



Whitney E. Snyder  
(717) 236-1300 x260  
[wesnyder@hmslegal.com](mailto:wesnyder@hmslegal.com)

Thomas J. Sniscak  
(717) 236-1300 x224  
[tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)

---

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 [www.hmslegal.com](http://www.hmslegal.com)

August 31, 2023

**VIA ELECTRONIC FILING**

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2<sup>nd</sup> Floor (filing room)  
Harrisburg, PA 17120

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 the Phase IV Energy Efficiency and Conservation Plans; Docket Nos. M-2020-3020820, M-2020-3020821, M-2020-3020822, M-2020-3020823; **PSU ANSWER IN SUPPORT OF PETITION FOR RECONSIDERATION OF STAFF ACTION**

Dear Secretary Chiavetta:

Enclosed you will find The Pennsylvania State University's Answer in Support of Petition for Reconsideration of Staff Action in the above-captioned matters.

If you have any questions concerning this filing, please contact me at (717) 236-1300.

Very truly yours,

*/s/ Whitney E. Snyder*

Whitney E. Snyder  
Thomas J. Sniscak

*Counsel for The Pennsylvania State University*

WES/jld  
Enclosure

cc: Office of Special Assistants (via email, [ra-OSA@pa.gov](mailto:ra-OSA@pa.gov))  
Per Certificate of Service

**BEFORE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**THE PENNSYLVANIA STATE UNIVERSITY’S  
ANSWER IN SUPPORT OF PETITION FOR  
RECONSIDERATION OF STAFF ACTION**

The Pennsylvania State University (“PSU”) submits this Answer in support of the August 21, 2023 Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (“FE Companies”) for Reconsideration of Staff Action (“Petition for Reconsideration”). The Petition for Reconsideration requests the Pennsylvania Public Utility Commission (“Commission”) approve the FE Companies’ Petition for Minor Modification of its Phase IV Energy Efficiency and Conservation (“EE&C”) Plan (“Petition for Minor Modification”) which was initially denied via Secretarial Letter issued August 11, 2023 (Secretarial Letter).<sup>1</sup>

1. The Commission should grant reconsideration and approve the unopposed Petition for Minor Modification because the Minor Modification is just and reasonable, compliant with the Commission’s Phase IV Implementation Order,<sup>2</sup> is not unreasonably discriminatory, is vital to PSU’s continuing participation in the EE&C program, and supports fundamental goals of the

---

<sup>1</sup> Consistent with the Commission’s regulations at 52 Pa. Code § 5.61(e), PSU is advising the Commission of PSU’s position on issues raised in the Petition for Reconsideration of Staff Action, has provided facts showing PSU’s standing to participate in this matter, and have stated the facts and matters of law relied upon. The Commission’s regulations do not require that answers to petitions provide responses on a paragraph by paragraph basis.

<sup>2</sup> See *Energy Efficiency and Conservation Program*, Docket No. M-2020-3015228 (Order Entered June 18, 2020) (“*Phase IV Implementation Order*”).

General Assembly in requiring EE&C plans. As of this filing, no party has opposed the Minor Modification. The Minor Modification has no impact on residential or low income customers.<sup>3</sup>

2. If the Minor Modification is not granted, PSU will not be able to participate in FE Companies' EE&C Plan because FE Companies' have interpreted the assumption within the current Plan, that the FE Companies will retain all capacity rights for projects, as a limitation on projects being eligible to participate in the Plan. Thus, PSU supports the Minor Modification as a clear means to participation in the Plan.

3. 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. In particular, PSU accelerated its participation and was vital in West Penn meeting its goals set by the General Assembly that requires a portion of EE&C Plan savings to be attributable to institutions of higher education.<sup>4</sup> The FE Companies' position that the current EE&C Plan does not allow a customer to retain capacity rights associated with the customer's projects has resulted in PSU not being able to participate thus far in the Phase IV EE&C Plan. The Minor Modification removes an unnecessary barrier to greater customer participation in FE Companies' EE&C Plan.

4. PSU has approximately ten projects, including major ones, on hold for submission to the Phase IV Plan, such as a cogeneration project. The energy savings PSU's projects have

---

<sup>3</sup> *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. 42 (Order entered March 25, 2021) ("March 25, 2021 Order").

<sup>4</sup> 66 Pa. C.S. § 2806.1(b)(1)(B).

provided, and could further provide, promote the key purpose of EE&C Plans and related statutory requirements – to reduce energy consumption and demand.

5. Ignoring these considerations, the Secretarial Letter arbitrarily and without context or legitimate reason inflexibly denied the Minor Modification because it incorrectly found that the Minor Modification would result in discrimination, was not just and reasonable, and that FE Companies had not shown the Plan was compliant with EE&C plan requirements.<sup>5</sup> These conclusions are meritless, as shown below, and a step backward from the fundamental purposes of the EE&C program.

6. **The Minor Modification does not result in discrimination, let alone unreasonable<sup>6</sup> discrimination.**<sup>7</sup> The Minor Modification is not discriminatory because the Minor Modification: a) makes the current EE&C Plan’s implementation *less* discriminatory; b) prevents retroactive application of a policy that works at cross purposes with the intent of the General Assembly in requiring EE&C Plans and promoting participation of entities like PSU; and c) does not unreasonably prejudice projects that will remain ineligible for the EE&C Plan where those project owners chose to assign away capacity rights after the effective date of the current EE&C Plan.

7. The Minor Modification results in less discrimination than the current EE&C plan that the Commission approved as the FE Companies have implemented it. Without the Minor

---

<sup>5</sup> See Secretarial Letter at 2-3 (The Minor Modification “does not satisfy the requirements of the [Commission’s] Expedited Process Order,” “the minor change to Section 1.6 of the Phase IV Plan proposed in the Petition discriminates against commercial and industrial customers without existing contracts with third-party demand response service providers,” and the FE 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 its customers”).

<sup>6</sup> The Secretarial Letter did not find unreasonable discrimination, it solely found discrimination. The Public Utility Code only prohibits *unreasonable* discrimination. 66 Pa. C.S. § 1304 (“No public utility shall, as to rates, 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.”) (emphasis added).

<sup>7</sup> *Id.*

Modification, the FE Companies' implementation of the Plan already makes a discriminatory distinction – projects with capacity rights that can be assigned to FE are eligible while FE has found ineligible those projects without capacity rights that can be assigned to the FE Companies because they were previously assigned to a third party. This distinction retroactively penalizes via ineligibility for the EE&C Plan projects where contractual decisions were made that did not impact eligibility at that time and thus harms PSU and similarly situated industrial and commercial customers., The discrimination in the current EE&C Plan also disincentives program participation and could reduce energy efficiency and conservation efforts.

8. The Minor Modification prevents the original discrimination of the current EE&C Plan from being retroactive; which ultimately allows more projects and entities to participate in the EE&C Plan. The Commission should consider what policy it is promoting when deciding this matter, and the policy that promotes the legislative intent behind EE&C Plans is broad participation particularly for entities like PSU, which the Minor Modification supports. The distinction the Minor Modification utilizes to prevent retroactive application of Plan eligibility rules is not unreasonable discrimination and does not impose any unreasonable prejudice or disadvantage, particularly given the Commission approved the current Plan that has a similar distinction. Thus, the Minor Modification lessens discrimination already inherent in the FE Companies' implementation of the current Plan.

9. Moreover, preventing retroactive application of new rules is not unreasonable discrimination<sup>8</sup> particularly where, as here, the Minor Modification will result in broader participation in the EE&C Plan thus supporting a goal of the Public Utility Code and result in no

---

<sup>8</sup> *Crown American Corp. v. Pennsylvania Public Utility Commission*, 463 A.2d 1257 (Pa. Cmwlth. 1983) (holding tariff rule prohibiting master metering for multi-tenant buildings which only applied to buildings not master metered prior to effective date of rule was *not* unreasonable discrimination).

harm to customers to which the Minor Modification does not apply because those customers' ineligibility status will not change. To the extent any economic harm could be alleged for customers that chose *after* the effective date of the current Plan to contract capacity rights to a third party, such harm is not unreasonable or prejudicial because: a) those customers would not be able to participate in the Plan regardless of whether the Minor Modification is granted; and b) concerns of this type of harm are not the objective of the Public Utility Code in contrast to the benefit of the Minor Modification which promotes the intent of the Public Utility Code.<sup>9</sup>

10. **The Minor Modification is Just and Reasonable.** The Minor Modification is just and reasonable because it substantially promotes the efficiency and conservation purposes of Act 129 EE&C plans by allowing for broader customer participation and encouraging energy efficiency and conservation-related savings because it clarifies that projects for which capacity rights have been assigned to a third party *prior* to the beginning of the current EE&C Plan Phase can still participate in the EE&C Plan. This means more projects will be eligible to participate in the Plan with the Minor Modification than without it and thus more efficiency and conservation to be achieved.

11. The Minor Modification is further just and reasonable because it promotes the General Assembly's intent that institutes of higher education, like PSU, participate in EE&C plans and achieve energy savings<sup>10</sup> because the Minor Modification removes unnecessary if not self-defeating barriers preventing PSU's participation in the EE&C Plan.

---

<sup>9</sup> *Id.* (“[a]ny economic disadvantage which may be the result of the rule is not unreasonable, because the protection of Crown’s economic interests and competitive position, and of those similarly situated, is neither an objective of Section 1502 nor of the regulatory scheme of the Code in general.”).

<sup>10</sup> See 66 Pa. C.S. § 2806.1(b)(1)(B) (“A minimum of 10% of the required reductions in consumption under subsections (c) and (d) shall be obtained from units of Federal, State and local government, including municipalities, school districts, institutions of higher education and nonprofit entities.”)

12. **The Minor Modification does not render the EE&C non-compliant with the Commission’s Phase IV Implementation Order.** Importantly, the Commission already and necessarily found the current EE&C Plan compliant when it originally approved the EE&C Plan.<sup>11</sup> The requested Minor Modification does not alter that determination because the Minor Modification will not impact the FE Companies’ ability to achieve the goals of its EE&C Plan or otherwise negatively impact the implementation of the approved EE&C Plan. The FE Companies explained that the proposed modification, if implemented, “will have no effect on any budget, savings, or Total Resource Cost (‘TRC’) Test Figures set forth in the Phase IV Plan.”<sup>12</sup> Additionally, the implementation of the minor change will not “increase the overall cost to any customer class.”<sup>13</sup>

13. Moreover, there is no requirement in either the Commission’s Phase IV Implementation Order nor the EE&C Plan that the FE Companies retain all capacity rights associated with commercial and industrial customers’ projects for a project to be eligible for participation. The Commission’s Phase IV Implementation Order held that electric distribution companies (“EDCs”) “are only required to nominate a portion of the peak demand reduction into the [Forward Capacity Market (‘FCM’)] and that EDCs retain the flexibility to make a business decision regarding the appropriate amount based on the mix of program measures in its Phase IV EE&C Plan.”

14. Thus, the Commission left it to the discretion of the utility the amount of capacity rights to acquire and bid into the forward capacity market. Allowing projects to participate in the EE&C Plan where capacity rights were assigned to a third party prior to the current Plan’s

---

<sup>11</sup> *March 25, 2021 Order* at 48-49.

<sup>12</sup> *Petition for Minor Modification* at 2.

<sup>13</sup> *Id.*

implementation is consistent with the discretion the Commission expressly gave utilities. It is illogical to negate that discretion by denying the Minor Modification.

15. The FE Companies confirmed that the Minor Modification “will not affect their ability to comply with the Phase IV Implementation Order’s requirement for bidding projected peak demand reductions into the PJM FCM.”<sup>14</sup> The EE&C Plan with the Minor Modification complies with the Commission’s Phase IV Implementation Order.

16. **Assignment to Office of Administrative Law Judge.** While the Commission should grant the FE Companies’ Petition for Reconsideration and Minor Modification based on the pleadings in this unopposed matter, PSU does not object to referring the matter to the Office of Administrative Law Judge although there is no need to do so as it will only delay entry of projects into the FE Companies’ EE&C Plan. The Commission should grant the Minor Modification without further cost and delay. A long, and unnecessary proceeding will only serve to delay or negate PSU’s participation. PSU implores the Commissioners to rectify this situation immediately without further and unnecessary process.

17. The Minor Modification to the FE Companies’ EE&C Plan should be approved by the Commission. The minor modification will allow more industrial and commercial customers, like PSU, to participate in Phase IV EE&C Plans. Without the Minor Modification, the FE Companies will not allow PSU’s projects to participate in its EE&C program—a result which is at absolute cross purposes with the EE&C Act and what the PUC has sought to promote – broad participation, particularly for institutions of higher education. Promoting broader plan participation is not unreasonably discriminatory in this instance; to the contrary, allowing more entities to

---

<sup>14</sup> Petition for Reconsideration at 11; *see also* Joint Petition at 4.



participate lessens discrimination. Moreover, there is no adverse impact to other customers. Accordingly, the Commission should approve the minor modification.

**WHEREFORE,** The Pennsylvania State University respectfully requests the Commission grant First Energy's Petition for Reconsideration of Staff Action and approve First Energy's Petition for Minor Modification.

Respectfully Submitted,

*/s/ Whitney E. Snyder* \_\_\_\_\_

Whitney E. Snyder, Esquire  
Thomas J. Sniscak, Esquire  
Hawke McKeon & Sniscak LLP  
100 North Tenth Street  
Harrisburg, PA 17101  
717-236-1300  
[wesnyder@hmslegal.com](mailto:wesnyder@hmslegal.com)  
[tjsniscak@hmslegal.com](mailto:tjsniscak@hmslegal.com)

*Counsel for  
The Pennsylvania State University*

Dated: August 31, 2023

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the forgoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

**VIA ELECTRONIC MAIL ONLY**

Daniel A. Garcia, Esquire  
FirstEnergy Service Company  
800 Cabin Hill Drive  
Greensburg, PA 15601  
[dagarcia@firstenergycorp.com](mailto:dagarcia@firstenergycorp.com)

David B Macgregor Esquire  
Devin T Ryan Esquire  
Post & Schell PC  
17 North Second Street 12 Floor  
Harrisburg PA 17101  
[dmacgregor@postschell.com](mailto:dmacgregor@postschell.com)  
[dryan@postschell.com](mailto:dryan@postschell.com)  
*Counsel for Metropolitan Edison Company,  
Pennsylvania Electric Company,  
Pennsylvania Power Company, and West Penn  
Power Company*

Steven C. Gray, Esquire  
Office Of Small Business Advocate  
555 Walnut Street 1st Floor  
Harrisburg PA 17101  
[sgray@pa.gov](mailto:sgray@pa.gov)

Christy Appleby Esquire  
Aron J Beatty Esquire  
Office Of Consumer Advocate  
555 Walnut Street 5th Floor  
Harrisburg PA 17101  
[cappleby@paoca.org](mailto:cappleby@paoca.org)  
[abeatty@paoca.org](mailto:abeatty@paoca.org)

John Sweet Esquire  
Elizabeth R Marx Esquire  
Ria Pereira Esquire  
Pa Utility Law Project  
118 Locust Street  
Harrisburg PA 17101  
[jsweetpulp@palegalaid.net](mailto:jsweetpulp@palegalaid.net)  
[emarxpul@palegalaid.net](mailto:emarxpul@palegalaid.net)  
[rpereirapulp@palegalaid.net](mailto:rpereirapulp@palegalaid.net)  
*Representing CAUSE-PA*

Susan E Bruce Esquire  
Charis Mincavage Esquire  
Jo-Anne Thompson Esquire  
100 Pine Street  
P. O. Box 1166  
Harrisburg, PA 17108-1166  
[sbruce@mcneeslaw.com](mailto:sbruce@mcneeslaw.com)  
[cmincavage@mcneeslaw.com](mailto:cmincavage@mcneeslaw.com)  
[jthompson@mcneeslaw.com](mailto:jthompson@mcneeslaw.com)  
*Representing MEIUG, PICA And WPPII*

Joseph L Vullo Esquire  
Burke Vullo Reilly Roberts  
1460 Wyoming Avenue  
Forty Fort PA 18704  
[jlvullo@aol.com](mailto:jlvullo@aol.com)  
*Representing CAAP*

/s/ Whitney E. Snyder  
Whitney E. Snyder, Esq.  
Thomas J. Sniscak, Esq.

Dated: August 31, 2023

## VERIFICATION

I, James L. Crist, on behalf of The Pennsylvania State University, hereby state that the facts set forth in the foregoing document 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 in this matter. This verification is made subject to the penalties of 18 Pa.C.S. §4904 relating to unsworn falsification to authorities.



---

James L. Crist, P.E.  
The Pennsylvania State University