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December 10, 2012

<u>Via Electronic Filing</u>
Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO 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 Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669 and P-2011-2273670

Dear Secretary Chiavetta:

On behalf of the Retail Energy Supply Association ("RESA") enclosed is its Comments to Revised Default Service Plan Retail Market Enhancement Programs that has been electronic filed with regard to the above-referenced matter. Copies being served in accordance with the attached Certificate of Service.

Sincerely,

Deanne M. O'Dell

Deanne M. O'Dell

DMO/lww
Enclosure

cc: Hon. Elizabeth H. Barnes w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of RESA's Comments to Revised Default Service Plan Retail Market Enhancement Programs upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email & First Class Mail Only

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Dated: December 10, 2012

* Indicates that I do not have a record of receiving an Executed Protective Order Agreement

{L0465063.1}

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

RETAIL ENERGY SUPPLY ASSOCIATION COMMENTS TO REVISED DEFAULT SERVICE PLAN RETAIL MARKET ENHANCEMENT PROGRAMS

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I. INTRODUCTION

The Retail Energy Supply Association ("RESA")[1] submits these Comments to the Revised Default Service Plan's Retail Market Enhancement Programs ("Revised Default Service Plan") filed on November 14, 2012 by Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power") and West Penn Power Company ("West Penn") (collectively, the "Companies" or "FirstEnergy"). The Revised Default Service Plan was filed in accordance the Opinion and Order of the Commission entered August 16, 2012, in the above-captioned proceeding ("*FirstEnergy Default Service Order*") and sets forth the Companies' proposals for revised Retail Market Enhancement ("RME") programs regarding:

1. Time-of-Use ("TOU") rates for West Penn and Penn Power;
2. An Opt-In Aggregation Program to replace the Companies' originally proposed Retail Opt-in Auction Program;
3. A cost recovery plan for both the Opt-In Aggregation Program and the Companies' proposed Standard Offer Customer Referral Program ("Standard Offer CRP"); and,
4. Proposed revisions to the Standard Offer CRP design to include small commercial customers and to clarify procedures for electric generation supplier ("EGS") participation and customer enrollment.[2]

The *FirstEnergy Default Service Order* adjudicated the default service plans submitted by FirstEnergy on November 17, 2011. The *FirstEnergy Default Service Order* addressed a

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1 RESA's members include: Champion Energy Services, LLC; ConEdison Solutions; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energetix, Inc.; Energy Plus Holdings LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MC Squared Energy Services, LLC; Mint Energy, LLC; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus, LLC; Reliant; Stream Energy; TransCanada Power Marketing Ltd. and TriEagle Energy, L.P.. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

2 Revised Default Service Plan at 2.

variety of topics related to default service procurement as well as retail market enhancement initiatives and directed that:

- FirstEnergy, in consultation with the EGSs, update their proposals for customer notification, opt-in enrollment and customer assignment to coordinate with the Commission's revised opt-in aggregation program design; and,
- FirstEnergy, in cooperation with the EGSs, resubmit a plan or proposal for Commission review regarding how the EGSs will pay for the Standard Offer Customer Referral Program and the redesigned opt-in aggregation program.[3]

The due dates for these plans was extended until November 14, 2012 by Secretarial Letter dated October 16, 2012. The Commission also entered an Amended Opinion and Order on October 11, 2012 (*"Amended Reconsideration Order"*) which addressed petitions for reconsideration and/or clarification of the *FirstEnergy Default Service Order* regarding issues relevant to the Revised Default Service Plan. By Secretarial Letter dated November 30, 2012, the Commission established that comments to FirstEnergy's filing were due on or before December 10, 2012.

As set forth more fully below, RESA recommends various modifications to the Revised Default Service Plan submitted by FirstEnergy. While RESA participated in the discussions coordinated by FirstEnergy the goal of which was crafting a consensus plan for these issues, consensus was not able to be achieved. Unfortunately, the Revised Default Service Plan contains some very significant areas of concern that – if adopted without modification – may result in unsuccessful implementation of the RME programs. More specifically, FirstEnergy's cost recovery proposal provides no details of projected costs for implementation of the RME

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3 *FirstEnergy Default Service Order* at 110 and 136.

programs but, nonetheless, requires participating EGSs to commit to paying 100% of these unknown costs. Particularly for the Standard Offer Program, such a cost allocation will result in no or very few EGSs participating, and thus, the failure of this program. Additionally, even if some EGSs may be willing to take a leap of faith regarding the program costs, the program designs offered by FirstEnergy for both RME programs contain serious deficiencies that are likely to discourage EGSs from participating. Without robust EGS participation in the RME programs, they cannot be successfully implemented and will not achieve the desired goal of promoting greater customer participation in the competitive market. Such an undesirable result could unravel all the efforts of the Commission and the stakeholders to date to encourage default service customers to participate in the competitive retail market. For these reasons, RESA requests that the Commission adopt the modifications proposed below to increase the chance of successful implementation of the RME programs for the benefit of consumers in the FirstEnergy service territories.

II. FIRSTENERGY'S RME PROGRAMS MUST BE MODIFIED TO ADDRESS COST RECOVERY AND PROGRAM DESIGN DEFICIENCIES

The key to successful implementation of the RME programs is to ensure that the programs are properly structured to encourage participation by EGSs and customers. There are two crucial pieces to addressing this. First, the RME programs must be designed in a cost efficient manner with a fair allocation of the costs. If the costs are too high and not fairly allocated, EGSs will simply choose not to participate. The second crucial piece is to design a program 'product" that EGSs can successfully offer to customers, so that they will choose to participate in the programs. Unfortunately, the proposals in FirstEnergy's Revised Default Service Plan miss the mark on both of these critical pieces and, therefore, RESA urges that the Commission address these issues consistent with the recommendations set forth below.

A. FirstEnergy's RME Cost Recovery Proposals Unreasonably Rely On Unknown Costs And Create A Serious Disincentive For EGS Participation In The Programs

The Revised Default Service Plan does not provide any estimate of the costs FirstEnergy expects to be incurred for implementing the RME programs. Instead, FirstEnergy sets forth its non-consensus proposal regarding how to allocate 100% of these unknown costs to participating EGSs.[4] Setting aside RESA's concerns regarding the program design for the RME programs, which are discussed in II.B below, RESA has real and serious concerns that expecting EGSs to commit to paying some unknown costs for these programs could be an impenetrable barrier to EGS participation. Therefore, RESA strongly urges that the Commission reject FirstEnergy's "black box" plan and adopt the alternative proposal set forth below, which is intended to address the deficiencies in FirstEnergy's proposal in a fair and equitable manner.

1. FirstEnergy's Plan To Impose Unknown And Significant Costs Must Be Corrected

The Commission has acknowledged RESA's concerns about how costly and poorly designed RME programs could negatively impact their successful implementation. In directing the parties to work together to try to arrive at a cost recovery sharing mechanism, the Commission specifically stated:

> Upon review of the Recommended Decision and the record in this proceeding, we find that we do not have sufficient information to adopt the proposal for the cost recovery of the ROI Aggregation Program and Standard Offer Customer Referral Program as recommended by the ALJ. <u>At this time, we have significant concerns that the $100,000 required up-front cost for EGS participation may be a significant barrier to entry. Likewise, the costs for the newly designed ROI Aggregation Program have not been discussed during the course of this proceeding.</u> Accordingly, the Companies, with the cooperation of the EGSs, are directed to

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[4] Revised Default Service Plan at 9-10.

> resubmit a plan or proposal within sixty days for Commission review regarding how EGSs will pay for the Standard Offer Customer Referral Program and the redesigned ROI Aggregation Program.
>
> We believe that the resolution of this issue is particularly important, as it is the cornerstone to the success of these programs. The thrust of the IWPF Order was to bolster customer participation in the retail electric market. However, these steps can only jumpstart the market if they are effectively implemented. We urge the EGSs and Companies to come to an agreement on how to minimize these costs and allocate these costs in order to carry out these programs in a cost-effective manner and bring more retail customers to the competitive electric market.[5]

Notwithstanding the Commission's direction, FirstEnergy's plan fails to present any specific estimate or projection of the costs of either RME program. This issue is particularly exacerbated by the proposed program design, which threatens to create an unnecessarily expensive program. For example, FirstEnergy has not presented any detailed description of how it intends to implement or operate the Standard Offer/CRP. Instead, FirstEnergy's proposal is simply that each EDC will track and record costs and recover these costs from the EGSs by assessing a standard, per-customer charge.[6] During the collaborative sessions, FirstEnergy initially suggested a per customer charge at $85 per customer. In fairness, FirstEnergy characterized this figure as a rough estimate that was on the high side. However, RESA would be very concerned if the actual cost was even half this projected amount. Importantly, though, FirstEnergy never provided any further level of detail or projections about the true costs that are likely to be incurred. During the collaborative sessions, RESA suggested that FirstEnergy consider a potentially more cost efficient means of administering the CRP, such as the use of an IVR (Interactive Voice Response) System which is used successfully in New York by some

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5 *FirstEnergy Default Service Order* at 136-137 (emphasis added).

6 Revised Default Service Plan at 11; Exhibit I at 5.

EDCs. FirstEnergy did not provide any concrete cost estimates for either a "live representative" based system or RESA's recommended IVR based system.

RESA is concerned because, under the present approach, since FirstEnergy is assured full recovery of all costs of implementing and operating the RME programs there is no incentive for FirstEnergy to implement the RME programs in a cost effective manner. For this reason, directing FirstEnergy to provide detailed estimates of its projected costs with supporting information is critically important.

2. FirstEnergy's Proposal To Allocation 100% Of The Costs To EGSs Must Be Rejected

FirstEnergy proposes to assign 100% of the costs of the two programs to EGSs. Expecting EGSs to agree to pay 100% of poorly designed and unnecessarily costly programs is unreasonable and without the participation of the EGSs the programs will not be successfully implemented. Importantly, the Commission never specifically ruled that only EGSs should be assigned the costs of these programs, and indeed stated plainly that "[i]f an agreement on the allocation of these costs is not reached within the allotted time period, the Commission may order an allocation of costs that comes from one of the proposals submitted by the stakeholders."[7] The Commission reinforced its openness to a cost recovery approach for RME programs that "include consideration of the possibility that customers as well as EGSs may be responsible for some program costs" in its most recent order in the PECO default service proceeding.[8]

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7 *Id.* at 137, n. 30.

8 *Petition of PECO Energy Company for Approval of its Default Service Program*, Docket Number P-2012-2283641, Opinion and Order (on reconsideration) entered November 21, 2012 at 16.

With this in mind, RESA respectfully urges the Commission to reject FirstEnergy's proposed 100% cost allocation to EGSs of its unknown costs for the RME programs. Instead, the Commission should direct that:

1. Costs of both programs should be shared equally between EGSs and distribution customers.

2. On an expedited basis, FirstEnergy should submit a detailed projection of both how it intends to implement both the Aggregation Program and the Standard Offer/CRP and the implementation and ongoing costs it projects it will incur for each. The costs should be subject to discussions with interested parties including the EGSs.

3. For each program, an initial, "per customer" cost for the first year of the program should be established by the Commission. For the Opt In Aggregation that "per customer" cost can reflect FirstEnergy's best projection of what the costs will be (FirstEnergy has used a cost of about $1 per mailing which is not unreasonable.) For the Standard Offer CRP, however, the Commission should establish a "per customer cost of no more than around $30/customer. If the per customer costs were to be significantly higher, RESA has serious doubts that EGSs will participate in the program.

4. EGSs would be asked to remit half of the initial per customer costs in order to participate in the Aggregation Program and the Standard Offer CRP.

5. FirstEnergy would be given the opportunity to recover the remaining initial per customer costs from distribution customers via a surcharge.

6. If the actual costs of the two programs exceed the initial per customer costs, FirstEnergy should be permitted to make a claim for the excess in a future base rate proceeding, but should be permitted to recover them from customers and EGSs, only if, after a proceeding, the Commission finds that FirstEnergy's implementation approach and cost projections were prudent and reasonable. Specifically, FirstEnergy's claim should be judged on whether it was designed to achieve <u>the greatest success</u> at the <u>lowest, reasonable cost</u>. If the Commission finds that FirstEnergy's plan does not meet this standard, revisions to the plan and costs should be ordered (with any necessary refunds provided to EGSs and customers) that already paid at the higher initial level.

7. Any costs incurred by the FirstEnergy companies that are subsequently determined not to meet this "greatest success at lowest reasonable cost" standard should be declared to be imprudent be and should be required to be absorbed by FirstEnergy shareholders.

RESA believes this approach is reasonable way to address its concerns regarding costs to create a greater chance that EGSs may choose to participate in the RME programs (with the caveat that the design of the programs must also be tweaked as explained below in Section II.B).

3. Even If Commission Chooses To Allocate 100% of the Costs To EGSs, FirstEnergy's Proposal Must Be Modified

a. Implementation Costs Amortized

The implementation costs for both RME programs should be amortized over a reasonable period and RESA recommends five to seven years. Under normal ratemaking, an EDC would be permitted to recover the costs over the useful life of the asset. FirstEnergy even describes the implementation costs for Standard Offer/CRP, such as the "costs associated with programming, development of phase scripts, administration of developing third party vendor arrangements, etc."[9] These costs are either straight capital or would be capitalized under generally accepted accounting rules because of the longer-term nature of the investment. In addition, the nature of the benefit – more customers in the competitive market – will accrue over a longer period, as customers who are exposed to the competitive market continue to realize benefits. Finally, it is very likely that the referral program will remain in place for several years to come. Therefore, the reasonable and prudent implementation costs of both the RME programs should be recovered from EGSs on an amortized bases, over five to seven years, and not over the 12 months as proposed by FirstEnergy.

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9 Revised Default Service Plan at 11.

b. Any Cost Recovery Mechanism Must Provide EGSs With A Known And Certain Fee Structure For Participation; FirstEnergy Should Not Be Permitted To Charge EGSs if None Participate or If EGSs Drop Out

In order for EGSs to participate, they must have a known and certain fee structure for participation. As a general matter, RESA does not object to the stated dollar amount per mailing and dollar amount per enrollment mechanisms that have been proposed for the opt-in and standard offer programs, respectively. However, such a cost recovery mechanism must not leave open the prospect for unknown, retroactive assessment to EGSs of program costs. For example, FirstEnergy proposes that if no EGSs elect to participate in Standard Offer/CRP, or it is otherwise unable to recover all of its implementation costs, then FirstEnergy will bill any unrecovered costs to the EGSs that had previously participated:

> In the event that (1) the Commission issues an order that results in a termination of the CRP, or (2) no Customer Referral Suppliers have participated in the CRP for a 6-month period, the difference between revenue collected through the CRP Charge and actual CRP Costs incurred (the "Cancellation Costs") will be billed to all Customer Referral Suppliers that previously participated in the CRP. The portion of the Cancellation Costs assigned to each Customer Referral Supplier will be determined by taking the number of months that the Customer Referral Supplier participated in the CRP and dividing it by the sum of the number of months that all Customer Referral Suppliers participated.[10]

Notably, this proposal does not deal with the contingency of no EGSs electing to participate at all. As noted above, this is a distinct possibility if the proposal set forth in the Revised Default Service Plan is adopted. Notwithstanding this, RESA submits that FirstEnergy's proposal to force EGSs who had previously participated in the program to bear all

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[10] Revised Default Service Plan, Exhibit I at 6.

the costs of the RME programs if they are not successfully implemented is completely unfair and of questionable legality.

The Commission has jurisdiction over EGSs only to the extent that such authority is conveyed by the Public Utility Code. Nowhere in the Code can authority be found to assign costs of RME programs to an EGS that has terminated its participation in a program to encourage shopping. Moreover, a determination that these cost could be assigned in this matter would create even more barriers to EGS participation. No EGS would want to risk the chance of being saddled with some unknown level of costs in the future merely because it elected to participate in CRP for a few months. Just as problematic would be a plan to assign the costs of the failed program to all EGSs doing business in Pennsylvania. Such a cost allocation is not only unfair but of even more dubious legality. The only way to address this issue is to allocate the costs (as well as any heretofore unrecovered implementation costs) of both RME programs to FirstEnergy default service customers or distribution ratepayers if the program is terminated or if no EGSs elect to participate (assuming that the Commission determines that the costs were prudently incurred in the first place.).

B. FirstEnergy's Proposed Program Structures for Both RME Programs Require Modification If They Are To Have Any Chance Of Being Successful

In addition to satisfactorily addressing the cost issues discussed in the previous section, the program structure of the RME programs must be designed in a way to increase the likelihood that they will be successfully implemented. One flaw that applies to both programs is FirstEnergy's requirement that participating EGSs are required to use rate ready consolidated EDC billing for the duration of the program terms.[11] This restriction is unnecessarily

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11 Revised Default Service Plan, Exhibit A at 6 and Exhibit I at 7.

prescriptive as many EGSs use bill ready billing, a platform that FirstEnergy also supports. RESA is unaware of any legitimate operational reason why these programs would have to be limited to rate ready billing and believes that such restriction could deter some EGSs from participating. Such a restriction may also be of questionable legality as it could be viewed as unfairly discriminating among different EGSs participating in the market, absent a clear operational reason to discriminate. Therefore, RESA recommends that the Commission reject FirstEnergy's proposal to limit the RME programs to EGSs utilizing rate ready billing. Further problematic design issues specific to each of the RME programs that must be addressed by the Commission are discussed below.

1. The Opt-In Aggregation Program Needs To Be Sequenced To Permit The EGS Price To Be Set After The EGS Knows The PTC

FirstEnergy's proposed program design for the Opt-In Aggregation Program is a direct mailing of EGS offers to customers. The proposed structure is a total 12-month program term. For the first four months of the program term, all participating EGSs would offer a price that is set at a 5% discount off the Price-to-Compare at the time of enrollment which, under the FirstEnergy proposal, is the PTC in effect from March 1 through May 31, 2013. For the remaining eight months, an EGS would be free to set the price that its aggregation customers would continue to receive unless they chose a different supplier.[12] However, because FirstEnergy proposes a program design wherein the customer solicitation materials are to include the pricing information for the full 12-month program term, FirstEnergy proposes that EGSs wishing to participate in the Opt-In Aggregation Program would be required to submit their Terms and Conditions to the Commission for review on <u>February 25, 2013</u>. FirstEnergy's

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[12] Revised Default Service Plan, Exhibit A at 6-8.

proposal is problematic for two reasons: (1) it misaligns the relevant PTC in the initial phase of the program; and, (2) it unreasonably requires EGSs to establish a price for the second phase of the program too far in advance. The chart below shows the PTC changes that would occur during the program term and when the actual PTCs would be filed:

DATE	AGGREGATION PROGRAM PHASE	PTC IN EFFECT	NEW PTC FILED
February 2013	Deadline for EGS to Submit Terms and Conditions (2/23/13)		PTC #1 to be in effect March 1, 2013 filed (2/19/13)
March 2013	Deadline for EGSs to confirm participation & submit marketing materials (3/27/12)	PTC #1 March 1 – May 31, 2013	
April 2013	Customer Solicitation & Enrollment		PTC #2 to be in effect June 1, 2013 filed (4/19/13)
May 2013			
June 2013	Introductory Phase begins effective June 1, 2013 – September 31, 2013	PTC #2 in effect June 1, 2013-August 31, 2013	
July 2013			
August 2013			PTC #3 to be in effect September 1, 2013 filed
September 2013		PTC #3 in effect September 1, 2013 – November 30, 2013	
October 2013	Final Phase begins October 1, 2013 – May 31, 2014		
November 2013			PTC #4 to be in effect December 1, 2013 filed
December 2013		PTC #4 in effect December 1, 2013 – February 28, 2014	
January 2014			PTC #5 to be in effect March 1, 2014 filed
February 2014			
March 2014		PTC #5 in effect March 1, 2014 – May 31, 2014	
April 2014			
May 2014			

FirstEnergy is proposing that the initial offer be based on the PTC at the time of the customer solicitation (March 2013) even though the PTC that will be in effect at the time the customer begins receiving service (June 2013) will be different. Notably the actual mailing to customers is proposed to occur in the same timeframe that the June 1, 2013 PTC would be filed (April 11 – May 1, 2013).

RESA supports using the PTC that will be in effect at the time customers begin receiving service (the June 2, 2013 PTC) and recommends that FirstEnergy's proposed calendar should be adjusted so that deadlines for suppliers to submit their marketing materials and FirstEnergy's direct mailing occur after April 19, 2013 (when the June 1, 2013 PTC will be known). While RESA recognizes that this may impact the start date for some customers until after their June meter read date, this problem is not significant. It is critically important that EGSs must be given the final PTC to which the 5% discount will be applied before requiring them to make a firm commitment to participate in the program. This proposed timing modification by RESA is also beneficial to customers. The opt-in program will be marketed to customers as an opportunity to save money relative to the PTC. This savings opportunity is meaningless if the 5% savings is off of a PTC that expires before the customers even begins to receive service.

A further problem with FirstEnergy's proposal is the way in which it suggests handling the pricing for the final eight month phase of the program. FirstEnergy specifically proposes that EGSs provide the price for the final eight-month phase of the program on February 25, 2013 when they are to submit their Terms and Conditions to the Commission for review.[13] FirstEnergy also proposes to require the price for the final eight-month phase of the program to be included in the initial customer solicitation. Both of these proposals are flawed and should be rejected.

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13 Revised Default Service Plan, Exhibit A at 5.

Based on FirstEnergy's proposed timeline, power flow for this last eight months would begin in October 2013 and would include three different PTCs.[14] Importantly, EGSs will not know the PTC to be in effect at the start of this final phase of the program as that PTC will not be filed until August 2013 – six months after FirstEnergy proposes to require EGSs to set their pricing. Additionally, the final eight month phase of the program will include three different PTC changes. Expecting EGSs to calculate the price for the final eight months of the program so far in advance of implementation is unreasonable. This effectively turns what was intended by the Commission to be an eight-month fixed price product into a fifteen to sixteen month fixed price product.

Nothing in the Commission's orders requires that the customer solicitation include the pricing for the full one year term of the Opt-In Aggregation Program as FirstEnergy proposes. Rather, the Commission made clear in this proceeding that the offer for the final eight months must be submitted to the Commission "*no later than* 45 days before the offers are extended to the potential customers."[15] The Commission further stated in its most recent order in the PECO default service proceeding that:

> We clarify that our intent regarding the EGS filing of the terms and conditions of its eight-month product offering is that such filing be made at least forty-five days before the offers for the *eight-month fixed price product* are extended to customers. An EGS that elects to participate in the Retail Opt-In Program *may* submit its filing in advance of that deadline (including the submission of its filing before its initial customer offer letter is mailed), but will not be required to do so.[16]

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14 Revised Default Service Plan, Exhibit A at 5 and 10.

15 *Amended Reconsideration Order* at 10 (emphasis original).

16 *Petition of PECO Energy Company for Approval of its Default Service Program*, Docket Number P-2012-2283641, Opinion and Order (on reconsideration) entered November 21, 2012 at 27 (emphasis added.

As explained above, requiring EGSs to calculate the price for the last eight months of the Opt-In Aggregation Program so far in advance when critical information is not known – as FirstEnergy proposes – is a significant undertaking and it is not one that is required by the Commission. RESA therefore recommends that EGS price offers for the final eight months of the aggregation program (starting on October 1, 2013) should be filed by August 2013 (rather than the February 2013 date proposed by FirstEnergy) and no requirement to include these eight-month final phase offers in the initial customer solicitation should be imposed. Pricing these offers at that time would coincide with FirstEnergy's filing of the PTC to be effective at the start of the eight-month period and is a significantly more feasible approach than that proposed by FirstEnergy. The only way to create a reasonable possibility that EGSs will seriously consider participating in the program is to shorten the time between the price offer and the effective date of the offer (whether for the first four months or the last eight months of the program term) as recommended.

2. The Standard Offer/CRP Must Be Revised To Address Program Deficiencies

a. FirstEnergy's Attempt To Force EGSs To Use FirstEnergy's Form Consumer Contract And Disclosure Statement Was Already Rejected In Concept By The Commission And Must Not Be Permitted

FirstEnergy proposes that EGSs participating in the Standard Offer/CRP must utilize FirstEnergy's own form of Consumer Contract and Disclosure Statement.[17] RESA opposed this proposal for both RME programs during the underlying proceeding.[18] Regarding the Standard Offer CRP, the Administrative Law Judge recommended against requiring an EDC to present the

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17 Revised Default Service Plan, Exhibit I.

18 RESA Main Brief at 74.

terms and conditions of the standard offer.[19] The Companies did not file an exception on this determination.

Conversely, the ALJ recommended that the Commission adopt the Companies' proposal to require all winning EGSs to sign its Opt-In Aggregation Agreement which includes a Consumer Contract and Disclosure Statement that the winning EGSs would be required to enter into with the aggregation customers.[20] RESA opposed this recommendation and filed an exception regarding it. Ultimately, the Commission agreed with RESA stating:

> We are persuaded by the arguments of RESA not to require all winning EGSs to sign the Companies' proposed Opt-In Aggregation Agreement, which includes a Consumer Contract and Disclosure Statement. We concur with RESA that the relationship between an EGS and EDC is already governed by existing agreements. In addition, any EGS seeking to receive a license to operate in Pennsylvania is required, as a part of the application process, to submit a proposed form for its disclosure statement to the Commission for review. None of the other Pennsylvania EDCs have similar requirements and we believe the procedures for the Companies should not be handled any differently. Accordingly, we shall grant the Exceptions of RESA, and reject the ALJ's recommendation.[21]

FirstEnergy's attempt to reinsert its form contract at this stage for the Standard Offer/CRP Program should be rejected.[22] The ALJ ruled against requiring EGSs to use FirstEnergy's form of standard contract and the Company never challenged this ruling. Moreover, the Commission's reasoning for rejecting the use of such a form contract for the opt-in program is equally applicable to the Standard Offer/CRP. Importantly, the relationship

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19 Recommended Decision dated June 15, 2012 at 122 ("Requiring an EDC to present the terms and conditions of the standard offer is inconsistent with 52 Pa. Code §§ 57.172 and 57.173 because it would shift from the EGS to the EDC the liability for incorrectly changing a customer, which appears contrary to the terms of 52 Pa. Code § 57.177.")

20 RD at 109.

21 *FirstEnergy Default Service Order* at 124.

22 The parties were not informed during the collaborative that FirstEnergy intended to propose the use of this document for the Standard Offer/CRP; the first that RESA became aware of FirstEnergy's intention was in its November 14 filing.

between an EGS and an EDC is already governed by existing agreements such as the supplier tariff and the billing services agreement. Any additional agreements may conflict with or dilute the clarity of the agreements under which EGSs and EDCs are currently doing business.[23] Also, using FirstEnergy's form contract would disrupt the current practice whereby an EGS uses its own Commission-approved disclosure statements to govern its relationship with its customers. Unlike EGSs, the FirstEnergy EDCs are not as familiar with, nor are they required to utilize, disclosure statements when enrolling new customers. In fact, any EGS seeking to receive a license to operate in Pennsylvania is required as a part of the application process to submit a proposed form for its disclosure statement. None of the EDCs have similar requirements and incorporating various terms used by EDCs into contracts utilized in the competitive markets is likely to introduce unnecessary ambiguity and confusion.[24] The use of the disclosure statement by an EGS providing service through the Standard Offer CRP should not be handled any differently.

This issue has already been decided against FirstEnergy below and there is no change in circumstances or other new facts that would now justify permitting the Company to insist an EGS desiring to participate in the Standard Offer/CRP to employ FirstEnergy's version of a consumer contract should be rejected. All that should be required is that the EGS's consumer contract/disclosure statement should contain the material pricing and other terms of the Standard Offer CRP as mandated by the Commission.

b. Customers Should Be Able To Be Assigned To An EGS Of Their Selection

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23 RESA MB at 73-74.

24 RESA MB at 66-67.

To the extent RESA's cost recovery and other concerns listed above regarding the CRP are addressed, RESA generally supports the program design revisions offered by FirstEnergy which are consistent with suggestions offered by RESA during the collaborative process. More specifically, FirstEnergy's operational proposal for how customers are to be enrolled are an improvement over prior processes that have been discussed. However, RESA recommends one additional change to the customer selection process. As proposed, customers would be assigned on a rotating basis with the goal of providing participating EGSs a "generally equivalent number of accounts by service type."[25] FirstEnergy's proposal, however, fails to make clear that a customer selecting a specific EGS participating in the CRP would be assigned to that EGS. Without this option, EGSs would be unable to market or promote the CRP as an attractive way for customers to participate in the market. Thus, FirstEnergy's plan should be modified to first give customers the opportunity to select a particular participating EGS, and then if the customer does not wish to select he/she would be randomly assigned in accordance with the process set forth by FirstEnergy.

III. WEST PENN AND PENN POWER TOU RIDERS

FirstEnergy made the following proposal to satisfy their statutory requirement to offer a time of use rate. For West Penn and Penn Power, EGSs would be given the opportunity to serve customers on a TOU rate for which the EGS would procure the generation and West Penn and Penn Power would bill the rate on a peak/off peak basis during the summer. The proposed differentiation would be as follows:

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25 Revised Default Service Plan, Exhibit I at 8.

Penn Power	
Summer On-Peak Hours	1.41 x PTC
Summer Off-Peak Hours	0.78 x PTC
West Penn	
Summer On-Peak Hours	1.35 x PTC
Summer Off-Peak Hours	0.82 x PTC

The TOU supplier would be identified as the customer's supplier on the bill. Smart meter customers (only customers with smart meters are eligible for the service) would be notified of the TOU rate opportunity and, if a customer responds, he/she will be assigned to a supplier on a random basis. Thereupon, the customer will remain with the EGS. At the end of the one year term, the customer will stay with the EGS unless the customer elects to move to a different EGS, back to default or to a specific product offered by the TOU EGS.[26] RESA generally supports FirstEnergy's proposal for providing TOU service to West Penn and Penn Power smart meter customers – with the following caveats:

- A customer informed of the TOU opportunity should be given the opportunity to designate a participating EGS from whom he/she would like to take the TOU service. This will allow EGSs to conduct their own marketing – if they so choose – to both encourage participating in the program and (just as important) convince the customer to ask to be switched to its favorite EGS to receive the service.
- There must be clear rules for end of the program.
- Since the default service plan is a 2 year term, the TOU default service should clearly end on May 31, 2015. At that point, EGSs should be permitted to retain the customer who take no action upon compliance with the Commission's standard end of term rules (notices 90 and 45 days before end of term). While an EGS might want to continue to offer a time of use product, this should not be mandatory since such an offering may turn out not to be popular or feasible.

[26] Revised Default Service Plan at 5-8.

IV. CONCLUSION

For all the reasons discussed above, RESA respectfully requests that the Commission modify the Revised Default Service Filing of FirstEnergy consistent with the recommendations herein.

Respectfully submitted,

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