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May 2, 2012

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

VIA ELECTRONIC FILING

RE: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of Their Default Service Plans; Dockets No. P-2011-2273650, P-2011-2273668, P-2011-2273669 and P-2011-2273670

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Main Brief of the Med-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), and West Penn Power Industrial Intervenors ("WPPII") in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Please date stamp the extra copy of this transmittal letter and Main Brief, and kindly return them to our messenger for our filing purposes.

Sincerely,

McNEES WALLACE & NURICK LLC

By Te K S

Teresa K. Schmittberger

Counsel to the Met-Ed Industrial Users Group,
Penelec Industrial Customer Alliance,
Penn Power Users Group, and West Penn Power
Industrial Intervenors

TKS/sar
Enclosures
c: Administrative Law Judge Elizabeth H. Barnes (via e-mail and First Class Mail)
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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Dated this 2nd day of May, 2012, at Harrisburg, Pennsylvania

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 PROGRAMS	:		

MAIN BRIEF OF THE MET-ED INDUSTRIAL USERS GROUP, THE PENELEC INDUSTRIAL CUSTOMER ALLIANCE, THE PENN POWER USERS GROUP, AND THE WEST PENN POWER INDUSTRIAL INTERVENORS

Air Liquide Industrial U.S. LP
Air Products & Chemicals, Inc.
American Refining Group Inc.
Appleton Papers Inc.
ATI Allegheny Ludlum Corporation
Carpenter Technology Corporation
Dixie Consumer Products, LLC, Lehigh Valley
E.I. du Pont de Nemours & Co., Inc.
East Penn Manufacturing Company
Electralloy, a G.O. Carlson, Inc., Co.
Ellwood National Steel
Ellwood Quality Steel
Erie Forge & Steel, Inc.
Ervin Industries
Exide Technologies, Inc.
Farmers Pride, Inc.
Glen-Gery Corporation
Harley-Davidson Motor Company - York Division
Knouse Foods Cooperative, Inc.
Latrobe Specialty Steel Company
Lehigh Specialty Melting Inc. (Whemco)
Magnesita Refractories Co.
MERSEN USA St Marys-PA Corporation
Occidental Chemical Corporation
Pittsburgh Glass Works
PPG Industries, Inc.
Procter & Gamble Paper Products Company
RH Sheppard Co., Inc. - Foundry Division
Royal Green LLC
Sheetz, Inc.
Standard Steel
Sweet Street Desserts, Inc.
Team Ten, LLC - American Eagle Paper Mills
The Plastek Group
Tray-Pak Corporation
U.S. Silica Company
Wegmans Food Markets, Inc.
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Dated: May 2, 2012

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I. INTRODUCTION

A. 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, "Companies") filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") a Joint Petition for approval of their Default Service Programs ("Joint Petition") for the period June 1, 2013, through May 31, 2015. *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, and P-2011-2273670 (Nov. 17, 2011) (hereinafter, "Joint Petition").

On December 19, 2011, Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), the Penn Power Users Group ("PPUG"), and, separately, the West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrial Customer Groups") filed Petitions to Intervene and Answers in Opposition to the Companies' Joint Petition. The Office of Consumer Advocate ("OCA") also filed an Answer to the Joint Petition. The Office of Small Business Advocate ("OSBA") and the Bureau of Investigation and Enforcement ("I&E") assumed active roles in this proceeding. A Prehearing Conference was held on December 22, 2011, before Administrative Law Judge ("ALJ") Elizabeth H. Barnes.

The Industrial Customer Groups received the Companies' Direct Testimony on December 21, 2011. Pursuant to the procedural schedule, on February 17, 2012, the Industrial Customer Groups submitted two pieces of Direct Testimony, and received Direct Testimony from the following parties: the OCA; the OSBA; I&E; the Coalition for Affordable Utility Services and

Energy Efficiency in Pennsylvania ("CAUSE-PA"); the Retail Energy Supply Association ("RESA"); Dominion Retail, Inc. ("Dominion"); the Constellation Energy Commodities Group, Inc., and Constellation NewEnergy, Inc. (jointly, "Constellation"); and Exelon Generation Company, LLC, and Exelon Energy Company (jointly, "Exelon"). On March 16, 2012, the Industrial Customer Groups received Rebuttal Testimony from the following parties: the Companies; the OCA; the OSBA; I&E; RESA; Dominion; and FirstEnergy Solutions Corporation ("FES"). On April 4, 2012, the Industrial Customer Groups submitted Surrebuttal Testimony. The Industrial Customer Groups received Surrebuttal Testimony from the Companies; the OCA; the OSBA; I&E; RESA; CAUSE-PA; Constellation; Dominion; and FES.

Evidentiary hearings were held in this proceeding on April 11-12, 2012, for the purposes of presenting testimony and performing cross-examination. During these hearings, the parties confirmed the process for submitting Briefs. Accordingly, the Industrial Customer Groups file this Main Brief to address the following proposals of the Companies: (1) the consolidation of West Penn's Type 20 and 30 Service Types; (2) the conversion from kW to kWh capacity pricing in West Penn's Hourly-Priced Default Service Rider; (3) bidding out the procurement of West Penn's hourly-priced default service; (4) the conversion from day-ahead to real-time hourly pricing in West Penn's Hourly-Priced Default Service Rider; (5) the procurement of 40% of solar photovoltaic alternative energy credits, and collection through non-bypassable riders; (6) the collection of a Market Adjustment Charge ("MAC") adder; and (7) the collection of non-market based ("NMB") transmission costs through non-bypassable riders that charge for such costs based on monthly demand.

B. Statement of the Case

The Industrial Customer Groups have several significant concerns regarding the Companies' proposed modifications to their Default Service Plans ("DSP"). Initially, the Industrial Customer Groups oppose the consolidation of West Penn's Type 20 and 30 Service Types due to the Companies' inability to confirm that any cross-subsidization, which is prohibited under the Public Utility Code, will not occur. *See* Section II.A.1., *infra*.

Similarly, the Companies' proposal to convert from kW to kWh capacity pricing for West Penn's hourly default service, as well as its intent to bid out the procurement of West Penn's hourly priced product, could result in an unjust and unreasonable increase in default service customers' rates, contrary to the terms of the Public Utility Code. Moreover, the Companies' proposal to charge West Penn's hourly priced default service customers based on the real-time locational marginal price ("LMP") poses similar problems. For these reasons, the Industrial Customer Groups disagree with the Companies' unsupported modification to the status quo with respect to West Penn's default service plan. *See* Section II.C., *infra*.

Moreover, the Industrial Customer Groups contest the Companies' convoluted adjustments to the procurement of solar photovoltaic alternative energy credits ("SPAECs"). The Companies are proposing a process that will require customers to renegotiate their contracts with Electric Generation Supplier ("EGS"), while also requiring these same customers shoulder the burden of ensuring that they are correctly charged by both the Companies and their EGS for a complex procurement process. In light of the fact that this modification is contrary to the public interest, immediate denial by the Commission is required. *See* Section II.E.2., *infra*.

Similarly, the Companies propose to collect a MAC adder that would inappropriately provide a "profit" for the Companies, even though default service is required to remain on a "least cost procurement" basis. In addition, the Companies' claims that this adder will encourage competition must be rejected, as, in actuality, the adder will inappropriately and artificially inflate market prices contrary to the Public Utility Code. *See* Section III.C., *infra*.

Finally, and perhaps most importantly, the Companies' propose to take several steps backwards with respect to the evolution of the competitive market in their service areas by effectively rebundling the transmission product with distribution, contrary to PUC regulations. Furthermore, by proposing to collect NMB Transmission costs from all customers through a non-bypassable rider, the Companies would implement a cost allocation and collection process that would result in unjust, unreasonable, and inappropriately discriminatory transmission rates. Because such a process would contravene the Public Utility Code, regulations, and precedent, the Companies' request must be denied. *See* Section III.D., *infra*.

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

A. Procurement Groups

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

The Companies' proposal to consolidate West Penn's Service Types 20 and 30 presents serious risks of cross-subsidization among these customer classes. Although West Penn frames its proposal as a means to achieve consistency among the Companies, West Penn fails to demonstrate that customers within these classes would not be subject to cross-subsidization if they were consolidated. Because cross-subsidization is not permitted by Act 129 or Commission precedent, and the Companies have not shown that cross-subsidization will not occur under its proposal, the proposed consolidation should be denied. *See* 66 Pa. C.S. § 2807(e)(7); *see also Lloyd v. Pa. Pub. Util. Comm'n*, 904 A.2d 1010, 1020-21 (Pa. Commw. Ct. 2006).

In 2008, Act 129 amended the Public Utility Code to require that "[a]ll default service rates shall be reviewed by the [C]ommission to ensure that the costs of providing service to each customer class are not subsidized by any other class." 66 Pa. C.S. § 2807(e)(7); *see also Lloyd*, 904 A.2d at 1020-21. This provision was intended to safeguard customers, specifically default service customers, from proposals that would prevent them from receiving service at "least cost over time." *See generally* 66 Pa. C.S. § 2807(e); *see also Lloyd*, 904 A.2d at 1020-21. This prohibition against cross-subsidization was similarly adopted as part of the Commission's regulations.

In supporting the Joint Petition, the Companies have not borne their burden to prove that consolidation of Service Type 20 and 30 would be structured in a manner to avoid cross-subsidization between classes. Customers belonging to separate Service Types are subject to different metering and billing arrangements by the Companies. Direct Testimony of Joseph Raia of Sheetz, Inc. on behalf of the Industrial Customer Groups (hereinafter, "Raia St. No. 1"), p. 14. These differences are illustrated within West Penn's Energy Efficiency and Conservation ("EE&C") Plan, which offers different programs to Service Type 20 and Service Type 30 customers. The Companies' stated purpose for consolidation, to promote consistency among the Companies, is not a compelling enough reason to overcome the adverse effects on customers of such cross-subsidization, which is a direct violation of the Public Utility Code. The benefit of consistency would accrue to the Companies. The Companies ignore that the cost of such consolidation would be borne by certain customers within Service Types 20 and 30 in terms of a Price to Compare ("PTC") that may be skewed due to inconsistencies between the Service Types.

The Companies have the burden of showing this proposal qualifies as "least cost over time." *See* 66 Pa. C.S. § 315(a). Integral to this finding, however, is that no cross-subsidization exists. Though the Companies provide information reflecting the similarity of the load profiles and tranche purchases between the Service Types, this alone does not support a finding that consolidation does not result in cross-subsidization and is consistent with default service that is "least cost over time." *See* Rebuttal Testimony of Raymond E. Valdes on behalf of the Companies (hereinafter "Companies' St. No. 2-R"), p. 4. The Companies are charging Service Type 20 and 30 customers varying distribution rates that encompass a range of services provided to the individual customer classes. The Companies do not address, however, whether Service Type 20 or 30 customers would be charged for costs they have already incurred as a separate class. *See* Raia St. No. 1, p. 14.

Because the Companies have not satisfied their burden, the Commission should not accept the Companies' proposal to consolidate Service Types 20 and 30. The mere convenience of consistency to the Companies does not outweigh the harm to customers associated with cross-subsidization. In addition, the Companies propose no safeguards to prevent the customers from remitting costs they have already incurred. Accordingly, the Companies' proposal to consolidate Service Types 20 and 30 should be denied.

B. Residential and Commercial Class Default Service Procurement

MEIUG, PICA, PPUG, and WPPII have no position on this issue.

C. Industrial Class Hourly-Priced Default Service

This section will address the proposed modifications to hourly priced default service in the West Penn service territory only. The Companies claim their proposed modifications are designed to standardize the terms for hourly priced default service throughout their Pennsylvania Electric Distribution Company ("EDC") service territories. As discussed herein, WPPII agrees that standardization is an important goal, as demonstrated by the Commission's own regulations mandating standardization in key facets of default service (*e.g.*, transmission being procured by EGSs). The Companies' focus on standardization, however, is solely as it pertains to its own operations. The Companies fail to appreciate the value of consistency in the application of rules as they affect their customers.

While the terms and conditions of hourly priced default service for the Companies' other EDCs may be akin to that proposed in the instant proceeding for West Penn, the Companies ignore the adverse effects of changing "midstream" the default service model on West Penn customers. This is particularly true given that West Penn's current hourly priced default service is grounded in cost causation principles. Altering the terms and conditions of West Penn's hourly priced default service as proposed by the Companies directly contravenes cost causation principles and should be rejected.

1. The Companies' Proposal To Charge Hourly Priced Default Service Customers for Capacity on a kWh Basis Is Inconsistent with Cost Causation Principles and Subverts the Price Signals Important for Functional Markets.

The Companies' proposal to charge West Penn hourly priced customers for capacity on a kWh basis is flawed in several respects: (a) the proposal is inconsistent with cost causation principles; (b) the proposal undermines the customer's ability to implement demand reduction strategies in PJM Interconnection, LLC's ("PJM's") Reliability Pricing Model ("RPM") capacity structure; (c) the proposal discriminates against certain customers; and (d) the Companies do not meet their burden of proof to justify the conversion to kWh capacity pricing. Accordingly, the Companies' proposal to convert to kWh capacity pricing for hourly priced default service customers must be rejected. West Penn should retain its current approach to collecting capacity costs from hourly priced default service customers based on a customer's individual Peak Load

Contribution ("PLC"), which is consistent with the manner in which capacity obligations are set and then charged to load-serving entities ("LSEs") under PJM's rules.

In order to recognize the inconsistencies of the Companies' proposal with cost-causation principles, it is important to understand the manner in which PJM satisfies its responsibility to ensure resource adequacy and reliability. Each LSE, including West Penn serving as a default service provider, must satisfy a capacity obligation. The capacity requirement in PJM is fulfilled through the Reliability Pricing Model ("RPM").[1] RPM is designed to create long-term price signals to attract needed investments in reliability in the PJM region. According to PJM, RPM "includes incentives that are designed to stimulate investment both in maintaining existing generation and in encouraging the development of new sources of capacity resources that include not just generating plants, but demand response and transmission facilities."[2]

PJM sets the amount of capacity that must be procured to ensure adequate reserves based on all retail customers' demand on the five highest peak days on the PJM system. *See* PJM Open Access Transmission Tariff, Attachment M-2. A customer's average usage during the system's five highest peak days is referred to as a customer's "PLC." Once capacity is procured to ensure resource adequacy, PJM allocates the cost of capacity to LSEs such that an LSE is charged on its LSE's customers' average load on the five peak load days. *See id.* Consistent with cost causation principles, this charge is a demand-based charge, not a volumetric energy charge. Thus, under PJM's rules, capacity is charged to LSEs (including an EDC serving in its default service role) as a kW demand charge (or MW demand charge) based on the LSE's customers' average usage on the system's five highest peak days. Each Large Commercial and Industrial ("C&I") customer receiving hourly priced default service has a specific and individual PLC that is a kW/MW value.

[1] *See PJM Interconnection, LLC Website,* http://pjm.com/markets-and-operations/rpm.aspx.
[2] *Id.*

Consistent with this bedrock cost causation principle, West Penn's current default service plan assigns capacity obligations among its hourly priced default service customers based on their individual PLCs because West Penn incurs cost responsibility from PJM on this basis. *See* West Penn's Electric Generation Supplier Coordination Tariff, p. 25; *see also* West Penn's Hourly-Priced Default Service Rider, p. 36-1.[3]

The Companies propose in this proceeding to depart from fundamental principles of cost causation and instead charge for capacity based on a customer's monthly energy consumption. The Companies represent that their sole purpose of making this change to West Penn's DSP is to align West Penn's tariff with the tariffs of the Companies' other EDCs. Joint Petition, p. 16. The Companies' approach would combine capacity costs with several unrelated charges, including Alternative Energy Portfolio Standards costs, supplier administrative costs, and other assorted costs. Notwithstanding the readily identifiable cost basis for capacity (*i.e.*, a customer's PLC), the Companies propose to collect these collective costs from customers through a "HP Cap-AEPS-Other Charge," that would be multiplied by a customer's monthly energy consumption. Direct Testimony of Raymond E. Valdes on behalf of the Companies (hereinafter, "Companies' St. No. 2"), p. 17. While WPPII takes no position on the appropriateness of this approach for the other FirstEnergy EDCs, and recognizes that circumstances, including the structure of legacy tariffs, may dictate appropriate default service design, the Companies' proposal as it is applied to West Penn has no direct link to fundamental principles of cost causation.

Sound principles of cost causation and ratemaking require that West Penn's hourly priced default service customers continue to be charged for capacity in the manner in which those capacity costs were incurred by West Penn as their default service provider. Of particular

[33] In West Penn's Hourly-Priced Rider, PLC is defined as "Customer kilowatt capacity Peak Load Contribution obligation." *See* West Penn's Hourly-Priced Rider, p. 36-1.

importance, mirroring the PJM allocation and rate design enables customers to make informed decisions regarding competitive supply offers, and to perform an "apples to apples" comparison of EGS bids to the default service option.

The Competition Act requires that "[t]he cost of electricity is an important factor in decisions made by businesses concerning locating, expanding and retaining facilities in this Commonwealth." 66 Pa. C.S. § 2802(6). The Commission used this principle to guide its development of regulations that enforce the Competition Act. *Implementation of Act 129 of October 15, 2008; Default Service and Retail Electric Markets*, Docket No. L-2009-2095604, Final Rulemaking Order (entered Sept. 22, 2011) (hereinafter, "September 2011 Order"), p. 2. Subsequently, Act 129, which amended certain aspects of the Competition Act, was passed in order to encourage EDCs and customers to reduce their peak demand levels. *See* 66 Pa. C.S. § 2806.1. Because the Companies' proposal would stifle default service customers' ability to participate in the competitive retail market, and thereby reduce their demand levels, the Companies' proposal is inconsistent with the Competition Act and Act 129.

Retail rate design, including terms and conditions of default service, is a critical link between Pennsylvania's retail market and the wholesale market administered by PJM. Successfully linking wholesale issues to retail rate design is key to fulfilling the competition Act's promise of competition and reliability. Thus, to the extent possible, policies between wholesale and retail markets should be coordinated in order maximize market efficiencies and capture the benefits of competitive electric markets for customers. This general principle is particularly true with respect to the product of capacity, which represents a growing percentage of retail customers' bills.

Currently, customers receiving hourly priced service from West Penn have an incentive to reduce their capacity obligations through efficiency investments because of the direct benefit that such customers can receive on their bills by reducing their consumption on any of the 5 CP days. Under West Penn's current hourly priced product, if a customer makes such investment to reduce consumption, the customer's PLC will be less and the customer will be charged less for capacity. Similarly, under West Penn's existing product, a customer with a known PLC may undertake to participate as a Demand Resource ("DR") in PJM's RPM program to receive a revenue stream to offset the customer's RPM capacity obligation. Having a direct cost causation link between how capacity costs are incurred and how the customer is charged for capacity sends appropriate market signals for such default service customers to participate in PJM's RPM capacity-related DR program.

In contrast, the Companies' proposal to collect capacity costs from hourly priced default service customers thwarts market signals, thereby reducing the incentive for customers to reduce their individual PLC. With a volumetric energy charge, the incentive for a customer to manage its contribution to the five peak-load days is minimized because such demand-side management would have not necessarily reduced their capacity cost exposure. Under the Companies' proposal, customers' effectiveness in utilizing demand response or self-generation strategies to reduce their demand on days that PJM is most likely to calculate capacity obligations would be stalled. Such a result is inconsistent with the goals of the Competition Act and Act 129.

Moreover, charging default customers for capacity on a monthly kWh basis creates cross-subsidization concerns. Under the Companies' proposal, a default service customer who successfully reduced its demand on days when PJM was likely to set system peaks would be charged substantially more by way of capacity costs if the customer usually maintains a high consumption level to operate its facility. By contrast, a customer with high demand on system peak days, but otherwise has lower consumption, creates the opposite problem. That customer will have increased the amount of capacity that PJM must procure in the RPM model, but the customer would have lower capacity cost responsibility under the Companies' proposal. Such cross-subsidization could be gamed by those with high peak demand in summer but otherwise lower consumption during the year. To avoid such risks, WPPII supports hourly priced default service customers being charged for capacity based on their individual capacity obligation under PJM's methodology.

The unfair and discriminatory nature of the Companies' proposal is reason enough to warrant rejection of the Companies' proposal. In addition, the Companies have not met their burden of proof with respect to this proposal. The Companies only support this proposal by stating that it would enhance the consistency among the Companies' default service plans. *See* Companies' St. No. 2, p. 16.

As the parties petitioning the Commission for approval of their default service plans, the Companies bear the burden of proof regarding their proposed default service plan changes. *See* 66 Pa. C.S. § 315(a). The Companies must show that a preponderance of the evidence supports the Companies' adoption of these modifications, as opposed to preserving the current default service terms. *See Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Commw. 1990).

The Companies' sole justification for their proposal to collect capacity costs on a kWh basis is to promote consistency among the Companies. Notably, the Companies fail to mention that their proposal would make West Penn's hourly priced default service inconsistent with the other large Pennsylvania EDCs. Every other major Pennsylvania EDC (*i.e.*, Duquesne Light

Company, PECO Energy Company, and PPL Electric Utilities, Inc.) charges its Large C&I customers for capacity on a kW basis. The Companies' only support for its proposal to charge hourly default service customers for capacity on a kWh basis is undermined by the lack of consistency the Companies would exacerbate throughout the Commonwealth. Accordingly, the Companies fail to establish their burden that the conversion from kW to kWh capacity pricing is justified.

2. The Companies' Proposal To Bid Out the Procurement of Hourly Default Service in West Penn Should Be Rejected As Inconsistent with Least-Cost Procurement.

In this proceeding, the Companies propose to bid out the procurement of West Penn's hourly priced default service. Direct Testimony of Dean W. Stathis, (hereinafter "Companies St. No. 4"), pp. 8-9. Winning suppliers would receive a fixed adder to compensate the supplier for, among other things, the administrative costs associated with procurement, as well as profit. Direct Testimony of James D. Reitzes on behalf of the Companies (hereinafter, "Companies' St. No. 6"), p. 7. By contrast, West Penn currently procures its hourly default service product in-house, at minimal customer expense. For the reasons set forth below, the Companies' proposal to bid out the procurement of West Penn's hourly priced default service is not consistent with the requirements of the Competition Act. 66 Pa. C.S. §§ 2801, *et seq.*

The Public Utility Code requires that default service be provided to customers at "least cost over time." 66 Pa. C.S. § 2807(e)(3.7). This "least cost over time" requirement was also incorporated into the Commission's regulations. If an EDC is choosing between two default service designs, all other things being equal, the EDC should choose the option that will result in the least cost to customers. This "least cost" requirement is especially important for Pennsylvania businesses, because their ability to compete on a broad scale is facilitated by lowered electric costs. *See* 66 Pa. C.S. § 2802(7).

West Penn's current approach to hourly service default procurement has served its hourly default service customers well. West Penn's current administrative costs associated with hourly priced procurement are so modest that it is unclear why the Companies would interfere with West Penn's current approach. According to West Penn's report to the Commission, the total administrative expenses in 2011 for West Penn's Large C&I default service customers, who are the primary recipients of hourly priced default service, was approximately $40,000. *See* WPPII Cross-Examination Exhibit No. 4, p. 3-8; *see also* Transcript of Evidentiary Hearing in Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670 on April 11-12, 2012, (hereinafter, "Tr."), p. 131. During most months of 2011, the reported costs were only a few hundred dollars. *See id.* Considering the limited resources expended by West Penn in its procurement of the hourly product, a modified procurement arrangement appears quite unnecessary.

While cloaked in the mantle of "competition," the Companies' proposal ignores that the key objective of electric restructuring was to reduce costs for customers to position the Commonwealth and its businesses to be competitive through policies that reduced electric costs for customers. *See* 66 Pa. C.S. § 2802(7). Based on the current administrative expenses associated with the procurement of the hourly product, it is reasonable to assume that the costs of default service under the Companies' proposal would be more than the existing approach, particularly as the Companies have described how they would structure the procurement. *See* Companies' St. No. 6, p. 7. Accordingly, bidding out West Penn's hourly priced default service is not consistent with the least cost requirement for default service under the Public Utility Code.

The Companies provide no compelling reason to support changing West Penn's current hourly priced default service approach, in light of the minor procurement administrative costs currently incurred by West Penn. Because this proposal does not qualify as least cost over time, West Penn should continue to procure the hourly product in-house, and the Companies' proposal should be rejected.

3. West Penn's Proposal To Charge Hourly Priced Default Service Real-Time Locational Marginal Pricing Should Be Rejected As Inconsistent with Least-Cost Procurement.

PJM permits LSEs to bid either into the day-ahead or real-time LMP markets. The day-ahead market offers customers their electric price the day before the electricity is consumed; by contrast, the real-time market offers customers an instantaneous electric price as the electricity is consumed.[4] West Penn currently charges its hourly default service customers based on the day-ahead LMP. As a final change to West Penn's Hourly-Priced Rider, however, the Companies propose to change the current terms and conditions of service to offer an hourly product based on the real-time LMP.

Other than a general interest in consistency among their operating companies, the Companies have not adduced a compelling reason to change this element of West Penn's default service plan. The Companies ignore that over 90% of suppliers choose to bid into the day-ahead market instead of the real-time market. *See* 2011 PJM State of the Market Report, p. 41. While the Companies' other EDCs may not follow this market example and instead charge for default service on a real-time basis, the circumstances within the West Penn service territory are separate and distinct and should be viewed as such.

In order to comply with the Competition Act, the Companies' proposal to charge hourly customers based on real-time prices must facilitate the transition to a fully competitive market "in a manner that is fair" to customers, EDCs, and other stakeholders. 66 Pa. C.S. § 2802(8). The Companies also must offer default service to customers at the "least cost over time."

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[4] *See PJM Interconnection, LLC Website,* http://www.pjm.com/markets-and-operations/energy.aspx.

Id. § 2807(e)(3.4). To qualify as "least cost over time," the Commission requires default service to be both affordable and reliable. September 2011 Order, p. 12.

The Companies' proposal does not appropriately facilitate the transition to a fully competitive market, nor offer the most affordable and reliable prices to hourly priced default service customers. West Penn originally supported a day-ahead product as a less expensive product. In the West Penn region, day-ahead LMPs were lower priced than real-time LMPs five of the six past years.[5] On this basis, the Companies' proposed transition to real-time pricing appears to be neither fair nor least cost for consumers. In the absence of compelling evidence on how West Penn customers on hourly default service would benefit from a change from day-ahead LMP to real-time LMP, the Companies' proposal to make this change to West Penn's established default service plan should be rejected.

If the Commission chooses to adopt the Company's proposal permit West Penn's hourly-priced service to be grounded in real-time LMP pricing, the Commission should take steps to ensure that such real-time pricing is consistent with the Commission's "least cost over time" mandate. One potential benefit of the Companies' proposal would be a reduction in the E-Factor associated with the hourly product. The E-Factor is a charge or credit to customers based on the difference between the costs and revenues of the Companies, including interest. Companies' St. No. 2, p. 32. Because the E-Factor includes the cost of interest, customers ultimately remit more to the Companies than if the customers were originally charged the appropriate amount. To that end, the Companies' proposal should be adjusted to lower the E-Factor reconciliation effect between the real-time LMP and the customers' charge.

[5] *See* PJM 2006 State of the Market Report, p. 87; PJM 2007 State of the Market Report, p. 88; PJM 2008 State of the Market Report, p. 88; PJM 2009 State of the Market Report, p. 99; 2010 State of the Market Report, p. 104; and 2011 State of the Market Report, p. 358.

Assuming *arguendo* that the Companies' proposal to bid out the procurement of the hourly product is approved by the Commission, it is unclear whether this proposal would requires such suppliers to bid into the real-time market. *See* WPPII Cross-Examination Exhibit No. 5; *see also* Tr., p. 134. Accordingly, if customers would be charged based on the real-time LMP, but suppliers bid into the day-ahead market, the E-Factor would be higher than it should. As noted above, over 90% of suppliers choose to bid into the day-ahead market instead of the real-time market. *See* 2011 PJM State of the Market Report, p. 41. If the Companies' default service suppliers follow this trend, then customers, who would be charged by the Companies based on the real-time LMP, risk incurring a large E-Factor. For this reason, if the Commission approves these proposals over WPPII's objections, West Penn's hourly priced default service suppliers must be required to undertake bidding strategies to reduce the E-Factor charged to hourly price default service customers.

D. Use of Independent Evaluator

MEIUG, PICA, PPUG, and WPPII have no position on this issue.

E. AEPS Requirements

1. Non-Solar Photovoltaic Requirements

MEIUG, PICA, PPUG, and WPPII have no position on this issue.

2. Solar Photovoltaic Requirements

a. Background

The Alternative Energy Portfolio Standards Act ("AEPS" or "Act") requires EDCs and EGSs to derive a percentage of electricity sold to Pennsylvania retail customers from certain alternative energy sources, such as wind, solar energy, and biomass. 73 P.S. §§ 1648.1, *et seq.* AEPS categorizes these sources as either "Tier I" or "Tier II" sources, with Tier I sources including solar photovoltaic and solar thermal energy. *Id.* § 1648.2. In addition, the Act contains a solar "set-aside," which mandates that a specific portion of the EDC and EGS Tier I requirements be satisfied through Alternative Energy Credits ("AECs") derived from solar photovoltaic energy. *Id.* § 1648.3(b).

Pursuant to Met-Ed and Penelec's first Default Service Proceeding ("M/P DSP I"), Met-Ed and Penelec assumed full responsibility for compliance with the Tier I solar requirements associated with AEPS for all of their customers, shopping and non-shopping alike. *Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Programs; Docket Nos. P-2009-2093053 and P-2009-2093054*, Opinion and Order (entered Aug. 12, 2009). To collect the costs of solar photovoltaic alternative energy credits ("SPAECs"), Met-Ed, Penelec, and Penn Power each have non-bypassable Solar Photovoltaic Requirements Charge ("SPVRC") Riders.[6] Companies' St. No. 2, p. 28. The SPVRC Riders impose a flat rate per kWh charge on all classes of customers, regardless of the customers' shopping status. *Id.* As a result, shopping customers on Met-Ed, Penelec, and Penn Power currently remit all costs associated with SPAECs to their appropriate EDC, while the remaining AECs (*i.e.*, for other Tier I and all of Tier II sources) are collected by their EGS.

By way of contrast, West Penn, akin to all other jurisdictional EDCs in Pennsylvania, has not assumed responsibility for compliance with the solar portion of the AEPS as it relates to shopping customers and, thus, does not procure SPAECs for shopping customers nor does it maintain a non-bypassable SPVRC Rider. *Id.* at 29. As a result, shopping customers within the West Penn service territory remit 100% of the costs of SPAECs, along with their remaining AEC-related costs, to their EGSs under their competitive supply arrangements.

[6] Penn Power adopted its SPVRC Rider in a separate default service proceeding from Met-Ed and Penelec. *See Petition of Pennsylvania Power Company For Approval of Default Service Program For Period from January 1, 2011 through May 31, 2013*; Docket No. P-2010-2157862, Opinion and Order (entered Nov. 17, 2010).

As part of the Joint Petition for Partial Settlement achieved in the PUC proceeding approving the merger of FirstEnergy Corp. and Allegheny Energy, Inc. ("Merger Settlement"),[7] the parties addressed SPAECs. Specifically, the Merger Settlement provides that the "post-merger FirstEnergy EDCs that have an existing SPVRC Rider will propose in the default service filings for the beginning June 1, 2013, to procure 40% of their solar requirements for the period of 2011 through 2012 using long-term contracts of 10 years in length…." *See* Companies' Exhibit DWS-7, p. 12. In this instance, the post-merger FirstEnergy EDCs with an existing SPVRC Rider were Met-Ed, Penelec, and Penn Power, thereby rendering this provision inapplicable to West Penn because West Penn did not have a SPRVC Rider at the time the Merger Settlement was approved. Importantly, the Merger Settlement also provides that "[n]othing herein shall be construed as prohibiting the Signatory Parties from opposing, or recommending changes in, those filings with regard to SPAECs…." *Id.*

As a result, the Merger Settlement did not result in any modifications to the means by which Met-Ed, Penelec, Penn Power, or West Penn are currently collecting costs related to SPAECs. The Merger Settlement, however, did provide a springboard in terms of the Companies' proposals for SPAEC procurement and cost collection as it relates to the DSP proceeding at hand.

b. Companies' Proposal

As part of this proceeding, the Companies propose the following changes relative to SPAEC procurement for Large Commercial and Industrial ("C&I") customers beginning June 1, 2013: (1) Met-Ed, Penelec, and Penn Power would decrease their SPAEC procurement for Large C&I shopping customers from 100% to 40%; (2) the EGSs serving Large C&I shopping customers on the Met-Ed, Penelec, and Penn Power system would have to increase their SPAEC

[7] MEIUG, PICA, and WPPII were signatories to the Merger Settlement.

procurement for these customers from 0% to 60%; (3) West Penn would increase its SPAEC procurement for Large C&I customers from 0% to 40%; (4) the EGSs serving these Large C&I customers on the West Penn system would have to decrease their SPAEC procurement from 100% to 60%; (5) Met-Ed, Penelec, and Penn Power would continue to collect the costs of the SPAECs procured for Large C&I shopping customers through their SPRVC Riders; and (6) West Penn would implement an SPVRC Rider to collect the SPAEC costs associated with the 40% procurement requirement. Joint Petition, pp. 11 and 18-19.

Not surprisingly, and as suggested by the above recitation, the Companies' proposed changes to the SPAEC procurement for Large C&I customers are confusing, convoluted, and complicated. Moreover, and contrary to the Companies' claims, this specific procurement is not mandated directly by the Merger Settlement. Accordingly, the Companies have not met their burden of proving that the proposed changes are just, reasonable, and in the public interest. Accordingly, the Commission should deny the Companies' request to modify the SPAEC procurement and cost collection process as presented and, instead, adopt one of the alternatives set forth herein. *See* Section II.E.2.d., *infra*.

c. The Companies' Proposal To Procure 40% of SPAECs Required for Large C&I Customers Must Be Denied as Unjust, Unreasonable, and Contrary to the Public Interest.

Although the Companies propose significant modifications to the current procurement and cost collection related to the SPAECs required for Large C&I shopping customers' load under the AEPS, the Companies fail to meet their burden of providing that such modifications are just, reasonable, and in the public interest. *See* Section II.E.2.c.i., *infra*. Rather, the Companies inappropriately rely on provisions set forth in the Merger Settlement as the main justification for a proposal that would place an added burden on this class of customers. *See* Section II.E.2.c.i, *infra*. If the Companies seek to change the procurement of SPAECs for Large

C&I customers, then this change must be implemented in a way that will address the needs and concerns of such customers, while still ensuring that the SPAECs for this customer class are accurately and appropriately collected. *See* Section II.E.2.d., *infra*.

i. The Companies Do Not Prove That Their Proposal To Collect 40% of SPAECs Is Just and Reasonable.

Pursuant to the Companies' proposed modifications to the SPAEC procurement for Large C&I shopping customers, the Companies would procure a portion of the SPAECs required by this customer class and collect the costs of this procurement through a non-bypassable SPVRC rider. Because the costs collected under this rider would be considered a rate received by an EDC, the PUC must confirm that this rate is just, reasonable, and in the public interest. Upon close review, the Companies have not met this burden of proof. Therefore, the Companies' proposal must be denied.

Section 1301 of the Public Utility Code mandates that "[e]very rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the commission." 66 Pa. C.S. § 1301. The EDC has "the burden of proof to show that the rate involved is just and reasonable." *Id.* § 315(a).

To date, the Companies have not established that their proposal to procure and collect 40% of SPAEC costs from Large C&I shopping customers is just and reasonable. As noted previously, this proposal would be implemented on June 1, 2013, which is the implementation date of the Companies' DSPs proposed in this proceeding. Obviously, this date enables the Companies to make an easy transition with respect to this change, as the M/P DSP I SPAEC procurement process would draw to a close on May 31, 2013. *See* Joint Petition, p. 4. Unfortunately, the Companies fail to recognize that many Large C&I shopping customers do not necessarily have contracts with their EGSs that coincide with the timing of the Companies' DSPs. In fact, because the M/P DSP I was implemented on January 1, 2011, Large C&I shopping customers may have contracts with their EGSs that run on a twelve, twenty-four, or thirty-six month period beginning with the January 1, 2011 generation rate cap expiration. *Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Programs; Docket Nos. P-2009-2093053 and P-2009-2093054*, Opinion and Order (entered Aug. 12, 2009).

Due to this timing differential, Large C&I shopping customers in the Met-Ed, Penelec, and Penn Power service territories would have to renegotiate their EGS contracts in order to incorporate a 60% SPAEC procurement and cost collection. Conversely, Large C&I shopping customers in the West Penn service territory would have to renegotiate their EGS contracts in order to remove 40% of the SPAECs procurement and cost collection. Because of the far-reaching basis over which this change would occur (*i.e.*, all Large C&I shopping customers in the West Penn, Met-Ed, Penelec, and Penn Power service territories who have a shopping contract that does not end on May 31, 2013), there is a strong likelihood that customers may be detrimentally impacted by this change. Raia St. No. 1, p. 10.

Specifically, because of the change in SPAEC procurement and cost collection, a possibility exists that overcharging may occur. *Id*. at 10. To avoid this dilemma, Large C&I shopping customers would have to be well informed about the need to renegotiate their EGS contracts. *See id*. at 9-10. While such customers already spent significant time and resources negotiating their original contracts with EGSs, the Companies' proposal would place an additional burden on such customers to expend further resources to renegotiate their contractual provisions. Moreover, even after the renegotiation, customers would have to shoulder the burden of monitoring both their EGS and EDC bills to ensure that the correct percentage collection is occurring. *See id.* To require customers to undertake a renegotiation, and then place a further burden on the customer to ensure that the subsequent procurement and collection is correct, does not serve the public interest.

Moreover, the Companies are proposing a 40/60 split, which adds an extra layer of confusion for customers when attempting to confirm that their EDC and EGS are collecting the correct percentage of SPAECs. *Id.* at p. 10. This percentage allocation also decreases the transparency of the SPAEC procurement process and creates risk that customers could be overcharged for SPAECs. *Id.* To that end, an argument could be made that the complexity of this 40/60 split creates an inappropriate barrier to entry in the competitive market if customers were to choose to forego the shopping process due to the confusion regarding procurement responsibilities. *See Investigation of Pennsylvania's Retail Electricity Market*, Docket No. I-2011-2237952, Opinion and Order (entered July 28, 2011), p. 8 (finding that barriers to market entry and competitive product offerings should be eliminated).

The Companies' proposal also presents additional challenges for customers with fixed price contracts who are unable to identify the portion of SPAECs costs that should be added to or, in the case of Met-Ed, Penelec, and Penn Power customers, subtracted from their contracts. *See* Raia St. No. 1, p. 10. Customers with fixed price contracts are charged one price by their EGSs, of which AEPS compliance costs represent but one portion. *See id.* Renegotiation may prove difficult, or even impossible, if customers in the West Penn service territory cannot determine what portion of their current price represents SPAEC costs, while customers in the other Companies' service territories may not be able to agree upon what amount should be added to their current prices. *See id.* at 10-11. Varying market conditions between when the customers originally negotiated their EGS contracts and when the customers would be forced to renegotiate their contracts also could adversely impact the renegotiation process. *Id.* at 11.

Customers with multiple Pennsylvania facilities would be especially affected by the Companies' proposal. Because no other Pennsylvania EDCs procure SPAECs for their shopping customers, much less expect EGSs to procure but a portion of this requirement, such facilities would face differing SPAEC requirements throughout the Commonwealth, thereby complicating any EGS renegotiation and future procurement. As a result, a customer with multiple facilities "would be prevented from standardizing its procurement processes when contracting with EGSs, which would create additional costs for securing generation supply." *Id.* at 10. Accordingly, it is unjust and unreasonable to require customers, especially those with multiple facilities throughout the Commonwealth, to navigate this 40/60 percentage split for each of their shopping contracts.

Especially disturbing is the fact that, despite all of these challenges faced by Large C&I shopping customers due to the Companies' proposed modifications to SPAEC procurement and cost collection, the Companies have set forth no transition plan to assist customers or EGSs in the implementation of this proposal. Raia St. No. 1, Exhibit JR-3, pp. 1-2. Instead, the customers and EGSs are expected to devise their own strategies to modify contracts to ensure accurate SPAEC procurement and cost collection. Moreover, the Companies have not identified any internal safeguards that would ensure that shopping customers are charged for only 40% of their SPAEC procurement, while non-shopping customers are charged for 100% of their procurement. *See id.*

Accordingly, the Companies' proposal to modify the SPAEC procurement and cost collection for Large C&I shopping customers would require such customers to renegotiate their EGS contracts; place the onus on these customers to ensure such modifications are correctly implemented; and add an additional burden on customers with multiple facilities throughout the Commonwealth. As such, the Companies' proposal is not just and reasonable and must be rejected.

ii. A Complete Reading of the Merger Settlement, Combined with PUC Precedent on the Implications of the Public Interest Standards, Indicate that the Companies Are Not Beholden to a 40% Procurement Proposal.

According to the Companies, the primary justification for this proposed modification to SPAEC procurement stems from the terms of the Merger Settlement. As discussed more fully herein, the terms of the Merger Settlement do not hold the Companies to an exact 40/60 procurement. Moreover, while the Companies attempt to argue that the Merger Settlement's division of SPAEC procurement between EGSs and EDCs will promote SPAEC procurement through long- and short-term provisions, more recent Commission precedent has held that the terms of a settlement may be jettisoned if they are not in the public interest. Finally, the Companies suggest that this proposed modification is necessary to address the current SPAEC environment; however, further review shows that changes in market conditions no longer require such efforts by the Companies. Because the Companies' proposal is detrimental to the interest of the public, and more specifically, Large C&I shopping customers, the PUC is required to reject it.

Initially, the Companies claim that they "are obligated to undertake this procurement in accordance with the settlement of the merger of FirstEnergy Corp. and Allegheny Energy, Inc., which was approved by the Commission." Rebuttal Testimony of Dean W. Stathis on behalf of the Companies (hereinafter, "Companies' St. No. 4-R"), p. 11. As a threshold matter, however, the Merger Settlement does not hold the Companies to a 40% procurement of SPAECs for all customers. Rather, the Merger Settlement merely indicates that Met-Ed, Penelec, and Penn

Power "will propose in the [next] default service filings…to procure 40% of their solar requirements for the period 2011 through 2012 using long-term contracts of 10 years in length…." Companies' Hearing Exhibit DWS-7 at 12 (emphasis added).

Nothing in the Merger Settlement language prohibits the Companies from proposing a procurement above 40%. In addition, the terms of the Merger Settlement do not even require West Penn to modify its procurement whatsoever. Finally, the Merger Settlement explicitly states that Signatory Parties may propose changes to this percentage requirement. *Id*. The Merger Settlement provides a baseline for purposes of Met-Ed, Penelec, and Penn Power's SPAEC procurement in this DSP filing, with the recognition that parties thereto would have the opportunity and ability to propose recommendations as necessary.

In addition, the Commission must remain aware of the fact that West Penn is not beholden by this aspect of the Merger Settlement, which only mandates that those Companies already utilizing an SPVRC Rider (*i.e.*, Met-Ed, Penelec, and Penn Power) must recognize the 40% SPAEC procurement issue. *See id.* For West Penn, the Companies' proposal is merely an unwarranted interference with shopping contracts in the West Penn service territory. Absent a strong public policy reason, and to date none has been presented, and in light of the importance of upholding the sanctity of private contracting, EGSs should continue to procure 100% of the SPAECs for their customers in the West Penn service territory.

Moreover, the Commission recently held that the terms of the Merger Settlement could be set aside when they are contrary to the public interest. *See Petition of Metropolitan Edison Company for Approval of Solar Photovoltaic Alternative Energy Credit Purchase Agreement with Air Products and Chemicals, Inc.*, Docket No. P-2011-2264304, Order (entered Sept. 15, 2011) (hereinafter, "SPAEC Order"). Specifically, under the Merger Settlement, the Companies were permitted to acquire SPAECs, pursuant to PUC approval, under long-term contracts at or below the most recent average price obtained by any one of the FirstEnergy EDCs through a Commission-approved request for proposals process. Companies' Hearing Exhibit DWS-7, p. 12. To that end, Met-Ed requested PUC approval of an agreement to purchase SPAECs from Air Products and Chemicals, Inc., at a price identical to that obtained by Penn Power in its most recent SPAEC purchase. SPAEC Order, p. 3. Although the terms of the agreement adhered to the requirements of the Commission-approved Merger Settlement, the Commission took issue with the agreed-upon SPAEC purchase price. *Id.* at 4. The Commission found that, since the prior Penn Power procurement, SPAEC market prices had decreased to such an extent that the Companies' prior purchase price no longer reflected SPAEC market conditions. *Id.* Deeming the proposed purchase price "contrary to the public interest," the Commission denied approval of the Met-Ed agreement. *Id*.

As exemplified in the *SPAEC* Order, the terms of the Merger Settlement cannot be implemented if such implementation is found by the Commission to be contrary to the public interest. In this instance, the proposed 40/60 SPAEC procurement split between EDCs and EGSs creates a burden on Large C&I shopping customers through contract renegotiation, arbitrary SPAEC percentage allocations, and continual customer review of EDC and EGS bills to verify that SPAEC procurement responsibilities and costs are properly allocated. *See* Section II.E.2.c.i., *supra*. Accordingly, because the means by which the Companies propose to implement the SPAEC term of the Merger Settlement is not within the public interest, the Companies' request must be rejected.

Finally, the Companies champion the procurement with the claim that it will create "an appropriate balance between SPAECs obtained through long-term EDC contracts and SPAECs obtained by EGSs, which can apply their procurement and hedging experience and strategies to meet their actual AEPS obligations." Surrebuttal Testimony of Dean W. Stathis on behalf of the Companies (hereinafter, "Companies' St. No. 4-SR"), pp. 4-5. The Companies provide no evidence, however, that the current SPAEC market conditions render the Companies' proposal necessary or even cost-effective. While previously, when the costs of SPAECs were significantly higher, procurement of SPAECs by the EDC for all customers may have provided a benefit in overall costs, over the past year, the price of SPAECs has significantly decreased. SPAEC Order, p. 3. As a result, the price stability created by the Companies' long-term contracting may no longer be necessary to ensure cost-effective SPAEC procurement. In fact, in light of the sharp decline in SPAEC prices, EGSs may be in a position to procure more affordable SPAECs for the foreseeable future.

In fact, these changing market conditions are particularly relevant for shopping customers in the West Penn service territory, in which EGSs currently procure 100% of the SPAECs needed to meet the Large C&I shopping customer load. *See* Raia St. No. 1, p. 11. Specifically, West Penn shopping customers would be adversely impacted by being held captive to long-term SPAEC contracts when no demonstrable need exists for such contracts to support solar development given current market conditions. Experience in West Penn's service territory demonstrates EGSs are in a position to provide stable SPAEC prices for their customers. *See id.* Accordingly, because EGSs can cost-effectively procure SPAECs in the renewable energy credit market, West Penn's adoption of a SPVRC Rider is inappropriate at this time. *See id.* Moreover, the Companies have not provided any evidence that West Penn's adoption of a SPVRC Rider is necessary at this time.

Given the plain language of the Merger Settlement, combined with PUC precedent and current SPAEC market conditions, the Companies have not presented any justifications that would legitimize a 40/60 SPAEC procurement split throughout the Companies' service territories. In fact, because such a procurement would be unjust, unreasonable, and contrary to the public interest, the Companies' proposal should be denied.

d. The Industrial Customer Groups' Proposals for SPAEC Procurement.

As discussed more fully above, the Companies' proposal to modify the procurement of SPAECs for Large C&I customers is unjust and unreasonable. To that end, the Industrial Customer Groups recommend that the Companies maintain the status quo, with West Penn procuring 0% of the SPAECs needed for its Large C&I shopping customers, while Met-Ed, Penelec, and Penn Power procuring 100% of the SPAECs needed for their Large C&I shopping customers. In the alternative, however, and assuming that the Companies would want to standardize procurement across the FirstEnergy EDCs, the Industrial Customer Groups would be amenable to all of the Companies procuring 0% of SPAECs required for Large C&I shopping customers, thereby permitting EGSs to procure 100% of SPAECs for these customers, as they currently do in the West Penn service territory. Raia St. No. 1, p. 11.

Maintaining the status quo for each of the FirstEnergy EDCs would eliminate the need for customers to renegotiate their contracts and devise complex strategies for calculating the costs associated with the Companies' proposed 40/60 SPAEC procurement split. Surrebuttal Testimony of Joseph Raia on behalf of the Industrial Customer Groups (hereinafter, "Raia St. No. 1-S"), p. 13. More importantly, maintaining the current approach minimizes the risk that customers would be overcharged by either the EDC or the EGS. If, however, the status quo is maintained, it must be done on a long-term basis, rather than simply through this default service plan period. *Id.* at 13-14. The Companies' continued tinkering with the terms of procurement issues as it relates to EGS contracts undermines the development of a competitive retail electric market. In a successful retail market, Large C&I customers should be permitted to maintain the negotiated terms within their shopping contracts without interference by their EDCs.

Under the alternative proposal in which none of the FirstEnergy EDCs would procure SPAECs for Large C&I shopping customers, such customers would face a one-time contract renegotiation; however, this one-time renegotiation would be mitigated by the assurance that no further changes in procurement would occur. *Id.* at 13. Moreover, customers would avoid the difficulties associated with a split procurement of SPAECs between their EDC and EGS, as customers could easily monitor their SPAEC bills, because they would only be charged by one entity, who would be charging 100% of SPAECs rather than an arbitrary percentage of SPAECs. *See id.*

e. Conclusion

The Companies' proposal to modify the status quo with respect to the procurement process for, and collection of costs related to, SPAECs is unjust and unreasonable due to the burden it places on Large C&I customers to renegotiate their contracts with EGSs; ensure correct and adequate billing and collection in light of a complex procurement process; and consider whether future contracts may be impacted by further incremental changes in such procurement percentages.

Contrary to the Companies' claims, the Merger Settlement does not mandate that the SPAEC procurement be held at 40%, and, in fact, the Merger Settlement recognized that parties may object to a procurement that was not customer-friendly. Moreover, the Commission has already held that the implementation of the terms of the Merger Settlement cannot occur if such implementation is not in the public interest.

Accordingly, the Companies' proposal must be rejected. Instead, the Companies must either maintain the status quo for each of the individual EDCs at issue, or conversely, and at the very least, transfer the procurement and collection of 100% of the SPAEC procurement for Large C&I shopping customers to their applicable EGSs.

F. Contingency Plans

MEIUG, PICA, PPUG, and WPPII have no position on this issue.

G. Supplier Master Agreements

MEIUG, PICA, PPUG, and WPPII have no position on this issue.

III. RATE DESIGN AND COST RECOVERY

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

MEIUG, PICA, PPUG, and WPPII have no position on this issue.

B. Industrial Class: Hourly Pricing Default Service Rider

The positions of MEIUG, PICA, PPUG, and WPPII on this issue are discussed in Section II.C.

C. Market Adjustment Charge

1. Summary and Overview of Each Party's Position

MEIUG, PICA, PPUG, and WPPII oppose the Companies' proposal to implement the collection of a $5.00 per MWh MAC adder from all residential and commercial default service customers.[8] Joint Petition, p. 16; *see also* Raia St. No. 1, pp. 12-13. While the Companies attempt to offer other justifications for implementation of the MAC, in actuality, the MAC is nothing more than an attempt by the Companies to apply an inappropriate Rate of Return ("ROR") component to the Companies' procurement of default service. *See* Section III.C.2.b.,

[8] Although the Companies are not proposing to charge the MAC to Large C&I customers, the Industrial Customer Groups are concerned about incorporating a MAC in the Companies' DSPs from a policy perspective, including any implications that the MAC could eventually be broadened to include Large C&I customers.

infra. Contrary to the Companies' claims, the PUC has jurisdiction over an ROR component, and such a charge cannot be included in an EDC's least cost procurement methodology for default service. *See* Section III.C.2.b., *infra*. Moreover, the MAC would create an inflated PTC, potentially resulting in an artificial increase in prices proffered in the market. *See* Section III.C.2.c., *infra*. In light of the fact that the PUC has previously rejected inclusion of an "ugly adder" in the PTC, the Companies' arguments that the MAC should be supported as a similar means to encourage competition must similarly be rejected. *See id.* Accordingly, because the Companies' request for a MAC violates PUC rules and regulations, the proposal must be denied.

2. Position of Parties Opposed

a. The Commission Must Utilize Its Regulatory Authority To Review Any Type of Market Adjustment Charge.

Despite the Companies' allegation that the MAC cannot be analyzed through the application of traditional utility ratemaking concepts, Public Utility Code explicitly authorizes the Commission to review all rates established by EDCs, including default service rates. Rebuttal Testimony of Charles V. Fullem on behalf of the Companies (hereinafter, "Companies' St. No. 7-R"), p. 5; *see also* 66 Pa. C.S. §§ 2801, *et seq.* Accordingly, the Commission must utilize its authority to vet the Companies' proposal thoroughly, which, as discussed more fully herein, represents an unlawful attempt to implement an ROR into the Companies' default service procurement costs. *See* Section III.C.2.b., *infra*.

Pursuant to the provisions of the Competition Act, the EDC must act as the provider of last resort (*i.e.*, the default service provider), unless and until the Commission approves another default service provider. 66 Pa. C.S. § 2802(16). As the statutorily-mandated default service provider, the EDC "shall have the right to recover on a full and current basis, pursuant to a reconcilable automatic adjustment clause under section 1307…all reasonable costs incurred under this section and a commission-approved competitive procurement plan."

Id. § 2807(e)(3.9). Pursuant to Section 1307, the Commission will not approve proposed rates collected through automatic adjustment mechanisms if they are "unjust and unreasonable." *Id.* § 1307(a).

The Companies' contention that the MAC would not be subject to traditional ratemaking principles plainly conflicts with the plain language of the Public Utility Code. The Companies are designated by the Commission as the default service providers because an alternative default service supplier has not been approved by the Commission in any of the Company's service territories. As such, the Companies are permitted to recover the costs of procurement pursuant to the terms of their procurement plans; however, such costs may only be collected if they are "reasonable." *Id.* § 2807(e)(3.9); *see also id.* § 1307(a). Accordingly, the MAC, which would be collected by the Companies through automatic adjustment mechanisms, can only be approved by the Commission if it is just, reasonable, and otherwise consistent with the Public Utility Code.

As discussed more fully below, the MAC proposed by the Companies is unjust and unreasonable. Although the Companies allege that the MAC could compensate for costs incurred through the default service procurement, while also encouraging default service customers to shop, the true intent of the MAC is to increase the Companies' profit while creating an artificially inflated electricity marketplace. Accordingly, the Commission must utilize its regulatory authority to deny the MAC.

b. The Companies' Proposed Market Adjustment Charge Is an Unjust and Unreasonable Adder that Would Violate the Public Utility Code Provisions Governing Default Service Procurement.

While the Companies argue that the implementation of a MAC would allow the Companies to obtain "value" from customers for the purported risks inherent in obtaining default service procurement, the Companies conveniently ignore the fact that such "value" is not an appropriate factor to be included in the Public Utility Code's requirement that an EDC utilize a least cost procurement methodology. Moreover, even if the Companies' claims that the costs to be collected in the MAC related to such procurement, the record reflects that the Companies have been unable to quantify any such costs. Finally, the Companies' response to various EGS's proposed modifications to the MAC signify that the purpose behind the MAC appears to be nothing more than an attempt to generate additional revenue by the Companies. Accordingly, the MAC must be denied.

Although the Companies argue the purpose of the MAC is to account for the "risk" undertaken by the Companies in procuring default service, further review suggests that the true purpose behind the Companies' request is to allow for a profit margin on the Companies' implementation of default service. *See* Direct Testimony of Charles V. Fullem on behalf of the Companies (hereinafter, "Companies' St. No. 7"), p. 11; *see* Surrebuttal Testimony of Matthew I. Kahal on behalf of the OCA (hereinafter, "OCA St. No. 1-SR"), p. 13. Because the MAC conflicts with the Public Utility Code, which requires an EDC's procurement be based upon a "least cost over time" procurement methodology, the MAC must be denied. 66 Pa. C.S. § 2807(e).

EDCs acting as default service providers are required to offer default service according to requirements set forth in the Public Utility Code. *See generally id.* § 2807. In 2008, Act 129 amended the Public Utility Code to state that default service procurement should be based upon a "least cost over time" methodology. *Id.* § 2807(e). More recently, the Commission explained that "least cost over time" is not equivalent to the lowest cost at a particular time, but instead a consideration of affordability, in conjunction with adequacy and reliability, as compared to alternatives. *See* September 2011 Order, p. 12. On this basis, an EDC's default service procurement must utilize a "least cost" procurement, which does not allow for the implementation of a profit margin for the EDC.

While the Companies posit that the purpose of the MAC is to compensate for the "value" provided to default service customers for the EDC's assumption of the risks related to default service procurement, such "value" does not fall within the least cost procurement standard set forth in the Public Utility Code. *See* Companies' St. No. 7, p. 11; *see also* Direct Testimony of Robert D. Knecht on behalf of the OSBA (hereinafter, "OSBA St. No. 1"), p. 5. Moreover, the Companies' request to collect $5.00 per MWh from default service customers, with no additional benefits to customers related to adequacy or reliability of the Companies' service, confirms the MAC falls outside of the parameters of a least cost procurement methodology. *See* 66 Pa. Code § 2807(e). As such, inclusion of a MAC to the Companies' default service procurement costs is diametrically opposed to the statutory requirement that an EDC must utilize a "least cost over time" procurement methodology.

In an effort to suggest that the purpose of the MAC is for more than simply providing the Companies with a return on their investment, the Companies assert the MAC will be used to compensate for a number of costs that are incurred for default service procurement.[9] *See* Companies' St. No. 7, p. 13; Companies' St. No. 7-R, p. 9. The Companies have been unable, however, to quantify the exact cost of these items. *See* OCA St. No. 1-SR, p. 11. While the Companies state that the MAC would result in their collection of approximately $140 million over the two-year default service term, the Companies provide no breakdown of how this $140 million would be allocated as compensation for these alleged costs. In fact, the Companies

[9] For example, the Companies assert that customers should compensate them for their uncollectible expenses and the "goodwill" associated with their brand name. *See* Companies' St. No. 7, p. 13; Companies' St. No. 7-R, p. 9.

provide no quantification of their alleged costs whatsoever. *Id.* There is simply no way to defend the collection of $140 million dollars for costs that cannot be quantified.

Finally, if there were any doubt that the MAC would operate only to increase the Companies' profits, the Companies' reactions to the proposals of RESA and Dominion to modify the MAC should be considered. *See* Direct Testimony of Christopher H. Kallaher on behalf of RESA (hereinafter, "RESA St. No. 2"), p. 21; *see also* Direct Testimony of Thomas J. Butler on behalf of Dominion (hereinafter, "Dominion St. No. 1), p. 10. Namely, if the Companies were genuinely interested utilizing the MAC to stimulate shopping, they would refund the MAC proceeds to customers in a competitively-neutral manner as proposed. Direct Testimony of Matthew I. Kahal on behalf of the OCA (hereinafter, "OCA St. No. 1"), p. 40. In response to both Dominion and RESA, however, both of which propose such reimbursement mechanisms, the Companies oppose any reimbursement of MAC revenues to customers. *See* Companies' St. No. 7-R, pp. 12-13. The unwillingness of the Companies to consider such reimbursement suggests that the true purpose of the MAC is to focus on providing a profit to the Companies' shareholders, as compared to actually collecting quantified costs or purportedly "improving" the competitive marketplace.

Disguised as a mechanism that would reimburse the Companies for costs they have yet to quantify, the true intent of the MAC can only be considered as a means to increase the Companies' ROR. As a result, the MAC is inconsistent with the least cost procurement methodology required by the Public Utility Code and therefore must be denied.

c. The Imposition of a Market Adjustment Charge To Facilitate Shopping Is Unjust and Unreasonable.

Even assuming, *arguendo*, that the true purpose of the MAC is to encourage customers to shop, in actuality, the Companies' proposal to implement a MAC would result in an unjust and unreasonable adder onto default service rates, which would inappropriately and artificially increase the Companies' PTC. As a result, the MAC would be detrimental to both shopping and non-shopping customers, while also hindering the ability of the natural forces to create a truly competitive market for generation. Accordingly, the MAC must be rejected.

As explained above, the Commission will not approve a default service cost unless it qualifies as just and reasonable. 66 Pa. C.S. § 1307(a). Moreover, as part of its rulemaking process to define the obligations of an EDC, the PUC determined that to "foster a competitive market, any POLR service model must be designed to avoid distortions to the market." *Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant To 66 Pa. C.S. § 2807(e)(2),* Docket No. L-00040169, Proposed Rulemaking Order (entered Dec. 16, 2004), p. 3. Thus, a proposal that interferes with market evolution by including an "ugly adder" conflicts with the intent of both the Public Utility Code and Commission precedent for purposes of developing a competitive electricity market.

As proposed by the Companies, the MAC is an inappropriate mechanism for encouraging shopping among residential and commercial default service customers. First and foremost, the MAC is unjust and unreasonable because it would result in an artificially inflated default service price due to the fact that it would increase default service prices without any cost-based justification. *See* OCA St. No. 1-SR, pp. 11-12. For this reason alone, the MAC should be denied as unjust and unreasonable.

Moreover, the Companies err in their reasoning that the MAC would encourage default service customers to shop, as the Companies ignore the fact that some customers who receive default service may not be doing so by choice. *See* Companies' St. No. 7, p. 11. For example, a customer may be in transition between EGS contracts or pursuing other competitive options after their EGS has left the market due to unforeseen circumstances (*e.g.*, bankruptcy). Industrial Customer Group's Joint St. No. 1, pp. 12-13. Similarly, a customer may be receiving default service due to an inability to find an EGS willing to serve it or because the EGS has summarily returned the customer to default service. *See* Surrebuttal Testimony of Robert D. Knecht on behalf of the OSBA (hereinafter, "OSBA St. No. 3"), p. 7. For these customers, the MAC is not only unjust and unreasonable, but it would not contribute to the Companies' stated purpose of facilitating shopping, as these customers would be inappropriately punished for receiving default service by no fault of their own. *See id.*

Contrary to the intent of the Competition Act, the MAC also interferes with competitive forces in the electric market. *See generally* 66 Pa. C.S. § 2802. Although it is possible that the MAC could contribute to increased shopping, an artificially increased PTC could cause EGSs to increase their prices. Because EGSs would be trying to attract default service customers, it is reasonable to assume they would offer a price lower than the PTC, but perhaps not as low as their prices might be without the presence of the MAC. OCA St. No. 1-SR, p. 15. Unlike other mechanisms for encouraging shopping, many of which were evaluated as part of the Commission's Retail Electricity Markets Investigation, the MAC is an unjust and unreasonable means for facilitating the development of the competitive market. *See* Rebuttal Testimony of Scott Granger on behalf of I&E (hereinafter "I&E St. No. 1-R"), p. 6.

An artificially increased default service price, created by the MAC, would not only punish default service customers, but also competitive supply customers who are offered higher rates by their EGSs in response to an artificial increase in the PTC. Moreover, the MAC would fail to address changes in shopping levels for those customers who are receiving default service through no "choice" of their own. According, the MAC must be rejected.

d. Conclusion

The Public Utility Code provides the Commission with jurisdiction to review the appropriateness of an EDC's request to collect costs incurred pursuant to an EDC's default service plan. The PUC's review of the Companies' proposal to include a MAC adder to their PTC will find that the MAC is nothing more than an inappropriate and unreasonable attempt by the Companies to obtain a rate of return on their provision of default service, which is contrary to the "least cost procurement" methodology required by the Public Utility Code. Moreover, even if the Companies' argument that a MAC adder would benefit the retail market, both legal and factual review indicates that the MAC cannot be approved on this basis. Accordingly, the PUC must reject the Companies' proposal.

3. RESA's Proposed Modification

MEIUG, PICA, PPUG, and WPPII reject a MAC for the principles stated above, with or without modification. The MAC is an unjust and unreasonable mechanism to facilitate shopping.

4. Dominion's Proposed Modification

MEIUG, PICA, PPUG, and WPPII reject a MAC for the principles stated above, with or without modification. The MAC is an unjust and unreasonable mechanism to facilitate shopping.

D. Default Service Support Rider

1. Non-Market Based Transmission Cost

a. Background.

In 1996, Pennsylvania adopted the Electricity Generation Customer Choice and Competition Act ("Competition Act") to encourage more affordable, safe, and reliable electric service, as well as promote business and industry throughout the Commonwealth. *See generally* 66 Pa. C.S. § 2802. In order to allow EGSs to sell electricity directly to customers in the Commonwealth, the Competition Act provided for an unbundling of generation, transmission, and distribution services, which had previously been offered as a bundled product by EDCs. *Id.* § 2802(13); *see also id.* § 2804(3). As a result of this unbundling, customers could negotiate with competitive retail suppliers (*i.e.*, EGSs) who would provide such "shopping" customers with both generation and transmission service, while the customer would continue to receive distribution service from the EDC. Conversely, "non-shopping" customers, who chose to remain with the EDC, would receive generation, transmission, and distribution service under the EDC's "provider of last resort" default service. *See id.* § 2802(16). Moreover, the PUC adopted regulations, consistent with the Competition Act, that assign responsibility for generation and transmission service to the same entity, *i.e.*, the EDC must provide generation and transmission service for non-shopping customers, and the EGS must provide generation and transmission service for shopping customers. 52 Pa. Code § 54.182; *see also id.* § 54.187(d).

Pursuant to the Competition Act, generation became a competitive product available to all customers throughout the Commonwealth. Although the PUC retained jurisdiction over EDCs' provision of distribution service, the Federal Energy Regulatory Commission ("FERC") regulates the terms and conditions of transmission service, including wholesale transmission rates. To that end, PJM is charged with the safe and reliable operation of the PJM transmission region, which includes the Companies' service territories. *See* Operating Agreement of PJM, Third Revised Rate Schedule FERC No. 24, Second Revised Sheet No. 32, Section 7.7(i)(A). As part of this responsibility, PJM determines each transmission owner's (*i.e.*, also the EDC in the case of the Companies) transmission obligation for the forthcoming year as set during the one coincident peak ("1-CP") during the previous year. Specifically, prior to January 1 of each year, PJM alerts an EDC as to its transmission obligation for the previous year. The EDC then determines each customer's individual obligation based upon that customer's 1-CP usage. The EDC is then able to provide PJM with the overall transmission obligations of all of the EGSs on the EDC's system, including the EDC's transmission obligation as it relates to the provision of default service. For customers that do not receive default supply, PJM bills each LSE (who serves as an EGS under Pennsylvania's rules) for the transmission costs incurred during the year based upon that LSE's transmission obligation.[10] *See* Tr., p. 88.

Because a purpose of the Competition Act was to allow customers the ability to negotiate for energy service, and the Commission's regulations state that EGSs should charge shopping customers for both generation and transmission, Large C&I shopping customers generally have two options with respect to transmission costs: (1) a pass-through transmission arrangement, or (2) a fixed-price transmission arrangement. *See* Raia St. No. 1-S, p. 4; *see also id.* at 73. Under a pass-through transmission arrangement, the EGS directly flows through to the customer its actual transmission costs incurred by the customer based upon the individual customer's 1-CP transmission obligation. *See id.* at 69. Because this is a direct "flow-through" of such costs, the

[10] For a Large C&I shopping customer, the customer often obtains its individual transmission obligation directly from the EDC and then provides it to its EGS. Surrebuttal Testimony of Alex Fried of Procter and Gamble Paper Products Company on behalf of the Industrial Customer Groups (hereinafter, Fried St. No. 1-S), p. 4; *see also* Tr. 69.

EGS does not incur any risk in the event that transmission costs either increase or decrease over the course of the customer's contract. Rather, the customer takes the risk of changing transmission costs, but the customer is able to avoid any "risk premium" that might be included by the EGS in its energy price if this direct pass-through did not occur.

By contrast, under a fixed-price transmission product, the EGS may include a "risk premium" in the customer's overall price that would allow the EGS to hedge the costs of fluctuating transmission costs over the course of a contract. In return, however, the customer may pay a premium for the EGS to shoulder such risk. Moreover, under this type of product offering, the customer would receive a single combined price for generation and transmission that remains steady over the course of the entire contract, thereby allowing the customer the ability to budget for a set energy price over the term of the contract. *See* Raia St. No. 1-S, pp.4-5.

b. Companies' Proposal

Consistent with the Commission's regulations, shopping customers on the Companies' systems currently remit generation and transmission costs to their EGSs, while non-shopping customers are charged both generation and transmission costs under each individual Company's default service rates.[11] In the instant proceeding, the Companies propose to depart from the process required by the Commission's regulations to utilize non-bypassable Default Service Support Riders ("DSSRs") that would collect transmission costs from all customers, as opposed to these costs being collected by EGSs from shopping customers. Joint Petition, p. 17. Via their DSSRs, the Companies would collect the following non-market based transmission costs ("NMB

[11] For residential and small commercial default service customers, these costs are collected through Met-Ed's, Penelec's and Penn Power's Price to Compare ("PTC") Default Service Rate Riders and West Penn's Transmission Service Charge Rider. Joint Petition, pp. 14-15. For Large C&I default service customers, transmission costs are collected via Met-Ed's, Penelec's and Penn Power's Hourly Pricing Default Service Riders and West Penn's Transmission Service Charge Rider *Id.* at 15-16.

Transmission costs") from both shopping and non-shopping customers:[12] (1) Network Integration and Transmission Service ("NITs"); (2) Regional Transmission Expansion Plan ("RTEP"); (3) Transmission Enhancement Charge ("TEC");[13] and (4) Generation Deactivation.[14] *See, e.g.*, Companies' Exhibit RLS-2, Appendix C; *see also* Tr., p. 72. If the Companies' proposal is adopted, transmission charges would be allocated to each customer class based on each class's 1-CP demand, as compared to utilizing each individual customer's 1-CP obligation. Companies' St. No. 2, p. 26. The Companies would then collect these costs from individual Large C&I customers based on the customer's highest monthly demand charge. *Id.* at p. 25.

As discussed more fully herein, the Companies' unsubstantiated proposal to shift the collection of NMB Transmission costs from EGSs to the EDCs must be rejected as an unjust and unreasonable proposition that would violate the Competition Act, the Public Utility Code, and the PUC's regulations.

c. In Summary, the Companies' Unsubstantiated Proposal To Collect Non-Market Based Transmission Costs Via a Non-Bypassable Rider Must Be Rejected as an Unjust and Unreasonable Violation of the Competition Act, the Public Utility Code and the PUC's Regulations.

The Companies' proposal violates the Competition Act and contravenes the Public Utility Code in several important respects. As a threshold matter, the Companies' proposal to shift

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[12] Throughout the course of this proceeding, the Companies have continued to indicate that "only NMB transmission charges" will be collected via the DSSR, thereby suggesting that a portion of transmission charges will remain with the EGS. In actuality, all but one transmission-related charge, the "Transmission Scheduling, System Control and Dispatch Service" will remain with the EGS, and the reason for it remaining with the EGS may simply be based upon the fact that the Companies did not even know that this charge existed. *See* Tr. at pp. 71-72. As it stands, however, the Companies would leave responsibility for this one modest charge with EGSs, causing further customer confusion and increasing the risk of customers paying twice for these costs.

[13] The Companies have described these costs as both Expansion costs and Enhancement costs. Companies' St. No. 2, p. 25; *see also* Companies' Exhibit RLS-2; *see also* Tr. at p. 71. The Companies' St. No. 7, p. 8, resolves this discrepancy by providing that PJM Expansion costs are those billed under Schedules 12 and 13 of the PJM Open Access Transmission Tariff, which refer to Transmission Enhancement and Expansion Cost Recovery, respectively. *See* PJM Open Access Transmission Tariff, Schedules 12 and 13. For purposes of this Brief, these costs will be referred to as "TEC costs."

[14] "Unaccounted for energy" is not considered by the Companies as a non-market based transmission cost but is still proposed to be collected via the Companies' DSSRs. *See* Tr. at p. 71.

responsibility for procuring transmission services from the competitive retail market to a regulated service represents a step backward in the evolution of Pennsylvania's retail market. Equally troubling, the Companies' proposal presents concrete risk that customers who have existing supply arrangements that extend beyond the effective date of the proposed DSP may be over-charged for transmission. Moreover, the Companies' request contravenes explicit Commission regulations, which provide that generation and transmission should remain with a customer's retail supplier. As discussed herein, in developing standard rules for default service, the Commission has recognized the value in consistency in default service across the Commonwealth, including the value in efficiency for Large C&I customers with multiple business locations across Pennsylvania. The Companies are effectively thwarting such businesses' ability to realize efficiency gains through standardized retail procurement throughout the Commonwealth.

Not only is the concept of the NMB Transmission Rider inconsistent with established law and policy, but perhaps even more objectionable is the proposed the rate design of the non-bypassable DSSR, which is unjust, unreasonable, and inappropriately discriminatory. Divorcing transmission cost recovery from cost causation, as proposed by the Companies, will result in unlawful discrimination and jeopardize investments made by Large C&I customers to control their transmission costs. Finally, although the Companies have the burden of proof in this proceeding, none of the reasons set forth by the Companies to date would permit the Commission to waive, if not effectively ignore, the aforementioned requirements. For these reasons, the Companies' request to utilize non-bypassable riders to collect NMB Transmission costs must be denied. If the Companies' request is approved, however, the DSSR itself must be modified to reflect cost-causation principles to allow transmission costs for Large C&I customers to be charged based on individual customer's transmission obligation as determined by PJM rules.

d. The Companies' Proposal Must Be Rejected As Inconsistent with the Requirements of the Competition Act.

A primary purpose of the Competition Act was to allow for the fair and equitable transition to a retail electric market by unbundling the various rate elements on a just and reasonable basis without undue discrimination. 66 Pa. C.S. § 2804(3); s*ee generally id.* § 2802. Particularly as they apply to Large C&I customers, the Companies' proposal to collect NMB Transmission costs through a non-bypassable DSSR, including the rate design of that DSSR, thwarts the Competition Act's objectives.

This section demonstrates that, as a threshold matter, the Competition Act contemplated the unbundling of electric service in order to drive product and pricing innovation for not only generation but also transmission. Currently, Large C&I customers derive benefits from being able to negotiate for transmission service on terms and conditions that serve their business objectives, which the Companies' proposal would eliminate. *See* Raia St. No. 1-S, pp. 4-5; *see* Fried St. No. 1-S, p. 4. As such, the Companies' proposal ignores the fact that Large C&I customers have negotiated contracts that extend beyond the effective date of the DSP II, thereby placing Large C&I customers at risk for being over-charged, if not charged twice, for transmission. *See* Industrial Customer Groups; St. No. 1, p. 6. Even if the Companies' NMB Transmission proposal were reasonable, however, the rate design of the DSSR Rider fails to follow cost causation principles and, as such, results in undue discrimination for Large C&I customers. Accordingly, the Companies' proposal must be denied. At a minimum, if the NMB Transmission proposal were to be approved, the DSSR must be modified for Large C&I customers to reflect cost causation principles, and safeguards must be developed to ensure existing shopping customers receive the benefit of their bargain and are not charged twice for transmission.

i. The Companies' NMB Transmission Proposal Represents a Step Backwards in the Evolution of the Retail Market by Re-Bundling Transmission with Distribution Service.

The Competition Act provides for "the unbundling of electric utility services, tariffs and customer bills to separate the charges for generation, transmission and distribution." 66 Pa. C.S. § 2802(13); *see also id.* § 2804(3). The purpose of this unbundling was to stimulate increased retail competition among the component parts of electric service, with the goal of spurring innovation and efficiencies. *See generally id.* § 2802.

In the instant proceeding, the Companies undertake the remarkable step of proposing to re-bundle transmission and distribution. Met-Ed and Penelec proposed a similar proposal in their last DSP proceeding. *Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Programs; Docket Nos. P-2009-2093053 and P-2009-2093054*, Opinion and Order (entered Aug. 12, 2009). Industrial Customers objected to the proposal then as inconsistent with the Competition Act's unbundling requirements; Industrial Customers continue their opposition to the Companies' proposal as inconsistent with the Competition Act. The proposed re-bundling of distribution and transmission is contrary to the plain language of the Competition Act and must be rejected.

The framers of the Competition Act understood that benefits could accrue to customers if they have the right to negotiate with their suppliers on the terms and conditions under which they receive transmission service. Since the inception of the retail electric market in Pennsylvania, Large C&I customers have been able to make business decisions to tailor the term and conditions under which they purchase transmission service by negotiating with an EGS. *See* Tr. at p. 290. With respect to transmission, a customer can structure an arrangement under which its EGS passes-through the cost of transmission service based on the customer's own transmission obligation. *Id.* at 69. The benefit of this approach is that a customer would be charged the then-current transmission rate based on the customer's own contribution to the cost of the transmission system (*i.e.*, the customer's load on the system peak day). *See* Fried St. No. 1-S, p. 4. Alternately, an EGS may offer a fixed price for electric service, including both generation and transmission service that does not vary. A Large C&I customer may prefer this approach for stable budgeting purposes. *See* Raia St. No. 1-S, pp. 4-5. Unfortunately, under the Companies' proposal, customers would no longer have the option to elect a pricing methodology that meets their business objectives, whether it is being charged based on actual costs or stable pricing.

In summary, the plain language of the Competition Act calls for unbundling of generation, transmission, and distribution. The Companies' NMB Transmission proposal would, if approved, effectively re-bundle transmission and distribution, circumscribing customers' options in the retail market. For this reason, the Companies' NMB Transmission proposal violates the Competition Act and should be denied.

ii. Contrary to the Requirements of the Competition Act, the Companies' NMB Transmission Proposal Fails To Address Important Transition Issues Fairly, Risking Customers Being Over-Charged for Transmission.

The Companies' NMB Transmission proposal raises fundamental transition issues for numerous customers that have competitive supply contracts, which include a transmission component, that extend beyond the effective date of the proposed DSP plan. If the Companies' proposal were adopted, all such customers would be at risk of being over-charged for transmission and would thus need to negotiate with their EGSs so that they would be charged only once for transmission service. No party to this proceeding, including the Companies who bear the burden of proof, has presented a compelling plan to ensure that currently shopping customers are not adversely affected by the Companies' proposal.

The Competition Act requires that the transitional issues that arise as the competitive market evolves must be resolved "in a manner that is fair" to all customers. 66 Pa. C.S. § 2802(8). With the risk of shopping customers being over-charged for transmission under the Companies' proposal, the Commission must ensure that shopping customers are fairly treated, including not being over-charged for transmission.

The problem is of acute concern for shopping customers receiving service under a fixed-price contract. Because NMB Transmission costs are embedded in the fixed price, the costs are difficult to remove according to the EGSs involved in this proceeding. *See, e.g.*, Rebuttal Testimony of Thomas J. Butler on behalf of Dominion (hereinafter, "Dominion St. No. R-1"), p. 11. RESA testifies that the nature of NMB Transmission costs prevents EGSs from removing them from their contract prices: "In the competitive market, a multitude of factors are balanced in offering a particular price and product to a customer. Therefore contracts may or may not include a specific "line item" to account for these charges." Rebuttal Testimony of Aundrea Williams on behalf of RESA (hereinafter, "RESA St. No. 1-R"), pp. 10-11. As a result, in RESA's view, "it likely would be impossible" to determine what portion of a contract price represents NMB Transmission costs. *See id.* If suppliers cannot ascertain the amount attributable to transmission costs for their existing supply agreements that extend beyond the effective date of the DSP, the concern that shopping customers would be over-charged, if not charged twice, for NMB Transmission costs is quite real. Simply put, implementing a proposal that would result in certain shopping customers being over-charged for transmission costs fails to meet the Competition Act's requirement that transitional issues be resolved in a fair manner.

In attempting to justify their proposal, the Companies have remarkably suggested that it may be appropriate for customers with fixed-price contracts to absorb additional transmission costs. According to the Companies, because some fixed-price contracts may include below-market elements, there may be no need to remove NMB Transmission costs from shopping contracts. *See* Companies' St. No. 2-R, p. 10. For obvious reasons, this attempt by the Companies to justify their NMB Transmission proposal must be disregarded. It is patently unjust and unreasonable for the Companies to require customers to absorb transmission costs within their competitive supply contracts and then charge them for NMB Transmission through the DSSR Rider. First of all, no guarantee exists that fixed-price contracts do contain below-market elements that could offset the removal of NMB Transmission costs to such an extent that no renegotiation would be required. Raia St. No. 1-S, pp. 4-5. It cannot be presumed that many, if any, fixed price contracts contain below-market aspects of their pricing. *Id.*

Even assuming that there may be such contracts in existence, the Companies' contention should still be disregarded. The proverbial slippery slope is created if shopping customers are presumed to have below-market contracts and are forced to assume additional costs. For restructured markets to continue to evolve, shopping customers must be permitted to maintain the benefit of their bargain. *Id*. at 5. Customers and EGSs negotiated their agreements in good faith and without any indication that NMB Transmission costs would be removed in the middle of the contract's term. *Id.* Accordingly, to the extent applicable, customers should be permitted to preserve below-market elements within their contracts, and, if necessary renegotiate these contract to address a change in law in order "to mirror the original terms of the contract." *Id.* It would be unjust and unreasonable to permit the Companies' NMB Transmission proposal to interfere with private contractual relationships between EGSs and customers.

A number of other transitional problems further renders the Companies' proposal unfair for customers. *See* Dominion St. No. R-1, p. 11. Assuming that the Companies' suggestion that customers do not need to renegotiate their competitive supply contracts is disregarded, customers would need to take action to address the resulting "change in law" (to the extent customers' shopping contracts had such terms and condition) if the Companies' proposal were adopted. Customers would then have to attempt to renegotiate their shopping contracts with their EGSs to avoid an over-collection of NMB Transmission costs, spending time and resources to remove the costs from their contracts. *See id.*; *see also* Raia St. No. 1-S, pp. 4-5.

If these contracts could be renegotiated, the customers would then need to monitor their EDC and EGS bills for any over-billing caused by the transition to a new billing arrangement, due to computer glitches or otherwise. *See id.* Fundamental principles of fairness dictate that the Commission not adopt a proposal that would have such negative effects on customers, including being forced to renegotiate contracts and assume the risk of the potential for over-billing.

Despite the necessity for widespread renegotiation of shopping contracts if their proposal were adopted, the Companies provide no transition plan to ensure that customers are safeguarded against being over-charged for transmission. Raia St. No. 1, Exhibit JR-1, p. 1. At the very least, if the Commission were to adopt the Companies' NMB Transmission proposal, it must establish customer protections, consistent with the Competition Act directive that transition issues must be fair to customers. Specifically, elements of a transition plan must grandfather those customers with contracts that extend beyond June 1, 2013. Under this approach, shopping customer could postpone the renegotiation of their shopping contracts until the end of their contract terms. Although the Companies' proposal would still be unjust and unreasonable as it pertains to the DSSR rate design, a grandfathering provision would at least reduce the likelihood of double billing and the need for customers to expend time and resources to renegotiate their customers.

iii. Because the Companies' Proposal Would Violate Commission Regulations That Provide for Generation and Transmission To Be Charged by the Same Entity, the Companies' Proposal Should Be Rejected.

After the passage of the Competition Act, the PUC adopted regulations to implement the Competition Act, which explain how customers should be charged for generation, transmission, and distribution services. Specifically, the Commission found that the PTC, the line item on a default service customer's bill that the customer may compare to the price offered by an EGS, should be "equal to the sum of all unbundled generation and transmission related charges to a default service customer for that month of service." 52 Pa. Code § 54.182; *see also Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant to 66 Pa. C.S. § 2807(e)(2)*, Docket No. L-00040169, Final Rulemaking Order, (entered May 10, 2007). The intention of this regulation is to specify that the default service provider, as well as the EGS, should charge their customers for both generation and transmission. The Commission elaborates that transmission, similar to generation, is a "default service cost element," which indicates that the Commission envisioned that shopping customers would be charged for transmission by an EGS. *See* 52 Pa. Code § 54.187(d). Consistent with these Commission regulations, EGSs and default service providers throughout the Commonwealth charge their customers for the costs of both generation and transmission.[15]

The Commission's regulations provide that generation and transmission should be charged by the same entity, thereby promoting standardization throughout the Commonwealth

[15] Since 1999, shopping customers have structured their shopping contracts to include generation and transmission. Tr. at p. 290. Shopping customers generally view the EDC's role as the distribution service provider. *See id.* The Commission's regulations codified this straightforward division of responsibility amongst the EGSs and EDCs.

and assisting customers in their navigation of a competitive market that contains two different entities for electric service. *See* Tr. at p. 290. The Companies agree that "those provisions are part of the regulations' broader purpose to assure that the price to compare includes the same categories of costs that EGSs are incurring to offer competitive generation service." Companies' St. No. 2, p. 27. To that end, all EDCs throughout Pennsylvania charge only distribution rates to shopping customers, while allowing EGSs to collect transmission and generation costs.

This standardization is especially important for Large C&I customers with multiple facilities in different Pennsylvania EDC service territories. When these customers organize procurement for their various facilities, standardized charges among EDCs and EGSs facilitate more efficient procurement processes and limit the time and resources the customers expend on these processes. *See* Industrial Customer Groups' Joint St. No 1-S, p. 6. For example, Sheetz, Inc., a company with numerous facilities throughout the Commonwealth, "has become accustomed to the collection of transmission costs through its shopping contracts, because this is a uniform requirement within all Pennsylvania shopping contracts." *Id.* As a result of this standardization, Sheetz, and companies similarly-situated to Sheetz, can develop standardized procurement terms that can be included in their Pennsylvania shopping contracts to simplify their contract negotiations with EGSs. *See id.*

Because all EGSs currently charge their customer for NMB Transmission costs per the Commission's regulations, the Companies' proposal adds complexity to the procurement process for chain businesses that would have to modify their Requests for Proposal and shopping contracts according to the specific standards determined by each Pennsylvania EDC. "Generation and transmission has been something billed by the EGSs, and to make a change, a diversion from that now… just creates additional confusion and makes it more difficult for customers to shop." Tr. at p. 313. Although the competitive market is not perfectly standardized, the removal of transmission costs from shopping contracts is a fundamental change to the competitive electric market, which since its inception has featured EGSs charging their customers for generation and transmission. *See* Industrial Customer Groups' Joint St. No 1-S, p. 6.

The Commission's regulations provide for costs associated with generation and transmission service to be collected by the same entity. This is a long-standing aspect of the market in Pennsylvania. The regulations foster a reasonably standardized market, which customers can rely upon when structuring their procurement processes. For markets to function as envisioned by the General Assembly, barriers to entry, such as inconsistent frameworks for shopping access EDC service territories, should not be institutionalized. Rather, the Commission's efforts to build statewide standardization, as memorialized in the Commission's regulations, should be taken seriously. As a result, the Companies' proposal, which alters these important aspects of the market and conflicts with the Commission's regulations, should be denied.

iv. The Companies' Proposed Rate Design To Collect NMB Transmission Costs Through the DSSR Rider Must Be Rejected As Contrary to the Competition Act and Unduly Discriminatory.

Industrial Customers have explained, *supra*, that the Companies' proposal to shift responsibility for arranging transmission service from EGSs is contrary to the Competition Act. Perhaps the most offensive aspect of the Companies' proposal, however, is the proposal to collect such NMB transmission costs from Large C&I customers in a manner that fails to comport with cost causation principles, resulting in unduly discriminatory rates contrary to the requirements of the Public Utility Code. By failing to adhere to bedrock cost causation principles, the

Companies' proposal, if endorsed, would skew important market signals, subvert customers' efforts to manage their transmission costs as they have been able to with transmission being fully unbundled, and result in unfair treatment of Large C&I customers.

Even if the Commission were to be persuaded that the Companies should have consistent treatment for transmission across their Pennsylvania and Ohio operating companies,[16] the Commission must ensure that the manner in which the Companies collect such NMB Transmission costs is consistent with cost causation principles.

As discussed previously, Large C&I shopping customers currently are in a position to work with their EGSs to design an appropriate structure by which they may be charged for transmission service. Under one option, a Large C&I customer may choose to be charged for transmission on a pass-through basis based on the customer's individual transmission obligation as determined by PJM. *See* Tr. at p. 69. Another option may be that a customer may seek a fixed "all-in" price from the EGS for generation and transmission service. *See* Raia St. No. 1-S, p. 5.

The Companies propose a different approach whereby the Companies would determine transmission charges for the Large C&I customer class based on PJM's 1-CP methodology but would then allocate those costs among the Companies' Large C&I customers based on a customer's previous month's peak demand. Companies' St. No. 2, p. 26. While this type of rate structure may resemble rate designs under traditional cost-of-service regulation, they do not have a place in the current restructured retail market. Under the Companies' proposal, a Large C&I customer would no longer have the choice to be allocated its own individual transmission obligation, but rather, would be allocated a portion of the Large C&I class transmission

[16] For the reasons explained in Sections III.D.1.c.i –III.D.1.c.iii, *supra*, Industrial Customers submit that such treatment is contrary to the Pennsylvania Public Utility Code and Commission regulations that govern the Companies' operations in this Commonwealth.

obligation in a manner that is not consistent with how cost responsibility for the transmission system is established under PJM's rules. Customers with pass-through contract arrangements would lose the option of being charged for transmission based on their individual transmission obligation; fixed price customers could no longer rely on a stable monthly transmission charge. The Companies' proposal would violate the Competition Act's requirement for a fair transition by instituting a mechanism that prevents customers from receiving transmission service in a manner of their choosing. 66 Pa. C.S. § 2802(8).

Moreover, the means by which the Companies seek to utilize their non-bypassable DSSRs would also result in inappropriate discrimination among customers within a particular class. In this important regard, the Companies' proposal fails to satisfy the Competition Act's requirement that transition to a fully competitive market must protect against unreasonable discrimination. *Id. § 1304*; *see also id.* § 1301. Specifically, the Companies' proposal discriminates against customers who have invested in self-generation and demand response strategies to reduce their individual transmission obligation. Under existing regulations, Large C&I shopping customers have an incentive to minimize their consumption on peak days to reduce their individual transmission obligation, either through investing in on-site generation or implementing demand response strategies. *See* Fried St. No. 1-S, p. 4. Large C&I customers may, in the competitive market, negotiate to have their individual costs passed directly through so that the customer's costs for transmission service align with their individual contribution to the transmission system's requirements. *See* Tr. at p. 69. Such strategies closely align with Act 129's objectives of reducing EDCs' peak demand.

The Companies' proposal to allocate transmission costs based on the previous month's peak demand skews this valuable market signal and results in unfair treatment of Large C&I

customers, particularly those investing in on-site generation and demand response strategies. The incentive to reduce consumption on peak days is compromised, frustrating efforts by many Large C&I customers to manage their energy costs as contemplated by the Competition Act and Act 129. For example, a Large C&I customer with self-generation capabilities “who would otherwise have a small or non-existent individual transmission obligation” would begin to pay for transmission costs they never caused to be incurred because they would be charged based on their class’ transmission obligation. *See* Fried St. No. 1-S, p. 3; *see also* Tr. at p. 289. When such a customer has higher monthly usage (for whatever reason), it would end up subsidizing customers with higher transmission obligations as calculated under PJM's rules. *See* Fried St. No. 1-S, p. 3.

This inappropriate subsidization would occur because the Companies seek to charge customers within the Large C&I class based on their highest monthly peak demands. Companies' St. No. 2, p. 25. However, customers' monthly demand fluctuations have no impact on the customer's assigned transmission obligation by PJM. *See* Fried St. No. 1-S, p. 3-4; *see also* Tr. at p. 289. If the Companies' proposal is adopted, customers with high monthly consumption, but implemented competitive strategies to lower their transmission obligations, would subsidize customers with lower monthly consumption, who may have triggered a high transmission obligation during peak days. As it stands, the Companies’ proposal would punish customers for responding to market signals and reward customers for ignoring them. This proposal is contrary to the Competition Act, because customers who utilized competitive strategies to lower their transmission costs would pay for the transmission costs of customers who may not have.

Large C&I shopping customers implemented self-generation and demand response strategies because they justifiably relied on the fact that the Commonwealth would continue to support unbundling of the transmission component of service, enabling these customers to procure products that suited their unique needs and requirements. Fried St. No. 1-S, pp. 3-4. Large C&I customers, especially those that have "done the right thing" by investing in on-site generation and demand response strategies to manage their energy costs as contemplated by the Competition Act, will be particularly adversely affected: "charging customers for NMB costs based on the average class demand rather than individual cost causation would produce highly inequitable results among customers." *Id.* at 4. Such a result is contrary to the protections requiring fundamental fairness and protections against undue discrimination in the Public Utility Code. *See* 66 Pa. C.S. § 1304.

Accordingly, the Companies' proposal to collect NMB Transmission costs through a non-bypassable rider based on a monthly billing demand violates bedrock principles of cost causation, creates perverse incentives for customers not to respond rationally to PJM rules and reduce their transmission obligations, and contravenes core provisions of the Public Utility Code and Competition Act that require "fundamental fairness" and protection against undue discrimination. Thus, the Companies' proposed rate design for collecting NMB transmission costs under the ill-advised DSSR must be rejected.

v. The Companies Have Not Met Their Burden of Proof that Their Proposal Is Consistent with the Competition Act and Commission Regulations.

As the party presenting the proposed modification to the collection of NMB Transmission costs, the Companies bear the burden of proof in this proceeding. As set forth herein, however, the Companies fail to provide substantial evidence that would support a request to implement a procedure that would violate both the Competition Act and the PUC's regulations. Rather, the

Companies erroneously rely on an inapplicable Policy Statement and claims from other jurisdictions to support this otherwise meritless proposal. Accordingly, because no evidence has been provided, the Companies' proposal should be denied.

Section 332(a) of the Public Utility Code provides the following with respect to burden of proof: "[e]xcept 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." 66 Pa. C.S. § 332(a). Under Section 315, "[i]n any proceeding…involving any proposed or existing rate of any public utility…the burden of proof to show that the rate involved is just and reasonable shall be upon the utility." *Id.* § 315(a).

According to the PUC, the "party seeking a rule or order from the Commission has the burden of proof" in a proceeding. *Pa. Pub. Util. Comm'n v. Jackson Sewer Corp.,* Docket No. R-00005997, at 5-7 (Nov. 13, 2001). In carrying this burden, a complainant must establish a case before an administrative tribunal using a preponderance of evidence as the requisite degree of proof. *Samuel J. Lansberry, Inc.,* 578 A.2d at 602. The standard of preponderance of the evidence is defined as the greater weight of the evidence, in view of all of the facts and circumstances of the case. *See Se-Lin Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 n.1 (Pa. 1950).

In order to support their burden of proof, the Companies initially rely on a PUC Policy Statement addressing the mechanisms that a wholesale supplier should consider for reducing risk premiums associated with transmission rates. Companies' St. No. 7, p. 9. According to the Companies, the Policy Statement endorses the utilization of adjustment clauses for the recovery of transmission costs. A more complete reading of the Policy Statement, however, indicates that its applicability focuses on wholesale suppliers, rather than the retail market.

Specifically, the Commission's Policy Statement states as follows:

> Wholesale energy suppliers may include a significant risk premium in their competitive bids to hedge against changes in transmission rates during the term of a default service supply contract. The public interest would be served by consideration of mechanisms that allow for the tracking and automatic adjustment of transmission rates during the term of the default service supply contract in order to reduce this premium.

52 Pa. Code § 69.1807(9).

Accordingly, while the public interest, as it applies to wholesale suppliers and the bidding of default service, may be served by an automatic adjustment mechanism for transmission rates, the Companies' attempt to extrapolate this statement to become a basis for eliminating transmission options for shopping customers and implementing unjust, unreasonable, and inappropriately discriminatory transmission rates should not stand.

The Companies are further attempting to justify their utilization of non-bypassable riders for the remittance of NMB Transmission costs because a similar mechanism was adopted in Ohio. However, Ohio is not Pennsylvania, and the evolution of the Ohio electric market has been separate from that of Pennsylvania. In Ohio, for example, there are no regulations that provide for generation and transmission to be charged by the same entity.[17] *But* cf. 52 Pa. Code § 52.182 and § 52.187(d); *See* Tr. at p. 180. This conflicting regulatory structure, as well as market circumstances that may be entirely different from Pennsylvania, render the Ohio analogy irrelevant in the instant proceeding.

Finally, the Companies erroneously suggest that this proposal should be approved by the Commission based upon the mere fact that customers were adequately notified regarding this

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[17] Similarly, the Companies attempt to substantiate this claim by referencing a similar process used in New York for the collection of transmission costs; however, the Companies readily admit that they are not aware whether New York has regulations similar to those in Pennsylvania regarding the unbundling of generation and transmission costs. *See* Tr., p. 180. Moreover, as with Ohio, New York is not Pennsylvania, and the evolution of the New York electric market cannot provide a substantive basis for modifying the Pennsylvania electric market.

change in NMB Transmission cost collection. *See* Companies' St. 2-R, pp. 7-8. Even assuming *arguendo* that the Companies provided such notice, this notice does not obviate the fact that the proposal violates the PUC's rules and regulations, much less quell the significant objections that the Companies' customers have raised regarding this proposal. Accordingly, this claim by the Companies does not support its burden of proof.

The Companies claims that adequate customer notice was provided merely by the fact that publication of the Companies' default service proceeding appeared in the *Pennsylvania Bulletin*. *Id.* at 7. Not surprisingly, the Companies could not provide any information regarding the number of customers that actually review the *Pennsylvania Bulletin*. *See* Tr. at 80. Similarly, the Companies indicated that no steps have been taken to alert customers via individual mailers or contact by customer representatives. *Id*. at 80. Instead, the Companies erroneously focus on the notice that was given to EGSs, including direct filings and meetings, even though it is the customer, rather than the EGS, who will shoulder the burden of confirming that the collection of NMB Transmission costs occurs accurately and appropriately on a customer's bill. *See* Companies' St. No. 2-R, p. 8.

Moreover, the customers that have received notification expressed repeated opposition to the Companies' proposal. In Met-Ed's and Penelec's last default service proceeding, MEIUG and PICA members opposed the collection of NITS through a separate non-bypassable rider. *See* Raia St. No. 1, p. 7.[18] In the instant proceeding, the Industrial Customer Groups continue to oppose the collection of transmission costs through non-bypassable riders. *See* Raia St. No. 1

[18] This proceeding was settled without the inclusion of this non-bypassable rider. *See Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Programs; Docket Nos. P-2009-2093053 and P-2009-2093054*, Opinion and Order (entered Aug. 12, 2009).

and StSt. No. 1. Accordingly, even if the Companies provided adequate notice to customers, this proposal is still opposed by customers, specifically, Large C&I customers.

e. Conclusion

The Competition Act or the Commission's regulations fail to support the Companies' proposal to collect NMB Transmission costs from all customers, regardless of their shopping status. In fact, the Companies request a waiver of the Commission's regulations in order to implement their proposal. Joint Petition, p. 18. This waiver should not be granted for all the above-stated reasons. This proposal is contrary to the Competition Act, because it would re-bundle transmission and distribution, while eliminating competitive transmission products. The adverse impact of the Companies' NMB Transmission proposal is seriously exacerbated by the Companies' unfair rate design proposal by which it would collect the class’s transmission obligation from customers based on a customer's monthly demand. As a result, the Companies' proposed rate design for the DSSR discriminates against customers that have invested in strategies to reduce their transmission obligation, skewing market signals and causing cross-subsidization among Large C&I customers. If the Companies were to prevail in rebundling transmission and distribution, any cost recovery mechanism must be based on cost-causation principles.

In addition, this proposal is unjust and unreasonable, in violation of the Competition Act because of the risks for Large C&I customers receiving service under a fixed price, specifically, that their existing competitive supply agreements may extend beyond the effective date of the DSP and include an embedded transmission component. No protections exist to ensure that customers would not be over-billed for NMB Transmission costs by both their EDC and EGS. The Companies provide no transition plan to minimize the time and resources customers would expend renegotiating their contracts and protect customers from double billing for these costs.

Lastly, the Companies' proffered evidence to support their proposal does not satisfy their burden of proof in this proceeding. Accordingly, the Companies' proposal to begin collecting NMB Transmission costs through non-bypassable riders should be rejected.

2. Generation Deactivation Charges

For the reasons discussed more fully in Section III.D.1, MEIUG, PICA, PPUG, and WPPII oppose any proposed collection of generation deactivation charges through a non-bypassable rider.

3. Unaccounted-For Energy Costs

For the reasons discussed more fully in Section III.D.1, MEIUG, PICA, PPUG, and WPPII oppose any collection of unaccounted for energy charges through a non-bypassable rider.

4. Economic Load Response Charges

For the reasons discussed more fully in Section III.D.1, MEIUG, PICA, PPUG, and WPPII oppose any collection of economic load response charges through a non-bypassable rider.

E. Solar Photovoltaic Requirements Charge Rider

The position of MEIUG, PICA, PPUG, and WPPII on this issue are discussed in section II.E.2.

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

MEIUG, PICA, PPUG, and WPPII have no position on this issue.

G. Reconciliation of Default Service Costs and Revenues

MEIUG, PICA, PPUG, and WPPII have no position on this issue.

H. Other Tariff Charges (Conforming West Penn to Other Companies

MEIUG, PICA, PPUG, and WPPII have no position on this issue.

IV. COMPETITIVE MARKET ENHANCEMENTS

A. Retail Opt-In Aggregation Program

MEIUG, PICA, PPUG, and WPPII have no position on this issue.

B. Standard Offer Customer Referral Program

MEIUG, PICA, PPUG, and WPPII have no position on this issue.

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

MEIUG, PICA, PPUG, and WPPII have no position on this issue.

V. OPERATIONAL ISSUES

A. System "Enhancements" Proposed by Constellation

MEIUG, PICA, PPUG, and WPPII have no position on this issue.

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

MEIUG, PICA, PPUG, and WPPII have no position on this issue.

VI. AFFILIATED INTEREST APPROVAL

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

MEIUG, PICA, PPUG, and WPPII have no position on this issue.

VII. OTHER ISSUES

MEIUG, PICA, PPUG, and WPPII have no other issues to address.

VIII. CONCLUSION

WHEREFORE, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Penn Power Users Group, and the West Penn Power Industrial Intervenors respectfully request that the Pennsylvania Public Utility Commission:

(1) Deny the consolidation of West Penn's Type 20 and 30 Service Types;

(2) Deny the conversion from kW to kWh capacity pricing in West Penn's Hourly-Priced Default Service Rider;

(3) Deny the Companies' proposal to bid out the procurement of West Penn's hourly-priced default service;

(4) Deny the conversion from day-ahead to real-time hourly pricing in West Penn's Hourly-Priced Default Service Rider;

(5) Deny the Companies' procurement of 40% of solar photovoltaic alternative energy credits, and collection through non-bypassable riders;

(6) Deny the collection of a Market Adjustment Charge adder; and

(7) Deny the collection of non-market based transmission costs through non-bypassable riders.

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Dated: May 2, 2012

APPENDIX A

STATEMENT OF QUESTIONS PRESENTED

STATEMENT OF QUESTIONS PRESENTED

Question No. 1: Should the Companies be permitted to consolidate West Penn's Service Types 20 and 30, even though they have not shown that the consolidation would avoid cross-subsidization, which is prohibited by the Public Utility Code, PUC Regulations, and Commission precedent?

Suggested Response: **NO.**

Question No. 2: Should the Companies be permitted to charge West Penn's hourly-priced default service customers for capacity on a kWh basis when it is inconsistent with cost causation principles, and undermines the customer's ability to utilize demand reduction strategies contrary to the intent of the Competition Act and Act 129?

Suggested Response: **NO.**

Question No. 3: Should the Companies be permitted to bid out the procurement of West Penn's hourly default service product when they have not shown that it qualifies as "least cost over time," and it needlessly increases costs for Pennsylvania businesses, contrary to the Public Utility Code, PUC Regulations, and Commission precedent?

Suggested Response: **NO.**

Question No. 4: Should the Companies be permitted to charge West Penn's hourly-priced default service customers based on the real-time LMP when they have not shown that the real-time LMP qualifies as least cost over time, as required by the Public Utility Code, PUC Regulations, and Commission precedent?

Suggested Response: **NO.**

Question No. 5: Should the Companies be permitted to modify the status quo as it pertains to the procurement and collection of SPAECs for shopping and non-shopping customers even though such modification would unjustly and unreasonably burden the public interest in direct contravention of PUC regulations and precedent?

Suggested Response: **NO.**

Question No. 6: Should the Companies be permitted to implement a MAC adder to their Price to Compare even though such an adder would inappropriately allow the Companies to retain a profit on their provision of default service contrary to the least cost procurement methodology required by the Public

Utility Code, while also artificially inflating the competitive market contrary to PUC precedent?

Suggested Response: **NO.**

Question No. 7: Should the Companies be permitted to implement a non-bypassable rider for the collection of non-market based transmission charges even though such a proposal would effectively rebundle transmission service contrary to the requirements of the Public Utility Code, while also resulting in an unjust, unreasonable, and inappropriately discriminatory collection of these costs from shopping customers?

Suggested Response: **NO.**

APPENDIX B

FINDINGS OF FACT

PROPOSED FINDINGS OF FACT

1. West Penn's Service Type 20 and 30 customers are members of different customer classes, and, thus, may have incurred different costs under West Penn's current default service plan. Raia Statement No. 1, p. 14.

2. Charging for capacity on a kW basis is consistent with cost causation principles, including the way in which PJM measures capacity. *See* PJM Open Access Transmission Tariff, Attachment M-2.

3. If charged for capacity on a kWh basis, West Penn's hourly priced default service customers could not effectively utilize demand reduction strategies. *Cf.* Fried Statement No. 1-S, p. 4.

4. The total administrative expenses associated with in-house procurement of West Penn's hourly product were approximately $40,000 in 2011. *See* WPPII Cross-Examination Exhibit No. 4, pp. 3-8; *see also* Tr., p. 131.

5. The day-ahead market has offered lower prices than the real-time market for five of the six past years. *See* PJM 2006 State of the Market Report, p. 87; PJM 2007 State of the Market Report, p. 88; PJM 2008 State of the Market Report, p. 88; PJM 2009 State of the Market Report, p. 99; 2010 State of the Market Report, p. 104; and 2011 State of the Market Report, p. 358.

6. Under the Companies' proposal, Met-Ed, Penelec, and Penn Power would decrease their SPAEC procurement for Large Commercial and Industrial shopping customers from 100% to 40%.

7. Under the Companies' proposal, West Penn would increase its SPAEC procurement for Large Commercial and Industrial shopping customers from 0% to 40%.

8. Under the Companies' proposal, EGSs serving Large Commercial and Industrial shopping customers within the Met-Ed, Penelec, and Penn Power service territories would have to increase their SPAEC procurement for these customers from 0% to 60%. Joint Petition, p. 11.

9. Under the Companies' proposal, EGSs serving Large Commercial and Industrial shopping customers within the West Penn service territory would have to decrease their SPAEC procurement for these customers from 100% to 60%. Joint Petition, pp. 11 and 19.

10. The Market Adjustment Charge is a $5.00 per MWh charge that would be imposed on residential and small commercial default service customers. Joint Petition, p. 16.

11. The Companies have not quantified any costs that would be reimbursed by the Market Adjustment Charge. OCA St. No. 1-SR, p. 11.

12. Customers may not be receiving default service by choice; an EGS bankruptcy or transition between EGSs could cause a customer to return to default service. Raia Statement No. 1, pp. 12-13.

13. The Companies are proposing to collect the following costs within non-bypassable Default Service Support Riders: Network Integration and Transmission Service; Regional Transmission Expansion Plan; Transmission Enhancement Charge; Generation Deactivation; and Unaccounted for Energy. *See, e.g.,* Companies' Exhibit RLS-2, Appendix C; *see also* Tr., pp. 70-71.

14. Large C&I customers derive benefits from being able to negotiate for transmission service on terms and conditions that serve their business objectives. Fried Statement No. 1-S, p. 4.

15. In the instant proceeding, the Companies propose to re-bundle transmission by collecting transmissions costs from shopping customers through a non-bypassable rider. *See* Joint Petition, p. 17.

16. Pass-through transmission provisions within shopping contracts permit shopping customers to be charged for their individual transmission obligation . *See* Tr., p. 69.

17. Fixed-price shopping contracts permit shopping customers to allocate the risk associated with transmission costs to their EGSs. *See* Tr., p. 350.

18. Because transmission costs are embedded within the single price of fixed price shopping contracts, transmission costs may be difficult, or even impossible, to remove from fixed price contracts. *See* RESA St. No. 1-R, p. 10-11.

19. Because the Companies' proposal is structured to allocate Large Commercial and Industrial class based on the Large Commercial and Industrial class demand for the PJM one coincident peak, and then allocate those charges to Large Commercial and Industrial customers based on their monthly demand, customers with low individual transmission obligations if calculated under PJM rules could subsidize customers with high individual transmission obligations if calculated under PJM rules. *See* Industrial Customer Groups' Statement No. 1-S, p. 3-4; *see also* Transcript, p. 289.

20. The Commission's regulations providing that generation and transmission should be charged by the same entity promote standardization throughout the Commonwealth. *See* 52 Pa. Code § 54.182; *see also* 52 Pa. Code § 54.187(d).

21. The Companies do not provide a transition plan to ensure that customers are safeguarded against being over-charged for transmission costs. Industrial Customer Groups' Exhibit JR-1, p. 1.

APPENDIX C

CONCLUSIONS OF LAW

PROPOSED CONCLUSIONS OF LAW

1. The Companies have not shown that their proposal to consolidate West Penn's Service Types 20 and 30 avoids cross-subsidization concerns, as required by Act 129. 66 Pa. C.S. § 2807(e)(7).

2. Because the Companies' proposal to charge West Penn hourly priced customers for capacity on a kWh basis is inconsistent with cost causation principles, and discriminatory against certain Large Commercial and Industrial customers, this proposal is inconsistent with Act 129 and the Competition Act. *See* 66 Pa. C.S. § 2802(6).

3. Because the Companies have provided no evidence that kWh capacity pricing is preferable to kW capacity pricing, the Companies have not established their burden that West Penn's hourly customers should be charged for capacity on a kWh basis. 66 Pa. C.S. § 315(a).

4. Because West Penn's in-house procurement requires minimal expense, the Companies' proposal to bid out the procurement of hourly priced default service does not qualify as "least cost over time." 66 Pa. C.S. § 2807(e).

5. Because real-time hourly pricing is historically more expensive and less preferable to suppliers than day-ahead hourly pricing, the Companies' proposal to charge West Penn's default service customers based on the real-time LMP does not qualify as "least cost over time." 66 Pa. C.S. § 2807(e).

6. It is unjust and unreasonable for the Companies to collect the costs of procuring 40% of the solar photovoltaic alternative energy credits for shopping customersthrough non-bypassable riders when the collection would interfere with shopping contracts, require contract renegotiation, and prevent standardization of the procurement processes for customers with multiple facilities throughout the Commonwealth. 66 Pa. C.S. § 1301.

7. The Market Adjustment Charge, which would impose a charge on customers for costs that are not quantified and would artificially inflate prices in the competitive market, is unjust, unreasonable, and inconsistent with a "least cost over time" procurement methodology. 66 Pa. C.S. § 2807(e).

8. The collection of NMB Transmission costs through non-bypassable riders would re-bundle transmission and distribution, and eliminate options for the pricing of transmission service, in contravention of the Competition Act. 66 Pa. C.S. § 2802(13); *see also* 66 Pa. C.S. § 2804(3).

9. Because shopping customers would not be charged for transmission costs based on their individual transmission obligation as determined by PJM's rules, the Companies' proposal to collect NMB Transmission costs through non-bypassable riders fails to fairly address transitional issues arising in the competitive market, as required by the Competition Act. 66 Pa. C.S. § 2802(8).

10. The collection of NMB Transmission costs through non-bypassable riders would no longer permit generation and transmission to be charged by the same entity, and, thus, prevent customers from standardizing their procurement processes throughout the Commonwealth, contrary to the Commission's regulations. 52 Pa. Code § 54.182; *see also* 52 Pa. Code § 54.187(d).

11. The collection of NMB Transmission costs through non-bypassable riders would result in unjust and unreasonable discrimination against customers who utilize onsite generation and demand reduction strategies to lower their individual transmission obligation, in contravention of the Public Utility Code. 66 Pa. C.S. § 1304; *see also* 66 Pa. C.S. § 1301.

12. The Companies have not met their burden of proof with respect to substantiating the appropriateness of their collection of NMB Costs through non-bypassable Riders, as required by the Public Utility Code. 66 Pa. C.S. § 332(a).