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May 15, 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 Reply 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

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.***

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

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Dated: May 15, 2018

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

I. INTRODUCTION

On May 1, 2018, Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power"), and West Penn Power Company ("West Penn") (hereinafter individually a "Company" and collectively "Companies") filed their Main Brief at the Pennsylvania Public Utility Commission ("Commission") in the above-referenced proceeding related to approval of their default service programs ("DSPs") for the period June 1, 2019 through May 31, 2023 ("DSP V"). The Companies also received main briefs from the following parties: 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"); Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, and West Penn Power Industrial Intervenors (collectively, the "Industrials"); NextEra Energy Marketing, LLC ("NextEra"); Pennsylvania State University ("Penn State"); Respond Power, LLC ("Respond"); and the Retail

Energy Supply Association ("RESA").[1]

Consistent with the Prehearing Order issued by Administrative Law Judge ("ALJ") May D. Long on January 19, 2018, reply briefs and any joint petitions for settlement are due on May 15, 2018. In addition to this Reply Brief, the Companies are filing a Joint Petition for Partial Settlement that addresses non-commodity products, Federal Energy Regulatory Commission ("FERC") 494 settlement allocations, net metering, time-of-use offerings, and network integration transmission service ("NITS") charges ("Joint Petition for Settlement" or "Settlement"). Accordingly, the Companies' Reply Brief both responds to all issues that remain in dispute as well as provides support for the Joint Petition for Settlement.

II. PROCEDURAL HISTORY

The Companies incorporate by reference the procedural history outlined in Section II of their Main Brief.[2]

III. DEFAULT SERVICE PLAN PORTFOLIO AND TERM

The Companies outlined their proposals regarding their default service plan portfolio and term in detail within their Main Brief.[3] The Companies incorporate those portions of their Main Brief herein by reference, and specifically address topics disputed by the parties within main briefs in the sections to follow.

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[1] Each of the following parties submitted letters indicating they were not filing Main Briefs: Calpine Energy Solutions, LLC ("Calpine"); Constellation NewEnergy, Inc. and Exelon Generation Company, LLC (collectively, "ExGen"); and Direct Energy Services, LLC ("Direct").
[2] Companies Main Brief ("M.B."), pp. 2-3.
[3] Companies M.B., pp. 3-23.

A. Residential Portfolio

1. Summary and Overview

In their Main Brief, the Companies described their proposed default service procurement and implementation plans for the residential default service customers and explained that those plans provide a "prudent mix" of contracts that will achieve the "least cost over time" for customers in accordance with 66 Pa.C.S. §2807(e)(3.7).[4] Specifically, the Companies propose to procure default service supply through twelve and twenty-four-month full requirements contracts with a 95% fixed-price portion established through the Companies' competitive procurements and a 5% variable-price portion priced at the hourly PJM Interconnection, LLC ("PJM") real-time zonal locational marginal pricing.[5] There is substantial agreement among the parties regarding the Companies' proposal to use primarily full requirements contracts to procure the residential default service supply. In addition, many parties either agreed generally with the Companies' plans or took no position in their main briefs.[6] However, the OCA disagreed with one aspect of the Companies' procurement plan for the residential customers and proposed a modification.[7]

In particular, the OCA opposed the "hard stop" of the supply contracts designed to take place on May 31, 2023, on the basis that residential customers may be exposed to potential increases on June 1, 2023 (the start of Companies' next default service plan).[8] Instead, the OCA recommended that sixteen of the forty-six twelve-month contracts proposed in the Companies'

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[4] Companies M.B., pp. 11-13 and 22-23.
[5] *Id.*
[6] In RESA's Main Brief, RESA stated that while it remained concerned with the Companies' proposal, it is not advancing an alternative procurement plan. *See* RESA M.B., p. 5.
[7] OCA M.B., pp. 10-12.
[8] *Id.*

procurement plans be converted to two-year contracts.[9] The OCA's proposal would allow these two-year contracts to extend beyond the May 31, 2023 term end-date proposed by the Companies.[10]

As explained in the Companies' Main Brief, their proposed residential procurement plan already provides for significant temporal diversity, making the OCA's recommendation of laddering of contracts is unnecessary.[11] The arguments against the Companies' approach advanced in the Main Brief of the OCA should be rejected for the reasons set forth below, and for those reasons outlined in the Companies' Main Brief.

In the OCA's Main Brief, OCA relies heavily on the argument that PPL Electric Utilities Corporation ("PPL") and PECO Energy Company ("PECO") have incorporated overhanging contracts into their procurement portfolios in order to avoid the "hard stop" concern raised by OCA's witness Dr. Estomin.[12] However, the OCA fails to recognize that as part of the Commission's *Investigation of Pennsylvania's Retail Electricity Market* ("RMI"), the Commission specifically recommended that electric distribution companies ("EDCs") file DSPs limiting or eliminating the existence of short-term energy contracts extending past the end date of the upcoming DSP duration.[13] Although the Commission recognized that some EDCs (including PECO and PPL) may want to propose delivery periods that extend beyond the end date of their next DSP under a laddered approach, there are also some EDCs that are able to eliminate the laddering of contracts without exposing customers to rate shock by spreading out purchases over time prior to the "hard

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[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] OCA M.B., pp. 10-12.
[13] *Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952 (Final Order entered on December 16, 2011), pp. 20-21.

stop".[14] As explained in their Main Brief, the Companies' proposed procurement plan spreads the residential customer class procurements over auctions scheduled at different points during the DSP V term, which in turn balances any commodity price changes in the power markets over time.[15]

Furthermore, the Commission has supported the Companies' use of "hard stops" since DSP II.[16] While the OCA asserts that the Commission's DSP II Order did not close the door to laddering contracts, the Commission very clearly articulated that it did not believe laddering was needed under the Companies' DSPs when it stated "we believe our decision that the Companies utilize shorter, more frequent procurements should ensure a smoother transition into the next procurement period without requiring that procurements extend beyond May 2015," i.e., the end of the applicable delivery period for that DSP.[17]

While the OCA goes on in its Main Brief to provide two methods by which its recommendation could be implemented,[18] the fact of the matter is that the OCA's recommendation is unnecessary, as the Companies' procurement plan already provides for significant temporal diversity and is consistent with the Commission's recommendations on this topic.

B. Commercial Portfolio

No party has opposed the Companies' commercial portfolio as proposed in their initial

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[14] *Id.*
[15] Companies M.B., pp. 11-13.
[16] *See* Met-Ed/Penelec/Penn Power/West Penn Statement No. 2-R, pp. 3-4; *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.* (Opinion and Order dated Aug. 16, 2012) ("DSP II Order"); 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").
[17] DSP II Order, pp. 2-27.
[18] OCA M.B., p. 13.

filing or as outlined in the Companies' Main Brief.[19]

C. Industrial Portfolio

No party has opposed the Companies' industrial portfolio as proposed in their initial filing or as outlined in the Companies' Main Brief.[20]

D. Procurement Classes

In its Main Brief, RESA agreed with the Companies' proposal to offer hourly pricing service ("HPS") to commercial customers at or above 100 kilowatts ("kW") beginning June 1, 2019, but recommended that the Companies use the method already existing in their tariffs to apply the HPS threshold (a customer whose billing demand is equal to or greater than 100 kW for two consecutive months during the twelve-month review period) instead of using the proposal filed in this case.[21] However, RESA failed to provide any support for its recommendation.[22] Meanwhile, the Companies provided numerous reasons why RESA's recommendation should not be approved in their Main Brief, which arguments are incorporated herein by reference.[23]

The only other party that opposed the Companies' HPS threshold proposal in briefing is Penn State.[24] Penn State agreed with RESA in its Main Brief, arguing that the Companies should use the method already existing in the Companies' tariffs to apply the HPS threshold.[25] Specifically, Penn State argued in its Main Brief that the Companies failed to meet their burden of

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[19] Companies M.B., p. 13.
[20] Companies M.B., p. 14.
[21] RESA M.B., pp. 5-6; 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 applicable price to compare. Otherwise, the commercial customer will receive default service under hourly pricing. *See* Companies M.B., pp. 16-17.
[22] *Id.*
[23] Companies M.B., pp. 16-19.
[24] Penn State M.B., pp. 3-4.
[25] *Id.*

proof in explaining why the Companies' proposal should be accepted by the Commission.[26] Interestingly, Penn State did not submit its own direct or rebuttal testimony disputing the Companies' proposal in this case. Instead, Penn State waited until surrebuttal testimony to support RESA's position on this issue.[27] Meanwhile, the Companies submitted very detailed rebuttal and surrebuttal testimony explaining why RESA's recommendation should be rejected and the Companies' HPS threshold proposal should be approved by the Commission.[28] In light of these facts, it is simply disingenuous of Penn State to argue that the Companies have failed to meet their burden of proof. RESA's proposed HPS threshold will push unsophisticated commercial customers that do not have the resources to devote to shopping for their generation supply or to manage hourly pricing onto hourly pricing.[29] As the OSBA noted in its Main Brief, the Companies have offered compelling reasons why RESA's HPS threshold should be rejected,[30] while RESA and Penn State have failed to provide any customer impact analysis supporting RESA's proposal; therefore, the Companies' less restrictive criteria should be approved by the Commission.[31]

E. Default Service Plan Term

In its Main Brief, the OSBA recommends that the Companies complete an analysis following procurement of the second round of twelve and twenty-four-month contracts have been finalized, to determine whether risk premiums associated with the three-month products for the commercial class continue to rise.[32] If the risk premiums are continuing to rise at that time, then

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[26] *Id.*
[27] PSU Statement No. 1-SR, p. 7.
[28] Met-Ed/Penelec/Penn Power/West Penn Statement No. 4-R, pp. 13-16; Met-Ed/Penelec/Penn Power/West Penn Statement No. 4-SR, pp. 1-6.
[29] Met-Ed/Penelec/Penn Power/West Penn Statement No. 4-R, p. 15.
[30] OSBA M.B., p. 7.
[31] OSBA M.B., pp. 7-8.
[32] OSBA M.B., pp. 4-5.

the OSBA recommends that a stakeholder session be held to address the risk premiums.[33] RESA, which supported the OSBA's proposal for a mid-point review in its testimony, remained silent in its Main Brief with regards to any concerns on this topic.[34] Specifically, in addressing the Companies' default service plan term, RESA states in its Main Brief, "FirstEnergy has proposed a four-year plan term for DSP V and RESA does not oppose this plan duration."[35]

In their Main Brief, the Companies thoroughly addressed their concerns with the OSBA's recommendation.[36] While the OSBA recognizes that the Companies' concerns have merit, the OSBA still does not believe that those factors outweigh the OSBA's own concerns relating to the impact of possible increases to the risk premiums associated with commercial class procurements.[37] However, as the Companies have already described in their Main Brief, the OSBA's recommendation is unnecessary because the Companies' proposed procurement plan spreads the commercial customer class procurements over auctions scheduled at eighteen different points during the DSP V term, thereby balancing any risk premiums which may exist associated with commercial class procurements.[38] Specifically, Dr. Reitzes testified:

> In addition, by holding eighteen different procurements throughout the four-year term, the existing plan offers "temporal diversity" that potentially smooths out any cyclical movements in risk premiums.
> Moreover, 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. As Witness Knecht observes, "[t]he use of FRLF contracts is a well established practice in Pennsylvania, and should generally be continued absent strong evidence to the contrary."[39]

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[33] *Id.*
[34] RESA M.B., p. 6.
[35] *Id.*
[36] Companies M.B., pp. 20-22.
[37] *See* OSBA M.B., p. 5.
[38] Companies M.B., pp. 20-22.
[39] Met-Ed/Penelec/Penn Power/West Penn Statement No. 3-R, p. 5.

Furthermore, the OSBA's own recommendation may cause the exact impact it is looking to avoid, in the form of increased risk premiums. Specifically, Dr. Reitzes testified:

> I think there are legitimate concerns involved in modifying the default service plan midstream. 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 increase the time and expense needed to prepare a bid. This could reduce supplier participation and induce increased prices for default service supplies, particularly with respect to the October/November 2020 and January 2021 auctions (that procure default service supplies for delivery beginning in mid-2021).[40]

Finally, the OSBA completely ignores the fact that the Companies' proposed portfolio of products for its commercial class is designed in response to the Commission's recommendations coming out of RMI which suggested that EDCs incorporate three-month products into their portfolios in order to provide market-reflective pricing.[41]

For the reasons stated above and in the Companies' Main Brief, the Commission should reject the OSBA's recommendation for a mid-point review. Should the OSBA's fear of high risk premiums come to fruition, there are existing methods by which to address this concern within the Companies' procurement process itself.[42] Therefore, the OSBA's recommendation of a mid-point review including a stakeholder session is unnecessary.

IV. PURCHASE OF RECEIVABLES CLAWBACK PROVISION

As explained within the Companies' Main Brief, a resolution of the issues raised in testimony pertaining to the Companies' proposed continuance of their purchase of receivables ("POR") clawback mechanism[43] was memorialized in a Joint Stipulation which was entered into

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[40] *Id.*
[41] RMI Final Order, pp. 41-43.
[42] *Id.*
[43] Those parties which responded to the Companies' proposed continuation of the POR clawback mechanism in direct testimony included RESA (RESA St. 1, pp. 13-17), Respond (Respond Power St. 1, pp. 3-17) and I&E (I&E Statement

the record at hearing on April 10, 2018.[44] The Clawback Stipulation provides that:

> 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.[45]

In main briefs, parties to this issue acknowledged resolution of all issues related to the Companies' proposed continuation of the POR clawback mechanism with two exceptions. First, while the OCA noted its non-opposition to the first two paragraphs of the Clawback Stipulation, it does take issue with the provision of customer information under paragraph 3 of the Clawback Stipulation.[46] Also, CAUSE briefed its opposition to the recommendation raised by each of RESA and Respond relating to the introduction of electric generation supplier ("EGS") credit screening of customers prior to extending shopping offers.[47]

No. 1, pp. 10-16). The OCA and CAUSE addressed this responsive testimony in their rebuttal testimony (OCA Statement No. 2R, pp. 8-13; CAUSE Statement No. 1-R, pp. 18-20).

[44] Joint Stipulation No. 2 (the "Clawback Stipulation").

[45] *Id.*

[46] OCA M.B., pp. 15-16.

[47] CAUSE M.B., pp. 7-8.

Like CAUSE, the Companies have traditionally opposed the introduction of credit screening prior to EGSs extending offers for service to new customers – a position that the Companies continued to take in this proceeding.[48] However, it is the Companies' understanding and expectation that the Clawback Stipulation was intended by all parties to it to resolve all issues related to the Companies' proposed continuation of the POR clawback mechanism (with exception of the reporting concern raised by the OCA), thereby eliminating the issue of credit screening as a recommendation that was no longer being advanced by RESA or Respond. As such, the Companies do not believe that ALJ Long or the Commission need address credit screening in this proceeding.

With respect to the OCA's opposition to paragraph 3 of the Clawback Stipulation, the OCA takes the position in its Main Brief that the Companies would be violating customer privacy restrictions by producing the contemplated reports, citing portions of the Commission's regulations and the Public Utility Code which require customer consent to be obtained prior to the release of such information.[49] What the OCA ignores is that by virtue of signing up with the EGS with whom this information would be shared – about one of its own active customers – the customer is presumed, and indeed, expected, to have authorized a release of its information. The OCA, acknowledging this point, asserts that because EGSs have sold their receivables to the Companies in these instances, the responsibility for collection of these dollars should continue to remain with the EDC, and implies that its concern centers around witness Alexander's expectation that EGSs will undertake their own collection efforts.[50] What this ignores is the fact that no party has suggested that the need for this information is in order to arm the affected EGS with the

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[48] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1-R, p. 18.
[49] OCA M.B., p. 15.
[50] OCA M.B., pp. 15-16, citing the testimony of OCA witness Alexander.

information necessary to begin collection efforts on its own behalf. To the contrary, the Companies have never established, nor voiced an intent to establish, a protocol by which the EGS would initiate its own collection efforts and submit payment to the Companies. However, what has been discussed is the fact that such information will give EGSs the insight necessary to understand whether they may need to revise pricing offers to some customers, decline to renew contracts for particular customers when the time comes, or discontinue service to customers which expose the affected EGS to undue risk, returning the customer to default service. It is also worth noting that the Clawback Stipulation specifically contemplates a report of "EGS-specific customer arrears." The OCA has raised concerns not only with the report of arrears being provided on a per-customer basis, but also with information such as "allocations of partial payments between the EDC and the EGS, payment arrangement terms, receipt of financial assistance, etc."[51] It is unclear why the OCA is raising those items as a concern, as they are not components contemplated to be included in the report based on the plain language of the Clawback Stipulation.

Conversely, the Clawback Stipulation is in the public interest due to the fact that it allows for the continued piloting of a program which, albeit immature, is demonstrating early results which demonstrate its effectiveness.[52] Absent approval of the Clawback Stipulation, the parties would be forced to litigate this issue, which would cause further delay to the Companies' ability to offset not only their own losses, but also those uncollectibles which get flowed back to their customers. Not only does the POR clawback mechanism drive a positive benefit to ratepayers in this regard, but it helps to ensure the continued sustainability of the Companies' POR programs by providing protections against escalating and unchecked shopping uncollectibles – a collective

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[51] OCA M.B. at 16.
[52] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1-R, pp. 14-15.

benefit for the electric retail market as a whole. With the addition of the reporting commitment made by the Companies, EGSs will in turn be availed of a valuable opportunity to more effectively manage their own write off balances and risk, as well as understand the activity of their customers better. Should the issue move forward with litigation, it is very possible, if not likely, that in order to address the concern that led to the establishment of the POR clawback mechanism, the existing pilot could be replaced with an across the board discount to the Companies' POR programs. A discounted POR program would lead to the subsidization of the impacts of some EGSs' behaviors by other EGSs, without regard for actual responsibility – thereby eliminating any incentive for EGSs to ensure they are "good actors" across the Companies' systems when making pricing decisions. Surely it cannot be found that a mechanism which not only recoups the losses incurred by the Companies and ratepayers, as well as drives self-regulation of the generation market in a way that directly correlates to cost-causation, is not in the public interest. For all of these reasons, the terms of the Clawback Stipulation should be adopted, and the concerns raised by the OCA and CAUSE should be rejected.

V. BYPASSABLE RETAIL MARKET ENHANCEMENT RATE MECHANISM

Of all parties filing main briefs filed at this docket, the only supporters of the Companies' bypassable retail market enhancement rate mechanism ("PTC Adder") was RESA, with some recommended modifications.[53] The Companies have outlined in their Main Brief why they do not agree with the modifications proposed by RESA and incorporate those arguments by reference here.[54] The Companies also directly defended their proposal of the PTC adder in the first instance

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[53] Parties opposing the PTC Adder include the Industrial Intervenors, OCA, CAUSE, NextEra, I&E and the OSBA. Penn State and Respond did not take a position with regard to the PTC Adder.
[54] Companies M.B., pp. 28-29.

within their Main Brief, both from a standpoint of why it was proposed as well as the proposed calculation and mechanics of the proposed charge. Those arguments are similarly incorporated by reference here.[55] The bottom line is that the Companies' proposal was put forward as an attempt to address concerns repeatedly raised by retail market participants regarding the need to better incentivize retail shopping for residential customers, and in an effort to support the goals identified by the Commission through the RMI – not because the proposal creates any value for the Companies themselves. While it is clear that the parties fundamentally disagree on a number of issues relating to this proposal, the Companies believe that those issues implicate policy guidance and legal interpretations that are best answered by the Commission, and as such, they look forward to the Commission's determination on this topic.

VI. NON-COMMODITY BILLING

The Joint Petition for Settlement filed on May 15, 2018 includes a term intended to resolve, for purposes of the instant proceeding, the issues and concerns raised at the above-referenced docket relating to the provision of non-commodity, or non-basic, products and services. Specifically, the Joint Petition 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."[56] Despite this provision, several parties, including the OCA and CAUSE, defend their position on these issues to some degree in their main briefs.[57] As noted in the Companies' Main Brief, it is the Companies' understanding and expectation that this provision was intended by all parties to "table" all issues related to the provision and billing of non-commodity products and services such that all issues

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[55] *Id.*
[56] Joint Petition for Partial Settlement.
[57] The OCA is an active signatory to and CAUSE has indicated its non-opposition to the Settlement.

raised by the parties in testimony regarding those topics would be considered in the Commission's proceeding at the above-referenced M-docket. As such, the Companies do not believe that ALJ Long or the Commission need address those topics directly in this proceeding and instead need only address the issue of whether the agreement reached by the parties is in the public interest.

The resolution reached on this topic is in the public interest for several reasons. Apart from the Commission's stated preference that parties reach resolution of issues through settlements as compared to litigation, the very set of issues deferred to the referenced generic docket are appropriately deferred for review in that docket because they have already been cited, by a Secretarial Letter issued midway through the instant proceeding, as included in the panoply of topics to be considered by the Commission at that docket.[58] To consider these topics – which impact the larger electric industry and market as a whole – on a limited basis through the Companies' individual default service proceedings would lead to an exclusion of key stakeholders from the discussion on these important topics, raising due process concerns and risking a limited fact base from which a determination would be made. Further, to address these issues within the context of this proceeding while they are contemporaneously being addressed in another unrelated proceeding runs the risk of conflicting outcomes and sets the stage for the Companies being put in the impossible position of having been given two differing sets of directives by which they must abide. Finally, the parties to this set of issues in this DSP proceeding are active participants in the generic proceeding as well. It would be a waste of resources for not only the Commission and the ALJ, but also the parties to address the various parties' positions in this case on these topics, when they could be more comprehensively addressed by including all key stakeholders in the

[58] Notice of En Banc Hearing on Implementation of Supplier Consolidated Billing, Docket No. M-2018-2645254 (Secretarial Letter Entered March 27, 2018).

Commission's established generic proceeding. For all of these reasons, this provision is in the public interest and should be approved without modification.

VII. CUSTOMER REFERRAL PROGRAM

Like their proposal to institute a PTC Adder, the Companies proposed to continue their existing customer referral program ("CRP") for the duration of the proposed four-year delivery term for DSP V in an effort to support the Commission's stated goal of supporting Pennsylvania's retail electric market. This represents a two-year extension of the program as it stands absent the Companies' proposal. The Companies defended their proposal of this program in their Main Brief, the relevant portions of which are incorporated herein by reference.[59] The parties who have briefed this issue are limited to the OCA, CAUSE and RESA, with CAUSE adopting the position of the OCA.[60]

Regardless of their views as to the necessity of the program itself, or what the scripts should and should not contain, the Companies take particular issue with the characterizations made by the OCA, and in turn adopted by CAUSE, with regard to their alleged non-compliance with the directives of the Commission and the terms of the Commission-approved settlement agreement resulting from DSP IV. In particular, the OCA cites the exact language from the Companies' Commission-approved DSP IV settlement that was to be included in the scripts used by its own employees and the Companies' third-party agent used for the administration of this program.[61] Notably, the only requirement of the DSP IV settlement was that the Companies make corresponding changes to each of those sets of scripts. In fact, the Companies provided the very scripts that the DSP IV Settlement modified to the OCA, which read verbatim as compared to the

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[59] Companies M.B., pp. 30-32.
[60] CAUSE M.B., pp. 16-17.
[61] OCA M.B., pp. 34-35.

comparable portions of the DSP IV Settlement language. What the OCA confuses is its distaste for the CRP itself for non-compliance by the Companies, which in fact are entirely compliant with the terms of the DSP IV Settlement and the Commission's directives to this point on the topic. The OCA has even admitted this in its own direct testimony of witness Alexander: "[t]he script changes that are identified as implemented in May 2017 do conform to the DSP IV Settlement requirements..."[62] The simple fact is that the OCA does not agree with the program as designed. That is the OCA's right; however, it surely does not stand as evidence that the Companies are not compliant. To the contrary, the clear and undisputable evidence is that the Companies complied with the stated terms of the DSP IV settlement.

More generally, as with the PTC Adder, the Companies do not benefit in any way from the continuation of the CRP. Instead, their intent in proposing its continuation for the duration of the DSP V delivery term was driven by their desire to align their plan as closely as possible to the Commission's stated goals and guidance resulting from the RMI proceeding, during which EDCs were specifically directed to implement such programs.[63] Since that time, the Companies have continued, and the Commission has approved, their CRP as being in the public interest.[64] Therefore, to this point, the Companies have received no indication from the Commission that there is an intent to deviate from the most recently provided guidance on this topic. While the OCA has criticized the Companies for not demonstrating a "need" for the program,[65] the bottom

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[62] OCA Statement No. 2, p. 18, lines 2-4.
[63] RMI Final Order, p. 13; *see also Commission's Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*; Docket No. I-2011-2237952, p. 30 (Final Order entered Mar. 2, 2012); *see also* 52 Pa. Code § 69.1815.
[64] DSP II; Docket Nos. P-2011-2273650, *et al.* (Opinion and Order dated Aug. 16, 2012; *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-2013-2391368, *et al.* (Opinion and Order dated Jul. 24, 2014); *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.* (Opinion and Order dated May 19, 2016).
[65] OCA M.B., p. 46.

line is that to the Companies' knowledge, there was no demarcation point that was set by the Commission marking an acceptable level of shopping in the Companies' territories or an expiration of its stated expectations in this regard. Absent such guidance, the Companies' expectation is that they are encouraged to continually support such programs over time, until advised otherwise. As such, the Companies look forward to the Commission's further guidance on its view of the need for this program on a prospective basis.

VIII. CUSTOMER ASSISTANCE PROGRAM SHOPPING

On May 2, 2018, the Commonwealth Court issued a decision in *Retail Energy Supply Association v. Pennsylvania Public Utility Commission* ("*RESA*"), which fundamentally modifies the legal landscape associated with customer assistance program ("CAP") shopping restrictions.[66] In light of the *RESA* decision, the Companies now agree that there is sufficient legal authority for CAP shopping restrictions, such as the price ceiling proposed by CAUSE, I&E, and OCA in this proceeding.[67] Accordingly, the Companies believe the question of restrictions on CAP shopping has become a policy determination for the Commission to make. The Companies would not object to the establishment of a price ceiling if the Commission determines that substantial evidence in this proceeding supports its adoption.

Until the Commonwealth Court's decision in *RESA*, the Commonwealth Court had yet to approve any significant CAP shopping limitations. In *Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania v. Pennsylvania Public Utility Commission* ("*CAUSE-PA*"), the Commonwealth Court ultimately rejected a price ceiling based on lack of evidentiary

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[66] *RESA*, 2018 Pa. Commw. LEXIS 153 (Pa. Commw. Ct. 2018).
[67] OCA M.B., pp. 58-60; CAUSE M.B., pp. 41-43; I&E M.B., pp. 37-39.

support.[68] However, the Commonwealth Court also established the test for evaluating whether to impose CAP shopping restrictions: 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, including the adoption of a price ceiling.[69]

In *RESA*, the record evidence established that CAP shopping customers paid approximately $2.74 million above the price to compare ("PTC").[70] The Commonwealth Court agreed with the Commission that CAP customers paying prices significantly above the PTC constitutes substantial evidence in favor of the adoption of CAP shopping restrictions.[71] As a result, the Commonwealth Court upheld the Commission's decision that approved PPL's CAP standard offer program ("SOP").[72] Under the approved CAP SOP rules, suppliers who wish to serve PPL's CAP customers must enroll in PPL's CAP SOP, which requires suppliers to charge customers a seven percent discount from the PTC and prohibits suppliers from charging CAP customers early termination fees.[73] In addition, any CAP customers currently enrolled with a supplier under different contractual terms and conditions will remain under their contract until the expiration date, at which time the CAP customers may choose to either return to default service or receive service from a CAP SOP supplier.[74] All CAP customers on month-to-month contracts also would be transitioned to either the CAP SOP or default service.[75]

To date, the Companies' opposition to CAP shopping restrictions was based on the

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[68] *CAUSE*, 120 A.3d 1087, 1107 (Pa. Commw. Ct. 2015).
[69] *Id.* at 1103-1104.
[70] *RESA* at *10.
[71] *Id.* at *52.
[72] *Id.*
[73] *Id.* at *16-18.
[74] *Id.*
[75] *Id.*

Commission's directives in the RMI.[76] Specifically, in the RMI Final Order, the Commission held that CAP customers should be allowed to participate in the competitive market without restriction.[77] The Companies' CAP rules comply with the Commission's RMI Final Order, which is the last Commission ruling regarding CAP shopping that was binding on the Companies. The Companies do not dispute that the record evidence in this proceeding demonstrates that CAP shopping customers are paying, on average, well above the PTC.[78] However, record evidence also demonstrates that as of the time testimony was offered, only two EGSs serving within the Companies' territories were offering percentage off products.[79] The Commission must determine, in light of both the Commonwealth Court's decisions in *CAUSE-PA* and *RESA* and the evidence in this case, whether it wishes to changes its policy on this topic as outlined in the RMI Final Order and approve CAP shopping restrictions for the Companies.

If the Commission reverses its directives in the RMI Final Order and approves CAP shopping restrictions for the Companies, the Companies support the implementation of a price ceiling as proposed within the record of this proceeding.[80] Specifically, the Companies could add CAP participation flags to it eligible customer list, which would inform suppliers before they attempt to enroll a CAP customer.[81] In order to enroll CAP customers, suppliers would agree to rate ready billing utilizing a percentage off variable priced product, which would allow the Companies to adjust the supplier's price by the required percentage off of the PTC for CAP

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[76] *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952 (Final Order entered Feb. 15, 2013) ("RMI Final Order").
[77] "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." *Id.* at 61.
[78] Companies M.B., p. 38.
[79] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1-R, p. 30.
[80] OCA M.B., pp. 58-60; CAUSE M.B., pp. 41-43; I&E M.B., pp. 37-39.
[81] Companies M.B., p. 40.

customers.[82] Beginning June 1, 2019, any enrollment request by a supplier for a CAP customer outside of those parameters would be automatically rejected by the Companies.[83] All costs associated with implementing the Companies' system changes and notifying suppliers and CAP customers regarding these changes would be recovered through the Companies' PTC Default Service Riders.[84]

Further, the Companies would support the transition plan proposed by CAUSE-PA and approved by the Commonwealth Court in *RESA*.[85] After June 1, 2019, at the end of a CAP customer's shopping contract, the customer could choose to be served by a supplier who agrees to the CAP-approved percentage-off PTC product or return to default service.[86] For CAP customers enrolled in month-to-month contracts, within 120 days of June 1, 2019, suppliers would be obligated to either provide the customer the approved percentage off product or return the customer to default service.[87] CAP customers also would have the right to terminate their supplier contracts early without supplier termination fees.[88] It would be the supplier's, as opposed to the Companies', obligation to ensure that month-to-month customers are transitioned appropriately and no early termination fees are charged.

Wherever possible, the suppliers should have the responsibility to implement CAP shopping restrictions. Although the Competition Act requires the Commission to ensure CAPs are operated in a cost-effective manner,[89] the Competition Act does not require EDCs to police

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[82] *Id.*
[83] *Id.*
[84] *Id.*
[85] CAUSE M.B., pp. 42-43; *RESA*, 2018 Pa. Commw. LEXIS 153, *16-18.
[86] CAUSE M.B., pp. 42-43.
[87] *Id.*
[88] *Id.*
[89] 66 Pa.C.S. § 2804(9).

suppliers who are contributing to higher CAP costs.[90] The Companies would oppose any CAP shopping restrictions that would require the Companies to monitor or police supplier activities, including a CAP SOP. The record in this proceeding offers no evidentiary support for a CAP SOP, and therefore, a CAP SOP should be rejected for this reason alone.[91] CAUSE-PA, OCA, and I&E each presented testimony in support of a PTC price ceiling as opposed to a CAP SOP.[92] For the Companies, a PTC price ceiling is significantly more straightforward to implement than a CAP SOP, promoting a more seamless implementation by the Companies and transparent rules for CAP customers.[93]

In RESA, the Commonwealth Court resolved a great deal of legal uncertainty associated with the adoption of CAP shopping restrictions. Accordingly, if the Commission determines that RESA justifies a reversal of RMI precedent that requires the Companies to adopt a PTC price ceiling, the Companies would accept the Commission's finding. Under these circumstances, the Companies would recommend that the Commission approve a PTC price ceiling under the terms outlined in this section.

IX. NON-MARKET BASED CHARGES

A. Allocation of High Voltage Transmission Charges/Credits

As explained in the Companies' Initial Brief, the parties were able to come to an agreement that the Companies' proposal related to the distribution and recovery of FERC 494 Settlement allocations will be considered uncontested in this matter,[94] which is included in the Joint Petition

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[90] *Contra* I&E M.B., p. 41.
[91] Similarly, RESA's proposed alternatives to a PTC price ceiling are not supported by record evidence and must be rejected. *See* RESA M.B., p. 28.
[92] OCA M.B., pp. 58-60; CAUSE M.B., pp. 41-43; I&E M.B., pp. 37-39.
[93] Companies M.B., pp. 40-41.
[94] Companies M.B., pp. 41-42.

for Settlement.[95] This provision of the Settlement concerning the distribution and recovery of FERC 494 Settlement allocations is in the public interest because, as the Companies' witness Mr. Siedt explained in his rebuttal testimony, EGSs should not be entitled to the charges and/or credits that result from any FERC-approved settlement.[96] Specifically, EGSs did not bear the responsibility for Regional Transmission Expansion Plan ("RTEP") costs on behalf of their shopping customers for most of the time-period that the FERC 494 Settlement addresses.[97] As Mr. Siedt testified, "of the total January 2007 through May 2013 (five years and five months) settlement period in question, the maximum period of time that any EGS could have potentially been responsible for RTEP costs amounts to two years and five months, or January 2011 through May 2013."[98] Even if EGSs could argue that they were responsible for RTEP costs for two years and five months of the settlement period in question, EGSs most likely recovered the RTEP costs from their customers for that time period. As Mr. Siedt explained,

> [e]ven for the January 2011 through May 2013 time period during which EGSs would have borne responsibility for RTEP costs on behalf of their shopping customers, it can be assumed that those EGSs would have collected the RTEP costs from their customers through: 1) a contract, which would have included a passthrough of RTEP costs to the customer; or 2) incorporation of RTEP costs into product pricing.[99]

Therefore, it is in the public interest to approve the Joint Petition for Settlement, which reallocates the RTEP expenditures from any FERC-approved settlement to customers as the Companies proposed in their direct case.

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[95] Joint Petition for Partial Settlement, p. 5.
[96] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, pp. 5-7.
[97] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 6.
[98] *Id.*
[99] *Id.*

B. Network Integration Transmission Service Costs

As explained in the Companies' Initial Brief, the parties have agreed that NITS costs will remain the responsibility of the Companies' default service suppliers and EGSs serving the Companies' customers,[100] which term is a part of the Joint Petition for Settlement.[101] This provision of the Settlement concerning NITS is in the public interest because it aligns with the Commission's historical guidance to exclude NITS from NMB charges.[102] At this point in time, no evidence has been demonstrated justifying why the Commission's long-standing policy on this point should be reversed. Specifically, the risk factor (which ExGen alluded to in its direct testimony),[103] attributable to NITS is not significant. As Mr. Reitzes testified:

> NITS costs generally make up a relatively small portion of the estimated no-risk cost, as indicated by the relative magnitudes of the adjusted NITS rate adder (column [13] in Met-Ed/Penelec/Penn Power/West Penn Exhibit JDR-1) to the Estimated No-Risk Price (column [14] in Met-Ed/Penelec/Penn Power/West Penn Exhibit JDR-1). For example, across the various Met-Ed contracts auctioned in calendar year 2017, NITS costs made up, on average, only 11.4% of the estimated no-risk price.[104]

Moreover, NITS should also be manageable for wholesale or retail suppliers on the Companies' system given that NITS charges change once per year (January 1) and are known as of October of the preceding year. This fact, paired with the Companies' proposed adjustments to their auction timing, which are designed to give bidders ample time to consider new rates based on the publication dates for MAIT and ATSI, should offset any residual uncertainty regarding NITS.[105] Meanwhile, avoiding any significant shifts in responsibilities for these charges by approving the

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[100] The Companies'M.B., pp. 42-44.
[101] Joint Petition for Partial Settlement, p. 6.
[102] *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").
[103] ExGen Statement No. 1, pp.8-9.
[104] Met-Ed/Penelec/Penn Power/West Penn Statement No. 3-R, p. 2.
[105] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2-R, p. 6; Met-Ed/Penelec/Penn Power/West Penn Statement No. 3-R, p. 3.

Joint Petition for Settlement gives large users, such as the customers represented by the Industrial Intervenors, certainty with regard to their existing energy contracts, and avoids administrative hassles and complications for all parties.

X. TIME-OF-USE RATE

As explained in the Companies' Main Brief, the parties were able to reach an agreement regarding the parties' concerns related to time-of-use ("TOU").[106] Specifically, the parties agreed to the following:

> 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.[107]

While it was the Companies' understanding that the OSBA no longer intended to address the issues it raised related to TOU issues as a result of the agreement reached and memorialized in the Joint Petition for Settlement, the OSBA did raise the issue in its Main Brief.[108] Specifically, the OSBA argued that the Companies are required under Act 129[109] to offer commercial customers a TOU rate as well as real-time pricing ("RTP").[110] The Companies disagree with this interpretation. Specifically, Section 2807(f)(5) of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 2807(f)(5), states: "[b]y January 1, 2010, or at the end of the applicable generation rate cap period, whichever is later, a default service provider shall submit to the commission *one or more*

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[106] Companies M.B., pp. 45-46.
[107] *Id.*
[108] OSBA M.B., pp. 13-14. In further discussions with OSBA's counsel, it is the Companies' understanding that OSBA no longer intends to pursue this issue given its agreement with the Settlement and will address this understanding in its reply brief.
[109] 66 Pa.C.S. § 2807(f)(5).
[110] OSBA M.B., pp. 13-14.

proposed time-of-use rates and real-time price plans" (emphasis added). In each of the Companies' DSP proceedings, the Companies have offered one or more TOU or RTP plans, which have been approved by the Commission. Specifically, the Companies have offered a TOU program for the residential class, while the commercial class has the ability to select real-time hourly pricing through HPS. The Commission has approved each of the Companies' DSPs, without taking issue with the absence of both a TOU and RTP option being available to any particular class.

Furthermore, the OSBA historically agreed that the Companies' DSPs were in compliance with Act 129, without reservation on this specific requirement. Mr. Siedt provided the below chart in his rebuttal testimony, which outlined the Companies' DSPs that have resulted in a finding by the Commission that the Companies' DSPs were in compliance with Act 129, including as it relates to TOU rates and RTP plans, and also identified those instances where the approval was of a settlement reached by parties including the OSBA.

Delivery Period	Docket Nos.	Settled v. Litigated	Final Order Date
January 1, 2011 - May 31, 2013 ("DSP I")	P-2009-2093053 P-2009-2093054	Settled*	November 6, 2009
June 1, 2013 - May 31, 2015 ("DSP II")	P-2011-2273650 P-2011-2273668 P-2011-2273669 P-2011-2273670	Litigated	August 16, 2012
June 1, 2015 – May 31, 2017 ("DSP III")	P-2013-2391368 P-2013-2391372 P-2013-2391375 P-2013-2391378	Settled*	July 24, 2014
June 1, 2017 – May 31, 2021 ("DSP IV")	P-2015-2511333 P-2015-2511351 P-2015-2511355 P-2015-2511356	Settled*	May 19, 2016

*Denotes settlements reached to which the OSBA was an affirmative signatory.[111]

This agreement is memorialized in the Joint Petition for Settlement,[112] the approval of which is in the public interest because it allows the Companies to complete a reevaluation of their TOU offerings (as the OSBA and the OCA requested) once their smart meters are fully functional for TOU billing and the necessary data is available to support such an analysis.[113] Until the Companies have the data sufficient to perform an informed evaluation of their TOU offerings, the Companies will continue to offer residential TOU service under the terms and conditions described in each Company's Rider K, Time-Of-Use Default Service Rider. Meanwhile, commercial customers will have the ability to select hourly pricing through HPS.[114]

Net Metering

[111] Met-Ed/Penelec/Penn Power/West Penn Statement No. 4-R, p. 9.
[112] Joint Petition for Partial Settlement, p. 6.
[113] Met-Ed/Penelec/Penn Power/West Penn Statement No. 4-R, p. 9.
[114] 66 Pa.C.S. § 2807(f)(5).

As explained in the Companies' Main Brief, the parties were able to reach an agreement that the parties' concerns related to net metering will not be addressed in this proceeding,[115] which resolution is memorialized within the Joint Petition for Settlement.[116] This provision of the Settlement concerning net metering is in the public interest because during this proceeding the Companies were able to clarify that only those customers taking default service are paying for all net metering excess energy payouts, which are based on the time based value of the energy provided when the customers elect time based rates, - a clarification which the Companies understand to have effectively resolved the OSBA's concern because the Companies' explanation of its practices in this regard was consistent with OSBA's position.[117] Specifically, Mr. Siedt explained in his rebuttal testimony:

> ...the Companies do take into consideration all applicable TOU factors when calculating the net metering cash out for customers taking default service on Rider K – a fact that is admittedly not very apparent given that the Companies only have one TOU Rider customer who also net meters. Meanwhile, those customers on RTP benefit from the measurement of the value of excess generation at the time the generation is provided to the system.
> With regard to Mr. Knecht's concerns relating to where the excess generation is credited or payouts are recovered from, the Companies agree with Mr. Knecht that only those customers taking default service should pay for all net metering excess energy payouts (which occurs when a customer has produced more than it consumes over a year period). To that end, the costs of such payouts are incorporated into the reconciliation portion of the Companies' PTC calculation, to be charged to only default service customers. However, because the value of the generation received has historically been so negligible from a load perspective that the Companies currently have no ability to capture the hourly effects of net metered customer generation other than for all customers to share in its impact through its inclusion in UFE while allocating cash outs to default service customers.[118]

Because the OSBA was the only party taking issue with net metering payouts and the OSBA's concern was effectively resolved, there is no longer a need to litigate this issue. Therefore, the

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[115] Companies M.B., pp. 46-48.
[116] Joint Petition for Partial Settlement, pp. 5-6.
[117] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2-R, pp. 12-13.
[118] *Id.*

Settlement is in the public interest and a determination on this issue need not be reached by the ALJ or the Commission in this proceeding.

XI. CONCLUSION

For the reasons set forth above, the Commission should approve the Joint Petition for Partial Settlement filed on May 15, 2018 as it modifies the Companies' DSPs as filed on December 11, 2017. In all other regards, the Commission should approve the Companies' DSPs to become effective on June 1, 2019 and to extend through May 31, 2023 as proposed, without modification. 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 15, 2018

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APPENDIX A

PROPOSED FINDINGS OF FACT

A. BACKGROUND

1. The Companies are defined as electric distribution companies ("EDCs") and default service providers under the Public Utility Code.[1]

2. As the default service providers, the Companies serve all customers who do not select an electric generation supplier ("EGS") or whose EGS fails to provide service.[2]

3. The Companies' current default service programs ("DSPs") began on June 1, 2017.[3]

4. Pursuant to the settlement of the DSP IV Proceeding, the Companies agreed to hold a stakeholder collaborative during the DSP IV term to discuss: (a) current procurement and market conditions; (b) the establishment of a bypassable retail market enhancement rate mechanism; (c) the scope of shopping available to customers enrolled in the Companies' customer assistance programs ("CAPs"); (d) the continuation of the purchase of receivables ("POR") clawback charge; and (e) any changes to customer classes.[4] The Companies were required to make a Commission filing, including but not limited to a new DSP petition, with regard to its position on the collaborative topics in a docketed proceeding by January 31, 2018.[5]

5. On December 4, 2017, the Companies filed a Joint Petition for approval of proposed DSPs for the period June 1, 2019 through May 31, 2023 ("DSP V"), which began the instant proceeding.

6. The Companies are proposing a DSP V period of June 1, 2019 through May 31,

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[1] 66 Pa.C.S. § 2803.
[2] *See id.*
[3] The Companies' current DSPs were approved at 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").
[4] *DSP IV Proceeding*, Docket Nos. P-2015-2511333, *et seq.*, pp. 5-22 (Joint Petition for Settlement dated April 1, 2016).
[5] *Id.*

2023.[6]

B. PROCUREMENT METHOD

7. The Companies are proposing to acquire full-requirements, load-following energy and energy-related products through multiple-round, descending-price clock auctions ("DCAs").[7]

8. DCAs have been frequently used for electricity procurement by EDCs in Pennsylvania, including the Companies, since the late 1990s.[8]

9. The auction format is transparent and nondiscriminatory to prospective bidders, which promotes competitive procurement results.[9]

10. The Companies will maintain their current load cap, which restricts the amount of supply any one bidder can win in an auction to 75%.[10]

11. The Companies are continuing to use CRA International, Inc., for their default service procurements, and the Brattle Group for their solar photovoltaic alternative energy credit ("SPAEC") procurements.[11]

12. The Supplier Master Agreement ("SMA") proposed by the Companies is identical to their current SMA with the exception of reflecting the 100 kW industrial class change and certain other cleanup changes related to new PJM billing line items.[12]

13. Winning bidders in the Companies' DCAs must fulfill all obligations imposed on a load serving entity ("LSE") by PJM Interconnection, LLC ("PJM"), including: (a) providing energy, capacity and transmission service, including Network Integration Transmission Service ("NITS") charges; (b) paying all ancillary service costs and PJM administrative expenses; and (c)

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[6] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1, p. 9.
[7] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 5.
[8] *Id.* at 12.
[9] *Id.* at 17.
[10] *Id.* at 10.
[11] *Id.* at 7, 23-24.
[12] *Id.* at 21-22.

providing any other services and paying any other fees as required by PJM of an LSE.[13]

14. The Companies will assume responsibility for 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 begin 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"). NMB costs will be recovered from customers in a competitively-neutral manner under the Companies' non-bypassable Default Service Support ("DSS") Riders.[14]

15. Winning bidders in the DCAs in the Met-Ed, Penelec and Penn Power service territories will be responsible for meeting all non-solar Tier I alternative energy credit ("AEC") and Tier II AEC requirements. Winning bidders in West Penn's service territory will be responsible for all Tier I and Tier II requirements less any Tier I AECs that are allocated under existing long-term purchases made by West Penn.[15] Penelec also will continue to make market-priced sales of excess AECs acquired under existing Commission-approved non-utility generator ("NUG") contracts.[16]

16. Met-Ed, Penelec, and Penn Power will conduct two requests for proposal ("RFPs") to solicit bids for the provision of a fixed number of SPAECs based on each Company's most recent distribution load forecasts. Met-Ed, Penelec, and Penn Power expect to obtain approximately 100% of the SPAEC requirements for both shopping and default service customers,

[13] *Id.* at 7.
[14] *Id.* at 5-6, 19.
[15] *Id.* at 6 and 23.
[16] *Id.* at 28.

after taking into account previous SPAEC purchases.[17]

17. All costs associated with the procurement of SPAECs by Met-Ed, Penelec, and Penn Power are collected via their Solar Photovoltaic Requirements Charge ("SPVRC") Riders.[18]

18. For West Penn, default service suppliers will be responsible for procuring all SPAECs less any SPAECs that are allocated to the suppliers under existing long-term purchases made by West Penn.[19]

19. The Companies will continue to utilize their current contingency plans, which address the following circumstances: (a) an auction is not fully subscribed; (b) the Commission rejects the bid results from an auction; and (c) a winning bidder defaults prior to or during a delivery period.[20]

C. DSP PORTFOLIO

20. Each residential class tranche includes a 95% fixed-priced product and a 5% real-time hourly load locational marginal price ("LMP") product plus a fixed adder of $20.00 per megawatt hour ("MWh") to cover the costs of other supply components associated with serving the contracted load, including capacity, ancillary services, Alternative Energy Portfolio Standards ("AEPS") compliance, and other costs.[21]

21. The residential products will have staggered twelve-month and twenty-four-month terms, which will be secured over twelve procurement dates.[22]

22. The residential procurement plan includes significant temporal diversity, spreading the procurements over auctions scheduled at different points during the DSP V term, which will

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[17] *Id.* at 23.
[18] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1, pp. 18-19.
[19] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 23.
[20] *Id.* at 30.
[21] *Id.* at 7.
[22] *Id.* at 8.

balance any commodity price changes in the power markets over time.[23]

23. Allowing the DSP supply contracts to conclude at the end of the DSP V term removes the regulatory risk associated with significant changes in default service rules that may be implemented after the DSP delivery period ends.[24]

24. To the extent market conditions changed in the middle of the DSP V term, the Companies' Bidding Rules would govern any changes.[25]

25. Each commercial class tranche features a 100% fixed-priced product, which will have staggered three-month, twelve-month and twenty-four-month terms. The commercial tranches will be secured over eighteen procurement dates.[26]

26. The eighteen different auctions for the commercial class held during the Companies' four-year DSP V term offer temporal diversity, which will smooth out any cyclical movements in risk premiums.[27]

27. The industrial class product is an hourly-priced service based upon the PJM real-time zonal hourly market price. Suppliers will bid for the right to serve a portion of the industrial load for 12-month terms. Winning suppliers will be paid the winning price bid in the hourly-priced auction, the hourly PJM real-time zonal LMP, and an additional fixed adder of $4/MWh to capture the estimated costs of other supply components, including capacity, ancillary services, NITS, AEPS compliance, and other costs.[28]

28. The Companies propose a procurement plan for all customer classes using eighteen

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[23] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2-R, p. 3.
[24] *Id.* at 3-4.
[25] *Id.* at 4.
[26] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 8.
[27] *See* Met-Ed/Penelec/Penn Power/West Penn Statement No. 3-R, p. 5.
[28] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 8.

separate procurement dates occurring in October/November[29] 2018, 2019, 2020, 2021, and 2022; January 2019, 2020, 2021, 2022, and 2023; April 2019, 2020, 2021, and 2022; and June 2019, 2020, 2021, and 2022.[30]

29. Non-shopping residential and commercial customers obtain default service under the Price to Compare Default Service Rider ("PTC Rider"). Non-shopping industrial customers receive default service under the Hourly Pricing Default Service Rider ("HPS Rider"). The Companies will collect all remaining default service-related costs via their DSS Riders.[31]

30. Consistent with the settlement of the DSP IV Proceeding, beginning June 1, 2019, the Companies will lower the hourly default service pricing threshold from 400 kW to 100 kW, when the Companies expect to have billing-capable smart meters installed in their service territories. In accordance with the Settlement of DSP IV Proceeding, the Companies are developing an outreach and educational communication plan to inform shopping and default service customers with demand between 100 kW and 400 kW of the change.[32]

31. On an annual basis, the Companies will review a non-shopping commercial customer's demand from the prior year period. If the demand of the customer was at or higher than 100 kW for all twelve months, the customer will be transitioned to the HPS Rider. Otherwise, the customer will continue to receive default service as part of the commercial class via the PTC Rider. All commercial customers, even those with demand below 100 kW, will continue to have the right to request hourly-priced service, which would cause the Companies to move the customer to the HPS Rider.[33]

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[29] 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.
[30] *DSP IV Proceeding*, Docket Nos. P-2015-2511333, *et seq.*, p. 7 (Joint Petition for Settlement dated April 1, 2016).
[31] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1, pp. 16-18.
[32] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1, p. 11.
[33] *Id.*; *see also* Met-Ed/Penelec/Penn Power/West Penn Statement No. 4-R, p. 15.

32. If the Companies were to move commercial customers whose demand exceeded 100 kW for only two consecutive months to the HPS Rider or to base the transition to the HPS Rider on peak load contribution or installed capacity, the change could impact unsophisticated commercial customers who do not have the resources to devote to shopping for their generation supply or to manage hourly pricing.[34]

D. PURCHASE OF RECEIVABLES CLAWBACK PROVISION

33. The Companies' Purchase of Receivables ("POR") clawback charge, approved as a two-year pilot in DSP IV Proceeding, will continue with the next assessment of the charge in September 2018 based on a review of the data for the twelve months ending August 31, 2018 and ending with charges to be assessed in September 2021.[35]

34. The Companies will continue to use a two-prong test to determine the clawback charge. The first prong will identify those 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 ("PTC") 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 the EGS's actual write-offs and 200% of the average percentage of write-offs per operating company.[36]

35. 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'

[34] Met-Ed/Penelec/Penn Power/West Penn Statement No. 4-R, p. 15.
[35] Joint Stipulation No. 2.
[36] *Id.*

purchase of receivables programs on a quarterly basis beginning no later than October 20, 2018, reflecting EGS arrears for third quarter 2018.[37]

E. RETAIL MARKET ENHANCEMENT RATE MECHANISM

36. Only 30% of the Companies' residential customers are shopping for generation service with an EGS.[38]

37. In order to incentivize non-shopping residential customers to participate in the retail electricity market, the Companies will adopt a retail market enhancement rate mechanism.[39]

38. The goal of the PTC adder is to encourage further development of Pennsylvania's retail electricity market.[40]

39. The PTC adder is designed based on the Companies' $30 customer referral program charge divided by a period of twenty-four months, which represents an EGS's average retention period.[41]

40. The PTC adder would be approximately $1.25 per month per residential customer or $0.00144 per kWh for the duration of the DSP V term.[42]

41. The estimated credit to be refunded through the DSS Riders is $0.00096 per kWh, $0.83 per month.[43]

42. The PTC adder is designed to be revenue neutral to the Companies. 95% of the revenues from the PTC adder will be returned to all customers, both shopping and default service customers, through the non-bypassable DSS Riders. The remaining 5% of revenues will be applied to the Companies' costs associated with administering this adder.[44]

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[37] *Id.*
[38] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1, p. 25.
[39] *Id.* at 24-25.
[40] *See id.*
[41] *Id.* at 25-26.
[42] *Id.*
[43] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1-R, p. 26.
[44] *Id.* at 25.

F. NON-COMMODITY BILLING

43. All issues related to non-commodity billing are resolved in the Joint Petition for Partial Settlement, which provides that any non-commodity billing issues will be addressed in the separate ongoing proceeding at Docket No. M-2018-2654254.[45]

G. CUSTOMER REFERRAL PROGRAM

44. The Companies will continue their customer referral program ("CRP") through May 31, 2023.[46]

45. Under the settlement of the DSP IV Proceeding, the Commission approved the Companies' continuation of the CRP through May 31, 2021.[47]

46. The Companies adopted revised CRP scripting in response to the settlement of the DSP IV Proceeding.[48]

47. Further scripting changes developed through a separate stakeholder collaborative would create an unreasonable additional administrative burden on the Companies and potentially result in lengthier or more complex scripting requirements for customers.[49]

48. The CRP should continue until the end of the DSP V term in order to promote continued development of Pennsylvania's retail electricity market.[50]

H. CUSTOMER ASSISTANCE PROGRAM SHOPPING

49. The Companies have offered unrestricted CAP shopping since they were directed to do so by the Commission in the RMI Final Order.[51]

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[45] *See* Joint Petition for Partial Settlement, p. 5.
[46] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1, p. 19.
[47] DSP IV Proceeding; Docket Nos. P-2015-2511333, *et seq.* (Opinion and Order dated May 19, 2016).
[48] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1, p. 5.
[49] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1-R, p. 9.
[50] *Id.* at 10.
[51] *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*; Docket No. I-2011-2237952, pp. 60-62 (Final Order dated Feb. 15, 2013) ("RMI Final Order").

50. The Companies' CAP shopping customers have, on average, paid more than the PTC.[52]

51. A PTC price ceiling for CAP customers is the only CAP shopping restriction supported by the evidentiary record in this proceeding.[53]

52. Two suppliers in the Companies' service territories currently offer a PTC price ceiling product.[54]

53. The Companies could implement a PTC price ceiling by adding CAP participation flags to their eligible customer lists, which would inform suppliers before they attempt to enroll a CAP customer. In order to enroll CAP customers, suppliers would agree to rate ready billing, which would allow the Companies to adjust the supplier's price by the required percentage-off the PTC for CAP customers. Any enrollment request by a supplier for a CAP customer outside of those parameters would be automatically rejected by the Companies.[55]

54. All costs associated with implementing the Companies' system changes and notifying suppliers and CAP customers regarding these changes would be recovered through the Companies' PTC Riders.[56]

55. The burden should be on suppliers to implement all CAP shopping limitations that the Companies have no ability to control, including not charging CAP customers early termination fees. The Companies should not be required to police suppliers' actions.[57]

56. A CAP standard offer program ("SOP") is not supported by the record evidence in this proceeding and should otherwise be rejected due to the complexity and administrative burden

[52] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1-R, p. 28.
[53] OCA Statement No. 2-R, p. 14; CAUSE-PA Statement No. 1-R, p. 3; I&E Statement No. 1-SR, p. 23.
[54] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1-R, p. 30.
[55] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1-R, pp. 30-33.
[56] *Id.*
[57] *Id.*

associated with the development and implementation of a CAP SOP.[58]

I. NON-MARKET BASED CHARGES

57. All issues related to NMB charges are resolved in the Joint Petition for Partial Settlement, which provides that no party contests the Companies' collection of NITS charges or RTEP charges related to FERC Docket No. EL05-121-009.[59]

58. No evidentiary support exists for any other changes related to the Companies' collection of NMB charges.[60]

J. TIME-OF-USE RATES

59. The Companies are currently providing residential time-of-use ("TOU") service under the terms and conditions of the Companies' Price to Compare Default Service Rate Riders as described in each Company's Rider K, Time-Of-Use Default Service Rider.[61]

60. All issues related to TOU service were resolved in the Joint Petition for Partial Settlement, which provides that the Companies will make a specific proposal regarding their residential TOU 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.[62]

H. NET METERING

61. All issues related to net metering were resolved in the Joint Petition for Partial Settlement, which states that concerns related to net metering will not be addressed in this proceeding.[63]

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[58] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1-SR, p. 8.
[59] Joint Petition for Partial Settlement, pp. 5-6.
[60] Met-Ed/Penelec/Penn Power/West Penn Statement No 4-SR, pp. 7-8.
[61] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1, pp. 27-28.

[62] Joint Petition for Partial Settlement, p. 6.
[63] *Id.* at 5.

PROPOSED CONCLUSIONS OF LAW

A. BURDEN OF PROOF

1. The party seeking a rule or order from the Commission has the burden of proof in this proceeding.[64]

2. A party's burden of proof is met by establishing a preponderance of the evidence, which requires proof by a greater weight of the evidence.[65]

3. A party that makes a proposal not included in the EDC's case in chief bears the burden of proof regarding its proposal.[66]

B. PROCUREMENT METHOD

4. Under Act 129 of 2008 ("Act 129"), the Companies are required to develop a competitive procurement plan for default service supply that includes auctions, RFPs, or bilateral agreements.[67]

5. The default service supply must include a prudent mix of spot market purchases, short-term contracts, and long-term purchase contracts.[68]

6. The prudent mix of purchases is designed to ensure "least cost to customers over time."[69]

7. The least cost over time requirement does not require the Companies to provide the lowest price over the DSP term, but instead that the default service supply is both stable and economical.[70]

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[64] 66 Pa.C.S. § 332(a).
[65] *Lansberry v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Commw. Ct. 1990).
[66] *Brockway Glass v. Pa. Pub. Util. Comm'n,* 437 A.2d 1067 (Pa. Commw. Ct. 1981); *see also Pa. Pub. Util. Comm'n v. Phila. Gas Works*, Docket No. R-00061931 (Opinion and Order dated Sept. 28, 2007).
[67] 66 Pa.C.S. § 2807(e)(3.1).
[68] 66 Pa.C.S. § 2807(e)(3.2).
[69] 66 Pa.C.S. § 2807(e)(3.4).
[70] *Implementation of Act 129 of 2008*; Docket No. L-2009-2095604, pp. 20-21 (Final Rulemaking Order dated Oct. 4, 2011).

8. The Companies' proposed default service procurement constitutes least cost over time default service and satisfies the Act 129 requirements for auction-based procurements including a prudent mix of spot market purchases and short- and long-term contracts.[71]

9. Under the Commission's regulations, default service programs must include copies of agreements or forms that are used for the procurement of default service supply.[72]

10. The Companies' proposed SMA is consistent with the Commission's regulations, as well as the SMA requirements developed by the Commission's Office of Competitive Market Oversight as a product of the Commission's Investigation of Pennsylvania's Retail Electricity Market.[73]

11. The Commission's regulations further require that default service programs include contingency plans to promote reliable default service in the event a default service supplier fails to fulfill its obligations.[74]

12. The Companies' proposed contingency plans are consistent with the Commission's regulations in this regard.[75]

13. Under the Commission's regulations, default service programs must include a rate design plan, which recovers all reasonable costs related to the provision of default service.[76]

14. The Companies' proposed rate design, including the PTC Riders, HPS Riders, DSS Riders, and SPVRC Riders, conform to the Commission's regulations.[77]

15. The Commission recommends that the default service procurement process be monitored by an independent evaluator to ensure a competitive and transparent process.[78]

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[71] 66 Pa.C.S. § 2807(e)(3.1)-(3.4).
[72] 52 Pa. Code § 54.185(e)(6).
[73] *See id.*; *see also* RMI Final Order, p. 42.
[74] 52 Pa. Code § 54.185(e)(5).
[75] *Id.*
[76] 52 Pa. Code § 54.185(e)(3).
[77] *Id.*
[78] 52 Pa. Code § 69.1807(8).

16. The Companies' use of independent evaluators for default service and SPAEC procurements are therefore consistent with Commission policy.[79]

17. The AEPS Act requires EDCs to obtain AECs based on certain percentages of electricity sold to retail customers in Pennsylvania.[80]

18. The Companies' proposed procurement of SPAECs and other Tier I AECs and Tier II AECs is consistent with the AEPS Act and the Commission's regulations.[81]

19. A four-year term for DSP V is consistent with recent Commission precedent approving four-year terms for EDCs' default service programs.[82]

20. The Companies' DSP supply contracts concluding at the end of the DSP term is consistent with Commission precedent stating that "shorter, more frequent procurements should ensure a smoother transition into the next procurement period without requiring the procurements extend beyond May 2015...."[83]

21. As proposed, the terms and conditions of the Companies' DSP V are consistent with the Electricity Generation Customer Choice and Competition Act ("Competition Act"), as amended by Act 129, and the Commission's default service regulations and policies.[84]

C. DSP PORTFOLIO

22. The default service product available to the residential class represents a prudent

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[79] 52 Pa. Code § 54.186(c)(30.
[80] 73 P.S. § 1648.1, *et seq.*
[81] *Id.*; 52 Pa. Code § 54.185(e)(1).
[82] *See, e.g., Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2017 Through May 31, 2021 (DSP IV)*, Docket No. P-2016-2534980 (Opinion and Order entered December 8, 2016); *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 (Opinion and Order entered October 27, 2016); *Petition of Duquesne Light Company for Approval of a Default Service Plan for the Period June 1, 2016 to May 31, 2021*, Docket No. P-2016-2543140 (Order entered December 22, 2016).
[83] *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 (Opinion and Order dated Aug. 16, 2012).
[84] 66 Pa.C.S. § 2801, *et seq.*; 52 Pa. Code §§ 54.181- 54.190; 52 Pa. Code §§ 69.1801-1817.

mix of spot market purchases and short- and long-term contracts consistent with Act 129.[85]

23. The default service product available to the commercial class represents a prudent mix of short- and long-term contracts consistent with Act 129.[86]

24. The Companies' proposal to transition commercial customers whose demand exceeds 100 kW for 12 months to the HPS Rider is consistent with the RMI Final Order, which indicates that "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 customers above that demand level who have interval meters."[87]

D. PURCHASE OF RECEIVABLES CLAWBACK PROVISION

25. The clawback charge, as described in Joint Stipulation No. 2, promotes least cost over time default service as required under Act 129.[88]

E. RETAIL MARKET ENHANCEMENT RATE MECHANISM

26. The PTC adder is consistent with the RMI Final Order, encouraging the "robust competitive market that was envisioned" when the Competition Act was adopted.[89]

F. CUSTOMER REFERRAL PROGRAM

27. The continuation of the CRP through May 31, 2023 is supported by the RMI Final Order, the Commission's Intermediate Work Plan developed as part of the Retail Markets Investigation, and the Commission's codified policy.[90]

G. CUSTOMER ASSISTANCE PROGRAM SHOPPING

28. The Competition Act states that "it is now in the public interest to permit retail

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[85] 66 Pa.C.S. § 2807(e)(3.2).
[86] *Id.*
[87] RMI Final Order, p. 29.
[88] 66 Pa.C.S. § 2807(e)(3.4).
[89] *Id.* at 15.
[90] RMI Final Order, p. 13; *see also Commission's Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*; Docket No. I-2011-2237952, p. 30 (Final Order entered Mar. 2, 2012); *see also* 52 Pa. Code § 69.1815.

customers to obtain direct access to a competitive generation market," and requires the Commission to "allow customers to choose among electric generation suppliers in a competitive generation market through direct access."[91]

29. 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."[92]

30. The Competition Act also provided for the continuation of universal service programs, including CAP: "The Commonwealth must, at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service."[93]

31. The Commission is tasked with ensuring that EDCs' universal service programs are appropriately funded, operated in a cost-effective manner, and subject to full cost recovery.[94]

32. In the RMI Final Order, the Commission held that CAP customer benefits are fully portable and CAP customers should be permitted to shop in the competitive market without restriction.[95]

33. In *Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania v. Pennsylvania Public Utility Commission* ("*CAUSE-PA*"), the Commonwealth Court established the following standard for evaluating whether to impose CAP shopping restrictions: 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, including the adoption of a PTC price ceiling.[96]

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[91] 66 Pa.C.S. § 2802(3); 66 Pa.C.S. § 2804(2).
[92] 66 Pa.C.S. § 2802(5).
[93] 66 Pa.C.S. § 2802(10).
[94] 66 Pa.C.S. § 2804(9).
[95] RMI Final Order, pp. 60-62.
[96] *CAUSE-PA*, 120 A.3d 1087, 1103-1104 (Pa. Commw. Ct. 2015).

H. JOINT PETITION FOR PARTIAL SETTLEMENT

34. The Joint Petition for Partial Settlement is consistent with the Commission's regulations and policies supporting settlement.[97]

I. MISCELLANEOUS

35. Neither the Companies nor any affiliated interest has withheld from the market any generation supply in a manner that violates federal law.[98]

36. The SMA should be approved as an affiliated interest agreement pursuant to 66 Pa.C.S. § 2102, as approved by the Commission in the Companies' prior DSP proceedings.[99]

37. As determined by the Commission in prior DSP proceedings, Penelec's transfer of AECs acquired through its NUG agreements in order to meet all of the Companies' AEPS requirements is consistent with 66 Pa.C.S. § 2102.[100]

38. To the extent necessary, a waiver of 52 Pa. Code § 54.187(h)-(j) to permit the Companies to use their own customer class definitions is appropriate and consistent with prior Commission approvals of the Companies' DSPs.[101]

39. To the extent necessary, a waiver of 52 Pa. Code §§ 54.182 and 54.187 may be granted to permit the Companies to continue their non-bypassable collection of the NMB charges identified herein through their DSS Riders as previously approved by the Commission.[102]

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[97] 52 Pa. Code §§ 5.231, 69.391 and 69.401.
[98] 66 Pa.C.S. § 2807(e)(3.7)(iii).
[99] 66 Pa.C.S. § 2807(e)(3.1)(iii)(B); *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 seq.* (Opinion and Order dated Aug. 16, 2012); *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-2013-2391368, *et seq.* (Opinion and Order dated Jul. 24, 2014); DSP IV Proceeding; Docket Nos. P-2015-2511333, *et seq.* (Opinion and Order dated May 19, 2016).
[100] *Id.*
[101] *See id.*
[102] *See id.*

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 Reply 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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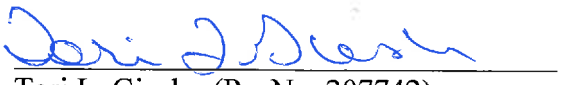

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