

**COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Programs	: : : : : : : : : : :	Docket Nos. P-2011-2273650 P-2011-2273668 P-2011-2273669 P-2011-2273670
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**MAIN BRIEF OF
CONSTELLATION ENERGY COMMODITIES GROUP, INC.
AND CONSTELLATION NEWENERGY, INC.**

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2. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A. 2d 600, 602 (Pa. Cmwlth. 1990).
3. *Opinion and Order in Re: Petition of PPL Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period January 1, 2011 Through May 31, 2014*, Commission Docket No. P-2008-2060309 (entered June 30, 2009).
4. *Final Order in re: the Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Commission Docket No. I-2011-2237952 (entered Mar. 2, 2012).
5. *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, III FERC Stats. & Regs., Regs. Preambles ¶ 31,322 (2011).

MAIN BRIEF OF
CONSTELLATION ENERGY COMMODITIES GROUP, INC.
AND CONSTELLATION NEWENERGY, INC.

I. INTRODUCTION AND PROCEDURAL HISTORY

Introduction

Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (collectively, “Constellation”) hereby submit their Main Brief for consideration by the Pennsylvania Public Utility Commission (“Commission”), with regard to the Default Service Implementation Programs filed by Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”), and West Penn Power Company (“West Penn”) (collectively, “FirstEnergy-PA”) on November 17, 2011¹ (with supporting testimony from FirstEnergy-PA circulated on December 20, 2011 and supplemented on January 30, 2012²) in Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670, *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Programs* (the filing herein referred to as the “Default Service Plan” or “DSP”).

¹ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Programs*, Commission Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 (Nov. 17, 2011) (“Joint Petition”).

² *Direct Testimony of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company*, Commission Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 (Dec. 20, 2011); *Errata to the Direct Testimony of Richard D’Angelo and Richard L. Schreder*, Commission Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 (Jan. 30, 2012) (collectively, the “FirstEnergy-PA Direct Testimony”).

Constellation submits that, in order to meet the goals of *Act 129 of 2008* (“Act 129”),³ all electric distribution companies’ (“EDCs”) Default Service plans must be designed in such a way as to encourage the broadest participation by wholesale suppliers. FirstEnergy-PA’s DSP will be consistent with the Electric Choice Act and the requirements of Act 129, if revised to incorporate certain limited improvements including, but not limited to, certain enhancements to aid in the development of customer choice and competition in the FirstEnergy-PA EDCs’ territories, and several important improvements to FirstEnergy-PA’s proposed forms of Supplier Master Agreement (“SMA”) by including three important provisions from the SMA previously approved for use by West Penn. With these limited changes, FirstEnergy-PA’s proposed design will be more likely to encourage the broadest participation by suppliers, is likely to more effectively meet the goals of Act 129, and will be in the public interest.

Procedural History

FirstEnergy-PA on November 17, 2011 filed its Joint Petition. Supporting testimony from FirstEnergy-PA was filed on December 20, 2011 and supplemented on January 30, 2012. On December 22, 2011, a Prehearing Conference was held, with Administrative Law Judge Elizabeth H. Barnes (“ALJ”) presiding. At the Prehearing Conference, the ALJ adopted the procedural schedule (“Procedural Schedule”) agreed to by the parties. The ALJ issued a Scheduling Order on December 22, 2011, followed by an Amended Scheduling Order on December 29, 2011.

³ *Press Release, Governor Rendell Signs Energy Conservation Bill to Save Consumers Millions on Electricity; Urges Legislature to Pass Rate Mitigation Bill*, Pennsylvania Office of the Governor (Oct. 15, 2008) (http://www.portal.state.pa.us/portal/server.pt?open=512&objID=2999&PageID=431162&mode=2&contentid=http://pubcontent.state.pa.us/publishedcontent/publish/global/news_releases/governor_s_office/news_releases/governor_rendell_signs_energy_conservation_bill_to_save_consumers_millions_on_electricity_urgues_legislature_to_pass_rate_mitigation_bill.html).

Notices or Petitions to Intervene were filed by the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Penn Power Users Group, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Bureau of Investigation and Enforcement, York County Solid Waste and Refuse Authority, Dominion Retail, Inc. (“Dominion”), ARIPPA, Direct Energy Services, LLC, the Retail Energy Supply Association (“RESA”), PECO Energy Company, York County Solid Waste and Refuse Authority, FirstEnergy Solutions Corp., Washington Gas Energy Services, Inc., Exelon Generation Company, LLC and Exelon Energy Company, the West Penn Power Industrial Intervenors, and Constellation.

Pursuant to the Procedural Schedule, direct testimony was submitted by intervening parties on February 17, 2012. Parties participated in a settlement conference on February 28, 2012, though no settlement has been reached at this time. Subsequently, rebuttal testimony was submitted by parties on March 16, 2012, and surrebuttal testimony was filed on April 4, 2012. Constellation submitted and circulated to parties direct and surrebuttal testimony for the Commission’s consideration, in order to provide an analysis of the DSP.⁴ A hearing was held on April 11, 2012, at which time pre-filed written testimony and exhibits were admitted into the record, and party witnesses were made available for cross examination.

The issues that were reserved for litigation and decisions by the ALJ and the Commission were included in an *Outline for Main Briefs* approved by the ALJ on April 17, 2012.

⁴ See *Direct Testimony of David I. Fein on Behalf of Intervenors Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.*, Commission Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 (Feb. 17, 2012) (“Constellation St. 1”); and *Surrebuttal Testimony of David I. Fein on Behalf of Intervenors Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc.*, Commission Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670 (July 7, 2009) (“Constellation St. 1SR”) (collectively, the “Constellation Testimony”).

Constellation addresses in this Main Brief only limited issues identified in the Brief Outline, and has identified those issues with the headings and descriptors laid out in the Brief Outline.

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

Standards Applicable to Default Service

The requirements for EDCs' structures for Default Service procurements can be found in Act 129's revisions to Section 2807, *Duties of Electric Distribution Companies*, of Title 66 of the Pennsylvania Consolidated Statutes (66 Pa.C.S. § 2807). Overall, Act 129 requires that, for a utility's Default Service procurement structure:

- (1) "The electric power acquired shall be procured through competitive procurement processes and shall include" auctions, requests for proposals and/or bilateral agreements;⁵ ("Requirement (1)")
- (2) "The electric power procured . . . shall include a prudent mix of" spot market purchases, short-term contracts and long-term purchase contracts "of more than four and not more than 20 years";⁶ ("Requirement (2)") and
- (3) The "prudent mix" of supply contracts "shall be designed to ensure" (a) "adequate and reliable service," (b) "the least cost to customers over time," and (c) "compliance with the requirements of Paragraph (3.1)"⁷ ("Requirement (3)"). Note that Paragraph (3.1) is the section of Act 129 which describes the "prudent mix" included in the second requirement above.

⁵ Act 129 at 66 Pa.C.S. § 2807(e)(3.1).

⁶ Act 129 at 66 Pa.C.S. § 2807(e)(3.2).

⁷ Act 129 at 66 Pa.C.S. § 2807(e)(3.4).

With respect to Requirement (3)(b), Act 129 provides a template for addressing whether a Default Service Plan is likely to result in “the least cost to customers over time,” stating specifically that:

At the time the Commission evaluates the plan and prior to approval, *in determining if the [DSP] obtains generation supply at the least cost*, the Commission shall . . . make specific findings which shall include the following:

(i) the [DSP] includes prudent steps necessary to negotiate favorable generation supply contracts.

(ii) the [DSP] includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis. [and]

(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.⁸

Finally, on June 30, 2009, the Commission entered an order regarding PPL Electric Utilities Corporation’s (“PPL Electric”) proposed procurement structure for Default Service supply (“June 2009 Order”).⁹ In its June 2009 Order, the Commission affirmed that (a) “provisions that enhance competitive bidding provide tangible and current benefits to Pennsylvania electricity customers,”¹⁰ (b) “a DSP must include prudent steps necessary to obtain ‘least cost generation supply contracts,’”¹¹ and (c) provisions of a DSP “must be structured so as to encourage greater competition.”¹²

⁸ Act 129 at 66 Pa.C.S. § 2807(e)(3.7) (*emph. added*).

⁹ *See Opinion and Order in Re: Petition of PPL Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period January 1, 2011 Through May 31, 2014*, Commission Docket No. P-2008-2060309 (entered June 30, 2009) (“June 2009 Order”).

¹⁰ June 2009 Order at p.29.

¹¹ June 2009 Order at p.30.

¹² June 2009 Order at p.30.

B. RESIDENTIAL AND COMMERCIAL CLASS DEFAULT SERVICE PROCUREMENT

1. Summary and Overview of Each Party's Position

Constellation's Position

Constellation takes the position in this proceeding that, “[s]ubject to the additional improvements [proposed by Constellation],” FirstEnergy-PA’s procurements under the DSP will indeed be consistent with the requirements under Act 129.”¹³ Constellation presents evidence outlining important reasons for certain limited improvements to FirstEnergy-PA’s proposed form of SMA by adopting three important aspects of the West Penn SMA, “in order to encourage the most robust participation in the DSP’s auctions.”¹⁴ Specifically, Constellation identifies that the following three specific aspects make the West Penn SMA more attractive to bidders, and should thus be reflected in FirstEnergy-PA’s proposed SMAs: (1) the West Penn SMA “does not include an Independent Credit Requirement (“ICR”) for wholesale suppliers,” (2) the West Penn SMA “includes more appropriate credit thresholds,” and (3) the West Penn SMA “defines its payments settlement period by relying on the period utilized by PJM [Interconnection, L.L.C. (“PJM”)], which currently uses a weekly settlement period.”¹⁵ Constellation’s suggested improvements to the wholesale supply process and documents will ensure that FirstEnergy-PA’s DSP meets the requirements of Act 129, allowing the DSP to solicit and obtain contracts for the least cost generation supply on a long-term, short-term and spot market basis.

¹³ Constellation St. 1 at p.12 (lines 11-13).

¹⁴ Constellation St. 1 at p.26 (lines 22-25).

¹⁵ Constellation St. 1SR at p.8 (lines 13-16).

FirstEnergy-PA's Position

FirstEnergy-PA attempts to rebut Constellation's proposed improvements to the SMA, on the basis generally that FirstEnergy-PA's proposed SMAs "have been used successfully in procurements since 2009,"¹⁶ ignoring the Commission's decisions reflecting that DSPs (and, in turn, their SMAs) must encourage greater competition.

G. SUPPLIER MASTER AGREEMENTS

Act 129 Requires that the Commission Find that the DSPs Are Structured so as to Encourage Greater Competition and Thus the Least Cost Generation Supply Contracts

Requirement 3 of Act 129, as identified above, requires that the "prudent mix" of supply contracts in a Default Service Plan "shall be designed to ensure" (a) "adequate and reliable service," (b) "the least cost to customers over time," and (c) "compliance with the requirements of Paragraph (3.1)"¹⁷ Moreover, with respect to Requirement 3(b), Act 129 lays out that "*in determining if the [DSP] obtains generation supply at the least cost,*" the Commission must make three specific findings, including that the Default Service Plan includes "prudent steps" necessary to: (i) "negotiate favorable generation supply contracts," and (ii) "obtain least cost generation supply contracts on a long-term, short-term and spot market basis."¹⁸

In order to evaluate whether the procurement methods in the DSP will result in least cost generation supply on a long-term, short-term and spot market basis, the competitive structure provides appropriate answers. In each case FirstEnergy-PA has designed the competitive bid procurement structure such that winning bidders are able to be determined on the basis of "least

¹⁶ FirstEnergy-PA St. 3-R at p.2 (lines 18-19).

¹⁷ Act 129 at 66 Pa.C.S. § 2807(e)(3.4).

¹⁸ Act 129 at 66 Pa.C.S. § 2807(e)(3.7) (*emph. added*).

cost” alone, eliminating the need to make determinations regarding bids based on other less objective criteria.¹⁹

Moreover, the record is clear and unrefuted that when properly structured to allow for a broad potential pool of bidders, competitive procurements will allow FirstEnergy-PA to obtain competitively-priced, favorable generation contracts.²⁰ The record is also clear that the greater the competition in FirstEnergy-PA’s procurements, the more likely it is that such procurements will result in the “least cost” to FirstEnergy-PA’s consumers.²¹ In this way, in making its Act 129-mandated specific findings under Requirement 3(b), the Commission must also make a finding that the DSP will encourage greater competition.

The Commission, in fact, confirmed this requirement in its June 2009 Order regarding PPL Electric’s Default Service Plan. As noted above, the Commission stated specifically that: “provisions that enhance competitive bidding provide tangible and current benefits to Pennsylvania electricity customers,”²² “a DSP must include prudent steps necessary to obtain ‘least cost generation supply contracts,’” and provisions of a DSP “must be structured so as to encourage greater competition.”²³

Failure to adopt Constellation’s proposed improvements to the SMAs will cause harm to consumers by impairing the DSP’s ability to obtain generation supply at the least cost.

¹⁹ Constellation St. 1 at p.16 (lines 14-21).

²⁰ See Constellation St. 1 at p.13 (lines 12-18) (referring to *Competitive Procurement of Retail Electricity Supply: Recent Trends in State Policies and Utility Practices*, the Analysis Group, Dr. Susan F. Tierney and Dr. Todd Schatzki, Commissioned by NARUC (issued July 2008)).

²¹ See, e.g., Constellation St. 1 at pp.26 (line 19) – 27 (line 17) (explaining how wholesale suppliers make their decisions to participate in procurements and that the “most robust participation” in FirstEnergy-PA’s procurements will lead to the “least cost generation supply contracts”).

²² June 2009 Order at p.29.

²³ June 2009 Order at p.30.

Therefore, adopting Constellation’s proposed improvements to the DSPs will be in the public interest.

1. Credit Requirements

The SMAs’ Independent Credit Requirement Should Be Eliminated

Constellation witness Fein explains clearly that:

[t]he ICR should be eliminated because FirstEnergy-PA’s credit exposures for the terms of the SMAs are already covered in daily mark-to-market (“MtM”) calculations, as laid out in SMA Section 6.5 and SMA Appendix A. Thus, the ICR, in conjunction with the MtM calculation, represents repetitive collateralization that may increase suppliers’ bids, and thus customers’ costs, while providing little additional credit protection to FirstEnergy-PA.²⁴

Evidence presented over the course of the proceeding shows that at least *three* of the most recently used SMAs for larger utilities in Pennsylvania (i.e., PPL Electric, West Penn and PECO Electric Company), as well as all of the large EDCs in Maryland, the District of Columbia and Delaware, have removed or otherwise do not include an ICR.²⁵ Mr. Fein’s testimony also explains how such other procurements are likely to be more attractive to potential wholesale bidders, noting that:

over-collateralization of this type may be more likely to cause potential bidders to “use up” their valuable credit capacity limits, set by their managements, for instance, thereby providing an incentive to bidders not to participate in FirstEnergy-PA’s Auctions – ***potentially decreasing the resulting overall participation in the Auctions and perhaps resulting in less competitive resulting Default Service prices.*** This is because each potential bidder, in determining its level of participation in any particular wholesale load procurement, must consider how its participation in that procurement may impact its credit rating. In other words, wholesale suppliers must always consider how much credit they “devote” to a

²⁴ Constellation St. 1SR at p.11 (lines 6-11).

²⁵ See Constellation St. 1SR at p.12 (lines 8-11).

particular load procurement. *Competitive procurement processes that call for less utilization of a wholesale supplier's credit capacity will have a competitive advantage, and likely will see greater participation.*²⁶

In response to the proposal to eliminate the ICR, FirstEnergy-PA alleges that:

[t]he ICR provides important protection to customers from the risk of energy price movements between the date of an early termination caused by a supplier default and the date of final calculation of damages owing to [FirstEnergy-PA] under the SMA.²⁷

FirstEnergy-PA fails to recognize, however, that the SMA's damages provisions already include language to allow for recovery for such "intra-month" exposure, if any, from a defaulting supplier. SMA Section 5.3(a) states clearly that damages owed to FirstEnergy-PA by a defaulting wholesale supplier will include:

*all Costs incurred by [FirstEnergy-PA] . . . in obtaining replacement services or in obtaining a replacement [Default Service supplier], which Costs exceed the amounts that would have been payable to the defaulting [Default Service supplier] under this Agreement.*²⁸

Moreover, the SMA explains that such "Costs" shall include all costs allocated by PJM (which would include non-energy components of Default Service supply, including any ancillary services costs), the costs of any Default Service supply purchased by FirstEnergy-PA to replace the defaulting supplier's obligations, administrative and legal costs,²⁹ as well as any financial hedging costs incurred by FirstEnergy-PA. In this way, FirstEnergy-PA's limited arguments against elimination of the ICR fail to pass muster.

Therefore, Mr. Fein is correct in his assertion that "the ICR represents a less than optimal balance between the competing concerns of securing necessary credit protection while

²⁶ Constellation St. ISR at pp.11 (line 12) – 12 (line 2) (*emph. added*).

²⁷ FirstEnergy-PA St. 3-R at p.3 (lines 4-7).

²⁸ FirstEnergy-PA Direct Testimony at FirstEnergy-PA Ex. RLS-1, Section 5.3(a) (*emph. added*).

²⁹ See FirstEnergy-PA Direct Testimony at FirstEnergy-PA Ex. RLS-1, Section 5.3(a)(i)-(iv).

minimizing suppliers' and, in turn, consumers' costs."³⁰ In order to be consistent with the Commission's June 2009 Order, then, FirstEnergy-PA *must* revise its SMAs in the same way, to "include prudent steps necessary to obtain 'least cost generation supply contracts,' and . . . be structured so as to encourage greater competition,"³¹ as required by the Commission. Consequently, Constellation proposes the following Ordering Paragraph:

FirstEnergy-PA is ORDERED to remove the ICR from the SMA, as reflected in Constellation St. 1-SR, Exhibit 1-SR-1.

The SMAs' Unsecured Credit Thresholds Should Be More in Line with Those Utilized in West Penn's Prior Procurements

Constellation witness Fein proposes that FirstEnergy-PA's proposed SMA be revised to include those Unsecured Credit Thresholds contained in the form of SMA previously used by West Penn in its prior Default Service procurements. In response, FirstEnergy-PA alleges that "[e]xtending more credit to [suppliers rated A- or better] would only increase the financial risk to [FirstEnergy-PA] and their customers."³² This, however, does not address the fact that West Penn currently uses, and the Commission approved, the use of these higher thresholds, and that these thresholds "will be more attractive to potential bidders."³³

In this way, in order to be consistent with the Commission's June 2009 Order, because the thresholds in the West Penn SMA will be more attractive to potential bidders, FirstEnergy-PA *must* bring its SMAs' Unsecured Credit Thresholds more in line with those included in the West Penn SMA, to be deemed to have "include[d] prudent steps necessary to obtain 'least cost

³⁰ Constellation St. 1-SR at p.12 (lines 3-5).

³¹ June 2009 Order at p.30.

³² FirstEnergy-PA St. 3-R at p.4 (lines 12-14).

³³ Constellation St. 1-SR at p.10 (line 19).

generation supply contracts,' and . . . be structured so as to encourage greater competition,'³⁴ as required by the Commission. Thus, Constellation proposes the following Ordering Paragraph:

FirstEnergy-PA is ORDERED to adopt the Unsecured Credit Thresholds used in West Penn's current form of SMA, as reflected in Constellation St. 1-SR, Exhibit 1-SR-1.

2. Monthly Versus Weekly Settlements

The SMAs Should Define Their Payments Settlement Period by Relying on the Period Utilized by PJM, Which Currently Uses a Weekly Settlement Period

Constellation proposes that the SMAs should define their payments settlement period by relying on the period utilized by PJM, which currently uses a weekly settlement period.³⁵ FirstEnergy-PA's argument against such a revision is that a move to weekly settlements may shift working capital costs from suppliers to FirstEnergy-PA, leading to FirstEnergy-PA needing to recover such costs in customer rates.³⁶

FirstEnergy-PA fails to address, however, that West Penn has appropriately been providing for weekly settlements under its current SMA, as have *six* other EDCs in Delaware, the District of Columbia and Maryland (including FirstEnergy-PA's Maryland affiliate),³⁷ and that evidence suggests that such a change will attract bidders and encourage more competitive pricing.³⁸ Moreover, FirstEnergy does not make mention, let alone refute, Constellation's

³⁴ June 2009 Order at p.30.

³⁵ See Constellation St. 1-SR at pp.12 (line 16) – 14 (line 15).

³⁶ See FirstEnergy-PA St. 3-R at p.5 (lines 1-19); see also FirstEnergy-PA St. 2-R at pp.25 (line 6) – 26 (line 16).

³⁷ See Constellation St. 1-SR at p.14 (lines 6-10).

³⁸ See Constellation St. 1-SR at p.13 (lines 5-20).

alternative proposal, which would provide for weekly payments, at the very least, in the event that an EDC is downgraded.³⁹

As Mr. Fein explains, “it is clear that [a move to weekly settlements] can only *help* to *increase* competition in FirstEnergy-PA’s procurements.”⁴⁰ In this way, FirstEnergy-PA *must* make such a change in order for its DSP to be deemed to have “include[d] prudent steps necessary to obtain ‘least cost generation supply contracts,’ and . . . be structured so as to encourage greater competition,”⁴¹ as required by the Commission in the June 2009 Order.

Constellation therefore proposes the following Ordering Paragraph:

FirstEnergy-PA is ORDERED to adopt weekly settlements language, as reflected in Constellation St. 1-SR, Exhibit 1-SR-1.

In the alternative, if it is deemed more appropriate to adopt weekly settlements only in the event of an EDC downgrade, Constellation proposes the following Ordering Paragraph:

FirstEnergy-PA is ORDERED to adopt language such as that used in Section 14.8 of West Penn’s current form of SMA, referring to “Accelerated Payments.”

³⁹ See Constellation St. 1-SR at pp.13 (line 21) – 14 (line 4).

⁴⁰ Constellation St. 1-SR at p.14 (lines 10-11).

⁴¹ June 2009 Order at p.30.

III. RATE DESIGN AND COST RECOVERY

D. DEFAULT SERVICE SUPPORT RIDER

4. Economic Load Response Charges

a) *Constellation's Proposal regarding Economic Load Response Charges to Load Resulting from PJM ELR Payments under FERC Order No. 745*

The New ELR Charges Should Appropriately Be Recovered Through the DSS Riders

Constellation witness Fein presents evidence surrounding the Federal Energy Regulatory Commission's ("FERC") March 15, 2011 order ("Order No. 745") regarding demand response compensation in organized wholesale energy markets,⁴² PJM's July 22, 2011 Compliance Filing in response to Order No. 745 laying out revisions to its tariff and market rules for Economic Load Response ("ELR") resources,⁴³ the costs ("New ELR Charges") to load for compensation to such ELR resources,⁴⁴ and the reasons why such New ELR Charges should be appropriately recovered through FirstEnergy's proposed Default Service Support ("DSS") Riders as newly-identified NMB Charges.⁴⁵

Mr. Fein explains that, as with all of the other NMB Charges, if Default Service suppliers – rather than EDCs – are responsible for these unknown and unpredictable New ELR Charges that *may* occur, then, in order to account for such risk, Default Service suppliers will need to factor a premium into their Default Service bids for such *potential* Charges *regardless* of the

⁴² *Demand Response Compensation in Organized Wholesale Energy Markets*, Order No. 745, III FERC Stats. & Regs., Regs. Preambles ¶ 31,322 (2011) ("Order No. 745").

⁴³ *Order No. 745 Compliance Filing*, FERC Docket No. ER11-4106-000 (filed July 22, 2011) ("July 2011 Compliance Filing") (available at <http://www.pjm.com/~media/documents/ferc/2011-filings/20110722-er11-4106-000.ashx>) (*emph. added*).

⁴⁴ July 2011 Compliance Filing at p.22.

⁴⁵ See Constellation St. 1 at pp.22 (line 6) – 26 (line 9); see also Constellation St. 1-SR at pp.4 (line 17) – 7 (line 21).

frequency and extent to which such New ELR Charges *actually* occur. Prudent bidders would have to consider the costs that they *could* incur for compensating ELR participants taking advantage of the new opportunity provided under Order No. 745.⁴⁶ Mr. Fein states that:

if the new ELR structure *does not* elicit robust participation over the course of the three years covered by a SMA entered into pursuant to the DSP's auctions, absent Constellation's suggested clarification, FirstEnergy-PA's consumers may – through costs embedded in default service bids – pay for desired market benefits which were never *actually* realized.⁴⁷

In this way, as FirstEnergy-PA witness Charles V. Fullem suggests for all other NMB Charges:

it is very difficult for [Default Service suppliers] to financially hedge NMB charges because of how those charges are calculated and imposed By having [FirstEnergy-PA] provide NMB services and recover the costs from all customers through a rider that imposes a reconcilable, non-bypassable charge, competitive neutrality can be maintained and all customers should benefit.⁴⁸

The Default Service product – without Constellation's suggested clarification – potentially raises the ultimate costs for Default Service supply for consumers. Constellation's suggested clarification, in turn, would be more likely to result in more competitive Default Service supply costs for consumers. As FERC intended for New ELR Charges to be borne by loads in the various RTOs/ISOs,⁴⁹ it is appropriate that such customers bear any *actual* costs for the revised ELR program *directly*, rather than leaving Default Service bidders responsible for trying to predict the success and impacts of a newly developed and implemented, significant market structural change.

⁴⁶ Constellation St. 1 at pp.24 (line 19) – 25 (line 2).

⁴⁷ Constellation St. 1 at p.25 (lines 2-7).

⁴⁸ FirstEnergy-PA Direct Testimony, Statement No. 7, at p.9 (lines 13-19)].

⁴⁹ See, e.g., Order No. 745 at ¶¶ 5, 99-102.

In response, FirstEnergy-PA witness Valdes states that “Constellation’s request to collect [the New ELR Charges] in the non-bypassable DSS Riders should be rejected,” arguing incorrectly that (1) “unlike generation deactivation charges and [unaccounted for energy (“UFE”) costs, the [New ELR Charges] are market-based and should remain the responsibility of EGSs,” and (2) the transfer of responsibility for [the New ELR Charges] to the [EDC] can only be accomplished for [Default Service suppliers],” and not for retail EGSs.⁵⁰

First, with respect to Mr. Valdes’ incorrect argument that New ELR Charges are market-based and therefore not appropriate for recovery in the DSS Riders, evidence in the record suggests otherwise. As Mr. Fein explains, Mr. Valdes confuses “ELR charges” with “compensation for demand response resources.”⁵¹ To be clear, the New ELR Charges (i.e., “ELR charges,” as Mr. Valdes calls them) *are not* the compensation paid out to ELR Resources (i.e., “demand response resources,” as Mr. Valdes calls them); rather, the New ELR Charges are the *charges* that PJM places on load in order to make the pool whole for the *payments* that PJM makes to ELR resources.⁵² As Mr. Fein describes in his testimony, “PJM has proposed two entirely different constructs to calculate *payments to ELR resources* and *charges to load to recover those costs* (i.e., the New ELR Charges).”⁵³ Mr. Valdes is correct to some extent, in that the ELR *resources* – i.e., those curtailing entities that participate in PJM’s ELR program – are “*compensated* at the locational marginal price (“LMP”) when LMP is at or above a net benefit threshold price,”⁵⁴ as LMP generally is a market-based construct. However, the New ELR

⁵⁰ FirstEnergy-PA St. 2-R at p.23 (lines 8-23).

⁵¹ FirstEnergy-PA St. 2-R at p.23 (lines 8-9).

⁵² See Constellation St. 1-SR at p.5 (lines 8-13).

⁵³ Constellation St. 1-SR at p.5 (lines 13-15).

⁵⁴ FirstEnergy-PA St. 2-R at p.23 (lines 8-9) (*emph. added*).

Charges to load that are meant to recover costs of such payments to ELR resources are set through an *administratively*-determined calculation that spreads the costs “on a region-wide basis (rather than on a locational basis)”⁵⁵ Therefore, the New ELR Charges that are set through this process will be difficult for potential Default Service suppliers and EGSs to predict and manage in much the same way as “generation deactivation charges and UFE costs.”⁵⁶

Next, with respect to Mr. Valdes’ argument that the transfer of responsibility for New ELR Charges can only be achieved for wholesale Default Service suppliers, and not EGSs, Constellation submits that Mr. Valdes’ has not provided any evidence to support his argument. Mr. Fein explains that Mr. Valdes’ argument’s shortcoming “may be due, in part, to [his confusion] regarding the difference between ELR *payments* to demand response resources, and the *charges* to load to recover the amounts paid out through PJM’s new ELR program.”⁵⁷ Absent any evidence presented to the contrary, no reason exists to prevent FirstEnergy-PA from simply adding PJM bill line item **ID# 1242 – Day-Ahead Load Response Charge Allocation**, and line item **ID# 1243 – Real-Time Load Response Charge Allocation** (together representing the New ELR Charges) to its list of line item NMB Charges that are collected through the DSS Riders.

For these reasons, Constellation proposes the following Ordering Paragraph:

FirstEnergy-PA is ORDERED to include the New ELR Charges (ID# 1242 – Day-Ahead Load Response Charge Allocation, and line item ID# 1243 – Real-Time Load Response Charge Allocation) in its NMB Charges collected through the DSS Riders.

⁵⁵ July 2011 Compliance Filing at p.22.

⁵⁶ FirstEnergy-PA St. 2-R at p.23 (lines 13-14).

⁵⁷ Constellation St. 1-SR at p.6 (lines 11-14).

F. TIME OF USE RATE PROPOSALS FOR WEST PENN AND PENN POWER

a) Summary and Overview of Each Party's Position

Constellation's Position

Constellation takes the position in this proceeding that, FirstEnergy-PA should hold its TOU enrollment period in advance of the broader wholesale procurements for the balance of its Default Service load, in order to provide certainty to Default Service suppliers regarding the amount of load that is left to be served through the Default Service auctions. In addition, Constellation proposes that in the alternative, FirstEnergy-PA could “bid out TOU supply as a separate wholesale product in its existing proposed auctions.”⁵⁸

FirstEnergy-PA's Position

FirstEnergy-PA addresses only Constellation's second alternative proposal, stating that FirstEnergy-PA does not agree with such alternative proposal, as it “would result in Penn Power and West Penn providing a TOU default service product that would directly compete with the standard (i.e., non-TOU) default service product.”⁵⁹ To be sure, FirstEnergy-PA *does not* address Constellation's primary recommendation that FirstEnergy-PA hold its TOU enrollment period in advance of the broader wholesale procurements for the balance of its Default Service load.

FirstEnergy-PA Should Hold TOU Enrollments in Advance of Other Wholesale Procurements

Constellation witness Fein explained that holding TOU enrollments in advance of other wholesale procurements “will provide certainty to [Default Service suppliers] regarding the

⁵⁸ Constellation St. 1 at p.30 (lines 6-7).

⁵⁹ FirstEnergy-PA St. 2-R at p.24 (lines 7-9).

amount of load that is left to be served through the default service auctions.”⁶⁰ Moreover, evidence in this proceeding suggests that bidders should have greater clarity with respect to the amount of load they may serve as a result of a competitive bidding process, in order to encourage the most competitive offers from such bidders.⁶¹ As FirstEnergy-PA has failed to meet its burden of proof by not addressing Constellation’s primary proposal,⁶² Constellation proposes the following Ordering Paragraph:

FirstEnergy-PA is ORDERED to hold its TOU enrollment period prior to the broader wholesale procurements for the balance of its Default Service load.

G. RECONCILIATION OF DEFAULT SERVICE COSTS AND REVENUES

a) Summary and Overview of Each Party’s Position

Constellation’s Position

Constellation witness Fein points out that FirstEnergy-PA witness Raymond E. Valdes has laid out well the reconciliation processes proposed by FirstEnergy-PA through its Price-to-Compare (“PTC”) Riders. Constellation’s concern, however, is that certain other Pennsylvania EDCs – while they also have well laid out reconciliation processes – have erred in their implementation of such processes. Mr. Fein states that:

certain EDCs have done a poor job with reconciliation management, resulting in very large swings in customers’ retail default service rates, due to prior miscalculations/mismanagement which resulted in sizeable under-

⁶⁰ Constellation St. 1 at p.30 (lines 1-3).

⁶¹ See, e.g., RESA St. 2 at pp.19 (line 19) – 20 (line 3) (RESA witness Kallaher explains that bidders “are likely to bid a lower price in order to secure a larger number of customers,” and that uncertainty with respect to the amount of load “might tend to make [suppliers] bid more conservatively”).

⁶² Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. Further, it is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” See *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A. 2d 600, 602 (Pa. Cmwlt. 1990).

recoveries, and which, in turn, had to be collected (through reconciliation processes) in later delivery periods. The concern is that, due to these significant under-collections and the resulting reconciliation charges, consumers in later months were not seeing prices that accurately reflected to any reasonable degree then-current market prices.⁶³

Constellation asked simply that FirstEnergy-PA take great care in its processes to ensure that customers do not see such large price swings due to under-recovery, but does not seek a Commission order on this issue with respect to the FirstEnergy-PA DSP at this time.

IV. COMPETITIVE MARKET ENHANCEMENTS

A. RETAIL OPT-IN AGGREGATION PROGRAM

1. Summary and Overview of Each Party's Position

Constellation's Position

Constellation recommends that customers be required to opt into the Retail Opt-In Auction program *prior* to such Auction, so that EGSs have a clear understanding of the size of the load on which they will bid, and are able to better develop their bids accordingly. Constellation also proposes that, if a customer leaves the EGS's Retail Opt-In Auction service in order to take service under a different product from that EGS or another EGS, and subsequently leaves or is dropped from such secondary EGS service, then such customer may not return to FirstEnergy-PA's Default Service until after May 31, 2015, and will instead be returned to the original EGS's Retail Opt-In Auction service or, in the alternative, to a separate, newly established tariff to serve such customers through hourly purchases by FirstEnergy-PA from PJM.

⁶³ Constellation St. 1 at pp.21 (line 22) – 22 (line 3).

FirstEnergy-PA's Position

FirstEnergy-PA disagrees with Constellation's first recommendation regarding the timing of customers' opt-in for the program, arguing that under such a proposal, customers "would have to leave default service based on *ex ante* expectations about price differences between the Opt-In Aggregation Program and default service that may be contrary to fact."⁶⁴

With respect to Constellation's proposal regarding customers' options in the event that they leave an EGS's Retail Opt-In Auction service, FirstEnergy-PA argues that Mr. Fein's proposal "would put significant, undue costs and burdens on the Companies to track each customer's movements between or among EGSs," and that it is "contrary to Commission's regulations at 52 Pa. Code § 54.188 that require EDCs to charge customers returning to default service from an EGS the same rates, at the same terms and conditions, as other default service customers."⁶⁵

Other Parties' Positions

Witnesses for RESA and Dominion takes positions generally in line with Constellation's first recommendation regarding the timing of customers' opt-in for the program.⁶⁶ However, OCA witness Alexander opposes Constellation's proposal.⁶⁷

Further, OCA witness Kahal opposes Constellation's proposal regarding customers' options in the event that they leave an EGS's Retail Opt-In Auction service.⁶⁸ No other parties take a position directly in response to Constellation's position on this issue.

⁶⁴ FirstEnergy-PA St. 7R at p.27 (lines 10-14).

⁶⁵ FirstEnergy-PA St. 7R at p.38 (lines 8-14)

⁶⁶ See RESA St. 2-R at p.8 (lines 1-13); see also Dominion St. R-1 at p.12 (lines 16-20).

⁶⁷ OCA St. No. 2-R at p.3 (lines 8-10).

⁶⁸ See OCA St. No. 1-R at p.6 (lines 1-7).

4. Timing of Solicitation and Auction

RESA witness Kallaher summarizes well the reasons why holding the customer opt-in period for the Retail Opt-In Auction prior to such Auction will result in better outcomes for consumers:

[FirstEnergy-PA] is proposing that the actual auction be conducted before the customer solicitation/enrollment. This means that EGSs will be forced to bid a certain “percentage off” a default service rate that will change each quarter for 24 months without knowing how many customers it might be able to serve. Each EGS will presumably be able to bid on a specified number of “blocks” with, for example, 10,000 customers in each block. (Met-Ed/Penelec/Penn Power/West Penn St. No.5 at 19). The total size of the auction pool, however, will have a material impact on EGS participation and bidding behavior, with many EGSs likely willing to bid a lower price in order to secure a larger number of customers. Under [FirstEnergy-PA’s] proposed approach, EGSs would have no idea whether the price they bid would be to serve 100 customers or 100,000 customers. Uncertainty in this area might tend to make EGSs bid more conservatively, decreasing the overall value to customers from the auction.⁶⁹

In other words, certainty on the load quantities will lead to more competitive bids from participating EGSs.

FirstEnergy-PA’s argument against such an approach is only that customers would have to make a decision to leave Default Service, and would not have reasonable expectations about the rate savings that they can expect.⁷⁰ However, pursuant to the revisions that FirstEnergy-PA made to its proposed Retail Opt-In Auction program in response to the Commission’s *Final Order in re: the Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work*

⁶⁹ RESA St. 2 at pp.19 (line 19) – 20 (line 3).

⁷⁰ See FirstEnergy-PA St. 7R at p.27 (lines 6-23) (stating that “[a] customer cannot be expected to ‘shop’ without knowing the price and term of the product it is shopping for”).

Plan (“Final IWP Order”),⁷¹ FirstEnergy-PA has created a structure under which customers would in fact have such certainty, even if they were required to opt-in prior to the Opt-In Auction. Specifically, as explained by FirstEnergy-PA witness Fullem, FirstEnergy-PA is “revising [its] Opt-In Auction proposal to offer a product that has a *twelve-month term* . . . and a fixed price *at least 5% less than each [EDC’s] PTC* at the time of the auction.”⁷² In this way, customers have certainty with respect to both the term of the product, and the minimum rate of savings they will receive. Even if customers must make a decision to opt-in prior to the Auction, they will nevertheless benefit from such a program as any resulting Auction price would need to beat the PTC by at least five (5) percent. Moreover, by providing greater certainty to EGSs regarding the customer load that has opted into the Auction, customers should see the benefits of not being “stuck paying a premium for EGSs having to manage and price in quantity uncertainty in the auction.”⁷³

For these reasons, Constellation proposes the following Ordering Paragraph:

FirstEnergy-PA is ORDERED to hold its Retail Opt-In Auction enrollment period prior to any Retail Opt-In Auction.

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

As noted above, Constellation proposes that FirstEnergy-PA make clear that, if a customer leaves an EGS’s Retail Opt-In Auction service in order to take service under a different product from that EGS or another EGS, and subsequently leaves or is dropped from such

⁷¹ *Final Order in re: the Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan*, Commission Docket No. I-2011-2237952 (entered Mar. 2, 2012) (“Final IWP Order”).

⁷² FirstEnergy-PA St. 7R at p.4 (lines 8-11).

⁷³ Constellation St. 1 at p.31 (lines 16-17).

secondary EGS service, then such customer may not return to FirstEnergy-PA's Default Service until after May 31, 2015, and will instead be returned (a) to the original EGS's Retail Opt-In Auction service or, (b) in the alternative, to a separate, newly established tariff to serve such customers through hourly purchases by FirstEnergy-PA from PJM. OCA witness Kahal explains clearly the shortcoming of FirstEnergy-PA's Program that would warrant a proposal such as that made by Constellation, as OCA also sees a need to address the issue:

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.⁷⁴

Mr. Kahal adds that:

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.⁷⁵

Whereas OCA proposes to address the issue by carving out the eligible Retail Opt-In Auction load altogether, Constellation proposes its alternative solution highlighted above.

FirstEnergy-PA witness Fullem's first argument against Constellation's proposal is that:

⁷⁴ OCA St. 1 at p.30 (lines 1-11).

⁷⁵ OCA St. 1 at p.30 (lines 12-18).

[it] would put significant, undue costs and burdens on the Companies to track each customer's movements between or among EGSs. The Companies will not be creating a separate rate code for opt-in participants and, therefore, will not be tracking them separately.⁷⁶

Mr. Fullem, however, has provided *no* evidence as to why FirstEnergy-PA *could not* create separate codes for opt-in participants or find some other method of tracking such customers, and has not explained any of the “costs and burdens” that FirstEnergy-PA would incur. As Mr. Kahal points out, however, a primary risk of FirstEnergy-PA's program is the potential costs to *all customers* including those that take a discount-percentage product from an EGS through the Retail Opt-In Auction.

FirstEnergy-PA witness Fullem's next argument is that Constellation's proposal is “contrary to Commission's regulations at 52 Pa. Code § 54.188 that require EDCs to charge customers returning to default service from an EGS the same rates, at the same terms and conditions, as other default service customers.”⁷⁷ Constellation notes at the outset that Mr. Fullem means to refer to 52 Pa. Code § **54.189** rather than 54.188. 52 Pa. Code § 54.189(c) states that “[a] DSP shall treat a customer who leaves an EGS as it would a new applicant for default service.” Constellation points out that its proposal includes *one of two* alternatives, the first of which would have a Retail Opt-In Auction customer be able to return *only* to the Retail Opt-In EGS's service until after May 31, 2015 (the end of the DSP period under the Joint Petition). This first alternative, which Mr. Fullem seems to ignore, would not be in opposition to the requirements of 52 Pa. Code § 54.189(c), because a customer will have opted into an established program outside of Default Service – the Retail Opt-In Auction program – the terms of which would clearly state that the customer would remain on and would return to service with

⁷⁶ FirstEnergy-PA St. 7R at p.38 (lines 8-11).

⁷⁷ FirstEnergy-PA St. 7R at p.38 (lines 8-14).

the Retail Opt-In EGS (first on the fixed-price for 12-months and then on the month-to-month renewal product, with no termination penalties) through the end of the DSP period, unless the customer chooses a different product from the Retail Opt-In EGS or another EGS.

As Constellation's first alternative would meet the requirements under 52 Pa. Code § 54.189(c), and as FirstEnergy-PA has not identified why it would be burdensome or costly to implement such alternative, Constellation proposes the following Ordering Paragraph:

FirstEnergy-PA is ORDERED to revise its Retail Opt-In Auction program such that, if a customer leaves an EGS's Retail Opt-In Auction service in order to take service under a different product from that EGS or another EGS, and subsequently leaves or is dropped from such secondary EGS service, then such customer may not return to FirstEnergy-PA's Default Service until after May 31, 2015, and will instead be returned to the original EGS's Retail Opt-In Auction service.

B. STANDARD OFFER CUSTOMER REFERRAL PROGRAM

1. Summary and Overview of Each Party's Position

Constellation's Position

Constellation argues that FirstEnergy-PA's Customer Referral Program should be voluntary for customers (i.e., customers should be required to "opt-in" to the program at some fixed date prior to the time at which FirstEnergy-PA begins to receive calls and refer customers).⁷⁸

⁷⁸ See Constellation St. 1 at p.33 (lines 11-13).

FirstEnergy-PA's Position

FirstEnergy-PA opposes Constellation's suggestion, on the basis that "[r]equiring an opt-in process before the program is implemented will confuse customers, who at that stage are unlikely to know what they are being asked to do."⁷⁹

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

Constellation's proposal is intended to be consistent with the Commission's *explicit* directive in its Final IWP Order that "[t]he Standard Offer Customer Referral Program should be voluntary, i.e., "opt-in," for customers and participating EGSs."⁸⁰ The Commission through such decision supports the notion that a customer should not have to receive referral offers through the Customer Referral Program, unless the customer indicated that she had a desire to do so. FirstEnergy-PA expresses concern that customers may be confused by a notice sent pursuant to an opt-in process, but there is nothing in the record to suggest that appropriate messaging could not be developed to limit customer confusion and adhere to the Commission's directive. For these reasons, Constellation proposes the following Ordering Paragraph:

FirstEnergy-PA is ORDERED to revise its Customer Referral Program to include an opt-in process whereby customers must "opt-in" to receive offer communications under the Program.

⁷⁹ FirstEnergy-PA St. 7-R at p.49 (lines 7-8).

⁸⁰ Final IWP Order at p.20.

V. OPERATIONAL ISSUES

A. SYSTEM “ENHANCEMENTS” PROPOSED BY CONSTELLATION

Constellation witness Fein proposed certain “system enhancements related to the provision of data and information to EGSs, in light of FirstEnergy-PA’s merger to include West Penn.”⁸¹ In response, FirstEnergy-PA witness Valdes stated that:

the seven items identified by Mr. Fein are more appropriately addressed with the [FirstEnergy-PA] retail choice ombudsman and in the regularly-scheduled monthly meetings between [FirstEnergy-PA] and EGSs rather than within the context of this proceeding.⁸²

Mr. Valdes also addressed several of Mr. Fein’s issues, indicating FirstEnergy-PA’s progress on such items. Constellation is generally satisfied with most of FirstEnergy-PA’s response on these items and will pursue its remaining issues through other channels, rather than through the instant proceeding.

VI. CONCLUSION

Constellation’s proposed improvements to FirstEnergy-PA’s DSP design are supported by substantial evidence in the record before the Commission. The FirstEnergy-PA DSP, with Constellation’s limited changes, will encourage more competitive procurements for FirstEnergy-PA’s DSP, more appropriate competitive options from EGSs and, in turn, will better assure that FirstEnergy-PA’s customers are able to receive benefits from the least costs for generation supply contracts, whether remaining on Default Service supply from FirstEnergy-PA or taking competitive service from an EGS.

⁸¹ See, generally, Constellation St. 1 at p.18 (line 17) – p.21 (line 9).

⁸² FirstEnergy-PA St. 2-R at p.27 (lines 1-4).

Respectfully Submitted,



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