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MAY 16 2012
PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

May 16, 2012

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

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

Dear Secretary Chiavetta:

Enclosed for filing are an original and nine (9) copies of the **Reply Brief of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company ("Reply Brief")** in the above-referenced matter.

As evidenced by the attached Certificate of Service, a copy of the Reply Brief has been served upon Administrative Law Judge Elizabeth H. Barnes and all parties. Pursuant to 52 Pa. Code § 1.11(2), the enclosed Reply Brief shall be deemed filed on the date shown on the express delivery receipt attached to the delivery envelope.

Kindly time-stamp the extra copy of the Reply Brief we have enclosed and return it to us in the postage-paid, return addressed envelope provided.

Should you have any questions, please contact me directly at 215.963.5234. Thank you.

Sincerely,

Thomas P. Gadsden

TPG/tp
Enclosures
c: Certificate of Service (w/encls.)

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 METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER COMPANY AND WEST PENN POWER COMPANY

Before Administrative Law Judge
Elizabeth H. Barnes

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May 16, 2012

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I. INTRODUCTION

Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power") and West Penn Power Company ("West Penn") (collectively, or any combination of the foregoing, the "Companies") file this Reply Brief in response to the Main Briefs that were filed by the following parties[1]:

Bureau of Investigation and Enforcement	("I&E")
Office of Consumer Advocate	("OCA")
Office of Small Business Advocate	("OSBA")
Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania	("CAUSE-PA")
Constellation NewEnergy, Inc. and Constellation Energy Commodities Group, Inc.	("Constellation")
Dominion Retail, Inc.	("Dominion")
FirstEnergy Solutions Corp.	("FES")
Met-Ed Industrial Users Group ("MEIUG), Penelec Industrial Customer Alliance ("PICA")	
Penn Power Users Group ("PPUG") and West Penn Power Industrial Intervenors ("WPPII")	("Industrials")
Retail Energy Supply Association	("RESA")

For the most part – subject to one glaring exception, discussed below – the opposing parties adhered to the outline that all parties, at the Administrative Law Judge's ("ALJ") direction, had agreed to follow in presenting their positions in their respective briefs. As a consequence, to a very large extent, the issues raised in the opposing parties' briefs were fully addressed in the Companies' Initial Brief, filed on May 2, 2012, and, therefore, an extensive reanalysis of each subject is unnecessary. However, as an aid to the ALJ, the Companies revisit herein certain areas of disagreement. Unfortunately, the Companies must also address new issues and non-record evidence that, as explained below, the Industrials are trying – belatedly and improperly – to interject in this case through their Main Brief.

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[1] The Anthracite Region Independent Power Producers Association, Direct Energy Services LLC, Exelon Generation Company and Exelon Energy Company ("Exelon"), PECO Energy Company, Pennsylvania State University, Washington Gas & Energy Services, Inc., and York County Solid Waste and Refuse Authority did not file Main Briefs.

On November 17, 2011, the Companies filed their Joint Petition requesting approval of their Default Service Programs for the period from June 1, 2013 to May 31, 2015 ("DSPs"). Approximately one month later, on December 19, 2011, the Industrials submitted Petitions to Intervene. Two days later, on December 21, 2011, the Companies submitted all of their direct testimony and accompanying exhibits. On December 22, 2011, a Prehearing Conference was conducted at which a schedule was established for submitting opposing parties' direct testimony and all parties' rebuttal and surrebuttal testimony, holding evidentiary hearings and filing briefs. *See* Amended Scheduling Order (December 29, 2011). Pursuant to that schedule, on February 17, 2012, other parties served their direct testimony and accompanying exhibits.

The Industrials submitted the direct testimony of Messrs. Fried (Fried St. 1) and Raia (Raia St. 1). Mr. Fried's direct testimony addressed three issues (*see* Raia St. 1, p. 4):

1. Mr. Fried's mistaken belief that Penelec was eliminating the "DSS_1" subcategory within its Default Service Support Rider ("DSS Rider")[2];
2. The Companies' proposal to acquire non-market based ("NMB") transmission services for all customers and recover the costs through their DSS Riders; and
3. The Companies' proposal to procure 40% of the Solar Photovoltaic Alternative Energy Credits ("SPAECs") needed to meet Pennsylvania's Alternative Energy Portfolio Standards Act ("AEPS") requirement for both default service and shopping customer load.

Mr. Raia's direct testimony addressed four issues (*see* Raia St. 1, p. 4):

1. The Companies' proposal regarding acquisition of, and cost recovery for, NMB transmission services;
2. The Companies' proposal regarding the acquisition of SPAECs;
3. The Companies' proposal to implement a Market Adjustment Charge ("MAC"); and
4. West Penn's proposal to consolidate Service Types 20 and 30.

[2] Mr. Fried's misunderstanding was corrected by Mr. Valdes (Companies' St. 2-R, pp. 2-3).

Messrs. Fried and Raia did not submit rebuttal testimony. Mr. Fried submitted surrebuttal testimony that dealt only with the Companies' proposal regarding NMB transmission services (Fried St. 1-S), while Mr. Raia submitted surrebuttal testimony that dealt only with the Companies' proposals regarding NMB transmission services and SPAECs (Raia St. 1-S).

The Industrials' Main Brief presents issues and arguments that were not addressed on the record by their witnesses or any other party's witnesses. Specifically, the Industrials now contest West Penn's proposals to adopt: (1) the same Hourly Pricing ("HP") Default Service Rider rate (i.e., a per-kWh charge for all service) that Met-Ed, Penelec and Penn Power employ (Industrials' Brief, p. 7); (2) the same competitive procurement method to obtain hourly-priced service for the Industrial Class that Met-Ed, Penelec and Penn Power employ (Industrials' Brief, p. 13); and (3) the same rate design (i.e., the PJM Interconnection LLC ("PJM") "real time" locational marginal price ("LMP")) that Met-Ed, Penelec and Penn Power employ (Industrials' Brief, p. 15).[3] None of these issues were mentioned in the direct or surrebuttal testimony of the Industrials' witnesses. Moreover, when the parties developed the consolidated outline of issues for this case, the Industrials did not identify their non-record positions for inclusion. As a result, the agreed-upon outline sent to the ALJ did not – indeed, could not – list the Industrials' newly-introduced positions and arguments.

The prejudice to the Companies and to other parties from the Industrials' "sandbagging" is obvious. By waiting until the deadlines for submitting written testimony had expired, hearings had concluded and the record had closed before laying out their positions and the alleged support for those positions, the Industrials have foreclosed any opportunity for the Companies or other

[3] In each instance, West Penn would be adopting a rate design and procurement method that has previously been approved by the Commission for use by the other Companies in their current DSPs and as to which no party other than the Industrials has objected in this case.

parties to present evidence in response. Moreover, by presenting those positions and arguments in their Main Brief – instead of in testimony where they belonged – the Industrials precluded other parties from cross-examining a witness on matters that are fundamentally factual. As a result, averments that are key components of each argument advanced in the Industrials' Main Brief sound exactly like expert opinions, yet have no witness' name attached to them. Under such circumstances, the Industrials' assertions (*e.g.*, Industrials' Brief, pp. 12-13) that the Companies failed to meet their "burden of proof" are patently disingenuous.

The additional – and even more serious – impropriety in the Industrials' Main Brief is its presentation of, and reliance upon, averments that are dressed up as facts but were not offered in evidence and, therefore, are not part of the record. While the Industrials' Main Brief is riddled with instances of such non-record factual averments, a few examples deserve special mention.

At page 7 of their Brief, the Industrials engage in a lengthy discussion of how PJM allegedly "satisfies its responsibility to ensure resource adequacy and reliability," including a mini-dissertation on PJM's "Reliability Pricing Model" and the manner in which PJM allegedly calculates the "Peak Load Responsibility" or "PLR" for each load serving entity ("LSE"). None of this is in the record either as testimony or any other form of evidence. The Industrials attempt to overcome that glaring deficiency by citing PJM documents that are **also outside the record**. In similar fashion, at page 15 of their Main Brief, the Industrials engage in an extended discussion of "day-ahead" and "real time" LMPs without providing a single citation to the record. Instead, they refer to the "2011 PJM State of the Market Report" and a document they contend is available on PJM's website; those documents are not in the record nor have they ever been identified for consideration by the parties before now.

Astonishingly, the Industrials relied on non-record documents (PJM State of the Market Reports) to advance the **central premise** of their argument that some (as yet unidentified) members of their group might pay more if West Penn were to employ "real time" LMPs for hourly-priced service (as the other Companies do) rather than "day ahead" LMPs (Industrials' Brief, p. 16, n. 5). In this instance, the Industrials' reliance on non-record documents underscores the practical wisdom – as well as the fundamental fairness – of requiring a litigant to present evidence for the record so that it can be vetted by other parties. As it turns out, page 358 of the PJM State of the Market Report for 2011, to which the Industrials refer, shows the opposite of what they cited it for. Table C-25 on that page, which is provided as Appendix A hereto, shows that the "day ahead" LMP in the Allegheny Power (AP) zone (West Penn is in that zone) was **higher** than the "real time" price, **not lower.**

Section 504 of the Administrative Agency Law, 2 Pa.C.S. § 504, provides that an agency's adjudication is not valid unless based on a record created after the parties have been given reasonable notice and the opportunity to be heard. *Kovalchik v. Pa. State Police*, 149 Pa. Cmwlth. 402, 409 613 A.2d 150, 153 (1992). In *Kovalchik, supra*, the Commonwealth Court held:

> Further, our Supreme Court, in construing the requirements of Section 504, has held that no adjudicatory action is valid unless there has been "a hearing wherein each party has opportunity to know of the claims of his opponent, to hear the evidence introduced against him, to cross-examine witnesses, to introduce evidence on his own behalf, and to make argument." *Callahan v. Pennsylvania State Police*, 494 Pa. 461, 465, 431 A.2d 946, 948 (1981).

As a Commonwealth agency, the Public Utility Commission ("PUC" or "Commission") must comply with the Administrative Agency Law, and Pennsylvania appellate courts have

reversed PUC orders that were based, even in part, on facts outside the administrative record. *Equitable Gas Co. v. Pa. P.U.C.*, 45 Pa. Cmwlth. 610, 616, 405 A.2d 1055, 1059 (1979); *United Natural Gas Co. v. Pa. P.U.C.*, 153 Pa. Super. 252, 265-266, 33 A.2d 752, 758 (1943) ("None of these figures appear in the record . . . No opportunity was afforded appellant to dispute or discuss them or show their inapplicability to the question.")

The dictates of Section 504 of the Administrative Agency Law are reflected in the Commission's own regulations, which provide: "After the record is closed, additional matter may not be relied upon or accepted into the record unless allowed for good cause shown by the presiding officer or the Commission upon motion." 52 Pa. Code § 5.431(b). Pursuant to the Commission's regulations and principles of fundamental fairness and due process of law, Administrative Law Judges have rejected efforts, like that of the Industrials in this case, to introduce new "evidence" in parties' briefs. *See, e.g., Third Ave. Realty Ltd. Partners v. Pennsylvania-American Water Co.*, Docket No. C-2008-2072920 (Initial Decision issued October 4, 2010), 2010 Pa. PUC LEXIS 1615 ("I will strike off those portions of the Complainant's reply brief that improperly attempt to introduce new evidence or raise arguments contrary to evidence presented by its witness.") Moreover, the Industrials have not filed a motion to reopen the record and, even if they did, it would be meritless. None of the non-record factual averments offered in their Main Brief constitute anything remotely like "new evidence," nor have they offered any reason why those factual averments should not have been presented in written testimony served upon all parties by the deadlines established in the Amended Scheduling Order. Accordingly, for the reasons set forth above, the positions and arguments advanced by the Industrials at pages 6 through 17 should be disregarded. Additionally, as

explained in the applicable sections of this Reply Brief, the Industrials' positions are clearly wrong.

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

A. Procurement Groups

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

As explained in the Companies' Initial Brief (pp. 4-6), West Penn is proposing to consolidate Service Types 20 and 30 because the load profiles and shopping rates of customers in the two groups are similar and because fewer than 600 customers (with a total load of less than 90 megawatts "MW") remain in Service Type 30.[4] Combining the two procurement classes will reduce the costs and administrative burdens associated with separate procurement classes and achieve consistency across all of the Companies (Companies' Sts. 2 (p. 8) and 2-R (p. 5)). The OSBA, which is the statutory advocate for commercial customers, does not oppose the consolidation (OSBA St. 1, p. 14).

Mr. Raia, testifying on behalf of Sheetz, Inc. ("Sheetz"), was the only witness to contest the proposed consolidation. Mr. Raia asserted – without any data or analysis to support his contentions – that the proposed consolidation "may" lead to "cross-subsidization" because of alleged "differing usage amounts and profiles" (Raia St. 1, p. 14). In response to Mr. Raia's testimony, Mr. Valdes presented two detailed analyses. The results of the first analysis, which

[4] West Penn currently has four customer classes, which are denominated "Service Types." Service Type 10 is identical to West Penn's proposed Residential Class, and Service Type 40 is identical to West Penn's proposed Industrial Class (Companies' St. 2, p. 7). Service Types 20 and 30 consist of customers that correspond to the Commercial Class of the other Companies but were separated into two different classifications as a consequence of changes that grew out of the settlement of West Penn's last default service proceeding, as Mr. Valdes explained (Companies' St. 2, p. 8). As a result of that settlement, Service Type 30 remained as a vestigial service classification containing a small number of customers and a small amount of load, all of which share the relevant characteristics of the customers and load in Service Type 20. *Id.*

were also depicted in a chart (Companies' St. 2-R, pp. 3-4) showed that, contrary to Mr. Raia's speculation, the average hourly usage per day of the default service customers in Service Types 20 and 30 exhibit very similar load profiles. *Id.* In the second analysis, Mr. Valdes reviewed the weighted average fixed prices for competitively procured tranche purchases used to calculate default generation rates for Service Types 20 and 30 since the inception of West Penn's current default service program (Companies' St. 2-R, p. 4). Not only were those prices very close, the difference narrowed over time such that, in the procurement for the period December 2011 to May 2012, the prices varied by only 0.2%. *Id.* In short, the record evidence shows that no "cross-subsidization" will occur from combining Service Types 20 and 30.

Neither Mr. Raia nor any other witness responded to Mr. Valdes' rebuttal testimony. In their Main Brief (p. 6), the Industrials eschewed any meaningful discussion of Mr. Valdes' analyses, which are unrebutted. Instead, they repeated Mr. Raia's initial, unsubstantiated and thoroughly discredited speculation that combining Service Types 20 and 30 might lead to undefined "cross-subsidization." However, as an apparent acknowledgment of the absence of support for their conclusory statements, the Industrials, once again, resorted to the highly improper tactic of dragging non-record material into their Main Brief to try to shore up their faltering position:

> These differences [between Service Types 20 and 30] are illustrated within West Penn's Energy Efficiency and Conservation ('EE&C') Plan, which offers different programs to Service Type 20 and 30 customers.

Industrials' Brief, p. 5.

In addition to its impropriety, the Industrials' reliance on non-record evidence is totally misplaced. Once again, the Industrials have misinterpreted a non-record document and,

therefore, cited it for a proposition it does not support. The Industrials did not identify which part of the nearly 300-page EE&C Plan they were referring to, and their non-record assertions were not derived from West Penn's description of its EE&C programs. Rather, it appears they based their contentions on data in the chart at page 164 of the EE&C Plan showing how West Penn anticipated allocating the costs of its EE&C programs among customer classes. However – and unmentioned by the Industrials – West Penn explained on page 165 of its EE&C Plan that the cost allocation did **not** demarcate the **eligibility** of each class to participate in those programs and, contrary to the Industrials' understanding, **all** customers are eligible to participate in **all** programs:

> Although not all non-residential customers taking service under each rate schedule/tariff will participate in each and every program, the above allocation attributes programs to each of the various rate schedules/tariff where the customer(s) taking service are most likely to have an application that permits them to participate in the program. *However, even if costs of a program are not presently allocated to a given rate schedule/tariff, that does not mean that customer(s) on the rate schedule/tariff are not eligible to participate.* It just means that the number of participating customer(s) taking service under the rate schedules/tariff that have not been allocated costs is not assumed to be significant. *However, should it be determined that the number of customers participating in a given program that has not been allocated costs becomes significant, a redesigned allocation methodology will be proposed so that EE&C Plan costs and benefits are best aligned.*

West Penn Power Company d/b/a Allegheny Power Pennsylvania Act 129 Energy Efficiency and Conservation Plan, September 10, 2010, filed at Docket No. M-2009-2093218 (emphasis added). The foregoing quotation totally contradicts the Industrials' attempted argument.

The record evidence supports the proposal to consolidate West Penn's Service Types 20 and 30, as all of the parties to this case, except the Industrials, have explicitly or tacitly acknowledged. Accordingly, West Penn's proposal should be approved.

B. Residential And Commercial Class Default Service Procurement

1. Summary and Overview

In their Initial Brief (pp. 6-8), the Companies described their proposed default service procurement and implementation plans for residential and commercial default service customers and explained that those plans provide a "prudent mix" of contracts that will achieve "least cost over time" for customers in accordance with 66 Pa.C.S. § 3807(e)(3.4). In their plans, the Companies propose to procure default service supply through two-year, full requirements contracts with a 90% fixed-price portion established through the Companies' competitive procurements and a 10% variable-price portion priced at the hourly PJM real-time zonal LMP. *Id.* In addition, residential customers of Met-Ed, Penelec, and Penn Power will continue to be served by long-term block energy contracts procured under current default service plans.

There is substantial agreement among the parties regarding the Companies' proposal to use primarily full requirements contracts to procure default service supply. In addition, many parties either agreed generally with the Companies' plans or took no position in their Main Briefs. However, several parties disagreed with aspects of the Companies' procurement plans and proposed modifications.

In its Main Brief (pp. 16-18), the OCA opposes the Companies' proposed contracts for the Residential Class because two-year full requirements contracts allegedly are not sufficiently "diverse" or "laddered" and, therefore, their termination on May 31, 2015 could cause an unexpectedly large increase in default service prices at that time. As an alternative, the OCA recommends a mix of two-year and one-year full requirements contracts combined with additional "block and spot" purchases. *Id.* For similar reasons, the OSBA proposed a modification for Commercial Class procurements that would use one-year and six-month full

requirements contracts to be replaced at their expiration with one-year contracts while maintaining the flexibility to enter contracts with terms that extend beyond May 31, 2015 (OSBA Main Brief, pp. 4-5). RESA agreed with the Companies' proposal that all supply contracts should end on May 31, 2015 and that block and spot contracts should be eliminated. However, RESA argues that a portion of the Companies' twenty-four month contracts for the Residential Class and all twenty-four month contracts for the Commercial Class should be replaced with twelve-month contracts having procurement dates closer to the start of delivery in order to obtain more "market-reflective, market-responsive" default service rates (RESA Main Brief, pp. 16-20).

In their Initial Brief, the Companies addressed the principal disagreements with their procurement plans expressed in the testimony of the opposing parties' witnesses. Several new arguments raised in the opposing parties' Main Briefs are discussed below.

2. Term of Contracts

The two-year full requirements contracts to be competitively procured in two different procurements (November 2012 and January 2013) proposed by the Companies will provide both time diversity and rate stability to the Residential and Commercial Classes (Companies' Initial Brief, p. 7). The arguments against the Companies' approach advanced in the Main Briefs of the OCA, the OSBA and RESA should be rejected for the reasons set forth below and in the Companies' Initial Brief.

First, the OCA and OSBA err in asserting that more one-year contracts, coupled with more procurements, to "ladder" contracts in 2013 and 2014 would more nearly approach a "prudent mix" of contracts and would reduce supplier risk premiums. As shown by the data the Companies presented on their procurements to date, one-year full requirements contracts could

be more expensive than two-year contracts when procured and there has been no statistically significant difference in the supplier risk premiums between the one and two-year contracts procured by the Companies (Companies' Initial Brief, p. 9). The Companies' proposed use of two-year fixed-price contracts (with a spot-market priced component) is well within the statutory definition of short-term contracts required to be part of a "prudent" mix of default service supply contracts. *See* 66 Pa.C.S. § 2807(e)(3.2)(iii).

Second, there is no textual basis for RESA's contention that the Public Utility Code "when considered holistically" (RESA Main Brief, p. 16) requires a default supply contract mix that is "most reasonably likely to result in a sustainable, competitive market" and produce "market-reflective, market-responsive" default service rates. There is no authority for RESA's "holistic" reading of the Public Utility Code. Moreover, RESA fails to acknowledge that the Commission has already implicitly rejected its claims by finding that a procurement plan designed to approximate the market price of energy is inconsistent with Act 129 and its objective of price stability for default service customers. *See* Companies' Initial Brief, pp. 10-11.

Third, RESA errs in contending that "there is no record dispute" that a longer contract term will necessarily result in more "out-of-market" default service rates at the time of delivery. As the Companies' witness made clear (Tr. 142-143), the Companies do not agree that current market prices will necessarily be significantly different a year or two after a contract is procured. As RESA itself conceded (RESA Main Brief, p. 17), no one can predict how a market price may change between procurement and delivery. Nor do the Companies agree that their proposed procurements will impede market entry of new suppliers (Companies' Initial Brief, p. 14). RESA also derives the wrong lesson from the Companies' evidence showing that there is no statistically significant difference in risk premiums between the twelve and twenty-four month

contracts procured by the Companies to date. That evidence shows that the price stability of two-year contracts can be achieved without higher risk premiums and contradicts the proposition that price stability must be discarded in order to obtain "market-reflective, market-responsive" prices.[5]

3. Procurement Dates

This issue was fully addressed in the Companies' Initial Brief (pp. 13-14). To the extent RESA continues to assert that the Companies' procurement of default service supply seven months before delivery is untimely, the Companies note that the Commission has recently indicated that even earlier procurements may be proper at the end of the Companies' proposed default service period. *See Investigation of Pennsylvania's Retail Elec. Market: Recommendations Regarding Upcoming Default Serv. Plans,* Docket No. I-2011-2237952 (Final Order entered Dec. 16, 2011) ("*DSP Recommendations Order*"), p. 21 (explaining that "the Commission would like to note that spreading out purchases over time, for example purchasing energy **nine months** and three months prior to the "hard stop," may help to mitigate any adverse impact created by unfavorable market conditions") (emphasis added).

4. Laddering of Contracts Beyond June 1, 2015

This issue was fully addressed in the Companies' Initial Brief (pp. 14-15).

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

The Companies addressed the OCA's proposal to incorporate "block and spot" purchases into their procurement plans in their Initial Brief (pp. 15-17). The Companies explained why the

[5] To the extent RESA implies that the Companies' default service reconciliation procedures are in any way improper (RESA Main Brief, p. 20), the Companies' proposed reconciliation procedures are the same as those currently approved by the Commission and consistent with the Commission's regulations (Companies' Initial Brief, pp. 80-81).

Commission should reject continued "block and spot" procurement, emphasizing the portfolio diversity obtained through procurement of full requirements contracts and the higher costs that have been incurred by Met-Ed and Penelec default service customers as a result of the Companies being forced to sell excess block energy into the wholesale energy markets. *Id.*

In its Main Brief (p. 20), the OCA objects to the Companies' reliance on its block and spot supply cost data on the grounds that the Companies included the costs of 50 MW long-term block contracts in that analysis. This objection is inapposite because the OCA is proposing that the Companies should include the **same type of long-term 50 MW contracts** in their upcoming DSPs and the OCA made no showing – indeed, did not even suggest – that the price of such contracts will now be lower (Companies' Initial Brief, p. 17, n. 8). Similarly, there is no basis for the OCA's objection that the Companies' analysis is not an "apples-to-apples" comparison of full requirements contracts and block and spot procurement because the prices obtained under the Companies **current** full requirements contracts (which were employed in the analysis) do not include the same "spot-priced" component that is **proposed** for contracts the Companies would enter into as part of the prospective DSPs for which approvals are requested in this case. The point of the analysis was not to project future prices but to demonstrate how customers have incurred additional costs arising from the sale of excess supply into the wholesale energy market that will be avoided under the Companies' proposal, where volumetric risk associated with full requirements contracts (including their spot component) will be entirely assumed by suppliers (Companies' Initial Brief, p. 17).

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

This issue was addressed in the Companies' Initial Brief (pp. 14-15), although one point bears additional note here. In its Main Brief (p. 30), the OCA contends that suppliers bidding

into the Companies' auctions to obtain full requirements default service supply will face added "volumetric risk" because: (1) default service load will decline as customers leave default service to "opt-in" to the Retail Opt-In Aggregation Program ("ROI Program"); and (2) the full requirements default service supply auction will be held before enrollments occur under the ROI Program and, therefore, bidders will not know how much load will migrate to the ROI Program. To address this alleged "volumetric risk," the OCA's witness, Mr. Kahal, proposed that the Companies "hold back" from their full requirements default service supply auction a percentage of default load to be reserved for the subsequent ROI Program enrollment. The OCA contends that such a "hold back" would eliminate the added "volumetric risk" created by the ROI Program for bidders in the full requirements default service supply auction because the bidders in that auction would be assured that the size (in MW) of the tranches on which they were bidding would be fixed at the expected 50 MW regardless of how many customers choose to enroll in the ROI Program. However, Mr. Kahal failed to connect the dots in his own proposal. Properly understood, that proposal would not mitigate any "volumetric risk" because, as Mr. Kahal acknowledged, the product he recommended that the Companies procure is "largely identical to the product that the FE Companies propose, i.e. FRC [full requirements contract] load tranche products to serve the defined residential default load tranches" and the load to be served in the tranches "held back" would be determined in a manner that is "no different than under the Companies' proposal" (Companies' Hearing Ex. 1). If, as Mr. Kahal admitted, the products to be procured in the default service auction will be the same (i.e., full requirements tranche products that require the default supplier to serve a given percentage of the default service load every hour), then the volumetric risk profile of the load that winning bidders in the default service auction will serve will be no different under his proposal than without his recommended

"hold back." This will undoubtedly be the case because the winning bidders for both the original tranches would still face the risk that some portion of the Companies' load they bid to serve would migrate to the ROI Program. Because there would be no change in the percentage of load to be served, there could not be any change in the volumetric risk assumed by the wholesale suppliers under Mr. Kahal's proposal to "hold back" tranches. As a result, Mr. Kahal's proposal introduces added complexity without achieving any mitigation of alleged "volumetric risk."

7. Procurement Method – Descending Price Clock Auction

In their Initial Brief (p. 20), the Companies explained the benefits of using a descending price clock auction ("DCA") to procure default service supply. No party contests the Companies' use of a DCA or its design to acquire default supplies, and the Commission should therefore approve the Companies' proposed use of a DCA for that purpose.

8. Load Cap

Consistent with the Commission's determination in the Met-Ed and Penelec's most recent default service proceeding,[6] the Companies have proposed a 75% load cap on the available tranches that any one default service supplier can win in the default service supply auctions (Companies' Initial Brief, pp. 20-22). RESA asserts that the load cap should be no more than 50%, while FES asserts that there should be no load cap at all or, at most, a load cap no lower than the Companies' proposed 75% cap (RESA Main Brief, pp. 29-30; FES Main Brief, pp. 15-20). The Companies addressed most of these arguments in their Initial Brief, and none of the new arguments justify a departure from Commission precedent for the reasons discussed below.

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[6] *See Joint Petition of Metropolitan Edison Co. and Pennsylvania Elec. Co. for Approval of Their Default Serv. Program*, Docket Nos. P-2009-2093053, P-2009-2093054 (Final Order entered Nov. 6, 2009) ("*Met-Ed/Penelec 2009 DSP Order*").

The Commission Has Full Information About The Winning Bidders In The Companies' Procurements. In its Main Brief (p. 30), RESA contends that the Companies have "vehemently opposed providing the Commission more specific details about what entities were successful bidders and how many times FES was a successful bidder" and that the Commission does not have this information. That is not correct. In accordance with its regulations, the Commission has full access to information regarding the Companies' procurements, including the identities of all winning bidders, and the Commission will continue to receive reports from the Independent Evaluator after each procurement and determine whether to approve the procurement results. *See* 52 Pa. Code §§ 54.186(c)(3) and 54.188; Companies' Ex. BAM-1, p. 10. The Companies opposed access **by RESA** to information about bidders in previous procurements in accordance with the confidentiality rules of the Companies' procurements previously approved by the Commission, and the ALJ ruled that the Companies' opposition was justified and consistent with existing regulations and orders.[7]

The Merger of FirstEnergy Corp. and Allegheny Energy, Inc. Provides No Basis For A Change In Load Cap. RESA also contends that the load cap should be lowered because the additional number of customers and square miles in West Penn's service territory could also be served by FES, which is an affiliate of each of the Companies. However, RESA does not

[7] *See Order Denying The Retail Energy Association's Motion to Compel*, Mar. 16, 2012 ("*Bidder Information Protection Order*"), p. 4, 6-8 (discussing confidentiality rules and Commission awareness of information relating to the load cap and any amount of default service supply won by affiliates of the Companies). Furthermore, RESA appears to have misunderstood the information regarding the Companies' procurements that it obtained in discovery; the data relied upon by RESA do not support lowering the load cap to increase supplier diversity. Citing RESA Cross Examination Exhibit No. 1, Attachment B, RESA notes that 32 tranches of default service supply were awarded to date in West Penn's default service procurements and claims that nearly all of those tranches were awarded to just one bidder. However, the number of unique bidders winning tranches across multiple procurements is not addressed in Attachment B. In addition, in several of the listed procurements, only one tranche was available for bid and, therefore, only one bidder could be successful. The same is true for Met-Ed, Penelec and Penn Power because the information RESA relied upon (RESA Cross Examination Exhibit No. 1, Attachment A) does not address the number of unique bidders across multiple procurements.

suggest that the Independent Evaluator is unable to ensure that the Bidding Rules are administered fairly and without preference to any affiliate of the Companies. Moreover, the ALJ has already determined that the Commission remains fully able to address any relevant issues that could arise from the possibility of FES serving load of its affiliated EDCs. *See Bidder Information Protection Order*, p. 8.

C. Industrial Class Hourly-Priced Default Service

In their Main Brief (pp. 6-17), the Industrials addressed three issues under this subheading: (1) the proposal that West Penn charge for hourly-priced default service on a per-kWh basis; (2) the proposal that West Penn use a competitive procurement method to acquire hourly-priced generation service; and (3) the proposal that West Penn employ the "real time" LMP for hourly-priced service. Two of those issues (charging a per-kWh price for default service and employing the "real time" LMP for hourly-priced service) principally involve rate design and cost recovery issues and, therefore, are properly discussed in Section III.B., *infra*. Accordingly, only the second of the Industrials' issues identified above is addressed here.

1. Response to the Industrials Concerning West Penn's Proposal to Competitively Procure Hourly-Priced Service

As explained in the Companies' Initial Brief (p. 22), the Companies have proposed to secure Hourly Priced Service ("HPS") as the default service power supply for the Industrial Class. HPS will be priced to the PJM real-time hourly energy market for each Company's load zone. Suppliers will bid in a simultaneous descending clock auction for the right to serve a percentage of each Company's HPS load, which will be divided into tranches. Customers on HPS will pay, and winning suppliers will receive: (1) the applicable PJM zonal real-time hourly

LMP; and (2) an amount to cover the costs of other supply components, including ancillary services, AEPS, and PJM administrative fees. *See* Companies' St. 4, pp. 8-9.

In their Main Brief (pp. 13-15), the Industrials do not dispute the use of this procurement method by Met-Ed, Penelec and Penn Power. In fact, the procurement method the Companies propose in this case is precisely the same as that approved by the Commission for Met-Ed, Penelec and Penn Power as part of their currently-effective default service programs.[8] That method has worked well, as evidenced by the absence of any opposition to its use in the proposed DSPs for each of those Companies. West Penn currently provides HPS for the Industrial Class.[9] In lieu of a competitive procurement, it acquires the HPS product itself and, therefore, acts as the purchaser of HPS (managing and administering the acquisition of energy, capacity and ancillary services) which, in its role as default service provider, it sells to Industrial Class default customers.

The Industrials oppose West Penn's use of a competitive procurement method to obtain HPS for the Industrial Class because they contend that West Penn's current approach to acquiring HPS would cost less than a competitive procurement (Industrials' Main Brief, pp. 13-14). However, that assertion is mere conjecture because there is no record evidence to support it. The administrative cost that West Penn allocated to its equivalent of the Large Commercial and Industrial Class for 2011 is, indeed, identified in a document that is part of the record. However, there is no evidence of any kind to support the other side of the Industrials' equation and,

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8 *See Met-Ed/Penelec 2009 DSP Order*, pp. 25-26; *Petition of Pennsylvania Power Co. for Approval of Default Serv. Program for the Period from January 1, 2011 through May 31, 2013*, Docket No. P-2010-2157862 (Final Order entered Nov. 17, 2010) ("*Penn Power 2010 DSP Order*"), pp. 8-9.

9 *See Petition of the West Penn Power Co. d/b/a Allegheny Power for Approval of its Retail Elec. Default Serv. Program and Competitive Procurement Plan for Serv. at the Conclusion of the Restructuring Transition Period*, Docket No. P-00072342 (Order entered July 25, 2008) ("*West Penn 2008 DSP Order*"), pp. 50-53.

therefore, there is no basis in the record to support the Industrials' contention that third-party competitive procurement would cost materially more than continuing West Penn's current approach of being both buyer and seller of the product it offers to Industrial Customers. Here again, the Industrials tried to compensate for a glaring evidentiary gap by tossing out the following unsubstantiated, non-record factual averment: "Based on the current administrative expenses, it is reasonable to assume that the costs of default service under the Companies' proposal would be more than the existing approach, particularly as the Companies have described how they would structure the procurement" (Industrials' Main Brief, p. 14). What may or may not be "reasonable to assume" is a factual issue and, therefore, should be offered in testimony at the appropriate point in the litigation process so that other parties can test the proposition through cross-examination and present countervailing evidence as they deem appropriate. Obviously, that did not happen here because the Industrials chose not to present any testimony on this issue.

Moreover, by improperly presenting their position and accompanying non-record factual averments for the first time in their Main Brief, the Industrials foreclosed the development of factors other than "cost" that make competitive procurement preferable. For example, the Companies proffer that, if they had the opportunity to respond on the record to the Industrials' factual averments, they would have presented testimony explaining that third-party competitive procurement permits them to specifically identify the procurement and administrative costs of providing this service, rather than relying on an allocation of total procurement and administrative costs, as West Penn does. In that way, default service can be more appropriately priced, and meaningful comparisons with alternative, competitive products are facilitated.

Finally, as explained above, the competitive procurement of HPS for Met-Ed, Penelec and Penn Power has been approved as part of the settlement of the proceedings in which their current default service programs were adopted. The Commission has already determined that competitive procurement is reasonable and comports with the "least cost" standard of Act 129. Contrary to the Industrials' repeated, but unsupported, assertions, there is no legally cognizable basis to distinguish those prior Commission holdings such that competitive procurement of HPS would be just, reasonable and in compliance with applicable law for Met-Ed, Penelec and Penn Power but not for West Penn. In short, the Industrials' proposal to bar West Penn from adopting a Commission-approved, well-accepted competitive procurement method for HPS should be rejected not only because it is improperly advanced for the first time in their Main Brief and is based on non-record evidence but also because it is demonstrably unreasonable.

D. Use Of Independent Evaluators

In their Initial Brief (p. 23), the Companies described the experience of CRA International, Inc. ("CRA"), which the Companies selected as the Independent Evaluator of the proposed default supply procurements and the Retail Opt-In Auction. In addition, the Companies described the experience of the Brattle Group, which the Companies selected as the Independent Evaluator for their proposed procurements of SPAECs to comply with AEPS requirements and for their proposed Time-Of-Use Competitive Bidding Process.

No party objected to the Companies' selection of Independent Evaluators. The OSBA, however, proposed that CRA should also be required to undertake further analysis of the results of each procurement similar to the analysis undertaken by the Companies' witness, Dr. Reitzes, in this proceeding, in which he calculated the "risk premiums" in the bids of winning default service suppliers (OSBA Main Brief, p. 7; *see* Companies' St. No. 6, pp. 13-14 and App. B).

The Companies addressed this proposal in their Initial Brief (p. 23) and explained that the OSBA could undertake such an analysis if so desired. The OSBA did not provide in its Main Brief any justification for its proposal but, instead, only references Mr. Knecht's testimony suggesting that such an analysis "should provide useful information" to the Commission in determining whether retail market enhancements are causing default service rates to no longer be consistent with "least cost over time."

While the Companies believe Dr. Reitzes's analysis is highly relevant in the evaluation of the Companies' proposed default service plans, the OSBA's assertion that such an analysis would be useful for an on-going evaluation of "least cost over time" is not consistent with the Public Utility Code. Once a default service plan has been approved by the Commission, the costs incurred for default service supply under that plan are "deemed to be least cost over time as required under [Section 2807(e)(3.4(ii)]" (*see* 66 Pa.C.S. § 2807(e)(3.6)) and, therefore, are not subject to the review envisioned by the OSBA. For this reason, and the reasons discussed in the Companies' Initial Brief, the Commission should reject the OSBA's proposal to expand the obligations of CRA in the Companies' procurements.

E. AEPS Requirements

1. Non-Solar Photovoltaic Requirements

No other party raised any issues in this area. The Companies' proposed procurements of Alternative Energy Credits ("AECs") to satisfy AEPS non-solar photovoltaic requirements should be approved for the reasons set forth in their Initial Brief (p. 24).

2. Solar Photovoltaic Requirements

The Companies propose to procure 40% of the SPAECs required to meet AEPS requirements for both default service and shopping customer load in each of their service territories through competitive requests for proposals ("RFPs") for ten-year SPAEC supply contracts (Companies' Initial Brief, p. 27). This proposal implements a commitment made by the Companies in the Joint Petition for Partial Settlement of the proceeding for approval of the merger of FirstEnergy Corp. and Allegheny Energy, Inc. ("FirstEnergy/Allegheny Merger Settlement"). The Industrials oppose the Companies' proposals because they contend: (1) the Companies are not bound by the FirstEnergy/Allegheny Merger Settlement to propose this procurement and, in any event, West Penn should not do so; (2) many large commercial and industrial customers may have contracts with EGSs that would have to be renegotiated to address the proposed changes, and these such would need to "closely monitor" their future EGS bills in light of the "complexity" of the Companies' proposals; and (3) the Companies have not shown that procuring SPAECs by both EDCs and EGSs will benefit customers and, therefore, the Commission should require the Companies either to maintain the "status quo" or, alternatively, to stop procuring SPAECs altogether (Industrials Main Brief, pp. 17-30). The Commission should reject each of these arguments and both of the Industrials' alternative proposals.

As a threshold matter, the Industrials' contention that Met-Ed, Penelec, and Penn Power are not obligated to propose to procure 40% of the SPAECs of their solar requirements is contrary to the plain language of the FirstEnergy/Allegheny Merger Settlement, which the Commission has already determined is in the public interest.[10] The Industrials' reliance on the

[10] *See* FirstEnergy/Allegheny Merger Settlement, ¶ 25; Opinion and Order, *Joint Application of West Penn Power Co. d/b/a Allegheny Power, Trans-Allegheny Interstate Line Co. and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Pub. Util. Code approving a change of control of West*

Commission's recent decision rejecting a proposed SPAEC contract between Met-Ed and an industrial customer under a separate provision of the FirstEnergy/Allegheny Merger Settlement permitting such bilateral agreements is also entirely misplaced; in that proceeding, the Commission did not conclude that SPAEC-related terms of the Settlement were contrary to the public interest, but only that the express provisions of the Settlement required Met-Ed to attempt to obtain a lower price for SPAECs than the price obtained in a recent procurement by Penn Power.[11]

Although the FirstEnergy/Allegheny Merger Settlement does not require West Penn to adopt a solar photovoltaic charge rider and procure SPAECs for 40% of its shopping customer load, the Companies have proposed the same procurement strategy for consistency among the Companies, and the Industrials' argument that the new SPAEC procurement will confuse or burden many customers is unsupported by the testimony of their witnesses, Mr. Fried and Mr. Raia. Both Messrs. Fried and Raia acknowledged that they had no knowledge of the terms of the EGS contracts of the other members of the industrial alliances that intervened in this case and neither could testify as to whether any of the alliances' other members would be affected by the Companies' proposal at all (Tr. 285-287; 310-311).[12] Furthermore, both witnesses stated that they closely monitor their own companies' EGS bills and would continue to do so; Mr. Fried did not believe that determining whether his employer was correctly charged by its EGS under the

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Penn Power Co. and Trans-Allegheny Interstate Line Co., Docket Nos. A-2010-2176520, A-2010-2176732 (Order entered Mar. 8, 2011) (hereinafter, the "*FirstEnergy/Allegheny Order*"). As the Industrials note, MEIUG, PICA, and WPII were signatories to the FirstEnergy/Allegheny Merger Settlement (Industrials' Main Brief, p. 19, n. 7).

[11] *See* Order, *Petition of Metropolitan Edison Co. for Approval of Solar Photovoltaic Alternative Energy Credit Purchase Agreement with Air Prod. and Chemicals, Inc.*, Docket No. P-2011-2264304 (Order entered Dec. 1, 2011), p. 3.

[12] Indeed, Mr. Fried explained that alliance members have confidentiality obligations that preclude review of other members' EGS contracts. Tr. 286-287.

Companies' proposed 60%/40% SPAEC allocation would be difficult; and Mr. Raia never explained whether he would, in fact, have to renegotiate his employer's contracts because of any tariff changes proposed by the Companies in this proceeding (Tr. 283-284; 298-300). To the extent the Industrials were concerned that the Companies' proposals would inhibit "standardization" of EGS contracts, the testimony offered by Mr. Raia made clear that differences in service territories already pose an obstacle to "standardization" and, in any event, industrial customers are experienced in managing such differences (Tr. 308).

The Industrials also err in contending that the Companies failed to demonstrate that their SPAEC procurement proposals were in the public interest. While the Commission has already found that the settlement containing the proposed 60%/40% SPAEC methodology is in the public interest, the Companies also presented testimony that the procurement of SPAECs by both EDCs and EGSs was an appropriate balance reflecting the different capabilities of both entities and the goals of the Commission's Solar Policy Statement (Companies' Initial Brief, pp. 26-27; Companies' Statement No. 4-SR, p. 4).[13] For the foregoing reasons, as well as those set forth in the Companies' Initial Brief, the Commission should reject both the Industrials' arguments against the Companies' proposed SPAEC procurement and their alternative SPAEC procurement proposals.

[13] For its part, RESA states that EGSs are unable to enter into long-term SPAEC procurement agreements, and continuation of long-term EDC procurements with disposition of SPAECs in a competitively neutral manner can be effected under the Companies' proposal in this proceeding as well as its current procedures. *See* RESA Main Brief, pp. 33-34.

F. Contingency Plans

No other party raised any issues in this area. The Companies' proposed contingency plans for obtaining default service supply and satisfaction of AEPS requirements should be approved for the reasons set forth in their Initial Brief (pp. 27-28).

G. Supplier Master Agreements

1. Unsecured Credit Thresholds

Constellation was the only party that addressed the Companies' credit requirements under the proposed supply master agreements ("SMAs"). Constellation contends that the Companies may increase participation in procurements and obtain lower default service prices if the amount of unsecured credit available to wholesale default service suppliers is increased from $75 million to $125 million and the SMAs' Independent Credit Requirement ("ICR") is eliminated. The Companies addressed Constellation's principal arguments in their Initial Brief (pp. 29-32). The further arguments presented in Constellation's Initial Brief should be rejected for the reasons discussed below.

First, Constellation failed to establish that increasing unsecured supplier credit by $50 million and eliminating the ICR will result in any increase in supplier participation levels or lower the costs of default service supply. *See* Constellation Main Brief, p. 12 (asserting, without data or analysis, only that it is "more likely" that such procurements will benefit customers). Notably, the Commission approved the higher credit requirements used in Met-Ed's, Penelec's, and Penn Power's current SMAs and proposed for the SMAs in this proceeding **after** it issued the order in 2009 on PPL Electric's default service plan upon which Constellation extensively relies. Moreover, that order had nothing to do with credit requirements. Constellation's reliance

is misplaced. There is no conflict between the credit provisions Met-Ed, Penelec and Penn Power have used to date and the "least cost" requirements of the Public Utility Code.[14]

Second, Constellation's assertion that the ICR serves no purpose because of the broad scope of the damages provisions of the proposed SMAs (Constellation Main Brief, p. 14) fundamentally misconstrues the purpose of the SMA credit support protections. By requiring suppliers to actually post collateral (or, in the case of investment-grade entities, to provide a guaranty), the Companies and their default service customers have resources to procure necessary default service supply immediately after a supplier default. Eliminating actual collateral requirements and relying only on an ability to bring a lawsuit against a default service supplier that has breached the SMA in order to try to collect damages in the future (assuming that the defaulting supplier has any resources remaining at that time) will plainly increase risks to default service customers arising from a supplier default.

2. Monthly Versus Weekly Settlements

In their Initial Brief (pp. 32-33), the Companies addressed Constellation's recommendation that the SMAs should be changed to provide weekly rather than monthly payments to suppliers and explained that weekly payments would increase the cost to default service. Moreover, despite its protestation that monthly payment inhibit suppliers' participation in default service supply auction, Constellation has participated actively and continues to participate in procurements in New Jersey, where EDCs routinely use monthly settlements. Id. In its Initial Brief (p. 17), Constellation requests that, if its principal recommendation is not

[14] *Compare Met-Ed/Penelec 2009 DSP Order; Penn Power 2010 DSP Order; Petition of PPL Utilities Corp. for Approval of a Default Serv. Program and Procurement Plan for the Period January 1, 2011 through May 31, 2014,* Docket No. P-2008-2060309 (Order entered June 30, 2009); *West Penn 2008 DSP Order.* The Companies note that West Penn's current default service plan was approved prior to the enactment of Act 129 in 2008 and the creation of the "least cost over time" standard.

adopted, then the SMAs should be modified to automatically provide for weekly settlements if the Companies' credit is downgraded. However, Constellation has made no showing that there is any risk of such downgrade that would justify altering the monthly settlement procedures currently used by Met-Ed, Penelec and Penn Power and reflected in the Companies' proposed SMAs. The Commission should therefore reject Constellation's alternative proposal as well. However, in the event that the Commission adopts Constellation's recommendation for weekly settlements, then a cash working capital adjustment needs to be added to the Price to Compare.[15]

3. Confidentiality

In its Initial Brief (p. 35), the OCA proposes that the confidentiality provisions of the Companies' SMAs should be amended to permit "appropriate reviewing parties" (including the Commission, the OCA, and other statutory parties) access to "bidder-supplied information" for use in future Commission proceedings. The OCA did not specify the bidder information it seeks, but simply asserts that "important information" might not be available "to ensure that default plans are working properly for consumers," and the Commission should adopt its proposal in the absence of rebuttal testimony on this issue. *Id.*, p. 34.

The Companies explained the commitment made in the FirstEnergy/Allegheny Merger Settlement,[16] which has been approved by the Commission, to provide specific information about procurements under their upcoming default service plans to the OCA and other statutory parties (subject to appropriate confidentiality agreements) (Companies' Initial Brief, p. 33). The Companies' proposed Bidder Rules also expressly provide for release of information approved

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[15] Companies' Ex. REV-27 specifies the following costs that should be the basis for the component to be added to the Price to Compare in this instance: $0.00105/kWh (Met-Ed); $0.00090/kWh (Penelec); $0.00085/kWh (Penn Power); $0.00084/kWh (West Penn).

[16] *FirstEnergy/Allegheny Order.*

by the Commission to the OCA and the OSBA. *See* Companies' Ex. BAM-1 (p. 28). The OCA does not explain why this information will be inadequate. Furthermore, to the extent there remain any concerns as to whether default service plans are "working properly," the Commission itself has full access to all other information relating to the Companies' procurements and also receives a report from the Independent Evaluator after each procurement (Companies' Ex. BAM-1, p. 19). *See* 52 Pa. Code § 54.186(c)(3) (providing that "Commission staff and a third party evaluator involved in monitoring the procurement process shall have full access to all information pertaining to the competitive procurement process"). Because specific information will already be provided to the statutory parties and because the Commission has the power to access the information it needs to exercise is oversight responsibility, the OCA's proposal to obtain access generally to unspecified bidder information should be rejected.

III. RATE DESIGN AND COST RECOVERY

A. Residential And Commercial Classes: Price To Compare Default Service Rider

No material issues have been raised with regard to the Companies' proposed PTC Riders and they should, therefore, be approved for the reasons set forth in their Initial Brief (pp. 34-37).

B. Industrial Class: Hourly Pricing Default Service Rider

1. Response to the Industrials Concerning West Penn's Proposed Adoption of the Per-kWh Rate Design Employed in the Other Companies' Hourly Pricing Default Service Rider

As explained in the Companies' Initial Brief (pp. 37-38), the Industrial Class default service rates for HPS of all the Companies except West Penn are charged through their HP Default Service Riders, which apply to the Industrial Class (Companies' St. 2, p. 15). West Penn currently has an Hourly-Priced Default Service Rider in its tariff to recover the cost of providing

HPS to Service Type 40 customers. West Penn's Hourly-Priced Default Service Rider differs in certain respects from the HP Default Service Rider used by Met-Ed, Penelec and Penn Power and, therefore, in this proceeding, it has been proposed that West Penn adopt an HP Default Service Rider like the one used by those Companies. *Id.* The adoption of a uniform HP Default Service Rider across all of the Companies implements a term of the FirstEnergy/Allegheny Merger Settlement, which provides, as follows:

> 38. In their default service filings for the period beginning June 1, 2013, each post-merger FirstEnergy EDC will propose that the structure of the Price-To-Compare ("PTC") for each of the four post-merger EDCs will utilize the same PTC structure.

The Joint Petition for Partial Settlement was approved by the Commission, which affirmed the settling parties' agreement to "harmonize" their respective Prices to Compare[17]:

> Specifically, the Joint Applicants also agreed to harmonize their Price-to-Compare (PTC) structures as a part of their Default Service plan filings for the period beginning June 1, 2013.

Under the currently-effective HP Default Service Riders of Met-Ed, Penelec and Penn Power, the charge for HPS is based on usage and is stated on a per-kWh basis. *See, e.g.,* Companies' Ex. REV-5, p. 1. This rate design was proposed in the default service programs that are in effect for Met-Ed, Penelec and Penn Power, were accepted by the parties in the proceedings in which those programs were adopted, and were approved by the Commission in each case. As previously explained, West Penn proposes to adopt the same rate design for its HP Default Service Rider as that employed by the other Companies.

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[17] *FirstEnergy/Allegheny Order*, p. 32.

In their Main Brief (pp. 7-13), the Industrials oppose West Penn's proposal because they contend that a portion of the cost of HPS, namely, charges that PJM imposes under its "Reliability Pricing Model" or "RPM," should be charged to purchasers of HPS as a "demand-based charge, not a volumetric energy charge" (Industrials' Main Brief, p. 8). The Industrials contend that allowing West Penn to adopt the same rate design the other Companies employ does not comport with "sound principles of cost causation and ratemaking;" would inhibit customers from making an "apples to apples" comparison of competitive products to the "default service option", would "stifle default service customers' ability to participate in the competitive retail market", and would be "inconsistent with the Competition Act and Act 129" (Industrials' Main Brief, p. 10). The Industrials neglected to mention that WPPII, as a signatory to the FirstEnergy/Allegheny Merger Settlement, is bound by the Commission-approved terms of Paragraph 38 requiring the Companies to "harmonize" their default service rates.

The Industrials' argument is totally undercut by prior Commission precedent. As previously explained, use of a per-kWh rate design by Met-Ed, Penelec and Penn Power has already been approved by the Commission. Consequently, the Industrials' hyperbolic claims that a per-kWh rate design violates the law, contravenes inviolable principles of "ratemaking" and "cost causation," and makes "competition" either impossible or the next thing to impossible are contrary to the Commission's prior holdings. They are also contrary to the experience of customers and EGSs in Met-Ed's, Penelec's and Penn Power's service territories, who are not clamoring for a change in rate design in order to participate in the competitive retail market. Given that 95% (Met-Ed), 96% (Penelec) and 99% (Penn Power) of the Companies' Industrial Class load is being served by competitive suppliers, the Industrials' claim that a per-kWh charge would "stifle" competition in West Penn's service territory does not pass the blush test.

Additionally, the Industrials, in contending that a "demand charge" for recovery of PJM "RPM" costs is necessary to comport with "the Competition Act and Act 129" and "sound principles of cost causation and ratemaking," simply overlook, or choose to ignore, the Commission's own guidance on the design of default service rates. Contrary to the Industrials' contentions, the Commission's *Policy Statement on Default Service and Retail Electric Markets* provides in Section 69.1810 (Retail Rate Design) that "[t]he PTC [Price to Compare] should not incorporate declining blocks, *demand charges* or similar elements." 52 Pa. Code § 69.1810 (emphasis added). In short, the Commission has already considered this issue on a generic basis and come down against the Industrials' position. Therefore, in tandem, the Commission's prior guidance on default rate design and its prior approval of a per-kWh rate design for HPS leave no room for the Industrials' arguments that West Penn's adoption of the other Companies' HP Default Service Rider is either unlawful or unreasonable.

Additionally, this section of the Industrials' Main Brief is rife with non-record factual averments. The entire discussion of PJM pricing, the "RPM," the calculation of "PLR" and the alleged "incentive" PJM hoped to foster by implementing the "RPM" reflects the Industrials' "spin" on non-record documents and sources. In like fashion, the Industrials' contentions about the possible effect of per-kWh pricing on "competition" is not graced with a single citation to the record and, as previously explained, is belied by the shopping statistics for Met-Ed, Penelec and Penn Power. Obviously, those statistics could have been cited chapter and verse in the Companies' responsive testimony if the Industrials had played by the rules and presented their position in testimony on the record. Further non-record factual assertions are spread through the discussion at pages 11-12 of the Industrials' Main Brief, where the Industrials offer opinions – without benefit of any witness' supporting testimony – about the alleged deleterious effects of

per-kWh pricing on such wide-ranging topics as customers' "incentive to reduce their capacity obligation," customers' willingness to make "efficiency investments," "market signals," and customers' alleged propensity to utilize "demand response or self-generation strategies" if "RPM" costs are embedded in "demand charges." In a final thrust, the Industrials conclude with the representation that West Penn's adoption of the same rate design employed by Met-Ed, Penelec and Penn Power "would make West Penn's hourly priced default service inconsistent with other Pennsylvania EDCs." Clearly, it would not make West Penn "inconsistent" with its three affiliates, which represent half of the "other Pennsylvania EDCs" to which the Industrials refer. Moreover, the rate designs of EDCs other than the Companies are not in the record in this case, which, apparently, was a matter of little concern to the Industrials.

For all the foregoing reasons, the Industrials' argument that the Commission should bar West Penn from using the rate design endorsed by the Commission in its *Policy Statement on Default Service and Retail Electric Markets* and approved as part of the current default service programs of Met-Ed, Penelec and Penn Power should be rejected, and the Industrials' non-record factual averments should be disregarded.

2. Response to the Industrials Concerning West Penn's Proposed Adoption of Real Time LMPs for Pricing HPS

Under the currently effective HP Default Service Riders for Met-Ed, Penelec and Penn Power, the price of HPS is based on PJM's "real time" LMP. Therefore, each of those Companies acquires hourly-priced generation service at its real-time LMPs to serve its Industrial Class default service load. This rate design and associated procurement were approved for each Company in its last default service proceedings. No party has contested these Companies' proposal to continue to employ real-time LMPs for pricing HPS.

As previously explained, West Penn proposes to adopt the rate design employed in the other Companies' HP Default Service Rider, which includes pricing HPS at the PJM real time LMP and procuring generation on that basis to meet HPS load. Under West Penn's current rate design, HPS load that is nominated for purchase at PJM's day-ahead LMP is purchased at that price, and differences between nominated load and customers' actual load are priced (i.e., "settled") at the PJM real time LMP.

The Industrials oppose West Penn's use of real time LMPs based on their contentions that "90% of suppliers choose to bid into the day-ahead market", "circumstances within the West Penn service territory are separate and distinct", and "day-ahead LMPs" are allegedly lower than "real-time LMPs" (Industrials' Main Brief, pp. 15-16). There is no evidence to support any of those assertions. Instead, the Industrials simply cited non-record documents. *Id.* Similarly, the Industrials introduce this section of their Main Brief (p. 7) with an attempted description of the difference between real time and day-ahead LMPs that is supposedly derived from the PJM's website. Clearly, the information from PJM's website is not in the record. More importantly, the Industrials' description is wrong. The day-ahead price is charged only for the amount of load that is nominated in advance (i.e., one day ahead). Because actual load will vary from the nomination, the difference between nominations and actual usage is "settled" at the real time LMP. Consequently, even so-called "day-ahead" pricing is at most a hybrid of day-ahead and real time LMPs. These kinds of factual distinctions (based on erroneous interpretations of non-record documents) could not be set out on the record through expert testimony because the Industrials only chose to raise this issue for the first time in their Main Brief.

Moreover, as explained in Section I, *supra*, the central premise of the Industrials' argument is that day-ahead prices are lower than real time prices. In an attempt to support that

assertion, for which no evidence exists in the record of this case, the Industrials refer the ALJ and the parties to PJM's "State of the Market Reports" (Industrials' Main Brief, p. 16, n. 5). The "State of the Market Reports" are not in the record, and no witness has explained how the information contained in them might inform a decision about the issue the Industrials raised in their Main Brief. That said, the most recent "State of the Market Report," for 2011, shows that, contrary to the Industrials' contention, the day-ahead LMP in West Penn's load zone was **higher**, not **lower**, than the real time LMP. *See* Appendix A hereto. While the Industrials try to defuse this critical fact by reference to earlier "State of the Market Reports," that smokescreen simply underscores the impropriety of their reliance on non-record documents. Expert testimony certainly would have clarified whether any credence should be give to data from as far back as 2006 and 2007, on which the Industrials purport to rely, versus current 2011 prices, that contradict the Industrials' position.

As previously discussed, pricing HPS based on PJM real time LMPs has been approved by the Commission for Met-Ed, Penelec and Penn Power. In fact, Penn Power, like West Penn, had priced HPS at day ahead LMPs. However, in its last default service proceeding, Penn Power – like West Penn in this case – proposed adopting the same real time LMP rate design employed by Met-Ed and Penelec. No party – including no member of the PPUG, which actively participated in that case – opposed Penn Power's proposal, which the Commission approved, stating as follows:

> The Market Based Energy Charge ("MBEC") and the Revenue Sufficiency Guarantee Distribution Charge ("RSGD") set forth in the current rider will be replaced with an Hourly Pricing Energy Charge. This charge will recover the locational marginal price ("LMP") determined on a "real time" basis using PJM's load-weighted average LMP for the Penn Power Zone plus any ancillary service charges. Since the LMP is a "real time" price, there will be

> no need for the extra step, embodied in the existing Penn Power rider, of imposing an MBEC at day-ahead prices and an RSGD to true-up for real-time pricing.

Penn Power 2010 DSP Order, p. 19.

Finally, the Industrials offer a confused, and confusing, rant on the alleged implications for calculating the "E" factor of the HP Default Service Rider if West Penn were to charge real time LMPs (Industrials' Main Brief, p. 17). The point, if there is one, is not discernible from the Industrials' discussion and, because this matter was not the subject of any testimony by witnesses for the Industrials, there is no record support for any of it. However, it appears that this portion of the Industrials' Main Brief is based on their fundamental misunderstanding of how HPS suppliers would be reimbursed and how the "E" factor reconciliation actually operates. West Penn's adoption of real time LMPs to price HPS, just like the other Companies' use of real time LMPs, would result in default suppliers being paid the real time LMP. How those suppliers might choose to acquire the generation supply that they provide to meet their HPS load obligations is of no consequence because, regardless of the manner in which they purchase that supply, they will be paid the real time LMP. Similarly, customers receiving HPS will pay a default service rate that is based on the real time LMP. Consequently, the "E" factor would reconcile real time LMP purchases from suppliers with real time LMP-derived rate revenue from HPS customers. If any variations arise between costs and revenues, they will not be a function of the way HPS is priced.

For all the foregoing reasons, the Industrials' argument that the Commission should bar West Penn from using the same real time LMP rate design that the Commission approved as part of the current default service programs of Met-Ed, Penelec and Penn Power should be rejected, and the Industrials' non-record factual averments should be disregarded.

C. Market Adjustment Charge

1. Summary and Overview

As explained in their Initial Brief (pp. 40-46), the Companies are proposing to impose a bypassable MAC on non-shopping Residential and Commercial Customers at a rate of 5 mills ($0.005) per kWh and recovered as part of the Price to Compare. 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 (Companies' St. 7, pp. 11-14) and constitute "reasonable costs" to furnish default service that EDCs are entitled to recover under 66 Pa.C.S § 2807(e)(3.9). *Id.* As further support for the adoption of the MAC, the Companies explained:

- The risks assumed and value provided by the Companies as default service providers are real, significant and have been identified and described in detail by witnesses on behalf of the Companies in this case. *See* Companies' Initial Brief, pp. 41-43)
- Other jurisdictions, including Maryland and New Jersey, have recognized that default service providers are not adequately compensated unless they are permitted to charge an increment reflecting the value they provide and the risks they bear as providers of last resort (Companies' St. 7, pp. 12, 14).
- The Commission's assertion of authority under 52 Pa. Code § 54.183(c) to reassign the default service obligation to a default service provider other than an EDC implicitly acknowledges that a mechanism should exist to compensate a default service provider for the risks it assumes and the value it creates. Otherwise, it is inconceivable that an alternative default service provider would be willing to assume the default service obligations and liabilities now borne by EDCs (Companies' St. 7-R, p. 6; Tr. 256-258).
- Unless default service providers are properly compensated for the obligations they assume in that role, the price of default service will be artificially depressed, which may impede the development of the competitive retail market. EGSs, which must charge prices that include a reasonable margin, are at a disadvantage if they must "compete" against default service prices that do not properly compensate default service providers for assuming the contractual and statutory obligations of serving as providers of last resort (Companies' Sts. 7 (pp. 14-15) and 7-R (pp. 7-8)).

2. Positions Of Parties Opposed To The MAC

I&E, the OCA, the OSBA, CAUSE-PA and the Industrials oppose the MAC, while RESA and Dominion support modified versions of the proposed MAC. For the most part, the parties opposed to the MAC voice three principal objections: (1) that it is not permitted under 66 Pa.C.S § 2807(e)(3.9); (2) that it represents a "return" that, allegedly, is either not authorized or not justified by any "investment;" and (3) that it will not be effective in fostering competition and could simply provide EGSs an excuse to raise their prices. These arguments were fully addressed, and refuted, in the Companies' Initial Brief (pp. 46-52). However, a few key points should be emphasized.

MAC opponents contend that the MAC does not represent a "reasonable cost" of furnishing default service authorized for recovery under 66 Pa.C.S § 2807(e)(3.9). However, that argument simply restates their fundamental misconception that a "return" is not a "cost" of providing service and, therefore, should not be permitted. In the regulated sphere, a "return" is granted in order to compensate utilities for the opportunity costs they incur by dedicating their resources to meeting their statutory service obligations. As such, a "return" is an integral part of the "cost of service" and not, as the parties opposed to the MAC suggest, a non-cost based "adder." The same principle applies to EDCs as default service providers. Just like the return granted EDCs in their role as distribution utilities, EDCs functioning as default service providers must be allowed a "return" to recognize the opportunity costs they incur by devoting resources, which they could employ in another profitable endeavor, to the provision of default service. Contrary to opposing parties' contentions, this cost is real and significant. As Mr. Fullem explained, the Companies could deploy their credit capacity in many ways, but choose to use it to avoid collateral requirements under their respective SMAs. This alone generates benefits to

default service customers of between one and two mills ($0.001 – $0.002) per kWh (Companies' St. 7, pp. 12-13). In summary, the MAC reflects a reasonable cost of providing default service that the Companies are entitled to recover under Section 2807(e)(3.9).

Additionally, arguments that the MAC is impermissible because it would allow the equivalent of a "return" are undercut by decisions in other jurisdictions, where regulatory commissions have recognized that a return component should be included in the price of default service to compensate providers of last resort for the risks they bear, the obligations they assume and the value they create (Companies' Initial Brief, pp. 43-44). Pennsylvania's neighboring states of Maryland and New Jersey have authorized "return" or "margin" components in their equivalent of the Price to Compare for that reason. *Id.* Consequently, there is no basis for the contention by MAC opponents that the MAC would violate allegedly widely-recognized ratemaking principles. *See, e.g.*, OCA Main Brief, pp. 39-40.

MAC opponents also argue that the MAC would likely increase the prices EGSs charge to shopping customers because EGSs would forego the opportunity to increase market share in order to increase their margins on existing business. This argument was addressed and thoroughly refuted in the Companies' Initial Brief (pp. 51-52). Additionally, as explained in RESA's Main Brief (p. 42), actual, historical price movement within competitive markets demonstrates that an increase in the price of default service would not drive increases in EGSs' prices. Dr. Reitzes, on behalf of the Companies, presented extensive analyses that established the same point (Companies' St. 6-R, p. 11; *see* Companies' Initial Brief, pp. 51-52).

For the reasons set forth above and in the Companies' Initial Brief (pp. 46-52), the arguments of parties opposed to the MAC should be rejected.

3. RESA's and Dominion's Proposed Modifications

The MAC modifications proposed by RESA and Dominion have been addressed in the Companies' Initial Brief (pp. 52-53) and, therefore, the Companies will not repeat their responses here. However, in its Main Brief (p. 41), RESA offered a further purported reason for stripping from the MAC anything resembling a return component. Specifically, RESA argued that its modification is needed to remove any "financial interest" for the Companies to "[keep] customers on default service." There is no basis in fact or logic for RESA's position, as Mr. Fullem explained in responding to a similar point made by RESA witness Kallaher:

> **Q. Mr. Kallaher contends that, if approved, the MAC will give each of the Companies a "substantial incentive to preserve its default service market share" (RESA St. 2-R, p. 33). Do you agree?**
>
> **A.** No. As I explained in my direct testimony (pp. 15-16), the MAC is intended to encourage increased shopping. Moreover, the Companies also are proposing an Opt-In Aggregation Program and a Standard Offer Customer Referral Program to stimulate further customer shopping and lower the marketing and customer acquisition costs of EGSs. Consequently, the Companies are "passive players" that merely offer default service under specified, Commission-approved terms and conditions and do not market or otherwise encourage the purchase of that service. To the contrary, the market enhancements the Companies are proposing in this proceeding, like those that are already in place, are designed to promote shopping. Customers are given ample opportunity to assess the benefits of shopping and choose to receive service from an EGS, while EGSs, for their part, actively compete with each other to "beat" the price of default service. Therefore, it is the EGSs' behavior that will largely determine if any customers remain on default service, and other factors that may affect the level of shopping, such as market conditions, are outside the control of the Companies.

Companies' St. 7-SR, p. 12.

D. Default Service Support Rider

The changes proposed to the Companies' DSS Riders were explained in their Initial Brief (pp. 53-56). The principal change is the Companies' proposal to include an NMB Services Transmission Charge to recover charges imposed by PJM for Network Integration Transmission Service ("NITS"), Regional Transmission Expansion Plan ("RTEP") costs, and Transmission Enhancement/Expansion expenditures. In response to direct testimony submitted on behalf of Exelon and Dominion, the Companies revised their proposal to also include recovery under the DSS Rider of Generation Deactivation charges and unaccounted-for energy ("UFE") (Companies' Initial Brief, pp. 67-70).

1. Non-Market Based Services Transmission Charges

As previously explained, NMB transmission costs consist of the charges PJM imposes for NITS, RTEP and Transmission Expansion/Enhancement costs (Companies' Initial Brief, p. 57). Currently, for default service, these costs are embedded in the Companies' Price to Compare. EGSs serving shopping customers, as LSEs, bear these costs. *Id.* In this case, the Companies propose to acquire all NMB transmission services on behalf of both their default service generation suppliers and EGSs serving load in their respective service areas; to remove the associated costs from their Price to Compare; and to recover NMB transmission service costs, as well as Generation Deactivation costs and UFE, through their DSS Riders as non-bypassable charges imposed on a competitively neutral basis on all shopping and non-shopping customers. *Id.* For Penn Power, the proposed change only needs to encompass NITS, Transmission Expansion/Enhancement costs, Generation Deactivation costs and UFE because the Commission previously approved Penn Power's recovery of RTEP costs under its DSS Rider. *Id*; *see* also *Penn Power 2010 DSP Order*, p. 20; Companies' St. 7, p. 9.

Messrs. Fried and Raia, on behalf of Proctor & Gamble Paper Products Co. ("P&G") and Sheetz, respectively, were the only witnesses that opposed the Companies' proposal to acquire NMB transmission services and recover the associated costs under their DSS Riders.[18] RESA, Dominion, Exelon and Constellation, which collectively reflect the views of both default service generation suppliers and EGSs, affirmatively support the Companies' proposal. Each of the principal arguments offered by Messrs. Fried and Raia in opposition to the Companies' proposal was addressed in detail in the Companies' Initial Brief (pp. 59-67) and shown to be meritless. Apart from repeating at length the same contentions advanced in their witnesses' testimony, the Industrials made three new arguments in their Main Brief, each of which is meritless, as explained below.

The Companies' Proposal Allegedly "Violates the Competition Act" (Industrials' Main Brief, pp. 45-47). The Industrials contend that the Companies' proposal "violates" the Electricity Generation Customer Choice and Competition Act ("Competition Act"). At the outset, the Commission will no doubt find this argument surprising because it previously approved Penn Power's proposal to recover RTEP charges – a significant component of NMB transmission service costs – through its DSS Rider. *Penn Power 2010 DSP Order*, p. 20. And, in the same Order, the Commission approved the consensus reached by the parties in that case that "[Penn Power's] affiliates, Metropolitan Edison Company and Pennsylvania Electric Company, will recover RTEP in a manner consistent with this Settlement." *Id.* Consequently, the Commission has already validated the legal and factual basis for an EDC to acquire such services on behalf of all suppliers and to recover the cost from shopping and non-shopping

[18] OSBA witness Knecht supported the Companies' proposal but recommended a one-year "transition" period. This issue was addressed in the Companies' Initial Brief (pp. 65-67).

customers on a competitively neutral basis. *Id.* The Industrials never acknowledged this prior precedent in their Main Brief.

Moreover, the Industrials' argument misconstrues the provisions of the Public Utility Code on which they purport to rely while ignoring other relevant provisions that are contrary to their argument. Thus, the Industrials contend that the Companies' proposal is inconsistent with Sections 2802[19] and 2804(3) of the Public Utility Code, which provide that "[t]his chapter requires electric utilities to unbundle their rates and services and to provide open access over their transmission and distributions systems" (Section 2802(14)) and "[t]he commission shall require the unbundling of electric utility services, tariffs and customer bills to separate the charges for generation, transmission and distribution" (Section 2804(3)) (Industrials' Main Brief, pp. 45-46). The Industrials contend that the Companies' proposal to recover PJM-imposed NMB charges through their DSS Riders amounts to "re-bundling" of "transmission and distribution" in contravention of Sections 2802(14) and 2804(3). That contention is clearly wrong; the DSS Rider imposes charges that are separate and distinct from "distribution" charges and, therefore, does not "re-bundle" anything. Moreover, applying the Industrials' tortured logic, even their preferred approach, which would require default service generation suppliers and EGSs to continue to bear PJM NMB charges, would represent an improper "bundling" of transmission and generation costs. Furthermore, if the Companies' proposal embodied an improper, anti-competitive "re-bundling" of transmission service, as the Industrials contend, it would be

[19] At various points in their Main Brief, the Industrials refer to "Section 2802" and "Section 2802(13)." However, Section 2802(13) provides, generally, a description of "current law and regulations" prior to enactment of the Competition Act and, therefore, must have been cited in error. Presumably the Industrials meant to cite Section 2802(14), which, as explained above, mirrors the language of Section 2804(3).

unlikely to have garnered the strong support of the EGS parties, all of whom support the Companies' proposal.

Compounding their error, the Industrials allege that the rate "unbundling" mandated by the Competition Act was designed to permit "increased competition among the component parts of electric service" and to allow customer the "right to negotiate with their suppliers on the terms and conditions under which they receive transmission service" (Industrials' Main Brief, p. 46). Thus, the Industrials conceive of "transmission" as another competitive service as to which they would be able to "negotiate . . . terms and conditions" if the Companies' proposal is not adopted. Those assertions are shockingly incorrect; the Competition Act says nothing like what the Industrials claim. To the contrary, Section 2802(16) provides: "It is in the public interest for the transmission and distribution of electricity to continue to be regulated as a natural monopoly subject to the jurisdiction and active supervision of the commission." 66 Pa.C.S. § 2802(16). As Mr. Fullem explained (Companies' St. 7, p. 9), and as no party disputes, PJM-imposed NMB charges – as their name implies – are **not** market-based charges; they are administratively determined, cost-of-service rates imposed by PJM and approved by the Federal Energy Regulatory Commission for services that are not at all "competitive" as the Industrials erroneously allege.

The Companies' Proposal Allegedly Violates The Commission's Regulations (Industrials' Main Brief, pp. 57-60). The heart of the Industrials' argument is that the Commission's default service regulations at 52 Pa. Code §§ 54.182 and 54.187(d) require that "generation and transmission should be charged by the same entity" in order to "[promote] standardization throughout the Commonwealth" (Industrials' Main Brief, pp. 51-52). The regulations upon which the Industrials rely say nothing like the proposition they are cited for.

Furthermore, the concept of "standardization" is entirely absent from the Commission's regulations, as evidenced by the fact that each EDC in the Commonwealth is required to submit it own default service program. "Standardization" would dictate that the Commission should develop state-wide, multiple-EDC plans for default service procurement and cost recovery as is done, for example, in New Jersey.

Section 54.187(d) provides, in relevant part, that the Price to Compare should be "designed to recover all default service costs, including generation, transmission and other default service cost elements, incurred in serving the average member of a customer class." The Industrials want to read the phrase "including . . . transmission" in isolation and, on that basis, contend that anything that might be deemed a "transmission" cost must be recovered in the Price to Compare and nowhere else. The Industrials are wrong; that phrase cannot be read in isolation. The antecedent for the phrase "including . . . transmission" is "all default service costs" and, therefore, "transmission" costs are to be included in the Price to Compare only if they constitute "default service costs." Under the Companies' proposal, NMB charges are not "default service costs" because they will be borne by the Companies for **all** customers – not just default service customers – and will be recovered on a competitively-neutral basis from **all** customers – not just default service customers. As a consequence, the PJM-imposed NMB charges will be removed from the prices charged by default generation suppliers and, therefore, will not be incurred as a "default service cost." Accordingly, the Companies' proposal is not inconsistent with the letter of the Commission's regulations. Moreover, that proposal is also entirely consistent with the spirit of the Commission's regulations.

The point of Section 54.187(d), like the comparable definition of the Price to Compare in Section 54.182, is to level the playing field for default service and competitive EGS products. A

level playing field is established by assuring that the costs EGSs bear to purchase generation for delivery to an EDC's load zone are mirrored by the "default service costs" the EDC includes in its Price to Compare. In that way an accurate comparison can be made between the prices for competitive service offerings and the Price to Compare. Thus, if an EGS incurs a PJM-imposed cost related to the delivery of generation to the EDC's load zone, the comparable cost element should be included in the Price to Compare to reflect the cost a default service provider would incur to deliver generation supply to EDC's load zone. Conversely, if the PJM-imposed NMB costs for delivering generation to the EDC's load zone are recovered in a separate, competitively-neutral charge from all customers, then excluding such costs from the Price to Compare assures the same comparability – a level playing field – for EGS prices and the price charged for default service. The Companies' proposal accomplishes this by recovering PJM-imposed NMB charges through the DSS Rider.

The Industrials also contend that Section 69.1807(9) of the Commission's *Policy Statement on Default Service and Retail Electric Markets* is somehow inconsistent with the Companies' proposal because, although that section expressly encourages the use of "mechanisms that allow for the tracking and automatic adjustment of transmission rates," it should be read to apply only to "wholesale suppliers" (Industrials' Main Brief, pp. 58-59). Section 69.1807(9) states, in full, as follows:

> Wholesale energy suppliers may include a significant risk premium in their competitive bids to hedge against changes in transmission rates during the term of a default service supply contract. The public interest would be served by consideration of mechanisms that allow for the tracking and automatic adjustment of transmission rates during the term of the default service supply contract in order to reduce this premium.

Accepting the Industrials' argument at face value, they concede that Section 69.1807(9) affirms the Commission's support for "mechanisms that allow for the tracking and automatic adjustment of transmission rates" for "wholesale suppliers," which is akin to one-half of the Companies' NMB cost recovery proposal. However, the Industrials' attempt to isolate the application of Section 69.1807(9) to "wholesale suppliers" fails because applying "mechanisms that allow for the tracking and automatic adjustment of transmission rates" in that fashion would create exactly the kind of tilted playing field that Section 54.187(d) of the Commission's regulations was intended to eliminate. "Wholesale suppliers" would be relieved of PJM-imposed transmission charges that EDCs could recover under separate, reconcilable, automatic adjustment clauses, while EGSs would have to continue to bear those costs. Clearly, under those circumstances, the Price to Compare would not be comparable to the costs borne by EGSs to deliver power to an EDC's load zone. If Section 69.1807(9) is implemented for "wholesale suppliers," it must, of necessity, be implemented for EGSs as well. That is precisely what the Companies have proposed.

The Companies' Proposal Allegedly Does Not Adhere To "Cost Causation" Principles (Industrials' Main Brief, pp. 53-57). The essence of the Industrials' argument is that each industrial customer should have the right to be charged a rate for NMB transmission services based on its **individual** contribution to the PJM system coincident peak demand (Industrials' Main Brief, pp. 54-55). That argument is contrary to one of the most fundamental principles of public utility regulation, namely, that rates are designed to reflect the costs of classes of customers, not individual customers:

> Each customer imposes a different combination of costs on the system and the cost to serve is unique to each. Ideally, each customer should be on a separate tariff, designed to reflect the

> costs he or she causes to be incurred. However, such a solution is administratively infeasible. Thus, customers with homogeneous characteristics are grouped together as a customer class and rates are designed to recover the cost of serving the class.

J.H. Cawley and N.J. Kennard, *Rate Case Handbook: A Guide To Utility Ratemaking Before The Pennsylvania Public Utility Commission* (1983), pp. 258-259.

The Industrials argue that their entitlement to individually-determined transmission rates derives from Section 1304 of the Public Utility Code, which proscribes "unreasonable discrimination" (Industrials' Main Brief, p. 55). However, Section 1304 authorizes class rates and expressly provides that reasonable rate classifications do not constitute "unreasonable discrimination":

> This section does not prohibit the establishment of reasonable zone or group systems, or classifications of rates . . .

66 Pa.C.S § 1304.

The additional error in the Industrials' argument is that they claim an entitlement for individualized rates for only one component of their cost of service, i.e., PJM-imposed NMB charges. In all other respects, the Industrials are charged rates determined on a class basis. Yet, in this one instance, where they believe they might get a benefit from doing so, they assert a right to have a charge determined based on individual, customer-specific usage characteristics.

Based on the flawed premise that they are entitled to individualized, customer-specific rates, the Industrials argue that, without such rates, customers who invested in "self-generation and demand response strategies" would suffer "discrimination" because there would no longer be any incentive to reduce usage on "peak days" (pp. 55-56). The Industrials' argument is wrong in

two respects.[20] First, NMB costs will be recovered from industrial customers as a demand charge, so that changes in a customer's demand would directly increase or decrease the customer's bill for NMB costs (Companies' St. 2-R, pp. 12-13). Second, and contrary to the Industrials' contentions, the Companies' proposal will do a better job of creating "incentives" to reduce demand than the current approach for charging NMB costs to customers, as Mr. Valdes explained (Tr. 76):

> **Q.** Okay. Would transmission costs fluctuate for a customer on a monthly basis based upon their demand under the [Companies'] proposal?
>
> **A.** Yes. As the customer's demand goes up and down it would fluctuate. So as a customer is able to effectively lower their demand due to Act 129 demand response and place less demand on the system, the customer subsequently receives the benefit of the lower demand, whereas they would not under the current structure where network service peak load is fixed regardless of whatever the customer's demand response initiatives may be.

As Mr. Valdes emphasized, the Companies' proposed rate design is far more responsive to changes in demand than the current pricing structure. In contrast, the Industrials argue for a pricing scheme under which a customer's demand responsibility would be frozen at a single point in time – the "one coincident peak" (Industrials' Main Brief, p. 41) – regardless of the demands it imposes on the transmission system during the rest of the year. Thus, while paying lip service to "demand response" and "cost causation," the Industrials are really complaining that the Companies' proposal will make it impossible for them to "game" the system by reducing their demand for one or two hours per year (in order to get the benefit of low demand-allocated

[20] The Industrials also err in repeatedly asserting that the Companies' proposed rate design would use as a billing determinant "a customer's previous month's peak demand." *See* Industrials' Main Brief, p. 54. In fact, the proposed rates design would charge customers based on their current month billing demand (Companies' St. 2-R, pp. 12-13).

transmission charges) while freeing themselves to impose whatever demands they desire on the transmission system during the rest of the year with no billing implications. The Industrials' position does not conform to "cost causation," it is the antithesis of that principle.

For all the reasons set forth above and in the Companies' Initial Brief (pp. 57-67), the Industrials' arguments against the Companies' proposal to recover PJM-imposed NMB charges through the DSS Rider should be rejected.

2. Generation Deactivation Charges

This issue was fully addressed in the Companies' Initial Brief (p. 67).

3. Unaccounted-For Energy Costs

This issue was fully addressed in the Companies' Initial Brief (pp. 68-70). It should be noted that the OCA has withdrawn its opposition to the proposal to recover UFE costs through the Companies' DSS Rider (OCA Main Brief, p. 51).

4. Economic Load Response Charges

For the reasons set forth in their Initial Brief (pp. 70-71), the Companies oppose Constellation's proposal to recover Economic Load Response ("ELR") charges through the DSS Rider. Constellation's efforts to cast ELR as NMB charges (Constellation Main Brief, p. 20) are unavailing. As Constellation concedes, the ELR charges imposed on LSEs are set to recover ELR costs that vary in proportion to LMP. For that reason, both the ELR costs themselves and the charges to LSEs calculated to recover those costs are "market based" and, therefore, should not be recovered as NMB charges under the DSS Rider. Additionally, Constellation simply has not responded in any substantive way to the fact that transferring responsibility to the Companies for ELR charges can be accomplished only for default service providers (Companies' Initial Brief, p. 71).

E. Solar Photovoltaic Requirements Charge Rider

Issues pertaining to the Solar Photovoltaic Requirements Charge Rider were addressed in Section II.E.2., *supra*.

F. Time Of Use Rate Proposals For Penn Power And West Penn

1. Summary and Overview

As explained in the Companies' Initial Brief (pp. 71-76), Penn Power and West Penn have each proposed a new Residential Time of Use ("TOU") Default Service Rider ("TOU Rider") to satisfy the requirement imposed by Section 2807(f)(5) of the Public Utility Code that EDCs have in place a TOU rate (Companies' St. 7, p. 19). The elements of the proposed Residential TOU Default Service Riders and the operation of the proposed TOU rate were also explained in the Companies' Initial Brief. *Id.* In short, the Residential TOU Default Service Rider reflects the Commission's recommendation in its final order at Docket No. I-2011-2237952 that "EDCs contemplate contracting with an EGS in order to satisfy their TOU requirement." Accordingly, under the Companies' TOU proposal, a Commission-approved EGS would serve customers who elect service under the Residential TOU Default Service Riders (Companies' St. 7, p. 19).

2. The OCA's and RESA's Positions

OCA recommends that Penn Power's and West Penn's proposed Residential TOU Default Service Riders not be implemented at this time and that the existing TOU rate options for both Companies be continued. RESA offers an alternative approach that would require each utility to survey EGSs, identify those that are offering or intend to offer a time-differentiated rate for at least twelve months, post information about conforming EGSs on a "clearing house website," and refer customers to that information when they inquire about TOU service. The

positions advanced by the OCA and RESA were fully addressed in the Companies' Initial Brief (pp. 76-80).

3. Constellation's Proposed Modification

Constellation has proposed that the TOU enrollment period occur in advance of the broader wholesale procurements for default service load in order to provide default service suppliers "certainty" as to the amount of load they would serve (Constellation Main Brief, p. 22). The Companies strongly oppose Constellation's recommendation. Customers should not be required to decide whether to enroll in TOU without knowing the standard default service rate that would be available to them if they did not choose TOU service.

G. Reconciliation Of Default Service Costs And Revenues

1. Summary and Overview

Consistent with the Commission's default service regulations at 52 Pa. Code § 54.187(f) and its approval of the existing DSPs for Met-Ed, Penelec, Penn Power and West Penn, the Companies have incorporated a reconciliation component in the generation rates proposed in each DSP (Companies' St. 1, p. 20). Reconciling adjustments will be made on a quarterly basis for the duration of each DSP. The reconciliation feature is included in both the PTC and HP Default Service Riders (Companies' St. 2, pp. 31-33).

2. The OCA's and the OSBA's Proposals

The OCA and the OSBA have proposed modifications to the Companies' reconciliation provisions, which are opposed by the Companies, Dominion and RESA. Indeed, other than the OCA and the OSBA, no party has expressed support for their proposals. The Companies addressed the OCA and OSBA proposals in their Initial Brief (pp. 81-89) and explained the significant defects in each. Accordingly, the OCA and OSBA proposals should be rejected.

H. Other Tariff Changes

The modest tariff changes proposed by the Companies were explained in their Initial Brief (p. 90). Those changes did not generate any issues in this case.

IV. COMPETITIVE MARKET ENHANCEMENTS

As explained in their Initial Brief (pp. 90-92), the Companies have proposed two major competitive market enhancements, specifically, an ROI Program and a Standard Offer Customer Referral Program. The principal components of both programs were explained in detail in the Companies' Initial Brief (pp. 92-94, 121-125). Additionally, the Companies addressed at length the opposing parties' recommended modifications to various elements of each program, many of which were as much at variance with each other as with the Companies' proposals.

For the most part, in their Main Briefs, the other parties set forth the positions articulated in the testimony of their respective witnesses, which were largely anticipated and discussed in the Companies' Initial Brief. Accordingly, further discussion of those issues in not necessary and only a few areas will be touched upon to make or reinforce certain points. In view of the limited scope of the Companies' responses, organizing those responses under the numerous subsection that appear in Section IV. of the Companies' Initial Brief would be confusing and redundant. Consequently, the Companies will use short descriptive rubrics to introduce each of the handful of points discussed with respect to each proposed market enhancement.

A. Retail Opt-In Aggregation Program

Composition Of The Product Offer – Bonus Payments. As explained in their Initial Brief (pp. 107-109), the Companies carefully considered the Commission's guidance that would permit "bonus" payments of $50 to participating customers that remain with their opt-in EGS for

at least three billing cycles. *Investigation of Pennsylvania's Retail Electric Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered Mar. 2, 2012) ("*Intermediate Work Plan Final Order*"), p. 69. For a variety of reasons, some of which involve information the Commission did not have when it entered the *Intermediate Work Plan Final Order* and, therefore, could not have considered, the Companies oppose including any "bonus" payments in the Retail Opt-In Aggregation Program.

At the outset, several parties misconstrue or misstate the import of Mr. Fullem's testimony concerning the prevalence of "bonus" payments. *See* Dominion Main Brief, p. 21. Mr. Fullem presented extensive evidence showing that such "bonus" payments are already widely used by EGSs in making competitive offers to residential customers (Companies' St. 7-R, pp. 32-33). Contrary to other parties' contentions, however, Mr. Fullem was not arguing that the wide-spread use of "bonus" payments, standing by itself, is the reason the Companies oppose such payments. Rather, he was providing a strong evidentiary basis to demonstrate that one important reason the Commission was inclined to endorse a $50 "bonus" payment as part of an opt-in aggregation program, namely, that it is allegedly a "unique feature" that would make the opt-in option stand out from existing EGSs offers, simply is not the case. *Id.* In fact, packaging a $50 "bonus" with a relatively short-term fixed rate, such as the six-billing-cycle term discussed in the *Intermediate Work Plan Final Order* (pp. 50 and 69), is not "unique"; rather, it is indistinguishable from a multitude of products already being offered by EGSs. *Id.*

Second, a fixed-price product for a full twelve-month term, which the Companies propose, is materially different from products already being offered for a several reasons. The most significant difference, namely, a straight-forward, easily understood discount from the Price to Compare, is a highly relevant consideration for customers who are wary of "gimmicks" that

come with a "catch," like an up-front "bonus." *Id.* In short, the Companies' proposal provides a clear, understandable choice that focuses customers' attention on what is important in shopping for electricity, specifically, the price of competitive service and the term of the product. *Id.*

Third, requiring a "bonus" in addition to a fixed price below the Price to Compare at the time of the Retail Opt-In Auction would create an unacceptable risk of attracting bidders who might use the opt-in product as a "loss leader" in order to take advantage of a perceived *status quo* bias that would give them a license to charge above-market prices after the initial service period expires (Companies' St. 7-R, pp. 33-34). If that were to occur, customers would eventually, but belatedly, figure out they are paying more than the competitive market price for power. *Id.* As a result, the Retail Opt-In Aggregation Program would not achieve its goal of encouraging customers to participate in the competitive market. In fact, it could confirm pre-existing misperceptions that shopping poses an unacceptable risk of paying higher prices in the long run. *Id.* Here again, the Companies' presented substantial new evidence that was not available to the Commission when it discussed "bonus" payments. Specifically, Mr. Fullem presented an analysis of current market conditions that shows that a $50 bonus plus a fixed price of at least 5% below the Price to Compare is likely to be a "loss leader" and not a sustainable price (Companies' St. 7-R, pp. 33-34). Additionally and even more significantly, Mr. Fullem provided strong evidence of how customers are penalized if they fall prey to short-term gimmicks, with some paying between 23% and 41% over the Price to Compare after only five months from enrollment. *See* Companies' St. 7-R, p. 25.

Fourth, and finally, if customers have an unsatisfying experience in the Retail Opt-In Aggregation Program because they believe they were enticed to participate by short-term "gimmicks" that they perceive as a form of "bait and switch," the EDCs' reputations may be

tarnished because of their involvement in the process that selected EGSs to participate in the program. *Id.*

For all of the foregoing reasons, the Companies' decision to exclude a "bonus" provision from their Retail Opt-In Aggregation Programs is a departure from the Commission's guidance that is fully justified by "good cause . . . supported by evidence produced during an EDC's default service proceeding." *Intermediate Work Plan Final Order*, pp. 6-7.

Provision Of Standard Contracts Specifying All Terms And Conditions. Under the Companies' proposed Retail Opt-In Aggregation Program, winning bidders in the Retail Opt-In Auction would be required to enter into an Opt-In Aggregation Agreement (Companies' Ex. CVF-10). Appendix B to that agreement is the Consumer Contract and Disclosure Statement that the winning EGSs would enter into with customers they serve under the program. RESA was the only party that took issue with the Companies' proposed Opt-In Aggregation Agreement and Consumer Contract and Disclosure Statement. As explained in the Companies' Initial Brief (p. 110), RESA acknowledged the need for uniform terms and conditions. However, its proposed alternative only kicks the can down the road by leaving to some future, unspecified time the task of introducing, "reviewing" and approving uniform contract terms. There is no reason to delay that process. This proceeding is the appropriate forum to develop approved, uniform terms and conditions, which is precisely why the Companies submitted proposed forms of the Opt-In Aggregation Agreement and Consumer Contract and Disclosure Statement for the Commission's review and approval. Moreover, and most significantly, no party – including RESA – has provided a single specific objection to the terms and conditions set forth in the form agreement submitted by the Companies. Moreover, RESA's claim that the Companies' Opt-In Aggregation Agreement is somehow "inconsistent with the terms and conditions of its own plan"

(RESA Main Brief, p. 72) is "inconsistent" with its own witness' testimony -- the testimony on which RESA relies (i.e., RESA St. 2-SR, p. 12) was withdrawn by its witness when he admitted his surrebuttal testimony was incorrect (Tr. 241-242).

Structure Of The Retail Opt-In Auction – Descending Clock Auction. In its *Intermediate Work Plan Final Order* (pp. 77-78), the Commission concluded that either a DCA or a sealed-bid RFP auction structure "would work well to provide a single clearing price." There is no dispute in this proceeding that either method could be utilized, as the Commission expressly permits. Nonetheless, Dominion, RESA, and the OCA generally contend that a DCA will be less complex and expensive, and RESA raises an additional argument that the results of a sealed bid process will be easier to explain to customers than a descending clock auction.

The Commission should reject those arguments. As explained in the Companies' Initial Brief (pp. 116-117), the benefits of the DCA in facilitating the procurement of multiple products (i.e., opt-in EGS offers **for all four Companies**) make the DCA the preferred procurement method here. No opposing party quantified the alleged "savings" that could be obtained through a sealed-bid RFP. Similarly, no one disputed that significant common costs are associated with **both** procurement methods or that the use of the DCA has successfully been used in a variety of electric industry procurements, as described by the Companies' witness, Dr. Miller (Companies' St. 5-R, pp. 3-7).[21] While Dominion tries to dismiss Dr. Miller's explanation of the benefits of a DCA by simply labeling his testimony as "incoherent" (Dominion Main Brief, p. 23), it fails to

[21] RESA witness Kallaher comments that a DCA "involves transactions between two sophisticated business entities" (RESA St. No. 2, p. 23), but does not appear to suggest that licensed EGSs seeking to serve a significant portion of default service customers in the Companies' service territories are not sufficiently sophisticated to participate in a DCA.

identify any error in Dr. Miller's detailed discussion of why a DCA is superior for this procurement and also fails to establish why a sealed bid RFP would be more "productive." *Id.*

RESA's suggestion that customers need to understand the difference between sealed bid RFPs and descending clock auctions makes no sense. Customers do not need to know how a price was determined to assess how it lines up with the Price to Compare. Moreover, this point is refuted by the Commission's determination that either method is suitable to establish the price offered by EGSs to customers. *Cf.* Companies St. 5-R, p. 8 (explaining that there is no direct connection between the bidding format used to determine winning EGSs, the winning prices in the auction, and the ability to explain to customers how their rates are determined).

B. Standard Offer Customer Referral Program

Issues surrounding the Companies' proposed Standard Offer Customer Referral Program were addressed fully in the Companies' Initial Brief (pp. 121-131) and lengthy further discussion is not necessary. However, it should be noted that that there is significant potential harm in RESA's proposal (RESA Main Brief, p. 82) to adopt a Standard Offer Customer Referral Program that would bind referred customers to a twelve-month contract, provide the standard offer discount of 7% for only four months, and then force those customers to "revert" to whatever rate the EGS chooses to charge so long as it is "disclosed to the customer in a mailing . . . shortly after enrollment." *Id.* Under those circumstances, a customer electing to participate in the referral program would be taking a gamble on the rate the EGS may decide to impose for the period between the end of the 7% discount and the balance of the twelve-month contract term. If RESA's structure were adopted, some EGSs that participate in the referral program might well offer reasonable prices for the balance of contract term following the four-month discount, however, others may charge an unreasonably high rate. Because EGSs (absent a specific request

by the customer) would be assigned on a rotational/random basis, customers would, in effect, be forced to play a game akin to Russian roulette, where the post-discount contract rate would be determined by a spin of the cylinder. Moreover, the possibility of harm to customers is real and has been documented. As Mr. Fullem's analysis showed (Companies' St. 7-R, p. 25), customers that have accepted short-term "teaser" rates have paid between 23% and 43% more than the Price to Compare only five months after enrollment. RESA's proposal should be rejected. Customers should have the assurance that the standard offer discount will be in place for the duration of the referral contract, which is precisely what the Commission had in mind when it formulated its guidance on standard offer customer referral programs, as explained in the Companies' Initial Brief (pp. 126-127).

Additionally, and unrelated to the Standard Offer Customer Referral Program, RESA raised certain issues pertaining to the Companies' New/Moving Customer Referral Program (RESA Main Brief, pp. 4-5). That program is not part of this proceeding and, therefore, RESA's recommendations should not be considered here. That said, RESA's Main Brief (p. 4) states that the Commission should require the Companies to "develop a procedure whereby the EDC enrolls an applicant or moving customer that knows the EGS from which he or she wishes to take service." That recommendation does not appear in any witness' testimony, is not part of anything submitted by the Companies, and is strenuously opposed by the Companies.

C. Low-Income Customers' Participation In Market Enhancement Programs

For the reasons set forth in detail in the Companies' Initial Brief (pp. 132-140), the proposals by the OCA and CAUSE-PA to limit or preclude participation of low-income customers in the Companies' market enhancement programs should be rejected. CAUSE-PA's position amounts to nothing more than an across-the-board prohibition on shopping by customers

that participate in Customer Assistance Programs ("CAP"). That position is untenable and should be rejected. Moreover, the benefits available to the Companies' CAP customers are fully "portable" and, therefore, CAP customers cannot lose those benefits if they choose to participate in the proposed market enhancement programs. *See* Companies' Initial Brief, p. 135. The Commission has endorsed CAP customer participation in market enhancement programs under these circumstances. *Intermediate Work Plan Final Order,* p. 43. Additionally, even under CAUSE-PA's misguided view of what might constitute "harm," low income customers would not be "harmed" by participating in the Companies' proposed market enhancement programs because they would receive a one-year fixed-price that is below the Price to Compare. As a consequence, the market enhancement programs benefit any low-income customer that chooses to participate. And, if the discounted price is reasonable at the time the customer decides to enroll, that price cannot become unreasonable later in the life of the program because it is fixed for the term of the customer's participation. CAUSE-PA claims, in effect, that simply because the Price to Compare might, at some point in the future, become lower than the fixed price provided by the market enhancement programs, a customer could be "harmed." Clearly, that is not the case. Furthermore, each of the market enhancement programs permits customers to choose another EGS offer or return to default service during the term of the contracts without incurring a switching fee or any other fee or penalty. *See* Companies' Initial Brief, p. 136.

For the reasons set forth above and in the Companies' Initial Brief, recommendations by CAUSE-PA and the OCA to limit the participation of low-income customers in the Companies' market enhancement programs should be rejected.

V. OPERATIONAL ISSUES

Operational issues were addressed in the Companies' Initial Brief (pp. 137-140). In its Main Brief (p. 32), Constellation stated that is satisfied with the Companies' responses to its inquiries. The Companies' also explained why RESA's recommendation should be addressed in one of the working groups being conducted as part of the Commission's *Investigation of Pennsylvania's Retail Markets* at Docket No. I-2011-2237952.

VI. AFFILIATED INTEREST APPROVAL

No party raised any issue with the Companies' requests for affiliated interest approvals, which should be granted for the reasons set forth in their Initial Brief (pp. 140-141).

VII. OTHER ISSUES

A. Call Center Performance Standards

The Companies' proposal to exclude customer telephone calls regarding high bill complaints and new service requests from the data to which the Commission applies its metrics for measuring the percentage of calls answered within thirty seconds if its Standard Offer Customer Referral Program is adopted was set forth in their Initial Brief (p. 141). That proposal should be approved for the reasons set forth in the Companies' Initial Brief and in Mr. Fullem's direct testimony (Companies' St. 7, p. 32).

B. Uncollectible Accounts Rate Adjustment

No party has opposed the request of Met-Ed, Penelec and Penn Power to update their uncollectible accounts rate as proposed by Mr. D'Angelo (Companies' St. 1-SR, pp. 3-5). Accordingly, that request should be approved for the reasons set forth by Mr. D'Angelo and summarized in the Companies' Initial Brief (pp. 141-142).

VIII. CONCLUSION

For the reasons set forth above and in the Companies' Initial Brief, the Commission should approve the Companies' DSPs to become effective on June 1, 2013. In addition, the Commission should: (1) make the findings required by 66 Pa.C.S § 2807(e)(3.7); (2) grant the affiliated interest approvals requested herein; and (3) grant such other approvals as may be needed to fully implement the DSPs, including the competitive market enhancements set forth therein.

Respectfully submitted,

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May 16, 2012

APPENDIX A

Day-Ahead, Load-Weighted, Average LMP by Jurisdiction

Table C-24 Jurisdiction day-ahead, load weighted LMP (Dollars per MWh): Calendar years 2010 and 2011 (See 2010 SOM, Table 2-48)

	2010	2011	Difference	Difference as Percent of 2010
Delaware	$54.23	$51.46	($2.77)	(5.1%)
Illinois	$35.48	$35.72	$0.24	0.7%
Indiana	$39.24	$40.15	$0.91	2.3%
Kentucky	$40.62	$40.41	($0.20)	(0.5%)
Maryland	$57.63	$52.23	($5.39)	(9.4%)
Michigan	$39.40	$41.37	$1.97	5.0%
New Jersey	$55.27	$52.29	($2.98)	(5.4%)
North Carolina	$54.05	$48.74	($5.31)	(9.8%)
Ohio	$39.31	$41.65	$2.34	6.0%
Pennsylvania	$49.13	$47.27	($1.86)	(3.8%)
Tennessee	$41.76	$40.58	($1.18)	(2.8%)
Virginia	$54.40	$48.65	($5.75)	(10.6%)
West Virginia	$41.58	$42.07	$0.49	1.2%
District of Columbia	$56.15	$50.57	($5.58)	(9.9%)

Zonal Price Differences

Table C-25 Zonal day-ahead and real-time average LMP (Dollars per MWh): Calendar year 2011 (See 2010 SOM, Table 2-68)

	Day Ahead	Real Time	Difference	Difference as Percent of Real Time
AECO	$47.86	$47.56	($0.30)	(0.6%)
AEP	$39.37	$39.04	($0.28)	(0.7%)
AP	$42.96	$42.91	($0.06)	(0.1%)
ATSI	$39.34	$39.24	($0.10)	(0.2%)
BGE	$48.66	$49.11	$0.44	0.9%
ComEd	$33.46	$33.30	($0.15)	(0.5%)
DAY	$39.29	$39.22	($0.07)	(0.2%)
DLCO	$38.89	$38.98	$0.09	0.2%
Dominion	$46.00	$46.38	$0.38	0.8%
DPL	$47.93	$47.33	($0.59)	(1.2%)
JCPL	$47.59	$47.65	$0.06	0.1%
Met-Ed	$45.82	$45.82	$0.01	0.0%
PECO	$47.21	$46.56	($0.65)	(1.4%)
PENELEC	$42.79	$42.95	$0.16	0.4%
Pepco	$47.58	$47.34	($0.25)	(0.5%)
PPL	$45.68	$45.84	$0.16	0.3%
PSEG	$48.32	$48.17	($0.15)	(0.3%)
RECO	$45.80	$44.28	($1.52)	(3.3%)
PJM	$42.52	$42.84	$0.32	0.7%

Jurisdictional Price Differences

Table C-26 Jurisdiction day-ahead and real-time average LMP (Dollars per MWh): Calendar year 2011 (See 2010 SOM, Table 2-69)

	Day Ahead	Real Time	Difference	Difference as Percent of Real Time
Delaware	$47.10	$46.61	($0.49)	(1.0%)
Illinois	$33.46	$33.30	($0.15)	(0.5%)
Indiana	$38.51	$38.45	($0.06)	(0.2%)
Kentucky	$38.50	$38.39	($0.11)	(0.3%)
Maryland	$48.17	$48.06	($0.10)	(0.2%)
Michigan	$39.48	$39.30	($0.18)	(0.5%)
New Jersey	$48.01	$47.88	($0.13)	(0.3%)
North Carolina	$44.86	$45.23	$0.37	0.8%
Ohio	$39.36	$39.38	$0.03	0.1%
Pennsylvania	$44.64	$44.48	($0.16)	(0.4%)
Tennessee	$38.61	$38.35	($0.25)	(0.7%)
Virginia	$45.23	$45.36	$0.13	0.3%
West Virginia	$40.27	$39.72	($0.55)	(1.4%)
District of Columbia	$47.59	$47.41	($0.18)	(0.4%)

Offer-Capped Units

PJM's market power mitigation goals have focused on market designs that promote competition and that limit market power mitigation to situations where market structure is not competitive and thus where market design alone cannot mitigate market power. In the PJM Energy Market, this situation occurs primarily in the case of local market power. Offer capping occurs only as a result of structurally noncompetitive local markets and noncompetitive offers in the Day-Ahead and Real-Time Energy Markets.

PJM has clear rules limiting the exercise of local market power.[8] The rules provide for offer capping when conditions on the transmission system create a structurally noncompetitive local market, when units in that local market have made noncompetitive offers and when such offers would set the price above the competitive level in the absence of mitigation. Offer caps are set at the level of a competitive offer. Offer-capped units receive the higher of the market price or their offer cap. Thus, if broader market conditions lead to a price greater than the offer cap, the unit receives the higher market price. The rules governing the exercise of local market power recognize that units in certain areas of the system would be in a position to extract monopoly profits, but for these rules.

8 See OA Schedule 1, § 6.4.2

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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	:		

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served copies of the **Reply Brief of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company** upon the following persons, in the matter specified below, in accordance with the requirements of 52 Pa. Code § 1.54:

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