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May 2, 2018

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
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:

Enclosed for filing please find the Main Brief of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company the in the above-referenced matter.

As indicated on the attached Certificate of Service, copies have been served on the parties in the manner indicated.

Please contact me with any questions regarding this matter.

Very truly yours,

Tori L. Giesler

dlm
Enclosures

c: As Per Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs	:	**Docket No. P-2017-2637855, *et al.***

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of the Main Brief of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs on the following persons in the matter specified in accordance with the requirements of 52 Pa. Code § 1.54:

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Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs	:	**Docket No. P-2017-2637855, *et al.***

MAIN BRIEF ON BEHALF OF
METROPOLITAN EDISON COMPANY
PENNSYLVANIA ELECTRIC COMPANY
PENNSYLVANIA ELECTRIC COMPANY
PENNSYLVANIA POWER COMPANY

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Dated: May 2, 2018

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MAIN BRIEF OF
METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER COMPANY AND WEST PENN POWER COMPANY

I. INTRODUCTION

On December 4, 2017, Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power"), and West Penn Power Company ("West Penn") (each individually a "Company" and collectively, the "Companies") filed a Joint Petition at the Pennsylvania Public Utility Commission ("Commission") for approval of their default service programs ("DSPs") for the period June 1, 2019 through May 31, 2023 ("DSP V"). As proposed by the Companies, the DSPs satisfy the criteria of 66 Pa.C.S. § 2807(e)(3.7), offering default service customers access to reliable generation supply at the least cost over time and enabling the Companies to recover all default service-related costs. Moreover, all components of the DSPs are consistent with the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2801, *et seq.* (the "Competition Act"), as amended by Act 129 of 2008 ("Act 129"), the default service regulations of the Pennsylvania Public Utility Commission at 52 Pa. Code §§ 54.181- 54.190 ("Regulations"), and the Commission's Policy Statement on default service at 52 Pa. Code §§ 69.1801-1817 ("Policy Statement").

II. PROCEDURAL HISTORY

Copies of the Joint Petition were served in accordance with 52 Pa. Code § 54.185(c) on December 4, 2017, the same date of filing. Notice of the Joint Petition was published in the *Pennsylvania Bulletin* on December 23, 2017, which also established a prehearing conference for January 17, 2018 before Administrative Law Judge ("ALJ") Mary D. Long. Formal protests, petitions to intervene, and answers were directed to be filed on or before January 12, 2018. The following parties were granted full party status after submitting an answer or intervention: the Bureau of Investigation and Enforcement ("I&E"); the Office of Consumer Advocate ("OCA"); the Office of Small Business Advocate ("OSBA"); the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"); Calpine Energy Solutions, LLC ("Calpine"); Constellation NewEnergy, Inc. and Exelon Generation Company, LLC ("ExGen"); Direct Energy Services, LLC ("Direct"); Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, and West Penn Power Industrial Intervenors (collectively, the "Industrials"); NextEra Energy Marketing, LLC ("NextEra"); The Pennsylvania State University ("Penn State"); Respond Power, LLC ("Respond"); and the Retail Energy Supply Association ("RESA").[1]

At the prehearing conference, ALJ Long addressed certain preliminary matters including discovery rules and protective order requirements, and established a procedural schedule identifying the dates for written testimony, evidentiary hearings, and briefing. On January 19, 2018, a Prehearing Order was issued memorializing the ALJ's findings at the conference.

Throughout this proceeding, parties exchanged extensive discovery and submitted written direct, rebuttal, and surrebuttal testimony by the dates reflected in the Prehearing Order. Public input hearings were held on March 13, 2018. An evidentiary hearing was conducted on April 10, 2018, during which parties' written testimony and certain stipulations were moved into the record

[1] In addition to the intervenors listed, twenty Penelec customers filed formal complaints against the Joint Petition.

of this proceeding. This Main Brief is submitted consistent with the Prehearing Order.

III. DEFAULT SERVICE PLAN PORTFOLIO AND TERM

The term of the Companies' DSPs is proposed to be for the forty-eight months spanning June 1, 2019 through May 31, 2023.[2] For each of the residential, commercial, and industrial customer classes, the Companies propose to procure full-requirements, load-following energy and energy-related services for those customers who have not chosen an electric generation supplier ("EGS") or whose EGS fails to provide service.[3]

Procurement Method

The load of each class will be divided into tranches, approximately fifty megawatts ("MW") each for the residential and commercial rate classes and approximately 100 MW each for the industrial rate class, with each tranche constituting a fixed percentage of the respective Company's non-shopping load.[4] Qualified suppliers will bid to serve tranches in simultaneous descending clock auctions ("DCAs") for all four Companies, as discussed more thoroughly in sections III.A., B. and C., *infra.*[5] The Companies have proposed to continue use of their current approach, which is a DCA format for procurement of default service supply under which simultaneous auctions are conducted for all four Companies' multiple products and/or tranches on the procurement dates outlined later in this brief.[6]

Auctions to procure default service supply are expressly permitted under the Public Utility Code[7] and DCAs have been used in numerous electricity procurements in Pennsylvania and other

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[2] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1, p. 9; Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 3.
[3] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 5.
[4] The actual load served will vary based on many factors, including customer migration to EGSs. Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, pp. 3, 7 and 5.
[5] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, pp. 3, 7 and 5.
[6] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 7.
[7] 66 Pa.C.S. § 2807(e)(3.1).

states since the late 1990s.[8] The auction format is non-discriminatory, open, fair, transparent, provides low barriers to participation for a variety of prospective bidders, and is designed to achieve competitive results. The Companies have successfully conducted DCAs for default service supply under their current and past default service programs.[9]

Under the DCA approach, multiple products and/or multiple tranches are bid on simultaneously. Bidding takes place online using web-based software in a series of bidding rounds, with pre-specified starting and ending times for each round. Prior to the start of each round, the announced price for each product is disclosed to bidders. At the end of each round, the bidding software (with oversight by the Independent Evaluator) determines which products are over-subscribed and which products are under-subscribed. A product is over-subscribed if suppliers bid to supply more tranches than the number of tranches needed of that product. Likewise, a product is under-subscribed if fewer tranches were bid on it than needed. If a product is over-subscribed, the announced price for that product will be reduced by a decrement for the next round.[10] If a product is not over-subscribed, its announced price will not change for the next round. The bidding process continues in this manner, with prices tending to tick down like a countdown clock. As prices change across the products, bidders are allowed to change the number of tranches they bid, subject to certain restrictions. In each round, a bidder simply specifies the number of tranches that it is willing and able to supply for each product at the announced price for each product.[11] There is no pre-determined number of rounds before the close of the auction, which occurs after the first round in which no product is over-subscribed. The winning bidders are those bidders who bid tranches at a price no higher than the clearing price, which is the lowest

[8] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p.12.
[9] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p.17.
[10] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, pp. 12-13.
[11] *Id.*

price at which the tranche product is not under-subscribed.[12]

No party contested the Companies' proposed default supply procurement method in this case.

Load Cap

As part of their respective procurement plans, the Companies have proposed to retain their current limit of 75% of the available tranches that any one supplier can win in its default service supply auctions.[13] No party has contested the Companies' proposed load cap.

Independent Evaluators

In accordance with Section 54.186(c)(3) of the Commission's Regulations, the Companies have selected CRA International, Inc. ("CRA") to serve as independent evaluator of the Companies' default service procurements for the delivery term at issue. The Companies have used CRA as their independent evaluator under their most recent DSPs since the delivery term beginning June 1, 2013.[14]

For procurements of SPAECs, the Companies proposed to continue to use The Brattle Group ("Brattle") to serve as independent evaluator. Brattle has considerable expertise in competitive energy matters and has been involved in several request-for-proposal ("RFP") design and management processes, including the procurement of electric power and renewable energy supplies under long-term contracts. Brattle has served as the independent evaluator in all past SPAEC procurements held by the Companies.[15]

No party has opposed the Companies' selection of independent evaluators.

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[12] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p.13.
[13] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p.10.
[14] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 7.
[15] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, pp. 23-24.

Supplier Master Agreement

Winning bidders will enter into a standard supply master agreement ("SMA") for the products they successfully bid to supply. In this proceeding, the Companies are proposing to continue the use of their current Commission-approved SMA,[16] with only limited modifications. As described in the testimony of Mr. Catanach, the proposed SMA differs from the Companies' current Commission-approved SMA in only two limited ways: (1) modifications were made to reflect the expansion of the industrial class to include customers with demand of 100 kilowatts ("kW") and above; and (2) cleanup modifications were made regarding assignment of new PJM Interconnection, LLC ("PJM") billing line items that have been established since the Companies' DSP IV proceeding,[17] for which proposals are discussed more thoroughly later in this brief.[18]

No party has recommended modifications to the Companies' proposed form of SMA.

Supplier Responsibilities

Default service ("DS") suppliers will be responsible for fulfilling all the obligations of a PJM load serving entity ("LSE").[19] As such, each DS supplier will be required to provide energy, capacity, and transmission service (including Network Integration Transmission Service ("NITS")), as well as all PJM administrative expenses and any other services or fees as required by PJM of an LSE, except for the following charges: Regional Transmission Expansion Plan charges ("RTEP"); Expansion Cost Recovery Charges; Reliability Must Run/generation deactivation charges ("RMR") associated with generating plants for which specific RMR charges

[16] A uniform SMA was agreed upon in a working group which was directed by the Commission's Office of Competitive Market Oversight ("OCMO") due to an Order entered on February 15, 2013 in *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service* at Docket No. I-2011-2237952. The Companies proposed a similar SMA that was developed in the OCMO working group. Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, pp. 18-22.

[17] The delivery period for DSP IV began on June 1, 2017 and will continue through May 31, 2019.

[18] *Id.*

[19] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, pp. 5-6 and 19.

began after July 24, 2014; historical out of market tie line, generation and retail customer meter adjustments; unaccounted for energy; and any Federal Energy Regulatory Commission ("FERC")-approved reallocation of PJM RTEP charges related to Docket No. EL05-121-009 (collectively referred to as "non-market based charges," or "NMB charges").[20] The NMB charges will be paid by the Companies on behalf of all customers and recovered from all customers through the Default Service Support ("DSS") Rider in the respective Company tariff.[21]

In addition, DS suppliers in the Met-Ed, Penelec and Penn Power service territories will be responsible for meeting all non-solar Tier I and Tier II requirements of Pennsylvania's Alternative Energy Portfolio Standards ("AEPS") Act; except for the AEPS Act's solar photovoltaic requirements, which will be supplied by the Companies on behalf of both default service suppliers and EGSs.[22] However, in the West Penn service territory, DS suppliers will be responsible for all Tier I and Tier II AEPS Act requirements (including solar photovoltaic requirements) less any Tier I alternative energy credits ("AECs") or solar photovoltaic alternative energy credits ("SPAECs") that are allocated to the DS suppliers from existing long-term purchases made by West Penn.[23] These obligations are discussed in more detail under "AEPS Requirements", below.

Of all of these obligations, the only which were called into question in this proceeding were those related to NMB charges, which are discussed at further length under section IX., "NON-MARKET BASED CHARGES", *infra*.

AEPS Requirements

The AEPS Act requires the Companies to obtain an increasing percentage of electricity sold to default service customers from certain alternative energy sources, such as wind, solar

[20] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, pp. 5-6 and 19.
[21] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 6.
[22] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, pp. 6 and 23.
[23] *Id.*

energy and biomass. Compliance is measured in AECs, which are equal to one megawatt-hour ("MWh") of energy from approved Tier I or Tier II alternative energy sources, as defined by the AEPS Act.[24] The AEPS Act also includes a solar set-aside, which mandates that a specific portion of the Companies' Tier I requirements be satisfied through AECs derived from solar photovoltaic energy. The AEPS Act defines Tier I and Tier II alternative energy sources and the dates and percentages of supply required for compliance.[25]

In accordance with Section 54.185(e)(1) of the Regulations, the Companies propose to satisfy most of their AEPS Act requirements as part of the solicitation of default service supply. Default service suppliers in the Met-Ed, Penelec and Penn Power service territories will be responsible for meeting 100% of the non-solar Tier I and Tier II AEPS Act requirements.[26] In the West Penn service territory, default service suppliers will be responsible for all Tier I and Tier II AEPS Act requirements less any Tier I AECs that are allocated to the default service suppliers from existing long-term purchases made by West Penn.[27] In addition, Penelec will continue to have the added flexibility to make market-priced sales of excess AECs acquired under existing Commission-approved non-utility generator contracts for use in meeting the Companies' AEPs requirements.[28]

Under the current DSPs of Met-Ed, Penelec, and Penn Power, the solar AEPS requirements associated with the customer load of both default service customers and shopping customers are met with SPAECs obtained by those Companies through separate SPAEC-only procurements. West Penn, in turn, will continue to require each DS supplier to provide SPAECs associated with the load served by the DS supplier. However, SPAECs that West Penn procured under existing

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[24] *See generally* 73 P.S. § 1648.1, *et. seq.*; Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 23.
[25] 73 P.S. §§ 1648.2 and 1648.3.
[26] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 23.
[27] *Id.*
[28] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 28.

long-term contracts previously approved by the Commission will be used to reduce the number of SPAECs that those DS suppliers would otherwise be obligated to transfer to West Penn under the SMAs. These SPAECs will be allocated on a pro rata basis in accordance with the percentage of default service load served by DS suppliers, and DS suppliers will be informed through the frequently asked question feature, prior to the first auction, of the exact amount of SPAECs that will be allocated in each procurement of default service supply so that the reduction in SPAEC obligations may be factored into default service supplier bids.[29]

The Companies plan to continue using Brattle as the independent third-party evaluator for the procurement of SPAECs. Met-Ed, Penelec and Penn Power will conduct two RFPs for two-year SPAEC products in each of March 2019 and March 2021 to procure the estimated additional SPAEC requirements for the DSP V term beginning June 1, 2019, after adjusting for the SPAECs already purchased through the ten-year SPAEC RFPs conducted under previously approved DSPs. The estimated volumes under the RFP will be determined based upon the most recent load forecast for the Companies at the time of the RFP. At the end of the 2019/2020, 2020/2021, 2021/2022 or 2022/2023 AEPS compliance periods, if necessary for compliance purposes, the Companies will conduct short-term SPAEC procurements at market prices.[30] As explained by Dr. Reitzes, the SPAEC procurement is designed to achieve the "least cost over time."[31]

No party to this proceeding has opposed the Companies' proposal regarding how they will meet their AEPS requirements.

Contingency Plans

The Companies propose to continue utilizing the contingency plans in their current Commission-approved default service plans, which address the following three possible scenarios:

[29] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, pp. 23-25.
[30] *Id.*
[31] Met-Ed/Penelec/Penn Power/West Penn Statement No. 3, p. 20.

(i) an individual solicitation is not fully subscribed; (ii) the Commission rejects the bid results from a solicitation; or (iii) a winning supplier defaults prior to the start of the delivery period or at any time during the delivery period.[32]

In the event that a scheduled solicitation is not fully subscribed during the initial proposed procurement date, the Companies will rebid the unfilled tranches from that solicitation in the next scheduled procurement. For any unfilled tranches still remaining, the Companies will purchase the necessary physical supply through PJM-administered markets and serve as LSEs for the affected default service customers. The Companies' procurements will be made at real-time zonal spot market prices, and the Companies will not enter into hedging transactions to attempt to mitigate the associated price or volume risks to serve these tranches. At the next quarterly rate adjustment, the Companies will include an estimate of these costs in the weighted cost of supply calculation and utilize the reconciliation process to recover differences between the estimated and actual costs that the Companies incur as a result of purchasing the necessary supply and AEPS requirements.[33]

If a winning bidder defaults prior to the start of or during the delivery period, the Companies will offer the unfilled tranches to the other registered bidders who participated in the most recent solicitation. The Companies may enter into an agreement with the registered bidder or bidders offering the best terms for the unfilled tranches resulting from the default, provided the prices offered by such bidder or bidders are consistent with the original prices under which the unfilled tranches were procured adjusted for changes in market conditions from the time when the original tranches were procured. If the Companies are not able to enter into such an agreement and a minimum of thirty calendar days exists prior to the start of the delivery period, the Companies

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[32] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 30.
[33] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, pp. 30-31.

will seek to bid the defaulted tranches in a separate supplemental competitive solicitation. As with other unfilled tranches described above, if insufficient time exists to conduct an additional competitive solicitation, or if the supplemental solicitation is unsuccessful, the Companies will supply the tranches using PJM-administered markets with recovery and reconciliation of estimated and actual costs as described previously.[34]

If some SPAEC tranches remain unfilled or if a winning SPAEC supplier defaults before or during the delivery period, the affected Company will conduct short-term procurements at market prices to ensure compliance for all solar photovoltaic AEPS requirements until such time as the Commission approves an alternative mechanism.[35]

No party to this proceeding has opposed the Companies' proposed contingency plans, either for energy or for AEPS obligations.

A. Residential Portfolio

1. Tranches

Each residential class tranche (approximately fifty MW) will be comprised of a load-following full requirements product with a ninety-five percent fixed-priced portion, and a five percent variable priced product.[36] The fixed-price for the ninety-five percent fixed-price option will be established through the Companies' DCA process.[37] Residential products will have staggered twelve and twenty-four-month terms.[38] The remaining five percent of the residential product is a real-time hourly load locational marginal price ("LMP") for the delivery point plus a fixed adder of $20.00 per MWh to cover the costs of other supply components associated with

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[34] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, pp. 30-31.
[35] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 32.
[36] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, pp. 3 and 7-8.
[37] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 7.
[38] *Id.*

serving the contracted load, including capacity, ancillary services, AEPS compliance, and other costs.[39]

2. Procurement Schedule

The residential tranches will be secured over twelve procurement dates.[40] In particular, the Companies proposed that the following auctions will be held for each residential class product:

- The residential twelve-month product auctions will be held: October/November[41] 2018, 2019, 2020 and 2021; January 2019, 2020, 2021 and 2022; April 2019, 2020, 2021 and 2022; and
- The residential twenty-four-month product auctions will be held: October/November 2018 and 2020; January 2019, 2020 and 2021; April 2019, 2020 and 2021.[42]

Laddering of Contracts Beyond May 31, 2023.

The OCA is concerned with the "hard stop" of the supply contracts to take place on May 31, 2023,[43] and recommended that sixteen of the forty-six twelve-month contracts proposed in the Companies' procurement plans be converted to two-year contracts.[44] OCA's proposal would allow these two-year contracts to extend beyond the May 31, 2023 term end-date proposed by the Companies.[45] The Commission should reject this proposal. The Companies' proposed

[39] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, pp. 7-8.
[40] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 8.
[41] The Companies will conduct each fall auction at some point after October 20 and before November 20 to allow participants in the fall auction to have access to any applicable proposed formula NITS rates filed in October for the upcoming calendar year before the auction occurs. Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 11.
[42] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, pp. 11-12.
[43] OCA also raised a concern that sixty-three percent of the Companies' supply for the first year of the four-year plan period is to be acquired within a three-month timeframe, and that nearly seventy percent of the residential supply for the first year is to be purchased within a three-month window. OCA Statement No. 1, pp. 10-11. While OCA expressed concern, OCA is not recommending any changes to the residential portfolio to address this concern. OCA Statement No. 1, p. 12. The Company does not believe OCA's concern to be valid because the Companies are spreading the first delivery year procurements over three auctions starting eight months, five months and two months prior to the start of the first delivery year (June 1, 2019), which will provide time diversity to the procurement plan by picking up fundamental and technical commodity price swings in power markets happening at those specific points in time. Furthermore, this procurement plan feature was in the Companies' previous DSP and was determined to be aligned with the Commission's default service rules. Met-Ed/Penelec/Penn Power/West Penn Statement No. 2-R, p. 3.
[44] OCA Statement No. 1, p. 11.
[45] OCA Statement No. 1, p. 12.

procurement plan already provides significant temporal diversity, spreading the procurements over auctions scheduled at different points during the DSP V term, which will balance any commodity price changes in the power markets over time.[46] Since DSP II,[47] the Companies' default service supply contracts have ended at the prescribed DSP delivery period, which feature the Commission has consistently supported, stating that the Companies' use of "shorter, more frequent procurements should ensure a smoother transition into the next procurement period without requiring the procurements extend beyond May 2015…".[48] Furthermore, having a "hard stop", the Companies are able to remove any regulatory risk associated with significant changes in default service rules that may be implemented beyond the end of a DSP delivery period.[49]

B. Commercial Portfolio

1. Tranches

Each commercial class tranche (approximately fifty MW) features a 100% fixed-priced product, which will be bid out through the Companies' DCA process.[50] Commercial products will have staggered three, twelve and twenty-four-month terms. Non-shopping commercial customers with demand less than 100 kWs will be eligible for this product.[51]

2. Procurement Schedule

The commercial tranches will be secured over eighteen procurement dates.[52] Specifically, the Companies proposed that the following auctions will be held for each commercial class

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[46] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2-R, p. 3.
[47] The delivery period for DSP II began on June 1, 2013 and ran through May 31, 2015. Met-Ed/Penelec/Penn Power/West Penn Statement No. 2-R, pp. 3-4.
[48] *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650, *et al.*, p. 26 (Order entered August 16, 2012).
[49] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2-R, pp. 3-4.
[50] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, pp. 7- 8.
[51] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 8.
[52] *Id.*

product:

- The commercial three-month product auctions will be held: October/November 2019, 2020, 2021 and 2022; January 2020, 2021, 2022 and 2023; April 2019, 2020, 2021 and 2022; June 2019, 2020, 2021 and 2022; and

- The commercial twelve-month product auctions will be held: October/November 2018, 2019, 2020 and 2021; January 2019, 2020, 2021 and 2022; April 2019, 2020, 2021 and 2022.[53]

C. Industrial Portfolio

1. Tranches

The industrial class product is the hourly pricing service ("HPS"), which is consistent with the Companies' current DSPs.[54] HPS contracts will be for twelve-month terms beginning June 1 of each year of the delivery period.[55] The HPS is a variable hourly service that is priced to the PJM real-time hourly total LMP for each Company's PJM delivery point.[56] DS suppliers will bid to serve a portion of a Company's HPS load (thirty-one tranches across all the Companies).[57] Customers on HPS will pay, and winning DS suppliers will receive: 1) the winning price bid by the winning DS supplier in the hourly-priced auction; 2) the applicable PJM zonal real-time hourly LMP; and 3) a fixed adder of $4/MWh, which will cover an estimate of costs of other supply components associated with meeting this full-requirements obligation, including capacity, ancillary services, NITS, AEPS compliance, and other costs.[58]

2. Procurement Schedule

The total industrial class load will be procured through four separate auctions in January 2019, January 2020, January 2021 and January 2022 for twelve-month agreement terms

[53] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 12.
[54] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 8.
[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] *Id.*

beginning June 1 of the auction year.[59]

No party in the proceeding raised concerns regarding the Companies' proposal for the industrial portfolio.

D. Procurement Classes

In their DSPs, the Companies propose to continue procuring default service supplies separately for each of the three retail customer classes: residential, commercial, and industrial. The only change proposed in this proceeding is to lower the existing hourly pricing threshold from 400 kW to 100 kW.[60] Met-Ed and Penelec rate schedule GS-Medium, Penn Power GM, Penn Power GS-Large, and West Penn Schedule 30 are affected by the change.[61]

The Companies proposed this change for two reasons. First, the Companies made a commitment in the DSP IV Joint Petition for Settlement to lower the hourly pricing threshold from 400 kW to 100 kW by June 1, 2019, to the extent smart meters will be available to be used for hourly priced billing.[62] Second, the Companies are following the Commission's End State Order related to its Retail Market Investigation ("RMI"), which established the following recommended structure for hourly pricing:

> As to the proposed delineation point of above 100 kW of demand, the Commission acknowledges that the more compelling point of delineation is whether the customer has an interval meter, as no EDC

[59] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 12.
[60] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1, p. 10.
[61] *See* Met-Ed/Penelec/Penn Power/West Penn Exhibits KLB-1 through KLB-5 (which reflect changes to the tariff definitions in each of the Companies' tariffs); Met-Ed/Penelec/Penn Power/West Penn Exhibits KLB-6 and KLB-7 (which reflect revisions to each of Met-Ed and Penelec's Rate GS-Medium); Met-Ed/Penelec/Penn Power/West Penn Exhibit KLB-8 (which indicates Penn Power Rate GM modifications); Met-Ed/Penelec/Penn Power/West Penn Exhibit KLB-9 (which presents the changes to West Penn Schedule 30); Met-Ed/Penelec/Penn Power/West Penn Exhibit KLB-10 (which shows the changes to Penn Power Rate GS-Large); Met-Ed/Penelec/Penn Power/West Penn Exhibits KLB-11 through KLB-14 (which show the changes to the Companies' PTC Riders); and Met-Ed/Penelec/Penn Power/West Penn Exhibits KLB-15 through KLB-19 (which present the modifications to the Companies' HP Riders).
[62] *See* Joint Petition for Settlement, *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-2015-2511333, *et al.* ("DSP IV Settlement") at 7, para. 2(d) (approved by Commission Opinion and Order on May 19, 2016).

> suggested any difficulty creating a subclass for default service. Therefore, at this time, the Commission continues to support the threshold of 100 kW for purposes of determining medium and large C&I customers, but expects EDCs to offer hourly LMP products only to the customers above that demand level who have interval meters. We expect the EDCs to continue adding medium C&I customers to the hourly LMP product as interval meters are deployed.[63]

Communication Plan

The Companies will develop an outreach and educational communication plan consistent with the DSP V Settlement[64] to inform shopping and default service customers with demand between 100kW and 400kW of the changes in eligibility for default service in the commercial class through their Price to Compare ("PTC") Default Service Rate Riders ("PTC Riders") as compared to default service as part of the industrial class through the Hourly Pricing Default Service Riders ("HPS Riders").[65] The OSBA was the only party in this proceeding that initially raised a concern that the Companies did not outline their specific communication plan in this proceeding.[66] However, the OSBA acknowledged in surrebuttal testimony that its concern was already addressed through the Companies' DSP IV Settlement (to which the OSBA was a signatory party) in this regard following receipt of the Companies' rebuttal testimony, and no other party contests this aspect of the Companies' proposed DSPs.[67]

100 kW Threshold Determination

RESA raised concerns with the criteria the Companies will use to identify commercial

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[63] Final Order *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952, p. 29 (Final Order dated February 14, 2013) ("RMI End State Order").
[64] In the DSP IV Settlement, the parties agreed to the following: (i) the communication plan will be circulated to the parties to the DSP IV Settlement for comment at least nine months prior to the effective date of the new hourly pricing threshold, or by September 1, 2018; and (ii) the Companies will notify customers at least six months before the effective date of the change, or by December 1, 2018. *See* DSP IV Settlement at 7, para. 2(d).
[65] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1, pp. 11-12.
[66] OSBA Statement No. 1, p. 6.
[67] OSBA Statement No. 1-SR, p. 1.

customers that exceed the 100 kW threshold.[68] In particular, the Companies proposed to conduct an annual review (on April 1) of each commercial customer's measured demand for the previous year (April 1 to March 31). If the actual measured demand in any of the twelve months is less than 100 kW, then the non-shopping commercial customer will receive default service under the provisions of the applicable PTC Rider. Otherwise, the commercial customer will receive default service under the provisions of the applicable HP Rider. Any changes will become effective June 1 of every year and the commercial customer will remain on the designated rider for a twelve-month period, or until they elect to shop with an EGS.[69]

RESA believes that the Companies' criteria leaves too many commercial customers on the fixed priced commercial PTC Rider rates and recommended that the Companies be required to use two consecutive months in a twelve-month period as the Companies' criteria or, in the alternative, to base a customer's migration on the customer's peak load contribution ("PLC").[70] The Companies disagree with RESA's recommendations for several reasons.

If the Companies were to adopt RESA's recommendation and instead use two consecutive months in a twelve-month period as the Companies' criteria, unsophisticated commercial customers who do not have the resources to devote to shopping for their generation supply or to manage hourly pricing will be pushed onto the HPS Riders.[71] As the Companies' witness Mr. Siedt testified, many of these commercial customers have had the option to voluntarily elect service under the applicable HPS Rider since 2011 (an option which remains available today) and have chosen not to do so.[72]

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[68] RESA Statement No. 1, p. 11.
[69] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1, p. 13.
[70] RESA Statement No. 1, p. 10.
[71] Met-Ed/Penelec/Penn Power/West Penn Statement No. 4-R, p. 15.
[72] *Id.*

While RESA's witness Mr. Hudson claimed that these commercial customers are in fact "generally more sophisticated energy consumers who should be well equipped to handle the transition to hourly priced default service,"[73] he did so by pointing to misleading information to support his statement. Specifically, Mr. Hudson relied on the North American Industry Classification System ("NAICS") codes,[74] provided in ME/PN/PP/WP Response to OSBA Interrogatory Set I, No. 9, CONFIDENTIAL Attachment A[75] to support this statement.[76] However, Mr. Hudson selected only twenty, out of a total of eighty-eight, NAICS codes (or categories of businesses) to support his argument,[77] which represents only 25.9% of the Companies' customers that have a NAICS code associated with their account.[78] Mr. Hudson's analysis ignores the fact that over half of the Companies' customers (51.3%) fall under only thirteen distinct codes, or business types,[79] only two of which are identified by Mr. Hudson as being "more sophisticated energy consumers."[80] It is simply inaccurate for Mr. Hudson to state that all commercial default service customers above 100 kW are "more sophisticated energy consumers" based on an analysis of only 25.9% of the Companies' commercial customers who are diverse in nature.[81]

[73] RESA Statement No. 1-R, p. 6.
[74] NAICS is the standard used by Federal statistical agencies in classifying business establishments into the category of business sector they participate in for the purpose of collecting, analyzing, and publishing statistical data related to the United States' business economy. *See* https://www.census.gov/eos/www/naics/ March 27, 2018. Met-Ed/Penelec/Penn Power/West Penn Statement No. 4-SR, p. 3.
[75] The Companies' response contained in CONFIDENTIAL Met-Ed/Penelec/Penn Power/West Penn Exhibit KMS-2 provided information related to the Companies' current commercial default service customers whose peak demand is above 100 kW. Met-Ed/Penelec/Penn Power/West Penn Statement No. 4-SR, pp. 2-3.
[76] RESA Statement No. 1-R, p. 6.
[77] *See* Met-Ed/Penelec/Penn Power/West Penn Exhibit KMS-3.
[78] Met-Ed/Penelec/Penn Power/West Penn Statement No. 4-SR, p. 3.
[79] The thirteen categories of commercial customers that make up the 51.3% include: merchant wholesalers, durable goods; food and beverage stores; executive, legislative, and other general government support; food services and drinking places; machinery manufacturing; utilities; professional, scientific, and technical services; and general merchandise stores. Met-Ed/Penelec/Penn Power/West Penn Statement No. 4-SR, p. 4.
[80] Met-Ed/Penelec/Penn Power/West Penn Statement No. 4-SR, pp. 3-4.
[81] Mr. Hudson's response to discovery questions posed by the Companies also indicated that Mr. Hudson's statement that all commercial default service customers above 100 kW are "more sophisticated energy consumers" was anecdotal and based on assumptions. *See* Met-Ed/Penelec/Penn Power/West Penn Statement No. 4-SR, p. 5.

RESA's alternative recommendation that the Companies utilize PLCs, or installed capacity ("ICAP"), to determine which customers would move to hourly service will force even more customers either onto the HPS Riders or into the shopping market for competitive generation supply contracts. Specifically, a PLC analysis is based on the highest capacity level for a customer, which is set once annually. Because of the inflexibility of the above-described test, many more small customers will be pushed onto hourly pricing.[82] Furthermore, Penn State raised valid concerns with regard to the adoption of this criteria, noting that the use of the PLC or ICAP will likely cause customer confusion, as the PLC or ICAP is not used for billing purposes and will not be understood by the impacted customers. Specifically, Mr. Crist testified "PLC or ICAP is more complex than the customer's monthly metered billing demand, which is a measure that commercial customers in that size range would normally understand.[83]

While the Companies agree with (and have proposed) moving the hourly pricing threshold level to 100 kW and above, the Companies do not agree with setting the eligibility criteria based upon the use of either only two consecutive months' data or PLCs to determine which customers would move to hourly service. The customers in question do consume more energy than residential customers; however, the use of a standard requiring twelve months' data in excess of 100 kW will ensure that only the larger energy consumers are required to move to hourly pricing. Under the Companies' proposal, those customers that are close to, but not at, the 100 kW threshold will have the ability to stay on the commercial PTC Rider rates, opt for hourly-priced default service, or shop for competitive generation supply. If commercial default service customers at or above 100 kW are generally more sophisticated energy consumers as RESA argues, those customers would likely have chosen an hourly pricing option by now.[84]

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[82] Met-Ed/Penelec/Penn Power/West Penn Statement No. 4-R, p. 15.
[83] PSU Statement No. 1-SR, p. 8.
[84] Met-Ed/Penelec/Penn Power/West Penn Statement No. 4-R, p. 15.

E. Default Service Plan Term

As highlighted earlier in this brief, the Companies have proposed a firm four-year delivery period as the term of DSP V (June 1, 2019 through May 31, 2023). No party raised objections related to the Companies' proposed four-year firm delivery period; however, OSBA and RESA requested a mid-point DSP V check in to evaluate market conditions, which they allege could warrant changes to the Companies' DSP V procurement plans, for differing reasons. OSBA's concern is specific to the fact that it believes risk premiums for the commercial three-month product have been generally increasing over the last three years.[85] OSBA recommended that the Companies' witness Dr. Reitzes update his analysis of risk premiums for procurements of commercial class full requirement products in April 2020.[86] If the updated analysis indicates that the implied risk premiums for the commercial class continue to worsen, or if the risk premiums for the three-month product continue to trend higher than the longer-term (*e.g.*, twelve-month and twenty-four-month) products, then the OSBA recommends that a stakeholder session should be held to address the risk premiums.[87] Under OSBA's proposal, any party would be entitled to submit a petition for a mid-term modification of the DSPs.[88] RESA supported OSBA's proposal for a mid-point check in, as RESA similarly believes it will be necessary to determine whether current market conditions warrant changes to the procurement plan at that time.[89] The Commission should reject the proposals for a mid-point check in for several reasons.

First, modifying the DSP midstream (*e.g.*, changing the products being procured or their term length, or modifying the procurement schedule halfway through the plan), may create confusion for participants in default service supply auctions or otherwise cause suppliers to

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[85] OSBA Statement No. 1, pp. 10 and 12.
[86] OSBA Statement No. 1, p. 12.
[87] *Id.*
[88] *Id.*
[89] RESA Statement No. 1, p 7; RESA Statement No. 1-R, p. 2.

increase the time and expense needed to prepare a bid, which could reduce supplier participation and induce increased prices for default service supplies. Second, the Companies' proposed DSP offers "temporal diversity" by holding eighteen different procurements for the commercial class throughout the four-year term, which potentially smooths out any cyclical movements in risk premiums. Third, as the Companies' witness Dr. Reitzes testified, "the use of a full-requirements load-following ("FRLF") product to serve default service customers, consistent with the current plan, has had a good track record in Pennsylvania." Even OSBA's witness Mr. Knecht recognizes this. Specifically, Mr. Knecht testified that "[t]he use of FRLF contracts is a well-established practice in Pennsylvania, and should generally be continued absent strong evidence to the contrary."[90] Fourth, the Companies' procurement process itself provides solutions to address such concerns in real time. Specifically, Section 4.4 of the Bidding Rules addresses the issue of extraordinary events by allowing the development of a revised schedule to the extent conditions dictate.[91] Also, the Commission has the ability to reject the results of an auction if the bids do not appear to be in alignment with the market conditions. Finally, the administrative and cost savings to the parties, the Commission and the Companies' customers that follow the implementation of a four-year program may well be lost if the Commission allows a two-year opt out provision to be included. The Companies' experience related to their DSP IV program with this type of provision is that it ultimately leads to filing a new DSP after the first two years, thereby causing the Companies and other parties to incur additional costs to file and litigate a new program and eliminating one significant benefit of having a four-year DSP term.[92]

In conclusion, having a mid-term checkpoint whereby parties are allowed to submit

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[90] OSBA Statement No. 1, p. 11.

[91] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 4.

[92] DSP IV was originally established to span the June 1, 2017 through May 31, 2021 delivery period. Met-Ed/Penelec/Penn Power/West Penn Statement No. 1-R, p. 4.

modifications to the DSP provides more harm than benefit. Moreover, a mid-term checkpoint is not necessary based on the protections already provided under the proposed DSPs and parties' current ability to exercise their rights under the law to the extent that market conditions change in a manner that significantly impacts the Companies' procurement plans (*e.g.*, parties always have the option to file a complaint against the Companies' DSPs, or the Companies could petition to modify their DSPs, with or without the presence of a mid-cycle collaborative process).[93]

In considering and approving a default service provider's plan, the Commission is required to make specific findings that the plan "includes prudent steps necessary to negotiate favorable generation supply contracts…[and] includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis."[94] The Companies' plans satisfy each of these requirements. Full-requirements suppliers acquire the combination of energy, capacity, ancillary services, and transmission products needed to ensure adequate and reliable service to default service customers at a fixed price in the face of load and price uncertainty, and the Companies' DCAs result in the selection of those suppliers who can provide these products at the least cost over time.[95] The procurement length of twelve-month and twenty-four-month fixed products will provide assured, stable pricing for residential customers,[96] whereas the five percent variable priced product for residential, and three-month product for commercial will provide more market reflective rates over the term of the Companies' DSPs.[97] When paired with the spot pricing component of certain of the Companies' products and the duration of the full requirements products, the previously-procured long-term SPAEC agreements meet the current legislative

[93] *Id.*
[94] 66 Pa.C.S. § 2807(e)(3.7).
[95] Met-Ed/Penelec/Penn Power/West Penn Statement No. 3, pp. 9-10; Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 17.
[96] Met-Ed/Penelec/Penn Power/West Penn Statement No. 3, p. 8; Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 4.
[97] *Id.*

standard under Act 129 and the Commission's Regulations and Policy Statement for the Companies' portfolios to have a blend of spot, short and long-term contracts. The Companies' procurement and implementation plans include detailed procurement schedules, Bidding Rules and associated documents, including form supplier contracts, contingency plans, plans for AEPS compliance, a proposed independent evaluator to administer procurement protocols, and ensure that any affiliate of the Companies does not receive an advantage in the procurements.[98] In addition, the Companies' DSPs are compliant with all PJM requirements.[99]

IV. PURCHASE OF RECEIVABLES CLAWBACK PROVISION

As agreed to in their Commission-approved DSP IV Settlement, the Companies implemented a purchase of receivables ("POR") program clawback mechanism as a two-year pilot for the two twelve-month periods ending each of August 31, 2016 and August 31, 2017. In DSP V, the Companies proposed a continuation of the clawback mechanism as a permanent element of the Companies' POR programs, without modification, thereby serving as a customer protection from those EGSs driving uncollectible accounts expense to unreasonable levels. Because adjusted allowances for uncollectible accounts expense were approved in the Companies' most recent base rate cases for recovery through both base rates and the Companies' respective DSS Riders,[100] to the extent the Companies are able to continue the clawback mechanism beyond the initial two-year pilot, customers' exposure to POR-related uncollectibles is minimized, as explained further below.

The clawback charge, as approved in the DSP IV Settlement, was designed to collect a portion of uncollectible accounts expense from those EGSs whose practices objectively drive

[98] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, pp. 7 and 12-32.
[99] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 10.
[100] These allowances separately isolate those portions attributable to base distribution rates as compared to default service and POR rates, the default service/POR-related portion of which is recovered through the Companies' DSS Riders. The default service/POR-related portion of uncollectible accounts expense for each Company is incurred, in part, as a result of the Companies' POR programs.

significantly higher write-offs to the Companies' customers than their EGS peers. Under the terms of the mechanism, a two-prong test is applied. The first prong identifies those participating EGSs whose average percentage of write-offs as a percentage of revenues over a twelve-month period 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 identifies, 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 operating company average PTC for the period. For those EGSs identified by both prongs of the test, the annual clawback charge assessed is calculated as the difference between that EGS's actual write-offs and their actual write-off amount calculated at 200% of the average EGS percentage of write-offs per operating company. The charge recovers the amount of EGS write-offs in excess of 200% of the operating company average, which is in turn billed to the EGS. Where a Company's actual uncollectible accounts expense is higher than the amount of uncollectible expense in base rates plus the amount included in the DSS Riders for the twelve-month period ended August 31 of the applicable year, that Company retains the clawback amounts paid. On the other hand, where a Company's actual uncollectible expense amounts to less than the level of uncollectible expense recovered in base rates and its DSS Rider, the Company refunds the clawback charges that are collected to its customers through a reduction to its DSS Rider. In this way, the Companies will collect uncollectible accounts obligations – and only those obligations - through the three sources of cost recovery available: (1) base distribution rates; (2) DSS Rider rates; and (3) POR clawback billings, where applicable.

Several of the parties to the DSP V case raised concerns related to the Companies' proposed continuation of the clawback mechanism on a permanent basis. In particular, the parties to this discussion included the I&E, RESA, and Respond Power. While I&E did not oppose an extension of the clawback pilot, it was not prepared to support the establishment of the clawback mechanism as a permanent component to the Companies' POR programs, citing the need for further experience and data from the program in order to determine its efficacy. Further, it raised concerns with regard to the mechanism's ability to comprehensively address the issue of POR-related uncollectibles, suggesting the need to add a universal discount rate to the Companies' POR programs. RESA, meanwhile, supported the continuation of the clawback mechanism as implemented to date, however, recommended that the Companies be directed to establish a reporting mechanism which would offer EGSs insight into the payment status of their customers, so that they may be better able to manage the writeoffs by which they are to be measured. Finally, Respond Power opposed the clawback provision in its entirety, first arguing that it should not be adopted because it modifies the Companies' POR programs to become "with recourse" programs. Respond goes on to raise issues related to the calculation of the clawback, the timing of its re-establishment or continuation, and various protections it believes should be established for EGSs to the extent that it is permitted to continue as a permanent part of the Companies' POR programs.

Despite these various claims, the Companies have reached a stipulation with each of the I&E, RESA and Respond (collectively, the "Stipulating Parties" as described below), under which those Stipulating Parties agree to a proposal that resolves each of their concerns regarding this topic, as follows:

> 1. The Stipulating Parties agree to a four-year extension of the Companies' Clawback Charge pilot, to begin with charges assessed in September 2018 based on a review of data for the twelve months ending August 31, 2018 and ending with charges to be assessed in September 2021.
>
> 2. The Companies will continue to use a two-prong test to determine the clawback charge. The first, as described in testimony, will identify those electric generation suppliers ("EGSs") whose average percentage of write-offs as a percentage of revenues over the twelve-month period ending August 31 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 test, EGSs whose average price charged over the same twelve-month period exceeds 150% of the average price-to-compare for the period. For those EGSs identified by both prongs of the test, the annual clawback charge assessed each September would be the difference between that EGS's actual

write-offs and 200% of the average percentage of write-offs per operating company.

3. The Companies will develop an EGS-specific customer arrears report with unpaid aged EGS account balances. This report will be provided to EGSs participating in the Companies' purchase of receivables programs on a quarterly basis, beginning no later than October 20, 2018, reflecting EGS arrears for third quarter 2018.[101]

As such, the Companies' intent is that their original proposal be modified consistent with this joint stipulation, such that the continuation of the clawback would be for a four-year extension of the pilot which just concluded, using the same terms for the calculation of the charge. In addition, the Companies' intent is to provide reports meeting the terms of paragraph 3 of the joint stipulation by the due dates set within so as to better enable EGSs' ability to manage their own write-offs, and in turn, the clawback charge exposure they bear.[102]

V. BYPASSABLE RETAIL MARKET ENHANCEMENT RATE MECHANISM

The Companies have proposed the introduction of a retail market enhancement rate mechanism ("PTC Adder") as part of this proceeding. The PTC Adder would essentially be a surcharge added to the residential default service rate for each Company in order to incentivize non-shopping residential customers to participate in the retail market. The reason the Companies have proposed the PTC Adder be applicable only to the residential customer class is due to the fact that this particular class has the lowest level of customer shopping across each of the Companies' footprints. In particular, only about 30% of the Companies' residential customers are shopping, on average. By contrast, commercial and industrial customers are shopping in significantly greater proportion, thereby indicating that commercial and industrial customers may be more aware of their opportunities to shop for, and further, do not need additional incentive to shop for, their

[101] Joint Stipulation No. 2.

[102] The OCA raised concerns within its rebuttal testimony regarding the idea of the Companies reporting to EGSs about the payment behavior of those EGSs' customers. However, this information is presently available to EGSs for their active customers today, and the Companies are not restricted from providing such information. To the extent such reports are provided, those reports would only include payment status for charges submitted by that EGS receiving the report, for current customers of that EGS.

electricity.

Once collected, the Companies intend to return 95% of the revenues collected to all residential customers – shopping and non – through their respective nonbypassable DSS Riders. The 5% of the revenue collected through the PTC Adder and retained by the Companies would be used to make the Companies whole for their expenses associated with administering the PTC Adder. Given this design, the mechanism is designed to be revenue neutral to the Companies. The calculation of the PTC Adder is designed to be based on the $30 Customer Referral Program Charge ("CRP charge") to EGSs for each customer enrolled by EGSs under the Companies' CRP, which is in turn divided by a period of twenty-four months. The twenty-four-month period was selected as a reasonable proxy for the Companies to assume as representing an EGS's average retention period in the absence of any other verifiable data. By using these inputs, the PTC Adder would amount to a charge of $1.25 per residential default service customer per month. The $1.25 per month charge is then divided by the average residential usage for the four Companies, which establishes a per kWh charge which is intended to be used as a component of the PTC Riders' rate calculation, with the charge expected to remain constant for the four-year DSP term. Using the average residential customer monthly consumption of 869 kWh for the twelve-month period ended August 31, 2017, the application of this calculation would result in a PTC Adder of $0.00144 per kWh for the June 1, 2019 through May 31, 2023 DSP term. Meanwhile, DSS Rider rates to be effective on June 1, 2020 will include the refund of 95% of the PTC Adder collected from residential default service customers in the PTC Rider between June 1, 2019 and March 31, 2020.

Various parties to this proceeding raised issues or made recommendations with regard to the Companies' proposed PTC Adder. Specifically, the OCA, OSBA, I&E and CAUSE-PA each raised concerns with regard to the establishment of the mechanism. In particular, these parties took issue with the establishment of the PTC adder, taking the view that it would amount to a penalty for not shopping, and may in fact only serve to raise the PTC. They further argued that the retention of five percent of the amounts collected should not be permitted given that the Companies did not fully justify the amount to be retained. Finally, the OCA and I&E raised concerns with regard to the assumptions used by the Companies to determine the calculation of the adder, asserting that there is no basis for the Companies' proposal to use the CRP charge to determine the price of the PTC Adder. Meanwhile, RESA supported the establishment of the mechanism, but made recommendations regarding the basis for the calculation of the amount to be charged, arguing that the Companies' use of the twenty-four-month period is too long, and that a twelve-month period would be more appropriate.

The Commission's policy to this point has been to encourage the further development of the retail electric market – a goal that EDCs have been asked to support in furtherance of that policy, and which drove the Companies' proposal of the PTC Adder in this case. While it is true, as the OCA and I&E both point out, that the Companies did propose a rate mechanism in their DSP II proceeding, there is one significant distinction in the proposal before the Commission in this DSP V docket from that proposal, which admittedly, was rejected by the Commission. That is, unlike the proposal set forth in DSP II, the PTC Adder is specifically designed to be revenue neutral to the Companies. This is important given that its design reduces the impact to customers as compared to the Companies' earlier proposal, while at the same time providing a modest incentive to explore shopping opportunities available in the marketplace, thereby furthering the previously-stated goals of the Commission.

As it relates to the proxies selected by the Companies for calculation of the PTC Adder, the CRP $30 CRP charge has been agreed upon as a reasonable proxy for customer acquisition fees since August 1, 2013, and as such, this was selected as a reasonable basis from which to start the calculation, given all parties' prior agreement to that value. Further, the CRP term was established as a twelve-month program, so the Companies adopted the assumption that customers stay with an EGS for an average of twenty-four months at the acquisition cost of $30 per customer. Given that the Companies are without knowledge of the actual average retention period for an EGS, or an alternative figure to use from a pricing standpoint, the Companies have no access to data from which to make a more informed calculation than that which they offered in their original proposal. Along those same lines, having not ever implemented a mechanism of this nature, the Companies have no actual data from which to determine what their administrative costs of implementing the PTC Adder would be. As such, 5% was selected as a reasonable assumption absent data to inform otherwise. While certain parties have opposed this, it is notable that no party recommended a different value to be retained to cover these costs. Nor did any party indicate a belief that the Companies should bear those costs without recovery.

To the extent the Commission continues to believe that further development of the retail electric market is necessary, the PTC Adder presents an uncomplicated, reasonable means of incentivizing customers to explore other options.

VI. NON-COMMODITY BILLING

While this topic was not raised in the Companies' direct case, RESA submitted testimony taking issue with both the inaccessibility of the Companies' utility bills to EGSs for purposes of billing non-commodity products and services, as well as raising concerns relative to the Companies' own offering of non-commodity products and services which are, in turn, billed by the Companies on their utility bills. The OCA likewise raised concerns within its direct testimony regarding the Companies' provision of such products and services, predominantly relating to the desire for the elimination of such practices or, in the alternative, stronger customer protections. The Companies in turn provided testimony rebutting those allegations and recommendations.[103]

[103] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1-R.

Notwithstanding these positions, the Companies have reached an agreement with all parties, including RESA and the OCA, which acknowledges that the Commission has initiated a generic docket to explore the topic of billing associated with non-commodity products and services, which is a more appropriate place for these issues to be addressed, in order to allow all industry participants and interested stakeholders to participate in the discussion. Specifically, the stipulation entered into the record at hearing provides, in relevant part, that "[s]ubject to the appropriate approvals by the Commission, issues related to supplier consolidated billing shall be addressed in the Commission's generic proceeding on the topic in Docket M-2018-2654254."[104] As such, this issue need not be considered within the context of the Companies' DSP V proceeding at this docket. This provision will be more fully outlined within the Joint Petition for Partial Settlement to be filed by the parties contemporaneously with reply briefs in this proceeding, at which time the Company will provide further support for stipulated terms.

VII. CUSTOMER REFERRAL PROGRAM

The Companies' CRP is set, by the terms of their Commission-approved DSP IV Settlement, to continue through May 31, 2021, at a minimum.[105] Given the Companies' proposal of a four-year delivery period for DSP V, they proposed to match the continuation of their CRP through that period, such that it would be renewed through May 31, 2023, rather than ending midway through the delivery period. No other changes to the terms, conditions, or mechanics of the program were proposed by the Companies. In response to this proposal, the OCA adamantly opposed the continuation of the program beyond May 31, 2021, recommending that the Companies should either terminate the program in its entirety at that time, or should make a filing which

[104] Joint Stipulation No. 1, para 3.
[105] DSP IV Settlement, para. H.1.

demonstrates why the program should continue, based on demonstrated benefits to customers.[106] The OCA further raised issue with the scripting and training materials currently in place for this program, arguing they do not provide sufficient customer disclaimers and education[107] - a position echoed by CAUSE-PA in rebuttal testimony.[108] Meanwhile, while RESA supports the continuation of the program through 2023 as proposed by the Companies, it took the converse position as the OCA regarding the scripting changes to be made, suggesting that the current scripts and program rules require modification to reduce the existing disclosures, as well permit bill-ready billing.[109] In order to accomplish this, RESA suggests that a stakeholder process be convened to develop new scripts, which would include the parties to this issue, as well as Allconnect (the Companies' subcontractor for purposes of administering this program) and the Commission's Office of Competitive Oversight.

The Companies maintain their position with regard to the CRP as proposed in their original filing. The parties take these positions despite the fact that the scripting was raised as an issue in the Companies' DSP IV proceeding, and was agreed to by all signatory parties to the DSP IV Settlement, including the OCA, CAUSE-PA and RESA.[110] To now take issue with those scripts and demand changes to them puts the Companies in the position of continually having to modify their scripts – and in turn training their staff and subcontractor – at the whims of the parties to these proceedings. Furthermore, to the extent that a stakeholder process would be convened, it is highly unlikely that its end product would yield success different from that which the same group of parties have been able to do thus far through settlement negotiations over the course of numerous default service proceedings. Apart from the administrative burden upon the Companies in having

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[106] OCA Statement No. 2, pp. X.
[107] OCA Statement No. 2, pp. 3-4, 8-27, 31.
[108] CAUSE-PA Statement No. 1-R.
[109] RESA St. 1, pp. 18-22.
[110] *See DSP IV Settlement,* para. H.1.(b).

to make such modifications, this presents the very real risk of the Companies' call center scripts associated with the CRP becoming lengthy and disrupting the Companies' ability to not only meet contact center performance metrics, but also retain the customer's interest on the call long enough to be able to finish educating them on the program. With regard to the continuation of the program through the end of the proposed DSP V term, the Companies' understanding of the Commission's articulated policy on this point is that, as discussed earlier with regard to the Companies' proposed PTC Adder, Pennsylvania EDCs are looked upon to be supportive of the further development of the Pennsylvania retail electric market. In particular, the CRP was a Commission-directed program stemming out of the RMI, at which time the Commission indicated its recommendation that EDCs establish such programs. As a result, the Companies introduced this program for the default service term beginning June 1, 2013. Since that time, the Commission has continued to approve the program, and in fact, the OCA has agreed to continuation of the program, as an ongoing part of the Companies' offerings to customers. The Companies' proposal in this proceeding is aimed to continue supporting the Commission's goals as outlined during the RMI, as the Companies' understanding is that this remains a goal of the Commission at this time.

VIII. CUSTOMER ASSISTANCE PROGRAM SHOPPING

The Companies are not proposing to limit the ability of customers enrolled in the Companies' Pennsylvania Customer Assistance Program ("PCAP") to shop for electricity with an EGS. In accordance with the early Commission precedent after deregulation, unrestricted shopping among PCAP customers has always been permitted under the Companies' Universal Service and Energy Conservation Plans ("USECPs"). Although recent Commonwealth Court and Commission precedent has opened the door to the possibility of certain customer assistance program ("CAP") shopping restrictions, the application of this precedent to the instant proceeding is questionable, and the legality and reasonableness of such restrictions remains unresolved.

Accordingly, the Companies are proposing to preserve the right of all customers to shop for electricity and continue to permit unrestricted CAP shopping. Certain parties have taken issue with the Companies' failure to propose limitations in this case, however. Specifically, CAUSE-PA, OCA, and I&E (collectively, the "advocate parties") all propose to limit the competitive options available to CAP customers though the introduction of a CAP shopping price ceiling.[111]

All customers, including CAP customers, should have the right to receive service from their supplier of choice. The Competition Act states that "it is now in the public interest to permit retail customers to obtain direct access to a competitive generation market,"[112] and requires the Commission to "allow customers to choose among electric generation suppliers in a competitive generation market through direct access."[113] In adopting the Competition Act, the legislature determined that "competitive market forces are more effective than economic regulation in controlling the cost of generating electricity."[114] The effect of the Competition Act was to overhaul the Public Utility Code and the Commission's Regulations to develop procedures to permit and encourage Pennsylvania electric customers to shop with a supplier. The Competition Act's mandate that all customers have the right to shop with an EGS is indisputable.

In addition to establishing customers' right to shop, the Competition Act also provided for the continuation of universal service programs, including PCAP: "[t]he Commonwealth must, at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service."[115] The Commission is tasked with ensuring that EDCs' universal service programs are appropriately funded, operated in a cost-effective manner, and

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[111] I&E Statement No. 1, pp. 18-24; OCA Statement No. 2, pp. 36-39; CAUSE-PA Statement No. 1, pp. 16-17, 21-24, 27-29, 32, and 34; I&E Statement No. 1-SR, p. 23.
[112] 66 Pa.C.S. § 2802(3).
[113] 66 Pa.C.S. § 2804(2).
[114] 66 Pa.C.S. § 2802(5).
[115] 66 Pa.C.S. § 2802(10).

subject to full cost recovery.[116] Nowhere within the Competition Act did the legislature state that participation in an EDC's universal service program should limit a customer's ability to shop.

On April 29, 2011, the Commission initiated its RMI in order to promote supplier participation and reduce barriers to shopping.[117] As characterized by the Commission, the guiding principles of the RMI were "favoring competition over regulation; a continuation of fundamental consumer protections; structuring the default service model to more closely reflect current market conditions; and encouraging investment by EGSs that results in innovative and competitively-priced product offerings for consumers."[118] In its RMI Final Order, the Commission adopted changes in an effort to encourage and increase supplier product offerings in Pennsylvania in order "to achieve and sustain the robust competitive market that was envisioned" when the Competition Act was adopted.[119] To advance this objective in the context of CAP, the Commission held that CAP customer benefits are fully portable and CAP customers should be permitted to shop in the competitive market without restriction.[120] Quoting the Competition Act, the Commission stated that "one of the basic intents of the Competition Act – to 'permit retail customers to obtain direct access to a competitive generation market' – was intended to include all customers.[121] Consistent with this Commission directive in the RMI, the Companies have continuously permitted CAP customers to shop for generation service with an EGS without restriction.

Subsequent to the RMI, both the Commission and the Commonwealth Court weighed in on CAP shopping limitations with respect to other Pennsylvania EDCs. PECO Energy Company

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[116] 66 Pa.C.S. § 2804(9).
[117] *Investigation of Pennsylvania's Retail Electricity Market*, Docket No. I-2011-2237952, p. 2 (Order entered Apr. 29, 2011).
[118] Final Order *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952, p. 10 (Final Order entered Feb. 15, 2013) ("RMI Final Order").
[119] *Id.* at 15.
[120] *Id.* at 60-62.
[121] *Id.* at 61; 66 Pa.C.S. § 2802(3).

("PECO") proposed to include a CAP shopping price ceiling as part of its USECP.[122] In other words, under PECO's proposed plan, CAP customers would be prohibited from shopping with a supplier at any price higher than the PTC.[123] The Commission rejected the proposed price ceiling and held that PECO could not place restrictions on the terms under which CAP customers could shop for electricity, stating that "by removing the barrier to customer choice and allowing CAP customers the freedom to choose their EGS, we are affording PECO's CAP customers the same opportunities and benefits currently available to every other PECO customer."[124]

The Commonwealth Court ultimately upheld the Commission's rejection of a CAP shopping price ceiling. As part of its decision, the Commonwealth Court recognized that "there can be no question, at this juncture, that the overarching goal of the Choice Act is competition through deregulation of the energy supply industry, leading to reduced electricity costs for consumers."[125] However, the Commonwealth Court also developed a standard that should be applied when evaluating the appropriateness of CAP shopping limitations. The Court held that under the Competition Act, EDCs have an obligation to administer CAPs in a cost-effective manner.[126] Therefore, if substantial evidence exists for why there is no reasonable alternative to limiting competition in order to achieve a cost-effective CAP, then limitations on shopping may be permissible.[127] Applied to PECO's proposal, however, the Commonwealth Court held that substantial record evidence did not exist to justify a CAP shopping price ceiling.[128]

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[122] *Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. v. Pa. Pub. Util. Comm'n*, 120 A.3d 1087, 1091 (Pa. Commw. Ct. 2015) ("*CAUSE-PA*").
[123] *Id.*
[124] *Id.* at 1091-1092; *see also Petition of PECO Energy Co. for Approval of its Default Service Plan*; Docket No. P-2012-2283641, pp. 4-5 (Opinion and Order entered Jan. 24, 2014).
[125] *Id.* at 1101.
[126] *Id.* at 1103.
[127] *Id.* at 1103-1104.
[128] *Id.* at 1107. The Commonwealth Court did find, however, that substantial record evidence supported a prohibition on suppliers charging CAP customers early contract termination fees.

Because the Commonwealth Court rejected a price ceiling in *CAUSE-PA*, the Commonwealth Court has yet to identify specific circumstances in which extreme CAP shopping limitations, such as a price ceiling, are reasonable. More recently, as part of a default service proceeding, PPL Electric Utilities Corporation ("PPL") proposed to develop and manage a CAP SOP, which would only permit CAP customers to choose from suppliers who offer a seven percent discount from the PTC and do not charge early contract termination fees.[129] The Commission approved the CAP SOP, holding that the parties presented substantial evidence in support of the proposed CAP SOP.[130] The legality of PPL's CAP SOP is currently pending at the Commonwealth Court.[131]

It is indisputable that a customer's right to shop for electricity is the core objective of the Competition Act.[132] To remain in compliance with the Act, efforts to restrict a customer's ability to shop should be avoided wherever reasonably possible. The Commission acknowledged this within the RMI, and imposed a number of requirements on EDCs, EGSs, and customers alike in order to promote supplier participation and increase the availability of supplier product offerings.[133] The Companies recognize that the Commonwealth Court and Commission recently identified limitations on CAP shopping that may be appropriate; however, for the reasons discussed below, neither of these cases has a direct bearing on this proceeding. Where the legal precedent in support of shopping restrictions is unrelated or unsettled, the Companies must act in a manner that advances the overarching goal of the Competition Act and continue to support unfettered CAP shopping.

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[129] *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 Through May 31, 2021*, Docket No. P-2016-2526627, p. 28 (Opinion and Order dated Oct. 27, 2016).
[130] *Id.* at 54.
[131] *Retail Energy Supply Ass'n v. Pa. Pub. Util. Comm'n*, Docket No. 230 CD 2017.
[132] 66 Pa.C.S. § 2802(3)-(5); 66 Pa.C.S. § 2804(2).
[133] RMI Final Order, pp. 10-15.

A customer's ability to shop for electricity should not be restricted based on his or her income level or financial need. Customers have the right to choose their own source of electricity generation, which is impossible if forced to return to default service or only choose from a limited number of suppliers. The retail electricity market in Pennsylvania features a diverse range of electric products, including renewable energy products and time-of-use products that offer favorable pricing based on a customer's usage habits. CAP shopping limitations, particular those which have been proposed by other parties in this proceeding, would mean significantly infringing on a customer's right to shop.

Under the advocate parties' proposals, in order to serve a PCAP customer, suppliers could only offer products at or below the Companies' current PTC.[134] The Companies could implement such a limitation through requiring EGSs that serve CAP customers to use a rate ready percentage-off product. A percentage-off product is a variable rate product that results in a customer paying an agreed to, fixed percentage off the PTC. While the price the customer pays per kWh changes quarterly with changes to the Companies' default service rates, the percentage the customer saves as compared to the PTC remains the same. Only two suppliers in the Companies' service territories currently offer such a product.[135] As a result, a CAP shopping price ceiling would severely limit, if not entirely eliminate, supplier options for PCAP customers.[136]

In *CAUSE-PA*, the Commonwealth Court recognized that retail electricity competition was the overarching goal of the Competition Act.[137] However, the Commonwealth Court also held that where substantial evidence indicates that no reasonable alternative to limiting competition exists in order to promote a cost-effective CAP, shopping limitations may be adopted.[138] The

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[134] *Id.*
[135] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1-R, p. 30.
[136] *Id.* at 29-30.
[137] *CAUSE-PA*, p. 1101.
[138] *Id.* at 1103-1104.

Commonwealth Court's analysis did not address a situation where the record evidence demonstrated that a proposed CAP shopping limitation would severely limit or eliminate all shopping among CAP customers. Accordingly, because the record evidence in this proceeding indicates that the adoption of a CAP shopping price ceiling would effectively eliminate supplier offerings to CAP customers, *CAUSE-PA* is distinguishable.[139] While *CAUSE-PA* stands for the adoption of reasonable CAP shopping limitations, the Companies seriously question whether the Commonwealth Court would approve a measure that could wholly prohibit shopping in contravention of the central tenet of the Competition Act.

Moreover, because the Commonwealth Court ultimately rejected a price ceiling in *CAUSE-PA*, the Commonwealth Court has yet to identify the factual circumstances that warrant such an extreme competitive market restriction. The Companies do not dispute that certain PCAP customers are paying prices higher than the PTC.[140] However, in the RMI Final Order, the Commission concluded that "measuring and determining the benefits of shopping requires more than just comparing a supplier to the PTC at one point in time."[141] If the delta between the PTC and supplier prices does not conclusively establish that PCAP shopping customers are paying more in total, then PCAP shopping customers paying higher generation prices, on average, than PCAP default service customers, does not, in and of itself, constitute substantial evidence warranting the adoption of a CAP shopping price ceiling as proposed by the advocate parties.

The Commission's Order on PPL's CAP SOP is also not directly relevant to this proceeding. The Commission ultimately approved PPL's CAP SOP after it was agreed to by a number of parties, including PPL, and supported through significant testimony. By contrast,

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[139] *See* Met-Ed/Penelec/Penn Power/West Penn Statement No. 1-R, p. 30.
[140] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1-R, p. 28.
[141] RMI Final Order, pp. 61-62.

parties to the Companies' DSP V proceeding have, for the most part, rejected a CAP SOP and advocated instead in favor of a CAP shopping price ceiling.[142] Therefore, prior Commission precedent approving a CAP SOP has no bearing on this proceeding where the record evidence does not support such a program.

Recent precedent related to the reasonableness of CAP shopping limitations remains unresolved and is distinguishable in multiple important respects from this proceeding. The Commonwealth Court has yet to approve a CAP shopping limitation that would severely limit or eliminate competitive options for CAP customers as the proposed price ceiling would for the Companies' PCAP customers. Similarly, PPL's CAP SOP is fundamentally different from the CAP shopping restrictions proposed in this proceeding, and the Commission's decision related to PPL's program is not directly applicable. While Commission and Commonwealth Court precedent remains unsettled regarding the reasonableness and scope of CAP shopping limitations, the Companies support allowing their CAP customers to continue to shop for electricity with their supplier of choice to avoid running afoul of the Competition Act.

In recognition of the recent trend in favor of CAP shopping restrictions, however, the Companies also will acknowledge the parameters that should apply if the Commission ultimately decides to limit PCAP shopping. The Companies do not believe they can or should be in the role of policing customer shopping.[143] While the Companies agree that they have a responsibility to promote cost-effective universal service programs,[144] the Companies have no control over a shopping customers' rates or terms of service. Suppliers opting to charge CAP customers more than the PTC is a supplier issue, not a Company one. As a result, if the Commission ultimately

[142] OCA Statement No. 2-R, p. 14; CAUSE-PA Statement No. 1-R, p. 3; I&E Statement No. 1-SR, p. 23.
[143] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1-R, pp. 30-31.
[144] 66 Pa.C.S. § 2804(9).

agrees to adopt a price ceiling or other CAP shopping restrictions in this proceeding, the onus should be on suppliers and not the Companies to ensure compliance with these restrictions.[145] In order to implement a price ceiling, it should be the supplier's obligation to respond to a CAP participation flag on the eligible customer list by agreeing to the percentage-off rate ready billing model, which would allow the Companies to adjust the supplier's price by the required price ceiling amount for CAP customers.[146] Although the Companies believe their system can automatically reject suppliers' attempts to enroll CAP customers under a different billing model, the Companies should not be put in the position of auditing all CAP customer accounts to ensure compliant supplier behavior.[147] Similarly, if the Commission orders that suppliers of CAP shopping customers may not charge early contract termination fees, only suppliers would be in a position to confirm whether they are meeting this requirement.[148] If a supplier is found to be ignoring the established CAP shopping restrictions, it is the supplier rather than the Companies who should be held responsible in any subsequent enforcement actions. Moreover, any costs that must be incurred by the Companies related to these limitations, such as modifications to the eligible customer list or notifications to the PCAP customer base, should be recoverable through the Companies' PTC Riders.[149]

The Companies oppose the adoption of a CAP SOP for similar reasons. Preliminarily, the record of this proceeding includes little, if any, support for a CAP SOP similar to PPL's and should be rejected based on lack of evidentiary support alone.[150] In addition, the Companies would oppose a CAP SOP due to the high level of complexity and Company involvement in its

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[145] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1-R, p. 33.
[146] *Id.* at 31.
[147] *Id.*
[148] *Id.* at 32.
[149] *Id.* at 33.
[150] OCA Statement No. 2-R, p. 14; CAUSE-PA Statement No. 1-R, p. 3; I&E Statement No. 1-SR, p. 23.

implementation.[151] The Companies should not be required to develop and manage another program to ensure suppliers are only charging CAP customers prices at or below the PTC. To the extent the Commission approves CAP shopping limitations, the Companies urge the Commission to structure those limitations in a manner that places the bulk of the implementation burden on suppliers rather than the Companies.

The Competition Act clearly intends for all Pennsylvania electric utility customers to be able to shop for electricity. Infringing on a customer's ability to shop for electricity in Pennsylvania's retail electricity market should only occur under exceptional circumstances and in a manner that ensures the Competition Act is not violated. As proposed by CAUSE-PA, OCA, and I&E, a CAP shopping price ceiling would severely limit a CAP customer's choice of suppliers and could ultimately eliminate CAP shopping altogether. Recent precedent from the Commonwealth Court and Commission imposing CAP shopping limitations remains unsettled and is not directly applicable to this proceeding. To ensure adherence with the Competition Act, the Commission should reject the adoption of a CAP shopping price ceiling and any other CAP shopping restrictions that would severely limit or eliminate CAP customers' shopping options. In the alternative, if the Commission finds that a CAP shopping price ceiling is warranted, the Commission should impose the majority of implementation requirements on suppliers as opposed to the Companies.

IX. NON-MARKET BASED CHARGES

A. Allocation of High Voltage Transmission Charges/Credits

In their DSPs, the Companies proposed to include any FERC-approved reallocation of PJM

[151] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1-SR, p. 8.

RTEP charges related to the settlement filed with the FERC at Docket No. EL05-121-009[152] ("FERC Settlement") as a NMB charge.[153] The NMB charges are paid by the Companies on behalf of all customers and recovered from all customers through the DSS Rider in each of the Companies respective tariffs.[154]

RESA was the only party in the proceeding who raised a concern regarding the Companies' proposal.[155] Specifically, RESA was concerned that under the Companies' proposal the EGSs would not receive their proportional share of any credits that arise from any FERC-approved settlement.[156] Therefore, RESA recommended that the Commission order the Companies to hold a technical session with EGSs, Commission staff, and other stakeholders to present the cost impacts under any FERC-approved settlement at Docket No. EL05-121-009 before deciding how those costs will be treated.[157]

The Companies and RESA were able to reach a Stipulation regarding this issue.[158] The Companies and RESA agreed that the Companies' proposal related to the distribution and recovery of FERC 494 Settlement allocations will be considered uncontested in this matter, which position was either affirmatively agreed to by all parties or not opposed.[159] The Company will provide further support for the Stipulation in the pending Joint Petition for Partial Settlement.[160]

B. Network Integration Transmission Service Costs

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[152] On June 25, 2014, the Court of Appeals for the Seventh Circuit remanded the FERC's prior determination regarding the cost allocation methodology for certain transmission facilities that operate at 500 kV and above within the PJM footprint back to FERC. Most of the parties in the remand proceeding negotiated a settlement to change the allocation methodology for these projects on a going-forward basis, effective January 1, 2016. Most of the parties in the remand proceeding also negotiated an adjustment to reallocate the charges associated with these projects prior to January 1, 2016. FERC has not yet approved the Settlement. *PJM Interconnection, L.L.C.* at Docket No. EL05-121-009.
[153] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 6.
[154] *Id.*.
[155] RESA Statement No.1, pp. 31-42.
[156] RESA Statement No.1, pp. 41-42.
[157] RESA Statement No.1, p. 42.
[158] *See* Joint Stipulation No. 1, p. 2.
[159] April 10, 2018 H.T. at 346.
[160] The Joint Petition for Partial Settlement will be filed on May 15, 2018.

Even though the Commission has a long-standing policy to exclude NITS[161] from NMB charges,[162] ExGen once again recommended in this proceeding that the Commission reverse its policy and include NITS as an NMB charge.[163] In support of that position, ExGen provided the following two reasons as to why the Commission should reverse its policy: 1) treatment of NITS as NMB charges will eliminate the need for wholesale default service supply bidders to add a risk premium for any perceived NITS-related risk when formulating their bids; and 2) if the Companies were to include NITS charges within their bucket of NMB charges for certain protected customer classes, EGSs may be able to offer more attractive long-term products to those customers.[164] ExGen requested that this treatment be extended to the residential rate class in its entirety, and for those commercial and industrial customers taking default service.[165] As an alternative, ExGen recommended that NITS charges become the responsibility of the Companies for all customers as an NMB charge, with the ability of industrial class customers to "opt out" of this treatment in a fashion similar to a pilot recently implemented by the Companies' affiliates in Ohio.[166] The only party to this proceeding who supported ExGen's recommendation was RESA,[167] while numerous others opposed it in rebuttal, and rejoinder testimony, including Calpine, Penn State, the Industrials, and the Companies.[168] Notwithstanding this disagreement in position, the parties were

[161] NITS charges are NMB Charges assessed by PJM, consisting of the PJM billing line items for the following transmission related services: (i) 1100 and 2100: Network Integration Transmission Service; (ii) 1101 and 2101: Low-Voltage Network Integration Transmission Service; (iii) 1102 and 2102: Network Integration Transmission Service (exempt); (iv) 1104 and 2104: Network Integration Transmission Service Offset; and (v) 1106 and 2106: Non-Zone Network Integration Transmission Service. ExGen Statement No. 1, p. 7.
[162] *See* DSP II Proceeding; Docket Nos. P-2013-2391368 (Met-Ed), P-2013-2391372 (Penelec), P-2013-2391375 (Penn Power), and P-2013-2391378 (West Penn) (collectively, the "DSP III Proceeding"); Docket Nos. P-2015-2511333 (Met-Ed), P-2015-2511351 (Penelec), P-2015-2511355 (Penn Power), and P-2015-2511356 (West Penn) (collectively, the "DSP IV Proceeding").
[163] ExGen Statement No. 1, p. 9.
[164] ExGen Statement No. 1, pp. 9-10.
[165] ExGen Statement No. 1, p. 9.
[166] ExGen Statement No. 1, p. 11.
[167] RESA Statement No. 1-R, p. 34.
[168] Calpine Statement No. 1-R, pp. 4-8; PSU Statement No. 1-R, pp. 5-12; MEIUG, PICA, WPPII Statement No. 1, pp. 3-12; Met-Ed/Penelec/Penn Power/West Penn Statement No. 4-R, pp. 16-17; Met-Ed/Penelec/Penn Power/West

able to reach a complete resolution of this issue. As a result, NITS will remain the responsibility of the Companies' DS suppliers and EGSs serving the Companies' customers, as applicable. That is, the responsibility for NITS will continue to be as it stands today. The Companies will provide further support for this term as part of the Joint Petition for Partial Settlement at the time the Companies submit their reply brief.

C. Non-Bypassable Non-Market Based Charges

Calpine believes that the Companies should not collect any NMB charges through the Companies' DSS Riders.[169] Calpine Witness, Becky Merola, made a two-sentence recommendation in rebuttal testimony, requesting that the Commission change a long-standing practice, which has been approved and in place since June 1, 2013, by shifting the responsibility for the non-bypassable collection of NMB charges from the Companies to EGSs and LSEs.[170] Calpine's recommendation must be rejected.

Certain NMB charges have already been approved by the Commission to be collected through the Companies' DSS Riders since June 1, 2013. The Companies provided the following chart in the surrebuttal testimony of Mr. Siedt, which represents a listing of the NMB costs that were approved for recovery through the Companies' DSS Riders and have been included in each of the Company's respective tariffs.[171]

Default Service Case No.	Docket No.	Effective Date of NMB Treatment	NMB Costs Approved for Future Collection Through the Companies' DSS Riders
DSP II	P-2011-2273650 P-2011-2273668 P-2011-2273669 P-2011-2273670	June 1, 2013 – May 31, 2015	PJM Interconnection, LLC ("PJM") Regional Transmission Expansion Plan, PJM Expansion Cost Recovery, and other Federal Energy Regulatory Commission-approved PJM transmission charges not included in the

Penn Statement No. 2-R, pp. 5-7; Met-Ed/Penelec/Penn Power/West Penn Statement 3-R, pp. 2-4; and April 10, 2018 H.T. pp. 327-331.

[169] Calpine Statement No. 1-R, p. 8.

[170] *Id.*

[171] Met-Ed/Penelec/Penn Power/West Penn Statement No. 4-SR, pp. 6-7.

			Companies' Price to Compare Default Service or Hourly Pricing Default Service Riders
DSP III	P-2013-2391368 P-2013-2391372 P-2013-2391375 P-2013-2391378	June 1, 2015 – May 31, 2017	Addition of PJM charges for Reliability Must Run generating unit declarations and charges associated with plants deactivated after June 24, 2014; historical tie line, generation, and retail customer meter adjustments; unaccounted for Energy

Furthermore, Mr. Siedt also explained in his surrebuttal testimony that NMB charges should be collected in the Companies' DSS Riders because it ensures a level playing field for default service and competitive service offered by EGSs. Specifically, Mr. Siedt testified that, "NMB charges are embedded, cost-of-service rates that are imposed on the basis of an electric distribution company's total native load, regardless of the source of the generation used to serve that load."[172] Recovery through the Companies' DSS Riders allows recovery of these costs on a competitively neutral basis from all shopping and non-shopping customers."[173] Calpine failed to provide any evidentiary support whatsoever as to why this change should be implemented. Therefore, this recommendation should be rejected.

X. TIME-OF-USE RATES

The Companies currently offer optional time-of-use ("TOU") pricing rates through their Rider K, Residential TOU Default Service Riders, which have no expiration date. The Companies propose to continue these Riders without modification under their Programs.[174] Only two parties in this proceeding (OCA and OSBA) raised concerns regarding the Companies' TOU programs.

OCA asserted that the Companies contracting with EGSs in order to provide TOU default

[172] Met-Ed/Penelec/Penn Power/West Penn Statement No. 4-SR, p. 7.
[173] Met-Ed/Penelec/Penn Power/West Penn Statement No. 4-SR, pp. 7-8.
[174] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1, pp. 27-28.

service is inconsistent with the Commonwealth Court's recent order in *DCIDA*.[175] OCA recommended that the Commission require the Companies to file revised TOU design plans no later than two months after the Commission's order for this case has been issued in order to resolve that concern.[176] Meanwhile, the OSBA questioned whether the Companies are in compliance with Act 129's requirement to provide TOU pricing or real time pricing ("RTP") to all customers, claiming that commercial customers must be offered both TOU rates *and* (as compared to *or*) RTP options. The OSBA also recommended that the Companies be required to file a revised TOU plan by December 31, 2018, addressing these issues.[177] The Companies rejected each of these arguments raised by the OCA and the OSBA within their rebuttal testimony.

Notwithstanding this disagreement in position, the Companies, the OCA, and the OSBA were able to reach a Joint Stipulation regarding this issue. Specifically, the stipulation states that "the Companies are currently providing residential TOU service under the terms and conditions of the Companies' PTC Riders as described in each Company's Rider K, Time-Of-Use Default Service Rider. The Companies will make a specific proposal regarding their residential time of use rate offerings in the earlier of their first base rate increase requests or default service proceedings following full implementation of smart meter back office functionality, which is planned for fourth quarter 2019 as of the date of this Stipulation."[178] The Companies will provide further support for the Joint Stipulation in the pending Joint Petition for Partial Settlement.

Net Metering

The Companies did not propose any changes in their DSPs regarding how net metering

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[175] *Dauphin County Indus. Dev. Auth. vs. Pa. Pub. Util. Comm'n*, 123 A.3d 1124 (Pa. Commw. Ct. 2015) ("*DCIDA*"); OCA Statement No. 1, p. 19.
[176] OCA Statement No. 1, p. 19.
[177] OSBA Statement No. 1, p. 18.
[178] Joint Stipulation No. 1, pp. 2-3.

customers are to be compensated for excess energy. Almost all of the Companies' net metering customers are compensated for excess energy at the average PTC for the applicable net metering period (June 1 to May 31 of each year (the "net metering year")).[179] Throughout the net metering year, any excess energy is banked to offset the customer's load in the next month.[180] As of May 31 each year, the banked kilowatt hour ("kWh") balance is then paid out to the customer at the average PTC for the same period.[181] If a net metering customer has elected Rider K,[182] then separate on-peak and off-peak banks are established during the net metering year, with the on-peak and off-peak banks paid based on the on-peak and off-peak weighted average PTC[183] in effect for the net metering year.[184]

For the Companies' customers (approximately forty) that net their generation with usage based on RTP, the same analysis is performed using a dollar bank process as compared to a kWh bank.[185] In each hour, the generation less the usage will be multiplied by the applicable LMP to arrive at a dollar value for that hour.[186] At the end of the month, all of the hours' dollar values will be summed to arrive at a net dollar bank for the month.[187] This net dollar bank will in turn be rolled into the next billing month.[188] The same process will be performed for each month, with the dollar bank carried over used to offset the dollar value calculation for the current month.[189] At the end of the net metering year, the Companies will pay the customer the value of their dollar

[179] Met-Ed/Penelec/Penn Power/West Penn Statement No. 4-R, pp. 11-12.
[180] *Id.*
[181] *Id.*
[182] Only one net metered customer across the four Companies is currently enrolled on Rider K. *Id.*
[183] The on- and off-peak weighted average PTC is calculated by multiplying the PTC by the applicable on- and off-peak factors found in Rider K for each of the Companies. *Id.*
[184] *Id.*
[185] *Id.*
[186] *Id.*
[187] *Id.*
[188] *Id.*
[189] *Id.*

bank balance peak and off-peak weighted average PTC[190] in effect for the net metering year.[191]

OSBA raised concerns over whether the Companies are cashing out excess energy related to net metering properly.[192] However, the Commission does not need to address this issue, because the Companies and the OSBA entered into a Joint Stipulation on this subject.[193] Specifically, OSBA and the Companies agreed that "concerns related to net metering will not be addressed in this proceeding."[194] The Companies will further address why this Joint Stipulation is in the public interest in its Joint Petition for Partial Settlement.

XI. CONCLUSION

For the reasons set forth above, the Commission should approve the Companies' DSPs to become effective on June 1, 2019 and to extend through May 31, 2023. In addition, the Commission should: (1) make the findings required by 66 Pa.C.S § 2807(e)(3.7); (2) grant the affiliated interest approvals requested herein; and (3) grant such other approvals as may be needed to fully implement the DSPs and other proposals set forth therein.

Date: May 2, 2018

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[190] *Id.*
[191] *Id.*
[192] OSBA Statement No. 1, pp. 19-21.
[193] Joint Stipulation No. 1, p. 2.
[194] *Id.*