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May 6, 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 for filing in the above-captioned proceedings is the **Initial Brief of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company** ("Initial Brief"). The Initial Brief will be served on presiding Administrative Law Judge Jeffrey A. Watson and 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.)

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served copies of the **Initial Brief of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company**, on the persons listed below, in the manner specified in accordance with the requirements of 52 Pa. Code § 1.54:

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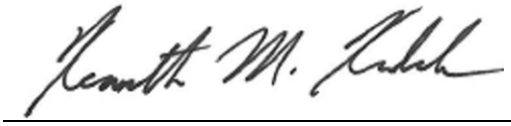

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Dated: May 6, 2022

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOINT PETITION OF METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER COMPANY AND WEST PENN POWER COMPANY FOR APPROVAL OF THEIR DEFAULT SERVICE PROGRAMS FOR THE PERIOD JUNE 1, 2023 TO MAY 31, 2027	**:**	**DOCKET NOS.**	**P-2021-3030012** **P-2021-3030013** **P-2021-3030014** **P-2021-3030021**

INITIAL BRIEF OF METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER COMPANY AND WEST PENN POWER COMPANY

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INITIAL BRIEF OF METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER COMPANY AND WEST PENN POWER COMPANY

I. INTRODUCTION

This proceeding was initiated on December 14, 2021, when 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") filed the above-captioned Joint Petition (the "DSP VI Petition") requesting that the Commission approve their sixth default service programs (the "Program(s)" or "DSP VI") for the period June 1, 2023 through May 31, 2027 in accordance with the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801 et seq. (the "Competition Act"). The Programs set forth in the DSP VI Petition were designed to satisfy the Companies' obligations to furnish adequate and reliable service to default service customers at the least cost over time by procuring a prudent mix of long-term, short-term and

spot market generation supplies. The Companies proposed to continue most of the existing programs in their fifth default service programs ("DSP V") as approved by the Commission.[1]

As described in the Joint Petition for Partial Settlement ("Joint Petition") filed on April 20, 2022, and summarized below, many of the parties to this proceeding reached a settlement (the "Settlement") of all but two issues presented in DSP VI.[2] In the Settlement, the Joint Petitioners request that the Commission approve the DSP VI Programs as proposed by the Companies, with certain modifications to the procurement plans for residential and commercial default service customers, revisions to the originally proposed Time-of-Use ("TOU") Default Service Riders and Third-Party Data Access Tariffs, the addition of online Customer Referral Program ("CRP") enrollment, and new rules that prohibit CAP customers from receiving generation service from electric generation suppliers ("EGSs") and remove barriers to CAP enrollment for eligible low-income customers with pre-existing EGS contracts.

The items reserved for litigation involve (1) the relevance of the Companies' treatment of excess energy from customer-generators to this proceeding and (2) Sunrise's assertions regarding

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1 *See Joint Petition of Metro. Edison Co., Pennsylvania Elec. Co., Pennsylvania Power Co., and West Penn Power Co. for Approval of their Default Serv. Programs for the Period Beginning June 1, 2019 through May 31, 2023*, Docket Nos. P-2017-2637855, et al. (Opinion and Order entered Sept. 4, 2018) ("September 2018 Order"). In the September 2018 Order, the Commission approved a partial settlement of the Companies' DSP V proceeding and resolved the remaining contested issues, including the residential procurement schedule, continuation of each Company's Customer Referral Program ("CRP"), and shopping by customers enrolled in each Company's Customer Assistance Program ("CAP"). On February 28, 2019, the Commission entered a Final Order adopting rules and procedures for the CAP shopping programs approved in the September 2018 Order and revising the Companies' CRP scripts.

2 The following parties joined the Settlement ("Joint Petitioners"): the Companies; the Pennsylvania Public Utility Commission ("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, the Penelec Industrial Customer Alliance, and West Penn Power Industrial Intervenors (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 The Pennsylvania State University ("PSU"). 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, authorized the Joint Petitioners to represent that they do not oppose the Settlement.

the Companies' calculation of the Price-to-Compare ("PTC") with respect to costs for compliance with Pennsylvania's Alternative Energy Portfolio Standards ("AEPS") Act[3] and the use of loss factors.

1. Procedural History

On December 14, 2021, the Companies filed the DSP VI Petition as well as the supporting data required by 52 Pa. Code § 53.52 and the prepared direct testimony and accompanying exhibits of six witnesses. The Companies notified their customers of the DSP VI Petition filing through press releases and published notices in major newspapers in their electric service areas. In addition, the Companies served the DSP VI Joint Petition on the OCA, the OSBA, I&E, PJM Interconnection, LLC ("PJM"), CAUSE-PA, the Industrials, PSU, RESA, and all EGSs registered to provide service in the Companies' service areas.

On January 1, 2022, the *Pennsylvania Bulletin* published the Commission's Notice setting a deadline for filing protests, complaints or petitions to intervene by January 18, 2022. On January 3, 2022, Administrative Law Judge Jeffrey A. Watson (the "ALJ") issued a Prehearing Conference Order scheduling a Prehearing Conference for January 21, 2022. Petitions to Intervene were filed by Calpine, CAUSE-PA, Constellation, Enerwise, the Industrials, PSU, RESA/NRG, Shipley and Sunrise. The OCA filed a Notice of Intervention and Public Statement and Answer. The OSBA filed a Notice of Appearance, Notice of Intervention, Public Statement and Answer. I&E filed a Notice of Appearance evidencing its participation in this proceeding.

On January 20, 2022, pursuant to 52 Pa. Code § 5.81, the Companies filed a Motion for Consolidation requesting that the four above-referenced proceedings be formally consolidated into a single proceeding. That Motion was granted on January 27, 2022.

[3] 73 P.S. §§ 1648.1 et seq.

A Prehearing Conference was held on January 21, 2022, at which a schedule was established for the submission of testimony and the conduct of hearings. Specifically, and consistent with Commission practice, a schedule was adopted whereby all case-in-chief, rebuttal and surrebuttal testimony would be submitted in writing in advance of hearings. Evidentiary hearings were scheduled for April 13-14, 2022, at which all testimony and exhibits would be placed in the record and all witnesses presented for cross-examination, if any, thereon. The ALJ thereafter issued a Prehearing Order on January 25, 2022 establishing this schedule and granting all outstanding Petitions to Intervene except for that of Sunrise. Sunrise was granted intervention by an Interim Order issued February 28, 2022.

Written direct, rebuttal, supplemental rebuttal and surrebuttal testimony were submitted by various parties in accordance with the proceeding schedule.[4] After the submission of written testimony, the parties engaged in discussions to try to achieve a settlement of some or all of the issues in this case. As a result of those negotiations, the Joint Petitioners were able to reach the Settlement summarized below and agree to revised default service programs ("Revised DSP VI Programs").

A telephonic evidentiary hearing was held on April 13, 2022. At the hearing, the Companies notified the ALJ of the Settlement and three witnesses for the Companies provided oral rejoinder testimony. Following cross-examination of two witnesses on their rejoinder testimony, the ALJ admitted into evidence, by stipulation, all previously served statements and exhibits.[5]

[4] Paragraph 9 of the Joint Petition for Partial Settlement specifies all testimony submissions by each party.

[5] At the request of the parties, the ALJ canceled the hearing scheduled for April 14, 2022.

On April 15, 2022, the ALJ granted the Companies' request to file the Joint Petition on April 20, 2022 without Statements in Support of the Settlement. The ALJ further directed that Statements in Support of the Settlement and Initial Briefs on the reserved issues be submitted on May 6, 2022, and that Reply Briefs on the reserved issues be submitted on May 16, 2022.

2. The Partial Settlement

The terms of the Settlement are set forth in the Joint Petition. As previously noted, all parties to this proceeding either joined in the Settlement or have authorized the Joint Petitioners to represent that they do not oppose the Settlement.

As explained in the Joint Petition, the Revised DSP VI Programs set forth in the Settlement contain all the elements required by the Public Utility Code, the Commission's default service regulations (52 Pa. Code §§ 54.181–54.190) and its Policy Statement on Default Service (52 Pa. Code §§ 69.1801–69.1817). In addition, the Settlement addresses the following key contested issues:

- **Residential/Commercial Default Service Products**. Under the Settlement, the Joint Petitioners agree to the Companies' original proposal to procure full-requirements, load following energy and energy-related products for residential and commercial default service customers through a descending price clock auction ("DCA") process. Joint Petition, ¶¶ 18-19. Under the Settlement, as originally proposed, the Companies will also offset a portion of residential default service load with energy and solar photovoltaic alternative energy credits ("SPAECs") purchased under competitively-procured long-term, fixed-price solar power purchase agreements ("PPAs"). *Id.* at ¶¶ 22-23. For the residential class, the Settlement eliminates the spot component of pricing for full requirements products, and the contracts will have staggered 12-month and 24-month terms. *Id.* at ¶¶ 20-21 and Ex. B. The Settlement eliminates the use of

6-month fixed-price full requirements contracts for the commercial product. *Id.* at ¶¶ 24-25 and Ex. B.

- **Procurement Schedule**. The Settlement provides that Companies will conduct DCAs for the residential and commercial class full requirements products twice per year in April and November, and the "hard stop" at May 31, 2027 originally proposed by the Companies will be replaced with overhanging full requirements contracts that cover the period from June 1, 2027 through May 31, 2028 (the first year of the Companies' seventh default service programs). Joint Petition at ¶¶ 26-27 and Ex. B. In addition, under the Settlement, the DCAs for hourly priced full requirements products proposed for March 2023, 2024, 2025 and 2026 will be moved to April of those same years. *Id.* at ¶¶ 29-30 and Ex. B.
- **AEPS Act Compliance**. The Settlement adopts the Companies' proposal to meet their AEPS Act obligations primarily through a combination of full requirements products and a long-term solar procurement to support solar energy facilities within the Commonwealth. For DSP VI, each Company will satisfy its AEPS obligations with respect to sales to default service customers by requiring each full requirements default service supplier to transfer Tier I and Tier II alternative energy credits ("AECs") to the Company corresponding to its AEPS obligations associated with the amount of default service load served by that supplier. As originally proposed, the Companies will also satisfy approximately 32% of their residential solar AEPS

requirements during DSP VI by procuring new long-term solar PPAs. Joint Petition at ¶¶ 33-35 and Ex. C.[6]

- **Rate Design and Cost Recovery**. The Settlement will continue the Companies' Commission-approved default service rate design with improvements to the default service rate adjustment and reconciliation process and new optional TOU rates for eligible residential and commercial customers. Joint Petition at ¶¶ 43-66 and Exs. D-1 to D-4. Under the Settlement, as originally proposed, the Companies will adjust default service rates for the residential and commercial classes established pursuant to their Price-to-Compare Default Service Rate Riders ("PTC Riders") and will reconcile the over/undercollection component of the PTC Riders and Hourly Pricing Default Service Riders ("HP Riders") on a semi-annual, instead of a quarterly, basis. *Id.* at ¶¶ 43, 45. The Settlement also adopts the Companies' original proposed TOU rate design with differentiated pricing across three usage periods (on-peak, off-peak and super off-peak) based on price multipliers designed to motivate customers to adjust the time of day they use electricity. *Id.* at ¶¶ 52-55, 57-62, 65-66. In addition, under the Settlement, the Joint Petitioners agreed to limited conditions related to periodic review of the TOU pricing multipliers and outreach and educational materials about the TOU rates effective June 1, 2023. *Id.* at ¶¶ 58, 63-64.
- **Customer Referral Programs**. The Settlement provides that the Companies' currently-effective CRPs will continue until May 31, 2027. Joint Petition at ¶ 69. In addition, the Companies will allow customers to enroll in the programs

[6] Under these PPAs, the Companies will procure both energy and AECs, with the energy generated by the selected solar facilities paired with spot purchases to satisfy a fixed quantity of residential default service load. Met-Ed/Penelec/Penn Power/West Penn St. 2, pp. 21-23 and Ex. JHC-6.

through their websites and EGSs will continue to be able to begin and end participation in the CRPs on a quarterly basis. *Id.* at ¶¶ 70-76 and Ex. F. Finally, the Companies will convene a collaborative to explore the compilation of metrics related to the CRPs. *Id.* at ¶¶ 77-79.

- **CAP Customer Shopping**. Currently, customers enrolled in each Company's CAP may only enter a contract with an EGS for a rate that is at or below the applicable Company's PTC and does not contain any early termination, cancellation, or other fees. Under the Settlement, effective June 1, 2023, all of the Companies' CAP customers must receive default service at the applicable PTC. *See* Joint Petition at ¶¶ 82-85, 87-88. In addition, the Companies' Electric Generation Supplier Coordination Tariffs will prohibit EGSs from charging early cancellation, termination, or other fees to any shopping customer transitioning into a Company's CAP. *Id.* at ¶ 86 and Exs. E-1 to E-4.
- **Third-Party Data Access Tariffs**. The Settlement also resolves issues related to the implementation of new tariffs governing electronic access to customer data by third parties who are not licensed EGSs. Under the Settlement, the Companies' Third-Party Data Access Tariffs will be limited to Conservation Service Providers registered with the Commission or Curtailment Service Providers that are PJM members and identified on PJM's list of demand response providers. *See* Joint Petition at ¶¶ 89-90 and Exs. G-1 to G-4. The Companies committed to conduct periodic, randomized internal audits to ensure that customer authorization is properly obtained by third parties when seeking access to customer data. *Id.* at ¶ 91.

In accordance with the Interim Order issued on April 15, 2022, the Companies' Statement in Support of the Settlement is being filed contemporaneously with this Initial Brief and the Companies' have included Proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs as Appendix A to this Initial Brief.

3. The Issues Reserved for Briefing

As previously explained, the items reserved for litigation involve (1) the relevance of the Companies' treatment of excess energy from customer-generators to this proceeding and (2) Sunrise's assertions regarding the Companies' calculation of the PTC. In this Initial Brief, the Companies will explain why their treatment of excess energy is wholly unrelated to the Companies' default service supply plans and will demonstrate how they are appropriately accounting for and recovering costs associated with AEPS Act compliance.

II. THE RELEVANCE OF THE COMPANIES' TREATMENT OF EXCESS ENERGY FROM CUSTOMER-GENERATORS TO THIS PROCEEDING

A. The Companies' AEPS Act Obligations Associated with Default Service Supply Are Separate and Distinct from AEPS Act Obligations Related to Excess Energy

Section 3 of the AEPS Act, 73 P.S. § 1648.3, requires electric distribution companies ("EDCs"), in their role as default service providers, and EGSs to obtain a percentage of electricity sold to the Commonwealth's retail customers from certain alternative energy sources—such as, wind, solar energy, and biomass. Compliance is measured through AECs that are equal to one MWh of energy from approved "Tier I" or "Tier II" alternative energy sources. The AEPS Act also includes a solar "set-aside," which mandates that a specific portion of the Companies' Tier I requirements be satisfied through AECs derived from solar photovoltaic

energy (i.e., SPAECs).[7] The Tier I, Tier II, and SPAEC percentage requirements during the term of DSP VI are more fully described in Met-Ed/Penelec/Penn Power/West Penn Exhibit JHC-5.[8]

In recognition of the Companies' AEPS Act obligations as default service providers, the Companies have explained in detail how they will procure the AECs necessary to satisfy AEPS Act requirements associated with default service load. Consistent with prior default service plans approved by the Commission, the Companies have proposed to procure all the necessary Tier I – Non-Solar and Tier II AECs, and a portion of the necessary SPAECs, as part of the overall default service supply that will be provided by winning default service bidders. The Companies are also proposing to make some direct SPAEC purchases as part of a long-term solar procurement.[9] In each case, the Companies will utilize a competitive process to procure the AECs consistent with obligations under the Public Utility Code[10] and the Commission's AEPS regulations.[11]

Whether AECs are obtained directly by the Companies or are embedded in wholesale default service supply, the obligation to satisfy Section 3 AEPS Act requirements associated with default service load remains with the Companies as default service providers. The Companies have consistently complied with such obligations, as demonstrated by the annual AEPS compliance reports prepared by the Commission in cooperation with the Pennsylvania

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7 In addition, pursuant to Commission directives implementing Act 40 of 2017, SPAECs must be generated by facilities located within the Commonwealth (subject to limited exceptions). *See* Docket No. M-2017-2631527.

8 Met-Ed/Penelec/Penn Power/West Penn St. 2, p. 17.

9 *See* Met-Ed/Penelec/Penn Power/West Penn St. 2, pp. 17-23.

10 *See* 66 Pa.C.S. § 2807(e)(3.5).

11 *See* 52 Pa. Code § 75.67(b).

Department of Environmental Protection and the absence of any AEPS Act penalties assessed against the Companies.[12]

Section 5 of the AEPS Act, 73 P.S. § 1648.5, establishes separate requirements related to net-metered customer-generators. In addition to requiring the Commission to develop technical and net-metering interconnection rules, Section 5 mandates that excess energy from net-metered customer-generators "receive full retail value for all energy produced on an annual basis." Excess energy is kilowatt-hours ("kWh") received from the customer-generator in excess of the kWh delivered by the Company to the customer-generator. The Commission's regulations require EDCs to file a tariff that provides for net metering as well as a tariff providing net metering protocols that enables EGSs to offer net metering to customer-generators taking service from EGSs.[13] The regulations further detail how net metered customer-generators should be credited for excess kWhs.[14]

Consistent with Section 5 of the AEPS Act and the Commission's net metering regulations, each Company has a Commission-approved net metering rider under which customer-generators are paid "full retail value" for their excess energy. If a customer-generator produces energy in excess of the customer-generator's consumption in a particular month, that excess is "banked" for the following month. Energy in excess of a customer-generator's consumption in that following month is again credited at the "full retail value." If credits remain

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[12] *See, e.g.*, Alternative Energy Portfolio Standards Act of 2004 Compliance for Reporting Year 2021 (Pa. P.U.C. Mar. 2022); Alternative Energy Portfolio Standards Act of 2004 Compliance for Reporting Year 2020 (Pa. P.U.C. Feb. 2021); Alternative Energy Portfolio Standards Act of 2004 Compliance for Reporting Year 2019 (Pa. P.U.C. Sept. 2020). The annual AEPS Act reports for compliance years prior to 2019 are available on the Commission's website at https://www.puc.pa.gov/filing-resources/reports/alternative-energy-portfolio-standards-aeps-reports/.

[13] 52 Pa. Code § 75.13(c)

[14] 52 Pa. Code § 75.13(d)-(f).

at the end of the year, then the excess energy is credited at the PTC.[15] Customer- generators taking service from an EGS will receive compensation for excess energy from their EGS, not the Companies.[16]

B. The Treatment of Excess Energy Is Not Relevant to This Proceeding Because Excess Energy Is Not Utilized to Satisfy Any Default Service Supply Obligations

Although Sunrise contends that excess energy from net-metered customer generators becomes "part of the total energy for default service"[17], wholesale markets do not recognize such energy as supply. Net-metered customer generator projects do not register with PJM or go through the PJM queue process to be recognized as a supply resource. Further, these projects do not sign on to PJM's Reliability Assurance Agreement or other governing documents that request certain types of asset performance. Instead, customer-generator net metered assets are compensated through retail programs that utilize intermittent resources to deliver aggregate load reductions on the demand side of the energy accounting equation.[18]

The Companies' default service procurement plans reflect the reality that excess energy is not wholesale supply. Neither the Companies' existing nor their proposed default service supply plans use excess energy from net-metering customer generators to serve default service load. Instead, non-shopping load is served by winning bidders in the Companies' default service

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15 Tr. 84; *see also* Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 6-7.

16 Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, p. 7.

17 Direct Testimony of David N. Hommrich on behalf of Sunrise (hereafter, "Sunrise Direct Testimony"), p. 9.

18 *See* Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 7-8. Sunrise agrees that net-metering is a retail load reduction mechanism, but erroneously assumes that excess energy is used by and sold to other retail customers. *See* Rebuttal Testimony of David N. Hommrich on behalf of Sunrise (hereafter, "Sunrise Rebuttal Testimony"), pp. 7-8 (acknowledging the retail load reduction); Second Direct Testimony of David N. Hommrich on behalf of Sunrise (hereafter, "Sunrise Second Direct Testimony"), p. 15 (arguing that excess energy is sold to other retail customers).

supply auctions.[19] These wholesale suppliers are not billed for, nor do they sell, excess energy from customer-generators.[20] Excess energy from customer-generators is not sold to other retail customers.[21]

As explained in detail by the Companies' witness Edward B. Stein, excess energy is recognized through a financial netting process at the PJM level instead of a physical load netting process. When there is excess energy from a net-metering customer generator who is taking service under a Company's net-metering rider, the Company (not a default service wholesale supplier) receives recognition of the load reduction in the form of a credit from PJM valued at the locational marginal price. As explained earlier, that customer-generator is subsequently paid "full retail value" for its excess energy, with the financial inputs and outputs ultimately netted in default service rates. Default service customers receive the value of the PJM credits related to the load reduction and also pay the costs to compensate customer-generators for their excess energy.[22]

In sum, despite numerous Sunrise statements to the contrary, the Companies' treatment of excess energy from net-metered customer generators is wholly unrelated to how default service supply is procured or deployed to satisfy default service load. The Commission should recognize the separate and distinct obligations that arise from Section 3 and Section 5 of the AEPS Act and find that the treatment of excess energy is irrelevant to the Companies' DSP VI Programs.

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19 *See* Met-Ed/Penelec/Penn Power/West Penn St. 2, p. 3; Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, p. 8.

20 Tr. 83.

21 *See* Sunrise Second Direct Testimony, p. 15 (quoting the Companies' response to a Sunrise discovery question).

22 Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 9-14.

III. THE COMPANIES' CALCULATION OF THE PRICE-TO-COMPARE WITH RESPECT TO AEPS ACT COMPLIANCE COSTS, LOSS FACTORS AND GROSS RECEIPTS TAX

A. The Scope of Costs Recovered in the PTC and HP Riders is Appropriate

Sunrise argues that the Companies are improperly excluding certain AEPS Act compliance costs from their PTC and HP Riders, including "indirect" costs associated with Company personnel spending time processing interconnection and net metering applications.[23] As discussed below, the scope of AEPS Act-related costs recovered in each Company's PTC and HP Rider is consistent with the AEPS Act, the Commission's regulations and prior Commission-approved cost allocations between default service and distribution.

As discussed earlier, Section 3 of the AEPS Act details obligations associated with default service supply that are separate from obligations in other sections of the Act. The recovery of costs related to Section 3 compliance activities is addressed in the AEPS Act as follows:

> "After the cost-recovery period, any direct or indirect costs for the purchase by electric distribution 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."[24]

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[23] *See* Sunrise Second Direct Testimony, p. 16 (claiming the Companies are failing to recover AEPS Act costs in accordance with Section 3 of the AEPS Act); Sunrise Direct Testimony, p. 13 (identifying interconnection application processing and administrative personnel as indirect costs that should be recovered pursuant to Section 3 of the AEPS Act).

[24] 73 P.S. § 1648.3(a)(3)(emphasis added).

The Commission's regulations further address cost recovery for AEPS Act obligations associated with default service supply. Specifically, those regulations (52 Pa. Code § 75.67(a)) provide that a default service provider may recover the following AEPS Act compliance costs from default service customers:

(1) The costs of electricity generated by an alternative energy system, purchased by a default service provider, and delivered to default service customers for purposes of compliance with § 75.61 (relating to EDC and EGS obligations).

(2) The costs of alternative energy credits purchased and used within the same reporting period for purposes of compliance with § 75.61.

(3) The costs of alternative energy credits purchased in one reporting period and banked for use in later reporting periods, consistent with § 75.69 (relating to banking of alternative energy credits).

(4) The costs of alternative energy credits purchased in the true-up period to satisfy compliance obligations for the most recently concluded reporting period, consistent with § 75.61(e).

(5) Payments to the alternative energy credits program administrator for its costs of administering an alternative energy credits program, consistent with § 75.64 (relating to alternative energy credit program administrator).

(6) Payments to a third party for its costs in operating an alternative energy credits registry, consistent with § 75.70 (relating to the alternative energy credit registry).

(7) The costs levied by a regional transmission organization to ensure that alternative energy sources are reliable.

(8) The costs of alternative compliance payments made under § 75.66 (relating to force majeure).

The Companies' PTC and HP Riders are generally designed to recover Section 3 compliance costs, including the types of costs specified in the Commission's regulations. As explained in the direct testimony of the Companies' witness James H. Catanach, with certain limited exceptions for solar photovoltaic requirements, default service suppliers will be responsible for delivering AECs to satisfy 100% of the Tier I and Tier II AEPS Act requirements associated with the Companies' default service load. The Companies therefore expect default

service suppliers to include all AEPS compliance costs, including the cost items listed in Section 3 of the AEPS Act and the Commission's regulations at 52 Pa. Code § 75.67, in their wholesale power prices, which are recovered through the Companies' PTC and HP Riders.[25] In addition, all costs associated with the Companies' proposed long-term solar procurement, which is expected to meet up to an estimated 32% of the Companies' solar AEPS requirements associated with residential default service load during DSP VI, will be recovered through the PTC Riders.[26] The Companies also recover the direct costs of purchasing AECs and maintaining their PJM Generation Attribute Tracking System accounts to manage AECs through their PTC and HP Riders.[27]

As explained in the supplemental rebuttal testimony of the Companies' witnesses Patricia M. Larkin and Edward B. Stein, the Companies' PTC and HP Riders appropriately exclude the costs of interconnecting distributed generation to the Companies' distribution systems.[28] Although Sunrise argues such costs are appropriate to recover through the PTC and HP Riders,[29] the Companies handle interconnection matters in their capacity as distribution utilities, not default service providers. As Mr. Stein explained, system planning and connections of any kind are a well-established distribution function, and socializing the fees charged to distributed generation interconnection applicants among all default service customers, as Sunrise apparently

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[25] There is an exception for SPAEC-related costs for Met-Ed, Penelec, and Penn Power procured under legacy long-term contracts that expire on May 31, 2024, to satisfy all customer load (default service and shopping customers) in their service territories, which are collected through the Companies' Solar Photovoltaic Requirements Charge Riders on a non-bypassable basis. *See* Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, p. 3.

[26] Met-Ed/Penelec/Penn Power/West Penn St. 2, pp. 17-23.

[27] *See* Sunrise Second Direct Testimony, Ex. 1.

[28] *See* Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, pp. 4-5; Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, p. 17; *see also* Met-Ed/Penelec/Penn Power/West Penn St. 5R, pp. 2-9 (describing the costs reflected in default service rates).

[29] Sunrise Direct Testimony, p. 13.

would prefer, is not consistent with long-standing cost-of-service principles. Moreover, this allocation of costs is consistent with the fact that the shopping status of a customer is unrelated to the interconnection process or interconnection costs.[30]

The Companies' costs related to interconnection of customer-owned small generation facilities to their distribution systems (net of interconnection application fees) are recovered through contributions in aid of construction and distribution base rates. Each Company's electric service tariff therefore includes provisions under which a customer seeking interconnection must pay an application fee and additional costs for certain system improvements that may be required for interconnection.[31] Those costs are entirely unrelated to default service and are properly not recovered as AEPS costs under default service rates.

For all these reasons, the Commission should reject Sunrise's claims that the Companies are improperly excluding certain AEPS Act costs from their PTC and HP Riders.

B. The Companies Properly Incorporate Loss Factors and Gross Receipts Taxes in Default Service Rate Calculations

In testimony in this proceeding, Sunrise witness David N. Hommrich contends that the use of loss factors to gross up the current cost of supply in the Companies' PTC and HP Riders for energy losses inherent in the transmission and distribution of energy to customers is inaccurate, purportedly resulting in a "windfall" to the Companies.[32] In addition, Mr. Hommrich contends that the Companies are improperly applying a gross receipts tax ("GRT") factor to

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30 Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, p. 17

31 *Id.*

32 Sunrise Second Direct Testimony, pp. 11, 13; Sunrise Rebuttal Testimony, pp. 11-14.

AEPS compliance costs recovered through default service rates.[33] Both of Mr. Hommrich's contentions are wrong.

As Mr. Stein testified at the evidentiary hearing, grossing up the current cost of default supply for loss factors in the PTC and HP Riders is proper "because, as a physical reality, there are losses associated with the transmission of energy to an individual customer's meter" and "[t]hose losses must be accounted for, and paid for, when calculating the amount of energy that must be bought and be delivered to a default service customer."[34] Consideration of loss factors in default service supply is well-recognized by the Commission, which requires the provision of loss factors to wholesale default service suppliers under default service implementation plans.[35] Wholesale suppliers are responsible for the costs of transmission and distribution losses associated with the load they serve under the Companies' supplier master agreements, just as they are responsible for providing AECs to meet their AEPS obligations.[36]

Mr. Hommrich proposes to disaggregate AEPS compliance costs included in current generation supply costs and recover those costs in a new variable that is not grossed up for loss factors in PTC and HP Rider rate calculations.[37] In support of that proposal, Mr. Hommrich points to the fact that AECs do not suffer line losses.[38] However, as the Companies' witnesses Stein and Larkin explained, the wholesale default supply contract prices that form the basis of the retail charges recovered through the PTC and HP Riders established in Commission-

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33 Sunrise Second Direct Testimony, p. 4.

34 Tr. 80.

35 52 Pa. Code § 54.186(c)(1)(E).

36 *See* Joint Petition, Ex. C (Default Service Supplier Master Agreement), Art. 1 (defining "DS Supply" to include "AECs for AEPS Act compliance" as well as all transmission and distribution losses).

37 *See* Sunrise Second Direct Testimony, pp. 4-5, 7-8.

38 *See id.* at 3-4.

approved default service procurements are not broken out by the different costs of the many components of default supply, and those prices reflect losses for which the supplier is responsible.[39] By applying loss factors to the costs of wholesale default service, the Companies are simply treating the AEPS compliance costs embedded in wholesale contract prices in a manner consistent with all of the other components of default service.[40] Moreover, if the Companies failed to apply loss factors, the result would result in underpayments to suppliers, which would necessarily have to be recovered from customers with interest through reconciliation.[41]

Mr. Hommrich also asserts that the Companies' use of loss factors to convert wholesale power contract costs to retail rates has led to overcharging customers for AEPS compliance costs.[42] According to Mr. Hommrich, the Companies' loss factors used in their default service calculations are somehow "off" because the Companies "have not revisited their loss factors in some time," and this alleged inaccuracy could result in a "windfall" to the Companies because customers are being overcharged for energy.[43] However, as Mr. Stein explained, the Companies ***do know*** that their loss factors are appropriate based on the actual difference between the aggregate zonal load (the amount of energy consumed by a Company's entire zone administered by PJM) and the retail load "grossed up" for losses based on the Company's load factors. The difference – known as "unaccounted for energy," or UFE – varies between 1.68% and -1.55%,

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39 Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, pp. 5-6; Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 3-4.

40 Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, p. 6.

41 Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, pp. 6-7 and Ex. PML-35; *see also* Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 4-5.

42 Sunrise Second Direct Testimony, pp. 2-3.

43 *See* Sunrise Second Direct Testimony, pp. 10-14; Sunrise Rebuttal Testimony, pp. 12-13.

which Mr. Stein explained was reasonable when considering the factors that impact UFE, such as broken meters and installation of batteries.[44] Furthermore, there is no "windfall" to the Companies; the amounts recovered based on these loss factors in the PTC and HP Riders are paid to suppliers consistent with their contract prices established in competitive, Commission-approved procurements.[45]

Mr. Hommrich's criticism of the Companies' inclusion of a gross-up for GRT on all default service costs recovered through the PTC and HP Riders is similarly flawed. Under the Public Utility Code, the electric generation service the Companies are required to purchase and provide in their role as default service providers includes both energy and AECs.[46] Pennsylvania law is similarly clear that the Companies must pay the GRT on all sales of energy,[47] and the Commission's Policy Statement on Default Service expressly provides that default service rates should be designed to recover applicable taxes.[48] Because the Companies must pay GRT on all default service sales at a rate of 5.9%, Mr. Hommrich's proposal to exclude AEPS costs from the application of the GRT in the PTC and HP Riders would preclude the Companies from recovering approximately $6 out of every $100 of AEPS compliance costs associated with default service supply, resulting in customers paying for those undercollections with interest in a future reconciliation period in light of the Companies' rights to recover all default service costs.[49]

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44 Tr. 80-81; Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 15.

45 Tr. 81 (explaining that the amounts are "the precise cost of electricity for which non-shopping customers pay – not a penny more – not a penny less").

46 66 Pa. Code § 2807(e)(3.5).

47 72 Pa. Stat. § 8101(b), (b)(1); Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, pp. 7-8.

48 *See* 52 Pa. Code § 69.1808(a)(5).

49 *See* 66 Pa.C.S. § 2807(e)(3.9); 52 Pa. Code § 54.187; *see also* Final Order, *Guidelines for Use of Fixed Price Labels for Products With a Pass-Through Clause*, Docket No. M-2013-2362961 (Final Order entered Nov. 14,

Finally, as Ms. Larkin explained, the Companies' PTC calculations are subject to extensive review. The Commission reviews the Companies' default service rate calculations when they are filed each quarter, as well as the annual reconciliation statement for each of the Companies' default service riders.[50] For all the foregoing reasons, the Commission should reject Sunrise's assertions that the Companies' PTC and HP Riders are flawed.

IV. CONCLUSION

For the reasons set forth above, the Commission should approve the DSP VI Programs, as modified by the Settlement, and affirm that the Companies are appropriately accounting for and recovering AEPS compliance costs. In addition, the Commission should find that the

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2013, p. 28 (explaining in the context of EGS pricing that the PTC is "all-inclusive" of the pricing components for default service, including gross receipts tax, and noting only the "notable exception" of sales tax).

[50] Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, pp. 4, 6 (noting the multiple, prior Commission reviews of the PTC and HP Riders).

Companies' treatment of excess energy from net-metered customer generators is not relevant to the default service supply plans being addressed in this proceeding.

Respectfully submitted,

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Dated: May 6, 2022

APPENDIX A

Proposed Findings of Fact, Conclusions of Law and Ordering Paragraphs

PROPOSED FINDINGS OF FACT

I. BACKGROUND

1. Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (each, a "Company" and collectively, the "Companies") are electric distribution companies ("EDCs") and default service providers as defined in the Pennsylvania Public Utility Code ("Public Utility Code" or "Code"), 66 Pa.C.S. § 2803.

2. As default service providers, the Companies provide electric generation service to those customers who do not select an electric generation supplier ("EGS") or who return to default service after being served by an EGS that becomes unable or unwilling to serve them.[1]

3. The Companies' current default service programs ("DSP V") expire on May 31, 2023.[2]

4. This proceeding was initiated on December 14, 2021, when the Companies filed a Joint Petition (the "DSP VI Petition") requesting that the Pennsylvania Public Utility Commission ("Commission" or "PUC")) approve the Companies' proposed sixth default service programs ("DSP VI" or "Programs") for the period June 1, 2023 through May 31, 2027 in

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1 66 Pa.C.S. § 2807(e).

2 *See Joint Petition of Metro. Edison Co., Pa. Elec. Co., Pa. Power Co., and West Penn Power Co. for Approval of Their Default Serv. Programs for the Period Beginning June 1, 2019 through May 31, 2023,* Docket Nos. P-2017-2637855 et al. (Opinion and Order entered Sept. 4, 2018) ("September 2018 Order"). In the September 2018 Order, the Commission approved a partial settlement of the Companies' DSP V proceeding ("DSP V Settlement") and resolved the remaining contested issues, including the residential procurement schedule, continuation of each Company's Customer Referral Program ("CRP"), and shopping by customers enrolled in each Company's Customer Assistance Program ("CAP"). On February 28, 2019, the Commission entered a Final Order ("February 2019 Order" and together with the September 2018 Order, the "DSP V Orders") adopting rules and procedures for the CAP shopping programs approved in the September 2018 Order and revising the Companies' CRP scripts.

accordance with the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801 et seq. (the "Competition Act"), as amended by Act 129 of 2008 ("Act 129").

5. As described in the DSP VI Petition, the Companies proposed to continue most of the existing programs as approved by the Commission in the DSP V Orders.

6. Copies of the DSP VI Petition filed by the Companies on December 14, 2021, were served on other organizations and entities as required by 52 Pa. Code § 54.185(c).

7. The following entities were afforded active party status in this case:

Bureau of Investigation of Enforcement	("I&E")
Office of Consumer Advocate	("OCA")
Office of Small Business Advocate	("OSBA")
Calpine Retail Holdings, LLC	("Calpine")
Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania	("CAUSE-PA")
Constellation Energy Corporation	("Constellation")
Enerwise Global Technologies, d/b/a CPower Energy Management	("Enerwise")
Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, and West Penn Power Industrial Intervenors	("Industrials")
John Bevec and Sunrise Energy LLC	("Sunrise")
Retail Energy Supply Association and NRG Energy, Inc.	("RESA/NRG")
Shipley Choice, LLC d/b/a Shipley Energy	("Shipley")
The Pennsylvania State University	("PSU")

8. A litigation schedule was established at the telephonic Prehearing Conference held on January 21, 2022 before Administrative Law Judge ("ALJ") Jeffrey A. Watson. The parties submitted written direct, rebuttal and surrebuttal testimony and accompanying exhibits in accordance with that schedule.

9. At the April 13, 2022 telephonic evidentiary hearing, the parties notified the ALJ that most of the parties reached a settlement (the "Settlement")[3] of all but two issues presented by the DSP VI Petition, which were reserved for briefing.[4] In addition, the Companies' witnesses James D. Reitzes, Edward B. Stein and Tiffanne L. Cowan presented, and were cross-examined on, oral rejoinder testimony and the pre-served written testimony and exhibits of all parties were admitted into evidence by stipulation.

10. In the Joint Petition for Partial Settlement ("Joint Petition") filed on April 20, 2022, the Joint Petitioners requested that the Commission approve DSP VI as proposed by the Companies, with certain modifications to the procurement plans for residential and commercial default service customers, revisions to the originally proposed Time-of-Use ("TOU") Default Service Riders and Third-Party Data Access Tariffs, the addition of online CRP enrollment, and new rules that prohibit CAP customers from receiving generation service from electric generation suppliers ("EGSs") and allow eligible low-income customers with pre-existing EGS contracts to enroll in CAP without facing early termination or cancellation fees. *See* Joint Petition, ¶¶ 15-95.

11. The two issues reserved for briefing in the Joint Petition involve the relevance of the Companies' treatment of excess energy from customer-generators to this proceeding and (2) Sunrise's assertions regarding the Companies' calculation of Price-to-Compare ("PTC") with respect to costs for compliance with Pennsylvania's Alternative Energy Portfolio Standards ("AEPS") Act[5] and the use of loss factors. *Id.*, p. 2.

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[3] The following parties joined the Settlement ("Joint Petitioners"): the Companies; I&E; the OCA; the OSBA; the Industrials; Enerwise; Constellation; Shipley; CAUSE-PA; and PSU. Calpine, RESA/NRG, and Sunrise authorized the Joint Petitioners to represent that they do not oppose the Settlement.

[4] At the request of the parties, the ALJ canceled the hearing scheduled for April 14, 2022.

[5] 73 P.S. §§ 1648.1 et seq.

II. THE EVIDENCE SUPPORTS THE FOLLOWING FINDINGS OF FACT

A. The Companies' Default Service Procurement and Implementation Plans

1. DSP VI Term, Procurement Classes, and Supply Portfolio

1. The Companies Programs shall be in effect for a period of four years, from June 1, 2023 through May 31, 2027. Joint Petition, ¶ 15; Met-Ed/Penelec/Penn Power/West Penn St. 1, pp. 10-11.

2. The Companies will divide customers consistent with their existing DSP V programs: the residential class, commercial class, and industrial class subject to the definitions that were approved in the DSP V Orders. Joint Petition, ¶¶ 16-17; Met-Ed/Penelec/Penn Power/West Penn St. 2, p. 6.

3. Under the Settlement, during the DSP VI term, except for the long-term solar procurement, the Companies will continue to procure full-requirements, load following energy and energy-related products for default service customers through a descending price clock auction ("DCA") process. A full requirements, load-following contract requires a supplier to provide energy, capacity, ancillary services, and all other services or products necessary to serve a specified percentage of default service load continuously over the term of the contract. Joint Petition, ¶¶ 18-19 and Ex. A; Met-Ed/Penelec/Penn Power/West Penn St. 2, pp. 7-10; Met-Ed/Penelec/Penn Power/West Penn St. 4, pp. 7-9, 13-15.

4. Under the Settlement, the Companies will employ a 50% load cap for fixed-priced auctions and a 75% load cap for hourly-pricing product auctions. Joint Petition, ¶ 19 and Ex. A

5. The full requirements contracts for the residential class will include a fixed price established through the applicable DCA. For the first year of the DSP VI term, contracts for

76% of the load will have terms of 12 months, and contracts for the remaining 24% will have terms of 24 months. Beginning on June 1, 2024, contracts for 51% of the residential class load will have terms of 12 months, and contracts for the remaining 49% will have terms of 24 months. Joint Petition, ¶¶ 20-21.

6. The Companies will also procure – through multi-year, fixed-price power purchase agreements ("PPAs") – the energy and solar photovoltaic alternative energy credits ("SPAECs") generated by one or more new in-state solar photovoltaic projects with total capacity of at least seven megawatts ("MW") and up to 20 MW. The winning project(s) will be selected through a competitive request for proposals ("RFP") process. The energy generated by the selected project(s) will be paired with spot purchases to satisfy a fixed quantity of residential default service load. Joint Petition, ¶ 22-23; Met-Ed/Penelec/Penn Power/West Penn St. 2, pp. 21-23; Met-Ed/Penelec/Penn Power/West Penn Ex. JHC-6; Met-Ed/Penelec/Penn Power/West Penn St. 4, pp. 9-10, 28-29.

7. The commercial class load will be supplied by a mix of 12- and 24-month full requirements products with a fixed price established through the DCA process. For the first year of the DSP VI term, the commercial class full requirements product mix will be comprised of 12-month contracts (74%) and 24-month contracts (26%). For the second year of the DSP VI term, the commercial class full requirements product mix will be comprised of 12-month contracts (49%) and 24-month contracts (51%). Beginning on June 1, 2025, contracts for 51% of the commercial class load will have terms of 12 months, and contracts for the remaining 49% will have terms of 24 months. Joint Petition, ¶¶ 24-25.

8. For the industrial class, the Companies will continue to solicit hourly-priced full requirements products with 12-month delivery terms for all default service supply. Joint

Petition, ¶ 28; Met-Ed/Penelec/Penn Power/West Penn St. 2, pp. 8-9; Met-Ed/Penelec/Penn Power/West Penn St. 4, pp. 6, 8-9, 30.

9. The procurement terms and schedule for the three procurement classes are set forth in Exhibit B to the Settlement. Joint Petition, ¶¶ 26-27, 29.

10. The Programs include some residential and commercial class supply products with delivery periods that extend beyond May 31, 2027 (the end of the DSP VI period). Joint Petition, ¶ 27.

2. Competitive Procurement Process and Independent Evaluator

11. Consistent with DSP V, all bids for full requirements default service supply will be obtained through a fair, non-discriminatory, and DCA process conducted by an independent third-party evaluator. Joint Petition, ¶¶ 18-19 and Ex. A; Met-Ed/Penelec/Penn Power/West Penn St. 2, pp. 5, 11-16; Met-Ed/Penelec/Penn Power/West Penn St. 4, pp. 19-27, 29-31.

12. The Companies will retain CRA International, Inc. d/b/a/ Charles River Associates ("CRA") as the independent third-party evaluator of the Companies' DCAs. Joint Petition, ¶ 41; Met-Ed/Penelec/Penn Power/West Penn St. 2, p. 7.

13. Each Company will execute a form of the Supplier Master Agreement ("SMA"), set forth in Exhibit C to the Settlement, with wholesale suppliers that are successful bidders in the Companies' DCAs. Joint Petition, ¶ 30. The form SMA incorporates certain changes to the Companies' current Commission-approved SMA in the areas of responsibility for AEPS compliance, protections against supplier default, the use of a capacity proxy price ("CPP") under certain circumstances. Joint Petition, ¶¶ 31-32; Met-Ed/Penelec/Penn Power West Penn Sts. 2, pp. 24-29, and 2R, pp. 3-6; Met-Ed/Penelec/Penn Power West Penn St. 3, pp. 3-9.

14. The Companies will retain The Brattle Group ("Brattle") as the independent third-party evaluator for the Companies' long-term solar procurement. Joint Petition, p. ¶ 42; Met-Ed/Penelec/Penn Power/West Penn St. 2, p. 22.

15. The Companies' solar RFP process set forth in the Settlement is designed to obtain competitive, fixed-price supply contracts at least cost, and it will utilize an independent third-party RFP monitor (Brattle). In addition, the solar RFP and related documents include terms and conditions that are typical of power purchase and solar renewable energy credit agreements. *See* Joint Petition, ¶¶ 22-23; Met-Ed/Penelec/Penn Power/West Penn St. 2, pp. 21-22; Met-Ed/Penelec/Penn Power/West Penn Ex. JHC-6; Met-Ed/Penelec/Penn Power/West Penn St. 4, pp. 28-29.

3. Compliance with Section 3 of the AEPS Act

16. Consistent with prior default service programs approved by the Commission, under the Settlement, the Companies have proposed to procure, as part of the solicitation of default service supply, all the necessary Tier I (Non-Solar) and Tier II AECs, and a portion of the necessary SPAECs to satisfy their Section 3 AEPS[6] requirements. In addition, the Companies will directly purchase some SPAECs as part of a long-term solar procurement. *See* Joint Petition, ¶¶ 22, 33-36 and Ex. C; Met-Ed/Penelec/Penn Power/West Penn St. 2, pp. 17-23.

17. The Companies have consistently met their Section 3 AEPS requirements associated with default service load, as demonstrated by the annual AEPS compliance reports prepared by the Commission in cooperation with the Pennsylvania Department of Environmental

[6] *See* 73 P.S. § 1648.3.

Protection and the absence of any AEPS Act penalties assessed against the Companies.[7] Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 5-6.

4. Other AEPS Obligations

18. Excess energy is kilowatt-hours ("kWh") received from the customer-generator in excess of the kWh delivered by the applicable Company to the customer-generator. Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, p. 6.

19. Sunrise contends that excess energy from net-metered customer-generators becomes "part of the total energy for default service." Direct Testimony of David N. Hommrich on behalf of Sunrise, p. 9; *see also* Second Direct Testimony of David N. Hommrich on behalf of Sunrise, p. 15; Rebuttal Testimony of David M. Hommrich on behalf of Sunrise, pp. 7-11.

20. The Companies current and proposed procurement plans do not use excess energy from net-metering customer-generators to serve default service load. Default service load is served by winning bidders in the Companies' DCAs that do not buy or sell excess energy from the Companies' customer-generators. *See* Met-Ed/Penelec/Penn Power/West Penn St. 2, p. 3; Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 7-8; Tr. 83.

21. The record evidence shows that excess energy is recognized through a financial netting process at the PJM level instead of a physical load netting process as Sunrise contends. When there is excess energy from a net-metering customer-generator who is taking service under a Company's net-metering rider, the Company (not a default service wholesale supplier) receives

[7] *See, e.g.*, Alternative Energy Portfolio Standards Act of 2004 Compliance for Reporting Year 2021 (Pa. P.U.C. Mar. 2022); Alternative Energy Portfolio Standards Act of 2004 Compliance for Reporting Year 2020 (Pa. P.U.C. Feb. 2021); Alternative Energy Portfolio Standards Act of 2004 Compliance for Reporting Year 2019 (Pa. P.U.C. Sept. 2020). The annual AEPS Act reports for compliance years prior to 2019 are available on the Commission's website at https://www.puc.pa.gov/filing-resources/reports/alternative-energy-portfolio-standards-aeps-reports/.

recognition of the load reduction in the form of a credit from PJM valued at the locational marginal price. That customer-generator is subsequently paid "full retail value" for its excess energy, with the financial inputs and outputs ultimately netted in default service rates. Default service customers receive the value of the PJM credits related to the load reduction and pay the costs to compensate customer-generators for their excess energy at the full retail value. *See* Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 9-14.

5. Contingency Plans

22. The Companies will continue utilizing the contingency plans for full requirements procurements approved in prior default service programs. Specifically, if a scheduled solicitation is not fully subscribed following the initial proposed procurement or if the Commission rejects the bid results from a solicitation, the Companies will rebid the unfilled tranches from that solicitation in the next scheduled procurement for which there is sufficient calendar time to include the tranches. For any unfilled tranches remaining, the Companies will purchase the necessary physical supply through PJM-administered markets. Joint Petition, ¶ 36; Met-Ed/Penelec/Penn Power/West Penn St. 3, p. 10.

23. If a winning bidder defaults prior to the start of, or during, the delivery period, the Companies will offer the unfilled tranches to the other qualified bidders who participated in the most recent solicitation of full-requirements, load-following products. If the Companies are not able to enter into an agreement with qualified bidders and at least 30 calendar days remain prior to the start of the delivery period, the Companies will seek to bid the defaulted tranches in a separate supplemental competitive solicitation. If insufficient time exists to conduct an additional competitive solicitation, or if the supplemental solicitation is unsuccessful, the

Companies will supply the tranches by purchasing power in the PJM-administered markets. Joint Petition, ¶ 37; Met-Ed/Penelec/Penn Power/West Penn St. 3, pp. 11-12.

24. In addition, effective June 1, 2023, the Companies will use a CPP in their DCAs if PJM does not conduct a base residual auction ("BRA") in time for default service suppliers to incorporate the BRA results in their bids. Joint Petition, ¶ 38; Met-Ed/Penelec/Penn Power/West Penn St. 3, p. 12.

25. If the Companies' long-term solar procurement is not fully subscribed, the Companies will develop and file an RFP with the Commission to procure SPAECs for a five-year period in an amount designed to satisfy up to an estimated 32% of the solar AEPS requirements for the Companies' residential default service load. If the RFP is undersubscribed, the Companies will go to the spot market to procure the SPAEC shortfall. Energy will not be procured in the contingency plan. Joint Petition, ¶ 39; Met-Ed/Penelec/Penn Power/West Penn St. 3, pp. 10-11.

B. Rate Design and Cost Recovery

1. Price To Compare and Hourly Pricing Default Service Rate Riders

26. Under the Settlement, the Companies will continue to recover the cost of default service for the residential and commercial classes through their Price to Compare Default Service Rate Riders ("PTC Riders") consistent with the PTC Riders approved by the Commission in the DSP V proceeding. Default service rates established pursuant to the PTC Riders will consist of a single per-kWh energy charge, which will change semi-annually instead of quarterly. These rates will continue to recover: (1) generation costs, transmission costs (excluding NMB charges),[8] and ancillary service costs; (2) supply management and

[8] The transmission requirements exclude Regional Transmission Expansion Plan ("RTEP") charges, Expansion Cost Recovery Charges; Reliability Must Run/generation deactivation charges associated with generating plans

administrative costs, as provided in 52 Pa. Code § 69.1808; and (3) applicable taxes. *See* Joint Petition, ¶ 43 and Exs. D-1 to D-4; Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 4-10; Met-Ed/Penelec/Penn Power/West Penn Sts. 4, pp. 15-19, and 4R, pp. 2-5.

27. The Companies will continue to use their Hourly Pricing ("HP") Default Service Rate Riders ("HP Riders") approved by the Commission in the DSP V proceeding to recover the cost of default service for industrial class customers. Default service rates established pursuant to the HP Riders will continue to be based upon the PJM hourly locational marginal price ("LMP") for each Company's respective PJM-designated transmission zone plus associated costs, such as capacity, ancillary services, PJM administrative expenses and costs to comply with AEPS requirements that are incurred to provide hourly pricing default service. Joint Petition, ¶ 45 and Exs. D-1 to D-4; Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 4-10.

28. In addition, the Companies will reconcile default service revenues and costs under the PTC and HP Riders on a semi-annual, instead of a quarterly, basis. Joint Petition, ¶¶ 43, 45.

29. Billing cycle lag results in a timing difference between revenue and expense that can produce significant fluctuations in the PTC that are not directly related to the underlying cost of default service supply. By using a semi-annual rather than a quarterly reconciliation schedule, fluctuations in default service prices will be smoothed out and result in clearer price signals for both customers and EGSs. Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 6-7; Met-Ed/Penelec/Penn Power/West Penn Ex. PML-2.

for which specific RMR charges begin after July 24, 2014; historical out-of-market tie line, generation, and retail customer meter adjustments; unaccounted for energy; or any Federal Energy Regulatory Commission ("FERC") approved reallocation of PJM RTEP charges related to Docket No. EL05-121-009 (collectively, referred to as "non-market based charges" or "NMB charges").

30. In addition, moving to semi-annual rate adjustments under the Companies' PTC Riders appropriately balances the responsiveness of the PTC to current market conditions and provides price stability benefits for customers. Met-Ed/Penelec/Penn Power/West Penn Sts. 4, pp. 15-19, and 4R, pp. 2-5; *see also* Met-Ed/Penelec/Penn Power/West Penn Ex. PML-1.

31. Sunrise argued that the Companies are improperly excluding certain AEPS Act compliance costs from their PTC and HP Riders, including "indirect" costs associated with Company personnel spending time processing interconnection and net metering applications. *See* Second Direct Testimony of David N. Hommrich on behalf of Sunrise, p. 16; Direct Testimony of David N. Hommrich on behalf of Sunrise, p. 13.

32. The record evidence demonstrates the Companies' PTC and HP Riders are generally designed to recover Section 3 compliance costs, including the types of costs specified in the Commission's regulations at 52 Pa. Code § 75.67(a). *See* Met-Ed/Penelec/Penn Power/West Penn St. 5R Supplemental, pp. 3-4; Met-Ed/Penelec/Penn Power/West Penn St. 2, pp. 17-23.

33. The record evidence demonstrates that the Companies' PTC and HP Riders appropriately exclude the costs of interconnecting distributed generation to the Companies' distribution systems. The Companies' costs related to interconnection of customer-owned small generation facilities to their distribution systems (net of interconnection application fees) are recovered through contributions in aid of construction and distribution base rates. System planning and connections of any kind are a well-established distribution function, and socializing the fees charged to distributed generation interconnection applicants among all default service customers, as Sunrise apparently would prefer, is not consistent with long-standing cost-of-service principles. Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, pp. 4-5; Met-

Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 17-18; *see also* Met-Ed/Penelec/Penn Power/West Penn St. 5R, pp. 2-9.

34. Sunrise witness Hommrich proposed to disaggregate AEPS compliance costs included in current generation supply costs in the Companies' PTC and HP Riders and recover those costs in a new variable that is not grossed up for loss factors to address energy losses inherent in the transmission and distribution of energy to customers, alleging that those loss factors provide a "windfall" to the Companies. In addition, Mr. Hommrich argued that the Companies are improperly applying a gross receipts tax ("GRT") factor to compliance costs recovered through default service rates. Second Direct Testimony of David N. Hommrich on behalf of Sunrise, pp. 11, 13; Rebuttal Testimony of David N. Hommrich on behalf of Sunrise, pp. 11-14.

35. While AECs do not suffer line losses, the wholesale default supply contract prices that form the basis of the retail charges recovered through the PTC and HP Riders established in Commission-approved default service procurements are not broken out by the different costs of the many components of default supply, and those prices reflect losses for which the supplier is responsible. By applying loss factors to the costs of wholesale default service, the Companies are simply treating the AEPS compliance costs embedded in wholesale contract prices in a manner consistent with all the other components of default service. Moreover, if the Companies failed to apply loss factors, the result would result in underpayments to suppliers, which would necessarily have to be recovered from customers through reconciliation. Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, pp. 5-7 and Ex. PML-35; Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 3-4; Tr. 81; *see also* Joint Petition, Ex. C.

36. The record evidence shows that the Companies' loss factors are appropriate based on the actual difference between the aggregate zonal load (the amount of energy consumed by a Company's entire zone administered by PJM) and the retail load "grossed up" for losses based on the Company's load factors. The difference – known as "unaccounted for energy," or UFE – varies between 1.68% and -1.55 is reasonable when considering the factors that impact UFE, such as broken meters and installation of batteries. Tr. 80-81; Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 15-16.

37. The record evidence demonstrates that the Companies must pay GRT on all default service sales at a rate of 5.9%, and therefore Mr. Hommrich's proposal to exclude AEPS costs from the GRT costs in the PTC would preclude the Companies from recovering approximately $6 out of every $100 of AEPS compliance costs associated with default service supply, resulting in customers paying for those undercollections with interest in a future reconciliation period. Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, pp. 7-8.

38. The Commission reviews the Companies' default service rate calculations when they are filed each quarter, as well as the annual reconciliation statement for the PTC and HP Riders. The Companies' default service rates are also subject to annual review and audit by the Commission. Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, pp. 4, 6.

2. Default Service Support Rider

39. Each Company's tariff will include a DSS Rider that imposes non-bypassable charges to recover the same categories of costs approved by the Commission in the DSP V proceeding, with the elimination of the non-utility generation ("NUG") cost component of Met-Ed and Penelec's DSS Riders. Joint Petition, ¶¶ 47, 49 and Exs. D-1 to D-4; Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 10-11.

40. The Companies' DSS Riders will continue to recover four categories of costs: (1) the uncollectible accounts expense incurred through the provision of default service and on behalf of EGSs through the purchase of receivables programs for residential and small commercial customers; (2) retail enhancement costs for the CRPs; (3) customer education costs; (4) NMB charges; and (5) clawback charge credit. Penn Power's DSS Rider may also recover any FERC-approved Midcontinent Independent System Operator ("MISO") Transmission Expansion Plan costs, PJM integration fees, and MISO exit fees associated with Penn Power's move from MISO to PJM. Joint Petition, ¶ 48; Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 10-11.

3. Solar Photovoltaic Requirements Charge Rider

41. To recover the costs associated with legacy solar contracts that expire in 2024, Met-Ed, Penelec and Penn Power will continue to use the non-bypassable Solar Photovoltaic Requirements Charge Riders approved by the Commission in the Companies' DSP V proceeding. Joint Petition, ¶ 50; Met-Ed/Penelec/Penn Power/West Penn St. 5, p. 12.

42. Following the completion of the current long-term solar procurement contracts for Met-Ed, Penelec and Penn Power, all costs related to the procurement of solar energy and/or SPAECs will be recovered through the Companies' PTC Riders. Joint Petition, ¶ 51 and Exs. D-2 to D-4; Met-Ed/Penelec/Penn Power/West Penn St. 5R, pp. 8-9.

4. Time-of-Use Default Service Rate Options

a. Background and Objectives Underlying the Companies' TOU Riders

43. Based on the statutory requirements set forth in the Conclusions of Law, *infra*, the Companies currently offer TOU rate options to residential default service customers through

their Commission-approved Time-of-Use Default Service Riders ("TOU Riders" or "Rider K").[9] Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 13-14.

44. Since the Commission's initial approval of Rider K for each Company, the scope of an EDC's statutory obligation to offer TOU rates to default service customers was the subject of litigation before the Commission and Commonwealth Court.[10] Following this litigation, the Commission proposed a new TOU structure for PPL to satisfy Act 129 requirements.[11] The Commission noted that the proposed TOU design for PPL "may provide future guidance to all EDCs" for incorporation into their own TOU proposals in their individual default service proceedings.[12] *Id.*

45. In the DSP VI Petition, the Companies proposed new TOU rate options for residential and small commercial default service customers consistent with Commission guidance on EDC TOU rate design to satisfy Act 129 requirements. As originally proposed, the Companies' TOU Riders under the Settlement reflect a balance of the following objectives: (1) simplicity; (2) cost-causation principles to connect the TOU pricing structure to wholesale markets and each Company's standard, non-time varying PTC Rider; and (3) incentives for

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9 *See Joint Petition of Metro. Edison Co., Pa. Elec. Co. Pa. Power Co., and West Penn Power Co. for Approval of their Default Serv. Programs*, Docket Nos. P-2011-2273650 et al. (Opinion and Order entered Feb. 15, 2013); *Pa. P.U.C. v. Metro. Edison Co.*, Docket No. R-2014-2428745 (Recommended Decision dated Mar. 9, 2015 ("Met-Ed Recommended Decision"), pp. 21, 29; *Pa. P.U.C. v. Pennsylvania Elec. Co.*, Docket No. R-2014-2428743 (Recommended Decision dated Mar. 9, 2015) ("Penelec Recommended Decision") at 22, 29-30. The Commission adopted and approved the Met-Ed Recommended Decision and Penelec Recommended Decision by an Opinion and Order entered on April 9, 2015 at Docket No. R-2014-2428745 and Docket No. R-2014-2428743, respectively.

10 *See Petition of PPL Elec. Utils. Corp. for Approval of a New Pilot Time-of-Use Program*, Docket No. P-2013-2389572 (Order entered Sept. 11, 2014) (holding that Act 129 did not require PPL Electric Utilities Corp. ("PPL") to offer TOU rates directly to customer-generators); *Dauphin Cty. Indus. Dev. Auth. v. Pa. P.U.C.*, 123 A.3d 1124, 1136 (Pa. Cmwlth. 2015) ("*DCIDA*") (holding that Act 129 does not authorize default service providers to delegate the obligation to offer TOU rates to customers with smart meters to EGSs).

11 *Petition of PPL Elec. Utils. Corp. for Approval of a New Pilot Time-of-Use Program*, Docket Nos. P-2013-2389572 and M-2016-2578051 (Secretarial Letter issued Apr. 6, 2017) ("April 2017 Secretarial Letter").

12 *Id.* at 4.

customer electric vehicle ("EV") adoption as envisioned by the Commission in its investigation of potential opportunities to better reflect wholesale cost causation into default service.[13] Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 14-15.

b. Customer Eligibility

46. The April 2017 Secretarial Letter (p. 3) provides that EDC TOU rates should be available to all default service customers who are not eligible for "spot only" default service and should incorporate existing consumer protections for CAP customers. In accordance with the Commission's guidance, as originally proposed, the Companies' TOU Riders under the Settlement will be available to non-CAP residential and commercial default service customers with smart meters. The Settlement adopts the Companies' original proposal to exclude CAP customers from the residential TOU Rider to avoid potential adverse impacts on CAP benefits. *See* Joint Petition, ¶¶ 59-61; Met-Ed/Penelec/Penn Power/West Penn Sts. 5, pp. 15-16, & 5R, p. 14.

47. In addition, the Commission recommended that EDCs offer all customers eligible for the TOU Rates "generation-weighted net metering".[14] Consistent with that guideline, customer-generators will be eligible for the TOU Riders under the Settlement. Joint Petition, ¶ 60; Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 17, 21.

48. The Settlement also includes restrictions on re-enrollment if a customer leaves the TOU Rider for any reason. This provision is designed to reduce "free riders" who enroll in a TOU rate only for times of the year when they do not have to shift usage to save money. Joint Petition, ¶ 62; Met-Ed/Penelec/Penn Power/West Penn St. 5, p. 16.

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[13] *See Investigation into Default Serv. and PJM Interconnection, LLC Settlement Reforms,* Docket No. M-2019-3007101 (Secretarial Letter issued Jan. 23, 2020) ("January 2020 Secretarial Letter"), p. 7.

[14] April 2017 Secretarial Letter, p. 4.

c. TOU Product Structure and Rate Design

49. The Settlement further adopts the Companies' original proposed TOU rate design with one revision – to review the TOU price multipliers periodically based on updated PJM market pricing data – as recommended by the OCA. *See* Joint Petition, ¶¶ 54-58.

50. The time-differentiated usage periods delineated in Paragraph No. 54 of the Joint Petition reasonably encompass the Companies' expected system peak usage times and account for the need for simplicity to provide eligible customers with a reasonable opportunity to shift usage to lower-priced (off-peak) hours. Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 16-17; Met-Ed/Penelec/Penn Power/West Penn Ex. PML-22.

51. Consistent with the January 2020 Secretarial Letter (p. 7), the Companies also designed their proposed TOU Riders in the context of EV expansion in the Commonwealth. Specifically, the Companies' proposed TOU rate design includes a super off-peak pricing period from 11 p.m. to 6 a.m. to provide cost savings opportunities to customers who charge their EVs during overnight, low-priced energy hours. Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 15, 17-18.

52. In addition, the Settlement adopts the Companies' original proposed TOU pricing multipliers to establish a rate premium above the applicable Company's standard, fixed-price PTC Rider rate for usage during the on-peak period and rate discounts from this baseline price for usage during the off-peak and super-off peak periods. These multipliers reflect the ratios calculated from average PJM spot market prices (allocating the cost of capacity to on-peak hours only) and create material price differentials designed to motivate customers to shift usage from

peak to off-peak periods consistent with the Commission's guidance.[15] *See* Joint Petition, ¶¶ 55-56; Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 18-19, and Exs. PML-23 to PML-26.

53. Under the Settlement, the Companies will source both the standard and TOU default service for residential and commercial customers from the same supply portfolio for each procurement class. The Companies will calculate the TOU rates on a semi-annual basis, synchronized with the PTC Rider adjustment periods. Joint Petition, ¶ 57-58 and Exs. D-1 to D-4; Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 19-20.

54. TOU customer kWh sales and costs will be included in the semi-annual reconciliation of the over/undercollection component of the GSA for the entire procurement class (i.e., residential or commercial). This reconciliation process, using a single E-Factor for each procurement class, will help mitigate potential large swings in PTC Rider over/undercollections that could arise if customers switch between the Companies' standard PTC Rider rate and the TOU rate. Joint Petition, ¶ 58; Met-Ed/Penelec/Penn Power/West Penn St. 5, p. 20.

d. Implementation Plan and Cost Recovery

55. As originally proposed, the Companies' will provide communications to notify existing TOU customers about the changes to the Companies' TOU Riders that will take effect on June 1, 2023, and educational materials regarding TOU rates, including tips on how customers can shift their electricity usage. Met-Ed/Penelec/Penn Power/West Penn St. 5, p. 21.

56. Under the Settlement, the Companies will incorporate specific disclosures recommended by CAUSE-PA in all TOU outreach and educational materials. *See* Joint Petition, ¶ 64.

[15] April 2017 Secretarial Letter, 3.

57. The Settlement also provides stakeholders (including interested EGSs) with the opportunity to review and provide feedback before those materials are finalized. *See* Joint Petition, ¶ 63.

58. The Companies will recover the costs to implement their revised TOU Riders from residential and commercial default service customers through their PTC Riders. Joint Petition, ¶ 65; Met-Ed/Penelec/Penn Power/West Penn St. 5, p. 20.

C. Customer Referral Program

59. The Companies' current CRP has evolved over the course of nearly a decade in four default service proceedings and is consistent with the parameters approved by the Commission in those cases. Met-Ed/Penelec/Penn Power/West Penn Sts. 1, pp. 11-12, and 1R, pp. 4-6.

60. The Companies' currently effective CRPs, including the cost recovery mechanisms last approved by the Commission in the DSP V Orders, will continue until May 31, 2027. Joint Petition, ¶¶ 69, 74 and Ex. F.

61. Effective June 1, 2013, the Companies will allow customers to enroll in the program through their websites as recommended by RESA/NRG and Shipley, with recovery of the costs associated with system changes necessary to implement web enrollments through their DSS Riders. *Id.* at ¶¶ 70-73, 75-76.

62. In addition, to address the OCA's and CAUSE-PA's concerns regarding the prices that CRP customers pay for competitive generation service, the Companies will convene a collaborative to explore the compilation of metrics related to the Companies' CRPs. *Id.* at ¶ 77-79.

D. Purchase of Receivables ("POR") Clawback Provision

63. Consistent with the September 2018 Order, the Companies extended the pilot for the POR clawback charge for the four-year period beginning with the 12 months ended August 31, 2018 and continuing annually through August 31, 2021. In addition, as required by the September 2018 Order, the Companies developed and now distribute an EGS-specific customer arrears report with unpaid aged account balances for EGSs participating in the Companies' POR programs. *See* Met-Ed/Penelec/Penn Power/West Penn St. 1, pp. 6-7.

64. As of June 1, 2023, the clawback charge will no longer be a pilot provision of the Companies' POR programs set forth in their Electric Generation Supplier Coordination Tariffs ("Supplier Tariffs"). Joint Petition, ¶ 80 and Exs. E-1 to E-4.

65. The Companies will continue to use a two-prong test to determine the clawback charge. The first will identify those EGSs whose average percentage of write-offs as a percentage of revenues over the twelve-month period ending August 31 each year exceeds 200% of the average percentage of total EGS write-offs as a percentage of revenues per operating company. The second prong of the test will identify, of those EGSs identified in the first test, EGSs whose average price charged over the same twelve-month period exceeds 150% of the average price-to-compare for the period. For those EGSs identified by both prongs of the test, the annual clawback charge assessed each September would be the difference between that EGS's actual write-offs and 200% of the average percentage of write-offs per operating company. Joint Petition, ¶ 81.

66. The record evidence in this case demonstrates that the clawback charge has been effective in achieving the Companies' goal of reducing the uncollectible accounts expense that would otherwise have to be collected from the Companies' customers through retail rates.

Continuing the clawback provision provides a reasonable approach to manage uncollectible accounts expense associated with the Companies' POR programs while avoiding creation of a subsidy for EGSs with disproportionally higher write-offs than their peers. Met-Ed/Penelec/Penn Power/West Penn Sts. 1, pp. 13-16, 1R, pp. 11-13, and Ex. JMS-3.

E. CAP Customer Shopping

67. In the DSP VI Petition, the Companies proposed to continue the rules and procedures for CAP customer shopping adopted by the Commission in the DSP V Orders where CAP customers may only enter a contract with an EGS for a rate that is at or below the applicable Company's PTC and does not contain any early termination, cancellation, or other fees. However, under those rules, customers that enter CAP with pre-existing, fixed-duration EGS contracts at prices above the PTC are permitted to remain with that supplier until the end of the contract term (or, in the case of pre-existing month-to-month contracts, for 120 days from CAP enrollment). Met-Ed/Penelec/Penn Power/West Penn Sts. 1, pp. 7, 17-18, and 1R, pp. 14-15.

68. Under the Settlement, effective June 1, 2023, CAP customers in the Companies' service areas will receive default service at the applicable PTC as recommended by the OCA and CAUSE-PA to address their concerns about enforcing the CAP rate protections for the subset of customers that may become eligible for CAP while they remain on an existing EGS contract. Joint Petition, ¶¶ 82-85, 87-88.

69. The Companies will also establish a new Supplier Tariff rule to ensure that low-income customers with pre-existing EGS contracts will be able to access CAP without facing fees as recommended by CAUSE-PA. *Id.*, ¶ 86 and Exs. E-1 to E-4.

F. Third Party Data Access Tariff

70. The DSP VI Petition included Third-Party Data Access Tariffs that would establish a registration process for a non-EGS entity seeking electronic access to customer data maintained by the Companies and impose continuing obligations for registered third parties to ensure the confidentiality of customer data. Met-Ed/Penelec/Penn Power/West Penn St. 6, pp. 5-9, St. 6R, pp. 3-5, and Exs. TLC-1 to TLC-4.

71. The Settlement limits third-party data access to Conservation Service Providers registered with the Commission or Curtailment Service Providers that are PJM members and identified on PJM's list of demand response providers and resolves all other issues related to the Third-Party Data Access Tariff. *See* Joint Petition, ¶¶80-90, and Exs. G-1 to G-4.

72. In addition, to address concerns raised by several parties regarding confidentiality and security of customer data, under the Settlement, the Companies agreed to conduct randomized semi-annual audits of the participants under their new Third-Party Data Access Tariffs to ensure that customer authorization is properly obtained by third parties when seeking access to customer data. *Id.* at ¶ 91.

73. Finally, the Companies will incorporate any best practices into their Third-Party Data Access Tariffs emerging from the Commission's investigation of third-party access to customer data electronically from EDC data systems at Docket No. M-2021-3029018.[16] Joint Petition, ¶¶ 89, 92-93; *see also* Met-Ed/Penelec/Penn Power/West Penn St. 6R, p. 6.

[16] *Investigation into Conservation Serv. Provider and Other Third-Party Access to Elec. Distribution Co. Customer Data*, Docket No. M-2021-3029018 (Secretarial Letter issued Feb. 8, 2022); *see also License Application of Enerwise Glob. Techs., LLC d/b/a CPower for Approval to Offer, Render, Furnish, or Supply Elec. or Elec. Generation Servs.*, Docket No. A-2019-3009271 (Final Order entered Oct. 7, 2021).

PROPOSED CONCLUSIONS OF LAW

I. BURDEN OF PROOF

1. The party seeking a rule or order from the Commission has the burden of proof in that proceeding. 66 Pa.C.S. § 332(a).

2. A party's burden of proof is met by establishing a preponderance of the evidence, which requires proof by a greater weight of the evidence. *See Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990).

3. When a utility has made a proposal and presented evidence sufficient to establish a prima facie case, the burden shifts to an opposing party to present "some evidence" to support an alternative approach. *NRG Energy, Inc. v. Pa. P.U.C.*, 2020 WL 2843488 (June 2, 2020) at *10.

II. STANDARDS APPLICABLE TO DEFAULT SERVICE

A. Default Service Supply Procurement and Implementation Plan

4. As a Pennsylvania EDC, each Company serves as default service provider to retail electric customers within its service territory in accordance with its obligations under Section 2807(e) of the Code (66 Pa.C.S. § 2807(e)).

5. Under Sections 2807(e) (3.1)-(3.2) and (3.4) of the Competition Act, the Companies are required to obtain, through competitive procurement processes, a "prudent mix" of default service supply contracts designed to ensure "adequate and reliable service" at the "least cost to customers over time." 66 Pa.C.S. § 2807(e)(3.7).

6. The Companies' Programs, as modified by the Settlement, contain all the elements required by the Commission's default service regulations (52 Pa. Code §§ 54.181-54.190) and its Policy Statement on Default Service (52 Pa. Code §§ 69.1801-69.1817),

including a procurement plan, an implementation plan, contingency plans, a default service rate design plan, and associated tariff pages.

7. The Companies' Programs, as modified by the Settlement and approved herein, comply with 66. Pa.C.S. § 2807(e)(3.7) in that: (1) they include prudent steps necessary to negotiate favorable generation supply contracts; (2) they include prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis; and (3) neither the Companies nor their affiliated interests have withheld from the market any generation supply in a manner that violates Federal law.

8. The Companies' Programs, as modified by the Settlement, comply with 66. Pa.C.S. § 2807(e) (3.7) in that they include a prudent mix of default service supply contracts designed to ensure adequate and reliable service at the least cost to customers over time.

9. The Companies' treatment of excess energy from net-metered customer-generators is not relevant to the default service supply plans being addressed in this proceeding.

B. <u>Compliance with Section 3 of the AEPS Act</u>

10. Section 3 of the AEPS Act requires default service providers like the Companies to obtain specified percentages of electricity sold to retail customers from alternative energy sources as measured by AECs and defined by the AEPS Act. The AEPS Act also includes a "set-aside" that requires some of those AECs to be derived from solar photovoltaic facilities. 73 P.S. § 1648.3(b)(2).

11. Under Act 40 of 2017 ("Act 40"), 71 P.S. § 714, the Companies must meet their future solar AEPS requirements using SPAECs generated from solar energy facilities in the Commonwealth of Pennsylvania.

12. The Companies' DSP VI Programs set forth in the Settlement utilize a competitive process to procure the AECs necessary to satisfy Section 3 AEPS obligations associated with default service load consistent with the Public Utility Code (66 Pa.C.S. § 2807(e)(3.5)), Act 40 and the Commission's regulations at 52 Pa. Code § 75.67(b).

C. Other AEPS Obligations

13. Section 5 of the AEPS Act, 73 P.S. § 1648.5, establishes separate requirements related to net-metered customer-generators. In addition to requiring the Commission to develop technical and net-metering interconnection rules, Section 5 mandates that excess energy from net-metered customer-generators "receive full retail value for all energy produced on an annual basis." 73 P.S. § 1648.5.

14. The Commission's regulations require EDCs to file a tariff that provides for net metering as well as a tariff providing net metering protocols that enables EGSs to offer net metering to customer-generators taking service from EGSs. Those regulations further detail how net metered customer-generators should be credited for excess kWhs. 52 Pa. Code § 75.13(c)-(f).

15. The record evidence demonstrates that the Companies' treatment of excess energy from net-metered customer-generators is wholly unrelated to how default service supply is procured or deployed to satisfy default service load.

D. Rate Design and Cost Recovery

16. The Companies' proposed rate design, including the PTC Riders, HP Riders, DSS Riders, SPVRC Riders and TOU Riders, are consistent with the applicable provisions of the Public Utility Code (66 Pa.C.S. §§ 2804(3) and 2807(e)(7)), the Commission's default service

regulations (52 Pa. Code §§ 54.185(e)(3) and 54.187) and Policy Statement on Default Service (52 Pa. Code §§ 69.1808-69.1810).

17. Section 3 of the AEPS Act details obligations associated with default service supply that are separate from obligations in other sections of the Act. The recovery of costs related to Section 3 compliance activities is addressed in the AEPS Act as follows:

> "After the cost-recovery period, any direct or indirect costs for the purchase by electric distribution 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."[17]

18. The Commission's regulations further address cost recovery for AEPS Act obligations associated with default service supply. Specifically, those regulations (52 Pa. Code § 75.67(a)) provide that a default service provider may recover the following AEPS Act compliance costs from default service customers:

> (1) The costs of electricity generated by an alternative energy system, purchased by a default service provider, and delivered to default service customers for purposes of compliance with § 75.61 (relating to EDC and EGS obligations).
>
> (2) The costs of alternative energy credits purchased and used within the same reporting period for purposes of compliance with § 75.61.
>
> (3) The costs of alternative energy credits purchased in one reporting period and banked for use in later reporting periods,

[17] 73 P.S. § 1643.3(a)(3)(emphasis added).

consistent with § 75.69 (relating to banking of alternative energy credits).

(4) The costs of alternative energy credits purchased in the true-up period to satisfy compliance obligations for the most recently concluded reporting period, consistent with § 75.61(e).

(5) Payments to the alternative energy credits program administrator for its costs of administering an alternative energy credits program, consistent with § 75.64 (relating to alternative energy credit program administrator).

(6) Payments to a third party for its costs in operating an alternative energy credits registry, consistent with § 75.70 (relating to the alternative energy credit registry).

(7) The costs levied by a regional transmission organization to ensure that alternative energy sources are reliable.

(8) The costs of alternative compliance payments made under § 75.66 (relating to force majeure).

19. The record evidence demonstrates that the Companies are appropriately accounting for and recovering AEPS compliance costs.

20. The Companies are entitled to full and current recovery of all default service costs. *See* 66 Pa.C.S. § 2807(e)(3.9); 52 Pa. Code § 54.187.

21. Under the Public Utility Code, the electric generation service the Companies are required to purchase and provide in their role as default service providers includes both energy and AECs. 66 Pa. Code § 2807(e)(3.5).

22. Consideration of loss factors in default service procurement and rate design plans is well-recognized by the Commission, which requires the provision of loss factors to wholesale default service suppliers under default service implementation plans. 52 Pa. Code § 54.186(c)(1)(e).

23. The Companies must pay GRT on all sales of energy, and the Commission's Policy Statement on Default Service expressly provides that the PTC should include the costs of AEPS compliance and applicable taxes. 72 Pa. Stat. § 8101(b), (b)(1); 52 Pa. Code § 69.1808(a)(5).

24. The record evidence does not support a finding that Sunrise has established a valid basis to change the rate calculation formulas employed in the Companies' PTC and HP Riders.

25. In addition to procurement of a "prudent mix" of default service supply contracts at the "least cost to customers over time,"[18] Act 129 provides that EDCs "shall offer" a TOU rate option to all default service customers with a smart meter. 66 Pa.C.S. § 2807(f)(5).

26. As the Commission has recognized, Act 129 makes clear that an EDC's TOU program should be optional for default service customers. *See* January 2020 Secretarial Letter, p. 6; 66 Pa.C.S. § 2807(f)(5) ("[r]esidential or commercial customers *may* elect to participate in time-of-use rates or real-time pricing" (emphasis added)).

27. The Commission has previously authorized other EDCs to recover TOU over/undercollection amounts from all default service customers based on its finding that the TOU rates mandated by Act 129 are a "form of default service". *See Pa. P.U.C. v. PPL Elec. Utils. Corp.*, Docket No. R-2011-2264771 (Opinion and Order entered Aug. 30, 2012), pp. 22-23.

[18] 66 Pa.C.S. §§ 2807(e)(3.1)-(3.2), (3.4) and (3.7).

28. The record evidence in this case supports a finding that the TOU rates set forth in the Settlement satisfy Act 129 requirements, incorporate the Commission's recommended guidelines on TOU rate design, and balance a variety of important objectives.

E. Customer Referral Program

29. The CRP was first established in the Companies' second default service proceeding, consistent with the Commission's guidelines in its Retail Markets Investigation. *See Investigation of Pa.'s Retail Elec. Mkt.: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered Mar. 2, 2012), p. 31; *Joint Petition of Metro. Edison Co., Pa. Elec. Co., Pa, Power Co. and West Penn Power Co. for Approval of Their Default Serv. Programs*, Docket Nos. P-2011-2273650 et al. (Opinion and Order entered Aug. 16, 2021), pp. 137-140, 144-146.

30. In the DSP V Orders, the Commission concluded that continuation of the CRP with the script improvements set forth in the February 2019 Order was in the public interest and "the easiest and safest way for a consumer to shop." February 2019 Order, pp. 38-42; *see also* September 2018 Order, pp. 31-32.

31. The Companies' Programs, as amended by the Settlement, continue the CRP until May 31, 2027 consistent with the Commission's guidance in its Retail Market Investigation and the Companies prior default service proceedings.

F. Legal Standards Regarding Settlements

32. In order to approve a settlement, the Commission must determine that the proposed terms and conditions, viewed in the context of the settlement as a whole, are in the public interest. *See Pa. P.U.C. v. CS Water & Sewer Ass'n*, 74 Pa. P.U.C. 767, 771 (1991); *Pa. P.U.C. v. Phila. Elec. Co.*, 60 Pa. P.U.C. 1, 22 (1985).

33. The Commission's policy and precedent embodied in its regulation at 52 Pa. Code § 5.231 and its Policy Statement on Settlements at 52 Pa. Code § 69.401 encourage parties to resolve contested proceedings by settlement.

34. In its Policy Statement, the Commission stated that "the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate *are often preferable to those achieved at the conclusion of a fully litigated proceeding*" (emphasis added).

35. *Pa. P.U.C. v. PECO Energy Co.*, Docket No. R-2010-2161575 (Recommended Decision issued November 2, 2010), p. 12, which was approved and adopted by the Commission in its Final Order entered December 21, 2010, summarized the benefits of resolving contested cases by settlement:

> Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative hearing resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401. Rate cases are expensive to litigate and the cost of such litigation at a reasonable level is an operating expense recovered in the rates approved by the Commission. This means that a settlement, which allows the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yields significant expense savings for the company's customers. That is one reason why settlements are encouraged by long-standing Commission policy.

36. The terms and conditions of the Joint Petition satisfy all of the Commission's criteria for approval of a settlement.

37. The record evidence in this case supports a finding that the CAP shopping rules, POR clawback charge and Third-Party Data Access Tariffs set forth in the Settlement are in the public interest.

PROPOSED ORDERING PARAGRAPHS

1. The Joint Petition is granted and the Settlement is approved, without modification.

2. Sunrise's proposed modifications to the Companies' PTC and HP Riders are denied.

3. Sunrise's claims regarding the Companies' treatment of excess energy from net-metered customer-generators are dismissed.

4. CRA is approved to continue as the independent third-party evaluator for the Companies' default service auctions.

5. Brattle is approved as the independent third-party evaluator for the Companies' long-term solar procurement.

6. The Companies' request for a waiver of the Commission's regulations at 52 Pa. Code § and 54.182 and 54.187 is granted to the extent that is necessary to permit the Companies' to: (1) continue to procure generation for three procurement classes; (2) implement semi-annual rate adjustments and reconciliation for commercial customers under the PTC Rider and semi-annual reconciliation of HP Rider over/under collections for the industrial class; and (3) continue to recover the NMB charges through the non-bypassable DSS Riders rather than the PTC Riders.

7. The Companies' currently effective Customer Referral Programs, including the associated cost recovery mechanisms approved in the Companies' prior default service

proceedings, is permitted to continue, subject to the applicable provisions set forth in the Settlement.

8. The proposed default service programs for the period June 1, 2023 through May 31, 2027 is approved, except as set forth in the ordering paragraphs above.

9. The Companies shall file tariff supplements as set forth in the Joint Petition.

10. This proceeding shall be marked closed.

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