

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PRECONFERENCE MEMORANDUM OF
JOHN BEVEC AND SUNRISE ENERGY, LLC**

TO THE HONORABLE JEFFREY A. WATSON:

AND NOW, come John Bevec and Sunrise Energy, LLC, by and through their undersigned counsel, A. Michael Gianantonio, Esquire, Robert F. Daley, Esquire and the law firm of Robert Peirce & Associates, and in accordance the Order of Presiding Administrative Law Judge Jeffery A. Watson (“Presiding ALJ”), hereby submit the following Prehearing Conference Memorandum, and in support thereof states as follows:

1. On December 14, 2021, Pennsylvania Electric Company, Pennsylvania Power Company, Metropolitan Edison Company, and West Penn Power Company (the “Joint Petitioners”) filed a Joint Petition for Approval of Default Service Plan (the “Joint Petition”) at the Docket Numbers identified above. The Joint Petition was filed pursuant to Section 2807(e) of the Public Utility Code.

2. In a Prehearing Conference Order, the Presiding ALJ required parties to file an answer, protest, or petition to intervene on or before January 18, 2022, in order to be eligible to participate in this proceeding.

3. Sunrise and Bevec filed and served their Petition to Intervene on January 17, 2022.

4. The Presiding ALJ's Order also required each party to circulate their Prehearing Conference Memorandum before 12:00 p.m. on Thursday, January 20, 2022. This Prehearing Conference Memorandum is submitted in compliance with that Order and in preparation for the Prehearing Conference scheduled for Friday, January 21, 2022, at 10:00 a.m.

I. COUNSEL AND SERVICE INSTRUCTIONS

5. Sunrise is a solar power developer located in Canonsburg, PA. Mr. Bevec is an individual, and a West Penn Power ratepayer. Bevec resides in Canonsburg, PA as well, and is a member of Sunrise. The Parties are represented by:

A. Michael Gianantonio, Esquire
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Robert F. Daley, Esquire
Pa. I.D. No.: 81992
Robert Peirce & Associates, P.C.
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6. The Parties' counsel consents to the service of documents by electric mail to mgianantonio@peircelaw.com.

II. WITNESSES, DISCOVERY AND ISSUES

7. Intervenors intend to present the testimony of David N. Hommrich and John Bevec. Mr. Hommrich is the president of Sunrise Energy, LLC. Contact information for Intervenors' proposed witnesses is:

John Bevec
1110 Union Street
Canonsburg, PA 15317

David N. Hommrich
2000 Park West Place, Apt. 112.
Pittsburgh, PA 15205

8. One item of housekeeping is the need to establish the standing of First Energy Services Company (“FESC”) to speak on behalf of the Joint Petitioners. FESC is a non-regulated entity that is speaking on behalf of regulated utility companies. Its employees have provided sworn testimony in this proceeding as if they represent the Joint Petitioners, but no evidence has been presented to support that claim. This issue can likely be resolved by FESC providing an underlying agreement that has no doubt been executed between itself and the Joint Petitioners; one that empowers FESC to speak on their behalf. Absent an agreement of some kind, it is difficult to ascertain why FESC has a seat at the table.

9. Intervenors will testify regarding the lack of transparency and the manner by which the Joint Petitioners calculate the Price to Compare in their default service plans. They will focus on the recovery of costs associated with the Pennsylvania Alternative Energy Portfolio Standards Act (the “AEPS Act” or the “Act”), and the impact those costs have on ratepayers.

10. On February 20, 2014, the Pennsylvania Public Utility Commission (the “PUC” or the “Commission”) issued a Notice of Proposed Rulemaking Order at Docket No. L-2014-2404361. Among the many reasons given by the Commission for the rulemaking was the concern that ratepayers were at risk of being harmed by costs associated with the AEPS Act.

11. In its rulemaking, the Commission sought to constrain renewable energy systems that generate excess energy; arguing that to do otherwise would be to expose retail electric customers to burdensome costs in the form of “retail rate subsidies”.

12. Attorney Tori Geisler (First Energy Corporation), in her role as representative of the Joint Petitioners, echoed the PUC’s concerns in her comments that were filed on the Independent Regulatory Review Committee’s website during the rulemaking process. In those comments, Ms. Geisler stated in part that:

“In particular, the Companies support the notion that in order to qualify as a customer-generator, there necessarily must be native load (i.e., load that would exist absent the customer-owned generation) at the service location which exceeds the customer’s anticipated usage. To permit anything other would be to allow merchant generators to bypass the existing process through which they sell to the wholesale market, *at the expense of retail electric customers and EDCs.*”

See, testimony of Ms. Geilser at

http://www.irrc.state.pa.us/docs/3061/COMMENTS_PUBLIC/3061%2009-08-14%20FIRSTENERGY.pdf

(emphasis added)

13. It is clear that both the Joint Petitioners (through FESC) and the PUC are in lockstep with their shared concern for ratepayer harm stemming from “excess retail subsidies”. This is despite the fact that neither organization has provided any evidence of the harm they seek to avoid.

14. There is only one mechanism for passing the cost of AEPS Act expenses on to ratepayers. This sole mechanism is described in the Act at 73 P.S. § 1648.3(a)(3)(ii), where it states that an electric distribution company (“EDC”) shall recover:

...After the cost recovery period, any direct or indirect costs for the purchase by electric distribution [companies] of resources to comply with this section, *including, but not limited to, the purchase of electricity generated from alternative energy sources,* payments for alternative energy credits, cost of credits banked, payments to any third party administrators for performance under this act and costs levied by a regional transmission organization to ensure that alternative energy sources are reliable, shall be recovered on a full and current basis pursuant to an automatic energy adjustment clause under 66 Pa.C.S. § 1307 as a cost of generation supply under 66 Pa.C.S. § 2807.

73 P.S. § 1648.3(a)(3)(ii). (emphasis added).

15. This cost recovery mechanism has been woven into the Commission-approved tariffs for each of the Joint Petitioners. The Price to Compare calculation is complex and it is an important component of the default service plan, but the Joint Petition offers virtually no visibility into the complex formula, and the inputs that are used.

16. As part of the formula described in the Joint Petitioners commission-approved tariffs, the PTC calculation includes, among other expenses:

Net AEPS Expense and AEPS expenses incurred by the Company related to amendments to the AEPS Act occurring subsequent to the effective date of the Supplier Master Agreement for the Default Service Supply Plan.

See, West Penn Power Company Electric Service Tariff at p.177.

17. Joint Petitioners are on the record regarding their concerns for ratepayers and the negative impact that AEPS Act cost recovery will have on them. Despite this clear message to the public, the Joint Petition is entirely silent on this matter.

18. This proceeding represents the best opportunity to date to shine a bright light on exactly what the impact of AEPS Act is on the cost of default service. These Intervenors seek to have Joint Petitioners put a number to the cost, and to make certain that this complex calculation is being done properly and in compliance with the statutory mandate in the Act.

19. Given the very public nature of the default service plan, and the Price to Compare calculations in particular, the Joint Petitioners should have no expectation of confidentiality in how they arrive at the PTC. Regardless of how the Presiding ALJ rules on the Joint Petitioners Proposed Protective Order, they should not be allowed to claim this topic, which has been discussed in great detail in public, should suddenly be confidential. Ratepayers have a right to know how if their default service rates are calculated properly and in accordance with the AEPS Act. This proceeding is the perfect opportunity to do that.

20. Intervenors have been in discussion with and will cooperate with the other parties to this matter in submitting a discovery plan.

III. SCHEDULE OF LITIGATION

21. Intervenors believe that the issues it will raise cannot, by their nature, be resolved through briefing alone. Testimony and written discovery will be essential to adequately address their opposition to the Joint Petition in its current form. Intervenors have been in discussions with

counsel for other parties and will cooperate with the Joint Petitioners and other Intervenors regarding a litigation schedule.


IV. CONCLUSION

22. Sunrise and Bevec will participate in the Prehearing Conference on Friday, January 21, 2022, through their counsel, Michael Gianantonio.

WHEREFORE, John Bevec and Sunrise Energy, LLC respectfully submit this memorandum for Your Honor's consideration.

Respectfully submitted,

ROBERT PEIRCE & ASSOCIATES P.C.

By: 
A. MICHAEL GIANANTONIO, ESQUIRE
Counsel for Petitioners John Bevec and Sunrise
Energy, LLC

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the participants, listed below, in accordance with the requirements of Section 1.54 (relating to service by a participant).

VIA EMAIL

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Dated: 1/20/22

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