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September 10, 2012

VIA E-FILING AND OVERNIGHT DELIVERY

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
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 is the unbound original **Answer of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to Petitions for Reconsideration and/or Clarification of the Commission's Order Entered August 16, 2012** (the "Answer") in the above-captioned proceeding.

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

Sincerely,

T P Gadsden

Thomas P. Gadsden

TPG/tp
Enclosures

c: Per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served copies of the **Answer of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to Petitions for Reconsideration and/or Clarification of the Commission's Order Entered August 16, 2012** upon the following persons, in the matter specified below, in accordance with the requirements of 52 Pa. Code § 1.54:

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Dated: September 10, 2012

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

ANSWER OF
METROPOLITIAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY,
PENNSYLVANIA POWER COMPANY AND
WEST PENN POWER COMPANY
To Petitions For Reconsideration And/Or
Clarification Of The Commission's Order
Entered August 16, 2012

I. INTRODUCTION

On August 16, 2012, the Pennsylvania Public Utility Commission ("PUC" or the "Commission") entered its Order in the above-captioned proceeding ("August 16 Order"). On August 31, 2012, Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power") and West Penn Power Company ("West Penn") (each individually a "Company" and, collectively, the "Companies") filed a Petition for Clarification in which they asked the Commission to affirm the Companies' authorization to proceed with competitive procurements conforming to the terms of the August 16 Order. Also on August 31, 2012, Petitions for Reconsideration and/or Clarification (hereafter "Petitions") were filed by the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Retail Energy Supply Association ("RESA"), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA") and

Constellation Energy Commodities Group, Inc., Constellation NewEnergy, Inc., Exelon Generation Company, LLC, and Exelon Energy Company ("Constellation/Exelon").

Pursuant to 52 Pa. Code § 5.572(e), the Companies submit this Answer to the Petitions filed by other parties. Although this Answer directly addresses the material averments of each Petition, there is an overarching factor the Companies urge the Commission to keep foremost in its mind as it conducts its review. Specifically, it is critically important that the Commission not compromise or qualify the finality of its prior approval of the components of the Companies' Default Service Programs for the period June 1, 2013 to May 31, 2015 ("DSPs") that comprise their default service procurement, implementation and cost recovery plans. As explained in the Companies' Petition for Clarification, it is essential that the August 16 Order provide the finality the Companies need in order to begin the procurement process by October 1, 2012. Beginning the procurement process by that date is the only way the Companies can be assured that they will complete the work required to conduct their first default service auction by January 2013 and conduct a request for proposals for Solar Photovoltaic Alternative Energy Credits ("Solar RFP") in November 2012, pursuant to the terms of the August 16 Order, so that power can flow to default service customers by June 1, 2013 under terms that conform to that Order.

Additionally, in their respective Petitions, the OCA and RESA have raised issues that pertain to the way the Commission-approved Retail Opt-In Aggregation Programs ("ROI Program") should be implemented. *See* OCA Petition, pp. 3-5; RESA Petition, pp. 11-13. Raising these issues by way of Petitions for Reconsideration or Clarification appears to be premature in light of the Commission's decision to postpone a final resolution of those issues until the parties have completed the Commission-directed consultative process and a proposal has been offered for the Commission's consideration on October 15, 2012. *See* August 16 Order, pp. 109 and 160. Moreover, the Commission will be in a better position to make an informed decision on these matters after the consultative process has played out and the proposal offered for its consideration has been fully vetted.

II. ANSWER TO THE OCA'S PETITION

The OCA's Petition seeks "clarification" of three aspects of the August 16 Order, which all relate to the ROI Program. First, the OCA asks the Commission to "clarify the discount for the first four months of the program." Specifically, the OCA proposes that language in the August 16 Order stating that the price for the first four months should be 5% off the Price to Compare ("PTC") "at the time of enrollment," should be interpreted to mean 5% off the PTC "on June 1, 2013." OCA Petition, pp. 4-5. Second, the OCA asks the Commission to clarify its "intent" regarding the prices to be charged by electric generation suppliers ("EGSs") participating in the ROI Program during months five through twelve of a customer's contract. Specifically, the OCA wants the Commission to decide whether all EGSs must charge participating customers the same price or each EGS may charge a different price and, if the latter, "how customers will be assigned to individual EGSs." *See* OCA Petition, pp. 5-6. Third, the OCA would like the Commission to affirm that it and "other interested stakeholders" may participate in the consultative process to address customer notification, opt-in enrollment and customer assignment for the ROI Program, as directed by Ordering Paragraph 13 of the August 16 Order. OCA Petition, p. 6.

The OCA's second and third issues are related and should be addressed first because their appropriate resolution is fairly straightforward. As to issue three, the Companies agree that the OCA and other stakeholders may participate in the consultative process to develop a proposal for implementing the ROI Program. For that reason, the OCA's second issue, which directly implicates important elements of the ROI Program implementation process, is premature and, therefore, should not be addressed until the consultative process has run its course. In that process, interested parties will have an opportunity to explore fully all of the inter-related implementation issues, including those the OCA believes may exist. Accordingly, the Commission should decline to consider those issues at this juncture.

The OCA's first issue, namely, whether the PTC "at the time of enrollment" should be interpreted to mean the PTC as of June 1, 2013, has significant and far-reaching implications, which the OCA may not have envisioned and which could impede the implementation of the ROI Programs by June 1, 2013. Simply stated, if the Commission directs that the initial four-month price must be 5% off the PTC as of June 1, 2013, then it will not be possible for the Companies to provide customers a specific price at the time the enrollment process begins because the June 1, 2013 PTC will not be known at that time. Although ROI Program materials will have to be provided to customers by the beginning of April 2013, the data needed to compute the June 1, 2013 PTC will not be available until late April 2013.

If the Commission directs that the price for the first four months of a participating customer's contract is to be 5% off the PTC as of June 1, 2013, then the material provided to customers to solicit their enrollment in the ROI Program will have to be distributed without an actual, stated price. Alternatively, if the Commission determines that customers should have the actual stated price, then that price must be 5% off the PTC then in effect (i.e., as of March 31 2013). It is extremely important that the Commission appreciate the logistical and implementation issues that would arise from selecting the June 1, 2013 PTC as the basis for setting the initial four-month price for the ROI Program customers.

III. ANSWER TO THE OSBA'S PETITION

The OSBA's Petition asks the Commission to reconsider its decision that small commercial and industrial customers ("Small C&I Customers") should be included in the ROI Program. As the OSBA notes in its Petition (p. 6), the Companies proposed that Small C&I Customers would not be eligible to participate in their ROI Programs. The Companies continue to believe that there are sound reasons not to include Small C&I Customers in their ROI Programs and, therefore, at a conceptual level, agree with OSBA's position, although not necessarily with each of the arguments the OSBA has made in support of its position. However, the Companies are not filing this Answer for that reason. Rather, it is being filed to point out certain averments in the OSBA's Petition that are not correct and to explain the Commission-approved parameters for defining Small Commercial and Industrial Customers.

In Paragraph 24 of its Petition, the OSBA identified what it believes to be the rate schedules that define the Company's "smallest commercial rate classes" as follows:

Met-Ed	GS	loads up to 1,500 kW
Penelec	GS	loads up to 1,500 kW
Penn Power	GS	loads up to 1,500 kW
West Penn	Rate 20	loads up to 100 kW

There appears to be a typographical error for Met-Ed and Penelec, as the 1,500 threshold should be stated in terms of kilowatt-hour ("kWh") energy as opposed to kilowatt ("kW") demand. Additionally, the OSBA was apparently unaware that Penn Power has a Small General Service rate schedule that is available only for loads up to 50 kW. Accordingly, the chart in Paragraph 24 of the OSBA's Petition should be revised to accurately reflect those Companies' rate schedules as follows:

Met-Ed	GS Small	loads up to 1,500 kWh per month
Penelec	GS Small	loads up to 1,500 kWh per month

Penn Power	GS Small	loads up to 50 kW
West Penn	Rate 20	loads up to 100 kW

Additionally, the OSBA asks the Commission to clarify the language of the August 16 Order that purportedly directs the Companies to "include commercial customers in the Market Enhancement Programs" without limiting the scope of that directive to "commercial customers with loads under 25 kW." OSBA Petition, p. 9. Specifically, the OSBA's prayer for relief requests a modification of the August 16 Order to provide that "any inclusion of small commercial and industrial customers in the Market Enhancement Programs is limited to those customers with a load profile under 25 kW." OSBA Petition, p. 10.

The Companies agree that the Commission did not intend to sweep all commercial customers into the ROI Program. However, the Companies oppose the OSBA's proposed "clarification" in the form it is expressed in the OSBA's Petition. As the August 16 Order (p. 104) explicitly states, on the issue of Small C&I Customers' eligibility for the Companies' Market Enhancement Programs, the Commission adopted RESA's proposal to include "small business customers," which it defined as "those with loads of up to 25 kW or, in the alternative, *customers in the smallest commercial rate class*." August 16 Order, p. 101 (emphasis added). Accordingly, the August 16 Order is clear that the Companies may implement the Commission's decision by extending eligibility for its Market Enhancement Programs to "customers in the smallest commercial rate class" of each Company. This precise definition of eligible customers is extremely important because it would be virtually impossible – and certainly highly impractical and prohibitively costly – to segregate commercial customers based on a 25 kW breakpoint.

For two of the four Companies, defining Small C&I Customers as "customers in the smallest commercial rate class" achieves virtually all that the OSBA seeks by way of clarification because those Companies have Small General Service rate schedules that encompass loads up to, but generally not above, 25 kW.[1] For Penn Power and West Penn, the smallest general service rate schedules extend to 50 kW and 100 kW, respectively. However, for the reasons previously discussed, it would be highly impractical to segregate customers in those rate classes based on a 25 kW breakpoint and, therefore, as the August 16 Order authorizes, the Companies are making all customers on Penn Power's GS Small and West Penn's Rate 20 rate classes eligible for their Market Enhancement Programs.

IV. ANSWER TO RESA'S PETITION

RESA's Petition asks the Commission to reconsider aspects of the Companies' Standard Offer Customer Referral Programs ("Standard Offer Referral Programs") (RESA Petition, pp. 5-10) and their ROI Programs (RESA Petition, pp. 11-13). Each of the issues raised by RESA is addressed below.

A. The Standard Offer Referral Programs

1. "Merging" The New/Moving Customer Referral Program

In its Petition (pp. 5-8), RESA has renewed its request, which it set forth at length in its testimony (RESA St. 2, p. 29; RESA St. 2-R, pp. 22-23), its Main Brief (pp. 86-87); and its Exceptions (pp. 40-41), that the Commission should displace the New/Moving Customer Referral Programs by accelerating the implementation of the Standard Offer Referral Programs. RESA claims that reconsideration is appropriate because the Commission rejected RESA's proposal based on its misunderstanding of RESA's position. RESA Petition, p. 8. RESA is simply wrong. Contrary to RESA's protestations – which amount to nothing more than

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1 A customer with monthly usage of no more than 1,500 kWh is generally not going to have a load beyond 25 kW. It is possible that Small C&I Customers with loads of 25 kW and less might be receiving service on rate schedules that extend to usage levels above 1,500 kW. However, the logistical nightmare of trying to identify the small number of customers that might fit that profile is another reason that only "customers in the smallest commercial rate class" should be eligible for the Companies' Market Enhancement Programs.

quibbling about semantics[2] – the Commission understood precisely what RESA was proposing, as evidenced by its summary of RESA's position:

> RESA has proposed that the New/Moving customer referral program be dropped and that the Companies focus their attention on implementing the Standard Offer Customer Referral Program, with the goal of doing so by the end of 2012.

August 16 Order, p. 151.

The Commission should not grant reconsideration as RESA requests and should not adopt RESA's position for two significant reasons. First, contrary to RESA's unsupported assumptions, there is simply not enough time to implement the Standard Offer Referral Program before June 1, 2013. The work needed to revise and realign call center and customer information system resources to accommodate the Standard Offer Referral Program will require the entire (already tight) schedule for getting that program fully functional by June 1, 2013.

Second, even if the Standard Offer Referral Program could be accelerated and made fully functional before the end of the current Default Service Programs, doing so would unfairly burden existing default service suppliers with customer migration risks that they could not have foreseen and did not take into account when they bid to provide default service generation under existing supply contracts. Indeed, it appears that the Commission established the starting dates for the Standard Offer Referral Program and the ROI Program to align with the beginning of new Default Service Programs so as not to impose unforeseen risks on default service suppliers.

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2 RESA strains to draw a distinction between "dropping" (the Commission's term) the New/Moving Customer Referral Program and its preferred expression, namely, "merging" that Program with the Standard Offer Customer Referral Program. RESA Petition, p. 8. It is a distinction without a difference. The New/Moving Customer Referral Program disappears as surely by being "merged" as by being "dropped." RESA offers rhetorical sleight of hand to try to create a "misunderstanding," and, therefore, a basis for reconsideration, where none, in fact, exists.

2. The 7% Discount And Changes In The PTC

In its Petition, RESA purports to perceive some ambiguity around the pricing provision for the Standard Offer Referral Program. No such ambiguity exists. The August 16 Order is clear that what the Companies proposed, what the ALJ approved and what the Commission adopted are all the same thing. Nonetheless, in light of RESA's Petition, a further explanation of the pricing of the Standard Offer Referral Program may be helpful.

When a customer calls a Company and elects to participate in the Standard Offer Referral Program, the customer will be entitled to receive service from the participating EGS that it selects (or to whom it is assigned) at the same fixed price for the entire one-year duration of its contract with that EGS. That price will be established at the time an offer is extended to the customer under the Standard Offer Referral Program and will consist of the PTC at the time of the offer less 7%. Thus, if a customer enrolls in the program on June 1, 2013 when the PTC (assumed for purposes of illustration) is $0.09 per kWh, the customer would be charged a fixed and unchanging price of $0.0837 per kWh for the entire one year duration of its contract. (Of course, the customer is free to leave the program at any time without penalties or termination fees.) Similarly, if another customer calls a Company on September 15, 2013 and enrolls in the program on that date, when the PTC (assumed for purposes of illustration) is $0.10 per kWh, the customer would be charged a fixed and unchanging price of $0.093 per kWh for the entire one year duration its contract (unless the customer terminates the contract before its term expires). In each instance, each customer will be charged a fixed price for the duration of its one-year contract, and that price will be set at 7% off the PTC in effect at the time an offer was extended to each customer.

It is not clear what aspect of the Standard Offer Customer Referral pricing procedure RESA does not understand. However, if RESA is under the impression that a participating customer, once enrolled in the program, will be charged a contract price that changes each quarter based on the application of a 7% discount to the then-effective quarterly PTC, then RESA's understanding is entirely incorrect. It appears that RESA's misunderstanding (i.e., its belief that a customer's contract price would change quarterly) was the basis for its proposal that "EGSs have the flexibility to leave the customer referral program with thirty (30) days notice when the new PTC is set." RESA Petition, p. 11. Consequently, that issue may be moot.

The Companies take no position with regard to EGSs' ability to leave the program upon proper notice; however, should the Commission find that EGSs should have the "flexibility" to exit the entire Standard Offer Referral Program, the Companies must be protected from any stranded costs of the program and receive full and current recovery of such costs in light of the Commission's decision that the Companies must recover the costs of their Market Enhancement Programs from EGSs. *See* August 16 Order, p. 136. If any portion of such costs is to be recovered through periodic payments over the term of the Market Enhancement Programs – in lieu of up-front payments at the start of such programs – then the Commission must be careful in how it allows participating EGSs to walk away from their cost obligations in support of the program.[3] Indeed, if, under those circumstances, EGSs are afforded the "flexibility" RESA seeks, the Commission must ensure full cost recovery, as the Companies are required to establish and maintain a program even where there would be no current EGS participation. Accordingly, should the Commission grant RESA's proposal, proper protections must be guaranteed to the Companies in order to ensure they are given full cost recovery for any costs incurred as a part of this program.

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[3] The Commission has suggested that it has "concerns" with such "up-front" payments (*see* August 16 Order, p. 136), which would indicate that it believes cost recovery could occur ratably over some portion of the lives of the Market Enhancement Programs.

B. The ROI Programs

RESA also seeks "clarification" of two issues that pertain to the Companies' ROI Programs. First, RESA asks the Commission to hold that "participating customers" should be "equally allocated" to "participating EGSs" "on an equitable basis." RESA Petition, pp. 12-13. Second, RESA requests the Commission to rule that each participating EGS will be free to "individually determine" its price for months five through twelve and that such prices not be subject to the Commission's review and oversight. RESA Petition, pp. 13-14. Although not discussed by RESA, these two issues are related in one important respect. If each EGS is permitted to "individually determine" the price for the last eight months of its ROI Program contract free from Commission oversight and customers are "allocated" to participating EGSs, then it is entirely possible that any two customers could get radically different deals based on the "luck of the draw" when they are "allocated" to a particular EGS. This approach could cause customer misunderstanding and dissatisfaction and could erode trust in "shopping" generally. Moreover, customers are likely to perceive at least a tacit endorsement by EDCs of the participating EGSs' offers simply because of the EDCs' association with the ROI Program. That being the case, a poor shopping experience by any group of customers is likely to damage the goodwill that EDCs have built up with the customers and communities they serve. Consequently, the Companies have a substantial interest in seeing that the implementation issues RESA has raised are analyzed carefully and resolved properly so as to not place the Companies in a position of recommending or endorsing a product to their customers that could be potentially harmful to them.

As the preceding discussion suggests, the Companies have concerns with the approach RESA has proposed and believe the Commission and other parties may as well. That said, the Companies acknowledge that the issues RESA has put on the table are similar to the implementation issues the OCA has also tried to raise by its Petition, as explained in Section II, *supra*.[4] Accordingly, like the implementation issues that precipitated the OCA's Petition, RESA's issues concerning the ROI Program should be addressed, at least initially, in the consultative process that the Commission expects interested parties to use to define and, hopefully, either resolve or narrow their differences before a proposal is presented to the Commission for its consideration by October 15, 2012. Consequently, RESA's request for "clarification" is premature and should be rejected.

V. CAUSE-PA'S PETITION

CAUSE-PA asks the Commission to reconsider its decision allowing customers enrolled in the Companies' Customer Assistance Program ("CAP") to participate in the Commission-approved Market Enhancement Programs. In so doing, CAUSE-PA offers three reasons for its request, which amount to little more than a wholesale reiteration of arguments CAUSE-PA unsuccessfully advanced to the Commission previously. Accordingly, on that basis alone, CAUSE-PA's Petition cannot satisfy the criteria the Commission has traditionally applied as the principal basis for granting reconsideration. *See Duick v. Pennsylvania Gas and Water Co.*, 56 Pa. P.U.C. 553 (1982) (The Commission "expect[s] to see . . . new and novel arguments, not previously heard . . ."). Moreover, none of CAUSE-PA's averments support the proposition that CAP customers should be excluded from the Companies' Market Enhancement Programs.

CAUSE-PA's first reason for urging reconsideration is the Commission's alleged departure from the views it expressed in the *Intermediate Work Plan Final Order*.[5] However,

4 The OCA also seeks "clarification" on whether a single fixed-price should be charged by all EGS to participating customers at the end of the first four months of such customers' ROI Program contracts. Additionally, the OCA has expressed concern over the possible adverse consequences of permitting EGSs to set different prices for customers they obtain through a random allocation. *See* OCA Petition, p. 6.

5 *Investigation of Pennsylvania's Retail Elec. Market: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered Mar. 2, 2012), pp. 31 and 43.

even CAUSE-PA had to concede (CAUSE-PA Petition, pp. 5-6) that, as to retail opt-in aggregation programs, the *Intermediate Work Plan Final Order* states only that "the Commission believes the ability of CAP customer participation should be determined within each EDC's default service proceeding." *Id.* at 43. Of course, that is precisely what happened here, and, therefore, CAUSE-PA's claims of inconsistency in that regard are totally unfounded.

Moreover, CAUSE-PA appears to accord the *Intermediate Work Plan Final Order* legal status akin to a regulation or other "binding norm" that limits the Commission's ability to take different action in the future on the same subject. However, because the *Intermediate Work Plan Final Order* was not adopted with the formalities required for a "regulation," i.e., compliance with the Commonwealth Documents Law (45 P.S. §§ 1102-1208; 45 Pa.C.S. Chapters 5, 7 and 9) and the Regulatory Review Act (71 P.S. §§ 745.1-745.15), it could not establish any "binding norm." To the contrary, the *Intermediate Work Plan Final Order* is akin to a policy statement, which announces a general position the Commission might take in a future proceeding, does not predetermine any particular outcome and does not limit the Commission's ability to take a different position based on case-specific factors. *See Pa. Human Relations Comm'n v. Norristown Area Sch. Dist.*, 473 Pa. 334, 374 A.2d 671 (1977).

For the same reason, there is no support for CAUSE-PA's contention that the Commission, in this proceeding, must walk in the footsteps of the *Intermediate Work Plan Final Order* because doing otherwise would deny "due process" to parties that allegedly "tailored" their "evidence" to that "standard" (*see* CAUSE-PA Petition, p. 10). CAUSE-PA knew – or should have known – the legal status of the *Intermediate Work Plan Final Order* and should not have automatically assumed that it created a "standard" from which the Commission could not depart. Furthermore, if CAUSE-PA's argument were given any credence, it would amount to a "backdoor" approach for parties to elevate the status of policy statements to "regulations" by claiming that, unless the Commission's pronouncement is treated as binding, someone's "due process" may be compromised. This circular argument must be rejected.

Finally, contrary to CAUSE-PA's contentions, the Commission had sound reasons, based on substantial record evidence, to permit CAP customers to participate in the Companies' Market Enhancement Programs. As the Commission explained, the Companies' CAP customers are already allowed to "shop" – in fact, are actually doing so – and the Companies' CAP benefits are entirely "portable" and cannot be diminished if a CAP customer chooses to "shop." August 16 Order, 143. *See also* Companies' Initial Brief, pp. 132-136. These factors distinguish the Companies from other EDCs in Pennsylvania and account for the Commission's decision that the general views expressed in the *Intermediate Work Plan Final Order* were not applicable in this instance.

CAUSE-PA's second reason for urging reconsideration is the claim that the Commission's adoption of a new format for the ROI Program somehow invalidated all of the record evidence the Commission relied upon to find that CAP customers should be allowed to participate in program. CAUSE-PA Petition, p. 8. The only concern expressed by CAUSE-PA during this proceeding that conceivably might be implicated by the format change involved the options available at the end of the period during which a discounted PTC price applies. The Companies demonstrated by record evidence that CAUSE-PA's alleged concerns were not warranted. *See* Companies' Initial Brief, pp. 132-136. It is simply not material for purposes of that issue whether the PTC is discounted at an administratively-determined 5%, as the Commission-approved program provides, or an auction-determined discount that could never be less than 5% and could be more, as the Companies proposed. And, it is equally immaterial whether the period the discounted PTC price is in place is four months, as the Commission has directed, or more than four months, as the Companies proposed. CAUSE-PA's attempt to support reconsideration based on those differences must fail.

CAUSE-PA's third reason for urging reconsideration is a broadly stated averment that the Commission failed to consider the possible "harm" CAP customers might suffer if they are allowed to participate in the Market Enhancement Programs. CAUSE-PA's Petition, pp. 9-12. However, as it has done throughout this proceeding, CAUSE-PA has assumed a definition of "harm" that bears no resemblance to what the Commission had in mind when it cautioned that "CAP customers should not be subject to harm." *Intermediate Work Plan Final Order*, p. 43. The Commission made clear that the "harm" it expects EDCs to avoid is CAP customers' "loss of benefits" as a result of participating in a market enhancement program. *Id.*; Tr. 338-339. The Companies' proposed Market Enhancement Programs satisfy the "no harm" standard because the CAP benefits the Companies provide are "portable" and, therefore, cannot be lost if a customer shops, as undisputed record evidence clearly established (Companies' St. 7-R, p. 43). Moreover, as evidenced by the testimony and cross-examination of CAUSE-PA's witness (CAUSE-PA St. 1-SR; Tr. 327-333), CAUSE-PA's concept of the "harm" from which CAP customers should be insulated is much different from the Commission's. In fact, CAUSE-PA considers CAP customers "harmed" if, at any point in the term of a competitive contract, they would pay more than the PTC, regardless of whether shopping could provide an overall net benefit (CAUSE-PA St. 1-SR, p. 11; Tr. 330-336). There is no reason to deny CAP customers the benefits of shopping based on that standard.

CAUSE-PA has not provided any valid reason for the Commission to reconsider its decision to allow CAP customers to participate in the Companies' Market Enhancement Programs, and its Petition should, therefore, be denied.

VI. CONSTELLATION/EXELON'S PETITION

Constellation/Exelon request that the Commission reconsider its decision that Generation Deactivation charges imposed by PJM Interconnection LLC ("PJM") remain a part of each Companies' PTC and be procured separately by EGSs that supply load in the Companies' service territory. Constellation/Exelon offer three alternative proposals for the Commission's consideration. Constellation/Exelon's Alternative 1 would have the Commission direct that the Companies bear Generation Deactivation costs on behalf of both default suppliers and EGSs and recover those costs on a non-bypassable basis through their Default Service Support Riders ("DSS Riders"), but mandate a one-year "transition period" for commercial and industrial customers that have "existing EGS contracts". Constellation/Exelon Petition, p. 14. Constellation/Exelon's Alternative 2 would also have the Companies bear Generation Deactivation costs on behalf of default suppliers and EGSs and recover those costs on a non-bypassable basis through their DDS Riders, but would "carve out" (i.e., exempt from this requirement) "industrial customers without existing EGS contracts." Constellation/Exelon Petition, pp. 16-17. Constellation/Exelon's Alternative 3 would require the Companies to bear Generation Deactivation costs for default suppliers but not for EGSs and recover the costs that it bears on a non-bypassable basis through their DSS Riders. Constellation/Exelon Petition, pp. 17-18.

As the Commission is aware, the Companies had proposed to procure all Non-Market Based ("NMB") transmission services on behalf of default suppliers and EGSs and recover the costs through their DSS Riders on a non-bypassable basis. Exelon and Dominion, respectively, proposed that the Companies' approach be expanded to include Generation Deactivation charges and unaccounted-for energy ("UFE") costs, and the Companies agreed. However, the Commission rejected the Companies' proposal with respect to all such costs except RTEP and PJM Expansion costs. *See* August 16 Order, pp. 161-162. The Companies also opposed proposals for "transition periods" that were advanced by certain industrial customers. See Companies' Initial Brief, pp. 65-66).

The Companies continue to believe that their original proposal was sound, but the reality is that deviating from the decision the Commission rendered in the August 16 Order with respect to Generation Deactivation charges (or, for that matter, UFE or NMB transmission costs) would necessarily trigger a cascading set of changes in the Companies' Supplier Master Agreements, auction bidding rules, supplier tariffs and retail tariffs, which have already been submitted in the compliance filing the Companies made on September 6, 2012. Accordingly, the Companies believe that the practicalities of their current situation require that the Commission resolve this issue promptly, in order to allow the Companies to begin implementation no later than October 1, 2012 in order to secure supplier contracts on a procurement schedule that conforms to the terms of the August 16 Order. *See* Companies' Petition for Clarification.

Additionally, the Companies strenuously oppose Constellation/Exelon's Alternative 1, 2, and 3 to the Companies' proposal. None of these "Alternatives" had been proposed by the Companies at any point in this proceeding. As previously explained, Alternatives 1 and 2 would entail, respectively a "transition period" for commercial and industrial customers served under "existing EGS contracts" and a "carve out" of industrial customers served under "existing EGS contracts." Alternatives 1 and 2 are administratively unworkable and would cause ongoing implementation problems for both the Companies and the industrial customers that would be subject to the "transition period" and "carve out." Additionally, any good faith effort to apply the "transition period" and "carve out" for "existing contracts" would necessarily require the Companies to intrude on the contractual relationship between commercial and industrial customers and their EGSs, if only to verify whether the as-yet undefined "existing contracts" exist. Accordingly, under no circumstances should the Commission entertain Constellation/Exelon's Alternatives 1 and 2 set forth at pages 16-17 of their Petition.

The Companies also oppose Alternative 3. Adoption of Alternative 3 would result in disparate treatment of default service generation providers and EGSs because the former would not be exposed to the risk associated with bearing Generation Deactivation costs while EGSs would. This asymmetry could force EGSs to include a risk premium in their prices for the uncertainties surrounding what actual Generation Deactivation cost may be. Default suppliers, who would not face those uncertainties, would not have to include similar risk premiums in their bids to supply default service load. The resulting disparity in pricing could place EGSs at a competitive disadvantage.

VII. CONCLUSION

WHEREFORE, for the foregoing reasons, the Commission should: (1) deny the Petitions for Reconsideration and/or Clarification filed by the OCA, the OSBA, RESA, CAUSE-PA and Constellation/Exelon except to the extent, and with respect to the specific issues, identified previously in this Answer; and (2) grant the clarification requested in the Companies' Petition for Clarification and expressly affirm their authority to begin to implement their default service procurement plans no later than October 1, 2012, because a delay beyond that date would imperil the Companies' ability to secure default service contracts with the terms and on the procurement schedule that conform to the August 16 Order.

Respectfully submitted,

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