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May 6, 2022

Via Electronic Filing

Honorable Jeffrey A. Watson
Administrative Law Judge
Pennsylvania Public Utility Commission
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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 & P-2021-3030021; **THE STATEMENT OF THE PENNSYLVANIA STATE UNIVERSITY IN SUPPORT OF THE JOINT PETITION FOR PARTIAL SETTLEMENT**

Dear Judge Watson:

Enclosed you will find The Statement of the Pennsylvania State University in Support of the Joint Petition for Partial Settlement in the above-captioned matters. Copies have been served in accordance with the attached Certificate of Service.

Should you have any questions or comments, please feel free to contact me directly.

Very truly yours,

/s/ Thomas J. Sniscak

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Enclosures

cc: Rosemary Chiavetta, Secretary (via efileing)
Nick Miskanic, Legal Assistant (via email, nmiskanic@pa.gov)
Per the Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Metropolitan Edison Company for Approval of Its Default Service Plan for the Period From June 1, 2023 through May 31, 2027	:	
	:	Docket No. P-2021-3030012
	:	
	:	
Petition of Pennsylvania Electric Company for Approval of Its Default Service Plan for the Period From June 1, 2023 through May 31, 2027	:	
	:	Docket No. P-2021-3030013
	:	
	:	
Petition of Pennsylvania Power Company for Approval of Its Default Service Plan for the Period From June 1, 2023 through May 31, 2027	:	
	:	Docket No. P-2021-3030014
	:	
	:	
Petition of West Penn Power Company for Approval of Its Default Service Plan for the Period From June 1, 2023 through May 31, 2027	:	
	:	Docket No. P-2021-3030021
	:	
	:	

**STATEMENT OF THE PENNSYLVANIA STATE UNIVERSITY
IN SUPPORT OF THE JOINT PETITION FOR PARTIAL SETTLEMENT**

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Dated: May 6, 2022

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I. INTRODUCTION

The Pennsylvania State University (“PSU”) submits this Statement in Support of the Joint Petition for Partial Settlement (“Joint Petition”) filed by Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”) and West Penn Power Company (“West Penn”) (individually, a “Company,” and collectively, the “Companies” or “FirstEnergy”); the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”); the Office of Consumer Advocate (“OCA”); the Office of Small Business Advocate (“OSBA”); the Met-Ed Industrial Users Group (“MEIUG”), the Penelec Industrial Customer Alliance (“PICA”), and West Penn Power Industrial Intervenors (“WPPII”) (collectively, the “Industrials”); Enerwise Global Technologies, d/b/a CPower Energy Management (“Enerwise”); Constellation Energy Corporation (“Constellation”); Shipley Choice, LLC d/b/a Shipley Energy (“Shipley”); the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”); and PSU, parties to the above-captioned proceedings (collectively, the “Joint Petitioners”).¹

As discussed more fully below, PSU offers its support for the terms of the Joint Petition and the terms of the settlement (“Settlement”) related to the issues in which it participated in this proceeding; namely, the recovery of Network Integration Transmission Service (“NITS”) charges. Joint Petition, ¶¶ 24, 96. PSU also supports the modifications to the Company’s proposed Third-Party Data Access Tariff. Joint Petition, ¶¶ 89-93. While PSU takes no position on the remaining terms of the Settlement, it does not oppose the remainder of the Joint Petition. Accordingly, PSU

¹ Calpine Retail Holdings, LLC (“Calpine”), the Retail Energy Supply Association (“RESA”) and NRG Energy, Inc. (“NRG”) and John Bevec and Sunrise Energy, LLC (collectively, “Sunrise”), which are parties to this proceeding, have indicated that they do not oppose the Settlement.

believes that the Settlement is in the public interest and respectfully requests that the Presiding Officer and the Commission approve the Joint Petition, without modification.

In support thereof, PSU avers as follows:

II. SUMMARY OF SETTLEMENT

1. On December 14, 2021, the Companies filed a Joint Petition for Approval of their Default Service Plans pursuant to Pennsylvania’s Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. § 2801, *et seq.*, as amended by Act 129 of 2008, the default service regulations of the Pennsylvania Public Utility Commission (“Commission”) at 52 Pa. Code §§ 54.181-54.190, and the Commission’s Policy Statement on default service at 52 Pa. Code §§ 69.1801-1817. The Joint Petition relates to default service rates to be charged by the FirstEnergy Companies during the period from June 1, 2023 to May 31, 2027 (“DSP VI”).

2. PSU is a major generation, transmission, and distribution service customer of West Penn at its University Park campus receiving service through West Penn’s Tariff Electric – Pa. P.U.C. No. 38 (“Tariff 38”). PSU is the only customer taking service under Tariff 38. PSU also receives generation, transmission and distribution service from West Penn under rate schedules other than Tariff 38 for approximately one hundred (100) additional accounts at the University Park campus, including the airport and campuses at New Kensington, Fayette and Mont Alto. PSU is also a customer of Penelec taking service at Penn State Erie, The Behrend College and the Altoona and Dubois campuses, along with some accounts near University Park. PSU also receives service from Met-Ed at its campuses at York and at the Fruit Research and Extension Center in Biglerville. Lastly, the Shenango campus receives service from Penn Power.

3. During this proceeding, after the submission of written testimony, the parties engaged in discussions to try to achieve a settlement on some or all of the issues in this case. As a result of those discussions, the Joint Petitioners were able to reach a partial settlement in this

proceeding. On April 13, 2022, the parties informed the Presiding Officer, Administrative Law Judge Jeffrey A. Watson (“ALJ Watson”), that the Parties reached a Settlement, with some issues remaining open for litigation.

4. On April 15, 2022, ALJ Watson issued an Interim Order Revising Litigation Schedule (“Interim Order”) directing the parties to file the Joint Petition by April 20 and to file Statements in Support, Briefs in Support of Settlement, and Main Briefs addressing any issues reserved for briefing by May 6, 2022. Interim Order at 4. PSU now submits this Statement in Support pursuant to the Interim Order.

5. As indicated in the Joint Petition, the Settlement resolves many of the complex issues in this proceeding.² Accordingly, subject to those issues reserved for litigation, the Joint Petitioners have agreed that the Companies’ may implement a revised default service program consistent with the Companies’ as-filed proposal, as modified by the terms and conditions set forth in the Settlement (“Revised DSP VI Programs”). The Settlement addresses, *inter alia*, residential and class procurement (Joint Petition, ¶¶ 18-27), industrial class procurement (Joint Petition, ¶¶ 28-29), the proposed capacity proxy price (Joint Petition, ¶ 38), time-of-use rates (Joint Petition, ¶¶ 52-66), the Customer Referral Program (“CRP”) (Joint Petition, ¶¶ 69-79), the Purchase of Receivables (“POR”) Clawback Charge (Joint Petition, ¶¶ 80-81), and the Third-Party Data Access Tariff (Joint Petition, ¶¶ 89-93).

² Two issues have been reserved for briefing: (i) the relevance of the Companies’ treatment of excess energy from customer-generators to this proceeding and (ii) Sunrise’s assertions regarding the Companies’ calculation of the Price-to-Compare (“PTC”) with respect to costs for compliance with Pennsylvania’s Alternative Energy Portfolio Standards (“AEPS”) Act, 73 P.S. § 1648.1, *et seq.*, and the use of loss factors. Joint Petition, at 1-2.

III. THE SETTLEMENT IS IN THE PUBLIC INTEREST AND FULLY SATISFIES THE REQUIREMENTS OF THE COMPETITION ACT AND THE COMMISSION'S DEFAULT SERVICE REGULATIONS

6. In lieu of full litigation of contested proceedings, the Commission encourages parties to settle all or as many issues as possible in order to preserve the time and resources of all involved. 52 Pa. Code §§ 5.231(a) and 69.391(a). The Joint Petitioners were able to resolve most of their differences via the Settlement terms, which represent a reasonable compromise of the various parties' positions in a manner which is in the public interest.

7. In addition to streamlining the litigation process and comporting with the Commission's policy of encouraging settlements, the Settlement promotes the "service, accommodation, convenience, or safety of the public in some substantial way" as required by the Public Utility Code and the *City of York v. Pa. Pub. Util. Comm'n.*, 295 A.2d 825 (Pa. 1972) ("City of York"). Through this Joint Petition, the Joint Petitioners have been able to reasonably address many of the issues in this proceeding. Thus, the settlement, taken as a whole, is in the public interest and should be approved without modification.

8. The following addresses certain facets of the Settlement that specifically benefit or are of particular interest to PSU, and which in and of themselves would meet the *City of York* standard.

A. Procurement and Implementation Plans (Joint Petition, ¶¶ 15-42)

9. PSU takes no position on these issues other than stating that it does not oppose paragraphs 15 – 42 of the Joint Petition.

B. Rate Design and Cost Recovery (Joint Petition, ¶¶ 43-68)

10. PSU takes no position on these issues other than stating that it does not oppose paragraphs 43 – 68 of the Joint Petition.

C. Customer Referral Program (Joint Petition, ¶¶ 69-79)

11. PSU takes no position on these issues other than stating that it does not oppose paragraphs 69 – 79 of the Joint Petition.

D. POR Clawback Charge (Joint Petition, ¶¶ 80-81)

12. PSU takes no position on these issues other than stating that it does not oppose paragraphs 80 – 81 of the Joint Petition.

E. CAP Customer Shopping (Joint Petition, ¶¶ 82-88)

13. PSU takes no position on these issues other than stating that it does not oppose paragraphs 82 – 88 of the Joint Petition.

F. Third-Party Data Access Tariff (Joint Petition, ¶¶ 89-93)

14. PSU supports the Third-Party Data Access Tariff as modified by the Settlement. *See* Joint Petition, ¶¶ 89-93. As Industrials witness Fried testified, the Companies’ as-filed proposal appeared to allow any third-party entity to request customer usage data via the electric generation supplier (“EGS”) web portal by only providing an attestation that the entity has received customer consent, rather than providing proof of the consent itself. Industrials St. 1 at 4:21 – 5:2. If approved as-filed, the Third-Party Data Access Tariff could allow potential ‘bad actors’ to access sensitive customer data.

15. The modifications under the Settlement, however, limit third party data access only to “Conservation Service Providers registered with the Public Utility Commission or Curtailment Service Providers that are [PJM Interconnection L.L.C. (“PJM”)] members and identified on PJM’s list of demand response providers available at www.pjm.com.” Joint Petition, ¶ 22. Moreover, the Settlement requires the Companies to conduct semiannual, randomized internal audits of at least 10 percent of active participants under their new Third-Party Data Access Tariffs to ensure that letters of authorization are being properly obtained by third parties governed

thereunder. Joint Petition, ¶ 91. All third parties found to be noncompliant will be permanently restricted from further access to customer data under the tariffs. *Id.* These modifications will help ensure that third party data access to sensitive customer information is not abused. Thus, PSU submits that these modifications are necessary and in the public interest.

G. Additional Settlement Terms (Joint Petition, ¶¶ 94-95)

16. On February 25, 2022, after review and investigation of the Companies' filings, Constellation filed the Direct Testimony of Lael Campbell, Constellation Statement 1. Constellation witness Campbell testified, among other things, that FirstEnergy should retain responsibility for all costs associated with Network Integration Transmission Service,³ or NITS, for both shopping and non-shopping customers and recover those costs through the Companies' default service supply rider ("DSS Rider").⁴ Constellation St. 1 at 17:1-10. If approved, this would change the existing requirement – that NITS costs should remain the responsibility of both the default service suppliers and electric generation suppliers ("EGSs"). Constellation St. 1 at 15:14 – 16:2. Recognizing that this position has been rejected by the Commission in past default service proceedings, Mr. Campbell recommended that, in the alternative, FirstEnergy commit that

³ PSU witness Crist explained that NITS is:

[A] service that allows an electric transmission customer to integrate, plan, economically dispatch and regulate its network reserves in a manner comparable to that in which the Transmission Owner serves its end-use customers (also called "Native Load") that the Load-Serving Entity is obligated to serve. NITS charges are NMB Charges assessed by PJM for transmission related services and are cost-of-service rates that are imposed on all load serving entities ("LSEs") based on each LSE's share of load served. Accordingly, all customer load on an electric distribution company's ("EDC") system is allocated a share of transmission service costs based on the customer's Network Service Peak Load Contribution. NITS cost-of-service based charges are ultimately paid for by all customers based on the customer's contribution to the system peak.

PSU St. 1-R at 5:20 – 6:9.

⁴ The DSS Rider is a non-bypassable charge assessed to all FirstEnergy customers in the same manner regardless of whether a customer is taking default supply service. Constellation St. 1 at 14:13-18.

its new transmission affiliate, Keystone Appalachian Transmission Company (“KATCo”), provide its Projected Transmission Revenue Requirement (“PTRR”) to PJM and interested parties by October 5th of each year, which is similar to the practice of another FirstEnergy transmission affiliate, Mid-Atlantic Interstate Transmission, LLC (“MAIT”).⁵ Constellation St. 1 at 19:2-6.

17. On March 24, 2022, PSU served the Rebuttal Testimony of James L. Crist, PSU St. 1-R, recommending that the Commission reject Constellation witness Campbell’s recommendation that FirstEnergy retain responsibility for NITS costs and recover it through the non-bypassable DSS Rider. PSU St. 1-R at 13-15. Mr. Crist’s recommendation was based, in part, upon the Commission’s previous decisions to reject this position.⁶ PSU St. 1-R at 6:14 – 10:7. Mr. Crist also explained why NITS charges should remain the responsibility of default service providers and EGSs, rather than be collected from customers through a non-bypassable rider:

Suppliers are in the business of providing and pricing products to customers such as Penn State. ... the principles of a competitive market are to create the opportunity for clever marketers to develop products that meet customers’ needs. Those marketers that succeed in developing such products will obtain the patronage of customers and those marketers that are unsuccessful in product development will not.

PSU Statement No. 1-R at 11:2-11. However, Mr. Crist agreed with Mr. Campbell’s alternative recommendation seeking a commitment that FirstEnergy’s transmission affiliate, KATCo, provide

⁵ KATCo is expected to acquire transmission assets from its affiliates Potomac Edison and West Penn Power Company and, thereafter, provide transmission service over those facilities pursuant to the rates, terms, and conditions of the PJM Tariff. *See PJM Interconnection, L.L.C., Compliance Filing to Place Settlement Rates Into eTariff, Section II.D, FERC Docket No. ER17-211-004 (Jun. 13, 2018).*

⁶ *See, e.g., Joint Petition of Metropolitan Edison Co., et al., for Approval of Their Default Service Programs, Docket Nos. P-2011-2273650, et al., slip. op. at 83 (Opinion and Order entered Aug. 16, 2012) (“DSP II”); Joint Petition of Metropolitan Edison Co., et al., for Approval of Their Default Service Programs, Docket Nos. P-2013-2391368, slip. op. at 53 (Opinion and Order entered Jul. 24, 2014) (“DSP III”); Petition of Metropolitan Edison Co., et al., for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023, Docket Nos. P-2017-2637855, et al., slip. op. at 9, 11 (Opinion and Order entered Sept. 4, 2018) (“DSP V”).*

its PTRR by October 5th every year to allow suppliers to incorporate such information into their pricing proposals and bids. PSU St. 1-R at 13:15-16.

18. Similarly, on March 24, 2022, the Companies submitted the Rebuttal Testimony of Patricia M. Larkin, Companies St. No. 5-R, responding to, *inter alia*, Constellation Witness Campbell. Ms. Larkin acknowledged that Mr. Campbell's position regarding NITS cost recovery was contrary to well-settled Commission precedent and should not be adopted at this time. Companies St. 5-R at 19:19-22. Companies witness Larkin also rejected Mr. Campbell's alternative recommendation citing due process concerns as KATCo was not a party to this proceeding. Ms. Larkin also testified that Met-Ed, Penelec, and Penn Power do not have transmission assets and, thus, do not have a PTRR. Companies St. 5-R at 20:1-7.

19. The Settlement reaches a reasonable compromise among these competing positions. In particular, the Settlement provides that changes to the Companies' recovery of NITS costs will not be addressed in this proceeding, consistent with the positions of PSU and FirstEnergy. Joint Petition, ¶ 94. Moreover, the Settlement provides that West Penn's NITS rates "are scheduled to be published on or before October 31 of each calendar year or the next business day thereafter. As such, the Companies will ensure that their November auctions are held no earlier than one week following posting of this data." Joint Petition, ¶ 26. Thus, the Companies agreed to provide the PTRR of West Penn, which owns transmission assets and is a party to this proceeding, by a date certain allowing suppliers to incorporate this information into their pricing proposals and bids. Collectively, these provisions address the concerns of PSU and are in the public interest.

IV. CONCLUSION

WHEREFORE, for all these reasons, the Pennsylvania State University believes that the Settlement is in the public interest and respectfully requests that the Presiding Officer and the Commission approve the Joint Petition for Partial Settlement, without modification.

Respectfully submitted,

/s/ Thomas J. Sniscak

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Dated: May 6, 2022

CERTIFICATE OF SERVICE

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

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Dated this 6th day of May, 2022.