COMMONWEALTH OF PENNSYLVANIA
OFFICE OF SMALL BUSINESS ADVOCATE

May 16, 2012

HAND DELIVERED

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

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

Dear Secretary Chiavetta:

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

If you have any questions, please contact me.

Sincerely,

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

Enclosures

cc: Parties of Record
Robert D. Knecht

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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**

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

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Dated: May 16, 2012

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I. INTRODUCTION AND PROCEDURAL HISTORY

On or about November 17, 2011, Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power") and West Penn Power Company ("West Penn") (collectively, "First Energy" or "the Companies") filed a Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs ("Petition") with the Pennsylvania Public Utility Commission ("Commission") pursuant to Section 2801 of the Public Utility Code, 66 Pa. C.S. §2801, as amended by Act 129 of 2008, ("Act 129") and 52 Pa. Code §§54.181 – 54.189 and 69.1801 – 1817. The Petition seeks approval of proposed programs to secure default service supply for the Companies' customers for the period June 1, 2013, through May 31, 2015.

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

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

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

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

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

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

The OSBA filed its Main Brief on May 3, 2012.

II. OSBA'S GENERAL REPLY

In its Main Brief, the OSBA addressed most of the arguments made by the various parties on issues in which the OSBA has an interest. Those arguments will not be repeated here. This Reply Brief replies selectively to other, specific arguments raised by the First Energy Companies, by RESA and Dominion, and by MEIUG/PICA/PPUG/WPPII ("the Industrials") on issues in which the OSBA has an interest.

III. OSBA'S REPLY TO THE FIRST ENERGY COMPANIES

A. Small C&I Procurements

With respect to the timing of Small Commercial and Industrial ("Small C&I") procurements and the Commission's regulations specifying two procurements per year, the Companies state: "More importantly, while the Companies' proposed procurements of two-year contracts in November 2012 and January 2013, are not within the same calendar year (January 1-December 31), they are within the same PJM delivery year (June 1-May 31) and are thus compliant with Section 69.1805, as it is the PJM year with which default service programs are synchronized . . ."[1] In footnote 6, the Companies go on to say: "While the Companies have made no determination with respect to procurements for default service supply after June 1, 2015, interpretation of Section 69.1805 consistent with a PJM planning year requirement would

[1] Companies' Main Brief at 12-13.

clearly permit the scheduling of two procurements in late 2014 and early 2015 for June 2015 deliveries."[2]

Therefore, the Companies effectively suggest that they can meet the Commission's regulations of two procurements per year by holding two procurements within the 2012/2013 PJM year (in November and February), and two procurements within the 2014/2015 PJM year. However, the Companies appear to have forgotten about the 2013/2014 year, during which they will hold zero procurements, in clear contravention of the Commission's regulations. The bottom line is that if the Companies procure all of their power in two procurements with two-year contracts, there is no way they can comply with the Commission's regulations, which require two procurements per year, however that year may be defined.[3]

Furthermore, the OSBA notes that the Companies' do not even pretend to address the Commission's requirement that contract terms be laddered within the 2013 to 2015 default service proceeding.

The OSBA's procurement proposal, set forth in Mr. Knecht's direct testimony, does conform to the Commission's regulations, and should be adopted by the Commission.[4]

B. Market Adjustment Charge ("MAC")

In their main brief, the Companies say: "The MAC will compensate the Companies for the risks they bear and the value they provide as default service providers, which are not currently recognized anywhere in the rates charged for default service . . . "[5]

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[2] Companies' Main Brief at 13, fn 6.

[3] *See* 52 Pa. Code § 69.1805.

[4] OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 15-17.

[5] Companies' Main Brief at 40.

This statement is important, because it represents a substantive change from the initial grounds under which the MAC was proposed. In the filing made with the Commission ("the Joint Petition"), the Companies argued that the MAC was necessary to recover costs that were not being recovered in the existing mechanism and to enhance retail competition.[6] The OSBA is pleased to note that the Companies have, to a large extent, abandoned their claims in this respect, as neither claim had any merit.[7]

However, in place of these claims, what the First Energy Companies now propose is to replace cost-of-service ratemaking with value-of-service ratemaking, by imposing an arbitrary and unsubstantiated charge on customers that is based on an unmeasurable "value" of service allegedly provided by the Companies.[8] The Companies also propose to impose charges on default service ratepayers for some alleged risks of non-payment, but for which the Companies can offer zero concrete examples.[9] Because Pennsylvania has a long history of using cost-of-service rather than value-of-service principles for ratemaking, and because the Act 129 clearly compensates cost-based default service rates, the Companies' MAC proposal can and should be rejected by the Commission.[10]

As stated in the OSBA Main Brief, if the Commission does decide that there are unmeasurable costs related to risks faced by the Companies (which it should not, since there is no evidence), the MAC is the wrong way to reflect those costs/risks in rates. Rather, a competitive procurement should be conducted to identify a new DSP, and awarded to the lowest-

[6] Joint Petition at Paragraph 38.

[7] OSBA Main Brief at 8-14.

[8] Companies' Main Brief at 40-42.

[9] Companies' Main Brief at 43.

[10] 66 Pa.C.S. § 2807(e)(3.9) and § 2807(e) (7).

cost qualified bidder.[11] Since the Companies appear to be unhappy with the compensation they receive for being default service providers, they would presumably have no objection to divesting themselves of this responsibility.

The Companies state:

> Moreover, there is no evidence that the marginal cost of supplying generation service to an additional customer increases with the number of customers that are being served, which is the fundamental – but flawed – assumption underlying the arguments of Messrs. Kahal and Knecht. If the marginal cost of supply is not increasing with the volume of customers, then there is no valid, cost-based reason for EGSs' prices to increase as the number of customers they serve increases, as Dr. Reitzes pointed out." [12]

The OSBA notes first that an upward sloping supply curve (showing higher prices when more load is served) is a common lesson in first year economics. The theoretical ideal of a "perfectly competitive" market with a flat supply curve is just that, a theoretical ideal which does not obtain in the real world. Regarding the effect of the MAC, even Companies' witness Dr. Reitzes was only willing to argue that "it cannot be concluded that prices to shopping customers would increase *significantly* if a MAC were imposed."[13] The economists therefore seem to agree that it is only a question of *how much* the MAC will increase prices paid by shopping customers, not *whether* the MAC will increase those prices.

Finally, as Mr. Knecht notes in his surrebuttal testimony, to the extent that the Companies are relying on the theoretical ideal of perfect competition in the retail market to justify the MAC, it is their burden to prove the existence of that perfect competition.[14] Because the Companies offer no concrete evidence that the market is perfectly competitive, they have failed to meet their

[11] OSBA Main Brief at 15-16.

[12] Companies' Main Brief at 51 (internal citations omitted).

[13] Met-Ed/Penelec/Penn Power/West Penn Statement No. 6-R, Rebuttal Testimony of James D. Reitzes at 11.

[14] OSBA Statement No. 3, Surrebuttal Testimony of Robert D. Knecht at 5-6.

burden of proof in justifying the MAC. Therefore, the Commission should reject the MAC proposal by the Companies.

C. Reconciliation

As stated in the OSBA's main brief, except for West Penn Power, the Companies use a reconciliation accounting methodology which improperly matches billed revenues with incurred costs, thereby resulting in larger "E-Factor" charges and credits than would occur under proper accounting. While this effect is most extreme in the first month of reconciliation, it remains an ongoing problem. In response,the Companies state:

> At the outset, it is important to understand that the Met-Ed/Penelec method, described above, required those Companies to amortize the initial under-recovery over a prospective twelve-month period (March 2011 through February 2012). As a result, the 'E' factor in effect during that period is incrementally higher because of that amortization. When this factor is considered, it is apparent that Mr. Knecht is proposing a solution to a problem that simply does not exist.[15]

The Companies go on to argue that if the effect of this supplemental charge in the E-Factor were ignored, the E-Factors would have been relatively stable. In essence, the Companies argue that if they had done their accounting correctly the first time, the problem observed by the OSBA would have been much less severe. The OSBA agrees with this argument. However, the real question then becomes whether three of the Companies should be allowed to continue to use improper accounting. Although the OSBA would agree that the transition to proper accounting will result in some temporary instability, continued use of the existing method will result in instability forever, as explained by Mr. Knecht in his surrebuttal testimony.[16].

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[15] Companies' Main Brief at 85.

[16] OSBA Statement No. 3, Surrebuttal Testimony of Robert D. Knecht at 12.

The Commission should require the Companies to make the transition to proper accounting regarding reconciliation.

D. Opt-In Auction Costs

In its Main Brief, the OSBA explains why, if the retail opt-in auction is applied to Small C&I customers, the costs associated with that auction should properly be assigned to and recovered from the parties who benefit from that auction, namely the EGSs. In contrast, the Companies propose to recover the costs of the auction from all distribution customers, through the Default Service Support Rider ("DSSR") mechanism. The Companies defend their proposal to recover opt-in auction costs from all distribution ratepayers rather than simply from EGSs on the grounds that (a) there is some risk the Companies' will not be paid and (b) charging the EGSs will result in higher prices from EGSs and possibly cause the auction to fail.[17] In making this defense, the Companies completely ignore the basic ratemaking principles of cost of service and fairness.

In the Companies' view, apparently, default service ratepayers should pay for all of the costs of providing default service, and then pay for a substantial portion of the costs of EGS marketing efforts.[18] This approach is not consistent with cost causation and it is not equitable. The Commission therefore correctly concluded, "In the Commission's view, having the participating EGSs pay for the auction implementation is a prudent way to recover the auction costs, given that the participating EGSs are the entities reaping the possible customer acquisition

[17] Companies' Main Brief at 118-119.

[18] Companies' Main Brief at 119.

benefits resulting from the auction." [19] To the extent that the Companies have legitimate concerns about cost recovery, the OSBA has no objection to allowing the Companies to recover reasonably-incurred costs for the opt-in auction from all customers if, *and only if*, the auction fails and/or the EGSs fail to meet their obligations.

The Commission should reject the Companies' proposal for cost recovery in the opt-in auction.

IV. <u>OSBA'S REPLY TO RESA AND DOMINION</u>

A. Market Adjustment Charge ("MAC")

Aside from the Companies, the only parties who support the MAC are those representing retail energy suppliers, namely RESA and Dominion. (The other energy suppliers, namely Constellation, Excelon and FES, do not take a position on the MAC in their main briefs.) Dominion, in fact, proposes an interim MAC rate that is even higher than that proposed by the Companies, at 10 mills per kWh compared to the Companies proposed 5 mills per kWh. However, neither RESA nor Dominion support the Companies' proposal to use the MAC as a windfall for the Companies' shareholders, but rather offer alternatives for how MAC funds should be used.

Both RESA and Dominion argue that MAC funds could be used to offset any identifiable costs that the Companies' incur as default supplier.[20] OSBA observes that this defense of the MAC is pointless – the Companies are already entitled to recover costs that are reasonably incurred in providing default service without additional recovery through the MAC.

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[19] Intermediate Work Plan at 78.

[20] RESA Main Brief at 37-38; Dominion Main Brief at 9.

RESA goes on to argue that the MAC revenues should then be used to (a) subsidize electric generation suppliers' ("EGSs") marketing efforts through the opt-in auction and referral programs, and then (b) offset DSSR costs that apply to both shopping and non-shopping customers.[21] In contrast, Dominion proposes that MAC revenues be refunded back to the non-shopping customers who paid the MAC in the first place, albeit through a mechanism that is somehow outside the price to compare ("PTC").[22]

The fundamental difference between RESA and Dominion in this proceeding boils down to the importance of cost causation in rate design. In RESA's view, cost causation is irrelevant, and the only important issue is to increase shopping. By way of contrast, Dominion recognizes that refunding the MAC to all ratepayers through the DSSR would result in an unfrair cross subsidy, and therefore modified its proposal accordingly.[23]

The OSBA submits that settled case law mandates that cost of service should be the over-riding rate design principle – the "polestar" criterion. When PPL Electric endeavored to increase transmission and distribution rates to non-residential customers in a way that was not consistent with allocated costs, the Commission's approval of that proposal was overturned by the Commonwealth Court, which stated:

> Because the flat percentage increase in transmission charges increases any previous discrimination in rates, and the Commission offers no explanation how discrimination in distribution and transmission rate structures are eventually going to be gradually alleviated, in effect, the Commission has determined that the principle of gradualism trumps all other ratemaking concerns-especially *the polestar-cost of providing service.*

[21] RESA Main Brief at 40.

[22] Dominion Main Brief at 10.

[23] Dominion Main Brief at 10-11; Dominion Statement No SR1 at 7. Note that Dominion witness Mr. Butler originally proposed that the MAC revenues be refunded through the DSSR, but changed his position in surrebuttal in response to OSBA's rebuttal testimony.

> Not only did the Commission allow gradualism to trump all other factors without providing a sufficient explanation, the total bill method is not in accord with the Competition Act. *Section 2804(3) of the Competition Act mandates rates for services as unbundled charges for transmission, distribution and generation and requires that rates and rate structures be set for each service primarily on a cost-of-service study.*[24]

In this proceeding, rather than allowing gradualism to trump cost of service, RESA is proposing that the goal of encouraging competition should trump cost of service. The OSBA submits that RESA's position is contrary to the established case law cited above. For that reason, the Commission would be correct to conclude that the costs of the opt-in auction and referral programs should be paid by the EGSs, for whom those programs are developed, as argued above. It would be similarly correct for the Commission to conclude that it would be inappropriate to impose a MAC that is unrelated to the cost of default service on non-shopping customers, and then return those revenues to all customers. A clearer example of an unfair and inappropriate cross-subsidy would be difficult to find.

In contrast to RESA, Dominion proposes to charge non-shopping customers for the MAC, and then refund those revenues to those same non-shopping customers.[25] From Dominion's brief, it certainly appears that customers who switch from default service to EGS service will (a) not pay the MAC any more, and (b) not receive the MAC credit any more. As a practical matter, the rate avoided by shopping would therefore be the default service rate *before* the MAC. While Dominion may want the Companies to include the MAC in the published PTC, such an approach would be at best misleading and should more accurately be described as a falsehood. Under Dominion's approach, the PTC would not reflect what costs the customer

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[24] *Lloyd v. Pennsylvania Public Utility Commission*, 904 A.2d 1010, 1020 (Pa. Commw. 2006) (emphasis added).

[25] Dominion Main Brief at 10.

would actually avoid when switching to an EGS. If it were adopted, it is likely that many default service customers who choose to shop based on a PTC that includes the MAC will be surprised to find out that their decision to shop not only replaces their PTC with the EGS price, but it also eliminates the MAC credit that they receive which is not part of their PTC. The OSBA recommends that the Commission not be a party to this subterfuge, and recommends that Dominion's proposal be rejected.

B. Opt-In Auction Eligibility

The only party advocating that Small C&I customers be included in the retail opt-in auction program, in contravention to the Commission's finding in the retail investigation, is RESA.[26] Of the other energy suppliers who might potentially benefit from the opt-in auction, Dominion and FES actively oppose including Small C&I customers in the auction, while Exgen and Constellation take no position. Moreover, no other party supports including Small C&I customers in the opt-in auction.

Therefore, in contrast to all the other parties to this proceeding, RESA proposes that non-residential customers with a maximum billing demand below 25 kW be eligible to participate in the opt-in auction.[27] Unfortunately, RESA is exceedingly vague as to how such a determination would be made within the existing rate classes, and its witness also suggests that the appropriate delineation should be " . . . the smallest commercial rate class for each FirstEnergy EDC." [28]

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

[27] RESA Main Brief at 57.

[28] RESA Statement No. 2, Direct Testimony of Christopher H. Kallaher at 17.

RESA offers no specific proposal, for example, as to how Met-Ed would go about telling one Rate GS-Small customer with a 24 kW peak demand that it was eligible for the opt-in auction, but that another GS-Small customer with a 26 kW peak demand was not eligible. Moreover, if RESA's alternative proposal were adopted for Met-Ed, OSBA notes that the smallest commercial rate class appears to be Rate GS-Small, which includes customers with maximum demands up to 2500 kVA, approximately 100 times RESA's alternative limit.[29] Moreover, it would be difficult to understand how a $50 opt-in credit would be attractive to a 2,000 kW GS-Small customer. Thus, even if it were justified on alternative grounds, RESA's proposal is unworkable.

RESA appears to support its proposal on the grounds that (a) competition is unreasonably low in the First Energy service territories, and (b) including Small C&I customers in the auction would substantially improve its chance of success. The only thing missing from RESA's arguments are any supporting facts. In contrast to RESA's assertions, the basic data indicate that (a) shopping among commercial customers is healthy and increasing, and (b) adding the non-shopping commercial load into the non-shopping residential load would only add a relatively small amount to the overall maximum load for the auction (particularly if it is limited to non-shopping customers, as RESA proposes).[30]

The table below shows the shopping levels for commercial customers at each of the EDCs in August of 2011 (some 8 months into the current default service program) and six months later at February 2012, based on OSBA Cross Examination Exhibit 1. As shown, competition was reasonably healthy in the commercial sector only eight months after the

[29] See Met-Ed tariff page 79 for Rate GS-Small eligibility rules.

[30] *See* OSBA Cross-Examination Exhibit No. 1; Hearing Transcript at pp. 114-119, OSBA cross examination of First Energy witness Raymond E. Valdes.

expiration of the rate caps, and it has continued to grow. (Note that Penn Power's rate caps expired several years ago.)

Commercial Class Shopping Statistics						
	Met-Ed	**Penelec**	**Penn Power**	**West Penn ST20**	**West Penn ST30**	**Total**
August 2011						
Shopping Load (GWh)	145.6	156.8	77.4	91.5	114.1	585.3
Total Load (GWh)	289.6	299.6	121.9	254.2	162.1	1,127.5
Percent Shopping (%)	**50%**	**52%**	**63%**	**36%**	**70%**	**52%**
February 2012						
Shopping Load (GWh)	143.5	185.7	79.8	93.3	115.8	618.0
Total Load (GWh)	238.3	304.1	115.5	241.9	156.6	1,056.2
Percent Shopping (%)	**60%**	**61%**	**69%**	**39%**	**74%**	**59%**

In addition, the table below shows the magnitude of the non-shopping residential and commercial load in February 2012. As shown, including commercial with residential would have only a small effect on the overall load subject to the auction, while doing so would add customers with very wide range of load sizes and shapes. Even if the entire non-shopping commercial load were included in the auction, the total eligible load for participating would increase by only a little more than 20 percent. It is difficult to understand how adding all of the complexity inherent in the commercial loads would make the auction more attractive to EGSs.

Non-Shopping GWh Load: February 2012				
	Residential	**Commercial**	**Total**	**Commercial %**
Met-Ed	478.6	94.7	573.4	**17%**
Penelec	358.6	118.4	477.0	**25%**
Penn Power	136.4	35.7	172.0	**21%**
West Penn	542.3	189.4	731.7	**26%**
Total	**1,515.9**	**438.2**	**1,954.1**	**22%**

Thus, the OSBA recommends that the Commission re-affirm its finding that Small C&I customers be excluded from eligibility for the opt-in auction, at least until the results of applying the auction to the much more homogeneous residential load are in.

V. OSBA'S REPLY TO THE INDUSTRIALS

MEIUG, PICA, PPUG, and WPPII ("the Industrials") argue against the inclusion of non-market-based ("NMB") transmission costs in the non-bypassable DSSR which would apply to all distribution customers. The Industrials argue that this approach constitutes an improper rebundling of transmission and distribution costs. However, as the Industrials admit, the transmission costs in question are PJM costs that are assigned to both wholesale and retail suppliers who have no control over those costs.[31] The OSBA submits that competitive forces cannot help reduce costs over which suppliers have zero control. Thus, there are no benefits to competition related to the unbundling of NMB transmission costs. In contrast, including these costs in the DSSR reduces risks faced by both wholesale and retail suppliers, to the longer-term benefit of both shopping and non-shopping customers.

The Industrials also argue that the proposal could result in some customers being double charged.[32] As stated in its Main Brief, the OSBA agrees.[33] The OSBA submits, however, that this problem is better addressed by continuing to assign NMB transmission costs to EGSs for one year and excluding those costs from the DSSR for shopping customers for that period, than by "throwing the baby out with the bathwater" and rejecting the proposal entirely.

The Industrials appear to be most concerned about the rate design aspect of the proposal. They state: "Perhaps the most offensive aspect of the Companies' proposal, however, is the proposal to collect such NMB transmission costs from Large C&I customers in a manner that fails to comport with cost causation principles, resulting in unduly discriminatory rates contrary

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[31] MEIUG/PICA/PPUG/WPPII Main Brief at 41-43.

[32] MEIUG/PICA/PPUG/WPPII Main Brief at 47-51.

[33] OSBA Main Brief at 18.

to the requirements of the Public Utility Code." [34] Specifically, the Industrials' concern is that NMB Transmission costs can currently be directly assigned to individual Large C&I customers, whereas the Companies propose to impose a DSSR charge based on billing demand. [35]

In OSBA's view, the Industrials have a legitimate grievance in this respect, in that the Companies' proposal is less consistent with cost causation than is the existing approach. As suggested by Mr. Knecht in his rebuttal testimony, OSBA recommends that the DSSR for Large C&I customers be modified such that NMB Transmission costs are directly assigned to individual customers, rather than being implicitly allocated based on customer peak demand.[36] The Industrials also appear to view this as an alternative solution, stating: "At a minimum, if the NMB Transmission proposal were to be approved, the DSSR must be modified for Large C&I customers to reflect cost causation principles, and safeguards must be developed to ensure existing shopping customers receive the benefit of their bargain and are not charged twice for transmission."[37] The OSBA submits that this would be a reasonable resolution of the real rate design issues raised by the Industrials on this issue.

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[34] Industrials' Main Brief at 53.

[35] Industrials' Main Brief at 54-55.

[36] OSBA Statement No. 2, Rebuttal Testimony of Robert D. Knecht at 6.

[37] Industrials' Main Brief at 45-46.

VIII. CONCLUSION

The OSBA respectfully requests that the Commission adjudicate this proceeding in accordance with the arguments presented herein and in the OSBA's Main Brief.

Respectfully submitted,

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Dated: May 16, 2012

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CERTIFICATE OF SERVICE

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

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