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July 9, 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 Replies of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to Exceptions (the "Reply Exceptions") in the above-captioned proceeding.

As indicated on the enclosed Certificate of Service, copies of this letter and the Reply 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	:		

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

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

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July 9, 2012

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES

Page(s)

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).

On June 15, 2012, the presiding Administrative Law Judge, Elizabeth H. Barnes ("ALJ") issued her Recommended Decision ("Recommended Decision" or "R.D.") recommending approval of the Companies' DSPs subject to limited modifications. On June 25, 2012, the Companies filed Exceptions to the Recommended Decision that were narrowly focused on five discrete areas. Also on June 25, 2012, Exceptions were filed by the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), Constellation NewEnergy, Inc. and Constellation Energy Commodities, Inc. ("Constellation"), Dominion Retail, Inc. ("Dominion"), FirstEnergy Solutions Corp. ("FES"), certain industrial and large commercial customers ("Industrials"),[1] Pennsylvania State University ("Penn State") and the Retail Energy Supply Association ("RESA").

The Recommended Decision provides a thorough analysis of the many issues in this proceeding and, in very large part, closely adheres to the Commission's orders in the Companies' prior default service proceedings and, as appropriate, follows the Commission's relevant guidance on default service programs[2] and the enhancement of the retail electric market.[3] In so

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1 Petitions to Intervene in this case were filed by four *ad hoc* associations of industrial and large commercial customers that refer to themselves as the Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), the Penn Power Users Group ("PPUG") and the West Penn Power Industrial Intervenors ("WPPII"). However, testimony was submitted only by Alex Fried, on behalf of Proctor & Gamble Paper Products Co. ("P&G"), and Joseph Raia, on behalf of Sheetz, Inc. ("Sheetz"). As Messrs. Fried and Raia testified, and as the ALJ found, each witness was authorized only to represent the interests of his respective employer (Tr. 285-286, 310-311; R.D., p. 63, n. 26).

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*").

doing, the ALJ has considered and properly rejected the more extreme positions advanced by parties that proposed changes to the Companies' DSPs. For that reason, most of the parties filed Exceptions that were limited in scope and number. Unfortunately, that was not the case with RESA and the Industrials, which took exception to every recommendation that did not go entirely their way.

To a significant extent, the exceptions taken by RESA and the Industrials ask the Commission to depart from the well-settled holdings of its prior orders and to turn its back on the guidance it recently issued concerning the structure of default service programs and the components of retail market enhancements. To illustrate, RESA has taken exception to the ALJ's recommendation to reaffirm the existing limit of 75% on the available tranches any one supplier can win in the Companies' default service supply auctions (RESA Exc. 2; R.D., pp. 35-36). In opposition to the ALJ's recommendation, RESA continues to argue for a 50% "load cap" even though one of RESA's members litigated this issue in Met-Ed's and Penelec's 2009 default service proceeding, where the Commission rejected this position.[4] In like fashion, RESA has taken exception to a number of the ALJ's recommendations to approve elements of the Companies' proposed market enhancement programs that are reasonable and conform to the guidance the Commission provided in its *Intermediate Work Plan Final Order*. *See* RESA Exc. 7, 8, 10, 11 and 16; R.D., pp. 93-98, 101-104, 109-111, 123-124). For example, the Commission provided well-reasoned explanations to support its guidance that "shopping" customers should not be summarily barred from participating in retail opt-in aggregation programs; that it is not reasonable to enlarge such programs to encompass small commercial customers; that there is insufficient time to conduct "pilot" programs (the functional equivalent of RESA's "testing" proposal), which, in any event, would have "minimal" value; and that the opt-in "auction" should be conducted before soliciting customers for enrollment. *Intermediate Work Plan Final Order*,

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3 *Investigation of Pennsylvania's Retail Elec. Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered Mar. 2, 2012) ("*Intermediate Work Plan Final Order*").

4 *See Order, Joint Petition of Metropolitan Edison Co. and Pennsylvania Elec. Co. for Approval of Their Default Serv. Program*, Docket Nos. P-2009-2093053, P-2009-2093054 (Order entered Nov. 6, 2009) ("*Met-Ed/Penelec 2009 DSP Order*"), pp. 16-18.

pp. 41-42, 47, 55. The Companies' proposed Retail Opt-In Aggregation Programs conform to those recommendations; RESA objects to all of them (RESA Exc. 7-10).

Similarly, the Industrials continue to oppose West Penn's proposals to: (1) competitively procure hourly-priced service for the Industrial Class; (2) charge for such service based on usage; and (3) price such service on the basis of PJM Interconnection LLC's ("PJM") real-time locational marginal price ("LMP") (Industrials Exc. 8.a., 8.b. and 8.c.; R.D., pp. 37, 52-54).[5] Unmentioned by the Industrials, West Penn's proposal implements a provision of the Commission's order accepting the settlement of the proceeding for approval of FirstEnergy Corp.'s merger with Allegheny Energy, Inc. ("FirstEnergy/Allegheny Merger Settlement"), which required the Companies "to harmonize their Price-to-Compare (PTC) structures as part of their Default Service Plan filings for the period beginning June 1, 2013." [6] (The Industrials were signatories to that settlement.) Consistent with the FirstEnergy/Allegheny Merger Settlement, West Penn proposes to adopt the rate design the Commission approved for use in the current default service programs of Met-Ed, Penelec and Penn Power.[7]

In the same vein, the Industrials contest the ALJ's recommendation to approve the Companies' proposal to acquire non-market based ("NMB") transmission service for all customers and to recover the costs on a competitively-neutral basis through their Default Service Support Riders ("DSS Riders") (Industrials Exc. 1-6; R.D., pp. 61-72). However, a significant element of this proposal, namely, recovery of PJM Regional Transmission Expansion Plan ("RTEP") costs from all customers through the DSS Rider, was previously approved for Penn Power and, in the same order, the Commission found that Met-Ed and Penelec should do the

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5 Significantly, these issues were not presented on the record by the Industrials and appeared for the first time in their Main Brief. The Companies objected to this tactic in their Reply Brief (pp. 1-7, 18-21, 29-36). The impropriety of the Industrials' belated presentation of these issues is also addressed in Section II.A.3., *infra*.

6 Opinion and Order, *Joint Application of West Penn Power Co. d/b/a Allegheny Power, Trans-Allegheny Interstate Line Co. and FirstEnergy Corp. for a Certificate of Pub. Convenience under Section 1102(a)(3) of the Pub. Util. Code approving a change of control of West Penn Power Co. and Trans-Allegheny Interstate Line Co.*, Docket Nos. A-2010-2176520, A-2010-2176732 (Order entered Mar. 8, 2011) (hereinafter, the "FirstEnergy/Allegheny Order"), p. 32.

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

same in their next default service proceeding. *Penn Power 2010 DSP Order*, p. 20. In short, the Industrials are collaterally attacking a prior Commission decision that established the legality and reasonableness of the Companies' NMB transmission service proposal.

The issues raised in Exceptions and discussed below were addressed in the Companies' Initial and Reply Briefs to the ALJ filed on May 2 and 16, 2012, respectively. The Commission is urged to review those briefs to gain a deeper understanding of such issues.

II. REPLIES TO EXCEPTIONS

A. Default Service Procurement And Implementation Plans

1. Procurement Groups – Proposed Consolidation Of West Penn's Service Types 20 And 30 (Industrials Exc. 9)

West Penn proposed consolidating Service Types 20 and 30 because the load profiles and shopping rates of customers in the two groups are similar and fewer than 600 customers with less than 90 MW of load remain on Service Type 30. The consolidation will create a procurement class that corresponds to the other Companies' Commercial Class and will reduce costs and administrative burdens (Companies' St. 2-R, p. 5). The OSBA, as the statutory advocate for commercial customers, did not oppose this proposal (OSBA St. 1, p. 14). Only the Industrials opposed the consolidation because they claim it would cause "cross-subsidization" due to alleged "differing usage amounts and profiles" (Industrials St. 1, p. 14).

The ALJ found that the proposed consolidation should be approved based on two detailed analyses presented by West Penn (R.D., pp. 14-16). The first analysis showed that, contrary to the Industrials' contentions, the average hourly usage of the default service customers in Service Types 20 and 30 revealed that they have very similar load profiles (Companies' St. 2-R, pp. 3-4). The second analysis focused on the weighted average fixed prices for competitively procured tranche purchases that West Penn has used to calculate default generation rates for Service Types 20 and 30 since its default service program began (Companies' St. 2-R, p. 4). All of those prices are very close and, for the period December 2011 to May 2012, the market prices for Service Types 20 and 30 varied by only 0.2%. *Id.* Thus, there is no risk of any meaningful "cross-subsidization."

The Industrials have excepted to the ALJ's recommendation and, notwithstanding the foregoing evidence, argue that West Penn did not present evidence to negate their allegation of potential "cross-subsidization." Indeed, in a pattern that repeats itself throughout their Exceptions, the Industrials pretend that this case ended when they submitted their direct testimony and, accordingly, make no attempt to engage the evidence submitted in subsequent stages of the proceeding, which totally undercuts their position. The ALJ properly considered all of the evidence and recommended approving the consolidation of Service Types 20 and 30.

2. Residential And Commercial Class Default Service Procurement (OCA Exc. 1-4; RESA Exc. 1-2; OSBA Exc. 1)

In their DSPs, the Companies proposed to procure default service supply for the Residential and Commercial Classes through two-year, full requirements contracts with a 90% fixed-price portion established through competitive procurements and a 10% variable-price portion priced at the hourly PJM real-time zonal LMP of each Company (R.D., pp. 17-18). All contracts will have the same 24-month term, expiring on May 31, 2015, and will be procured in two different procurements (November 2012 and January 2013) in order to achieve time diversity and rate stability (R.D., p. 19). A portion of the requirements for Met-Ed's, Penelec's, and Penn Power's residential customers will continue to be met through 48-month long-term block energy contracts expiring on May 31, 2015, which were procured during those Companies' prior default service proceedings, and each Company will also procure long-term Solar Photovoltaic Alternative Energy Credit ("SPAEC") contracts. *Id.*; Companies' Initial Brief, p. 25. The ALJ found that the Companies' DSPs satisfy the "prudent mix" and "least cost over time" criteria of Act 129 of 2008 ("Act 129") and, therefore, she recommended that the Commission make the findings required by 66 Pa.C.S. § 2807(e)(3.7) and approve the DSPs (R.D., pp. 17-45, 143). The OCA, OSBA and RESA have taken exceptions to the Companies' procurement plans. As explained below, those exceptions are meritless and should be rejected.

a. Term of Contracts, Procurement Dates/Number of Procurements, and Laddering of Contracts Beyond June 1, 2015

The OCA and RESA have excepted to the ALJ's recommendation to approve the

Companies' proposed two-year 90% fixed/10% spot-priced full requirements contracts for the Residential Class. The OCA contends that the Companies should instead procure a mix of laddered one and two-year full requirements contracts on additional procurement dates as well as "block and spot" energy to achieve a more "diverse" supply and price stability (OCA Exc., pp. 9-13, 19-22). RESA proposes that the Companies replace one-half of their proposed two-year contracts with one-year contracts procured on dates closer to delivery in 2013 and 2014 so that default service rates could be more "market responsive" and criticizes the ALJ for allegedly giving undue consideration to "price stability" (RESA Exc., pp. 4-15). For the Commercial Class, the OSBA proposes that the Companies procure one-year and six-month contracts, which it believes are needed to comply with the Default Service Policy Statement (52 Pa. Code § 69.1805), while RESA proposes one-year contracts for the same reasons it favors such contracts for the Residential Class (OSBA Exc., p. 7; RESA Exc., p. 5.)

The OCA's Exception. The OCA agrees with the ALJ that price stability is an important element of default service procurement plans, but contends that a more "diverse" array of products than that proposed by the Companies is needed to balance "prudent mix" and price stability considerations, particularly after May 31, 2015 (OCA Exc., pp. 4-5, 9, 14). As the ALJ found, however, the Companies' proposal already provide diversity of supply because full requirements suppliers assemble a diverse mix of products to meet their contractual obligations (R.D., p. 32). Indeed, the Commission has previously made "the important point" that "'diversity' of contracts should not be confused with a 'prudent mix' where full requirements contracts can include significant mitigation risks for customers by ensuring fixed prices regardless of congestion costs, usage patterns, weather and other factors." *Act 129 Rulemaking Order*, p. 61.[8]

The two-year, full requirements, fixed-price contracts (with a spot-market priced component) proposed by the Companies are well within the definition of short-term and spot-priced contracts provided in 66 Pa.C.S. § 2807(e)(3.2)(iii) for purposes of determining a

[8] *Implementation Of Act 129 Of October 15, 2008: Default Serv. And Retail Elec. Markets*, Docket No. L-2009-2095604 (October 4, 2011) ("*Act 129 Rulemaking Order*").

"prudent" mix of default service supply contracts and, as noted previously, residential customers will continue to be served by long-term contracts for block energy and/or SPAECs (R.D., p. 31; Companies' St. 4, pp. 4-8, and St. 6, pp. 8-10). The Companies' proposal to obtain two-year contracts in two separate procurements will ensure that the "prudent mix" for the Residential Class has both time diversity and rate stability during the period of their DSPs. *Id.*

Although the OCA contends that the Companies' proposed DSPs should generally replicate the default service portfolios currently being used by Met-Ed, Penelec, and Penn Power, the evidence does not support continued use of "block and spot" procurement. The Companies' witness, Dr. Reitzes, analyzed the results of the Companies' procurements to date, including the cost of full requirements contracts and block and spot supply. That analysis showed that the block and spot supply had higher costs than the full requirements supply (Companies' St. 6-R, pp. 3-4). Dr. Reitzes' analysis also revealed that the cost incurred by full requirements suppliers to manage the risks associated with varying customer load under fixed-price, full requirements contracts had been modest, while continued block and spot procurement would shift greater risks to customers without necessarily producing lower costs. *Id.* The ALJ properly rejected the OCA's proposal to continue the block and spot approach in the proposed DSPs (R.D., p. 32).

The OCA's contention that price stability beyond May 31, 2015 warrants approving its proposed alternative procurement plan (*see* OCA Exc., p. 9) is inconsistent with the Commission's own previously stated goals. In accordance with the *DSP Recommendations Order* (pp. 20-21), the Companies have designed their proposed DSPs so that all default supply contracts will terminate on May 31, 2015, as the Commission has encouraged EDCs to do. It is not necessary to "ladder" contracts beyond that date to achieve price stability because a default service program that begins on June 1, 2015 (if the current default service structure remains in place) can provide for multiple procurements to occur prior to that date and, in that way, assure that there is no "hard stop." *Id.* at 21 (discussing conducting procurements nine months and three months before June 1, 2015 to mitigate adverse impacts from potentially unfavorable market conditions). *See* Companies' Initial Brief, p. 15. Furthermore, the Commission has approved the Companies' existing default service programs, which contain full-requirements contracts, all of which expire on May 31, 2013.

The OSBA's Exception. The OSBA contends that the Companies' proposed Commercial Class procurement plan is flawed because the use of two-year contracts allegedly does not comply with the recommendation in Section 69.1805 of the Commission's Default Service Policy Statement (52 Pa. Code § 69.1805) that procurements for commercial customers be "laddered" and two solicitations be conducted per year. The ALJ disagreed with the OSBA and found that the Companies' procurements are consistent with Section 69.1805 because the November 2012 and January 2013 solicitations will be within the same PJM planning year (R.D., pp. 28-29). The OSBA excepts to this recommendation (OSBA Exc., p. 4).

The OSBA concedes, as it must, that Section 69.1805 is not a binding regulation. The OSBA asserts that the Companies should, nonetheless, conduct two procurements each calendar year to acquire contracts with terms no longer than one year because doing so could reduce the "risk premium" default suppliers charge for two-year contracts and avoid "a large shift in default service rates" when those contracts expire on May 31, 2015 (OSBA Exc., pp. 6-7). The ALJ properly dismissed the OSBA's argument because the Companies' witness, Dr. Reitzes, showed that there is not a significant difference in "risk premiums" between one-year and two-year contracts (R.D., pp. 24-25) and because the Companies' proposal not to procure supply beyond May 31, 2015 is entirely consistent with the *DSP Recommendations Order* (R.D., pp. 30-31). Accordingly, the Companies' proposed two-year full requirements contracts for the Commercial Class satisfy the statutory requirements of a "prudent mix" as discussed *supra*.

RESA's Exception. The heart of RESA's exception is its broad assertion that the ALJ's "viewpoint" with respect to both Act 129 and the Commission's Default Service Regulations is "incomplete" because it purportedly "fails to recognize the broader course this Commission has established regarding default service" (RESA Exc., pp. 11-12). In particular, RESA contends that the ALJ erred in relying upon the Commission's *Act 129 Rulemaking Order* to find that RESA's alternative procurement proposals were an improper interpretation of Act 129's "prudent mix" requirements and "conflict with Act 129's objective of achieving price stability." *See* RESA Exc., p. 11 (citing R.D., p. 22).

Although the Commission said that it did not intend its Default Service Regulations to "foreclose [the Commission's] consideration of other default supply models or adjustments to the current default service model" (*Act 129 Rulemaking Order*, p. 9), RESA is wrong to suggest that the Commission's Retail Market Investigation ("RMI") proceedings effectively invalidated the Commission's conclusions set forth in the *Act 129 Rulemaking Order* relied upon by the ALJ. In fact, in its May 1, 2012 submission to the Independent Regulatory Review Commission on the *Act 129 Rulemaking Order* (the "IRRC Report"),[9] the Commission emphasized that the findings it made in the RMI proceedings did not vitiate its prior determination of what Act 129 requires:

> The Retail Markets Investigation (RMI) is a Commission proceeding initiated at Docket I-2011-2237952 to develop recommendations to ensure a functioning retail electric market in Pennsylvania. This proceeding is specifically evaluating all aspects of retail electric markets and default service, including, among other things, procurement of default service supply. The ultimate recommendation of the Commission may include policy, regulatory and/or statutory changes; but at this point, *it is premature to speculate both on what the proposed future structure of default service will be and the approach necessary to implement that design.*
>
> The Commission is not waiting for the results of the RMI to implement the Act 129 procurement provisions. . . . *Having clarified that the Act 129 procurement issues have been resolved*, the Commission reiterates its strong opinion that the final form regulations should be promulgated as written. . . .
>
> *Any conclusion of the RMI has no bearing on the present need to establish regulatory consistency between the current default service regulations and the requirements of state law, as specified in Act 129.*

IRRC Report, pp. 5-6 (emphasis added). The ALJ therefore properly relied on the *Act 129 Rulemaking Order* in rejecting RESA's proposal to increase the market-priced component of default supply to forestall what RESA believes is the potential for default service rates to diverge from "market prices" (R.D., pp. 25-26). The Commission's emphasis on rate stability as an important element of the "prudent mix" and "least cost over time" requirements expressed in the *Act 129 Rulemaking Order* has not been diminished. Therefore, RESA is wrong when it

[9] *See* Pennsylvania Public Utility Commission, *Report to the Independent Regulatory Review Commission: Disapproved Regulation Submitted Without Revisions*, IRRC Docket No. 57-273 (May 1, 2012), available at http://www.irrc.state.pa.us.

contends that the Commission has somehow signaled that default service plans should henceforth force customers into the competitive market if they desire some measure of rate stability (RESA Exc., pp. 14-15). To the extent the RMI proceedings offer any guidance on upcoming default service plans, it is found in the Commission's express statements about the design of default service plans and market enhancements made in the *DSP Recommendations Order* and the *Intermediate Work Plan Order.* RESA's efforts to go beyond those recommendations to effectively void large portions of the *Act 129 Rulemaking Order* should be rejected.

RESA's additional objections to the ALJ's recommendations fare no better. RESA's reliance on the Commission's decision in *Petition of Pike County Light & Power Co. for Approval of Its Default Serv. Implementation Plan*, Docket No. P-2011-2252042, 2012 WL 1963545 (Pa. P.U.C. May 24, 2012) to suggest that the ALJ gave undue emphasis to price stability is misplaced. Contrary to RESA's contentions, in that Order, the Commission underscored the "unique" nature of Pike County Light and Power Company and emphasized that the Preamble of Act 129 may be considered in construing Act 129 consistent with the *Act 129 Rulemaking Order* upon which the ALJ relied. *See id.* pp. 30-31; R.D., pp. 10-11, 13, 22. Furthermore, the Companies are not proposing to enter into financial "hedges" in order to add more price stability to the Residential Class portfolio, as in *Pike County.* Rather, under the proposed DSPs the Companies will procure contracts that are indisputably "short-term" under Act 129, with a 10% spot-pricing component. The ALJ agreed that wholesale suppliers are very familiar with these products and will actively compete to provide the lowest price for customers (R.D., pp. 27-28, 31-32). Although RESA disagrees with Dr. Reitzes' analysis, which showed no significant difference in risk premiums between one-year and two-year contracts (RESA Exc., p. 8), it did nothing to rebut Dr. Reitzes' conclusions other than to make the unsubstantiated claim that an analysis of historical trends is not "indicative of future performance.[10] The ALJ understandably rejected RESA' unsupported contention.

[10] RESA's additional recommendation to alter the Companies' proposed procurement dates was also carefully considered and properly rejected by the ALJ, who found that RESA's proposed procurement dates would undermine wholesale suppliers' ability to hedge their supply obligations and the Companies' ability to implement reasonable contingency plans (R.D., pp. 29-30).

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

The OCA proposed that the Companies "hold back" the procurement of 20% of the full requirements default service supply for the Residential Class in an effort to reduce "premiums" that wholesale default service suppliers may impose due to migration of customers from default service to the Retail Opt-In Aggregation Program. Specifically, the OCA proposed using block and spot purchases to fill the tranches that are held back in the event those tranches: (1) do not fully migrate to shopping under the Retail Opt-In Aggregation Program; and (2) other full requirements suppliers do not step in to serve the held-back tranches. The ALJ rejected the OCA's hold-back proposal because it would create significant additional price risk for customers by increasing the amount of block and spot supply in the Companies' portfolio (R.D., p. 33).

As explained in the Companies' Initial and Reply Briefs, the OCA's "hold-back" proposal is flawed for a variety of reasons. It is also unnecessary. Default suppliers are capable of assessing and mitigating the migration risk associated with the Retail Opt-In Auction and, in any event, the volumetric risk profile of the load that winning bidders in the default service auction will serve will be no different even if the OCA's proposal were implemented (Companies' Initial, p. 18, and Reply, pp. 14-16, Briefs).

In its Exceptions, the OCA contends that the price risk attending the block and spot component of its hold-back proposal is equivalent to the risk that would arise if the Companies' own default supply contingency plans had to be implemented. It also claims there is no reason why default suppliers "would decline to accept additional tranches" (OCA Exc., pp. 18-19).[11] The OCA assessment of the Companies' contingency plans is wrong. Unlike the OCA's proposal, those contingency plans would not result in increase block and spot purchases. Moreover, the OCA provided no evidence that suppliers would be interested in serving the "held back" tranches. Therefore, the ALJ was correct in finding that the OCA's proposal presented significant risks that the Companies would have to procure block and spot supply under contracts

[11] The OCA also asserted that its lower proposed cap for the Retail Opt-In Auction of 20% (instead of 50%) would reduce the risk of under-subscription. The OCA's proposed 20% cap is addressed in Section II.C.1.b., *infra*.

that would extend well into their next default service program (R.D., p. 32).

The OCA's proposal is unworkable, would not reduce the "migration risk" allegedly caused by the proposed Retail Opt-In Aggregation Programs, would increase the level of block and spot procurement in the Companies' supply portfolio and would disrupt the orderly transition from the DSP ending May 31, 2015 to the default service programs that would begin on June 1, 2015. Accordingly, the OCA's exception should be dismissed.

c. Load Cap

RESA has excepted to the ALJ's recommendation to approve a 75% load cap for wholesale default service suppliers in lieu of its proposed 50% cap (RESA Exc., pp. 16-17). As the ALJ found, the Commission previously rejected a proposal for a 50% load cap by one of RESA's members in Met-Ed's and Penelec's first default service plan proceeding and RESA has not offered any valid reason to depart from that decision (R.D., pp. 35-36; Companies' Reply Brief, pp. 16-18). In addition, it should be emphasized that RESA's repeated allegation that the Companies have withheld results of their procurements from the Commission is **not true**. As the Companies explained in their Reply Brief (p. 17), the Commission has **full access** to information for the Companies' procurements (including the identities of winning bidders), and the Commission will continue to receive Independent Evaluator reports after each procurement to determine whether to approve the auction results. *See* 52 Pa. Code §§ 54.186(c)(3) and 54.188; Companies' Ex. BAM-1, p. 10. The Companies opposed turning over **to RESA** information about bidders in previous procurements in accordance with the confidentiality rules of the Companies' procurements previously approved by the Commission. The ALJ concluded that the Companies' opposition to RESA's information requests is justified by the Commission-approved confidentiality rules and existing regulations and orders.[12] The Commission should approve the 75% load cap as proposed by the Companies and dismiss RESA's exception.

[12] *See Order Denying The Retail Energy Association's Motion to Compel*, Mar. 16, 2012 ("*Bidder Information Protection Order*"), pp. 4, 6-8 (discussing confidentiality rules and Commission awareness of information relating to the load cap and any amount of default service supply won by affiliates of the Companies).

3. Industrial Class Hourly Priced Default Service (Industrials Exc. 8.a.)

In Exception No. 8, the Industrials address three separate issues, namely, West Penn's proposals: (1) to use a competitive procurement method to acquire hourly-priced generation service (Exc. 8.a.); (2) to charge for hourly-priced default service on a per-kWh basis (Exc. 8.b.); and (3) to employ the "real-time" LMPs for hourly-priced service (Exc. 8.c.). Two of those issues (charging a per-kWh price and employing the "real-time" LMP) involve principally rate design and cost recovery and, therefore, are discussed in Section II.B., *infra*. Thus, only the Exception No. 8.a. is addressed here. That said, one aspect of the Industrials' argument is common to all three exceptions, namely, their criticism of the ALJ for allegedly "failing to address" their opposition to West Penn's proposals (Industrials Exc., p. 33). The Industrials' criticism is unwarranted for two reasons.

First, the ALJ clearly ruled on all three of West Penn's proposals and properly recommended their approval, noting that: (1) "the Commission has previously approved this type of hourly-priced service" (R.D., p. 37); (2) by adopting West Penn's proposal, "the rate design for hourly pricing service will be consistent across all the Companies as required by the terms of the [FirstEnergy/Allegheny] Merger Settlement" (R.D., p. 54); and (3) "[T]he hourly-priced service to be offered under the HP [Hourly Pricing] Default Service Riders is consistent with the Commission's regulations at 52 Pa. Code § 54.187(i) and (j), other applicable provisions of those regulations, the [FirstEnergy/Allegheny] Merger Settlement and the Commission's prior approval of the Companies' customer class definitions and service offerings" (R.D., p. 54).

Second, if the Recommended Decision provides less specificity than the Industrials would like, they have only themselves to blame. As noted in Section I, *supra*, the three issues that comprise the Industrials' Exception No. 8 were not raised on the record – indeed, neither of the Industrials' witnesses mentioned them (*see* Companies' Reply Brief, pp. 1-3). Additionally, at a minimum, the Industrials could have put the ALJ and the other parties on notice that they planned to raise these new issues by including them in the consensus outline of issues that the parties prepared at the ALJ's direction and submitted for her use as the "road map" to their respective Main Briefs. They didn't. Instead, the Industrials simply interjected these issues in their Main Brief. That tactic is entirely improper and has garnered justifiable criticism from Administrative Law Judges and the Commission. The Industrials' Exception No. 8 should be rejected in its entirety for that reason alone. *See* Companies' Reply Brief (pp. 1-7).

Notwithstanding the inappropriate manner in which the issues comprising the Industrials' Exception No. 8 were presented, the record clearly establishes that the Industrials are wrong on the merits. *See* Companies' Reply Brief, pp. 18-21, 29-36. Although the Companies are addressing the substance of the Industrials' Exception Nos. 8.a., 8.b. and 8.c. in these Replies, they do so without waiving their overarching objection to the Commission considering these issues at all. *Id.* The first of those issues (Industrials Exc. 8.a.) is addressed here.

The Companies have proposed to secure Hourly Priced Service ("HPS") as the default service power supply for the Industrial Class. HPS will be priced to the PJM real-time hourly energy market for each Company's load zone, and suppliers will bid in a simultaneous descending clock auction for the right to serve a percentage of each Company's HPS load, which will be divided into tranches. Customers on HPS will pay, and winning suppliers will receive: (1) the applicable PJM zonal real-time hourly LMP; and (2) an amount to cover the costs of other supply components, including ancillary services, Alternative Energy Portfolio Standards ("AEPS") requirements, and PJM administrative fees. *See* Companies' St. 4, pp. 8-9.

The Industrials do not dispute the use of this procurement method by Met-Ed, Penelec and Penn Power. In fact, this procurement method is precisely the same one approved for Met-Ed, Penelec and Penn Power in their currently-effective default service programs (R.D., p. 54). That method has worked well, as evidenced by the absence of any opposition to its use in the proposed DSPs for each of those Companies. West Penn currently provides HPS for the Industrial Class.[13] But, instead of conducting competitive procurements, West Penn manages and administers the acquisition of energy, capacity and ancillary services that, in its role as default service provider, it then resells to Industrial default service customers.

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

As they did in their Main Brief (pp. 13-14), the Industrials oppose West Penn's proposed use of competitive procurement for HPS for the Industrial Class based on their contention that West Penn's current approach would cost less (Industrials Exc., p. 34). However, that assertion is mere conjecture because there is **no record evidence** to support the Industrials' contention that third-party competitive procurement would cost materially more than continuing West Penn's current approach of being both buyer and seller of the product it offers to Industrial Customers. Here again, the Industrials try to compensate for a significant evidentiary gap by making non-record factual averments that merely assume what they failed to prove. *See* Industrials Exc., p. 34 ("the fixed adder would *likely* result in a higher default service price for Large C&I customers . . .") (emphasis added). What may or may not be "likely" is a factual issue and, therefore, should have been offered in testimony so that other parties could test the proposition through cross-examination and present countervailing evidence.

Moreover, by improperly offering non-record factual averments for the first time in their Main Brief, the Industrials foreclosed the development of factors other than "cost" that also make competitive procurement preferable. For example, if they had been given a chance to do so, the Companies' witnesses would have explained that third-party competitive procurement permits the Companies to specifically identify the cost of providing this service, rather than relying on an allocation of total procurement and administrative expenses, as West Penn currently does. In that way, default service can be more appropriately priced, and meaningful comparisons with alternative, competitive products can be facilitated.

Finally, because the competitive procurement of HPS for Met-Ed, Penelec and Penn Power has been approved as part of the settlement of the proceedings in which their current default service programs were adopted, the Commission has already determined that it is reasonable and comports with the "least cost" standard of Act 129. Contrary to the Industrials' assertions, there is no legally cognizable basis to distinguish the Commission's prior holdings such that competitive procurement of HPS would be just, reasonable and in compliance with applicable law for Met-Ed, Penelec and Penn Power but not for West Penn.

4. AEPS Requirements – Solar Photovoltaic Requirements (Penn State Exc. 1; Industrials Exc. 7)

The Companies have proposed to procure 40% of the SPAECs required to meet AEPS requirements for both their default service and shopping customer load through requests for proposals ("RFPs") for ten-year SPAEC supply contracts. This proposal is consistent with the commitment made in the FirstEnergy/Allegheny Merger Settlement that Companies with Solar Photovoltaic Requirements Charge ("SPVRC ") Riders (*i.e.*, Met-Ed, Penelec, and Penn Power) would submit proposed DSPs for the period beginning June 1, 2013 that provide for procuring 40% of their 2011-2021 solar AEPS requirements through long-term contracts (hereafter, the "40% SPAEC Commitment"). *Id.* West Penn's proposed DSP is consistent with the other Companies' SPAEC proposals. *See* Companies' Initial Brief, p. 25. The ALJ recommended approving the proposed SPAEC procurements (R.D., pp. 41-42), and the Industrials and Penn State have excepted.

The Industrials contend that the ALJ misconstrued the FirstEnergy/Allegheny Merger Settlement, failed to give adequate weight to the "detrimental impact" on the public interest purportedly shown by their witnesses, and ignored the Industrials' request to approve a "carve-out" for large commercial and industrial customers (Industrials' Exc., pp. 23-24). Penn State contends that West Penn did not justify its proposed SPAEC procurement because it does not have a SPVC Rider and, therefore, is not bound by the 40% SPAEC Commitment. All of these exceptions are meritless and should be rejected.

As a threshold matter, the Industrials' contention that the Companies were free to walk away from the 40% SPAEC Commitment and maintain the "status quo" or, alternatively, to offer an entirely different proposal is contrary to the plain language of the FirstEnergy/Allegheny Merger Settlement, which the Commission has already determined is in the public interest.[14]

[14] The Industrials appear to be arguing that the 40% SPAEC Commitment was voided after the fact by a Commission decision that declined to approve a proposed SPAEC contract between Met-Ed and an industrial customer that was submitted for review pursuant to an entirely different provision of the FirstEnergy/Allegheny Merger Settlement. That argument is wrong. In the case the Industrials rely upon, the Commission did **not** conclude that **all** of the SPAEC-related terms of the FirstEnergy/Allegheny Merger Settlement were contrary to the public interest. Rather, it found only that certain provisions unrelated to the 40% SPAEC Commitment required Met-Ed to increase its efforts to procure SPAECs at a price lower than the
(continued)

Moreover, contrary to the Industrials' contentions, neither the Companies nor the ALJ stated that the 40% SPAEC Commitment obligated West Penn to make a similar proposal in its DSP. Rather, the Companies explained that it made sense for West Penn to conform to the 40% SPAEC Commitment in order to achieve consistency across the Companies and that neither the Industrials nor any other customers would be adversely affected by the Companies' proposal (Companies' St. 2, p. 29; R.D., p. 41).

The Industrials and Penn State also assert that the Companies' proposal would make it harder for large shopping customers to determine whether they are appropriately charged for SPAECs. In addition, the Industrials contend that some customers with EGS contracts extending beyond June 1, 2013 will have "transition" issues. The record evidence does not support either claim. Both of the Industrials' witnesses acknowledged that they closely monitor their employers' EGS bills and will continue to do so. Mr. Fried conceded that it would not be difficult to determine whether his employer was correctly charged by its EGS under the Companies' SPAEC proposal. And Mr. Raia declined to say whether he would, in fact, have to renegotiate any contracts that may extend beyond June 1, 2013 because of changes proposed by the Companies. *See* Tr. 283-284; 298-300. Penn State presented no evidence about its circumstances, and its assertions are, therefore, totally unsupported.

Finally, contrary to the Industrials' and Penn State's contentions, the Companies' SPAEC proposal is in the public interest and, indeed, the Commission found as much by approving the FirstEnergy/Allegheny Merger Settlement. Additionally, as the ALJ properly concluded, procuring SPAECs for EDC and EGS load appropriately balances the differing capabilities of EDCs and EGSs and promotes the goals of the Commission's Solar Policy Statement (Companies' Initial Brief, pp. 26-27; Companies' St. 4-SR, p. 4). The Industrials' contention that the ALJ did not give due consideration to their carve-out proposal is wrong; the carve-out

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one Penn Power was able to achieve in a prior procurement. In short, that Order says nothing like the proposition for which the Industrials have cited it. *See* Order, *Petition of Metropolitan Edison Co. for Approval of Solar Photovoltaic Alternative Energy Credit Purchase Agreement with Air Prod. and Chemicals, Inc.*, Docket No. P-2011-2264304 (Order entered Dec. 1, 2011), p. 3.

proposal simply repackaged their principal request for a complete rejection of the SPAEC proposal, which the ALJ found to be meritless.

B. Rate Design And Cost Recovery

1. Market Adjustment Charge (RESA Exc. 3-4; Dominion Exc. 4)

The Companies have proposed to include a Market Adjustment Charge ("MAC") in their Price to Compare ("PTC") Riders to establish a bypassable charge to compensate them for the risks they bear and the value they provide as default service providers. The ALJ recommended that the Commission not approve the Companies' proposal, and the Companies have taken exception to that recommendation. Companies' Exc., pp. 2-3, 6-18. The ALJ also recommended that the Commission reject the modifications to the MAC proposed by RESA and Dominion (R.D., pp. 57-58). RESA and Dominion have each taken exception to those recommendations.

For the reasons set forth in their Exceptions, the Companies believe that the MAC should be approved exactly as they have proposed it. The Companies oppose the modifications RESA and Dominion espouse because they would modify the MAC out of existence. RESA's and Dominion's modifications were properly rejected for the reasons set forth in the Recommended Decision (pp. 57-58) and the Companies' Initial (pp. 52-53) and Reply (p. 40) Briefs.

2. Industrial Class Hourly Priced Service – West Penn's Proposal To Adopt The Same Per-kWh Rate Design Employed In The Other Companies' Hourly Pricing Default Service Riders (Industrials Exc. 8.b.)

West Penn currently recovers the cost of providing HPS to its Service Type 40 through an Hourly-Priced Default Service Rider that differs somewhat from the other Companies' Hourly Pricing ("HP") Default Service Riders. Therefore, West Penn proposed to adopt an HP Default Service Rider like the one used by those Companies. *Id.* Under the HP Default Service Rider, HPS is priced on the basis of usage and is stated on a per-kWh basis. As previously explained, adopting a uniform HP Default Service Rider will implement the term of the FirstEnergy/Allegheny Order (p. 32) that requires the Companies "to harmonize their Price-to-Compare (PTC) structures as a part of their Default Service plan filings for the period beginning June 1, 2013." *See also* R.D., p. 54. The ALJ recommended approval of West Penn's proposal, and the Industrials have excepted.

The Industrials object to usage-based charges because they contend that certain capacity-related costs of providing HPS should be passed through to large industrial customers as a demand charge in order to avoid a conflict with "cost causation principles" (Industrials Exc., p. 35). The Industrials' argument is contrary to prior Commission precedent. As previously explained, use of a per-kWh rate design by Met-Ed, Penelec and Penn Power has already been approved by the Commission. Consequently, the Industrials' claims that a per-kWh rate design violates Act 129, is inconsistent with appellate authority and contravenes principles of "cost causation" are baseless.

Additionally, in contending that a "demand charge" for recovery of PJM capacity costs is necessary to comply with Act 129 and "cost causation principles," the Industrials ignore the Commission's prior pronouncements on the design of default service rates. Specifically, the Commission's Policy Statement on Default Service and Retail Electric Markets provides in Section 69.1810 (Retail Rate Design) that "[t]he PTC [Price to Compare] should *not* incorporate declining blocks, *demand charges* or similar elements." 52 Pa. Code § 69.1810 (emphasis added). In short, the Commission has already considered this issue on a generic basis and come down solidly against the Industrials' position.

Finally, the Industrials' contention that per-kWh pricing will discourage customers from adopting "strategies to reduce their peaks" and create roadblocks to "conservation behavior" (Industrials Exc., pp. 35- 36) should be disregarded. No record evidence supports those claims. Rather, just as they did in their Main Brief, the Industrials have simply made factual averments with no record support. *See* Companies' Reply Brief, pp. 4-7, 32-33.

3. Industrial Class Hourly Priced Service – West Penn's Proposal To Adopt Real-Time LMPs For Pricing HPS In Conformity With The Other Companies' HP Default Service Riders (Industrials Exc. 8.c.)

Under Met-Ed's, Penelec's and Penn Power's currently effective HP Default Service Riders, the price of HPS is based on PJM's "real time" LMP. Therefore, each of those Companies acquires hourly-priced generation service at real-time LMPs to serve its Industrial

Class default service load. This rate design and associated procurement were approved for each Company in its last default service proceeding. No party has contested these Companies' proposals to continue to employ real-time LMPs for pricing HPS.

As previously explained, West Penn proposes to adopt the rate design employed by the other Companies, which includes pricing HPS at the PJM real time LMP and procuring generation on that basis to serve HPS load. Under West Penn's current rate design, the quantity of HPS load "nominated" by a customer each day for purchase the next day at PJM's day-ahead LMP is acquired at that price, and any differences between the daily nomination load and the customer's actual load are priced (i.e., "settled") at the PJM real-time LMP. Consequently, even West Penn's current "day-ahead" price is really a hybrid of day-ahead and real-time LMPs.

The ALJ recommended approving West Penn's proposal, and the Industrials have excepted (Industrials Exc. 8.c.) essentially on two grounds: (1) that "day-ahead prices have been historically lower"; and (2) that the default service suppliers "bid into the day-ahead market when they are being paid real-time prices" (Industrials Exc., p. 37). Notably, the Industrials do not cite any record evidence for either proposition. Instead, they refer to their Main Brief as purported authority for their statements. The cited portions of that brief, in turn, do not refer to the record because the Industrials chose not to pursue this issue on the record.

In their Main Brief, the Industrials tried to support their claim that day-ahead LMPs are lower than real-time LMPs by extracting data from PJM's "State of the Market Reports." *See* Industrials' Main Brief, p. 16, n. 5. The "State of the Market Reports" are **not** in the record, and no witness testified about their contents. That said, when the Companies actually chased down the references provided by the Industrials, they found that the most recent "State of the Market Report" for 2011 shows that, contrary to the Industrials' contention, the day-ahead LMP in West Penn's load zone was actually **higher**, **not lower**, than the real-time LMP. *See* Companies' Reply Brief, p. 35, and Appendix A.

Similarly, the Industrials assert that default service suppliers "bid into the day-ahead market when they are being paid real-time prices." This is a factual averment which, if the Industrials believe is relevant, should have been presented on the record so that other parties could test the proposition and present responsive testimony. That said, it is impossible to discern what relevance the Industrials' unsubstantiated averment – even if true – could have on West Penn's proposed rate design for HPS. West Penn's rate design proposal, like the rate design already employed by the other Companies, prices HPS at the PJM real-time LMP. Therefore, West Penn, like the other Companies, will procure power at the real-time LMP to serve that load, *i.e.*, what West Penn buys and what it sells to customers will be priced by reference to the PJM real-time LMP. The possibility that default suppliers may choose to "hedge" their real-time obligation by bidding into the day-ahead market has no bearing on the reasonableness of West Penn's rate design. Default service providers no doubt engage in many other "hedging" strategies, and there is no reason that the pricing of default service must, therefore, be reconciled back to the suppliers' "hedged" prices. Suppliers are paid the real-time price regardless of the success or failure of their "hedging" strategies.

As previously discussed, pricing HPS based on PJM real-time LMPs has been approved by the Commission for Met-Ed, Penelec and Penn Power. In fact, Penn Power in the past priced HPS at day-ahead LMPs. However, in its last default service proceeding, Penn Power – like West Penn in this case – proposed adopting the same real time LMP rate design employed by Met-Ed and Penelec. No party – including no member of the PPUG, which actively participated in that case – opposed Penn Power's proposal, which the Commission approved. *Penn Power 2010 DSP Order*, p. 19 ("This charge will recover the locational marginal price ('LMP') determined on a 'real time' basis using PJM's load-weighted average LMP for the Penn Power Zone plus any ancillary service charges.)

4. DSS Rider – NMB Transmission Charges (Industrials Exc. 1-6)

NMB transmission costs consist of the charges PJM imposes for network integration transmission service ("NITS"), RTEP and Transmission Expansion/Enhancement. Currently, for default service, these costs are embedded in the Companies' PTCs, while, for shopping customers, EGSs bear these costs. *See* Companies' Initial Brief, p. 57. In this case, the Companies propose to acquire NMB transmission services on behalf of both their default service generation suppliers and EGSs serving load in their respective service areas; to remove the associated costs from their PTC; and to recover those costs, as well as Generation Deactivation and unaccounted for energy ("UFE") costs,[15] through their DSS Riders as nonbypassable charges imposed on shopping and non-shopping customers. *Id.*[16] For Penn Power, the proposed change does not need to include RTEP costs because the Commission previously approved its recovery of those costs through its DSS Rider. *See Penn Power 2010 DSP Order*, p. 20.

The evidence shows, and the ALJ found, that:

- NMB transmission costs are embedded, cost-of-service rates imposed on the basis of an EDC's native load regardless of the source of the generation serving it (i.e., PJM does not differentiate between EDC load served by default generation suppliers and load served by EGSs);
- Recovering NMB transmission charges on a competitively-neutral basis from all customers conforms to the way those costs are incurred by the Companies;
- Default service generation suppliers and EGSs cannot financially "hedge" NMB transmission charges;
- Authorizing the Companies to provide NMB transmission services and recover the associated costs from all customers through a reconcilable, nonbypassable charge, maintains competitive neutrality and lowers the risk profile for both default service generation suppliers and EGSs because, given their inability to hedge such costs, default generation suppliers and EGSs need to include a risk premium in their prices to account for the uncertainty of cost recovery.

See Companies' Initial Brief, pp. 57-58; R.D., pp. 61-63.

Messrs. Fried and Raia, employees of P&G and Sheetz, respectively, were the only witnesses that opposed the Companies' proposal. RESA, Dominion, Exelon and Constellation – a group that reflects the views of both default service generation suppliers and EGSs that participated in this case – affirmatively supported the Companies' proposal. The ALJ recommended approval of the Companies' proposal (R.D., pp. 61-72), and the Industrials are the

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15 The Companies did not include Generation Deactivation costs and UFE in their initial proposal. Exelon and Dominion recommended that Generation Deactivation and UFE costs also be recovered under the DSS Riders because they share the same relevant characteristics as NMB transmission services. Exelon St. 1 and Dominion St. 1, p. 4. The Companies adopted those recommendations. Companies' St. 2-R, pp. 21-23.

16 Constellation proposed that the Companies modify their proposal to treat Economic Load Response ("ELR") charges the same as NMB transmission costs. The Companies opposed Constellation's proposal because ELR charges are market-based and do not exhibit the relevant characteristics of NMB transmission service costs. *See* Companies' Initial Brief, pp. 70-71. The ALJ recommended that the Commission reject Constellation's proposed modification (R.D., pp. 72-74), and Constellation has excepted. Constellation's exception should be rejected for the reasons set forth in the Recommended Decision and the Companies' Initial Brief.

only party that has excepted.

Each of the principal arguments presented in the testimony of Messrs. Fried and Raia in opposition to the Companies' proposal was addressed in detail in the Companies' Initial Brief (pp. 59-67) and shown to be meritless. Apart from repeating at length the same contentions advanced by their witnesses and rejected by the ALJ, the Industrials have made several new arguments in their Exceptions, each of which is also meritless.

"Cost Causation." The Industrials argue that the Companies' proposal would contravene "cost causation principles." *See* Industrials Exc., pp. 6, 10. It is not clear why that would be the case because, as the Industrials acknowledge (Industrials Exc., p. 2), the Companies would charge NMB transmission costs to their industrial customers on the basis of demand, which is consistent with the demand-related nature of such costs (Tr. 76). In reality, the Industrials' position has nothing to do with "cost causation principles" and everything to do with securing a pricing scheme that would allow a few of its members to try to "game" the system in order to evade paying transmission-related costs. *See* Companies' Reply Brief, pp. 47-50.

The Industrials repeatedly reference the method PJM uses to allocate transmission costs to load serving entities ("LSEs"). Specifically, PJM's allocation is based on each LSE's contribution to a "single coincident peak" (what the Industrials refer to as the "1-CP"). The Industrials contend that their retail transmission cost responsibility should likewise be established as a customer-specific rate calculated on the basis of their individual contributions to the PJM system peak. Under that pricing model, an HPS default service customer could devise ways to be off line (or to substantially reduce demand) during the one-hour interval that sets the 1-CP and, in that way, avoid paying (or could substantially reduce) its transmission charges while imposing whatever demands it likes during the other 8,759 hours of the year. There are three major flaws in the Industrials' argument.

First, simply because PJM chooses to allocate bulk transmission costs among LSEs based on a 1-CP methodology is no reason the same cost of service allocation procedure should be employed to establish retail rates. Indeed, despite their mantra-like repetition of the phrase "cost causation principles," the Industrials have not provided any authority – let alone any prior

Commission decisions – that require an EDC's retail rate design to mimic the rate design that an upstream wholesale provider uses to distribute costs among multiple wholesale purchasers.

Second, the essence of the Industrials' argument is that each industrial customer is entitled to be charged a rate for NMB transmission services (and, by extension, for Generation Deactivation and UFE costs) based solely on its **individual** contribution to the PJM system 1-CP (Industrials Exc., pp. 3-7). That argument is contrary to one of the most fundamental principles of public utility regulation, namely, that rates are designed to reflect the costs of classes of customers, not individual customers. *See* J.H. Cawley and N.J. Kennard, *Rate Case Handbook: A Guide To Utility Ratemaking Before The Pennsylvania Public Utility Commission* (1983), pp. 258-259 ("Thus, customers with homogeneous characteristics are grouped together as a customer class and rates are designed to recover the cost of serving the class."). In fact, the principle that rates are established for classes of customers, not individual class members, is enshrined in the Public Utility Code. *See* 66 Pa.C.S. § 1304 ("This section does not prohibit the establishment of reasonable zone or group systems, or classifications of rates . . .").

The third flaw in the Industrials' argument is that they claim to be entitled to individualized rates for only **one** component of their cost of service, i.e., PJM-imposed NMB charges. In all other respects, they are charged class-based rates. Yet, in this one instance, because they anticipate obtaining a benefit from doing so, they claim a right to have charges determined based on customer-specific usage characteristics.

Incentives For Peak-Reduction. The Industrials also claim that the Companies' proposal would reduce customers' incentives to invest in facilities to reduce total transmission demand (Industrials Exc., pp. 7-12). That will not be the case. NMB transmission costs will be allocated among customer classes and charged to the Industrial Class on a demand basis. Therefore, industrial customers would certainly achieve savings by reducing their demand (Tr. 76; Companies' St. 2-R, pp. 12-13). In reality, and as noted previously, while paying lip service to "demand response" and "cost causation," the Industrials are complaining that the Companies' proposal will make it impossible to "game" the system by reducing demand for only one hour per year (in order to benefit from a lower allocation of transmission costs based on the "1-CP" allocation method) while freeing themselves to impose whatever demands they desire on the transmission system during the rest of the year with no billing implications. The Commission should not condone a rate design that encourages such behavior.

Alleged "Rebundling." The Industrials also contend that the Companies' proposal to recover PJM-imposed NMB charges through their DSS Riders amounts to "re-bundling" of "transmission and distribution" in contravention of 66 Pa.C.S. §§ 2802(14) and 2804(3) (Industrials Exc. 3). That contention is clearly wrong; the DSS Rider imposes charges that are separate and distinct from "distribution" rates and, therefore, does not "re-bundle" anything. Moreover, applying the Industrials' tortured logic, their preferred approach, which would require default service generation suppliers and EGSs to continue to bear NMB transmission charges, would also represent an improper "bundling" of transmission and generation costs. And, if the Companies' proposal promoted the anti-competitive "re-bundling" of transmission service, as the Industrials contend, it would not have been supported by the EGS parties.

The Commission will no doubt find the Industrials "re-bundling" argument surprising because it has previously approved Penn Power's proposal to recover RTEP charges – a significant component of NMB transmission service costs – through its DSS Rider. *Penn Power 2010 DSP Order*, p. 20.[17] And, in the same Order, the Commission approved the consensus reached by the parties in that case that "[Penn Power's] affiliates, Metropolitan Edison Company and Pennsylvania Electric Company, will recover RTEP in a manner consistent with this Settlement." *Id.* Consequently, the Commission has already validated the legal and factual basis for an EDC to acquire such services on behalf of all suppliers and to recover the associated costs from shopping and non-shopping customers on a competitively neutral basis.

Compounding their error, the Industrials allege that the rate "unbundling" mandated by the Competition Act was designed to permit "competitive products for pricing transmission service" and to allow customers to negotiate with suppliers in order to "allocate the risk of

[17] PJM-imposed RTEP and NITS charges recover the same kinds of costs for new and existing transmission facilities, respectively. *See* Tr. 71.

fluctuating transmission costs" (Industrials Exc., p. 12). In other words, the Industrials conceive of "transmission" as another competitive service as to which they can negotiate terms and conditions. The Competition Act, however, belies the Industrials' characterization. Indeed, Section 2802(16) expressly provides: "It is in the public interest for the transmission and distribution of electricity to continue to be regulated as a natural monopoly subject to the jurisdiction and active supervision of the commission." 66 Pa.C.S. § 2802(16). Thus, no party disputes that PJM-imposed NMB charges – as their name implies – are not market-based charges; they are administratively determined, cost-of-service rates imposed by PJM and approved by the Federal Energy Regulatory Commission for services that are not "competitive" as the Industrials erroneously allege.

Transitional Issues And "Standardization." The Industrials further contend that the Companies' proposal creates insurmountable problems for customers with fixed-price EGS contracts that allegedly also recover NMB transmission costs. The ALJ considered and properly rejected these arguments (R.D., pp. 63-64). *See also* Companies' Initial Brief, pp. 59-61. As a preliminary matter, the Industrials have ample time to make the necessary transition. *Id.* Moreover, if the Industrials' argument were given any credence, then any customer with an EGS contract that extends beyond an existing default service program could insist on freezing the then-existing terms of default service. The Commission should not allow its hands to be tied in this fashion. Furthermore, if P&G and Sheetz entered into contracts with terms that span future default service periods, they did so with knowledge that changes along the lines of the Companies' NBM transmission service cost proposal were likely to occur. See *Penn Power 2010 DSP Order, supra*. Similarly, the Industrials' claim that the Companies' proposal would prevent Sheetz from "standardizing" its procurement process is factually incorrect and was properly rejected by the ALJ (R.D., p. 67). *See* Companies' Initial Brief, pp. 63-64. As the OSBA's witness explained in testifying against Sheetz's position: "It's not clear that you have total standardization now . . . there are some differences from utility to utility right now in how these costs are recovered" (Tr. 352-353).

Generation Deactivation And UFE Costs. The Industrials unfairly criticize the ALJ for not specifically addressing their opposition to the proposal to include Generation Deactivation and UFE charges among the costs to be recovered from all customers through the Companies' DSS Riders (Industrials Exc. 5). As the Companies, Exelon and Dominion explained, these costs have the same characteristics as NMB transmission service costs and, therefore, it is appropriate to include them in the Companies' proposal as well (R.D., pp. 69-72). Consequently, a separate, extended discussion of Generation Deactivation and UFE costs by the ALJ was not necessary.

Carve-Out Of NITS. In their Exceptions (pp. 22-23), the Industrials argue, for the first time, that if the Commission were to adopt the Companies' proposal, it should carve out NITS costs from recovery under the Companies' DSS Riders. There is no basis for such a carve-out because NITS have the same characteristics that make it appropriate for other NMB costs to be recovered under the DSS Riders. Moreover, it is improper to present a new argument in Exceptions, and the Industrials proposal should be rejected for that reason alone.[18]

5. RESA's Time Of Use Rate Concept (RESA Exc. 6)

RESA offered an alternative approach for West Penn and Penn Power to satisfy the requirement of 66 Pa.C.S. § 2807(f)(5) that they have a time of use ("TOU") rate in place. Under RESA's alternative approach, EDCs would maintain a "clearing house website" to furnish customers access to EGSs' offers of TOU rates. *See* Companies' Initial Brief, p. 79. The ALJ recommended that RESA's concept not be adopted, and RESA has excepted. Although RESA's concept may merit further exploration, it is, at this stage, not a fully-formed proposal capable of being implemented in the Companies' DSPs. Accordingly, the ALJ's recommendation is correct and should be adopted.

18 *See Pa. P.U.C. v. Columbia Gas of Pa., Inc.*, 245 PUR 4th 1 (2005) ("IOGA first raised its opposition . . . on Exception. . . . As such, we will deny IOGA's Exceptions on this issue."); *Pa. P.U.C. v. Pennsylvania Gas and Water Co.*, Docket No. R-922169, 1993 Pa. PUC LEXIS 36 (Mar. 2, 1993) ("P&G's proposed alternative . . . was inappropriately introduced on exception.")

6. Reconciliation Of Default Service Costs And Revenues And Migration Rider (OCA Exc. 5; RESA Exc. 5)

Consistent with the Commission's default service regulations at 52 Pa. Code § 54.187(f) and its approval of the existing default service programs for Met-Ed, Penelec, Penn Power and West Penn, the Companies have incorporated a reconciliation component in their generation rates (Companies' St. 1, p. 20). Each quarter, the cumulative over or under-collection recorded on the Companies' books is used to compute a new reconciliation charge or "E" factor (Companies' St. 2, pp. 31-33). The "E" factor is calculated to refund or recover, as appropriate, the net over or under-collection per customer class, including carrying charges, on a per-kWh basis, over the prospective three-month rate application period. *Id.* The Companies did not propose to change their existing reconciliation mechanisms, which have been previously approved by the Commission. Nonetheless, the OCA and OSBA advocated changes to the Companies' reconciliation method, which the ALJ recommended rejecting (R.D., pp. 81-88).

The OCA's Proposal. The OCA's witness, Mathew I. Kahal, agreed that costs and revenues under the PTC Rider should be reconciled on a quarterly basis but proposed that the net balance of each quarter's reconciliation be collected or refunded over a prospective twelve-month period (OCA St. 1, pp. 49-50). The ALJ rejected Mr. Kahal's proposal (R.D., pp. 81-83) because his analysis contains three major flaws:

- He assumed that the net reconciliation balance would regularly alternate between over and under-collection from quarter to quarter so that positives and negatives would cancel out over any twelve-month period. There is no evidence that this will happen. And, if a net over or under-collection were to persist for several successive quarters, the OCA's proposal would increase the magnitude of each "E" factor change, not reduce it (Companies' Initial Brief, p. 81);
- The interest component on an over or under-collection will always be larger if refunding or recoupment is postponed as Mr. Kahal proposed, thereby magnifying the effect of the "E" factor on the total PTC (Companies' Initial Brief, p. 82); and
- Merely lengthening the reconciliation refund/recovery period will not reduce volatility because, as shopping levels increase – as they are doing and will likely continue – there will be fewer and fewer customers on default service. As a consequence, the absolute value of the "E" factor would have to increase so that the net balance created by a larger customer pool could be recouped from or refunded to a smaller – and shrinking – customer pool (Companies' Initial Brief, pp. 82-83).

The OCA has taken exception to the ALJ's recommendation. However, its Exception merely repeats Mr. Kahal's arguments, which the ALJ found were not supported by the record evidence. The OCA also contends that Mr. Kahal's proposal should be adopted "to mitigate the PTC uncertainty and instability problem" (OCA Exc., p. 23). However, as the evidence also shows, there is no "PTC uncertainty and instability problem." To the contrary, after the effects of the initial "ramp-up" period have played out, the Companies' "E" factors have declined to relatively low and stable levels. Companies' Initial Brief, pp. 84-86; R.D., pp. 83-85. In short, the OCA proposes a solution to a problem that does not exist.

The OSBA's Proposals And RESA's Exception. The OSBA's primary proposal consisted of several inter-related components, all of which the ALJ recommended should be rejected. *See* R.D., pp. 83-88. In addition, the OSBA offered an alternative proposal that entailed eliminating the "E" factor and replacing it with a "migration rider." The ALJ also recommended rejecting the OSBA's alternative proposal without prejudice to revisiting it in the future if the pool of default customers in any class becomes too small (R.D., p. 87):

> I am not persuaded that a migration rider is needed at this time. A migration rider might become an appropriate remedy if, because of extensive shopping, the number of default service customers in a particular class became very low and, therefore, the reconciliation balance became disproportionately high relative to the customer base (Companies' St. 2-R, p. 19). However, this is not currently the case.

The OSBA did **not** take exception to the ALJ's recommendations with respect to either its primary or alternative proposals. Rather, RESA excepted to the portion of the Recommended Decision quoted above because, in its view, the Commission should foreclose any possibility that it might consider a migration rider in the future (RESA Exc. 5). RESA's Exception No. 5 should be rejected. At the outset, the target of RESA's exception is not a recommendation by the ALJ at all. As the ALJ explained, she recommended rejecting the OSBA's proposal in this case but reserving judgment on whether circumstances might arise in the future that could justify considering a migration rider. The ALJ is clearly correct. It is premature to decide now that a migration rider should never be considered in the future regardless of how facts might change in the interim.

C. Competitive Market Enhancements

1. Retail Opt-In Aggregation Program

The Companies have proposed a Retail Opt-In Aggregation Program in substantially the form outlined by the Commission in the *Intermediate Work Plan Final Order* (pp. 33-35). The program contains the following principal elements:

- EGSs would bid in a Retail Opt-In Auction to provide competitive retail service to not more than 50% of each Company's residential default service customers at a price at least 5% below the applicable PTC on the date of the auction (Companies' Sts. 7, pp. 23-24, and 7-R, pp. 31-34);
- The results of the auction would be submitted to the Commission for approval, and the winning bidders would be required to execute an Opt-In Aggregation Agreement in the form set forth in the Companies' Ex. CVF-10; and
- The winning bidders would provide service under the terms of the Opt-In Aggregation Agreement to enrolled customers for a term of twelve months beginning with the customer's June 2013 meter reading and ending with the customer's May 2014 meter reading (Companies' Ex. CVF-10, p. 4).

The ALJ recommended adopting the Companies' proposed Retail Aggregation Opt-In Program with two modifications: (1) she recommended that the costs of the program be recovered from participating EGSs; and (2) she recommended that participants in the Companies' Customer Assistance Program ("CAP") be ineligible for enrollment (R.D., pp. 89-117). The Companies have taken exception to those recommended modifications. *See* Companies' Exc., pp. 4-5, 23-29. RESA, the OCA and Dominion have taken exception to other aspects of the decision, to which the Companies respond below.

a. Auction Structure – Descending Clock Auction (DCA) (OCA Exc. 9; Dominion Exc. 2)

In its *Intermediate Work Plan Final Order* (pp. 77-78), the Commission opined that either a DCA or a sealed-bid RFP structure "would work well to provide a single clearing price" for retail opt-in auctions. The Companies have proposed a DCA to conduct a simultaneous Retail Opt-In Auction for all four companies because it will provide a fair, transparent competitive bidding process that facilitates the submission of lowest-price bids (Companies' Initial Brief, pp. 116-17). After considering objections to the DCA based on its allegedly higher cost, the ALJ recommended approving the Companies' proposal because there is no evidence that material savings will result from switching to an RFP (R.D., p. 114).

The OCA (Exc. 9) and Dominion (Exc. 2) have taken exception to the ALJ's recommendation and point to the testimony of Dominion's witness, Thomas Butler, as alleged support for the proposition that an RFP would cost less. However, Mr. Butler's testimony consisted of nothing more than opinion backed only by his claim of having "participated" in DCAs and RFPs. In contrast, the Companies' position was supported by the testimony of their independent evaluator for the Retail Opt-In Auction, Dr. Bradley Miller of Charles River Associates, who has actively managed over 100 auctions using a variety of mechanisms, including DCAs and RFPs (Companies' St. 6, pp. 1-3). Dr. Miller explained that a DCA offers significant advantages over an RFP where, as here, multiple companies are conducting a simultaneous procurement because it creates an active, real-time, price discovery process that ensures the lowest prices are obtained for all purchasers. *Id.* Dr. Miller also explained that a sealed-bid RFP would not necessarily be less expensive than a DCA because many of the most substantial procurement costs are largely independent of the bidding format (Companies' St. 6-R, pp. 2-7). No party refuted the substance of Dr. Miller's testimony. *See* Companies' Reply Brief, pp. 57-58. Consequently, the ALJ correctly found that the evidence supports the Companies' DCA proposal and provides no basis for the opposing parties' objections.

b. The OCA-Proposed 20% Participation Cap (OCA Exc. 9)

The Companies have proposed to limit customer participation in their Retail Opt-In Aggregation Program to 50% of each Company's default service residential customer base as of the date of the Retail Opt-In Auction. The proposed 50% customer participation cap was supported by RESA (RESA St. 2-SR, p. 14), Dominion (Dominion St. 1-SR, p. 4) and Constellation (Constellation St. 1, p. 32).

The OCA's witness, Barbara R. Alexander, proposed that the participation cap be lowered to 20% because, in her view, the Commission should take a go-slow approach to retail market enhancement even if that means that more customers will seek to enroll in the Retail Opt-In Aggregation Program than the 20% participation cap can accommodate. *See* OCA Exc., p. 27

("If 20% can participate and far more seek to enroll and participate, this would be an excellent indication of customer interest in the retail market . . ."). Ms. Alexander also claimed that a 20% participation cap would reduce the "volumetric risk" that the Retail Opt-In Aggregation Program might create for bidders in the Companies' default generation supply auctions. *See* OCA Exc., p. 26. The ALJ recommended rejecting the OCA's proposal.

In its *Intermediate Work Plan Final Order* (pp. 59-60), the Commission addressed this issue and expressed the following view:

> While the Commission understands those parties' comments suggesting that the cap be lower than 50% in order to provide more meaningful certainty to the EGSs, the Commission does not want to impose a limit that may lead to the rejection of customers wishing to participate in the Retail Opt-in Auctions. However, the Commission believes that a lack of a cap would provide no estimate of customer participation to both wholesale and retail suppliers. We believe the 50% cap provides both a large customer participation pool, while providing some level of certainty to those EGSs opting to participate in the Retail Opt-in Auctions.
>
> * * *
>
> We also disagree with the parties who stated that the customer participation cap may deter EGSs from participating in the Retail Opt-in Auctions. The Commission believes the 50% cap provides a large number of customers to be served by the EGSs in the auctions while still providing those same EGSs with some certainty as to the maximum number of customers they are expected to serve.

The OCA has not offered any valid evidentiary basis for departing from the Commission's guidance. The Commission considered the possible impact of retail opt-in aggregation programs on default supply procurements and concluded, contrary to the OCA's position, that a 50% participation cap appropriately mitigates any "volumetric risk." Furthermore, the Commission has already rejected the OCA's go-slow approach because it "does not want to impose a limit that may lead to the rejection of customers wishing to participate in the Retail Opt-In Auctions." *Id.*

c. Composition Of Product – $50 Bonus (RESA Exc. 12)

The Companies carefully considered the Commission's guidance that would permit "bonus" payments of $50 to participating customers that remain with their opt-in EGS for at least three billing cycles. *Intermediate Work Plan Final Order*, p. 69. However, the Companies chose not to include any "bonus" payments in their Retail Opt-In Aggregation Program for several reasons:

- A "bonus" of $50 packaged with a relatively short-term fixed rate is **not** a "unique feature" as the Commission assumed; it is quite similar to a multitude of products already being offered by EGSs;
- The Companies' proposal, which offers a fixed price for twelve months, is different in several important respects from products already being sold in the competitive marketplace. It avoids "gimmicks" and provides a clear, understandable choice to focus customers' attention on the price of competitive service and the length of time the price will remain in effect;
- Payment of a "bonus" is likely to produce unsatisfying shopping experiences for participating customers. The Companies' witness, Charles V. Fullem, prepared a careful analysis of current market conditions that shows a $50 bonus plus a fixed price of at least 5% below the PTC is likely to be a "loss leader" (i.e., produce a negative margin for EGSs) and, therefore, will not be sustainable. As such, it is likely to attract bidders planning to take advantage of a perceived *status quo* bias in order to charge above-market prices after the initial service period expires; and
- If customers have an unsatisfying experience with the Retail Opt-In Aggregation Program, it will not achieve its goal of increasing participation in the competitive market. To the contrary, it could diminish interest in shopping while also tarnishing the reputation of EDCs because of their involvement in the process.

See R.D., pp. 106-108; Companies' Initial Brief, pp. 107-109.

The ALJ recommended approving the Companies' proposal to establish a Retail Opt-In Aggregation Program consisting of a twelve-month term and a discount of at least 5% from the PTC (R.D., pp. 96-97, 104-106). She also recommended approving the Companies' proposal not to include a "bonus" payment in the program because the Companies provided a strong evidentiary basis for departing from the Commission's guidance in this aspect of the program (R.D., pp. 106-108). RESA has taken exception to the latter recommendation.

RESA's exception asks the Commission, as to this one issue, to strictly adhere to the guidance offered in the *Intermediate Work Plan Final Order*, notwithstanding substantial evidence showing that "bonus" payments are not a good idea. Notably, RESA's plea is undercut by its advocacy of significant departures from that guidance in many other areas simply because the Commission's recommendations do not precisely match its business interests. *See* Section I, *supra*. Furthermore, the Commission contemplated that EDCs could implement market enhancements that are not in lock-step with its guidance if "good cause" existed for doing so or if the EDC's proposal was otherwise "supported by evidence produced during the EDC's default service proceeding." *Intermediate Work Plan Final Order*, pp. 6-7. The ALJ found that the Companies had, in fact, provided "good cause" for their proposal (R.D., p. 106). Not surprisingly, in its Exceptions, RESA hardly mentions the evidence submitted by the Companies other than to criticize Mr. Fullem's loss-leader analysis for allegedly making "the assumption that EGSs would incur the same costs to acquire a customer through the opt-in auction as they do when they acquire one through normal marketing channels" (RESA Exc., p. 37). That criticism has no factual basis. As shown by the analysis itself (Companies' Ex. CVF-9) and as explained by Mr. Fullem (Companies' St. 7-R, pp. 33-34), he assumed that EGSs incurred **zero** customer acquisition costs. Indeed, if **any** customer acquisition costs were assumed, the loss per customer for EGSs that charge 5% below the PTC and provide $50 bonus would be even greater than that calculated by Mr. Fullem. *See* Companies' Initial Brief, pp. 108-109.

d. Standard Contracts (RESA Exc. 13)

The Companies proposed that winning bidders in the Retail Opt-In Auction enter into an Opt-In Aggregation Agreement in the form provided as Companies' Exhibit CVF-10. Appendix B to that agreement is a Consumer Contract and Disclosure Statement that the winning EGSs would enter into with customers they serve under the program. RESA objected to the proposed standard contracts as an unnecessary intrusion on the competitive market.

The ALJ recommended approving the Companies' standard contracts because the competitive selection of opt-in service providers requires that the Companies establish common terms and conditions of service so that the Retail Opt-In Auction can focus on price competition alone (R.D., pp. 108-109). Uniform terms and conditions of service are essential, as even RESA's witness conceded (RESA St. 2-SR, p. 10). RESA's witness also conceded that whatever agreements are employed must conform to the terms of the Retail Opt-In Aggregation Program and must be reviewed and approved by the Commission. *Id.* Consequently, RESA's objection to such review and approval occurring in this case only kicks the can down the road and leaves to some future, unspecified time the task of developing approved contract terms. There is no reason for delay. This proceeding is the appropriate forum for developing uniform contract terms and conditions. Moreover, no party – including RESA – has any raised any specific objections to the terms and conditions of the agreements. Accordingly, those agreements should be approved.

e. RESA's Proposed Deviation From The Commission's Guidance

As previously noted, RESA has taken exception to many of the ALJ's recommendations to approve aspects of the Companies' Retail Opt-In Aggregation Programs that are reasonable, supported by substantial evidence and also track the Commission's guidance offered in the *Intermediate Work Plan Final Order.* Those exceptions are meritless and should be rejected.

Customer Eligibility – Shopping Customers (RESA Exc. 7). The Companies proposed that all residential customers be eligible to participate in their Retail Opt-In Aggregation Programs because their existing customer information systems cannot selectively reject EGS enrollments of certain customers who are already shopping (Companies' St. 7-R, p. 19). However, all of the Companies' marketing, notifications and customer education efforts would be targeted **only** at non-shopping customers. *Id.* The ALJ recommended approving this aspect of the program because, in addition to its operational necessity, it comports with the Commission's guidance on retail opt-in programs in the *Intermediate Work Plan Final Order* (pp. 41-42) (R.D., pp. 94-96). RESA has taken exception to that recommendation but does not offer any evidence to refute the fundamentally sound reasons supporting the ALJ's decision. Instead, it asserts that the Companies' evidence should be ignored because, in RESA's judgment, residential shopping in the Companies' service territories is less than it should be (RESA Exc., p. 28). However, the shopping statistics relied upon by RESA: (1) are not in the record; (2) are only a snapshot at one point in time; and (3) do not indicate as large a disparity between the Companies and other EDCs as RESA would lead one to believe. In any event, RESA's mere reference to current shopping percentages cannot support the marked departure from the guidance furnished by the *Intermediate Work Plan Final Order.*

Customer Eligibility – Small Commercial/Industrial Customers (RESA Exc. 8). The Companies proposed that small commercial and industrial customers not be eligible for the

Retail Opt-In Aggregation Program because their widely-varying usage patterns make it extremely difficult to create homogeneous "tranches" for bidding purposes (Companies' St. 7-R, pp. 15-17). Additionally, some of the largest companies in America would be deemed "small commercial" customers if electrical usage is a defining criterion. For example, telecommunications, wireless, cable and transit companies have tens of thousands of low-usage connections spread throughout the Companies' service territories. *Id.* If these accounts were swept into the program, administrative costs and burdens would be increased to target customers that have no interest in participating or, as in the case of local service locations of large national accounts, have already considered "shopping" and decided against it for valid business reasons. *Id.* The ALJ recommended approving the Companies' proposal because it is reasonable, is supported by the evidence and conforms to the Commission's guidance in the *Intermediate Work Plan Final Order* (p. 42).

In a pattern repeated throughout its Exceptions, RESA takes issue with both the ALJ's recommendation and the *Intermediate Work Plan Final Order* for allegedly failing to consider "current levels of shopping," which RESA believes are too low and, therefore, would justify ignoring the evidence and departing from the Commission's own prior guidance. *See* RESA Exc., p. 29. However, as the ALJ explained, both she and the Commission properly considered small commercial and industrial customer shopping levels before recommending that such customers not be included in retail opt-in aggregation programs (R.D., pp. 93-94).

"Testing"/Pilot Programs (RESA Exc. 10). The ALJ recommended rejecting RESA's proposal to require EDCs to undertake elaborate "testing" of marketing "channels" for their retail opt-in aggregation programs (R.D., pp. 109-110). RESA's "testing" proposal simply repackages the "pilot program" concept that the Commission rejected in the *Intermediate Work Plan Final Order* (p. 47), wherein it concluded that such programs cannot be completed by June 1, 2013, are unduly burdensome, and have "minimal" value. The evidence the Companies presented in this case underscores each of the Commission's observations. Unlike RESA, the Companies constructed a timeline for conducting the "testing" RESA proposed and demonstrated that the testing could not be finished by the Commission's June 1, 2013 deadline (Companies' St. 7-R, pp. 3-4). Moreover, such "testing" would not provide any meaningful information about the likely success of various approaches to marketing the Retail Opt-In Aggregation Programs. *Id.*

Timing Of Customer Solicitation Relative To EGS Auction (RESA Exc. 10). RESA, joined by Dominion (Dominion Exc. 3), also takes issue with the ALJ's recommendation approving the Companies' proposal to conduct the retail opt-in auction before customer enrollment occurs (R.D., pp. 97-98). The ALJ's recommendation, in turn, fully conforms to the Commission's guidance in the *Intermediate Work Plan Final Order* (p. 54). Contrary to RESA's and Dominion's contentions, the appropriate balance between EGSs' desire to know the size of the auction pool and customers' need for pricing information sufficient to make an informed opt-in decision requires that EDCs offer rates and terms when the opt-in solicitation occurs (Companies' St. 7-R, p. 27).

As the ALJ found (R.D., p. 98), customers will have difficulty "shopping" if they do not know the price and terms of the product they hope to buy. EGSs, on the other hand, routinely make offers to customers without knowing how many will accept. Indeed, sophisticated EGSs are fully capable of making reasonable estimates of acceptance levels (Companies' St. 7-R, p. 27; *see* R.D., p. 98). Moreover, any uncertainty that might exist because bidders do not know the exact number of customers in the aggregation group is minimized by the use of a tranche-style auction and a 50% customer participation cap. *Id.* In short, the EGSs' concerns have been properly addressed and should not be used allowed to defeat the program's primary goal of enhancing customer shopping. Accordingly, RESA's and Dominion's exceptions should be rejected.

Supplier Load Cap – Minimum Number Of "Winning" Bidders (RESA Exc. 11). The Companies proposed that no EGS would be allowed to win more than 50% of the available tranches in the Retail Opt-In Auction (Companies' St. 7-R, p. 30; R.D., p. 102). RESA objected to the Companies' proposal and argued that, in addition to the 50% supplier load cap, the Commission should require that the auction have at least four "winning" bidders. The ALJ properly rejected RESA's proposal because it is nothing more than a veiled attempt to re-write the *Intermediate Work Plan Final Order*. *See* R.D., p. 103; *Intermediate Work Plan Final*

Order, p. 63. And, because RESA proposes that the four lowest bids, not the single lowest bid, would be selected, the opt-in price for participating customers would be higher. Finally, any purported concerns about the competitiveness of the auction are unwarranted. The 50% load cap adequately addresses those concerns and, in any event, the Commission has reserved the right to review the results of each auction to assess for itself the participation levels and competitiveness of the auction. *Intermediate Work Plan Final Order*, p. 64. RESA's exception should, therefore, be rejected

2. Standard Offer Customer Referral Program

a. Term Of The Standard Offer Product And Duration Of The 7% Discount (RESA Exc. 16)

In its Exceptions (pp. 41-42), RESA renews its opposition to the Companies' proposal that the Standard Offer Referral Program provide a 7% discount from the PTC for a one-year service term. RESA contends that the 7% discount should only be offered for "the first four months of the one year service term and, after that introductory period, the price offered by the EGS should revert to one that is disclosed to the customer in the mailing from the EGS serving the customers." *Id.* The ALJ properly rejected RESA's position because the *Intermediate Work Plan Final Order* (p. 31) unmistakably states that the 7% discount may be offered for a term that is "a minimum of four months, but should not exceed 1 year." That Order does not discuss, let alone approve, RESA's proposal to bind a customer to a one-year contract, provide a 7% discount from the PTC for only four months, and allow the EGS to set its own price for the balance of the term.

Additionally, there is significant potential for harm in guaranteeing the 7% discount for only four months and forcing customers to "revert" to whatever rate the EGS chooses to charge for the balance of the term. Under those circumstances, a participating customer would be gambling on the rate the EGS may decide to impose when the 7% discount ends. If RESA's structure were adopted, some participating EGSs might well offer reasonable prices for the balance of the contract term, while others might charge an unreasonably high rate. Because EGSs (absent a specific request by the customer) would be assigned on a rotational/random basis, customers electing to participate in the program would, in effect, be forced to play a game akin to Russian roulette, where the post-discount contract rate would be determined by a spin of the cylinder. Customers should be assured that the standard offer discount will be in place for the duration of the contract, which is precisely what the Commission had in mind when it formulated its guidance (Companies' Initial Brief, p. 126). Accordingly, RESA's exception should be rejected.

b. Standard Contracts (RESA Exc. 13)

The Companies proposed that EGSs participating in their Standard Offer Customer Referral Programs execute standard contracts. The Companies provided form contracts for review and approval (Companies' Exs. CVF-5 and CVF-11), and Mr. Fullem explained their basic terms (Companies' Sts. 7, p. 29, and 7-R, p. 44). No one objected to this aspect of the program. Nonetheless, tucked away in footnote 118 of its Exceptions, RESA makes the totally inaccurate claim that the ALJ "did not recommend" adoption of the Companies' standard contracts. To the contrary, the ALJ recommended approval of the Companies' Standard Offer Customer Referral Program, and the standard contracts are an integral part of that program. She did not write separately about the standard contracts because no one – including RESA – objected to them.[19] It appears RESA is tacitly implying that, despite its previous silence, its opposition to standard contracts for the Standard Offer Customer Referral Program may be inferred from its opposition to standard contracts for the Retail Opt-In Aggregation Program. If so, then the ALJ's recommendation to approve standard contracts for the Retail Opt-In Aggregation Program should likewise be construed to extend to both programs. The distinction RESA is trying to make in footnote 118 should be seen for what it is – a rhetorical trick that should be summarily rejected.

3. Operational Issues – RESA's Proposal (RESA Exc. 17)

RESA proposed that the Companies investigate implementing a secure, web-based system to provide EGSs electronic access to key customer usage and account data. The ALJ

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19 *See* RESA Sts. 2, pp. 24-25, and 2-SR, pp. 10-12, wherein RESA objected only to standard contracts for use in the Retail Opt-In Aggregation Program.

recommended rejection of RESA's proposal because this is not the proper forum for such a request (R.D., pp. 139-140). RESA's proposal should be addressed in one of the working groups organized as part of the Retail Market Investigation at Docket No. I-2011-2237952. As provided in the *Intermediate Work Plan Final Order* (pp. 96-99), this issue falls under the purview of the working group addressing EGS access to customer-specific bills and letters of authorization ("LOA"). As the Commission explained in the *Intermediate Work Plan Final Order* (p. 98), until the working group completes its mission, the current practices in each EDC's service territory should be maintained.[20]

III. CONCLUSION

For the reasons set forth above, the Recommended Decision issued by Administrative Law Judge Barnes on June 15, 2012, should be adopted with the modifications described in the Companies' Exceptions filed on June 25, 2012.

Respectfully submitted,

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July 9, 2012

[20] If the Commission were to direct the Companies to implement such an operational change as part of their DSPs, then they must be given the opportunity to recover the implementation costs through their DSS Riders or from all EGSs through a charge imposed under their respective supplier tariff. *See* R.D., p. 140.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

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

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(with CD containing Reply Exceptions in Word 2007)

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