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May 16, 2012

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

VIA HAND DELIVERY

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

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission are the original and nine (9) copies of the Reply Brief of the Med-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), and West Penn Power Industrial Intervenors ("WPPII") in the above-referenced proceeding.

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

Sincerely,

McNEES WALLACE & NURICK LLC

By 
Teresa K. Schmittberger

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

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c: Administrative Law Judge Elizabeth H. Barnes (via e-mail and Hand Delivery)
Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

Air Liquide Industrial U.S. LP
Air Products & Chemicals, Inc.
American Refining Group Inc.
Appleton Papers Inc.
ATI Allegheny Ludlum Corporation
Carpenter Technology Corporation
Dixie Consumer Products, LLC, Lehigh Valley
E.I. du Pont de Nemours & Co., Inc.
East Penn Manufacturing Company
Electralloy, a G.O. Carlson, Inc., Co.
Ellwood National Steel
Ellwood Quality Steel
Erie Forge & Steel, Inc.
Ervin Industries
Exide Technologies, Inc.
Farmers Pride, Inc.
Glen-Gery Corporation
Harley-Davidson Motor Company - York Division
Knouse Foods Cooperative, Inc.

Latrobe Specialty Steel Company
Lehigh Specialty Melting Inc. (Whemco)
Magnesita Refractories Co.
MERSEN USA St Marys-PA Corporation
Occidental Chemical Corporation
Pittsburgh Glass Works
PPG Industries, Inc.
Procter & Gamble Paper Products Company
RH Sheppard Co., Inc. - Foundry Division
Royal Green LLC
Sheetz, Inc.
Standard Steel
Sweet Street Desserts, Inc.
Team Ten, LLC - American Eagle Paper Mills
The Plastek Group
Tray-Pak Corporation
U.S. Silica Company
Wegmans Food Markets, Inc.
World Kitchen LLC

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Dated: May 16, 2012

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I. INTRODUCTION AND SUMMARY

On May 2, 2011, the Met-Ed Industrial Users Group ("MEIUG"), Penelec Industrial Customer Alliance ("PICA"), Penn Power Users Group ("PPUG"), and West Penn Power Industrial Intervenors ("WPPII") (collectively, the "Industrial Customer Groups") filed a Main Brief ("M.B.") with the Pennsylvania Public Utility Commission¹ ("PUC" or "Commission") opposing certain aspects of the proposed default service plans ("DSPs") of Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power"), and West Penn Power Company ("West Penn") (collectively, "Companies"). The Industrial Customer Groups received Main Briefs from the Companies; the Office of Consumer Advocate ("OCA"); the Office of Small Business Advocate ("OSBA"); the Bureau of Investigation and Enforcement ("I&E"); the Retail Energy Supply Association ("RESA"); the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"); Dominion Retail, Inc. ("Dominion"); Exelon Generation Company, LLC, and Exelon Energy Company (jointly, "Exelon"), the Constellation Energy Commodities Group, Inc., and Constellation NewEnergy, Inc. (jointly, "Constellation"); and FirstEnergy Solutions Corporation ("FES").

The Main Brief of the Industrial Customer Groups provides a comprehensive review of the problems with the Companies' proposed DSPs as they apply to Large Commercial and Industrial ("C&I") customers in the Companies' service territories. The Industrial Customer Groups submit this Reply Brief to respond to arguments set forth in the Companies' Main Brief

¹ The Industrial Customer Groups' Main Brief, along with the requisite transmittal letter and Certificate of Service, was inadvertently filed on May 2, 2012, as a "Certificate of Service," and not as a "Main Brief." The Industrial Customer Groups received notification of the ministerial error on May 3, 2012. Upon communication from the Secretary's Bureau, Administrative Law Judge Barnes excused the ministerial error and deemed the Industrial Customer Groups' Main Brief timely filed.

and correct certain mischaracterizations therein of the Industrial Customer Groups' positions.² Specifically, the Industrial Customer Groups submit that the Companies have failed to meet their burden of proof with respect to their following proposed changes: (1) modifications to West Penn's procurement classes and Hourly-Priced Default Service Rider; (2) procurement and cost collection for 40% of solar photovoltaic alternative energy credits; (3) imposition of a Market Adjustment Charge ("MAC") on residential and small commercial customers; (4) collection of non-market based transmission ("NMB Transmission") costs through non-bypassable Default Service Support Riders ("DSSRs"); and (5) the proposed rate design to collect the so-called NMB Transmission costs. *See* 66 Pa. C.S. § 332(a). These modifications conflict with the Public Utility Code, the plain language and intent of the Electricity Generation Customer Choice and Competition Act ("Competition Act") and Act 129, the Commission's regulations, and sound public policy. *See* Sections II.A.-III.D., *infra*. Each of these proposed changes to the Companies' DSPs must be rejected by the Commission, especially to the extent they affect Large C&I customers.

A review of the Main Briefs in this proceeding indicates that Large C&I customers have a different perspective on the competitive retail market than many other parties.³ This difference is explained by the fact that, unlike residential and small commercial customers, Large C&I customers began shopping over a decade ago and sharply increased their shopping after the expiration of generation rate caps. *See* Transcript of Evidentiary Hearing in Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670 on April 11-12, 2012

² The Industrial Customer Groups' Reply Brief will also address issues set forth in the Main Briefs of various other parties.

³ The Industrial Customer Groups' Reply Brief will not respond to every argument contained in all of the parties' Main Briefs, but only those issues necessitating additional response. The Industrial Customer Groups' decision not to respond to all arguments should not be construed as agreement with the positions of any party on any of the outstanding issues in this proceeding.

(hereinafter, "Tr."), p. 290. The overwhelming majority of Large C&I customers are shopping customers, who work with electric generation suppliers ("EGSs") to develop competitive electric products that fit with their business objectives. *See* WPPII Cross-Examination Exhibit No. 1. As a result of this increased shopping experience, Large C&I customers oppose changes to the default service framework that have not been proven to support competitive market development or provide demonstrable customer benefits. Based on Large C&I customers' differing shopping experiences and electric purchasing requirements, it is reasonable for the Companies to treat Large C&I customers differently.

Certain features of the platform for retail competition that the Companies seek to alter by this filing would have adverse consequences for Large C&I customers, even if other customers may not be affected in the same way. In particular, the Companies' proposed collection of NMB Transmission costs from shopping customers would prevent Large C&I customers from being charged based on their individual transmission obligation determined by PJM Interconnection, LLC ("PJM"), which is a fundamental aspect of many Large C&I shopping contracts. *See* Industrial Customer Groups' M.B., pp. 54-56. This adjustment to the rate design for collection of transmission costs, while not as burdensome for residential and small commercial customers, would have significant economic effects on many Large C&I customers that have made investments to reduce their contribution to the system peak. *See id.* at 57. Specifically, the millions of dollars invested by Large C&I customers into demand reduction technologies to reduce their transmission contribution, in reliance on Commission regulations that facilitate contractual pass-through of transmission costs, would be stranded as uneconomic. *See id.*; *see also* Surrebuttal Testimony of Alex Fried on behalf of the Industrial Customer Groups (hereinafter, "Fried St. No. 1-S"), pp. 3-4. Moreover, the Companies' multiple proposals to

complicate and interfere with the terms of shopping contracts and procurement processes are more adverse for Large C&I customers who spend substantial time and resources negotiating and perfecting their contractual and procurement terms because of the importance of energy to their business objectives. *See* Industrial Customer Groups' M.B., pp. 23 and 47.

The high shopping statistics among Large C&I customers are a strong indication that the Companies should not alter the competitive market environment for these customers. *See* WPPII Cross-Examination Exhibit No. 1. Because the shopping statistics for residential and smaller commercial customers are much lower, it may be appropriate to apply certain rules to those customer classes that should not extend to Large C&I customers. The Industrial Customer Groups' opposition to the Companies' proposals, in particular, reflects Large C&I customers' prevailing interest in maintaining the current structure for competitive procurement. The Industrial Customer Groups are a coalition of 38 businesses and industries, many of whom have multiple facilities throughout the Companies' service territories.⁴ *See* Industrial Customer Groups' M.B. The members are all customers of the Companies, and these members provide the only Large C&I customer perspective in this proceeding. With respect to the competitive retail market, the members of the Industrial Customer Groups provide an important perspective as Large C&I customers with vast shopping experience.

Because the Companies' proposals addressed herein would erect barriers to competitive market participation and decrease the competitive options for customers to tailor service in the competitive retail market to meet their business objectives, the Industrial Customer Groups

⁴ The Industrial Customer Groups provided testimony in opposition to the Companies' proposals in this proceeding from two group members, which was supported by all of the members in the groups. *See* Direct Testimony of Alex Fried on behalf of the Industrial Customer Groups; *see also* Fried St. No. 1-S; *see also* Direct Testimony of Joseph Raia on behalf of the Industrial Customer Groups; *see also* Surrebuttal Testimony of Joseph Raia on behalf of the Industrial Customer Groups (hereinafter, "Raia St. No. 1-S"). This process is one that MEIUG, PICA, PPUG, and WPPII have followed in numerous PUC proceedings throughout the years. In the instant proceeding, the group members who testified provide examples of ways in which the Companies' proposals would adversely affect similarly situated Large C&I customers in the Companies' service territories.

would be adversely impacted in ways that other customers with much less shopping experience and/or incentive would not. Accordingly, where the Commission deems it appropriate, the Industrial Customer Groups support a Large C&I carve-out with respect to many of its positions discussed herein.

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

A. Procurement Groups

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

Per the requirements of the Public Utility Code, the Companies must arrange their default service in a manner that prevents cross-subsidization among its customer classes. Industrial Customer Groups' M.B., p. 5; *see also* 66 Pa. C.S. § 2807(e)(7). Although many parties to this proceeding took no position with respect to the Companies' proposed consolidation of West Penn's Service Types 20 and 30, this lack of response should not be viewed as evidence in support of the Companies' proposal. Cross-subsidization between classes is a serious concern and is specifically prohibited within the Competition Act. *See* 66 Pa. C.S. 2807(e)(7). The Companies have not shown that the proposed consolidation of Type 20 and 30 prevents cross-subsidization. Because the Companies have not met their burden of proof with respect to this consolidation, it must be denied. *See* Industrial Customer Groups' M.B., p. 5.

The Companies claim that the similarity of these customers, specifically their load profiles and tranche purchases, justifies this consolidation. Companies' M.B., p. 5. The Companies do not acknowledge any of the differences between the classes, *e.g.*, differences between their rate schedules and EE&C programs. *See id.* There continues to be no guidance from the Companies regarding which of these different services and charges would continue if

Service Types 20 and 30 were consolidated. Without this evidence, simply no way exists to ensure cross-subsidization is avoided. *See* Industrial Customer Groups' M.B., pp. 5-6.

The OSBA suggests that cross-subsidization between Service Type 20 and Service Type 30 customers is indeed possible. Citing the more attractive load shape of Service Type 30 customers, the OSBA contends that supplier bid prices would decrease for Service Type 20 customers with less attractive load profiles. OSBA M.B., pp. 3-4. The OSBA further believes that this decrease would be offset by premiums included within bid prices because Service Type 30 customers are more likely to shop than Service Type 20 customers. *Id.* Both of the OSBA's conclusions are based on the differences between Service Type 20 and Service Type 30 and one Service Type cross-subsidizing the other. Moreover, although the OSBA supports the Companies' proposal, the OSBA never quantifies these differences between the Service Types to determine the impact on the customers in each class.

Implicitly recognizing that cross-subsidization could occur through this consolidation, the Companies' Main Brief never addresses the differences between the Service Types or makes any specific findings with respect to cross-subsidization. *See* Companies' M.B., p. 5. Instead, the Companies outline the supposed similarities between the Service Types and allege that the proposed consolidation of Service Types 20 and 30 would not "have any adverse effects on customers." *Id.* The Companies cannot satisfy their burden of proof by ignoring the unfavorable aspects of their proposal that indicate a potential for cross-subsidization. Because the Companies have not shown that cross-subsidization would be avoided, their proposal to consolidate Service Types 20 and 30 should be rejected by the Commission.

B. Residential and Commercial Class Default Service Procurement

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

C. Industrial Class Hourly-Priced Default Service

The West Penn Power Industrial Intervenors opposed the changes to West Penn's hourly-priced service in its Answer in this proceeding. *Contra* Companies' M.B., p. 22; *see also 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, Petition to Intervene and Answer in Partial Opposition of West Penn Power Industrial Intervenors (Dec. 19, 2011).

Specifically, WPPII opposes: (1) the change from day-ahead to real-time hourly pricing for default service; (2) the fixed adder that would effectively be created by bidding out procurement of the hourly product; and (3) kWh-based capacity pricing. Industrial Customer Groups' M.B., pp. 6-7. The Companies have been aware of WPPII's opposition since WPPII's Answer was filed and by virtue of discovery. Yet, the Companies provide no substantive analysis in their Main Brief to meet their burden of proof with respect to these changes to West Penn's hourly default service. *See* Companies' M.B., pp. 22 and 39.

For the reasons set forth in Industrial Customer Groups' Main Brief, the current terms for West Penn's hourly-priced service, including day-ahead LMP pricing, kW capacity pricing, and in-house procurement of the hourly product, are consistent with public utility law and policy in the Commonwealth. *See* Industrial Customer Groups' M.B., pp. 6-17. Day-ahead LMP pricing and in-house hourly procurement are both consistent with least-cost procurement methodology. In addition, the proposed elimination of pricing for capacity on a kW basis in favor of kWh pricing contravenes fundamental principles of cost causation. PJM charges any default service provider for capacity on a kW basis based on their contribution to the PJM peak; West Penn's

default service rules should mirror that allocation. Because the Companies do not provide any evidence to support their proposed changes to West Penn's hourly-priced service, West Penn's current hourly service must be maintained, and the Companies' proposed changes should be denied.

D. Use of Independent Evaluator

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

E. AEPS Requirements

1. Non-Solar Photovoltaic Requirements

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

2. Solar Photovoltaic Requirements

Unlike many smaller customers who are not yet active in the market, Large C&I customers have undertaken significant efforts negotiating the precise terms of their shopping contracts. *Industrial Customer Groups' M.B.*, pp. 22-23. Large C&I customers develop their contractual terms and procurement processes in a competitive, arms-length relationship with EGSs. As a result, a proposal, such as the Companies' proposed 40/60 percentage split of SPAEC procurement and cost collection, which forces contract renegotiation and adds complexity within the competitive market risking overcharges, would have a uniquely negative effect on Large C&I customers. *See id.* The confusion is amplified by the fact that West Penn and other EDCs currently have different rules pertaining to solar AEPS compliance.

The Companies' proposed procurement and cost collection of 40% of SPAECs through Solar Photovoltaic Requirements Charge ("SPVRC") Riders⁵ would force Large C&I customers to renegotiate their shopping contracts to include the procurement and cost collection of 60% of

⁵ West Penn Power currently does not have a SPVRC Rider. EGSs serving in West Penn's service territory currently procure 100% of SPAECs for their customers.

SPAECs. *Id.* This renegotiation would likely be mired in complexity, because in some cases the customers would remove 40% of SPAEC responsibilities from their contracts, and in other cases they would include 60% of SPAEC responsibilities in their contracts. *Id.* Assuming customers could navigate this renegotiation successfully,⁶ while continuously monitoring and double-checking to ensure that SPAEC procurement and cost collection percentages are allocated correctly post-renegotiation, the Companies still do not explain why this burden on customers is necessary or even appropriate. *See* Companies' M.B., p. 26.

As the proponents of the proposal, the Companies have the burden of showing that the proposal is just and reasonable pursuant to the Public Utility Code. *See* Industrial Customer Groups' M.B., p. 21; *see also* 66 Pa. C.S. §§ 315(a) and 1301. The Companies are mandating, however, that Large C&I customers undertake unnecessary and unjust complexity within their competitive contracts and procurement processes. Industrial Customer Groups' M.B., p. 29. *Forced renegotiation of contracts to include the procurement and cost collection of 60% of SPAECs is unjust and unreasonable when the Companies could maintain their current straightforward SPAEC procurement and cost collection procedures. See id. at 23.*

The risk of SPAEC cost over-collection is another unjust and unreasonable consequence created by the increased complexity of the Companies' proposed SPAEC procurement and cost collection processes. Industrial Customer Groups' M.B., p. 22. On this point, the Companies cite RESA's testimony, which acknowledges that the Companies' proposal creates a burden and transitional issues for EGSs. Companies' M.B., p. 27; *see also* Rebuttal Testimony of Aundrea Williams on behalf of RESA (hereinafter, "RESA St. No. 1-R"), pp. 13-14. Nevertheless, the

⁶ Importantly, customers with fixed price contracts may not have the ability to renegotiate their contracts to remove SPAEC costs. *See* Industrial Customer Groups' M.B., p. 23.

Companies note, RESA does not suggest that EGSs would overcharge their customers based on the 40/60 procurement and cost collection split.⁷ Companies' M.B., p. 27.

As a threshold issue, Large C&I customers would presume that EGSs would act in good faith to modify contracts accordingly. A customer's recourse if an EGS does not act in such a fashion, however, has not been adequately addressed. Moreover, the Commission's reach into generation supply agreements has not been tested. As stated in the Industrial Customer Groups' Main Brief, the Companies' proposal, if adopted, causes risks for Large C&I customers by virtue of the sheer number of shopping customers who would need to try to renegotiate their contracts. Industrial Customer Groups' M.B., p. 22. Over-collection of SPAECs by either the Companies or EGSs may not be purposeful, but may simply occur because of the increased complexity and coordination among customers, EDCs, and EGSs necessary to implement this proposal. *See id.* at 22-23. Because there are straightforward alternatives for SPAEC procurement and cost collection proposed by the Industrial Customer Groups, the Commission should reject the Companies' proposal, which creates the risk that shopping customers would be overcharged for SPAECs and cause customer confusion to boot. *See id.* at 29-30.

The only justification provided by the Companies for its SPAEC proposal is its commitment within the Merger Settlement to procure 40% of SPAECs. *See* Companies' M.B., p. 25; *see also* Companies' Exhibit DWS-7, p. 12. As the Industrial Customer Groups clarified in their Main Brief, however, the terms of the Merger Settlement may be jettisoned when they are not in the public interest based on changed circumstance. *See* Industrial Customer Groups' M.B., pp. 25-28; *see also* *Petition of Metropolitan Edison Company for Approval of Solar Photovoltaic Alternative Energy Credit Purchase Agreement with Air Products and Chemicals, Inc.*, Docket

⁷ Not all EGSs are members of RESA. *See* RESA M.B., fn. 4.

No. P-2011-2264304, Order (entered Sept. 15, 2011). For all the reasons discussed herein, as well as within the Main Brief, the terms of the Merger Settlement need not, and in fact, should not, apply, especially to Large C&I customers. The plain language of the Merger Settlement explicitly permits parties to recommend changes to the 40% SPAEC procurement figure and does not require West Penn to procure any SPAECs at all.

Both alternatives presented by the Industrial Customer Groups for SPAEC procurement and cost collection are superior to the Companies' proposal, which does not meet the "just and reasonable" test. First, the Industrial Customer Groups recommend that each Company maintain its current SPAEC procurement and cost collection duties. Under this approach, Met-Ed, Penelec, and Penn Power would continue to procure 100% of SPAECs for all customers, and West Penn would continue to procure 0% of SPAECs for shopping customers. Because the Companies have not met their burden of proving that the 40/60 procurement and cost collection split is just and reasonable, maintaining current SPAEC procedures is appropriate. *See id.*

Second, premised on the notion that the Companies would continue to tinker with their SPAEC procurement in future default service proceedings, the Industrial Customer Groups would alternatively recommend that EGSs throughout the Companies' service territories begin to procure 100% of SPAECs for Met-Ed, Penelec and Penn Power customers, as they currently do in the West Penn service territory. *See id.* at 30. Purportedly to alleviate the Industrial Customer Groups' concerns about continued systematic decreases of SPAEC percentages, the Companies state that future decreases would be subject to Commission approval. Companies' M.B., p. 26. The Industrial Customer Groups agree that the Commission would be available in the future to consider further reductions in SPAEC procurement and cost collection by the Companies. Because Commission approval is also required for the instant default service proceeding,

however, no reason exists to postpone customer certainty regarding their SPAEC procurement and cost collection responsibilities. Industrial Customer Groups' M.B., p. 30.

To limit the time and resources that Large C&I customers would need to expend addressing future percentage decreases, the Companies should either commit to maintain their current SPAEC procurement and cost collection procedures, or decide to transfer all SPAEC duties to EGSs at this time. Both alternatives would minimize the customer confusion related to the Companies' proposed 40/60 split of SPAEC procurement and cost collection responsibilities. Moreover, if alternative SPAEC procedures are adopted now, there would be no need for Large C&I customers to spend time and resources renegotiating and monitoring their shopping contracts in the future. Industrial Customer Groups' M.B., pp. 29-30.

The Companies' proposed 40/60 SPAEC procurement and cost collection percentage split is an unjust and unreasonable interference with Large C&I shopping contracts and procurement processes. The Companies provide no evidence that the adoption of a 40/60 SPAEC procurement and cost collection percentage split is consistent with the just and reasonable requirement within the Public Utility Code. *See id.* at 29. Considering the complexity added to competitive contracts and processes for Large C&I customers, as well as the potential for over-collection of SPAEC charges, the Companies' proposal should be rejected in favor of the Industrial Customer Groups' SPAEC procurement and cost collection alternatives, if not for all customers, then at least for Large C&I customers.

F. Contingency Plans

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

G. Supplier Master Agreements

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

III. RATE DESIGN AND COST RECOVERY

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

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

B. Industrial Class: Hourly Pricing Default Service Rider

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

C. Market Adjustment Charge

1. Summary and Overview of Each Party's Position

2. Position of Parties Opposed

Although the Companies' proposed MAC would not apply to Large C&I customers, the Industrial Customers oppose the MAC based on its adverse policy implications for competitive market development in Pennsylvania. *See* Industrial Customer Groups' M.B., p. 31. Simply put, the MAC is an unjust and unreasonable increase to the price of default service, a rational result of which would likewise be an increase to the price of competitive supply. *Id.* at 31-32. Despite the Companies' attempt to fit the MAC within the bounds of public utility law, the Public Utility Code specifically prohibits a MAC mechanism. Accordingly, the MAC must be denied.

The Companies contend in their Main Brief that, because the Commission's regulations leave open the possibility that another entity could serve the default service provider role, the Commission "implicitly acknowledges" that the default service provider should be permitted to collect profit from customers to compensate the default service provider for unquantifiable risks. Companies' M.B., p. 40; *see also* 52 Pa. Code § 54.183(c). To reach this tenuous conclusion, the Companies make a number of unwarranted assumptions.

First, the Companies assume to know what would motivate default service suppliers, when in fact there is no way to know how willing future suppliers might be to act as default service providers pursuant to Commission rules. Moreover, assumptions regarding default service provided by future suppliers are irrelevant in the instant proceeding, which solely relates to EDCs serving as default service providers. In this instance, the MAC is proposed by four EDCs, which are regulated entities under the Public Utility Code, and accordingly, are required to provide default service at the "least cost over time."⁸ Industrial Customer Groups' M.B., p. 33; *see also* 66 Pa. C.S. § 2807(e). A MAC, which charges customers an extra \$5.00 per MWh, and provides no corresponding benefit to the customers in return, does not, by definition, qualify as "least cost." Industrial Customer Groups' M.B., p. 35; *see also Implementation of Act 129 of October 15, 2008: Default Service and Retail Electric Markets*, Docket No. L-2009-2095604, Final Rulemaking Order (entered Sept. 22, 2011), p. 12.

Second, the Companies presume that the Commission's regulations implementing the Public Utility Code support a MAC, when in actuality the Public Utility Code does not provide for a MAC. The Public Utility Code only authorizes default service providers to recover the reasonable costs incurred in their provision of default service. Industrial Customer Groups' M.B., p. 33; *see also* 66 Pa. C.S. § 2807(e)(3.9). Accordingly, the Public Utility Code prohibits the collection of a MAC based on unquantifiable risks,⁹ rather than reasonable costs. *See* Industrial Customer Groups' M.B., pp. 33-34.

⁸ Although the Companies attempt to provide additional justification for the MAC by claiming that a similar mechanism was adopted in Maryland and New Jersey, this claim is irrelevant since, in Pennsylvania, the MAC is contrary to public utility law. *See* Companies' M.B., p. 43.

⁹ Two of the risks enumerated by the Companies are not quantifiable or cost-based and are also flawed for important policy reasons. The Companies allege that a MAC should be imposed to compensate the Companies for their creditworthiness and goodwill. Companies' M.B., pp. 41 and 48. Ironically, it was the customers themselves who, through years of no electric choice, regularly paid the Companies for electric service and established the Companies' credit and goodwill. Without the customers' years of mandated payments, the Companies assuredly would not have

Moreover, the "headroom" created by the MAC would only stimulate competition by distorting the market contrary to Commission precedent and artificially increasing prices for default service and shopping customers alike. The Commission has found that a fully competitive market must include a default service option "designed to avoid distortions in the market." *Industrial Customer Groups' M.B.*, p. 37; *see also Rulemaking Re Electric Distribution Companies' Obligation to Serve Retail Customers at the Conclusion of the Transition Period Pursuant To 66 Pa. C.S. § 2807(e)(2)*, Docket No. L-00040169, Proposed Rulemaking Order (entered Dec. 16, 2004), p. 3. An arbitrary increase to the default service price to encourage shopping certainly creates a distorted market, in which increased customer shopping and EGS presence would be based on artificially-inflated prices, rather than genuine market participation. *See Industrial Customer Groups' M.B.*, p. 37. In addition, the presence of the MAC could trigger EGSs, who compare their prices to default service prices, to offer higher prices to shopping customers, guaranteeing that the MAC's negative consequences would be pervasive throughout the competitive market. *See id.*

The MAC is directly contrary to the Public Utility Code. It is unjust, unreasonable, and precisely the opposite of a "least cost over time" procurement process. There is no implicit approval of such a device hidden in the Commission's regulations. The MAC inappropriately encourages competition through market distortion at the expense of all customers. Accordingly, the MAC must be rejected by the Commission.

the same credit and goodwill today. Accordingly, it is unjust and unreasonable to require the customers to compensate the Companies for qualities the customers established for the Companies.

3. RESA's Proposed Modification

MEIUG, PICA, PPUG, and WPPII reject a MAC, with or without modification, for the principles stated above and as set forth in the Industrial Customer Groups' Main Brief. The MAC is an unjust and unreasonable mechanism to facilitate shopping.

4. Dominion's Proposed Modification

MEIUG, PICA, PPUG, and WPPII reject a MAC, with or without modification, for the principles stated above and as set forth in the Industrial Customer Groups' Main Brief. Moreover, Dominion's proposal to double the cost to be recovered via the MAC would only compound the problems addressed in Section III.C., *supra*. See Dominion M.B., p. 10. The MAC is an unjust and unreasonable mechanism to facilitate shopping.

D. Default Service Support Rider

1. Non-Market Based Transmission Charges

a. The Companies' Collection of Non-Market Based Transmission Costs Through Non-Bypassable Riders Is Unjust and Unreasonable for Large Commercial and Industrial Customers.

For Large C&I customers, the collection of non-market based transmission costs by the Companies through non-bypassable riders would hinder competitive market participation and in many cases, have significant adverse effects. This issue is uniquely problematic for Large C&I customers because of: (1) their long-term participation in the competitive market; and (2) the contractual terms and mechanisms negotiated by Large C&I customers over the course of their shopping history. Residential and small commercial customers, many of whom continue to receive default service, have different rate designs and load profiles, which may be more compatible with the Companies' proposal. Accordingly, if the Commission approves the Companies' proposal to collect NMB Transmission costs from shopping and non-shopping

customers, the Industrial Customer Groups urge the Commission to carve-out the Large C&I customer class from the implementation of such a proposal.

b. The Rate Design Proposed for the Collection of these Transmission Costs from Large Commercial and Industrial Customers Is Unjust, Unreasonable, and Inappropriately Discriminatory.

The Industrial Customer Groups are concerned that the Companies' proposed rate design for collection of transmission costs under the Companies' DSSRs has not been clearly explained in the Companies' Main Brief. To clarify, the Companies' proposed rate design for the collection of NMB Transmission costs does not allocate or charge Large C&I customers for transmission on the same basis that NMB Transmission costs are incurred by the load-serving entity ("LSE") under PJM's rules. *See* Industrial Customer Groups' M.B., pp. 53-54. The Companies' proposed rate design is thus unjust, unreasonable, and inappropriately discriminatory for Large C&I customers who have developed pass-through transmission arrangements as a cost-effective and legitimate means for such customers to manage their transmission costs. *Id.* at 55. Moreover, the Companies' proposal inhibits Large C&I customers' ability to respond to market signals and subverts the benefits to individual customers of employing self-generation and other demand reduction strategies contrary to the intent of Act 129, flatly ignoring the competitive progress made by Large C&I customers with respect to transmission costs. *Id.* In this critical regard, the Companies' proposed rate design is inconsistent with the Competition Act, which specifically acknowledges the importance of Pennsylvania businesses and industries being able to effectively manage their energy costs. *See* 66 Pa. C.S. § 2802(7). Because of the inherent problem with the Companies' proposal, it must be denied.

The Companies incorrectly submit that their proposal is consistent with cost causation principles. The facts prove otherwise. The Companies, as transmission owners, are assigned a

transmission obligation by PJM based on the demand of the customers in their zones during the PJM one coincident peak ("1-CP").¹⁰ Under the Companies' proposal, the Companies would collect transmission costs from all the customers in their zones, which the Companies believe would be consistent with cost causation principles. Companies' M.B., pp. 57-58. In this brief explanation of the allocation of transmission costs, however, the Companies gloss over the fact that the Companies' zones include many customers, served by the Companies or EGSs, who each have individual contributions during the 1-CP. With Large C&I customers' advanced metering, direct visibility exists as to each customer's contribution to their LSE's peak demand. This granularity of information on Large C&I customers' demand in peak periods permits EGSs to offer Large C&I customers transmission products based on their individual transmission obligations during the 1-CP. *See id.* Thus, Large C&I customers may be charged for transmission by their LSEs in precisely the same manner they incur transmission costs at PJM. *Id.* Under the Companies' proposal, however, Large C&I customers would be charged a portion of their class's transmission obligation during the 1-CP based not on their individual demand during the peak day but on a monthly billing demand. This is not the basis by which PJM allocates the costs of the transmission system to the Companies or EGSs. Under the Companies' proposal, Large C&I customers would in fact lose the ability to be charged for transmission in the manner they incur transmission costs. Accordingly, the Companies' proposal fails to comport with cost causation principles. Industrial Customer Groups' M.B., pp. 54-55.

Moreover, the rate design of the Companies' proposal, specifically the manner in which the Companies would collect transmission costs from Large C&I customers, threatens the economic success of Pennsylvania businesses and industries by prohibiting Large C&I customers

¹⁰ The 1-CP is the metered peak zonal demand as determined by PJM as set during the highest demand day for each of the PJM zones. *See Tr.*, 97; *see also* Industrial Customer Groups' M.B., p 55; *see also* <https://www.pjm.com/~media/markets-ops/settlements/network-service-peak-loads-2012.ashx>.

from managing their transmission costs through demand reduction strategies. *See id.* On this point, the Companies contend that, under their proposal, customers would be billed based on their individual demand; however, the Companies fail to explain that the demand they are referring to is monthly demand, not system peak demand. Companies' M.B., p. 65. The Companies' simple reference to "demand" is highly misleading, because the only relevant demand for PJM's allocation of transmission charges, and the customers' utilization of demand reduction strategies, is demand on the 1-CP day. *See Industrial Customer Groups' M.B.*, pp. 54-55. Under the Companies' proposal, Large C&I customers would not be charged, as they are currently able to be charged under pass-through transmission arrangements with EGSs, for their transmission based on their demand during the 1-CP. Instead, Large C&I would be charged based on their monthly demand, demand which is entirely irrelevant when PJM allocates transmission obligations. Tr. 65; *see also* Direct Testimony of Raymond E. Valdes on behalf of the Companies, p. 25 ("The demands of customers in the Industrial Customer Class will be determined in the same way they are determined under the applicable distribution rate schedule..."); *see also* Met-Ed Tariff No. 51, Rate GS-Large, Rate GP, and Rate TP; *see also* Penelec Tariff No. 80, Rate GS-Large, Rate GP, and Rate LP; *see also* Penn Power Tariff, No. 35, Rate Schedule GP and GT; *see also* West Penn Tariff No. 39, Schedule 30, Schedule 40, Schedule 41, Schedule 44, and Schedule 46.

For a customer such as Procter & Gamble Paper Products Company ("P&G"), the Companies' proposal to charge for transmission costs based on monthly demand would mute the price signals P&G depends on to reduce costs through the utilization of self-generation. *See Industrial Customer Groups' M.B.*, p 55. After investing tens of millions of dollars into large scale self-generation projects, P&G has systematically reduced its individual transmission

obligation by lowering its demand on high peak days when PJM is likely to measure the 1-CP. *See id.*; *see also* Fried St. No. 1-S, p. 4. If the Companies were to charge P&G transmission costs based on P&G's monthly demand on Penelec's system, P&G utilization of self-generation to minimize its transmission obligation would be rendered irrelevant. *See* Fried St. No. 1-S, p. 4. Thus, the Companies' proposal would render P&G's self-generation technology useless with respect to controlling transmission costs. *See* Industrial Customer Groups' M.B., p 55.

Management of transmission costs is possible for Large C&I customers, who, pursuant to pass-through transmission arrangements with EGSs, may lower their 1-CP demand by implementing self-generation or other demand reduction strategies on high peak days when PJM is likely to measure the 1-CP. *See* Industrial Customer Groups' M.B., p 55. It is not feasible for customers with operational businesses to lower their demand each and every month, without limiting the productivity and profit of their businesses, contrary to the Competition Act. *See id.*; *see also* 66 Pa. C.S. § 2802(7). It is unjust and unreasonable to charge Large C&I customers for transmission costs based on their monthly demand, which would prevent Large C&I customers from managing their costs. *See* Industrial Customer Groups' M.B., p 54.

Moreover, the Companies' proposal unduly discriminates against those Large C&I customers who have already relied on the rules established by this Commonwealth and this Commission, pursuant to which competition would occur, to reduce their transmission costs, as intended by Act 129. *See id.* at 55. Under the Companies' proposal, Large C&I customers, who employ self-generation and demand reduction technologies to reduce their 1-CP demand, would remit transmission costs based on their monthly demand. *See id.* at 55-56. As a result, these customers would subsidize customers with lower monthly demands, who may have triggered higher transmission obligations and caused a higher system peak as calculated by PJM rules. In

other words, Large C&I customers who utilize demand reduction strategies would be paying for a portion of the Large C&I class transmission obligation in excess of their individual transmission obligation. *Id.*

Such cross-subsidization among the members of the same customer class may occur less frequently for residential and small commercial customers, who have more similar load profiles to one another. Such similar load profiles results in fairly uniform transmission cost causation among the customers in the residential and small commercial classes. Because of these similarities, residential and small commercial customers are already charged for transmission based on a portion of their class's transmission obligation. By contrast, Large C&I customers, who have extremely varied load profiles, incur wide-ranging transmission charges when viewed on a 1-CP, cost-causation basis. Because of these differences, Large C&I customers developed pass-through transmission arrangements with their EGSs based on their individual demand during the 1-CP. Therefore, the Companies' proposal to charge customers based on a portion of their class's transmission obligation is uniquely problematic for Large C&I customers. *See Industrial Customer Groups, M.B., p. 41.*

From a practical perspective, it is not surprising that residential and commercial customers would be less interested in this issue. Unlike Large C&I customers, smaller customers generally do not have metering capabilities to determine their individual transmission obligation under PJM rules. *See Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans, Docket No. I-2011-2237952, Final Order, pp. 60-61 (entered Dec. 16, 2011) (finding that customers with demand less than 100 kW are unlikely to have individual metering capabilities).* As a result, although the Companies' proposal would have highly discriminatory effects on Large C&I customers,

residential and small commercial customers would not be impacted. *See* Industrial Customer Groups, M.B., p. 57.

The competitive market has evolved to permit Large C&I customers to be charged based on their individual transmission obligations calculated by PJM. Because Large C&I customers have this option available to them, they have invested in utilizing demand reduce strategies and self-generation on high peak days, which promotes economic savings, grid reliability, and a fair allocation of transmission costs among Large C&I customers.¹¹ The Companies cannot be allowed to detract from this positive competitive market development. *See id.*

For all the foregoing reasons, the Companies' proposal, particularly its rate design component, cannot be imposed on Large C&I customers. If the Commission approves any aspect of the Companies' collection of NMB Transmission costs, there should be a carve-out for Large C&I customers. If there is no carve-out, then the Industrial Customer Groups recommend that NMB Transmission be charged based on a customer's individual contribution to PJM's 1-CP. It is crucial that Large C&I customers retain the option to be charged based on their individual transmission obligation. Otherwise, as applied to Large C&I customers, the Companies' proposal is unjust, unreasonable, and unduly discriminatory in contravention of the Competition Act and Act 129.

c. The Resulting Re-Bundling of Transmission and Distribution Is Excessively Unfair for Large Commercial and Industrial Customers.

The Companies' proposed re-bundling of transmission and distribution, and collection of transmission costs from all customers, is contrary to the Competition Act and Commission precedent. Industrial Customer Groups' M.B., p. 46; *see also* 66 Pa. C.S. §§ 2802(13) and

¹¹ In another section of their Main Brief, the Companies acknowledge the benefits of demand response and recognize that demand response strategies are utilized for "peak-shaving during high-usage periods." Companies' M.B., p. 71.

§2804(3). Although violating the plain language of law alone warrants its rejection, the proposal is also counter to the intent of the Competition Act. As applied to Large C&I customers, the Companies' proposal would eliminate innovative competitive products and efficiencies, and interfere with contractual terms and relationships.

An overarching principle of the Competition Act requires "the unbundling of electric utility services, tariffs and customer bills to separate the charges for generation, transmission, and distribution." Industrial Customer Groups' M.B., p. 46; *see also* 66 Pa. C.S. §§ 2802(13) and §2804(3). The Commission's regulations implementing the Competition Act further explain that unbundled generation and transmission should be charged to default service customers, indicating that EGSs should likewise charge shopping customers for both generation and transmission. *See* 52 Pa. Code §§ 54.182 and 54.187(d). The Companies' collection of NMB Transmission costs from both default service and shopping customers is contrary to these fundamental aspects of electric competition law in the Commonwealth.¹²

Contrary to the intent of the Competition Act, the Companies' proposed re-bundling of transmission and distribution would disrupt the competitive market, especially for Large C&I customers, by eliminating competitive products and interfering with private contractual relationships. In their Main Brief, the Companies claim that their proposal would benefit customers because it would reduce the risk premium EGSs impose on customers based on the difficulty in hedging for transmission costs.¹³ Companies' M.B., p 58. Although this justification may be a consideration for residential and small commercial customers, as noted by

¹² Because Met-Ed's and Penelec's last default service proceeding was settled without the inclusion of a non-bypassable rider for the collection of NITS, the Commission was not able to evaluate arguments challenging the lawfulness of the proposal.

¹³ RESA also states that it supports the Companies' proposal to collect NMB Transmission costs through non-bypassable riders. Because RESA provides no justification for this support, however, the Industrial Customer Groups assume that RESA supports the proposal for the same reasons as the Companies, which are refuted by the discussion herein and within the Industrial Customer Groups' Main Brief.

the OSBA, it is less important for Large C&I customers, who have the option in the market to request direct pass-through by EGSs. *See* OSBA M.B., p. 18. In fact, one transmission product frequently chosen by Large C&I customers, the pass-through product, is a direct pass-through of transmission charges from PJM that, by its nature, does not include an EGS premium. *See* Industrial Customer Groups' M.B., p. 47. Another transmission product, the fixed price product, has a separate purpose for Large C&I customers than it does for smaller shopping customers. Large C&I customers sometimes prefer a fixed price transmission product, including a risk premium, because it provides a stable monthly price for accounting purposes and allocates the risk of transmission cost fluctuation to EGSs. *See id.* As a result, for Large C&I customers, the Companies' proposal serves to only eliminate the competitive transmission options available to them without providing any associated benefit.

In addition to removing competitive transmission products from the market, the Companies' re-bundling of transmission and distribution would also interfere with the terms of all shopping contracts that extend past the implementation date of their DSPs. Because Large C&I customers expend significant time and resources negotiating their precise contractual terms, the Companies' modification of a central component within contracting is more impactful than it might be for residential and small commercial customers. *See* Industrial Customer Groups' M.B., p. 50. To minimize the significance of this interference, the Companies state that one EGS, specifically Dominion, testified that it would voluntarily remove NMB Transmission costs from shopping contracts. Companies' M.B., p. 61; *see also* Rebuttal Testimony of Thomas J. Butler on behalf of Dominion (hereinafter, "Dominion St. No. 1-R"), p. 11. However, the Companies fail to provide the crux of Dominion's testimony, which explains that there is no guarantee other EGSs would remove NMB Transmission costs without prompting from their

customers. Dominion St. No. 1-R, p. 11. Moreover, RESA theorized that it might be impossible to remove transmission costs from fixed price contracts because they are embedded in a single price. Industrial Customer Groups' M.B., p. 48; *see also* RESA St. No. 1-R, pp. 10-11. If the portion of the price that represents the NMB Transmission costs cannot be extracted, then it is irrelevant whether an EGS would plan to remove NMB Transmission costs or not. Industrial Customer Groups' M.B., p. 48.

Assuming *arguendo* that NMB Transmission costs could be removed, Large C&I customers would be required to systematically renegotiate each of their long-term shopping contracts in order to prevent double transmission charges by both their EDC and EGS. Renegotiation is especially problematic for Large C&I customers, because of their overwhelming participation in the competitive market, as opposed to residential and small commercial customers who generally continue to receive default service.

On the topic of renegotiation, the Companies recommend that customers avoid renegotiation, by either relying on their contractual language, or the presence of below-market pricing elements within contracts that would offset the removal of NMB Transmission costs; however, neither of these recommendations is proper. Companies' M.B., p. 60. There is no way to know how the language of privately-negotiated shopping contracts would address the unprecedented removal of transmission costs. *See* Raia St. No. 1-S, p. 4. In addition, customers should not be required to eliminate any below-market elements that they negotiated as part of a good faith, arms-length transaction with their EGS. *See* Industrial Customer Groups' M.B., p. 49. It is unfair and unreasonable for the Companies to sanction customers to overpay for NMB Transmission costs for the duration of their shopping contracts. *See id.*

The Companies allege that the Industrial Customer Groups' willingness to renegotiate their shopping contracts to include 100% of SPAEC responsibilities indicates that customers should be open to renegotiation with respect to NMB Transmission costs. Companies' M.B., p. 61. This analogy is flawed for a number of reasons. First, the Industrial Customer Groups considered both of their alternatives for SPAEC procurement and cost collection, and ultimately determined that it would be preferable for the Companies to maintain their current SPAEC procurement and cost collection methodologies in order to avoid renegotiation. *See* Industrial Customer Groups' M.B., p. 29-30. Second, the Industrial Customer Groups are willing to move all SPAEC responsibilities under their contracts to avoid future renegotiation necessitated by the Companies' continued tinkering with SPAEC percentages in future default service proceedings. *Id.* at 30. Third, the inclusion of 100% of SPAEC responsibilities in shopping contracts is fundamentally different from the removal of NMB Transmission costs from shopping contracts. While customers would be permitted to negotiate their SPAEC costs with EGSs, customers would lose their ability to negotiate with respect to transmission. As a result, the Industrial Customer Groups' position with respect to SPAEC renegotiation is inapplicable to NMB Transmission renegotiation.

Despite the difficulty extracting these costs from shopping contracts, and the potential widespread contract renegotiation for Large C&I customers, the Companies fail to provide a transition plan for the extraction of these costs. Instead, the Companies mistakenly believe that the amount of time between now and June 1, 2013 is equivalent to a transition plan for NMB Transmission costs.¹⁴ Companies' M.B., p. 66. No amount of time would cause these costs to

¹⁴ Similarly, the Companies note that the involvement of MEIUG, PICA, PPUG, and WPPH in this proceeding is evidence that Large C&I customers were adequately notified regarding this proposal. *See* Companies' M.B., p. 65. Interestingly, in a separate breath, the Companies suggest that the testimony sponsored by MEIUG/PICA/PPUG/WPPH is indicative of the issues faced by only the two members that presented testimony.

disappear from shopping contracts that extend beyond June 1, 2013. Industrial Customer Groups' M.B., p. 48. Moreover, educating customers about why the Companies are proposing to collect NMB Transmission costs would also not address the renegotiation difficulties related to these costs. *Contra Dominion M.B.*, p. 11. Rather than provide a transition plan for cost extraction or contract renegotiation, the Companies advise customers to assume their contracts have below-market elements, and continue to pay full contract price. *See Companies' M.B.*, p. 60. Considering the difficulties associated with the removal of NMB Transmission costs, it is unreasonable for the Companies to assume that EGSs and customers can figure out how to fairly extract these costs without a clearly defined transition plan with adequate customer safeguards. *See 66 Pa. C.S. § 2802(8); see also Industrial Customer Groups' M.B.*, p. 45.

Finally, for Large C&I customers with multiple facilities throughout the Commonwealth, the proposed re-bundling of transmission and distribution would prevent their utilization of standardized contract terms and procurement processes. The Companies contend that because perfect standardization among Pennsylvania EDCs does not currently exist, as evidenced by Penn Power's future non-bypassable collection of RTEP costs, their proposal to collect NMB Transmission costs would not create standardization concerns. *Companies' M.B.*, pp. 63-64. The Industrial Customer Groups have admitted that there is not pure standardization throughout the Commonwealth; however, there is with respect to transmission.¹⁵ *See Industrial Customer Groups' M.B.*, p. 53. Consistent with the Commission's regulations, all Pennsylvania EDCs collect transmission costs from their non-shopping customers, and all Pennsylvania EGSs collect

See id. at 58. The Companies cannot argue that notification of the Industrial Customer Groups adequately informs Large C&I customers of this proposal while simultaneously downplaying the role of the Industrial Customer Groups' concerns in this proceeding.

¹⁵ The adoption of a non-bypassable rider for the collection of NMB Transmission costs in Ohio is irrelevant to the instant proceeding. Moreover, there are no regulations in Ohio that provide for generation and transmission to be charged by the same entity. *See Industrial Customer Groups' M.B.*, p. 59.

transmission costs from their shopping customers. *Id.* at 51; *see also* 52 Pa. Code §§ 54.182 and 54.187(d). It is true that Penn Power will be diverging from this perfect standardization when it begins to collect RTEP costs, but this is not a suitable rationale for eliminating the standardization for all other transmission costs throughout the Companies' service territories.¹⁶

The Companies' proposed re-bundling of transmission and distribution would eliminate competitive transmission products, interfere with freely-negotiated contracts, and force private parties to renegotiate their contracts without safeguards or guidance. Because the Competition Act and the Commission's regulations prohibit the Companies' collection of transmission costs from shopping customers, Large C&I customers are unprepared for such extensive interference with their competitive arrangements.¹⁷ The Companies' proposal should not be approved, especially with respect to Large C&I customers.

d. Conclusion

Large C&I customers have spent considerable time navigating the competitive market, and developing products and contracts that suit their business objectives. The shopping statistics reflect the strong participation of Large C&I customers in Pennsylvania's retail market. The Commission should rightly consider this as a success for the Large C&I transition to retail competition. The Companies' proposal would hinder this progress with respect to transmission costs by prohibiting transmission to be competitively sourced with generation and interfering with contracts. Because the Competition Act and the Commission's regulations require shopping

¹⁶ Moreover, Penn Power is a much smaller service territory than the other Companies with significantly fewer Large C&I customers. Thus, utilizing a non-bypassable rider for one specific cost (*i.e.*, RTEP) would not have the same depth and breadth as the proposal set forth herein.

¹⁷ The Industrial Customer Groups had no reason to anticipate this proposal by the Companies. Because the Commission's regulations provide for generation and transmission to be charged by the same entity, the Industrial Customer Groups reasonably assumed that there would be no reason to modify their contracts or otherwise prepare for a proposal by the Companies to collect transmission costs.

customers to be charged for transmission by their EGSs, many of the competitive mechanisms developed by Large C&I customers depend on the continued collection of all transmission costs by their EGSs. If the Companies charge Large C&I customers for transmission based on their class's demand, Large C&I customers could no longer effectively manage their transmission costs through self-generation and demand reduction strategies. If Large C&I customers are instead charged based on their monthly demand, they may be charged for transmission costs they never incurred, and cross-subsidize other customers to their substantial economic disadvantage. Because Large C&I customers are a unique type of customers with differing load profiles, individual metering capabilities, and extensive involvement in the competitive market, the Companies' proposal to collect NMB transmission costs through non-bypassable riders should not apply to them. To the extent this proposal is approved by the Commission, however, it is essential and appropriate under fundamental cost causation principles for Large C&I customers to be charged for transmission based on their individual transmission obligation during the 1-CP. Otherwise, the incentives for demand response and efficient self-generation are compromised and businesses' efforts to manage their energy costs would be thwarted.

2. Generation Deactivation Charges

Because the Companies propose to collect generation deactivation costs as an additional NMB Transmission cost, it should be opposed for all of the above-stated reasons in Section III.D.1. Generation deactivation charges are only allocated to those customers who will benefit from the increased reliability triggered by continued generation. *See Exelon M.B.*, p. 3. As a result, it is inconsistent with cost causation principles for the Companies to begin to collect these costs through non-bypassable riders because the costs would be allocated to all customers, rather than only those who benefit. Large C&I customers can currently receive generation deactivation

charges as part of a pass-through or fixed price arrangement, but the Companies' proposal would eliminate these options. *See* Industrial Customer Groups' M.B., p. 47. Moreover, generation deactivation costs may be impossible to remove from contracts, but if removal is possible, widespread contract renegotiation would be required. *See id.* at 49. For the reasons discussed more fully in Section III.D.1., as well as within the Industrial Customer Groups' M.B., MEIUG, PICA, PPUG, and WPPII oppose any collection of generation deactivation costs through a non-bypassable rider for Large C&I customers.

3. Unaccounted-For Energy Costs

Because the Companies propose to collect unaccounted-for energy ("UFE") costs via their non-bypassable DSSRs, it should be opposed for many of the above-stated reasons in Section III.D.1. Large C&I customers can currently receive UFE charges as part of a pass-through or fixed price arrangement, but the Companies' proposal would eliminate these options. *See* Industrial Customer Groups' M.B., p. 47. Moreover, UFE costs may be impossible to remove from contracts, but if removal is possible, widespread contract renegotiation would be required. *See id.* at 49. For the reasons discussed more fully in Section III.D.1., as well as within the Industrial Customer Groups' M.B., MEIUG, PICA, PPUG, and WPPII oppose any collection of UFE costs through a non-bypassable rider for Large C&I customers.

4. Economic Load Response Charges

Because Constellation proposes collection of economic load response ("ELR") costs via the Companies' non-bypassable DSSRs, it should be opposed for many of the above-stated reasons in Section III.D.1. ELR charges would only be allocated to those customers who will benefit from the demand response dispatched by PJM. *See* Companies' M.B., p. 70. As a result, it is inconsistent with cost causation principles for the Companies to begin to collect these costs through non-bypassable riders, because the costs would be allocated to all customers, rather than

only those who benefit. Large C&I customers could receive ELR charges as part of a pass-through or fixed price arrangement, but Constellation's proposal would eliminate these options. *See Industrial Customer Groups' M.B.*, p. 47. Moreover, ELR costs may be impossible to remove from contracts, but if removal is possible, renegotiation would be required for those customers who have already included ELR costs in their contracts. *See id.* at 49. For the reasons discussed more fully in Section III.D.1, as well as within the Industrial Customer Groups' M.B., MEIUG, PICA, PPUG, and WPPII oppose any collection of ELR costs through a non-bypassable rider.

E. Solar Photovoltaic Requirements Charge Rider

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

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

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

G. Reconciliation of Default Service Costs and Revenues

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

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

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

IV. COMPETITIVE MARKET ENHANCEMENTS

A. Retail Opt-In Aggregation Program

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

B. Standard Offer Customer Referral Program

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

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

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

V. OPERATIONAL ISSUES

A. System "Enhancements" Proposed by Constellation

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

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

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

VI. AFFILIATED INTEREST APPROVAL

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

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

VII. OTHER ISSUES

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

VIII. CONCLUSION

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

- (1) Deny the collection of non-market based transmission costs through non-bypassable riders, particularly from Large Commercial and Industrial customers;
- (2) If the collection of non-market based transmission costs through non-bypassable riders is approved, approve a charge for NMB Transmission costs based on the individual transmission obligation of Large Commercial and Industrial customers during the 1-CP ;
- (3) Deny the consolidation of West Penn's Type 20 and 30 Service Types;
- (4) Deny the conversion from kW to kWh capacity pricing in West Penn's Hourly-Priced Default Service Rider;

- (5) Deny the Companies' proposal to bid out the procurement of West Penn's hourly-priced default service;
- (6) Deny the conversion from day-ahead to real-time hourly pricing in West Penn's Hourly-Priced Default Service Rider;
- (7) Deny the Companies' procurement of 40% of solar photovoltaic alternative energy credits, and collection through non-bypassable riders, particularly for Large Commercial and Industrial customers;
- (8) Deny the collection of a Market Adjustment Charge adder; and
- (9) Provide any other relief that the Commission deems just and reasonable.

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Dated: May 16, 2012

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CERTIFICATE OF SERVICE

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

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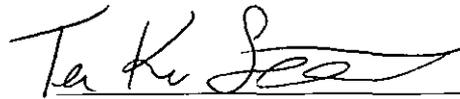
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