



COMMONWEALTH OF PENNSYLVANIA  
OFFICE OF SMALL BUSINESS ADVOCATE

May 3, 2012

**HAND DELIVERED**

Rosemary Chiavetta, Secretary  
Pa. Public Utility Commission  
Commonwealth Keystone Building  
P.O. Box 3265  
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for filing are the original and twelve (12) copies of the Main Brief, on behalf of the Office of Small Business Advocate, in the above-docketed proceedings. As evidenced by the enclosed certificate of service, two copies have been served on all active parties in this case.

If you have any questions, please contact me.

Sincerely,

Daniel G. Asmus  
Assistant Small Business Advocate  
Attorney ID #83789

Enclosures

cc: Parties of Record  
Robert D. Knecht

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**MAIN BRIEF  
ON BEHALF OF  
THE OFFICE OF SMALL BUSINESS ADVOCATE**

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Dated: May 3, 2012

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## **I. INTRODUCTION AND PROCEDURAL HISTORY**

On or about 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, “First Energy” or “the Companies”) filed a Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs (“Petition”) with the Pennsylvania Public Utility Commission (“Commission”) pursuant to Section 2801 of the Public Utility Code, 66 Pa. C.S. §2801, as amended by Act 129 of 2008, (“Act 129”) and 52 Pa. Code §§54.181 – 54.189 and 69.1801 – 1817. The Petition seeks approval of proposed programs to secure default service supply for the Companies’ customers for the period June 1, 2013, through May 31, 2015.

The OSBA filed an Answer to the Petition as well as a Notice of Intervention and Public Statement on December 5, 2011.

An Answer and Notice of Intervention were also filed by the Office of Consumer Advocate (“OCA”) on December 19, 2011. A Notice of Appearance was filed by the Commission’s Bureau of Investigation and Enforcement (“I&E”). Interventions were also filed by ARIPPA, the York County Solid Waste and Refuse Authority (“YCSWRA”), Constellation NewEnergy, Inc. and Constellation Energy Commodities Group (“Constellation”), Exelon Generation Company, LLC. and Exelon Energy Company (“Exelon”), the Retail Energy Supply Association (“RESA”), Direct Energy Services, LLC (“Direct”), PECO Energy Company (“PECO”), CAUSE PA, First Energy Solutions Corp. (“FES”), Washington Gas Energy Company (“Washington Gas”), Dominion Retail, Inc. (“Dominion”) and the Met-Ed Industrial Users Group (“MEIUG”), the Penelec Industrial Customer Alliance (“PICA”), the Penn Power

Users Group (“PPUG”), and the West Penn Power Industrial Intervenors (“WPPII”) (collectively, the “Industrial Intervenors”).

A Prehearing Conference took place on December 22, 2011, before Administrative Law Judge (“ALJ”) Elizabeth H. Barnes, where the parties agreed to a procedural schedule and discovery modifications.

The OSBA submitted the Direct Testimony, Rebuttal Testimony, and Surrebuttal Testimony of its witness, Robert D. Knecht.

Evidentiary hearings were held in Harrisburg on April 11-12, 2012. Witnesses for the parties, including Mr. Knecht, were cross-examined, and the testimony of the parties was entered into the record.

This Main Brief is being filed pursuant to the procedural schedule set forth in the Scheduling Order entered by ALJ Barnes on December 22, 2011.

## **II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS**

### **A. Procurement Groups**

West Penn has proposed to consolidate Service Types (“ST”) 20 and 30 for purposes of procuring default service supplies and setting default service rates.<sup>1</sup> ST20 and ST30 generally map to West Penn’s Rate 20 and Rate 30, except that customers with peak demand over 500 kW are excluded from ST30. These rate classes generally consist of small and medium non-residential customers. WPPII is the only party actively to oppose this proposed consolidation.<sup>2</sup>

As Mr. Knecht testified:

The OSBA does not oppose West Penn’s proposal. The primary advantage of the Companies’ proposal is that it will bring consistency to the four First Energy companies, such that each Company will have three default service classes: Residential, Small/Medium Non-residential (“Commercial”) and Large Non-Residential (“Industrial”). [FE refers to small/medium C&I as “Commercial,” and it may be simplest to keep that convention. “Small/Medium C&I” is probably most accurate though.] As Mr. Knecht testified

I do not oppose the Companies’ proposal that Met-Ed, Penelec, and Penn Power retain a combined Small C&I default service procurement group. I also do not oppose West Penn’s proposal to combine its ST20 and ST30 procurement groups, in order to achieve consistency with the other First Energy companies.<sup>3</sup>

The Commission has already approved residential/commercial/industrial default service groups for Met-Ed, Penelec, and Penn Power.<sup>4</sup> Moreover, the large industrial customers, specifically those using over 500 kW in Rate 30, are already excluded from ST30.

As Mr. Knecht also testified, combining the ST20 and ST30 service types has offsetting effects. Including ST30 with ST20 will add customers with a more attractive load shape, thereby

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<sup>1</sup> Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, Direct Testimony of Raymond E. Valdes at 7-8.

<sup>2</sup> WPPII/MEIUG/PICA/PPUG Joint Statement No1, Direct Testimony of Joseph Raia at 14-15.

<sup>3</sup> OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 14.

<sup>4</sup> OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 13-14.

putting downward pressure on wholesale bid prices, while those same customers have a higher propensity to shop, thereby putting upward pressure on wholesale bid prices.<sup>5</sup>

**B. Residential and Commercial Class Default Service Procurement**

NOTE: the OSBA will only address Commercial default service procurement.

**1. Summary and Overview of the OSBA's Position**

The Company proposes that Commercial default service supplies be procured entirely through the use of two-year full-requirements contracts, of which 90 percent of the supplies are priced at a fixed rate and 10 percent are priced at the spot market price. The OSBA's position is that this proposal should be modified to consist of a mix of a combination of one-year and six-month contracts, including a laddering of contracts, as specified in the Commission's guidelines.<sup>6</sup> The OSBA's position was set forth in Mr. Knecht's direct testimony, where he testified:

Specifically, I recommend that the Companies initially procure half of their Small C&I default service requirements through one-year contracts and half of their requirements through a 6-month contract. After every subsequent six month period (the first being in approximately July of 2013), the Companies would conduct a procurement to replace the expiring contract (for half of the class default supplies) with a new 12-month contract. To the extent that the Commission retains its desire that all supply contracts expire at May 2015, the last procurement would be a six-month contract.<sup>7</sup> However, if in late 2014 the Commission is satisfied that the mechanism is working reasonably, this approach could simply be continued.<sup>8</sup>

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<sup>5</sup> OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 14.

<sup>6</sup> OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 15.

<sup>7</sup> Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans, Docket No. I-2011-2237952, Order Entered December 16, 2011. See page 19 for the Commission's desire that contracts do not extend beyond May 2015.

<sup>8</sup> OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 15-16.

## **2. Term of Contracts**

The exclusive use of two year contracts results in a “hard stop” to all supply contracts and the potential for a large price change in June, 2015. The exclusive use of two year contracts fails to incorporate the “laddering” of contracts specified by the Commission guidelines.<sup>9</sup> As Mr. Knecht stated:

The Commission’s Policy Statement regarding default service and retail electric markets at Section 69.1805 specifies that default service plans for both small (under 25 kW) and medium (25 to 500 kW) non-residential customers include laddered contracts to reduce risk and “a minimum of two competitive bid solicitations per year to further reduce the risk of acquisition at the time of peak prices.”<sup>10</sup> The Companies’ proposal meets neither of these criteria. My proposal conforms with those policies.<sup>11</sup>

## **3. Procurement Dates**

### **a. Number of Procurements Per Delivery Year**

The Companies’ proposal fails to comply with Commission guidelines which specify at least two procurements per year, as noted in the quote from Mr. Knecht’s direct testimony, immediately above.

### **b. Dates of Procurements Relative to Delivery Year**

The OSBA does not believe that the Companies’ proposal is unreasonable, so long as two procurements per year are conducted.<sup>12</sup>

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<sup>9</sup> OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 16-17.

<sup>10</sup> See 52 Pa. Code § 69.1805. Note that the referenced language appears in both the current and proposed versions of the Policy Statement.

<sup>11</sup> OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 17.

<sup>12</sup> OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 15-16.

**4. Laddering of Contracts Beyond June 1, 2015**

As noted above under the Summary and Overview of the OSBA's Position in Section B.1, although the Commission has specified that all contracts should end at May 31, 2015, the OSBA submits that it would be reasonable to incorporate enough flexibility into the default service procurements for Small C&I ratepayers to allow procurements to continue with laddered contracts beyond May 31, 2015, if the Commission determines that market conditions and the retail market enhancements provide for a workably competitive retail market.<sup>13</sup>

**5. OCA's Proposal to Continue the Use of Block Purchase Components With Spot Transactions for Residential Customers**

The OSBA has no comment on the OCA's proposal for the Residential class. The OSBA notes that no party has made such a proposal for the Small C&I class.

**6. The OCA's Proposed "Hold Back" For Retail Opt-In Auction**

The OSBA has no comment on the OCA's proposal for the Residential class. The OSBA notes that no party has made such a proposal for the Small C&I class.

**7. Procurement Method – Descending Price Clock Auction**

The OSBA has not taken a position on this issue.

**8. Load Cap**

The OSBA does not oppose the Companies' proposal.

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<sup>13</sup> OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 16.

**C. Industrial Class Hourly-Priced Default Service**

It does not appear that any party opposes the Companies' proposal on this issue.

**D. Use of Independent Evaluator**

The OSBA submits that the Commission should require the Independent Evaluator to prepare an evaluation of the results of each competitive procurement for full requirements contracts, similar to the evaluation presented in Appendix B of Dr. Reitzes' Direct Testimony, and to make that evaluation public at a suitable time following the approval of the procurement.<sup>14</sup>

**E. AEPS Requirements**

The OSBA did not take a position with respect to AEPS requirements.

**F. Contingency Plan**

The OSBA did not take a position with respect to a contingency plan.

**G. Supplier Master Agreements**

The OSBA did not take a position with respect to supplier master agreements.

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<sup>14</sup> OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 27; Met-Ed/Penelec/PennPower/West Penn Statement No. 6, Direct Testimony of James D. Reitzes, Appendix B.

### **III. RATE DESIGN AND COST RECOVERY**

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

The OSBA does not object to the Companies' proposal for specifying the price to compare.<sup>15</sup>

#### **B. Industrial Class: Hourly Pricing Default Service Rider**

The OSBA did not take a position with respect to the industrial class hourly pricing default service rider.

#### **C. Market Adjustment Charge ("MAC")**

##### **1. Summary and Overview of OSBA's Position**

The OSBA strongly opposes the MAC as proposed by the Companies. In the OSBA's opinion, this is an attempt by the Companies to inflate profits without any basis in the realities of providing default service to ratepayers.<sup>16</sup>

##### **2. Position of Parties Opposed**

The OSBA opposes the MAC, because, among other flaws, it has no cost basis. For example, none of the four costs that are listed by the Companies' witness, Mr. Reitzes, in his attempt to justify the MAC are credible. Mr. Knecht testified that, according to Mr. Reitzes, those costs include:

- Personnel and "infrastructure" to ensure generation supply in the event of wholesale supplier default;

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<sup>15</sup> OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 17-18.

<sup>16</sup> OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 2.

- Unspecified potential cost increases associated with purchase of receivables (“PoR”) program;
- Increases in uncollectible expense associated with providing default service; and
- Incremental working capital requirements in the event of wholesale supplier default.<sup>17</sup>

Mr. Knecht went on to demonstrate how these four purported “costs,” and other costs put forth by the Companies to justify the MAC, are not credible.

**Q. Let’s take these one at a time. Is the MAC justified by costs associated with ensuring generation supply in the event of supplier default?**

A. No. First, it is unclear to which costs Dr. Reitzes refers. Wholesale supplier default is not going to cause generating plants to disappear or to go offline, or require the Companies’ to construct new generating capacity. As long as the generating capacity necessary to meet all customers’ needs is physically in place and operational, the Companies will be able to contract for the needed supplies. At worst, the Companies can simply procure the necessary supplies on the PJM spot market (which is, in fact, the Companies’ last backstop proposal in the event of supplier default).<sup>18</sup> The costs associated with such an effort are likely to be quite small relative to the overall size of default service revenues. Moreover, if the Companies incur these costs, they are fully recoverable as part of the default service charge.<sup>19</sup> There is no need for an additional charge to prospectively recover speculative costs that may never be incurred.

**Q. Are the potential unspecified costs associated with the PoR program a legitimate basis for the MAC?**

A. No. Costs associated with the PoR program are not default service costs; they are costs associated with providing a service to EGSs. To the extent that these costs can be identified, they should be charged to the EGSs for whom the service is provided. Common practice in Pennsylvania is to incorporate these

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<sup>17</sup> OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 5-6.

<sup>18</sup> In its DS Final Rulemaking Order at page 71, the Commission indicates that “. . . adequate credit protection mechanisms should be a part of all supply contracts to protect customers in the event of a bankruptcy or other inability to perform.” Note that unlike the Companies, the Commission correctly understands where the risk of supplier default lies – with the customers and not the DSP. Costs incurred by the DSP associated with replacing a failed wholesale supplier will be passed on to default service ratepayers.

<sup>19</sup> These type of costs fit within the administrative costs defined in the PTC at 52 Pa. Code § 69.1808(a)(4).

costs into the PoR purchase price discount. There is no reason to charge default service customers for a service that is provided to EGSs.

**Q. Are increases in uncollectibles expense a justification for the MAC?**

A. No. The Companies are permitted to make a reasonable estimate of what their default service uncollectibles costs will be, and to include a provision for recovery of those costs in default service rates. The Companies have generally chosen to address this issue by incorporating the uncollectibles costs for all electric supply (shopping and non-shopping) in the non-bypassable default service support rider (“DSSR”). The Companies are at risk for supply-related uncollectibles costs from both default service customers and all shopping customers whose EGSs use the PoR program.<sup>20</sup> As shown in the response to OSBA-II-6, the Companies have been able to recoup a substantial percentage of their total uncollectibles costs (supply and distribution) from the charge on all customers. There is no reason to believe that the charge for uncollectibles does not provide the Companies with a reasonable opportunity to recover supply-related uncollectibles costs.

It is true, however, that the Companies necessarily absorb some risk associated with the recovery of default service uncollectibles costs. It is both unlawful (I am informed by OSBA counsel) and unreasonable to allow a utility to fully reconcile uncollectibles costs on a dollar for dollar basis, as it would discourage collections efforts. Therefore, the provision for uncollectibles costs in the default service rates may either understate actual uncollectibles costs, to the detriment of the Companies, or overstate actual uncollectibles costs, to the benefit of the Companies.

This risk could be substantially mitigated by establishing a charge for default service uncollectibles that is based on a pre-determined percentage of the default service rate. Other Pennsylvania utilities have adopted the approach of applying a percentage-based merchant function charge (“MFC”) to default service customers for recovery of uncollectibles costs paired with a matching percentage discount for purchased receivables. If that pre-determined percentage is established based on historical averages, and if it is updated regularly, the Companies would face very little longer-term risk of under-recovering uncollectibles costs. In my view, this alternative approach is superior to the Companies’ approach, in that it does not discriminate against EGSs who directly bill their customers, and it reduces risks faced by the DSP for both default service and shopping customer uncollectibles.

For reasons of their own, the Companies have chosen not to propose such a program.<sup>21</sup> As the existing method has been approved by the Commission, and

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<sup>20</sup> Because the Companies purchase receivables with no rate discount, the cost of uncollectibles is not passed on to EGSs who use the PoR program.

<sup>21</sup> See OSBA II-6(d).

since all EGSs service Small C&I customers may use the PoR program, I do not propose to modify the existing approach in this proceeding. While this approach is a little riskier than alternative approaches, there is no reason for the Companies to impose an arbitrary MAC tax associated with uncollectibles risk that they have voluntarily chosen to assume.

**Q. The Companies propose that the MAC be set at the same per-kWh level for Residential and Small C&I default service ratepayers, and at zero for Large C&I ratepayers. Is this consistent with uncollectibles cost patterns by rate class?**

A. No, it is not. The rate of uncollectibles costs for Small C&I customers is far lower than that for Residential customers, as shown in OSBA-II-6. Moreover, the rate of uncollectibles for Large C&I customers is not zero. If the MAC were actually an effort to recoup uncollectibles costs, it would need to be differentiated by rate class, with substantially lower rates for Small C&I customers than for Residential customers.

**Q. Are incremental working capital costs a credible justification for the MAC?**

A. No. The Commission's regulations explicitly contemplate working capital costs as a recoverable cost of providing default service.<sup>22</sup> To the extent the Companies believe that they face the possibility of incurring additional working capital costs as a result of supplier default, they should propose a mechanism for recovering those specific costs if they should ever be incurred. There is no need for a large generic markup of default service rates to justify some costs that the Companies are unlikely ever to incur and which are fully recoverable under existing regulatory procedures. Moreover, to the extent working capital costs related to electric supply are shifted to the PTC, they should be backed out of distribution rates.<sup>23</sup>

Further, with the exception of West Penn, the Companies are already requiring default service ratepayers to contribute to working capital financing through the reconciliation charges. That is, the Companies are recording costs as incurred but revenues only as billed, leaving approximately one half-month of unbilled revenues in the reconciliation account, which is subsequently billed to default service ratepayers through the reconciliation charges. While the Companies have mitigated this impact by spreading it over a 12-month period, they are nevertheless implicitly requiring default ratepayers to provide working capital financing. To the extent that the Companies modify their default service plans to directly include working capital costs, and to the extent that the Commission allows the Companies to retain their existing accounting method, these costs should be offset by the working capital benefits that the Companies receive from the accounting mismatch.

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<sup>22</sup> 52 Pa. Code § 69.1808(a)(5).

<sup>23</sup> See 52 Pa. Code § 69.1808(b) for the Commission's views on ensuring that gas supply costs are removed from distribution rates.

**Q. At pages 12 to 13 of his testimony, Mr. Fullem argues that the Companies provide value to default service customers in that they are creditworthy counterparties to supply agreements, and they are therefore not required to provide collateral under the default service supply contracts. Is this a reason to impose a MAC?**

A. No, it is not. First, avoided collateral costs are not a cost incurred by the Companies. There is no reason for default service customers to pay for value that costs the Companies nothing. Second, the creditworthiness of the Companies is substantially related to (a) the Companies' legislated monopoly franchises to provide distribution services at regulated rates, and (b) the Companies' legislated authority to recover all costs incurred in providing default service at virtually zero risk through the use of a reconciliation mechanism. In effect, the creditworthy nature of the Companies comes from the ratepayers and the government; it is not related to any costs incurred by shareholders. There is no reason to charge default service ratepayers for this service.

**Q. At pages 14 to 15 of his testimony, Mr. Fullem argues that if any entity other than a utility were providing default service, it would require a return. Is this a credible reason to impose a MAC?**

A. No, it is not. Any return that a non-utility might require to provide this service would need to be commensurate to the risk of the service, which is minimal.

It is important to recognize that the MAC would result in a very large increase in the profitability of the Companies. In OCA-II-8, the Companies estimate the full-year value of MAC revenues at about \$95 million, based on increased shopping levels over 2011. Adding this amount to the allowed return on equity for the Companies' distribution rate base would increase the Companies' implied return on equity by more than 6 percentage points (600 basis points), from the currently authorized level of 10 to 13 percent to 16 to 19 percent.<sup>24</sup>

The Companies do not offer any credible evidence that the magnitude of the proposed MAC reflects this risk.<sup>25</sup>

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<sup>24</sup> These calculations are based on figures provided in OCA-II-17.

<sup>25</sup> OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 6-11.

Furthermore, analyzing the MAC using basic principles of economics shows that the MAC would increase both default service rates and rates charged by EGSs, thereby unjustly enriching both the Companies and the EGSs.<sup>26</sup>

Another example of a cost listed by the Companies in support of the MAC is “good will.”<sup>27</sup> “Good will” is simply not an allowable cost for a regulated rate such as the MAC.<sup>28</sup> The following Q&A from Mr. Knecht’s surrebuttal testimony states the OSBA’s position:

**Q. What arguments does Mr. Fullem advance in defense of the proposed MAC?**

A. Mr. Fullem argues (a) the Companies are incurring risks associated with default supply for which they should be compensated through a return, (b) default service rates are not traditional regulation rates, and (c) the Companies have an unfair “brand equity” competitive advantage over EGSs as a result of “many years of providing reliable service,” and default service customers should pay a higher price as a return on this “goodwill” asset.

**Q. Has Mr. Fullem advanced any new arguments about the nature of the alleged risks faced by the Companies?**

A. No, he has not. The only example of, which I am aware in which an EDC serving as DSP is not able to fully recover its incurred costs involved net revenue reductions associated with load shifting from time-of-use (“TOU”) rates, and most Pennsylvania EDCs (including all of the Companies) have implemented TOU programs that avoid this risk.

**Q. Do you agree with Mr. Fullem that default service rates should not be subject to standard ratemaking principles?**

A. No, I do not. Had the Pennsylvania General Assembly wanted to completely deregulate electric generation supply and allow incumbent EDCs to charge premium prices there would have been no reason for it to (a) require there be a DSP, (b) allow EDCs to serve as the initial DSP, (c) require the DSPs to develop default service plans, (d) explicitly allow DSPs to fully recover costs

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<sup>26</sup> OSBA Statement No. 2, Rebuttal Testimony of Robert D. Knecht at 2-3; OCA Statement No. 1, Direct Testimony of Matthew I. Kahal at 40.

<sup>27</sup> Met-Ed/Penelec/Penn Power/West Penn Statement No.7-R, Rebuttal Testimony of Charles V. Fullem at 8-9.

<sup>28</sup> OSBA Statement No. 3, Surrebuttal Testimony of Robert D. Knecht at 7.

incurred in providing default service, and (e) give the Pennsylvania Public Utility Commission regulatory oversight over those default service plans.

I therefore conclude that default service rates are regulated rates provided under regulated default service plans.

**Q. Do you agree with Mr. Fullem that default service customers should pay a premium in their default service rates for brand equity and goodwill?**

A. No. First, as Mr. Fullem admits, normal regulatory ratemaking does not include a return on goodwill. Second, while I agree that the fact that customer shopping is lower than might otherwise be expected may be in some small part due to the historical high quality distribution service provided by the Companies, although Mr. Fullem provides no evidence relating to this factor. However, it is more likely that shopping levels are affected by (a) customer inertia, (b) a long-term business relationship between the Companies and customers that resulted from the Companies being granted a monopoly utility franchise, (c) trust that rates regulated by the Pennsylvania Public Utility Commission are reasonable, (d) for some customers, an inability to find an EGS willing to provide service, or whose EGS summarily returned them to default service, and (e) an unwillingness of some customers to continually shop for power to ensure that rates from EGSs are reasonable, which is a necessary part of being a shopping customer.<sup>29</sup> None of these factors would justify using a MAC to set default service rates above costs.

**Q. Did the Companies respond to your suggestion that, if the Companies feel that their compensation as default suppliers is inadequate and unquantifiable that they should initiate a proceeding to competitively retain a third-party DSP responsibility?**

A. Not directly. Mr. Fullem opines that it is unlikely that the Commission would be able to turn DSP responsibility over to a third party without providing a return such as the MAC. This statement does not address my point. My conclusion was that if a third-party DSP is to be retained, it should be done so through a competitive procurement, and any return required by the new DSP would be determined through competitive forces. This approach would be far superior to setting an arbitrary and administratively determined \$5 per MWh MAC charge in this proceeding.

Moreover (and with the proviso that I am not an attorney), retaining a new DSP would presumably allow the Companies to establish and license unregulated subsidiary EGSs, who could then benefit from all the brand equity the Companies can command in the competitive marketplace.<sup>30</sup>

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<sup>29</sup> See Exhibit IEC-S2 for a press report relating to an EGS returning shopping customers to default service in Pennsylvania.

<sup>30</sup> OSBA Statement No. 3, Surrebuttal Testimony of Robert D. Knecht at 6-8.

Although the Companies attempt to define the MAC as a retail market enhancement, the MAC does not qualify as a retail market enhancement as defined by the Commission.<sup>31</sup> After the Commission's long and thorough review of potential retail market enhancements, no mention was made of a MAC-style charge in the Commission's Final Order relating to the intermediate work plan.<sup>32</sup>

Moreover, the MAC is not consistent with traditional rate design criteria.<sup>33</sup> Finally, the MAC does not reflect the substantive differences between residential and Small C&I customers.<sup>34</sup>

If the Commission decides (it should not) that the Companies, as default service providers, are unfairly treated because they are unable to recoup some vague, unidentifiable costs from default service rates, the Commission still should not adopt the MAC proposed by the Companies. Instead, it should replace the Companies as default service providers with an alternative default service provider(s), determined through a competitive process. As Mr. Knecht testified:

**Q. The Companies also claim that they incur costs that cannot be quantified with respect to meeting their DSP obligations, and the MAC is designed to recover those costs. Can you respond?**

A. For the reasons detailed above, I believe that the Companies have a reasonable opportunity to recover all of the costs that they incur in providing default service, including a reasonable return on invested capital. However, if the Commission agrees that there are non-quantifiable costs that a DSP incurs, or that the DSP should be allowed to earn some return on the minimal risk it faces, the correct solution is *not* to allow the incumbent DSP to impose an arbitrary and unsupported charge on default service customers. The correct solution would be for the Commission to initiate a proceeding pursuant to 52 Pa. Code § 54.183(c)

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<sup>31</sup> OSBA Statement No. 2, Rebuttal Testimony of Robert D. Knecht at 3.

<sup>32</sup> Docket No. I-2011-2237952, Order Entered March 2, 2012.

<sup>33</sup> OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 12-13.

<sup>34</sup> OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 13.

to identify replacement DSPs for the Companies' service territories. I suggest that the Commission use a competitive procedure to determine a reasonable level for these non-quantifiable costs. In effect, the Commission would ask potential DSPs to submit a bid for the amount that they would charge in order to assume the responsibilities of the DSP under the same terms and conditions that now apply to the EDCs. Because this would provide access to all default service customers and wide name recognition, it is certainly possible that such an approach would result in a credit rather than a charge.<sup>35</sup>

### **3. RESA's Proposed Modification**

RESA proposes to modify the Company's proposal such that the MAC revenues benefit RESA rather than benefiting the Companies. More specifically, RESA proposes that MAC revenues first be used to offset the costs of the retail market enhancement programs designed to encourage shopping, specifically the opt-in auction and the standard offer referral program, and then be returned to all distribution ratepayers. In effect, RESA's alternative proposal has all of the flaws of the Companies' proposal, except that it will unjustly enrich only RESA's members instead of unjustly enriching both RESA's members and the Companies' shareholders.

RESA's proposal will result in an improper cross-subsidy from default service ratepayers to shopping customers. The Commission has explicitly determined that the costs for the opt-in auction and the standard offer referral program should be borne by the parties who benefit from those programs, namely the EGSs (and, indirectly, the shopping customers).<sup>36</sup> With respect to RESA's proposal that MAC revenues be refunded to all distribution customers, even Dominion witness Mr. Thomas Butler (representing an EGS)

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<sup>35</sup> OSBA Statement No. 1, Direct testimony of Robert D. Knecht at 11.

<sup>36</sup> Investigation of Pennsylvania's Retail Electricity Market: Recommendation Regarding Upcoming Default Service Plans, Docket No. I-2011-2237952, Order Entered October 14, 2011.

recognizes that this results in an improper cross-subsidy from default service ratepayers to shopping customers.<sup>37</sup> In effect, RESA's proposed modification to the MAC as proposed by the Companies is little more than an attempt to enrich shopping customers and EGSs at the expense of default service ratepayers..<sup>38</sup>

#### **4. Dominion's Proposed Modification**

Dominion's alternative to the Companies' MAC is not clear. Dominion recognizes that imposing a MAC on default service customers and refunding it to all ratepayers (as proposed by Dominion witness Thomas J. Butler) would imply that default service customers are subsidizing shopping customers.<sup>39</sup> Dominion's proposal to refund the MAC to default service ratepayers effectively eliminates the MAC, since the MAC would be paid by, and then refunded to, default service ratepayers.<sup>40</sup>

#### **D. Default Service Support Rider ("DSSR")**

##### **1. Non-Market Based ("NMB") Transmission Charges**

The Companies incur certain PJM transmission costs for both default service and shopping customers. Currently, the NMB transmission costs for default service customers are assigned to the default service wholesale suppliers and the NMB transmission costs for shopping customers are assigned to the EGSs. Both sets of

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<sup>37</sup> Dominion Statement No. 1, Direct Testimony of Thomas J. Butler at 9-10.

<sup>38</sup> OSBA Statement No. 2, Rebuttal Testimony of Robert D. Knecht at 3; RESA Statement No. 2, Direct Testimony of Christopher H. Kallaher at 30-31.

<sup>39</sup> OSBA Statement No. 2, Rebuttal Testimony of Robert D. Knecht at 3; Dominion Statement No. 1, Direct Testimony of Thomas J. Butler at 9-10.

<sup>40</sup> OSBA Statement No. 2, Rebuttal Testimony of Robert D. Knecht at 3.

suppliers presumably recover these costs in their rates. In this proceeding, the Companies propose to retain responsibility for these costs, and to recover them from all ratepayers in their DSSRs.

For the longer term, the OSBA supports the notion that transmission costs over which neither wholesale nor retail suppliers have control are better recovered by the EDC in DSSR rates. This approach reduces risks for both wholesale and retail suppliers, and therefore, reduces risk premiums built into those suppliers' rates.<sup>41</sup> The OSBA did not take a position on the specific costs that are identified as transmission costs over which supplies have no control.

In the short run, however, the Companies' proposal may result in some shopping customers being double-charged for these costs.<sup>42</sup> While there is no perfect solution to this problem, the OSBA suggests that these costs continue to be charged to EGSs and excluded from shopping customers DSSRs for a one-year period, thereby allowing time for existing contracts to expire and for market forces to keep down prices for shopping customers.<sup>43</sup>

## **2. Generation Deactivation Charges**

The OSBA did not take a position with respect to whether generation deactivation charges should be included in the DSSR.

## **3. Unaccounted-For Energy Costs**

The OSBA did not take a position with respect to whether unaccounted-for energy costs should be included in the DSSR.

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<sup>41</sup> OSBA Statement No 1, Direct Testimony of Robert D. Knecht at 18.

<sup>42</sup> OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 18-19.

<sup>43</sup> OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 19.

#### **4. Economic Load Response Charges**

The OSBA did not take a position with respect to whether economic load response charges should be included in the DSSR.

#### **E. Solar Photovoltaic Requirements Charge Rider**

The OSBA did not take a position with respect to a solar photovoltaic requirements charge rider.

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

The OSBA did not take a position with respect to time of use rates at these companies.

#### **G. Reconciliation of Default Service Costs and Revenues**

##### **1. Summary and Overview of OSBA's Position**

The Companies' reconciliation mechanism is simply not working. E-factor charges are high and erratic. Efforts to achieve rate stability, such as two-year contracts proposed by the Companies, have been defeated by improper accounting and lagging reconciliation mechanisms.<sup>44</sup>

##### **2. The OCA's Proposal**

The OCA proposes to move from quarterly reconciliation to annual reconciliation.<sup>45</sup>

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<sup>44</sup> OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 23-24.

<sup>45</sup> OCA Statement No. 1, Direct Testimony of Matthew I. Kahal at 12, 48-49

The OCA's proposal is essentially one-half of Mr. Knecht's "Approach 2" (discussed below) for addressing the failings of the Companies' reconciliation mechanism. OCA's proposal will achieve the first objective of "Approach 2" by smoothing over the large ups and downs in the E-Factor charges/credits. However, like Approach 2, it does not address the underlying causes for the variances. Moreover, the OCA's proposal does not address the second aspect of "Approach 2," in that it does not contain a migration rider. Without a migration rider, the OCA's proposal will result in a much longer time frame during which a default service customer can switch to an EGS and avoid a high E-factor change, as well as a long time period during which shopping customers can return to default service to take advantage of a large E-factor credit.<sup>46</sup>

### **3. The OSBA's Proposals**

Mr. Knecht offered two proposals: one which would address some of the fundamental causes for large variances, and one which would simply smooth over the problem.<sup>47</sup> Specifically, Mr. Knecht proposed:

#### **Approach 1:**

- The Companies should all adopt West Penn's approach for accruing revenues when service is provided rather than when billed. To transition from the existing approach to this approach, the net gain associated with recognizing approximately one-half month's unbilled receivables should be amortized over 12-months.
- The Companies should estimate net recoveries of the reconciliation account balance up to the date at which the new E-factor goes into effect, to minimize the effect of the two-month lag.

To reduce the incentives for DSPs to understate default service rates, the interest charge for under-collections be reduced to a rate consistent with the short term cost of capital. I suggest that a published rate be used, such as the monthly prime bank lending rate. Interest credit for

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<sup>46</sup> OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 24.

<sup>47</sup> OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 24-25.

over-collections should be set at that rate plus 200 basis points.<sup>48</sup> I understand that this recommendation would require a waiver of the Commission's regulation at 52 Pa. Code §54.187(f).

**Approach 2:**

- The Companies would exclude the E-Factor from the PTC. The Companies would establish a "migration rider," in which customers would retain an obligation or entitlement to the E-Factor for twelve months following their decision to switch to competitive supply. Similarly, new customers, and customers returning from competitive supply, would not be obligated to pay, or entitled to receive, E-Factor charges or credits for a period of twelve months.
- The E-Factor balance would continue to be updated quarterly, but would be designed to recover the balance over a "rolling" 12-month period.

The first approach would restructure the reconciliation calculation so that the variance balances remain relatively small, consistent with the original intent of the default service plans. The second approach is akin to that used by natural gas distribution companies in Pennsylvania, where the large variances that result from the current reconciliation accounting methods are amortized over a relatively long period, and a migration rider is imposed to ensure that customers cannot avoid those variances by choosing to shop.

Both approaches would be superior to the Companies' proposed approach, which will likely result in continued instability in default service rates, coupled with skewed incentives for customers to abandon default service when E-Factors are large, and return to default service when a substantial E-Factor credit is in place.<sup>49</sup>

The OSBA supports Mr. Knecht's Approach 1. Approach 1 would first modify the accounting method used by Met-Ed, Penelec and Penn Power to be consistent with the West Penn approach, which properly matches incurred costs with earned revenues. The West Penn approach has generally resulted in more stable E-factors. Second, Approach 1 would modify the reconciliation calculation to estimate the E-factor variance

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<sup>48</sup> Over the past ten years, the prime bank lending rate has averaged approximately 325 basis points more than the yield on 3-month Treasury Bills. I selected a 200 basis point difference between the over- and under-collection interest rate to be consistent with Commission practice for other applications.

<sup>49</sup> OSBA Statement No. 1, Direct testimony of Robert D. Knecht at 24-26.

as of the date the new E-factor goes into effect. Otherwise, the E-factor charge will be relying on a variance that is at least two months out of date, and it will fail to correctly reflect any variance recoveries that are reasonably expected over that two month time period.<sup>50</sup> Third, Approach 1 would rely on a rolling method for calculating the E-Factor, which is consistent with the existing approach but it would not include the Companies' proposed two-month lag.

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

The OSBA did not take a position with respect to other tariff changes.

### **IV. COMPETITIVE MARKET ENHANCEMENTS**

#### **A. Retail Opt-In Aggregation Program**

##### **1. Summary and Overview of OSBA's Position**

The OSBA's position, consistent with the Orders of the Commission and the proposal of the Companies, is that Small C&I ratepayers should not be eligible for a retail opt-in auction program. If a decision is made that the Small C&I class is included in the opt-in aggregation program, costs for the program should be recovered from the EGSs.<sup>51</sup>

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<sup>50</sup> OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 25, OSBA Statement No. 3, Surrebuttal Testimony of Robert D. Knecht at 13.

<sup>51</sup> OSBA Statement No. 2, Rebuttal Testimony of Robert D. Knecht at 6-9.

## 2. Customer Eligibility

### a. Small Commercial and Industrial

After a detailed and thorough review, the Commission has stated that Small C&I customers are not eligible for this program.<sup>52</sup>

Moreover, no party has advanced any credible evidence as to why the situation at the Companies is sufficiently different from the rest of Pennsylvania to depart from the Commission's decision. Only RESA witness Mr. Kallaher offers a suggestion, and the most he can state is that there is a "meager level of customer shopping in the FirstEnergy service territories."<sup>53</sup> Mr. Kallaher, however, appears to be unfamiliar with the facts. Shopping for Small C&I ratepayers in the First Energy service territory is substantial, it is steadily increasing, and it is much higher than the shopping rate for residential ratepayers, even for the smallest under- 25kV customers.<sup>54</sup> Neither Mr. Kallaher nor any other witness offers any credible shopping statistics that would support Mr. Kallaher's conclusion.

Furthermore, no credible, fleshed-out proposal has been offered by any party with respect to why and how Small C&I ratepayers should be included in this program. Until such time as the Commission might reverse its position, (which the OSBA believes is unnecessary) the OSBA will follow the Commission's current directives.

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<sup>52</sup> Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans, Docket No. I-2011-2237952, Order Entered October 14, 2011 ("Tentative Order") at 25-26; Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans, Docket No. I-2011-2237952, Order Entered December 16, 2011 ("Final Order") at 42-43.

<sup>53</sup> RESA Statement No 2-R. Surrebuttal of Christopher H. Kallaher at 19.

<sup>54</sup> Hearing Transcript, pp 114-119 (OSBA cross-examination of First Energy witness Raymond E. Valdes, OSBA Cross-Examination Exhibit No. 1).

**b. Shopping Customers**

See above for OSBA's comments with respect to Small C&I customers.

The OSBA did not take a position with respect to shopping customers in other classes.

**3. Program Length**

The OSBA did not take a position with respect to program length.

**4. Timing of Solicitation and Auction**

The OSBA did not take a position with respect to the timing of the solicitation and auction.

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

The OSBA did not take a position with respect to the timing for providing full terms and conditions to customers.

**6. Customer Participation Cap**

The OSBA did not take a position with respect to a customer participation cap.

**7. Supplier Participation Load Cap**

The OSBA did not take a position with respect to a supplier participation load cap.

**8. Composition of Product Offer**

The OSBA did not take a position with respect to the composition of the product offer.

**9. RESA's Proposal to Conduct Testing of Various Marketing Channels Before Implementing Program**

The OSBA did not take a position with respect to RESA's Proposal.

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

The OSBA did not take a position with respect to these issues.

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

The OSBA did not take a position on the structure of the opt-in auction.

**12. Recovery of Costs**

**a. All customers v. EGSs**

As stated above, the OSBA’s position is that if the opt-in auction is made applicable to Small C&I customers, the costs of the auction applicable to the Small C&I class should be recovered from the EGSs.<sup>55</sup> As already noted, this is consistent with Commission guidelines and Orders. Furthermore, the recovery of auction costs from EGSs is consistent with long-standing Commission policy regarding cost recovery related to supply, in which default service customers are responsible for all costs associated with providing default service, and therefore, shopping customers should be responsible for all costs associated with EGS (“shopping”) supply, including auctions which benefit the EGSs.<sup>56</sup> Mr. Knecht discussed the two philosophies behind cost recovery.

There are two general philosophies regarding the recovery of supply-related costs, both of which are internally consistent.

One philosophy is that all costs related to the administration of the electric supply function should be borne by all customers. Costs incurred to establish a default service program are shared among all customers, under the argument that all customers are eligible for default service and all customers benefit from its existence. Costs incurred to enable and

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<sup>55</sup> OSBA Statement No. 3, Surrebuttal Testimony of Robert D. Knecht at 19-21.

<sup>56</sup> OSBA Statement No. 3, Surrebuttal Testimony of Robert D. Knecht at 19.

promote competitive markets are also shared among all customers, under the argument that competitive markets benefit all customers, whether they choose to participate or not.

The Commission, however, has consistently followed the other philosophy. In this alternative approach, default service customers pay for default service costs, and shopping customers pay for costs related to shopping. Under the Commission's philosophy, the administrative costs incurred for default service procurements are recovered only from default service customers. In this philosophy, costs incurred to conduct procurements for EGSs should be borne by the shopping customers who benefit from that program. As a practical matter, it is much easier to recover the costs from the EGSs who actually participate in the auction, rather than trying to establish a charge which applies only to customers who participate in the auction. The EGSs will presumably recover these costs in their own rates.<sup>57</sup>

**b. Recovery Through the MAC as Proposed by RESA**

In contrast to the position taken by the OSBA, RESA proposes that default service customers not only pay for every dollar of cost associated with default service, but also that default service customers pay for EGSs' marketing costs through the MAC.<sup>58</sup> As Mr. Knecht pointed out:

RESA adopts an extreme philosophy. Regarding costs related to default service procurements, Ms. Williams argues strongly that all costs should be borne by default service customers.<sup>59</sup> However, when it comes to costs related to obtaining customers for EGSs, Mr. Kallaher argues that costs related to the opt-in auction should either be recovered from default service customers, or possibly from all distribution service customers. RESA's proposal is consistent with neither of the reasonable approaches to administrative cost recovery, and will result in an inequitable over-assignment of costs to default service customers.<sup>60</sup>

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<sup>57</sup> OSBA Statement No. 3, Surrebuttal Testimony of Robert D. Knecht at 19-20.

<sup>58</sup> OSBA Statement No. 3, Surrebuttal Testimony of Robert D. Knecht at 20.

<sup>59</sup> RESA Statement No. 1, Direct Testimony Aundrea Williams at 21-22.

<sup>60</sup> OSBA Statement No. 3, Surrebuttal Testimony of Robert D. Knecht at 20-21.

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

If Commercial customers are included in the opt-in auction, the OSBA takes the position that to improve the odds that EGSs will actually pay for the auction costs, such auction costs should be funded by all EGSs who choose to participate (and before the auction), rather than only by the winning bidders.<sup>61</sup>

**B. Standard Offer Customer Referral Program**

**1. Summary and Overview of the OSBA's Position**

The OSBA did not take a position with respect to the standard offer customer referral program, except for the issues of eligibility and recovery of costs, a position which is the same as that presented in the preceding section with respect to the opt-in auction.

**2. Customer Eligibility**

In his surrebuttal testimony, Mr. Knecht offered the following Q&A:

**Q. Mr. Kallaher criticizes OCA witness Ms. Alexander for recommending a standard offer referral program that is not consistent with the Commission's recommendations in the Final Order. Is Mr. Kallaher's proposed standard offer referral program consistent with the Commission's Final Order?**

A. It is not in two significant respects. First, Mr. Kallaher recommends that Small C&I customers be included in the program, whereas the Commission recommends that the program be targeted at residential customers. Second, Mr. Kallaher recommends that either default service customers or all distribution customers pay for the cost of the program, whereas the Commission recommends that EGSs pay for the program.

**Q. Do you agree with Mr. Kallaher's proposal that Small C&I customers be included in a standard offer referral program?**

A. No. The Commission has made a determination on this issue. For the reasons detailed in the preceding section, and consistent with Mr. Kallaher's own critique of Ms. Alexander's testimony, I see no reason to rehash this issue.

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<sup>61</sup> OSBA Statement No. 3, Surrebuttal Testimony of Robert D. Knecht at 21.

Mr. Kallaher does not offer any new information beyond that which the Commission has already considered with respect to standard offer referral programs.

I therefore also conclude that the new/moving customer referral program for Small C&I customers should be retained, also as recommended by the Commission.

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

The OSBA did not take a position with respect to this issue.

**4. Recovery of Costs**

*In Mr. Knecht's surrebuttal Q&A, quoted above, he continued*

**Q. If the Commission approves a standard offer referral program for Small C&I customers, do you agree with Mr. Kallaher that default service customers should pay for the program?**

A. No, I do not. As I explained in the preceding section, the Commission has adopted an internally consistent cost assignment approach, in which costs related to default service programs should be borne by default service customers, and costs related to shopping customers should be borne by shopping customers. The Commission's proposal to assign standard offer referral program costs to participating EGSs is consistent with that philosophy. Mr. Kallaher's proposal is internally inconsistent, and will inequitably burden default service customers with costs related to both default service and EGS service.

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

The OSBA did not take a position with respect to this issue.

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

The OSBA did not take a position with respect to this issue.

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

The OSBA did not take a position with respect to this issue.

**C. Limiting Participation by Low-Income Customers in Proposed Retail Market Enhancements**

The OSBA did not take a position with respect to this issue.

**V. OPERATIONAL ISSUES**

The OSBA did not take a position with respect to operational issues.

**VI. AFFILIATED INTEREST APPROVAL**

The OSBA did not take a position with respect to affiliated interest approval.

**VII. OTHER ISSUES**

The OSBA has not identified any other issues.

**VIII. CONCLUSION**

The OSBA respectfully requests that the Commission adjudicate this proceeding in accordance with the arguments presented herein. The OSBA also respectfully requests that the Companies' be required to present *their* compliance tariffs with redlines noting the changes from the present tariffs.

Respectfully submitted,



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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I certify that I am serving two copies of the Main Brief, on behalf of the Office of Small Business Advocate, by e-mail and first-class mail (unless otherwise noted) upon the persons addressed below:

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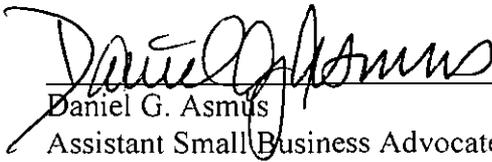
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