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May 16, 2022

VIA eFILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
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Re: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of Their Default Service Programs
Docket Nos. P-2021-3030012, P-2021-3030013, P-2021-3030014, and P-2021-3030021

Dear Secretary Chiavetta:

Enclosed for filing in the above-captioned proceedings is the **Reply Brief of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company** ("Reply Brief"). The Reply 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/ap
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-2021-3030012**
COMPANY, AND WEST PENN POWER COMPANY, FOR APPROVAL OF	**:**	**DOCKET NO. P-2021-3030013**
THEIR DEFAULT SERVICE PROGRAMS	**:**	**DOCKET NO. P-2021-3030014**
	:	**DOCKET NO. P-2021-3030021**

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served copies of the **Reply 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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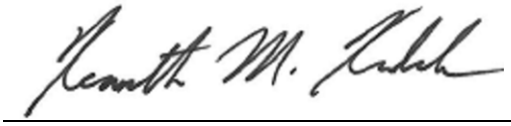

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Dated: May 16, 2022

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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**

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

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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**

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

I. INTRODUCTION

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") file this Reply Brief in response to the Initial Brief filed by John Bevec and Sunrise Energy, LLC (collectively, "Sunrise") with respect to the issues that were reserved for briefing in the Joint Petition for Partial Settlement ("Settlement" or "Joint Petition") filed on April 20, 2022.[1] As explained in the Companies'

[1] The following parties joined the Settlement ("Joint Petitioners"): the Companies; the Pennsylvania Public Utility Commission ("Commission") Bureau of Investigation and Enforcement; the Office of Consumer Advocate; the Office of Small Business Advocate; the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, and West Penn Power Industrial Intervenors; Enerwise Global Technologies, d/b/a CPower Energy Management Constellation Energy Corporation; Shipley Choice, LLC d/b/a Shipley Energy; the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania; and The Pennsylvania State University.

Initial Brief filed on May 6, 2022, the reserved issues 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' default service rate calculations with respect to costs for compliance with Pennsylvania's Alternative Energy Portfolio Standards ("AEPS") Act,[2] the use of loss factors, and the application of gross receipts tax ("GRT").

On May 6, 2020, the Joint Petitioners filed Statements in Support of the Settlement and Calpine Retail Holdings, LLC, the Retail Energy Supply Association ("RESA") and NRG Energy, Inc. ("NRG"), and Sunrise do not oppose the Settlement.[3] Sunrise is the only party challenging how the Companies will satisfy, and recover the costs of, AEPS Act requirements associated with default service supply during their sixth default service programs for the period from June 1, 2023 to May 31, 2027 ("DSP VI" or "Programs"). As the record evidence makes clear, the Companies do not use excess energy purchased from customer-generators to serve default service load. Despite that fact, Sunrise reiterates its witness David N. Hommrich's contention that the Companies have failed to account for distributed generation in their default service calculations. Sunrise also argues that the formulas employed in the Companies' Price to Compare Default Service Rate Riders ("PTC Riders") and Hourly Pricing Default Service Riders ("HP Riders") are inappropriate because they gross up the current cost of default service supply for losses and apply GRT to AEPS compliance costs.

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2 73 P.S. §§ 1648.1 et seq.

3 In their Letter of Non-Opposition filed on May 6, 2022, RESA/NRG offered commentary about why they did not join the Settlement and summarized evidence presented by RESA/NRG witness Travis Kavulla on competitive retail market issues. However, RESA/NRG reiterated that they do not oppose the "ultimate result" and noted that several provisions of the Settlement are in the public interest, including implementation of an online enrollment process for the Companies' Customer Referral Programs. RESA/NRG Letter of Non-Opposition, p. 1; *see also id.*, pp. 2-3, 5, 7.

The Companies' Initial Brief explained in detail why their treatment of excess energy from net-metered customer-generators is wholly unrelated to how default service supply is procured or deployed. The Companies' AEPS Act obligations associated with default service supply are separate and distinct from the AEPS Act obligations related to excess energy. Sunrise also did not refute the extensive record evidence demonstrating that Sunrise's proposal 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 and GRT would result in an undercollection of current default service costs in the PTC and HP Riders.

To a large extent, the principal reasons for rejecting Sunrise's arguments in this proceeding were addressed in the Companies' Initial Brief and therefore this Reply Brief will only revisit the key areas of disagreement.

II. ARGUMENT

A. Sunrise Has Misconstrued the Legal Standards Applicable to the Companies' AEPS Obligations as Default Service Providers

Under the Electricity Generation Customer Choice and Competition Act (the "Competition Act"),[4] as an electric distribution company ("EDC"), each Company serves as the default service provider to retail electric customers within its service territory in accordance with its obligations under Section 2807(e) of the Public Utility Code ("Code"). 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."[5] As discussed in the Companies' Initial Brief, the Code also applies these requirements to energy

[4] 66 Pa.C.S. §§ 2801 et seq.

[5] 66 Pa.C.S. § 2807(e)(3.7).

and alternative energy credits ("AECs") that default service providers are required to purchase for AEPS compliance.[6] The Competition Act further provides that EDCs are entitled to full recovery of all costs of furnishing default service.[7] *See* ME/PE/PP/WP Initial Br., p. 20.

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.[8] The AEPS Act further provides that EDCs should recover costs related to Section 3 compliance activities as a cost of generation supply under Section 2807 of the Code.[9] Consistent with prior Commission-approved default service programs, during DSP VI, the Companies will meet their AEPS Act obligations primarily through a combination of full requirements wholesale power contracts and direct purchases of AECs. *See* ME/PE/PP/WP Initial Br., pp. 9-10.

As explained in the Companies' Initial Brief (pp. 11-12), Section 5 of the AEPS Act establishes *separate* requirements related to net-metered customer-generators. Section 5 requires EDCs to *credit* excess energy from net-metered customer-generators at the full retail value.[10] Consistent with Section 5 of the AEPS Act and the Commission's net metering regulations, each Company has a Commission-approved net-metering rider.

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6 66 Pa.C.S. § 2807(e)(3.5).

7 66 Pa.C.S. § 2807(e)(3.9).

8 73 P.S. §§ 1648.3.

9 73 P.S. §§ 1648.3(a)(3)(ii); *see also Proc. to Evaluate Transition to Corrected Non-Solar Tier I Calculation Methodology*, Docket No. M-2009-2093383, 2016 WL 6024509 at *7 n.5 (Final Order entered Oct. 6, 2016) (noting that EDCs receive full and current recovery for the cost of complying with Section 3 of the AEPS Act through default service rates).

10 73 P.S. § 1648.5; *see also Hommrich v. Pa. P.U.C.*, 231 A.3d, 1027, 1033 (Pa. Commw. Ct. 2015) ("*Hommrich*") ("Section 5 of the AEPS Act requires EDCs to purchase any net energy produced by [customer-generators] at the full retail value.").

In this case, Sunrise does not dispute that the Companies' Programs set forth in the Settlement will maintain the same rate design with respect to AEPS cost recovery that the Commission has determined complies with the Code and its regulations in prior default service proceedings. Moreover, the undisputed testimony explained in the Companies' Initial Brief (pp. 14-17) confirms that the PTC and HP Riders outlined in the Settlement are designed to recover Section 3 AEPS compliance costs during DSP VI, including the types of costs specified in the Commission's regulations at 52 Pa. Code § 75.67(a).[11] Nonetheless, Sunrise continues to press for changes to the Companies' default service rate calculation formulas based principally on its view of the impact of distributed generation on the Companies' default service load.

At pages 4-8 of its Initial Brief, Sunrise conflates the separate and distinct obligations under Sections 3 and 5 of the AEPS Act to try to support the proposition that the Companies are somehow obligated to incorporate excess energy produced by customer-generators into their default service rate design. In support of that contention, Sunrise cherry-picks language from *Dauphin County Industrial Development Authority v. Pennsylvania Public Utility Commission*[12] and *Hommrich* purporting to show that the Companies cannot rely on the Commission's prior approval of their default service calculations to support the existing treatment of AEPS compliance costs in the PTC and HP Riders. Neither of these cases, however, involved the Commission's interpretation of Section 3 of the AEPS Act, which establishes obligations related to default service supply. Sunrise fails to explain how the Commonwealth Court's findings in *DCIDA* and *Hommrich* regarding Section 5 of the AEPS Act (and, in the case of *DCIDA*, time-

[11] In its Initial Brief, Sunrise appears to abandon Mr. Hommrich's claim that the Companies' PTC and HP Riders improperly exclude "indirect" costs associated with the purchase of alternative energy, such as the costs of processing net metering and interconnection applications for customer-generators under Section 5 of the AEPS Act. *See* Sunrise Initial Br., p. 4 n. 2 (noting that Sunrise would not pursue claims of "cost recovery except as it applies to distributed generation and line loss").

[12] 123 A.3d 1124 (Pa. Commw. Ct. 2015) ("*DCIDA*").

of-use obligations) preclude the Commission from determining that a default service program mandated by the Code appropriately addresses Section 3 AEPS Act requirements and recovers the associated costs.[13]

B. Contrary to Sunrise's Contentions, Excess Energy Is Not Utilized to Satisfy Any Default Service Supply Obligations and the Cost of Excess Energy Is Appropriately Recovered

Sunrise argues that the Companies should be required to "calculate excess energy produced by customer-generators as their supply." Sunrise Initial Br., p. 10. Sunrise further contends that, by not treating excess energy as supply, the Companies are preventing default service customers from having the benefit of the lower loss factors that could apply to excess generation as compared to wholesale default service supply. *Id*., p. 9. Finally, Sunrise claims that excess energy is paid for twice, citing the credit received by customer-generators and the recovery of excess energy costs under the PTC. *Id*., pp. 9-10. Each of these arguments is without merit.

First, as described in the Companies' Initial Brief (pp. 11-12), the Companies' separate treatment of excess energy and default service supply is consistent with the Companies' statutory obligations and wholesale market realities. As default service providers, the Companies are required to competitively procure wholesale default service supply,[14] including the AECs necessary to satisfy obligations under Section 3 of the AEPS Act.[15] Excess energy from net-metered customer-generators is appropriately excluded from the Companies' procurement plans

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[13] *See DCIDA*, 123 A.3d at 1133-35 (holding that the Code required EDCs to offer time-of-use rates directly to net-metering customer-generators to ensure they receive compensation for excess electricity at the full retail rate); *Hommrich*, 231 A.3d at 1037-40 (finding that the PUC's definitions of "customer-generator" and "utility" are unenforceable because they redefine eligibility standards for net metering established in Section 5 of the AEPS Act).

[14] 66 Pa.C.S. § 2807(e)(3.1).

[15] 66 Pa.C.S. § 2807(e)(3.5); 73 P.S. § 1648.3.

because such energy is neither wholesale supply nor competitively procured. The Companies have explained that intermittent excess generation from net metered customer-generators is not recognized as a supply resource in PJM Interconnection LLC ("PJM") and cannot be counted on as default service supply. *See* ME/PE/PP/WP Initial Br., p. 12; Tr. 82. Wholesale sales are FERC-jurisdictional under section 201(b)(1) of the Federal Power Act, 16 U.S.C. § 824(b)(1), but FERC has held that excess energy from net-metered generators are *not* a wholesale sale of power at all. *See Sun Edison LLC*, 129 FERC ¶ 61,146 (2009). Because this excess energy is not a wholesale sale, it cannot be wholesale supply. Further, the Companies' obligation to credit net-metered customer-generators is derived from a different section of the AEPS Act (Section 5[16]) that is unrelated to default service supply obligations. Simply put, there is no basis to include excess generation from net-metered customer-generators as part of default service supply.

Second, because excess energy from net-metered customer-generators is wholly separate from default supply, there is no reason to reflect any line loss differences between excess generation and wholesale default supply in the cost of default supply. The micro-level accounting of losses at the substation level envisioned by Sunrise is not consistent with how energy balancing occurs currently–at the PJM level–and Sunrise does not acknowledge the complexities of a substation approach. *See* Met-Ed/Penelec/Penn Power/ West Penn St. 8R-Supplemental, pp. 8, 16. In addition, Sunrise completely ignores electric generation supplier ("EGS") load and offers no discussion of how substation-based loss factors could be incorporated in the retail shopping statutory framework. *Id.*, p. 16. As explained in the Companies' Initial Brief (pp. 19-20), the unaccounted for energy ("UFE") measured on their

[16] 73 P.S. § 1648.5.

system–which is the difference between the amount of energy used in the Companies' zones as calculated by PJM and the amount of energy used by customers–confirms that the Companies' existing loss factors are reasonable.

Finally, there is no evidence that excess energy is paid for twice as Sunrise contends. The Companies have explained in detail how both the financial inputs and outputs associated with excess generation are netted out in default service rates. The cost of crediting net-metered customer-generators under a Company's Commission-approved net-metering rider is recovered from default service customers. In addition, default service customers receive the value of PJM credits related to the load reduction from excess generation. *See* ME/PE/PP/WP Initial Br., p. 13. The mere fact that the costs and credits occur at different times is neither unusual nor evidence of any improper billing.

For all these reasons, the Sunrise claims concerning improper treatment of excess generation should be rejected.

C. The Commission Should Reject Sunrise's Proposed Changes to the Rate Calculation Formulas Employed in the Companies' PTC and HP Riders

In its Initial Brief (pp. 9-12), Sunrise rehashes contentions advanced in Mr. Hommrich's testimony to support his proposal to disaggregate AEPS compliance costs from the current cost of generation supply and recover those costs through a separate variable that is not grossed up for line losses or GRT. Mr. Hommrich claimed that distributed generation reduces line losses and that the loss factors used in the Companies' default service calculations are inaccurate because they do not account for the excess energy produced by customer-generators. According to Mr. Hommrich, this alleged inaccuracy could result in a "windfall" to the Companies because customers are being overcharged for energy. *See* Sunrise Second Direct Testimony, pp. 10-14; Sunrise Rebuttal Testimony, pp. 12-13. Mr. Hommrich also argued that the Companies are

overcharging customers by applying GRT to AEPS compliance costs recovered through default service rates. Sunrise Second Direct Testimony, p. 4.

These arguments were addressed, and refuted, in the Companies' Initial Brief (pp. 17-20). First, the wholesale default supply contract prices that form the basis of the retail charges under the Companies' PTC and HP Riders do not separately quantify the costs of meeting AEPS requirements associated with default supply, and those prices reflect losses for which the supplier is responsible. As previously discussed, the Companies have the right to recover all default service costs on a full and current basis. However, performing default service calculations under the Companies' PTC and HP Riders without the gross-up for loss factors results in undercollection of current wholesale power contract costs. Those undercollections will ultimately be recovered from customers with interest in accordance with the Commission's regulations at 52 Pa. Code § 54.190(c). *See* ME/PE/PP/WP Initial Br., pp. 20-21.

Sunrise's contention that distributed generation reduces the loss factors used in the Companies' default service calculations rests on Mr. Hommrich's claim that line losses should be calculated in real-time at the substation level. As noted previously, Sunrise did not offer any evidence to explain how EGSs would incorporate substation-based loss factors into their load forecasting or address how Mr. Hommrich's new line loss methodology routine would account for routine switching of distribution lines feeding into the Companies' substations. *See* Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, p. 16. Indeed, as explained by the Companies' witness Edward B. Stein, the Companies have shown that the loss factors currently utilized in the PTC and HP Riders are appropriate because the average levels of UFE on the Companies' system are within a reasonable range, when considering other factors that impact UFE. Ultimately, the amounts recovered through the Companies' PTC and HP Riders are equal

to payments to suppliers at contract prices established in competitive, Commission-approved procurements. *See* ME/PE/PP/WP Initial Br., pp. 19-20.

The Companies' Initial Brief (pp. 20-21) also explained that the PTC and HP Riders properly apply GRT to all default service costs, consistent with the Code's default service provisions incorporating AEPS Act compliance under Section 2807(e)(3). In its Initial Brief (pp. 10-11), Sunrise argues that the Companies improperly rely upon the Commission's Policy Statement on Default Service, which expressly provides that the Companies' PTC should be designed to recover "applicable taxes" as part of the "related" costs of default service. Sunrise believes this reliance is improper because the Policy Statement does not explicitly reference the GRT, is not binding, and the AEPS Act does not expressly address the collection of taxes associated with AEPS compliance costs.

None of these arguments has merit. As Sunrise concedes on page 10 of its Initial Brief, Section 2810 of the Code requires an EDC to pay tax on its gross receipts, which indisputably include revenues associated with the provision of default service. Under Section 2807(e) of the Code and the AEPS Act, EDCs are required to procure energy and AECs to meet AEPS Act requirements and recover the associated cost on a full and current basis. There is simply no legal basis to exclude AEPS-related costs that EDCs incur as part of their statutory default service obligations from an EDC's default service revenues subject to GRT, and Sunrise's citation to case law addressing state taxes levied on tickets for interstate bus travel is entirely irrelevant.

Sunrise's interpretation of the Policy Statement is also flawed. While Sunrise correctly observes that a statement of policy does not have the force of law, Sunrise's proposal to exclude AEPS compliance costs recovered through default service rates from application of the GRT levied on all electric utility sales in the Commonwealth is contrary to the Code and AEPS Act

provisions discussed in Section II.A. above that confer the right to full cost recovery on default service providers. Furthermore, Section 69.1808 of the Policy Statement separately lists a variety of default service-related costs that are also subject to the GRT, including wholesale energy costs and administrative costs. There is no language in the Policy Statement to support Sunrise's assertion that the listing of AEPS costs in the exact same manner as other costs should somehow be interpreted to reflect a Commission intent to exclude AEPS costs from other default service costs for tax purposes.

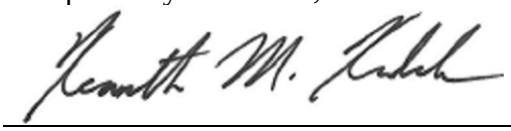
In sum, the applicable statutory framework, the plain language of the Policy Statement, and the record evidence shows that the Companies are appropriately accounting for and recovering AEPS compliance costs through default service rates. Accordingly, the Commission should reject Sunrise's proposed changes to the PTC and HP Riders agreed to by the Joint Petitioners.

III. CONCLUSION

For the reasons set forth above and in the Companies' Initial Brief, the Commission should approve DSP VI, 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 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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