies d/b/a CPower Energy Management (CPower). Michael A. Gruin, Esquire filed a Notice of Appearance on behalf of CPower on January 21, 2022.

On January 18, 2022, a Petition to Intervene was filed by Exelon Generation LLC (ExGen) and Constellation New Energy Inc (Constellation).

On January 19, 2022, the Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission filed a Notice of Appearance.

On January 20, 2022, Calpine Retail Holdings LLC (Calpine) filed a Petition to Intervene.

On January 20, 2022, an Application to Practice Pro Hac Vice of John M. White was filed on behalf of ExGen and Constellation.

Prehearing Memoranda were filed by the Company, OCA, OSBA, I&E, CAUSE-PA, MEIUG, PICA, WPPII, Shipley, PSU, ExGen, Constellation, RESA, NRG, Bevec, Sunrise, and Calpine on January 20, 2022.

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. Petitioners averred they are making no attempt to "interject" any tangential issues concerning definitions of "customer-generator" and the ability of Sunrise to utilize net metering. According to Petitioners, those questions have been in answered in *Hommrich v. Pennsylvania Public Utilities Commission, Inc.,* 231 A.3d 1027, 1039-1040 (Pa.Cmwlth 20201), aff d, 245 A.3d 637 (Pa. 2021). Instead, John Bevec and Sunrise Energy, LLC aver they are concerned as to whether the EDCs are appropriately addressing cost recovery in accordance with the Pennsylvania Alternative Energy Portfolio Standards Act (the AEPS act) 73 P.S. 1648.1, *et seq.* For instance, Petitioners aver the EDCs' respective Petitions reference only costs associated with solar photovoltaic alternative energy credits (SPAECS) to energy purchased in relation to future Power Purchase Agreements (PPAs). However, Petitioners aver the Company in its Joint Petition is silent on the recovery of other costs associated with the implementation of the AEPS Act. Specifically, Petitioners aver, the EDCs do not address the recovery of the cost of excess energy purchased from renewable energy systems pursuant to the AEPS Act. Moreover, Petitioners aver the actual EDCs themselves are silent in their respective Petitions. According to Petitioners, most if not all, evidence offered in support of the respective Petitions is provided by First Energy Service Company (FESC) and outside witnesses.

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). No Notice To Plead was attached to the Motion. The regulations provide a Party has 20 days to file a responsive pleading or objections to the Motion, or until March 15, 2022. At the time of the filing of the Motion, discovery was ongoing and the litigation schedule provided for the exchange of written direct testimony by February 25, 2022, well before the deadline of March 15, 2022, to file responses and objections to the Motion for the requested extensions.

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.

In its responsive pleading, the Company averred that Sunrise is seeking an unnecessary second opportunity to file direct testimony (Second Direct Testimony) that will jeopardize the rights of the Companies and other parties in light of the statutory deadlines for this proceeding and the associated schedule already established in this proceeding. In the alternative, the Company requested that, in the event Sunrise should be entitled to file Second Direct Testimony, that an order be entered directing Sunrise to serve all discovery that it believes is necessary to prepare its Second Direct Testimony no later than March 4, 2022; (ii) requiring Sunrise to file its Second Direct Testimony no later than March 18, 2022; and (iii) providing the Companies with an opportunity to file supplemental rebuttal testimony in response to the issues presented by Sunrise in its Second Direct Testimony no later than March 31, 2022.

Under the circumstances, the following order will be entered.

THEREFORE,

IT IS ORDERED:

1. That the Motion to Extend Time Permitted to Conduct Discovery and Submit Testimony of John Bevec and Sunrise Energy, LLC, is granted in part, as set forth below.
2. John Bevec and Sunrise Energy shall serve all discovery that it believes is necessary to prepare its Second Direct Testimony no later than March 4, 2022.
3. John Bevec and Sunrise Energy shall file its Second Direct Testimony no later than March 18, 2022.
4. The Parties to this proceeding, including Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company may serve supplemental rebuttal testimony in response to the issues presented by John Bevec and Sunrise Energy in its Second Direct Testimony, no later than March 31, 2022.

Date: March 2, 2022 /s/ Jeffrey A. Watson Administrative Law Judge

**P-2021-3030012 et al – Petition of Metropolitan Edison Company for approval of Default Service Program et al**

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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)