

**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	:	

**RECOMMENDED DECISION**

Before  
David A. Salapa  
Administrative Law Judge

**INTRODUCTION**

Electric utilities filed petitions for approval of their default service programs (DSPs). Various entities filed answers opposing provisions contained in the petition. This decision recommends that a settlement among the parties be approved and adopted.

## HISTORY OF THE PROCEEDING

On November 3, 2015, Metropolitan Edison Company (Met Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power) and West Penn Power Company (West Penn), collectively FirstEnergy (FE) filed with the Pennsylvania Public Utility Commission (Commission) their joint petition for approval of their DSPs for the period beginning June 1, 2017 through May 31, 2019, pursuant to the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801-2812 (Competition Act), Act 129 of 2008 (Act 129) and Commission regulations at 52 Pa.Code §§ 54.181-54.189 and the Commission's policy statement on default service, 52 Pa.Code §§ 69.1801-69.1817.

Notice of FE's four petitions was published in the November 14, 2015 Pennsylvania Bulletin at 45 Pa.B. 6654-6655, specifying a deadline of November 30, 2015, for filing protests, petitions to intervene and answers to the FE petitions. The notice also stated that I would preside over a prehearing conference to be held on December 1, 2015 at 10:00 a.m. in Hearing Room 4 of the Commonwealth Keystone Building in Harrisburg.

By notice dated November 6, 2015, the Commission scheduled a prehearing conference for this matter on December 1, 2015 at 10:00 a.m. in Hearing Room 4, Commonwealth Keystone Building in Harrisburg and assigned the case to me. I issued a prehearing conference order dated November 6, 2015, setting forth the procedural matters to be addressed at the prehearing conference.

On November 23, 2015, the Office of Small Business Advocate (OSBA) filed an answer, notice of intervention and public statement.

On November 25, 2015, the Pennsylvania State University (PSU), Med-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, the Industrials) and Noble Americas Energy Solutions, LLC (Noble) all filed petitions to intervene.

On November 30, 2015, Exelon Generation Company, LLC (Exelon), NextEra Energy Power Marketing, LLC (NextEra), Retail Energy Supply Association (RESA), Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), TransCanada Power Marketing LTD (TransCanada), and Direct Energy Services, LLC (Direct) all filed petitions to intervene.

On November 30, 2015, the Office of Consumer Advocate (OCA) filed an answer, notice of intervention and public statement.

On November 30, 2015, the Commission's Bureau of Investigation and Enforcement (I&E) filed a notice of appearance.

On November 30, 2015, FE filed a motion to consolidate the four petitions.

I conducted a prehearing conference in this case on December 1, 2015 at 10:00 a.m. in Harrisburg. Present were counsel for FE, I&E, OCA, OSBA, the Industrials, PSU, RESA, Noble, NextEra, Exelon, Direct, and CAUSE-PA. As a result of the prehearing conference, I issued Prehearing Order #2, dated December 3, 2015. Prehearing Order #2 established a litigation and briefing schedule.

By separate order also dated December 3, 2015, I granted FE's request for protective order.

By notice dated December 3, 2015, the Commission scheduled this matter for hearings on February 24-25, 2016 at 10:00 a.m. in Hearing Room 4, Commonwealth Keystone Building in Harrisburg.

I convened the hearing as scheduled on February 24, 2016 at 10:00 a.m. Prior to the hearing, the parties had contacted me to indicate that they were attempting to settle the case.

The parties requested that I recess the hearing until 1:00 p.m. in order to allow settlement talks to continue. I recessed the hearing until 1:00 p.m. N.T. 18.

I reconvened the hearing on February 24, 2016 at 1:00 p.m. Prior to my reconvening the hearing, the parties had contacted me to request that I recess the hearing until February 25 at 10:00 a.m. in order to allow settlement talks to continue. I recessed the hearing until February 25 at 10:00 a.m. N.T. 18-19.

I reconvened the hearing on February 25, 2016 at 10:00 a.m. At that time, the prepared testimonies and accompanying exhibits of various witnesses for which there was no objection or cross examination were moved into the record. N.T. 30-44. After this prepared testimony was moved into the record, the parties requested a recess until 11:00 a.m. in order further discuss settlement. N.T. 44-45.

I reconvened the hearing on February 25, 2016 at 11:00 a.m. Since the parties had not reached a settlement, the prepared testimonies and accompanying exhibits for two FE witnesses were moved into the record, subject to cross examination. N.T. 45-93.

On March 10, 2016, I received an e-mail from the parties to this proceeding representing that they had reached an agreement in principle settling all the issues in this proceeding and requesting that I suspend the litigation schedule. The parties represented that they would file a signed, written settlement agreement on or before April 1, 2016. By order dated March 10, 2016, I suspended the litigation schedule set forth in Prehearing Order #2.

On April 1, 2016, FE filed a joint petition for settlement and attachments on behalf of the joint petitioners. The joint petition states that the joint petitioners are FE, I&E, OCA, OSBA, the Industrials, RESA, Exelon, CAUSE-PA and TransCanada. The petition asserts that Noble, NextEra, Direct and PSU have authorized the joint petitioners to represent that they do not oppose the joint petition.

Attached to the joint petition for settlement are exhibits A through I. Also attached to the joint petition for settlement are statements in support of the settlement by FE, I&E, OCA, OSBA, CAUSE-PA, Exelon, the Industrials, RESA and TransCanada.

As of the date of this decision, I have not received any written objections to the joint settlement petition. The record closed on April 1, 2016, the date FE filed the joint settlement petition. For the reasons set forth below, I recommend that the Commission approve and adopt the joint settlement petition

### DISCUSSION

FE has the burden of proof in this proceeding to establish that it is entitled to the relief it is seeking. 66 Pa. C.S. §332(a). It must establish its case by a preponderance of the evidence. Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n, 578 A.2d 600 (Pa.Cmwlth. 1990), alloc. den., 602 A.2d 863 (Pa. 1992) To meet its burden of proof, FE must present evidence more convincing, by even the smallest amount, than that presented by any opposing party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950). In this case, FE requests that the Commission approve its DSPs for the period beginning June 1, 2017 through May 31, 2019.

The Competition Act, as amended by Act 129, requires that electric distribution companies (EDCs), such as FE, file DSPs with the Commission for approval. In order to provide background for FE's DSP, I will provide a brief explanation of the provisions of the Competition Act and Act 129 and Commission regulations that govern DSPs.

The General Assembly passed the Competition Act in order to encourage competition in the generation of electricity, reduce electricity rates, encourage business and industry in the Commonwealth, and maintain safe, affordable, and reliable transmission and distribution services. The objectives of the Competition Act were to encourage competitive retail and wholesale markets, while providing significant cost savings and rate protections to customers. In order to ensure that this transition benefited all customers, while protecting the Commonwealth's ability to compete in the national and international marketplace for industry

and jobs, the Competition Act contained specific provisions to ensure continued safe and affordable service for all customers. 66 Pa.C.S. §§ 2802(7), (8), and (11).

At the end of the transition period for the switch from regulation to competition, the Competition Act provided that each EDC would act as a provider of default service to provide electric generation service to customers not served by EGSs. 66 Pa.C.S. § 2807(e)(3). In order to provide this default service, the Competition Act required the Commission to promulgate regulations establishing how EDC's would provide default service. 66 Pa.C.S. § 2807(e)(2).

Pursuant to the Competition Act, the Commission enacted default service regulations, 52 Pa.Code §§ 54.181- 54.189, and a policy statement, 52 Pa.Code §§ 69.1802-69.1817, addressing DSPs. The regulations became effective in 2007 and have been amended to incorporate the amendments to the Competition Act by Act 129. Implementation of Act 129 of October 15, 2008; Default Service And Retail Electric Markets, Docket No. L 2009-2095604 (Final Rulemaking Order entered October 4, 2011) (Act 129 Final Rulemaking Order).

In the Act 129 Final Rulemaking Order, the Commission required that a DSP's procurement plan be a "prudent mix" of: (a) spot market purchases; (b) short-term contracts; and (c) long-term contracts entered into as a result of an auction, request for proposal or bilateral contract that is free of undue influence, duress or favoritism, of more than four and not more than 20 years. 66 Pa.C.S. § 2807(e)(3.2)(i),(ii), and (iii). In addition, the Commission mandated that the "prudent mix" of contracts be designed to ensure: (1) adequate and reliable service; (2) the least cost to customers over time; and (3) compliance with the requirements of subsection (e)(3.1) regarding competitive procurement, pursuant to 66 Pa. C.S. § 2807(e)(3.4).

In the Act 129 Final Rulemaking Order, the Commission stated that in evaluating DSPs, the Commission should also be concerned about rate stability as well as ensuring a "prudent mix" of supply and ensuring safe and reliable service, pursuant to 66 Pa.C.S. §§ 2807(e)(3.2), (3.4) and (7). The Commission asserted that a DSP should also meet the "least cost over time" standard in Act 129. The Commission explained that the DSP should not have, as its

singular focus, achieving the absolute lowest cost over the DSP time frame but, rather, a cost for power that is adequate, reliable and economical relative to other options.

In summary, the Commission requires that an EDC acting as a default service provider develop a procurement plan that meets several goals. The EDC should obtain a prudent mix of supplies designed to provide service at the least cost to customers over time. The default service must be reliable, adequate, and designed to reduce price instability. The Commission considers price stability and reliability when determining whether the prudent mix standard is met.

Having provided a brief explanation of the provisions of the Competition Act and Act 129 governing DSPs, I will now address the Commission's standards for approving settlements. As noted above, the parties have reached a settlement. Commission policy promotes settlements. 52 Pa.Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve precious administrative hearing resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa.Code § 69.401.

In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. Pennsylvania Pub. Util. Comm'n v. York Water Co., Docket No. R-00049165, (Final Order entered October 4, 2004); Pa. Pub. Util. Comm'n v. C S Water and Sewer Assoc., 74 Pa. P.U.C. 767 (1991).

Having provided a brief explanation of the provisions of the Competition Act and Act 129 governing DSPs and the Commission's standards for approving settlements, I will now review the terms of the joint petition for settlement to determine whether those terms address the requirements of the Competition Act, Act 129 and Commission regulations as well as meet the Commission's standards for approving settlements.

## TERMS OF THE SETTLEMENT

The joint petition for settlement sets forth the following terms agreed to by the parties:

### A. Procurement and Implementation Plans

#### 1. Term

a. The term of the DSP will be four years. The contract lengths, product percentages and procurement lead times during the initial two years of the implementation period, June 1, 2017 through May 31, 2019, are shown in Exhibit A-1 attached to the joint petition for settlement. The subsequent two years of the implementation period, June 1, 2019 through May 31, 2021, will replicate the same contract lengths, product percentages and procurement lead times shown in Exhibit A-2 attached to the joint petition for settlement subject to the following condition:

(1) FE will hold a stakeholder collaborative in October 2017 to discuss:

(a) The currently approved procurement plan and current market conditions. In preparation for the collaborative, FE will update the data contained in FE Exhibit JDR-1, admitted into the record in this proceeding, to reflect the most recent information as of the time of the collaborative. FE will circulate the update with supporting work papers among the parties at least one week prior to the collaborative. If FE or any of the parties believes that intervening market conditions have changed substantially, or that a default supply product is not producing competitive bids, and consideration of an alternative procurement plan is warranted, FE or that party may present information supporting such a position during the collaborative.

(b) The stakeholder collaborative contemplated by Section J set forth below.

(c) The proposed continuation of the purchase of receivable (POR) clawback charge contemplated by Section I set forth below.

(d) Any proposed changes to customer classes as contemplated by Section A.2 set forth below.

## 2. Procurement Groups

a. FE's default service customers shall continue to be divided into three classes for purposes of the default service procurement; the residential class, the commercial class and the industrial class.

b. FE will maintain the same residential and commercial class definitions that were last approved by the Commission in the previous DSP proceeding, subject to d. below.

c. Met Ed, Penelec, Penn Power and West Penn will maintain the same industrial class definitions that were last approved by the Commission in the previous DSP proceeding, subject to d. below.

d. FE represents that it will have systems in place, pursuant to its smart meter deployment plans so that it can and will lower the hourly pricing threshold to 100 kW, effective June 1, 2019, where smart meters will be used for hourly pricing billing purposes by that date. FE will provide updates on its ability to bill hourly priced service through smart meters to the parties to this settlement at six-month intervals until June 1, 2019. At least nine months prior to the effective date of any modifications to the hourly pricing threshold, FE will develop an outreach program for the default service customers affected by the change, and will circulate that program to the parties for comment. Customers affected by the change will be notified at least six months before the effective date of the change.

## 3. Residential and Commercial Class Procurement

a. FE will procure 100% of the supply required to serve residential and commercial default service customers during the DSP term through a descending clock auction (DCA) for full requirements service. Winning suppliers will bid in "tranches" corresponding to a percentage of the actual residential and commercial default service customer load and be responsible for fulfilling all the associated requirements of the load serving entity (LSE) under their agreements with PJM, including energy, capacity, transmission, ancillary services, PJM administrative expenses, as well as providing all necessary alternative energy credits described in Section C, set forth below, for compliance with Pennsylvania's Alternative Energy Portfolio Standards (AEPS) Act. 73 P.S. § 1648 et seq.

b. Winning suppliers will schedule the delivery of these products to the Met Ed Zone (PJM designation METED) for Met Ed products, the

Penelec Zone (PJM designation PENELEC) for Penelec products, the Penn Power Zone (PJM designation Penn Power Aggregate) for Penn Power products and the West Penn Zone (PJM designation APS) for West Penn products in PJM. A winning supplier must be a LSE within PJM and comply with all regulations, business rules, scheduling protocols and all other aspects of doing business within PJM.

c. The parties agree to the rules for the DCA attached to the joint petition for settlement as Exhibit B. Exhibit B is a revised version of FE's Exhibit RBR-2 to reflect the procurement plan and products set forth in the joint petition for settlement.

d. Each residential class tranche is a full requirements, load-following product that consists of a 95% fixed price portion and a 5% variable price spot portion. The 5% spot portion will be priced at the hourly PJM real-time zonal locational marginal price (LMP) for each company plus a \$20 per megawatt-hour (MWh) adder to cover the costs of other supply components associated with serving the contracted load, including capacity, ancillary services AEPS compliance and other costs. The fixed price portion will be established through FE's DCA.

e. Contracts for 50% of the residential class load will have terms of twelve months and contracts for the remaining 50% will have terms of twenty-four months.

f. The full requirements contracts for the commercial class will include a fixed price for 100% of the supply and will be procured through DCAs in the same manner and at the same time as the residential class.

g. The commercial class full requirements product mix will be comprised of three month contracts (28%), twelve month contracts (36%) and twenty-four month contracts (36%).

h. The procurement terms and schedule for the residential and commercial customer class contracts are set forth in Exhibits A-1 and A-2 attached to the joint petition for settlement.

#### 4. Industrial Class Procurement

a. The industrial class product is an hourly-priced service product based on PJM real-time zonal hourly market prices. Suppliers will bid for the right to serve a portion of the hourly-priced service load for twelve-month terms, commencing on June 1, 2017, June 1, 2018, June 1, 2019 or June 1, 2020. Winning suppliers will be paid the winning bid price in the hourly-priced auction, the hourly PJM real time zonal LMP, and a fixed adder of \$4/MWh to capture the estimated costs of other supply

components, including capacity, ancillary services, AEPS compliance and other costs.

b. FE will procure default service supply for the industrial class load through four separate auctions for twelve-month contracts in each of January 2017, 2018, 2019 and 2020 as shown on Exhibits A-1 and A-2 attached to the joint petition for settlement.

#### 5. Load Caps

a. The load cap for the procurement plans shall be set at 75%.

### B. Supplier Master Agreement

1. Attached to the joint petition for settlement as Exhibit C is the form of the supplier master agreement (SMA) that each FE company will execute with wholesale suppliers that are successful bidders in FE's default service supply procurements.

2. Exhibit C is a revised version of FE's Exhibit RBR-3 to reflect revisions to the creditworthiness requirements so as to allow a guaranty to be provided jointly and severally. Exhibit C has been reviewed and found to acceptable by the parties.

### C. Alternative Energy Portfolio Standards Act

1. For all customer classes, FE's non-solar AEPS requirements will be fulfilled by default service suppliers through the full-requirements contracts. Winning full requirements suppliers in the Met Ed, Penelec and Penn Power service territories will be required to supply alternative energy credits (AECs) to satisfy all Tier I, except solar photovoltaic and Tier II AEPS requirements associated with the load they serve, including the increasing annual percentage requirements. In the West Penn service territory, default service suppliers will be responsible for all Tier I and Tier II AEPS requirements, including solar photovoltaic requirements, less any AECs that are allocated to the suppliers on a load-ratio basis from existing long-term purchases made by West Penn. All other AEPS requirements shall be those in effect at the time the SMAs are executed for that load.

2. Met Ed, Penelec and Penn Power will conduct two two-year requests for proposals (RFPs), consistent with the procurement process last approved in the prior DSP proceeding, to solicit bids for the provision of a fixed number of solar photovoltaic alternative energy credits (SPAECs) based on each company's most recent distribution load forecasts. The parties agree to the use of the RFP rules for SPAEC procurements and the agreement, which each winning supplier in the Met Ed, Penelec and Penn Power service territories will be required to execute, as

were set forth in FE's Exhibit RBR-5 and are attached to the joint petition for settlement as Exhibit D.

3. 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, they may make market-priced sales and purchases of such excess AECs amongst each other as needed to fill their own shortfall.

#### D. Contingency Plans

##### 1. Full Requirements

a. The parties agree that FE will continue utilizing the contingency plans approved in the previous DSP proceeding. Specifically, in the event that the default service load for any class is not fully subscribed or if the Commission rejects the bid results from a solicitation, FE will rebid the unfilled tranches in the next scheduled procurement for which there is sufficient calendar time to include the tranches. For any unfilled tranches still remaining, FE will purchase the necessary physical supply for the remaining tranches for that class through PJM-administered markets. FE will not enter into hedging transactions to attempt to mitigate the associated price or volume risks to serve such unfilled tranches.

b. The parties agree that, in the event a winning bidder defaults prior to the start of or during the delivery period, FE will offer the unfilled tranches to the other qualified suppliers. If this is unsuccessful and a minimum of thirty calendar days exist prior to the start of the delivery period, the tranches will be bid out in a separate solicitation. If insufficient time exists to conduct an additional solicitation, or if the supplemental solicitation is unsuccessful, FE will supply the tranches using PJM-administered real-time markets.

##### 2. AEPS Requirements

a. The parties agree that in the event that a SPAEC solicitation held by Met Ed, Penelec or Penn Power is not fully subscribed, the Commission rejects the bid results from a solicitation or any winning supplier defaults before or during a delivery period, Met Ed, Penelec or Penn Power will conduct short-term procurements at market prices to ensure AEPS compliance until such time as the Commission approves an alternative mechanism.

#### E. Independent Evaluators

1. The parties agree to the appointment of CRA International, Inc. d/b/a/ Charles River Associates (CRA) as the independent third-party evaluator for FE's default service procurements.

2. The parties agree to the appointment of The Brattle Group (Brattle) as the independent third-party evaluator for SPAEC procurements.

#### F. Rate Design and Cost Recovery

##### 1. Price to Compare Default Service Rate Riders

a. FE will continue to recover the cost of default service for the residential and commercial classes through its Price to Compare Default Service Rate Riders (PTC Riders) approved by the Commission in the previous DSP proceeding.

##### 2. Hourly Pricing Default Services Riders

a. FE will continue to use the HPS Rider approved by the Commission in the previous DSP proceeding to recover the cost of default service for industrial class customers.

##### 3. Default Service Support Riders

a. FE will continue to use the Default Service Supply Riders (DSSRs) approved by the Commission in the previous DSP proceeding that imposes non-bypassable charges to recover those same categories of costs approved by the Commission in the previous DSP proceeding.

b. FE agrees to meet with the parties to this proceeding to discuss the calculation of NMB charges under FE's Default Service Support Riders. The parties will discuss 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, FE will propose a charge to its DSSR to effectuate such adjustment.

##### 4. Solar Photovoltaic Requirements Charge Riders

a. To recover the costs attributable to complying with solar AEPS requirements, FE will continue to use the non-bypassable Solar Photovoltaic Requirements Charge Rider (SPVRC Rider) approved by the Commission in the previous DSP proceeding.

##### 5. Reconciliation

a. FE will maintain the same E-factor reconciliation mechanisms that the Commission approved in the previous DSP proceeding.

6. Allocation of Default Service Administrative Costs

a. FE's default service administrative costs (primarily the costs of conducting procurement auctions and RFPs, as well as 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 loads (in kWhs), as approved by the Commission in the previous DSP proceeding.

7. Time of Use Rates

a. FE currently offers an optional time-of-use (TOU) pricing rate to residential customers and will continue to do so in the manner approved by the Commission in the previous DSP proceeding (for Penn Power and West Penn) and in the most recent Met Ed and Penelec base rate proceedings.

8. Electric Generation Supplier Coordination Tariff (supplier tariff)

Changes

a. FE's supplier tariffs have been updated to include provisions related to refunds and credits provided to customers associated with EG charges which fall under the POR. A refund will only be credited through FE's billing system after an EGS obtains the consent of a residential customer: (a) who is billed as part of FE's POR and (b) to whom the EGS is willing to issue a refund to resolve a Commission formal or informal individual customer complaint; and (c) where the customer has an outstanding arrearage, owed to FE that is associated with the dispute that is the subject of the informal or formal Commission 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 payments to the customer and encourage the customer to address the outstanding arrearage directly with the EDC.

b. FE's supplier tariffs have further been updated to include provisions related to the POR clawback charge outlined under Section I set forth below.

c. Those supplier tariff sheets bearing the revisions noted in a. and b. above are attached to the joint petition for settlement as Exhibit E (Met Ed), Exhibit F (Penelec), Exhibit G (Penn Power) and Exhibit H (West Penn). Exhibits E through H have been reviewed and found acceptable by the parties.

## G. Network Integration Transmission Services (NITS)

1. NITS will remain the obligation of default service providers and electric generation service providers during the default service delivery period beginning June 1, 2017.

2. Transparency of NITS rates and charges will be enhanced in the following ways:

a. FE will provide notice to EGSs and default service providers of any public docketed FERC filings that modify the NITS rate for any transmission company providing service to FE. This includes but is not limited to any informational filings implementing annual rate changes under a formula rate. All such notices will be provided via email through the Supplier Support communications process, and through updating FAQs on the default service auction website not later than ten days after such filing is made at the FERC. All communications will be archived on FE's Supplier Support website, as well as FE's default service auction website.

b. FE will add a page to its Supplier Support website titled NITS Rate Information. This page will include the information and notices referenced in the forging provision. The website will also include a prominent table displaying the currently-effective NITS rates for each FE company, the effective dates of the NITS rates, and a column labeled Future NITS Rate. The Future NITS Rate will reflect any proposed rate filed at the FERC as well as the proposed effective date of the rate.

## H. Customer Referral Program

### 1. Program Administration

a. The currently effective Customer Referral Program (CRP), including the cost recovery mechanisms last approved by the Commission in the previous DSP proceeding will continue until May 31, 2021.

b. The CRP scripts will be modified to include the following:

AllConnect script will continue to state that the EGS's rate could be higher or lower than the PTC.

FE's CSR script initiating the transition to the program specialist will provide as follows: "In Pennsylvania, you can choose the company that provides your electricity without impacting the quality of service. Would you like to speak to a representative who can offer you a potential savings opportunity by enrolling with an electric generation supplier?"

The AllConnect script will be revised to include the following language:

“The CRP offers a fixed price of \_\_\_/kWh for one year provided by an Electric Generation Supplier. The fixed CRP price provides an initial discount off of today’s Price to Compare which is \_\_\_/kWh. The Price to Compare will change again on (March/June/September/December) first. The CRP price will not change through twelve monthly bills but the PTC could be higher or lower than the CRP price during this period.”

c. Hourly fees to investigate customer disputes with a CRP Supplier as proposed in the filing will be charged only in instances of confirmed violation of the CRP Agreement. In any such identified instance, FE will notify the affected CRP Supplier and the CRP Supplier will have ten days to submit a formal objection to FE’s initial determination. The formal objection shall be processed consistent with Section 18 of FE’s Supplier Coordination Tariffs. FE’s CRP Agreement has been updated to reflect this requirement and has been attached as Exhibit I to the joint petition for settlement. Exhibit I has been reviewed and found acceptable by the parties.

d. FE agrees to reconvene the supplier workshops so that CRP Suppliers and FE are provided a collaborative forum to discuss operational enhancements that can be implemented to the CRP by both FE and EGS participants to improve the administration of the program. Topics shall include but not be limited to sharing of customer account information associated with those customers who have affirmatively selected to participate in the CRP.

## 2. Cost Recovery

a. The parties agree that FE continues to have the right to full and current cost recovery for all cost associated with the CRP, with recovery to continue as approved by the Commission in the previous DSP proceeding.

### I POR Clawback Charge

1. In recognition of the fact that FE’s POR program is a zero discount rate program, the parties agree as follows:

a. FE’s POR clawback proposal, as modified below, will be implemented as a two year pilot, followed by a report to be provided as part of FE’s October 2017 collaborative regarding the results of the pilot.

(1) The report will include the following for each of the FE companies:

(a) A write off analysis by operating company for the twelve months ending June 30<sup>th</sup> showing, by rate class:

amounts,

- i. Distribution and default service write-off dollar
- ii. EGS write-off dollar amounts,
- iii. Total write-off dollar amount; and
- iv. The percentage of EGS write offs as a percentage of total write-offs.

(b) Uncollectible expense by operating company for the twelve months ending June 30<sup>th</sup> showing:

- i. Actual uncollectible expenses dollar amounts; and,
- ii. Uncollectible expense amount in rates (both in base rates and the default service support rider),

(c) For every participating supplier, including EGSs below 200% of the average supplier write-offs as a percentage of revenue, the following by operating company for the twelve months ending June 30<sup>th</sup>:

- i. EGS revenues,
- ii. EGS write-offs,
- iii. Write-Offs as a percentage of revenues,
- iv. Average price per kWh; and,
- v. Whether the billing is on a rate ready or bill ready basis.

(d) For every participating supplier that passes the first prong of the test described below, the average price for the prior twelve-month period as compared to the Companies' average price-to-compare.

(2) FE agrees to apply a two-prong test to determine the clawback charge. The first, as described in testimony, will identify those participating EGSs whose average percentage of write-offs as a percentage of revenues over the twelve-month period ending August 31<sup>st</sup> each year exceeds 200% of the average percentage of total EGS write-offs as a percentage of revenues per operating company. The second prong of the test will identify, of those EGSs identified in the first prong of the test, EGSs whose average price charged over the same twelve-month period exceeds 150% of the average price-to-compare for the prior twelve-month period. For those EGSs identified by both prongs of the test, the annual clawback charge assessed beginning September 2016 would be the difference between that EGS's actual write-offs and 200% of the average EGS percentage of write-offs per operating company.

2. In the event that FE determines that the POR clawback mechanism should be continued following the October 2017 collaborative process described above, FE agrees not to propose, in any proceeding, a decrease to the 200% threshold in the first prong of the test to below 150% prior to 2021. All other parties reserve the right to

propose modifications to or termination of the POR clawback charge at the conclusion of the two-year pilot program.

3. While no consensus could be reached regarding maintaining the current credit and deposit restrictions set forth in Section 12.9 of FE's Electric Generation Supplier Coordination Tariffs with implementation of the pilot POR clawback, the parties recognize that to the extent FE proposes to continue the POR clawback, the parties agree to use good faith efforts to resolve this issue.

#### J. Stakeholder Collaboratives

1. Within 120 days following entry of the Commission's final order at these dockets, FE agrees to convene initial stakeholder collaboratives open to the signatories to explore the following issues:

a. Establishment of a bypassable retail market enhancement rate mechanism. Any mechanism proposed will be revenue neutral to FE. Participating stakeholders would be free to make any recommendations related to this mechanism.

b. The scope of shopping available to customers participating in FE's customer assistance programs (CAPs), as well as cost recovery associated with any changes to FE's existing CAPs.

(1) Thirty days prior to the initial CAP customer shopping collaborative meeting, FE will provide the following information to the parties at this docket:

a. For the period beginning December 2015 through the billing period immediately prior to providing these numbers, an update to Met-Ed/Penelec/Penn Power/West Penn Exhibit CVF-3 submitted at these dockets.

i. The total CAP shortfall amount paid by residential customers, broken down by Company, from the period June 2013 through the billing period immediately prior to providing these numbers.

ii. FE will work in good faith to provide information showing the total dollar difference between the amount CAP shopping customers paid to suppliers and what they would have paid if they were on default service, by company, for the same period as provided in subparagraph i, above.

2. FE commits to convening multiple collaborative meetings concerning these issues so long as the parties continue to work in good faith to resolve the issues raised.

3. FE will make proposals in a docketed proceeding related to these issues following discussion and input from the collaboratives in the earlier of the next available default service proceedings filed following the close of the collaboratives or January 31, 2018.

4. All parties retain any right they otherwise may have to raise with the Commission any issues discussed in the collaboratives and no parties waive their right to oppose or take any other action with respect thereto.

#### K. Affiliate Relations

1. Pursuant to Section 2807(e)(3.1)(iii)(B) of the Public Utility Code, the parties request that the Commission approve the SMAs as affiliated interest agreements as required under 66 Pa.C.S. § 2102.

2. Pursuant to Section 2102 of the Public Utility Code, the parties request that the Commission approve FE's ability to enter into affiliate transactions to make market-priced sales and purchases of excess AECs amongst each other as needed to fill their own shortfalls.

#### L. Request For Waivers

1. 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." If necessary, the parties respectfully request that the Commission grant FE a waiver of 52 Pa. Code § 54.187 to allow their customer grouping to be as delineated in Section II.A.2, in the joint petition for settlement.

2. To the extent necessary, the parties also respectfully request that the Commission grant FE a waiver of 52 Pa. Code §§ 54.182 and 54.187 with regard to inclusion of certain transmission-related costs in the PTC so that they may recover RTEP, ECRC, and NMB charges through FE's non-bypassable DSSR rather than the PTC as explained in Section III.F, in the joint petition for settlement.

#### M. Miscellaneous

1. All parties acknowledge that this settlement is a product of a negotiated process that is based on the facts and record in this proceeding. Any agreements reached herein are not intended to apply to other proceedings nor to waive any parties rights regarding those issues in future proceedings.

## PUBLIC INTEREST

Having set forth the terms of the joint petition for settlement, I will now address whether those terms address and meet the standards for DSPs set forth in the Competition Act, Act 129 and Commission regulations and whether the joint petition for settlement is in the public interest.

FE contends that the proposed 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. FE asserts that the proposed DSPs fully satisfy each of the requirements of the Competition Act, Act 129 and the applicable Commission regulations on default service.

Concerning the procurement and implementation, FE points out that the Competition Act requires EDCs to use competitive procurement processes to obtain default service supply. In the joint petition for settlement, the parties agree to FE's original proposal to procure electric generation supply for the residential, commercial and industrial classes through the use of a descending clock auction (DCA) process. FE contends that the DCA rules that guide the bid solicitation processes are consistent with those that are used by FE in its current, Commission-approved DSPs and that have yielded competitive outcomes. 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. 52 Pa. Code §§ 54.186(b)(6)(ii) and 54.186(c)(2). Accordingly, continuation of FE's existing DCA processes as part of the implementation plan for the proposed DSPs satisfies requirements of the Competition Act, Act 129 and Commission regulations regarding competitive procurement processes.

In the joint petition for settlement, the parties agree to a four-year term for the proposed DSP, subject to a collaborative among the parties in October 2017 to discuss market conditions and other matters and, if FE finds it necessary, will make appropriate filings with the

Commission to make any necessary changes to the DSP on or before January 31, 2018. FE believes that a four-year term, subject to the foregoing modification process, is appropriate given that the proposed DSP is FE's fourth DSP, the components of which have been repeatedly reviewed by the parties to this proceeding and the Commission over the course of FE's earlier DSPs.

The four-year term addresses OCA's and CAUSE-PA's concerns that filing DSPs every two years creates additional unnecessary expense that are borne by customers. OCA contended that a four year plan would avoid the time and expense associated with a filing in two years and save ratepayers that expense.

The collaborative in October 2017 addresses CAUSE-PA's concern that wholesale market conditions be reviewed in order to determine whether a petition for default service needs to be filed before the end of the four year term.

The collaborative also addresses OSBA's concern that FE provide detailed information regarding the risk premiums implicit in all of the contracts awarded. If this information demonstrates that the risk premiums are unreasonable, the joint petition for settlement leaves open the possibility for either FE to petition for a change or for OSBA to challenge a continuation of the plan. If the plan is functioning reasonably, the joint petition for settlement provides for a 4-year term for the plan, with the concomitant savings in regulatory costs.

RESA did not support extending FE's DSP to four years. However, since the joint petition for 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, RESA concludes that resolution of this issue is reasonable.

I conclude that the provisions of the joint petition for settlement concerning the length of the DSP comply with the requirements of the Competition Act and Act 129. I also

conclude that the terms of the joint petition for settlement concerning the length of the DSP are in the public interest.

By implementing a longer-term plan, customers, the parties and the Commission all benefit from reduced administrative costs. Reducing administrative costs reduces the amounts customers would have to pay should they elect default service. Reducing the costs of default service to customers is in the public interest.

At the same time, the joint petition for settlement provides flexibility regarding potential future changes in market conditions that may impact default service in Pennsylvania should they make adjustments to FE's plans necessary. Allowing for these adjustments in the DSP should market conditions change helps keep default service costs low and is in the public interest.

Concerning procurement groups, the joint petition for settlement provides that FE will retain their existing procurement groups for the duration of the four-year term, subject to the commitment that, to the extent FE will have the ability to bill customers for hourly priced service using smart meters, effective June 1, 2019, it will reduce its hourly pricing threshold to 100 kW effective as of that date. In order to implement the procurement classes proposed in the joint petition for settlement, the parties have requested that, if necessary, the Commission grant FE a waiver of the specific peak load class criteria in 52 Pa. Code § 54.187.

Concerning the residential procurement group, in the joint petition for settlement, the parties agree to FE's currently-effective residential tranche consisting of a 95% fixed price portion and a 5% spot priced portion. The fixed price portion of the residential default service load will have equal shares of 12-month and 24-month delivery terms. This provision is consistent with recommendations made by OCA and RESA.

For the initial two years of the delivery period, FE will conduct DCAs for the 24-month products in October 2016, January 2017 and April 2017. Commencing October 2017, FE will hold three auctions per year for 12-month products, taking place in October, January and

April of each year. Assuming no revisions are filed by January 31, 2018 with respect to the remaining two years of the four-year plan period, FE will replicate this procurement schedule for the remaining two years of the delivery period.

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 for settlement. 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 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 Alternative Energy Portfolio Standards (AEPS) compliance. The form SMA which suppliers will be required to execute is attached as Exhibit C to the joint petition for settlement.

I conclude the provisions of the joint petition for settlement concerning the residential procurement group comply with the Competition Act, Act 129 and Commission regulations. The combination of full requirements contracts as set forth in the joint petition for 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. 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, Act 129 and Commission regulations.

At the same time, the use of spot purchases provides a reflection of current market prices. Furthermore, the comprehensive DCA rules agreed to in the joint petition for settlement 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. Finally, the procurement schedule diversifies the times when auctions occur.

I conclude that the provisions of the joint petition for settlement concerning the residential procurement group are in the public interest. The procurement provisions will provide least cost supply, reliable service and price stability, all of which are in the public interest. The Commission should therefore approve the procurement plan for FE's residential customers set forth in the joint petition for settlement.

Concerning the commercial procurement group, the joint petition for settlement provides that 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. FE 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. Starting in April 2017, FE will hold four auctions per year for 3-month products in April, June, October, and January. The form SMA which suppliers will be required to execute is attached as Exhibit C to the joint petition for settlement.

I conclude that the provisions of the joint petition for settlement concerning the commercial procurement group comply with the Competition Act, Act 129 and Commission regulations. 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. 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 prices.

I also conclude that the provisions of the joint petition for settlement concerning the commercial procurement group are in the public interest. The procurement plan represents a compromise developed by the parties concerning the appropriate blend of supply resources to best serve the commercial class and resolves differences among FE, RESA and the OSBA with respect to the contract mix and timing of procurements. The procurement provisions will provide least cost supply, reliable service and price stability, all of which are in the public interest. The Commission should therefore approve the procurement plan for FE's commercial customers set forth in the joint petition for settlement.

Concerning the industrial procurement group, the joint petition for settlement adopts FE's original proposed industrial class procurement plan that service for the industrial class load would be through two separate auctions for twelve month contracts in January 2017 and 2018, 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.

I conclude that the provisions of the joint petition for settlement concerning the industrial procurement group comply with the Competition Act, Act 129 and Commission regulations. The industrial class procurement plan complies with the Competition Act's requirements, and includes timing to adopt the longer-term programs to which the parties have agreed.

I also conclude that the provisions of the joint petition for settlement concerning the industrial procurement group are in the public interest. The procurement provisions will provide least cost supply, reliable service and price stability, all of which are in the public interest. The Commission should therefore approve the procurement plan for FE's industrial customers set forth in the joint petition for settlement.

Concerning terms that apply to multiple procurement classes, the joint petition for settlement reaches agreement on several terms. First, regarding AEPS compliance, pursuant to the Competition Act and the Commission's AEPS regulations, EDCs, as well as EGSs, are required to use a competitive procurement process to obtain alternative energy credits (AECs). 66 Pa.C.S. § 2807(e)(3.5); 52 Pa. Code § 75.67(b). Met-Ed, Penelec and Penn Power will meet their non-solar requirements under the AEPS Act through the default service supply solicitation process. 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 requests for proposals (RFP) processes to be administered by Brattle, an independent third-party evaluator. 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.

The joint petition for settlement complies with the Competition Act's, Act 129's and Commission's regulations requirements to procure AECs through competitive processes.

Concerning contingency plans, a default service program must include a contingency plan in the event a supplier defaults. 52 Pa. Code § 54.185(e)(5). The joint petition for settlement provides for continuation of the contingency plans for full requirements and SPAEC procurements approved by the Commission in the previous DSP proceeding and complies with the Competition Act, Act 129 and Commission regulations.

Concerning 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. 52 Pa. Code § 54.186(c)(3). FE has proposed that CRA continue to serve as independent evaluator for their full requirements default service procurements. FE has also proposed that Brattle continue to serve as independent evaluator for Met-Ed's, Penelec's, and Penn Power's separate SPAEC procurements.

The joint petition for settlement complies with the Competition Act, Act 129 and Commission regulations by providing for 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.

Concerning affiliate relations, the joint petition for settlement provides that FE's affiliates may participate in FE's competitive procurement process. Such participation is permitted by the Commission's default service regulations, 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 66 Pa.C.S. § 2807(e)(3.1)(iii)(B), the joint petition for settlement requests that the Commission approve the form SMAs included as exhibits to the joint petition for settlement as affiliated interest agreements as by 66 Pa.C.S. § 2102.

The joint petition for settlement provides that in the event either Met-Ed or Penelec is in possession of excess credits produced by NUGs under existing Commission-approved NUG contracts, Met Ed or Penelec may make market-priced sales and purchases of such excess AECs amongst each other as needed to fill their own shortfalls. Allowing Met Ed or Penelec 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 66 Pa. C.S. § 2102, the joint petition for settlement requests that the Commission approve Met Ed's or Penelec's 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.

I conclude that the above provisions of the joint petition for settlement governing affiliate relations are consistent with the Competition Act, Act 129 and Commission regulations and are therefore in the public interest.

Concerning 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. 52 Pa. Code § 54.186(e)(6). The joint petition for settlement provides that the DCA rules attached to the joint petition for settlement 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 FE's procurement plans.

The provisions of the joint petition for settlement governing documentation comply with the Competition Act, Act 129 and Commission regulations and are therefore in the public interest.

Concerning rate design, cost recovery and tariff changes, the joint petition for settlement reaches agreement on several terms. Concerning the PTC Rider for residential and commercial classes, the joint petition for settlement provides that FE will continue to charge residential and commercial class default service rates through its 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.

The design of the PTC Rider rates for the residential and commercial classes complies with the Commission's default service regulations and the Competition Act and Act 129. Consistent with their PTC Riders approved by the Commission in the previous DSP proceeding, FE will calculate and offer a PTC, which will be stated separately by rate schedule and procurement class. With respect to the residential class, the Commission's regulations at 52 Pa.Code § 54.187(d) state that default service rates may not use a declining block structure. The Commission's regulations at 52 Pa.Code § 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 66 Pa. C.S. § 2807(e)(7) provides that the residential rates should change no more frequently than 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. 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.

Accordingly, the joint petition for settlement is seeking approval of commercial classes that differ somewhat from the 500 kW threshold recommended in the Commission's regulations to preserve the FE's existing customer and rate classes as have been previously approved by the Commission in the previous DSP proceeding.

Moreover, like the PTC Rider for the residential class, the commercial class PTC Rider rates employ a flat per-kWh design and, therefore, comply with the Competition Act, Act 129 and Commission regulations prohibiting a declining block structure and are therefore in the public interest.

Concerning the hourly pricing service (HPS) Rider for the industrial class, the joint petition for settlement adopts FE's original proposal to continue to recover the cost of default service for industrial class customers via the HPS Riders. Consistent with the Commission's order in the previous DSP proceeding, qualifying commercial customers with interval meters installed may affirmatively request, on a voluntary basis, to take default service on the HPS Rider.

The hourly-priced service to be offered under the HPS Riders complies with the Competition Act, Act 129 and Commission regulations at 52 Pa. Code § 54.187(k), other applicable provisions of those regulations and the Commission's prior approval of FE's customer class definitions and service offerings in the previous DSP proceeding. Default service rates established pursuant to the HPS Rider will continue to be based upon the PJM hourly LMP for each of the FE 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. The level of the fixed adder agreed to by the parties will continue to be \$4/MWh.

The provisions of the joint petition for settlement concerning rate design comply with the Competition Act, Act 129 and Commission regulations because they employ a flat per-kWh design and will change quarterly. Since these provisions comply with applicable laws and regulations, they are in the public interest.

Concerning supplier tariff changes, FE proposed a POR Clawback Charge, which would assess a charge to any EGS participating in FE's POR programs whose average individual write-offs exceeded total EGS write-offs for a particular FE company by 150%. The joint petition or settlement adopts a modified version of the FE's proposal on a pilot basis, to be

reviewed after two years. If, after that point, FE believes it appropriate to continue the use of a clawback charge, FE will make an affirmative filing proposing to implement the charge beyond the pilot term. This pilot will give FE 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 for the EGSs whose operations drive these increased write-off levels.

The collaborative on the POR Clawback Charge addresses concerns of CAUSE-PA regarding any changes to the POR clawback charges. CAUSE-PA believes that the collaborative 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 of the DSP.

OSBA contended that FE 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. OSBA also argued that FE's proposal failed to address the underlying problem, namely that they were assuming the risk for EGSs that were charging unreasonably high prices. Finally, OSBA argued that FE's proposal failed to recognize the very different write-off rates between rate classes.

The joint petition for settlement addresses OSBA's concern by adopting a two year pilot which will allow evaluation as to whether the plan is unduly discriminating against EGSs. In addition, the clawback mechanism is modified such that a clawback is only required if both the prices charged by the EGS are excessive, as measured by being more than 50 percent above the PTC, and 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. Finally, at the end of the pilot, FE 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.

RESA expressed concern that implementation of this mechanism may lead to unintended consequences, such as the POR Clawback Charge being unreasonably assessed on suppliers who may meet the prongs but may have valid and justifiable reasons for doing so. However, the joint petition for settlement reserves the rights of all parties to propose modifications to or termination of the POR Clawback Charge. In addition, this provision is not intended to apply to other proceedings nor to waive any parties' rights regarding those issues in future proceedings. Given these considerations, RESA believes that the joint petition for settlement is a reasonable compromise.

I&E expressed concern about the level of FE's write offs and proposed an alternative to FE's proposed clawback provision. While the joint petition for settlement does not adopt I&E's proposal, it does provide that the clawback provision be implemented as a pilot program subject to review by the parties. I&E concedes that this is a reasonable compromise.

I conclude that the provision of the joint petition for settlement establishing the POR clawback charge is in the public interest. As the parties recognize, any unpaid bills for service rendered are borne by all the utility's ratepayers. The POR clawback charge addresses FE's concerns about increasing amounts of unpaid bills and the resulting write-offs while balancing the concerns of the other parties as outlined above.

Concerning POR refunds and credits, FE proposed certain supplier tariff revisions which would require EGSs participating in FE's POR programs to provide any refunds or credits associated with customer complaints back to the respective customer through FE's billing system so that those amounts could first be applied to any outstanding balance before returning to the customer. The joint petition for settlement modifies FE's 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. With proper coordination between the EGSs served under FE's POR programs and FE, 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.

The joint petition for settlement addresses OCA's concerns that customers seeking and receiving refunds face various circumstances and may have made choices to forego expenditures on necessities, such as food, medicine, and housing, to ensure that they have made sufficient payments to retain essential electric service. The joint petition for settlement addresses CAUSE-PA's concern that the choice of whether refunds should flow back through FE's billing system should always remain with the customer as it is the customer's refund, not FE's refund, and that this choice should be made only after receiving the informed consent of the customer. The joint petition for settlement addresses these concerns by requiring 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.

The provisions of the joint petition for settlement governing POR refunds and credits are in the public interest because they adequately protect the autonomy of the customer while at the same time reasonably ensuring that FE is made whole for outstanding bills that were floated through the POR program but have been unpaid.

Concerning FE's CRP, the joint petition for settlement provides the FE will continue the current CRP design, including the cost recovery mechanism approved by the Commission in the previous DSP proceeding. FE will revise the call center scripts and other written documents related to the CRP to provide additional information about the interplay between the CRP discount and PTC.

OCA advocated that the scripts eliminate the reference to a specific 7% discount, which had previously been included and which OCA characterized as misleading. OCA contended that elimination of the reference to a specific 7% discount was 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. The joint petition for settlement eliminates the reference to the 7% discount language. OCA states that the language adopted by the joint petition for 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.

RESA agrees that the joint petition for settlement is a reasonable compromise on this issue. RESA points out that the CRP supplier fee remains unchanged; that the script changes address the concerns of OCA without potentially degrading the effectiveness of the CRP and FE 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.

In addition, FE will reconvene their supplier workshops in order to discuss any day to day operational enhancements that can be made to the program implementation. Finally, FE 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.

The OCA supports continuing the supplier workshops in order to help ensure that the administration of the CRP is conducted in an efficient and effective manner and therefore in the public interest.

I conclude that continuation of the CRP 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 in the joint petition for settlement will benefit not only participating EGSs, but also provide further clarification regarding pricing to customers.

Finally, the joint petition for settlement provides that FE will host several stakeholder collaboratives related to FE's shopping programs as available to customers participating in FE's CAPs and the establishment of a bypassable retail market enhancement rate mechanism.

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 FE's original proposal. To the extent that the results of these collaboratives demonstrate that modifications to FE's practices, rates or programs are appropriate, FE will make the necessary filings to implement such modifications.

The joint petition for settlement addresses OCA's and CAUSE-PA's concerns about CAP customer shopping by requiring FE to convene a stakeholder collaborative to discuss, the scope of CAP customer shopping, as well as cost recovery associated with any changes to FE's existing programs. The requirement for FE to hold a stakeholder collaborative to discuss CAP shopping will enable FE and the parties to further discuss the effects of CAP shopping and determine the best action to take regarding CAP shopping in the future.

I conclude that the provision of the joint petition for settlement requiring FE to convene the collaboratives outlined above is in the public interest. As noted earlier, Commission policy favors settlement. To the extent that the collaboratives result in settlement of the issues stated above, they reduce litigation costs which benefit the parties and FE's customers and are in the public interest.

Approving and adopting the settlement petition is also in the public interest because accepting the settlement petition will avoid the substantial time and expense involved in litigating the proceeding. Accepting the settlement petition will negate the need to examine or cross-examine witnesses, prepare main briefs, reply briefs, exceptions and reply exceptions and possibly file appeals. This is in the public interest because avoiding these expenses serves the interests of the parties and FE's customers.

#### CONDITIONS OF SETTLEMENT

The parties agree that the joint petition for settlement represents the default service procurement plan for all of FE's customer classes for the DSPs' program term. FE shall be entitled to recover all costs incurred by it under its procurement plan as set forth in the joint petition for settlement, and the parties agree that they shall neither challenge nor seek disallowance of such costs, including pursuant to 66 Pa.C.S. §§ 2807(e)(3.8) and (3.9), provided that FE's procurements are made in accordance with the approved plan and there has been no fraud, collusion, or market manipulation with regard to the contracts entered into under the plan.

The joint petition for settlement is proposed by the parties to settle the instant case and is made without any admission against, or prejudice to, any position which any party might adopt during subsequent litigation of this case or any other case. It is understood, however, that the paragraph above shall be binding upon the parties should the joint petition for settlement be approved.

The joint petition for settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If the Commission should disapprove the joint petition for settlement or modify the terms and conditions herein, the joint petition for settlement may be withdrawn upon written notice to the Commission and all active parties within five business days following entry of the Commission's Order by any of the parties and, in such event, shall be of no force and effect. In the event that the Commission disapproves the joint petition for settlement or FE or any other party elects to withdraw as provided above, the parties reserve their respective rights to fully litigate this case, including but not limited to legal argument through submission of briefs, exceptions and replies to exceptions.

If the Administrative Law Judge, in his Recommended Decision, recommends that the Commission adopt the joint petition for settlement as herein proposed without modification, the parties agree to waive the filing of exceptions. However, the parties do not waive their rights to file exceptions with respect to any modifications to the terms and conditions of the joint petition for settlement, or any additional matters proposed by the Administrative Law Judge in his Recommended Decision. The parties also reserve the right to file replies to any exceptions that may be filed.

#### CONCLUSION

For the reasons set forth above, I find that the proposed settlement is in the public interest and consistent with the requirements of the Competition Act, Act 129 and Commission regulations. Accordingly, I recommend that the Commission approve the joint petition for settlement.

## CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of and the parties to this proceeding. 66 Pa.C.S. §§ 2801-2812, 52 Pa.Code §§ 54.181- 54.189, 52 Pa.Code §§ 69.1802- 69.1817.

2. The joint petition for settlement filed on April 1, 2016 is in the public interest and should be approved by the Commission. Pennsylvania Pub. Util. Comm'n v. York Water Co., Docket No. R-00049165, (Final Order entered October 4, 2004).

3. Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company have met their burden of proof that they are entitled to the relief they are seeking. 66 Pa.C.S. § 332(a).

4. Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company, have satisfied the requirements for default service programs. 66 Pa.C.S. §§ 2801-2812, 52 Pa.Code §§ 54.181- 54.189, and a policy statement, 52 Pa.Code §§ 69.1802- 69.1817.

5. The joint petition for settlement provides a procurement plan that is a prudent mix of: (a) spot market purchases; (b) short-term contracts; and (c) long-term contracts entered into as a result of an auction, request for proposal or bilateral contract that is free of undue influence, duress or favoritism, of more than four and not more than 20 years. 66 Pa.C.S. § 2807(e)(3.2)(i),(ii), and (iii).

6. The joint petition for settlement provides a procurement plan with a prudent mix of contracts designed to ensure: (1) adequate and reliable service; (2) the least cost to customers over time; and (3) compliance with the requirements regarding competitive procurement. 66 Pa. C.S. §§ 2807(e) (3.1) and (3.4).

7. The joint petition for settlement provides a procurement plan that will ensure the least cost to customers over time. 66 Pa. C.S. § 2807(e)(3.4).

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the joint petition for settlement filed on April 1, 2016 in the above-captioned case is approved and adopted.

2. That Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company shall file tariff supplements as set forth in the joint petition for settlement.

3. That the petitions at P-2015-2511333, P-2015-2511351, P-2015-2511355 and P-2015-2511356 be terminated and marked closed.

Date: April 15, 2016

\_\_\_\_\_/s/  
David A. Salapa  
Administrative Law Judge