

COMMONWEALTH OF PENNSYLVANIA




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May 6, 2022

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Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
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400 North Street
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Re: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of Default Service Programs for the Period June 1, 2023 through May 31, 2027
Docket Nos. P-2021-3030012
P-2021-3030013
P-2021-3030014
P-2021-3030021

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Statement in Support of Settlement in the above-referenced proceedings.

Also, please be advised that the OCA will not be filing a Main Brief in the above-referenced proceedings. The OCA reserves the right to file a Reply Brief should it deem necessary.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

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Certificate of Service

*328298

CERTIFICATE OF SERVICE

Re: Joint Petition of Metropolitan Edison Company, : Docket Nos. P-2021-3030012
Pennsylvania Electric Company, Pennsylvania : P-2021-3030013
Power Company, and West Penn Power Company : P-2021-3030014
for Approval of Default Service Programs for the : P-2021-3030021
Period June 1, 2023 through May 31, 2027 :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Statement in Support of the Joint Petition for Settlement, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 6th day of May 2022.

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Dated: May 6, 2022
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Metropolitan Edison Company for : P-2021-3030012
Approval of Its Default Service Plan for the Period :
From June 1, 2023 through May 31, 2027 :

Petition of Pennsylvania Electric Company for : P-2021-3030013
Approval of Its Default Service Plan for the Period :
From June 1, 2023 through May 31, 2027 :

Petition of Pennsylvania Power Company for : P-2021-3030014
Approval of Its Default Service Plan for the Period :
From June 1, 2023 through May 31, 2027 :

Petition of West Penn Power Company for : P-2021-3030021
Approval of Its Default Service Plan for the Period :
From June 1, 2023 through May 31, 2027 :

STATEMENT OF THE
OFFICE OF CONSUMER ADVOCATE
IN SUPPORT OF THE JOINT
PETITION FOR SETTLEMENT

The Office of Consumer Advocate (OCA), a signatory party to the Joint Petition for Settlement (Settlement) in the captioned proceedings, respectfully requests that the terms and conditions of the Settlement be approved by Administrative Law Judge Jeffrey Watson (ALJ Watson) and the Pennsylvania Public Utility Commission (Commission). It is the position of the OCA that the proposed Settlement is in the public interest and in the interests of the customers of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (Met-Ed, Penelec, Penn Power, and West Penn, respectively, or the Companies, jointly).

I. INTRODUCTION

On December 14, 2021, the Companies filed a Joint Petition for Approval of Their Default Service Programs (Petition). The Companies sought approval of default service programs (DSPs) and procurement plans covering a four-year period, from June 1, 2023 to May 31, 2027. Petition at ¶ 11.

In their Petition, the Companies proposed to acquire supply for residential customers through a combination of a series of load-following, full requirements supply contracts in approximately 50 megawatt (MW) tranches, Petition at ¶ 11, and a long term solar procurement, Petition at ¶ 15. As to the long term solar contract, the Companies stated only that they will obtain a “fixed quantity” of the default service load. Petition at ¶ 15. For the full requirements contracts, the winning bidders would also be responsible for meeting all obligations imposed on a Load Serving Entity (LSE) by PJM and for supplying other services or products that are required of LSEs. Petition at ¶ 12. Those Companies would procure all necessary solar photovoltaic requirements on behalf of all load in their service territories, other than that procured by the long term solar contract. Petition at ¶¶ 12; 26. The new contracts for residential products were proposed to have staggered 12- and 24-month terms. Petition at ¶ 14. The Companies proposed that each residential class tranche for load that is not served by the Companies’ proposed long-term solar procurement includes a 95% fixed-price product, the price for which will be established through the Companies’ descending-price clock auction process, and a 5% variable price spot portion. Petition at ¶ 14. The Companies further proposed to obtain energy from long-term solar procurement through multi-year, fixed-price power purchase agreements. Petition at ¶ 15. From years 2023 to 2026, the Companies proposed that auctions will be conducted in March and September. Petition at ¶ 19.

The Companies further proposed the following changes to their supplier master agreement

(SMA): (1) modifications to reflect the changes in default service supplier responsibility for Alternative Energy Portfolio Standards Act (AEPS) compliance; (2) the addition of several protections against supplier default, including adoption of a more conservative credit exposure methodology, an Independent Credit Requirement per Tranche for winning bidders, and a standard supplier assignment agreement; and (3) revisions to introduce a capacity proxy price in the Companies' auctions in the event PJM does not conduct a base residual auction. Petition at ¶ 25.

The Companies also proposed to maintain the same rate design for their Price to Compare (PTC) Default Service Rate Rider used to recover the cost of default service for residential and commercial customers, with two modifications. Petition at ¶ 36. First, the Companies proposed to modify the PTC Riders to adjust rates semi-annually, instead of on a quarterly basis, with rate change filings to be made the later of forty-five days prior to the effective date or seven days after the last supply auction. Petition at ¶ 37. Additionally, the Companies proposed tariff revisions to align their PTC Riders and Hourly Pricing Default Service Riders (HP Riders) with the procurement plans. Petition at ¶ 38. The Companies did not propose any change to their non-bypassable Default Service Support (DSS) Rider. Petition at ¶ 41. The Companies proposed to continue to utilize a flat per-kWh rate design for the residential and commercial customer classes. Petition at ¶ 42. The Companies also requested to recover non-market based (NMB) charges through the non-bypassable DSS Riders rather than under the PTC Rider. Petition at ¶ 43.

In compliance with their DSP V settlement commitment, the Companies proposed to implement new Time of Use (TOU) rates. Petition at ¶ 50. The Companies further proposed to continue their existing Customer Referral Program (CRP) and the pilot Purchase of Receivables (POR) clawback charge. Petition at ¶¶ 58-60. The Companies proposed to continue the Customer Assistance Program (CAP) shopping programs approved in the DSP V Order. Petition at ¶ 64. Additionally, the Companies proposed Third-Party Data Access Tariffs which would establish a

registration process for a non-EGS entity seeking electronic access to customer data. Petition at ¶ 66.

The Petition was assigned to the Office of Administrative Law Judge and further assigned to ALJ Watson. On December 17, 2021, the Office of Administrative Law Judge issued a Notice scheduling a Call-In Telephonic Prehearing Conference for January 21, 2022, at 10:00 a.m. On January 3, 2022, ALJ Watson issued a Prehearing Conference Order setting forth the parties' obligations with respect to the Prehearing Conference and directing the parties to prepare and distribute prehearing memorandums by January 20, 2022, at 12:00 p.m. On January 4, 2022, the OCA filed its Notice of Intervention and Public Statement in response to the Companies' Petition. Interventions were also filed by the Commission's Bureau of Investigation and Enforcement, the Office of Small Business Advocate, Met-Ed Industrial Users Group, Penelec Industrial Customer Alliance, Penn Power User Group, West Penn Power Industrial Intervenors, the Coalition for Affordability Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), John Bevec, Sunrise Energy, LLC, Penn State University, Enerwise Global Technologies, Shipley Choice, LLC, Constellation NewEnergy Inc., Retail Energy Supply Association, NRG Energy, Inc., and Calpine Retail Holdings, LLC. On January 20, 2022, the OCA filed its Prehearing Memorandum in accordance with ALJ Watson's Order. On January 21, 2022, ALJ Watson convened the prehearing conference establishing the procedural schedule and modifying discovery in accordance with the OCA's prehearing memorandum.

The OCA retained the expert services of Dr. Serhan Ogur and Ms. Barbara R. Alexander to assist the office in its review of the Companies' filing.¹ After several rounds of discovery, the

¹ Dr. Ogur's and Ms. Alexander's credentials and experience are set out at length in their respective statements. *See* OCA St. 1 at App. B; OCA St. 2 at Exh. BA-1.

OCA filed the Direct, Rebuttal, and Surrebuttal testimonies of Dr. Ogur and Ms. Alexander. In their testimonies, Dr. Ogur and Ms. Alexander proposed several modifications to the Companies' Petition, designed to improve the plan for residential customers.

Specifically, Dr. Ogur recommended several modifications to the Companies' proposed residential default service portfolios. Dr. Ogur recommended that the 5% spot energy component proposed by the Companies should be eliminated from the pricing of the residential full requirement contracts (FRCs) and all residential FRCs should be priced based exclusively on the price established through the Companies' descending clock auctions (DCAs). OCA St. 1 at 6. Dr. Ogur also recommended that the Companies revise their proposed Residential Full Requirements Tranche Procurement Schedule to include the procurement of overhanging FRCs during the term of DSP VI that covers the time period of June 1, 2027 through May 31, 2028 (the first year of DSP VII). OCA St. 1 at 14. Dr. Ogur further recommended the Companies should request bids for a solar power purchase agreement (PPA) with a term of more than four, but not more than 20 years (as opposed to between four years and 10 years in the Companies' proposal). *Id.* Dr. Ogur also recommended that the Companies' TOU rate proposal should be amended. *Id.* Dr. Ogur further recommended that the Companies should calculate the reconciliation amount corresponding to the difference between their default service costs and revenues semi-annually as they propose, but collect or credit this reconciliation amount over 12 months (rather than over six months as the Companies proposed). *Id.* Moreover, Dr. Ogur recommended that the Companies' proposal to establish a bidder load cap of 40% in any given fixed-price DCA should be rejected and the load cap remain at its current level of 75%. *Id.* at 6-7. Finally, Dr. Ogur recommended that bidders with poor or no credit ratings should not be allowed to bid on any of the load tranches in the Companies' DCAs. *Id.* at 7.

In Ms. Alexander's testimony, she recommended several modifications to the Companies' customer referral program (CRP), including, *inter alia*, ending the program. OCA St. 2 at 3-4. Ms. Alexander supported the Companies' Clawback Proposal and recommended that, at a minimum, the clawback charge should continue to be implemented as proposed by the Companies. *Id.* Moreover, Ms. Alexander recommended that the Companies should prohibit EGSs from serving CAP customers. *Id.* Ms. Alexander also recommended that, in contrast to a Time of Use rate option, the Companies should be required to explore, and if cost effective, propose a Peak Time Rebate program. *Id.* at 4-5. Ms. Alexander also expressed concern with the Companies' proposed tariff to allow third party access to customer data and recommended that the third party data access tariffs be rejected, in part due to the Commission's initiation of a generic proceeding to explore this policy for all EDCs. *Id.* at 5.

In her Rebuttal Testimony, Ms. Alexander also opposed the recommendations presented by RESA/NRG that the Commission should eliminate or reduce the role of the EDC in providing default service; that the Price to Compare does not properly reflect all the costs of providing default service and should be modified; that time of use rates should be mandated or made the default rate option for default service ratepayers; that CAP customers should be allowed to select a time of use rate; that supplier consolidated billing should be implemented; that the Companies eliminate the characterization of Default Service as the price to compare; and, that the Companies should automatically enroll customers who are not served by an EGS in the referral program. OCA St. 2-R at 2-14.

Throughout the proceeding, the OCA actively participated in settlement discussions with the Companies and the parties, leading to its participation in this Settlement. While the Settlement does not include all of the OCA's recommendations, the OCA recognizes that the Settlement is a product of compromise and represents a balance of the signatory parties' positions. In this

Statement in Support, the OCA addresses those Settlement terms pertaining to issues it raised throughout the proceeding and looks to other parties to discuss Settlement terms addressing their respective issues. The Settlement, taken as a whole, is a reasonable compromise that reflects the range of likely outcomes in the event of full litigation before the Commission. For the reasons set forth below, the Settlement is in the public interest and in the best interest of the Companies' ratepayers.

II. SUMMARY OF SETTLEMENT

The Settlement addresses the Companies' proposed DSP procurement and implementation plans, supplier master agreement, Alternative Energy Portfolio Standards (AEPS) Act compliance, contingency plans, rate design and cost recovery, customer referral program, Purchase of Receivables (POR) clawback charge, Customer Assistance Program shopping, and third-party data access tariffs. Additionally, the Settlement contains an agreement that the issues raised by RESA/NRG would not be addressed in this default service proceeding.

III. THE SETTLEMENT IS IN THE PUBLIC INTEREST AND FULLY SATISFIES THE REQUIREMENTS OF THE COMPETITION ACT AND THE COMMISSION'S DEFAULT SERVICE REGULATIONS

A. Procurement and Implementation Plans (Joint Petition, Paragraphs 15-42)

The OCA submits that the Settlement addresses many of the issues raised by the OCA's witnesses and provides several benefits for residential ratepayers. First, under the terms of the Settlement, the Companies will employ a 50% load cap for fixed-price product auctions and a 75% load cap for hourly-pricing product auctions. Settlement at ¶ II.19. In testimony, Dr. Ogur opposed the Companies proposal to lower the load-cap in fixed-price auctions from 75% to 40%. OCA St. 1 at 28-30. Dr. Ogur recommended that the per-auction load cap in DSP VI remain the current

70%. OCA St. 1 at 30. The OCA submits that a 50% load cap is a reasonable compromise in furtherance of the Settlement and is in the public interest.

As set forth in Exhibit A of the Settlement, the Settlement also provides that the Companies will incorporate overhanging contracts that will layer into the Companies' next DSP VII plan through May 31, 2028 to avoid a "hard stop" at the end of DSP VI. Settlement at ¶ II.19, II.27, Exh. A. An overhanging contract in the context of the Companies' proposed DSP VI is a full requirements contract with a delivery period that extends into the subsequent DSP period. OCA St. 1 at 10. In testimony, OCA witness Ogur raised a concern regarding the lack of overhanging contracts in the Companies' default service plan. OCA St. 1 at 10-14. As Dr. Ogur testified:

Overhanging contracts are used to avoid the problem of a "hard stop," which occurs when 100% of a new portfolio must be procured shortly before the beginning of the subsequent DSP period because all of the FRCs expire at the conclusion of the prior plan period. A hard stop unnecessarily exposes residential default service customers to a price shock risk. The use of overhanging contracts extends the price stability benefits of the hedging approach into the beginning part of the Companies' subsequent DSP period.

OCA St. 1 at 11. The inclusion of overhanging contracts is also consistent with the manner in which other Pennsylvania EDCs procure supply. OCA St. 1 at 13. Duquesne Light Company, PECO Energy Company, PPL Electric Utilities, UGI Electric, and Pike County Light & Power Company all include overhanging contracts in their DSPs. OCA St. 1 at 13. Inclusion of overhanging contracts is reasonable, will provide greater price stability, and should be adopted as in the public interest.

The Settlement also eliminates the Companies' proposed 5% spot component for the residential customer procurement. Settlement at ¶ II.21. OCA witness Ogur witness recommended in direct testimony that the 5% spot component be eliminated as unnecessary when balancing the benefits and additional costs. OCA St. 1 at 15-16. The elimination of the spot market component will provide for greater price stability for residential customers. Dr. Ogur testified that under the

default service regulations, the Companies have the flexibility of proposing default service supply product portfolios for each customer class tailored to the needs of that customer class and every customer class portfolio does not need to include long-term, short-term, and spot-market generation components. OCA St. 1 at 15. Moreover, the inclusion of the proposed long-term solar power purchase agreements (PPAs) in the residential default service portfolio will expose residential default service customers to some degree of spot market purchases. OCA St. 1 at 16. As OCA witness Ogur testified, this is due to the need to balance the mismatch between the portion of the residential default service load being carved out corresponding to the size of the solar PPAs and the energy deliveries from the solar PPAs via spot market purchases and sales in PJM. OCA St. 1 at 16. Elimination of the spot market component will provide for greater price stability and should be approved as in the public interest.

B. Rate Design and Cost Recovery (Joint Petition, Paragraphs 43-68)

Under the Settlement, the Companies will implement the Time of Use (TOU) riders as proposed by the Companies. Settlement at ¶ II.I.54-58. OCA witness Ogur recommended that if the TOU program was implemented, that the multipliers used to calculate the TOU rates be changed each year based on the rolling four-year average Locational Marginal Prices (LMP), customer class loads, and the PJM capacity prices applicable to the PJM Delivery Year to prevent the price multipliers from getting misaligned with market conditions. OCA St. 1 at 22-24. In direct testimony, Dr. Ogur noted that the multipliers included in the Companies' filing are based on five years of historical data beginning in 2015 (for capacity costs) and 2016 (for energy costs) and that by the end of the proposed default service program period (May 2027), some of the data on which the multipliers would be based would be more than 10 years old. *See* OCA St. 1 at 22-23. Dr. Ogur noted that the static multipliers provide no benefit to customers. OCA St. 1 at 23. Under the Settlement, the Companies will adopt OCA witness Ogur's recommendation, in part, and will

review the TOU rate multipliers every two years. The Companies will update the calculation of the TOU rate multipliers if at least one of the TOU rate multipliers results in a 15% or larger change in any direction. Settlement at ¶¶ II.I.55-56. The Settlement represents a reasonable compromise of the issue because the review of the rate multipliers will ensure that the rates more appropriately align with market conditions during the four year duration of the DSP.

OCA witness Alexander recommended that, in contrast to a TOU rate option, FirstEnergy should be required to explore and, if cost effective, propose a Peak Time Rebate program that rewards customers for reducing usage during certain critical peak hours or days. OCA St. 2 at 13-17. While a Peak Time Rebate program was not adopted in the Settlement, the OCA believes that, taken as a whole, the Settlement achieves a reasonable compromise of contentious issues that are within the range of likely outcomes in the event of full litigation of the case.

C. Customer Referral Program (Joint Petition, Paragraphs 69-79)

The Settlement ensures that each Company's CRP, as it is currently operated, will terminate as of May 31, 2027. Settlement at ¶ II.G.69. Moreover, in the Companies next default service filing, the Companies will address whether a new CRP program should be implemented and is necessary, as well as provide reasons for their proposal. *Id.*

As noted by Ms. Alexander in her Direct Testimony, there is not a sufficient value to consumers to continue the CRP. OCA St. 2 at 8. Ms. Alexander noted that the program has served its initial purpose and that there is no need for the EDC to act as the marketing agent for the EGSs since the retail market has been in effect for over a decade. OCA St. 2 at 9. Ms. Alexander provided evidence demonstrating that despite the CRP being promoted as a "7% discount program," there is a widespread disparity in actual discount levels for customers who enrolled in the CRP compared to their respective Prices to Compare (PTCs). *See* OCA St. 2 at 7-8. Ms. Alexander further noted that no amount of additional customer disclosures would provide an accurate picture when the

emphasis to entice enrollment is a 7% discount that does not in fact last more than a few months and does not extend beyond the initial month when the customer enrolls in certain months. OCA St. 2 at 8. Terminating the CRP as of May 31, 2027 is a reasonable compromise and is in the public interest.

The Companies also committed to convening multiple CRP collaborative meetings, including a meeting 90 days prior to filing of their next DSP to review the results of data collected by the Companies in regard to the CRP. Settlement at ¶¶ II.G.77-79. The collaboratives will provide the parties with an opportunity to negotiate data to be collected for the CRP review process and will provide the parties with useful data to evaluate a new CRP, if proposed.

D. POR Clawback Charge (Joint Petition, Paragraphs 80-81)

OCA witness Alexander also recommended that the purchase of receivables clawback charge should continue to be implemented as proposed by FirstEnergy. OCA St. 2R at 1. The Settlement continues the Companies' purchase of receivables clawback charge and ends the clawback charge's designation as a pilot program. Settlement at ¶¶ II.H.80-81.

E. CAP Customer Shopping (Joint Petition, Paragraphs 82-88)

In Direct Testimony, OCA witness Alexander recommended that FirstEnergy, like other Pennsylvania EDCs, prohibit EGSs from serving CAP customers. *See* OCA St. 2 at 11-13. The Settlement adopted OCA witness Alexander's recommendation and includes a provision that all customers enrolled in the Companies' CAP are required to be enrolled in default service at the applicable PTC. Settlement at ¶¶ II.I.82. Ms. Alexander performed an analysis as to the prices CAP customers of the Companies' EDCs were charged compared to the PTC and found that the EGSs do not always charge CAP customers an amount equal to or less than the PTC. OCA St. 2 at 12. Data presented by other parties in this proceeding demonstrated that the current CAP customer protections were not working and that as a result of CAP-customer participation in the competitive

electric market these customers and the other ratepayers who pay for CAP were paying millions of dollars more than they otherwise would have paid had all CAP customers been on default service. *See* CAUSE-PA St. 1 at 37. The settlement adopts a reasonable set of rules for CAP customers and those customers who pay for CAP so as to ensure that the program is adequately funded consistent with law, but that non-CAP customers are not paying more to support the program than is reasonably necessary and that CAP customers are not paying rates that exacerbate energy unaffordability. Thus, the record amply demonstrates that the elimination of CAP shopping is in the public interest and this provision should be adopted consistent with the practices of all EDCs in the Commonwealth.

F. Third-Party Data Access Tariff (Joint Petition, Paragraphs 89-93)

Under the Settlement, the Companies will implement a third-party data access tariff. Settlement at ¶ II.J.89-93. The third-party data access tariffs establish a registration process for non-EGS entities seeking electronic access to customer data. OCA St. 2 at 18. While the OCA opposed the Companies' proposed third party data access tariff (OCA St. 2 at 18-19), several of the enumerated protections as recommended by OCA witness Alexander were adopted in the Settlement. *See*, Settlement at ¶ II.J.89-93. In Direct Testimony, OCA witness Alexander recommended that access to electronic data exchange from the EDC should be limited to approved Conservation Service Providers (CSPs). OCA St. 2SR at 12. The Settlement limits data access to CSPs either registered with the PUC or Curtailment Service Providers that are PJM members and are identified on PJM's list of demand response providers available on PJM's website. Settlement at ¶ II.J.90. OCA witness Alexander also recommended that Enerwise's standard authorization form be utilized by the Companies for third parties seeking access to customer data. OCA St. 2SR at 13. The Settlement adopts this recommendation. Settlement at ¶ II.J.89.

In Direct Testimony, OCA witness Alexander noted that a generic proceeding regarding third party data access tariffs, Docket No. M-2021-3029018, is currently underway and that the Companies' third party data access tariffs should not be implemented prior to the completion of the Commission's generic proceeding. OCA St. 2 at 19. Under the Settlement, all parties reserve their rights for the generic proceeding and there is no precedent created for third-party utility data sharing practices as a result of this proceeding. Settlement at ¶ II.J.92. The Settlement also noted that, upon the conclusion of the generic proceeding on third-party data access, the Companies will assess whether their current system is consistent with any final Commission orders on the matter and will make additional filings to amend their tariffs, if required. Settlement at ¶ II.J.93.

G. Additional Settlement Terms (Joint Petition, Paragraphs (94-95))

As recommended by OCA witness Alexander, none of the RESA/NRG proposals regarding default service and retail market reforms were adopted in the Settlement. The Settlement's terms explicitly state that the following issues will not be addressed in this default service proceeding: (i) proposals for the Commission to open one or more proceedings to reexamine the default service model and to revisit default service regulations and the default service policy statement to ensure that EDCs are recovering all default service costs through default service rates; (ii) RESA/NRG's proposal to revisit supplier consolidated billing; (iii) changes to the Companies' recovery of NITS costs; (iv) Constellation's proposal for the incorporation of a 24x7 load following clean energy product in future default service proceedings; and (v) credit requirement consistency among default service providers. Settlement at ¶ II.J.94. The Joint Petitioners also agreed to allow RESA and/or NRG to incorporate their testimony into future proceedings on these issues with all parties reserving the right to object. Settlement at ¶ II.J.95. The agreement that these issues will not be addressed in the Companies' default service proceeding promotes judicial efficiency and is in the public interest.

III. CONCLUSION

The OCA submits that the Joint Petition for Settlement provides a reasonable resolution to the Companies' DSP filing. For the foregoing reasons, the OCA submits that the proposed Settlement is in the public interest and in the best interest of the Companies' ratepayers. Accordingly, the Office of Consumer Advocate respectfully requests that the Commission approve the Settlement in its entirety, without modification.

Respectfully Submitted,

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