

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition of Metropolitan Edison	:	
Company, Pennsylvania Electric Company,	:	Docket No. P-2015-2511333
Pennsylvania Power Company and West	:	P-2015-2511351
Penn Power Company for Approval of	:	P-2015-2511355
their Default Service Programs	:	P-2015-2511356
	:	

**STATEMENT OF
METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY,
PENNSYLVANIA POWER COMPANY AND
WEST PENN POWER COMPANY
IN SUPPORT OF THE JOINT PETITION FOR SETTLEMENT**

April 1, 2016

TABLE OF CONTENTS

- I. INTRODUCTION 1
- II. SUMMARY OF THE SETTLEMENT 2
- III. THE SETTLEMENT IS IN THE PUBLIC INTEREST AND FULLY SATISFIES THE REQUIREMENTS OF THE COMPETITION ACT AND THE COMMISSION' S DEFAULT SERVICE REGULATIONS..... 5
 - A. The Revised DSPs Utilize Competitive Procurement Processes..... 6
 - B. The Term Of the Revised DSPs Is Proper 6
 - C. The Companies’ Procurement Class Designations Are Appropriate And Consistent With The Commission’s Goals Regarding The End State Of Default Service 7
 - D. The Procurement Plan For The Residential Customer Class Is In The Public Interest 8
 - E. The Procurement Plan For The Commercial Customer Class Is In The Public Interest .. 10
 - F. The Procurement Plan For The Industrial Customer Class Is In The Public Interest..... 11
 - G. Additional Procurement Issues 12
 - H. The Settlement Continues A Fair And Reasonable Retail Rate Design That Complies Fully With The Commission’s Regulations And Policy Statement On Default Service.. 15
 - I. The Companies’ Revised DSPs Will Continue The Customer Referral Program..... 20
 - J. Stakeholder Collaboratives 21
- IV. CONCLUSION..... 22

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I. INTRODUCTION

Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power") and West Penn Power Company ("West Penn") (collectively, "the Companies"); the Bureau of Investigation and Enforcement ("I&E"); the Office of Consumer Advocate ("OCA"); the Office of Small Business Advocate ("OSBA"); the Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), the Penn Power Users Group ("PPUG") and West Penn Power Industrial Intervenors ("WPPH") (collectively, "Industrial Intervenors"); the Retail Energy Supply Association ("RESA"); Exelon Generation Company, LLC ("ExGen"); the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"); and TransCanada Power Marketing, Ltd. ("TransCanada") (collectively, the "Joint Petitioners"), by their respective counsel, submit this Joint Petition For Settlement ("Settlement") of all issues in the above-captioned proceeding and request that the Administrative Law Judge approve the Settlement without modification.¹

¹ Noble Americas Energy Solutions, LLC ("NAES"), NextEra Energy Power Marketing, LLC ("NEPM"), Direct Energy Services, LLC ("Direct"), and The Pennsylvania State University ("PSU"), which are parties to this proceeding, have authorized the Joint Petitioners to represent that they do not oppose the Settlement.

The Joint Petition sets forth the factual background and procedural history of this case. This Statement in Support (the "Statement") is filed pursuant to Paragraph 14 of the Joint Petition.

The settlement embodied in the Joint Petition (the "Settlement") was achieved only after an extensive investigation by the parties of the Companies' proposed Default Service Programs for the period June 1, 2017 to May 31, 2019 ("Original Proposal"), which included substantial discovery and the submission of direct, rebuttal and surrebuttal testimony. In addition, a hearing was held on February 25, 2016 during which written and oral rejoinder and cross examination was offered with respect to certain parties' witnesses. Apart from these efforts, over a period of several weeks, the parties engaged in discussions and negotiations about the terms of the Settlement.

The Companies are in full agreement with each of the reasons set forth in the Joint Petition. In this Statement, following a summary of the Settlement, the Companies offer additional reasons why the Settlement is in the public interest and should be approved.

II. SUMMARY OF THE SETTLEMENT

The Original Proposal contained very limited changes to the Companies' existing, Commission-approved default service programs ("DSPs").² Under the Settlement, the Companies' Default Service Programs (the "Revised DSPs") are generally consistent with the Original Proposal. The Revised DSPs will have a four-year term, beginning June 1, 2017 and ending May 31, 2021, subject to specific provisions in the event that changing market conditions lead to the Companies filing new DSPs to modify the Revised DSPs beginning at the midpoint of the four-year term, or June 1, 2019. The Companies' default service customers will remain divided into three procurement classes: a residential class, a commercial class and an industrial class. The Companies will maintain the same procurement class definitions that were approved by the

² On July 24, 2014, the Commission issued an Opinion and Order approving the Companies' current default service programs. See Docket Nos. P-2013-2391368 (Met-Ed), P-2013-2391372 (Penelec), P-2013-2391375 (Penn Power), and P-2013-2391378 (West Penn) (collectively, the "DSP III Proceeding").

Commission in the DSP III Proceeding for the full four-year delivery period, subject to the caveat that if any of the Companies find that their smart meter technology will enable billing to customers, a reduction will be made in the hourly pricing threshold to 100 kW, effective June 1, 2019.

For the residential class, the Companies will acquire load-following, full requirements default service supply procured through a descending clock auction (“DCA”). The full requirements contracts for the residential class will include a fixed price for 95% of the supply to be established through the applicable DCA and a variable price for the remaining 5% of the supply, which will be priced at the hourly real-time zone price for the applicable Company PJM Interconnection, L.L.C. (“PJM”) zone. Contracts for 50% of the load will have terms of twelve months, and contracts for the remaining 50% will have terms of twenty-four months.

The commercial class products are 100% full requirements contracts with a fixed price established through the Companies’ DCA process. The commercial class product mix will be comprised of 3-month contracts (28%), 12-month contracts (36%) and 24-month contracts (36%).

For the industrial class, the load will be served through twelve-month full requirements contracts for hourly-priced service procured through four DCAs conducted in each of January 2017, 2018, 2019 and 2021. Winning suppliers will be paid the winning price bid in the hourly-priced auction, the hourly PJM real time zonal locational marginal price (“LMP”), and a fixed adder of \$4 per megawatt-hour (“MWh”) to capture the estimated costs of other supply components, including capacity, ancillary services, compliance with Pennsylvania’s Alternative Energy Portfolio Standards Act, 73 P.S. § 1643.1 *et seq.* (“AEPS” or “AEPS Act”) and other costs.

The Joint Petitioners have also agreed on a form supplier master agreement (“SMA”) and related documents to implement the Revised DSPs, as well as procedures for the acquisition and use of alternative energy credits (“AECs”) and contingency plans in the event of failure to fully subscribe the default service load for any class, Commission rejection of the bid results for any

procurement, or supplier default. The Joint Petitioners further resolved other procurement-related issues, including the appointment of CRA International, Inc. d/b/a/ Charles River Associates (“CRA”) as an independent third-party evaluator of the Companies’ DCAs and The Brattle Group (“Brattle”) as an independent third-party evaluator of the Companies’ separate solar photovoltaic AEPS procurements. In addition, the Joint Petitioners have agreed upon the continuation of existing tariff and rate design to implement the Revised DSPs.

The Companies will continue their existing, Commission-approved Customer Referral Program (“CRP”) for the timeframe agreed upon by the Joint Petitioners. The Companies will also revise their CRP call center scripts and other related documents to clarify the nature of the CRP’s discounted price. In addition, the Companies will convene their stakeholder meetings to review potential improvements to the administration of the CRP that may enhance the day to day operation of the program.

The Joint Petitioners have agreed to the implementation of a two-year pilot program to implement a clawback charge associated with the Companies’ purchase of receivables (“POR”) programs. Under this pilot, the Companies will assess a charge to those electric generation suppliers (“EGSs”) participating in the Companies’ POR programs whose individual write-offs exceed a set threshold as compared to total EGS write-offs for that Company, following application of an established two-prong test. Those clawback amounts will be retained by the Companies unless and until the Companies are made whole with respect to their uncollectible expense by combining payments received under the pilot and amounts recovered by the Companies through their base rates and applicable riders.

Finally, the Companies have committed to initiate collaboratives to discuss their current shopping programs for customers enrolled in the Companies’ customer assistance programs (“CAPs”), as well as the establishment of a bypassable retail market enhancement rate mechanism.

The Companies will make proposals with respect to these issues in filings before the Commission following the collaboratives.

III. THE SETTLEMENT IS IN THE PUBLIC INTEREST AND FULLY SATISFIES THE REQUIREMENTS OF THE COMPETITION ACT AND THE COMMISSION' S DEFAULT SERVICE REGULATIONS

Under the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2801 *et seq.* (the “Competition Act”), the Companies, as electric distribution companies (“EDCs”) and default service suppliers, are required to procure electric generation service for customers who contract for electric energy which is not supplied or who do not choose an EGS. Under Sections 2807(e)(3.1) - (3.2) and (3.4) of the Competition Act, as amended by Act 129 of 2008 (“Act 129”), the Companies are required to obtain, through competitive procurement processes, a “prudent mix” of default service supply contracts designed to ensure “adequate and reliable service” at the “least cost to customers over time.” 66 Pa.C.S. § 2807(e)(3.7).

Under the Commission’s default service regulations, a default service program must include, *inter alia*: (1) a default service procurement plan, which sets forth the Companies’ strategy for procuring generation supply and complying with AEPS requirements; (2) an implementation plan identifying the schedule and other details of the Companies’ proposed competitive procurements for default supply, with forms of supplier documents and agreements and an associated contingency plan; and (3) a rate design plan to recover all reasonable costs of default service, including rates, rules and conditions of service and revisions to its tariff. 52 Pa. Code § 54.185(e).

In considering and approving a default service provider’s plan, the Commission is required to make specific findings that “the default service provider’s plan includes prudent steps necessary to negotiate favorable generation supply contracts...[and] includes prudent steps necessary to

obtain least cost generation supply contracts on a long-term, short-term and spot market basis.”
66 Pa.C.S. § 2807(e)(3.7).

The Companies’ Revised DSPs contain all of the elements required by the Commission’s default service regulations (52 Pa. Code §§ 54.181 – 54.189) and its Policy Statement on Default Service (52 Pa. Code §§ 69.1801- 69.1817), including implementation plans, procurement plans, contingency plans, rate design plans, and associated tariff pages. As described in the Settlement and in this Statement, the Companies’ Revised DSPs fully satisfy each of the requirements of the Competition Act and the applicable Commission regulations on default service.

A. The Revised DSPs Utilize Competitive Procurement Processes

The Competition Act requires EDCs to use competitive procurement processes to obtain default service supply. In the Settlement, the Joint Petitioners agree to the Companies’ original proposal to procure electric generation supply for the residential, commercial and industrial classes through the use of a DCA process. Joint Petition, ¶¶ 13.A.3 and 13.A.4 & Ex. B. The DCA rules that guide the bid solicitation processes are consistent with those that are used by the Companies in their current, Commission-approved DSPs and that have yielded competitive outcomes. Companies’ St. 1, pp. 11-18. The DCA rules are also designed so that the procurements are in compliance with the Commission’s codes of conduct and that bidder qualification requirements are fair and non-discriminatory. *See* 52 Pa. Code §§ 54.186(b)(6)(ii) and 54.186(c)(2); *see also* Companies’ St. 1, pp. 12-19. Accordingly, continuation of the Companies’ existing DCA processes as part of the implementation plan for the Revised DSPs satisfies the Competition Act’s requirements regarding competitive procurement processes.

B. The Term Of the Revised DSPs Is Proper

The Commission’s regulations provide that the term of DSPs subsequent to the first program will be determined by the Commission. 52 Pa. Code §§ 54.185(d). In their Original

Proposal, the Companies' proposed a term of two years, spanning June 1, 2017 to May 31, 2019, consistent with the length of the term approved in the DSP III Proceeding. Companies' St. 1, p. 3. Both the OCA and OSBA advocated for adoption of longer programs, suggesting four-year terms. *See* OCA St. 1, pp. 12-13; OSBA St. 1, pp. 8-10.

In the Settlement, the Joint Petitioners agree to revise the Companies' original proposed two-year term to a four-year term, subject to an outlined process in the event that market conditions change so as to make continuation of the four-year plan inappropriate following the initial two years of the term. Specifically, the Companies will convene a collaborative with the Joint Petitioners in October 2017 to discuss market conditions and other matters and, if the Companies find it necessary, will make appropriate filings with the Commission with respect to any necessary changes on or before January 31, 2018. Joint Petition, ¶ 13.A.1. The Companies believe a four-year term, subject to the foregoing modification process, is appropriate given that the Revised Programs will be the Companies' fourth generation programs, the components of which have been repeatedly vetted by the parties to this proceeding and the Commission over the course of the Companies' earlier generation plans. By implementing a longer-term plan, customers, the parties and the Commission all benefit from reduced administrative costs. At the same time, the structure agreed to in the Settlement provides flexibility regarding potential future changes in market conditions that may impact default service in Pennsylvania should they make adjustments to the Companies' plans necessary.

C. The Companies' Procurement Class Designations Are Appropriate And Consistent With The Commission's Goals Regarding The End State Of Default Service

The Commission's regulations (52 Pa. Code § 54.187) and Policy Statement (52 Pa. Code § 69.1805) provide that default service providers should design procurement classes based upon peak loads of 0-25 kW, 25-500 kW, and 500 kW and greater, but default service providers may

propose to depart from these specific ranges, including to “preserve existing customer classes.”
See 52 Pa. Code § 69.1805.

In their Original Proposal, the Companies proposed to divide customers into three classes for purposes of default service procurement: a residential class, a commercial class, and an industrial class subject to the definitions that were approved in their DSP III Proceeding. Companies’ St. 1, p. 6. RESA argued for a reduced threshold for determining which customers would be subject to hourly-priced service, recommending the use of 100 kW as the appropriate level. *See* RESA St. 1, pp. 6-8 (recommending that the threshold for the industrial procurement class be lowered to 100 kW).

Under the Settlement, the Companies will retain their existing procurement groups for the duration of the four-year term, subject to the commitment that to the extent any of the Companies will have the ability to bill customers for hourly priced service using smart meters effective June 1, 2019, any such Company will reduce its hourly pricing threshold to 100 kW effective as of that date. Joint Petition, ¶ 13.A.2. In order to implement the procurement classes under the Settlement, the Joint Petitioners have requested that, if necessary, the Commission grant the Companies a waiver of the specific peak load class criteria in 52 Pa. Code § 54.187. Joint Petition, ¶ 13.L.1.

D. The Procurement Plan For The Residential Customer Class Is In The Public Interest

In their Original Proposal, the Companies proposed a full requirements product for the residential class with each tranche consisting of a 100% fixed price, load-following full requirements portion with equal shares of 12-month and 24-month contract terms. Companies’ St. 1, pp. 4-7. The Companies proposed to hold DCAs for 12-month and 24-month products in accordance with the schedule submitted as Companies’ Exhibit RBR-1.

OCA and RESA both argued to retain the spot component currently present in the residential class products. *See* OCA St. 1, pp. 6-7; RESA St. 1, pp. 4-6. In addition, the OCA

opposed the Companies' original proposed timing of procurements. *See* OCA St. 1, p. 11-12 (proposing to further stagger procurements in conjunction with the adoption of a four-year delivery term).

In the Settlement, the Joint Petitioners agree to the Companies' currently-effective residential tranche consisting of a 95% fixed price portion and a 5% spot priced portion. The fixed priced portion of the residential default service load will have equal shares of 12-month and 24-month delivery terms. Joint Petition, ¶ 13.A.3. The addition of the spot component of the residential product pricing represents a compromise between the Companies, OCA, and RESA regarding the procurement strategy for the residential class.

For the initial two years of the delivery period, the Companies will conduct DCAs for the 24-month products in October 2016, January 2017 and April 2017. *See* Joint Petition, Ex. A-1. Commencing October 2017, the Companies will hold three auctions per year for 12-month products, taking place in October, January and April of each year. *See id.* Assuming no revisions are filed by January 31, 2018 with respect to the remaining two years of the four-year plan period, the Companies will replicate this procurement schedule for the remaining two years of the delivery period. *See* Joint Petition, Ex. A-2. All DCAs will be administered by an independent, third-party evaluator (CRA) in accordance with the DCA rules set forth in Exhibit B to the Joint Petition. Consistent with Section 54.185(3)(4) of the Commission's regulations, suppliers participating in the DCAs will bid on tranches corresponding to a percentage of actual residential default service load. Winning suppliers will be responsible for fulfilling all the associated requirements of a load serving entity ("LSE") under applicable agreements with PJM, including energy, capacity, transmission, ancillary services, PJM administrative expenses, as well as providing all necessary

alternative energy credits for AEPS compliance.³ Joint Petition, ¶ 13.A.3. The form SMA which suppliers will be required to execute is attached as Exhibit C to the Joint Petition.

The Settlement resolves the parties' differences regarding the residential procurement plan, is consistent with the Competition Act's requirements and is in the public interest. The Companies believe that the combination of full requirements contracts as set forth in the Settlement constitutes a "prudent mix" of supply resources to obtain least cost generation supply on a long-term, short-term, and spot market basis and to ensure adequate and reliable service, as required by the Competition Act. *See* 66 Pa.C.S. § 2807(e)(3.7). The use of 12-month and 24-month full requirements purchases provides some measure of price stability, a concern that the Commission is required to consider under the Competition Act.⁴ At the same time, the use of spot purchases provides a reflection of current market prices. Furthermore, the comprehensive DCA rules agreed to by the Joint Petitioners satisfy the Competition Act's requirements of a competitive procurement process, with prudent steps to negotiate favorable generation supply contracts and obtain contracts at least cost. *See id.* Finally, the procurement schedule diversifies the times when auctions occur. The Commission should therefore approve the procurement plan for the Companies' residential customers set forth in the Settlement.

E. The Procurement Plan For The Commercial Customer Class Is In The Public Interest

In their Original Proposal, the Companies proposed a commercial class procurement plan that was identical to the residential procurement plan. *See* Companies' St. 1, p. 4-5, 8. Both RESA and the OSBA recommended reintroduction of the 3-month contracts present in the Companies' current commercial class supply portfolio. RESA St. 1, pp. 4-6; OSBA St. 1, p. 6-10.

³ Transmission requirements exclude Regional Transmission Expansion charges ("RTEP"), Expansion Cost Recovery Charges ("ECRC"), and other non-market based transmission costs as defined under the Companies' Default Service Support Riders.

⁴ *See* Final Order, *Implementation of Act 129 of October 15, 2008; Default Serv. and Retail Elec. Mkts.*, Docket No. L-2009-2095604 (October 4, 2011), p. 40.

Under the Settlement, the commercial class procurement product is a 100% fixed price full requirements tranche for 3-month (28%), 12-month (36%) and 24-month (36%) delivery terms. Joint Petition, ¶ 13.A.3. The Companies will procure the 12-month and 24-month products for commercial class customers through DCAs in the same manner and at the same time as the residential DCAs. *See* Joint Petition, Exs. A-1 and A-2. Starting in April 2017, the Companies will hold four auctions per year for 3-month products (i.e., in April, June, October, and January). *See id.* The form SMA which suppliers will be required to execute is attached as Exhibit C to the Joint Petition.

As with the residential class, the procurement plan for commercial customers complies with the Competition Act's requirement to use "competitive procurement processes" to obtain a "prudent mix" of contracts designed to ensure "adequate and reliable service" at the "least cost to customers over time." *See* 66 Pa.C.S. §§ 2807(e)(3.1), (3.2), (3.4). Here, the mix of longer-term contracts and 3-month contracts balances price stability and market reflectivity. The procurement plan also represents a compromise developed by the Joint Petitioners concerning the appropriate blend of supply resources to best serve the commercial class and resolves differences between the Companies, RESA and the OSBA with respect to the contract mix and timing of procurements.

F. The Procurement Plan For The Industrial Customer Class Is In The Public Interest

In their Original Proposal, the Companies proposed to procure hourly-priced generation service for the industrial class load through two separate auctions for twelve-month contracts in January 2017 and January 2018. Companies' St. 1, pp. 8. Suppliers would bid for the right to serve a portion of the hourly-priced service load for twelve-month terms (commencing on either June 1, 2017 or June 1, 2018). Winning suppliers would be paid the winning price bid in the hourly-priced auction, the hourly PJM real-time zonal LMP, and a fixed adder of \$4/MWh.

The Settlement adopts the Companies' original proposed industrial class procurement plan, with the only modification being that procurements will also occur in each of January 2019 and January 2020 to serve load for the remaining two years of the four-year plan that has been agreed upon, absent any filing to modify the remaining two years as discussed *supra*. Joint Petition, ¶ 13.A.5.

Similar to the procurement plans for other classes, the industrial class procurement plan complies with the Competition Act's requirements, and includes timing to adopt the longer-term programs that have been agreed to.

G. Additional Procurement Issues

As set forth in the Settlement, the Joint Petitioners have also reached agreements on several terms that apply to multiple procurement classes.

AEPS Compliance. Under the Competition Act and the Commission's AEPS regulations, EDCs, as well as EGSs, are required to use a competitive procurement process to obtain AECs. *See* 66 Pa.C.S. § 2807(e)(3.5); *see also* 52 Pa. Code § 75.67(b) (requiring default service providers to demonstrate compliance with the Commission's AEPS regulations by identifying a competitive procurement process for acquiring AECs in default service plans). Consistent with the Companies' Original Proposal and the Commission's Orders in the DSP III Proceeding, Met-Ed, Penelec and Penn Power will meet their non-solar requirements under the AEPS Act through the default service supply solicitation process. Joint Petition, ¶ 13.C.1. Met-Ed, Penelec and Penn power will procure solar photovoltaic alternative energy credits ("SPAECs") for 100% of their shopping and non-shopping load through two request for proposal ("RFP") processes to be administered by an independent third-party evaluator (Brattle). *Id.*, ¶ 13.C.2. In the West Penn service territory, default service suppliers will be responsible for all Tier I and Tier II AEPS requirements (including solar) less any Tier I and Tier II AECs or SPAECs that are allocated to the default service suppliers

from existing long-term purchases made by West Penn. *Id.*, ¶ 13.C.1. The Companies believe that the Settlement complies with the Competition Act's requirement to procure AECs through competitive processes.

Contingency Plans. A default service program must include a contingency plan in the event of a supplier default. *See* 52 Pa. Code § 54.185(e)(5). The Settlement appropriately provides for continuation of the contingency plans for full requirements and SPAEC procurements approved by the Commission in the Companies' DSP III Proceeding. Those contingency plans are described in Paragraphs 13.D.1 and 13.D.2 of the Joint Petition.

Third Party Evaluators. The Commission's default service regulations provide that the competitive bid solicitation process shall be subject to monitoring by the Commission or an independent third party selected by a default service provider in consultation with the Commission. *See* 52 Pa. Code § 54.186(c)(3). The Companies have proposed that CRA continue to serve as independent evaluator for their full requirements default service procurements. Companies' St. 1, p. 7. The Companies have also proposed that Brattle continue to serve as independent evaluator for Met-Ed's, Penelec's, and Penn Power's separate SPAEC procurements. Joint Petition, ¶¶ 13.E.1 and 13.E.2 & Ex. D; *see also* Companies' St. 1, p. 25.

The Joint Petitioners agree to the appointment of CRA as the independent third-party evaluator and auction manager for all DCAs and Brattle as the independent third-party evaluator and RFP manager for the separate SPAEC procurements. Joint Petition, ¶¶ 13.E.1 and 13.E.2.

Affiliate Relations. The Joint Petitioners agree that the Companies' affiliates may participate in the Companies' competitive procurement process. Such participation is permitted by the Commission's default service regulations, *see* 52 Pa. Code § 54.186(b)(6), and is in the public interest because it will increase the number of potential bidders to competitively supply full requirements service. Pursuant to Section 2807(e)(3.1)(iii)(B) of Act 129, the Joint Petitioners

have requested that the Commission approve the form SMAs included as exhibits to the Joint Petition as affiliated interest agreements as required under 66 Pa.C.S. § 2102. Joint Petition, ¶ 13.K.1.

The Joint Petitioners further agree that in the event either of Met-Ed or Penelec is in possession of excess credits produced by non-utility generators (“NUGs”) under existing Commission-approved NUG contracts, the Companies may make market-priced sales and purchases of such excess AECs amongst each other as needed to fill their own shortfalls. Allowing the Companies to do so is in the public interest due to the fact that these excess credits may not hold value elsewhere in the marketplace, and such transactions would transfer credits that would be otherwise purchased at the same rates while retaining some value to the customers of the selling Company. Pursuant to Section 2102 of the Public Utility Code, the Joint Petitioners have requested that the Commission approve the Companies’ ability to enter into affiliate transactions to make market-priced sales and purchases of excess AECs amongst each other as needed strictly to fill their own shortfalls. Joint Petition, ¶¶ 13.C.3 and 13.K.2.

Documentation. The Commission’s default service regulations require a default service provider to include copies of the agreements (such as the SMA) and other documentation to be used in implementing a default service provider’s procurement plan. *See* 52 Pa. Code § 54.186(e)(6). The Joint Petitioners agree that the DCA rules attached to the Joint Petition as Exhibit B, the form SMA attached to the Joint Petition as Exhibit C and the RFP rules for SPAEC procurement attached to the Joint Petition as Exhibit D should be utilized for implementation of the Companies’ procurement plans. Joint Petition, ¶¶ 13.A.3(c), 13.B.1, 13.B.2, and 13.C.2.

Load Caps. The Companies proposed increasing their existing 50% load cap to 75% as part of the Original Proposal. Companies’ St. 1, pp. 10-11. The OCA disagreed, arguing that the

50% level is appropriate, on the basis that this level properly manages risk to customers and has not proven problematic in the past. OCA St. 1, pp. 8-10.

The Settlement adopts the Companies' Original Proposal of a higher 75% cap to be applied for the four-year term. This increased limit will allow bidders the opportunity to submit more competitive bids for the benefit of customers, strengthening the Companies' ability to secure products at the least cost over time, consistent with the requirements of the Competition Act.

H. The Settlement Continues A Fair And Reasonable Retail Rate Design That Complies Fully With The Commission's Regulations And Policy Statement On Default Service

As set forth in the Settlement, the Joint Petitioners have also reached agreements regarding rate design, cost recovery and tariff changes, as described below.

Residential and Commercial Classes: PTC Rider. In the Settlement, the Joint Petitioners agree to the Companies' original proposal to continue to charge residential and commercial class default service rates through each Company's PTC Rider. The PTC Riders will recover the cost of energy and capacity, transmission and ancillary service costs, excluding RTEP, ECRC and other NMB transmission charges. Joint Petition, ¶¶ A.F.1.

The design of the PTC Rider rates for the residential and commercial classes complies with the Commission's default service regulations and the Public Utility Code. Consistent with their PTC Riders last approved by the Commission in the Companies' DSP III Proceeding, the Companies will calculate and offer a Price-to-Compare ("PTC"), which will be stated separately by rate schedule and procurement class. With respect to the residential class, the Commission's regulations at Section 54.187(d) state that default service rates may not use a declining block structure. The Commission's regulations at Section 54.187(i) require that default rates charged to all rate classes with maximum registered peak loads of 25 kW or less (which includes the residential class) be adjusted no less frequently than quarterly, while Section 2807(e)(7) of the

Public Utility Code provides that the residential rates should change no more frequently than quarterly. The Settlement's PTC Rider rates for the residential class comply with these requirements because they employ a flat per-kWh design and will change quarterly.

With respect to the commercial class, the Commission's regulations provide that the default service rates for customers with a maximum registered peak load of up to 500 kW should be adjusted no less frequently than quarterly. *See* 52 Pa. Code § 54.187(j). However, the Commission's regulations also provide that default service providers may propose, for Commission approval, a different grouping of customers in order to avoid splitting existing customer and rate classes. *See id.* Accordingly, the Joint Petitioners are seeking approval of commercial classes that differ somewhat from the 500 kW threshold recommended in the Commission's regulations to preserve the Companies' existing customer and rate classes as have been previously approved by the Commission, most recently in the DSP III Proceeding.. Moreover, like the PTC Rider for the residential class, the commercial class PTC Rider rates employ a flat per-kWh design and, therefore, are consistent with the Commission's regulation prohibiting a declining block structure.

Finally, the Settlement does not impose any restrictions on "switching" for customers that obtain default service under the PTC Riders. Like the Companies' current PTC Riders, the Settlement's PTC Riders do not require customers to remain on default service for a minimum term nor do they impose any restrictions on switching to an EGS or from an EGS to default service.

Industrial Class: HPS Rider. In the Settlement, the Joint Petitions agree to the Companies' original proposal to continue to recover the cost of default service for industrial class customers via their HPS Riders. Consistent with the Commission's Order in the Companies' DSP III Proceeding, qualifying commercial customers with interval meters installed may affirmatively request, on a voluntary basis, to take default service on the HPS Rider. Joint Petition, ¶ 13.F.2.

The hourly-priced service to be offered under the HPS Riders is consistent with the Commission's regulations at 52 Pa. Code § 54.187(k), other applicable provisions of those regulations and the Commission's prior approval of the Companies' customer class definitions and service offerings in the DSP III Proceeding. Default service rates established pursuant to the HPS Rider will continue to be based upon the PJM hourly LMP for each Company's respective PJM-designated transmission zone plus associated costs, such as capacity, ancillary services, PJM administrative expenses and costs to comply with AEPS requirements that are incurred to provide hourly-priced service. As previously explained, the level of the fixed adder agreed to by the Joint Petitioners will continue to be \$4/MWh.

Default Service Support Rider. Under the Settlement, each Company's tariff will continue to include a DSSR that imposes non-bypassable charges to recover the same categories of costs approved by the Commission in the Companies' DSP III Proceeding. Joint Petition ¶ 13.F.3.

In addition, the Companies have agreed to convene stakeholder discussions to review various adjustments to the timing and estimation of NMB charges that could be made to determine whether any such adjustments would result in reducing potential reconciliation charges. If any adjustments are agreed upon following this effort, the Companies will propose a change to their DSS Riders to effectuate such adjustments. *Id.*

Solar Photovoltaic Requirements Charge Rider. In the Settlement, the Joint Petitioners agree to the Companies' original proposal to continue to recover the costs attributable to complying with solar AEPS requirements through the non-bypassable Solar Photovoltaic Requirements Charge Riders ("SPVRC Rider") last approved by the Commission in the Companies' DSP III Proceeding. Joint Petition, ¶ 13.F.4.

Reconciliation. Consistent with the Commission’s default service regulations at 52 Pa. Code § 54.187(f), the Settlement incorporates a reconciliation component in the generation rates established under the Companies’ PTC Riders and HPS Riders. Under the Settlement, the Companies will maintain the reconciliation mechanisms last approved in the DSP III Proceeding. Joint Petition, ¶ 13.F.5.

Allocation of Default Service Administrative Costs. Under the Settlement, the Companies’ default service administrative costs (i.e., primarily the costs of conducting procurement auctions or RFPs and the regulatory costs associated with these proceedings) will continue to be allocated to and recovered from the various customer classes in accordance with each class’ percentage of non-shopping kilowatt-hours consistent with the approach last approved in the Companies’ DSP III Proceeding.. Joint Petition, ¶ 13.F.6.

Time of Use (“TOU”) Rates. The Companies currently offer optional TOU pricing rates to residential customers through their TOU Riders approved by the Commission in the DSP III Proceeding (for Penn Power and West Penn) and their most recent distribution base rate proceedings (for Met-Ed and Penelec). Under the Settlement, the Companies will continue to offer an optional TOU pricing rates to residential customers as required by the Competition Act. Joint Petition, ¶ 13.F.7.

Supplier Tariff Changes – POR Clawback Charges.

In their Original Proposal, the Companies established a POR Clawback Charge, which would assess a charge to any EGS participating in the Companies’ POR programs whose average individual write-offs exceeded total EGS write-offs for that Company by 150%. Companies’ St. 3, pp. 12-20. While the OCA supported the Companies’ proposal with revisions to create a more stringent test (OCA St. 2, pp. 25-28), the I&E and OSBA objected on the bases of concerns regarding design, as well as concerns that the proposal unfairly penalizes EGSs, instead suggesting

the implementation of a discount program. I&E St. 1; OSBA St. 1, pp. 10-16. Meanwhile, RESA objected to the implementation of any revisions to the POR program to mitigate against write-offs on the basis that they believed implementation of any recourse or discount program is inappropriate as a result of previous settlement terms. RESA St. 1, pp. 8-24.

The Joint Petition adopts a modified version of the Companies' Original Proposal on a pilot basis, to be reviewed after two years. If, after that point, the Companies believe it appropriate to continue the use of a clawback charge, the Companies will make an affirmative filing proposing to implement the charge beyond the pilot term. Joint Petition, ¶ 13.I. This pilot will give the Companies a tool to help mitigate their rising EGS-related write-off levels, which will further reduce their need to update uncollectible levels to be charged to customers and recovered through rates, instead creating a responsibility in the EGSs whose operations drive these increased write-off levels.

Supplier Tariff Changes – POR Refunds and Credits.

The Companies also filed as part of their Original Proposal certain supplier tariff revisions which would require EGSs participating in the Companies' POR programs to provide any refunds or credits associated with customer complaints back to the respective customer through the Companies' billing system such that those amounts could first be applied to any outstanding balance before returning to the customer. Companies' St. 3, pp. 20-21. This proposal was opposed by each of the OCA, RESA and CAUSE-PA. OCA St. 2, pp. 28-30; CAUSE-PA St. 1, pp. 22-24; RESA St. 1, pp. 25-27.

The Joint Petition modifies the Companies' Original Proposal, to require that the funds to be refunded or credited be tied specifically to the arrearage against which it would be applied, as well as to require customer consent to this method of refund or credit. Joint Petition, ¶ 13.F.8. With proper coordination between the EGSs served under the Companies' POR programs and the

Companies themselves, it is hoped that outstanding arrearages tied to EGS disputes will decline, while at the same time reducing the likelihood that such disputes will lead to customer terminations for non-payment.

I. The Companies' Revised DSPs Will Continue The Customer Referral Program

On April 29, 2011, the Commission initiated its extensive *Investigation of Pennsylvania's Retail Electricity Market* at Docket I-2011-2237952 (the "Retail Market Investigation"), which ultimately led to the Commission recommending that the Companies and other EDCs undertake a variety of retail market enhancements which the Commission then originally approved as part of the Companies' DSP II Proceeding, and subsequently approved to continue under the Companies' DSP III Proceeding. These initiatives include the Companies' CRP in which default service residential and small commercial customers contacting the Companies' customer service center are encouraged to select among a group of EGSs who have voluntarily chosen to offer customers a twelve-month contract priced at least 7% below the applicable Company's default service rate at the time of the offer.

In its Final Order in the Retail Market Investigation, the Commission observed that standard offer customer referral programs will "improve the overall operation of the competitive market in the near term." End State Order, pp. 12-13. To that end, in their Original Proposal, the Companies proposed to continue the CRP, which resulted in over 222,000 default service customers switching to an EGS from August 1, 2013 (its original implementation date) to December 31, 2015, for the upcoming default service term. The only modifications proposed by the Companies included a reduction of the deadline on a notice to participate in a given quarter from sixty days to thirty days, as well as the imposition of fees to a participating EGS in order to recover the cost associated with hours spent investigating and legal fees associated with defending alleged violations of the program terms. Companies' St. 3, pp. 11-12. The OCA opposed

continuation of the CRP, except where conditions were imposed, including revisions to customer disclosures, commencing a survey/focus group effort, and implementing a sunset date in the event a four-year plan was implemented. OCA St. 2, pp. 20-25.

Under the Settlement, the Companies will continue the current CRP design, including the cost recovery mechanism last approved in the DSP III Proceeding for the duration of the Revised DSP term, while adopting the reduced deadline notice modification filed as the Original Proposal. Joint Petition, ¶ 13.H.1(a). To address the OCA's concern regarding the Companies' disclosures regarding the nature of the 7% discount, the Companies will revise their call center scripts and other written documents related to the CRP to provide additional information about the interplay between the CRP discount and PTC. The specific disclosures agreed to in the Settlement are set forth in detail in Paragraph 13.H.1(b) of the Joint Petition. In addition, the Companies will reconvene their supplier workshops in order to discuss any day to day operational enhancements that can be made to the program implementation. Joint Petition, ¶ 13.H.1(d). Finally, the Companies will limit the imposition of hourly fees to investigate and legal fees to defend alleged violations of the CRP terms to those instances of confirmed violation of the CRP Agreement. Joint Petition, ¶ 13.H.1(c).

The Companies believe that continuation of the CRP under the Settlement is in the public interest and will further advance the Commission's goal of enhancing the retail electric market in the near term. The operational and disclosure enhancements agreed to as part of the Settlement will benefit not only participating EGSs, but also provide further clarification regarding pricing to customers.

J. Stakeholder Collaboratives

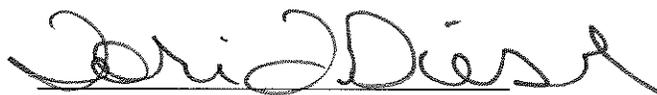
Finally, the Joint Petition contains terms that provide the Companies will host several stakeholder collaboratives, related to: the Companies' shopping programs as available to

customers participating in the Companies' customer assistance programs; and the establishment of a bypassable retail market enhancement rate mechanism. Joint Petition, ¶¶ 13.J. Each of these provisions is aimed towards addressing additional concerns raised by CAUSE-PA and RESA as part of this proceeding which were not otherwise part of the Companies' Original Proposal. To the extent that the results of these collaboratives demonstrate that modifications to the Companies' practices, rates or programs are appropriate, the Companies will make the necessary filings to implement such modifications.

IV. CONCLUSION

In sum, the Settlement provides a reasonable means of resolving all issues raised in this proceeding. It also reduces the administrative burdens on the Commission and the litigation costs of all parties. Accordingly, for the reasons set forth above and in the Joint Petition, the Settlement is in the public interest and should be approved without modification.

Respectfully submitted,



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*Counsel for Metropolitan Edison Company,
Pennsylvania Electric Company, Pennsylvania
Power Company and West Penn Power Company*

Dated: April 1, 2016

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Metropolitan Edison Company for	:	
Approval of a Default Service Program for the	:	P-2015-2511333
Period Beginning June 1, 2017, through	:	
May 31, 2019	:	
Petition of Pennsylvania Electric Company for	:	
Approval of a Default Service Program for the	:	P-2015-2511351
Period Beginning June 1, 2017, through	:	
May 31, 2019	:	
Petition of Pennsylvania Power Company for	:	
Approval of a Default Service Program for the	:	P-2015-2511355
Period Beginning June 1, 2017, through	:	
May 31, 2019	:	
Petition of West Penn Power Company for	:	
Approval of a Default Service Program for the	:	P-2015-2511356
Period Beginning June 1, 2017, through	:	
May 31, 2019	:	

**BUREAU OF INVESTIGATION AND ENFORCEMENT
STATEMENT IN SUPPORT OF
JOINT PETITION FOR SETTLEMENT**

Allison C. Kaster
Senior Prosecutor
PA Attorney ID #93176

Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Dated: April 1, 2016

TO ADMINISTRATIVE LAW JUDGE DAVID A. SALAPA:

The Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission (Commission), by and through its Prosecutor Allison C. Kaster, hereby respectfully submits that the terms and conditions of the foregoing Joint Petition for Settlement (Joint Petition or Settlement) are in the public interest and represent a fair, just, and reasonable balance of the interests of the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, the Companies) and their respective customers:

I. INTRODUCTION

On November 3, 2015, the Companies filed with the Commission a request for approval of proposed default service programs referenced by docket number in the caption above. Included in the filings were proposed revisions to the purchase of receivables (POR) programs.

I&E entered the Notice of Appearance of Allison C. Kaster on November 30, 2015.

Administrative Law Judge David A. Salapa (ALJ) held a prehearing conference on December 1, 2015, during which the parties agreed to a schedule for the conduct of the case including the service of testimony among the parties and the dates for evidentiary hearings. In accordance with the procedural schedule established at the prehearing

conference, I&E served the following pieces of testimony and accompanying exhibits:

I&E Statement No. 1 and I&E Exhibit No. 1: Direct Testimony and Exhibit of Christopher Keller; and

I&E Statement No. 1-SR: Surrebuttal Testimony of Christopher Keller

The I&E testimony identified above was entered into the record at the evidentiary hearing held on February 25, 2016.

I&E participated in multiple in-person and telephonic settlement discussions with the Companies and other parties to the proceeding. Following extensive settlement negotiations, the parties notified ALJ Salapa on March 10, 2016 that an agreement in principle settling all issues had been reached and the ALJ issued an Order suspending the procedural schedule.

II. PURCHASE OF RECEIVABLES PROGRAM: CLAWBACK CLAUSE

A. Company Proposal

Due to the growth of uncollectible accounts expense, the Companies proposed to implement a clawback clause to their POR programs.¹ Under the current POR, the Companies purchase accounts receivable from EGSs at a zero discount rate.² As such, the Companies pay the face value of the accounts receivable regardless of what they are actually able to collect from customers. The POR program expenses are then recovered through the Default Service Support Rider (DSSR), which is paid by all customers.³

The proposed POR clawback clause shifts the risk of nonpayment from the Companies and their customers to EGSs with a higher percentage of write-offs.

¹ Company St. No. 3, pp. 13-15.

² Company St. No. 3, p. 12.

³ Company St. No. 3, p. 13.

According to the Companies, EGSs with higher write-offs charge variable rates that are substantially higher than the price-to-compare (PTC).⁴ Because collection is not an issue for EGSs, the Companies maintain that these pricing practices unfairly burden the Companies and their customers because there is no incentive for suppliers to consider uncollectibles in their marketing strategies.⁵ The proposed clawback clause was designed to address suppliers that have disproportionately higher write-offs than their peers and serve as a disincentive to EGSs that offer unreasonable or variable rates that are likely to result in higher write-offs.⁶ Under the filed proposal, EGSs that exceed 150% of the average supplier write-offs as a percentage of revenue would be assessed this clawback charge which is the difference between the annual supplier write-off amount and 150% of each Company's average EGS annual write-offs as a percentage of billed revenues.⁷ The Companies maintain that implementing this charge will reduce exposure to unreasonable EGS-driven uncollectibles and incentivize EGSs to consider their pricing programs on a customer's ability to pay.⁸

B. I&E's Recommendation

In direct testimony, I&E recommended that the clawback clause be rejected because it failed to recognize that all EGS uncollectibles burden the Companies and their ratepayers, not just those above the 150% threshold.⁹ Additionally, the 150% guideline appeared arbitrary and improperly designed to affect EGS pricing practices and

⁴ Company St. No. 3, p. 16.

⁵ Company St. No. 3, p. 17.

⁶ Company St. No. 3, p. 17.

⁷ Company St. No. 3, p. 17.

⁸ Company St. No. 3, p. 18.

⁹ I&E St. No. 1, pp. 5-6.

competition.¹⁰ Finally, I&E argued that creating this new, untested methodology was unnecessary given that the Commission has approved the purchase of supplier receivables at a discount corresponding to the utility's uncollectible expense, implementation costs and any administrative costs.¹¹

I&E agreed that POR-related write-offs have increased in recent years, but recommended that a discount rate by customer class equal to average supplier write-offs as a percentage of revenue be implemented in lieu of the proposed clawback charge.¹² I&E noted that this discount rate is the accepted method for regulated gas utilities per Commission regulations and other electric distribution companies have utilized a similar method.¹³ Alternatively, if the Commission adopted the clawback proposal, I&E recommended that it be implemented on a pilot basis to give parties the opportunity to review the effectiveness of this new mechanism.¹⁴ To that end, I&E recommended that the Companies be required to provide detailed information pertaining to write-offs and uncollectible expense to allow for a full and timely review of the clawback charge in the next DSP filing.¹⁵

In surrebuttal testimony, I&E continued to maintain that a discount rate charged to all suppliers is appropriate, but recognized that implementing this mechanism and making the associated changes to the DSSR would be more properly addressed in a base

¹⁰ I&E St. No. 1, pp. 5-6.

¹¹ I&E St. No. 1, pp. 6-7, 9.

¹² I&E St. No. 1, p. 7.

¹³ I&E St. No. 1, p. 8.

¹⁴ I&E St. No. 1, pp. 9-10.

¹⁵ I&E St. No. 1, p. 10.

rate proceeding rather than the instant DSP proceeding.¹⁶ I&E recognized that implementation of this clawback charge appropriately assigns some cost to suppliers in the interim period until a base rate case is filed.¹⁷ Accordingly, in surrebuttal testimony, I&E recommended that the clawback charge proposed by the Companies be implemented on a temporary two-year pilot basis and that detailed information be provided at the conclusion of the pilot program.¹⁸

C. Settlement (Joint Petition ¶ II.I)

The parties engaged in extensive settlement discussions and ultimately agreed to the clawback charge in the Settlement, which modified the Companies' proposal. Per the Settlement, those EGSs that satisfy both prongs of the following test will be assessed the difference between the EGS's actual write-offs and 200% of the average EGS percentage of write-offs per operating company beginning September 2016:

- EGSs whose average percentage of write-offs as a percentage of revenues over the twelve-month period ending August 31st each year exceeds 200% of the average percentage of total EGS write-offs as a percentage of revenues per operating company; and,
- Of those EGSs identified above, EGSs whose average price charged over the same twelve-month period exceeds 150% of the average price-to-compare for the prior 12-month period.

¹⁶ I&E St. No. 1-SR, p. 8.

¹⁷ I&E St. No. 1-SR, pp. 9-10.

¹⁸ I&E St. No. 1-SR, p. 10.

The clawback charge contained in the Settlement was achieved after lengthy settlement discussions during which all parties represented their respective positions. Representatives for residential consumers, small business customers, industrials, suppliers and the Companies participated in those discussions and agreed to the implementation of this clawback charge on a pilot basis. Engaging in settlement discussions is consistent with the Commission's policy of encouraging settlements.¹⁹ The Commission issued the following policy statement that articulates general settlement guidelines and procedures for major rate cases:

In the Commission's judgment, the results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate are often preferable to those achieved at the conclusion of a fully litigated proceeding. It is also the Commission's judgment that the public interest will benefit by the adoption of §§ 69.402—69.406 and this section which establish guidelines and procedures designed to encourage full and partial settlements as well as stipulations in major section 1308(d) general rate increase cases.²⁰

Although the instant proceeding is not a rate case, this policy statement highlights the importance of settlement in Commission proceedings. The DSP filings were made on November 3, 2015 and, over the past five months, the parties engaged in extensive formal and informal discovery, preparation of testimony and lengthy settlement discussions. All signatories to the Joint Petition actively participated in and vigorously represented their respective positions during the course of the settlement process.

¹⁹ 52 Pa. Code § 5.231.

²⁰ 52 Pa. Code § 69.401.

I&E is charged with representing the public interest in Commission proceedings related to rates, rate-related services, and applications affecting the public interest. In negotiated settlements, it is incumbent upon I&E to identify how amicable resolution of any such proceeding benefits the public interest and to ensure that the public interest is served. As previously discussed, the Companies currently pay the face value of EGS accounts receivable regardless of whether or not the customers pay the full amount due; therefore, EGSs are not at risk for the uncollectible accounts expense. I&E's discount rate recommendation sought to remedy this by requiring all EGSs to pay a discount rate equal to average supplier write-offs as a percentage of revenue. Although the zero discount rate will continue, the clawback charge contained in the Settlement modifies the current POR program to assign some cost of the growing uncollectible accounts expense to suppliers.

I&E recognizes that this clawback charge is a new mechanism; however, the Settlement contains several provisions that provide the parties an opportunity to review its effectiveness. First, the clawback charge will be implemented on a pilot basis and parties reserve the right to propose modifications or elimination of this charge in a stakeholder collaborative to be held October 2017. Second, as outlined in section II.I.1 of the Settlement, the Companies agreed to provide detailed information that will assist I&E in evaluating the pilot program during the collaborative. I&E maintains that approval of this charge is in the public interest given that the Settlement establishes the clawback charge on a pilot basis, contains detailed reporting requirements and provides the

opportunity to review and propose modifications to the charge in the October 2017 collaborative.

As such, the issues raised by I&E have been satisfactorily resolved through discovery and discussions with the parties and are incorporated in the Joint Petition. Based upon I&E's analysis, acceptance of this proposed Settlement is in the public interest and I&E recommends that it be approved by the ALJ and the Commission without modification.

III. THE SETTLEMENT SATISFIES THE PUBLIC INTEREST

I&E represents that all issues raised in testimony have been satisfactorily resolved through discovery and discussions with the Companies or are incorporated or considered in the resolution proposed in the Settlement. The very nature of a settlement requires compromise on the part of all parties. This Settlement exemplifies the benefits to be derived from a negotiated approach to resolving what can appear at first blush to be irreconcilable regulatory differences. The parties have carefully discussed and negotiated all issues raised in this proceeding, and specifically those addressed and resolved in this Settlement.

In addition, acceptance of this proposed Settlement is in the public interest because resolution of this case by settlement rather than litigation will avoid the substantial time and effort involved in continuing to formally pursue all issues in this proceeding at the risk of accumulating excessive expense. Doing so will negate the need for the preparation of Main and Reply Briefs, the preparation of Exceptions and Replies, and the potential of filed appeals, all yielding substantial savings for parties, and

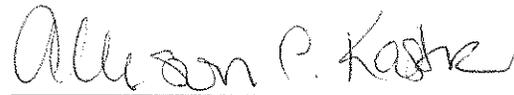
ultimately all customers, as well provide certainty regarding the disposition of these issues.

The Settlement is conditioned upon the Commission's approval of all terms without modification. If the ALJ recommends that the Commission adopt the Settlement as proposed, I&E agrees to waive the filing of Exceptions. However, I&E does not waive its right to file Replies to Exceptions with respect to any modifications to the terms and conditions of the Settlement or any additional matters that may be proposed by the ALJ in the Recommended Decision.

I&E's agreement to settle this case is made without any admission or prejudice to any position that I&E might adopt during subsequent litigation in the event that the Settlement is rejected by the Commission or otherwise properly withdrawn by any other parties to the Settlement.

WHEREFORE, the Commission's Bureau of Investigation and Enforcement represents that it supports the Joint Petition for Settlement as being in the public interest and respectfully requests that Administrative Law Judge David A. Salapa recommend, and the Commission approve, the terms and conditions contained in the Settlement.

Respectfully submitted,



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Attorney I.D. #93176

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Dated: April 1, 2016

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Petition of Metropolitan Edison	:	
Company, Pennsylvania Electric Company,	:	Docket Nos. P-2015-2511333
Pennsylvania Power Company, and West	:	P-2015-2511351
Penn Power Company for Approval of	:	P-2015-2511355
Their Default Service Programs	:	P-2015-2511356

STATEMENT OF THE
OFFICE OF CONSUMER ADVOCATE
IN SUPPORT OF THE JOINT
PETITION FOR SETTLEMENT

The Office of Consumer Advocate (OCA), a signatory party to the Joint Petition for Settlement (Settlement) in the above-captioned proceedings, respectfully requests that the terms and conditions of the Settlement be approved by Administrative Law Judge David A. Salapa and the Pennsylvania Public Utility Commission (Commission). It is the position of the OCA that the proposed Settlement is in the public interest and in the interests of the customers of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (Met-Ed, Penelec, Penn Power, and West Penn, respectively, or the Companies, jointly).

I. INTRODUCTION

On November 3, 2015, the Companies filed a Joint Petition (Petition) with the Commission seeking approval of default service programs (DSPs) and procurement plans for the period June 1, 2017 through May 31, 2019. In their Petition, the Companies proposed to acquire

supply for residential customers through a series of load-following, full requirements supply contracts in approximately 50 megawatt tranches. Petition at ¶ 13. For each residential tranche, 100% of the supply would be at a fixed price. Petition at ¶ 13. Pursuant to the Petition, the new contracts for residential products would have staggered 12 and 24-month terms. Petition at ¶ 13. The Companies proposed to procure the full requirements products through descending-price clock auctions. Petition at ¶ 13. The Companies proposed six procurements, occurring in October 2016 and 2017, January 2017 and 2018, and April 2017 and 2018. Petition at ¶ 16. The Companies also proposed to increase the auction load cap, which restricts the percentage any one bidder can win at an auction, from 50% to 75%. Petition at ¶ 20.

Additionally, the Companies proposed the addition of a clawback clause to their Purchase of Receivables Programs (POR Programs) related to Electric Generation Supplier (EGS) write-offs (Clawback Proposal). Petition at ¶ 51. Specifically, the Companies proposed to impose an annual charge on those EGSs whose write-offs exceed 150% of the average supplier write-offs as a percentage of revenue as calculated separately for each of the Companies. Petition at ¶ 51. EGSs whose write-offs exceed 150% of the average would be charged the difference between their actual annual write-off amount and 150% of the respective Company's average annual EGS write-off as a percentage of billed EGS revenues. Petition at ¶ 51.

Furthermore, in their Petition, the Companies proposed that EGS refunds under their POR Programs would go directly to the Companies to apply to the respective customer's account balance first. Petition at ¶ 54. Additionally, in their Petition, the Companies proposed to continue their Customer Referral Program (CRP or the Program) from June 1, 2017 to May 31, 2019, with limited changes to the Program. Petition at ¶ 47.

The Petition was assigned to the Office of Administrative Law Judge and was further assigned to Administrative Law Judge David A. Salapa for investigation and the scheduling of hearings. On November 30, 2015, the OCA filed an Answer, a Notice of Intervention, and a Public Statement in response to the Companies' Petition. The Commission's Bureau of Investigation and Enforcement, the Office of Small Business Advocate, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power User Group, West Penn Power Industrial Intervenors, the Coalition for Affordability Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), TransCanada Power Marketing LTD, NextEra Energy Power Marketing, LLC, Retail Energy Supply Association, Noble Americas Energy Solutions, LLC, Direct Energy Services, LLC, Exelon Generation Company, LLC, and Pennsylvania State University also intervened in this matter.

The OCA retained the expert services of Mr. Richard Hahn and Ms. Barbara R. Alexander to assist the office in its review of the Companies' filing. The OCA conducted discovery in this proceeding. The OCA filed the Direct, Rebuttal, and Surrebuttal testimonies of Mr. Hahn and Ms. Alexander. In their testimonies, Mr. Hahn and Ms. Alexander proposed several modifications to the Companies' Petition, designed to improve the plan for residential customers.

Specifically, Mr. Hahn recommended several modifications to the Companies' proposed residential default service portfolios. Mr. Hahn recommended that the Companies' proposal to eliminate spot products from the supply portfolio should be denied, and spot products should constitute approximately 5% of the portfolio. OCA St. 1 at 6-7. Mr. Hahn further recommended that the Companies' proposal to increase the supplier load cap should not be approved, and the load cap should be retained at 50%. *Id.* at 8-10. Mr. Hahn also recommended that the contract

procurement schedule should be revised to achieve more staggered contract expirations. Id. at 11-12. Finally, Mr. Hahn recommended that the Commission approve a four year plan. Id. at 12-13.

In Ms. Alexander's testimony, she recommended several modifications to the Companies' CRP, including, *inter alia*, reforming the disclosures related to the Program. OCA St. 2 at 21-23. Notably, Ms. Alexander recommended the elimination of any reference to a "7% discount" in presenting this Program to customers. Id. at 22. Additionally, in her testimony, Ms. Alexander supported the Companies' Clawback Proposal, but recommended that the "trigger" write-off amount be lower than the Companies' recommended 150%. Id. at 28. Additionally, Ms. Alexander recommended that the Companies should assess EGS write-offs on a quarterly basis. Id. Ms. Alexander also supported the Companies' proposal that an EGS refund be applied directly to the customer's account balance to the extent the EGS refund resulted from a re-bill or correction to the customer's bill due to a billing error. Id. at 29. Ms. Alexander, however, expressed concern with the Companies' proposal to the extent a customer receives a refund from his or her EGS to resolve a customer dispute or formal or informal complaint. Id. at 29-30. In her Rebuttal Testimony, Ms. Alexander also supported the Direct Testimony of Mr. Harry Geller, filed on behalf of CAUSE-PA in this proceeding, in which Mr. Geller testified that it is unsound public policy for CAP customers who enroll with EGSs to pay a price for generation supply service that is in excess of that charged by their respective EDCs. See OCA St. 2-R at 1.

Throughout the proceeding, the OCA actively participated in settlement discussions with the Companies and the parties, leading to its participation in this Settlement. The OCA submits that the Settlement is in the public interest and in the interest of consumers for the reasons set forth below.

II. SETTLEMENT BENEFITS FOR RESIDENTIAL CUSTOMERS

The OCA submits that the Settlement addresses many of the issues raised by the OCA's witnesses and provides several benefits for residential ratepayers. First, under the terms of the Settlement, the plan term will be four years, as recommended by Mr. Hahn. Settlement at ¶ II.13.A.1.a. Mr. Hahn testified that the number of issues relating to the Companies' DSP filings seems to be declining. OCA St. 1 at 12. Mr. Hahn further testified that a four year plan "would avoid the time and expense associated with a filing two years from now, saving ratepayers the expense associated with such a filing." *Id.* Mr. Hahn explained, "If changes to the plan were desired by the Companies, they could still file for revisions as appropriate." *Id.* The OCA notes that the Settlement specifically reserves the Companies' right to make a DSP filing, if necessary, following a stakeholder collaborative that will be held in October 2017. Settlement at ¶ II.13.A.2. As a four year plan will avoid the time and expense associated with a filing in two years and save ratepayers that expense, the OCA submits that the Settlement is in the public interest.

Additionally, under the terms of the Settlement, each residential class tranche will consist of a 95% fixed price portion and a 5% variable price spot portion. Settlement at ¶ II.13.A.3.d. This provision of the Settlement is consistent with Mr. Hahn's recommendation. See OCA St. 1 at 6-7. As Mr. Hahn explained in his Direct Testimony:

Pennsylvania statute requires a prudent mix of spot market, short-term, and long-term (i.e., up to 20 years) contracts. There are no long-term products in the Companies' current DSP, but there are spot and short-term (i.e., 12 to 24 month) contracts. Eliminating spot products would result in a supply portfolio that contains only one of the three required products, and makes the plan less compliant with the statute. And, having some amount of spot products makes the portfolio more diverse.

OCA St. 1 at 6. (Footnote added). Mr. Hahn recommended that spot products constitute approximately 5% of the portfolio. Id. As some amount of spot products is consistent with Pennsylvania law and provides diversification benefits, the OCA submits that the Settlement is in the public interest.

The Settlement also modifies the Companies' current CRP by modifying the disclosures made to customers when presenting this Program. Importantly, as recommended by Ms. Alexander in her Direct Testimony, the Settlement eliminates the reference to a specific "7% discount," which had previously been included in the AllConnect script used to present this Program to customers. See Settlement at ¶ II.13.H.1.b. Specifically, under the Settlement, the AllConnect script provides as follows regarding the initial discount customers will experience under the CRP: "The fixed CRP price provides an initial discount off of today's Price to Compare which is ___/kWh." Settlement at ¶ II.13.H.1.b. There is no reference to a specific 7% discount. The OCA submits that elimination of the reference to a specific "7% discount" when presenting this program to customers is essential in providing customers with accurate information relating to the CRP and ensuring that customers understand that the CRP is not a guaranteed savings program. Ms. Alexander provided evidence demonstrating that despite the CRP being promoted as a "7% discount program," there is a widespread disparity in actual discount levels for customers who enrolled in the CRP compared to their respective Prices to Compare (PTCs). See OCA St. 2 at 14-18. Ms. Alexander concluded:

While customers who enrolled in some months have enjoyed savings in excess of 7%, other customers have experienced wild swings in savings and losses compared to the PTC. As a result, the presentation of this program as a "7% discount program," even with the attempted qualifications that the PTC will change during the 12-month program, is incorrect because the "7% discount" is not applicable to anything other than the calculation of the fixed price and has nothing to do with the customer's actual experience during the 12-month term. While it is reasonable for the Commission, the EDC, and AllConnect to

understand this distinction, it is not reasonable in my opinion to assume that customers understand this distinction or the actual meaning of the 7% discount language used to present this program to customers. It is unreasonable to assume that customers who enroll in this program understand or agree to such a potential wide variation in monthly savings and losses during the 12-month term compared to the actual PTC. These wide variations in actual discount level compared to the PTC during the 12-month term of the agreement may not be a positive experience for the EGSs either because those customers who may notice that they are paying a higher price than the PTC can cancel at any time without penalty.

OCA St. 2 at 17-18. Moreover, during cross-examination at the hearing on February 25, 2016 in this proceeding, the Companies' witness, Mr. Charles V. Fullem, acknowledged that a Met-Ed, Penelec, Penn Power, or West Penn customer who selects the CRP program on February 25, 2016 would not retain a 7% discount below his or her respective PTC beginning on March 1, 2016.¹ See Tr. at 83-88. Thus, the OCA submits that elimination of the specific "7% discount" reference when presenting the CRP to customers is in the public interest, as such reference can be misleading. The AllConnect script language, as modified by the Settlement, is more accurate, because it does not create the implication that customers who enroll with the CRP will experience a specific 7% discount during their entire 12-month term.

Moreover, under the Settlement, the AllConnect script used to present the CRP to customers will continue to state that the EGS "rate could be higher or lower than the PTC." Settlement at ¶ II.13.H.1.b. Additionally, the Settlement modifies the Companies' current CRP script in that the Program is presented as a "potential savings opportunity." *Id.* The OCA submits that these disclosures will also help to ensure that customers are receiving accurate and adequate information prior to enrolling with the CRP.

Moreover, under the terms of the Settlement, the Companies agree to reconvene their supplier workshops so that CRP suppliers and the Companies are provided a collaborative forum

¹ In fact, as acknowledged by Mr. Fullem, Met-Ed, Penelec, or Penn Power customers who selected the CRP program on February 25, 2016 would actually pay more than their respective PTC beginning on March 1, 2016, thus only receiving "7% savings" for four days. See Tr. at 83-87.

to discuss operational enhancements to improve administration of the Program. Settlement at ¶ II.13.H.1.d. The OCA submits that this provision of the Settlement is in the public interest, as continued collaboratives relating to the CRP will help to ensure that the administration of the Program is conducted in an efficient and effective manner.

The Settlement also modifies the Companies proposal that EGS refunds under their POR programs would go directly to the Companies to apply to the respective customer's account balance first. See Settlement at ¶ II.13.F.8.a. Specifically, the Settlement requires the consent of a residential customer prior to his or her respective EDC receiving his or her refund directly to offset any arrearages on the customer's account. Id. The OCA submits that this provision addresses the concerns raised by Ms. Alexander relating to the Company's original proposal. Specifically, Ms. Alexander expressed concern that the Companies' initial proposal does not "reflect the complexities and associated administrative actions" in situations where an EGS issues a refund as a result of a complaint or investigation that was triggered by evidence suggesting that the EGS violated Pennsylvania law or Commission regulations or Orders. See OCA St. 2 at 29-30. Moreover, Ms. Alexander testified that the Companies' proposal "does not reflect the various circumstances facing customers who seek and receive refunds or credits from an EGS as a result of a complaint or as a result of a settlement of a formal investigation." Id. at 30. Ms. Alexander explained, "Affected customers have perhaps made choices to forego expenditures on necessities, such as food, medicine, and housing costs, to ensure that they have made sufficient payments to retain essential electric service." Id.; see also Tr. at 61-62 (During cross-examination at the hearing on February 25, 2016 in this proceeding, the Companies' witness, Kimberlie L. Bortz, acknowledged that customers who receive refunds may be using the refund money to pay for medication, food, or emergency expenses.). The OCA submits that

requiring the consent of residential customers prior to any refunds going directly to the Companies helps to eliminate the concerns raised by Ms. Alexander and, as such, the Settlement is in the public interest.

Finally, the Settlement addresses Mr. Geller's and Ms. Alexander's concerns relating to CAP customer shopping by requiring the Companies to convene a stakeholder collaborative to discuss, *inter alia*, the scope of CAP customer shopping, as well as cost recovery associated with any changes to the Companies' existing programs. Settlement at ¶ II.13.J.1.b. In her Rebuttal Testimony, Ms. Alexander explained in detail the potential impacts of CAP shopping on both CAP customers and other ratepayers. See OCA St. 2-R at 1-3. The requirement for the Companies to hold a stakeholder collaborative to discuss CAP shopping will enable the Companies and the parties to further discuss the effects of CAP shopping and determine the best action to take regarding CAP shopping in the future. As such, the Settlement is in the public interest.

III. CONCLUSION

The OCA submits that the Joint Petition for Settlement provides a reasonable resolution to the Companies' DSP filing by increasing the plan term to four years, retaining some spot products for residential tranches, enhancing customer disclosures for the Companies' CRP, requiring customer consent prior to the Companies' receiving customer refunds directly, and requiring a stakeholder collaborative to discuss CAP shopping. For the foregoing reasons, the Office of Consumer Advocate submits that the proposed Settlement is in the public interest and in the best interest of the Companies' ratepayers.

Respectfully Submitted,

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Dated: April 1, 2016

219043

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition of Metropolitan Edison	:	
Company, Pennsylvania Electric	:	Docket Nos. P-2015-2511333
Company, Pennsylvania Power Company	:	P-2015-2511351
And West Penn Power Company For	:	P-2015-2511355
Approval of Their Default Service	:	P-2015-2511356
Programs	:	

**STATEMENT OF THE OFFICE OF SMALL BUSINESS ADVOCATE
IN SUPPORT OF THE JOINT PETITION FOR SETTLEMENT**

I. INTRODUCTION

The Small Business Advocate is authorized and directed to represent the interests of small business consumers in proceedings before the Pennsylvania Public Utility Commission (“Commission”) under the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41 - 399.50. In order to discharge this statutory duty, the Office of Small Business Advocate (“OSBA”) is participating as a party to this proceeding to ensure that the interests of small commercial and industrial (“Small C&I”) customers of Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”) and West Penn Power Company (“West Penn”) are adequately represented and protected.

II. PROCEDURAL BACKGROUND

On or about November 3, 2015, Met-Ed, Penelec, Penn Power, and West Penn (collectively, “First Energy” or “the Companies”) filed a Joint Petition of Metropolitan Edison

Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs (“Petition”) with the Pennsylvania Public Utility Commission (“Commission”) pursuant to Section 2801 of the Public Utility Code, 66 Pa.C.S. §2801, as amended by Act 129 of 2008 (“Act 129”), and 52 Pa. Code §§ 54.181-54.189 and 69.1801-1817. The Petition seeks approval of proposed programs to secure default service supply for the Companies’ customers for the period June 1, 2017, through May 31, 2019.

The OSBA filed an Answer to the Petition, a Notice of Intervention and Public Statement on November 23, 2015. Other parties participating in this proceeding include the Commission’s Bureau of Investigation and Enforcement (“I&E”), the Office of Consumer Advocate (“OCA”), and intervenors CAUSE-PA, Direct Energy, Exelon, the Industrial Intervenors, NAES, PSU, RESA, NEPM, and TransCanada.

A prehearing conference was held on December 1, 2015, with Administrative Law Judge (“ALJ”) David A. Salapa presiding, during which a schedule was established for the submission of testimony and the conduct of evidentiary hearings.

On January 14, 2016, I&E, CAUSE, OCA, OSBA, RESA, TransCanada and ExGen submitted their direct testimony. On February 9, 2016, the Companies, CAUSE, Industrial Intervenors, OCA, OSBA and RESA submitted their rebuttal testimony. On February 19, 2016, the Companies, OCA, OSBA, CAUSE, I&E, RESA, ExGen and PSU submitted surrebuttal statements.

After the submission of written testimony, the parties engaged in discussions to try to achieve a settlement of some or all of the issues in this case. While the parties were able to agree to a potential resolution of some issues, they were not able to reach a global settlement prior to hearings.

At the February 25, 2016 hearing, the parties advised the ALJ that settlement discussions were continuing and settlement of all issues was still possible. As settlement had not yet been reached, the Companies submitted one written rejoinder statement and the Industrial Intervenors submitted three stipulations. Following oral rejoinder and cross examination of the Companies' witnesses, Kimberlie L. Bortz and Charles V. Fullem, the ALJ admitted, by stipulation, all other previously filed statements of testimony and exhibits.

After the February 25, 2016 hearing, the parties continued to engage in discussions to try to achieve a settlement of all issues. As a result of those negotiations, the parties were able to reach a Joint Settlement of the issues raised in this proceeding, which resulted in the filing of this Joint Petition for Settlement and the parties' Statements in Support of that Petition.

III. STATEMENT IN SUPPORT

The OSBA identified two significant aspects of the Companies' filings in this matter that were of concern:

First, the Companies proposed to modify the procurement model for its Commercial customers from the approach adopted in the settlement of the last default service proceeding.

- a. In the last proceeding, the parties agreed that Commercial default service customers would be supplied by a mixture of full-requirements load-following ("FRLF")

contracts of varying terms, specifically 3-months (28 percent), 12-months (36 percent) and 24-months (36 percent).

b. In this proceeding, the Companies proposed to modify that procurement mix to a 50/50 split of 12-month and 24-month FRLF contracts.

c. In general, the OSBA shared the Companies' concern that the short-term 3-month FRLF contracts might not attract bidders' attention, and may result in higher risk premiums. However, due to the timing of these (heretofore) biennial default service proceedings, the Companies' had scant evidence of any such risk premium.

d. Out of respect for the settlement in the last proceeding, the OSBA suggested one reasonable approach would be to continue the existing procurement schedule. However, because of the potential price premium risk for the 3-month contracts, the OSBA recommended limiting the term of the DSP to 2 years. In the alternative, the OSBA suggested that, if the Commission was convinced that the 3-month contracts imposed undue risk, the Company's procurement plan be adopted and extended to a 4-year term.

e. The Settlement essentially incorporates both of these suggestions. Specifically, the Settlement will continue the existing procurement mechanism for four years, but with the provision for a mid-term evaluation. As part of that evaluation, the Company is required to provide detailed information regarding the risk premiums implicit in all of the FRLF contracts awarded. If this information demonstrates that the risk premiums are unreasonable, the Settlement leaves open the possibility for either the Companies to petition for a change or the OSBA to challenge a continuation of the plan. Moreover, if the

plan is functioning reasonably, the Settlement provides for a 4-year term for the plan, with the concomitant savings in regulatory costs.

The OSBA submits that the Settlement is a very reasonable response to the concerns raised by OSBA in its testimony in this matter.

2. In an effort to address rising uncollectibles costs associated with high-priced receivables purchased from competitive Electric Generation Suppliers (“EGSs”), the Companies put forth a proposed “claw back” provision to its Purchase of Receivables (“PoR”) plan. Specifically, the Companies proposed that EGSs retain responsibility for uncollectibles costs when the write-off rates for their receivables exceeded 1.5 times the average write-off rate for EGS receivables.

a. While the OSBA was sympathetic to the Companies’ concerns, the OSBA voiced three concerns regarding the proposal.

i. First, the Companies had not demonstrated that write-off rates for EGS customers, on average, were consistently higher than those for default service customers, and therefore establishing different rules for EGSs was not justified.

ii. Second, the Companies’ proposal failed to address the underlying problem, namely that they were assuming the risk for EGSs that were charging unreasonably high prices.

iii. Third, the Companies’ proposal failed to recognize the very different write-off rates between rate classes.

b. In general, the Settlement addresses all three of these concerns, as follows:

i. First, the mechanism is adopted as a pilot, with a detailed review after two years. This will allow an evaluation as to whether the plan is unduly discriminating against EGSs.

ii. Second, the clawback mechanism is modified such that a clawback is only required if both (a) the prices charged by the EGS are excessive, as measured by being more than 50 percent above the PTC, and (b) the EGS write-off rate is excessive, as measured by being more than twice the average EGS write-off rate. This provision addresses OSBA's concern about the need to focus on the problem at hand, namely excessive pricing by some EGSs.

iii. At the end of the pilot, the Companies will provide detailed information on a class-by-class basis regarding write-off rates, which will allow parties to evaluate whether class differentiation should be included in this program, if it continues.

b. In addition, the OSBA observes that the Companies did not propose to modify the uncollectibles rates used to derive the non-bypassable charges in their Default Service Support Riders ("DSSRs") in their filing in this proceeding. The OSBA did not oppose this proposal, although the OSBA did object to the Companies' efforts to introduce a modification in their surrebuttal testimony. This untimely proposal was rightfully excised from the record by the Administrative Law Judge¹, and the Settlement leaves the uncollectibles rates unchanged as proposed by the Companies.

¹ ALJ Salapa struck from the record the surrebuttal testimony of Kimberlie L. Bortz (FirstEnergy Statement No. 3-SR) from page 6 line 9 through page 7 line 6 as well as any exhibits supporting this testimony.

In addition to the Companies filing, the OSBA opposed the proposal advanced by RESA that the Companies should be required to develop and implement a supplier consolidated billing (“SCB”) mechanism. The OSBA explained why this proposal would be better addressed in a generic proceeding, if it needed to be addressed at all. This proposal was not adopted by the Settlement.

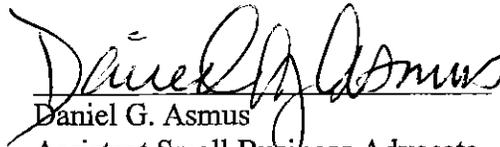
IV. CONCLUSION

The settlement of this proceeding avoids the litigation of many complex, competing proposals and saves the possibly significant costs of further and more extended administrative proceedings. Such costs are borne not only by the Joint Petitioners, but ultimately by the Company’s customers as well. Avoiding extended litigation of this matter has served judicial efficiency, and allows the OSBA to more efficiently employ its resources in other areas.

The OSBA acknowledges and is in full agreement that this Settlement is in the best interest of customers and the Joint Petitioners and, therefore, is in the public interest.

For the reasons set forth in the Joint Petition, as well as the additional factors enumerated in this statement, the OSBA supports the proposed Joint Petition and respectfully requests that ALJ Salapa and the Commission approve the Joint Petition in its entirety without modification.

Respectfully submitted,


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For:

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Dated: April 1, 2016

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition of Metropolitan Edison	:	
Company, Pennsylvania Electric Company,	:	Docket No. P-2015-2511333
Pennsylvania Power Company and West	:	P-2015-2511351
Penn Power Company for Approval of	:	P-2015-2511355
their Default Service Programs	:	P-2015-2511356

**STATEMENT IN SUPPORT OF SETTLEMENT OF THE COALITION FOR
AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY IN PENNSYLVANIA
(CAUSE-PA)**

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), by its counsel at the Pennsylvania Utility Law Project, submits this Statement in Support of the Joint Petition for Settlement of all issues in the captioned proceeding. CAUSE-PA joins the other parties and requests that the Pennsylvania Public Utility Commission (Commission) approve the Settlement without modification.

I. INTRODUCTION

CAUSE-PA intervened in this proceeding because it remains concerned about the effects that the retail market enhancement programs implemented in previous default service proceedings have on the long-term affordability of service for economically vulnerable households in each of the four First Energy Companies¹ (“Companies”). CAUSE-PA was also concerned certain proposals made by the Companies in their petition. Specifically, CAUSE-PA was concerned about the Companies’ proposal to continue offering the Customer Referral Program; the impact that the

¹ Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company.

Companies' proposed changes to their Purchase of Receivables program and EGS related write-offs will have on low-income customers; and, the Companies' proposed changes to how electric generation supplier (EGS) refunds are processed. In addition to these issues, CAUSE-PA believes that the Companies must develop more stringent and significant cost-protection safeguards for their low-income customers enrolled in the Customer Assistance Programs ("CAP") who are receiving generation supply from EGSs.

CAUSE-PA submitted direct, rebuttal, and surrebuttal testimony addressing these issues in detail along with several exhibits, all of this evidence was entered into the record of this proceeding at the hearing on February 25, 2016.² CAUSE-PA has actively participated in good faith discussions with the other parties in this proceeding to achieve the negotiated settlement of the contested issues presented in the Joint Petition for Settlement. In CAUSE-PA's view, the Settlement is in the public interest in that it addresses issues of concern affecting the Companies' low-income customers, balances the various interests of the parties, and resolves the contested issues fairly. If approved, the Settlement will eliminate the possibility of further litigation and appeals along with their attendant costs.

II. BACKGROUND

CAUSE-PA adopts the background set forth in Paragraphs 1-12 of the Joint Petition for Settlement as if fully stated herein.

² Specifically, CAUSE-PA submitted the following pieces of testimony: CAUSE-PA Statement No. 1, the Direct Testimony of Harry Geller with attachments; CAUSE-PA Statement No. 1R, the Rebuttal Testimony of Harry Geller; and, CAUSE-PA Statement No. 1SR, the Surrebuttal Testimony of Harry Geller. All of this testimony was admitted into evidence at the hearing held on February 25, 2016 and was electronically filed with the Secretary's Bureau on February 29, 2016.

III. REASONS FOR SUPPORT OF THE SETTLEMENT

The following terms of the Settlement address issues of concern to CAUSE-PA and reflect a carefully balanced compromise of the interests of all the parties in this proceeding:

In Paragraph 13.A.1.a., the Joint Petitioners have agreed that the Companies' plan will be for a term of four years rather than the two proposed by the Companies. This extension of the plan and the relatively uncontested procurement strategy has the potential to result in significant cost and time savings for the Companies and interested stakeholders. Just as importantly, however, the paragraph contains a few significant safeguards in the event that changes are necessary. Specifically, the Companies will hold a stakeholder collaborative in October 2017 that will address:

- The wholesale market conditions to determine whether a full petition for default service needs to be filed before the end of the four year term;
- The results of various other stakeholder collaboratives, including the significant CAP stakeholder collaborative agreed to by the Companies and which was essential for CAUSE-PA's support of any settlement; and,
- Any changes to the POR clawback charges contemplated by the settlement.

As a result of this collaborative, the Companies indicated that they will file proposals with the Commission by January 31, 2018 to address the aforementioned issues, as well as any unresolved objections that would lead to the filing of a full default service proceeding.

The combination of the four-year term, along with this stakeholder process, will allow for continued conversation in the event that there is a need to change course at the conclusion of two years. The combination of these was an essential term that brought together various parties to the settlement. CAUSE-PA supports this approach and believes that it is in the public interest because

it provides certainty for a significant period of time, while allowing the parties to address non-procurement issues before the end of the four-year period.

Paragraph 13.F.8.a provides that the Companies' supplier tariffs will be updated to include provisions related to refunds and credits provided to customers associated with EGS charges which fall under the POR. A refund will only be credited through the Companies' billing system after an EGS obtains the consent of a residential customer: (a) who is billed as part of the Companies' POR; and (b) to whom the EGS is willing to issue a refund to resolve a Pa PUC formal or informal individual customer complaint; and (c) where the customer has an outstanding arrearage, owed to one of the Companies, that is associated with the dispute that is the subject of the informal or formal Pa PUC complaint. The EGS will use good faith efforts to remit the refund directly to the EDC to offset any arrearages on the customer's account associated with the disputed amount. If the customer does not agree to have the refund remitted directly to the EDC, the EGS will remit payment to the customer and encourage the customer to address the outstanding arrearage directly with the EDC.

The material terms of this provision were addressed in the testimony of CAUSE-PA witness Harry Geller. Mr. Geller specifically testified, in response to the Companies' initial proposal, that the choice about whether EGS refunds should flow back through the Companies' billing system should always remain with the customer as it was the customer's refund, not the Companies' refund, and that this choice should be made only after receiving the informed consent of the customer.³ Furthermore, Mr. Geller voiced concern about the companies' proposal, and suggested it should be limited to only those instances where the refund was a result of a PUC

³ See CAUSE-PA Statement No. 1 at 23:8-24:11.

formal or informal complaint as opposed to other damages or refunds sought by the customer, and only if the customer owed a delinquent balance.⁴

The consensus reached by the Joint Settlement preserves many of the protections sought by CAUSE-PA and provide safeguards to protect the choice of the customer. Under the terms of this provision, EGSs would have to obtain the consent of the customer before any refund could flow through the Companies' billing system and it would only occur if the refund was the result of a PUC complaint and the customer had an arrearage. These protections are in the public interest because they adequately protect the autonomy of the customer while at the same time reasonably ensuring that the Companies' are made whole for outstanding bills that were floated through the POR program but have been unpaid.

Paragraph 13.I.1.b., modifies various aspects to the Customer Referral Program scripts to clarify that the Customer Referral Program provides a discount that is potentially time-limited and dependent on increases or decreases to the Companies' respective prices to compare. These changes seek to ensure that the public is appropriately informed about the benefits and risks associated with the customer referral program, including the very real possibility that shortly after a customer signs up for the program their rates could be significantly higher than the Companies' default service price. These were significant issues raised by OCA witness Barbara Alexander.⁵ The compromise language agreed to in the Settlement is in the public interest as it constitutes a significant improvement over the current scripts used by the Companies. The language seeks to ensure that customers are informed prior to agreeing to take EGS service pursuant to the Customer Referral Program.

⁴ Id.

⁵ OCA Statement No. Statement No. 2 at 14-18.

Paragraphs 13.J.1.b – J.3 commit the Companies to (1) convene a CAP customer shopping stakeholder collaborative, (2) provide various data points/information to the parties, and (3) filed a petition for an on-the record filing in the event that no consensus can be reached about the scope of protections to be placed on CAP customer’s engagement with the retail electric market. These provisions were essential to CAUSE-PA’s agreement to settle. In his direct testimony, Mr. Geller discussed the economic harm to the Companies’ CAP customers as a result of their current ability to select EGS-provided service without any price protections. Mr. Geller stated:

In response to a discovery request, the [C]ompanies provided various pieces of information which lead me to conclude that the significant majority of the Companies’ CAP customers who are shopping are paying more than the default service price. Preliminarily, the reported data appears to show that as of November 2015, more than 77% of Met-Ed’s CAP customers, more than 50% of Penelec’s CAP customers, and more than 65% of West Penn’s CAP customers who are shopping are paying a price higher than the price to compare. This is unacceptable.

In my judgment, there is no reason why a CAP customer should ever pay more than the default service price regardless of whether they are on default service or being served by an EGS.

It is simply not reasonable to approve discounts and reduced rates for low income customer classes, which are paid collectively by other residential customers, but at the same time approve a DSP plan which allows CAP customers to be charged higher rates that result in unaffordable or higher bills, thus contributing to the higher collection costs to all customers and adverse impacts on the low income households.

Thus, a primary concern in this proceeding should be the implementation of a DSP that does not compromise affordability for its CAP customers who shop, but rather will complement and be consistent with the requirements of the Choice Act and the Commission Policy Statement.⁶

Through the settlement, the Companies and other parties’ committed to addressing these issues in a collaborative, the end of which will result in an on the record proceeding if no consensus can be reached. This is plainly in the public interest. Ample evidence was presented

⁶ CAUSE-PA Statement No. 1 at 14:16-15:11 (footnote omitted).

demonstrating the harm associated with CAP customers paying more than the price to compare. This harm befalls not only CAP customers themselves, but also all of the residential ratepayers who pay for CAP and whose CAP rider has been increased because of higher costs paid in the competitive market.⁷ By allocating time to discuss these issues in a collaborative, the parties can appropriately vet the various options available to ensure that CAP customers who wish to access the competitive market can do so while being adequately protected from paying more for service than they need pay. At the same time, given the diversity of views on this subject, it was essential to CAUSE-PA that if consensus was not able to be reached that the Companies had a firm deadline by which they had to file an on-the-record petition to obtain a Commission decision about these issues. The Settlement provisions ensure that these issues will be both timely and adequately addressed, and should be approved without modification as being in the public interest.

IV. CONCLUSION

The Joint Petitioners arrived at the Settlement terms after conducting extensive discovery and engaging in discussions over several weeks. The terms and conditions outlined here, and those contained in the Joint Petition itself, constitute a carefully crafted package representing reasonably negotiated compromises on the issues of concern to each party in this proceeding. Thus, the Settlement is consistent with the Commission's rules and practices encouraging negotiated settlements (see 52 Pa. Code §§ 5.231, 69.391 and 69.401), and is supported by a substantial record. Furthermore, acceptance of the Settlement avoids the necessity of further administrative and possibly appellate proceedings regarding the settled issues at what would have been a

⁷ CAUSE-PA Statement No. 1 at 13-14.

substantial cost to the Joint Petitioners and the Companies' customers.

Accordingly, CAUSE-PA respectfully requests that the ALJ and the Commission approve the Joint Petition for Settlement without modification.

Respectfully submitted,
PENNSYLVANIA UTILITY LAW PROJECT
Counsel for CAUSE-PA



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Date: April 1, 2016

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition Of Metropolitan Edison	:	
Company, Pennsylvania Electric	:	Docket No. P-2015-2511333
Company, Pennsylvania Power	:	Docket No. P-2015-2511351
Company and West Penn Power	:	Docket No. P-2015-2511355
Company for Approval of Their	:	Docket No. P-2015-2511356
Default Service Program	:	

**STATEMENT IN SUPPORT OF JOINT PETITION FOR SETTLEMENT
ON BEHALF OF EXELON GENERATION COMPANY, LLC**

Exelon Generation Company, LLC (“ExGen”) offers this Statement In Support of the Joint Petition for Settlement (“Settlement”) submitted 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 Settlement addresses all issues in the above-captioned proceeding.

ExGen primarily focused its advocacy in this proceeding on correcting the treatment Network Integration Transmission Services (“NITS”) charges to reflect that they are non-market based charges. ExGen filed direct and surrebuttal testimony explaining the appropriateness of recovering NITS charges and similar non-market based charges on behalf of all load through a non-bypassable charge. Related to NITS and non-market based charges, the Settlement provides that the Companies agree to implement various processes and procedures to provide more transparency to all market participants regarding NITS rates and charges. Additionally, the Settlement provides a discussion opportunity for the Companies and the parties to this proceeding to discuss the calculation of NMB charges under the Companies’ Default Service Support Riders (“DSSRs”).

ExGen believes that NITS charges for shopping and non-shopping customers should be recovered through the Companies’ DSSRs. While the Settlement does not facilitate this, taken as

a whole, the Settlement represents a fair and reasonable outcome of the collective issues raised in this proceeding. Settlements, including the Settlement reached here, represent agreement on a multitude of issues across a diverse set of interested parties to further expeditious and efficient outcomes of complex administrative proceedings.

For the reasons, stated above, taken as a whole, the Settlement is in the public interest. ExGen is in support of the Settlement and requests its approval without modification.

Respectfully submitted,



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Date: April 1, 2016

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition of Metropolitan Edison	:	
Company, Pennsylvania Electric Company,	:	Docket Nos. P-2015-2511333
Pennsylvania Power Company and West	:	P-2015-2511351
Penn Power Company for Approval of	:	P-2015-2511355
Their Default Service Programs	:	P-2015-2511356

**JOINT STATEMENT IN SUPPORT OF
THE MET-ED INDUSTRIAL USERS GROUP,
THE PENELEC INDUSTRIAL CUSTOMER ALLIANCE,
THE PENN POWER USERS GROUP, AND
THE WEST PENN POWER INDUSTRIAL INTERVENORS**

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") (collectively, "Industrials"), by and through their counsel, submit that the Joint Petition for Settlement ("Settlement") filed in the above-captioned proceeding is in the public interest and represents a fair, just, and reasonable resolution of the Metropolitan Edison Company ("Met-Ed"), the Pennsylvania Electric Company ("Penelec"), the Pennsylvania Power Company ("Penn Power"), and the West Penn Power Company ("West Penn") (collectively, "Companies") Joint Petition for approval of their Default Service Plans ("Joint Petition" or "DSP IV"). As a result of settlement discussions, the Companies; the Industrials; the Office of Consumer Advocate ("OCA"); the Office of Small Business Advocate ("OSBA"); the Bureau of Investigation and Enforcement ("I&E"); the Retail Energy Supply Association ("RESA"); Direct Energy Services, LLC ("Direct"); Exelon Generation Company, LLC ("ExGen"); the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"); and TransCanada Power Marketing, LTD ("TransCanada") (collectively, "Settling Parties") have agreed upon the terms embodied in the foregoing Settlement. The Industrials offer this

Statement in Support to further demonstrate that the Settlement is in the public interest and should be approved without modification.

I. BACKGROUND

1. On November 3, 2015, the Companies filed with the Pennsylvania Public Utility Commission ("Commission" or "PUC") the aforementioned Joint Petition. Specifically, the Joint Petition outlined the Companies' proposals to address the terms and conditions under which the Companies would supply default service from June 1, 2017, through May 31, 2019.

2. On November 25, 2015, the Industrials filed a Joint Petition to Intervene in the above-captioned proceeding. The Industrials are *ad hoc* associations of energy-intensive commercial and industrial ("C&I") customers receiving electric service in Met-Ed's, Penelec's, Penn Power's, and West Penn's service territories. As some of the Companies' largest customers, whose manufacturing processes require significant amounts of electricity, any proposed modifications to the Companies' terms and conditions of service could significantly impact the Industrials' production costs.

3. A Prehearing Conference was held on December 1, 2015, before presiding Administrative Law Judge ("ALJ") David A. Salapa. A procedural schedule was established for discovery, written testimony, settlement discussions, and hearings.

4. On March 10, 2016, the Parties informed the ALJ that a settlement had been reached on all of the issues in this proceeding.

II. STATEMENT IN SUPPORT

5. The Commission has a strong policy favoring settlements. As set forth in the Commission's regulations, "[t]he Commission encourages parties to seek negotiated settlements of contested proceedings in lieu of incurring the time, expense and uncertainty of litigation." 52

Pa. Code § 69.391; *see also* 52 Pa. Code § 5.231. Consistent with the Commission's policy, the Settling Parties engaged in negotiations to resolve the issues raised by the various parties. These ongoing discussions produced settlement in this proceeding.

6. The Settling Parties agree that approval of the proposed Settlement is overwhelmingly in the best interest of the parties involved.

7. The Settlement is in the public interest for the following reasons:

- a. As a result of the Settlement, expenses incurred by the Settling Parties and the Commission for completing this proceeding will be substantially less than they would have been if the proceeding had been fully litigated.
- b. Uncertainties regarding further expenses associated with possible appeals from the Final Order of the Commission are avoided as a result of the Settlement.
- c. The Settlement results in terms and provisions that present a just and reasonable resolution of the Companies' proposed DSP-IV.
- d. The Settlement reflects compromises on all sides presented without prejudice to any position any Settling Party may have advanced so far in this proceeding. Similarly, the Settlement is presented without prejudice to any position any party may advance in future proceedings involving the Companies.

8. In addition, the Settlement satisfies the specific concerns of the Industrials by continuing the obligation of electric generation suppliers ("EGSs") to collect Network Integration Transmission Services ("NITS") costs during the term of the default service period beginning June 1, 2017. *See* Settlement II.G.1.

9. The Industrials support the Settlement because it is in the public interest; however, in the event the Settlement is rejected by the ALJ or the Commission, the Industrials will resume their litigation position.

10. As set forth above, the Industrials submit that the proposed Settlement is in the public interest and adheres to the Commission's policies promoting negotiated settlements. The Settlement was achieved after numerous settlement discussions. While the Settling Parties have invested time and resources in the negotiation of the Settlement, this process has allowed the Settling Parties and the Commission to avoid expending the substantial resources that would have been required to fully litigate this proceeding while still reaching a just, reasonable, and non-discriminatory result. The Settling Parties have thus reached an amicable resolution to this dispute as embodied in the proposed Settlement. Approval of the Settlement will permit the Commission and the Settling Parties to avoid incurring the additional time, expense, and uncertainty of further litigation of issues in this proceeding. *See* 52 Pa. Code § 69.391.

III. CONCLUSION

WHEREFORE, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Penn Power Users Group, and the West Penn Power Industrial Intervenors request that the Pennsylvania Public Utility Commission approve the Joint Petition for Settlement submitted in this proceeding.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

By 

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Dated: April 1, 2016

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition Of Metropolitan Edison	:	
Company, Pennsylvania Electric	:	Docket No. P-2015-2511333
Company, Pennsylvania Power	:	Docket No. P-2015-2511351
Company and West Penn Power	:	Docket No. P-2015-2511355
Company for Approval of Their	:	Docket No. P-2015-2511356
Default Service Program	:	

**STATEMENT IN SUPPORT OF JOINT PETITION FOR SETTLEMENT
ON BEHALF OF RETAIL ENERGY SUPPLY ASSOCIATION**

The Retail Energy Supply Association (“RESA”),¹ offers this Statement In Support of the Joint Petition for Settlement (“Settlement”) submitted 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 Settlement addresses all issues in the above-captioned proceeding. While the Settlement does not resolve all the issues raised by RESA in the manner preferred by RESA, the Settlement does reasonably address many of the issues and – on balance – is a reasonable resolution of this proceeding. Thus, RESA supports approval of the Settlement without modification.

RESA is a nonprofit organization and trade association that represents the interests of a broad and diverse group of energy suppliers who share the common vision that competitive retail and wholesale energy markets deliver a more efficient, customer-oriented outcome than the regulated utility structure. RESA is devoted to working with all stakeholders to promote vibrant

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

and sustainable competitive retail energy markets for all consumers. RESA members currently serve residential, commercial and industrial and institutional customers in Pennsylvania and other jurisdictions in North America that have enacted retail choice.

In this proceeding, RESA raised the following issues and concerns about the Companies' proposed default service plan: (1) the changes proposed by the Companies' regarding the residential and commercial classes procurement mix; (2) the threshold for the Companies' industrial procurement group as it impacts hourly priced default service; (3) the proposal to implement a Purchase of Receivables ("POR") Clawback penalty mechanism; (4) the proposal to require electric generation suppliers ("EGSs") to remit customer refunds directly to the electric distribution company ("EDC"); and, (5) the Companies' request to begin collecting an hourly fee from EGSs participating in the Customer Referral Program ("CRP") to cover FirstEnergy's expenses for researching customer complaints related to the CRP Supplier's activity.²

In addition, RESA offered the following proposals: (1) that the Companies be required to unbundle default service costs that it currently recovers through distribution rates and require that those costs are recovered through the price- to-compare ("PTC");³ (2) that FirstEnergy be required to expeditiously develop the supplier consolidated billing option for EGSs; (3) that a working group be established to determine the rules and procedures required to allow EGSs to bill for non-commodity charges on the EDC bill; and, (4) FirstEnergy be directed to give EGSs the most up-to-date mailing information for customers that participate in CRP to assist EGSs with regulatory compliance.⁴

² RESA St. No. 1 at 2-3; RESA St. No. 2 at 3.

³ 52 Pa. Code § 54.187(e).

⁴ RESA St. No. 2.

Even though all of RESA's concerns and issues are not fully addressed in the manner preferred by RESA, the Settlement does represent a reasonable compromise which balances all of the issues and should be approved.

First, regarding the procurement plan, the Settlement implements revised contract lengths, product percentages and procurement lead times similar to the Companies' current procurements⁵ which is consistent with RESA's recommendation. While RESA did not support the recommendation of the Office of Consumer Advocate ("OCA") to extend the default service plan term from FirstEnergy's proposed two years to four years,⁶ the Settlement establishes a stakeholder collaborative process in October 2017 to enable parties to assess the procurement plan and present information for the consideration of the stakeholders to support consideration of an alternate procurement plan.⁷ On balance, the Settlement's proposed resolution of the procurement issues is reasonable.

Second, regarding RESA's concerns about the hourly priced customer threshold, FirstEnergy represents that it will have systems in place to lower the hourly pricing threshold to 100 kW effective June 1, 2021 and agrees to lower it to 100 kW effective June 1, 2019 where smart meters will be used for hourly pricing billing purposes by that date. The Companies agree to provide updates on their ability to bill hourly priced service at six-month intervals until June 1, 2019.⁸ Taking into consideration FirstEnergy's Smart Meter Deployment Plan, this is a reasonable resolution of this issue.

⁵ Settlement at Exhibit A.

⁶ RESA St. No. 1-R at 2-3.

⁷ Settlement at 5, Section A(1)(1)(a).

⁸ Settlement at 7, Section A(2)(d).

Third, the Settlement offers reasonable modifications to the Companies' proposal regarding refunds and courtesy credits made by EGSs to POR customers when addressing customer complaints. Specifically, the Settlement requires customer consent to credit the payment through the Companies' billing system and requires use of the process only for customers who have an outstanding arrearage owed to one of the Companies.⁹ While RESA had concerns with this proposal, the stakeholder discussions that occurred as a result of the settlement process lead to the approach set forth in the Settlement which is a reasonable way to balance the competing concerns raised by the Companies and other stakeholders.

Fourth, while RESA did not propose any changes regarding the treatment of Network Integration Transmission Services ("NITS") in this proceeding, RESA has long advocated for recovering NITS charges and similar non-market based charges on behalf of all load through a non-bypassable charge and supported the recommendation of Exelon Generation Company, LLC ("ExGen") that certain transmission related non-market based charges should be included with the Companies' Default Services Support Rider ("DSSR").¹⁰ As part of the Settlement, the Companies agree to implement various processes and procedures to provide more transparency to all market participants regarding NITS rates and charges.¹¹ In consideration of the Commission's prior determinations on this issue as well as updated discussions with impacted parties and the Companies' willingness to implement the new transparency provisions set forth in the Settlement regarding these charges, the Settlement offers a reasonable approach at this time for this issue.

⁹ Settlement at 14, Section F(8).

¹⁰ RESA St. No. 1-R at

¹¹ Settlement at 15, Section G(2).

Fifth, the Settlement reasonably addresses issues regarding the CRP and appropriately balances the sometimes competing concerns raised by RESA, OCA and FirstEnergy. More specifically, pursuant to the Settlement: (1) the current CRP Supplier fee remains unchanged; (2) additional due process procedures are established regarding FirstEnergy's proposal to charge CRP Suppliers hourly fees to investigate customer disputes; (3) reasonable script changes to address the concerns of OCA without potentially degrading the effectiveness of the CRP are proposed; and, (4) FirstEnergy agrees to reconvene its supplier workshops to discuss operational issues including, but not limited to, RESA's concern regarding the sharing of customer account information.¹² On balance, the modifications to the Companies' CRP and initial proposals regarding the CRP set forth in the Settlement represent a fair resolution of the CRP issues.

Sixth, while the Settlement does propose to implement FirstEnergy's POR Clawback Charge which will enable it to assess targeted EGSs additional charges related to uncollectibles, modifications to the initially proposed mechanism are included in the Settlement. These include: (1) the mechanism will be implemented as a two-year pilot; (2) the Companies will provide a report, with detailed information and analysis, regarding the operation of the mechanism during the October 2017 collaborative; (3) the initial mechanism is redesigned with two separate prongs that an EGS needs to meet before assessment of the charge; (4) even if the Companies propose to continue the mechanism beyond the two-year pilot, they agree not to propose decreasing the threshold of the first program to below 150% prior to 2021; (5) even though parties could not agree to remove the current POR credit and deposit restrictions due to implementation of the POR Clawback charge, the parties do agree to use good faith efforts to resolve this issue if the

¹² Settlement at 16-17, Section H

Companies elect to propose to continue the POR Clawback after the two-year pilot implementation.¹³

While RESA remains concerned that implementation of this mechanism may lead to unintended consequences, such as being unreasonably assessed on suppliers who may meet the prongs but may have valid and justifiable reasons for doing so, the modifications to the original proposal set forth in the Settlement (in combination with the fact that FirstEnergy's POR program has a zero discount) represent likely improvements from the initial proposal. In addition, and specifically regarding the POR Clawback Charge, the Settlement reserves the rights of all parties to propose modifications to or termination of the POR Clawback Charge.¹⁴ More generally, the parties of the Settlement specifically acknowledge that the Settlement is based on the facts and record in this proceeding and the agreements are not intended to apply to other proceedings nor to waive any parties' rights regarding those issues in future proceedings.¹⁵ Thus, for all these reasons in combination with the resolution of other issues in this proceeding, the Settlement is an adequate resolution of the POR Clawback Charge.

Finally, regarding RESA's unbundling proposal, the Settlement requires a stakeholder collaborative to explore the establishment of a bypassable retail market enhancement rate mechanism with the Companies and stakeholders agreeing to discuss the collaboratives during the October 2017 discussion and the Companies committing to file its proposals regarding the issues no later than January 31, 2018.¹⁶ Establishing a forum to collaboratively address these issues is a reasonable step forward.

¹³ Settlement at 18-20, Section I.

¹⁴ Settlement at 20, Section I(3).

¹⁵ Settlement at 23, Section M.

¹⁶ Settlement at 5 and 20, Sections A(2) and J(1)(a), (3).

On balance, the Settlement represents a fair balancing and compromise of the issues raised in this proceeding. While the Settlement does not resolve all of the issues and concerns raised by RESA, it does represent improvements on many issues proposed by the Companies (as well as the other parties) and was developed as the result of the parties working cooperatively to reach a reasonable and comprehensive compromise of all the issues. In addition, the Settlement reduces the administrative burden and costs to resolve the numerous issues. For all these reasons, the Settlement is in the public interest and should be adopted. Thus, RESA respectfully requests that the Settlement be approved without modification.

Respectfully submitted,



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Date: April 1, 2016

Attorneys for Retail Energy Supply Association

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition of Metropolitan Edison	:	
Company, Pennsylvania Electric Company,	:	Docket No. P-2015-2511333
Pennsylvania Power Company and West	:	P-2015-2511351
Penn Power Company for Approval of	:	P-2015-2511355
their Default Service Programs	:	P-2015-2511356

**STATEMENT IN SUPPORT OF SETTLEMENT
OF TRANSCANADA POWER MARKETING LTD.**

I. INTRODUCTION

1. TransCanada Power Marketing Ltd. (“TransCanada”), respectfully submits, through its counsel, that the Joint Petition for Settlement (“Joint Petition”) filed in the above-captioned proceeding by Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company; the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Penn Power Users Group, West Penn Power Industrial Intervenors, the Retail Energy Supply Association, Direct Energy Services, LLC, Exelon Generation Company, LLC, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, and TransCanada (collectively, the “Joint Petitioners”) promotes the public interest and should be approved by the Pennsylvania Public Service Commission (“Commission”) without modification.

II. BACKGROUND

2. The background set forth in Paragraphs 1 through 12 of the Joint Petition is incorporated herein by reference as if set forth in its entirety.

III. STATEMENT IN SUPPORT

3. It is the policy of the Commission to encourage settlements. 52 Pa. Code § 5.231. The Commission's regulations state, "The Commission encourages parties to seek negotiated settlements of contested proceedings in lieu of incurring the time, expense and uncertainty of litigation." As such, the Joint Petitioners negotiated in good faith to resolve all issues that were raised by the parties in this proceeding. The Joint Petition is in the public interest and is consistent with the Commission's policy promoting settlement.

4. The Joint Petition was reached after extensive discovery, presentation of written testimony, and numerous settlement discussions and is a reasonable and appropriate compromise of the Joint Petitioners' diverse interests and positions.

5. The Joint Petition adequately addresses the primary concern raised by TransCanada through the course of this proceeding, namely approval of an alternate guaranty that will allow the guaranty to be issued by two guarantors, jointly and severally.

6. It is TransCanada's position that allowing this alternate guaranty is in the public interest because the alternate guaranty will allow potential suppliers, such as TransCanada, to be more price competitive, thus increasing competition and potentially lowering prices for default service customers.

IV. CONCLUSION

7. TransCanada respectfully requests that the Commission approve the Joint Petition as submitted, without modification.

Respectfully Submitted,



Dated: April 1, 2016

Bruce V. Miller (PA Attorney ID No. 201922)
Attorney for TransCanada Power Marketing Ltd.