

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MAIN BRIEF
OF THE BUREAU OF
INVESTIGATION AND ENFORCMENT**

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I. INTRODUCTION AND PROCEDURAL HISTORY

On November 17, 2011, Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power") and West Penn Power Company ("West Penn") [collectively referred to as "Companies"], filed a Joint Petition for Approval of their Default Service Programs ("Joint Petition") with the Pennsylvania Public Commission ("Commission"). In the Joint Petition, the Companies submitted a proposed program for the terms and conditions for each of the four subject Companies to provide default service to their respective customers for the period June 1, 2013 to May 31, 2015. As filed, the proposed default service program contained a myriad of components that required the participation the Commission's Bureau of Investigation and Enforcement ("I&E") in the proceeding to investigate whether each component was in the public interest.

The Prehearing Conference was conducted as scheduled by presiding Administrative Law Judge Elizabeth H. Barnes on December 22, 2011, in Hearing Room 3 in the Commonwealth Keystone Building. The I&E Prehearing Memorandum listed a number of specific matters that I&E intended to investigate and respond to where necessary during the course of the proceeding. Those matters included: (1) the Companies' proposed method for procuring electricity to serve default service customers, including the nature of the contingency plan; (2) the use of a Default Service Support Rider; (3) the imposition of a Market Adjustment Charge ("MAC"); (4) the Solar Photovoltaic Requirements Charge

Rider; (5) provision for Time of Use Rates; (6) implementation of a Retail Opt-In Auction; and (7) the cost and other elements of a Customer Referral Program. As a review of the I&E testimony of record and this instant Main Brief will disclose that, as a result of I&E's scrutiny of all aspects of the submitted default service program, the significant matter that undoubtedly needs to be raised in this brief by I&E is the Companies' proposed imposition of a Market Adjustment Charge ("MAC") and the accompanying reasons for I&E's forthright opposition to Commission approval of such an unnecessary and unauthorized mechanism in any form.¹

Following the conduct of the Prehearing Conference, the ALJ issued a Scheduling Order on December 22, 2011, that addressed: (1) the Companies' Motion to Consolidate; (2) motions for ad hoc vice admission; (3) petitions to intervene; (4) a procedural schedule based upon a nine-month litigation time frame, as set forth in 66 Pa.C.S. §2807(e)(3.6); (5) service of documents; (6) briefing instructions; (7) discovery matters; (8) a protective order; (9) the question

1 A second issue raised in the I&E Direct Testimony at pages 6-8 regarding the lack of a component in the plan to recover over/under collections in the rider related to Time-of-Use ("TOU") service was subsequently addressed by a Companies witness to the satisfaction of I&E. Companies Witness Fullem responded to this raised issue in his rebuttal testimony, Companies Statement No. 7-R, at pages 13-14, and with his reference to Exhibit CVF-3. Mr. Fullem stated that "the EGS furnishing the TOU will do so at a fixed rate, and there will be no need for reconciliation because any risk of under recovery will be borne by the EGS." Companies Statement No. 7-R at p. 13, lines 17-18. Upon confirmation of this representation, I&E has determined that the default service customers cannot be adversely financially affected by such a structured fixed rate. As such, that matter has been resolved to I&E's satisfaction and need not be raised here.

of the need for any public input hearings; and (10) the establishment of a date certain for initial settlement discussions among the parties.

In her Scheduling Order, the ALJ stated that, “[T]he Motion for Consolidation filed by Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company shall be granted because the Companies have proposed a single set of master protocols and agreements for: (1) default service supply procurement; (2) solar alternative energy credit procurement; (3) retail opt-in auctions; (4) a customer referral program; and (5) time-of-use auctions. Thus, as it appears on the face of the Joint Petition that each company's program involves a substantial number of common questions of law and fact, and in the interest of judicial efficiency, the Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670 shall be consolidated for purposes of litigation pursuant to 52 Pa. Code § 5.81 (relating to consolidation).” Order, p. 2.

During the course of this proceeding, the parties timely exchanged prepared testimony and exhibits and the ALJ addressed two separate motions made by the Retail Energy Supply Association (“RESA”). The first motion submitted February 7, 2012, sought to modify the procedural schedule in anticipation of the entrance of the Commission’s Final Order on March 2, 2012, regarding the proceeding entitled *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, at Docket No. I-2011-2237952, when the Tentative

Order at that docket had been entered on December 16, 2011. The ALJ explained the reasons for denying the motion in her Order issued February 16, 2012.

The second RESA motion sought to have ALJ Barnes dismiss the Companies' objections to RESA Interrogatories Set III and compel responses. By Order issued March 16, 2012, the ALJ denied the RESA motion for the reasons stated therein.

Pursuant to the date established in the ALJ's Scheduling Order, all parties conducted the initial settlement conference on February 28, 2012. I&E is unaware of any written settlement document between or among the parties resulting from either that all-parties conference or individual settlement discussions between or among any of the parties. As such, none of the issues raised in the filing or by an active party have been settled and all are subject to briefing at the discretion of each party.

Following the parties separate distribution of direct, rebuttal and surrebuttal testimonies and exhibits, ALJ Barnes conducted the evidentiary hearings as scheduled on April 11 & 12, 2012, during which the Companies presented the oral rejoinder of several of their witnesses and had their filing and prepared testimony and exhibits admitted into the record. The other parties also had their respective previously distributed testimonies and exhibits admitted into the record, either by a sponsoring witness present at the hearings or by stipulation of all parties, supported by the submission of a signed affidavit or verification from the authoring witness.

In this proceeding, I&E has sought to contribute to the scrutiny of the Companies' proposed terms and conditions for the provision of default service to distribution customers for the subject period June 1, 2013, to May 31, 2015. The three separately distributed I&E testimonies, Direct, Rebuttal and Surrebuttal that were admitted into the record at hearing were produced and sponsored by I&E Witness Scott Granger, who is a full-time I&E expert holding the Commission title of Executive Policy Analyst. I&E Witness Granger's Direct Testimony was offered and admitted into the record as I&E Statement No. 1, his Rebuttal Testimony was admitted as I&E Statement No. 1-R and his Surrebuttal Testimony was admitted as I&E Statement No. 1-SR.²

Pursuant to agreement among the parties and authorization by the ALJ, a common brief outline was established for use by all parties. Again, this present I&E Main Brief addresses one particular aspect of the Companies filed program, the proposed imposition of a Market Adjustment Charge ("MAC") to be added as a financial component to the default service rate. While this I&E Main Brief

2 The I&E Direct Testimony will most often be referenced in this Main Brief as it sets forth the reasons and rationale for opposition to the proposed MAC. The I&E Rebuttal Testimony is also referenced here as it responds to respective direct testimonies of the Retail Energy Supply Association ("RESA") witness and the Dominion Retail Inc. ("Dominion Retail") witness, both of whom recommend that the proposed MAC be approved, but each attached certain respective modifications and/or conditions. The I&E Rebuttal Testimony is also cited here as it relates to the Commission's Final Order on March 2, 2012, regarding the *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, at Docket No. I-2011-2237952. References to the I&E Surrebuttal Testimony will for the most part be reserved for the I&E Reply Brief as it responds to certain portions of Companies' witnesses rebuttal testimonies that seek to continue to support the imposition of a MAC.

relates to that section of the common brief outline, for consistency with the agreed upon common brief outline, the instant Table of Contents does list the other headings with a notation in italics in the body of this brief under each unused heading that no issues are addressed there. The particular section and its subsection of the common brief outline related to the MAC proposal that is the subject of this I&E Main Brief, with the applicable heading and subheading shown in bold, are as follows:³

III. RATE DESIGN AND COST RECOVERY

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

B. Industrial Class: Hourly Pricing Default Service Rider

C. Market Adjustment Charge

1. Summary and Overview of Each Party's Position

2. Position of Parties Opposed

3. RESA's Proposed Modification

4. Dominion's Proposed Modification

I&E now submits this Main Brief to ALJ Barnes and the Commission with the assertion presented herein that valid and sound reasons exist for the adoption of this I&E recommendation and the rejection of the proposed MAC. In support of the I&E recommendation, this I&E Main Brief references sections of the I&E

3 For purposes of agreeing to the common main brief outline and the placement of the MAC issue in the section entitled "Rate Design and Cost Recovery," I&E considered, and hereby submits that the proposal falls within that section heading as relating to "rate design" rather than "cost recovery."

testimonies, the Companies' proposal and other documents admitted into the instant record.

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

No issues in the common brief outline heading addressed herein..

III. RATE DESIGN AND COST RECOVERY

No issues in Subsections A or B addressed in this Main Brief.

C. Market Adjustment Charge

1. Summary and Overview of Each Party's Position

Not Applicable – presumably to be provided by Companies in their Main Brief

2. Position of Parties Opposed – I&E Position

The Bureau of Investigation and Enforcement's (I&E"), the Office of Small Business Advocate ("OSBA"), the Office of Consumer Advocate ("OCA") and the Industrial Intervenors all oppose the Companies proposed imposition of a Market Adjustment Charge ("MAC") to their respective default service rates.

Based upon the I&E scrutiny of the proposed MAC to be applied to the default service rate for the period June 1, 2013, to May 31, 2015, and given our responsibility to represent the public interest, I&E recommends that the ALJ and the Commission reject the proposed MAC as it fails to properly qualify as a legitimate retail market enhancement tool and is simply an inappropriate and unnecessary financial adder. Of particular note, the I&E opposition to such a proposal is not affected by the question of which type of entity, an electric

distribution company (“EDC”) or an electric generation supplier (“EGS”) ends up with the some or all of the proceeds from such a patently unauthorized adder.

I&E respectfully submits that the Companies have failed to meet their burden of proof to demonstrate that such an unprecedented scheme is in the public interest, a criteria that includes the best interest of customers, particularly those customers who have elected, for whatever reason, to receive default service.

Further, given that this is the first submitted EDC default service program to be considered since the Commission’s Final Order entered on March 2, 2012, at *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, at Docket No. I-2011-2237952,⁴ it is imperative that all involved ensure that the analysis of the presently proposed default service program is both thorough and complete, and that the rationale for any and all approved components of the program be clearly described, determined to be lawful and demonstrated to be in the public interest. The I&E participation in this proceeding has been directed towards achieving those goals.⁵

4 As explained by I&E Witness Granger, the Order represents the Commission’s issuance of a final intermediate work plan to establish various recommendations and proposals to seek to improve competition in the retail electricity market. The work plan is based on a set of recommendations that the Commission received from its Office of Competitive Market Oversight (“OCMO”). The Order is particularly important and relevant to this proceeding as it is designed “... to provide guidance on those issues, tasks and goals that can be resolved and implemented prior to the expiration of the EDCs’ next round of default service plans” Order, at “Conclusion,” p. 103. I&E Stmt. No. 1-R, p. 9.

5 Additionally, the advantage of a Commission Order that provides such clear and distinct reasons for rejecting such an adder would serve to discourage other EDCs from proposing any similar type component in their subsequent default service filing(s).

In the Joint Petition, the Companies describe the proposed MAC at Paragraph 38, pages 16 and 17, that states in full as follows:

38. The Companies propose a bypassable Market Adjustment Charge (“MAC”) for the residential and commercial customer classes at a rate of \$0.005 per kWh, which will be included in the PTC Rider. The MAC will be included in the weighted average cost and in the reconciliation calculation to reasonably compensate the Companies for the obligation and attendant risk of procuring electric power for customers who choose not to shop. The MAC will have the collateral benefit of enhancing competition by creating additional “headroom” beneath the price-to-compare for competitive offers.

Joint Petition, pp. 16-17.

The I&E opposition to the proposed MAC is initially presented in the Direct Testimony of I&E Witness Scott Granger at pages 3-6. I&E Stmt. No. 1, pp. 3-6. At page 3, Mr. Granger states that, “First, the Companies seek to implement a Market Adjustment Charge (“MAC”) and the issue is whether the MAC qualifies as a retail market enhancement tool or is simply a profit component adder.” I&E Stmt. No. 1, p. 3. Also on page 3 of his Direct Testimony, Mr. Granger references Companies Statement No. 7, wherein the Companies Witness Charles V. Fullem acknowledges that “the MAC contains a return component that will be added to the weighted average cost of generation for default service customers in the residential and commercial classes and included in the reconciliation cost calculation.” I&E Stmt. No. 1, p. 3. Companies Stmt. No. 7, p. 11.

The inclusion of an artificial “adder” to a default service rate is contrary to the entire notion of what the deregulation of electric generation service sought to

achieve – a fair market, competitive price for electric generation to be paid by customers here in the Commonwealth. Both the Pennsylvania Legislature and this Commission have repeatedly and consistently acted to demonstrate their clear commitment to achieving that goal. I&E Stmt. No. 1-R, pp. 8-9.

As referenced in the Introduction section of this I&E Main Brief, the Commission’s Final Order entitled *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, at Docket No. I-2011-2237952, was in fact entered during the course of this proceeding on March 2, 2012. As such, it is important to note here what that Order did and did not provide regarding the appropriate structure and components of a default service program. A thorough review of that Order will disclose that there is no reference to any such MAC or similar type proposal of any kind. Further, on the issue of whether a MAC should be imposed due to the alleged insufficient degree of residential shopping for the FirstEnergy Companies, the Commission had this to say when discussing the reason for its conclusion that pilot programs should not be implemented for Retail Opt-in Auctions, where it states:

Several parties recommend that the pilot be limited to the FirstEnergy Companies’ service territories as these territories generally experience low customer migration. However, we note that during technical conferences, the FirstEnergy Companies pointed out that residential shopping has grown from a low of 10.3% (Met-Ed) to a high of 22.3% (Penn Power) over the last nine months. A steady progression of shopping has occurred since the expiration of rate caps and, therefore, we do not believe that a “rushed” pilot program is warranted to incite shopping in the FirstEnergy Companies’ service territories prior to the full-scale Retail Opt-in Auctions.

Order, at page 47.

As noted by I&E Witness Granger, this “steady progression of shopping” identified by the Commission undermines the FirstEnergy Companies’ remaining and fast unraveling thread of purported rationale for the imposition of a MAC, and a similar rationale offered by the RESA and Dominion Retail witnesses, as addressed below in this I&E Main Brief. I&E Stmt. No. 1-R, p. 11. Said contentions being that the MAC is needed to stimulate further shopping by FirstEnergy customers.

It is important to emphasize that this Commission has not allowed the addition of a return component to a default service rate as sought 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. § 2807(e). This obligation is generally recognized as not allowing the EDCs to add a profit margin to the price of their default service electric power. I&E Stmt. No. 1, p. 5.

3. RESA’s Proposed Modification

The Retail Energy Supply Association (“RESA”) presented Direct, Rebuttal and Surrebuttal of Christopher H. Kallaher, who is Senior Director of Government and Regulatory Affairs for Direct Energy Services, LLC. RESA Stmts. 2, 2-R and 2-SR. RESA Witness Kallaher addresses the Companies’ proposed MAC at pages 29-31 of his Direct Testimony, observing at page 30 that “First Energy proposes to collect the MAC proceeds and (apparently) keep them

as profit for the distribution utility.” RESA Stmt. 2, p. 30, lines 6-7, and in total at pp. 29-31. While characterizing the adder as “reasonable and appropriate” at page 30 of his Direct Testimony, Mr. Kallaher recommends that the proceeds of the MAC be used to pay: (1) the costs of implementing improvements to the market structure in the EDC's service territory, with a corresponding adjustment to the non-bypassable DSS rider; and, (2) costs related to any of the risks identified by Companies Witness Reitzes that actually materialize. RESA Stmt. 2, p. 31. He goes on to recommend that if funds are left over, which he perceives will occur based upon his understanding of the Companies’ projection, the funds should be returned as a credit each year to all distribution ratepayers on a pro rata basis via a non-bypassable credit, thus removing any incentive for the Companies to retain customers on default service. RESA Stmt. 2, p. 31. As a general proposition and not surprisingly, Mr. Kallaher agrees with the Companies that a MAC would enhance the competitive market for electric generation service. RESA Stmt. 2, p. 31.

I&E categorically opposes RESA’s suggested modifications to the Companies’ proposed MAC. It is the inclusion of a MAC in any form and with any distribution of the proceeds as part of the default service rate that I&E considers to be objectionable - as it represents a legally impermissible adder under the applicable Section 2807(e) of the Public Utility Code, 66 Pa.C.S. § 2807(e). In responding directly to RESA Witness Kallaher’s suggestions, I&E

Witness Granger rejects the notion that any adder would involve the recovery of “costs” and states as follows at pages 3 and 4 of his Rebuttal Testimony:

Yes, his recommendation should be rejected as it still allows for the existence of a MAC and only alters the distribution of the proceeds. Again, in my Direct Testimony, I provided the I&E position that EDCs such as the FirstEnergy Companies have no apparent statutory authority to add a profit component such as a MAC to their default service price-to-compare (PTC). The EDCs are given statutory authority to recover all reasonable costs. However profits, including artificial profit adders, have never been included in the cost recovery mechanisms. For that reason, I recommend that the Commission not authorize the use of the MAC as a retail electric market enhancement tool (I&E Statement No. 1, pp. 3-6). This same reasoning applies to allow the Commission to reject the RESA proposal, as any such “adder” that would otherwise increase the default service rate lacks statutory authorization, regardless how the proceeds are distributed.

I&E Statement No. 1-R, pp. 3-4.

In his Rebuttal Testimony, RESA Witness Kallaher references certain unquantified costs incurred by the Companies as EDCs providing default service and then states that, “[I]n the absence of a detailed cost allocation study of the costs of providing default service, the MAC is a reasonable mechanism for ensuring that costs that are attributable to the provision of default service are included in the default service rate rather than in distribution rates.” RESA Stmt. 2-R, p. 32.

In response to such a blanket assertion, I&E submits that public utility regulation here in Pennsylvania does not function in such an slapdash manner. Rather than assuming the existence of some patently nebulous level of “costs” and then establishing a real and specific financial adder to any rate charged to customers, this Commission has traditionally and appropriately required credible

support and definitive documentation for any and all rate components. Such a requirement is particularly necessary here where such an adder is nowhere authorized, referenced or even implied in the applicable Section 2807(e) of the Public Utility Code, 66 Pa.C.S. § 2807(e). Such credible support and documentation for the proposed MAC is absent from the instant record.

4. Dominion's Proposed Modification

Dominion Retail, Inc. ("Dominion Retail") presented Direct, Rebuttal and Surrebuttal of Thomas J. Butler, who is Dominion's Director of New Business. Dominion Witness Butler addresses the Companies' proposed MAC at pages 8-11 of his Direct Testimony, pages 5-6 of his Rebuttal Testimony and pages 5-7 of his Surrebuttal Testimony. Dominion Retail Stmt. Nos. 1, 1-R and 1-SR. In his Direct Testimony, Dominion Witness Butler recommends that the Companies' proposed MAC be approved with some modifications. The proposed modifications include doubling the amount of the MAC until 50% of customers switch from default service, while also allowing the flow back of monies to customers via a rider. Dominion Retail Stmt. No. 1, p. 10. Mr. Butler also proposes a provision to make the MAC cancelable at any time if further customer switching from default service does not occur. Dominion Retail Stmt. No. 1, p. 10.

In his Dominion Retail Surrebuttal Testimony, Mr. Butler responds to a criticism by OSBA Witness Knecht and acknowledges that his initial proposal to return monies collected through the MAC via the DSS rider could have created a

cross subsidy and then Mr. Butler agreed to returning the monies to non-shopping customers via a distinct rider as part of his proposal. Dominion Retail Stmt. No. 1-SR.

In response to Dominion Retail Butler's stated position recommending imposition of a MAC with modifications, I&E Witness Granger first restates the valid reasons and rationale for I&E's opposition to the imposition of a MAC, at page 4-9 of his Rebuttal Testimony. I&E Stmt. No. 1-R, pp. 4-9. Again, I&E is opposed to the concept of any such "adder," be it a MAC or other such scheme, as lacking in statutory authority, fairness or necessity. As to Dominion Retail Witness Butler's repeated assertions that a MAC would provide needed "headroom" to encourage customer shopping, I&E Witness Granger responded with the cogent conclusion that no such "headroom" can or should be added to the price-to-compare ("PTC") through the use of the proposed MAC and that establishing any sort of arbitrary adder such as a MAC to attempt to stimulate increased shopping does not ultimately financially benefit customers. And as Mr. Granger accurately observes in his Rebuttal Testimony, the imposition of a MAC "may increase shopping, but only at the expense of the pocketbooks of both shopping and default service customers, who will be paying a higher rate than is lawful, fair and accurate."⁶ I&E Stmt. No. 1-R, p. 6.

6 As opined by I&E Witness Granger in his Rebuttal Testimony, "It is not unreasonable to presume that an EGS would structure their price by targeting the artificially higher PTC. For example, if the default service rate is \$0.10 per Kwh and the MAC is \$0.01 per kWh, then the PTC will be \$0.11 per kWh. Arguably,

As to Dominion Retail Witness Butler's suggestion that his recommended MAC level, notably higher than even the level proposed by the Companies, could be imposed on a temporary basis, I&E Witness Granger reiterated the I&E position that the default service rate should be established without any arbitrary adder whatsoever. I&E Stmt. No. 1-R, pp. 8-9. He further emphasized that fundamental fairness, to say nothing of the entire process undertaken by the Commission to ensure that the price-to-compare ("PTC") is accurate and reflective of the marketplace, requires that EGSs compete with a true cost based PTC, not a temporary arbitrary higher PTC. I&E Stmt. No. 1-R, pp. 8-9.

And importantly, any temporary inflated PTC would eventually return to the true and accurate lower level, at which point under Mr. Butler's proposed scheme, any or all of the involved EGSs could leave the market after reaping the profits from shopping customers built in to such an arbitrarily higher PTC. This potential results should be considered by the Commission as a further reason to reject the Dominion Retail modified MAC proposal and adopt the I&E position that no MAC of any sort should be authorized, even on a temporary basis. I&E Stmt. No. 1-R, pp. 8-9.

No issues are raised in the remaining Subsections D through H of this Section entitled "III. RATE DESIGN AND COST RECOVERY."

the EGSs, being for profit businesses, would then offer a price below \$0.11 per kWh but not necessarily below the true \$0.10 per kWh when soliciting customers, even while competing against one another. Under this scenario, a customer may have more choices of alternative suppliers, but all customers, shopping and non-shopping would ultimately pay more for generation service than if no MAC existed." I&E Stmt. No. 1-R, p. 7.

IV. COMPETITIVE MARKET ENHANCEMENTS

No issues in the common brief outline heading addressed herein.

V. OPERATIONAL ISSUES

No issues in the common brief outline heading addressed herein.

VI. AFFILIATED INTEREST APPROVAL

No issues in the common brief outline heading addressed herein.

VII. OTHER ISSUES (If any)

No issues in the common brief outline heading addressed herein.

VIII. CONCLUSION

The numerous parties to this proceeding have raised a myriad of issues that require rulings by presiding Administrative Law Judge Elizabeth H. Barnes and the Commission. Based upon the Bureau of Investigation and Enforcement's scrutiny of the instant default service program proposed by the FirstEnergy Companies, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for the period June 1, 2013 to May 31, 2015, the proposed imposition of a Market Adjustment Charge ("MAC") has been of paramount concern. This I&E position is sound and reasonable, particularly given that no such adder scheme is anywhere authorized, referenced or even implied in the applicable Section 2807(e) of the Public Utility Code, 66 Pa.C.S. § 2807(e) governing EDCs' default service programs and, in fact, runs directly contrary to that statutory section. If for whatever reason the

Commission were to allow the inclusion of the Companies' MAC as proposed, the resultant profits to the four FirstEnergy EDCs would likely be substantial.

For the reasons provided herein, I&E recommends that the ALJ and the Commission reject any proposed MAC as it represents an unauthorized and inappropriate adder to the default service rate and does not and cannot qualify as a legitimate retail market enhancement tool.

Respectfully submitted,



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Dated: May 2, 2012

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Joint Petition of Metropolitan Edison :
Company, Pennsylvania Electric :
Company, Pennsylvania Power Company :
and West Penn Power Company for : Docket No. P-2011-2273650
Approval of Their Default Service :
Program :

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I hereby certify that I am serving the foregoing **Main Brief** dated May 2, 2012,
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