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May 16, 2012

VIA E-FILING

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

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:

On behalf of FirstEnergy Solutions Corp., I have enclosed for electronic filing the *Reply Brief of FirstEnergy Solutions Corp.* Accompanying the Reply Brief is a Confidential Attachment 1 which is being filed under seal and served only on those parties that signed protective order acknowledgement forms. We respectfully request that Attachment 1 be maintained in a non-public file. Copies have been served in accordance with the attached Certificate of Service.

Very truly yours,

Brian J. Knipe
For BUCHANAN INGERSOLL & ROONEY, P.C.

BJK/kra

Enclosures

cc: The Honorable Elizabeth H. Barnes (via email and first class mail)
Certificate of Service

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

REPLY BRIEF OF FIRSTENERGY SOLUTIONS CORP.

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Attorneys for
FirstEnergy Solutions Corp.

DATED: May 16, 2012

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I. INTRODUCTION

The Main Brief of FirstEnergy Solutions Corp. ("FES") explained why the Pennsylvania Public Utility Commission ("Commission") should approve the default service programs ("DSPs"), Retail Opt-in Auction ("Opt-In Program") and Standard Offer Customer Referral Program ("Referral Program") proposed by the Joint Petitioners, Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power") and West Penn Power Company ("West Penn") (collectively, the "Companies") as a holistic approach to transitioning Pennsylvania to an optimal end-state of electricity default service. The record evidence demonstrates that the DSPs include a prudent mix of contracts designed to ensure the least cost over time, are designed to ensure adequate and reliable service to customers, will maximize price stability for smaller customers, and will promote shopping within the parameters of the Pennsylvania Electricity Generation Customer Choice and Competition Act ("Choice Act"), as amended by Act 129 of 2008 ("Act 129"), 66 Pa. C.S. §§ 2801-2818. In addition to meeting the requirements and objectives of Act 129, the DSPs will facilitate the Commission's transition to an end-state model of default service beginning June 1, 2015.

While FES's Main Brief adequately responded to the arguments of other parties who seek to modify the Companies' default supply procurement portfolio, or to reduce the Companies' proposed load caps, FES will briefly reply to certain of their arguments in this Reply Brief. As explained below, proposals to reduce the Companies' proposed use of 24-month contracts for smaller customers are based upon inapplicable and outdated legal standards, lack the price stability that is so important under Act 129, and fail to accommodate the Commission's plan to transition the Commonwealth to a new model of end-state default service beginning June 1,

2015. The Companies' proposed portfolio of contracts is superior and a proper exercise of the flexibility and latitude that the Commission affords EDCs in accomplishing the goal of achieving the "least cost" standard and designing a default service portfolio in a manner that meets the needs of their customers and service territories. RESA's arguments for lowering the Companies' proposed wholesale load cap are based on conjecture, not evidence, and fail to apply the correct legal standard.

The Companies' proposed Opt-In Program and Referral Program follow much of the guidelines set forth in the Commission's Intermediate Work Plan ("IWP") Final Order entered March 2, 2012. See *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered March 2, 2012) ("IWP Order"). When there is a deviation from the guidelines, the Companies have shown good cause to justify it. The Companies' proposed Opt-In Program and Referral Program are designed to invigorate customer migration from default service to competitive suppliers by ensuring competition among a high number of participating suppliers, while ensuring that the outcome of the programs benefit participating customers and leave them with a positive experience regarding the Commission's intermediate competitive enhancements and retail electric competition in general. Further, FES believes the Companies' DSPs and retail market enhancement programs are designed so that they will complement one another, by giving participating customers a stable platform from which to further explore competitive options and realize additional savings. FES believes that a key shortcoming in the positions of those seeking to modify the Companies' programs is the failure to consider that the DSPs and retail market enhancement programs must be considered as a package, and must take into account the Commission's intention to move toward a new end-state model of default service beginning June 1, 2015.

FES will not respond in this Reply Brief to every argument set forth in the Main Briefs of the other parties, nor address every issue in the common brief outline. FES's Main Brief has adequately addressed most of the positions and arguments of the other parties, and has set forth the evidence and arguments that recommend the Commission approve the Companies' proposed DSPs, retail Opt-In Programs and Referral Programs, and reject modifications proposed by other parties. The omission of a response to any arguments raised in another party's Main Brief should not be construed as FES's acceptance of those arguments.

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

A. Procurement groups

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

This section intentionally left blank.

B. Residential and Commercial Class Default Service Procurement

1. Summary and Overview of Each Party's Position

As FES explained in its Main Brief, it supports the Companies' proposed mix of short-term contracts and spot market purchases, which is consistent with the Choice Act as amended by Act 129. The elaborate alternative procurement proposals advocated in the Main Briefs of RESA, the OSBA and the OCA reflect the law prior to Act 129, lack the price stability that is an important policy goal of Act 129, and/or fail to facilitate a transition to a new end-state model of default service beginning June 1, 2015. They also fail to observe the Commission's pronouncements that EDCs should be permitted flexibility and latitude in designing default supply procurement portfolios to meet Act 129's requirements and policy goals.

With respect to the Companies' proposed 75% load caps, FES does not support any supplier caps, and strongly opposes the proposal of RESA to reduce the Companies' proposed load caps to 50%. RESA's arguments in support of this recommendation are based on conjecture regarding potential supplier defaults and inadequate numbers of participants in wholesale procurements, rather than any hard evidence.

2. Term of Contracts

The Companies' proposed procurement plan for residential and commercial customers is consistent with the legal requirements and policy goals of the Choice Act as amended by Act 129. FES supports the Companies' proposal to procure 90% of default supply for residential and small commercial and industrial ("C&I") customers using 24-month full requirements contracts, and the remaining 10% from the spot market. As FES explained in its Main Brief, the Company's proposed portfolio of contracts, procured at different points in time and combined with 10% spot market purchases, satisfies the "prudent mix" mandate of Act 129 66 Pa. C.S. § 2807(e)(3.2), (3.4). Also, it meets the clear policy goals of the Act to ensure adequate and reliable service to customers and "tak[e] into account any benefits of price stability over time" and "to ensure that electricity obtained reduces the possibility of electric price instability." Preamble to Act 129; FES M.B. at 9-12.

The Commission should reject the complex alternative portfolios proposed by RESA, OSBA and the OCA. In addition to rate stability, the Companies' proposed use of 24-month contracts will provide significant benefits which RESA's, OCA's and OSBA's small customer procurement proposals cannot, including but not limited to:

- Price certainty and predictability that allow customers to better evaluate retail offers by competitive suppliers, FES St. No. 1-R at 19;

- More certainty of savings for shopping customers who enter into fixed price retail contracts, FES No. 1-R at 20;
- A defined default service product against which retail suppliers can develop a wide variety of products, FES St. No. 1-R at 20;

Also, the Companies' proposal avoids procuring supply beyond May 31, 2015, in accordance with the Commission's recent guidance. *Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952 (Final Order entered December 16, 2011) ("Upcoming DSP Final Order"), slip op. at 19. Moreover, 24-month full requirements contracts are familiar to wholesale bidders, increasing competition at the wholesale level and requiring fewer auctions which reduces administrative costs. See Met-Ed/Penelec/Penn Power/West Penn St. No. 4-R at 4; FES St. No. 1-S at 6. Other parties' proposed supply portfolios lack these benefits.

Benefits such as these are particularly important for default service plans for 2013-2015, a period in which the Commission plans to vigorously encourage default service customers to shop while transitioning default service to a new end-state model beginning June 1, 2015. The Commission recognized the importance of DSPs to this transition in explaining the rationale for directing that the DSPs span two years:

> A two-year default service plan that incorporates intermediate competitive enhancements allows sufficient time to incorporate long-term changes that affect default service while progressing towards a more competitive market.

Upcoming DSP Final Order, slip op. at 11. Thus, the current DSPs are not merely another step in the gradual evolution of default service. During this two-year transition to a new end-state of default service, default service customers will be inundated with information to educate them on electric competition, and encouraged to participate in retail market enhancement programs. The

Companies' proposal provides a better platform for this undertaking. As FES explained, customers that have been reluctant to shop will be able to make better comparisons of competitive offers against a relatively stable default service price. The Companies' proposal facilitates this transition in a way RESA's, the OCA's and the OSBA's proposals do not. In fact, the OCA's recommendation that the Companies should procure a mix of contracts similar to those procured by Met-Ed and Penelec under their current DSPs which the Commission approved in 2009, OCA M.B. at 5, 6, 18, indicates no recognition of the transition to end-state default service. This is confirmed by the OCA's contention that the current default service model has worked well and provides a solid foundation to further develop the retail market. OCA M.B. at 6.

RESA, the OSBA and the OCA recommended complex modifications to the Companies' procurement of default supply which would substitute 6 and 12-month contracts for many of the 24-month contracts, introduce complex layering and laddering of contracts and, in the case of the OCA, incorporate a "block and spot" approach for 25% of residential default supply. As an initial matter, FES believes these proposals for multiple laddered and layered procurements of short-term contracts of several varying lengths are inconsistent with and inappropriate for an abbreviated 2-year DSP which is a mere bridge to end-state default service. Also, these proposals recommend micromanaging the Companies' default supply portfolio in a way the Commission has previously been reluctant to do. In its recent *Default Service Rulemaking Order*, the Commission declined numerous requests by various commenters to require a specific mix or percentage of types of contracts, set limits on the numbers and types of products that should be included, or prescribe methods of diversification and accumulation of contracts. Instead, the Commission emphasized that EDCs should be permitted the flexibility and latitude to accomplish the goal of achieving the "least cost" standard in a manner that meets the need of their customers and service territories. *Implementation of Act 129 of October 15, 2008; Default Service and Retail Electric Markets*, Docket No. L-2009-2095604 (Final Rulemaking Order entered October 4, 2011) ("Default Service Rulemaking Order"), slip op. at 38. Similarly, the Commission interpreted the "prudent mix" requirement in a flexible fashion which allows the default service provider to design its own combination of products that meets the various obligations to achieve "least cost to customers over time," ensure price stability, and maintain adequate and reliable service. *Default Service Rulemaking Order*, slip op. at 60. Accordingly, the Commission should reject these parties' attempts to micromanage the Companies' procurement portfolio.

In addition, RESA continues to ignore the price stability objective of Act 129 and argue for a non-existent legal standard of "market reflective, market-responsive" prices to achieve its objectives in this case. E.g., RESA M.B. at 16. Despite the clear language of the Preamble to Act 129 emphasizing price stability, RESA inexplicably contends that "price certainty and predictability " do not come within the goals of the Act. RESA M.B. at 20. Rather, RESA makes "market reflective" prices the keystone of its procurement recommendation. While RESA's arguments may have been appropriate under the former "prevailing market prices" legal standard, RESA's recommendation to reduce the Companies' use of 24-month contracts and utilize 12 and 6-month contracts to achieve "market reflective" prices contradicts the current legal standards for default service procurement. As the Commission found in its *Default Service Rulemaking Order*, the current legal standards make no reference whatsoever to the objective of achieving "market reflective" default service prices. *Default Service Rulemaking Order*, slip op. at 20. As FES explained in its Main Brief, the amendments to Act 129 specifically *removed* the "prevailing market price" procurement standard from Act 129 and replaced it with the standard of a "prudent mix" of contracts that will ensure customers least cost over time. The current legal standard requires more price stability, which the proposals of RESA, the OSBA and the OCA do not allow. Further, RESA is incorrect to suggest that there is no market reflective component in the Companies' portfolio, since the Companies have proposed to procure 10% of small customers' default supply from the spot market.

RESA incorrectly contends that 24-month contracts will not really promote default service price stability for small customers because there will still be a reconciliation mechanism employed to adjust the rate even if all full requirements contracts are 24 months in length. RESA M.B. at 20. While the price-to-compare ("PTC") will not be 100% certain, given the Companies' proposal to procure 10% of their supply for smaller customers from the spot market and the resulting need for periodic reconciliation of the PTC, 24-month fixed price supply contracts will provide much more certainty with regard to the PTC than the 12 or 6-month supply contracts recommended by RESA, the OSBA and the OCA, which will increase rate volatility and move default service further away from the rate stability that is a policy goal of Act 129. FES St. 1-S at 6.

The OCA incorrectly argues that reliance on a single type of contract, all of which start on June 1, 2013 and end on May 31, 2015, cannot be deemed a "prudent mix." OCA M.B. at 5, 16. This argument is factually incorrect because it overlooks the 10% of supply procured from the spot market and ignores the current low price market environment which would suggest that now may be the most prudent time to purchase longer term supply. Also, the OCA's premise is incorrect. In its recent *Default Service Rulemaking Order* interpreting the requirements of Act

129, the Commission rejected the OCA's position that a single product cannot be deemed a "prudent mix:"

> We do reject the positions of those parties that "prudent mix" be defined to always require a specific mix or percentage of types of contract components in each default service plan or a minimum of two types of products.

Default Service Rulemaking Order, slip op. at 60.

Further, the arguments of parties like the OCA that the use of 12-month contracts is necessary to achieve a more diverse "prudent mix" of contracts, OCA M.B. at 14-24, mistakenly suggest that 6, 12 and 24-month contracts are different types of contracts under the law, for purposes of fulfilling the "prudent mix" legal requirement of Act 129. To the contrary, 24-month contracts, just like 12 and 6-month contracts, qualify as "short-term contracts" under the law. See 66 Pa. C.S. § 2807(e)(3.2)(iii); 52 Pa. Code § 69.1805; *Default Service Rulemaking Order*, slip op. at 23. As a result, the OCA, the OSBA and RESA are not recommending any new types of contracts recognized by Act 129 as part of a "prudent mix." Rather, these parties are quibbling over different lengths of "short-term contracts." Adding additional short-term contracts to currently proposed short-term contracts does not expand the mix of purchases in the context of Act 129. The Companies are already providing a prudent mix of purchases by combining 24-month, short term contracts with spot market purchases. The Companies' preferred use of 24-month contracts is superior to OSBA's and OCA's preference for some 6 and 12-month contracts because of the additional benefits that accrue from a stable, predictable 24-month rate for small default service customers.

The OSBA's and the OCA's arguments for the use of 12 or 6-month contracts place undue emphasis on the need for a layered and laddered portfolio. OSBA M.B. at 4-5; OCA M.B. at 22. These arguments lack merit, for the reasons set forth in Section II.B.4 of this Reply Brief. Also, the OCA's recommended "prudent mix" of contracts relies on block and spot purchases. This argument should be rejected as well, as explained below in Section II.B.5.

In sum, the Company's proposal to use 24-month short-term contracts, procured at different points in time and combined with spot market purchases, satisfies the legal requirements of Act 129 and serves its policy goals better than any other proposal presented, and therefore should be approved.

3. Procurement Dates

a) Number of Procurements Per Delivery Year

This section intentionally left blank.

b) Dates of Procurements Relative to Delivery Year

As FES explained in its Main Brief, FES believes that the default service supply procurements, consistent with the Companies' proposal, should be for 24 months with all procurements completed prior to the start of the 24-month default service delivery period, to maximize price stability during the default service plan. FES M.B. at 13-14. FES's Main Brief also explained that the recommendations of the OCA, OSBA and RESA to require the Companies to conduct procurements during the delivery period should be rejected because they do not allow for the price stability which is so important under Act 129 and in the case of RESA's proposal, would conflict with the timing of the Companies' proposed Opt-In Program. FES M.B. at 13-14.

While the OCA argues that holding procurements 2 months apart creates market timing risk, OCA M.B. at 21, the Commission's Default Service Regulations require the Commission to approve or disapprove competitive bid results, 52 Pa. Code § 54.188(d), and the new language in

Section 54.188(d) provides for the Commission to institute an investigation into a DSP's default service plan and order remedies as appropriate. *Default Service Rulemaking Order*, slip op. at 30. Therefore if undue risk is encountered, the Commission has a remedy available to counter that risk.

Also, as explained previously in Section II.B.2 of this Reply Brief, RESA's arguments that procurements too far in advance of the delivery date will result in pricing that is not "market reflective," RESA M.B. at 13, does not recognize the current state of the law. In fact, RESA bases its arguments regarding the dates of procurements relative to delivery year on the same pre-Act 129 Commission Order discussed in FES's Main Brief, a case decided under the former "prevailing market prices" legal standard. See RESA M.B. at 21 n.65 (discussing *Petition of the West Penn Power Company d/b/a Allegheny Power for Approval of Its Retail Electric Default Service Program and Competitive Procurement Plan for Service at the Conclusion of the Restructuring Transition Period*, Docket No. P-00072342 (Opinion and Order entered July 25, 2008), slip op. at 14); FES M.B. at 11-12. RESA's argument is inconsistent with the present legal standard, and therefore RESA's criticism of the Companies' proposed procurement dates should be rejected.

4. Laddering of Contracts Beyond June 1, 2015

FES agrees with the position of the Companies that the DSP should not include any new procurements that extend beyond May 31, 2015. Met-Ed/Penelec/Penn Power/West Penn M.B. at 14-15. In arguing for their preferred procurement portfolios, the OSBA and the OCA emphasize the need for a layered and laddered approach. As explained in FES's Main Brief, these proposals are inconsistent with the Commission's *Upcoming DSP Final Order*. FES M.B. at 14 (discussing *Upcoming DSP Final Order*, slip op. at 19).

In addition, the Commission, while endorsing the concept of laddering in its October 2011 *Default Service Rulemaking Order*, opted to "leave it to the DSPs to develop those methods of accumulation and diversification that best meet the needs and characteristics of the customer base and service territory." *Default Service Rulemaking Order*, slip op. at 63. The Companies appropriately exercised their discretion in this instance, and the OSBA and the OCA can point to no evidence of record that layering and laddering is needed or appropriate for a 2-year default service plan leading up to a "hard stop" and a significant change in the model for default service.

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

FES agrees with the arguments of the Companies that a preponderance of the evidence shows that the incorporation of a block and spot approach advocated by the OCA is not cost effective and will shift unnecessary risk to customers. Met-Ed/Penelec/Penn Power/West Penn M.B. at 15-17. It is also worth noting that the OCA regards block and spot purchasing as an aspect of a managed portfolio approach, an approach the Commission has declined to endorse. In the Commission's Default Service Rulemaking, the OCA cited experiences with block and spot energy purchasing as justification for the Commission to endorse a managed portfolio ("MP") approach to electricity generation procurement:

> OCA advocates reliance on the MP approach for the following reasons:
>
> * * *
>
> 4. OCA opines that recent procurements demonstrate that the MP approach is a lower cost alternative to the FR approach. In support, OCA cites to recent procurements by PPL, PECO and FirstEnergy affiliates where the winning bids for block energy purchases was significantly less than full requirements purchases. Therefore block and spot purchase[s] should be part of a prudent mix of products for default service.

Default Service Rulemaking Order, slip op. at 51. The Commission, however, declined to endorse the path to the OCA's ideal end state of default service procurement:

> On balance, we are not persuaded that the MP approach is superior to the FR approach in achieving the "least cost to customers" while also achieving the other objectives of "prudent mix" of products and price stability. . . .
>
> * * *
>
> Consequently, we will not require nor do we specifically endorse the use of the MP approach at this time. We do express a preference for continued reliance by DSPs on the FR approach to the extent this method best suits the DSP's particular procurement needs.

Default Service Rulemaking Order, slip op. at 55-56. Given the OCA's view of its own block and spot proposal as a step toward a procurement approach the Commission has declined to endorse, the OCA's block and spot proposal should be rejected.

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

FES disagrees with the OCA's argument that 20% of default supply should be "held back" for use in the retail opt-in program. The OCA believes that the Companies have not adequately accounted for the impact that the proposed retail opt-in auction will have on wholesale default service bidders, and that holding a portion of supply in reserve will enable default auction bidders to bid on a stable product, reducing the uncertainty and related risk that would otherwise be added into bids. OCA M.B. at 6-7, 17. FES, which is an experienced wholesale supplier that bids in default service auctions, appreciates the OCA's concern but agrees with the Companies that this risk is exaggerated.

7. Procurement Method – Descending Price Clock Auction

This section intentionally left blank.

8. Load Cap

FES does not support any load cap. FES M.B. at 15-20. The Companies proposed a 75% cap on the number of tranches that can be bid by a single supplier and, as explained in its Main Brief, FES strongly opposes RESA's position to reduce the Companies' proposed load cap to 50%. FES offered several reasons why RESA's recommendation to lower the Companies' proposed 75% load cap to 50% should be rejected:

- Lowering the load cap to 50% would ensure higher cost suppliers will serve more of the load resulting in higher prices for customers;
- Competition, not artificial and administratively determined limitations, should determine the cost of default service and the selected suppliers;
- With the data available from PJM's transparent markets, the lowest price will result from bids demonstrating each competitor's expertise in managing costs and risks;
- A load cap will prevent bidders from participating fully;
- FirstEnergy's Position follows the "least cost to customers over time" procurement standard;
- The Companies' 75% cap proposal is consistent with the Commission's historic position on this issue;
- The issue of load caps, unlike several other issues, was not addressed in the *Upcoming DSP Final Order*, suggesting the Commission did not see this as an issue requiring a shift in direction;
- RESA's concern regarding potential future winning bidder defaults on default service electricity supply are not supported by any evidence of such a phenomenon; and
- The fact that bidders must establish creditworthiness and winning bidders must provide credit assurance makes RESA's supplier default concern invalid.

FES M.B. at 15-20. These arguments fully responded to the contentions of RESA, whose Main Brief offered no new arguments in support of its proposal. It is telling that the advocates with the most direct interest in the outcome of the residential and commercial customers' default service bids results either support the Companies' load cap position (OSBA), or take no position on the issue (OCA, CAUSE-PA).

RESA continues to assert that lower load caps are required to limit the Companies' exposure to contract failure of any wholesale supplier. Yet, instead of evidence, RESA's arguments are permeated by the word "could." According to RESA, a winning supplier "could" default, and defaults "could" result in "extremely" high replacement power costs. RESA M.B. at 29, 32. RESA downplays its lack of any tangible information from the last five years demonstrating that supplier defaults are a realistic concern, contending the lack of such information is meaningless because a supplier default "could" occur in the future. RESA M.B. at 32. RESA has failed to provide any credible evidence in support of its position, much less a preponderance.

Further, the Commission considered the potential for supplier bankruptcy in its recent Default Service Rulemaking, and concluded that these concerns can be addressed through measures such as credit and collateral provisions and contingency plans. *Default Service Rulemaking Order*, slip op. at 71-72. While the Commission's list of protective measures is not exhaustive, load caps are conspicuously absent from the discussion.

RESA's other argument for reducing load caps is the need to ensure supplier diversity by preventing wholesale suppliers from being dissuaded from participating in auctions. Again, RESA argues about what "could" happen, i.e., if one or a few suppliers dominate wholesale auctions, it "could" result in competitors driven out of the market. RESA contends that the effect of the Companies' existing 75% load cap has been "negligible." In support of this statement, RESA submitted a Confidential Attachment A with its Main Brief, consisting of arguments based on a confidential discovery answer served by the Companies. RESA M.B. at 29. RESA's argument in Confidential Attachment A severely mischaracterizes the import of the discovery answer, and FES responds to RESA's argument in **Confidential Attachment 1** submitted with this Reply Brief. It suffices to say here that, as the Presiding Officer in this proceeding observed in an Order denying a Motion to Compel filed by RESA seeking competitively sensitive information, the Commission sets load caps based on the level of participation in auctions:

> The question in determining the proper load cap . . . is whether the load cap level is set to attract a sufficient number of bidders who can provide least-cost supply. . . . The total number of bidders participating in the auction determines the competitiveness of the auction process.

Order Denying The Retail Energy Supply Association's Motion to Compel, at 7. RESA has presented no evidence that there has been an inadequate number of participants in any of the Companies' auctions, or pointed to any indication of participants being driven away.

Instead, RESA resorts to unsupported insinuations that its aforementioned Motion to Compel related to something the Companies and FES feel they need to hide from the Commission, something that must be remedied by reduced load caps. The Motion to Compel related to a discovery request to the Companies seeking the percentages of load awarded to default service bidders in the Companies' prior auctions. The Companies, which are legally obligated to protect the confidentiality of such information, objected. FES, a participant in the Companies' auctions, opposed the baseless request as well. Ultimately, the Presiding Officer upheld the Companies' objections. Incredibly, RESA argues that the Companies' and FES's opposition to this request for competitively sensitive information means the Companies and FES "did not want the Commission to have this information," which in turn "should be evidence enough that lower wholesale supplier load caps are necessary to assure adequate competition and reasonable rates for these service territories." RESA M.B. at 30. This baseless argument defies logic. Even assuming, for the sake of argument, that RESA did not previously know that Commission staff reviews and the Commission approves the bid results of every default service auction, the Presiding Officer told RESA the same in the Order denying the Motion to Compel:

> I am persuaded to find that the subject matter requested is privileged and would cause an unreasonable investigation, such that the discovery should not be allowed. Even if I were to compel discovery of disaggregated bids labeled by supplier 1 and supplier 2, etc., the bidders could conceivably use the information to determine what their competition bid on the same tranches. This is especially true when there is a small number of bids. **I further find the information requested to be irrelevant to instant proceeding. Commission staff is already aware of whether the Companies' affiliates dominated the procurement process and by what percentage of market power**.

Order Denying The Retail Energy Supply Association's Motion to Compel at 8 (Emphasis added). Thus, RESA knows fully well that the Commission is already aware of this information. This was yet another improper attempt by RESA to obtain the competitively sensitive information of a non-member, and RESA cannot be allowed to distort the Companies' and FES's legitimate opposition to RESA's improper discovery.

RESA also argues that the Commission's prior support for a 75% load cap is no longer relevant because the addition of West Penn to the FirstEnergy operating companies now concentrates more customers and service territory in the same entity. RESA M.B. at 30-31. However, RESA never establishes any logical connection between the size of the load to be served with the diversity of suppliers that may be available to bid, which is supposedly the purpose of its lower load cap recommendation.

RESA's argument to reduce load caps also contradicts other positions it takes. For instance, while RESA expresses concern with artificially increasing default service rates when arguing over the dates of procurements relative to delivery years, RESA M.B. at 13, the same concerns do not apply to RESA's endeavor to artificially increase default service rates by limiting the amount of supply provided by the lowest priced bidders. Also, while RESA continually reminds the Commission that the General Assembly has found that "competitive market forces are more effective than economic regulation in controlling the costs of generating electricity," RESA M.B. at 8 (quoting 66 Pa. C.S. § 2802(5)), RESA has utterly abandoned that principle in this context.

For these reasons, and those discussed at length in FES's Main Brief, RESA's recommendation to reduce the load caps should be rejected.

C. Industrial Class Hourly-Priced Default Service

1. Summary and Overview of Each Party's Position

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D. Use of Independent Evaluator

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E. AEPS Requirements

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G. Contingency Plans

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2. AEPS Requirements

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2. Monthly Versus Weekly Settlements

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B. Industrial Class: Hourly Pricing Default Service Rider

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This section intentionally left blank.

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3. RESA's Proposed Modification

This section intentionally left blank.

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D. Default Service Support Rider

1. Non-Market Based Transmission Charges

This section intentionally left blank.

2. Generation Deactivation Charges

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3. Unaccounted-For Energy Costs

This section intentionally left blank.

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

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E. Solar Photovoltaic Requirements Charge Rider

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

a) Summary and Overview of Each Party's Position

This section intentionally left blank.

b) **The OCA's Position**

This section intentionally left blank.

c) **RESA's Proposal**

This section intentionally left blank.

G. Reconciliation of Default Service Costs and Revenues

a) **Summary and Overview of Each Party's Position**

This section intentionally left blank.

b) **The OCA's Proposal**

This section intentionally left blank.

c) **The OSBA' s Proposal**

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

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IV. COMPETITIVE MARKET ENHANCEMENTS

A. Retail Opt-In Aggregation Program

1. Summary and Overview of Each Party's Position

As explained in its Main Brief, FES generally supports the Companies' proposals for their Retail Opt-in Aggregation program (the "Opt-In Program"), with the exception of the supplier load cap. FES M.B. at 30-31. FES will respond to arguments raised in the Main Briefs filed by other parties on various components of the Companies' proposal in the appropriate subsections below, with one exception.

In its Main Brief RESA asserts that its proposals that are contrary to the Commission's recommendations in the *IWP Order* should be adopted because of the "extremely low levels of shopping" in the Companies' service territories, and that "special efforts" are necessary to make the Opt-In Program "as successful as possible." RESA M.B. at 56. In several other sections RESA repeats this assertion that its recommendations should be adopted because shopping levels are "very low" (RESA M.B. at 57) or "anemic" (RESA M.B. at 64), or "competition is too meager and the market is too fragile" (RESA M.B. at 59). RESA cites no support for these statements. FES recognizes that what constitutes "acceptable" shopping levels is subjective. However, it is inarguable that shopping levels have trended upward in the Companies' service territories since the expiration of their rate caps. *See* CAUSE-PA M.B. at 25-26. Notably, even the OCA recognizes the fallacy of RESA's assertions, stating in its Main Brief that "the current statistics indicate that the percentage of customers taking service from an EGS across all four of the FirstEnergy EDCs is continuing to trend upward at a robust pace." OCA M.B. at 71.

2. Customer Eligibility

a) Small Commercial and Industrial

FES takes no position on this issue beyond that stated in its Main Brief. FES M.B. at 25-26.

b) Shopping Customers

FES takes no position on this issue beyond that stated in its Main Brief. FES M.B. at 26

3. Program Length

Most parties that briefed this issue support the Companies' proposal to set the Opt-In Program contract term at 12 months. FES M.B. at 26-27; RESA M.B. at 61-62; OCA M.B. at

65-67; Dominion M.B. at 17. CAUSE-PA took no position but noted that "there appears to be consensus" that the Opt-In Program length should be 12 months. CAUSE-PA M.B. at 18. While the Companies' proposed term differs from the guideline of six billing cycles in the *IWP Order*, FES submits that the Companies' proposal has been supported on the record in this proceeding and substantially by parties hereto. Therefore, the proposal satisfies the standard in the *IWP Order* for deviations from the guidelines set forth therein. *IWP Order* at 6-7.

4. Timing of Solicitation and Auction

The Companies propose that the Opt-In Program EGS auction occur after the wholesale procurement auctions, and before customers are solicited to opt-in to the program. Met-Ed/Penelec/Penn Power/West Penn M.B. at 98-99. FES agrees with the Companies' proposed schedule, as does the OCA. FES M.B. at 27-29; OCA M.B. at 67-68. Dominion states that it is "willing to live with" the Companies' proposed schedule. Dominion M.B. at 18. Only Constellation and RESA continue to propose that the customer solicitation should occur first, then the EGS auction. Constellation M.B. at 26-27; RESA M.B. at 62-64.

The timing of the EGS auction and customer solicitation proposed by the Companies will clearly benefit customers most, since they will know the program price when they consider whether or not to opt-in. Not so with the RESA-Constellation proposal. The RESA-Constellation proposal is driven by suppliers' purported need to know how many customers will be participating in the program. In other words, the RESA-Constellation proposal will primarily benefit suppliers to the detriment of customer benefits and a successful program. Retail suppliers are sophisticated market participants who know, or should know, how to calculate risk associated with unknown factors such as the number of customers who will participate in the Opt-In Program and can limit their exposure by bidding to serve only the number of customers that they are comfortable serving. Suppliers are more knowledgeable about electric markets than most residential customers. Expecting residential customers to sign up for the program without knowing exactly what they are signing up for makes no sense, particularly since the program is aimed at customers who have already shown disinterest in purchasing retail electric supply through their failure to sign up for offers similar to that which will be available in the Opt-In Program. Determining the proper order of the wholesale and EGS auctions and the customer opt-in solicitation really comes down to the question of which stakeholders in the Opt-In Program should assume risk, and which need and deserve the most consideration. The RESA-Constellation proposal puts suppliers' interests before customers' needs. The position taken by the Companies, Dominion, OCA and FES puts customers first, not suppliers. Finally, in the *IWP Order* the Commission specifically rejected the RESA-Constellation proposal. *IWP Order* at 55, 60. It should be rejected in this proceeding as well.

5. Timing for Providing Full Terms and Conditions to Customers

The majority of parties that briefed this issue agree that customers should receive the full terms and conditions of the Opt-In Program before they are required to decide whether to opt-in. Met-Ed/Penelec/Penn Power/West Penn M.B. at 99-100; OCA M.B. at 68-69; Dominion M.B. at 18-19; CAUSE-PA M.B. at 19. FES agrees that customers should receive the full terms and conditions, including the price as stated in Section IV.A.4. above, before they must decide whether to opt-in to the program. As Dominion notes correctly, transparency will be key to customers' positive perception of the program. Dominion M.B. at 18. That transparency includes customers' knowing all the terms and conditions of the program before they sign up.

6. Customer Participation Cap

a) Summary and Overview of Each Party's Position

FES takes no position on this issue beyond that stated in its Main Brief, except FES will address the OCA proposal in Section 6. c), below. FES M.B. at 29.

b) The Companies' Proposal (50%)

FES takes no position on this issue beyond that stated in its Main Brief. FES M.B. at 29.

c) The OCA's Proposal (20%)

In its Main Brief, FES stated its opposition to the OCA's proposal that the customer participation cap in the Opt-In Program should be set at 20% of residential customers. FES M.B. at 30. The OCA is the only party that supports this proposal, and other parties besides FES have voiced their opposition to it. Met-Ed/Penelec/Penn Power/West Penn M.B. at 101-102; Dominion M.B. at 19; RESA M.B. at 66-67. The OCA's proposal is based upon its concern that a larger potential customer pool for the Opt-In Program will "directly contribute to uncertainty for Full Requirements Suppliers (FSRs) bidding in the Companies' default service procurement auctions that will take place prior to the EGS auction." OCA M.B. at 69. In other words, the OCA's primary concern on this issue is that it thinks a higher customer cap will adversely affect traditional default service procurements. FES submits that traditional default service is precisely what the Commission intends to move customers away from through its endorsement of the retail market enhancements in the Retail Markets Investigation ("RMI"), including retail opt-in auctions such as the Companies' Opt-In Program.

The OCA made the same arguments in favor of its proposed lower customer cap in the RMI proceeding. While FES continues to oppose any customer or supplier caps in retail enhancement programs, it recognizes that the Commission determined otherwise in the *IWP Order*. However, the Commission endorsed a higher customer cap and rejected the OCA's arguments for a lower cap in the *IWP Order*, reasoning that a lower cap could lead to the rejection of customers wishing to participate in the program. The Commission determined that the 50% customer cap provides both a large customer participation pool, while providing some certainty to those retail suppliers opting to participate in the program. *IWP Order* at 59.

7. Supplier Participation Load Cap

a) Summary and Overview of Each Party's Position

FES has consistently stated its position against both customer and supplier load caps, which are inconsistent with FES' principles of giving customers the lowest available pricing and not artificially restricting qualified EGS participation in programs designed to promote retail competition. FES M.B. at 30. Supplier load caps interfere with the natural operation of competitive market forces, which Pennsylvania, through the Choice Act, has recognized to be more effective than regulation in controlling the cost of electric generation service. FES St. No. 1-R at 12. Supplier load caps ensure that customers will not receive the lowest price, particularly when a bidder who is willing to serve more than the capped amount of load is the lowest bidder. FES St. No. 1-S at 4.

The Companies state in their Main Brief that they have "serious reservations" about imposing a supplier load cap in their Opt-In Program. Met-Ed/Penelec/Penn Power/West Penn M.B. at 103. However, they apparently feel constrained to do so by the *IWP Order*, which found that a 50% supplier load cap is appropriate. *IWP Order* at 63. FES contends that the ability of customers to receive the lowest possible price through the Opt-In Program justifies a departure from the *IWP Order* guideline. The goal of the retail enhancement programs is to induce greater customer participation both within and outside the Commission-sponsored programs, and offering customers the lowest possible price is the best way to achieve that goal. FES requests that the Companies proposed 50% supplier load cap be rejected.

b) The Companies' Proposal

See Section 7. a), above, and FES M.B. at 30-31.

c) Dominion Retail's Proposal

In its Main Brief, Dominion acknowledges that it initially proposed a 25% supplier load cap, but has changed its position and now agrees with the Companies' proposed 50% supplier load cap. Dominion M.B. at 20. For the reasons stated in Section 7. a) above, and in its Main Brief, FES submits that this position should be rejected.

d) RESA's Proposal

FES addressed RESA's proposal in its Main Brief. FES M.B. at 34. Since FES is opposed to the Companies' proposed 50% supplier load cap, it follows that it is even more opposed to RESA's proposal of a 25% supplier load cap with a minimum of four winning bidders. In its Main Brief, similar to Dominion's change in position, RESA now says that it supports the Companies' 50% supplier load cap proposal but continues to argue for a minimum number of four winning bidders in addition to the cap. RESA M.B. at 68.

Contrary to RESA's assertion in its Main Brief, FES has provided substantial justification for its opposition to load caps through the testimony of its witness Mr. Banks. FES St. No. 1-R at 11-13; FES St. No. 1-S at 3-4. RESA offered testimony in this proceeding that apparently reflects the opinion only of its witness but not the position of any of its member companies. Ex.

TCB-2 (FES I-11). As such, it is deserving of no probative value since it does not reflect the actual experience of any particular retail energy provider.

Also, FES disputes RESA's reading of the *IWP Order* as it pertains to RESA's proposal concerning a minimum number of winning bidders. RESA and Dominion both urged the Commission in the RMI proceeding to include this element in its guidelines for EDCs' opt-in auction program proposals, but the Commission declined to do so, and stated the following:

> The EDCs <u>may consider such a requirement</u> within the parameters of their proposed Retail Opt-in Auctions.

IWP Order at 64 (emphasis added). Contrary to RESA's assertion, the above language cannot reasonably be interpreted to mean that the Commission "specifically directed that the issue of minimum number of bidders be determined in each default service proceeding." RESA M.B. at 68. A logical reading of the cited language is that the Commission left the determination whether to include the "minimum number of winning bidders" requirement to the EDCs' discretion in designing the opt-in programs included in their default service plan filings. Similarly, RESA's statement that the Commission may "waive or alter this requirement if there are compelling reasons to do so" is an inaccurate representation of the *IWP Order*. RESA M.B. at 69. There is no such "requirement" in the *IWP Order*. Notably, Dominion did not continue its support for the proposal in this proceeding, calling the Companies' proposal to implement a 50% supplier cap "adequate protection." Dominion M.B. at 20.

That is not to say parties in any proceeding cannot advocate different outcomes from those proposed by the EDC or recommended in the *IWP Order*. Indeed, many parties to this proceeding, including FES, are doing so. However, the *IWP Order* clearly is not favorable to the "minimum number of winning bidders" requirement as RESA suggests, and in order for its proposal to be adopted, RESA has to have shown good cause and substantial evidence in support thereof. It has not done so.

RESA's justification for this requirement, that it will attract EGSs to the market that might otherwise not participate, and that those EGSs will obtain a "critical mass" of customers thus enabling them to stay in that market, is not supported by substantial evidence. In fact, RESA witness Kallaher seemed to back away from this argument on cross-examination, when he acknowledged that even with a minimum number of winning bidders requirement a winning bidder could still obtain such a small number of customers that it would not meet his "critical mass" standard. Tr. 245. Therefore, the lack of supporting evidence combined with the above-noted lack of any retail suppliers' support of the proposal requires that it be rejected.

8. Composition of Product Offer

a) Discount from PTC

FES takes no position on this issue beyond that stated in its Main Brief. FES M.B. at 34-35.

b) "Bonus" Payments

FES addressed the bonus payment issue at length in its Main Brief. FES M.B. at 35-40. Here, FES will respond to some other parties' arguments in favor of bonus payments in their Main Briefs. Dominion criticized, as a "newly invented rule," the Companies' testimony that bonuses have already been offered by retail suppliers in the Companies' service territories, and thus did not provide any new or unique characteristic to entice non-shopping customers into the retail market. Dominion M.B. at 21. RESA says the Commission was presumably aware that EGSs have already made offers containing bonus payments in the Companies' service territories, and decided in the *IWP Order* to recommend them regardless. RESA M.B. at 70-71. However, the purportedly unique feature of the bonus payments is precisely why the Commission decided to include them as an element of the opt-in program product.

> "...without some sort of attractive unique feature, like a bonus, the customer offer will look too similar to routine supplier offers – offers that these target customers have already ignored."

IWP Order at 70. FES respectfully submits that the Commission was mistaken in believing that a bonus payment in connection with a retail supply offer is "unique," at least in the Companies' service territories. Nor are bonus payments ultimately an "attractive" feature. The Companies submitted evidence that non-shopping customers regard bonuses as "gimmicks," and expressed concern that suppliers will participate in the program to gain customers then raise prices later to recoup profits lost due to the required bonus and PTC discount. Obviously these higher prices can exceed the default service rate. This will create customer dissatisfaction with the retail shopping experience, and by extension tarnish the reputation of the EDC that sponsored the program. Met-Ed/Penelec/Penn Power/West Penn M.B. at 107-109. The Companies have shown good cause why bonus payments should not be ordered as part of their Opt-In Program.

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

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

FES addressed this issue in its Main Brief at 40-42. RESA, in its Main Brief, continues to argue for its "test" program, stating that the most important reason for conducting its test is that "EGSs will have very little basis on which to predict the level of customer participation they can expect" in the Opt-In Program. RESA M.B. at 74. It is notable that no retail suppliers in this proceeding support this proposal. RESA cannot or will not even state whether any of its member companies support any of its proposals, including this proposal. Ex. TCB-2 (FES I-11). Finally, as noted by several parties, there is not sufficient time to complete the "test" and incorporate lessons learned into the Companies' Opt-In Program prior to its implementation. FES M.B. at 41-42; Met-Ed/Penelec/Penn Power/West Penn M.B. at 111-112; OCA M.B. at 78. RESA's proposal should be rejected.

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

FES addressed this issue in its Main Brief at 42-43. Of the other parties that briefed this issue, only CAUSE-PA supports the OCA's proposal for three notices prior to the end of the Opt-In Program term, rather than the two notices currently required by the Commission's renewal notice guidelines and the *IWP Order*. In addition to FES, the Companies, Dominion and RESA oppose the OCA's proposed third notice requirement. Met-Ed/Penelec/Penn Power/West Penn M.B. at 113-116; Dominion M.B. at 22; RESA M.B. at 75. The OCA made this same proposal in the RMI proceeding and the Commission declined to adopt it in the *IWP Order*. *IWP Order* at 73. The proposal should be rejected here as well.

The OCA also makes the argument in its Main Brief that, after the expiration of the Opt-In Program, customers who make no other affirmative supply choice should remain with the EGS on a fixed price, month-to-month contract. OCA M.B. at 80.[1] Dominion agrees that this product is appropriate, but the EGS should decide for how long the fixed price will be in effect. Dominion M.B. at 22. FES respectfully disagrees with these parties. Customers who have opted

[1] This statement in the OCA's Main Brief is somewhat confusing, as a "month-to-month fixed price" contract seems contradictory. FES assumes the OCA means that the month-to month price should remain the same unless and until the customer affirmatively agrees to change it. FES submits this proposal is not, in fact, a true "month to month" product, since such a product normally includes the possibility of monthly price changes.

to participate in the Opt-In Program have made the choice to move from default service to retail generation supply. They will have received two notices that their contract is ending. If they make no other affirmative choice, the terms of service after the Opt-In Program ends should be those offered by the EGS, which may be a fixed rate or variable rate. Whichever product the EGS offers, the customer will always have the ability to switch to a better offer if he or she finds one elsewhere. In the *IWP Order*, the Commission chose not to require that EGSs offer a particular product after the retail opt-in auction programs expire. None should be imposed in this proceeding.

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

FES takes no position on this issue beyond that stated in its Main Brief. FES M.B. at 43-45.

12. Recovery of Costs

a) All customers versus EGSs

FES supports the Companies' proposal to recover the costs of the Opt-In Program from all residential customers via the non-bypassable Default Service Support Rider ("DSSR") of each Company's tariff. FES M.B. 45-46; Met-Ed/Penelec/Penn Power/West Penn M.B. at 118-119. Dominion agrees with this proposal. Dominion M.B. at 23. RESA argues that, if its proposal to recover costs through the proceeds of the Companies' proposed Market Adjustment Charge is not adopted, then the costs should be recovered through the DSSR. RESA M.B. at 76. Other parties object to the Companies' proposed cost recovery methodology, arguing that participating EGSs should bear the costs instead. OCA M.B. at 82-83; CAUSE-PA M.B. at 24-26; OSBA M.B. at 25-26.

In addition to the reasons FES stated in its Main Brief supporting the recovery of costs through the DSSRs, it is important to note that customers and participating EGSs are not the only stakeholders who stand to benefit from the Opt-In Program. In addition to the customers who are eligible for the program, and the EGSs that participate, non-participating EGSs will enjoy benefits in the future from the customer education resulting from the efforts of the EDCs and participating EGSs in publicizing the program. All non-shopping customers will be exposed to information about the program (and all the RMI retail market enhancements), and even those customers who choose not to participate in the Opt-In Program will be more likely to try retail service in the future as they learn more about it. Thus, the education efforts expended as part of the Opt-In Program will benefit not only all customers, but also those EGSs that do not participate and thus will not incur any of the costs of the program if such costs are only recovered from participating EGSs. Recovering costs only from participating EGSs will thus discourage EGS participation in the Opt-In Program and might actually encourage EGSs to wait to target the 50% of customers who are not eligible to participate because of the customer participation cap. While participating EGSs will avoid the customer acquisition costs they will incur obtaining customers outside the Opt-In Program, they will be subsidizing other EGSs' customer acquisitions by paying to educate non-shopping customers about the benefits of retail service.

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

FES takes no position on this issue.

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

FES addressed this issue in its Main Brief at 46-48. It is notable that CAUSE-PA has retreated from its previous position that costs should be recovered through a discount on the Companies' purchase of receivables ("POR") payments. CAUSE-PA M.B. at 26-27. FES appreciates that CAUSE-PA has recognized the impropriety of cost recovery through the POR programs.

The Companies' alternative is not acceptable. The Companies suggest that participating EGSs share the cost of the auction equally, and the winning EGSs bear costs associated with the marketing and mailing of opt-in notices to the residential customers included in the tranches they win. Met-Ed/Penelec/Penn Power/West Penn M.B. at 120. As stated in subsection a) above, this cost recovery methodology will discourage EGSs from participating in the Opt-In Program, since non-participating EGSs will reap the benefit of the educational aspects of the RMI programs without responsibility for any of the costs involved. For the reasons stated in its Main Brief and in subsection a) above, FES maintains that cost recovery from all residential customers through each Company's DSSR is appropriate.

B. Standard Offer Customer Referral Program

1. Summary and Overview of Each Party's Position

FES explained in its Main Brief that while it preferred the Companies' initial "supplier of the week" proposal, it recognizes that the Companies' revised proposal, which includes certain components of a "New York" style Referral Program, is a reasonable response to the *IWP Order*. FES also supported the Companies' inclusion of CAP customers, but opposes requiring EGSs to bear the costs of the Referral Program.

The issues addressed the most by the parties' Main Briefs were the length of the Standard Offer and the 7% discount, and whether customers or EGSs should bear the costs of the Referral Program. FES generally addressed the parties' arguments in its Main Brief, and will briefly respond below to couple additional points made by the parties.

2. Customer Eligibility

FES supports the Companies' proposal not to exclude residential shopping customers if they request to participate. Met-Ed/Penelec/Penn Power/West Penn M.B. at 125. In contrast, RESA would make only default service customers eligible, RESA M.B. at 79, and Dominion would limit the Referral Program to non-shopping customers as well, Dominion M.B. at 25. FES agrees with the Companies and the *IWP Order* guidelines that shopping customers should not be solicited for the Referral Program, since the program should not cause an EGS whose customer is pleased with the EGS to lose the customer. However, FES believes that if a shopping customer specifically requests to participate in the Referral Program their participation should be allowed, to avoid shopping customers feeling "trapped" with an EGS, and potentially displeased with their experience with electric competition. No evidence contrary to the *IWP Order* guideline has been adduced, and therefore the Companies' proposal should be adopted.

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

FES explained in its Main Brief that while it preferred the Companies' initial proposal, it supports the Companies' modification of the Referral Program product to a 12-month Standard Offer, in response to the *IWP Order*, as well as the Companies' proposal that the length of the 7% discount off the EDC's effective PTC on the date the Standard Offer is made should match the 12-month term of the Standard Offer. See FES M.B. at 49-50; see also Met-Ed/Penelec/Penn Power/West Penn M.B. at 126.

CAUSE-PA supports the terms of the Companies' revised Referral Program, provided that low-income customers are excluded. If low-income customers are not excluded, CAUSE-PA would not modify any terms; rather, it recommends the Commission reject the Referral Program in its entirety. CAUSE-PA M.B. at 28. As explained below in Section IV.C, FES believes CAP customers should be included in the Referral Program and will benefit from the program, and CAUSE-PA's condition for approval of the program should be rejected.

Dominion asserts that it has "accepted" the Companies' changes to the Referral Program, subject only to the further "suggestion" that the 7% standard offer discount be reduced to 5% if the MAC charge is adopted. Dominion M.B. at 24. This suggestion is not accompanied by any explanation or evidence, however, and no benefit to customers is apparent. Therefore, FES recommends that this modification to the Companies' revised Referral Program be rejected.

In its Main Brief, FES opposed any proposals to make the term shorter than 12 months, or to shorten the 7% discount to only a portion of the term. These proposals include the recommendation of the OCA, which continues to advocate shortening the term to 4 months, so that the 7% discount off the PTC provides guaranteed savings for the entire standard offer term. Absent affirmative action, customers would return to default service at the end of the 4-month term. OCA M.B. 93-95. Dominion opposes the OCA's recommendation that participating customers return to default service at the end of the program term. Dominion M.B. at 25. They also include the recommendation of RESA, which supported a 12-month term but contends the 7% discount should last for only the first 4 months, and then be replaced by a fixed offer disclosed in the mail by the EGS shortly after the customer's enrollment. RESA M.B. at 80, 82. FES explained why each of these proposals should be rejected on pages 50-52 of its Main Brief.

RESA raises a couple additional arguments to which FES will respond in this Reply Brief. First, RESA argues that the Companies have misread the *IWP Order*, which referred to the "New York" style program. RESA M.B. at 82. While the Commission adopted certain components of a "New York style" referral program, it did not adopt the New York program in its entirety. If it had, it would not have directed participating EGSs to offer a 4-month introductory rate, since a 4-month offer is longer than the standard offer in New York. Also, as FES previously explained, the Commission's *IWP Order* set forth clear guidelines for the Standard Offer which do not distinguish between the term of the Standard Offer and the term of the 7% discount:

- The standard offer should be comprised of a 7% reduction from the EDC's effective DS PTC. The 7% reduction is a constant price established against the PTC effective on the date the standard offer is made.
- The standard offer should be provided for a minimum of four months, but should not exceed 1 year. The standard offer and its term should be uniform within an EDC's service territory.

IWP Order at 31. Second, RESA argues that offering a 7% discount for the entire year "is not practicable and will likely severely limit the ability of EGSs to participate." RESA M.B. at 82. This argument is mere hyperbole and does not cite to any evidence offered by an EGS regarding the difficulty of providing a fixed price product for an entire year, where the fixed price is 7% below the EDC's PTC at the beginning of the term. Therefore, RESA's recommendation should be rejected.

Also, in its Main Brief, FES discussed Dominion's recommendations regarding the Companies' initial "supplier of the week" proposal, including a proposal to exclude an affiliated supplier from participating. FES M.B. at 53-54. FES observed that Dominion's Surrebuttal Testimony appeared to have implicitly withdrawn this anticompetitive recommendation, contingent on the Commission's approval of the Companies' revised Referral Program. Dominion's Main Brief continues in this vein, by suggesting that even before the Companies modified their proposed Referral Program, the affiliate exclusion and related recommendations were "suggestions" and not Dominion's "first solution," which was to make the Referral Program look more like the *IWP Order* and to allow participation by an unlimited number of suppliers. Dominion M.B. at 24. Again FES and Dominion have both offered general support for the Companies' revised Referral Program. However, even in the event the Commission were to approve the Companies' initial "supplier of the week" proposal, Dominion's recommendation to exclude suppliers should be denied for all the reasons set forth in FES's Main Brief.

4. Recovery of Costs

a) All Customers versus EGSs

FES supports the Companies' proposal to recover costs from all customers through a non-bypassable charge. FES M.B. at 54-56. RESA also supports recovery of costs from customers. RESA M.B. at 83-84. Dominion also expresses support for recovering costs from customers, and opposes the recovery of all costs from all EGSs. Dominion M.B. at 26-27. CAUSE-PA and the OCA contend that costs should be recovered from EGSs. CAUSE-PA M.B. at 29; OCA M.B. at 95-96. The OSBA opposes the imposition of costs on default service customers, without specifically addressing a non-bypassable charge. OSBA M.B. at 28. None of these parties acknowledge the evidence put forth by RESA regarding the benefits customers will enjoy as a result of the Referral Program. The Referral Program will benefit more customers than those that participate, and the benefits will last after the Referral Program has ended. Nor did these parties respond to evidence that imposing costs on EGSs will discourage EGS participation in the Referral Program, or encourage some EGSs to become "free riders" and stay out of the program until other EGSs have paid the program's up-front costs. For the reasons explained at length on pages 54-56 of FES's Main Brief, costs should be recovered from all customers eligible to participate in the program through the Companies' proposed non-bypassable charge, and the recommendations of CAUSE-PA and the OCA should be rejected.

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

This section intentionally left blank.

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

FES agrees with the Companies' position that recovery of the costs of the Referral Program through a discount on purchased receivables, a concept alluded to in the *IWP Order*, is inappropriate. Met-Ed/Penelec/Penn Power/West Penn M.B. at 128. No parties argued in favor of a POR discount in their Main Briefs. RESA also opposed use of a discount on POR. RESA M.B. at 84. CAUSE-PA takes no position on the POR discount, but says customers should not bear any costs; CAUSE-PA leaves it to the Commission, the Companies and EGSs to decide how EGSs will pay the program costs. CAUSE-PA M.B. at 29.

If the Commission requires participating EGSs to pay these costs, the Companies' alternative proposal is for participating EGSs to make an upfront payment to fund start-up, and contribute to continuing monthly costs. The OCA indicated non-opposition to the Companies' alternative cost recovery proposal. OCA M.B. at 95-96. In the event costs are to be recovered from EGSs, Dominion advocates the recovery of some costs from EGSs to whom customers are awarded in the Referral Program, in the form of a per customer switching fee covering incremental operating costs. Dominion M.B. at 26-27.

For the reasons stated in Sections IV.A.12.a) and c) above, FES strongly opposes the imposition of costs of retail market enhancement programs on EGSs. While the Companies' alternative proposal is better than either a POR discount or Dominion's competing proposal, FES continues to believe that the Companies' proposal to recover costs via the non-bypassable DSSR of each Company's tariff is the most equitable manner of cost recovery for this program.

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

This section intentionally left blank.

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

This section intentionally left blank.

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

This section intentionally left blank.

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

FES addressed this issue in its Main Brief at 57-58. FES recognizes that some EDCs' CAP programs are set up in a way that participants in those programs are unable to shop. However, the Companies' CAP programs do not restrict their participants from shopping, and FES sees no reason to restrict those participants' ability to take advantage of the Companies' RMI programs if they wish to do so. The Companies provided several reasons, including operational restraints, that support the adoption of their proposal to include CAP customers in the

Opt-In Program and the Standard Offer Customer Referral Program. Met-Ed/Penelec/Penn Power/West Penn M.B. at 132-133.

1. CAUSE-PA's Proposal

In its Main Brief, CAUSE-PA pointed to the default service provider's obligation to ensure that its procurements provide customers with the least cost over time under Act 129, and that an EGS has no such statutory obligation. It is apparent that CAUSE-PA sees this obligation, and Commission oversight of other costs, as assurance that CAP customers will receive the least cost supply from default service providers, not EGSs. CAUSE-PA M.B. at 32. FES submits this conclusion is speculative at best, and the testimony in opposition to the Companies' proposal was not credible, since it was clear that the sponsoring witness was unfamiliar with Pennsylvania default service models and misunderstood how the Companies' CAP programs operate. Met-Ed/Penelec/Penn Power/West Penn M.B. at 133-136. First, CAP customer benefits in the Companies' service territories are "portable" and thus are not lost if the customer shops. Met-Ed/Penelec/Penn Power/West Penn St. No. 7-R at 43. Second, the Companies' proposed programs assure that the customer will receive a price lower than the default service PTC, and if the EGS price becomes higher than the PTC during the term of the program the customer can shop elsewhere or return to default service without penalty. Met-Ed/Penelec/Penn Power/West Penn M.B. at 136. CAP customers will suffer no harm if they participate in the Companies' RMI programs, and therefore their participation should be allowed.

2. The OCA's Proposal

FES addressed the OCA's proposal in its Main Brief at 58. In its Main Brief, the OCA supports the CAUSE-PA position addressed above. OCA M.B. at 96-97. For the reasons set forth above and in FES' Main Brief, the CAUSE-PA and OCA positions should be rejected. CAP customers will experience no harm, and very likely will enjoy substantial benefits, from the RMI programs. The Companies' CAP customers should be permitted to participate in both the Opt-In Program and the Standard Offer Customer Referral Program.

V. OPERATIONAL ISSUES

A. System "Enhancements" Proposed by Constellation

This section intentionally left blank.

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

This section intentionally left blank.

VI. AFFILIATED INTEREST APPROVAL

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

This section intentionally left blank.

VII. OTHER ISSUES

This section intentionally left blank.

IX. CONCLUSION

For the foregoing reasons, the Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs should be granted, in accordance with FirstEnergy Solutions Corp.'s recommendations.

Respectfully submitted,

By: ____________________

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Dated: May 16, 2012

Attorneys for FirstEnergy Solutions Corp.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of § 1.54 (relating to service by a party).

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