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SECRETARY'S BUREAU

June 25, 2012

VIA HAND-DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Joint Petition Of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval Of Their Default Service Programs
Docket 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 the unbound original and nine copies of the Exceptions of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to the Recommended Decision of Administrative Law Judge Elizabeth H. Barnes issued on June 15, 2012 in the above-captioned proceeding.

As indicated on the enclosed Certificate of Service, copies of this letter and the Exceptions are being served on all active parties, the Office of Special Assistants and the presiding Administrative Law Judge.

Sincerely,

TPGadsden

Thomas P. Gadsden

TPG/tp
Enclosures
c: Per Certificate of Service

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	**:**		

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

To The Recommended Decision Of
Administrative Law Judge Elizabeth H. Barnes

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June 25, 2012

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I. INTRODUCTION

This proceeding was initiated on November 17, 2011, when 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") filed a Joint Petition ("Joint Petition") requesting that the Pennsylvania Public Utility Commission ("Commission" or the "PUC") approve their Default Service Programs for the period from June 1, 2013 to May 31, 2015 ("DSPs") and find that the DSPs satisfy the criteria set forth at 66 Pa.C.S § 2807(e)(3.7). As described in the Joint Petition, the Companies' DSPs contain all of the elements required by the Commission's default service regulations (52 Pa. Code §§ 54.181 – 54.189) and its Policy Statement on Default Service (52 Pa. Code §§ 69.1801- 69.1817), including implementation plans, procurement plans, contingency plans, rate design plans, and associated tariff pages. In addition, the DSPs propose various competitive market enhancements including a Retail Opt-In Aggregation Program and a Standard Offer Customer Referral Program.

The Commission initiated an investigation with respect to the Companies' DSPs and assigned the matter to Administrative Law Judge Elizabeth H. Barnes ("ALJ"). A detailed history of this proceeding is set forth in the Companies' Initial Brief, dated May 2, 2012. In addition, on May 16, 2012, the Companies filed a Reply Brief in response to the Main Briefs submitted by certain of the other parties in this case.[1]

On June 15, 2012, the ALJ issued her Recommended Decision in which she recommended that the Commission approve the Companies' DSPs subject to certain, limited

[1] A list of intervenors is provided in the Companies' Initial Brief (p. 2). A list of the intervenors that filed Main Briefs is provided in the Companies' Reply Brief (p. 1).

modifications. The ALJ clearly spent a great deal of time and effort reviewing the voluminous record in this case and, in large part, has provided the Commission with a well-reasoned and thorough analysis of the many issues addressed in this proceeding. In so doing, the ALJ has considered and properly rejected the more extreme and unsupported positions advanced by parties that proposed changes to the Companies' DSPs. Consequently, the following Exceptions are narrowly limited to the five areas discussed below.

II. EXCEPTIONS

The Companies respectfully note the following Exceptions to the Recommended Decision:

1. Market Adjustment Charge ("MAC"). Exception is taken to the ALJ's recommendation that the Companies' proposed MAC should not be approved (R.D., pp. 56-59). As explained herein and in the Companies' Initial (pp. 40-52) and Reply (pp. 37-39) Briefs, the MAC will properly 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 and which constitute "reasonable costs" to furnish default service that electric distribution companies ("EDCs") are entitled to recover under 66 Pa.C.S. § 2807(e)(3.9). As the Companies explained, adoption of the proposed MAC should be adopted for the following principal reasons:

- 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 the Companies' witnesses. *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. Electric generation suppliers ("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. Time Of Use ("TOU") Rate Proposals For Penn Power And West Penn. Exception is taken to the ALJ's recommendation that the Residential TOU Default Service Riders ("Residential TOU Riders") proposed by Penn Power and West Penn not be approved (R.D., pp. 76-82). The proposed Residential TOU Riders incorporate 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 [under Act 129]."[2] Accordingly, under their TOU proposals, a Commission-approved EGS would be selected through a competitive procurement process to serve customers who elect service under the Residential TOU Riders. In addition, Penn Power and West Penn have proposed alternative residential TOU rates in the event a competitive procurement of TOU default service does not yield a TOU supplier or if the Commission does not approve the contract with the competitively-selected TOU supplier. If the Commission does not approve the proposed Residential TOU

[2] *Investigation of Pennsylvania's Retail Elec. Market: Recommendations Regarding Upcoming Default Serv. Plans*, Docket No. I-2011-2237952 (Dec. 16, 2011) ("*DSP Recommendations Order*"), p. 47.

Riders, then it should authorize Penn Power and West Penn to implement their contingency plans, which provide that their TOU obligations will be met by charging qualifying TOU customers the rates set forth in their Price to Compare Default Service Rate Riders ("PTC Riders") adjusted by the on-peak and off-peak factors set forth in the Companies' Exhibits CVF-1 and CVF-2. *See* Companies' St. 7-R, pp. 13-14.

3. Recovery Of The Costs Of The Proposed Market Enhancement Programs. Exception is taken to the ALJ's recommendation that the Commission reject the Companies' proposal to recover the costs of the proposed Retail Opt-In Aggregation Program and Standard Offer Customer Referral Program from all residential customers as a nonbypassable component of their Default Service Support Riders ("DSS Riders") (R.D., pp. 119, 127-129). The ALJ recommended, instead, that the cost of the market enhancement programs be recovered from EGSs that participate in those programs as the Commission suggested in its final order in *Investigation of Pennsylvania's Retail Elec. Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Mar. 2, 2012) (hereafter "*Intermediate Work Plan Final Order*") (pp. 32, 78). *Id.* The Companies demonstrated by substantial evidence that attempting to recover the cost of the market enhancement programs from "participating EGSs" presents significant risks of which the Commission was not aware and, therefore, could not consider, before issuing the *Intermediate Work Plan Final Order.* Such risks include the risk that the costs will not be recovered and the risk that assigning the costs to EGSs will create a significant barrier to EGS participation in the market enhancement programs or make the prices offered under those programs much less attractive to residential customers and, thereby, diminish customer participation. *See* Companies' St. 7-R, pp. 39-40.

4. Eligibility Of Customer Assistance Program ("CAP") Participants For The Proposed Market Enhancement Programs. Exception is taken to the ALJ's recommendation that CAP customers should be barred from participating in the Companies' proposed market enhancement programs (R.D., pp. 124-125, 135-137). CAP customers should be permitted to participate in the proposed market enhancement programs because: (1) they are already permitted to shop under the terms of the Companies' existing, Commission-approved retail tariffs; (2) pursuant to the terms of the Companies' Commission-approved Universal Service Programs, CAP funding is entirely "portable"; and (3) the Companies' Universal Service Programs also provide that CAP benefits cannot be diminished if a customer switches to an EGS (Companies' St. 7-R, pp. 42-43). Moreover, the proposed market enhancement programs would assure that participating customers will likely pay a price below the Price to Compare.[3] Given that CAP customers already are permitted to shop without any assurance that they are purchasing a product at a price that is below the Price to Compare, there is no sound reason to exclude such customers from the market enhancement programs. *See* Companies' Initial Brief, pp. 132-136. Finally, with particular reference to the Retail Opt-In Aggregation Program, the Companies' systems for enrolling customers do not have the capability to identify and reject enrollments from CAP customers (Companies' St. 7-R, pp. 42-43). Consequently, operational constraints present a significant obstacle to implementing the ALJ's recommendation with respect to the Retail Opt-In Aggregation Program.

5. The ALJ's Finding Of Fact No. 2. In Finding of Fact No. 2 (R.D., p. 3), the ALJ correctly found that the Companies' procurement plan for fixed price service satisfies

[3] As to the Retail Opt-In Aggregation Program, the fixed price must be at least 5% below the Price to Compare at the time of the Retail Opt-In Auction. As to the Standard Offer Customer Referral Program, the fixed price must be 7% below the Price to Compare at the time of referral. *See* Companies' Initial Brief, pp. 92, 126-127.

the terms of 66 Pa.C.S. § 2807(e) including the "prudent mix" requirement. However, the brief summary of the Companies' proposed contracts set forth in Finding of Fact No. 2 does not provide a complete description of the Companies' procurement plan for fixed price service. Accordingly, the Companies request that Find of Fact No. 2 be modified to acknowledge all relevant elements of the Companies' procurement plans, as set forth in summary fashion at pages 6-8 of the Companies' Initial Brief and in more detail in the Companies' Statement Nos. 4 and 6.

III. ARGUMENT

A. The Companies' Proposed MAC (Exception No. 1)

1. Overview Of The Companies' MAC Proposal

The Companies propose to include a MAC in their respective PTC Riders. The MAC is a bypassable charge that would be imposed 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. *See* Companies' St. 7, pp. 11-14; Companies' Initial Brief, pp. 40-41. The Companies explained that the adoption of the MAC is appropriate and fully supported for several reasons, which were developed through the extensive evidence that the Companies presented in this case.

The Value Created And The Risks Borne By Default Service Providers. As default service providers, the Companies must commit to significant contractual obligations under their supplier master agreements ("SMAs") to obtain generation supplies on behalf of default service customers. Obviously, there is an inherent value to customers to have an entity assume liabilities of that magnitude on their behalf. The full extent of that value is not readily quantifiable. However, one significant component of the total value proposition was specifically identified and quantified by the Companies, namely, the value customers realize because the Companies are creditworthy counterparties (Companies' St. 7, p. 12). As a direct result of the Companies committing their available credit capacity to their SMAs, generation suppliers are willing to enter into SMAs that do not require the Companies to furnish collateral for the obligations the Companies assume under those agreements. *Id.* If the Companies preserved their credit capacity instead of committing it to their contractual SMA obligations, suppliers would insist on imposing collateral requirements and, by so doing, increase the costs borne by customers. *Id.* The Companies have calculated that entering into SMAs that do not include collateral requirements provides a benefit to default service customers of between one and two mills ($0.001 – $0.002) per kWh (Companies' St. 7, pp. 12-13).

In addition, default generation suppliers are held responsible only for Alternative Energy Portfolio Standards ("AEPS") requirements as they exist at the time SMAs are executed. In this way, customers pay default generation supplier prices that exclude any element of the risk of future increases in the cost of AEPS compliance. *Id.* That value flows to customers only because the associated compliance risk falls on the Companies. The Companies are not currently compensated for creating that value or for assuming the associated risks. *Id.*

Of course, one of the largest components of the total value the Companies provide default service customers flows from their designation as load serving entities ("LSEs") by PJM Interconnection LLC ("PJM"). As PJM-designated LSEs, the Companies must continuously stand ready to serve load and, if necessary, to procure additional supply if any supplier breaches its obligation under an SMA. The assurance of continued service at transparent market-based prices by entities that have sufficient creditworthiness to meet such an open-ended obligation has incalculable value to default service customers and to EGS customers that, for whatever reason, must return – or choose to return – to default service. No element of the existing default service pricing structure compensates EDCs for shouldering this obligation or providing the associated value to customers (Companies' St. 7, p. 13).

As explained above, for virtually every element of value created by the Companies, they bear an associated risk. However, there are a number of other, significant risks that EDCs face as default service providers. Not all of those risks are apparent because many are inchoate and would not surface until a major dislocation in the markets were to actually occur. Nonetheless, the Companies identified a number of major risk factors that clearly exist now and are not reflected in the price of default service. As explained by the Companies' witness, Dr. James D. Reitzes[4] (Companies' St. 6, pp. 36-37), the obligations imposed on default service providers to support the competitive retail market create the risk of the Companies being unable to fully recover certain costs that are not included in their existing default service rates, including, among others:

- The need to maintain infrastructure and personnel to ensure generation supply in the event winning bidders in the default service auctions do not fulfill their obligations;

- Unanticipated cost increases under the program for purchasing receivables from EGSs at zero discount;

- Increases in uncollectible accounts expense associated with default service[5]; and

[4] Dr. Reitzes is an economist and a Principal in *The Brattle Group*, who has been involved professionally in the areas of competition and regulation for many years including working at the Federal Trade Commission, providing private economic consulting services and publishing many peer-reviewed articles and papers (Companies' St. 6, p. 1 and App. A).

[5] This cost can be significant, as evidenced by Met-Ed, Penelec and Penn Power having incurred a shortfall in recovery of default service-related uncollectible accounts of approximately $3 million since the initiation of their existing Default Service Plans (Companies' St. 1-SR, p. 3).

- The cost of providing incremental working capital to meet PJM collateral requirements if winning bidders in the default service supply auctions do not meet their supply obligations.

The Approval Of Price Elements Comparable To The MAC In Other Jurisdictions. As previously noted, utility regulatory commissions in other jurisdictions have included charges like the MAC in default service rates. In Maryland, a specific return component is permitted as part of the price for service furnished to residential and small commercial customers (Companies' St. 7, p. 12). The issue of whether such a return component should be included in default service rates and, if so, in what manner was addressed in proceedings before the Maryland Public Service Commission which approved a comprehensive settlement that provided for the addition of a return component to default service prices for all customer classes. *Id.* New Jersey, in turn, approved a "Retail Margin" of 5 mills per kWh to be included in the charges for basic generation service (the New Jersey equivalent of default service) furnished to customers with annual peak loads of 750 kW or above between 2004 and 2010 (Companies' St. 7, p. 12). And, the Public Utility Commission of Texas authorizes a 20% return to be added to the cost of wholesale energy costs in the prices charged by companies furnishing provider-of-last-resort service. *Id.*

Admittedly, each state operates under a somewhat different statutory scheme. Nonetheless, it is noteworthy that other regulatory commissions have found, as a factual matter, that default service is not fully compensated without reflecting an increment for the risks borne and the value provided by default service providers. Ample evidence has been produced in this case to show that the same holds true for EDCs in Pennsylvania.

Section 54.183(c) Of The Commission's Regulations And The Provision Of Default Service By Entities Other Than EDCs. Under 52 Pa. Code § 54.183(c), the Commission has asserted authority to reassign the role of default service provider to entities other than EDCs. If that authority is to have any real force, there must be entities willing to assume the obligations of furnishing default service. However, it is virtually inconceivable that any entity considered a valid candidate for that role would willingly undertake the obligation of serving as a default service provider without being compensated for shouldering the attendant risks. Stated simply, absent a return commensurate with the risk incurred, no rational market participant would step up to become an assigned default service provider and, therefore, it would be unlikely that Section 54.183(c) would have any practical application.

Clearly, the Commission did not adopt Section 54.183(c) with the expectation that, as a practical matter, it could never be exercised. Thus, Section 54.183(c) incorporates the implicit assumption that a default service provider can, and should, be compensated for the risks it bears and the value it provides by allowing it to recover an appropriate margin above specifically identified out-of-pocket expenses. If that is the case for non-EDC default service providers – and it clearly appears that it is – then there is no reason why EDCs serving in the same capacity should be denied compensation for the same "reasonable costs" of furnishing default service that alternative providers of that service are entitled to receive. Indeed, neither the Commission's regulations nor the Public Utility Code distinguishes between EDC and non-EDC default service providers in this regard. In fact, the witness for the Retail Energy Supply Association ("RESA"), when presented with this issue, stated that he could not discern any such distinction (Tr. 256-258).

The MAC Is An Important Competitive Market Enhancement. The MAC is necessary to properly compensate the Companies for the risks they bear and the value they provide in discharging their obligations as default service providers. As such, the MAC levels the playing field for EGSs which, absent a MAC, would be competing against a default service price that excludes significant elements of EDCs' cost to furnish default service. In short, without the MAC, the "headroom" between default service prices and the prices EGSs are able to charge would be artificially reduced (Companies' St. 7, p. 11).

The attractiveness of EGS offers depends, in large part, on how their prices compare to the price of default service. As default service pricing rises relative to current forward market prices, competitive retail options become more attractive to consumers. In this context, a MAC that increases the Price to Compare modestly above forward wholesale energy prices in order to adequately compensate EDC providers of default service is likely to induce greater market penetration by EGSs in the residential and small commercial classes (Companies' St. 6, p. 37).

The Companies' witness, Dr. Reitzes, conducted detailed studies showing that the percentage of residential customers who choose competitive retail supply (i.e., the "shopping" percentage) increases in tandem with increases in the difference between the Price to Compare and wholesale energy prices (Companies' St. 6, p. 38). The study shows that higher shopping percentages are achieved among residential customers in utility service territories where there is a larger differential between the Price to Compare and wholesale market costs. The study's results are consistent with earlier comprehensive research that Dr. Reitzes presented in a peer-reviewed publication.[6] *Id.* In summary, the MAC will provide the important collateral benefit of

6 James D. Reitzes, Lisa V. Wood, J. Arnold Quinn, and Kelli L. Sheran, "Designing Standard-Offer Service to Facilitate Electric Retail Restructuring," *The Electricity Journal*, Vol. 15, No. 9 (Nov. 2002), pp. 34-51.

promoting robust competition in the retail electricity market and, therefore, is a meaningful competitive market enhancement.

2. The ALJ's Recommendation (R.D., pp. 54-58)

The ALJ recommended that the Commission not approve the Companies' proposed MAC because, in her view, the MAC is a "financial adder" that constitutes a "return" and, as such, is not one of the "reasonable costs" that EDCs may recover under 66 Pa.C.S. § 2807(e)(3.9), which provides:

> The default service provider shall have the right to recover on a full and current basis, pursuant to a reconcilable automatic adjustment clause under section 1307 (relating to sliding scale of rates; adjustments), all reasonable costs incurred under this section and a commission-approved competitive procurement plan.

In reaching her decision, the ALJ discounted the evidence presented by the Companies that the increment in price represented by the MAC is justified by the risks the Companies bear and the value they provide as default service providers because, in her view, the Companies had not identified nor "quantified" the added risks – and attendant costs – they bear in their role as default service providers (R.D., p. 56). Additionally, the ALJ stated that the Companies, through their MAC proposal, seek compensation for their investment in "goodwill," purportedly contrary to accepted principles of utility ratemaking (R.D., pp. 56-57).

Section 2807(e)(3.9) And The Allowance Of A "Return." The essence of the ALJ's position is that the MAC provides a "return" and, for that reason, should not be considered a "cost" that EDCs may recover under Section 2807(e)(3.9). This view embodies the 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 meet their statutory service obligations. As such, a "return" is an integral part of the "cost of service" and not a non-cost based "adder" as the ALJ seems to suggest. A substantially similar principle applies to EDCs as default service providers.

Just like the return granted to EDCs in their role as distribution utilities, EDCs that function as default service providers must be allowed an increment – whether or not denominated a "return" – to recognize the opportunity costs they incur when they devote resources they could employ in another profitable endeavor to the provision of default service. Contrary to the ALJ's assessment, this cost is real and significant. The Companies could deploy their credit capacity in many ways, but choose to use it to avoid collateral requirements under their respective SMAs (Companies' St. 7-R, pp. 12-13). Thus, this one factor, namely, the Companies' dedication of credit capacity to default service, generates benefits to default service customers of between one and two mills ($0.001 – $0.002) per kWh. *Id.* 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, the contention that the MAC is impermissible because it would allow the equivalent of an unearned "return" is 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. *See* Section III.A.1., *supra*, and 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 recognized ratemaking principles or provide an impermissible and unearned return.

The Attempt To Dismiss The MAC As The Recovery Of "Goodwill." The ALJ also errs in characterizing the MAC as simply an attempt to compensate the Companies for their investment in "goodwill" (R.D., p. 57). The Companies' position is much different from its characterization in the Recommended Decision. Specifically, the Companies discussed their investment in "goodwill" as part of their response to parties who argued that the MAC would provide a "return" for which there is not a corresponding "investment." *See, e.g.*, Office of Consumer Advocate ("OCA") St. 1, p. 44. To reiterate, while the Companies do not have an investment in generating facilities that furnish default service, they clearly have assumed a significant liability by contracting for generation to meet default customers' needs. The risks that attend the Companies' obligations, while different from those associated with the ownership of tangible assets, are, nonetheless, a significant form of investment for which the Companies should be compensated (Companies' St. 7-R, pp. 5-6). These risks were either overlooked or unjustifiably discounted by the ALJ. Along the same lines, the ALJ – like the parties that opposed the MAC – ignored the substantial investment in goodwill that supports the Companies' assigned role as default service providers. The price of default service will continue to be artificially depressed unless the Companies' investment in goodwill – and the effect that investment has on the perceived value of default service – are properly recognized.

As the Commission is aware, one of the challenges to fostering greater competition in the residential and small commercial market is customers' view that they receive greater value, relative to price, by purchasing default generation service from their incumbent EDCs. These customers' purchasing decisions reflect, in large part, the trust and brand loyalty that EDCs have built with customers over many years of providing service. That trust and brand loyalty is the substance of the asset recognized and booked, under generally accepted accounting principles ("GAAP"), as "goodwill" (Company St. 7-R, p. 8).

In competitive markets for other goods and services, the added value that customers attach to a seller's "brand" supports a higher price. To capture the value-premium associated with a particular vendor's "brand," a customer pays a premium price. Premium pricing, however, leaves room for other vendors, who have not built up similar "brand equity," to compete effectively on the basis of price. Customers have to decide whether a premium price is justified by comparison to the products offered by other vendors. *Id.* The current pricing structure for default service not only fails to compensate the Companies for the risks they bear and the value they create, it also fails to properly account for the increment in price necessary to reflect the "brand equity" inherent in EDC-provided service (Companies' St. 7-R, p. 8).

The significant efforts expended by the Commission and EDCs to educate customers that electric generation is a fungible commodity have had only limited success, which is understandable because customers are much more likely to respond to economic incentives. And, as default service is currently priced, the incentives do not reinforce the consumer education message. Simply stated, if the "name brand" and the generic product are priced the same, customers will – all other things being equal – choose the name brand.

In contrast to how default service is priced, in unregulated markets name brands and other brands do not sell at the same price. *Id.* To the contrary, the "goodwill" associated with brand loyalty bears a premium price. Customers therefore have to make a judgment about the price-to-value ratio of each product. In very large numbers, customers exercise their judgment to purchase the product that is not the name brand, which is why so many competing vendors exist and can sell their products profitably in thousands of product markets across the country. *Id.* As the Companies' witness, Charles V. Fullem,[7] explained (Companies' St. 7-R, p. 9), the existing structure of default service pricing ignores these basic economic principles:

> As things now stand, the pricing of default service does not reflect the straight-forward economics I described above. In the market for electric generation service, it is generally acknowledged that customers retain significant loyalty to the "brand" they associate with their incumbent utilities. However, the "name brand" is not priced to reflect the value-premium that customers attach to default service. In short, the price of default service is artificially depressed. As a consequence, regulation has removed from the generation market the incentives that operate in other competitive markets for customers to rationally assess price-to-value ratios for competing products. Under those circumstances, it is rational for customers to choose what they perceive to be the premium brand because they get the premium without paying for it.

Contrary to the ALJ's assessment, the MAC is not an "unnecessary financial adder" (R.D., p. 56). Rather, it is a reasonable way to assure that the price of default service offered by incumbent EDCs is not artificially depressed. The MAC allows the price of default service to reflect the value-premium that customers attach to purchases from their incumbent EDCs. If that increment is not reflected, then customers will rationally conclude that the price-to-value ratio favors default service. Depressing the price of default service by regulatory fiat, as currently occurs, not only fails to adequately compensate EDCs; it makes it very difficult for EGSs to compete on the basis of price while trying to build brand loyalty of their own (Companies' St. 7-R, pp. 9-10). As Mr. Fullem elaborated, even the OCA's witness, Mathew I. Kahal,[8]

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7 Mr. Fullem is employed by FirstEnergy Service Company as the Director, Rates and Regulatory Affairs – Pennsylvania. Mr. Fullem is responsible for developing, coordinating, preparing and presenting the Companies' rates and other rate-related matters, including their Default Service Programs. Mr. Fullem has testified extensively in proceedings before this Commission (Companies' St. 7, pp. 1-2 and App. A).

8 The ALJ apparently relied in large part upon the OCA's witness' testimony in formulating her position on the proposed MAC. *See* R.D., p. 56.

acknowledged the value inherent in EDC-provided default service, but, nonetheless, ignored the investment that contributes to the creation of that value (Companies' St. 7-R, pp. 10-11):

> Mr. Kahal recognizes the value the Companies provide to customers through their provision of default service (OCA St. 1, p. 44). Nonetheless, he contends that none of that added value should be recognized in the price of default service because the Companies have "fail[ed] to identify any invested capital associated with that function" (OCA St. 1, p. 44). Mr. Kahal apparently is unwilling to acknowledge the existence of the asset that underlies the value-premium customers attach to EDC-provided default service. As I previously explained, that asset is "goodwill," which represents significant "invested capital" and, in fact, is recorded on corporate balance sheets as such pursuant to GAAP.

The investment in the Companies' goodwill is recorded on their books of account at approximately $1.2 billion. *Id.* That investment is not reflected in the Companies' delivery service rates, and the Companies are not proposing that it should be. However, as explained earlier, default service is fundamentally different from regulated public utility service. Although traditional regulated service is priced under a standard cost of service (rate base/rate of return) model, default service is one of many products available to customers in the competitive market and, as such, must be priced under a different model. The increment of value that the MAC represents is the direct result of substantial underlying investments that generated the goodwill recorded on the Companies' balance sheets. Therefore, the Companies have a legitimate claim to retain the investment-backed increment of value that the MAC is designed to reflect. *Id.*

Finally, the ALJ also stated that "the MAC would probably result in increased EGS charges for consumers who accept a percent-off-the-default service pricing offering" (R.D., p. 56). This proposition does not provide a valid basis for rejecting the MAC. First, there is no evidence of the extent – if at all – any EGSs are actually offering "percent-off" the Price to

Compare products to the classes of customers that would pay the MAC. Second, such "percent-off" products, if they exist, would be affected by any increases in the Price to Compare that occur for any reason. In short, the ALJ's argument proves too much. Third, simply because an increase in the Price to Compare might diminish slightly the level of benefit accruing to a customer that purchased a "percent-off" product is no reason to preclude an EDC from recovering the legitimate cost that such an increase is designed to recover. And, as the substantial evidence presented by the Companies demonstrates, the MAC would recover legitimate costs of furnishing default service.

For all the foregoing reasons, the Commission should approve the Companies' proposal to adopt a MAC.

B. TOU Rate Proposals For Penn Power And West Penn (Exception No. 2)

Penn Power and West Penn each proposed a new Residential TOU Rider set forth in the Companies' Exhibits CVF-1 and CVF-2, respectively, to satisfy the requirement imposed by Section 2807(f)(5) of the Public Utility Code that EDCs have in place a TOU rate[9] (Companies' St. 7, p. 19). The proposed Residential TOU Riders would be available to residential customers that have been provided a smart meter pursuant to Penn Power's and West Penn's respective Commission-approved Smart Meter Plans. *Id.* Customers who desire TOU pricing would have to enroll for service under the Residential TOU Rider, and enrollment would be available for up to 15,000 new customers per Company per year during an enrollment period running from April

[9] Met-Ed and Penelec have legacy, optional TOU rates available for residential customers, which are set forth in each Company's Rate Schedule RT – Residential Time-of-Day Service (Companies' St. 7, p. 17). No changes are proposed to Met-Ed's and Penelec's Rate Schedule RT in this case.

1 through May 31 of each year. *Id.* After May 31 of each year, the Rider would be closed to new applicants until the following year.

As previously explained, the Residential TOU Riders are intended to implement the Commission's recommendation in the *DSP Recommendations Order* (p. 47) 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 furnish service to customers who elect service under the Residential TOU Riders (Companies' St. 7, p. 19).

As proposed by Penn Power and West Penn, an auction would be held annually to select the EGS to provide TOU service, as described in detail in the Companies' Statement No. 6 (pp. 42-44). Through the auction, Penn Power and West Penn would solicit twelve-month, fixed price, on-peak and off-peak products. (On-peak hours would match those of PJM (7:00 am to 11:00 pm weekdays, excluding Company-observed holidays), and all other hours would be off-peak.) (Companies' St. 7, p. 19). The results of the auction would be submitted to the Commission for approval, and the winning bidder would be required to execute a contract in the form set forth in the Companies' Exhibit CVF-3. *Id.* The winning bidder would provide service to all customers that enroll under the Residential TOU Rider for a term of up to twelve months beginning with the customer's June meter reading and ending with the customer's May meter reading. *Id.*[10]

The proposed Residential TOU Riders are a reasonable means for Penn Power and West Penn to satisfy the Act 129 requirement that they offer TOU rates to residential customers.

[10] Other components of the TOU program, including enrollment processes, billing, customer options at the end of the TOU contract year and notices of customer options are described in detail in the Companies' Initial Brief (pp. 73-75).

Additionally, the Residential TOU Riders provide an important competitive market enhancement because Penn Power and West Penn will provide only standard or "plain vanilla" default service – thus, avoiding competing with EGSs – and those Companies' obligation to furnish a TOU rate would be satisfied by the competitive selection of an EGS offering optional TOU service on their behalf[11] (Companies' St. 7, pp. 22-23). The TOU program will also enhance competition by placing enrolled customers in a direct contractual relationship with the EGS furnishing TOU service. *Id.* Although customers that enroll in the TOU program will be billed by the EDC (using EDC consolidated billing), TOU default service will be displayed on the bill as having been provided by the TOU supplier. *Id.* And, at the conclusion of the twelve-month TOU service period, customers enrolled in the TOU program would remain customers of the EGS unless they affirmatively elect default service or select an alternative EGS, which is entirely consistent with the options afforded all shopping customers. *Id.*

The ALJ recommended that the Commission not approve the Residential TOU Riders based on the testimony of OCA witness Barbara Alexander (R.D., p. 78; OCA St. 2, pp. 21-22). Ms. Alexander opposed the proposed TOU rates, principally for two reasons. First, in her opinion, the number of smart meters to be installed in the West Penn and Penn Power service areas during the period from June 2013 to May 2015 will be too small to sustain the cost-effective implementation of the Residential TOU Riders. Second, Ms. Alexander contended that the on-peak hours are too great and the off-peak hours too small to provide the necessary incentive for residential customers to shift enough usage to the low-cost period to experience

[11] The use of an annual competitive selection process also assures enrolled customers that they are obtaining TOU service from a least-cost provider each year (Companies' St. 7, p. 23).

meaningful savings. Ms. Alexander's positions are wrong for several reasons, and the ALJ should not have relied upon them.

Although not mentioned in the Recommended Decision, Ms. Alexander agreed that 15,000 smart meter installations would be enough to justify West Penn offering the program and that West Penn will, in fact, have more than 15,000 smart meters installed prior to the summer of 2013 (Companies' St. 7-R, p. 7). Moreover, recovering the costs of the TOU program from all residential customers under the DSS Rider makes it cost-effective for both EGSs and residential customers to participate in the proposed TOU program, contrary to Ms. Alexander's claim – which the ALJ apparently accepted – that the program cannot be implemented cost-effectively. *Id.*

Furthermore, Ms. Alexander's prediction that the designated on-peak and off-peak periods will not provide residential customers a meaningful opportunity for cost savings is not based in fact. Until the TOU procurement process is implemented and the rate differential for on-peak and off-peak usage is developed from the results of that process, it is premature to make judgments about how much load residential customers would need to shift in order to experience meaningful bill savings (Company St. 7-R, p. 16). Moreover, adopting the wholesale market's, i.e., PJM's, definition of on-peak and off-peak periods assures that EGSs bidding to provide TOU service will be able to appropriately hedge their TOU offerings in the wholesale market. Indeed, the TOU auction will not generate much interest among EGSs if they do not have the opportunity to hedge that risk. *Id.*

The Companies fully support the use of market forces to determine the pricing of TOU service (Companies' St. 6-R, p. 7). If the Penn Power/West Penn TOU proposal generates insufficient EGS interest in providing TOU service, then TOU customers will be served at the rates set forth in the Companies' PTC Riders adjusted by on-peak and off-peak factors (Companies' St. 7-R, pp. 13-14). In that regard, the Residential TOU Riders provide for the contingencies that the TOU auction might garner no bidders, that the Commission might not approve the results of an auction or that the Commission might reject a proposed contract between the Companies and the competitively-selected EGSs. *Id.* Specifically, the Residential TOU Riders provide that, in such cases, TOU service will be furnished under Penn Power's and West Penn's PTC Riders with Price to Compare Default Service rates (including the "E" Factor component) multiplied by the on-peak and off-peak TOU factors set forth in the Residential TOU Riders.[12]

Although Penn Power and West Penn firmly believe their Residential TOU Riders are a properly structured approach to providing a TOU rate option to residential customers, if the Commission decides that it is premature to launch the proposed TOU program at this time because of the current status of the Companies' smart meter deployment, then the Commission must expressly approve the alternative, administratively-determined on-peak and off-peak factors for TOU service, as previously described, so that the Companies will have in place time-differentiated rates that satisfy the requirement for such rates imposed by 66 Pa.C.S. § 2807(f)(5). In that event, Penn Power and West Penn would incorporate the on-peak and off-peak factors in the PTC Riders they submit with their compliance filings in order to provide an option for customers that have smart meters in place and desire TOU service.

[12] Under the contingency rates, TOU service would be provided under the PTC Rider and, therefore, any over/under collections would be applied to only those customers to whom the PTC Rider applies. *Id.*

C. Recovery Of The Costs Of The Proposed Market Enhancement Programs (Exception No. 3)

The Companies proposed to recover the costs of the Retail Opt-In Aggregation Program and the Standard Offer Customer Referral Program from all residential customers as a nonbypassable component of their DSS Riders (Companies' St. 7, p. 27). This proposal was opposed by witnesses on behalf of the OCA, the OSBA and CAUSE-PA. For its part, the Commission, after a cursory review of the cost recovery issue in the context of its retail market investigation, offered guidance suggesting that the costs of the Opt-In Aggregation Programs and Standard Offer Customer Referral Programs should be paid by "participating EGSs." *Intermediate Work Plan Final Order*, pp. 32, 78. The ALJ recommended that the Commission's guidance should be implemented, and the Companies respectfully except to that recommendation.

The Companies presented substantial evidence demonstrating that there is good cause not to adopt the Commission's guidance to recover Retail Opt-In Aggregation Program and Standard Offer Customer Referral Program costs from "participating EGSs." Specifically, that approach to cost recovery presents three significant risks of which the Commission was not aware and, therefore, could not have considered, before it issued the *Intermediate Work Plan Final Order* (Companies' St. 7-R, pp. 39-40).

The first is the risk that the EDCs' costs will not be recovered at all. *Id.* The Companies must incur substantial up-front costs to implement the market enhancement programs. If EGSs are to be responsible for program costs, then the Companies could not recover those costs if no EGSs elected to participate in the program. Moreover, the risk of non-recovery would still be present if EGSs that chose to participate did not fulfill their obligation to pay their assigned costs.

The second is the increased risk that assigning cost responsibility to participating EGSs would create significant disincentives to their participation in the opt-in auction. *Id.* One important purpose of the market enhancement programs is to reduce EGSs' customer acquisition costs and, in that way, provide the means for participating EGSs to offer a discount relative to the Price to Compare. Saddling EGSs with the costs of implementing and administering such programs would negate that important aspect.

The third is the risk that the Commission's recommended approach is likely to make the market enhancement programs far less attractive to residential customers because either the market clearing price received in the auction would not be as favorable or the only EGSs that participate will be those that plan on leveraging a perceived *status quo* bias in order to charge above-market prices after the initial service period. *Id.* If the Commission wants the opt-in auction to be successful, the Companies should collect the cost of the auction from all residential customers through the DSS Riders, as the Companies have proposed in this filing.

Although the Companies firmly believe that recovering the costs of the market enhancement programs from all customers under their DSS Riders is appropriate and should be approved, they also anticipated the possibility EGSs would be made to bear program costs and, therefore, offered a secondary proposal outlining the best way to implement that form of cost recovery:

- **Retail Opt-In Aggregation Program.** The Companies proposed that the cost of the auction itself be divided equally among participating EGS, with each EGS required to pay the Companies its share **before** the auction is held (Companies' St. 7-R, p.

40). Winning EGSs would then be responsible for all costs associated with the marketing and mailing of opt-in notices to the residential customers included in the tranches that they win. *Id.* And, the mailing of the opt-in material would be contingent upon payment being received from each EGS. *Id.*

- **Standard Offer Customer Referral Program.** The Companies proposed to modify the Standard Offer Customer Referral Program Agreement (Companies' Ex. CVF-11) as follows: (1) to require each participating EGS, not less than six months before the program starts, to make a $100,000 payment toward initial start-up costs; (2) to provide that, beginning June 1, 2013, the ongoing costs for the Standard Offer Customer Referral Program Implementation team be billed monthly to participating EGSs by dividing the monthly expenses by the number of participating EGSs; (3) to specify that ongoing costs would include a two-year (June 1, 2013 to May 31, 2015) amortization of start-up costs that exceed the $100,000 up-front payments received from participating EGSs; and (4) to provide that the program only move forward if a minimum of five EGSs execute the Standard Offer Customer Referral Program Agreement and make the initial payments so that the Companies will have some assurance that they will recover at least a portion of their start-up costs (Companies' St. 7-R, p. 46).

The ALJ recommended approval of the Companies' alternative proposal (R.D., pp. 117, 127).[13] Although the Companies continue to support recovery of program costs from all customers through the DSS Rider, if that approach is not approved by the Commission, the

[13] At page 127 of the Recommended Decision, the ALJ initially offers a summary of positions on cost recovery for the Standard Offer Customer Referral Program and, to that end, quotes a portion of Mr. Fullem's rebuttal testimony. However, as evidenced by references therein to the "opt-in" process, the ALJ incorrectly quoted the portion of Mr. Fullem's testimony describing the Companies' alternative proposal to recover the cost of the Retail Opt-In Aggregation Program, not the Standard Offer Customer Referral Program. However, in her discussion of the "Disposition" of this issue, also on page 127, the ALJ correctly quoted the portion of Mr. Fullem's testimony describing the Companies' alternative cost recovery proposal for the Standard Offer Customer Referral Program.

Commission should affirm the ALJ's recommendation to adopt the Companies' alternative cost-recovery proposals.

D. Eligibility Of CAP Participants For The Proposed Market Enhancement Programs (Exception No. 4)

In its *Intermediate Work Plan Final Order*, the Commission addressed the participation of CAP customers in market enhancement programs. With regard to retail opt-in programs, the Commission noted that some EDCs permit CAP customers to shop, while others do not. *Intermediate Work Plan Final Order*, p. 43. As a consequence, the Commission declined to offer specific guidance on CAP customer participation in those programs and directed that the issue be addressed in each EDC's next default service proceeding:

> Because CAP customer participation in electric competition currently varies from EDC to EDC, the Commission finds it difficult to make a statewide pronouncement regarding these customers' inclusion or exclusion in the auctions at this time. The Commission notes that a Universal Service subgroup has been formed under the auspices of the Investigation and it is expected that those subgroup participants will discuss the issues surrounding CAP customer shopping at length and provide recommendations for future RMI initiatives, such as the long-term work plan anticipated to be released in the spring of 2012. However, the Commission believes it cannot make a determination, at this time, regarding the eligibility of such customers to participate in the Retail Opt-in Auctions. As such, the Commission believes the ability of CAP customer participation should be determined within each EDC's default service proceeding, through which the EDCs are presenting proposed Retail Opt-in Auction models. We also note that we do see significant merit and agree with the comments provided by AARP/PULP/CLS, Constellation, OCA, PCADV and PEMC that CAP customers should not be subject to harm, i.e., loss of benefits, if they are deemed eligible to participate in the auctions.

Intermediate Work Plan Final Order, p. 43.

Unlike the consideration it gave CAP customer participation in the context of retail opt-in programs, the Commission did not discuss the issue in the portion of the *Intermediate Work Plan Final Order* that addressed Standard Offer Customer Referral Programs. Nonetheless, its guidance on such programs included the following recommendation:

> At this time, CAP customers should be excluded from the Standard Offer Customer Referral Program and have deferred the details of addressing the provision of universal service within default service to the RMI's Universal Service subgroup.

Intermediate Work Plan Final Order, p. 31.

As previously explained, the Companies proposed that CAP customers be eligible to participate in both the Retail Opt-In Aggregation Program and the Standard Offer Customer Referral Program. The ALJ, however, recommended that CAP customers be precluded from participating in either program and based her recommendation principally on her perception that the Commission favored this outcome because of its comments (quoted above) in the *Intermediate Work Plan Final Order*. *See* R.D., pp. 121, 137. The Companies respectfully take exception to the ALJ's recommendation. CAP customers should not be barred from participating in the Companies' market enhancement programs, as the ALJ recommends, for three principal reasons.

First, CAP customers should be permitted to participate in the proposed market enhancement programs because they are already permitted to shop under the terms of the Companies' existing, Commission-approved retail tariffs. Notably, the ALJ's concerns about alleged "increased risks" to which CAP customers would be exposed (*see* R.D., p. 121) are not specific to the proposed market enhancement programs, but, instead, would apply to any "shopping" by CAP customers. In short, the concerns expressed by the ALJ could be addressed only by barring CAP customers from "shopping" in **any** form – either within or outside of the market enhancement programs – which the ALJ specifically refused to do. *See* R.D., p. 121 ("However, I am not prepared to go as far as the recommendation of Ms. Biedrzycki in her surrebuttal testimony that those CAP customers who are shopping outside of these programs currently should be gradually transitioned back to default service.")

Additionally, many of the ALJ's "concerns" about CAP customer participation in the market enhancement programs appear to be based on the testimony of Carol J. Biedrzycki, who appeared on behalf of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania ("CAUSE-PA"). However, Ms. Biedrzycki's recommendations were grounded on her fundamental misperception that "shopping" is **always** deleterious to CAP customers because, as she views the market structure in Pennsylvania, default service is "stable," "predictable," and "least cost," while all of the options available in the competitive market, including those offered under the Companies' proposed market enhancements, are "volatile," "constantly changing" and present CAP customers with "pricing risk" (Tr. 320-326; CAUSE-PA St. 1-SR, pp. 7-8).

Ms. Biedrzycki's perception of the competitive market was based almost entirely on her experience in Texas, which, as she acknowledged, operates under a much different statutory model than Pennsylvania (Tr. 336-338, 340-341). In that regard, Ms. Biedrzycki eventually conceded that she had "no idea" how Pennsylvania's Price to Compare is calculated (Tr. 324). In fact, the Companies' Price to Compare for residential customers changes quarterly and, therefore, would be **less** "stable" and **more** "volatile" than the fixed-price products to be offered in the Retail Opt-In Aggregation Program and the Standard Offer Customer Referral Program (Tr. 324). There are a host of additional errors and misperceptions in Ms. Biedrzycki's testimony, which are discussed in detail in the Companies' Initial Brief (pp. 133-136).

Second, the Companies' proposal to allow CAP customers to participate in the market enhancement programs satisfies the "no harm" standard that the Commission articulated in the *Intermediate Work Plan Final Order* (p. 43): "CAP customers should not be subject to harm, i.e., loss of benefits, if they are deemed eligible to participate in the auctions." In fact, "no harm" to CAP customers is assured because, under the terms of the Companies' Commission-approved Universal Service Programs, CAP funding is entirely "portable" and CAP benefits cannot be diminished if a customer switches to an EGS (Company St. 7-R, pp. 42-43).

Moreover, the proposed market enhancement programs would assure that participating customers pay a price below the Price to Compare (i.e., at least 5% below the Price to Compare at the time of the Opt-In Auction and 7% below the Price to Compare at the time of a Standard Offer Customer Referral). *See* Companies' Initial Brief, pp. 92, 126-127. Because CAP customers already are permitted to shop without any guarantee that they will pay a price below the Price to Compare, there is no sound reason to exclude such customers from the market enhancement programs, which assure a price below the Price to Compare on the terms previously described. *See* Companies' Initial Brief, pp. 132-136.[14]

Third, with particular reference to the Retail Opt-In Aggregation Program, the Companies' systems for enrolling customers do not have the capability to identify and reject enrollments from CAP customers (Companies' St. 7-R, pp. 42-43). If the Companies were

[14] The Companies' proposed market enhancement programs provide one-year fixed prices, and those prices must be below the Price to Compare at the time of the Opt-In Auction and Customer Referral, respectively. As a consequence, if a CAP customer determines that the price offered is reasonable at the time he or she enters the program, that price cannot become unreasonable over the life of the program because it is fixed for the term of the customer's participation. The ALJ apparently gave some credence to speculation by CAUSE-PA's witness that a CAP customer could be "harmed" if the Price to Compare, at some point in the future, were to decline relative to the fixed price established by the market enhancement programs. However, even if that situation were to arise, a customer would not be "harmed" because each of the market enhancement programs permits customers to choose another EGS offer or to return to default service during the term of the contracts without switching fees or other penalties. *See* Companies' Initial Brief, p. 136.

directed to preclude CAP customers from participating in the Retail Opt-In Aggregation Program, the only way they could try to implement that directive is to not send direct-mail opt-in materials to CAP customers. However, a CAP customer nonetheless could opt-in online or by telephone after obtaining information about the program from another source or could use a return mailer obtained from another customer. If that were to occur, the Companies would have no way to screen the customers from enrollment because, as the ALJ correctly noted in a finding she made in another part of the Recommended Decision (pp. 94-95), the Companies do not have the capability to block such enrollments. Consequently, operational constraints would present an obstacle to fully implementing the ALJ's recommendation with respect to the Retail Opt-In Aggregation Program.

E. Finding Of Fact No. 2 (Exception No. 5)

As previously explained, in Finding of Fact No. 2 the ALJ correctly found and determined that the Companies' procurement plan for fixed price service satisfies the terms of 66 Pa.C.S. § 2807(e) including the "prudent mix" requirement. However, that finding does not furnish a complete picture of the Companies' procurement plan for fixed price service. Accordingly, the Companies request that Finding of Fact No. 2 be modified as follows (changes and additions are shown in italics:

> 2. The Companies' proposed procurement length of twenty-four months is consistent with both the Public Utility Code's requirement for a "prudent mix" of default supply contracts and the Commission's guidance for default service plans for the June 1, 2013-May 31, 2015 period, which directs EDCs to limit or eliminate contracts that will extend past May 31, 2015 and the inclusion of a 10% portion subject to hourly PJM real-time zonal pricing that exposes customers to the effects of spot purchases; *in addition, a portion of the requirements of residential customers of Met-Ed, Penelec, and Penn Power will continue to be met through 48-month long-term block energy contracts procured during the*

> *Companies' prior default service period, which contracts will not expire until May 31, 2015, and through ten-year contracts to acquire solar renewable energy credits and, therefore,* a portion of the requirements of residential customers will continue to be met through long-term contracts (*Companies' St. 4, pp. 5-8, and* Companies' St. 6, pp. 8-10).

The elements of the Companies' procurement plan are described in greater detail in the Companies' Statement Nos. 4 and 6 and are also discussed in the Companies' Initial Brief (pp. 6-33).

IV. CONCLUSION

For the reasons set forth above and in the Companies' Initial and Reply Briefs, the Commission should grant the Companies' Exceptions and adopt the Recommended Decision with the modifications requested herein.

Respectfully submitted,

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June 25, 2012

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served copies of the **Exceptions of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to the Recommended Decision of Administrative Law Judge Elizabeth H. Barnes issued on June 15, 2012** upon the following persons, in the matter specified below, in accordance with the requirements of 52 Pa. Code § 1.54:

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