

Morgan Lewis

Kenneth M. Kulak

Partner
+1.215.963.5384
ken.kulak@morganlewis.com

March 1, 2022

VIA eFILING

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

**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**

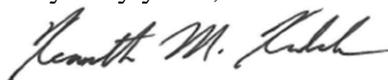
Dear Secretary Chiavetta:

Enclosed please find the **Answer of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company to the Motion to Extend Time Permitted To Conduct Discovery And Submit Testimony Of John Bevec And Sunrise Energy (“Answer”)** in the above-captioned proceedings.

The Answer has been served on all parties of record as indicated on the Certificate of Service.

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

Very truly yours,



Kenneth M. Kulak

KMK/tp
Enclosures

c: Per Certificate of Service (w/encls.)

Morgan, Lewis & Bockius LLP

1701 Market Street
Philadelphia, PA 19103-2921
United States

T +1.215.963.5000
F +1.215.963.5001

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served copies of **Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company’s Answer to the Motion to Extend Time Permitted to Conduct Discovery and Submit Testimony of John Bevec and Sunrise Energy LLC**, on the persons listed below, in the manner specified in accordance with the requirements of 52 Pa. Code § 1.54:

VIA ELECTRONIC MAIL

Administrative Law Judge Jeffrey A. Watson
301 5th Avenue
Piatt Place - Suite 220
Pittsburgh, PA 15222
jeffwatson@pa.gov
nmiskanic@pa.gov

Darryl A. Lawrence
Christy M. Appleby
Harrison W. Breitman
Office of Consumer Advocate
5th Floor - Forum Place
555 Walnut Street
Harrisburg PA 17101-1923
OCAFEDSP2021@paoca.org
lmyers@paoca.org

Allison C. Kaster
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
akaster@pa.gov

Elizabeth R. Marx
Lauren N. Berman
Ria M. Pereira
John W. Sweet
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@pautilitylawproject.org
*Counsel for Coalition for Affordable
Utility Services and Energy Efficiency
in Pennsylvania*

Michael A. Gruin
Stevens & Lee
17 North 2nd Street, 16th Floor
Harrisburg, PA 17101
michael.gruin@stevenslee.com
*Counsel for Enerwise Global
Technologies, LLC d/b/a CPower
Energy Management*

Todd S. Stewart
Hawke McKeon & Sniscak, LLP
100 North Tenth Street
Harrisburg, PA 17101
tsstewart@hmslegal.com
*Counsel for Shipley Choice, LLC
d/b/a Shipley Energy*

John M. White
Exelon Corporation
101 Constitution Avenue, N.W.
Suite 400 East
Washington, DC 20001
john.white@exeloncorp.com
*Counsel for Exelon Generation
Corporation, LLC and Constellation
NewEnergy, Inc.*

Erin K. Fure
Assistant Small Business Advocate
Office of Small Business Advocate
555 Walnut Street – First Floor
Harrisburg, PA 17101
efure@pa.gov

Brian R. Greene
GreeneHurlocker, PLC
Suite 200
4908 Monument Avenue
Richmond, VA 23230
bgreene@greenehurlocker.com
*Counsel for Enerwise Global
Technologies, LLC d/b/a CPower
Energy Management*

Susan E. Bruce
Charis Mincavage
McNees Wallace & Nurick LLC
P.O. Box 1166
100 Pine Street
Harrisburg, PA 17108
sbruce@mcneeslaw.com
cmincavage@mcneeslaw.com
*Counsel for Met-Ed Industrial Users Group,
Penelec Industrial Customer Alliance, and
West Penn Power Industrial Intervenors*

Colleen Kartychak
Exelon Corporation
1310 Point Street
Baltimore, MD 21231
colleen.kartychak@exeloncorp.com
*Counsel for Exelon Generation
Corporation, LLC and Constellation
NewEnergy, Inc.*

John F. Lushis, Jr.
David Berger
Norris McLaughlin, P.A.
515 West Hamilton Street, Suite 502
Allentown, PA 18101
jlushis@norris-law.com
dberger@norris-law.com
*Counsel for Calpine Retail
Holdings, LLC*

Deanne M. O'Dell
Karen O. Moury
Eckert Seamans Cherin & Mellott, LLC
213 Market Street – 8th Floor
P.O. Box 1248
Harrisburg, PA 17101
dodell@eckertseamans.com
kmoury@eckertseamans.com
*Counsel for Retail Energy Supply
Association and NRG Energy, Inc.*

James Laskey
Norris McLaughlin, P.A.
400 Crossing Boulevard, 8th Floor
Bridgewater, NJ 08807
jlasky@norris-law.com
Counsel for Calpine Retail Holdings, LLC

Thomas J. Sniscak
Whitney E. Snyder
Phillip D. Demanchick, Jr.
Hawke McKeon & Sniscak, LLP
100 North Tenth Street
Harrisburg, PA 17101
tjsniscak@hmslegal.com
wesnyder@hmslegal.com
pddemanchick@hmslegal.com
*Counsel for The Pennsylvania
State University*

A. Michael Gianantonio
Robert F. Daley
Robert Peirce & Associates, P.C.
707 Grant Street
Gulf Tower, Suite 125
Pittsburgh, PA 15219
mgianantonio@peircelaw.com
*Counsel for John Bevec and
Sunrise Energy, LLC*

Respectfully submitted,



Kenneth M. Kulak (Pa. No. 75509)
Catherine G. Vasudevan (Pa. No. 210254)
Brooke E. McGlinn (Pa. No. 204918)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Telephone No.: 215.963.5384
Fax No.: 215.963.5001
ken.kulak@morganlewis.com
catherine.vasudevan@morganlewis.com
brooke.mcglinn@morganlewis.com

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

Dated: March 1, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC
COMPANY, PENNSYLVANIA POWER COMPANY AND WEST PENN POWER
COMPANY TO THE MOTION TO EXTEND TIME PERMITTED TO CONDUCT
DISCOVERY AND SUBMIT TESTIMONY OF JOHN BEVEC AND SUNRISE
ENERGY, LLC**

Pursuant to the 52 Pa. Code § 5.61, 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”) submit this Answer to the Motion to Extend Time Permitted to Conduct Discovery and Submit Testimony of John Bevec and Sunrise Energy, LLC (“Sunrise Energy”; collectively, “Sunrise”) in the above-referenced proceedings. As explained below, through this Motion, 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 by the Administrative Law Judge (the “ALJ”). In the event the ALJ nevertheless determines that Sunrise should be entitled to file Second Direct Testimony, the Companies respectfully request that the ALJ enter an order (i) 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.

I. RELEVANT BACKGROUND

On December 14, 2021, the Companies filed the above-captioned Joint Petition (the “Joint Petition”) requesting that the Pennsylvania Public Utility Commission (“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. Among other things, the Joint Petition addresses how the Companies will satisfy the requirements imposed by the Alternative Energy Portfolio Standards (“AEPS”) Act¹ associated with default service supply.

On January 18, 2022, Sunrise filed a Petition to Intervene, explaining that Mr. Bevec is served by West Penn and that Sunrise Energy owns a commercial solar facility also served by West Penn. The Petition identifies several alleged “operative facts warranting intervention” including: (1) the Joint Petition’s failure to discuss “the recovery of the cost of excess energy purchased from renewable energy systems pursuant to the AEPS act;” (2) the representation of the Companies by FESC, an entity “that is not regulated by the [Commission]”; (3) the submission of sworn testimony by FESC employees “despite having presented no evidence that they are in any way affiliated with the [Companies]”; and (4) the Joint Petition’s failure to discuss how the Companies will implement their Programs “considering that most, if not all, of the [Companies’] managerial and administrative tasks are carried out by FESC, which is not a

¹ 73 P.S. §§ 1648.1 – 1648.8 and related provisions of 66 Pa.C.S §§ 2813-2814.

regulated utility”. The Petition claims that Mr. Bevec and Sunrise Energy have a significant interest in the outcome of the Joint Petition because West Penn may be “double billing” for energy. They further contend that Met-Ed, Penelec and Penn Power may engage in the same practices “because they are controlled and/or operated by FESC and/or FirstEnergy Corporation.”²

On January 21, 2022, the ALJ convened a Prehearing Conference at which the Companies stated their intention to file a response to the Petition to Intervene of John Bevec and Sunrise Energy, LLC, which is reflected in the ALJ’s Prehearing Order, issued January 25, 2022. In the Prehearing Order, the ALJ also established a schedule for this proceeding, including ordering Other Parties Direct Testimony to be served on February 25, 2022.

On February 7, 2022, the Companies filed an Answer and New Matter to the Petition to Intervene, in which the Companies explained that David Hommrich, the president of Sunrise Energy, LLC, had litigated various issues under the AEPS Act before the Commonwealth Court of Pennsylvania, and issues relating to whether a particular facility owned by Sunrise Energy, LLC qualifies as a customer-generator and may sell “excess generation” to West Penn at the “full retail value”³ under West Penn’s net metering tariff are currently being litigated by Sunrise Energy, LLC in the Court of Common Pleas of Washington County⁴; and that certain issues (including the use of FirstEnergy Service Company (“FESC”) employees as counsel and witnesses for the Companies has been raised by Sunrise in the case before the Court of Common

² Petition to Intervene, pp. 1-4.

³ See 73 P.S. § 1648.5.

⁴ See *Sunrise Energy, LLC v. FirstEnergy Corp.*, Court of Common Pleas of Washington County, Civil Division, No. 2014-5178. See also, *Sunrise Energy, LLC v. FirstEnergy Corp.*, 148 A.3d 894 (Pa.Cmwlt. 2016) (remanding the matter back to the Court of Common Pleas of Washington County).

Pleas). The Companies asserted that Sunrise was effectively looking for a “second bite at the apple” through their intervention in this proceeding.

On February 23, 2022, Sunrise filed this Motion, in which it noted that it was unable to submit discovery to the Companies because Sunrise’s request to intervene as a litigant with party status in this proceeding was pending before the ALJ. In the event the ALJ granted Sunrise’s Petition to Intervene, Sunrise requested an extension of the deadline for Sunrise to serve direct testimony “five days after [Bevec and Sunrise Energy] receive a response to their discovery requests.”⁵

On February 25, 2022, while the Petition to Intervene was pending, Sunrise served direct testimony in this proceeding in accordance with the schedule established by the ALJ in its Prehearing Conference Order. In that testimony, Mr. Hommrich made various statements and assertions regarding the AEPS Act, distributed generation and default service, line losses, excess energy, AEPS cost recovery, utility staffing, and default service rate calculations, and asserted that all of his opinions were rendered “within a reasonable degree of professional certainty.”⁶

On February 28, 2022, the ALJ granted Sunrise’s Petition, but specifically noted that Sunrise’s participation in this proceeding shall be limited to the subject matter set by statute in default service proceedings and other claims (including those with respect to FESC) remain subject to appropriate motions and objections (including motions in limine). In an Interim Order issued on the same day, the ALJ directed the Companies to file an Answer to the Motion by 4:00 p.m. on March 1, 2022 and encouraged the parties to confer and resolve the issues raised in the

⁵ Motion, ¶ 10.

⁶ Direct Testimony of David N. Hommrich on Behalf of Sunrise Energy, LLC and John P. Bevec (“Hommrich Testimony”).

Motion. As directed by the ALJ, the Companies engaged in consultations with Sunrise counsel, but the parties have not resolved the issues raised in the Motion as of the filing of this Answer.⁷

II. ANSWER

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. Admitted.
6. Admitted.
7. Denied as stated. The deadline for submission of Direct Testimony was February 25, 2022.
8. Denied as stated. Because Sunrise has been permitted to intervene and afforded party status in this proceeding as of February 28, 2022, Sunrise is able to serve discovery.
9. Denied. The Companies are without knowledge or information sufficient to form a belief as to Sunrise's allegations in Paragraph No. 9 regarding "vital" discovery. By way of further response, Sunrise served the Hommrich Testimony on February 25, 2022 without conducting prior discovery, in which Mr. Hommrich offered his opinions "within a reasonable degree of professional certainty" and without any reservation to supplement his testimony.
10. Denied. Sunrise has already served Direct Testimony in accordance with the Prehearing Order, without any reservation to supplement that testimony following any discovery

⁷ On February 28, 2022, counsel for the Companies contacted counsel for Sunrise to confer and attempt to resolve the issues raised in the Motion. The Companies explained that an opportunity for Second Direct Testimony was no longer necessary given Sunrise's submission of the Hommrich Testimony on February 25, 2022. Counsel for Sunrise advised that he would communicate Sunrise's position on the morning of March 1, 2022. Counsel for the Companies have not received any further communication from Sunrise.

that Sunrise believed was necessary to prepare Direct Testimony in this case and in which its witness, Mr. Hommrich, believed he was able to provide his opinions “within a reasonable degree of certainty.” As a party to this proceeding, Sunrise is now entitled to serve discovery and will be able to address the Companies’ testimony regarding the issues presented in its Direct Testimony through surrebuttal testimony due on April 7, 2022 and at evidentiary hearings scheduled for April 13-14, 2022. Sunrise’s proposal for submission of Second Direct Testimony based upon unspecified dates as to when it might serve discovery is unworkable and would entirely undermine the schedule established by the ALJ and the due process rights of the Companies and the other parties, who will have insufficient time and opportunity to properly respond to Sunrise.

III. CONCLUSION

WHEREFORE, for the foregoing reasons, the Companies respectfully request that the ALJ deny the Motion in its entirety. In the event the ALJ nevertheless concludes that Sunrise should be able to submit Second Direct Testimony, the Companies respectfully request that the that the ALJ enter an order (i) 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 serve its Second Direct Testimony no later than March 18, 2022; and (iii) providing the

Companies with an opportunity to serve supplemental rebuttal testimony in response to the issues presented by Sunrise in its Second Direct Testimony no later than March 31, 2022.

Respectfully submitted,



Tori L. Giesler (Pa. No. 207742)
Darshana Singh (Pa. No. 330971)
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001
Phone: (610) 921-6658
tgiesler@firstenergycorp.com
singhd@firstenergycorp.com

Kenneth M. Kulak (Pa. No. 755098)
Catherine G. Vasudevan (Pa. No. 210254)
Brooke E. McGlinn (Pa. No. 204918)
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
Phone: (215) 963-5384
ken.kulak@morganlewis.com
catherine.vasudevan@morganlewis.com
brooke.mcglinn@morganlewis.com

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

Dated: March 1, 2022