BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOINT PETITION OF METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER COMPANY AND WEST PENN POWER COMPANY FOR APPROVAL OF THEIR DEFAULT SERVICE PROGRAMS	:	**Docket Nos. P-2011-2273650** **P-2011-2273668** **P-2011-2273669** **P-2011-2273670**

MAIN BRIEF OF DOMINION RETAIL, INC.

DATED: May 2, 2012

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I. INTRODUCTION AND PROCEDURAL HISTORY

A. Introduction

On November 17, 2011, nearly a month before the Pennsylvania Public Utility Commission ("Commission") issued its Tentative Order in *Investigation of Pennsylvania's Retail Electricity Market; Intermediate Work Plan*, Docket No. I-2011-2237952 (Tentative Order entered December 16, 2011, "Tentative Order"; Final Order entered March 2, 2012, "Final Order"), the First Energy Corporation subsidiaries: Metropolitan Edison Company ("MetEd"), the Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("PennPower") and West Penn Power Company ("West Penn")("collectively "First Energy" or the "Companies"), filed a default service plan ("DSP") that proposed the parameters for default service across the four electric distribution companies ("EDC") that make up First Energy in Pennsylvania. The plan would be effective for service commencing June 1, 2013 through May 31, 2015.

Of critical importance for this proceeding, the Commission's Final Order proposed a number of market enhancements intended to spur additional shopping activity in anticipation of a revised market end-state to be implemented after June 1, 2015. Among those enhancements are retail opt-in auctions ("ROI") and a customer referral program ("CRP"). The Commission offered specific guidance for these programs, although it did not require adherence if EDCs were able to justify deviation from the requirements.

The CRP, as provided in the Final Order, also referred to as a standard offer referral program, provides customers calling an EDC's call center with an opportunity to switch either to a supplier of their choosing, with a prompt from the customer service representative, or to be randomly assigned to an electric generation supplier ("EGS") in the program, provided that EGS had committed to providing the "standard offer" which is prescribed as a fixed price product, with a minimum four (4) month term and a maximum twelve (12) month term at a price that is at least seven percent (7%) below the price to compare ("PTC") for that EDC at the time the offer is made. The offering EGSs are not permitted to charge early termination fees and would apply the standard two customer notices upon expiration of the contract period. At the end of the contract, absent affirmative consent for some other option, customers would remain as customers of the standard offer provider to whom they were switched, on a month to month basis with no termination or switching fee. (Final Order, slip op. pp. 73-74).

The Final Order's requirements for the ROI were even more comprehensive and required that the programs be one-time events that apply only to residential customers, and suggested a six-billing cycle term with no switching or early termination fees, but with a no-return clause so that if a customer were to switch away, they could not return to the ROI, and could possibly forfeit any bonus or other incentive if they left to early. The Commission also suggested a fifty percent (50%) customer participation cap and a fifty percent (50%) supplier load cap, meaning no single EGS could be awarded more than half of the customers in the ROI. The recommended offer was to be a $50 bonus payment with no minimum discount off the price to compare. Again, the Commission recognized that customers would be "opting in" to this program and required only the standard two notices upon contract expiration. The Commission declined to endorse any particular auction structure.

As discussed below, First Energy's original DSP deviated significantly from the requirements of the Final Order in some areas, and in others, was more in line. In Rebuttal testimony, the Companies did modify their proposals to bring them further into compliance with the Commission's Final Order, but the Companies still have resisted going the whole way. First Energy has insisted that both the customer CRP and the ROI provide 1 year products, and have required that the ROI provide a five percent (5%) minimum discount as opposed to the $50 desired by the Commission. Again, some parties support some or all of these changes, and others oppose. (First Energy Statement "FE St." No. 7-R, 3:21-4:16).

The other purpose of the DSP is to provide the more mechanical procurement and pricing rules for default service for the upcoming period, including procurement and rate setting. First Energy proposed a procurement strategy that will eliminate contracts that will extend or "overhang" beyond the end of the default service period, to allow for smooth transition into whatever end-state may be prescribed for the period after June 1, 2015. First Energy also proposed to shift its recovery of certain costs to a non-by-passable rider, the Default Service Support Rider or DSS Rider, since the costs are borne by all market participants are unpredictable and not susceptible to hedging. These relocated charges include most non-market based transmission costs. Other parties, including Dominion Retail, Inc. d/b/a Dominion Energy Solutions ("DES") proposed other cost items that fit the same criteria, such as unaccounted for energy ("UFE") that should be included. No parties have offered serious objection to First Energy's recovery mechanisms.

Perhaps the single most controversial aspect of the Companies' proposal is for the Market Adjustment Charge or MAC. As discussed below, the MAC was proposed as a means for First Energy to recover its costs of providing default service that are otherwise not reflected in the PTC. The MAC would be structured as a .5 cent per KWH adder to the PTC. (FE St. No. 7, ___) Again, several parties, including DES, have offered modifications to the MAC. DES takes no position on First Energy's suggestion that the MAC provide recovery for otherwise unrecoverable costs of default service except to suggest that if First Energy is able to identify specific costs, that it be permitted to recover those costs through the MAC. However, DES sees the MAC as an opportunity to jump-start competition by providing the necessary headroom for

EGSs to make meaningful savings offers to customers, while at the same time, not simply providing the Companies an opportunity to increase revenue. Mr. Butler, DES' witness, proposed first that the MAC be doubled to 1 cent/KWH, but that it be in place for only a year, rather than the two years proposed by First Energy. He then proposed that the bulk of the revenue produced by the MAC be refunded to customers outside the PTC, as a credit to default service customers. (Dominion Retail St. "DR St." No. 1, pp. 9-10).

In short, what is at issue in this case are primarily the Company's deviations from the Commission's Final Order and several innovative approaches not contemplated by that Final Order. As will be obvious, for the most part, DES supports the final product, with some obvious exceptions, as being a reasonable compromise of the various competing viewpoints and recommends adoption of First Energy's proposed and modified DSP, with DES' proposed changes.

B. Procedural History

On November 17, 2011, the Companies filed a Joint Petition for Approval of their Default Service Implementation Plans at Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669 and P-2011-2273670. The Joint Petition was filed pursuant to Section 2807(e) of the Public Utility Code. Dominion Retail, Inc., d/b/a Dominion Energy Solutions ("DES") intervened in this matter, which intervention was granted by the presiding ALJ.

On December 22, 2011, a Scheduling Order was issued setting forth a litigation schedule including a deadline of February 17, 2012, for the filing of non-Company direct testimony.

On February 7, 2012, the Retail Energy Supply Association (RESA) filed a Motion requesting a modification of the schedule. Specifically, RESA requested that the non-Company testimony regarding the "competitive enhancements" that were the subject of the Commission's

December 16, 2011 Tentative Order be held in abeyance until: 1) the Commission entered a Final Order on or about March 1, 2012; 2) the Companies submitted supplemental testimony explaining how they would propose to change their existing proposals due to the Final Order or, if they proposed not to change their proposals, the reasons for not modifying their positions. DES supported RESA's motion. By Order dated February 16, 2012, the Presiding ALJ denied the request.

On March 2, 2012, the Commission entered the Final Order as expected.

In Rebuttal Testimony, that was submitted March 16, 2012, First Energy, and to a certain extent the other parties, attempted to incorporate the requirements of the Commission's Final Order into their respective cases.

Two days of hearings were held for the receipt of evidence and the cross-examination of witnesses on April 11 & 12, 2012. Main Briefs were required to be filed on or before May 2, 2012.

C. Burden of Proof

As the proponent of a rule or order, First Energy bears the burden of proving that its proposed default service plan is in the public's best interest, 66 Pa. CS § 332(a), and that all of its proposals satisfy the Commission's Default Service Regulations. 52 Pa. Code § 54.181, *et seq.*, as well as the Commission's recent guidance in its Retail Markets Investigation proceedings. *Investigation of Pennsylvania's Retail Electricity Market; Intermediate Work Plan,* Docket No. I-2011-2237952 (Final Order entered March 2, 2012)("Final Order").

The term "burden of proof" means a duty to establish a fact by a preponderance of the evidence. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1954) and *Feinstein v. Philadelphia Suburban Water Co.*, 50 Pa. P.U.C. 300 (1976). The term "preponderance of the evidence" means that one party must present evidence that is more convincing, even by the smallest amount, than the evidence presented by the other parties.

Due to the complexity of this matter and the diversity of issues, it is not possible to make a blanket statement as to the Companies satisfaction of the burden of proof. In some cases, such as the MAC, the company has failed to identify or quantify any specific cost element that it would recover via that charge, but it has supported the overall need for the charge. In others, such as the Companies' proposal to use a descending clock auction for the ROI, as opposed to the sealed bid process, First Energy has offered testimony, but that testimony provides no proof, no coherent evidence, that a descending clock auction is superior or more cost effective than a sealed bid process. Accordingly, on these two points, and others that are identified herein, First Energy has failed to carry its burden of proof. In other areas, also identified herein, it has succeeded.

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

A. Procurement groups

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B. Residential and Commercial Class Default Service Procurement

1. Summary and Overview of Each Party's Position

The Companies have proposed a procurement mix that will eliminate purchases of block and spot power in favor of full requirements products for residential and small commercial customers. (FE St. No. ____). Other parties, the OCA in particular (OCA Statement No. 1, p. 23), reject the companies' pro-competitive approach and instead proposed that twenty-five percent (25%) of the Company's supply be purchased in blocks or in the highly volatile spot market. DES supports First Energy's proposal.

2. Term of Contracts

3. Procurement Dates

a) Number of Procurements Per Delivery Year

b) Dates of Procurements Relative to Delivery Year

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

The Commission's Order on future default service plans, *Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952 (Order entered December 16, 2011, slip op. at 19-20)("DSP Order") made it clear that EDCs should minimize contracts that overhang the end of the procurement period or that will dampen competition. First Energy has proposed to move to a portfolio that is comprised entirely of full requirements contracts, none of which will overhang the default service plan, thus providing a stable price that will not include the volatility and market price dislocation that reconciling block and spot purchases can cause and which eliminates the price risk that accompanies blocks and spot programs. The OCA (OCA St. No. 1) has proposed that First Energy continue to purchase a significant portion of its default service supply in these volatile markets.

DES' witness, Mr. Butler, suggests that retail success, and in particular, success in the ROI process envisioned in First Energy's filing, will rest on pricing comparisons between default service and supplier offers. Mr. Butler is concerned that the volatility caused by including a large amount of volatile block and spot purchases make it harder for customers to make valid comparisons, and that this lack of comparability is exacerbated by the reconciliation that further separates the prices at the time of delivery versus the rate that is paid by the customer. (DR St. No. R-1, 3:15-4:2).

Accordingly, DES recommends approval of the Companies' residential procurement plans.

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

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B. Industrial Class: Hourly Pricing Default Service Rider

C. Market Adjustment Charge

First Energy has proposed a Market Adjustment Charge ("MAC"). The MAC is a 0.5 cents per kilowatt hour charge that is layered on top of the PTC, and was proposed to allow the Companies to recover their costs of providing default service that are otherwise unrecoverable through default service rates. The MAC is described at length in First Energy Statement No. 6, the Testimony of James Reitzes, as well as in First Energy Statement No. 7, the testimony of Mr. Charles Fullem.

1. Summary and Overview of Each Party's Position

While Mr. Butler neither supports nor opposes First Energy's cost recovery premise as a general matter, he does concede that if First Energy can substantiate specific costs, it should be allowed to recover those costs through the MAC. DES thus supports the MAC, believing that the MAC surcharge could help establish workable competition by lowering the most significant barrier to robust competition the mere existence of default service. Mr. Butler cited a recent customer survey as evidence that customer offers of savings in the range of ten to twenty percent (10-20%) over default service can increase customer interest in shopping from twenty-six to fifty-one percent (26% to 51%). Mr. Butler calculates that the MAC surcharge would increase headroom by approximately seven percent (7%), which should improve the ability of suppliers to make offers that would entice customers to switch. (DR St. No. 1, pp. 8-10).

Several witnesses, including Mr. Kahal and Ms. Alexander, on behalf of the Office of Consumer Advocate, (OCA St. No. 1 & 2, respectively) have speculated that increasing the headroom in the PTC will simply cause EGSs to increase their prices to take advantage of the profit opportunity, and that customers will not receive the benefit of the MAC surcharge and instead only see higher prices. These witnesses, and those for the OSBA and other customer parties, also oppose the MAC charge by claiming it will provide a potential windfall for First Energy. Under Mr. Butler's proposal, however, the windfall argument is not an issue. (OCA St. No. 1-R, 7:13-9:20). Neither is there evidence to support the notion that increasing headroom will only cause increased supplier offers. The reason is simple: if suppliers cannot attract customers in the first place, and in particular the customers that have not yet switched, higher-priced offers are not likely to entice them to switch, and customers will not be harmed. However, if Mr. Butler is correct, and suppliers use the headroom as an opportunity to attract customers with substantial savings, customers will be the winners. Accordingly, DES Supports the MAC as modified by Mr. Butler's proposal. (DR St. No. 1, p. 10).

2. Position of Parties Opposed

3. RESA's Proposed Modification

4. Dominion's Proposed Modification

Mr. Butler proposed that the MAC surcharge be increased to one cent per kilowatt hour, for a temporary period, 3-5 years, as a way of increasing the headroom even more in the critical early years of the transition. Mr. Butler's proposal is to return the funds not used to offset First Energy's costs to non-shopping customers, outside of the PTC, to minimize the over-all economic impact on those customers. DR St. No. SR-1, 5:6-10. Specifically, Mr. Butler proposed:

> My recommendation would be accept First Energy's MAC proposal with some modifications. Make the MAC surcharge: 1) **higher** - increase it to 1 cent/kwh; 2) **temporary** until 50% switching is achieved; 3) **a funding source**, where monies flow back mostly to customers via NMB rider; and, 4) **cancelable** - by being willing to end the surcharge at anytime if switching is not occurring. (DR St. No. 1, p. 10).

DES' position is that the status quo must be overcome for choice to be successful. The facts show that substantial savings are necessary to motivate customers and DES views the MAC charge, as modified by Mr. Butler's proposal, as a means of creating the headroom that will allow suppliers to make those savings offers. Conversely, there is little room for harm, because under Mr. Butler's proposal, most of the MAC derived revenue will flow back to customers outside the PTC. Finally, in response to the argument that extra headroom will result in suppliers increasing prices, DES suggests that if suppliers raise prices in the short term, instead of trying to gain customers, the effort may fail because customers will not migrate without savings, and a major opportunity will have been lost. In DES's experience, suppliers have not been so short-sighted. Accordingly, DES supports the adoption of the MAC, as modified by Mr. Butler's testimony.

D. Default Service Support Rider

1. Non-Market Based Transmission Charges

First Energy has proposed that it no longer recover certain transmission costs, NITS and other costs, through its price to compare, and to instead recover those costs through a Default Service Support ("DSS") Rider. The DSS Rider would be a separate charge on the bills of all customers. (DR St. No. 1, 3:17-23). Mr. Butler testified regarding his concern that there may be confusion during the transition from the present collection to the proposed methodology, because certain of these charges are included in the prices electric generation suppliers provide to customers, and the sudden removal of these costs could cause price dislocation for customers. Otherwise, DES does not oppose the change. DES would adjust its prices to reflect the fact that customers would now be paying these charges to the utility and not suppliers, but other suppliers may not do so. While this is a transitional issue, it is nonetheless a serious concern.

DES' recommendation, as discussed by Mr. Butler, is to require substantial customer education to accompany the change so that customers understand why the charges are changing, and to include a long lead time as part of that education. (DR St. No. 1, 4:19). Mr. Butler also recommended that prior period NITS balances continue to be recovered through the price to compare and that First Energy not be permitted to advertise the reduction in the price to compare as a price reduction.

2. Generation Deactivation Charges

DES supports the inclusion of Generation Deactivation charges in the DSS Rider.

3. Unaccounted-For Energy Costs

Mr. Butler suggested that Unaccounted for Energy ("UFE") which is based upon a comparison of hourly loads versus hourly usage as a secondary reconciliation also be recovered through the DSS Rider. (DR St. No. 1, p. 4). Mr. Butler believes that UFE is highly unpredictable in both directions and shared across all loads based upon an energy allocator. Mr. Butler recommended that the UFE costs be included in the DSS Rider and no longer charged individually to EGSs because UFE charges are unmanageable for both the Company and EGS and it would be more appropriate for the company to manage these costs on behalf of all customers and recover the costs in the DSS Rider. First Energy has accepted this and to best of DES' knowledge all other parties have accepted this proposal as well.

4. Economic Load Response Charges

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

E. Solar Photovoltaic Requirements Charge Rider

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

1. Summary and Overview of Each Party's Position

2. The OCA's Position

3. RESA's Proposal

G. Reconciliation of Default Service Costs and Revenues

1. Summary and Overview of Each Party's Position

First Energy witness D'Angelo proposed that the Companies continue to reconcile on a quarterly basis but that the Companies would modify slightly the dates on which the rates are implemented. (FE St. No. 1). The OCA and OSBA both proposed modifications to the reconciliation process. DES recommends rejecting both proposals.

2. The OCA's Proposal

The OCA, through Mr. Kahal, recommends that instead of the present methodology, where the variance between costs and revenues are reconciled on a quarterly basis, that the Companies continue to reconcile quarterly, but that the recovery period be calculated over the 12 succeeding months, not the present three (3) month period. (OCA St. No 1, p. 48). This reconciliation methodology is what is used in the natural gas industry, and, which coupled with the migration rider concept proposed in this case by the OSBA, has been responsible for the less than stellar shopping statistics in that market. (DR St. No. R-1, 6:20-7:2). The longer reconciliation period would cause customers to pay more interest, will result in compounding and increasing of unrecovered balances and will disassociate market costs from rates, thus eliminating any potential price signals to customers, and will likely increase volatility in the PTC, not reduce it. (First Energy St. 2-R, 15:6-16:10). The OCA proposes this change despite a lack of any evidence that the Company's present method is inadequate and thus fails to carry its burden of proving that the status quo is inadequate or inequitable. Simply put, there is no basis for the OCA's proposed changes and it should be rejected.

3. The OSBA' s Proposal

Not content simply to change the time periods over which the rates are reconciled, Mr. Knecht on behalf of the OSBA (OSBA St. No 1, p. 25), offers two solutions to what are non-existent problems with First Energy's reconciliation methodology. (DR St. No. R-1, 13:13-

14:2). His first suggestion is to impose the West Penn methodology upon the other three EDCs, rather than the opposite. (FE Statement No. 2-R, 16:18-17:17). As a second suggestion, he proposes a migration rider that would charge customers for the e-factor when they leave default service for up to a year and would excuse customers from paying the e-factor when they go back to default service for a year.

Mr. Knecht's goal of consistency across the First Energy footprint is admirable, but based upon the Company's response (Id.). DES supports the First Energy position that the status quo be maintained.

With regard to Mr. Knecht's second option, there simply is no factual or legal basis to support the need for a migration rider, or to overcome the fact that it has the potential to promote gaming, and to otherwise provide a set of perverse incentives for customers to return to default service. (DR St. R-1, 13:13-14:2). A migration rider is not in the best interest of transparency because it hides the true cost of default service from default service customers under the guise of trying to match costs with cost causers. It must be remembered that there is a cost associated with the requirement that allows customers to be able to freely move on and off the service on the same terms and conditions. 66 Pa. C.S. § 2807(e)(4). Rather than impose that cost directly on customers, as the ratemaking concept of direct cost causation may argue, the General Assembly and the Commission have required that the default service rate, the PTC, recover the costs of default service through the PTC and only from default service customers. 66 Pa. C.S. § 2807(4), 52 Pa. Code § 54.187(a). There simply is no way to get around the plain fact that only the PTC, which can be charged only to default service customers, is able to recover the costs of default service. *Id.* Accordingly, DES rejects Mr. Knecht's suggestion, and recommends that Mr. Knecht's proposed modifications to First Energy's reconciliation methodology be rejected.

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

IV. COMPETITIVE MARKET ENHANCEMENTS

A. Retail Opt-In Aggregation Program

1. Summary and Overview of Each Party's Position

First Energy has proposed a retail opt-in auction in which each constituent EDC will solicit bids from EGSs in the form of a fixed price, based on an initial percentage-off discount of each individual distribution company's PTC. The minimum bid will be a five percent (5%) discount. The Company has proposed to use a descending clock auction as the bid methodology. Originally the ROI product was to be a twenty-four (24) month fixed price, however in its Rebuttal Testimony, (FE St. No. 7-R, 3:21-4:12), First Energy proposed to modify the ROI product to a twelve (12) month product at a minimum five percent (5%) discount off the respective company's price to compare at the time of the auction. The companies also propose a fifty percent (50%) customer participation cap and a fifty percent (50%) supplier load cap. (FE St. No. 7-R, 3:21-4:12). However, the Companies continue to decline the Commission's suggestion in its Final Order of a $50 bonus payment for customers for participating in the program and have proposed a one year initial contract period for that program in contrast to the Commission's recommendation of a six (6) billing cycle proposal. (DR St. No. 1, 3-19).

DES believes that the supplier load cap should be twenty-five percent (25%), rather than fifty percent (50%), but can agree with the Companies' proposed one year product for the retail opt-in auction as opposed to the Commission's recommended six (6) billing cycle program length. Mr. Butler continues to believe however, that a $50 bonus payment is a reasonable and appropriate incentive for customers, as part of the pre-auction aggregation of customers and that it would create the necessary customer participation. DES suggests that the winning retail opt-in auction suppliers be established through the means of a sealed bid proposal as opposed to the Companies' descending clock auction proposal.

DES would support recovery of ROI costs from all customers, or alternatively from winning bidders, so long as a sealed bid process is used. The reasoning is simple, a descending clock auction costs over $500,000, which DES believes is excessive and unnecessary, and it cannot consent to bearing those costs. (DR St. No. R-1, 5:9-14). By comparison, the sealed bid process is far more cost effective and should be adopted here where the costs could be significant.

2. Customer Eligibility

a) Small Commercial and Industrial

DES supports not including the small commercial and industrial customers in the ROI, for a variety of reasons, not the least of which is the fact that the Commission reached the same conclusion. Small C&I customers vary widely in their consumption and sophistication in contrast to residential customers that are more or less homogeneous. Designing an ROI product offering that could meet the needs of even a small slice of the small C&I market could prove treacherous for suppliers and customers alike. It was for this reason that the Commission recommended not including those customers and it is why DES supports that conclusion here. (Final Order, p. 42).

b) Shopping Customers

The purpose of the ROI is to provide an easy path for customers who for whatever reason have failed to take advantage of offers in the market that would save them money. As Mr. Butler describes it, a Commission endorsed program that takes the guesswork out of the process and provides credibility so that this group of so-far unresponsive customers can be enticed to give competition a try. Customers that already have shopped have made it over that hurdle and need no further enticement, so there is no need to include them in the group of eligible customers for purposes of calculating the customer participation cap and no need to provide them with any promotion regarding the program. DES recognizes however, that some subset of shopping customers are dedicated bargain hunters and that they may show up at the party without an invitation. That is, they may find out about the program anyway and want to participate. DES does not object, believing from a fairness and customer service perspective, it would do more harm to exclude them than would be caused by including them. Accordingly, DES's recommendation follows that of the Final Order, while customers who are already shopping may participate if they ask, they should not receive marketing materials nor be the focus of the program.

3. Program Length

The Commission's Final Order proposed that the ROI Product be a six (6) billing cycle product with a $50 bonus payment. The Company has proposed a twelve (12) month product at a minimum of 5% discount and no bonus payment. The rationale for the Company's longer proposal is that a shorter term proposal tends to be a "bait and switch" type of offering to customers and does not bring the type of value that will cause customers to shop in the long run. In this context, DES supports the Company's twelve (12) month proposal as being a reasonable compromise between the six (6) billing cycle proposal of the Final Order and the Company's original twenty-four (24) month offer. DES tends to agree that longer term offers are better for customers and provide more value to customers. (DR St. No. R-1, 8:1-4). Accordingly, DES supports the Company's twelve (12) month program length proposal in this context.

4. Timing of Solicitation and Auction

DES proposed that customers be aggregated prior to the auction so that participating suppliers would have the option of knowing the sizes of the tranches before proposing bids. It was DES' belief that this information would be critical to suppliers and would reduce the prices of the bids due to the risk of serving larger or smaller groups of customers. (DR St. No. 1, p. 7). It was DES' intention that the $50 rebate or bonus would be employed as part of this pre-bid aggregation to stimulate customer participation. DES recognizes that this two-step proposal does add complexity and cost to the auction process, but ultimately believes that the customers would benefit through lower bid prices. In its Final Order, the Commission rejected DES' proposal as did First Energy. While DES continues to believe that it would be beneficial to customers for suppliers to know the number of participating customers prior to holding the auction, it nonetheless is willing to live with what it believes is a less than satisfactory result that will be produced by forcing suppliers to bid in a vacuum.

5. Timing for Providing Full Terms and Conditions to Customers

DES believes that customers should have the terms and conditions at the time they are provided the offer from the supplier, and before they actually "opt in." The rationale for this belief is that customers may ultimately believe that they were not fully informed, and in fact, they may not be if they have not had an opportunity to review the T's & C's. That is, because of the timing provisions and the other unique aspects of the offers being provided by suppliers in this context, DES believes that it would be beneficial and would avoid negative repercussions later on for customers to be provided the full terms and conditions prior to executing the switch. Transparency is a key element of the program being considered to be legitimate by customers;

accordingly, DES recommends that terms and conditions be provided to customers once their supplier has been identified.

6. Customer Participation Cap

a) Summary and Overview of Each Party's Position

b) The Companies' Proposal (50%)

c) The OCA's Proposal (20%)

The Company has proposed a fifty (50%) percent cap on customers participating in the ROI and the OCA has proposed a twenty (20%) cap. DES has supported the Company's fifty percent (50%) cap as a reasonable means of reducing the risk exposure to wholesale bidders in the default service supply auction. (DR St. No. R-1, 8:9-14). To the extent that these bidders are aware that the maximum number of customers eligible to switch would be fifty percent (50%), it will mitigate some of the risk associated with switching by providing some transparency. While the OCA's twenty percent (20%) proposal would have the same effect, it would be such a small group of customers as to make the auction unsuccessful from the beginning, and is thus contrary to the goal of the ROI, which is to migrate customers to the competitive marketplace. Moreover, a cap of twenty percent (20%) over which to spread the costs of this program will increase the cost per customer which may doom the program if suppliers are to be charged the ROI costs. There is simply no basis to conclude that a twenty percent (20%) cap is reasonable. Moreover, the Commission's guidance is a fifty percent (50%) cap and DES supports that position.

7. Supplier Participation Load Cap

a) Summary and Overview of Each Party's Position

b) The Companies' Proposal

c) Dominion Retail's Proposal

With regard to the Supplier Participation Load Cap, DES initially proposed a twenty-five percent (25%) load cap so that no supplier could win more than twenty-five percent (25%) of the auction load. (DR St. No. 1, p. 6). As Mr. Butler made clear, the purpose of the retail opt-in auction is to stimulate shopping and help develop a competitive market, a market in which there are many sellers offering diverse products. Mr. Butler is seriously concerned that designing an auction that would allow one EGS to dominate the market would be counterproductive. (DR St. No. SR-1, 9:1-10:8). In its Rebuttal Testimony, and in apparent response to the Final Order, First Energy modified its initial proposal of no cap and imposed a cap of fifty percent (50%). That is, no supplier could win more than fifty percent (50%) of the customer load participating in the ROI program. Mr. Butler has since agreed that the Commission's fifty percent (50%) load cap is an adequate protection.

d) RESA's Proposal

8. Composition of Product Offer

a) Discount from PTC

First Energy has proposed that the ROI product will be a fixed price, twelve (12) month term that will be at least five percent (5%) less than the price to compare at the time it is offered. DES supports a fixed price product that is set at a discount from the PTC, but suggests, as discussed further below, that a bonus payment of at least $50 would serve to better stimulate shopping. (DR St. No. 1, pp. 5-6). As Mr. Butler discussed in his testimony, a guaranteed percentage off product, particularly a one for term as long as a year, would introduce significant risks for suppliers which could cause their offers to be higher than they would otherwise be with a fixed percentage discount. Mr. Butler believes that a fixed price plus the bonus will be more attractive to customers and suggests that the Company adopt this approach. Moreover, the Commission has agreed that the bonus payment is the appropriate approach, so long as the customer remains on the service for at least three (3) billing cycles. Accordingly, DES supports the twelve (12) month fixed price concept but submits that a bonus also appears to be needed.

b) "Bonus" Payments

First Energy, through Mr. Fullem, contends that the best way to entice customers into participating in the ROI is a straight discount, arguing that the bonus programs suggested by DES and others have already been offered. (FES St. No. 7-R, 32:6-33:13). Mr. Fullem offered no testimony supporting the success or failure of these offerings. Rather, the fact that they had been used already was sufficient for Mr. Fullem to recommend not using them again. Apparently, Mr. Fullem believes that any requirement for the opt-in program must have some "new" spin. This newly invented rule, however, is internally inconsistent because what Mr. Fullem proposes, competition based solely on the level of the discount, appears to be the norm in the market. Simply put, without the $50 bonus payment, the program is simply a discount off of the price to compare like many other offers in the market.

While Mr. Butler concedes that the response to rebates so far has been mixed, because customers may wonder how it is being paid for, Mr. Butler believes that if it is being offered through a Commission-authorized program consumers would be less skeptical. (DR St. No. 1, 4:16 - 5:4). For this reason, DES would support an even higher rebate, even as high as $125 per customer, believing that it would be the optimum level for customer participation coupled with a lower minimum discount off the price to compare. Accordingly, DES recommends that the

Commission require some form of rebate or bonus payment to customers, consistent with the Commission's Final Order and Mr. Butler's testimony here.

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

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

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

The OCA, through its witness, Ms. Alexander, suggests that customers receive three (3) notices as the expiration of contracts for the opt-in auction. (OCA St. No. 2, 11:19). Mr. Butler believes that three (3) notifications is excessive, as he believes that a single notice would be sufficient, but understands that the Commission currently requires two (2) such notices. Mr. Butler suggests that because customers are in fact opting-in to this program, they are no different from any other customer accepting an EGS offer and therefore there is no basis for providing three (3) notices because it would significantly increase costs. Further, Mr. Butler believes that at the end of the opt-in auction contact customers should be offered a fixed price contract unless the customer provides affirmative consent to change to a variable price. He believes that the automatic move from a fixed price to variable price may "catch some customers by surprise" and believes that it might be more customer friendly to provide those customers with a fixed price, but that suppliers should be able to select how long they want to fix that price, i.e. for three (3), six (6), or up to the full year. (DR St. No. R-1, 9:4-16). Accordingly, while DES rejects the OCA's three notice proposal, it submits that suppliers should offer a "fixed" price for some period at the expiration of the ROI initial one year term.

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

First Energy has been stalwart in its intention that the ROI winners be determined using a descending clock auction. DES has been as adamant that a sealed bid process is less expensive and would be more productive in the ROI setting. Witness Miller on behalf of First Energy (FE St. No. 5-R, 4:1-7:17), attempts to explain why a descending clock auction is a better choice, but his "explanation" is incoherent and cannot overcome Mr. Butler's argument that sealed bids are just as effective and cost less. Simply put, First Energy cannot carry its burden of proving that a descending clock auction with its higher costs is a better option. As Mr. Butler stated repeatedly, a sealed bid is less expensive than a DCA and requires each company put forth its best offer once and only once. (DR St. No. SR-1, 6:14-22).

12. Recovery of Costs

a) All customers versus EGSs

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

c) Form of Recovery if EGSs to be responsible for all costs

DES supports the recovery of costs from all customers, as proposed by First Energy, as the best way of recovering the costs for the opt-in auction, particularly if the Commission requires a descending clock auction. (DR St. No. SR-1, 4:1-3). However, if the Commission does not permit recovery from all customers, then the winning EGS should be responsible for the incremental cost on a prorated, per customer share basis. (DR St. No. R-1, 3:1-8).

B. Standard Offer Customer Referral Program (CRP)

1. Summary and Overview of Each Party's Position

First Energy originally proposed a standard offer CRP that would bid out the ability to be a standard offer supplier, and to provide either, or both, a twelve (12) or a twenty-four (24) month product. This status would have been auctioned off on a weekly basis. Mr. Butler expressed concern that a weekly auction would favor a single supplier and suggested that either the same supplier could not win the weekly auction for two weeks in a row, that the same supplier cannot be selected for the one and two year price in the weekly auction, or that the utility's affiliate could not participate. Mr. Butler's first solution, however, was to make the CRP look more like what the Commission had proposed in the Final Order, and to allow participation by an unlimited number of suppliers, so long as they are willing and able to provide a specified discount for a minimum period of time. (DR St. No. SR-1, 9:4-10:8).

First Energy subsequently modified the program through the Rebuttal Testimony of Mr. Fullem. (FE St. No 1-R, 3:21-4:12). First Energy's modified position is more in line with the Final Order, and requires participating suppliers to provide service at a rate that is at least 7% lower than the respective companies' PTC at the time of the offer, and includes only the twelve (12) month product. Under First Energy's modified proposal, customers would have the option of selecting their own EGS or be randomly assigned to one of a group of hopefully participating suppliers. First Energy has proposed that CAP customers be eligible for the program.

Mr. Butler accepted these changes in his Surrebuttal Testimony. However, Mr. Butler suggested that unless the Commission adopts the MAC charge, that the seven percent (7%) discount should be reduced to five percent (5%). DR St. No. SR-1, 4:11, 12

The Company also proposed to follow the Commission's Final Order with regard to the notices and actions required at the end of the contract period, that customers remain with the supplier on a month to month basis with no cancellation fees. Mr. Butler disagrees with Ms. Alexander with regard her proposal that customers should be automatically returned to default service absent a wet signature at the end of the CRP. DES submits that the standard offer CRP, like the ROI, has customers opting in to the program so there is no need for any different switching requirements than those provided for other customers. Simply put, additional switching requirements add cost and complexity and provide no additional consumer protections. (DR St. No. R-1, 10:16-21).

2. Customer Eligibility (Non-CAP)

DES believes that all non-shopping customers should be permitted to participate in the CRP in a manner similar to the ROI. There should be no cap, and no quota. Limiting the CRP to non-shopping customers should be easy because the call center representative will know the status of the customer and should not offer the referral to a customer already shopping.

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

The Companies' modified plan for the Standard Offer CRP is a seven percent (7%) discount off the current PTC at the time the offer is made. This discount is a substantial offer, when one considers the one-year term, that should entice customers to "dip a toe" into the competitive pool. Any additional discount could pose too much risk to suppliers and may dampen participation. After all, as Mr. Butler made clear, he views the goal of the competitive enhancements as promoting a robust competitive market with many sellers making offers to customers. (DR St. No. SR-1, 3:22-4:12). The product needs to strike a balance between the need to bring meaningful value to customers, and to provide an opportunity for as many suppliers as possible to participate. DES believes that seven percent (7%) achieves that goal, unless the MAC charge is not approved, in which case, the discount should be two percent (2%), to alleviate the problem associated with less headroom.

4. Recovery of Costs

a) All Customers versus EGSs

First Energy has proposed to recover the costs of the Standard Offer CRP from all customers through the DSS Rider, in a fashion similar to the ROI. This mechanism conflicts with the Commission's preferred method of recovery, which is to recover the costs from suppliers. A CRP that provides non-shopping customers with information and an immediate opportunity to act on that information is a benefit to all customers and it is rational to recover the costs from all customers as First Energy has proposed. Assigning all of the costs to all suppliers could keep suppliers from entering the market in the first place. Recovering at least some of the costs only from suppliers that win customers is one alternative, if the fee is known and reasonable in light of the benefit of the program. For example, a per customer fee of $200 per customer would likely keep most suppliers from participating and would doom the program to failure. It cannot be forgotten that the level of the fee is driven by the costs, which to this point have been under the control of First Energy. DES has disagreements with the level of expense proposed by First Energy and believes that those expenses must be thoroughly examined if First Energy is to charge suppliers directly. (DR St. No. R-1, 7:12-16). DES recommends recovery of call center improvement costs from all customers since these are obvious EDC costs. Although not DES' first choice, incremental cost associated with the bidding could be charged to winning suppliers, so long as the bidding is accomplished through a sealed bid, otherwise the customers should pay those costs. Costs of the notices to customers are normal supplier costs and should be borne by suppliers. (DR St. No. R-1, 9:8-16).

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

c) Form of Recovery if EGSs to be responsible for all costs

If the Commission were to reject First Energy's cost recovery proposal and instead require that the costs be recovered from suppliers, the best and fairest mechanism would be for First Energy to charge a per customer switch fee calculated to recover the incremental operating expenses from Suppliers spread over some reasonable estimate of the level of participation. It simply is unreasonable to expect suppliers to pay to upgrade the EDC's systems and to provide those companies with valuable assets as part of a program to help customers. Accordingly, DES would recommend that if the Commission were to conclude that suppliers must pay something, it seems logical that suppliers pay the incremental operations expenses, which one could argue replace those cost if the supplier were to seek that customer on its own.

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

It appears from Mr. Fein's Direct testimony (Constellation St. No. 1, 33:11) he is proposing that customers must "opt-in" to the CRP in order to be eligible. This requirement is nonsensical. A CRP is presented to a customer when they call the EDC for some issue that is a non-emergency and is related to their generation service. To require customers to "opt-in" at some prior date, in order to be eligible, would require that the customer know in advance: 1) that they may have to call the utility at some point in the future; 2) that the utility has a CRP; and, 3) that they may want to participate in that program. Broken into its components, it soon becomes clear that such a requirement would make the CRP inoperable, and it must therefore be rejected. Any proposal that would require the customer to "opt-in" that is, to take some affirmative step before they contact the utility is: a) not possible to implement because customers are not clairvoyant; and, b) an obvious attempt to thwart the program because of Constellation's apparent ongoing desire that the majority of customers remain on default service. The Commission should reject this notion as silly and unwarranted.

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

The OCA, through its witness, Ms. Alexander, has proposed delaying the implementation of the CRP until at least 2013, to avoid conflict and confusion with the ROI. (OCA St. No. 2, p.16). Mr. Butler agreed, in part with Ms. Alexander's proposal. His view was that if the CRP cost estimates proved to be even close to reality, from a cost benefit perspective it may be better to delay implementation. (DR St. No. R-1, 7:12-16). DES supports the CRP but is concerned with saddling customers or suppliers with too much expense, expense that they cannot control. Accordingly, DES's primary position is that the ROI and CRP be initiated in 2013, and DES recommends a slight delay in the CRP if, and only if, First Energy imposes a descending clock auction methodology, which DES views as overkill and unnecessary expense.

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

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

DES submits that from a pure policy perspective, there is no good reason to deprive low income customers who may participate in an EDC's CAP program the opportunity to save money via a CRP. In fact, it is hard to understand why anyone would argue that such customers should not be the first ones in line, since it is obvious that their need to save money is substantial. The only argument in favor of such a restriction is the paternalistic suggestion that "low-income customers are not capable of assessing competing offers and thus need to be kept on higher priced default service so they do not suffer the consequences of their poor choices". While some EDCs may have implementation issues that make it difficult, in the short term, for CAP customers to participate in every facet of the CHOICE market, First Energy does not. Therefore, it does not appear that there is any valid reason to prohibit CAP customers from being included in the standard offer CRP, where the savings will be at least seven percent (7%).

a) CAUSE-PA's Proposal

b) The OCA's Proposal

C. OPERATIONAL ISSUES

D. System "Enhancements" Proposed by Constellation

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

V. AFFILIATED INTEREST APPROVAL

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

VI. CONCLUSION

DES generally supports the DSP proposal in this case, as modified in subsequent rounds of testimony and as modified by Mr. Butler's recommendations. Accordingly, it respectfully requests that the Plan, as so amended, be approved by the Commission.

Respectfully submitted,

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