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May 6, 2022

VIA ELECTRONIC FILING

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, P-2021-3030021

Dear Secretary Chiavetta:

Enclosed for filing on behalf of Enerwise Global Technologies, LLC d/b/a CPower Energy Management please find its Statement in Support of Joint Petition for Partial Settlement in the above-captioned matter.

This letter will also confirm that Enerwise Global Technologies, LLC d/b/a CPower Energy Management will not be filing a Main Brief in this matter.

Copies of this filing have been served in accordance with the enclosed Certificate of Service.

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

Respectfully submitted,

STEVENS & LEE



Michael A. Gruin

Enclosure

cc: Administrative Law Judge Jeffrey A. Watson (via Email)
Certificate of Service

Allentown • Bergen County • Bala Cynwyd • Cleveland • Fort Lauderdale • Harrisburg • Lancaster • New York
Philadelphia • Princeton • Reading • Rochester • Scranton • Valley Forge • Wilkes-Barre • Wilmington
A PROFESSIONAL CORPORATION

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition Of Metropolitan Edison Company,	:	P-2021-3030012
Pennsylvania Electric Company, Pennsylvania	:	P-2021-3030013
Power Company And West Penn Power Company	:	P-2021-3030014
For Approval Of Their Default Service Programs	:	P-2021-3030021
	:	

CERTIFICATE OF SERVICE

I hereby certify that on this 6th day of May 2022, a copy of the foregoing filing has been served, via electronic mail, upon the persons listed below, in accordance with the Requirements of 52 Pa. Code § 1.54:

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Michael A. Gruin

DATED: May 6, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ENERWISE GLOBAL TECHNOLOGIES, LLC
d/b/a CPOWER ENERGY MANAGEMENT
STATEMENT IN SUPPORT OF JOINT PETITION FOR PARTIAL SETTLEMENT**

Enerwise Global Technologies, LLC d/b/a CPower Energy Management (“CPower”), by counsel, submits this Statement in Support of the Joint Petition for Partial Settlement (“Settlement”) in the above-captioned proceeding. CPower supports the provisions in Section J of the Settlement related to the Third Party Data Access Tariff, but takes no position on the other provisions in the Settlement. CPower requests that the Pennsylvania Public Utility Commission (“PUC” or “Commission”) approve Section J of the Settlement without modification.

I. INTRODUCTION

CPower is an aggregator of distributed energy resources in Pennsylvania and elsewhere throughout the United States. CPower serves as a curtailment service provider in the PJM Interconnection (“PJM”) wholesale market and, as such, manages the participation of customers’ demand response and energy efficiency resources in PJM. In addition, CPower is a Conservation Service Provider under Pennsylvania Act 129 and has contracted with several Pennsylvania electric distribution companies to provide energy efficiency and demand response services under Act 129 programs.

CPower intervened in this proceeding to support the FirstEnergy Companies' ("FirstEnergy") proposed new Third Party Data Access Tariff and to explain why, as a third-party provider of customer energy management services, the new tariff is important. CPower submitted direct and rebuttal testimony addressing FirstEnergy's proposed Third Party Data Access Tariff. CPower's testimony was entered into the record on April 13, 2022.¹

In its direct testimony, CPower suggested two changes to the proposed tariff. First, CPower suggested deleting the first sentence in proposed section 2.2.4, which read "A Third Party is not an agent of the Customer."² CPower suggested this change to avoid confusion as "[i]n proposed section 2.2.1, the tariff states that the third party must be authorized by the customer to obtain data. In a sense, the third party is acting as an agent of the customer for the purpose of retrieving data. The stand-alone declarative first sentence in 2.2.4 is therefore confusing and can be deleted without changing the intended meaning of the tariff."³ FirstEnergy agreed with this revision to the tariff and removed this sentence from the current version of the tariff.⁴

CPower's second change would have increased the length of time third parties can access data from the proposed twelve months to twenty-four months.⁵ CPower witness Kenneth Schisler testified that, "access to only twelve months will not be sufficient for PJM demand response capacity registrations."⁶ Twelve months is insufficient because "PJM changed its market rules a few years ago to create discrete summer and winter peak load contribution ('PLC') values and

¹ Specifically, CPower entered the following testimony into the record: Enerwise Global Technologies, LLC d/b/a CPower Energy Management Statement No. 1, the Direct Testimony of Kenneth Schisler; and Enerwise Global Technologies, LLC d/b/a CPower Energy Management Statement No. 1-R, the Rebuttal Testimony of Kenneth Schisler.

² CPower Statement No. 1 at 6:4-6.

³ CPower Statement No. 1 at 6:8-14.

⁴ See Met-Ed/Penelec/Penn Power/West Penn Statement No. 6R at 6:16; see also Settlement at Exhibit G-1, p. 9.

⁵ CPower Statement No. 1 at 6:15-18.

⁶ CPower Statement No. 1 at 6:19-20.

separate performance and testing requirements.”⁷ Under the new PJM market rules, if CPower was “seeking data for a customer in February 2022, for a customer registration in the current registration year, [CPower] would need certain data from at least the winter period of 2020-2021 to complete the registration.”⁸ Accordingly, CPower’s position was that “requests for more than twelve months of data will likely be fairly common.”⁹

FirstEnergy did not agree with CPower’s second proposed revision.¹⁰ FirstEnergy testified that its proposal includes adopting processes that exist today, and that increasing the provision of data to twenty-four months of customer usage will require modifications involving additional costs and delays.¹¹

For purposes of this settlement, CPower agreed to continue the twelve-month limitation as part of the overall package to approve the Third Party Data Access Tariff. However, as discussed below, CPower intends to participate in the statewide proceeding in Docket M-2021-3029018 and will address the implications of PJM’s changes to its market rules and the minimum access period for which customer usage data is available to a third party in that proceeding. CPower reserves all rights to advocate for positions in the statewide proceeding that may differ from the terms of Section J of the Settlement.

II. SUMMARY OF SETTLEMENT

The settlement of issues related to the proposed Data Access Tariffs is reflected in Section J of the Settlement. Section J reflects the following agreed-upon changes:

- Beginning June 1, 2022, the Companies will implement a standard form of

⁷ CPower Statement No. 1 at 6:20-23.

⁸ CPower Statement No. 1 at 7:6-10.

⁹ CPower Statement No. 1 at 7:13-14.

¹⁰ Met-Ed/Penelec/Penn Power/West Penn Statement No. 6R at 6:16-17.

¹¹ Met-Ed/Penelec/Penn Power/West Penn Statement No. 6R at 7:6-9.

authorization, which is appended to the Third Party Data Access Tariffs, to be used for all new requests from third parties seeking customer data through the terms of the Companies' Third-Party Data Access Tariffs. Any other standard form of authorization, dated prior to June 1, 2022 will be accepted as a standard form of authorization under the terms of the Third-Party Data Access Tariffs until the expiration date of such form, at which point the Companies will require the use of the standard form of authorization included in this Settlement.

- Third-party data access shall be limited to Conservation Service Providers registered with the Public Utility Commission or Curtailment Service Providers that are PJM members and identified on PJM's list of demand response providers.
- The Companies will conduct periodic, randomized internal audits of the participants under their new Third-Party Data Access Tariffs to ensure that letters of authorization are being properly obtained by third parties governed thereunder when seeking access to customer data. Such audits will occur at least semi-annually and will include at least 10% of active third parties governed by the tariff to ensure compliance with the Tariffs.

The parties agreed that the Settlement does not create a precedent for third-party utility data sharing practices in Pennsylvania. All parties reserve the right to take a different position on the issues addressed in the Settlement in the context of the statewide proceeding at Docket M-2021-3029018. Upon conclusion of the statewide proceeding at Docket M-2021-3029018, the Companies agreed to assess whether their current system is consistent with any final Commission orders on the matter and will make subsequent filing(s) with the Commission to amend their tariffs if required, and serve a copy on all parties to this proceeding.

III. SECTION J OF THE SETTLEMENT IS IN THE PUBLIC INTEREST AND SHOULD BE ADOPTED.

It is the policy of the Commission to encourage settlements in contested cases.¹² Settlements have many benefits including “eliminat[ing] the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission’s decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the

¹² See Pa. Code § 5.231(a).

Commission and all ratepayers of a utility, who may otherwise have to bear the financial burden such litigation necessarily entails.”¹³ To accept a settlement such as that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest.¹⁴

Section J of the Settlement is in the public interest because the Third Party Data Access Tariff provides much needed clarity and standardization around the rules for access to customer data. Additionally, Section J of the Settlement is in the public interest because standard rules for accessing third party data will ensure that companies are responsible for the way they manage customer data. If approved, the Settlement will reduce the possibility of further litigation and appeals along with their attendant costs.

The following facts and arguments support CPower’s position:

A. Standard Authorization Form

The Settlement calls for FirstEnergy to “implement a standard form of authorization ... to be used for all new requests from third parties seeking customer data through the terms of the Companies’ Third-Party Data Access Tariffs.”¹⁵ This practice essentially continues the existing consent requirement which has worked well for customers.¹⁶

The Settlement also grandfathers existing signed authorization forms, providing that, “any other standard form of authorization, dated prior to June 1, 2022 will be accepted as a standard form of authorization under the terms of the Third Party Data Access Tariffs until the expiration date of such form.”¹⁷ Grandfathering prior authorization forms creates efficiencies for companies

¹³ *Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2011 through May 31, 2013*, P-2009-2135500, Recommended Decision at p. 8 (issued March 12, 2010).

¹⁴ *Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2011 through May 31, 2013*, P-2009-2135500, Recommended Decision at p. 8 (issued March 12, 2010); *see also* Pa. P.U.C. v. CS Water and Sewer Associates, 74 Pa. P.U.C. 767, 771 (1991).

¹⁵ Settlement at ¶ 89.

¹⁶ CPower Statement No. 1-R at 2:9-11.

¹⁷ Settlement at ¶ 89.

by eliminating the need to contact existing customers to re-execute an authorization for the same information on a slightly different form. Accordingly, CPower supports the use of a standard form of authorization and grandfathering prior authorization forms until the standard form goes into effect on June 1, 2022.

B. Limitation to Conservation Service Providers or Curtailment Service Providers

Under the Settlement, third-party data access shall 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.¹⁸ CPower notes that all third parties, not just Electric Generation Suppliers, are allowed to access customer data today, with consent, pursuant to Pennsylvania law.¹⁹ Therefore, CPower is generally supportive of this provision in Section J of the Settlement as an overall part of the settlement package related to the Third Party Data Access Tariff issue.

C. Periodic, Randomized Internal Audits

The Settlement calls for FirstEnergy to “conduct periodic, randomized internal audits of the participants under [the] new Third Party Data Access Tariffs.”²⁰ These audits must occur at least semi-annually and “include at least 10% of active third parties governed by the tariff.”²¹ If a third party is found to be noncompliant with the tariff, it will be permanently restricted from further access to customer data.²²

While CPower was supportive of the original attestation approach outlined by FirstEnergy in the proposed tariff, the settlement position of periodic, randomized audits of participants is a

¹⁸ Settlement at ¶ 90.

¹⁹ CPower Statement No. 1 at 1:17-19.

²⁰ Settlement at ¶ 91.

²¹ *Id.*

²² *Id.*

better solution than requiring the utility to maintain all of the customer authorizations. Requiring the utility to maintain all of the customer authorizations “would be an administrative nightmare for the utility and quite costly, and it is simply not necessary. It is sufficient that the utility can request any third party provide the authorization, recognizing that failing to do so makes the third party subject to termination of data access.”²³

The periodic, randomized audits create a standardized process for FirstEnergy to ensure good faith compliance by third party providers and deter bad actors. If a third party egregiously or intentionally fails to comply with any of the requirements in the tariff, including the requirement to maintain authorization from the customer to access or retrieve data, then the utility may terminate the third party’s access to data. “This is a powerful deterrent because without this access, third parties cannot do business.”²⁴ Accordingly, CPower is generally supportive of periodic, randomized audits as a structured system of monitoring compliance by third party providers as long as the audits are conducted fairly and reasonably, and that termination of data access can only occur for intentional or egregious non-compliance. This is a better approach than requiring the utility to manage tens of thousands of consent forms.²⁵

D. Statewide Proceeding in Docket M-2021-3029018

Under the Settlement, once the statewide proceeding in Docket M-2021-3029018 has concluded, FirstEnergy must “assess whether their current system is consistent with any final Commission orders on the matter and will make subsequent filing(s) with the Commission to amend their tariffs if required.”²⁶ Additionally, the Settlement provides that “[a]ll parties reserve

²³ CPower Statement No. 1 at 5:17-23.

²⁴ CPower Statement No. 1 at 5:6-15.

²⁵ See CPower Statement No. 1 at 5:17; CPower Statement No. 1-R at 2:18-20.

²⁶ Settlement at ¶ 93.

the right to take a different position on the issues addressed in the Settlement in the context of the statewide proceeding at Docket M-2021-3029018.”²⁷

The Office of Consumer Advocate, the Industrials, and CAUSE-PA wanted the proposed tariff removed from this proceeding and addressed only in the generic proceeding.²⁸ CPower advocated for the data access issue to be addressed in this proceeding, as opposed to waiting for the generic proceedings to conclude. As CPower witness Mr. Schisler testified, “FirstEnergy has identified their current third party data access procedures as barriers to their customers effectively participating in energy management programs. There is no reason to delay implementation of a tariff that will save customers money and protect the grid.”²⁹ Accordingly, the generic proceedings “should not be considered a replacement for FirstEnergy’s proposed tariff.”³⁰

The Settlement provisions in Section J (1) permit the parties to take a different position in the statewide generic proceeding, and (2) require FirstEnergy to make updates to their proposed tariff if needed based on the outcome of the statewide proceeding. These provisions: (1) allow the third party data access issue to be addressed now; (2) afford FirstEnergy the flexibility to modify the tariff as needed in the future; and (3) permit the parties to agree to settlement provisions in this proceeding that they may disagree with on a broader basis.

CPower continues to believe that the minimum access for usage data should be twenty-four months, as opposed to the twelve months provided for in the tariff. CPower intends to participate in the statewide proceeding in Docket M-2021-3029018 and will address the implications of PJM’s changes to its market rules and the minimum access period for which

²⁷ Settlement at ¶ 92.

²⁸ Industrials Statement No. 1 at 6:3-11; CAUSE-PA Statement No. 1 at 57:21-58:14; and OCA Statement No. 2 at 19:19-23.

²⁹ CPower Statement No. 1-R at 4:13-16.

³⁰ CPower Statement No. 1-R at 4:12-13.

customer usage data is available to a third party in that proceeding. Accordingly, CPower is supportive of addressing the third party data access issue in this proceeding, permitting the parties to take a different position in the statewide generic proceeding, and requiring FirstEnergy to make updates to their proposed tariff if necessary.

IV. CONCLUSION

Section J of the Settlement is a reasonable compromise of the third party data access issues and it should be approved. Section J of the Settlement allows for the implementation of a tariff in this proceeding, which in turn provides much needed clarity and standardization around the rules for access to customer data while the generic proceeding is ongoing. Accordingly, CPower supports Section J of the Settlement as a balanced resolution of the third party data access issues in this proceeding and respectfully requests that the ALJ and the Commission approve Section J of the Settlement without modification.³¹

Respectfully submitted,

ENERWISE GLOBAL TECHNOLOGIES, LLC
d/b/a CPOWER ENERGY MANAGEMENT

By Counsel

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³¹ As noted at the beginning of this Statement in Support, CPower takes no position on the other provisions in the Settlement.

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Date: May 6, 2022