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February 7, 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 **Answer and New Matter of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company to the Petition to Intervene of John Bevec and Sunrise Energy, LLC** (the "Answer"), in the above-captioned proceedings.

Copies of the Answer have been served on Administrative Law Judge Jeffrey A. Watson and the parties listed on the attached 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

KMK/tp
Enclosures

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

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**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 the **Answer and New Matter of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company to the Petition to Intervene 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:

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Dated: February 7, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

NOTICE TO PLEAD

You are hereby notified pursuant to 52 Pa. Code § 5.63 that a responsive pleading must be filed within twenty (20) days of the date of service of the New Matter in the following Answer and New Matter.



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Dated: February 7, 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 AND NEW MATTER OF METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER COMPANY
AND WEST PENN POWER COMPANY TO THE PETITION TO INTERVENE OF
JOHN BEVEC AND SUNRISE ENERGY, LLC**

Pursuant to the 52 Pa. Code § 5.66, 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 and New Matter to the Petition to Intervene of John Bevec and Sunrise Energy, LLC (collectively, the “Petitioners”) in the above-referenced proceedings. As explained below, the Petitioners are attempting to interject into this case, which is statutorily limited in subject matter and time,¹ alleged interests that are outside the scope of this default service proceeding and therefore should not be considered. Specifically, these issues include: (1) the definition of “customer-generator” under the Alternative Energy Portfolio Standards (“AEPS”) Act, which has recently been litigated by Sunrise Energy, LLC’s president David

¹ See 66 Pa. C.S. § 2807(e)(3.6)(3.7) and (3.8) (describing the Commission’s review of a default service provider’s “competitive procurement plan” and providing that if the Commission fails to issue a final order within nine months of the date that the plan is filed, the plan shall be deemed to be approved).

Hommrich before the Commonwealth Court of Pennsylvania²; (2) 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, which is currently being litigated by Sunrise Energy, LLC in the Court of Common Pleas of Washington County⁴; and (3) the use of FirstEnergy Service Company (“FESC”) employees as counsel and witnesses for the Companies in the proceeding and as implementors of default service programs, which has been raised by Sunrise in the case before the Court of Common Pleas and also is not prohibited by Pennsylvania Public Utility Commission (“Commission”) regulations. Simply put, the Petitioners are looking for a “second bite at the apple” through their intervention in this proceeding.

The Administrative Law Judge (“ALJ”) has express authority under the Commission’s regulations to limit the participation of intervenors.⁵ The Companies therefore request that ALJ Jeffrey Watson exercise his authority to limit the scope of Petitioners’ intervention to issues that are properly addressed in the context of this default service proceeding and thereby facilitate the creation of a complete and well-developed evidentiary record within the Commission review period provided by 66 Pa. C.S. § 2807(e)(3.6).

I. RELEVANT BACKGROUND

On December 14, 2021, the Companies filed the above-captioned joint petition (the

² See *Hommrich v. Pennsylvania Public Utility Commission, Inc.*, 231 A.3d 1027, 1038-1040 (Pa. Cmwlth. 2020), *aff’d* 245 A.2d 637 (Pa. 2021). (“*Hommrich*”)

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.Cmwlth. 2016) (remanding the matter back to the Court of Common Pleas of Washington County).

⁵ 52 Pa. Code § 5.75 (providing that the presiding officer “may, if found to be appropriate, authorize limited participation” by an intervenor).

“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. Among other things, the Joint Petition addresses how the Companies will satisfy the AEPS Act obligations associated with default service supply.

On January 18, 2022, John Bevec and Sunrise Energy, LLC filed a Petition to Intervene, explaining that Mr. Bevec is served by West Penn and that Sunrise 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 regulated utility”. The Petition claims that Mr. Bevec and Sunrise Energy, LLC 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.”⁶

On January 21, 2022, ALJ Watson convened a Prehearing Conference at which the

⁶ Petition to Intervene, pp. 1-4.

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.

II. ANSWER

1. Admitted.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. The Petition to Intervene does not include a Paragraph 6.

7. Admitted

8. Denied as stated. It is admitted that the Joint Petition was filed with the Commission on December 14, 2021.

9. Denied in part. Counsel for the Companies includes attorneys from FESC and the law firm of Morgan, Lewis & Bockius LLP. It is further denied that the Companies are required to have counsel employed by an entity that is "regulated" by the Commission.

10. Denied in part. The Joint Petition includes testimony from several witnesses employed by FESC. Each piece of testimony provides the witness's background and experience and also explains that the witness is submitting testimony on behalf of the Companies. It is further denied that the Companies are required to have their witnesses provide "evidence" they are "affiliated with" the Companies.

11. Admitted.

12. Denied as stated. The complete sentence that was excerpted by Petitioners is as follows: "The Companies file this Joint Petition in accordance with their responsibilities as default service providers to establish the terms and conditions under which they will procure

default service supplies, provide default service to non-shopping customers, satisfy requirements imposed by the Alternative Energy Portfolio Standards (“AEPS”) Act, and recover all associated costs on a full and current basis for the period from June 1, 2023 through May 31, 2027.”⁷ By way of further response, the Joint Petition does not broadly address all of the Companies’ AEPS Act obligations. Instead, the filing appropriately addresses the Companies’ AEPS Act requirements *associated with default service supply*.

13. Denied as stated. The complete sentence that was excerpted by Petitioners is as follows: “The Companies file this Joint Petition in accordance with their responsibilities as default service providers to establish the terms and conditions under which they will procure default service supplies, provide default service to non-shopping customers, satisfy requirements imposed by the Alternative Energy Portfolio Standards (“AEPS”) Act, and recover all associated costs on a full and current basis for the period from June 1, 2023 through May 31, 2027.”⁸

14. Denied. The Joint Petition addresses the Companies’ proposal to satisfy AEPS Act requirements *associated with default service supply*, including satisfying a portion of solar obligations through solar photovoltaic alternative energy credits (“SPAECs”) from solar power purchase agreements (“PPAs”). The proposal is summarized in Paragraph 26 of the Joint Petition as follows:

In accordance with Section 54.185(e)(1) of the Regulations, the Companies propose to satisfy most of their AEPS Act requirements as part of the solicitation of default service supply. Specifically, 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

⁷ Joint Petition, pp. 1-2.

⁸ Joint Petition, pp. 1-2.

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.

The energy purchased from the solar PPAs will be paired with spot purchases to satisfy a fixed quantity of residential default service load and will not be used to meet the energy needs of default service customers or satisfy AEPS Act obligations associated with default service supply.⁹ The Joint Petition further explains that the cost of default service (which includes the satisfaction of AEPS Act requirements associated with default service supply) will continue to be recovered from the residential and commercial customer classes through their respective Price to Compare Default Service Rate Riders and from the industrial customer class through the Hourly Pricing Default Service Rider.¹⁰

15. Denied in part. As explained in Paragraph 14, the Joint Petition details the Companies' proposal to satisfy, and recover the costs of, AEPS Act requirements *associated with default service supply*. "Excess energy" is energy purchased from a customer-generator under a Company's net-metering tariff and is entirely unrelated to the Companies' default service procurement plan. Excess energy from customer-generators is not used to serve default service load and the Companies do not take title to any associated alternative energy credits ("AECs") or otherwise use such AECs to satisfy AEPS Act requirements associated with default service supply. Any excess energy from customer-generators who receive default service is sold into the wholesale electricity markets operated by PJM Interconnection, L.L.C., with any revenues from such sales credited to default service customers net of compensation paid to customer-generators.

⁹ Joint Petition, ¶ 15.

¹⁰ Joint Petition, ¶¶ 36, 40.

Customer-generators who shop for electric generation service receive net metering compensation from their electric generation suppliers, not the Companies. For those reasons, the Companies' default service filing does not address excess energy purchased from customer-generators.

16. Denied. The Joint Petition, and accompanying expert testimony, provide a detailed discussion of how the Companies will implement the various components of DSP VI. The Commission's default service regulations do not prohibit the involvement of service company employees in the implementation of default service programs.

17. The language in 52 Pa. Code § 5.72 speaks for itself.

18. The language in 52 Pa. Code § 5.72(a)(2) speaks for itself.

19. Admitted.

20. Denied in part. As explained in Paragraph 15, the Joint Petition does not address "excess energy" from renewable energy systems under a Company's net metering rider because: (1) the energy is not used to serve default service load; and (2) the associated AECs are not transferred to the Company or otherwise used to satisfy AEPS Act obligations associated with default service supply. It is further denied that West Penn engages in any double billing for excess energy purchased under the Company's net metering rider.

In addition, for the reasons discussed below and in *New Matter*, the Companies deny that Petitioners' alleged "significant interest" in the treatment of excess energy provides a valid basis for the Petitioners to intervene in this proceeding and pursue: (1) issues concerning the definition of "customer-generator" under the AEPS Act, the Commission's regulations and/or each Company's net metering tariff; or (2) issues concerning whether any particular renewable energy system, including a system owned by Sunrise Energy, LLC, qualifies as a "customer-generator" under the AEPS Act, the Commission's regulations and/or each Company's net metering tariff.

Litigation Against The Commission Concerning Net-Metering Regulations. Sunrise Energy, LLC president David Hommrich recently challenged the validity of several Commission net-metering regulations in Commonwealth Court and, as a result, the Commonwealth Court found that certain regulations, including the definition of “customer-generator,” were beyond the scope of the Commission’s authority.¹¹

In this default service proceeding, Sunrise Energy, LLC and Mr. Bevec express concern about prior Commission rulemaking efforts (Docket No. L-2014-2404361) intended to “constrain renewable energy systems that generate excess energy” and highlight the Companies’ comments in that proceeding regarding the definition of “customer-generator”.¹² The Petitioners should not be permitted to litigate the definition of “customer-generator” in this default service proceeding. Instead, those issues should be addressed in future proceedings to implement the Commonwealth Court’s decision in *Hommrich*, which the Commission has not yet scheduled.

Litigation Against West Penn Regarding Facility Qualification As A “Customer-Generator”. Sunrise Energy, LLC has also initiated litigation in the Court of Common Pleas of Washington County seeking a finding, among other things, that Sunrise’s solar facility in Washington County, Pennsylvania is entitled to net meter as a customer-generator under the AEPS Act.¹³ In light of the Common Pleas litigation initiated by Petitioners, the Petitioners should not be permitted to litigate whether or not a particular facility qualifies as a “customer-generator” under the AEPS Act, the Commission’s regulations and/or a Company’s net metering tariff as part of this default service proceeding.

¹¹ See *Hommrich*, 231 A.3d at 1038-1040.

¹² Preconference Memorandum of John Bevec and Sunrise Energy, LLC, ¶¶ 10-13.

¹³ 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).

21. Denied. Met-Ed, Penelec and Penn Power each deny that they are double billing for excess energy purchased under their respective net metering riders and also deny they are “controlled and/or operated” by FESC. It is further denied that Petitioners have demonstrated a valid interest in the activities of Met-Ed, Penelec or Penn Power as Petitioners are customers of West Penn.

22. Denied in part. It is admitted that the AEPS Act includes provisions related to cost recovery.¹⁴ The Companies deny that they are double billing for excess energy purchased under their respective net metering riders. The Companies further deny that excess energy is distributed “for sale to ratepayers.” As explained in Paragraph 15, excess energy is not used to serve default service load.

23. Denied. For the reasons set forth above, several of Petitioners’ alleged interests are not within the scope of this proceeding in light of other litigation or are otherwise irrelevant to the implementation of DSP VI and therefore do not provide a basis for their request to intervene.

24. Denied. For the reasons set forth above, Petitioners’ alleged interests are not within the scope of this proceeding in light of other litigation or are otherwise irrelevant to the implementation of DSP VI and therefore do not provide a basis for their request to intervene.

25. Denied. For the reasons set forth above, several of Petitioners’ alleged interests are not within the scope of this proceeding in light of other litigation or are otherwise irrelevant to the implementation of DSP VI and therefore do not provide a basis for their request to intervene.

¹⁴ See, e.g., 73 P.S. § 1648.3(a).

III. NEW MATTER

1. Sunrise Energy, LLC president David Hommrich challenged the overall validity of several Commission net-metering regulations in Commonwealth Court. On May 12, 2020, the Commonwealth Court found that certain regulations, including the definition of “customer-generator,” were beyond the scope of the Commission’s authority.¹⁵

2. Sunrise Energy, LLC has initiated litigation in the Court of Common Pleas of Washington County seeking a finding that Sunrise is entitled to net meter as a customer-generator under the AEPS Act and an order for West Penn to pay damages to Sunrise related to its solar facility in Washington County, Pennsylvania.¹⁶ In that proceeding, Sunrise raised issues concerning the use of FESC employees by West Penn. Fact discovery has closed and Sunrise has filed a motion for partial summary judgment.

3. The Petitioners are trying to interject in this case the following issues which are outside the scope of a default service proceeding : (1) the definition of “customer-generator” under the AEPS Act, the Commission’s regulations and/or each Company’s net metering tariff; (2) whether any particular renewable energy system, including any system owned by Sunrise Energy, LLC, qualifies as a “customer-generator” under the AEPS Act, the Commission’s regulations and/or each Company’s net metering tariff; and (3) the use of FESC employees as counsel and witnesses for the Companies in this proceeding and as implementors of default service programs.

¹⁵ See *Hommrich*, 231 A.3d at 1038-1040.

¹⁶ 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).

IV. CONCLUSION

WHEREFORE, for the foregoing reasons, the Companies respectfully request that the ALJ exercise his authority to limit the scope of the intervention of Mr. Bevec and Sunrise Energy, LLC in this proceeding to exclude: (1) issues concerning the definition of “customer-generator” under the AEPS Act, the Commission’s regulations and/or each Company’s net metering tariff; (2) issues concerning whether any particular renewable energy system, including any system owned by Sunrise Energy, LLC, qualifies as a “customer-generator” under the AEPS Act, the Commission’s regulations and/or each Company’s net metering tariff;

and (3) the use of FESC employees as counsel and witnesses for the Companies in this proceeding and as implementors of default service programs.

Respectfully submitted,



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

Dated: February 7, 2022

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**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	:	

VERIFICATION

I, Joanne M. Savage, Director, Rates & Regulatory Affairs, FirstEnergy Service Company, hereby state that the facts set forth in the foregoing **Answer and New Matter of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to the Petition to Intervene of John Bevec and Sunrise Energy, LLC** are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing if held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 (relating to unsworn falsification to authorities).



Dated: February 7, 2022

Joanne M. Savage
Director, Rates & Regulatory Affairs
FirstEnergy Service Company