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August 21, 2023

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Consolidation of Proceedings and Approval of Act 129 Phase IV Energy Efficiency and Conservation Plan
Docket Nos. M-2020-3020820, et al.

Dear Secretary Chiavetta:

Attached for filing is the Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Reconsideration of Staff Action in the above-referenced proceeding.

Copies are being provided as indicated on the Certificate of Service.

Respectfully submitted,



Devin Ryan

DR/kl
Attachments

cc: The Honorable Mark Hoyer (*via email; w/att.*)
The Honorable Emily DeVoe (*via email; w/att.*)
Bureau of Technical Utility Services

Rosemary Chiavetta, Secretary
August 21, 2023
Page 2

Certificate of Service

CERTIFICATE OF SERVICE

(Docket Nos. M-2020-3020820, M-2020-3020821, M-2020-3020822, M-2020-3020823)

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Date: August 21, 2023



Devin T. Ryan

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition of Metropolitan Edison	:	
Company, Pennsylvania Electric Company,	:	Docket Nos. M-2020-3020820
Pennsylvania Power Company and West Penn	:	M-2020-3020821
Power Company for Consolidation of	:	M-2020-3020822
Proceedings and Approval of Act 129 Phase	:	M-2020-3020823
IV Energy Efficiency and Conservation Plan	:	

**PETITION OF METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC
COMPANY, PENNSYLVANIA POWER COMPANY, AND WEST PENN POWER
COMPANY FOR RECONSIDERATION OF STAFF ACTION**

TO THE PENNSYLVANIA PUBLIC UTILITY COMMISSION:

Pursuant to 52 Pa. Code § 5.44 and the procedures set forth in the Pennsylvania Public Utility Commission’s (“Commission”) *Minor Plan Change Order*,¹ Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”), and West Penn Power Company (“West Penn”) (collectively, the “Companies”), by and through their attorneys, hereby submit this Petition for Reconsideration² of the Bureau of Technical Utility Services’ (“TUS”) decision set forth in its August 11, 2023 Secretarial Letter (“Secretarial Letter”), wherein TUS denied the Companies’ unopposed Petition for Approval of a Minor Change to Their Act 129 Phase IV Energy Efficiency and Conservation (“EE&C”) Plan (“Petition”).

TUS’s denial of the Petition is flawed and should be reversed. The Companies proposed **a single, unopposed minor EE&C Plan change that would add a footnote** in Section 1.6 of the

¹ See *Energy Efficiency and Conservation Program*, Docket No. M-2008-2069887, at 19 (Order Entered June 10, 2011) (“*Minor Plan Change Order*”).

² Although styled as a Petition for Reconsideration in accordance with Section 5.44 of the Commission’s regulations, the *Duick* standard is inapplicable, as that scope of review is applicable only to requests for reconsideration of final Commission decisions pursuant to Section 703 of the Public Utility Code. *Duick v. Pa. Gas & Water Co.*, 56 Pa. P.U.C. 553 (1982).

Phase IV EE&C Plan (“Phase IV Plan”) to enable commercial and industrial customers, who have existing contracts with third party demand response service providers that were executed before June 1, 2021 (*i.e.*, the start of Phase IV of Act 129 EE&C), to have the option of retaining the PJM Interconnection, LLC (“PJM”) capacity rights associated with their EE&C projects. For customers to retain those capacity rights under the proposed change, their project applications must: (a) be submitted to the Companies after the effective date of the Commission’s Order approving the Petition; and (b) provide proof of the relevant contract with the third party demand response service provider.

The proposed minor change is just and reasonable and should be approved. As explained in the Companies’ Petition, the proposed change will allow customers who have those preexisting contracts, like The Pennsylvania State University (“PSU”), to participate in the Phase IV Plan programs without potentially impairing their existing contractual relationships with their demand response service providers. By resolving that concern and expanding the pool of participants in the Companies’ Phase IV programs, without negatively affecting the Companies’ ability to meet all of their required savings and peak demand reduction targets, the proposed change will benefit the Companies, the Companies’ customers, and the Commonwealth as a whole. Indeed, the reasons supporting the proposed change were confirmed and bolstered by the Verified Comments filed by PSU, in which PSU noted that it “has approximately ten projects on hold for submission to the Phase IV Plan, including a cogeneration project, because PSU had assigned the associated capacity rights to a third-party demand response provider prior to the Phase IV EE&C Plan implementation.”³ Critically, TUS overlooked PSU’s Comments in reaching its decision, even stating in the Secretarial Letter that “[n]o comments were filed.”⁴

³ PSU Comments at 3 (emphasis added).

⁴ Secretarial Letter at 1.

In addition, contrary to TUS’s findings, the Companies complied with the *Minor Plan Change Order* by providing “sufficient documentation” to support the proposed change, including black-line pages showing the proposed change and an explanation of how the proposed change affects the current Phase IV Plan. Also, the Companies established that the proposed change fully comports with the Commission’s *Phase IV Implementation Order*.⁵ Nowhere in the *Phase IV Implementation Order* does it state that electric distribution companies (“EDCs”) must retain all of the capacity rights associated with commercial and industrial customers’ EE&C projects in Phase IV. Rather, *Phase IV Implementation Order* only requires the Companies to bid a portion of the projected peak demand reductions associated with their EE&C measures into the PJM Forward Capacity Market (“FCM”). Therefore, the Companies do not need to retain the capacity rights from all commercial and industrial customers’ projects to comply with the *Phase IV Implementation Order*.

Further, the proposed change is not unreasonably discriminatory. According to TUS, the proposed change “discriminates against commercial and industrial customers without existing contracts with third-party demand response service providers and would not have the option to retain the PJM capacity rights associated with EE&C projects.”⁶ However, TUS failed to recognize that only “unreasonable” discrimination in service is prohibited by Section 1502 of the Public Utility Code.⁷ As such, “reasonable” discrimination is permissible. Here, there are well-supported and justifiable reasons for treating commercial and industrial customers with these preexisting contracts differently from those without such contracts, as noted previously.

⁵ See *Energy Efficiency and Conservation Program*, Docket No. M-2020-3015228 (Order Entered June 18, 2020) (“*Phase IV Implementation Order*”).

⁶ Secretarial Letter at 3.

⁷ 66 Pa.C.S. § 1502.

Lastly, to the extent that the Commission believes that evidentiary support for this single, unopposed minor EE&C Plan change is lacking, the Commission should refer the matter to the Office of Administrative Law Judge so that an evidentiary record can be developed on these issues, rather than denying the Petition.

For these reasons, and as further explained herein, the Companies respectfully request that the Commission reverse TUS's decision and approve the Companies' Petition without modification. In support of their Petition for Reconsideration, the Companies state as follows:

I. BACKGROUND

1. November 30, 2020, the Companies filed their Joint Petition with the Commission requesting approval of their Phase IV Plan and cost-recovery mechanisms related thereto pursuant to Act 129 of 2008 ("Act 129") and various related Commission orders.

2. After engaging in discovery and the exchange of pre-served written testimony and exhibits, the parties ultimately reached a settlement and filed a Joint Petition for Full Settlement of All Issues on February 16, 2021.

3. On March 25, 2021, the Commission approved the Companies' Phase IV Plan Petition, subject to the terms and conditions of the Joint Petition for Full Settlement of All Issues.⁸

4. On July 7, 2023, the Companies filed their Petition for Approval of a Minor Change to Their Act 129 Phase IV Energy Efficiency and Conservation Plan.

5. On August 10, 2023, PSU filed its Verified Comments in support of the Companies' Petition for Approval of a Minor Change to Their Act 129 Phase IV Energy Efficiency and Conservation Plan.

⁸ See *March 2021 Order*, pp. 48-49.

6. On August 11, 2023, the Secretarial Letter was issued denying the Companies' unopposed Petition.

7. The Companies are filing this Petition for Reconsideration of Staff Action pursuant to 52 Pa. Code § 5.44 and the Commission's *Minor Plan Change Order*.

II. ARGUMENT

A. THE COMMISSION SHOULD REVERSE TUS'S DECISION AND APPROVE THE COMPANIES' SINGLE, UNOPPOSED MINOR EE&C PLAN CHANGE

8. The Commission should reverse TUS's decision and approve the Companies' proposed minor EE&C Plan change.

9. As a preliminary matter, the proposed minor change was unopposed.

10. Given that the Petition was served on all the parties in the Phase IV Plan proceeding, which represent a wide and differing set of interests, the lack of opposition (in and of itself) is strong evidence that the proposed minor change is just and reasonable.

11. Even still, TUS denied the Companies' Petition.

12. As alleged support for denying the Companies' proposal, TUS claimed that: (a) the Companies "failed to provide sufficient rationale to support the proposed minor EE&C Plan change and did not demonstrate that the Petition is in the best interest of [their] customers"; (b) the Companies did not "file sufficient documentation to support the proposed minor EE&C Plan change," as required by the *Minor Plan Change Order*; (c) the Companies failed to demonstrate that the proposed change "complies with" the *Phase IV Implementation Order*; and (d) the proposed change "discriminates against commercial and industrial customers without existing

contracts with third-party demand response service providers and would not have the option to retain the PJM capacity rights associated with EE&C projects.”⁹

13. None of these claims have merit.

1. The Proposed Minor Change Is Just and Reasonable and in the Best Interest of the Companies’ Customers

14. TUS incorrectly found that the Companies “failed to provide sufficient rationale to support the proposed minor EE&C Plan change and did not demonstrate that the Petition is in the best interest of [their] customers.”¹⁰

15. In the Petition, the Companies explained that the proposed change will allow customers who have preexisting contracts with third party demand response service providers to participate in the Phase IV Plan programs without potentially impairing their existing contractual relationships with their demand response service providers.¹¹

16. The Companies observed that “customers with such contracts may be reluctant to participate in the Phase IV Plan programs because to do so they must relinquish their PJM capacity rights associated with their EE&C measures in order to receive incentives from the Companies.”¹² “Indeed, if those customers did participate in the Phase IV Plan, they may be concerned about breaching their contracts with the third party demand response service providers, given that those contracts may require the providers to bid the PJM capacity rights associated with the customers’ EE&C measures.”¹³

17. PSU confirmed the existence and validity of these concerns in its Verified Comments.¹⁴ In particular, PSU highlighted that it “has approximately ten projects on hold for

⁹ Secretarial Letter at 2-3.

¹⁰ *Id.* at 3.

¹¹ *See* Petition at 3.

¹² *Id.*

¹³ *Id.*

¹⁴ *See* PSU Comments 2-5.

submission to the Phase IV Plan, including a cogeneration project, because PSU had assigned the associated capacity rights to a third-party demand response provider prior to the Phase IV EE&C Plan implementation.”¹⁵ Since the “current EE&C Plan does not allow a customer to retain capacity rights associated with the customer’s projects,” PSU has been unable “to participate thus far in the Phase IV EE&C Plan.”¹⁶

18. PSU’s non-participation in Phase IV due to the capacity rights issue is troubling, especially since “PSU has participated in the FE Companies’ EE&C Plans for 13 [years], making substantial investments in energy conservation technologies and PSU’s projects have provided significant kWh energy reductions and kW demand reductions, earning incentive reimbursements of approximately \$1 million per EE&C phase.”¹⁷

19. Yet, by denying the Companies’ Petition, TUS is preventing the Companies from removing unnecessary barriers that prevent customers, like PSU, from participating in the Companies’ Phase IV EE&C programs like they did in prior phases of Act 129 EE&C.

20. Also, TUS overlooked PSU’s Comments in reaching its decision, even stating in the Secretarial Letter that “[n]o comments were filed.”¹⁸

21. In the end, the proposed change will resolve the concerns of PSU and similarly-situated customers and expand the pool of participants in the Companies’ Phase IV programs, all without negatively affecting the Companies’ ability to meet all of their required savings and peak demand reduction targets.

¹⁵ PSU Comments at 3 (emphasis added).

¹⁶ *Id.*

¹⁷ PSU Comments at 3.

¹⁸ Secretarial Letter at 1. Although PSU’s Comments were submitted after the deadline for comments had passed, the Comments were accompanied by a signed verification and provided well-reasoned support for the Companies’ proposed change. At the very least, it is unclear whether TUS reviewed PSU’s Comments.

22. Thus, the Companies established that the proposed change would benefit the Companies, the Companies' customers, and the Commonwealth as a whole, and TUS erred in finding otherwise.

2. The Companies Provided "Sufficient Documentation" to Support the Proposed Change, as Required by the *Minor Plan Change Order*

23. TUS mistakenly concluded that the Companies failed to provide "sufficient documentation to support the proposed minor EE&C Plan change," in compliance with the Commission's *Minor Plan Change Order*.¹⁹

24. In its *Minor Plan Change Order*, the Commission explained that when proposing a minor EE&C Plan change, EDCs are "only require[d] . . . to file sufficient documentation to support the proposed minor EE&C Plan change, to include the affected pages of the plan, a redlined version of the affected pages and an explanation of how the proposed minor changes affect the previously approved plan."²⁰

25. Additionally, the Commission "will require the EDC to post a complete redlined version of its proposed plan on its website for public inspection upon filing."²¹

26. The Companies complied with all of these requirements.

27. Specifically, the Companies' Petition identified Section 1.6 of the Phase IV Plan as the section being changed, quoted the current language in the Phase IV Plan implicated by the proposed change, and attached a black-line version of the affected pages to the Petition as Appendix A.²²

¹⁹ Secretarial Letter at 2-3.

²⁰ *Id.*

²¹ *Id.*

²² *See* Petition at 2-3; Petition, Appx. A.

28. The Companies also explained at length how the proposed minor change would affect the current Phase IV Plan, noting that it would “enable commercial and industrial customers, who have existing contracts with third party demand response service providers that were executed before June 1, 2021 (*i.e.*, the start of Phase IV of Act 129 EE&C), to have the option of retaining the PJM capacity rights associated with EE&C projects.”²³

29. The Petition even outlined the procedure for customers to elect this option—“[f]or customers to retain those capacity rights under the proposed change, their project applications must: (a) be submitted to the Companies after the effective date of the Commission’s Order approving this Petition; and (b) provide proof of the relevant contract with the third party demand response service provider.”²⁴

30. Further, the Companies stated that “[t]he proposed change concerns a change to measures’ conditions that will not increase the overall costs to any customer class” and that “implementing the requested change will have no effect on any budget, savings, or Total Resource Cost (‘TRC’) Test figures set forth in the Phase IV Plan.”²⁵

31. Although TUS notes that the proposed change will not negatively affect the Companies’ ability to meet their savings targets, TUS never mentions in the Secretarial Letter how the proposed change will not affect the overall costs to any customer class or any budget or TRC Test figures in the Phase IV Plan.²⁶

²³ Petition at 3.

²⁴ *Id.*

²⁵ *Id.* at 1-2.

²⁶ *See* Secretarial Letter at 1-3.

32. In addition, the Companies complied with the Commission’s requirement to “post a complete redlined version of its proposed plan on its website for public inspection upon filing,” and even stated in the Petition that they would do so.²⁷

33. Thus, TUS erroneously found that the Companies failed to provide “sufficient documentation” to support the proposed minor change as required by the Commission’s *Minor Plan Change Order*.

3. The Proposed Change Comports with the Commission’s *Phase IV Implementation Order*

34. TUS incorrectly determined that the proposed change does not comply with the *Phase IV Implementation Order*.²⁸

35. Under the *Phase IV Implementation Order*, EDCs must only bid a portion of the planned demand reductions associated with their EE&C measures into the PJM FCM.²⁹

36. Nothing in the *Phase IV Implementation Order* states that EDCs must retain all of the capacity rights associated with commercial and industrial customers’ EE&C projects in Phase IV.

37. In fact, the Commission clarified that “EDCs have the flexibility to make a business decision regarding the appropriate amount” to bid into the PJM FCM “based on the mix of program measures in its Phase IV EE&C Plan.”³⁰

38. Here, as explained in the Petition, the Companies will still retain the PJM capacity rights associated with EE&C measures implemented by customers without such contracts or who choose to decline this option,” and “the Companies have been and will continue to comply with

²⁷ Petition at 5.

²⁸ See Secretarial Letter at 3.

²⁹ See *Phase IV Implementation Order* at 70.

³⁰ *Id.*

their obligation to bid a portion of the projected peak demand reductions associated with their EE&C measures into the PJM FCM.”³¹

39. As a result, the Companies’ proposed change will not affect their ability to comply with the *Phase IV Implementation Order*’s requirements for bidding projected peak demand reductions into the PJM FCM.

40. Therefore, TUS erred in concluding that the Companies’ proposed change would not comply with the *Phase IV Implementation Order*.

4. The Proposed Change Does Not Unduly Discriminate Against Commercial and Industrial Customers Without Preexisting Contracts with Third Party Demand Response Service Providers

41. TUS incorrectly rejected the proposed change because the change allegedly “discriminates against commercial and industrial customers without existing contracts with third-party demand response service providers and would not have the option to retain the PJM capacity rights associated with EE&C projects.”³²

42. TUS failed to recognize that Section 1502 of the Public Utility Code does not prohibit treating customers within the same customer class differently; rather, the statute only prohibits “unreasonable” discrimination.³³

43. In full, Section 1502 of the Public Utility Code provides:

No public utility shall, as to service, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. No public utility shall establish or maintain any unreasonable difference as to service, either as between localities or as between classes of

³¹ Petition at 4.

³² Secretarial Letter at 3.

³³ 66 Pa.C.S. § 1502.

service, but this section does not prohibit the establishment of reasonable classifications of service.³⁴

44. Consequently, a public utility can provide a reasonable preference or advantage to a person, corporation, or municipal corporation, as well as subject a person, corporation, or municipal corporation to a reasonable prejudice or disadvantage.

45. Here, the Companies provided sound and justifiable reasons for treating commercial and industrial customers with these preexisting contracts with demand response service providers differently from those without such contracts, as noted in Section II.A.1, *supra*.

46. PSU also reinforced the Companies' justification for the proposed change in its Verified Comments.

47. Thus, the Companies' proposed minor change does not constitute unreasonable discrimination in service under Section 1502 of the Public Utility Code.

48. Based on the foregoing, TUS's reasons for denying the Companies' Petition lack merit, and the Commission should reverse TUS's decision and approve the Companies' Petition without modification.

B. ALTERNATIVELY, THE COMMISSION SHOULD REFER THE MATTER TO THE OFFICE OF ADMINISTRATIVE LAW JUDGE

49. As noted in the Secretarial Letter, the *Minor Plan Change Order* "directs Staff to issue a Secretarial Letter approving, denying, or transferring to the Office of Administrative Law Judge for hearings, some, or all of a petition's proposed minor plan changes."³⁵

50. In this case, TUS decided to deny the Petition instead of referring the proposed minor change to the Office of Administrative Law Judge.

³⁴ *Id.* (emphasis added).

³⁵ Secretarial Letter at 1.

51. Through the Petition and this Petition for Reconsideration, the Companies have demonstrated that the proposed change is just and reasonable and should be approved.

52. Notwithstanding, to the extent that the Commission finds that the evidence supporting the Companies' proposed change is lacking, the Companies respectfully request that the Commission refer the matter to the Office of Administrative Law Judge so that an evidentiary record can be developed, as opposed to denying the Petition outright.

III. CONCLUSION

WHEREFORE, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company respectfully request that the Pennsylvania Public Utility Commission grant the instant Petition for Reconsideration of Staff Action, reverse the Bureau of Technical Utility Services' August 11, 2023 decision, and approve the Companies' unopposed Petition for Approval of a Minor Change to Their Act 129 Phase IV Energy Efficiency and Conservation Plan or, alternatively, refer the matter to the Office of Administrative Law Judge for hearings.

Respectfully submitted,



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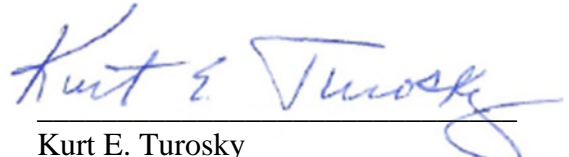
Date: August 21, 2023

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

VERIFICATION

I, Kurt E. Turosky, Director, Energy Efficiency Compliance and Reporting for FirstEnergy Service Company, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: August 21, 2023


Kurt E. Turosky