COMMONWEALTH OF PENNSYLVANIA

May 2, 2018

E-FILED

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for approval of their Default Service Programs / Docket Nos. P-2017-2637855, P-2017-2637857, P-2017-2637858, P-2017-2637866

Dear Secretary Chiavetta:

I am delivering for filing today my Main Brief, on behalf of the Office of Small Business Advocate ("OSBA"), in the above-captioned proceeding.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Daniel G. Asmus
Assistant Small Business Advocate
Attorney ID No. 83789

Enclosures
cc: Judge Mary D. Long
Robert D. Knecht
Parties of Record

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

JOINT PETITION OF METROPOLITAN	:		
EDISON COMPANY, PENNSYLVANIA	:	**Docket Nos.**	**P-2017-2637855**
ELECTRIC COMPANY, PENNSYLVANIA	:		**P-2017-2637857**
POWER COMPANY AND WEST PENN	:		**P-2017-2637858**
POWER COMPANY FOR APPROVAL OF	:		**P-2017-2637866**
THEIR DEFAULT SERVICE PROGRAMS	:		

MAIN BRIEF
ON BEHALF OF THE
OFFICE OF SMALL BUSINESS ADVOCATE

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For:

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Date: May 2, 2018

TABLE OF CONTENTS

I. INTRODUCTION

On or about December 4, 2017, Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power"), and West Penn Power Company ("West Penn") (collectively, "FirstEnergy" 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, 2019, through May 31, 2023.

The OSBA filed an Answer to the Petition as well as a Notice of Intervention and Public Statement on January 2, 2018.

II. PROCEDURAL HISTORY

The OSBA refers to the Procedural History contained in the Main Brief of FirstEnergy.

III. DEFAULT SERVICE PLAN PORTFOLIO AND TERM

A. Residential Portfolio

The OSBA did not take a position or present testimony regarding the residential portfolio.

B. Commercial Portfolio

The Companies' proposal for Commercial Class procurement involves the use of a portfolio of full-requirements load-following ("FRLF") contracts of 3-month, 12-month and 24-month terms in approximately equal measures. In his Direct Testimony, OSBA witness Robert D. Knecht noted that the use of 3-month contracts was grandfathered in by the terms of previous settlement agreements. However, Mr. Knecht expressed concern over the increase in implied risk premiums for FirstEnergy's Commercial class default service procurements, as shown in the Companies' filed evidence.[1] He recommended that the Companies review the procurements at the half-way point, after the second round of twelve-month and twenty-four month contracts has been finalized, to see whether the implied risk premiums continue to rise. If they do, Mr. Knecht recommended convening a stakeholders meeting to address the problem and to propose potential solutions. Specifically, Mr. Knecht stated:

> Q. What, then, do you conclude and recommend with respect to the Companies' proposed procurement plan?
>
> A. The use of FRLF [full requirements load-following] contracts is a well-established practice in Pennsylvania, and should generally be continued absent strong evidence to the contrary.
>
> Nevertheless, the trends at the Companies for Commercial class procurements are troubling, with implied risk premiums increasing, and high risk premiums for the 3-month contracts in the past two years. Moreover, beginning in 2019, the Companies will exclude the over-100 kW customers from the Commercial class, and it is unclear how this change will affect risk premiums. It is possible that the exclusion of the larger customers will reduce risk, given the higher shopping propensity of the larger customers. It is also possible that this change will increase risk, as the remaining customers will be smaller, probably more weather-sensitive, and potentially subject to greater business fluctuations given their relatively small size.
>
> In light of this uncertainty, I recommend that the Companies prepare and submit an update of Dr. Reitzes' analysis following the second round of 12-month and 24-month contract

[1] OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 9-10.

procurements in April 2020. If the high implied risk premiums for the Commercial class continue to worsen, or if the implied risk premiums for the 3-month contracts prove to be higher than those for longer-term contracts, the Companies should convene a stakeholder session to address potential solutions to the problem. Based on the Companies' analysis and the results of the stakeholder session, any party would be entitled to submit a petition for a mid-term modification of the DS procurement plan.[2]

Witnesses for the Companies did not agree with Mr. Knecht's proposal. Their arguments were that such a review could increase administrative costs involved with the default service procurements, and that potentially changing the parameters of procurement in mid-stream could increase costs.[3] While acknowledging that there was merit to the Companies' concerns, Mr. Knecht argued that such concerns did not outweigh the continuing increases to the risk premiums associated with Commercial class procurements, a pattern which could eventually make the current default service procurement procedures untenable.[4]

The Companies should be directed to provide a mid-term review of the issue of risk premiums for the Commercial class of customers and to agree to a stakeholder process to address any problems that arise with respect to risk premiums.

C. Industrial Portfolio

The OSBA did not address the Industrial class portfolio.

D. Procurement Classes

Consistent with the Settlement of the Companies' last default service proceeding, the Companies propose to limit eligibility for Commercial class default service to customers below 100 kW in maximum demand. As a matter of policy, the OSBA does not agree that it is

[2] *Id.* at 11-12.

[3] OSBA Statement No. 1-SR, Surrebuttal Testimony of Robert D. Knecht at 4-6.

[4] *Id.* at 6.

reasonable to require all customers over 100 kW in demand to either shop or take hourly-priced default service. However, at Docket No. P-2014-2417907, the Commission approved the proposal of PPL Electric to establish that limit. In that proceeding, the OSBA agreed to the Settlement.

In this proceeding, the only analysis of the impact of this proposal was put forward by Mr. Knecht. Based on data provided by the Companies, Mr. Knecht concluded that 1,511 current Commercial default service customers would lose their eligibility status for Commercial default service, and would be required to take either hourly priced service or to shop.[5] Mr. Knecht went on to demonstrate that the affected customers represent a very wide range of industries, as evidenced by the fact that these customers fell into 88 different NAICS 3-digit industry codes, and that the top five NAICS codes represented only about 28 percent of the affected load. Mr. Knecht's testimony was not rebutted, and the Companies did not make any changes to the information upon which Mr. Knecht relied.

In direct testimony, RESA supported the Companies' proposal to lower the threshold, but took issue with the methodology as to how the 100 kW maximum demand would be determined. In the Companies' proposal, the customer would need to have maximum demand above 100 kW in each of the preceding 12 months. As alternatives, RESA proposed that the 100 kW limit be exceeded if maximum demand was over 100 kW in two consecutive months, or if the customer's PJM peak load capacity ("PLC") or installed capacity ("ICAP") tag exceeded 100 kW.[6]

In surrebuttal testimony, having not raised this issue in either direct or rebuttal testimony,

[5] OSBA Statement No. 1 at 5.
[6] RESA Statement No. 1, Direct Testimony of Richard J. Hudson, Jr. at 11-12

Penn State offered the view that the RESA proposal to use PLC or ICAP was too confusing to customers, since neither metric appears on the customers' bills.[7] Neither RESA nor Penn State provided any analysis of the number of type of customers that would be affected by their proposed changes.

In rebuttal testimony, the Companies provided compelling reasons why the RESA proposal advanced by Mr. Hudson should not be adopted. As Mr. Seidt explained:

> I believe the Commission should reject Mr. Hudson's proposal. First, he fails to acknowledge the fact that all of the customers at issue have had the option to voluntarily elect the HPS Rider since 2011 (an option which remains available today) and have chosen not to do so. Second, a large number of the customers that have the potential to migrate to the HPS Riders already shop for their generation supply. The use of the twelve consecutive months provides those that are close to, or at, the 100 kW threshold the ability to stay on the commercial PTC, opt for hourly-priced default service, or shop for competitive generation supply. Many of these customers are small businesses that simply do not have the resources to devote to shopping for their generation supply or to manage hourly pricing, and have therefore preferred to stay on the commercial PTC Riders. Mr. Hudson's first recommendation to utilize a billing demand that is equal to or greater than 100 kW in two consecutive months, while consistent with the Companies' existing practice at the 400 kW level, is likely to push unsophisticated customers onto the HPS Riders, very possibly to their detriment. Even so, this recommendation would be less concerning than Mr. Hudson's alternative recommendation that the Companies utilize PLCs to determine which customers would move to hourly service, forcing even more customers either onto the HPS Riders or into the shopping market for competitive generation supply contracts. This is due to the fact that a PLC analysis would be based on the highest capacity level for a customer that is set once annually. Given the inflexibility of such a test, the result would be a push of many more small customers onto hourly pricing. Based on a review of the customers that have the potential to be migrated to hourly pricing, approximately 83% of those customers are already shopping. Therefore, any method used would have minimal impact to that segment of customers because a large majority of customers are already shopping, making Mr. Hudson's argument a non-issue.[8]

Based on the Companies' rebuttal testimony, combined with the absence of any customer impact analysis from RESA and Penn State, the OSBA respectfully submits that the Companies'

[7] PSU Statement No. 1, Surrebuttal Testimony of James L. Christ at 7-8.
[8] FirstEnergy Statement No. 4-R at 15-16.

proposal is the best on offer in this proceeding. Moreover, the OSBA observes that the Companies' proposal is the most conservative, in that it will force the fewest number of customers onto hourly default service or into the competitive marketplace against their current wishes. If better impact analysis is conducted in the future, the Companies and the Commission can consider whether a less restrictive standard is appropriate. If all of the customers under a less restrictive standard are kicked out of the Commercial class now, it will not be possible to undo the damage when a reasonable impact assessment is complete.

E. Default Service Plan Term

OSBA's only concern regarding the term for the Default Service Plan is addressed in Section III.B. *supra.*

IV. PURCHASE OF RECEIVABLES CLAWBACK PROVISION

The OSBA did not address the Purchase of Receivables Clawback Provision.

V. BYPASSABLE RETAIL MARKET ENHANCEMENT RATE MECHANISM

The OSBA addressed this issue, which applied only the Residential class, because the Companies' proposal to remove above-100kW customers from the Commercial class by 2019 will likely reduce the percentage of shopping customers in the Commercial class, making it appear more like the Residential class. As Mr. Knecht pointed out "[a]s such, it is reasonably likely that adoption of this mechanism for the Residential class will lead to recommendations that it be expanded to the Commercial class."[9]

[9] OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 13.

In opposing this proposal, Mr. Knecht testified that the implementation of a bypassable retail market enhancement rate enhancement mechanism ("BRMERM") would increase the price paid by default service customers, to the benefit of electric generation suppliers ("EGSs").[10] Mr. Knecht noted that the Companies have provided no factual justification for the implementation of a BRMERM, basing the proposal instead on a vague need to promote residential shopping. As Mr. Knecht put it:

> In particular, when asked specifically as to why a mechanism is necessary 'to incent residential retail shopping,' the Companies' response is that the intent of the mechanism is '. . . to create an incentive for residential customers to participate in the competitive retail electric market.'[11] Based on this non-response, I must conclude that the Company has no specific reason for concluding that some sort of problems exist regarding competition in the Residential class.[12]

Mr. Knecht likened this proposal to "getting the camel's nose under the tent." He stated

> If the Commission approves this mechanism, then it can be reasonably inferred that it believes competition is not sufficiently robust. If this modest fee has, as is likely, little impact on shopping rates, the Commission will then logically have to allow the fee to increase in the future, in order to address the competition problem it has identified. In effect, once it concludes that competition is inadequate, the Commission will face pressure to continue to modify the mechanism until competition as measured by shopping rates reaches some arbitrary acceptable level.[13]

Such a notion of an arbitrary acceptable level of competition could then logically be applied by the Commission to the Commercial class of customers, whose measurable levels of competition will most likely show a decrease in 2019, as the above-100kW customers transition to hourly

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[10] *Id.*

[11] OSBA-I-13(a)

[12] OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 14.

[13] *Id.* at 15.

service under this plan.[14] The same criticisms of the BRMERM voiced by Mr. Knecht would, of course, then apply to the Commercial class.

Further, RESA, through its witness Richard J. Hudson, Jr., provided an alternative rationale which supported the Companies' proposal for implementation of a BRMERM. As summarized by Mr. Knecht:

> Mr. Hudson argues that EGSs face competitive disadvantages vis-à-vis default service supply due to (a) an alleged failure to fully unbundle default service costs, and (b) the advantage of default service that it is, in fact, the default option for customers. At page 23, Mr. Hudson initially argues that the BMERM serves to level the playing field with respect to the latter competitive disadvantage, by addressing EGSs' customer acquisition costs. In that respect, Mr. Hudson also argues that the BRMERM charge should be double the level proposed by the Companies.
>
> However, while Mr. Hudson appears to initially rely on the issue of customer acquisition cost, he goes on to argue at page 26 that the BRMERM can serve as a proxy for full cost unbundling.[15]

Mr. Knecht rebutted this alternative rationale as follows:

> First, I respectfully disagree with Mr. Hudson's conclusion that there is a need for a proxy mechanism to address the problem that the Companies' costs of providing default service are not fully unbundled. The Commission's regulations mandate that costs related to providing default service were to be excluded from default service rates as part of an EDC base rates case filed after September 15, 2007.[16] As the Companies conducted base rates proceedings in both 2014 and 2016, this issue was (at least implicitly) addressed therein. Thus, the Commission, at least, must believe the costs are reasonably unbundled. In that light, if the BRMERM is to serve as a proxy for cost unbundling, it would appear to be more procedurally appropriate to address that issue in a base rates case.
>
> Second, I respectfully disagree that Mr. Hudson's second argument is any different from that advanced by the Companies. Both the Companies and RESA appear to argue that the benefits of more competition justify taxing default service customers in order to

[14] *Id.* at 13.

[15] OSBA Statement No. 1-R, Rebuttal Testimony of Robert D. Knecht at 1.

[16] 52 Pa. Code 69.1808 (b).

increase EGS market share. This argument implicitly relies on the idea that current levels of competition are somehow inadequate.

I respectfully disagree, generally for the reasons stated in my direct testimony.

Neither the Companies nor RESA offer any standard by which the Commission may determine that competition is sufficiently robust. Further, as I indicated in my direct testimony, there will be no way for the Commission to measure whether the BRMERM has achieved its objective, because no objective has been established.

Moreover, as an economic matter, in the Companies' 2012 default service proceeding, I demonstrated at some length how an arbitrary increase in the price of default service will result in (a) deadweight losses for the market as a whole as a result of an increase in prices to both default service and shopping customers, (b) increased supplies from less efficient EGSs and (c) an increase in margin for the infra-marginal EGSs.[17] While the Companies' proposed mechanism in this proceeding does not result in a windfall to the Companies as did the method proposed in 2012, the pricing and economic transfer implications for default service and shopping ratepayers are the same. As I (and other witnesses) observe in direct testimony, the Commission rejected the Companies' proposed mechanism in that proceeding.[18]

The Commission should reject the proposal for a BMERM, for the reasons stated above.

VI. NON-COMMODITY BILLING

RESA also put forth a proposal for a supplier consolidated billing ("SCB") pilot program to address perceived competitive inequities in the Companies' billing activities. As Mr. Knecht noted

> Mr. Hudson recommends that the Commission order the Companies to form a working group with EGSs to develop a suppler consolidated billing program ("SCB"). Under an SCB program, customers would receive their electric bills for both energy and distribution services from their EGS rather than from the EDC.[19]

This proposal results from what RESA perceives to be a problem where the Companies

[17] OSBA Statement No. 3, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, P-2011-2273670, April 4, 2012, pages 3-6.

[18] OSBA Statement No. 1-R, Rebuttal Testimony of Robert D. Knecht at 2-3.

[19] OSBA Statement No. 1-R, Rebuttal Testimony of Robert D. Knecht at 3.

favor third party vendors on electric bills to the disadvantage of EGSs . Mr. Knecht opposed RESA's proposal by stating

> As Mr. Hudson acknowledges, the Commission recently conducted a review of a petition by NRG Energy Inc. ("NRG") to implement SCB in Pennsylvania.[20] In its decision rejecting the petition, the Commission determined that the issue of SCB should be pursued through an *en banc* hearing before the Commission, designed to address many of the difficult questions associated with SCB.[21] These questions include an evaluation as to whether SCB is legally permissible in Pennsylvania.[22] Given both the existence of this alternative process, and the many legal, regulatory and economic uncertainties surrounding SCB, it would be duplicative, administratively costly and likely counter-productive to establish a parallel pilot program at the FirstEnergy Companies.
>
> While Mr. Hudson appears to acknowledge this decision by the Commission (at page 35 of his direct testimony), he does not offer any reason why an alternative program at the Companies would be necessary or reasonable.
>
> Moreover, as Mr. Hudson also appears to recognize, if the Commission determines that the Companies' billing practices are inequitable, the problem can be addressed much more simply by establishing reasonable rules regarding the marketing materials that an EDC may or may not be include in its electric bills. There is no need to establish a duplicative SCB pilot to address this issue.[23]

The OSBA therefore respectfully submits that the issue of SCB be deferred to the Commission's generic proceeding for that purpose, and that the duplicative and unnecessary pilot program offered by RESA in this proceeding be rejected.

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[20] Opinion and Order, Pennsylvania Public Utility Commission, Docket No. P-2016-2579249, Order Entered January 31, 2018.

[21] The Commission stated, "In the Commission's judgement, NRG's proposal is not fully developed, leaves many critical issues unaddressed, and could be harmful to Pennsylvania's electric consumers and retail electric market in general. As such, NRG has not met its burden of proving that its proposal is in the public interest, or that it complies with the Public Utility Code and Commission regulations promulgated thereunder." *Id.*, at 20-21.

[22] The Commission also cited a wide variety of other unresolved issues related to SCB, including questions regarding Chapter 56, universal service issues, customer service centers, service termination and related consumer protections, consumer education, NRG's proposal to block customers with payment arrangements from switching, the potential bundling of value-added and commodity service charges, potential legal problems associated with EGSs' purchase of EDC receivables, and the possibility that SCB would, in fact, make the retail market *less* competitive.

[23] OSBA Statement No. 1-R, Rebuttal Testimony of Robert D. Knecht at 3-4.

VII. CUSTOMER REFERRAL PROGRAM

This program is for the Residential class of customers, and the OSBA did not address it.

VIII. CUSTOMER ASSISTANCE PROGRAM SHOPPING

This program is for Residential customers, and the OSBA did not address it.

IX. NON-MARKET BASED CHARGES

The OSBA did not address this issue.

X. TIME-OF-USE RATE

By statute, a default service provider is obligated to offer time of use ("TOU") rates and real-time pricing plans.[24] In addition, by statute and the Commission's regulations, the default service provider must cash out customer generators taking net metering service for annual excess generation at the "full retail value for all energy produced" and at the provider's price-to-compare ("PTC").[25]

As Mr. Knecht put it

> At present, customers in the Commercial classes are not eligible for TOU rates. In response to OSBA-I-4(c), the Companies indicate that, because these customers are permitted to take real-time pricing service, their legal obligation to offer TOU service is satisfied. However, the Public Utility Code indicates, *"Residential or commercial customers may elect to participate in time-of-use rates or real-time pricing."*[26] While I am not an attorney, it certainly appears that the legislation requires that the Companies offer TOU rates to Commercial customers in order to provide them with the choice specified in the legislation.[27]

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[24] 66 Pa. C.S. §2807(f)(5).
[25] 73 P.S. §1648.5; 52 Pa. Code § 75.13(e).
[26] 66 Pa. C.S. §2807(f)(5).
[27] OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 18.

It is the position of the OSBA that FirstEnergy has not satisfied its legal obligation under the Public Utility Code to provide a choice between time-of-use rates and real-time pricing. By providing only real-time pricing to Commercial customers, the Companies have denied these customers an option that the Public Utility Code clearly intended to be offered to both residential and commercial customers.

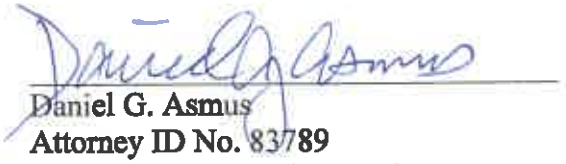
In concluding his Direct Testimony, Mr. Knecht recommended

> that the Commission direct the Companies to submit a filing regarding TOU rates before December 31, 2018. This timeframe would provide for a sufficient window for regulatory review and evaluation of the Companies' proposals before TOU billing becomes fully feasible. In particular, the Companies should, at a minimum, address the following issues:

- Whether TOU service must legally be offered to Commercial customers;
- Whether it remains appropriate to have no TOU rate differentiation in nine months of the year;
- Whether the Companies' existing definitions for on-peak periods remain reasonable;
- Whether the Companies' price multiples for summer on-peak and off-peak periods remain reasonable;
- Whether the cashout mechanism for excess generation from net metered customers who opt for TOU service should reflect the timing for when the excess generation was supplied to the grid.[28]

[28] OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 20-21.

Respectfully submitted,



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Dated: May 2, 2018

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Petition of Metropolitan Edison Company,	:	**P-2017-2637855**
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Power Company and West Penn Power	:	**P-2017-2637858**
Company for approval of their Default Service	:	**P-2017-2637866**
Programs	:	

CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of the foregoing have been served via email and/or First-Class mail (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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