McNees
Wallace & Nurick LLC

100 Pine Street • PO Box 1166 • Harrisburg, PA 17108-1166
Tel: 717.232.8000 • Fax: 717.237.5300

Teresa K. Schmittberger
Direct Dial: 717.237.5270
Direct Fax: 717.260.1688
tschmittberger@mwn.com

June 25, 2012

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

VIA HAND DELIVERY

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

Dear Secretary Chiavetta:

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

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

Sincerely,

McNEES WALLACE & NURICK LLC

By Teresa K. Schmittberger

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

TKS/sar
Enclosures
c: Administrative Law Judge Elizabeth H. Barnes (via e-mail and Hand Delivery)
Cheryl Walker Davis, Director, Office of Special Assistants
(with CD-ROM via Hand Delivery)
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 THE MET-ED INDUSTRIAL USERS GROUP, THE PENELEC INDUSTRIAL CUSTOMER ALLIANCE, THE PENN POWER USERS GROUP, AND THE WEST PENN POWER INDUSTRIAL INTERVENORS

Air Liquide Industrial U.S. LP
Air Products & Chemicals, Inc.
American Refining Group Inc.
Appleton Papers Inc.
ATI Allegheny Ludlum Corporation
Carpenter Technology Corporation
Dixie Consumer Products, LLC, Lehigh Valley
E.I. du Pont de Nemours & Co., Inc.
East Penn Manufacturing Company
Electralloy, a G.O. Carlson, Inc., Co.
Ellwood National Steel
Ellwood Quality Steel
Erie Forge & Steel, Inc.
Ervin Industries
Exide Technologies, Inc.
Farmers Pride, Inc.
Glen-Gery Corporation
Harley-Davidson Motor Company - York Division
Knouse Foods Cooperative, Inc.
Latrobe Specialty Steel Company
Lehigh Specialty Melting Inc. (Whemco)
Magnesita Refractories Co.
MERSEN USA St Marys-PA Corporation
Occidental Chemical Corporation
Pittsburgh Glass Works
PPG Industries, Inc.
Procter & Gamble Paper Products Company
RH Sheppard Co., Inc. - Foundry Division
Royal Green LLC
Sheetz, Inc.
Standard Steel
Sweet Street Desserts, Inc.
Team Ten, LLC - American Eagle Paper Mills
The Plastek Group
Tray-Pak Corporation
U.S. Silica Company
Wegmans Food Markets, Inc.
World Kitchen LLC

Susan E. Bruce (Pa. I.D. No. 80146)
Charis Mincavage (Pa. I.D. No. 82039)
Vasiliki Karandrikas (Pa. I.D. No. 89711)
Teresa K. Schmittberger (Pa. I.D. No. 311082)
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
717.232.8000 (p)
717.237.5300 (f)

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

Dated: June 25, 2012

TABLE OF CONTENTS

I. INTRODUCTION

The Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power"), and West Penn Power Company ("West Penn") (collectively, "Companies"), filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") a Joint Petition for approval of their next Default Service Plans ("DSPs"). The Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), the Penn Power Users Group ("PPUG"), and, separately, the West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrials") filed Petitions to Intervene and Answers in Opposition to certain of the Companies' proposals contained in the Joint Petition. On June 15, 2012, Administrative Law Judge ("ALJ") Elizabeth H. Barnes issued a Recommended Decision ("R.D.") in this proceeding. The Industrials file these Exceptions to except specifically to the R.D.'s recommendations to approve the following aspects of the Companies' Joint Petition.

II. EXCEPTIONS

1. <u>Exception No. 1.</u> **The Recommended Decision erred in failing to address that, under the Companies' proposal, NMB Transmission costs would be inappropriately collected from Large Commercial and Industrial customers in a manner that is inconsistent with cost causation principles.**

In this proceeding, the Companies propose to collect NMB Transmission costs from all customers via non-bypassable Default Service Support Riders ("DSSRs"). R.D. at 59. This proposal departs from principles that have been fundamental to the implementation of the Electric Generation Customer Choice and Competition Act ("Competition Act") from the outset; specifically, transmission costs should be collected by the entity providing a customer with generation services. *See* Industrials Reply Brief ("R.B."), p. 23. Currently, the Companies only collect NMB Transmission costs[1] from default service customers, as a component of the price-to-compare ("PTC"). *See* Industrials Main Brief ("M.B."), p. 42. Under the Companies' proposal, however, the electric distribution companies ("EDCs")[2] would collect transmission costs from both shopping and non-shopping customers. As discussed more fully herein, this proposed change creates numerous problems for Large C&I shopping customers, not the least of which is the fact that the Companies incorrectly request that the aforementioned *transmission* costs be collected based upon a customer's monthly *distribution* demand. *See* Direct Testimony of Raymond E. Valdes on behalf of the Companies, p. 25 ("The demands of customers in the Industrial Customer Class will be determined in the same way they are determined under the applicable *distribution* rate schedule....") (emphasis added). From the Large C&I customer perspective, the collection of transmission costs based upon a customer's distribution demand is the most significant modification proposed in the instant proceeding.

Specifically, the proposed rate design for the collection of these costs would lead to a sea change in the manner in which transmission would be charged to Large C&I customers receiving competitive generation supply. In this proceeding, the Companies propose to collect NMB

---

[1] As part of the last Met-Ed and Penelec DSP proceeding, Met-Ed and Penelec proposed to recover one NMB Transmission cost, specifically Network Integration Transmission Service ("NITS"), through a non-bypassable rider. *See* Industrials M.B., p. 46. In the instant proceeding, the Companies propose to collect many costs as "NMB Transmission costs." These costs are most, if not all, of the transmission charges imposed by PJM, including NITS, regional transmission expansion plan ("RTEP"), transmission enhancement charge ("TEC"), and generation deactivation. *See id.* at 43. Of note, the Companies did not originally request to collect generation deactivation charges through their non-bypassable DSSRs; Exelon Generation Company, LLC, and Exelon Energy Company (jointly, "ExGen") proposed this additional charge as part of this proceeding, and ExGen's request was later adopted by the Companies. *See* Rebuttal Testimony of Raymond E. Valdes on behalf of the Companies (hereinafter, "Companies St. No. 2-R"), p. 21. Similarly, the Companies did not originally request to collect unaccounted-for energy ("UFE") through their DSSRs; Dominion Retail, Inc. ("Dominion") proposed this addition, which was later adopted by the Companies. *Id.* at 22. Though not classified by the Companies as a NMB Transmission charge, UFE costs would also be collected via the Companies' DSSRs and present many of the same concerns as other NMB Transmission costs. *See* Exception No. 5, *infra*.

[2] Met-Ed, Penelec, Penn Power, and West Penn are the EDCs in this proceeding.

Transmission costs via their non-bypassable DSSRs "in the same way they are determined under the applicable distribution rate schedule…." *See id.* The R.D. correctly acknowledges that the Companies would employ a demand-based rate design identical to the rate design used to collect distribution charges from Large C&I customers. R.D. at 61. Unfortunately, the R.D. misconstrues the fact that applying the same distribution rate design to transmission-related charges would be inconsistent with cost causation principles, contrary to fundamental principles of public utility law, and violate the traditional manner in which transmission costs are charged to Large C&I customers. *See* R.D. at 61; *see also* Industrials R.B., pp. 17-18; *see also Lloyd v. Pa. Pub: Util. Comm'n*, 904 A.2d 1010 (Pa. Commw. Ct. 2006). To understand the inappropriateness of the Companies' cost collection proposal endorsed in the R.D., it is helpful to know the basis upon which the transmission costs are established. PJM Interconnection, LLC ("PJM"), a regional transmission organization, is tasked by the Federal Energy Regulatory Commission with overseeing and managing the operation and planning of the PJM regional transmission system to which the Companies belong. *See* Industrials M.B., p. 41. A key element of PJM's management of the regional transmission system is recovering the cost of using the transmission system from all load serving entities ("LSEs"), which include both EDCs serving as default service providers and electric generation suppliers ("EGSs"), within the PJM region for transmission based on their respective transmission obligations. *See id.*

The ALJ accurately describes the methodology that PJM utilizes to allocate charges to EDCs: "All NMB transmission charges … are imposed on the basis of an EDCs' total native load, regardless of the source of the generation used to serve that load." R.D. at 62. Subsequently, the EDCs report the one coincident peak ("1-CP") demand for each of the LSEs (*e.g.*, EGSs) in their service territories to PJM for billing purposes. *See* Industrials M.B., p. 41.

The total transmission obligation for the Companies' zones is based on the demand of each of their customers during the "1-CP" established by PJM.[3] Industrials R.B., p. 18. The 1-CP methodology measures the daily load of all retail customers located within a transmission zone coincident with the annual peak of that transmission zone. *See* PJM Open Access Transmission Tariff, Section 34.1. LSEs – either EDCs serving as default service providers or EGSs – pay for transmission service based on peak load responsibility within each zone. Peak load responsibility is based on the portion of the yearly single coincident peak for the zone attributed to the LSE. *See* Industrials M.B., p. 41. PJM charges each LSE for annual transmission costs based on its peak load responsibility. *See id.*

The ALJ fails to acknowledge that no customer demand at any other part of the year is taken into account by PJM to determine an LSEs' total transmission cost. *See* Industrials R.B., p. 18. As a result, the transmission costs associated with a retail customer's 1-CP transmission obligation are precisely equal to the costs incurred by the customer's LSE. *See id.* Thus, to be consistent with cost causation principles, if NMB Transmission costs, including NITS, are to be re-bundled with distribution service and collected from ratepayers as a regulated charge, the rate design methodology must follow cost causation principles.[4]

Instead, the Companies' proposal would charge customers for NMB Transmission costs based on their monthly distribution demand rather than their 1-CP transmission demand. *Id.* at 19. The ALJ misunderstands this crucial difference, stating "[b]ecause NMB Services

[3] "The 1-CP is the metered peak zonal demand as determined by PJM as set during the highest demand day for each of the PJM zones." Industrials R.B., fn. 10. For Large C&I shopping customers, the EDC provides the EGS with the customer's 1-CP so that the EGS can collect the customer's transmission costs based upon the customer's individual transmission obligation.

[4] Large C&I customers must be charged for NMB Transmission costs (if re-bundled with distribution, which as discussed below, the Industrials oppose for Large C&I customers) based on their demand during the 1-CP. *See* Industrials R.B., p. 18.

Transmission Charges are imposed by PJM on a demand basis, the Companies' proposal for allocating such costs is consistent with the methodology PJM uses to allocate transmission-related costs." R.D. at 68. Currently, PJM charges for transmission based on demand during the 1-CP, which may be allocated in EGS contracts to Large C&I customers based on their individual transmission obligations during the peak.[5] Industrials R.B., p. 19. By contrast, under the Companies' proposal, the Companies would charge for demand based on Large C&I customers' monthly distribution demand and ignore the 1-CP altogether. *See* Transcript of Evidentiary Hearing in Docket Nos. 2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670 on April 11-12, 2012 (hereinafter, "Tr."), p. 65; *see also* Industrials R.B., p. 19. In other words, the R.D. confuses monthly distribution demand with 1-CP transmission demand.

To be consistent with cost causation principles, if NMB Transmission is to be collected through a regulated charge, Large C&I customers must be charged for transmission costs based on their demand during the 1-CP. *See* Industrials R.B., p. 18. The ALJ notes that the Companies' proposal to collect NMB Transmission costs provides for Large C&I customers to be charged based on their individual demand according to the proposed rate design of the DSSRs. R.D. at 68. Again, however, the demand the ALJ refers to is monthly *distribution* demand, which is only consistent with cost causation principles for *distribution* charges. If the Companies are choosing to utilize their DSSRs to collect transmission costs, at a minimum, these costs should be collected from Large C&I shopping customers in the manner they are, and always have been, incurred, *i.e.*, based on transmission demand during the 1-CP. *See* Tr. at 290.

[5] Because transmission is a function of competitive supply agreements, some customers may elect other competitive transmission products, including fixed price contracts. The availability of multiple transmission products is one of the benefits associated with competitive market development. *See* Industrials R.B., p. 24.

Without this correct rate design, the Companies' proposal would result in a fundamental overhaul of the transmission cost structure for Large C&I customers. Large C&I customers would be charged for transmission based on their fluctuating monthly distribution demands, which could result in much higher transmission costs than what they would have contributed to their zone's peak and would be allocated to their LSEs by PJM. *See* Industrials R.B., p. 20. Moreover, as discussed in greater detail in Exception No. 2, *infra*, the proposed rate design based on monthly distribution demand would frustrate Large C&I customers' investments of substantial sunk costs and numerous competitive arrangements based on the 1-CP transmission rate design. *See* Industrials M.B., p. 57; *see also* Surrebuttal Testimony of Alex Fried of Procter & Gamble on behalf of the Industrials (hereinafter "Fried St. No. 1-S"), p. 4. There is simply no rationale provided by the Companies that justifies the collection of transmission costs from Large C&I customers in a manner inconsistent with cost causation principles.

If the Commission approves the collection of NMB Transmission costs by the Companies through non-bypassable riders, the rate design for Large C&I customers must be modified. If NMB Transmission becomes a regulated charge, Large C&I customers should be charged based on their 1-CP demand. Large C&I customers have the metering capabilities to be charged in this manner because they already are charged based on their individual PJM transmission obligations by EGSs. *See* Industrials R.B., p. 21. To find that the Companies' proposal may be approved with its current rate design would be unjust and unreasonable, causing many customers to be charged in excess of the transmission costs allocated to them, while subsidizing those customers that may have a higher contribution to the PJM system peak but lower monthly distribution demands. Therefore, the Commission must reject the R.D.'s unreasonable recommendation to permit the Companies to collect NMB Transmission costs from Large C&I customers based on their monthly distribution demand.

As discussed more fully herein, the Industrials submit that the most just and reasonable option that meets the requirements of Commission precedent would be for Large C&I customers to retain their current competitive transmission arrangements with their EGSs; however, if the Commission chooses not to establish a Large C&I carve-out, Large C&I customers must be charged for NMB Transmission costs based on their 1-CP demand in accordance with cost causation principles.

2. **<u>Exception No. 2.</u> The Recommended Decision erred in failing to recognize that the Companies' proposed NMB Transmission collection from Large Commercial and Industrial customers would occur in an unjust and unreasonable manner that would both harm Large Commercial and Industrial customers and discourage the adoption of demand reduction strategies counter to the intent of Act 129.**

In addition to cost causation concerns, the Companies' proposal to collect NMB Transmission costs based on Large C&I customers' monthly distribution demand could have far-reaching adverse effects for Large C&I customers. Contrary to the Public Utility Code, the Companies' proposal to collect transmission costs based upon a customer's monthly distribution demand would lead to inflated transmission costs for certain Large C&I customers; cross-subsidization among Large C&I customers; and stifled private investments into demand reduction strategies by Large C&I customers. The ALJ fails to address any of these concerns, which were discussed at length in the Industrials' Main and Reply Briefs. *See* Industrials M.B., pp. 53-57; *see also* Industrials R.B., pp. 17-22.

The effect of the Companies' proposed rate design on PICA member Procter & Gamble ("P&G") illustrates the above concerns. P&G has been a participant in the competitive retail electric market for over a decade. Tr. at 290. With such extensive shopping experience, P&G

determined that it could significantly lower its energy costs by choosing a pass-through transmission arrangement with an EGS, as many Large C&I customers have since determined, which would permit P&G to be charged for its individual transmission obligation during the 1-CP. *See* Fried St. No. 1-S, p. 4. This arrangement is fair and equitable, because P&G is remitting costs for precisely the portion of Penelec's transmission obligation that P&G caused Penelec to incur during the 1-CP. *See also* Industrials R.B., p. 19. Moreover, P&G can reduce its individual transmission obligation, and thus Penelec's transmission obligation, by lowering its demand on days when the 1-CP is predicted to occur, *i.e.*, hot summer days when demand is likely to be highest. *See* Industrials M.B., p. 55; *see also* Industrials R.B., p. 20. As a result, P&G has invested tens of millions of dollars into the installation of generators at its facility (to be completed by the spring of 2013), which would permit P&G to lower its 1-CP demand in order to decrease its transmission and capacity costs. *See* Fried St. No. 1-S, p. 4. An important factor in P&G's investment into self-generation technology was its ability to achieve a return on the investment in the form of reduced transmission costs. *See id.*

If the Companies' proposal is adopted, however, soon after the installation of P&G's generators is complete, P&G would no longer be charged for transmission in a manner related to its individual transmission obligation. Industrials R.B., p. 20. Even though PJM only attributes transmission costs to Penelec based on P&G's 1-CP demand, P&G would be charged based on its monthly distribution demand.[6] *Id.* As a result, P&G would likely face higher transmission

[6] Once P&G's generators are fully operational, P&G would likely have a lower demand charge throughout the year. *See* Tr. at 288. P&G would occasionally perform maintenance on the generators, requiring P&G to be charged a higher monthly distribution demand. *See id.* However, P&G would not perform maintenance on days the 1-CP is likely to be measured to manage its transmission costs. *See id.* at 289 ("[I]f either generator goes off line, we will load shed appropriately to keep down our peak demand and our peak load contribution ("PLC") to avoid those costs.").

costs that would render its self-generation technology uneconomical. *Id.* Such a change could impact the bottom line of numerous Pennsylvania businesses and industries, in particular those that are currently operating successfully and those that have taken positive efforts to manage their energy costs and reduce their impact on the grid. *See id.* In this economy, the Companies' proposal is unjust, unreasonable, and inconsistent with the Competition Act, considering its potentially negative effect on Large C&I customers through the Companies' four service territories. *See* Industrials R.B., p. 20; *see also* 66 Pa. C.S. § 2802(7) ("This Commonwealth must begin the transition from regulation to greater competition in the electricity generation market to benefit all classes of customers and to protect this Commonwealth's ability to compete in the national and international marketplace for industry and jobs.").

Moreover, if the Companies' proposed rate design is approved as is, Large C&I customers who have lower individual transmissions obligations could be inappropriately subsidizing other Large C&I customers with higher transmission obligations, which creates an unreasonable advantage for the latter customers contrary to 66 Pa. C.S. § 1304. *See* Industrials M.B., p. 55; *see also* Industrials R.B., p. 21. Returning to the P&G example, P&G installed demand reduction technologies to lower its demand during the 1-CP. *See* Industrials R.B., pp. 19-20. By contrast, another customer may not be interested in installing demand reduction technologies. Instead, this customer could choose to run its facility at random times and happen to incur a substantial 1-CP transmission obligation, increasing the overall transmission obligation of the zone. *See id.* Most of the year, however, the customer could run at a lower demand than P&G. *See id.* Per the Companies' proposal, the other customer would have substantially lower transmission costs than P&G. *See id.* Although the other customer's demand during the 1-CP is a substantial portion of its EDC's total transmission obligation, the other customer has lower transmission costs because it would be charged based on its monthly distribution demand. *See id.* On this basis, P&G would cross-subsidize the other customer's transmission service. *See id.* In this way, the Companies' proposal provides an unfair advantage to customers that have not responded to the price signals of the competitive electric market to reduce costs in contravention of the Public Utility Code. *See* 66 Pa. C.S. § 1304; *see also* Industrials M.B., p. 55. Approval of this proposal would thus create perverse market incentives by discouraging competitive market opportunities for Large C&I customers to lower their transmission costs and demand from the system. Industrials R.B., p. 20.

In this proceeding, the Industrials are merely requesting to retain the ability to be charged for transmission based on direct cost causation principles. *See id.* at 22. The Companies' proposal would charge Large C&I customers an assigned price for transmission that is unrelated to the costs that these customers incur on the PJM transmission system. *Id.* at 20. Despite the availability of the retail electric market and the advantages it presents for customers to lower their transmission costs, the Companies propose to derive transmission costs based on factors unrelated to the way in which PJM has established the transmission system. *See id.* at 22.

Adding insult to injury, the Companies' proposal to collect NMB Transmission costs based upon a customer's monthly distribution demand could deter private investment into demand reduction strategies, contrary to the underlying purpose of Act 129. *See id.* at 20; *see also* 66 Pa. C.S. § 2806.1. If Large C&I customers are not charged for transmission costs based on their 1-CP demand, then they would be unable to manage their transmission costs through the aforementioned strategies. Industrials R.B., p. 20.; *see also* Fried St. No. 1-S, p. 4. Accordingly, Large C&I customers are less likely to invest in self-generation and demand reduction capabilities, because the implementation of such strategies would not reduce customers' transmission costs. *See* Industrials R.B., p. 20. Moreover, the Companies' proposal would frustrate the investments of P&G and other Large C&I customers who have already adopted these strategies. *See id.* Because the reduction of consumption and demand is an essential aspect of Act 129, the Companies' proposal, which would deter this behavior, should not be approved.

As a final note, the proposed rate design for the collection of NMB Transmission costs is particularly problematic for Large C&I customers as opposed to other customer classes. Residential and small commercial customers are already charged for transmission based on a portion of their class usage, rather than their 1-CP demand. Industrials R.B., p. 21. Because the load profiles of customers within these classes are more similar, residential and small commercial customers do not have the metering capabilities to be charged based on their transmission obligation determined by PJM. *Id.* The competitive market evolved to provide Large C&I customers with a pass-through transmission arrangement based on the 1-CP because of their wide-ranging intra-class differences in demand. *See id.* As applied to Large C&I customers, the Companies' proposed rate design would be patently unfair and highly discriminatory for many customers. *Id.*

The R.D. incorrectly notes that the Companies' proposal to collect NMB Transmission costs would benefit all customers. R.D. at 62. Unfortunately, the R.D. seems to overlook the significant and highly inappropriate cross-subsidization that would occur within the Large C&I class, to the harm of many Large C&I customers. Collection of NMB Transmission costs based on the monthly distribution demand of Large C&I customers is contrary to fundamental principles within the Public Utility Code that promote competition and demand reduction, and prohibit unfair discrimination. Accordingly, the Companies' proposal to collect NMB Transmission costs through non-bypassable riders should not be applied to Large C&I

customers. If, however, the Commission chooses not to allow for a carve-out for Large C&I customers, then this class of customers must at least continue to be charged for NMB Transmission costs based upon their individual 1-CP. To do otherwise would undercut the progress that has been made by these customers thus far in the energy efficiency and demand reduction areas and chill future investment.

3. **Exception No. 3. The Recommended Decision erred in failing to acknowledge that the Companies' proposed NMB Transmission collection would harm Large Commercial and Industrial customers and stifle competitive market development.**

While the Companies' NMB proposal raises significant cost collection issues, the Commission cannot lose sight of the fact that the Companies' overarching proposal to collect NMB Transmission costs through non-bypassable riders would inappropriately re-bundle transmission and distribution costs, thereby eliminating the competitive products for pricing transmission available to Large C&I customers. *See* Industrials R.B., p. 23. As part of this loss, Large C&I customers would no longer have the ability to allocate the risk of fluctuating transmission costs in a manner of their choosing. *See id.* at 24. For Large C&I customers in particular, the elimination of competitive products for pricing transmission reduces the attractiveness of the competitive market and hinders market development. *See id.* Unfortunately, the R.D. is silent with respect to the impact of this competitive market interference on Large C&I customers.

As discussed more fully in the Industrials' Main and Reply Briefs, the Competition Act and PUC regulations provide for transmission and distribution charges to be unbundled, with transmission and generation to be charged by the same entity. *See* 66 Pa. C.S. §§2802(13) and 2804(3); *see also* 52 Pa. Code §§ 54.182 and 54.187(d). In other words, shopping customers should be charged for generation and transmission costs by their EGSs and distribution costs by their EDCs. The Companies' proposal to collect transmission costs from all customers is a direct violation of PUC precedent in the Commonwealth. *See* Industrials R.B., p. 23.

After the passage of the Competition Act, unbundling of transmission and distribution permitted Large C&I customers to develop the pass-through and fixed price transmission products with their EGSs. Industrials R.B., p. 24. The pass-through transmission product offers customers a transmission price that represents the customer's individual transmission obligation determined under PJM rules (*i.e.*, a direct pass-through of transmission costs based upon the customer's 1-CP). Industrials M.B., p. 41. The fixed price transmission product permits customers to receive a non-fluctuating transmission price, which, as a result, may include a risk premium, since the EGS would be taking on the risk of hedging these costs. *See id.* at 42. These two products are important for Large C&I customers, who may choose a fluctuating price without a risk premium to minimize costs, or who may chose to pay the extra for a risk premium in order to obtain a stable price. Industrials R.B., p. 24.

The proposed collection of NMB Transmission costs as a non-bypassable charge by the Companies eliminates both the pass-through and fixed price competitive transmission products. *Id.* By removing products from the competitive market, the Companies hinder competitive market development for Large C&I customers, who are the largest participants in Pennsylvania's retail electric market. *See id.* Large C&I customers who have been shopping in large measure since the expiration of rate caps will once again be subject to a charge for transmission imposed on them by EDCs, rather than a charge created through competitive market forces, contrary to the Competition Act. *See* 66 Pa. C.S. § 2802(6) ("Competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.").

In the R.D., the ALJ completely disregards the effect of this competitive product elimination on Large C&I customers. Instead, the R.D. focuses on reducing the risks for EGSs and the importance of lowering the risk premium included in fixed price shopping contracts. R.D. at 66. The Companies allege that EGSs would reduce the risk premium embedded in their prices if NMB Transmission costs, which are difficult to hedge, are collected by EDCs. *See* Companies St. No. 2-R, pp. 11-12. However, this risk premium analysis may be most relevant for residential and small commercial shopping customers who might view a risk premium as a negative aspect of shopping. Industrials R.B., pp. 23-24. For Large C&I customers, the fixed price arrangement, even including a risk premium, may be an attractive option for purposefully allocating the risk of fluctuating transmission costs to the EGS instead of the customer.[7] *Id.* at 24. Certain businesses may prefer to remit additional costs in exchange for a stable price over the term of their contracts. *Id.* Accordingly, a reduction in the risk premium is not as important for Large C&I customers who choose a fixed price arrangement for stability purposes.

Large C&I customers are a different type of customer than residential and small commercial customers and would be uniquely impacted by the Companies' proposal to eliminate competitive pricing products for transmission service. *Id.* As such, the solution for Large C&I customers should be a carve-out from the Companies' proposal to re-bundle distribution and transmission. *See id.* at 22. Otherwise, Large C&I customers will have fewer competitive market opportunities to manage their energy costs as intended by the Competition Act. *See* 66 Pa. C.S. § 2802(7). Although the R.D. expresses concern for the EGSs' ability to manage risk, the Competition Act was concerned with providing a viable market for all customers, including

[7] If one EGS chooses not to offer the fixed price product, then the Large C&I customer may find another EGS that will. *See* Tr. at 72-73.

Large C&I customers, whose needs may by different than the residential and small commercial class. *See id.* at § 2802(6). Accordingly, the Commission must reject the ALJ's recommendation and prohibit the Companies from collecting NMB Transmission costs from Large C&I customers.

4. **<u>Exception No. 4.</u> The Recommended Decision erred in failing to give the appropriate weight to the Industrials' evidence proving that the Companies' proposed NMB Transmission collection is not in the public interest.**

The Companies' proposal to collect NMB Transmission costs from all customers beginning June 1, 2013, would raise significant transitional issues, especially for Large C&I customers, through interference with many shopping contracts. In the Main and Reply Briefs, the Industrials present a number of issues related to this contractual interference and renegotiation; however, the R.D. fails to acknowledge the significance of the Industrials' concerns. Instead, the R.D. attributes too much weight to the Companies' arguments, which inappropriately downplay the effect of this proposal on shopping customers' contractual dealings. *See* R.D. at 63-69.

Specifically, the R.D. errs in not finding that the Companies fail to show by a preponderance of the evidence that the proposed NMB Transmission collection is just, reasonable, and in the public interest. *See* 66 Pa. C.S. § 315(a) (indicating that the burden of proof is on the utility to show that a proposal is just and reasonable); *see also Se-Lin Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856, n. 1 (Pa. 1950). In fact, the Companies' proposal is unjust and unreasonable because it forces Large C&I customers to enter into contract renegotiation; involves no transition plan for customers; and interferes with procurement and contracting standardization throughout the Commonwealth. As a result, the Companies' proposal should be rejected by the Commission in its entirety.

As discussed in the Main and Reply Briefs, the Industrials are deeply concerned that customers would be overcharged for NMB Transmission costs if they are parties to EGS contracts that extend beyond June 1, 2013, the proposed implementation date of the Companies' DSPs. *See* Industrials M.B., p. 48; *see also* Industrials R.B., p. 25. In this respect, the R.D. states that this concern is unwarranted because other elements of EGS contracts will minimize the likelihood that shopping customers would be overcharged. R.D. at 63-64. For pass-through arrangements, the R.D. explains that NMB Transmission costs would automatically be removed from contracts if the Companies begin to collect the costs. *Id.* at 63. In addition, for those customers with fixed price arrangements, the R.D. states that other below-market aspects of contracts could continue to render the contracts economical after the Companies begin to collect NMB Transmission costs. *Id.* at 64.

The R.D. errs in its analysis with respect to both pass-through and fixed price transmission arrangements. Initially, it cannot be assumed that NMB Transmission costs would automatically be removed from pass-through transmission arrangements. *See* Industrials R.B., p. 25. Contracts are drafted by private parties who may agree to a provision that would allow for continued collection of the costs by EGSs. *Id.* The only automatic removal of costs occurs during renegotiation at the end of a contract term.

Turning to fixed price transmission arrangements, it is unreasonable to surmise that EGSs are including below-market elements that would offset the double collection of NMB Transmission costs. Moreover, assuming *arguendo* that customers were able to negotiate below-market elements of their contracts, they cannot be expected to lose these beneficial aspects of their contract price merely because the Companies seek to implement a proposal that, for all intents and purposes, seeks to assist EGSs, rather than customers. *See id.* Customers negotiate their contracts as part of a good faith transaction and should retain the benefits of their original bargain. *Id.*

Accordingly, Large C&I customers must renegotiate their contracts to ensure that double collection of NMB Transmission costs is avoided; however, there is evidence that the extraction of NMB Transmission costs from fixed price contracts may prove to be difficult, if not impossible. For example, the Retail Energy Supply Association ("RESA") explained that because NMB Transmission costs are embedded in a single price, they cannot be differentiated from other elements of the price. Rebuttal Testimony of Aundrea Williams on behalf of RESA, pp. 10-11. Moreover, Dominion stated that although it planned to take efforts to remove these costs from contracts, other EGSs might not give customers the same courtesy. Rebuttal Testimony of Thomas J. Butler on behalf of Dominion, p. 11. Based on this testimony, it cannot be presumed that transmission costs would or could be cleanly eliminated from customers' supply contracts after June 1, 2013.

Notwithstanding these challenges, the Companies provide no transition plan for the removal of NMB Transmission costs from shopping contracts even if a method for extracting these costs was determined. The R.D. states that a transition plan is unnecessary considering the amount of months between the Companies' DSP approval, (*i.e.*, August 2012), and the DSP implementation date, (*i.e.*, June 1, 2013). *See* R.D. at 68. However, because RESA testified that these costs may be impossible to extract, the length of time before June 1, 2013 is irrelevant. Industrials R.B., p. 26. Moreover, if customers are not aware of the Companies' proposals, they may not approach their EGSs for renegotiation. Though the R.D. mentions that EGSs have regular meetings during which these charges have been discussed, customers are not involved these meetings. R.D. at 68. Lack of customer notice could still lead to double collection of these costs.[8] *See* Industrials R.B., p. 27.

With respect to the ease of renegotiation, the R.D. further states that because the Industrials are willing to renegotiate their contracts with respect to SPAEC arrangements, they should likewise remove their NMB Transmission costs. R.D. at 65. This analogy is inappropriate, however, based on the potential impact of the renegotiation with respect to SPAECs versus NMB Transmission costs. SPAECs are a minor aspect of contracts as compared to transmission costs, a central component of electric service. *See, e.g.*, Met-Ed Electric Service Tariff, Electric Pa. P.U.C. No. 51, p. 92 (indicating that the SPAEC charge for Rates GS-Large, GP, and TP is 0.016 cents per kWh). In addition, the inclusion of 100% SPAEC responsibilities in contracts would eliminate the need for future renegotiations related to SPAEC percentages because EGSs would become entirely responsible for them. Industrials R.B., p. 26. As a result, the Industrials' SPAEC recommendations have no bearing on their ability to renegotiate contracts with respect to NMB Transmission costs.

The R.D. also minimizes the importance of transmission standardization for procurement and contracting purposes throughout the Commonwealth for Large C&I customers with multiple facilities in different service territories. R.D. at 67. Citing Penn Power's collection of RTEP costs beginning June 1, 2013, the R.D. explains that NMB Transmission costs will lack

[8] The R.D. explains that the settlement of Met-Ed's and Penelec's last DSP proceeding without the inclusion of a non-bypassable NITS rider does not indicate anything about the merit of the Companies' proposal in the instant proceeding. R.D. at 65. When referring to the settlement, the Industrials only intended to show that they were opposed to this type of collection for NITS in a prior proceeding, and the Companies were aware of this opposition. The Industrials are even more concerned about the instant proposal to collect NITS as well as other transmission costs through non-bypassable riders, considering the extensive efforts in the last DSP proceeding and the Commission's regulations that provide otherwise. *See* Industrials R.B., fn. 17.

standardization when all of the Companies' next DSPs begin.[9] *Id.* In addition, the R.D. mentions that the FirstEnergy Ohio Companies began collecting NMB Transmission costs through non-bypassable riders on June 1, 2011, which also detracts from standardization for Pennsylvania-Ohio chain businesses. *Id.*

As a threshold matter, the collection of NMB Transmission costs in Ohio is inapplicable to the instant proceeding. Ohio has a different regulatory system than Pennsylvania, which does not indicate that generation and transmission should be charged by the same entity. Industrials M.B., p. 59. The R.D. further errs because currently in Pennsylvania, there is pure standardization among EDCs regarding the collection of NMB Transmission costs, namely with respect to NITS. Industrials R.B., p. 27. Businesses with multiple facilities can utilize standard procurement and contract language throughout the Commonwealth. Industrials M.B., p. 52. If the Companies' proposal is approved, these customers who undertake massive procurement efforts would be tasked with modifying their procurement processes and contractual terms on a service territory by service territory basis. Creating this added complexity for the procurement and contracting processes is unwarranted and unreasonable for Large C&I customers.

All of the transitional issues presented by the Companies' proposal, ranging from potential double collection of NMB Transmission costs to contracting and procurement complexities for chain businesses, would increase the time and resources Large C&I customers

---

[9] In a separate proceeding, the Commission approved Penn Power's future collection of RTEP costs through non-bypassable riders. *Petition of Pennsylvania Power Company For Approval of Default Service Program For Period from January 1, 2011 through May 31, 2013,* Docket No. P-2010-2157862 Opinion and Order (entered Oct. 21, 2010). As stated previously, the Industrials do not believe the approval of this collection has any bearing on the instant proceeding. Penn Power is a much smaller service territory with far fewer Large C&I customers that would be impacted by this collection. Industrials R.B., fn. 16. Moreover, as discussed further in Exception No. 6, *infra*, the nature of the RTEP charge is a much smaller component of overall transmission costs. For these reasons, the outcome of the Penn Power proceeding should not influence the outcome of the instant proceeding with respect to Large C&I customers in all four service territories.

invest in their competitive electric market dealings. The Companies provide no evidence that supports the collection of NMB Transmission costs via non-bypassable riders from Large C&I customers and fail to meet their requisite burden of proof. *See* 66 Pa. C.S. § 315(a). Considering the concerns of Large C&I customers, and the lack of evidence provided by the Companies, the R.D. errs in its approval of the Companies' proposal to begin collecting NMB Transmission costs from all customers. It is unjust and unreasonable for the Companies to collect these costs without a carve-out for Large C&I customers. Accordingly, the Commission must reject the ALJ's recommendation and prohibit the Companies from collecting NMB Transmission costs from Large C&I customers.

5. **<u>Exception No. 5.</u> The Recommended Decision erred in failing to address the Industrials' opposition to the collection of generation deactivation and unaccounted-for energy costs via non-bypassable Default Service Support Riders.**

Contrary to the R.D., the Industrials explicitly opposed the ExGen and Dominion proposals regarding the collection of generation deactivation and UFE costs via the Companies' non-bypassable riders. Surrebuttal Testimony of Joseph Raia of Sheetz, Inc. on behalf of the Industrials (hereinafter "Raia St. No. 1-S"), p. 11; *see also* Industrials M.B., p. 62; *see also* Industrials R.B., pp. 29-30. The collection of generation deactivation costs, described as an additional NMB Transmission cost, is opposed for all of the foregoing reasons previously set forth herein regarding NMB Transmission Costs, as these arguments are just as applicable to generation deactivation costs as they are for NITS, RTEP, and TEC costs. In addition, although the Companies classify UFE costs as separate from NMB Transmission costs, the Industrials' concerns related to contracting and double cost collection would be just as applicable to this cost because the Companies also propose to collect these costs through their non-bypassable DSSRs.

Accordingly, the Commission should approve a carve-out for Large C&I customers, which permits them to continue to be charged for generation deactivation and UFE costs by their EGSs.

The R.D. does not provide any justification for the collection of generation deactivation and UFE costs through non-bypassable riders. *See* R.D. at 70 and 72. Moreover, the R.D. states that "there is no dispute on this issue" with respect to UFE costs. *Id.* at 72. On both issues, the R.D. fails to address the Industrials arguments opposing the collection of these costs by the Companies.

For both proposed charges, the Industrials are concerned that the collection of these charges through non-bypassable riders would interrupt long-term shopping contracts and force renegotiation. Raia St. No. 1-S, p. 11. In addition, this proposal would increase the likelihood of double cost collection by the Companies and EGSs while increasing the risk for customers. *Id.* Moreover, there is evidence that the proposed rate design for collection of generation deactivation costs would conflict with cost causation principles. *See* Tr. at 69 and 71; *see also* Industrials R.B., pp. 29-30. Based on the many identical positions with respect to other NMB Transmission costs, generation deactivation, and UFE costs, the Industrials oppose the collection of all costs through non-bypassable riders.[10] *See* Industrials M.B., p. 62; *see also* Industrials R.B., pp. 29-30. Accordingly, the Commission should reject the Commission's recommendation and deny the Companies' proposed collection of generation deactivation and UFE costs for Large C&I customers.

[10] The Industrials opposed the collection of generation deactivation and UFE costs by referring to earlier Sections in their Briefs rather than repeating the same arguments. *See* Industrials M.B., p. 62; *see also* Industrials R.B., pp. 29-30. The Industrials believed this approach would be acceptable as the Companies never differentiated among the other NMB Transmission costs in their case-in-chief.

6. **<u>Exception No. 6.</u> The Recommended Decision erred in failing to acknowledge that the differences among non-market based transmission costs, generation deactivation, and unaccounted-for energy costs could lend themselves to different collection methodologies if certain elements of the Companies' proposal are approved by the Commission.**

Assuming *arguendo* that the Commission agrees with the Companies' position that NMB Transmission costs should be collected through non-bypassable riders, the Industrials urge the Commission to permit the Companies to collect only costs that are truly "non-market based" or incidental to transmission service. While the R.D. does not differentiate among the NMB Transmission costs, if the Commission permits the Companies to collect any transmission costs, the NITS cost collection should remain the responsibility of EGSs.

Specifically, the NITS charge is distinct from the other NMB Transmission costs and warrants continued collection by EGSs even if the Companies are permitted to collect the remaining costs via non-bypassable riders. NITS costs are directly related to the transmission service offered to customers, generally referred to simply as "transmission" costs. *See* Companies Exhibit RLS-2, p. 7. In the 2011 PJM State of the Market Report, the NITS charge, classified by PJM as part of the Transmission Service Charge, equaled 7.1% of the total electricity price per MWh for customers. *See* 2011 PJM State of the Market Report, Table 1-7. For comparison purposes, the TEC charge was only 0.05% of the total price per MWh. *Id.*

Moreover, because the NITS charge is considered the traditional transmission charge, NITS costs are distinguishable from other so-called NMB costs because all customers have to remit transmission costs on an annual basis, which is not the case for other NMB Transmission costs. *See, e.g.*, Exelon Generating Co., LLC, 135 FERC ¶ 61190 (May 27, 2011) (indicating the generation deactivation costs would expire after limited seven- and 12-month terms). The RTEP charge is a minor charge that only represents the costs for identifying transmission system improvements and additions throughout the PJM region. *See* Companies Exhibit RLS-2, p. 8.

Generation deactivation costs only impact certain customers within the PJM region, depending on the reliability analysis for that area. *See* Exelon M.B., p. 3; *see also* Industrials R.B., p. 29. TEC and UFE costs are incidental costs related to utilization of the PJM grid. *See* Companies Exhibit RLS-2, p. 9; *see also* Dominion's M.B., p. 12. In other words, all NMB Transmission costs besides NITS are either incidental or impact only certain customers in the Companies' service territories and therefore are more unpredictable.

Considering the magnitude and predictability of the NITS charge, the Industrials believe that EGSs should retain the collection of NITS costs from their customers. Because the NITS charge is a regularly-incurred charge based on prior year 1-CP demand, the assumption that EGSs cannot hedge for this charge is unpersuasive. *See* Direct Testimony of Charles V. Fullem on behalf of the Companies, p. 9. Based on the nature of the NITS charge, it should remain with the EGS even if EDCs begin to collect all other NMB Transmission costs. To find that this main component of transmission costs should be transferred back to EDCs for collection through non-bypassable riders would authorize an overhaul of the fundamental retail market impacting all market participants.

Finally, as discussed further in Exception No. 2, if the Commission approves the collection of any NMB Transmission, generation deactivation, or UFE costs through non-bypassable riders, the rate design must be modified for Large C&I customers based on their 1-CP demand. Accordingly, if the Commission permits the Companies' collection of NMB Transmission costs, EGSs should continue to collect NITS costs. For all transmission costs collected by the Companies, Large C&I customers must be charged for these costs based on their individual 1-CP demand.

7. **<u>Exception No. 7.</u> The Recommended Decision erred in recommending that the Companies' proposal to modify the procurement of solar photovoltaic alternative energy credits for Large Commercial and Industrial shopping customers should be approved.**

As part of this proceeding, the Companies propose to modify the procurement of SPAECs for all customers, including Large C&I shopping customers, beginning June 1, 2013, as follows: (1) Met-Ed, Penelec, and Penn Power would decrease their SPAEC procurement for Large C&I customers from 100% to 40%; (2) the EGSs serving these customers would have to increase their SPAEC procurement from 0% to 60%; (3) West Penn would increase its SPAEC procurement for Large C&I customers from 0% to 40%; and (4) the EGSs serving these customers would have to decrease their SPAEC procurement from 100% to 60%. *See* Industrials M.B., pp. 20-21. In addition, Met-Ed, Penelec, and Penn Power would reflect the corresponding change in cost for this procurement reduction via their Solar Photovoltaic Requirements Charge ("SPVRC") Riders, while West Penn would implement an SPVRC Rider in order to begin collecting the costs associated with the newly implemented procurement. *Id.* at 20.

Unfortunately, the R.D. incorrectly recommends approval of the Companies' proposed modifications. R.D. at 42. Specifically, the R.D. misconstrues the requirements of the Joint Petition for Partial Settlement achieved in the PUC proceeding approving the merger of FirstEnergy Corp. and Allegheny Energy, Inc. ("Merger Settlement"). *Id.*; *see also* Industrials M.B., pp. 25-27; Industrials R.B., pp. 10-11. In addition, the R.D. fails to provide adequate weight to the evidence presented by the Industrials regarding the detrimental impact that this proposal would have on the public interest at large, as well as Large C&I shopping customers specifically. R.D. at 41; Industrials M.B., pp. 21-25; Industrials R.B., pp. 9-10. Similarly, the R.D. discounts the evidence presented by Industrials refuting the Companies' claims that this proposal would benefit the overall SPAEC market. R.D. at 41; Industrials M.B., p. 28. Finally, the R.D. completely ignores the request of MEIUG, PICA, PPUG, and WPPII for a carve-out Large C&I shopping customers in order mitigate the Companies' unjust, unreasonable, and inappropriate proposal. Industrials M.B., pp. 29-30; Industrials R.B., p. 12. For these reasons, the ALJ's recommendation should be rejected, and the Commission should require the Companies to maintain the status quo, or, in the alternative, implement a carve-out for Large C&I shopping customers.

a. Because the terms of the Merger Settlement between FirstEnergy Corporation and Allegheny Energy, Inc., are non-binding, it is improper for the Companies to rely on the Merger Settlement as support for their SPAEC proposal.

Initially, the R.D. correctly notes that the Companies' proposed change in procurement stems from the aforementioned Merger Settlement. R.D. at 39-40. Unfortunately, the R.D. does not recognize that West Penn is exempt from this provision of the Settlement upon which the Companies base their claim. Industrials M.B., p. 26. Moreover, the R.D. fails to acknowledge that the terms of the Settlement do not mandate the implementation of the Companies' proposal. *Id.* at 25-26. Finally, the R.D. overlooks the fact that the PUC has previously held that provisions of the Merger Settlement cannot be implemented if they are not in the public interest. *Id.* at 26-27.

As discussed more fully in Industrials' Main Brief, the provision of the Merger Settlement that addresses the 40% SPAEC procurement applies only to Met-Ed, Penelec, and Penn Power. Industrials M.B., p. 26. Specifically, the Merger Settlement mandates that the aforementioned provision only applies to those companies already utilizing an SPVRC Rider (*i.e.*, Met-Ed, Penelec, and Penn Power). As a result, WPPII has submitted evidence in this proceeding that, absent a strong public policy reason (and to date none has been presented), the terms of the Merger Settlement should not be extrapolated to include West Penn customers. *Id.*

at 26. Unfortunately, the R.D. fails to mention, much less even recognize, the fact that West Penn should be exempt from this provision of the Merger Settlement since it does not currently have a SPVRC Rider in place.

While the R.D. also suggests that the SPAEC proposal must be implemented under the terms of the Merger Settlement, the R.D. fails to recognize that the Settlement does not hold the Companies to a 40 percent procurement. *See* R.D. at 40; *see* Industrials M.B., pp. 25-27; Industrials R.B., pp. 10-11. Rather, the Merger Settlement indicates that Met-Ed, Penelec, and Penn Power will *propose* to procure 40% of their solar requirements under DSP II using long-term contracts; however, nothing in the Settlement language prohibits the Companies from proposing a procurement amount greater than 40% (*i.e.*, retaining the status quo of 100% procurement).[11] Industrials M.B., pp. 25-26.

In addition, the Merger Settlement recognizes that the parties to the DSP II proceeding may not agree with the Companies' initial proposal, as the language of the Settlement explicitly notes that the parties to the Settlement may propose changes to this percentage requirement. Industrials M.B., p. 26. In this instance, the Industrials' proposal to maintain the status quo or provide a carve-out for Large C&I customers because the proposed procurement is not in the public interest aligns with the underlying purpose of the Merger Settlement, which granted the parties the opportunity to propose adjustments to the Companies' procurement proposal. *Id.*

Contrary to the findings of the R.D., the Merger Settlement does not mandate implementation of a 40 percent procurement by the Companies. On this basis alone, the R.D. recommendation should be discounted. In addition, however, the Commission has recently held

[11] Moreover, the terms of the Settlement do not even require West Penn to modify its procurement at all. Industrials M.B., p. 26.

that the terms of the Settlement can be set aside when they are contrary to the public interest. *See* Industrials M.B., pp. 26-27; *see also See Petition of Metropolitan Edison Company for Approval of Solar Photovoltaic Alternative Energy Credit Purchase Agreement with Air Products and Chemicals, Inc.*, Docket No. P-2011-2264304, Order (entered Dec. 1, 2011). In this instance, the Industrials have provided substantial evidence that the Companies' proposal is not in the public interest. *See* Section 2, *infra*. Accordingly, the findings of the R.D. should be rejected, and the Companies' proposal should be modified to ensure an SPAEC procurement that aligns with the interest of all of the Companies' customers, including Large C&I shopping customers.

b. Because the Companies failed to establish their burden of proof that their SPAEC proposal is in public interest, the proposal should be denied.

At the outset, the R.D. tangentially recognizes that transitional issues will occur as a result of the Companies' proposed modification. R.D. at 40. Unfortunately, the R.D. dismisses these issues, summarily rejecting the concerns of customers with pass-through contracts; ignoring the plight of customers with fixed price contracts; and overlooking the changes that have occurred in the SPAEC market over the past few years. *Id.* at 40-41.

As discussed more fully in Industrials' Main and Reply Briefs, although the Companies carry the burden of proof in this proceeding, the Companies have failed to present substantial evidence indicating that the proposed modification to SPAEC procurement is just, reasonable, and in the public interest. *See* Industrials M.B., pp. 17-31 and 57-58; *see also* Industrials R.B., pp. 8-12. Specifically, the Companies have failed to address how the transitional burdens that will be placed on customers, especially Large C&I customers, outweigh any purported claim of benefit either to customers or the SPAEC market.

As noted by the Industrials, the proposed modifications to SPAEC procurement would be implemented on June 1, 2013, which, while allowing for an easy transition for the Companies,[12] would create a problem for Large C&I shopping customers who do not necessarily have contracts with their EGSs that coincide with the timing of the Companies' DSPs. Industrials M.B., pp. 21-22. Due to this differential in timing, Large C&I shopping customers would have to renegotiate their EGS contracts either to incorporate a 60% SPAEC procurement and cost collection (in the case of customers on the Met-Ed, Penelec, and Penn Power systems) or remove 40% of the SPAEC procurement and cost collection (in the case of customers on West Penn's system). *Id.* at 22. Not surprisingly, this renegotiation, coupled with the unusual 40/60 split, adds an extra burden (and layer of confusion) for customers attempting to confirm that both their EDC and EGS are collecting the correct percentage of SPAECs. *Id.* at 22-23.

Moreover, the onus is even greater for those customers with fixed price contracts who are unable to identify the portion of SPAEC costs that should either be added or subtracted from their contracts. *Id.* at 23. For example, customers with fixed price contracts in the West Penn service territory are charged one price by their EGSs of which AEPS compliance represents but one portion. Renegotiation may be difficult, if not impossible, if these EGSs cannot determine what portion of the fixed price represents SPAEC costs. *Id.* Conversely, renegotiation for customers in the other Companies' service territories may be problematic if they are unable to agree with their EGSs as to what cost should be added to their current prices to account for 60% SPAEC procurement. *Id.*

Despite all of the challenges faced by Large C&I customers due to the Companies' proposed modifications, the Companies have set forth no transition plan to assist customers in

---

[12] The Companies' DSP I ends on May 31, 2013.

the implementation of this proposal. Industrials M.B., p. 24. While Large C&I customers would presume that EGSs would act in good faith to modify contracts, a customer's recourse if an EGS does not act in that fashion has not been addressed by the R.D. Industrials R.B., p. 10. Similarly, the burden of ensuring that costs are appropriately charged and collected from both the EDCs and EGSs fall squarely on the shoulders of customers. Industrials M.B., p. 24. While customers have not asked for this proposed modification, nor would they directly benefit from this resulting change, it is unfortunately the customers who will have to shoulder the resulting burdens that stem from the Companies' proposal.

Even in light of these concerns, the R.D. chooses to completely disregard the plight of the Large C&I customer. In response to the aforementioned concerns raised by the Industrials regarding the overarching effects on the Large C&I customer class, the ALJ inappropriately dismisses these concerns by finding that the Industrials witnesses' Fried's and Raia's monitoring of their individual bills should resolve any and all concerns for the entirety of the Large C&I class. R.D. at 41. In addition, the R.D. wholly ignores the dilemma faced by a fixed price customer by opting not even to recognize this transition issue, much less how it should be addressed. Accordingly, the R.D. did not place adequate weight on the evidence provided by the Industrials regarding the detrimental impact that the Companies' proposal would have on customers, while also according too much weight to the minimal evidence presented by the Companies.

While failing to allocate the appropriate weight to the evidence set forth by the Industrials regarding the detrimental impact on Large C&I customers, the R.D. places too great of a weight on the claim of the Companies that this proposal will "strike[] an appropriate balance between SPAECs obtained through long-term EDC contracts and SPAECs obtained by EGSs…to the benefit of the overall SPAEC market." R.D. at 41. Although the Companies seem to intend for this "benefit" to outweigh the aforementioned transition cost issues that will burden customers, the Companies fail to provide any evidence that current SPAEC market conditions render the Companies' proposal necessary or cost-effective. During the DSP I proceeding, the costs of SPAECs were significantly higher, thereby providing that procurement of SPAECs by an EDC for all customers may have provided a benefit in overall costs. Conversely, the price of SPAECs has significantly decreased over the past year. Industrials M.B., p. 28. As a result, the price stability resulting from long-term contracts by an EDC may no longer be necessary, and EGSs may be in a better position to procure more affordable SPAECs in the future. *Id.*

In addition, the changes in the SPAEC market compound the problem for shopping customers in the West Penn service territory. As noted previously, West Penn customers currently have all of their SPAECs procured by their EGSs. Under the Companies' proposal, West Penn shopping customers would be held captive to long-term SPAEC contracts even though no demonstrable need exists for such contracts to support solar development in light of current market conditions. Industrials M.B., p. 28. Because experience in West Penn's service territory demonstrates that EGSs can cost-effectively procure SPAECs in the renewable energy market, the adoption of an SPVRC Rider for West Penn is not needed at this time. *Id.*

Accordingly, the purported benefits of this proposed SPAEC modification have not been substantiated, and, as such, cannot outweigh the transitional burdens that will plague customers. Therefore, the Commission must reject the R.D.'s recommendation and require in the Companies to maintain the status quo with respect to SPAEC procurement. In the alternative, and as discussed more fully below, the Commission should reject the R.D.'s recommendation as it applies to Large C&I shopping customers, by specifically providing a carve-out for this customer class, under which these customers' EGSs would be responsible for 100% of the customer-required SPAEC procurement. *See* Section 3, *infra*.

c. As an alternative to the Companies' SPAEC proposal, the Commission should either allow the Companies to continue their current SPAEC procurement methodologies or transfer all SPAEC responsibilities to EGSs for Large Commercial and Industrial customers.

Even assuming, *arguendo*, that the Merger Settlement should be interpreted as requiring the Companies to modify their SPAEC procurement, the public interest factor requires a carve-out for Large C&I shopping customers to account for the unjust and unreasonable effect that the Companies' proposed modification would have on these shopping customers' contracts. Unfortunately, however, the R.D. fails to recognize, much less even address, the need for such a carve-out.

As noted more fully in Industrials' Main and Reply Briefs, the Industrials would prefer to retain the status quo (*i.e.*, Met-Ed, Penelec, and Penn Power procuring 100% of the SPAECs needed for Large C&I customers, with West Penn procuring 0% of the SPAECs required for these customers). Industrials M.B., pp. 29-30. In the alternative, however, the Industrials would be amenable to all of the Companies procuring 0% of the SPAECs required for Large C&I shopping customers, thereby permitting EGSs to procure 100% of the SPAECs for these customers (as is currently the status quo in the West Penn service territory). *Id.*

While the R.D. fails even to give this proposal a passing glance, further review indicates that this alternative would address Large C&I shopping customer concerns, while still providing the purported benefits claimed by the Companies. Industrials M.B., p. 29. Specifically, by retaining the status quo for West Penn, these Large C&I customers would not have to incur any of the burdens resulting from renegotiation of their EGS contracts. *Id.* By reducing the Met-Ed, Penelec, and Penn Power procurement to 0%, Large C&I shopping customers would only have to allow for a one-time modification to their current EGS contracts. *Id.* at 29-30. More importantly, this resolution would eliminate the need for customers to devise complex strategies for calculating the costs associated with the Companies' proposed 40/60 procurement split, while also minimizing the risk of customers being overcharged by the EDC or EGS due to this complex split.[13] *Id.*

In addition, this carve-out comports with the provisions of the Merger Settlement, in that, while the Companies originally proposed a 40% procurement, the Industrials have proposed a change in this percentage requirement (*i.e.*, to 0%) to account for the specific needs of Large C&I shopping customers. Industrials M.B., p. 29. In other words, the public interest component would be achieved by allowing for this carve-out to attend to the needs of Large C&I shopping customers, most of whom would have to address this issue via their EGS contracts, as compared to residential and small commercial customers, who would not have as complex of contracts with their EGSs.

Finally, because this carve-out would only apply to Large C&I shopping customers, the Companies' goal, of allowing for long-term contracts with EDCs while utilizing the procurement and hedging experiences of EGSs, would still be met through the residential and small commercial customers. R.D. at 41. Accordingly, by utilizing the Industrials' proposal, the goals of the Companies, the aim of the R.D., and the concerns of the Large C&I shopping customers

[13] While the ALJ is "persuaded" by the thought that both Mr. Raia and Mr. Fried closely monitor their bills and can determine whether their respective companies are being correctly charged for SPAECs, the ALJ overlooks the fact that the burden still remains on the customer in attempting to obtain a correction if an overcharge should occur. R.D. at 41; Industrials M.B., p. 29.

would all be met in a manner that is just, reasonable, in the public interest, and in accordance with PUC precedent.

As such, the Commission should reject the findings of the R.D. and instead allow for a carve-out of SPAEC procurement for Large C&I shopping customers so that 100% of these customers' SPAEC procurement could be met by their EGSs.

8. Exception No. 8. The Recommended Decision erred in failing to address any *arguments in opposition to West Penn's Hourly-Priced Rider modifications.*

The Industrials, WPPII in particular, oppose the Companies' proposals to modify West Penn's Hourly-Priced Rider in the following respects: (1) to bid out the procurement of hourly-pricing; (2) to convert from kW to kWh capacity pricing; and (3) to convert from day-ahead to real-time hourly pricing. Companies M.B., pp. 22 and 39. In the R.D., the ALJ approves all of these modifications and provides no analysis related to WPPII's concerns. R.D. at 54. In fact, after describing an hourly-priced model that includes each of these characteristics, the R.D. states that "no party to this proceeding opposed its continued use." R.D. at 37. As discussed in more detail in the Industrials' Main and Reply Briefs, WPPII opposes these modifications to West Penn's Hourly-Priced Rider for the reasons addressed below.[14] Accordingly, the Commission should reject the ALJ's recommendation to modify West Penn's Hourly-Priced Rider.

a. The proposed fixed adder associated with bidding out West Penn's hourly-priced default service should be denied.

Although West Penn procures the hourly product in-house for its Large C&I default service customers, the Companies propose for West Penn to bid out this procurement beginning June 1, 2013. Direct Testimony of Dean W. Stathis on behalf of the Companies, pp. 8-9.

[14] Please note that in addition to discussing these positions in Main and Reply Briefs, the Industrials, specifically WPPII, opposed the Companies' proposals in this Exception in an initial Answer, and cross-examined on these proposals during the evidentiary hearings in this proceeding. *See* Industrials R.B., p. 7.

Because the current in-house procurement requires minimal administrative expenses on the part of West Penn, WPPII submits that bidding out the procurement of West Penn's hourly product, which would include a fixed adder for suppliers, does not qualify as "least cost over time." *See* 66 Pa. C.S. § 2807(e). However, the R.D. is silent with respect to WPPII's position that this proposal would be higher cost for Large C&I customers. As a result, the Commission should deny the Companies' request to bid out the procurement of West Penn's hourly product.

West Penn's current in-house procurement of the hourly default service product results in minimal administrative costs imposed on customers. Specifically, the 2011 hourly procurement and incidental costs totaled less than $40,000. *See* WPPII Cross-Examination Exhibit No. 4, p. 3-8; *see also* Tr. at 131. This low annual expense for in-house procurement indicates that West Penn experiences little, if any, burden performing this procurement for Large C&I default service customers. *See* Industrials M.B., p. 14. At the same time, Large C&I customers benefit from the in-house procurement in the form of lower generation-related costs. *See id.*

If West Penn's hourly product is bid out to a supplier, however, Large C&I customers would remit additional costs associated with the proposed fixed adder. *See id.* at 13. The Companies explain that the fixed adder would compensate the supplier for its procurement services and include a profit. Direct Testimony of James D. Reitzes on behalf of the Companies, p. 7. Though the Companies cannot provide specific pricing information for the fixed adder until procurement for their next DSPs begin, the fixed adder would likely result in a higher default service price for Large C&I customers because West Penn does not receive a profit for its provision of default service. Industrials M.B., p. 14. Accordingly, the Companies' proposal to bid out West Penn's hourly-priced product does not comport with "least cost over time" principles. *Id.*

The Companies provide no justification for this proposal that warrants its adoption despite the higher price that would be associated with hourly default service. The Companies defend this proposal as proper because it was already approved for the other Companies. *See* Companies R.B., p. 21. For West Penn, however, this proposal appears to increase default service costs for Large C&I customers in contravention of the Public Utility Code. As a result, the Commission should reject the ALJ's recommendation and deny the Companies' proposal to bid out procurement of the hourly product and include a fixed adder associated with the product.

b. The proposed conversion from kW to kWh capacity pricing within West Penn's Hourly Priced-Rider should be denied.

WPPII opposes the conversion from kW to kWh capacity pricing for West Penn's hourly default service customers because it is inconsistent with cost causation principles contrary to utility law precedent. *See Lloyd v. Pa. Pub. Util. Comm'n*, 904 A.2d 1010 (Pa. Commw. Ct. 2006). Further, kWh capacity pricing discourages Large C&I customers from implementing strategies to reduce their peaks, as intended by Act 129. *See* 66 Pa. C.S. § 2806.1. The R.D. fails to address WPPII's arguments opposing this conversion, even though the Companies provide no evidence showing this conversion is just and reasonable for Large C&I customers. *See* Industrials M.B., p. 12. As a result, the Commission should deny this proposed modification to West Penn's Hourly-Priced Rider.

As discussed in the Industrials' Main Brief, the Companies' proposal to charge Large C&I customers for capacity on a kWh basis conflicts with cost causation principles because the Companies incur capacity charges based on the demand of their load calculated by PJM. *See* West Penn's Electric Generation Supplier Coordination Tariff, Electric Pa. P.U.C. No. 2S, p. 25; *see also* PJM Open Access Transmission Tariff, Attachment M-2. Capacity charges are based on customers' average demand during the five highest peak days on the PJM system, which is referred to as the peak load contribution ("PLC"). Industrials M.B., p. 9; *see also* West Penn's Electric Generation Supplier Coordination Tariff, Electric Pa. P.U.C. No. 2S, p. 25 ("In accordance with the PJM ... rules and procedures, the Company will calculate a system PLC "tag" for each Customer, served in the Company's Pennsylvania jurisdiction."). Therefore, if the Companies' proposal is approved, Large C&I default service customers would be charged for capacity in a manner that is unrelated to how they incur capacity costs under PJM rules. *See* Industrials M.B., p. 9.

Many of the Industrials' cost causation concerns related to NMB Transmission costs similarly apply to kWh capacity pricing. If Large C&I customers are charged for capacity on a kWh basis, they could not manage their capacity costs by lowering their demand when the PLC is likely to be established. *See id.* at 11. If this proposal is adopted, Large C&I customers would be discouraged from adopting demand reduction strategies that would lower their PLC. *Id.* As a result, the conversion to kWh capacity pricing creates perverse market signals for Large C&I customers and discourages conservation behavior intended by Act 129.[15] *See id.*; *see also* 66 Pa. C.S. § 2806.1.

The Companies assert that West Penn should charge Large C&I customers for capacity on a kWh basis to standardize the rate design of all the Companies. Companies R.B., p. 30. Yet the Companies do not provide any evidence that supports converting West Penn's rate design as

---

[15] In addition, the default service rate design for capacity is of particular concern for Large C&I customers as opposed to smaller customer classes. Unlike residential and small commercial customers, Large C&I customers have more of an incentive to install self-generation and other demand reduction technologies to lower their demand and respond to market signals. *See* Industrials R.B., p. 20. Moreover, Large C&I customers have individual metering that permits these customers to be charged based on their specific PLC. *See id.* at 18. Because Large C&I customers are different from smaller customers in these crucial respects, WPPII submits that the Commission's policy statement providing that demand charges should not be included in an EDC's PTC should not apply to capacity for Large C&I default service customers. *See* 52 Pa. Code § 69.1810.

opposed to the other Companies' rate designs. *See* Industrials M.B., p. 12. Considering the cost causation concerns discussed above, the Companies have not met their burden of proof with respect to the proposed conversion to kWh capacity pricing. *Id.* Accordingly, the Commission should reject the ALJ's recommendation and deny the conversion to kWh capacity pricing in West Penn's Hourly-Priced Rider.

c. The proposed conversion from day-ahead to real-time hourly pricing in West Penn's Hourly-Priced Rider should be denied.

WPPII opposes the conversion to real-time hourly default service pricing because it is traditionally more expensive for customers, which is inconsistent with the "least cost over time" requirement. *See* Industrials M.B., p. 16; *see also* 66 Pa. C.S. § 2807(e). In addition, it is unreasonable to pay suppliers for real-time prices if they bid into the day-ahead market when the day-ahead prices have been historically lower. *See* Industrials M.B., p. 16. For these reasons, although the R.D. ignores WPPII's opposition with respect to this proposal, the Commission should deny the Companies' modification of West Penn's Hourly-Priced Rider to include real-time hourly pricing.

WPPII's position with respect to this proposal is straightforward. It is an established fact that day-ahead pricing, as currently charged by West Penn, is historically lower than real-time pricing. *Id.* Over the past six years, only 2011 featured lower average real-time prices than day-ahead prices. *See id.* Because day-ahead prices are generally more affordable, WPPII opposes the proposed conversion to real-time pricing as inconsistent with "least cost over time" principles. *See* 66 Pa. C.S. § 2807(e).

Moreover, WPPII is concerned that the Companies' proposal would permit default service suppliers to bid into the day-ahead market when they are being paid real-time prices. *See* Companies R.B., p. 36. The overwhelming majority of suppliers choose to bid into the day-ahead market instead of the real-time market. Industrials M.B., p. 15. If suppliers serving West Penn's hourly default service customers are permitted to bid into the day-ahead market and receive real-time payments, these suppliers could be overcompensated, especially considering the traditionally lower day-ahead prices. *See id.* at 15-16.

Once again, the Companies provide no evidence supporting that this modification to West Penn's Hourly-Priced Rider is just and reasonable for Large C&I default service customers. Although the Companies claim that the proposal creates more consistency among the Companies' rates and riders, this proposal is inappropriate if adopted at the expense of customers. *See* Companies M.B., p. 34; *see also* Industrials M.B., p. 16. Because the Companies' proposed conversion to real-time pricing within West Penn's Hourly-Priced Rider appears to be inconsistent with the "least cost over time" requirement within the Public Utility Code, the Commission should reject the ALJ's recommendation and deny the conversion.

9. **Exception No. 9. The Recommended Decision erred in failing to address whether cross-subsidization between Service Types 20 and 30 would be avoided if the classes are consolidated.**

As part of this proceeding, the Companies proposed to consolidate West Penn's Service Types 20 and 30. The Industrials opposed this proposal because West Penn has not borne its burden to prove that the consolidation does not result in cross-subsidization. Although the R.D. approves the consolidation of Service Types 20 and 30, it does not address the Industrials' arguments with respect to cross-subsidization. Because the Companies failed to provide a preponderance of evidence that their proposal would avoid cross-subsidization among customer classes as required by the Competition Act, the Commission should deny the consolidation of West Penn's Service Types 20 and 30. *See* 66 Pa. C.S. § 2807(e)(7).

From the Industrials' perspective, this cross-subsidization is self-evident within the R.D. itself. The R.D. explains that combining Service Types 20 and 30 would have "offsetting effects" because Service Type 20 customers who have a less attractive load shape would lower the bid prices for Service Type 30 customers who have more a attractive load shape but are more likely to shop. R.D. at 17. The Industrials contend that these "offsetting effects" are in fact cross-subsidization effects. Here, the R.D. acknowledges that if Service Types 20 and 30 are combined, there will be an effect on their bid prices from wholesale suppliers but does not indicate what the precise effect would be. Without quantification of these changing prices, it is likely that one class would subsidize another class post-consolidation. Industrials R.B., p. 6.

Moreover, the Industrials are concerned that differences between these classes would cause customers in one class to remit costs for infrastructure and billing changes that the customers have already incurred. Industrials M.B., p. 5. The Companies provide no evidence that the costs of consolidation could be applied to the customers in each class in a manner that avoids cross-subsidization. *See id.* The Industrials testified that customers in different classes are subject to separate billing and metering requirements. Direct Testimony of Joseph Raia of Sheetz, Inc., on behalf of the Industrials, p. 14. Despite this evidence, the R.D. only acknowledges the similarities between the classes identified by the Companies, ignoring that the Companies have not explained how cross-subsidization would be avoided during the consolidation process.

The Industrials do not dispute the R.D.'s position that the proposed consolidation would promote customer class consistency among the four Companies. *See* R.D. at 16. However, the R.D. errs when it values this consistency over the potential for cross-subsidization. The R.D.'s example describing the differing load shape and shopping levels among the customers in these Service Types is an indication of this cross-subsidization. The Companies must provide evidence that shows cross-subsidization resulting from the consolidation would be avoided despite these differences between the customer classes related to load shapes, shopping levels, metering, and billing. Industrials M.B., p. 5. Because the Companies failed to provide this evidence, the Commission should reject the R.D.'s recommendation and deny the consolidation of Service Types 20 and 30.

III. CONCLUSION

WHEREFORE, MEIUG, PICA, PPUG, and WPPII respectfully request that the Pennsylvania Public Utility Commission: (1) deny the Companies' collection of NMB Transmission costs through non-bypassable riders for Large C&I customers; (2) in the alternative, modify the Companies' collection of NMB Transmission costs to include a rate design that allocates NMB Transmission costs to Large C&I customers based on their individual 1-CP transmission obligation; (3) deny the Companies' procurement of 40 percent of solar photovoltaic alternative energy credits for their load and cost collection through non-bypassable riders; (4) deny modification of West Penn's Hourly-Priced Rider; and (5) deny consolidation of West Penn's Service Types 20 and 30.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By ______________________________

Susan E. Bruce (Pa. I.D. No. 80146)
Charis Mincavage (Pa. I.D. No. 82039)
Vasiliki Karandrikas (Pa. I.D. No. 89711)
Teresa K. Schmittberger (Pa. I.D. No. 311082)
McNees Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
717.232.8000 (p)

Dated: June 25, 2012

Counsel to MEIUG, PICA, PPUG, and WPPII

CERTIFICATE OF SERVICE

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

VIA E-MAIL AND FIRST-CLASS MAIL

Charles Shields
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commerce Keystone Building
400 North Street, 2^{nd} Floor
P.O. Box 3265
Harrisburg, PA 17105-3265
chshields@pa.gov
sgranger@pa.gov

Daniel G. Asmus
Assistant Small Business Advocate
Office of Small Business Advocate
1102 Commerce Building
300 North Second Street
Harrisburg, PA 17101
dasmus@pa.gov

Darryl A. Lawrence
Aron J. Beatty
Tanya J. McCloskey
Office of Consumer Advocate
555 Walnut Street, 5^{th} Floor
Forum Place
Harrisburg, PA 17101
dlawrence@paoca.org
abeatty@paoca.org
tmccloskey@paoca.og
cshoen@paoca.org

Bradley A. Bingaman
Tori L. Giesler
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612-6001
bbingaman@firstenergycorp.com
tgiesler@firstenergycorp.com

Thomas P. Gadsden
Kenneth M. Kulak
Anthony D. DeCusatis
Catherine G. Vasudevan
Morgan Lewis & Bockius LLP
1701 Market Street
Philadelphia, PA 19103-2921
tgadsden@morganlewis.com
kkulak@morganlewis.com
adecusatis@morganlewis.com
cvasudevan@morganlewis.com

Daniel Clearfield
Jeffrey J. Norton
Deanne M. O'Dell
Carl R. Shultz
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8^{th} Floor
Harrisburg, PA 17101
dclearfield@eckertseamans.com
jnorton@eckertseamans.com
dodell@eckertseamans.com
cshultz@eckertseamans.com

Amy Hamilton
Exelon Business Services Co., LLC
300 Exelon Way
Kennett Square, PA 19348
amy.hamilton@exeloncorp.com

Todd S. Stewart
Hawke McKeon & Sniscak LLP
100 North 10th Street
P.O. Box 1778
Harrisburg, PA 17105
tsstewart@hmslegal.com

Thomas T. Niesen
Charles E. Thomas, III
Thomas, Long, Niesen & Kennard
212 Locust Street
PO Box 9500
Harrisburg, PA 17108
tniesen@thomaslonglaw.com
cet3@thomaslonglaw.com

Brian J. Knipe
Buchanan Ingersoll & Rooney, PC
17 North Second Street, 15th Floor
Harrisburg, PA 17101
brian.knipe@bipc.com

Divesh Gupta
Constellation Energy
100 Constellation Way, Suite 500C
Baltimore, MD 21202
divesh.gupta@constellation.com
david.fein@constellation.com

Patrick M. Cicero
Harry S. Geller
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pciceropulp@palegalaid.net
hgellerpulp@palegalaid.net

Amy M. Klodowski
First Energy Solutions Corp.
800 Cabin Hill Drive
Greensburg, PA 15601
aklodow@firstenergycorp.com

Michael A. Gruin
Stevens & Lee
17 North Second Street, 16th Floor
Harrisburg, PA 17101
mag@stevenslee.com
lre@stevenslee.com

Benjamin L. Willey
Law Offices of Benjamin L. Willey
7272 Wisconsin Avenue, Suite 300
Bethesda, MD 20814
blw@bwilleylaw.com
ssp@bwilleylaw.com

Trevor D. Stiles
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202
tstiles@foley.com
tmullooly@foley.com

Matthew I. Kahal
Steven L. Estomin
Exeter Associates, Inc.
10480 Little Patuxent Parkway, Suite 300
Columbia, MD 21044
mkahal@exeterassociates.com
sestomin@exeterassociates.com

Robert D. Knecht
Industrial Economics Incorporated
2067 Massachusetts Avenue
Cambridge, MA 02140
rkd@indecon.com

Thomas J. Sniscak
William E. Lehman
Hawke McKeon & Sniscak LLP
100 North Tenth Street
PO Box 1778
Harrisburg, PA 17105
tjsniscak@hmslegal.com
welehman@hmslegal.com
jlcrist@aol.com

Teresa K. Schmittberger

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

Dated this 25th day of June, 2012, at Harrisburg, Pennsylvania

RECEIVED
2012 JUN 25 PM 3:51
PA PUC
SECRETARY'S BUREAU