COMMONWEALTH OF PENNSYLVANIA

OFFICE OF CONSUMER ADVOCATE
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

IRWIN A. POPOWSKY
Consumer Advocate

FAX (717) 783-7152
consumer@paoca.org

May 2, 2012

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
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-2011-2273650; P-2011-2273668, P-2011-2273669, P-2011-2273670

Dear Secretary Chiavetta:

Enclosed please find the Office of Consumer Advocate's Main Brief, in the above referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully Submitted,

Aron J. Beatty

Aron J. Beatty
Assistant Consumer Advocate
PA Attorney I.D. # 86625

Enclosures
cc: Hon. Elizabeth H. Barnes
Certificate of Service
151293

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Petition of Metropolitan Edison	:	
Company, Pennsylvania Electric Company,	:	Docket Nos. P-2011-2273650
Pennsylvania Power Company and West	:	P-2011-2273668
Penn Power Company For Approval of	:	P-2011-2273669
Their Default Service Programs	:	P-2011-2273670

MAIN BRIEF OF THE
OFFICE OF CONSUMER ADVOCATE

Darryl Lawrence
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org
Aron J. Beatty
PA Attorney I.D. # 86625
E-Mail: ABeatty@paoca.org
Assistant Consumer Advocates

Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
E-Mail: TMcCloskey@paoca.org

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Dated: May 2, 2012

TABLE OF CONTENTS

TABLE OF CITATIONS

Cases

Administrative Decisions

Statutes & Regulations

Miscellaneous

I. INTRODUCTION AND PROCEDURAL HISTORY

A. Introduction.

The Office of Consumer Advocate (OCA) files this Main Brief in the Joint Petition of the FirstEnergy Companies for approval of Default Service Plans in accordance with the procedural schedule approved and modified by Administrative Law Judge Elizabeth H. Barnes. The Joint Petition addresses the provision of default electricity service Plans for Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Power Company (Penelec), Pennsylvania Power Company (Penn Power), and the West Penn Power Company (West Penn)(collectively, "FirstEnergy" or the "Companies"). The Companies have filed default service plans (DSP) for service beginning on June 1, 2013 and ending May 31, 2015. The Companies' current DSPs expire on May 31, 2013.

Contemporaneous with this filing, the Pennsylvania Public Utility Commission (Commission) has been investigating the retail electricity market. In its Order initiating the Retail Market Investigation (RMI), the Commission stated that the statewide investigation would be conducted "with the goal of making recommendations for improvements to ensure that a properly functioning and workable competitive retail electricity market exists in the state."[1] To that end, the Commission has issued two orders providing recommendations and guidance for upcoming default service plans, which include the Companies' pending Joint Petition.[2]

The OCA submits that the primary task in this proceeding is to ensure that default service is provided in a reasonable manner consistent with Pennsylvania law, while at the same time

[1] Investigation of Pennsylvania's Retail Electricity Market, Docket No. I-2011-2237952 (Order entered April 29, 2011).

[2] Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans, Docket No. I-2011-2237952 (Order entered December 16, 2011) (December 16 Final Order); Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan, Docket No. I-2011-2237952 (Order entered March 2, 2012) (IWP Order).

providing cost effective improvements to the retail market that will encourage customers to take advantage of competitive retail offers if they so choose. The provision of default service and the enhancements that have been proposed by the Companies and other parties in this proceeding are closely interrelated. The default service products purchased, and the timing of those purchases, must be coordinated with the retail enhancements (*e.g.*, opt-in auction, referral programs) approved in this proceeding.

B. Overview Of The Legal Requirements Of Default Service.

Default service is the basic service that Pennsylvania's electric customers are entitled by law to receive if they do not switch to an alternative retail electric generation supplier (EGS), or if their alternative EGS fails to provide them with service. Each of the Companies is the statutorily defined Default Service Provider in their respective service territory, and as such must offer default service that meets specific legal requirements. Act 129 of 2008 provides the framework that service must meet, and defines and sets forth specific parameters for the procurement of electric default service in Pennsylvania. Act 129 commenced by identifying three "public policy findings" and "objectives of the Commonwealth" that were to be served by the Act. The first of these findings included the need to ensure the availability to all Pennsylvanians of "adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, taking into account any benefits of price stability over time." Act 129 went on to declare that it is in the public interest to adopt "energy procurement requirements designed to ensure that electricity obtained reduces the possibility of electric price instability, promotes economic growth and ensures affordable and available electric service to all residents."[3]

[3] See, Preamble to Act 129, 2008 Pa. Laws 129.

Consistent with these findings, the General Assembly in 2008 set forth a definition of default service and established procurement standards for the provision of default service. Under Act 129, the Companies must offer service "pursuant to a commission-approved competitive procurement plan" through a "prudent mix of contracts" that is designed to ensure the "least cost to customers over time."[4]

C. Retail Market Investigation Background.

On April 29, 2011, the Commission initiated an investigation into Pennsylvania's retail electricity market.[5] This investigation has become known as the Retail Market Investigation (RMI). At present, the RMI process is ongoing. Since the inception of the RMI, the OCA has participated in all facets of the investigation, including filing written Comments, providing testimony at *en banc* hearings, participating in regularly scheduled teleconferences and working with some of the specialized sub working groups.

Two of the recent Orders to come out of the RMI docket have played a large role in shaping the Companies' default service program and proposed retail market enhancements.[6] Directly relevant to the Companies' DSP here, these Orders provided recommendations for default supply procurements, and the possible use of retail opt-in auctions and customer referral programs. In its December 16 Order regarding default service plans, the Commission provided discretion in implementing its recommendations as follows:

> The Commission clarifies that its intent is to issue recommendations and flexible guidelines with respect to the format and structure of EDCs' upcoming default

---

4 66 Pa.C.S. § 2807(e) 3.1, 3.4.

5 Investigation of Pennsylvania's Retail Electricity Market, Docket No. I-2011-2237952 (Order entered Apr. 29, 2011).

6 The two Orders that addressed these issues are the December 16 Final Order and the IWP Order.

> service plans. The Commission encourages EDCs to view the recommendations as the starting point in developing the next phase of default service plans.[7]

The Commission also indicated that "the recommendations are intended to provide EDCs with the flexibility to craft default service plan filings in a manner in which they see appropriate."[8]

On March 2, 2012, the Commission issued its Intermediate Work Plan Order (IWP Order) regarding retail market enhancements. The IWP Order provided guidance on the implementation of opt-in auction and customer referral programs. The IWP Order also provided the Companies with discretion in implementing these programs, noting as follows:

> To the extent that an EDC chooses to deviate from these guidelines, we expect the differences to be justified by good cause shown, which includes showing operational constraints, or supported by evidence produced during an EDC's default service proceeding and supported substantially by interested parties in the default service proceeding.[9]

Consistent with the Commission's Orders, the Companies have proposed Opt-In Auction and Customer Referral Programs in this proceeding. Both the Companies, as well as the OCA and other parties, however, have proposed important variations from some of the Companies' proposals and the Commission's recommendations as contained in the IWP Order. The OCA discusses the retail market enhancements below in Section IV of this Main Brief.

D. The OCA's Proposed Modifications To The Companies' Default Service Plans.

Taking the legal requirements of default service and the RMI proceedings into consideration, the OCA has proposed modifications to the Companies' proposed DSPs.[10] First, the OCA submits that the Companies must procure a far more diverse mix of supplies, including purchases of different products on different dates. Second, the Companies' unprecedented

---

7 December 16 Final Order at 6.

8 December 16 Final Order at 4.

9 IWP Order at 6-7.

10 The OCA's Briefs and testimony address residential default service except where specifically noted.

Market Adjustment Charge (MAC) proposal must be rejected in its entirety. Third, modifications to the Companies' retail enhancement proposals must be made to ensure their success while maintaining necessary consumer protections.

1. The OCA's Residential Supply Mix Proposal.

First, the OCA recommends modifications to the residential procurement plan to ensure that reasonable default service is the base from which the entire program operates.[11] The Companies have proposed to purchase 24-month full requirements contracts for all of their additional default supply needs for the June 1, 2013 to May 31, 2015 period. The Companies would rely 100% on a single type of contract, purchased on two dates approximately two months apart. The OCA submits that it is not reasonable or prudent to rely on one product for all residential default service needs, nor is it reasonable to make all of those purchases in a short period of time. Reliance on a single type of contract, all of which start on the same day (June 1, 2013) and end on the same day (May 31, 2015) can hardly be deemed a "prudent mix" of purchases as mandated by Act 129 of 2008.[12]

The OCA submits that the Companies should procure a mix of contracts, similar to the contracts that have been used by Met-Ed and Penelec under their current Commission–approved DSPs. The Companies should procure supplies through a laddered approach to avoid purchasing

---

[11] The OCA's residential supply portfolio proposal is supported by the testimony of Matthew I. Kahal. Matthew I. Kahal is an independent consultant retained in this case by Exeter Associates, Inc., an economic consulting firm. Since 2001, Mr. Kahal has worked as an independent consulting economist, specializing in energy economics, public utility regulation and utility financial studies. Over the past three decades, his work has encompassed electric utility integrated resource planning, power plant licensing, environmental compliance and utility financial issues. Mr. Kahal has provided expert testimony on more than 350 occasions before state and federal regulatory commissions and the U.S. Congress. Mr. Kahal has participated in numerous Pennsylvania default service proceedings, including those involving the FirstEnergy EDCs. In 2009, Mr. Kahal participated actively in the Met-Ed and Penelec default service cases (Pa PUC Docket Nos. P-2009-2093053 and P-2009-2093054). See, OCA St. 1 at 1-3, OCA St. 1, Appendix A.

[12] 66 Pa. C.S. §2807(e)(3.2).

supplies that all start or end in a single market "window" that may, or may not, be favorable to customers.

The OCA proposes that the Companies continue to utilize the same basic supply mix currently in place for Met-Ed and Penelec, that is a mix of one year and two year full requirements contracts, one year and four year block energy contracts, and spot market purchases. Under their current default service plans, the Companies have procured a mix of a variety of products that has worked well for both non-shopping and shopping customers alike. Since the expiration of Met-Ed and Penelec's rate caps in January 2011, for example, more and more customers have taken advantage of shopping opportunities. For the period of January 2011 to April 2012, Met-Ed and Penelec have seen the number of residential shopping customers increase from less than one percent to 20.0% and 23.3% respectively.[13] The OCA submits that the current default service model has worked well and provides a solid foundation to further develop the retail market, while ensuring that non-shopping customers receive reasonable market-based generation default service. Importantly, as long as default service is obtained from a mix of Commission-approved competitive procurement processes, then all customers receive the benefits of competitive generation markets as envisioned in both Act 129 of 2008 and the original electric Restructuring Act in 1996.[14]

In addition, as part of the Companies' procurement plans, the OCA submits that a portion of default supply should be "held back" for use in the retail "opt-in" program as proposed by OCA witness Matthew I. Kahal. By holding a portion of supply in reserve, the default auction

---

[13] OCA Cross Exam. Exh. 1 at 2; PUC Powerswitch website (as of April 25, 2012). The complete web address of updated Pennsylvania shopping statistics is http://extranet.papowerswitch.com/stats/PAPowerSwitch-Stats.pdf?/download/PAPowerSwitch-Stats.pdf

[14] Act 138 of 1996, 66 Pa. C.S. §2801, *et seq.*

participants will be able to bid on a stable product, reducing the uncertainty and related risk that would otherwise be added into bids.

With these modifications to the Companies' procurement plans, detailed further in Section II.B. of this Main Brief, the OCA submits that default service will meet the requirements of Act 129.

2. The Market Adjustment Charge Must Be Rejected In Its Entirety.

In order to establish reasonable default service rates, the Companies' unprecedented proposed Market Adjustment Charge of a half cent per kWh must be soundly rejected. The Companies propose to modify their default service rate through a half cent per kWh adder they have termed a "market adjustment charge" or "MAC." The Companies claim that the MAC is needed in order to increase shopping by providing "head room" under which EGSs can compete. In addition, unlike any other DSP in the Commonwealth, and for the first time, the Companies claim that there is a cost basis for such an adder.

The OCA submits that this adder must be rejected for a number of reasons. Initially, the OCA notes that no other Pennsylvania EDC that recovers default service costs through a reconcilable dollar for dollar surcharge has sought any such premium on top of its actual default service costs. It is well understood in Pennsylvania that a Default Service Provider is permitted to recover all of its reasonable costs. As a result, each Default Service Provider that utilizes a reconcilable surcharge recovers its costs without risks – or associated profits. As detailed further below, however, Pennsylvania law is clear that a utility may not recover "phantom" expenses in order to inflate its profits or for any other purpose.

3. The OCA's Proposed Retail Market Enhancement Modifications.

In contrast to the Companies' proposed MAC (which OSBA witness Knecht characterized as "ridiculous") see OSBA St. 1 at 4, there are reasonable ways to enhance retail shopping opportunities that should be pursued in the upcoming Default Service Plan. The OCA supports implementation of two major retail enhancements, with some modifications.

The OCA supports an opt-in retail auction for residential customers to bring added benefits to customers, including the possibility of further cost savings. The OCA also supports the implementation of a customer referral program, provided there are reasonable customer protections and that costs are minimized and allocated to the appropriate stakeholders. The retail enhancement programs as proposed by the Companies should be modified to ensure that default service continues as a reasonable, stable and market based product while facilitating further development of the retail market.[15]

E. Conclusion.

In this proceeding, the Commission must ensure that default service customers continue to receive reasonable, adequate and stable service, designed to provide the least cost to customers over time. Given the legal requirements for provision of default service, and the goals of the RMI, the challenge before the Administrative Law Judge and Commission in this proceeding is to strike the appropriate balance among these objectives. The OCA submits that its proposed modifications to the Companies' default service plans, as detailed in this Main Brief, will ensure that non-switching customers continue to receive default service consistent with Pennsylvania

[15] The details of the OCA modifications to the Companies' retail enhancement proposals are detailed in Section IV below, and are supported by the testimony of OCA witness Barbara Alexander. Ms. Alexander is a Consumer Affairs Consultant who works on consumer protection and customer service issues associated with utility regulation. Ms. Alexander is an attorney, and a graduate of the University of Michigan (1968) and the University of Maine School of Law (1976). Prior to opening her consulting practice in 1996, she spent nearly ten years as the Director of the Consumer Assistance Division of the Maine Public Utilities Commission. Her current consulting practice is directed to consumer protection, customer service and low-income issues associated with both regulated and retail competition markets. Ms. Alexander's qualifications are detailed in OCA St. 2 at Attachment BA-1.

law while opening up new opportunities for customers to receive additional benefits in the retail market.

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

A. Procurement Groups.

1. West Penn's Proposed Consolidation of Service Types 20 and 30.

The OCA takes no position on this issue.

B. Residential and Commercial Class Default Service Procurement.

1. Summary and Overview of the OCA's Position.

The Companies' prospective Residential procurement plans rely exclusively on 24-month Full Requirements Contracts, with a spot market pricing component, for the electric power supplied during the June 1, 2013 through May 31, 2015 period. The Companies propose to procure approximately half of these contracts in November 2012, with the remaining half procured in January 2013. The OCA submits that the Companies' total reliance on a single contract type and length clearly does not satisfy the "prudent mix" requirements for the purchasing of electric power as required under Act 129.[16]

As detailed below and in the Testimony of OCA witness Matthew I. Kahal, the OCA submits that the Companies should procure a prudent mix of power purchases, with those procurements laddered over time. The OCA submits that these contracts should include 12 and 24 month Full Requirements Contracts, 12 and 48 month standard block contracts, and spot market purchases. See, OCA St. 1 at 23-26, Sch. MIK-2. This procurement plan is modeled on the current default service procurements for Met-Ed and Penelec and has worked well for residential customers. As detailed below, the OCA proposal meets the requirements of Act 129 and should be implemented for the Companies' upcoming Default Service Plan.

---

[16] 66 Pa. C.S. §2807(e)(3.2).

a. Legal Framework.

The General Assembly established the policy goals of Act 129 of 2008 in its Preamble. There, in declaring the purpose of Act 129, the General Assembly found that price stability was a key concern that needed to be addressed. The General Assembly stated:

> **Preamble**
>
> The General Assembly recognizes the following public policy findings and declares that the following objectives of the Commonwealth are served by this act:
>
> (1) The health, safety and prosperity of all citizens of this Commonwealth are inherently dependent upon the availability of adequate, reliable, affordable, efficient and environmentally sustainable electric service *at the least cost, taking into account any benefits of price stability over time* and the impact on the environment.
>
> (2) It is in the public interest to adopt energy efficiency and conservation measures and *to implement energy procurement requirements designed to ensure that electricity obtained reduces the possibility of electric price instability*, promotes economic growth *and ensures affordable and available electric service to all residents*.
>
> (3) It is in the public interest to expand the use of alternative energy and to explore the feasibility of new sources of alternative energy to provide electric generation in this Commonwealth.[17]

As the highlighted portions above demonstrate, the General Assembly determined that essential electricity service must be provided to consumers at the least cost while considering price stability. In addition to the obligation to provide least cost and stable service, the Act specifically requires that default service be adequate, reliable, affordable, efficient, and available.[18] The General Assembly established a series of policy objectives that each EDC must work to achieve through its default service plan. In reviewing the Companies' plans here, the

17 See, Preamble to Act 129, 2008 Pa. Laws 129 (Emphasis added).

18 Id.

Commission must assure that these legal obligations are met in order to provide customers with service designed to achieve the least cost to default service customers over time.

The legal framework for default service is set forth in detail in Section 2807(e), Obligation to Serve.[19] Under Section 2807, the FirstEnergy Companies are required to provide electric generation supply service to all of their default service customers through a Commission approved competitive procurement plan.[20] Under the Act, generation is to be obtained through competitive procurement processes, such as auctions, requests for proposals, and bilateral agreements.[21] As part of a procurement plan, Act 129 requires a mix of power as follows:

> The electric power procured pursuant to paragraph (3.1) shall include a prudent mix of the following:
>
> (i) Spot market purchases.
>
> (ii) Short-term contracts.
>
> (iii) Long-term purchase contracts, entered into as a result of an auction, request for proposal or bilateral contract that is free of undue influence, duress or favoritism, of more than four and not more than 20 years.[22]

The Act requires that default supply must include a prudent mix of the various types of contracts. Further, the mix of contracts must be designed to achieve certain goals, as follows:

> The prudent mix of contracts entered into pursuant to paragraphs 3.2 and 3.3 shall be designed to ensure:
>
> (i) Adequate and reliable service.
>
> (ii) The least cost to customers over time.
>
> (iii) Compliance with the requirements of paragraph (3.1).[23]

---

[19] 66 Pa. C.S. §2807(e).

[20] 66 Pa. C.S. §2807(e)(3.1).

[21] Id.

[22] 66 Pa. C.S. §2807(e)(3.2).

The Act further requires that the Commission evaluate whether the default supplier's plan meets the requirements of the Act. The Commission must take several factors into consideration, and must make specific findings that the default supplier's plan meets the requirements of the Act, as follows:

> (3.7) At the time the commission evaluates the plan and prior to approval, in determining if the default electric service provider's plan obtains generation supply at the least cost, the commission shall consider the default service provider's obligation to provide adequate and reliable service to customers and that the default service provider has obtained a prudent mix of contracts to obtain least cost on a long-term, short-term and spot market basis and shall make specific findings which shall include the following:
>
> (i) The default service provider's plan includes prudent steps necessary to negotiate favorable generation supply contracts.
>
> (ii) The default service provider's plan includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis.
>
> (iii) Neither the default service provider nor its affiliated interest has withheld from the market any generation supply in a manner that violates Federal law.[24]

The General Assembly requires each EDC to take affirmative steps to ensure that the goals of the Act are met.

As detailed above, the default service legislative framework requires the default service provider to develop a procurement plan that meets several goals. The default service provider must obtain a prudent mix of supplies designed to provide service at the least cost to customers over time. Default service must be reliable, adequate, and designed to reduce price instability.

---

[23] 66 Pa. C.S. §2807(e)(3.4).

[24] 66 Pa. C.S. §2807(e)(3.7).

The OCA submits that the above legal framework provides the foundation upon which the FirstEnergy Companies' default service procurement plans must be reviewed.

As part of its investigation into Pennsylvania's retail electricity market, the Commission issued guidelines impacting the current filing. In general, the Commission favors limiting or eliminating contracts extending past the end date of the upcoming default service plan. In addition, the Commission recommended that each EDC limit long-term contracts.[25]

In presenting these guidelines, however, the Commission explicitly recognized that such recommendations were not intended to impede a DSP from meeting its statutory obligations to provide default service at least cost to customers over time. The Commission addressed the legal implications of its recommendations, as follows:

> Notably, these guidelines are not intended to inhibit EDCs from developing default service plans that include a prudent mix of contracts that achieve the "least cost to customers over time." The Commission reiterates that it will not mandate a prescriptive portfolio of contract lengths and will allow EDCs to retain flexibility in developing plans that meet Act 129 requirements. For this reason, the Commission declines to accept RESA's and Direct Energy's recommendations that the Commission direct EDCs to develop portfolios that include a more specific mix of contracts.
>
> …
>
> OCA remarks that it is impossible to know whether long-term contracts will be necessary for EDCs to meet Act 129 requirements, and thus the Commission should not recommend limiting their use. The Commission reiterates that these recommendations are not intended to constrain an EDC from meeting its statutory obligations.
>
> Further, the Commission will refrain from making recommendations with respect to specific contractual terms and conditions for energy that will be procured for the next phase of default service plans, as suggested by Direct Energy. Providing guidance on specific, contractual provisions is outside the scope of the purpose of these recommendations.[26]

---

25 December 16 Final Order at 19.

26 December 16 Final Order at 19-20.

The OCA submits that the Commission's guidelines must be considered in light of the requirements of Act 129 to develop a reasonable and appropriate default service plan.

b. <u>The Companies' Residential Default Service Procurement Proposal</u>.

The FirstEnergy Companies have proposed to supply their residential default service customers through the purchase of 24 month full requirements contracts. Each of these contracts would be for service starting June 1, 2013 and ending May 31, 2015. OCA St. 1 at 13. By definition, the Companies' purchases would be classified as "short-term" contracts under the Public Utility Code.[27] Under the Companies' proposal, each DSP would lock in supplies to meet their default customers' demands through these "full requirements" contracts.

OCA witness Kahal explained the basic structure of the Companies' residential procurement plan, as follows:

> Each of the four EDCs will use a competitive process to acquire a series of "full requirements" contracts (or FRCs) to provide generation service for the existing default load. All such contracts will have fixed terms of two years, exactly coinciding with the time period of the default service plan, and will be acquired through DCAs to be held in November 2012 and January 2013, i.e., approximately two months apart.
>
> Under the DCAs, wholesale suppliers will bid to supply load "tranches" of nominally 50 MWs each under mostly fixed-price contracts for the two years. That is, the supplier bids a simple $/MWh price to supply all generation products required to serve load – capacity, energy, ancillary services and required alternative energy credits ("AECs"). The $/MWh price is fixed for the two years. However, 10 percent of the energy will be priced at the actual hourly locational marginal price ("LMP") of energy for the EDC's zone, plus a defined adder of $20 per MWh. This ten percent of energy need not be physically procured on the spot market by the FRC supplier, merely priced at the hourly spot market prices for contractual purposes. This contract arrangement, in effect, provides a mix (a 90/10 mix) of short-term contract pricing and spot energy pricing.

[27] Section 2807(e)(3.2) identifies three categories of default supplies: Spot market, short term, and long term contracts. Long term contracts are those greater than 4 years, but less than 20. Spot market purchasing occurs in the PJM administered wholesale market at both day ahead and real time prices. The proposed 24 month contracts are "short-term" contracts as defined by the Act. 66 Pa.C.S. §2807(e)(3.2).

OCA St. 1 at 13-14.

The winners of these contracts would supply power for a fixed percent, or "tranche," of the FE Companies' default service requirements. For example, if ten tranches were awarded for a particular DSP, each winning supplier would be responsible for 10% of the residential default load at every moment of every day during the contract. See, OCA St. 1 at 14. In this way, the Companies would shift the obligation of meeting default service demands to wholesale suppliers. As a result, the wholesale suppliers under full requirements contracts are exposed to the volumetric risk of an uncertain load responsibility. OCA St. 1 at 14.

The Companies have proposed to procure all of their 24 month full requirement tranches in November of 2012 and January of 2013. Approximately half of the June 2013 through May 2015 supply would be procured in November, with the remaining supply purchased in January. All of the contracts are for service beginning on June 1, 2013 and ending on May 31, 2015.

c. The OCA Submits That The Companies' Procurement Plan Raises Serious Concerns And Should Not Be Implemented At This Time.

The OCA submits that the Companies' procurement proposal relies far too heavily on a single type of product (24 month full requirements contracts) and does not adequately diversify the timing of procurements. As proposed, the Companies would procure all of their power through 24 month contracts. This proposed plan is in stark contrast to the current Met-Ed/Penelec default service plan, which includes 12 and 24 month full requirements contracts, 12 and 48 month block energy purchases, and a portion of supply directly purchased from the PJM spot market. The OCA submits that the Companies should continue with a diversified approach to the procurement of power. The Companies' proposal, which relies on a single type of short term contract for default service supply, does not represent a prudent mix of supplies as required by Act 129.

OCA witness Kahal identified concerns with the overall structure of the Companies' portfolio:

> One of the largest concerns that I have is with the basic structure of the wholesale products to be procured under this plan to provide generation supply for residential default customers. With one minor exception, residential default load is to be served by two-year Full Requirements Contracts (FRCs) that begin June 1, 2013 and terminate May 31, 2015. Hence, there is no contract laddering, no contract or product type diversity and an abrupt termination date for all power supply resources. Under this plan, 100 percent of supply must be replaced for June 1, 2015 introducing market timing risk and the possibility of an abrupt pricing change for default customers on that date.

OCA St. 1 at 7-8 (footnote omitted). The OCA submits that the Companies' residential supply plan relies too heavily on a single product, terminating at a single point in time, and does not adequately ladder purchases over time.

OCA witness Kahal further identified the details of his concerns with the Companies' residential procurement plan, noting:

> There are several problems with Joint Petitioners' residential default supply plan that merit change. First, it relies almost entirely on two-year FRCs, a single product type and term. As mentioned above, the FRCs may be more expensive than necessary because suppliers must price in premiums for volumetric risk. A second and related problem is that virtually 100 percent of supply for all four EDCs for the two years is acquired within an extremely short time window of about two months (i.e., November 2012–January 2013) largely eliminating the long-standing practice of Pennsylvania EDCs (and those in other states) of diversifying the timing of market purchases and staggering contracts.
>
> Third, in addition to the relative absence of market timing diversity for procuring power, 100 percent of residential supply contracts will terminate on a single day (May 31, 2015), and at that time all power supply must be replaced, referred to as the "hard stop" problem. If conditions in forward power supply markets do not change much between now and 2015, then this may not be a significant issue. But since we cannot know what will happen to markets, there is a significant risk of a major jump in default service pricing on June 1, 2015. The FE Companies in this plan have abandoned the long-standing and widely-employed practice of managing risk and seeking rate stability through portfolio diversity and staggered contracts. The FE Companies' portfolio can provide rate stability within the two-year term of the plan itself, but there is no provision for rate stability or transition after that.

OCA St. 1 at 17.

In addition, the Companies' have not adequately accounted for the impact that the proposed "retail opt-in auction" will have on wholesale default service bidders. Mr. Kahal explained the interaction between the retail opt in auction and the default service procurements, as follows:

> A fourth and more subtle problem arises from the interaction between the FRCs acquired for default service and the Opt-In Retail Auction Program, as proposed. As discussed above, suppliers must price migration risk into their FRC bids since the default load and consequently their responsibility for that load can change unexpectedly. The Opt-In Retail Auction Program is to be implemented after the FRC bidding is completed, and it is designed to foster a very sudden and sharp migrating away from default service. The FE Companies' Opt-In Retail Auction Program is entirely open ended in terms of size. Potentially, this arrangement could lead to much larger risk premiums being priced into the FRCs acquired for this default service plan.

OCA St. 1 at 18.

Taking all of these concerns into consideration, the OCA submits that the Companies' residential procurement plan should not be adopted at this time. As explained below, the OCA proposes that the residential procurement plan proposed by OCA witness Kahal that is modeled on the existing Met-Ed and Penelec default service plan should be adopted.[28]

d. The OCA Proposes To Continue The Current Practice Of Procuring A Prudent Mix Of Products.

The OCA recommends that the Companies procure a mix of products that includes one and two year full requirement contracts, along with block energy purchases of both one year and four years, and spot market purchases. By employing a more diverse mix of products, the

28 Penn Power's existing default service model also relies on a similar mix of full requirements contracts, and block and spot purchases. See, Petition of Pennsylvania Power Company For Approval Of Default Service Program For Period From June 1, 2011 To May 31, 2013, Docket No. P-2010-2157862 (Order entered November 17, 2010)(Slip op. at 5-7). West Penn's existing default supply plan was approved before Act 129 was passed. See, Petition of West Penn Power Company d/b/a Allegheny Power For Approval Of Its Retail Electric Default Service Program And Competitive Procurement Plan For Service At The Conclusion Of The Restructuring Transition Period, Docket No. P-00072342 (Order entered July 25, 2008).

Companies will achieve a prudent mix of supplies designed to provide service at the least cost over time.

The OCA further submits that these products should be laddered in order to avoid purchasing all of the Companies' supply in a short time horizon. The OCA supports layering in purchases over a broader horizon in order to capture market conditions over time. Mr. Kahal explained this alternative as follows:

> Two of the FE Companies (Met-Ed and Penelec) currently employ residential default portfolios that use "block and spot" supply along with FRCs, which provides considerable diversity. This arrangement was agreed to as part of the settlement in the Met-Ed/Penelec 2009 plan. I note that other Pennsylvania EDCs have also incorporated block and spot supply in their residential portfolios.

OCA St. 1 at 21.

OCA witness Kahal explained that his recommendation is to incorporate the general framework that currently exists for Met-Ed and Penelec for the upcoming default service period. Mr. Kahal explained why the Companies should include a more diverse supply portfolio, as follows:

> Q. Do you recommend inclusion of block and spot for the FE Companies in this case?
>
> A. Yes, I do, in a manner similar to that implemented for Met-Ed and Penelec. It would be reasonable to continue to provide about 25 percent of the residential default service (after first netting out loads served under the Opt-In Retail Auction Program) to block and spot supply for all four companies. The procedures used should be those currently in use by Met-Ed and Penelec. In Schedule MIK-2, I provide the relevant settlement paragraphs describing the procedures, not as authority or precedent but because it is a precise technical description of how this supply is defined and the tasks that the EDCs must perform. While there may be various methods of applying the block and spot concept, the FE Companies are certainly familiar with the protocols listed on Schedule MIK-2. These procedures seem practical, and I see no reason at this time to make major changes.

> As compared with a 100 percent FRC portfolio, the inclusion of block and spot provides some needed product diversity and has the potential to lower overall supply costs, consistent with the goals of Act 129.

OCA St. 1 at 23.[29]

OCA witness Kahal developed a procurement mix and purchasing schedule that addressed the concerns raised above. Mr. Kahal described his general approach as follows:

> I begin with the 78 tranches identified by the FE Companies for residential default service. There presently are 30 for WPP, 24 for Met-Ed, 18 for Penelec and 6 for Penn Power. For each EDC, I divide the load into essentially three supply segments – starting with roughly 20 percent assigned to the Opt-In Retail Auction Program; of the remaining 80 percent, roughly 25 percent (i.e., 20 percent of the total residential Default Service load) are block and spot (similar to the current Met-Ed/Penelec portfolios); the remainder (75 percent of the load excluding the Opt-In Retail Auction program, or 60 percent of the total residential Default Service load) are FRCs. I believe that it is important to have a defined amount of load (in the form of the number of customers) assigned to the Opt-In Retail Auction Program in order to mitigate what might otherwise be a severe volumetric risk problem. I discuss this issue further in Section IV of my testimony.

OCA St. 1 at 24.[30]

---

[29] Penn Power's existing default service plan also includes a mix of 25% block and spot market purchases, along with 75% full requirements contracts. Petition of Pennsylvania Power Company For Approval Of Default Service Program For Period From June 1, 2011 To May 31, 2013, Docket No. P-2010-2157862 (Order entered November 17, 2010)(Slip op. at 5-7). Due to Penn Power's size, the block portion of its existing supply mix is sized somewhat differently than the Met-Ed and Penelec supply mix.

[30] As explained by OCA witness Kahal in his testimony, the Opt-In auction creates risks to the procurement process that may lead to higher costs for default service. Mr. Kahal's proposed procurement plan is designed to limit this risk. A full discussion of the impact of the Opt-In Auction and the impact on default service is detailed further in Section II. B. 6. of this Main Brief.

Using Met-Ed as an example, OCA witness Kahal proposed the following procurement schedule:

Year 1 Procurements **(November 2012 – January 2013)**	**Year 2 Incremental Procurements** **(November 2013 – First Quarter 2014)**
Met-Ed (24 tranches) **1 50 MW, four-year Round the Clock** **3 one-year block and spot** **7 FRC, one-year** **7 FRC, two years** **6 Set aside for the retail opt-in auction**	**Met-Ed (10 tranches)** **3 one-year block and spot** **7 FRC, two year**

OCA St. 1, Sch. MIK-1. As shown above, Mr. Kahal's proposal would include both one year and two year full requirements contracts. These contracts would be similar to the full requirements contracts currently employed by Met-Ed and Penelec, and would not have ten percent of the contract priced at spot market prices. OCA St. 1 at 26. In addition, the portfolio would include one year on and off-peak block energy products, 48 month "around the clock" block energy contracts, and direct spot market purchases. See, OCA St. 1 at 23-24, sch. MIK-2.

Mr. Kahal's proposal allows for a diverse supply portfolio that meets the requirements of Act 129. The proposed purchasing plan would spread purchases over four periods: November 2012, January 2013, November 2013, and the first quarter of 2014. By purchasing supplies over a laddered period, the companies will reduce their exposure to potential wholesale price spikes. In addition, this portfolio incorporates the basic structure that is currently in place for Met-Ed and Penelec and will allow retail competition to continue to develop and expand. The OCA submits that the Companies should continue to pursue a diverse mix of products, as proposed by OCA witness Kahal, at this time.

2. Term of Contracts.

The OCA recommends that the Companies procure a mix of products of one year full requirements contracts, two year full requirement contracts, one year block energy purchases, four year block energy purchases, and spot market purchases. See, OCA St. 1, Sch. MIK-1. As discussed above in Section II.B.1 of this Main Brief, by employing a more diverse mix of products, the Companies will achieve a prudent mix of supplies designed to provide service at the least cost over time.

3. Procurement Dates.

The OCA submits that the Companies' proposed timing of purchases is unreasonable because it would limit all procurements for 2013-2015 supply to market conditions approximately two months apart. In other words, the state of the market during the time of the November 2012 procurement and the January 2013 procurement will dominate the price of default service for the entire June 2013 to May 2015 plan period.

The OCA has recommended a supply mix similar to what the Companies currently procure for Met-Ed and Penelec. OCA St. 1 at 24-25. Under such a procurement strategy, OCA witness Kahal identified four procurement dates: November 2012, January 2013, November 2013, and the first quarter of 2014. OCA St. 1, Sch. MIK-1.

In his Rebuttal Testimony, Mr. Kahal addressed concerns raised by RESA that procurements should be closer in time to contract start dates. OCA St. 1-R at 12. In response, Mr. Kahal noted that moving the second auction to March 2013 would help reduce market timing risk by spreading the first two procurements over a longer period. Id. The OCA submits that separating the Companies' proposed November and January procurements could be beneficial and does not object to such a move.

4. Laddering of Contracts Beyond June 1, 2015.

The Companies have proposed to end all supply contracts on May 31, 2015, *i.e.*, a "hard stop" of all contracts. As a result, the Companies will be fully exposed to market conditions at the time of the procurements for its next Default Service Plan. Energy markets have been subject to volatility, and the Companies' plan would fully expose customers to potentially dramatic rate increases on June 1, 2015.

OCA witness Kahal explained why a hard stop is a concern for residential procurement:

> Q. Will residential customers be harmed by the "hard stop" attribute of the filed plan?
>
> A. Sitting here today, we cannot know for certain whether there will be actual harm, but there is exposure to significant risk of sharp price increases if market conditions change adversely. This is why it has been accepted practice to stagger contracts and avoid the hard stop. For example, New Jersey's procurement practice has contributed to relative price stability by using overlapping three-year contracts with one-third of supply replaced each year. Maryland uses overlapping two-year contracts with one-quarter of supply replaced every six months.

OCA St. 1 at 18-19.

Mr. Kahal further testified that market conditions, while currently favorable, may change dramatically prior to the next default filing, thus exposing customers to potentially significant rate increases. Mr. Kahal explained:

> Conditions for consumers in power supply markets are presently very favorable, and all indications are that this should persist in the near term. I am optimistic that the auctions to be conducted by the FE Companies within the next year will produce very attractive pricing for default customers. This is due to a combination of extremely low natural gas prices (due to a glut of supply), adequate generating capacity and depressed customer loads due to a weak economy.

> For the period two to five years hence, I am less confident these favorable conditions for consumers will persist. Historically, the natural gas market has been both cyclical and volatile, and there are reasons to expect a price recovery over time. While there are arguments over the scope of the problem, there are expectations of large amounts of coal plant retirements over the next several years due principally to the cost of environmental compliance. Much of the retired coal plant capacity and energy will be replaced by natural gas-fired units (new and existing), placing upward pressure on natural gas prices, electric energy prices and capacity prices. If a strong economic recovery takes place, this will put further pressure on wholesale power supply costs.

OCA St. 1 at 19.

To support a "hard stop", Companies' witness Stathis argued in Rebuttal that the Commission's default service recommendation Order (the December 16 Order discussed above in this Brief) recommended that contracts end on May 31, 2015. FE St. 4–R at 2-3. Mr. Stathis argued that the Companies could stagger their purchases for future service at the time of its next default service filing in a "similar" manner to what the Companies are doing in this proceeding, *i.e.*, meeting default supply through two procurements spread out over a two month period. FE St. 4-R at 3.

In response to this argument, OCA witness Kahal noted that there was no clear plan as to how potential price spikes could be mitigated at a later date. Mr. Kahal explained:

> Mr. Stathis seems to recognize that the potential for abrupt price changes is a legitimate concern. His testimony attempts to provide a sort of assurance ("anticipation") that the problem will, in fact, be adequately addressed in the next default plan (i.e., the plan to begin in June 1, 2015). However, he provides absolutely no details on this plan, no real commitment by the Companies, and he is not able to demonstrate that in the next plan it will even be feasible to smooth or mitigate a potential abrupt price change.

OCA St. 1-SR at 6.

The OCA further submits that the Commission's December 16 Order expressly recognized that, "The Commission reiterates that it will not mandate a prescriptive portfolio of contract lengths and will allow EDCs to retain flexibility in developing plans that meet Act 129 requirements."[31] The OCA submits that the Companies' "hard stop" procurement unnecessarily exposes residential customers to possible price spikes, and should be modified to ladder in purchases.

5. OCA's Proposal To Continue The Use Of Block Purchase Components With Spot Transactions for Residential Customers.

As discussed above, the OCA supports the use of block and spot purchases as part of a diversified portfolio of energy supplies designed to provide service at least cost over time. The OCA recommends that the Companies include block and spot market purchases along with full requirements contracts. The OCA submits that the inclusion of block and spot purchases, with full requirements contracts, will ensure reasonable and stable rates at the least cost over time. In this section, the OCA responds to criticism of the use of these products in the residential supply mix.

a. The Companies' Analysis Of Block Energy And Spot Energy Purchasing Is Flawed Because It Does Not Account For The Higher Cost 48 Month Block.

In response to OCA witness Kahal supporting the continuation of the Companies' diverse procurement mix which includes block and spot purchases, the Companies provided a cost comparison of the full requirements portion of their supply portfolio as compared to the block and spot portion of their supply.[32] The Companies looked at eight months of results (June through January) to support their proposal to eliminate block and spot purchases.

---

31 December 16 Final Order at 19.

32 For this comparison, the Companies looked at Met-Ed, Penelec, and Penn Power, each of which supplies customers with a mix of full requirements, spot, and block purchases. West Penn does not currently share the same type of default service portfolio as the other FirstEnergy EDCs.

The OCA submits, however, that the results of this study should be viewed with caution because it compares ***12 and 24 month*** full requirements contracts in FE Exhibit DWS-5 with a block and spot mix that is heavily influenced by a ***48 month***, 50 MW block. As such, it is not the "apples to apples" comparison that the Companies suggest.[33]

OCA witness Kahal explained why FE witness Stathis' study was inconclusive, as follows:

> At the outset of this case, the OCA requested that the Joint Petitioners provide any available evidence on this question, and at that time, none was available. I commend the FE Companies for providing this evidence at this time in rebuttal testimony, and I urge the FE Companies to continue to perform such analyses.
>
> Unfortunately, the information provided by Mr. Stathis is far too preliminary and limited to draw firm conclusions at this time. The study period covers only eight months (June 2011 – January 2012), and it has several other potential limitations. Some back-up information on the Companies' recent default service contract procurements is provided in response to confidential OCA II-6. This information seems to imply that the 48 month round-the-clock block is more expensive than the one-year blocks, perhaps not surprisingly. It is therefore possible that the relatively high cost of the 48-month block may be obscuring the comparisons and Mr. Stathis' overall findings of no savings. In addition, there appear to be timing differences between when the blocks were procured versus when the FRCs were procured. Fixed-price contracts can sometimes be very sensitive to the dates of acquisition.
>
> In light of these limitations, I believe that it would be valuable for the FE Companies to continue to perform such cost comparison analyses. Further studies should use a longer time period, correct for any contract acquisition timing difference and attempt to net out the effects of the 48-month contracts to obtain a more rigorous "apples to apples" comparison. I recommend that the Companies' study efforts be coordinated with the OCA.

OCA St. 1-SR at 8-9.

[33] It is also worth noting that the Companies have proposed to price a portion of their full requirements supply at spot market prices. In the study, however, pricing associated with the spot market is included with the "block and spot" portion of their portfolio. While the study is used to support the exclusive use of full requirements contracts over a more diverse portfolio, it does not adjust for the movement of "spot" pricing into the proposed "full requirements" products. As such, it is not an "apples to apples" comparison.

Mr. Kahal further testified that the results from the block and spot portion of the current plan, running from June 1, 2011 through May 31, 2013, will be available in the Companies' next default service filing. At that time, a more complete analysis can be conducted. In the meantime, the inclusion of block and spot purchases in the supply mix will diversify the supply mix and reduce reliance on a single type of product. See, OCA St. 1-SR at 9.

b. RESA and Dominion's Criticisms Of Block And Spot Purchasing Are Overstated.

In their Rebuttal testimony, RESA and Dominion objected to the OCA's proposal to include block and spot purchases in the residential default service plan. RESA witness Williams objected to block and spot purchasing and instead supported one year full requirements contracts purchased close to the time of use. RESA St. 1-R at 4-5. Dominion witness Butler opposed the continued use of block and spot purchasing out of concerns that it would add volatility to the default service price. Dominion St. R-1 at 3-4. The OCA submits that both concerns are overstated and do not warrant abandoning the use of a more diverse mix of products.

With regard to RESA witness Williams' concerns, the OCA submits that relying exclusively on FRCs with spot market pricing is unreasonable and clearly at odds with Act 129's objectives. Reducing the length of products, and reducing diversity of supply, will not lead to a stable and affordable product. Act 129 repealed the "prevailing market price" standard for default service that was included in the original 1996 electric Restructuring Act and replaced it with a "least cost over time" standard to be achieved by purchasing a "prudent mix" of contracts of varying length.[34] The RESA proposal is not consistent with this legislative direction.

OCA witness Kahal further testified that RESA's objections to the continued use of block and spot purchasing did not accurately capture his proposal. Mr. Kahal explained:

---

[34] 66 Pa. C.S. §2807(e)(3.2).

> Witness Williams appears to misapprehend my portfolio recommendation. It is not my intention to recommend "expanding" the use of "block and spot". Instead, I am recommending that the Companies continue the practice that was established in the last default case for Met-Ed and Penelec and is currently being used now – 25 percent of supply from block and spot with the remainder from FRCs. I would note that under this existing 75 percent FRC/25 block and spot portfolio mix, residential switching to EGS service has increased rather substantially.

OCA St. 1-SR at 7.

As Mr. Kahal explained, the block and spot purchasing proposal is not new to the market. Indeed, retail switching has continued to increase during operation of the current default service plans containing a block and spot component.[35] The OCA submits that RESA's objection to the continued use of block and spot purchases should be rejected.

OCA witness Kahal also addressed the concerns raised by Dominion witness Butler. Mr. Butler's primary concern was that including block and spot purchases would add volatility to the default service rate. Dominion St. SR-1 at 4. Mr. Kahal explained, however, that his proposal would reduce, not add to volatility. Mr. Kahal agreed with the Dominion witness' conceptual concerns, but disagreed that block and spot procurements would be problematic, where he testified as follows:

> I believe that Mr. Butler's underlying conceptual argument has considerable merit. If customers are to make rational, informed choices between default service and EGS offers, then the PTC should not be excessively volatile, and it requires some reasonable predictability or stability. A stable PTC platform can promote an orderly residential retail market and will benefit consumers. Ironically, it is certain EGS parties that, contrary to Mr. Butler, have argued aggressively for making default service more volatile in the interests of making it more "market sensitive."
>
> Where I must disagree with witness Butler is the factual question as to whether the block and spot component materially increases overall default portfolio volatility. I do not believe that it does (nor does it create additional customer risk as alleged by Dr. Reitzes) for several reasons. First, the "block and spot" supply

[35] For Met-Ed, for example, the percentage of residential customers shopping was 1.74% in June 2011, and as of April 25, 2012 was 20%. OCA Exh. 1 at 2; Pa. PUC Powerswitch website (as of April 25, 2012).

> itself is designed to be about 80 percent fixed price, with the remaining "balancing energy" priced at locational marginal price ("LMP"). Second, the block and spot (which itself is primarily, but not entirely, a fixed price) is intended to be only about 25 percent of total default supply. Third, I recommend as an offset removing the ten percent spot priced component from the FRCs. The end result is my 75/25 portfolio and the FE Companies' 100 percent FRC portfolio would have roughly the same amount of spot priced versus fixed price energy. Consequently, there will be little or no difference in price volatility between our respective supply portfolios. There is no evidence to the contrary in any party's rebuttal testimony.

OCA St. 1-SR at 7-8.

As explained by Mr. Kahal, the spot market portion of the "block and spot" supplies replaces the spot market pricing component of the full requirements contracts proposed by the Companies. As such, there is no additional volatility introduced into the default service price. Rather, incorporation of the block and spot products adds stability to the default service price that will benefit shopping.

6. <u>The OCA's Proposed "Hold Back" for Retail Opt-In Auction</u>.

The OCA submits that the Companies' DSP must be designed to achieve least cost to customers over time. To achieve that goal, the procurements must be conducted in a stable environment without adding excessive risks to wholesale default suppliers that would then impact default service rates. In order to protect the default service procurement process in light of the proposed Retail Opt-In Auction, OCA witness Kahal developed a mechanism by which the open ended risks to default suppliers that could be triggered under the retail opt-in program (discussed further below in section IV. A.) are substantially mitigated.

The FirstEnergy Opt-In Program is unlike any program in any other electric choice state. As OCA witness Kahal testified, in such a novel proceeding, caution is warranted:

> Q. Are you aware of any similar programs in other retail access states?

> A.	No, I am not. In response to OCA I-17, the Joint Petitioners indicate that they are also unaware of similar programs. This absence of experience is why program design should be approached with considerable care. The goals of program design should be to (a) encourage customers to participate in the retail market when and if it meets their needs; (b) encourage EGS participation; (c) minimize customer risk associated with participation; (d) maximize customer net benefits or savings; (e) avoid driving up the cost of default service; and (f) avoid harming or distorting the development of the retail market. **In pursuing these goals, it is important to be mindful of the absence of actual experience with this type of program, and this should be considered when defining the key features**.

OCA St. 1 at 28-29 (emphasis added).

OCA witness Kahal further explained the potential problems that the Opt-in program could create for default service supply procurement, as follows:

> The single most important concern is that the program, as structured, creates an open-ended risk for the wholesale suppliers bidding in to the default auctions that take place prior to this program being implemented (i.e., in November 2012 and January 2013). This is because the amount of load to be served under this program is uncapped and therefore completely indeterminate. Wholesale FRC suppliers are already exposed to the volumetric risk of customer migration and this risk perception is priced into default supply bids. The potential for a sharp and abrupt increase in customer migration that could occur immediately following the submission of their bids could greatly increase default service supply costs for residential customers. Potential savings for customers choosing to participate in the Opt-In Retail Auction Program should not come at the expense of customers that remain on default service.
>
> This problem even raises the possibility that the rate discount achieved by the program for participating customers could turn out to be illusory. That is, if the program itself causes an increase in the price of default service, then it is possible that the discount provided by the program is not a true savings for participants because it is merely a discount to an artificially increased default service price. In this scenario, it is possible that all residential customers could lose – program participating customers, other EGS customers and default customers.

OCA St. 1 at 30.

Constellation Energy also recognized the potential harm that an open-ended opt-in auction could have on default supply. Constellation witness Fein testified that, “There is a concern that opt-in auctions would have an adverse impact on existing and/or future default service procurements, as effective wholesale procurement for a subset of customers (through retail opt-in programs) could cannibalize the wholesale procurements for default service supply for EDCs." Constellation St. 1 at 30. Mr. Fein further testified that such a result, "could cause the wholesale default service auctions to have unduly high prices to account for such potential risk, to the detriment of those customers that remain on default service." Constellation St. 1 at 30.

OCA witness Kahal recommended a procedure by which the wholesale bidders would not be exposed to the volumetric risk created by the opt-in auction. Under Mr. Kahal's proposed "hold back" of supply reserved for the opt-in auction, full requirements bidders would be assured that the MW size of the tranches they were bidding on were fixed at the expected 50 MW size. Mr. Kahal summarized his hold back procedure, explaining:

> I mitigate this problem by defining the program load size (i.e., in the form of a participation cap) and by removing the program load from the FRC default load auction process. A numerical example can illustrate the risk mitigation benefit of my recommended approach.
>
> Assume an EDC with a residential default load of sixteen 50 MW tranches at the outset. My portfolio would allocate 10 of the tranches to FRCs, 3 to block and spot and 3 to the Opt-In Retail Auction Program. If the Program is fully subscribed, then all FRC suppliers will continue to serve their 50 MW tranches as contemplated. While they still face volumetric risk from normal shopping activity, they are not affected by the Program itself. This assumes that customers participating in the Program remain with the winning EGS.

OCA St. 1 at 31-32. Importantly, Mr. Kahal's proposal would ensure that each winning supplier would serve an approximately 50 MW tranche – regardless of the outcome of the opt-in auction. See, OCA St. 1 at 32-33.

Mr. Kahal recommended that a participation level of 20% be used and that approximately 20% of non-shopping load be "held back" from the default service procurement for use in the opt-in auction. Mr. Kahal explained the benefits of this approach, as follows:

> As I show on Schedule MIK-1, about 20 percent of the identified residential default tranches should be allocated to this program. If fully subscribed, this would be a very large program and an enormous increase in residential shopping within a very short period of time. As mentioned above, about 18 percent of FE Companies' residential customers (on average) already are shopping, almost all of which has occurred within the past year. If this trend continues, a 20 percent increment from this program would be considered very significant.

OCA St. 1 at 33 (footnote omitted).

In the event the opt-in auction does not reach a 20% participation level, those unfilled tranches held back for the opt-in program would be offered back to winning wholesale bidders in the default service auctions. OCA St. 1 at 32. Mr. Kahal explained the contingency mechanism, as follows:

> If the undersubscription is less than one tranche, then it should be filled through the PJM spot market for the one-year term. If the undersubscription is more than one tranche, then the undersubscribed load should be filled by offering it to the eligible wholesale default bidders as a one-year FRC, similar to the procedures outlined in Paragraph 29 of the Joint Petition. In the event a one-year FRC cannot be reached, the EDC should fill the tranche or tranches with block and spot supplies. This procedure also would apply if the Commission does not approve the EGS selection.

OCA St. 1 at 34.

The OCA submits that Mr. Kahal's proposal adequately addresses the potential negative impact an open-ended opt-in program could have on default service procurement. Mr. Kahal's "hold back" proposal will allow for a successful opt-in auction while helping to ensure that default service procurements do not contain unreasonable risk adders and limited bidder interest to the detriment of default service customers. As such, the OCA supports the inclusion of Mr. Kahal's proposal in the Companies' default service procurement plan.

7. Procurement Method – Descending Price Clock Auction.

The Companies propose to use "Descending Clock Auctions" (DCAs) to select the winning suppliers. FE St. 5 at 13-15. The Companies argue that the use of these types of auctions will attract substantial interest as wholesale suppliers can participate on a single day and modify bids for all four EDCs as necessary. FE St. 5 at 16-17.

The OCA submits that descending clock auctions may be a more costly alternative than other traditional procurement methods. OCA witness Kahal explained the cost concerns of this auction methodology, as follows:

> In contrast to the more commonly used method of a sealed-bid RFP, for a given product (e.g., a two-year FRC) and EDC, the DCA produces a single market-clearing price that all winning bidders receive. In contrast, under the sealed-bid RFP method, the winning bidders receive contract prices reflecting their individual bids – not the single clearing price.

OCA St. 1 at 16. As Mr. Kahal explained, under a sealed-bid RFP, winning suppliers receive the price they bid for service. Under the DCA clearing price methodology, all winning suppliers receive the clearing price regardless of their actual bid.

Given the widespread utilization of sealed-bid RFP procurements, the OCA generally supports the use of that procurement methodology. OCA witness Kahal explained that, on balance, the sealed bid RFP remains preferable at this time at least for the non-FRC procurements, particularly in light of the significantly higher administrative costs associated with the DCA. Mr. Kahal testified:

> I recognize that there are conceptual arguments supporting both approaches to procurement, and it is clear that both can be effective methods of acquiring competitively-priced power supply. The sealed-bid RFP appears to be far more widely used by utilities in acquiring default service supply contracts than the DCA. Moreover, a sealed-bid RFP can be conducted at a much smaller administrative expense. The FE Companies and Dr. Miller's testimony discusses the favorable attributes of the DCA procurement method for default service supply, but they were not able to provide any empirical evidence (e.g., analyses or studies) demonstrating superiority to the conventional sealed-bid RFP for default supply procurement. (Response to OCA II-8.)
>
> While I cannot endorse the DCA as the superior procurement tool, I do not contest its use in this case for the FRCs to be acquired. Fortunately, in this case the DCA expenses can be spread over a relatively large customer base. However,

> I recommend that the other much smaller procurements, i.e., block purchases and EGS selections, be done using conventional sealed-bid RFPs.

OCA St. 1 at 16.

As explained by OCA witness Kahal, the sealed-bid RFP model has proven to be successful and is a lower cost option. The OCA supports the use of a sealed bid procurement at this time for all non-FRC procurements.

8. Load Cap.

The OCA takes no position on this issue.

C. Industrial Class Hourly Priced Default Service.

The OCA takes no position on this issue.

D. Use of Independent Evaluator.

The OCA takes no position on this issue.

E. AEPS Requirements.

While the OCA did not present testimony on this issue, the OCA would note that it supports the Companies' AEPS proposals at this time. The procurement practices are consistent with prior settlements, and have worked reasonably well to this point. In addition, the Companies' solar plan will encourage long term development of solar resources in a manner consistent with the Commission's recommendations contained in the December 16th Order.[36]

1. Non-Solar Photovoltaic Requirements. (Addressed above)

2. Solar Photovoltaic Requirements. (Addressed above)

F. Contingency Plans.

1. Full Requirements Products.

The OCA takes no position on this issue.

---

36 See, December 16 Final Order at 21.

2. AEPS Requirements.

The OCA takes no position on this issue.

G. Supplier Master Agreements.

1. Credit Requirements.

The OCA takes no position on this issue.

2. Monthly versus Weekly Settlements.

The OCA takes no position on this issue.

3. Confidentiality.

FirstEnergy witness Richard L. Schreader described and explained the Supplier Master Agreements (SMAs) that are being proposed for use by the Companies in the new DSP. FE Statement 3 at 3-11. In his Direct Testimony OCA witness Kahal addressed one specific concern with respect to the proposed confidentiality provisions of the SMAs. Mr. Kahal testified as follows:

> The FE Companies' draft agreements with suppliers (such as Supplier Master Agreements or "SMAs") have confidentiality provisions for information supplied by bidders to the EDCs. The presence of confidentiality provisions is understandable since unregulated suppliers may be asked to provide financial and other business data (including bid data) which they may regard as market sensitive. While confidentiality provisions may be needed, it is my understanding that this could result in important information about the operation of default service plans and default procurement methods not being available for review in order to ensure that default plans are working properly for consumers.
>
> I am not contesting the need for confidentiality provisions in the supplier agreements and in the competitive procurement process. However, I do believe that confidentiality procedures and provisions established in this docket should not prevent access to needed data and information by appropriate parties in future PaPUC proceedings and investigations. In particular, provision should be made that appropriate reviewing parties have the ability to access such information subject to approved confidentiality agreements in such future proceeding. The "appropriate reviewing parties" certainly would include the Commission, the

> Bureau of Investigation and Enforcement, the OCA and the Office of Small Business Advocate ("OSBA") i.e., entities with statutory responsibility for public and consumer protection. It might not be appropriate for certain other parties (or individuals) that are market participants to have access to such confidential information, which is judged to be commercially sensitive.

OCA St. 1 at 47-48. As Mr. Kahal testified, certain information as to default service plans and procurement methods are critical to the OCA's ability to thoroughly analyze and investigate default service related programs in matters before the Commission. Some of the confidentiality language currently contained in the proposed SMAs could be interpreted as a bar to disclosure of bidder-supplied information in a future proceeding, even as to a statutory party such as the OCA.

Based on a review of the record, the OCA has not found any rebuttal testimony as to the confidentiality issue raised by Mr. Kahal.[37] Accordingly, the OCA respectfully requests the Commission to adopt the OCA's proposal as to the SMAs and direct the Companies to modify any confidentiality provisions in the SMAs that would bar the "appropriate reviewing parties", as described by Mr. Kahal, from access to bidder-supplied information in the normal course of such parties' investigation in future proceedings before the Commission.

III. RATE DESIGN AND COST RECOVERY

A. Residential and Commercial Classes: Price to Compare Default Service Rider.

In Section III. G. of this brief, the OCA discusses its recommendations as to the reconciliation process for the Price to Compare Default Service Rider. The OCA is adamantly opposed to the implementation of the Companies' proposed Market Adjustment Charge (MAC) in any form, and to any effect the MAC would have on the PTC Default Service Rider. The OCA has no opposition to the composition of the PTC Default Service Rider beyond these areas.

[37] The OCA would note that the Rebuttal testimony of FE witness Mr. Schreader did address additional issues regarding the proposed SMAs, but such testimony was directed at recommended changes made by Constellation witness David I. Fein. FE Statement 3-R at 1-5. Mr. Fein's recommendations did not include the confidentiality issues identified by OCA witness Kahal.

B. Industrial Class: Hourly Pricing Default Service Rider.

The OCA takes no position on this issue.

C. Market Adjustment Charge.

1. Summary and Overview of the OCA's Position.

The Companies propose to add a 0.5¢ per kWh charge to the PTC for the residential and commercial classes that will serve to increase the default service rate by one-half cent. The Companies allege that the Market Adjustment Charge (MAC) will compensate the Companies for the obligation and risk of providing generation service for customers who choose not to shop, and will enhance competition by creating "headroom" for EGS to provide competitive offers. See FE St. 7 at 11-17. The OCA opposes the MAC.

The OCA submits that the MAC is in conflict with the Public Utility Code in several respects, particularly since the Companies receive full recovery of all costs of providing default service on a dollar-for-dollar basis through an automatic adjustment surcharge. The OCA has calculated that if the Companies are authorized to implement the proposed MAC, the Companies would receive over $190 million[38] in additional pre-tax profit from default service customers – as there are no offsetting costs or risks associated with adding the 0.5¢ per kWh charge to the PTC. OCA St. 1 at 39.[39]

The proposed Market Adjustment Charge also would impact shopping customers in the Companies' service territories. An artificially inflated default service rate will result in increased EGS' charges for consumers who accept a percent-off-the-default price offering. For example,

38 The OCA notes that FirstEnergy witness Fullem, in response to Mr. Kahal, testified that the MAC would only produce about $140 million during the two-year period of the DSP. FirstEnergy St. 7-R at 11.

39 Even assuming that fewer customers will remain on default service in the future, the 0.5¢ per kWh charge will almost certainly provide tens of millions of dollars in profits that are over and above the costs incurred by the Companies to provide default service.

First Energy Solutions (FES) recently offered 6% off the Price to Compare for residential customers and 4% off the Price to Compare for commercial customers as part of a proposed municipal opt-out program in Meadville, Pennsylvania.[40] The Companies' proposed MAC would simply increase costs for consumers and provide a substantial windfall for FirstEnergy shareholders.

The MAC is completely inconsistent with several provisions of the Public Utility Code and is also inconsistent with deeply entrenched case law. The Companies' proposal to implement a MAC must be rejected.

2. The OCA's Position.

The Public Utility Code provides in relevant part:

> (a) Burden of proof.--Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof.[41]

As the petitioner for a Commission Order in this matter, FirstEnergy has the burden of proof.[42] In addition to satisfying the burden of proof, a petitioner must provide substantial evidence in the record as support for its case before the Commission.[43] The Pennsylvania Supreme Court has

---

40 See, Consolidation of Three Petitions Regarding Municipal Aggregation and Directive re: Customer Switching Pursuant to "Opt-out" Municipal Aggregation Programs, Dock. Nos. P-2010-2207062, P-2010-2207953 and P-2010-2209253 (Opt-out Municipal Aggregation), First Energy Solutions Answer filed November 22, 2010 at pg. 2. Although FES' proposal was ultimately found to not be in compliance with the Public Utility Code by the Commission, the basic issue of an artificially inflated PTC remains – shopping customers who accept a percent-off-the-default price offer in the Companies' service territories will pay higher rates with the proposed Market Adjustment Charge in place.

41 66 Pa. C.S. § 332(a).

42 66 Pa. C.S. § 332(a); Petition of PPL Electric Utilities Corporation for Approval of a Competitive Bridge Plan, Dock. No. P-00062227 (Order entered May 17, 2007). In Se-Ling Hosiery, Inc. v. Margulies, 364 Pa. 45, 70 A.2d 854 (1950) the Pennsylvania Supreme Court held that the term "burden of proof" means a duty to establish a fact by a preponderance of the evidence.

43 2 Pa. C.S. § 704. The term "substantial evidence" has been defined by the Pennsylvania Supreme Court, Superior Court and Commonwealth Court as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037

also provided that the party with the burden of proof has a formidable task before its position can be adopted by the Commission. Even where a party has established a prima facie case, the litigant must establish that:

> the elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.[44]

In addition to the general burden of proof required of a petitioner as provided in Section 332, the Public Utility Code provides the following as to proceedings specifically involving the rates of a public utility, in relevant part as follows:

> § 315. Burden of proof
>
> (a) Reasonableness of rates.--In any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility, or in any proceedings upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.[45]

FirstEnergy has failed to carry its burden of proof on this issue, has failed to provide substantial evidence in support of the proposed MAC, and has failed to show that the inclusion of the MAC in its DSP would result in just and reasonable rates.[46] In his rebuttal testimony, Mr.

(1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 194 Pa. Super. Ct. 278, 166 A.2d 96 (1961); and Murphy v. Comm. Dept. of Public Welfare, White Haven Center, 85 Pa. Commw. 23, 480 A.2d 382 (1984).

44 Burleson v. Pa. Pub. Util. Comm'n, 501 Pa. 433, 436, 461 A.2d 1234, 1236 (1983).

45 66 Pa. C.S. § 315(a). As this Commission stated in the Penn Power default service case:
As the party seeking a Commission Order approving an Interim Default Service Plan, Penn Power has the burden of proving that the aspects of its proposed plan are both just and reasonable (66 Pa. C.S.A. §315(a)). The evidence necessary to meet this burden must be substantial and substantial evidence has been defined as being "...more than a mere scintilla, such evidence as a reasonable mind might accept as adequate to support a conclusion." Consolidated Edison Co. v. National Labor Relations Board, 305 U.S. 197, 229 (1938). Petition of Pennsylvania Power Company for Approval of Interim Default Service Supply Plan, Docket No. P-00072305 at 4 (Order entered January 2, 2008).

46 ALJ Susan D. Colwell succinctly captured the cost recovery structure of default service in a recent decision, stating "A default service provider is entitled to full recovery of its costs because it is not permitted to make a profit on the cost of the commodity." Petition of PPL Electric Utilities Corp. for Approval to Implement a Reconciliation Rider for Default Supply Service, Docket No. P-2011-2256365 (Recommended Decision of Administrative Law Judge Susan Colwell, issued April 4, 2012 at 35).

Fullem attempted to defend the MAC as a "reasonable cost" that the Companies are entitled to collect under the Public Utility Code. FE St. 7-R at 5. Mr. Fullem is wrong. The Public Utility Code provides, in relevant part:

> The default service provider shall have the right to recover on a full and current basis, pursuant to a reconcilable automatic adjustment clause under section 1307 (relating to sliding scale of rates; adjustments), all reasonable costs incurred under this section and a commission-approved competitive procurement plan.[47]

A plain reading of the statute indicates that the default service provider has a right to "recover" all reasonable costs "incurred". This plain meaning of cost recovery as to a public utility is embedded in a number of significant decisions from the Pennsylvania Courts. Directly on point here, the Supreme Court of Pennsylvania provided that:

> Although the Commission is vested with broad discretion in determining what expenses incurred by a utility may be charged to the ratepayers, the Commission has no authority to permit, in the rate-making process, the inclusion of *hypothetical expenses not actually incurred*. When it does so, as it did in this case, it is an error of law subject to reversal on appeal.[48]

On this same issue of illusory costs, the Commonwealth Court of Pennsylvania has held that:

> However, a utility may pass along to its customers only those expenses or costs it actually incurs. Any other approach would permit the utility, by charging higher rates than necessary, to gain a profit from its customers under the guise of recovering operating expenses.[49]

The plain meaning of the relevant Section of the Public Utility Code and the decisions of the appellate courts in Pennsylvania agree – a utility may only recover costs from its ratepayers that it has actually incurred. Hypothetical and illusory "costs", such as the MAC, are precluded from consideration in the rates that utility customers pay. The Bureau of Investigation and

---

[47] 66 Pa. C.S. § 2807(e)(3.9).

[48] Barasch v. PA PUC, et al., 493 A.2d 653, at 655 (Pa. 1985) (emphasis added).

[49] Cohen v. PA PUC, et al., 468 A.2d 1143, at 1150 (Pa. Commw. Ct. 1983) (internal citations omitted); See also, Barasch v. PA PUC, 532 A.2d 325, at 336 (Pa. 1987); Popowsky v. PA PUC, 695 A.2d 448, at 455 (Pa. Commw. Ct. 1997).

Enforcement (I&E) witness, Mr. Scott Granger, agrees with the OCA's position as to the MAC. In his Direct Testimony, I&E witness Granger testified that:

> It is my understanding that Pennsylvania has not allowed the addition of a return component (profit component) as described and proposed by the Companies. In fact, within the EDC's "obligations to serve" set forth in the Public Utility Code, it states that the EDC shall provide the default service electric power to the retail customers at no greater cost than the cost of obtaining the generation. *See,* 66 Pa.C.S. Section 2807(e). This obligation is generally recognized as not allowing the EDC's to add a profit margin to the price of their default service electric power.

I&E St. 1 at 5.

In his Direct Testimony, OSBA witness Robert D. Knecht also provided a substantial discussion as to why the MAC should not be implemented.[50] When asked whether the MAC was consistent with the normal criteria for setting utility rates, Mr. Knecht responded:

> No, it is not. Of the ten rate design criteria commonly cited in utility rate proceedings, the MAC violates at least five of them. First, it is not effective in recovering the revenue requirement, in that it exceeds identifiable costs. Second, it is not stable and predictable, because it would, in fact, result in an unexpected increase that is seriously adverse to ratepayers, and is unpredictable because it is not based on any identifiable costs. Third, it does not pass the static efficiency criterion, in that it discourages the use of electricity by default service customers by setting the rate substantially above the marginal cost of that service. Fourth and fifth, it is both unfair and unduly discriminatory, in that it fails to reflect the differences among rate classes, both with respect to the unidentifiable costs it purports to recover and with respect to the alleged need to encourage retail competition.

OSBA St. 1 at 12. The statutory advocates all agree on this point – FirstEnergy's alleged "costs" that it seeks to recover through the MAC are illusory and unsubstantiated.

OCA witness Matt Kahal discussed the total lack of any support for these costs, as follows:

---

50 See e.g., OSBA St. 1 at 4-13; See also, OSBA St. 1 at 4, where Mr. Knecht described "the Companies proposal for a 'headroom' default service charge to enrich utility shareholders" as "ridiculous".

> Dr. Reitzes discusses the MAC proposal arguing that the FirstEnergy Companies bear the risk of failing to recover costs associated with providing default service. (Statement No. 6, pages 36-39) The costs allegedly at risk are:
>
> - EDC infrastructure and personnel costs that might be needed in the event of wholesale supplier default;
> - Unanticipated costs of the purchase of receivables from EGSs;
> - Increases in uncollectible costs for default service; and
> - Incremental working capital costs that an EDC might incur in the event of wholesale supplier default.
>
> Dr. Reitzes lists these costs but provides no cost data, nor does he indicate whether such costs have ever been incurred by the FirstEnergy Companies or any Pennsylvania EDC.
>
> The OCA requested information on these four asserted risk items including cost data, a detailed description of the cost items and potential lost earnings estimates for the FirstEnergy Companies. (OCA II-18) The response did not provide any description, documentation or quantification. There is no indication that such costs have ever been incurred by Joint Petitioners, nor is there any available evidence that any of the listed items constitute a material risk of earnings loss.

OCA St. 1 at 41-42; see also, OCA Cross Exam. Exh. 1 at 19. As Mr. Kahal testified, FirstEnergy has been unable to quantify the "costs" that it is seeking to recover through the MAC. It is clear that such costs do not exist, and accordingly cannot be recovered from ratepayers through the unprecedented MAC or any other mechanism.

As to the issue of the purported risk that the Companies raised in regards to their provision of default service, Mr. Kahal testified as follows:

> OCA II-13 asked for credit rating reports, securities analysts' reports and Joint Petitioners' management presentations that identified default service risks. The Joint Petitioners' response stated that they were not aware of any such reports. Based on my experience, I concur with this response. I have seen no evidence that the financial community perceives any material business risk resulting from the provision of default service. Again, there is no documented support for Dr. Reitzes' position that there is material risk associated with default service that warrants a profit adder of any size.

OCA St. 1 at 42, see also, OCA Cross Exam. Exh. 1 at 16. As Mr. Kahal explained in his Surrebuttal Testimony, there is no evidence to support a cost basis for the MAC. Mr. Kahal testified that:

> There has been no clear explanation or set of calculations in the Joint Petition (and supporting testimony and exhibits), data responses or rebuttal testimony showing how 5 mills per kWh was quantified. The OCA has asked the FirstEnergy Companies to document unrecovered costs (actual or projected) and uncompensated risk incurred by the Companies, and no such quantification or documentation to date has been provided, nor is there any in the rebuttal testimony.

OCA St. 1-SR at 11. At the surrebuttal phase of this proceeding, the Companies finally identified what was alleged to be an unrecovered cost from the provision of default service. As discussed below, however, these alleged costs provide no support for the MAC.

In his surrebuttal testimony, FirstEnergy witness D'Angelo provided a discussion of uncollectible accounts expense for the Companies, that result in an alleged shortfall of approximately $3 million. FE St. 1-SR; Exh. RAD-4 and Exh. RAD-5. Mr. D'Angelo explained that for Met-Ed, Penelec and Penn Power, settlements of the last default service cases for these Companies provide that the uncollectible accounts expense can only be updated in the next base rate case, or in the next default service proceeding. FE St. 1-SR at 2-5. According to Mr. D'Angelo, the inability to adjust these expenses has created a shortfall.

The OCA specifically requested information from the Companies as to Mr. D'Angelo's surrebuttal testimony. In response, the Companies supplied the complete text of the Met-Ed/Penelec and the Penn Power settlement agreements. See, OCA Cross Exam. Exh. 1 at 27-123. As to the Met-Ed/Penelec settlement, the specific language of the settlement provides that:

> 73. The Companies will fully unbundle uncollectible accounts expense associated with default service for residential, commercial and industrial customers as shown on Met- Ed/Penelec Exhibit RAD – 6. Beginning January 2011, the unbundled uncollectible accounts expense associated with default

> service and EGS service will be removed from distribution rates and recovered through the Default Service Support Rider on a non-bypassable, non-reconcilable basis. The default service-related uncollectible expense to be recovered under the Default Service Support Rider is as shown in Met-Ed/Penelec Exhibit RAD-6. The charge for uncollectible accounts expense under the Default Service Support Rider will be a class specific rate and will be adjusted in January 2011, June 2011, and June 2012, based on the projected price of default service but not based on changes in the uncollectibles percentage for each class. Adjustments will be made to the uncollectible percentage in a distribution base rate case or the start of the next default service program, which ever occurs earlier.
>
> 74. By reason of the Companies agreeing to unbundle uncollectible accounts expense and to file a POR program on the basis set forth above, the other Joint Petitioners agree not to petition the Commission for the further unbundling of the Companies' distribution rates until such time as the Companies file a distribution base rate case.

OCA Cross Exam. Exh. At 60-61. As clause number 73 above shows, Mr. D'Angelo's representations as to the procedures for adjusting the uncollectible accounts expense are accurate.[51] What Mr. D'Angelo fails to discuss, however, is that FirstEnergy explicitly agreed to this process, and that, as clause number 74 provides, FirstEnergy extracted a promise in return for this treatment of the uncollectible account expense issue. The Companies' complaints on this issue decidedly ring hollow, as the issue complained of here is in complete accord with what the Companies agreed to in settlement.[52]

The OCA submits that it is important to recognize that the MAC has the propensity to increase the rates of all residential customers – whether they choose to switch to an EGS for generation service or whether they remain on default service. OCA witness Matt Kahal testified on this issue, as follows:

---

[51] The provisions contained within the Penn Power settlement document on this issue are, for all intents and purposes, identical to the Met-Ed/Penelec provisions. See, OCA Cross Exam. Exh. 1 at 108.

[52] In addition, even if the Companies claims were recognized as valid, such claims of a shortfall as discussed by Mr. D'Angelo hardly justify the enormity of the proposed MAC charge.

> I believe there is at least the potential to harm residential customers that seek supply from competitive EGSs. Although within the past year there has been significant movement to EGS supply services, the majority of residential customers continue to take default service from their EDC. Competitive suppliers do, of course, compete with each other, but they also seek to attract customers away from default service by advertising lower prices or discounts relative to the default service price. Given these circumstances and the developing nature of the residential retail market, it is hard to believe that competitive suppliers would not take into account the pricing of default service in determining their own optimal pricing needed to attract customers and gain market share.
>
> The 0.5 cent/kWh adder to the market cost of default service is certainly a sizeable rate increase. I am not suggesting that EGSs would move their price offers in lock step with the MAC. However, I believe that it is entirely plausible, if not likely, that the adder could have some influence on EGS pricing, and it could induce EGSs to raise price offers to residential customers by some fraction of the 0.5 mills. In such a case, not only will default customers be harmed by the MAC, but the price umbrella effect of the artificially high default service price could also harm shopping customers, albeit by less than the full MAC.

OCA St. 1 at 39-40. The MAC would increase the rates that residential customers pay in a variety of ways. As Mr. Kahal indicated, an increase in the PTC could lead to an increase in the prices that EGSs offer. Assuming that EGSs are profit-seeking enterprises, the economic theory that a "rising tide floats all boats" would seem to apply. As the OCA noted above, customers accepting a "percent-off-the-PTC" offer will undoubtedly see higher rates with the MAC in place.

For example, the current PTC for West Penn Power (WPP) residential customers is 6.99 cents per kWh.[53] For simplicity's sake, this number can be rounded to 7 cents. The MAC would change that PTC to 7.5 cents. For residential default service customers of WPP, that is very close to a 7% increase in the PTC. For these same default customers who then choose to switch to an EGS offering a percent-off-the-PTC product, such as the 6% discount off the PTC offered by First Energy Solutions (FES) to residential customers as part of its proposed municipal opt-

[53] The OCA Shopping Guide, available at: http://www.oca.state.pa.us/Industry/Electric/elecomp/wpp.pdf

out program in Meadville, Pennsylvania, they would still end up paying more than the price to compare without the artificially inflated MAC.[54]

As shown, not only would default service customers be directly affected by an artificial increase in the PTC as proposed by FirstEnergy, shopping customers who accept a percent-off-the-PTC product offer would pay more and it is likely that other shopping customers who switched to an EGS would also pay more, as Mr. Kahal described, due to the artificially higher PTC.

The final issue of record that requires discussion as to the MAC is the concept of "goodwill". In his Rebuttal testimony, Mr. Fullem alluded to the fact that the Companies should be able to extract a premium price for default service based on "goodwill". FE St. 7-R at 9-11. Mr. Fullem is wrong on this assumption.

It is a well-established principle that "goodwill" cannot be considered as part of the ratemaking process. Indeed, in the early 1900s, the United States Supreme Court addressed this issue in Des Moines Gas Company v. City of Des Moines, 238 U.S. 153 (1915). In that case, Des Moines Gas filed suit to enjoin the enforcement of an ordinance fixing the rate for gas. Id. at 158-159. The Company claimed that the enforcement of the ordinance would amount to a taking of the gas company's property without just compensation and would operate as a confiscation of its property, without due process of law. Id. In its discussion of the rates at issue, the Court, citing an even earlier Supreme Court decision, held:

> That 'good will,' in the sense in which that term is generally used as indicating that element of value which inheres in the fixed and favorable consideration of

[54] See, Consolidation of Three Petitions Regarding Municipal Aggregation and Directive re: Customer Switching Pursuant to "Opt-out" Municipal Aggregation Programs, Docket Nos. P-2010-2207062, P-2010-2207953 and P-2010-2209253 (Opt-out Municipal Aggregation), First Energy Solutions Answer filed November 22, 2010 at pg. 2.

> customers, arising from an established and well-known and well-conducted business, has no place in the fixing of valuation for the purpose of rate-making.[55]

This Commission has also held, on numerous occasions, that goodwill cannot be considered in setting rates. For example, in the Application of PPL for Approval of Restructuring Plan, the Commission addressed an issue regarding the ability of a PPL affiliate to use the PPL name.[56] In ruling on this issue, the Commission stated:

> The name PP&L and the good reputation associated with the name are shareholder assets, and, as such, are not included in the ratebase...Ratepayers have never had to pay through rates a return on the value of goodwill or for enhancement of the utility's name, and name and reputation are cost free to PP&L's customers.[57]

Similarly, in Application of Shenango Valley Water Co., the Commission held that goodwill is "not a part of the ratemaking equation and produce[s] no earnings."[58] In his Surrebuttal Testimony, Mr. Kahal provided the following discussion of Mr. Fullem's testimony on the issue of whether the First Energy Companies should somehow be permitted to charge the MAC at least in part as compensation for goodwill:

> While his testimony on this point is somewhat vague, I believe that he may be referring to the goodwill asset that is on the balance sheet of the parent company (FirstEnergy Corporation), not the FirstEnergy Companies themselves. Moreover, my understanding is that goodwill itself is an accounting adjustment that is specifically related to the acquisition premium that the parent incurred associated with its large mergers when it acquired GPU and Allegheny Energy. The central point is that the goodwill asset on the parent's balance sheet has nothing whatsoever to do with the provision of default service and was not an investment undertaken or cost incurred so that these four EDCs could supply default service. In other words, the goodwill accounting entry would be precisely the same dollar amount whether or not the FirstEnergy Companies provided any default service and is not a resource used to provide default service.

---

55 Id. at 165 (citing Willcox v. Consolidated Gas Co., 212 U.S. 19, 52 (1909)).

56 In re PPL, Dock. No. R-00973952 at 64-65 (Order entered April 1, 1998).

57 Id.

58 Application of Shenango Valley Water Co., Docket. No. A-21275F0002 at 10 (Ordered entered July 12, 1994).

> Mr. Fullem correctly concedes that it is not proper to include any goodwill in setting the EDC delivery service rates. It is equally true that it should have no bearing on default service rates, and it clearly is not a reasonable cost incurred by the EDCs in connection with providing default service.

OCA St. 1-SR at 14. At hearing, Mr. Fullem provided in his oral rejoinder that the goodwill he was referring to was actually on the books of Met-Ed and Penelec. Tr. at 174. Mr. Fullem's oral rejoinder on this issue prompted the following cross examination of Mr. Fullem by OCA counsel:

> Q. And I also believe in the same section of Mr. Kahal's surrebuttal testimony where he was talking about the goodwill issue that you and I are discussing now, he also said that goodwill is not used in setting any of the EDC delivery service rates. Now, at that time he was talking about the goodwill that would have been on FirstEnergy's parent company's books, and now that you've clarified that it was not the goodwill in question, that it's the goodwill that's on the books of MetEd and Penelec, is that statement still true; the goodwill on the books of MetEd and Penelec is not used in setting the EDCs delivery service rates?
>
> A. And that is correct. I think he was actually quoting my testimony, so he was accurate with that statement.

Tr. at 217. As Mr. Fullem testified, goodwill is not used in setting EDC rates. The OCA submits that the issue of goodwill provides no support for the inclusion of the MAC in the Companies' DSP.

The Companies have failed to carry their evidentiary burden as to the MAC. As discussed, the OCA submits that the inclusion of the MAC in FirstEnergy's DSP finds no support in the Public Utility Code or the controlling case law in Pennsylvania.[59] The OCA respectfully requests the Commission to deny FirstEnergy's request for the MAC.

3. <u>RESA's Proposed Modification</u>.

---

[59] Additionally, the OCA would note that nowhere, in all the various orders issued by the Commission in the RMI proceeding, is a profit adder on default service discussed or considered.

RESA witness Kallaher agrees with FirstEnergy's proposal to implement a MAC, but differs as to how the revenues from the MAC should be applied. RESA St. 2 at 30-31. Mr. Kallaher recommends that the MAC revenues be applied to cover the EDCs' costs of implementing the retail market enhancements, to cover any risks that the EDCs incur in providing default service, and the balance of revenues should then be returned to all ratepayers through a non-bypassable charge. RESA St. 2 at 30-31.

The OCA disagrees with RESA on this issue. First of all, as noted above, the Companies have made no showing that it has incurred any relevant costs that are not already recovered on a dollar for dollar basis in their reconcilable default service rates. As to the incremental costs of competitive enhancements, as the OCA discusses in Section IV. A. 12. of this brief, the EGSs should be responsible for these costs. Indeed, the default service customers who would pay 100% of the MAC costs under this proposal are the very customers who, by definition, are not participating in the retail market enhancement programs such as the opt-in auction and customer referral program.

OCA witness Kahal responded to the EGS support for their modified MAC, as follows:

> It must be made clear at the outset that 100 percent of MAC revenue is pure (pre-tax) profit for the EDCs. The testimony of Dr. Reitzes and Mr. Fullem on behalf of Joint Petitioners, along with responses to OCA data requests, have failed to document a single dollar of unrecovered cost, lost earnings or incremental EDC investment risk. Dr. Reitzes' testimony on the asserted risks is at best hypothetical with no empirical support whatsoever. Mr. Fullem even tries to justify the MAC based on costs *not* incurred, not costs that need recovery. I explain this in some detail in my Direct Testimony. Witnesses Kallaher and Butler make vague references to FE Companies' testimony, but they also provide no documented support for either the present or future existence of any unrecovered costs or uncompensated risks.
>
> …
>
> As an administrative matter, witnesses Kallaher and Butler would create an enormous slush fund, obtained from default customers, for ill-defined and hypothetical costs and risks.

OCA St. 1-R at 8. As to the "slush fund" that Mr. Kahal discussed, aside from the obvious legal and policy issues implicated by the MAC, and the inequities already discussed, the RESA proposal would create additional issues.

RESA suggests that the MAC be implemented; that FirstEnergy use the revenue to pay for retail market enhancement costs and coverage of any "risks" the Companies incur; and then the Companies return the rest to all ratepayers (not just the default service customers who pay the MAC) through the non-bypassable Default Service Support Rider (DSSR). The problem with this proposal, of course, is that default service customers would pay 100% of the MAC, but only get credit for the percentage of DSSR revenues that are paid by non-shopping customers. So, for example, if 25% of residential customers are shopping, for every dollar that a default service customer would pay into the artificially inflated MAC fund, they would receive only 75 cents back through a reduction in the DSSR. Only default service customers are charged for the MAC, but all residential customers pay the DSSR and thus all residential customers would receive the credit from the "leftover" MAC revenues. This situation is, again, inequitable and discriminatory. Accordingly, the OCA is opposed to the RESA proposal as to the MAC.

4. Dominion's Proposed Modification.

Dominion witness Butler discusses the MAC in his direct testimony. Mr. Butler agrees that the MAC should be implemented, and in fact suggests that the ½ cent/kwh as proposed by FirstEnergy should probably be increased to 1 cent/kwh. Dominion St. 1 at 9. Mr. Butler's proposal is similar to that of RESA except that he proposes that the revenues be mainly used as a credit to offset Non-Market Based Transmission Costs (NMB) that FirstEnergy plans to collect through the DSSR, with any remaining revenue to accrue to the benefit of FirstEnergy. Dominion St. 1 at 9-10; See also FE St. 7-R at 12-13.

The OCA disagrees with Dominion on this issue. The OCA opposes the Dominion proposal for all of the reasons previously discussed with regard to the RESA proposal.

D. Default Service Support Rider.

FirstEnergy proposes to recover all costs of the retail market enhancements proposed in their DSP from all residential customers through the non-bypassable Default Service Support Rider (DSSR). As discussed later in this brief, the OCA is opposed to ratepayers being charged for the costs of these programs, and instead supports the Commission's recommendation that EGSs pay for the costs of these programs.

1. Non-Market Based Transmission Charges.

The OCA takes no position on this issue.

2. Generation Deactivation Charges.

The OCA takes no position on this issue.

3. Unaccounted-For Energy Costs.

In his Direct Testimony, Dominion witness Butler discussed the issue of Unaccounted for Energy (UFE). Dominion St. 1. Mr. Butler testified in relevant part that "UFE costs should be included in the DSS rider and no longer charged to individual EGSs by PJM. This change would be helpful to EGSs by mitigating unmanageable risks." Dominion St. 1 at 4. In his Rebuttal Testimony, OCA witness Kahal objected to this proposal on the grounds that there was insufficient information to support it. OCA St. 1-R at 10.

In the Companies' Rebuttal Testimony, however, FirstEnergy witness Valdes agreed with Mr. Butler on this issue. FE St. 2-R at 22-23. In his Surrebuttal Testimony, Mr. Valdes provided a more in-depth discussion and explanation as to why the UFE charges in question should be collected through the DSS Rider as Mr. Butler had recommended. FE St. 2-SR at 1-3.

After further review of this issue and the aforementioned testimonies, the OCA has no further opposition to the proposed collection of UFE charges as proposed by Mr. Butler and as supported by Mr. Valdes in his Surrebuttal Testimony.

4. Economic Load Response Charges.

The OCA takes no position on this issue.

E. Solar Photovoltaic Requirements Charge Rider.

The OCA takes no position on this issue.

F. Time of Use Rate Proposals for West Penn and Penn Power.

1. Summary of the OCA's Position.

The OCA submits that the Commission's recommendation that EDCs consider fulfilling the TOU requirement through a competitive bidding process is reasonable. The FirstEnergy TOU proposal in this proceeding for Penn Power and West Penn Power, however, creates serious issues and concerns for ratepayers. FirstEnergy's proposed TOU rate program for these companies is too costly, lacks significant benefits for ratepayers, contains areas of potential harm to ratepayers, and is premature for a program of this type due to the limited deployment of fully-operational smart meters. The OCA submits that the residential TOU proposal for Penn Power and WPP should not be adopted for use in the upcoming DSP.

2. The OCA's Position.

a. Introduction.

On October 14, 2011, the Commission issued its Tentative Order as part of the RMI proceeding.[60] In the Tentative Order, the Commission stated that the majority of stakeholders participating in the Investigation prefer that default service offerings be made as simple as

---

[60] Investigation of Pennsylvania's Retail Electricity Market: Recommended Directives on Upcoming Default Service Plans, Dock. No. I-2011-2237952 (Order Entered Oct. 14, 2011) (Tentative Order).

possible. The OCA agrees and shares that view. Under Act 129, however, the default service provider is also required to submit a proposed optional time of use (TOU) rate plan and a real time price plan for customers with smart meters. 66 Pa. C.S. § 2807(f)(5). To address concerns regarding future time of use rate programs, the Commission recommended that EDCs contemplate securing a competitive bid for the provision of TOU service. The Commission stated that bidding out the TOU rate warrants serious consideration in future default service proceedings. Tentative Order at 7. The OCA agrees that such an approach may be a reasonable option for the provision of TOU rates.

In its proposed DSP, filed on November 17, 2011, the Companies have submitted a plan to supply a TOU rate option for the residential customers of Penn Power and West Penn Power (WPP). The proposed TOU program is described and discussed in the Direct Testimony of FirstEnergy witness Charles Fullem. FE St. 7 at 17-23. In general, the TOU program includes conducting an auction to seek an EGS to provide the TOU service to residential customers of Penn Power and WPP.

On December 16, 2011, the Commission issued its Final Order on Default Service (December 16 Final Order). In the Final Order, the Commission provided the following as to the provision of TOU rates:

> After review of the comments, the Commission will maintain its recommendation that EDCs contemplate contracting with an EGS in order to satisfy their TOU requirement. The Commission does wish to clarify that this recommendation is not, in and of itself, a rejection of the other proposals raised, such as instituting peak time rebate offers or creating a separate wholesale auction for TOU rates. Such ideas may indeed have merit, and we will allow the EDCs to evaluate these proposals for possible inclusion in their next default service filings.

December 16 Final Order at 47. The FirstEnergy TOU proposal here, however, while adhering to the general framework set out by the Commission, creates serious issues and concerns for ratepayers without providing the requisite level of corresponding benefits. The OCA recommends that the residential TOU proposal for Penn Power and WPP not be adopted for use in the upcoming DSP.

In response to the Companies' proposal, the OCA presented the testimonies of Barbara Alexander and Matt Kahal on the TOU issue. The OCA witnesses concluded that the FirstEnergy TOU proposal is too costly, lacks significant benefits for ratepayers and is premature for a program of this type due to the limited numbers of smart meters currently employed and operational within those service territories. The OCA submits that the Companies' proposal should be rejected.

b. Discussion.

In her Direct Testimony, OCA witness Barbara Alexander provided the following details of the FirstEnergy TOU proposal:

> FirstEnergy proposes to conduct an auction to seek an EGS to provide Time of Use (TOU) service to residential customers with smart meters installed for Penn Power and West Penn Power. Under this proposal, FirstEnergy will conduct a descending clock auction for EGSs to bid to provide a one-year fixed price TOU rate option for up to 15,000 customers who have smart meters and who elect to take TOU under this option. Customers must agree to a minimum 12-month contract. The TOU rate structure will be established pursuant to this auction bid, with on-peak hours matching the PJM on-peak hours of 7:00 AM to 11:00 PM on weekdays, with all other hours considered off-peak. Customers with smart meters will be informed of the auction results, the winning EGS, and the terms of service in a direct mailing. Those customers who choose to enroll in this program must affirmatively agree by sending in a tear-off mailer to the winning EGS or contacting the EGS by phone or internet. Customers who enroll in this program will not be able to return to Default Service during this contract term. The Companies will also refer customers with smart meters to this program when they call for a new service request or register a high bill complaint. After the end of the contract term the customer will be offered new or different rate options by the EGS, but will remain with that EGS unless the customer affirmatively seeks to return to Default Service or choose another EGS.

OCA St. 2 at 19-20. The OCA has serious concerns with several elements of the TOU proposal. Specifically, the Companies' decision to employ a descending clock auction (DCA) platform for EGS to bid on participation will entail significant costs for a program of the limited size envisioned here. See, OCA Cross Exam. Exh. at 7. Second, the deployment of smart meters in Penn Power and WPP's service territories are hardly adequate at this time to support any reasonable level of enrollment by customers. Third, the proposed "on-peak" time frames of 7:00 AM to 11:00 PM every weekday will likely fail to entice residential customers to sign up.

In her Direct Testimony, Ms. Alexander discussed each of these issues, starting with the deployment of smart meters, as follows:

> The Company has installed 370 residential smart meters for Met-Ed and 5,200 smart meters for West Penn, but there are no smart meters installed for Penelec and Penn Power customers. FirstEnergy currently offers an optional distribution-only TOU rate for Met-Ed or Penelec customers and has no plans to change that program at this time. Penn Power offers a TOU option that is available for up to 5,000 customers. This Penn Power option adjusts the price to compare rate by a fixed on-peak TOU factor and a fixed off-peak TOU factor. However, there are no customers taking service under this option. West Penn Power offers a Critical Peak Rebate program to shopping and non-shopping customers who have a smart meter installed. Participating customers receive 50 cents for each kWh of load reduced during summer peak load periods. This program is funded through West Penn's Act 129 Energy Efficiency and Conservation Surcharge. This is a very popular program with approximately 17,800 customers enrolled as of January 2012.

OCA St. 2 at 20-21 (footnotes omitted). As Ms. Alexander discussed, there are a limited number of smart meters installed for WPP residential customers and currently no smart meters deployed for Penn Power's residential customers. In addition, FirstEnergy cannot say at this time how many residential customers in the affected service territories will actually be able to participate in the TOU rate option during the proposed two-year term due to the availability of smart meters. See, OCA Cross Exam. Exh. at 20. From this evidence, Ms. Alexander concluded that:

> FirstEnergy is not far enough along with its deployment of smart meters to justify a large scale TOU rate program and the evidence to date indicates that only very few customers have indicated an interest in TOU rates where they are available. Furthermore, West Penn's popular peak time rebate program should continue without the potential confusion of offering a TOU rate option, at least in 2013.

OCA St. 2 at 21 (footnote omitted).

Ms. Alexander then went on to discuss the on peak and off peak time periods proposed by the Companies in the TOU option, and specifically pointed out the impractical nature of same, as follows:

> the rate structure being proposed for TOU in which the entire day from 7:00 AM to 11:00 PM at night is charged at an on-peak rate is excessive. I am not aware of any residential TOU rate that charges an on-peak price for 16 hours a day. Typically, TOU rates identify a portion of each day to send the price signal that reflects the highest demand or wholesale market price for electricity. To suggest that residential customers can accommodate higher on-peak prices from 7 AM to 11 PM every weekday and shift enough usage to the middle of the night and on weekends in order to experience bill savings is unrealistic. In conclusion, FirstEnergy's TOU rate auction proposal should not be approved and needs major reforms to reflect a reasonable TOU rate option for residential customers. I recommend that this proposal be deferred until there is a larger penetration of smart meters and a TOU rate option can be designed that is reasonable and typical of TOU rates in general.

OCA St. 2 at 21-22. As Ms. Alexander testified, the on-peak periods proposed by FirstEnergy are simply unrealistic. The OCA submits that voluntary enrollment of customers in such a program is likely to be low.

The potential costs of such a program are an additional concern. In his Direct Testimony, Mr. Kahal provided the following as to the costs of the TOU program:

> Given the very limited and uncertain deployment of smart meters (an eligibility requirement), it is very uncertain whether this program can be successful. Yet, there are significant implementation costs, including the cost of running a DCA to select a winning EGS. Since for customers, this program has the potential to be "all cost, no benefit," it should not be undertaken unless each winning EGS is assigned responsibility for the implementation costs. If this is a barrier to the program going forward at this time, then this may be an indication that it is simply

> not worthwhile and cost effective. Again, to reduce cost, a sealed-bid RFP may be more appropriate than a DCA due to cost considerations.

OCA St. 1 at 36-37.

While the OCA is opposed to the adoption of the TOU rate options proposed by the Companies, the OCA submits that the current WPP Critical Peak Rebate (CPR) program should continue and should not be cancelled for any reason having to do with the TOU proposal. See OCA St. 1 at 37; OCA St. 2 at 21.

If the Commission does go forward with the Companies' TOU proposal, the question remains as to what happens to customers at the end of the TOU contract period. With respect to that issue, OCA witness Alexander testified as follows:

> I presume that there will be a 12-month contract term for the TOU rate option. The Companies should solicit EGSs to provide a TOU rate option annually. Those customers who have joined the TOU pool by agreeing to this rate option should be notified of the forthcoming TOU rate option in sufficient time to allow the customer to determine whether to continue this rate option. During this period of considering the next year's TOU option, the customer should be able to affirmatively choose to remain with the prior year's EGS under a TOU or other rate offered by the EGS, return to Default Service, or select another EGS (whether offering a fixed rate or a TOU rate). Any of those options would result in the customer leaving the TOU rate pool. However, because the purpose of this rate option as proposed by FirstEnergy is to offer TOU rates to its customers through an EGS, it would not be appropriate for the customer to remain with the prior year's EGS as the "default" option. Therefore, if the customer does not make any other affirmative choice, the customer should be enrolled in the new 12-month TOU rate program.

OCA St. 2 at 23-24. For the reasons discussed above, the OCA is opposed to the TOU option as proposed by FirstEnergy. Should the program go forward, however, the OCA submits that Ms. Alexander's proposal as to the disposition of customers at the end of the TOU period should be adopted by the Commission.

In his Rebuttal testimony, FirstEnergy witness Fullem responded to the OCA's position on the TOU rate option. Mr. Fullem asserted that the OCA's position on the TOU proposal would require the continuation of WPP's CPR Program through May 31, 2015. FE St. 7-R at 14-15. Mr. Fullem went on to state that sufficient smart meters would be in place to justify the TOU proposal in WPP's service territory and that the implementation costs of the TOU rate option should not be a concern, as such costs would be recovered from all residential customers through the DSS Rider. FE St. 7-R at 15. Lastly, Mr. Fullem provided his opinion that it would be premature to conclude, as Ms. Alexander did, that customers would not be able to realize savings from shifting their peak usage to the identified off-peak hours. FE St. 7-R at 16.

FirstEnergy witness Reitzes also responded to Ms. Alexander. Mr. Reitzes primarily defended the use of a DCA to set prices for potential TOU customers. FE St. 6-R at 7-8. Mr. Reitzes did confirm, however, that should the EGS auction to provide TOU service not be successful, Penn Power and WPP residential customers would still have the availability of a TOU rate option from the Companies. FE St. 6-R at 7; see also, OCA Cross Exam. Exh. at 22. In her Surrebuttal Testimony, Ms. Alexander responded to these assertions.

As to the WPP CPR issue raised by Mr. Fullem, Ms. Alexander testified that:

> Mr. Fullem's assertion in his Rebuttal testimony that I recommended that West Penn's Critical Peak Rebate (CPR) program be continued beyond its current approved term without further approval misunderstands my intent. My intent was to suggest that West Penn seek continuation of the CPR program as part of its energy efficiency/demand response programs since it has also been approved to serve as a TOU rate option. If West Penn cannot obtain such approval, then I recommend that West Penn adopt a similar program to Penn Power pending the development of a future bid-based TOU program.

OCA St. 2-SR at 16 (footnote omitted). As to the further issues of the use of a DCA and the deployment of smart meters, Ms. Alexander testified that:

> I continue to oppose this proposal. The FirstEnergy proposal is overly expensive and fails to consider other potentially reasonable approaches, such as that recommended by Mr. Kallaher on behalf of RESA, Mr. Fein on behalf of Constellation Energy or a simpler RFP approach. My concerns are only confirmed upon learning that FirstEnergy's smart meter deployment plans for

> these EDCs have not yet been approved and that the smart meters that will be installed for West Penn customers by the summer of 2013 will not be activated and connected to the two-way communication system necessary to make the meters "smart."

OCA St. 2-SR at 15-16 (footnote omitted). The OCA submits that the evidence of record in this proceeding supports the OCA's recommendation that FirstEnergy's proposed TOU rate option for WPP and Penn Power customers should not be allowed to go forward as part of the proposed DSP.

c. Conclusion.

FirstEnergy's TOU rate option is costly, will likely provide little, if any benefits to customers due to the limited availability of fully-operational smart meters in the service territories of WPP and Penn Power, and contains an on-peak time period that encompasses 16 hours of every weekday. For the reasons discussed above, the OCA requests the Commission to reject the Companies' request to employ this rate option for use in the proposed DSP.

3. RESA's Proposal.

In his direct testimony, RESA witness Kallaher provides an overview of a potential alternative for offering a TOU rate option to Penn Power and WPP residential customers. RESA St. 2 at 7-11. Conceptually, the OCA has no opposition to the general framework offered by RESA in this regard. As Ms. Alexander provided in her Surrebuttal Testimony:

> The FirstEnergy proposal is overly expensive and fails to consider other potentially reasonable approaches, such as that recommended by Mr. Kallaher on behalf of RESA, Mr. Fein on behalf of Constellation Energy or a simpler RFP approach.

OCA St. 2-SR at 15. As discussed by FirstEnergy witness Fullem, however, the RESA proposal is not fully fleshed out. FE St. 7-R at 16-17. As such, the OCA submits that the Commission should adopt the OCA's recommendations on this issue as discussed above.

G. Reconciliation of Default Service Costs and Revenues.

1. Summary and Overview of the OCA's Position.

As part of its proposed Default Service Program (DSP), the Companies included a reconciliation procedure for adjusting default service rates in order to correct for under or over collections. In his Direct testimony, FirstEnergy witness Richard D'Angelo provided an overview of how the proposed reconciliation process would work for residential customers. FE St. 1 at 20-23.[61] Specifically, Mr. D'Angelo testified that the default service charges would be adjusted and reconciled on a quarterly basis. FE St. 1 at 21-22.

In its December 16 Final Order the Commission discussed the issue of PTC rate changes and reconciliation, as follows:

> [C]oncerning reconciliations, a majority of the parties appear to agree that semi-annual, or even annual, adjustments would be beneficial.
>
> The Commission recognizes the argument that semi-annual rate adjustment may create rates that are less market-reflective. Further, the Commission agrees that longer reconciliation periods may help to smooth out over/under collections and therefore keep default rates more market-reflective. Therefore, the Commission will consider quarterly, as well as semi-annual or annual reconciliation periods in future default service proceedings.[62]

The OCA does not oppose the Companies' proposal to continue the practice of changing its PTC rate on a quarterly basis. The OCA does, however, submit that an annual, rather than quarterly, reconciliation period would be of benefit to consumers and would also create a more positive shopping atmosphere. As discussed below, the OCA supports a change to the reconciliation process that would provide for a smoother and more consistent PTC.

2. The OCA's Proposal.

---

61 A complete description of the reconciliation process is provided in the Direct Testimony of FirstEnergy witness Raymond Valdes. See, FE St. 2.

62 December 16 Final Order at 54.

In his Direct Testimony, OCA witness Matt Kahal discussed the reconciliation issue. Mr. Kahal provided the following overview of the current process:

> The reconciliation charge is a rate mechanism designed to true up on a periodic basis default service costs incurred by the EDC with the revenues for that service received. The charge is changed along with the Price to Compare ("PTC") on a quarterly basis with any unrecovered balance (positive or negative) accruing interest. The EDC determines the net balance to be recovered from default customers (or credited if it is negative), and it divides the net balance by projected Kwh sales over the next three months to calculate cents per Kwh reconciliation charge. This is included in the PTC for default service. Thus, the procedure is intended to extinguish the net balance within the three-month period.

OCA St. 1 at 48. As compared to the Companies' proposed continuation of the quarterly reconciliation process, Mr. Kahal recommended the following approach:

> I am recommending a modification to the current reconciliation charge calculation procedure to mitigate the PTC uncertainty and instability problem. Specifically, I recommend reconciling the net balance of revenues minus costs using projected annual default service sales rather than projected quarterly sales.
>
> With this change, the EDC will determine the net balance each quarter, as it currently does, and it will then divide that balance by default sales over the next 12 months instead of the next three months. This allows the EDC to update on a timely basis, but it should contribute to PTC rate smoothing and less volatility, at least for this one component of the PTC. I would expect that using forward annual sales would result in smaller quarter-to-quarter changes in the reconciliation charge as compared to current practice.

OCA St. 1 at 48-49. The OCA submits that a 12-month reconciliation method should have the effect of smoothing out the PTC, as a longer time frame is being averaged out. Less volatility in the PTC should lead to greater consumer confidence in accepting EGS' offers that provide savings over a current PTC. The 12-month reconciliation method is currently used in natural gas cost reconciliations for the major natural gas distribution utilities, and should be a relatively simple changeover for the Companies to adopt.

FirstEnergy witness Valdes provided three reasons why Mr. Kahal's proposed reconciliation method should not be adopted. FE St. 2-R at 15-16. Mr. Valdes testified that in the event of a continued over or under collection in successive quarters, the longer reconciliation period would lead to a much larger credit or charge to that particular class. FE St. 2-R at 15. Second, Mr. Valdes testified that the longer reconciliation period would lead to larger amounts of interest either being charged or refunded. Id. And third, with a longer reconciliation period, increased shopping levels could lead to greater volatility in the PTC, and not less volatility as Mr. Kahal's proposal would seek to achieve. FE St. 2-R at 15-16.

In his Surrebuttal Testimony, Mr. Kahal responded to Mr. Valdes, as follows:

> I do not find any of these arguments persuasive. With regard to the second argument, this assumes that the average deferred balance will be higher under the 12-month as compared to a three-month amortization. While this might be true, Mr. Valdes has not offered an opinion on whether the dollars involved are even material, and if so, why interest on accrued balances is particularly harmful or a more important "problem" than rate stability.
>
> …
>
> His arguments (1) and (3) are theoretically possible outcomes but not really plausible. The track record that I have seen on reconciliation charges is that historically they do go in both directions – sometimes positive and sometimes negative. If they all went in one direction, there would be something wrong with the EDC's estimation procedures.
>
> …
>
> With respect to the third argument, I agree with Mr. Valdes that customer shopping can be expected to increase over time, certainly compared to pre-2010. The Opt-In Retail Program has the potential to provide a one-time "jolt" to residential shopping. While I agree with Mr. Valdes to some extent on this outlook, this is all the more reason why a 12-month amortization is probably more appropriate and more consistent with rate stability. That is, if default loads shrink over time (due to increased shopping), then amortizing a given deferred balance over a smaller three-month sales projection will result in a larger reconciliation charge (or credit) than using a 12-month sales projection, even with the declining load outlook. I cannot agree with Mr. Valdes that a three-month amortization period provides greater rate stability than a 12-month amortization, and he has provided no evidence that it would.

OCA St. 1-SR at 23-24 (footnotes omitted).

The OCA's proposed reconciliation method will promote a better atmosphere for shopping as it will create a more stable and predictable PTC. The OCA submits that a longer reconciliation period, as recommended by the OCA herein would also serve to promote a more successful Retail Opt-In Auction Program as discussed in the next section of this brief.

3. The OSBA's Proposal.

In his direct testimony, OSBA witness Mr. Knecht discussed the Companies' proposed reconciliation method and discussed two possible approaches for modifications to the method. OSBA St. 1 at 22-26. In the OCA's view, Mr. Knecht's Approach 2 is substantially similar to the process recommended by OCA witness Kahal. OSBA St. 1 at 25. The OCA has no objection to the general ideas testified to by Mr. Knecht, as to his Approach 2.

H. Other Tariff Changes (Conforming West Penn to Other Companies).

The OCA takes no position on this issue.

IV. COMPETITIVE MARKET ENHANCEMENTS

A. Retail Opt-In Aggregation Program.

1. The OCA's Position.

The OCA supports the implementation of an opt-in auction program as a reasonable means to provide further incentives for ratepayers to engage in the competitive retail market for electricity.[63] As to FirstEnergy's proposed Opt-In Auction Program, the OCA has several key elements that it submits should be included in order to ensure a successful program and to provide necessary ratepayer protections. Specifically:

- The contract term should be for 12-months;
- Customers should be offered a price that is guaranteed to be lower than the PTC for the entire contract term,

[63] The OCA's positions address only residential customers. The OCA takes no position on whether commercial or industrial customers should be included. In addition, the OCA will address the participation of CAP customers within Section IV.C.

- No more than 20% of the total, default residential customers should be allowed to enroll in the program;

- All terms and conditions, including price, must be provided to customers prior to their opting in to the program;

- Prior to the end of the contract, enrolled customers should receive three separate notices advising them of their options for continued generation service;

- Enrolled customers who do not affirmatively select an option for continued service at the end of the program, should remain with their current EGS on a month-to-month fixed price product;

- A Request for Proposal method should be used to solicit offers for the program; and

- The winning EGSs in the auction should pay for all of the incremental costs of implementing the Opt-In Auction Program.

The OCA will discuss each of the issues set out above in the following sections. First, however, the OCA provides some general comments on the issue of retail market enhancements.

On April 29, 2011, the Commission initiated an investigation into Pennsylvania's retail electricity market.[64] The April 29 Order assigned the task of studying the retail electricity market to the Commission's Office of Competitive Market Oversight (OCMO). With the input of stakeholders, OCMO was to address and attempt to provide recommended solutions to certain issues identified by the Commission as being most relevant to improving the current retail electricity market.[65]

As the OCA discusses below, two of the recent Orders to come out of the RMI docket have played a large role in shaping the Companies' default service program as to the proposed

64 Investigation of Pennsylvania's Retail Electricity Market, Docket No. I-2011-2237952 (order entered Apr. 29, 2011) (Retail Market Investigation or RMI).

65 At present, the RMI process is ongoing. Since its inception, the OCA has participated in all facets of the investigation, including filing numerous sets of written Comments, providing testimony at several *en banc* hearings, participating in regularly scheduled teleconferences and working with some of the specialized sub working groups.

retail market enhancements.[66] The December 16 Final Order provided recommendations for the possible use of retail opt-in auctions and customer referral programs. The Company filed its current DSP on November 17, 2011. Based on the Commission's Tentative Order of October 14, 2011, and as an active participant in the RMI process, FirstEnergy was aware of the retail market enhancements that could be included in the December 16 Final Order and chose to incorporate certain of those programs into its proposed DSP. Specifically, the Companies proposed a Retail Opt-In Auction Program and a Customer Referral Program. As part of its investigation and analysis of this matter, the OCA provided the Direct Testimonies of Matthew I. Kahal and Barbara R. Alexander on February 17, 2012. OCA witnesses Kahal and Alexander addressed the Companies' proposed retail market enhancements, as the OCA will discuss in detail in the following sections. Subsequently, on March 2, 2012, the Commission issued its Intermediate Work Plan Order (IWP Order).

The IWP Order provided the following:

> This intermediate work plan provides guidance regarding the following topics: (1) the expansion of consumer education; (2) the acceleration of the switching timeframe when a customer shops for an alternative supplier; (3) the initiation of a customer referral program; (4) the initiation of a retail opt-in auction program; (5) the inclusion of the default service PTC on customer bills; and (6) the increase in coordination between EDCs and EGSs.

IWP Order at 6. Specifically the IWP Order provided detailed guidance on the implementation of opt-in auction programs and customer referral programs.[67] When the Companies filed their

---

[66] December 16 Final Order and the IWP Order. On October 14, 2011, the Commission issued its Tentative Order as part of the RMI proceeding. Investigation of Pennsylvania's Retail Electricity Market: Recommended Directives on Upcoming Default Service Plans, Docket No. I-2011-2237952 (Order Entered Oct. 14, 2011) (Tentative Order). The Tentative Order provided the framework for the opt-in auction and referral programs, and provided the parties to the RMI proceeding the ability to comment on these programs. The December 16 Final Order discussed the comments, provided certain resolutions, and also provided a more structured set of guidelines for EDCs to consider when planning their default service filings.

[67] The IWP Order also provided the following provision: To the extent that an EDC chooses to deviate from these guidelines, we expect the differences to be justified by good cause shown, which includes showing operational

Rebuttal Testimonies on March 16, 2012, the Companies proposed several adjustments to their Opt-In Auction and Customer Referral Programs in order to accommodate some of the Commission's guidance as contained in the IWP Order.

In the following sections the OCA will discuss the Companies' proposed retail market enhancements, starting with the Retail Opt-In Auction. As discussed above, the OCA submits that the proposed Retail Opt-In Auction Program should be modified in order to best serve the Commission's goal of increasing customer interest in the retail market for generation supply and also to ensure that customers benefit as a result of the adoption of these retail market enhancements.

2. Customer Eligibility.

a. Small Commercial and Industrial.

The OCA takes no position on this issue.

b. Shopping Customers.

FirstEnergy witness Charles Fullem provided the Companies' position as to the eligibility of shopping customers to participate in the Opt-In Auction Program. Mr. Fullem testified that all residential customers would be eligible to participate in the program, even shopping customers; however, FirstEnergy would not directly solicit shopping customers for participation. FE St. 7 at 23-24. The OCA agrees with this position.[68] Specifically precluding residential shopping customers from participation could raise the specter of discrimination.

3. Program Length.

---

constraints, or supported by evidence produced during an EDC's default service proceeding and supported substantially by interested parties in the default service proceeding.
IWP Order at 6-7.

[68] Mr. Fullem's discussion also includes CAP customers, which the OCA will address in Section IV.C. of this Main Brief.

FirstEnergy witness Fullem described the Opt-In Auction Program in his direct testimony. Specifically, Mr. Fullem testified that the proposed contract term for the program would be 24 months. FE St. 7 at 23. OCA witness Matt Kahal testified as to why a shorter program length would be preferable, as follows:

> [O]ver a two-year period the PTC itself can fluctuate which creates pricing risk for the winning EGS in this program. For that reason, I believe the two-year program may be too ambitious, and suppliers instead should be required to bid their discount (and be selected) based on one-year bids. Of course, once the winning EGS is selected, the EGS is free to voluntarily commit to retain that discount for more than one year in order to retain participation.

OCA St. 1 at 33-34. In its IWP Order, the Commission discussed many of the comments received on this issue, and provided the following recommendation:

> After considering the comments that were filed on this topic, we recommend that customers receive supply service under the terms of the Retail Opt-in Auctions for a period of six billing cycles. We believe that a term of six billing cycles is not as risky as a longer term, since shorter-term Retail Opt-in Auctions may help protect against the unpredictability of the market and may lessen risk premiums that suppliers incorporate into their prices. Further, a shorter-term auction may entice more suppliers to participate in the program.[69]

In his rebuttal testimony, FirstEnergy witness Fullem discussed the IWP Order. Specifically, Mr. Fullem provided that the Companies were modifying the program length for the Opt-In Auction from 24 months to 12 months. FE St. 7-R at 4, 26. The OCA agrees with FirstEnergy that a 12-month contract term for the Opt-In Auction Program is reasonable. OCA witness Kahal addressed the benefits of a 12-month term, as follows:

> I believe customers would find a one-year program more attractive than a six-month program. A one-year program would provide participating customers with greater price certainty and avoid the circumstance of forcing participating customers to re-evaluate EGS pricing relative to the PTC after only six months.

---

69 IWP Order at 50.

OCA St. 1-R at 14. Accordingly, the OCA respectfully urges the Commission to accept the FirstEnergy position on this issue.

4. Timing of Solicitation and Auction.

In his direct testimony, FirstEnergy witness Fullem provided an overview of the Companies' proposed timing for the EGS auction and also for solicitation of customers. Mr. Fullem testified that the auction would occur sometime after the scheduled January 2013 DSP procurement auction, but no later than March 2013. FE St. 7 at 25. Subsequent to the EGS auction, the Companies will use bill inserts and direct mailers to advise customers of their ability to opt in. The provided information would include the price being offered. Customers would have 30 days to respond. FE St. 7 at 26. The OCA has no disagreement with FirstEnergy's proposed timing of solicitation of customers.[70]

In the IWP Order, the Commission discussed the issue of whether to have the EGS auction before enrollment, or to enroll customers first and then have the EGS auction. The Commission concluded that:

> Upon review of each of the party's comments, the Commission will retain its initial decision to hold the EGS auction before the customer enrollment. We are cognizant of the concerns raised by some EGSs about uncertainty that may be manifested from this sequence; however, we believe that the proposal to hold enrollments before the product specifications are known will create customer confusion. One of the underlying goals of the Retail Opt-in Auctions is to assist uncertain customers in their shopping endeavors. As such, mitigating customer confusion is important to the Commission. The Commission is also concerned about a worst-case scenario in which the EGS auction does not fully subscribe all available tranches. Such a scenario could foster a negative perception toward the competitive retail markets if customers who expected auction service were not able to receive service or had to receive a different price and/or product.[71]

---

[70] The OCA notes that it does have concerns over the timing of the EGS auction, as such timing has the potential to negatively impact the default service procurement auction results. These concerns, however, are addressed in the appropriate sections of this brief at IV.A.6. and II.B.6. The OCA also has concerns with the informational materials used for solicitation as proposed by the Companies. The OCA discusses these concerns within the appropriate section of this brief at Section IV.A.8.c.

[71] IWP Order at 55.

FirstEnergy's proposals are consistent with the recommendations found in the IWP Order. The OCA agrees with the FirstEnergy position as to the timing for the EGS auction and also as to the timing of solicitation of customers for participation. Accordingly, the OCA respectfully requests the Commission to adopt the FirstEnergy position on the issue of timing of solicitation and auction.

5. Timing for Providing Full Terms and Conditions to Customers.

Potential participants for the Opt-In Auction program must be provided with full terms and conditions, including the price, before being asked to opt in to the program. As Ms. Alexander testified:

> it is vital that customers be presented with the complete terms and conditions of the EGS offer at the time of the opportunity to enter the Opt-In Auction pool.
>
> …
>
> Customers must consider all the terms of service at the time of making their decision, not merely the percent off the price to compare.

OCA St. 2 at 11. The OCA's position on this issue is consistent with that of the Companies as explained in the direct testimony of Mr. Fullem. FE St. 7 at 26. In addition, the OCA submits that by recommending that the EGS auction occur prior to enrollment, the IWP Order has implicitly provided that customers should have the full terms and conditions prior to enrolling in the Opt-In Auction Program.

In the OCA's view, the issue of the timing of providing full terms and conditions to customers is directly tied to the prior issue in this brief, that is the appropriate sequencing of the EGS auction in relation to when customers are invited to enroll. The parties' testimonies on these issues are, understandably, intertwined. Accordingly, the OCA submits that the resolution of the Timing of Solicitation and Auction issue should control the determination of when complete terms and conditions are supplied to customers. The OCA agrees with the FirstEnergy position, and also that of the Commission as set out in the IWP Order.

6. Customer Participation Cap.

a. Summary and Overview of the OCA's Position.

All residential default service customers should be solicited for participation in the Opt-In Auction Program. The maximum number of customers who should be authorized to enroll in the program, however, should be limited to no more than 20% of the total number of non-shopping customers eligible for solicitation. OCA witness Kahal captured the OCA's concern with regard to the Companies' original proposal that there be no customer participation cap, as he testified that:

> The single most important concern is that the program, as structured, creates an open-ended risk for the wholesale suppliers bidding in to the default auctions that take place prior to this program being implemented (i.e., in November 2012 and January 2013). This is because the amount of load to be served under this program is uncapped and therefore completely indeterminate. Wholesale FRC suppliers are already exposed to the volumetric risk of customer migration and this risk perception is priced into default supply bids. The potential for a sharp and abrupt increase in customer migration that could occur immediately following the submission of their bids could greatly increase default service supply costs for residential customers. Potential savings for customers choosing to participate in the Opt-In Retail Auction Program should not come at the expense of customers that remain on default service.

OCA St. 1 at 30.[72]

The OCA's primary concern in this regard is that a larger pool of potential Opt-In Auction enrollees will directly contribute to uncertainty for Full Requirement Suppliers (FRSs) bidding in the Companies' default service procurement auctions that will take place prior to the EGS auction. Such uncertainty will likely increase the level of risk premiums that such FRSs

[72] A complete description of the OCA's concerns in this regard and Mr. Kahal's suggested resolution for this problem is contained within Section II.B.6 of this Brief, and will not be repeated here.

will include in their default service bids, and thus the price paid by default service customers will be higher than is reasonably necessary.

b. The Companies' Proposal (50%).

FirstEnergy originally included no participation cap in its case-in-chief. FE St. 7 at 24. In the IWP Order on this issue, the Commission provided the following recommendation:

> While the Commission understands those parties' comments suggesting that the cap be lower than 50% in order to provide more meaningful certainty to the EGSs, the Commission does not want to impose a limit that may lead to the rejection of customers wishing to participate in the Retail Opt-in Auctions. However, the Commission believes that a lack of a cap would provide no estimate of customer participation to both wholesale and retail suppliers. We believe the 50% cap provides both a large customer participation pool, while providing some level of certainty to those EGSs opting to participate in the Retail Opt-in Auctions.
>
> Per some of the parties' requests, we would like to clarify that the 50% customer participation cap means that no more than 50% of an EDC's default customer base, i.e., non-shopping customers, may participate in the Retail Opt-in Auctions. This limit does not apply to the number of customers being solicited for the auctions.[73]

In his rebuttal testimony, Mr. Fullem testified that the Companies were amending their proposal to include a customer participation cap of 50%. FirstEnergy St. 7-R at 29. As stated above, the OCA submits that a participation cap of 20% should be authorized in this matter and, accordingly, opposes the FirstEnergy proposal for a 50% cap. The OCA further submits that it has provided substantial evidence on this issue, and has shown good cause as to why its recommendation should be adopted, as further detailed below.

c. The OCA's Proposal (20%).

To be clear, the OCA agrees with the Commission's concerns that the lack of any cap would result in an unreasonable level of uncertainty for wholesale suppliers. The OCA also agrees with the proposed method of determining the number of residential customers who can

[73] IWP Order at 59-60.

actually enroll in the program. The OCA submits, however, that a 20% cap on participation will provide the best opportunity for a successful program, while at the same time properly mitigating potential harm to default service customers.

Ms. Alexander testified as to her continuing concerns over the 50% participation cap, as follows:

> The recommendation to solicit all non-shopping customers and allow up to 50% of non-shopping customers to enroll in the Opt-In Auction does not recognize the growing trend toward a significant increase in customer migration to retail generation suppliers through all the EDCs, particularly the significant growth in migration occurring in the FirstEnergy EDCs in recent months, a trend that is likely to continue in the near term.

OCA St. 2-R at 14-15. As Ms. Alexander testified, the current statistics indicate that the percentage of customers taking service from an EGS across all four of the FirstEnergy EDCs is continuing to trend upward at a robust pace. The very issue that Mr. Kahal described in his Direct Testimony, full requirements suppliers already dealing with customer migration due to increased switching activities, is playing out right now in the Companies' service territories. This increased level of shopping activity signifies a need for a more carefully measured Opt-In Auction Program, as the OCA suggests through its 20% participation cap.

In her Surrebuttal Testimony, Ms. Alexander expounded on this issue, as follows:

> This program should limit enrollment to 20% of residential default service customers. My position is a not a reflection of any objection to customer choice and the development of a retail market. Rather, opening up this program that has little or no precedent or experience to rely upon to predict results carries significant risks that may adversely impact customer opinion about the retail market. If 50% of the default service customers can enroll and far less agree to enroll, the retail opt-in auction may be publicly viewed as a failure. If 20% can participate and far more seek to enroll and participate, this would be an excellent indication of customer interest in the retail market and EGSs would have the option to offer the same terms to additional customers outside the auction process itself.

OCA St. 2-SR at 6. As Ms. Alexander explained, the OCA is hopeful that the Opt-In Auction Program will prove to be successful. The OCA has proposed a 20% cap in order to provide a reasonable platform for this success, while at the same time ensuring that default service customers are not harmed. OCA witness Kahal has proposed a 20% "carve out" from the general default service procurements in order to effectuate this result. In the OCA's view, adoption of the OCA's carve out proposal would provide a level of certainty for EGSs and wholesale suppliers alike. And, as Ms. Alexander testified, the proposed OCA 20% cap would still allow EGSs to make offers to customers directly, based on the level of interest generated by the Opt-In Auction Program.

The OCA understands and appreciates that there are a variety of opinions on this topic amongst the various parties here. The OCA submits, however, that the OCA's 20% cap and carve out provisions provide a reasonable accommodation for all of these interests, and provides protection for those consumers who remain on default service, as Act 129 requires. Accordingly, the OCA respectfully requests the Commission to review the substantial evidence provided by the OCA on this issue and adopt the OCA's recommendations as to the customer participation cap.

7. Supplier Participation Load Cap.

The OCA takes no position on this issue.

8. Composition of Product Offer.

a. Discount from PTC.

The OCA supports a product offer for the Opt-In Auction Program that contains a guaranteed percent off the PTC for the duration of the contract term. In the OCA's view, the retail market enhancements in this proceeding are being proposed in order to generate further interest in the competitive retail market for generation service. Such Commission-sponsored programs should allow current default customers to experience the competitive market without fear of harm and with some assured level of savings.

FirstEnergy witness Mr. Fullem described the product initially proposed by FirstEnergy in his direct testimony, as follows:

> The Companies are seeking a "percentage-off' product because it will assure that customers *always pay less* than the EDC's price-to-compare. The goal of the EDC retail opt-in aggregation program is to benefit customers by leveraging their trust in their EDC to help them select an EGS and, in that way, increase residential customer shopping and raise customer awareness of the savings possible from shopping. By the same token, if we are going to leverage the customers' trust by having the EDC form an aggregation group, *we need to take great care not to violate that trust*. In that regard, the "percentage off' product guarantees that the customers who opt-in to the aggregation program will benefit from doing so. This attribute, *which guarantees savings*, will also minimize what has been known as "regret risk", namely, customers' fear that switching from a known supplier of default service to a new supplier could cause them to pay higher prices. We believe that eliminating "regret risk" and providing guaranteed savings will likely increase participation rates in the EDC retail opt-in aggregation program.

FE St. 7 at 25 (emphasis added). The OCA was in agreement with the product offer, as initially advanced by FirstEnergy, with the exception of altering the term from 24 months to 12 months, as OCA witness Kahal testified:

> I agree with the Company that a PTC discount is a very appealing way to structure the pricing and ensure customer savings. A percentage discount is a concept easy for customers to understand since many may not have an intuitive feel for what is an attractive cents per Kwh price. An additional program feature could include a sign up bonus, as determined by the Commission.

OCA St. 1 at 33-34; See also OCA St. 2 at 10-11. With the adoption of a 12-month product, the FirstEnergy product proposal, for all the reasons discussed by Mr. Fullem, would have had the OCA’s support. In rebuttal testimony in response to the IWP Order, however, FirstEnergy modified its position.

The IWP Order addressed the composition of a product offer, which is succinctly captured in Mr. Fullem's rebuttal testimony, as follows:

> The Commission's guidelines recommend that the product should include a $50 bonus payment by the winning EGSs to customers that remain in the program for three entire billing cycles. The Commission also recommends that a fixed price product should be offered and that the opt-in auction not move forward unless the fixed price is at least 5% below the applicable EDC's PTC on the day of the auction. The Companies will revise the program to adopt the Commission's recommendation for a fixed price at least 5% below the PTC on the day of the auction. However, they oppose the payment of any "bonus."

FE St. 7-R at 31. In sum, the Companies abandoned their percent off the PTC guaranteed savings approach for the term of the program, and instead adopted part of the Commission's recommendation – to include a fixed-price product that is at least 5% off the PTC on the day of the EGS auction, with no bonus. Mr. Fullem then went on to testify at length as to why a bonus should not be included in the product offer. FE St. 7-R at 31-34. Mr. Fullem also provided a recap of the other parties' positions as follows:

> Mr. Butler proposes a fixed-price product. Mr. Kallaher proposes a fixed-price product combined with a fixed bonus amount to be determined by the Commission and a Commission-retained expert. Mr. Fein proposes a product that has a fixed price at least 10% below the EDC's PTC at the time of Opt-in auction.[74]

FE St. 7-R at 34.

The OCA opposes the use of the product offer as now described by FirstEnergy, and respectfully disagrees with the Commission's recommendation in the IWP Order on this issue. Ms. Alexander discussed the OCA's concerns with the IWP Order's recommendation on a product offer, as follows:

> The recommendation that the Opt-In Auction would offer a fixed price over a six-month period, that could offer only a 5% discount off the current PTC, and does not guarantee that the customer will pay less than the PTC during the entire term

[74] Mr. Fullem also testified as to an apparent difference of opinion between the OCA witnesses. FE St. 7-R at 34. Mr. Kahal addressed this issue in his Surrebuttal Testimony and clarified that the OCA witnesses' opinion on this issue were consistent. OCA St. 1-SR at 19.

> of the contract is troubling. The suggestion that enticing customers into this optional program as a means of jump starting the retail competitive market and then creating the potential for customers to pay a higher price for generation supply as a result of their enrollment is not a reasonable path to securing customer interest in or satisfaction with the competitive market.

OCA St. 2-R at 14 (footnote omitted).

As discussed above, the OCA has concerns that customers could be harmed as a result of participating in the Opt-In Auction Program in the form FirstEnergy currently proposes. OCA witness Kahal discussed how these harms may be avoided, as follows:

> I believe the best way would be for the FirstEnergy Companies to adhere to their original proposal, which I support, i.e., a fixed percentage (or mills per kWh) discount to the PTC that prevail during the life of the program. This would ensure that program participants benefit from the program, and it would provide strong incentives for customers both to sign up for the program and *not* to migrate back to default service.

OCA St. 1-SR at 19. The IWP Order provided a vision of the product offer as something "unique and eye-catching, and as customer-friendly as possible." IWP Order at 69. FirstEnergy's current proposal, however, fails to capture this vision.

The OCA's position on this issue remains unchanged. The product offer should guarantee customer savings during the product term, without fear of harm. The Companies' current approach does not provide these benefits. The OCA's guaranteed percent off discount for the entire term of the contract is the only product offer of record that can accomplish these goals. The OCA has submitted substantial evidence on this issue, and respectfully requests the Commission to adopt the OCA's recommendations as to the product offer for the Opt-In Auction Program.

b. Bonus Payments.

The OCA is not opposed to the use of a bonus payment as one possible means to provide benefits for customers who participate in the Opt-In Auction. With or without the bonus, however, the OCA's concerns as detailed in the preceding section remain – customers will get a fixed-price offer that is at least 5% off the PTC on the day of the auction, but during the period covered by the auction program the PTC could drop considerably. Auction participants may end up paying more than they would have if they had remained on default service even with the bonus payment. In the OCA's view, this is not the type of outcome or customer experience that the Commission is likely looking for from the implementation of retail market enhancements like the Opt-In Auction Program.

For all the reasons discussed above, the OCA respectfully requests the Commission to view the entire record on this matter and adopt the OCA's recommendations as to the composition of a product offer for the Opt-In Auction Program.

c. Provision of Standard Contracts Specifying All Terms and Conditions of Service.

The OCA has concerns as to the method that FirstEnergy proposes to use in order to provide the full terms and conditions of the Opt-In Auction Program to customers targeted for solicitation. In his direct testimony, FirstEnergy witness Fullem described the notification method, as follows:

> After the highest percentage-off price-to-compare bid (i.e., the lowest bid price) has been determined and the results have been approved by the Commission, each Company will notify its residential customers of their ability to opt-in to the program by means of a bill insert or direct mailing that will contain all the necessary terms and conditions that are necessary for a customer to make an informed decision. The terms and conditions will indicate that the offer is only available for a 30-day period from the date indicated on the mailing. The bill insert or direct mailing will include a tear-off card to be returned directly to the winning EGS for the customer to affirmatively elect the program. Customers can also affirmatively elect the program electronically or by telephone. The winning EGS(s) will then enroll the customer using the same enrollment protocols and electronic transactions that are currently in place for enrolling customers in retail choice.

FirstEnergy St. 7 at 26. In her Direct Testimony, OCA witness Barbara Alexander commented on this proposal, as follows:

> it is vital that customers be presented with the complete terms and conditions of the EGS offer at the time of the opportunity to enter the Opt-In Auction pool. This information is unlikely to be presented properly in a postcard mailing such as proposed by FirstEnergy. Customers must consider all the terms of service at the time of making their decision, not merely the percent off the price to compare. The winning EGS should be responsible for preparing these materials that the EDC is mailing to customers to explain the opportunity to enter the aggregation pool.

OCA St. 2 at 11. In his Rebuttal testimony, Mr. Fullem responded to the OCA's concerns on this issue, as follows:

> The Companies' program conforms to Ms. Alexander's proposal. Each Company will issue a direct mailing consisting of: (1) a Company letter; (2) marketing material provided by the EGSs that describes itself and the product as well as necessary instructions for enrollment; and (3) the terms and conditions of service as set forth in Appendix B to Met-Ed/Penelec/Penn Power/West Penn Exhibit CVF-4, which was submitted with my direct testimony and is being updated herein as Met-Ed/Penelec/Penn Power/West Penn Exhibit CVF-10 . In order for the EGS marketing material to contain as much customer information as possible on the return postcard, the Company will provide each EGS with a database of customers included in their winning tranches as quickly as possible after the Commission approves the auction.

FE St. 7-R at 28. After a review of this additional testimony by Mr. Fullem, the OCA submits that the Company's proposal to provide the full terms and conditions prior to enrollment is satisfactory.

9. <u>RESA's Proposal to Conduct Testing of Various Marketing Channels before Implementing the Program</u>.

In his rebuttal testimony, RESA witness Kallaher proposed a process whereby a test could be performed in order to ascertain optimal methods for customer enrollment and disclosure materials for the Opt-In Auction Program. RESA St. 2 at 11-13. In her Surrebuttal Testimony, OCA witness Barbara Alexander responded to this recommendation, as follows:

> Mr. Kallaher on behalf of RESA proposes a "test" of marketing channels and customer enrollment methods to determine which type of enrollment method and disclosures would result in what volume of customer enrollment. I interpret this proposal as a means to estimate the number of customers that would enroll in a full scale opt-in auction program, thus providing useful information to the participating EGSs in determining their cost structure and price offer, as well as testing how customers respond to the marketing materials and the enrollment methodologies. Nonetheless, this proposal is akin to the notion of a pilot opt-in auction that the Commission has rejected. While the idea of a test such as recommended by Mr. Kallaher might be ideally useful, I do not see how such a program could be designed and implemented in time to implement a full scale program in June 2013. … Mr. Kallaher does not offer EGS payment for this test and has not yet estimated its costs.

OCA St. 2-SR at 11-12 (footnote omitted). As Ms. Alexander noted, the RESA proposal on this issue is essentially a scaled down pilot program – an idea that has been considered and not included for recommendation in the Commission's IWP Order.[75] In addition, the OCA agrees with the comments of FirstEnergy on this issue that implementing a process as described by Mr. Kallaher would require more time than is currently available for such an endeavor. See FE St. 7-SR at 2-5

For these reasons, the OCA opposes the RESA recommendation to implement a test program. The OCA agrees with the Commission's recommendation in the IWP Order that this type of pilot program should not be implemented.

10. Customer Options on Program Expiration and Notices to Customers of Contract Expiration.

The OCA disagrees with the Companies' proposed handling of customers and also the notice provisions that would occur at the expiration of the Opt-In Auction Program. Under the FirstEnergy proposal, customers would receive two notices from the EGS, and non-responders would remain with their EGS at such terms and conditions as the EGS may set. FE St. 7 at 27. The OCA submits that three notices should be provided to customers prior to the end of the

75 See, IWP Order at 48.

program, one from the EDC stating that the program is coming to an end and two from the EGS as required by the Commission's regulations. Customers who do not respond to a notice would stay with their current EGS on a fixed-price, month-to-month product. In her Direct Testimony, Ms. Alexander testified as follows:

> the manner in which customers are informed of what will occur at the end of the EGS contract needs reform. Participating customers must receive three notices: (1) a 90-day notice from the EDC that will alert the customer to the end of the contract term and their options (select another EGS, select an offer from the serving EGS, return to Default Service), and explaining that they will hear directly from their EGS about rate options in the coming months; (2) a notice from the EGS 52-60 days prior to the end of the contract about the customers' options that shall disclose the EGS offers to the customer, and a prominent disclosure of what will occur if the customer does nothing; (3) a similar notice from the EGS 45 days prior to the end of the contract.
>
> The EGS notices should disclose to the customer that if the customer fails to respond to any of the options listed in their notice, the customer would be put on a fixed price month-to-month contract without penalty or termination fees.

OCA St. 2 at 11-12 (footnote omitted). The IWP Order provided a recommendation that customers receive two notices prior to the end of the contract term, as is currently required for standard EGS contracts by the Commission's Regulations. IWP Order at 73. The IWP Order also provided that:

> For the reasons stated above, the Commission maintains its determination that, upon expiration of the Retail Opt-in Auction program term, a customer who makes no other choice – does not (1) renew the contract with the current EGS; (2) switch to a new EGS; or (3) return to EDC-provided default service – will remain on a month-to-month contract with his or her current EGS, without the risk of the imposition of termination penalties or fees.[76]

In her Surrebuttal Testimony, Ms. Alexander explained in greater detail why the OCA has concerns over the two-notice provision, as follows:

> Mr. Fullem rejects my recommendation that the EDC issue a notice to customers participating in the retail opt-in auction that informs customers generally about

[76] IWP Order at 75.

> their options at the end of the auction term. However, Mr. Fullem's reasons for objecting to the EDC notice do not reflect what he previously identified as linking this proposed program to the "brand, image, and customer trust" of the EDC. I agree that the EDC imprimatur given to this program carries with it the right of the EDC to make sure that communications and program design features do not adversely impact the EDC's reputation. Therefore, I think it advisable that the EDC, similar to its presentation of this program to customers, advise participating customers generally about the upcoming end of the auction term and their general options, alerting the customer to forthcoming notices from the EGS about the offers for continuing with the EGS at the end of the auction term, the right to return to default service and how to compare offers to the PTC in effect at the end of the auction term, the right to select another EGS, as well as the important fact that if they do not respond or take affirmative action, they will remain with their current EGS under a month-to-month contract that may seek to charge variable and volatile prices based on a short-term wholesale market index or formula.

OCA St. 2-SR at 8 (footnote omitted).

Finally, it is important to note that customers who opt in to this program will likely (depending on the outcome of the product offer issue) receive some type of fixed price or guaranteed discount offer during the term of the program. When the program ends, customers who do not affirmatively respond to the notices will remain with the EGS on a month-to-month product. The OCA submits that this month-to-month product should be fixed-price, and not a variable priced product that is inherently subject to substantial variations. Neither the IWP Order nor the FirstEnergy proposal have sufficiently clarified this important issue. At the end of the retail opt-in auction period, the OCA submits that customers should not be placed on a variable price rate by their EGS unless the customer affirmatively chooses such a rate.

For the reasons discussed above, the OCA submits that three notices should be provided to customers prior to the end of the program, one from the EDC and two from the EGS, and that customers who do not respond to a notice should stay with their current EGS on a fixed-price, month-to-month product. The OCA has submitted substantial evidence on this issue and provided good cause as to why the FirstEnergy Opt-In Auction proposal should only be adopted if the OCA's recommendations are included.

11. Structure of Opt-In Auction – Descending Price Clock Auction versus Sealed Request for Proposals.

The OCA opposes the use of a Descending Clock Auction (DCA) for the EGS auction that would be part of the Opt-In Auction Program, and instead would recommend the use of a sealed bid request for proposal (RFP).[77] The FirstEnergy proposal for the use of a DCA is contained in the direct testimony of FirstEnergy witness Miller. FE St. 5 at 20-23. As Mr. Kahal testified:

> While I cannot endorse the DCA as the superior procurement tool, I do not contest its use in this case for the FRCs to be acquired. Fortunately, in this case the DCA expenses can be spread over a relatively large customer base. However, I recommend that the other much smaller procurements, i.e., block purchases and EGS selections, be done using conventional sealed-bid RFPs.

OCA St. 1 at 17. The OCA's opposition to the use of a DCA for the Opt-In Auction Program is based on the costs to operate such an auction, versus the simpler RFP method. As Mr. Kahal testified:

> Program implementation costs should be assigned to the winning EGS suppliers, not the residential retail customers. Such costs can be reduced by using a simple sealed-bid RFP in place of the more complex descending clock auction ("DCA").[78]

OCA St. 1 at 10.

In his rebuttal testimony, and in response to the RFP recommendations of RESA, Dominion and the OCA, FirstEnergy witness Miller defended the Companies' proposal to use a

---

[77] The OCA notes that the Commission's IWP Order expresses no preference on this issue. IWP Order at 77-78.

[78] The OCA notes that in the surrebuttal testimony of Mr. Knecht, on behalf of the OSBA, a chart is presented which indicates that RESA and Dominion also favor a sealed bid RFP for the Opt-In Auction Program. OSBA St. No. 3 at 17.

DCA for the Opt-In Auction Program. FE St. 5-R. In his surrebuttal testimony, Dominion witness Mr. Butler responded to Mr. Miller's assertions as to the lack of any cost difference between a DCA and an RFP process. Mr. Butler testified that:

> I disagree. We have participated in both types of processes and from our perspective at least, the costs are significantly different. An RFP does not require any special systems or high priced consultants to run the process. PECO performed its own auction with the MST program and it went well. Mr. Miller's explanation of why a descending clock auction ("DCA") is the better choice is baffling and provides no real justification for the Companies' choice other than they want a DCA. A sealed bid, not a DCA, requires each company to put forth its best offer, once and only once, and to stand by that bid and at a much lower costs of implementation, Mr. Stathis' reassurance to the contrary (FirstEnergy 4-R, 11 : 1-9) notwithstanding.

Dominion St. SR-1 at 6. The OCA agrees with the position of Dominion and RESA on this issue.

12. Recovery of Costs.

a. All Customers versus EGSs.

FirstEnergy proposes to recover the costs of the Opt-In Auction Program from residential customers through the non-bypassable Default Service Support Rider (DSSR). FE St. 7 at 27. The OCA is opposed to this proposal, as explained by Ms. Alexander:

> the costs of implementing this program should not be imposed on the EDC's residential distribution service customers as proposed by FirstEnergy. Rather, since the purpose of this program is to expose customers to the process and potential benefits of selecting an EGS and will provide substantial market share to the winning EGS without incurring any of the typical marketing and acquisition costs, the winning EGS should pay for the incremental administrative costs to conduct the bidding, select the winning EGS, and provide the necessary disclosures to customers. It is the EGS that will benefit from obtaining mass market customers through this program and avoid marketing and acquisition costs. However, I do agree that the additional costs incurred by the EDC's calling center to interact with customers about this program during the customer opt-in process is properly allocated to the EDC's customers through the Default Service Support Rider.

OCA St. 2 at 12.

The IWP Order provides the following as to the issue of cost recovery:

> Concerning the OCA's and UGIES's request to have participating EGSs pay for the cost of implementing the Retail Opt-in Auctions, the Commission agrees. In the Commission's view, having the participating EGSs pay for the auction implementation is a prudent way to recover the auction costs, given that the participating EGSs are the entities reaping the possible customer acquisition benefits resulting from the auction.[79]

In his rebuttal testimony, Mr. Fullem reaffirmed the Companies' original position that the costs for the program should be recovered from residential customers and not EGSs. FE St. 7-R at 38-39. Mr. Fullem cited risks of non-collection and stated that imposing these costs on EGSs may either preclude EGS participation, or that the auction results as to price could potentially be less attractive to customers. Id. In his Surrebuttal Testimony, OCA witness Kahal commented on these arguments, as follows:

> The Joint Petitioners in rebuttal testimony continue to support charging all program costs to residential customers, and they have provided no compelling operational argument for their position. Notably, Dominion witness Butler supports the Commission's guidance on this issue in his rebuttal testimony. (Rebuttal testimony, page 5) I believe that participating EGSs, who also stand to benefit by expanding market shares, should be willing to accept the program implementation costs. If the program implementation costs are merely imposed on customers (including those that do not participate), it runs the risk of being a net harm to customers.

OCA St. 1-SR at 17. As Mr. Kahal testified, FirstEnergy has provided no operational constraints or other compelling evidence to justify a result different from the one recommended in the IWP Order. FirstEnergy has not provided sufficient evidence to support collecting the costs from all residential customers as opposed to cost recovery from EGSs as set out in the IWP Order. The OCA respectfully requests the Commission to order FirstEnergy to implement a cost recovery mechanism that is consistent with the recommendation contained in the IWP Order.

b. Recovery through the Market Adjustment Clause as Proposed by RESA.

[79] IWP Order at 78

As discussed in Section III. C. of this brief, the OCA is opposed to the implementation of a MAC in this proceeding, for any purpose, whatsoever. Accordingly, the OCA is opposed to the RESA recommendation that revenues from the MAC be used to cover costs of the Opt-In Auction Program. Indeed, recovery of retail opt-in costs through the MAC is particularly inappropriate since the default service customers who would pay the MAC are the very customers who, by definition, will not be participating in the auction program.

c. Form of Recovery if EGSs to be Responsible for all Costs.

The OCA supports the recovery of all costs for the implementation of the Opt-In Auction Program from EGSs. As to a specific form of recovery, as Ms. Alexander testified, there are a variety of methods that could be used. OCA St. 2-SR at 10-11. In his rebuttal testimony, Mr. Fullem provided such a method, as follows:

> If the Commission directs that EGSs pay for the program, the best way to do so would be for the cost of the auction itself to be divided equally among participating EGSs, with each EGSs being required to pay the Companies their share before the beginning of the auction. Winning EGSs would then be responsible for all costs associated with the marketing and mailing of opt-in notices to the residential customers included in the tranches that they win. The mailing of the opt-in material would be contingent upon payment being received from each EGS.

FE St. 7-R at 40. The OCA agrees in general that this could be a reasonable manner in which to collect these costs.

B. Standard Offer Customer Referral Program.

1. The OCA's Position.

a. Introduction.

The Companies proposed a referral program that would include a standard offer product from EGSs. The Companies' Referral Program is discussed in the direct testimony of several

FirstEnergy witnesses, including D'Angelo and Reitzes, but the principal witness for the Companies on this issue is Mr. Fullem. See FirstEnergy St. 7 at 28-32. The OCA presented the testimony of Barbara Alexander on the Referral Program issue. Ms. Alexander submitted substantial evidence on this topic. See OCA Sts. 2, 2-R and 2-SR.

The OCA submits that the Referral Program as designed and proposed by FirstEnergy is overly complicated, entails substantial costs and is likely to result in customer confusion and potential dissatisfaction. In the following section, the OCA will discuss the proposed Referral Program in detail, the changes made to the Referral Program by FirstEnergy as a result of the Commission's Intermediate Work Plan Final Order (IWP Order) and the OCA's recommendations as to the inclusion of the Referral Program in the proposed DSP.

b. Discussion.

In her Direct Testimony, Ms. Alexander described the Referral Program as proposed by FirstEnergy, as follows:

> FirstEnergy proposes to conduct a weekly Customer Referral Solicitation to select the lowest 12-month and 24-month fixed price offers from EGSs that agree to participate in the program. Customers who call the EDC about a high bill complaint or new service request will be advised of their option to select an EGS "at favorable prices" and, then offered to have their call transferred to a Customer Referral Plan Implementation Team, a separate call center that FirstEnergy proposes to establish for this program. Once transferred to this Team, the customer would be told about customer choice and the information resources available, as well as the opportunity to be referred to the winning EGSs for the 12-month or 24-month fixed price products for that week. Upon request, the customer's call would be transferred to the EGS making the offer that the customer selects. If the customer agrees to the EGS offer, the EGS will submit the enrollment request electronically. At the end of the contract term, FirstEnergy proposes that the customer be informed of their options pursuant to 52 Pa. Code Sec. 54.5(g)(1) and if the customer fails to make an affirmative selection, the customer would remain with the EGS at a price set by the EGS.

OCA St. 2 at 13. OCA witness Alexander then described how the Referral Program would be implemented in conjunction with FirstEnergy's proposed Opt-In Auction Program, as follows:

> FirstEnergy is proposing to implement the Referral Program after the enrollment period for the Opt-In Auction has ended, in June 2013. As a result, only those customers not served by an EGS (either through an individual selection or through the Opt-In Auction pool) will be targeted for the Referral Program.

OCA St. 2 at 13-14. The structure, timing and substantial cost[80] of the proposed Referral Program is of concern to the OCA, as Ms. Alexander explained:

> The program requires a discussion of two rate options that will be changing weekly. The customer will be transferred from one EDC call center to another EDC call center and then to an EGS, contributing to the potential for dropped calls and customer frustration. If the Referral program options offer a lower price than the Opt-In Auction price, those customers who entered the Opt-In Auction will be frustrated and disappointed and, if they leave the Opt-In Auction pool for this type of alternative offer it is likely to contribute to dissatisfaction with the Opt-In Auction process. The program is costly as proposed by FirstEnergy and requires a separate call center, weekly price auctions, and constantly changing information that the EDC customer representatives must handle. Finally, FirstEnergy proposes that customers who complete their Referral program contract will be retained by the EGS without affirmative customer agreement. I disagree with the Customer Referral program as proposed by FirstEnergy.

OCA St. 2 at 14. In the OCA's view, FirstEnergy should scale back and modify its Referral Program in order to provide a more gradual implementation. For one, the proposed Referral Program would roll out in very close proximity to the implementation of the Opt-In Auction Program. These two programs share many similarities and could easily cause unnecessary levels of customer confusion. Second, the costs of the Referral Program as proposed are considerable, especially considering that FirstEnergy is proposing to charge these costs to customers. As Ms. Alexander testified:

> The EGSs that participate in the Customer Referral program and who obtain new customers through the EDC's marketing of this program should pay for incremental administrative costs. My recommendation is similar to that adopted by the New York Public Service Commission.

OCA St. 2 at 18-19 (footnote omitted). Consistent with a more gradual, reasonable

---

[80] FirstEnergy estimates start up costs for the Referral Program of $2.5 million, and ongoing annual expenses of anywhere from $2.4 million to over $10 million. See, OCA Cross Exam. Exh. 1 at pgs. 12-13.

implementation of a customer referral program, Ms. Alexander recommended a bifurcated approach to implementation that would include a more basic first-year program along with a ramped up program for year two. Ms. Alexander explained her concerns and recommendations for the first year of the program, as follows:

> I agree with the notion that customers who call the EDC to establish new service or who transfer service to a new address should be affirmatively informed of the existence of customer choice and how customers can learn more about choice and EGS offers they may find of interest. Customers should be routinely informed of the PaPowerSwitch and OCA websites to learn further about what EGSs are making offers in their service area and how to shop and compare prices and terms of service for generation supply service. However, customers who call the EDC about high bill issues should not be required to hear about customer choice before their consumer protections and customer service questions and issues are resolved. … I do agree that FirstEnergy's call center should also contain a menu that includes learning more about customer choice that any customer can select when calling the toll-free number for any purpose. This more modest promotion of choice and EGS offers should be implemented in 2013.

OCA St. 2 at 15-16. Ms. Alexander went on to provide a detailed road map for what could be available for customers in the second year of a referral program, with consideration given to the implementation of the Opt-In Auction, as follows:

> - The Referral program should be affirmatively offered to new customers or those moving within the EDC service territory, but other customer calls to the EDC should not affirmatively require an explanation of the Referral Program unless there is a customer request to do so;
> - The minimum period of time for a Referral offer should be 4 months and should not exceed 12 months, but in any case should be a uniform contract term for all participating EGSs;
> - Participating EGSs must agree to accept all customers and eliminate early termination fees or other service or monthly fixed fees from the offer;
> - The EDC should solicit EGSs to participate in the Referral Program based on their willingness to offer the customer a guaranteed price that is a standard percentage lower than the current price to compare with every quarterly change in the price to compare so that any qualifying EGS can participate in the program, thus eliminating FirstEnergy's proposal for expensive weekly bidding and the customer confusion that is likely to occur with constantly changing referral program offers;
> - The customer who agrees to participate in the Referral program should be offered the option of selecting a specific EGS from the list of participating EGSs

> or randomly assigned to one of the participating EGSs, assuming that all EGS offers are the same in terms of price and other terms and conditions;
>
> - The EGS offers should be included on the EDC website;
> - The EDC should transfer the customer to the EGS to implement the enrollment process and receive the full terms and conditions.

OCA St. 2 at 16-17. Ms. Alexander went on to discuss necessary safeguards and protections for handling of customers at the end of the Referral Program term. Ms. Alexander testified that:

> Customers enrolled with an EGS pursuant to the Referral Program can, at the termination of their contract term, select another EGS or select an offer from their own EGS (the one serving them under the referral program). However, the customer's silence should result in the transfer of the customer back to Default Service.

OCA St. 2 at 17 (footnotes omitted).[81] The OCA submits that the adoption of Ms. Alexander's recommendations would provide a reasonable path for the implementation of a referral program that could be of benefit to ratepayers. As proposed, however, the FirstEnergy Referral Program should not be allowed to proceed. In addition, the Companies have stated concerns over their ability to maintain current levels of call center performance, which Ms. Alexander addressed as follows:

> I do not recommend that any Referral program or other market enhancement program result in or be used as an excuse for a deterioration of customer call center standards. This concern in part is reflected in my proposals for the design of a Referral Program.

OCA St. 2 at 18.

The IWP Order provides a detailed discussion of referral programs. As an introduction to the referral program issue, the IWP Order provided:

> In the December 16 Order, we discussed two different types of customer referral

[81] As noted by Ms. Alexander, her recommendation in this regard reflects the Central Hudson Gas & Electric referral program, called "Energy Switch." Under that program the customer is guaranteed a specific discount for the first month's service, but must then affirmatively agree to the EGS (called an ESCO In New York)'s terms of service to continue being served at the EGS price. See, http://www.centralhudson.com/energy_choice/energy_switch.html. OCA St. 2 at 17, fn 6.

programs. The first type of program was designated as the New/Moving Customer Referral Program. This program is meant to provide new customers and customers moving within an EDC's service territory with information about the competitive market place at the time those customers contact the EDC about their future electric service. As discussed below, we also considered whether this type of program could be used for all customers who contacted their EDCs for any reason, other than emergencies, service quality issues and service terminations. The main thrust of this program is to ensure that customers do not assume that EDC-provided default service is their first (or only) option for generation supply.[82]

The Commission's description here of the New/Moving type program is consistent with Ms. Alexander's testimony as to a potential first-year referral program that could be employed by FirstEnergy in its proposed DSP. The IWP Order then provided a general description of a standard offer program involving EGSs, as follows:

> The second type of customer referral program was the Standard Offer Customer Referral Program. This is designed to be a more robust customer referral program in which customers would be given the opportunity to voluntarily "opt-in" for a program in which several EGSs would participate and offer some form of generation product that would include a discount off of the current EDC PTC for a stated period of time. Our December 16 Order suggested a three-month term with a standard percentage discount from the EDC's PTC. The product would be uniform throughout the EDC's service territory. Upon entering the program, customers could either select a preferred EGS or be randomly assigned to a participating EGS. At the conclusion of the Standard Offer Customer Referral Program, absent an affirmative action by the customer to the contrary, the customer would remain with the EGS on a month-to-month basis with no early termination fees if the customer switches suppliers.[83]

After a discussion of the comments received on these issues, the Commission provided the following resolutions:

> Based on the comments received, notably the concerns revolving around complexity and cost, we have determined that the New/Moving Customer Referral Program will be restricted to those customers calling to initiate service or calling to move service within an EDC's service territory.
>
> …

[82] IWP Order at 13-14 (citations omitted).

[83] IWP Order at 14 (citations omitted).

> We agree with OCA that the question of CAP customer participation should be considered as part of the RMI Universal Service working group.[84]

…

The IWP Order provided the following as to a Standard Offer Program:

- The Standard Offer Customer Referral Program should be voluntary for customers, i.e., "opt-in", as well as for participating EGSs.

- The standard offer will target/market residential default service customers; however, residential shopping customers will not be excluded if they specifically request to participate. At this time, CAP customers should be excluded from the Standard Offer Customer Referral Program and have deferred the details of addressing the provision of universal service within default service to the RMI's Universal Service subgroup.

- The standard offer should be comprised of a 7% reduction from the EDC's effective DS PTC. The 7% reduction is a constant price established against the PTC effective on the date the standard offer is made.

- The standard offer should be provided for a minimum of four months, but should not exceed 1 year. The standard offer and its term should be uniform within an EDC's service territory.

- Customers may choose to be assigned to an EGS of their choice or may choose a random assignment. The process by which an EGS is assigned either randomly or by customer choice, at the customer's discretion, will be specifically detailed in each EDC's plan proposal to ensure fairness and impartiality.

- The terms and conditions of the standard offer must be presented to customers before they decide to enter the program.

- The Standard Offer Customer Referral Program should be presented during customer contacts to the EDC call centers, other than calls for emergencies, terminations and the like. We would, however, permit that a customer be presented the standard offer during customer contacts to the EDC call center for high bill issues, only and explicitly after the customer's concerns were satisfied.

- Once a customer enrolls in the Standard Offer Customer Referral Program, the enrollment will be forwarded to the EGS for EDI processing.

- At the time of the first contact between the EGS and the customer, the customer will be reminded of the terms and conditions of the standard offer, including the date by which the customer must take action to exercise his or her options at the end of the term.

[84] IWP Order at 17-18.

- There will be no termination penalty or fee imposed at any time during the effective period of the standard offer.

- All existing customer notification requirements apply, including notices and the timing of those notices relating to proposed changes in the terms and conditions of the EGS-customer relationship.

- At the conclusion of the standard offer period, absent affirmative customer action to enter into a new contract with the EGS, the customer's enrollment with a different EGS or the customer's return to default service, the customer will remain with the EGS on a month-to-month basis, and shall not be subject to any termination penalty or fee. However, this should not deter an EGS from offering longer, fixed-term prices.[85]

As to the further issue of cost recovery, the IWP Order provided in relevant part that:

> As to program costs, we agree with the assertions of OCA and UGIES that the bulk of the costs, including the costs of maintaining the referral programs once they are put into place, should be the responsibility of the participating EGSs.[86]

With respect to the referral program guidelines found in the IWP Order and the Companies' revisions to their proposals in light of the IWP Order, OCA witness Alexander identified a number of continuing concerns. Specifically, Ms. Alexander testified that:

- Customers who participate in the Referral Program should receive a lower price than the PTC during the term of the contract;

- The EDC should only solicit those customers who call to establish service, are moving to a new location within the service territory or specifically inquire about Choice;

- Customers who do not affirmatively respond to notices at the end of the contract term should be returned to default service; and

- The Referral Program should only be implemented after sufficient time has passed to allow the Commission and the parties to examine the results of the Opt-In Auction Program prior to the implementation of another program that may cause customer confusion.

OCA St. 2-R at 12-14. The OCA agrees that a properly designed referral program could serve as

[85] IWP Order at 31-32.

[86] IWP Order at 32.

a method to further educate customers about choice and facilitate enhanced customer shopping. Consistent with Ms. Alexander's comments, however, certain elements contained in the Companies' proposal have the potential to cause harm to customers who participate in referral programs.

In his rebuttal testimony, Mr. Butler on behalf of Dominion supported several of the OCA's positions on the proposed FirstEnergy Referral Program. Dominion St. R-1 at 7-11. As to the issue of timing and costs of the Referral Program, Mr. Butler responded that:

> I agree with Ms. Alexander. The referral program seems exceedingly expensive – which I did not expect. If the costs of a referral program cannot be reduced significantly, it may not be worthwhile from a cost/benefit perspective. While we are surprised at the level of FirstEnergy's cost estimates, if they prove to be accurate and unchangeable, I could agree that a referral program be deferred until after the opt-in auction.

Dominion St. R-1 at p. 7. As to cost recovery for the Referral Program, Mr. Butler also agreed that participating EGSs should pay the costs of the program. Specifically, Mr. Butler testified that:

> I am okay with participating suppliers bearing the cost – but the cost to acquire must be reasonable. Non-participating suppliers should not bear the cost of the referral program.

Dominion St. R-1 at 11.

In response to the IWP Order, FirstEnergy made certain revisions to its Referral Program. In his Rebuttal testimony, FirstEnergy witness Fullem provided a description of the changes made by the Companies to the proposed Referral Program as a result of the IWP Order. FirstEnergy St. 7-R at 41-46. Mr. Fullem first listed those areas where he believed FirstEnergy's Referral program differed with the guidelines provided by the Commission in the IWP Order, and also discussed the modifications that FirstEnergy was proposing. FE St. 7-R at 42-46. Specifically, Mr. Fullem testified that under the FirstEnergy Referral Program: (1) CAP customers could participate; (2)

FirstEnergy was altering its pricing and terms to concur with the IWP Order, such that the referral product price would be 7% below the PTC at the time of the offer and the term would be 12 months; (3) EGSs would provide terms and conditions and enroll customers; and (4) all costs for the Referral Program would be collected from customers through the DSS Rider, not EGSs. Id

In her Surrebuttal Testimony, OCA witness Alexander discussed the FirstEnergy rebuttal position on the Referral Program, as follows:

> Mr. Fullem on behalf of FirstEnergy makes several changes to their Customer Referral Program, specifically proposing that qualified EGSs must offer a fixed price that is at least 7% less than the PTC in effect at the time of the offer for a 12 month contract term. FirstEnergy also seeks to continue to rely on their specialized call center to handle explanations for the Referral Program.

OCA St. 2-SR at 13. As to the rebuttal positions of FirstEnergy, Ms. Alexander testified as to the OCA's continuing concerns evidenced by FirstEnergy's rebuttal testimony. OCA St. 2-SR at 13-15. To summarize:

- The potential confusion for customers and possible dissatisfaction with the retail market enhancements could be ameliorated by delaying the implementation of the full Standard Offer Referral Program and instead implement a "light" program as described in Ms. Alexander's Direct Testimony;

- Consistent with the New York Central Hudson Model, customers who do not affirmatively respond to the notices at the end of the contract should be returned to default service;

- The EDC should only solicit those customers who call to establish service, are moving to a new location within the service territory or specifically inquire about Choice;

- The term of the Referral Program contract should be four months in order to ensure that customers will realize savings; and

- The EGSs participating in the Referral Program should pay for the incremental costs to implement this program.

OCA St. 2-SR at 13-15. As Ms. Alexander discussed in her Surrebuttal Testimony, the implementation of the Referral Program on the heels of the Opt-In Auction will create unnecessary customer confusion. The Referral Program carries substantial costs, which if allowed to proceed, should be paid for by the EGSs. A clarification must be made such that the Referral Program is only offered to those customers who specifically call to inquire about Choice, new customers or those moving within the service territory. The contract term should be decreased to four months and the 7% off the PTC should be for every month of that term.

c. Conclusion.

In the OCA's view, customers should be able to participate in a Commission/EDC sponsored referral program without fear of harm. Such is not the case here. Under the FirstEnergy proposal, customers would be offered a contract for 7% off the PTC, but only good at the moment of the offer. Should the PTC decrease below the offer price during the remainder of the contract term, customers will be harmed. Similarly, it is the OCA's position that customers who make no affirmative response at the end of the contract term should be returned to default service. Under the FirstEnergy proposal, customers who do not respond would stay with the EGS on a month-to-month contract with unspecified, likely varying price. These customers are subject to harm. In addition, the potential for customer confusion as to the timing of the Referral Program on top of the Opt-In Auction Program, as well as FirstEnergy's proposal to recover the substantial costs of the Referral Program from all customers will create additional potential harms to customers as a result of the program. The OCA respectfully requests the Commission to consider the OCA recommendations set out herein, and to not authorize FirstEnergy to implement its Referral Program unless such alterations are included.

2. Customer Eligibility.

Consistent with its discussion above, the OCA submits that the Referral Program should be affirmatively offered to new customers, those customers moving within the EDC service territory, and those who specifically inquire about customer choice or the Referral Program, but other customer calls to the EDC should not trigger a requirement to offer the Referral Program.

3. Term of the Standard Offer Product and Length of 7% Discount.

As discussed above, the OCA submits that the Referral Program should be for a term of four months and that throughout that term the customer should be guaranteed a specific percent off the PTC. This method would ensure that customers participating in the program would receive guaranteed benefits in the form of savings. At the end of the contract term, customers who do not affirmatively respond to the EGS' notices should not be retained by the EGS, but rather should be transferred back to default service.

4. Recovery of Costs.

As previously discussed, the OCA supports the Commission's recommendation that the costs of the Referral program should be recovered from EGSs. Accordingly, the OCA respectfully submits that the Companies' proposal to recover these costs through the DSSR from all residential customers should be denied.

a. All Customers Versus EGSs.

The OCA opposes recovering the costs of the Referral Program from customers.

b. Recovery Through the Market Adjustment Clause as Proposed by RESA.

The OCA strictly opposes the implementation of the MAC. Accordingly, the OCA opposes the use of the MAC as a funding mechanism for the Referral Program.

c. Form of Recovery if EGSs to be Responsible for All Costs.

The OCA supports the recovery of Referral Program costs from EGSs. In his rebuttal testimony, FirstEnergy witness Fullem describes a recovery methodology whereby the

Companies would recover these costs from EGSs. FirstEnergy St. 7-R at 46. The OCA has no opposition to this approach.

5. Constellation's Proposal to Require Customers to "Opt In" in Order to Be Eligible to Participate.

The OCA agrees with FirstEnergy witness Fullem's comments as to the Constellation proposal. See FirstEnergy St. 7-R at 49. As discussed by Mr. Fullem, witness Fein for Constellation recommended that customers should be notified of the Referral Program, in advance, and asked to indicate whether they wished to be given the chance to participate in the Referral Program, at some future date. Id. Requiring customers to opt in to a program that they do not have full and complete details about will likely only result in customer confusion. Accordingly, the OCA opposes this recommendation by Constellation.

6. The OCA's Proposal to Sequence the Implementation of the Customer Referral Program.

In the OCA's view, FirstEnergy should scale back and modify its Referral Program in order to provide a more gradual implementation. The proposed Referral Program would roll out in very close proximity to the implementation of the Opt-In Auction Program. These two programs share many similarities and could easily cause unnecessary levels of customer confusion. Consistent with a more gradual, reasonable implementation of a customer referral program, as discussed above, the OCA supports a bifurcated approach to implementation that would include a more basic first-year program along with a ramped up program for year two.

7. RESA's Proposal to allow the Standard Offer Customer Referral Program to Displace the New/Moving Customer Referral Program.

While there are aspects of RESA's proposal that the OCA agrees with, such as the recommendation to simplify the Referral Program, the OCA continues to support the OCA's suggested referral program elements as discussed above and as specifically contained in the Direct Testimony of OCA witness Barbara Alexander. See, e.g., OCA St. 2 at 17.

C. Limiting Participation By Low-Income Customers In Proposed Retail Market Enhancements.

1. CAUSE-PA's Proposal.

The IWP Order provided the following recommendation as to CAP customers' participation in the Referral Program:

> At this time, CAP customers should be excluded from the Standard Offer Customer Referral Program and have deferred the details of addressing the provision of universal service within default service to the RMI's Universal Service subgroup.[87]

The OCA has maintained throughout the RMI proceeding that CAP customers, and other customers who pay the CAP shortfall, must be held harmless if CAP customers are allowed to participate in any of the retail market enhancements as proposed by EDCs in their upcoming default service procurement plans. Accordingly, the OCA supports the Surrebuttal Testimony of CAUSE-PA witness Carol J. Biedrzycki on this issue – CAP customers should not be allowed to participate in either the Opt-In Auction or the Referral Program. See CAUSE-PA St. 1-SR.

2. The OCA's Proposal.

The OCA did not specifically set out a proposal as to CAP customer participation in the Referral Program. Although, in her Surrebuttal Testimony, OCA witness Alexander provided that:

> It would appear unreasonable to allow CAP customers to participate in the opt-in auction unless they will benefit in the form of lower bills compared to the PTC during the entire auction term. While this concern is important for all potential enrollees in this program, it has obvious and vital importance for customers who, by definition, are unable to afford their bills for essential electricity service. Mr. Kallaher's suggestion that CAP customers will find value in participating in this program that go beyond the price for service is not realistic or appropriate.

[87] IWP Order at 31.

OCA St. 2-SR at 12. The OCA's position on CAP customer participation in the Opt-In Auction is consistent with its view of CAP customers participating in the Referral Program. Accordingly, the OCA supports the surrebuttal position of CAUSE-PA on this issue.

V. OPERATIONAL ISSUES

A. System "Enhancements" Proposed by Constellation.

Constellation's System Enhancement recommendations were addressed by FE witness Valdes in his rebuttal testimony. FE St. 2-R at 27-29. The OCA finds no response in the surrebuttal testimony of Constellation. Accordingly, the OCA is uncertain at this time as to whether Constellations concerns on this issue have been addressed. Should further information on this issue be supplied in the briefs of the other parties, the OCA reserves its right to reply.

B. RESA's Proposal that that Companies Investigate Implementing a Secure, Web-Based System to Provide EGS Electronic Access to Customer Usage and Account Data.

The OCA lacks sufficient information from any of the testimony or other record evidence in this proceeding in order to fairly judge the "Operational Enhancements" proposed by RESA. For instance, the OCA has no information as to the potential costs of such enhancements, or what entity would be assigned such costs under the RESA proposal. As such, the OCA cannot currently comment further, but reserves the right to reply on this issue if further information is submitted in the main briefs of the other parties.

VI. AFFILIATED INTEREST APPROVAL

A. Approval of Contracts under Chapter 21 as Requested in the Joint Petition.

The OCA takes no position on this issue.

VII. OTHER ISSUES

The OCA has no issues that have not already been addressed.

VIII. CONCLUSION

The OCA submits that, as proposed, the FirstEnergy Companies' Default Service Plans do not provide residential customers with a least cost, reliable and stable "prudent mix" of supplies as required under Pennsylvania law. In addition, the Companies' unprecedented proposed Market Adjustment Charge of a half cent per kWh must be soundly rejected. The OCA further submits that the proposed modifications detailed in this Main Brief will ensure that the legal requirements for the provision of default service are met, while increasing the opportunities customers have to receive additional benefits in the retail market. As such, the OCA submits that its proposed modifications must be adopted.

Respectfully Submitted,

Aron J. Beatty

Aron J. Beatty
PA Attorney I.D. # 86625
E-Mail: ABeatty@paoca.org
Darryl Lawrence
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org
Assistant Consumer Advocates

Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
E-Mail: TMcCloskey@paoca.org

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: May 2, 2012
00155621.docx

CERTIFICATE OF SERVICE

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-2011-2273650 P-2011-2273668 P-2011-2273669 P-2011-2273670

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Main Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 2nd day of May 2012.

SERVICE BY E-MAIL & INTER-OFFICE MAIL

Charles D. Shields, Senior Prosecutor
Bureau of Investigation and Enforcement
Pa. Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105
chshields@pa.gov

SERVICE BY E-MAIL & FIRST CLASS MAIL, POSTAGE PREPAID

Thomas P. Gadsden, Esq.
Kenneth M. Kulak, Esq.
Anthony C. DeCusatis, Esq.
Catherine G. Vasudevan, Esq.
Morgan, Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
tgadsden@morganlewis.com
kkulak@morganlewis.com
adecusatis@morganlewis.com
cvasudevan@morganlewis.com

Bradley A. Bingaman, Esq.
Tori L. Giesler, Esq.
First Energy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001
bbingaman@firstenergycorp.com
tgiesler@firstenergycorp.com

Daniel G. Asmus, Esq.
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second Street
Harrisburg, PA 17101
dasmus@pa.gov

Charis Mincavage, Esq.
Susan E. Bruce, Esq.
McNees, Wallace & Nurick, LLC
P.O. Box 1166
Harrisburg, PA 17108-1166
cmincavage@mwn.com
sbruce@mwn.com

Daniel Clearfield, Esq.
Deanne M. O'Dell, Esq.
Carl R. Shultz, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market St., 8th Floor
Harrisburg, PA 17101
dclearfield@eckertseamans.com
dodell@eckertseamans.com
cshultz@eckertseamans.com

Trevor D. Stiles, Esq.
Foley & Lardner LLP
777 E. Wisconsin Ave.
Milwaukee, WI 53202
tstiles@foley.com

Thomas J. Sniscak, Esq.
William E. Lehman, Esq.
Hawke Mckeon & Sniscak, LLP
100 North 10th Street
P.O. Box 1778
Harrisburg, PA 17105
tjsniscak@hmslegal.com
welehman@hmslegal.com

Thomas T. Niesen, Esq.
Charles E. Thomas, III, Esq.
Thomas, Long, Niesen & Kennard
212 Locust Street
P.O. Box 9500
Harrisburg, PA 17108-9500
tniesen@thomaslonglaw.com
cet3@thomaslonglaw.com

Brian J. Knipe, Esq.
Buchanan Ingersoll & Rooney, PC
17 North Second Street, 15th Floor
Harrisburg, PA 17101
Brian.knipe@bipc.com

Divesh Gupta, Esq.
Managing Counsel-Regulatory
Constellation Energy
100 Constellation Way, Suite 500C
Baltimore, MD 21202
divesh.gupta@constellation.com

Patrick M. Cicero, Esq.
Harry S. Geller, Esq.
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pciceroPULP@palegalaid.net
HGellerPULP@palegalaid.net

Amy M. Klodowski, Esq.
FirstEnergy Solutions Corp.
800 Cabin Hill Drive
Greensburg, PA 15601
aklodow@firstenergycorp.com

Michael A. Gruin, Esq.
Stevens & Lee
17 North Second Street, 16th Floor
Harrisburg, PA 17101
mag@stevenslee.com

Benjamin L. Willey, Esq.
Law Offices of Benjamin L. Willey
7272 Wisconsin Ave.
Suite 300
Bethesda, MD 20814
blw@bwilleylaw.com

Todd S. Stewart, Esq.
Hawke McKeon & Sniscak LLP
P.O. Box 1778
100 N. Tenth Street
Harrisburg, PA 17105-1778
tsstewart@hmslegal.com

Gary Jeffries, Esq.
Dominion Retail, Inc.
501 Martindale St., Suite 400
Pittsburgh, PA 15212-5817
gjeffries@dom.com

Aron J. Beatty

Darryl A. Lawrence
Assistant Consumer Advocate
PA Attorney I.D. # 93682
Email: DLawrence@paoca.org
Aron J. Beatty
Assistant Consumer Advocate
PA Attorney I.D. # 86625
Email: ABeatty@paoca.org
Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
Email: TMcCloskey@paoca.org

Counsel for
Office of Consumer Advocate
555 Walnut Street 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
151034