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July 9, 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:

Attached please find the Reply Exceptions of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company 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 if you have any questions.

Very truly yours,

Tori L. Giesler

Tori L. Giesler

dlm

c: As Per Certificate of Service

**BEFORE THE**
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

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## I. INTRODUCTION

This proceeding was initiated on December 4, 2017, when Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power") and West Penn Power Company ("West Penn") (collectively, or any combination of the foregoing, the "Companies") filed a Joint Petition ("Joint Petition") requesting that the Pennsylvania Public Utility Commission ("Commission") approve their Default Service Programs for the period from June 1, 2019 to May 31, 2023 ("DSPs") and, among other things, find that the DSPs satisfy the criteria set forth at 66 Pa.C.S § 2807(e)(3.7).

On June 8, 2018, presiding Administrative Law Judge Mary D. Long ("ALJ") issued her Recommended Decision ("Recommended Decision" or "R.D.") recommending approval of the Companies' DSPs as modified by the Joint Petition for Partial Settlement filed on May 15, 2018, as well as by a stipulation reached amongst the Retail Energy Supply Association ("RESA"), Respond Power LLC ("Respond"), and the Commission's Bureau of Investigation and Enforcement ("I&E"), with two exceptions. In particular, the ALJ recommended that the Companies' proposed retail market enhancement rate mechanism be denied ("PTC Adder"), as well as recommended that the Companies be directed to establish shopping restrictions for

customers participating in the Companies' customer assistance programs ("CAPs"). On June 28, 2018, Exceptions were filed by the Office of Consumer Advocate ("OCA") and RESA.

The Recommended Decision provides a thorough analysis of the many issues in this proceeding and, in very large part, closely adheres to the Commission's orders in the Companies' prior default service proceedings and, as appropriate, follows the Commission's relevant guidance on default service programs and the enhancement of the retail electric market. The issues raised in Exceptions and discussed below were addressed in the Companies' Initial and Reply Briefs to the ALJ filed on May 1 and 15, 2018, respectively. The Commission is urged to review those briefs to gain a deeper understanding of such issues.

## II. REPLY EXCEPTIONS

### A. Reply to OCA Exception No. 1: The ALJ Correctly Determined That the Companies' Default Service Plan Residential Portfolio Procurements Meet the Requirements of Act 129, Rejecting the OCA's Alternative Residential Procurement Schedule

In their DSPs, the Companies proposed that for the residential class, tranches will be obtained through descending clock auctions[1] with staggered twelve and twenty-four-month terms and procured over twelve separate procurement dates.[2] Meanwhile, the OCA proposed one modification to the Companies' proposed residential portfolio to address its concern with the Companies' proposed "hard stop" of supply contracts on May 31, 2023.[3] Specifically, the OCA recommended that sixteen of the forty-six twelve-month contracts proposed in the Companies' procurement plans be converted to two-year contracts, which would allow these two-year contracts to extend beyond the May 31, 2023 term end-date proposed by the Companies.[4]

[1] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, p. 7.
[2] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2, pp. 7-8.
[3] OCA Statement No. 1, pp. 11-12.
[4] *Id.*

ALJ Long properly recommended that the OCA's modification be rejected.[5] Specifically, ALJ Long determined that the Companies' procurement plan is consistent with prior Commission-approved DSPs for the Companies, the Companies' procurement strategy does not violate Section 2807,[6] the OCA did not identify any specific issue with the Companies' past procurements that would require a change in procurement strategy, and that the OCA has not demonstrated that the auction schedule proposed by the Companies will not provide adequate price stability for their customers.[7] The OCA has taken exception to ALJ Long's recommendation to reject its proposed modification to the Companies residential portfolio.[8] Specifically, the OCA believes the ALJ erred for two reasons in concluding that "the OCA has not demonstrated that the auction schedule proposed by the Companies will not provide adequate price stability for their customers."[9]

First, the OCA argued that it presented evidence that extending purchases beyond the term of the DSP is the best practice to avoid unnecessary market timing risk for residential customers.[10] To support this argument, OCA cites to the direct testimony of its witness Mr. Estomin.[11] However, the OCA is not the only party who presented testimony in this proceeding. The Companies presented the rebuttal testimony of Mr. Catanach who, in response to Mr. Estomin's direct testimony, stated that the Companies' proposed procurement plan already provides significant temporal diversity, spreading the procurements over auctions scheduled at different points during the DSP term, which will balance any commodity price changes in the power markets over time.[12] The ALJ correctly determined that the Companies should not be required to implement OCA's recommendation, because their DSPs are already structured to account for

[5] R.D., p. 30.
[6] 66 Pa.C.S. § 2807.
[7] R.D., p. 30.
[8] OCA Exceptions, pp. 3-5.
[9] *Id.*
[10] *Id.*
[11] *Id.*
[12] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2-R, p. 3.

market timing risk.[13]

In further support, the OCA argues that integrating contracts into a subsequent DSP is a common practice in Pennsylvania and cites to other utilities such as PPL Electric and PECO. 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.[14] 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 stop".[15] As Mr. Catanach testified, the Companies are able to eliminate the laddering of contracts without exposing customers to rate shock because the Companies spread the procurements over auctions scheduled at different points during the DSP term, which balances any commodity price changes in the power markets over time.[16] Furthermore, the Commission has supported the Companies' use of "hard stops" since DSP II. Both of these points were recognized in the ALJ's Recommended Decision.[17]

The OCA also disagrees with ALJ Long's decision to the extent that she placed the burden of proof on the OCA to demonstrate that the Companies' auction schedule does not provides adequate price stability.[18] The legal standard for these types of cases has been very clear over the years. Specifically, the burden of proof is as follows:

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[13] R.D., p. 30.
[14] *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.
[15] *Id.*
[16] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2-R, p. 3.
[1717] R.D., p. 30.
[18] OCA Exceptions, p. 4.

> Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is well-established that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible."[19]
>
> The burden of proof is comprised of two distinct burdens: the burden of production and the burden of persuasion. The burden of production tells the adjudicator which party must come forward with evidence to support a particular proposition. *See* In re Loudenslager's Estate, 430 Pa. 33, 240 A.2d 477, 482 (1968). The burden of persuasion determines which party must produce sufficient evidence to convince a judge that a fact has been established, and it never leaves the party on whom it is originally cast.[20]

While the Companies have the burden of proving that their proposed DSPs are just and reasonable, which they did, any party contesting the DSPs or any portion of the DSPs has the burden of persuading the Commission that the Companies' filings are not just and reasonable.[21] In addition, where competing proposals are introduced, the sponsoring party must show that the alternative proposal will better serve customers.[22] Therefore, the ALJ was correct in determining that the OCA failed in meeting its burden of proof that the auction schedule proposed by the Companies will not provide adequate price stability for customers.[23]

In conclusion, the Commission should adopt ALJ Long's recommendation and reject OCA's modification to the Companies residential portfolio proposal. As explained throughout this proceeding, the Companies' proposed procurement plan already provides significant temporal diversity, spreading the procurements over auctions scheduled at different points during the DSP term, which will balance any commodity price changes in the power markets over time.[24]

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[19] *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990).
[20] *Reidel v. County of Allegheny*, 633 A.2d 1325, 1329 n. 11 (Pa.Cmwlth. 1993).
[21] *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs,* P-2013-2391368, P-2013-2391372, P-2013-2391375, P-2013-2391378 (Recommended Decision April 23, 2014)
[22] *Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Programs,* Docket No. P-2009-2093053 and P-2009-2093054 at 19 (Opinion and Order entered November 6, 2009).
[23] R.D., p 30.
[24] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2-R, p. 3.

Moreover, since DSP II,[25] the Companies' default service supply contracts have ended at the prescribed DSP delivery period, which feature the Commission has consistently supported, stating that the Companies' use of "shorter, more frequent procurements should ensure a smoother transition into the next procurement period without requiring the procurements extend beyond May 2015…".[26] Finally, by including a "hard stop", the Companies are able to remove any regulatory risk associated with significant changes in default service rules that may be implemented beyond the end of a DSP delivery period.[27]

**B. Reply to OCA Exception No. 2: The ALJ Properly Recommended That the Terms of the Stipulation Reached by the I&E, RESA, Respond and the Companies, Including the Companies' Provision of EGS and Customer-Specific Arrears Reports, as Modified by the Recommended Decision**

In its Exceptions, the OCA continues to take the position that the Companies would be violating customer privacy restrictions by producing reports, specific to each EGS and the individual customers it actively serves in the Companies' territories. In particular, the OCA believes that such reports would present a violation to the Commission's regulations which require customer consent to be obtained prior to the release of such information.[28] The OCA goes on to outline what information it believes is restricted by virtue of this regulation, including such items as "billing information, particularly as it pertains to partial payments, the allocation of partial payments between the EDC and the EGS, payment arrangement terms, receipt of financial assistance, etc."[29] However, 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 by the EDC, to have authorized a release of its

[25] The delivery period for DSP II began on June 1, 2013 and ran through May 31, 2015. Met-Ed/Penelec/Penn Power/West Penn Statement No. 2-R, pp. 3-4.
[26] *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650, *et al.*, p. 26 (Order entered August 16, 2012).
[27] Met-Ed/Penelec/Penn Power/West Penn Statement No. 2-R, pp. 3-4.
[28] OCA Exceptions, pp. 5-6.
[29] OCA Exceptions, p. 6.

information as it relates to the customer's transactions with the EGS it chooses to shop with. Further, the OCA continues to import its own expectations as to what information those reports will contain, without regard to the evidence entered into the record in this proceeding, and the clarification made by the Companies in their Reply Brief on this topic.[30] In particular, Witness Bortz testified on behalf of the Companies that such reports are already available today and while currently produced manually at the request of an EGS, could be automated in the event the Clawback Provision were to be adopted over a longer period.[31] Those reports, Ms. Bortz went on to note, contain a "list of their [the EGS's] customers showing their outstanding unpaid balances" – not indicating that any other information listed by the OCA would be provided.[32] The OCA, in an effort to support its position, 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.[33] However, no party has suggested that the need for this information is in order to arm the affected EGS with the information necessary to begin collection efforts on its own behalf. Instead, 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, or discontinue service to customers which expose the affected EGS to undue risk, returning the customer to default service – a right EGSs have under the Companies' supplier coordination tariffs.

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

[30] Companies' Reply Brief, p. 12.
[31] Met-Ed/Penelec/Penn Power/West Penn Statement No. 1-R, pp. 17-18.
[32] *Id.*
[33] OCA Exceptions, p. 6.

benefit for the electric retail market as a whole. With the addition of the reporting commitment made by the Companies and modified by the ALJ's Recommended Decision, 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. For all of these reasons, the terms of the Clawback Stipulation should be adopted as modified by the Recommended Decision, and the OCA's exception should be denied.

### C. Reply to OCA Exception No. 3: The ALJ Properly Recommended That the Companies' Existing Customer Referral Program ("CRP") be Extended Through May 31, 2023

Like their proposal to institute a PTC Adder, the Companies proposed to continue their existing CRP for the duration of the proposed four-year delivery term 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 currently stands absent the Companies' proposal.

The OCA continues to oppose the continuation of this program on the basis that it claims that the CRP confuses and misleads customers, and that it believes the Companies did not properly implement the program. Regardless of their views as to the necessity of the program itself, or what the scripts should and should not contain, the Companies vehemently disagree with the characterizations made by the OCA regarding the Companies' alleged non-compliance with the directives of the Commission and the terms of the Commission-approved settlement agreement which set forth the terms of their current DSPs.

The OCA continues to cite the exact language from the Companies' Commission-approved DSP IV settlement that was to be included in the scripts used by the Companies' own employees and their third-party agent for the administration of this program.[34] Notably, the only requirement of the DSP IV settlement was that the Companies make corresponding changes to each of those

[34] OCA M.B., pp. 34-35.

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 comparable portions of the DSP IV Settlement language. The OCA confuses its distaste for the CRP itself as 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..."[35] 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 with any settlement they have entered into or any Commission directive. 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 noted numerous times throughout this proceeding, 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.[36] Since that time, the Companies have continued, and the Commission has approved, extensions of their CRP as being in the public interest.[37] To this point, Companies have received no indication from the Commission that there is an intent to deviate from the most recently provided guidance on this

[35] OCA Statement No. 2, p. 18, lines 2-4.

[36] 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.

[37] 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).

topic. While the OCA has criticized the Companies for not demonstrating a "need" for the program,[38] the bottom 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, and the OCA's exceptions as they relate to the Companies' performance of their obligations in compliance with all settlements and Commission directives should be denied.

**D. Reply to RESA Exceptions, p. 3: RESA's Proposals That the Commission Initiate Multiple New Proceedings and Rate Initiatives if it Does Not Adopt the Companies' PTC Adder, Made for First Time in its Exceptions, are Improperly Presented at This Stage of This Proceeding, and, Consistent With Well-Established Commission Precedent, Should Be Summarily Rejected**

RESA generally supported the concept of a PTC Adder, while recommending certain modifications to the Companies' proposal – modifications that the Companies opposed. By its Exception No. 1, RESA has taken exception to the ALJ's rejection of the PTC Adder and, in support of its exception, RESA reiterates the basis for its support of that proposal.

However, in the "Introduction" that preceded its Exception No. 1, RESA presented – for the first time in this case – entirely new proposals for actions it is urging the Commission to take in the event the PTC Adder is not approved.[39] As a consequence, none of the parties were afforded an opportunity to address RESA's proposals either during the testimonial phase of this proceeding or, for that matter, in the Main and Reply Briefs that were submitted to the ALJ. In addition, because of the belated interjection of RESA's proposals, no evidentiary record was developed on which the Commission could base a decision, and the Commission was deprived of the analysis

[38] OCA M.B., p. 46.
[39] RESA Exceptions, p. 3.

and recommendation of the ALJ – indeed, RESA has proceeded in a manner that would cut the ALJ out of the deliberative process entirely. In short, basic due process principles of notice and opportunity to be heard, fundamental fairness, and well-settled processes and procedures for the equitable and orderly conduct of formal Commission proceedings would be violated, and the Companies and other parties would be seriously prejudiced, if the Commission gives any consideration to the proposals presented in the Introduction to RESA's Exceptions.

Significantly, RESA's proposals also extend far beyond the scope of this proceeding and seek to initiate action that would affect other EDCs and stakeholders that are not even parties to this case and who had no way of knowing that regulatory initiatives even remotely resembling RESA's far-reaching proposals could flow from the Commission's decision in this docket. Specifically, RESA's three-part proposal asks the Commission to:

> (1) initiate cost allocation cases *for the electric distribution companies ("EDCs")* similar to what is contemplated in 52 Pa. Code § 69.1808; (2) direct staff from the Office of Competitive Management Oversight ("OCMO") to undertake a review *of utility rates* and submit a report and recommendation regarding potential reforms to the PTC to create better parity with competitive market price offerings; and/or (3) open *a generic proceeding* to focus specifically on how to ameliorate the current competitive advantages that EDCs have in the retail market.[40]

Thus, in addition to all of the other defects in RESA's proposals that were outlined above, a default service proceeding for a single EDC should not become the launching pad for previously-unexamined proposals to initiate Commission proceedings of the nature, scope and magnitude of those RESA is advocating. Such proposals, if they are to be considered by the Commission at all, should be presented in separately-submitted Petitions that adequately delineate the bases for RESA's requested relief. Additionally, the filing of separate Petitions – with adequate notice to interested parties, as due process requires – would provide all potentially-affected stakeholders a

[40] *Id.* (emphasis added).

reasonable opportunity to address the threshold questions of whether the entirely new proceedings RESA is promoting are necessary at all and whether the resources of the participants and the Commission should be expended in that fashion at this time. Moreover, separately-filed Petitions would also enable interested parties to help the Commission identify and define the issues that might properly be explored if, after due consideration, the Commission decided that re-examining yet again the areas RESA has targeted should be undertaken at all. None of that kind of issue-definition is possible given the impromptu and highly improper manner that RESA used to try to thrust its belated proposals into this case.

Adding to the impropriety of using a procedurally-defective vehicle (i.e., an "Introduction" to "Exceptions") to promote its proposals, RESA also attempts to support its request for relief with a host of factual averments that have no basis in the evidentiary record.[41] RESA presents what purport to be statements of fact about alleged problems with the retail electricity market as if those statements had some antecedent in the evidentiary record. They clearly do not, and RESA's attempt to advance proposals for new regulatory initiatives in reliance upon such unsupported averments is a further serious denial of fundamental due process to parties that have not had the opportunity to present testimony or other evidence to refute RESA's speculative criticisms of the state of electric competition. In addition, given the current procedural posture of this case, namely, the absence of a properly developed evidentiary record related to RESA's proposals, the Commission does not have the necessary legal basis to entertain those proposals, let alone grant them.[42] As this Commission has previously held: "Pennsylvania law requires that administrative

[41] *See* RESA Exceptions, pp. 1-2.

[42] An adjudication by a Commonwealth agency must contain findings and conclusions for the agency's decision, and those findings and conclusions must be based on substantial evidence set forth in an evidentiary record that was developed by affording parties the opportunity for notice of the issues presented and an opportunity to be heard. 1 Pa.C.S. §§ 504-507. *See also* 2 Pa.C.S. § 704 (findings of a Commonwealth agency must be supported by "substantial evidence").

decisions must be based on evidence and not on propositions which have not been sustained by record evidence."[43]

Well-established minimum standards of due process in regulatory proceedings require timely notice of issues that will be raised for decision, and such notice must be adequate to enable the parties to reasonably address those issues *on the record.*[44] Applying those fundamental principles, the Commission has repeatedly and forcefully held that it is highly improper for parties to attempt to introduce new claims, proposals or adjustments in briefs to the ALJ.[45] Additionally, in *Pa. P.U.C. v. Pennsylvania-American Water Co.,*[46] where the OCA tried to raise a new issue at the *surrebuttal* phase of the case, both the Administrative Law Judge and the Commission rejected the OCA's position for coming too late in the litigation process. In this case, as previously explained, RESA is attempting to by-pass *both* the evidentiary *and* briefing phases of the case and, to that extent, its tactic is far more egregious than the OCA's attempt to introduce a new position in surrebuttal testimony in *Pennsylvania-American, supra.*

For all of the foregoing reasons, the new proposals that RESA has improperly tried to advance in the "Introduction" to its Exceptions should be rejected by the Commission. Granting

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[43] *Shaffer v. Commonwealth Tele. Co. et al.*, Docket No. C-00924648, 1995 Pa. PUC LEXIS 14 at *15 (Final Order entered Jan. 24, 1995).

[44] *Smith v. Pa. P.U.C.*, 192 Pa. Super. 424, 498, 162 A. 2d 80, 81 (1960) ("The commission, as an administrative body, is bound by the due process provisions of constitutional law and by the principles of common fairness [citations omitted]. Among the requirements of due process are notice and an opportunity to be heard on the issues, to be apprised of the evidence submitted, to cross-examine witnesses, to inspect documents, and to offer evidence in explanation or rebuttal.") *Accord Town Development, Inc. v. Pa. P.U.C.*, 50 Pa. Cmwlth. 104, 411 A.2d 1317 (1980) ("Obviously, principles of due process are applicable in civil as well as criminal matters. The PUC is clearly bound by the due process provisions of constitutional law and by the principles of common fairness.").

[45] *Enron Cap. and Trade Res. Corp. v. Peoples Nat'l Gas Co.*, Docket No. R-00973928 *et al.* (Rec. Dec of Adm. Law Judge Larry Gesoff issued Nov. 13, 1997)("Enron should not be permitted to introduce an argument at the briefing stage which it could have introduced in the evidentiary phase of this proceeding."), adopted and approved by the Commission (Final Order entered Aug. 24, 1998), 1998 WL 817682 at 14 and 37; *P.U.C. v. Philadelphia Elec. Co.*, 57 Pa. P.U.C. 260, 270 (Final Order entered Apr. 29, 1983) (rejecting a proposal made for the first time in a party's reply brief); *Pa. P.U.C. v. Pennsylvania Power and Light Co.*, 57 Pa. P.U.C. 559, 595 (Final Order entered Aug. 19, 1983) ("Merits aside, it is highly inappropriate for a party to propose a completely new adjustment for the first time in its brief."); *Pa. P.U.C. v. Philadelphia Elec. Co.*, 56 Pa. P.U.C. 191, 236 (Final Order entered June 30, 1982) ("The ALJ has rejected this proposal on the basis that this issue was first brought up in CEPA's brief and, accordingly, there is no record evidence to support it. We agree.").

[46] 79 Pa. P.U.C. 25, 58 (Final Order entered Apr. 21, 1993) ("However, we are of the opinion the ALJ was correct in rejecting this proposed adjustment because it was put forth too late in the case to be properly argued.")

any credence to RESA's proposals in this case would constitute a serious violation of due process, fundamental fairness and the legally-binding processes and procedures embodied in applicable provisions of Pennsylvania's Administrative Agency Law, controlling Pennsylvania appellate authority and the Commission's own regulations and orders, as discussed above.

## III. CONCLUSION

For the reasons set forth above, the Recommended Decision issued by Administrative Law Judge Long on June 8, 2018, should be adopted without modification, and the exceptions filed by the OCA and RESA on June 28, 2018 should be rejected.

Respectfully submitted,

Dated: July 9, 2018

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**BEFORE THE**
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

## CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served a copy of the Reply Exceptions 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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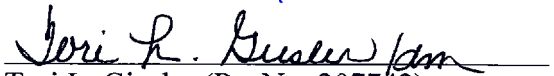

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