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August 30, 2016

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120


Re: *Proceeding to Evaluate Transition to Corrected Non-Solar Tier I Calculation Methodology*; Docket No. M-2009-2093383

Dear Secretary Chiavetta:

Pursuant to the Commission's Tentative Order entered August 15, 2016, in the above-referenced proceeding, enclosed herewith for filing are the Comments of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company.

Please contact me if you have any questions regarding this matter.

Very truly yours,


Teresa K. Schmittberger

Enclosures

c: As Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Proceeding To Evaluate Transition :
To Corrected Non-Solar Tier I : **Docket No. M-2009-2093383**
Calculation Methodology :

**COMMENTS OF METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER
COMPANY, AND WEST PENN POWER COMPANY**

I. INTRODUCTION AND BACKGROUND

Pursuant to the Alternative Energy Portfolio Standards (“AEPS”) Act, electric distribution companies (“EDCs”) and electric generation suppliers (“EGSs”) are required to procure electricity generated from solar Tier I alternative energy sources, non-solar Tier I alternative energy sources, and Tier II alternative energy sources at increasing percentages on an annual basis. 73 P.S. §§ 1648.1, *et seq.* To implement the AEPS Act, the Pennsylvania Public Utility Commission (“PUC” or “Commission”) adopted regulations that identify the specific percentage of EDCs’ and EGSs’ retail sales that must come from Tier I and Tier II alternative energy sources each year. 52 Pa. Code § 75.61. In addition, as part of Act 129 of 2008, the legislature expanded the definitions for non-solar Tier I resources to include new categories of biomass and low-impact hydropower resources. 66 Pa.C.S. § 2814. In light of these newly eligible Tier I resources, the Commission was directed to, on at least a quarterly basis, adjust the percentage of electricity purchased from non-solar Tier I alternative energy sources to reflect any new biomass energy or low-impact hydropower resources. *Id.* At the above-referenced docket, the Commission adopted a Final Order

establishing, among other things, the procedures that would be followed by the Commission to make the Tier I quarterly adjustments.¹

By Secretarial Letter dated July 8, 2016, the Commission notified EDCs and EGSs that the Commission discovered a calculation error of this quarterly adjustment for non-solar Tier I requirements over the past six years impacting all EDCs and EGSs. As a result of this error, the Commission increased all non-solar Tier I purchasing obligations by approximately seven percent for the 2016 reporting period (i.e., June 1, 2015, through May 31, 2016). This calculation error only impacted the quarterly adjustment for new non-solar Tier I resources imposed by Act 129, not the overall non-solar Tier I obligation imposed by the AEPS Act and reflected in 52 Pa. Code § 75.61. On or about July 15, 2016, the Program Administrator for the AEPS program began providing EDCs and EGSs with their adjusted non-solar Tier I requirements for the 2016 reporting period. The original true-up date for alternative energy credits (“AECs”) for the 2016 reporting period was September 1, 2016. *See id.* § 75.61(e). As a result, EDCs and EGSs initially believed they would be required to make all increased non-solar Tier I purchases and subsequently retire them by September 1, 2016.

By Secretarial Letter dated August 9, 2016, the Commission extended the true-up period for the adjusted non-solar Tier I requirements from September 1, 2016 to November 30, 2016 in order to provide stakeholders with additional time to address the unexpected increase to non-solar Tier I requirements. The Commission also issued a Tentative Order on August 15, 2016 at the above-referenced docket seeking comments on how to address this increase to EDCs’ and EGSs’ non-solar Tier I requirements. The Commission specifically requested comments on the two following options: (1) delaying the true-up period for non-solar Tier I obligations; and (2)

¹ *See Implementation of Act 129 of 2008 Phase 4 – Relating to the Alternative Energy Portfolio Standards Act*, Docket No. M-2009-2093383 (Final Order entered May 28, 2009).

procurement of the increased non-solar Tier I alternative energy credits (“AECs”) by EDCs on behalf of EGSs in their service territories. Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”), and West Penn Power Company (“West Penn”) (each of which may be referred to as “Company” or in combination as “Companies”) respectfully submit the following comments in response to the issues raised in the Tentative Order.

II. COMMENTS

The Companies appreciate the opportunity to comment on possible approaches for addressing the increase in non-solar Tier I requirements for the 2016 reporting period. When the Companies were first notified regarding the calculation error for quarterly adjustments of non-solar Tier I requirements, the Companies participated in discussions with Commission staff regarding the modified non-solar Tier I obligations. The Companies also engaged in discussions with other EDCs to evaluate the various approaches other EDCs were taking to obtain additional Tier I AECs. From these discussions, it became apparent to the Companies that all EDCs were taking different approaches for making the additional purchases required by their increased Tier I obligations. The significant reason for these differences is that each major EDC in the Commonwealth is subject to different tariff provisions and supplier master agreements (“SMAs”), causing EDCs to choose different mechanisms for procuring additional AECs. As a result, the Companies urge the Commission to provide EDCs and EGSs with flexibility in the procedures they follow to make the additional non-solar Tier I purchases required by this quarterly adjustment calculation error.

Meanwhile, the Companies began reviewing their options for meeting these increased Tier I requirements by the September 1, 2016 true-up deadline. Under the Companies’ SMA, the

Companies' default service suppliers are responsible for procuring all non-solar Tier I AECs associated with the portion of load that they serve on behalf of each of the Companies.² The SMA identifies the non-solar Tier I percentages that are required for each annual reporting period.³ In addition, the SMA states that these percentages will be revised "to reflect changes in law or other applicable regulatory requirements."⁴ In subsequent language, the SMA further provides that "if the Alternative Energy Portfolio Requirements change by law or any other reason, DS Supplier[s] shall be responsible for providing the credits at [their] expense."⁵ In interpreting these two provisions together, the Companies concluded that only a change in law or regulations would permit the Companies to require default service suppliers to procure additional non-solar Tier I AECs for the load they serve. A calculation error of the quarterly adjustment of non-solar Tier I AECs is not a change in law or regulations, but instead an error or mistake in law that the Companies determined fell outside of the language of their SMA for the 2016 reporting year. As a result, the Companies concluded that their only option for meeting the increased non-solar Tier I requirements associated with default service load was for the Companies themselves to make additional spot market purchases of non-solar Tier I AECs.

Accordingly, after the Companies obtained their revised non-solar Tier I obligations from the Program Administrator on July 15, 2016 (which were further revised on July 18, 2016), the Companies began to make the additional required purchases of non-solar Tier I AECs from the spot market.⁶ The Companies acted quickly to fill their increased non-solar Tier I requirements in

² *Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company Default Service Supplier Master Agreement, Appendix E – DS Supplier's Obligations for AEPS Compliance*, pg. 93.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ Having purchased the AECs for only those customers taking default service, the Companies are planning to recover the costs of those purchases through their Price to Compare Default Service Rate Rider (Rider H) and Hourly Pricing Default Service Rider (Rider I).

order to meet the original September 1, 2016 true-up deadline and ensure that they did not violate the AEPS Act, Act 129, or related Commission regulations. *See* 73 P.S. § 1648.3; 66 Pa.C.S. § 2814; 52 Pa. Code § 75.61(e). Based on the restrictive language within their SMA, the Companies' purchase of additional non-solar Tier I AECs from the spot market was the only available approach that allowed the Companies to meet their non-solar Tier I requirements by the true-up deadline. The Companies did not anticipate that a subsequent Commission Secretarial Letter would extend this true-up deadline to November 30, 2016.

Because the Companies already made these additional purchases, the Companies met the increased non-solar Tier I requirements for the 2016 reporting period in advance of the original true-up period deadline of September 1, 2016. It is the Companies' understanding that no further adjustment will be made to the Companies' obligation for the 2016 reporting period. To the extent any additional adjustment occurs, however, the Companies have a strategy in place to make any additional required purchases.

In light of the Companies' fulfillment of their increased non-solar Tier I requirements, the Companies will only submit general comments on the two suggested options within the Commission's Tentative Order. First, the Companies do not oppose an extension of the true-up period for the additional non-solar Tier I requirements until or beyond November 30, 2016. Although the Companies have already met the additional AEC requirements, the Companies are fully aware that other EDCs and EGSs have developed a variety of strategies for addressing this increase in non-solar Tier I requirements as a result of the different procedures included in their tariffs, SMAs, and individual contracts. To the extent these different strategies require additional time for other EDCs and EGSs, the Companies support an extended true-up period to ensure all EDCs and EGSs have a reasonable opportunity to meet their 2016 obligations.

In addition, the Companies believe certain challenges exist as their tariff and rate mechanisms are structured today that would prevent the Companies from procuring non-solar Tier I AECs on behalf of EGSs serving shopping customers in the Companies' service territories. Specifically, the Companies' supplier tariffs do not explicitly permit the Companies to procure non-solar Tier I AECs on behalf of EGSs in the same way those tariffs provide for the procurement of solar AECs on behalf of EGSs. In addition, the Companies' retail electric tariffs do not include a non-bypassable collection mechanism that allows the Companies to recover costs associated with the procurement of non-solar Tier I AECs. Although the Companies' Default Service Support ("DSS") Riders allow for non-bypassable recovery of certain costs from both shopping and non-shopping customers, costs incurred as a result of the procurement of non-solar Tier I AECs are not among those costs permitted for non-bypassable recovery. If the Commission were to require the Companies to purchase additional non-solar Tier I AECs on behalf of EGSs, then either a Commission Order or separate Commission proceeding would be required to modify the language of the Companies' DSS Riders to allow for such procurement and cost recovery. In addition, if the Companies are required to procure these AECs on behalf of EGSs, an extension of the true-up period for the 2016 compliance period would be necessary. The length of this extension would depend entirely on the date of the Commission Order or length of the additional proceeding that would modify both the Companies' supplier and retail electric tariffs to allow for procurement and cost recovery. These challenges would need to be addressed before EDCs could be required to procure non-solar Tier I AECs on behalf of EGSs.

As discussed above, the most appropriate way to respond to the calculation error of the quarterly adjustment for non-solar Tier I requirements is by providing EDCs and EGSs with the flexibility to meet the increased requirements based on the terms of their respective tariffs, SMAs,

and contracts. Because the Companies' SMA does not allow for this increased procurement by default service suppliers, the Companies already successfully purchased the additional non-solar Tier I AECs on behalf of their default service load and can meet the original true-up period deadline of September 1, 2016. All EDCs and EGSs should have an opportunity to review their specific tariff and contract language to determine the appropriate methodology for their increased procurement. To the extent additional time is necessary to allow EDCs and EGSs to meet these additional non-solar Tier I requirements, the Companies would not oppose an extension of the true-up period deadline for the 2016 reporting period. Finally, if the Commission requires the Companies to procure additional non-solar Tier I AECs on behalf of EGSs in their service territories, the Companies request that the Commission address each of the challenges discussed above to ensure that the Companies may legally procure these AECs on behalf of EGSs; have adequate time to conduct this additional procurement; and may modify their non-bypassable DSS Riders to allow recovery of this one-time expense that would be incurred on behalf of shopping and non-shopping customers on a competitively neutral basis from all customers.

III. CONCLUSION

Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company appreciate the opportunity to provide Comments regarding the Tentative Order at the above-referenced docket by the Pennsylvania Public Utility Commission.

Respectfully submitted,



Dated: August 30, 2016

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by first class mail, as follows:

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Suite 1102, Commerce Building
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Harrisburg, PA 17101

Tanya J. McCloskey
Office of Consumer Advocate
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Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
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Dated: August 30, 2016



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