COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

May 1, 2018

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

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

Dear Secretary Chiavetta:

Enclosed please find the Bureau of Investigation and Enforcement's (I&E) **Main Brief** in the above-captioned proceeding.

Copies are being served on parties as identified in the attached certificate of service. If you have any questions, please contact me at 717-783-7998.

Sincerely,

Gina L. Miller /RAK

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Deputy Chief Prosecutor
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cc: Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Petition of Metropolitan Edison	:	
Company, Pennsylvania Electric	:	**Docket No. P-2017-2637855**
Company, Pennsylvania Power Company	:	**P-2017-2637857**
and West Penn Power Company for	:	**P-2017-2637858**
Approval of their Default Service	:	**P-2017-2637866**
Programs	:	

MAIN BRIEF
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT

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Dated: May 1, 2018

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I. INTRODUCTION

On December 11, 2017, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively the "Companies") filed with the Pennsylvania Public Utility Commission ("Commission") a Petition for Approval of its Default Service Program and Procurement Plan for the Period of June 1, 2019 through May 31, 2023 ("Petition" or "DSP V"). The Companies' DSP V included, inter alia, a proposal for competitive procurement of default service supply, a plan to satisfy the requirements of the Alternative Energy Portfolio Standard Act and to recover all associated costs during the DSP V period. Pertinent to the Bureau of Investigation and Enforcement's ("I&E") position in this matter, the Companies' DSP V also indicated the Companies' plan to (1) continue its purchase of receivables ("POR") clawback charge on a permanent basis; (2) establish a bypassable retail market enhancement rate mechanism, known as the Price to Compare Adder ("PTC Adder")[1]; and (3) continue the status quo of permitting Customer Assistance Program ("CAP") customers to shop without restriction.[2] As explained more thoroughly below, I&E opposes each of these three proposals made by the Companies.

A. Summary of the Argument

At the outset of this case, the Companies' proposed to continue their purchase of receivables clawback charge on a permanent basis; however, I&E opposed the

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1 I&E notes that the Retail Energy Supply Association ("RESA") made a proposal similar to the PTC Adder, but modified it in several ways and termed it the "retail rate mechanism." I&E notes that it also opposes RESA's proposal, which is addressed more thoroughly below.

2 Petition at ¶¶ 6-7.

Companies proposal. The Companies' clawback charge has only been assessed on a two-year pilot basis and therefore has not yet yielded enough data for use in gauging its success in mitigating the Companies' uncollectible expenses. Considering this lack of data and the need to preserve options to protect ratepayers from increased uncollectible expenses, I&E recommended that the option for the Companies to establish a merchant function charge for default service customers and a POR discount rate in its next DSP proceeding should not be foreclosed. As this case progressed, the Companies' proposed a resolution of this issue via Joint Stipulation No. 2, which is attached to this Main Brief and herein incorporated as Exhibit A. I&E avers that Joint Stipulation No. 2 resolves its concerns through certain parties' agreement to limit the term of the Companies' clawback charge to operating on a four-year pilot basis. For this reason, and others that are more thoroughly discussed below, I&E respectfully submits that Joint Stipulation No. 2 is in the public interest and it should be approved.

Additionally, I&E opposes both of the bypassable retail market enhancement rate mechanisms proposed in this proceeding, identified as the PTC Adder proposed by the Companies, and the retail rate mechanism proposed by RESA. In both cases, these proposals unfairly target the Companies' residential default service customers for application of an artificial and unsupported charge. Each of these proposals violates the Public Utility Code's ("Code"), prohibition against rate discrimination, violates fundamental ratemaking principles, and fails to acknowledge customer choice. Notwithstanding these identified defects, the Companies and RESA have also failed to

produce evidence that warrants the need for their proposals. Accordingly, I&E submits that the Companies' PTC Adder proposal and RESA's retail rate mechanism proposal are both without merit and should be denied.

Finally, I&E fundamentally rejects both the Companies' and RESA's position that the scope of CAP shopping need not be addressed in this proceeding. On the contrary, and as explained in more detail below, the record in this case revealed that, over 55 months, over $17 million in excess CAP shopping costs were being incurred within the Companies' service territories as a result of CAP customers shopping for rates that exceeded the Companies' PTC. I&E submits that the Companies do have a mandate to restrict the scope of CAP shopping under certain circumstances. Chief among these circumstances, and pertinent to this case, is the necessity to restrict CAP shopping when evidence proves that escalated costs have resulted from the Companies' unrestricted CAP shopping program and access to and affordability of electricity service is compromised. For this reason, and in conjunction with the Companies' obligations to appropriately fund cost-effective universal service programs, I&E recommended that the Companies mitigate CAP shopping costs by prohibiting CAP customers from shopping for electricity rates that exceed the Companies' PTC at any time. Although the Companies and RESA oppose I&E's recommendation, I&E submits that their opposition is unsupported and contrary to the weight of the evidence in this proceeding; therefore, I&E's recommendation should be approved.

B. Legal Standards and Burden of Proof

Pursuant to the Code, the proponent of a rule or order bears the burden of proof.[3] In a case such as this one, pending before an administrative tribunal, Courts have held that a "litigant's burden of proof is satisfied by establishing a preponderance of evidence which is substantial and legally credible."[4] In this proceeding, as the proponent of the DSP V, the Companies have the burden of proof to establish that the terms of the proposed DSP V should be adopted. However, any party that offers a proposal that was not included in the Companies' original filing bear the burden of proof for such proposal.[5] In order to meet their respective burdens of proof, each proponent must present evidence more convincing, by even the smallest amount, than that presented by any opposing party.[6]

C. The Role of the Bureau of Investigation and Enforcement

Act 129 of 2008,[7] authorized the Commission to establish bureaus, offices and positions to, *inter alia,* take appropriate enforcement actions that are necessary to ensure compliance with the Code and Commission regulations and orders.[8] In accordance with Act 129, the Commission established the Bureau of Investigation and Enforcement ("I&E") to serve as the prosecutory bureau for the purposes of representing the public

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3 66 Pa. C.S. § 332(a).
4 *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).
5 *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981).
6 *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).
7 66 Pa.C.S. § 308.2.
8 66 Pa.C.S. § 308.2(a)(11).

interest in ratemaking and service matters, and enforcing compliance with the Code.[9] The instant proceeding warrants I&E's participation because its outcome has ratemaking implications and because key components of the Code and the Commission's regulations are at issue.

II. PROCEDURAL HISTORY

On December 11, 2017, the Companies filed their DSP V. Thereafter, the Commission's Office of Administrative Law Judge assigned the proceeding to Administrative Law Judge ("ALJ") Mary D. Long for investigation and scheduling of hearings to consider, inter alia, whether the DSP V will provide default service that is adequate, reliable, and will result in the least cost to customers over time.[10]

I&E entered its appearance on January 12, 2018. On February 29, 2016, Notices of Appearance, Answers, and Formal Complaints were filed by the Office of Consumer Advocate ("OCA") and the Office of Small Business Advocate ("OSBA"). Intervention petitions were submitted by the following entities: the Pennsylvania State University, NextEra Energy Marketing, LLC ("NextEra"), Calpine Energy Solutions, LLC, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), Constellation New Energy. Inc., Exelon Generation Company, LLC ("Exelon"), Met-Ed Industrial Users Group ("MEIUG")/Penelec Industrial Customer Alliance ("PICA")/West Penn Power Industrial Intervenors ("WPPII")

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9 66 Pa.C.S. §§ 101 *et seq.*, and Commission regulations, 52 Pa. Code §§ 1.1 *et seq. See Implementation of Act 129 of 2008; Organization of Bureaus and Offices,* Docket No. M-2008-2071852 (Order entered August 11, 2011).

10 66 Pa. C.S. §2807(e).

(collectively, the "Industrials"), Direct Energy Services, LLC, Respond Power, LLC, and RESA. A Prehearing Conference was held on January 17, 2018, at which time all interventions were granted. At the Prehearing Conference, a procedural schedule and the procedures applicable to this proceeding were set forth and subsequently memorialized in the Prehearing Order dated January 19, 2018. After the Prehearing Conference, I&E, the parties engaged in a substantial amount of discovery and participated in settlement discussions. Additionally, two public input hearings were held in Erie, Pennsylvania at 1:00 p.m. and 6:00 p.m., respectively. During these hearings, over sixty people testified in opposition to the Companies' proposal for the PTC Adder.

In accordance with the procedural schedule outlined in the Second Prehearing Order, the parties exchanged direct, rebuttal, surrebuttal, and rejoinder testimony. I&E introduced the following statements of testimony:

- I&E Statement No. 1: Direct Testimony of Christopher Keller
- I&E Exhibit No. 1: Exhibit to accompany the Direct Testimony of Christopher Keller
- I&E Statement No. 1-R: Rebuttal Testimony of Christopher Keller
- I&E Statement No. 1 –SR: Surrebuttal Testimony of Christopher Keller
- I&E Exhibit No. 1-SR: Exhibit to accompany the Surrebuttal Testimony of Christopher Keller

On April 10, 2018, an evidentiary hearing was held in Harrisburg. At the hearing, counsel for the Companies informed ALJ Long that the parties had either entered into or agreed not to oppose a partial settlement of this proceeding. The partial settlement was memorialized and thereafter moved into the record as Joint Stipulation No. 1. As I&E did not take a position regarding the terms outlined in Joint Stipulation No. 1, I&E did not support this partial settlement but represented its non-opposition. Alongside Joint Stipulation No. 1, five additional stipulations were presented and thereafter moved into the record. Of these additional stipulations, only Joint Stipulation No. 2, is relevant to I&E's position in this matter. Joint Stipulation No. 2, which is entered into between the Companies, I&E, Respond Power, and RESA, is attached to this Main Brief and herein incorporated as Exhibit A, and proposes a resolution of the Companies' clawback charge proposal.

Additionally, at the hearing, the parties moved for the admission of their evidence into the record. I&E entered the above-referenced testimony into the record.[11] Pursuant to the procedural schedule and the Commission's regulations,[12] I&E submits this Main Brief.

III. DEFAULT SERVICE PLAN PORTFOLIO AND TERM

I&E notes that while it investigated and reviewed the Companies' DSP V portfolio and proposed term, I&E did not take a position regarding these items in its case in chief. Additionally, to the extent that other parties may have addressed these issues through

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11 Hearing Tr. at 44-45.

12 52 Pa. Code §§ 5.501-5.502.

Joint Stipulation No. 1, I&E has neither opposed nor supported Joint Stipulation No. 1. For these reasons, I&E will not address these issues.

IV. PURCHASE OF RECEIVABLES CLAWBACK PROVISION

At present, the Companies purchase accounts receivables from electric generation suppliers ("EGSs") at a zero discount rate, which means that the Companies pay the full value of the accounts receivable regardless of whether customers pay the full amount owed.[13] The Companies recover their purchase of receivables ("POR") expenses from all ratepayers through the Default Service Support Rider ("DSS Rider"), meaning that ratepayers bear the risk of nonpayment and the costs of associated collection.[14] The Companies impose an administrative charge upon EGSs only under limited circumstances, and they refer to this charge as the purchase of receivables clawback charge ("clawback charge").[15]

The clawback charge is a charge that applies only to EGSs who meet both of the following criteria: (1) the EGS's write off percentage of revenues was 200% higher than their peers and (2) the EGS's average price per kilowatt hour is greater than 150% of the average PTC for the operating company in which the EGS serves customers. [16] EGSs that meet the both prongs of the criteria incur an annual charge that is equal to the difference between the EGS' actual write-offs and 200% of the average EGS percentage

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13 I&E St. No. 1, p. 10.
14 I&E St. No. 1, p. 10; Companies' St. No. 1, p. 20.
15 Companies' St. No. 1, pp. 20-21.
16 Companies' St. No. 1, p. 21.

of write-offs.[17] For purposes of additional context, the clawback charge arose out of the approved settlement of the Companies' prior default service proceeding.[18] Specifically, as part of that settlement, the Companies implemented the clawback charge on a two-year pilot basis for the twelve-month periods ended August 31, 2016 and August 31, 2017.[19]

At the outset of this case, the Companies proposed to continue their POR program at a zero discount rate and to continue assessing the clawback charge on a permanent basis.[20] In support of the these proposals, the Companies claimed that the clawback charge has effectively reduced exposure to unreasonable EGS uncollectibles by making EGSs with an abnormally high uncollectible costs accountable and by incenting them to reduce uncollectibles and to consider customers' ability to pay as a factor in pricing programs.[21] The Companies noted the results of the two-year pilot of the clawback charge as follows: for the twelve months ended August 31, 2016 was assessed to three EGSs for a total of $573,603.23, and for the twelve months ended August 31, 2017 the charge was invoiced to four EGSs for a total of $254,008.15.[22]

For the period ended August 31, 2016, the Companies actual uncollectible expense was higher than the amount it recovered in base rates and through the DSS rider, and therefore the Companies retained the amount collected to reduce their uncollectible expense. For the period ended August 31, 2017, the Companies' actual uncollectible

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17 Companies' St. No. 1, p. 21.

18 *Petition of Metropolitan Edison Company et al. for Approval of a Default Service Program for the Period Beginning June 1, 2017, through May 31, 2019*, Docket Nos. P-2015-2511333, P-2015-2511351, P-2015-9 2511355, and P-2015-2511356 ("DSP IV").

19 Companies' St. No. 1, p. 2.

20 Companies' St. No. 1, pp. 23-24.

21 Companies' St. No. 1, pp. 22-23.

22 Companies' St. No. 1, p. 23.

expense was less than the total amount recovered in base rate through the DSS rider for Met-Ed, Penelec and West Penn Power. As a result, customers of those operating companies will have the clawback charge revenue refunded to them, while Penn Power will retain the clawback charge of $604.13 since its uncollectible expense was higher than the amount collected in rates.[23] Using this data, the Companies' witness Bortz argues that the clawback charge has been effective in achieving the Companies' goal of reducing the uncollectibles borne by the Company and its customers.[24]

I&E witness Keller acknowledged that the results from the Companies' 2016 and 2017 clawback charge have indicated that EGSs have modified their pricing behaviors and reduced their uncollectibles; however, he expressed concern that the clawback charge fails to address all EGS uncollectibles.[25] As he explained, continuation of the clawback charge is only appropriate on a pilot basis, so that parties and the Commission are not foreclosed of the opportunity to explore further options for addressing uncollectibles in future DSP proceedings:

> I am concerned that the clawback clause fails to address all EGS uncollectibles. The Companies' clawback clause ignores the fact that all EGS uncollectibles burden the Companies and ratepayers by only charging the EGS' over the 200% of average supplier write-offs threshold. The EGS' under the 200% threshold, even at a high rate such as 175%, would continue to recoup the full amount of receivables without any discount even though not all customers will pay. Suppliers under the 200% threshold have no incentive to maintain or reduce uncollectibles. Therefore, while I recognize that the clawback has modified pricing behaviors

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23 Companies' St. No. 1, p. 23.
24 Companies' St. No. 1, p. 24.
25 I&E St. No. 1, pp. 12-13.

> and shifted some cost recovery to EGS', it does not address all EGS uncollectibles and should continue on a pilot basis so that all options can be explored in a future DSP proceeding.[26]

Witness Keller also recognized that an alternate mechanism is available to address the Companies' uncollectible expense.

Specifically, the uncollectible expense can be addressed through establishing a merchant function charge for default service customers and a POR discount rate addressed to EGSs for application to retail customers.[27] As witness Keller explained, he proposed this option in the Companies' last default service proceeding and it remains a viable option:

> [t]hese uncollectibles can be addressed via a Merchant Function Charge (MFC) on the default service customer side and as a POR discount rate assessed to EGS' on the shopping customer side. The use of a discount rate has been widely accepted by the Commission. Under a POR program, the EGS sells its accounts receivable, which allows it to receive immediate payment and avoid the risk of nonpayment by the customer. The EDC often purchases the receivables at a discount to recognize there is a risk that the account receivable may not be fully paid by the customers and to recognize that collection of accounts is not without costs. The discount may be attributable to uncollectible expense, *i.e.,* bad debt of the electric generation supplier's customers, and the EDC's administrative costs for billing and collection. In the last DSP proceeding, I recommended a POR discount and may want to make a similar recommendation in a future proceeding if it appears that the clawback does not adequately address the uncollectible issue.[28]

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26 I&E St. No. 1, p. 13.
27 I&E St. No. 1, p. 14.
28 I&E St. No. 1, p. 14 (omitting internal citation).

As witness Keller notes, while the clawback charge has been somewhat effective thus far, a further evaluation period is necessary, and the POR discount option must not be foreclosed at this time.

As this case progressed, the Companies' proposed a stipulation to resolve the concerns that several parties, including I&E, had regarding the Companies' proposal to continue the clawback charge indefinitely. As more fully set forth in Exhibit A, the Companies, I&E, Respond Power, and RESA entered into a Joint Stipulation, which was ultimately admitted into the record in this proceeding as Joint Stipulation No. 2. The Joint Stipulation contained three terms focusing on the continuation of the clawback charge as follows:

> (1) The parties agree to a four-year extension of the 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 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' POR programs on a quarterly basis, beginning no later than October 20, 2018, reflecting EGS arrears for 3Q 2018.

I&E notes that the first of these terms, parties' agreement to limit the term of the clawback charge to operating on a four-year pilot basis, was the defining term that solidified I&E's support for the Joint Stipulation.

Specifically, this term is consistent with witness Keller's recommendation that the clawback charge operate only on a pilot basis in order to allow further time to evaluate its success in reducing the Companies' uncollectibles and benefitting ratepayers. On this basis, I&E avers that retaining the ability to review the success of the clawback charge before the Companies' assess it on an indefinite basis is in the public interest. Additionally, as Mr. Keller explained, confining the clawback charge to operating on a fixed-term pilot basis will enable I&E, other interested parties, and the Commission to retain the option to recommend that the Companies instate a POR discount program if the clawback charge does not prove to be effective or results in other concerns that must be addressed. Through the Joint Stipulation, the ability to recommend that the Companies establish a POR discount program will not be foreclosed in the future; therefore, the public interest is served by ensuring that the ability to utilize other mechanisms to reduce the Companies' uncollectible is preserved, protecting both the Companies and its ratepayers. Finally, I&E notes that both RESA and Respond Power expressed concerns

regarding unintended consequences, such as an EGS unwittingly triggering the clawback penalty,[29] and therefore, I&E opines that limiting the continuation of the Companies' clawback charge to a four-year pilot term also benefits EGSs by ensuring that they are not exposed to the charge indefinitely if it negatively impacts their operations. Simply put, this term protects the Companies, their ratepayers, and EGSs; therefore, I&E avers that it is in the public interest and it should be approved.

I&E notes that it did not take a position regarding the second and third terms of the Joint Stipulation regarding the two-pronged criteria or the EGS-specific arears report that the Companies will provide to participating EGSs on a quarterly basis. I&E notes that Respond Power initially opposed the second prong of the clawback charge which reviewed whether the EGS' average price charged exceeded 150% of the electric distribution company's ("EDCs") PTC over a twelve-month period on the basis that this comparison as an inappropriate limitation of pricing.[30] However, Respond Power has elected to join the Joint Stipulation and therefore, the combined terms of the Joint Stipulation were sufficient to warrant its agreement.

Finally, while I&E did not take a position regarding he EGS-specific arears reporting, I&E notes that the record supports the concerns that both RESA and Respond Power. Both RESA and Respond indicated that absent timely reporting from the Companies, their inability to monitor whether their customers were paying bills was frustrated, compromising their ability to address the nonpayment in a timely manner so as

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29 RESA St. No. 1, p. 14; Respond Power St. No. 1, pp. 9-10.

30 Respond Power St. No. 1, pp. 14-15.

to avoid application of the clawback charge.[31] Accordingly, as the Joint Stipulation provides for quarterly reporting that would enable EGSs to be informed of and monitor customers' nonpayment, a result that could help EGSs reduce uncollectible expense for all ratepayers, I&E submits that it too is in the public interest. Accordingly, I&E respectfully avers that all of the terms of the Joint Stipulation are in the public interest and therefore, it should be approved.

V. BYPASSABLE RETAIL MARKET ENHANCEMENT RATE MECHANISM

A. The Companies' PTC Adder

As part of this proceeding, the Companies proposed to establish a bypassable retail market enhancement rate mechanism surcharge with the purpose of incenting residential retail shopping.[32] According to the Companies' witness Bortz, only residential default service customers will be compelled to pay the PTC Adder surcharge because it has the lowest level of customer shopping, with only about 30% of those customers participating in the retail shopping market. The Companies calculate that the PTC Adder will result in a volumetric charge of $0.00144 per kWh for residential default service customers.[33] The Companies rely upon their $30 Customer Referral Program Charge ("CRP Charge") as the basis for calculating the PTC Adder, and they divide this amount by twenty-four months, based on the assumption that shopping customers stay with an EGS for twenty-four months.[34] The CRP-based calculation produces a charge of $1.25 per month, which

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31 RESA, St. No. 1, pp. 15-16; Respond Power, p. 10.
32 Companies' St. No. 1, p. 24.
33 Companies' St. No. 1, p. 25.
34 Companies' St. No. 1, p. 26.

the Companies divide by an average monthly residential usage of 869 kWh to result in the PTC Adder of $0.00144 per kWh. After explaining the calculations for the PTC Adder, the Companies' witness Bortz indicated that the Companies intend to refund 95% of the PTC Adder proceeds collected from residential default service customers to all residential customers through its Default Service Support Rider. The Companies propose to retain the other 5% of the PTC Adder revenue for its administrative costs.[35]

1. The PTC Adder Violates the Code and Fundamental Ratemaking Principles

(a) The Companies' Obligation as an EDC

Under the Code, as EDCs, the Companies have an obligation to provide default service. Specifically, as set forth in the Code, EDCs are required to provide default service electric to customers at no greater cost than the cost of obtaining generation.[36] As explained above, the PTC Adder will result in an increased volumetric charge for residential default service customers, but it is not predicated on the cost of generation.[37] Instead, the PTC Adder is calculated arbitrarily and it is being assessed solely to influence residential default customers' decisions to enter the retail market. I&E avers that there is no evidence that assessing the PTC Adder to the Companies residential default service customers would in any way promote their Companies' provision of safe

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35 Companies' St. No. 1, pp. 26-27.

36 66 Pa. C.S. § 2807(e).

37 I&E notes that this point was also borne out in the Companies' 2011 Default Service Proceeding whereby the Companies made a similar proposal, albeit termed the Merchant Adjustment Charge ("MAC"). In that case, the Commission rejected the MAC, noting that the charge could not be tied to actual known and measurable costs. *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,* pp. 55-62 (Order entered August 16, 2012).

and reliable service to those customers.[38] Furthermore, the PTC Adder is not in any way tied to the Companies' cost of providing residential default service. Instead, the PTC Adder is simply an arbitrary charge that the Companies unilaterally determined was necessary to incent these customers to enter the retail shopping market.[39] Accordingly, I&E submits that the Companies' proposal for PTC Adder conflicts with its default service obligations under the Code and therefore it should be denied.

(b) Rate Discrimination

I&E avers that the Companies' PTC Adder proposal also violates Section 1304 of the Code.[40] Section 1304 provides as follows:

> No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. **No public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service.**[41]

While Section 1304 does not prohibit differences in rates, the Commonwealth Court has held that the utility must show that the differential is justified by the difference in costs required to deliver service to each class.[42] In this case, there is no nexus of connection between the PTC Adder and the Companies' cost of serving the single class of customers

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38 I&E St. No. 1-SR, p. 11.

39 I&E notes that the Companies have indicated an intent to refund 95% of the PTC Adder revenues to all residential customers, regardless of whether they take default of EGS service. The refund does not cure the Code violation for several reasons, including that it is not a full refund, and that it will dilute funds by paying them over to EGS customers who have not been assessed the PTC Adder charge.

40 66 Pa. C.S. § 1304.

41 Id.

42 *Philadelphia Suburban Water Co. v. Pennsylvania Public Utility Commission*, 808 A.2d 1044, 1060 (Pa.Cmwlth. 2002).

that the Companies have decided to target, residential default service customers. Because the PTC Adder would inflate the volumetric charge of only residential customers, and no other customer class would be impacted, the Companies' proposal would produce an unreasonable difference in rates. Accordingly, the Companies' PTC Adder proposal violates Section 1304 of the Code, resulting in rate discrimination; therefore, it must be rejected.

2. The Companies' PTC Adder Proposal Fails to Acknowledge Customer Choice

The Companies' PTC Adder unfairly penalizes residential default service customers who choose not to shop for electricity by adding the approximate equivalent of $1.25 to their bills.[43] As I&E witness Keller explained, the Companies' proposal infringes upon customers' rights to make choices about their electric supplier:

> It is not the Companies' responsibility to influence residential customers to shop for electricity, as it is the customers' option to choose an alternate supplier, and they should not be penalized for remaining with their default supplier. There are many reasons why a customer may take default service and they should not be required to pay the equivalent of an arbitrary $1.25 fee for doing so. For example, one possible reason is that shopping may not provide the customer with significant savings because, unlike other customer classes, a minimal change in the customer's electric supply costs will result in insignificant savings for residential customers. For example, the average residential customer uses 869 kWh per month. A savings of $0.005 per kWh results in only a savings of $4.35 (869 kWh x $0.005 kWh) in a residential customer's electricity bill. A savings of less than $5.00 per month for the average residential customer may not be enough of an incentive to change suppliers considering the

[43] I&E St. No. 1, pp. 6-7.

> effort necessary to keep track of their current contract and monitor any changes in electric rates.[44]

Like witness Keller, OCA witness Alexander also agrees that the Companies' failed to take into account that customers may be aware of their option to choose and EGS, but affirmatively decide not to enroll with one and to take default service instead.[45] Witnesses Keller and Alexander correctly highlighted the fact that some default service customers make the informed decision not to enter the retail shopping market based on a number of factors, and this is well-supported in the evidentiary record in this case.

More specifically, during the public input hearings held in this proceeding on March 13, 2018 in Penelec's service territory in Erie, Pennsylvania, over 60 Penelec customers expressed their concerns with the proposed PTC Adder.[46] Many of these customers testified on the record and indicated that they made a conscious, affirmative decision to remain default service customers of Penelec despite their knowledge of the availability of retail market options. A few examples of the include the following:

- Casimir Jarmolowiz on behalf of AARP: "Again, I want to emphasize that not every consumer has the desire or ability to effectively shop for their electricity supplier. And many who have shopped around have

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44 I&E St. No. 1, pp. 6-7.

45 OCA St. No. 2, p. 33.

46 *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, *et al.*, Public Input Hearing Tr., pp. 63-306.

affirmatively chosen to remain with default service, as is their right under the Electric Competition Law."[47]

- Roger Prectl: "I shopped around and I decided to stay with my company that I had. Why should I be penalized for that…?"[48]
- Patrick Hermann: "As it has been previously mentioned, there's a reason that many of us have not signed up for alternative electric choice. Mr. Springirth has graciously touched on that subject, but in a few words, the pricing and restrictions are just too prohibitive. The electric choice is an option. And we should not be coerced into going for it; and if we don't, then we're going to be assessed a penalty for not going for it. To coerce us to change to something that is currently an option should be illegal.[49]
- Robert Feederson: "Well, I would like to oppose this surcharge on the grounds that they say you have to make a choice for an electric supplier, and then you won't be charged the surcharge. Well, my choice for an electric supplier is Penelec."[50]

Additionally, several public input witnesses provided their testimony in written format that identified various reasons why they chose to opt out of the retail electric market. These reasons include rate escalation through variable rates,[51] cancellation

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47 Public Input Hearing Tr. at p. 88; I&E Ex. No. 1-SR, Sch. 1, p. 2.
48 Public Input Hearing Tr. at p. 97.
49 Public Input Hearing Tr. at p. 120.
50 Public Input Hearing Tr. at p. 279.
51 I&E Ex. No. 1-SR, Sch. 1, p. 3.

charges,[52] poor experiences with an EGS,[53] while other customers simply do not want to switch suppliers.[54] Accordingly, the evidentiary record proves that some of the Companies' customers have affirmatively chosen to remain default customers for many different, but viable reasons. Therefore, the Companies' proposal to penalize them with the PTC Adder charge in an attempt to incent them to enter the market fails to respect these customers' informed decisions, unfairly punishes them for making a permissible electric choice, and therefore it should be denied.

3. The Companies Failed to Produce Any Evidence that the PTC Adder is Warranted

The record in this case reveals that the Companies failed to support the need for the PTC Adder. Of special import here is the fact that the Companies admit that they have no evidence that imposing the PTC Adder upon residential default service customers would have an identifiable effect on customer shopping rate.[55] I&E submits that this fact alone is enough to invalidate the PTC Adder proposal, because there is no basis to support the claim that imposing a PTC Adder surcharge on residential default service customer would produce the intended effect. Yet, this lack of support is further compounded by the fact that the Companies have not even attempted to establish any metrics that could gauge the effectiveness of their proposal. More specifically, the Companies admit that they have no opinion of the appropriate level of residential customer shopping, and that they have not set a specific shopping level at which point the

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52 I&E Ex. No. 1-SR, Sch. 1, p. 7.
53 I&E Ex. No. 1-SR, Sch. 1, pp. 4-6.
54 I&E Ex. No. 1-SR, Sch. 1, p. 7.
55 I&E Ex. No. 1, Sch. 1, p. 3.

PTC Adder surcharge would no longer be necessary.[56] Therefore, the record reveals that the Companies' proposal is not only unsupported, but also underdeveloped, because Companies' failure to establish parameters and metrics upon which to evaluate the PTC Adder only serves to highlight the arbitrary, unnecessary, and artificial nature of the surcharge.

Aside from the general lack of evidence supporting the need for the PTC Adder, the Companies have also failed to support the mechanics of the proposal. First, the calculation of the PTC Adder is arbitrary because the data relied upon to support it is based upon the Companies' unsupported assumptions.[57] As I&E witness Keller explained, the Companies reliance upon their $30 CRP fee as the basis for the PTC Adder calculation is misplaced:

> the Companies state the $30 CRP fee is appropriate in determining the cost of the PTC Adder as this is the price that EGSs are willing to pay for customers referred by the Companies. The Companies' calculation of the PTC Adder essentially assumes that all residential customers shop for electricity through referrals under the CRP Program and ignore other ways to shop for electricity such as using PAPowerSwitch.com. If a customer were to use PAPowerSwitch.com to shop for a supplier, the $30 CRP fee would not apply, and the actual costs incurred by the EGS' for customer acquisition is unknown. Therefore, the Companies are attempting to force all default service customers to pay an amount equal to the $30 CRP fee, regardless of how those customers might shop for electricity or any knowledge of actual EGS customer acquisition costs.[58]

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56 I&E Ex. No. 1, Sch. No. 1, pp. 2-3.
57 I&E St. No. 1, pp. 4-5.
58 I&E St. No. 1, p. 5.

As I&E witness Keller correctly points out, the Companies' reliance upon the CRP fee assumes that none of the Companies' customers shop for electricity outside of the CRP program. Mr. Keller further explained that there is simply no relationship between the $30 CRP fee, which is the amount that the Commission agreed that the Companies could charge EGSs for referrals, and a PTC Adder that is allegedly being assessed to incent residential default service customers to enter the electric shopping market.[59] Because there is no nexus of connection between the CRP fee and the Companies' proposal, the Companies' reliance upon it as the baseline metric that underlies the calculation of the PTC Adder is arbitrary and unsupported.

Furthermore, the remaining portion of the PTC Adder calculation, the assumption of a twenty-four-month EGS customer retention rate, is also unsupported. According to the Companies, they had to assume the length of the retention period because they did not have access to the proprietary information that they would need to establish the true retention rate.[60] Accordingly, the twenty-four month retention rate is not based upon actual, verifiable data; therefore, like the CRP fee, it too fails to provide a valid basis to underlie calculation of a PTC Adder surcharge.

Finally, the Companies' proposal for handling PTC Adder revenues is arbitrary, unsupported, and unfair. Notably, the Companies propose to retain five percent of the revenues for administrative costs despite their admission that this figure only represents

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59 I&E St. No. 1-SR, pp. 4-5.

60 Companies' St. No. 1, p. 26.

an estimate of the unknown costs.[61] Even more concerning is the fact that even if the costs become identifiable, the Companies have indicated that they will not ever track the expense since the effort would only create additional costs.[62] Witness Keller correctly acknowledges the concerning lack of accountability implicated in the Companies proposal. This includes the fact that the Companies will not track the administrative costs, and the true costs will therefore never be known; therefore, no parties will ever be able to determine whether this amount was ever appropriate to retain.[63]

B. RESA's Retail Rate Mechanism Proposal

RESA attempts to convert the Companies' PTC Adder proposal by repurposing it to suit its own agenda and referring to it as the retail rate mechanism. By way of further explanation, RESA conditioned its support for the Companies' PTC Adder proposal upon several major modifications.[64] These modifications are three-fold, and include revising the purpose for, the calculation of, and the proceed distribution of the PTC Adder.

First, RESA indicates that "[r]ather than operating as an incentive to shop, RESA views this [the Companies' PTC Adder] proposal as a means of levelling the playing field by partially mitigating the competitive advantage enjoyed by the default service product."[65] Through this statement, RESA clearly rejects the original intent of the Companies' proposal. RESA solidifies this rejection by attempting to rely upon the retail rate mechanism as a substitute to perform a full cost analysis to unbundle certain costs

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61 I&E Ex. No. 1, Sch. 1, p. 3.
62 I&E Ex. No. 1, Sch. 1, p. 3.
63 I&E St. No. 1, p. 6.
64 RESA St. No. 1, p. 23.
65 RESA St. No. 1, p. 23.

from distribution rates and to reallocate them to default service.[66] Specifically, RESA opines that while the retail rate mechanism is "an imperfect proxy for full cost unbundling, it is a reasonable step forward in addressing this long-standing market equity."[67]

Aside from revising the purpose of the PTC Adder, RESA also proposes to revise its calculation by dividing the $30 CRP value by twelve months, instead of the twenty-four months relied upon by the Companies.[68] To support this revision, RESA claims that the fixed CRP term of twelve months is a more appropriate basis for the calculation. The result increases the Companies' proposed PTC Adder to $0.00288 per kWh, and RESA adopts it as appropriate for the retail rate mechanism.[69] Doing so adds approximately $2.50 to residential bills in lieu of the $1.25 proposed by the Companies.

Finally, RESA suggests that rather than adhering to their plan to withhold 5% of the PTC Adder revenue for its administrative costs and allocate the remaining revenue over the residential customer class, the Companies could devote a portion of those revenues to low-income customer assistance program.[70] RESA's proposal was made, in part, in recognition of parties' concerns that the 5% of revenue that the Companies intended to withhold may not bear any relationship to their actual costs.[71] Although RESA did not commit to the percentage of revenues that it advocates returning through

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66 RESA St. No. 1, pp. 25-26.
67 RESA St. No. 1, p. 26.
68 RESA St. No. 1, p. 24.
69 RESA St. No. 1, p. 24.
70 RESA St. No. 1-R, p. 12.
71 RESA St. No. 1-R, p. 12.

its retail rate mechanism proposal, it estimated that using ten percent of that revenue for customer would generate an additional $3.78 million in funding.[72]

1. RESA's Retail Rate Mechanism Proposal is Defective in the Same Ways as the Companies' PTC Adder

Like the Companies' PTC Adder proposal, RESA's retail rate mechanism proposal seeks to impose an artificial cost upon residential default service customers that is not related to the Companies' provision of generation or tied to the cost of serving those customers. For this reason, RESA's proposal also offends the Code in the same ways as the Companies' proposal, meaning that it is contrary to Section 2807(e) of the Code, and that it also constitutes rate discrimination under Section 1304. I&E will not repeat these arguments here, but simply reasserts and incorporates them as they are made above.

2. RESA Failed to Adequately Support its Retail Rate Mechanism Proposal

Although RESA's proposed retail rate mechanism is contrary to the Code in several ways and it should be rejected on those bases alone, additional grounds for rejection exist because RESA has also failed to support its proposal. At the outset, RESA claims that the retail rate mechanism, a charge of $0.00288 per kWh should be assessed to the Companies' residential default service customers in order to mitigate the cost advantages that these customers enjoy from receiving the default service product.[73] To support this claim, RESA argues that default service providers have embedded cost

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72 RESA St. No. 1-R, p. 12.
73 RESA St. No. 1, p. 24.

advantages because they can recover certain costs, including call center employees and infrastructure, legal personnel, office space, accounting and auditing services, printing, and postage, from all ratepayers through distribution rates, and not from the PTC.[74]

In furtherance of its claim, RESA points to the Companies' answer to a discovery response indicating that there are not costs being allocated to the PTC for certain costs incurred through this proceeding, including legal or regulatory cost, metering and related expenses, or billing and IT system costs.[75] Citing to this information, RESA indicates that ideally, the Companies should perform a full cost analysis, unbundle some costs from distribution rates and reallocate them to default service, but it quickly dismisses that plan by opining that the exercise would be costly and contentions, with parties disagreeing about which costs are related to default service.[76] Noting these challenges, RESA resigns to adopting the retail rate mechanism as an "imperfect proxy" for full cost unbundling and alleges that it is a step towards addressing market inequities.[77] However, the fatal flaw in RESA's argument is that there is no evidence that assessing the retail rate mechanism would resolve the inequities that RESA alleges exist. Specifically, the record does not identify and breakdown costs that should be unbundled or reveal how such alleged costs would support charging residential default service customers a $0.00288 per kWh. Witness Keller correctly notes that RESA fails to provide any support that doubling the PTC Adder would adequately cover the Companies' alleged cost

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74 RESA St. No. 1, pp. 24-25.
75 RESA St. No. 1, p. 25.
76 RESA St. No. 1, p. 25.
77 RESA St. No. 1, p. 25.

advantage.[78] I&E acknowledges RESA's point that performing a full cost unbundling might be burdensome and contentious, but that is not an adequate reason to arbitrarily adopt an unsupported charge in the hopes that it will somehow level a playing field that has not been proven to need leveling.

Additionally, like the Companies' calculation of the PTC Adder, RESA's calculation of the retail rate mechanism is also arbitrary. Witness Keller aptly explained that RESA witness Hudson's calculation starts with the same unsupported assumption that the Companies' used, but then becomes further skewed:

> For his calculation, Mr. Hudson simply reduced the Companies' assumed twenty-four-month retention rate to twelve months, based solely upon his claim that an assumption of twelve months is more appropriate since it is the length of the fixed CRP term (RESA St. No. 1, pp. 23-24). On this factor alone, Mr. Hudson takes an already arbitrary factor in calculating the PTC Adder and reduces it by half for the sake of "leveling the playing field." Yet, Mr. Hudson fails to provide any link between his calculation and the alleged cost advantages that he claims that default customers enjoy. Additionally, like the Companies' proposal, RESA's proposal fails to consider that an EGS is not always be charged the $30 CRP charge due to those acquired customers that select an EGS through an alternate method, such as PAPowerSwitch.com or direct EGS solicitation.[79]

As illustrated above, RESA's calculation is structured in a manner intended to address the Companies' alleged cost advantages, but the calculation fails to include any metric associated with the claimed advantages. Accordingly, RESA has not only failed to

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78 I&E St. No. 1-R, p. 4.

79 I&E St. No. 1-R, pp. 5-6.

support the need for a retail rate mechanism, but it has also failed to support the calculation for its proposal; therefore, this is simply an additional basis for its rejection.

Finally, while RESA's proposal to distribute a percentage of retail rate mechanism revenue to low-income customers appears laudable,[80] I&E submits that the detriments that low-income customers would face under RESA's proposal would far outweigh any benefits that they may hope to receive. More specifically, RESA's proposal does not appear to exempt low income residential default service customers from being assessed with the retail rate mechanism, which is twice as much as the PTC Adder proposed by the Companies.[81] As witness Keller explained, low-income customers would benefit more by not having to pay this unwarranted cost than by receiving back a small percentage of the proceeds.[82]

VI. NON-COMMODITY BILLING

I&E notes that while it investigated and reviewed the Companies' non-commodity billing, I&E did not take a position regarding it in its case in chief. Accordingly, I&E will not address this issue here.

VII. CUSTOMER REFERRAL PROGRAM

I&E notes that while it investigated and reviewed the Companies' customer referral program, I&E did not take a position regarding this issue in its case in chief. Accordingly, I&E will not address this issue here.

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80 RESA St. No. 1-R, p. 12.
81 I&E St. No. 1-R, p. 6.
82 I&E St. No. 1-SR, p. 7.

VIII. CUSTOMER ASSISTANCE PROGRAM SHOPPING

A. The Companies' PCAP Program

The Companies' low-income residential CAP is called the Pennsylvania Customer Assistance Program ("PCAP"). Through PCAP, eligible customers receive discounted payment amounts and arrearage forgiveness for remaining current on their PCAP payment. The amount that PCAP customers pay is based on a percentage of their income, and they must be enrolled in an equal payment plan, which is based on the customers' usage over the last twelve months. The difference between the equal payment plan amount and the PCAP customer's asked to pay amount is the monthly PCAP credit.[83] PCAP subsidy credits are paid for by all residential, non-PCAP customers through the Companies' Universal Services rider.[84]

As part of the settlement of the Companies' DSP IV, the Companies agreed to convene stakeholder collaboratives regarding the scope of PCAP shopping and associated cost recovery. In conjunction with that obligation, the Companies also agreed that thirty days prior to the PCAP customer shopping collaboratives, the Companies would provide the total PCAP shortfall amount paid by residential customers, broken down by Company, from the period June 2013 through the billing period immediately prior to providing these numbers, as well as other PCAP shopping data. Finally, the Companies also agreed to make a proposal in its next default service proceeding regarding the scope of PCAP shopping.

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83 I&E St. No. 1, pp. 17-18; I&E Ex. No. 1, Sch. 2.

84 I&E St. No. 1, pp. 17-18.

The Companies did convene stakeholder collaborative sessions with parties to the prior default service settlement on September 13, 2016; November 30, 2016; May 25, 2017; and on October 4, 2017.[85] Although the Companies did provide the required information to stakeholders in conjunction with the collaborative sessions, no PCAP shopping resolution was reached. In the instant proceeding, the Companies proposal regarding PCAP shopping was simply to not propose any modifications to the scope of shopping, meaning that the Companies will continue to permit PCAP customers to shop for alternative generation supply without restriction.[86] I&E submits that the Companies' proposal in this case is insufficient and contrary to their obligations under the Code, as the evidence in this case overwhelmingly supports the need to restrict the scope of PCAP shopping in the Companies' service territories.

B. The Companies' Obligations Under the Choice Act and Commission Regulations

The Electricity Generation Customer Choice and Competition Act ("Choice Act") became effective January 1, 1997. Under the Choice Act, which added Chapter 28 to the Code, the generation of electricity would no longer be regulated as a public utility.[87] Instead, electric utilities were required to unbundle their rates and services and to provide open access over their transmission and distribution systems to permit competitive suppliers to generate and sell electricity directly to consumers in this Commonwealth.[88] In essence, Chapter 28 opened a retail electric market in which customers could purchase

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85 Companies' St. No. 1, p. 3.
86 Companies' St. No. 1, p. 3.
87 66 Pa.C.S. § 2802(14).
88 66 Pa.C.S. § 2802(14).

electricity from competing EGSs. The Choice Act was prefaced, in part, with a finding that that competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.[89]

The Choice Act acknowledged the necessity of electric service as "essential to the health and well-being of residents, to public safety and to orderly economic development."[90] Because electric service is a necessity, the Choice Act concluded that all customers should be able to obtain service on "reasonable terms and conditions."[91] The Choice Act also highlighted the need to protect low income customers, mandating that "[t]he Commonwealth must, **at a minimum**, continue the protections, policies and services that now assist customers who are low-income to afford electric service."[92] To ensure the protection of low income customers, the Act mandated that the Commission ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each EDC's territory. [93]

At a minimum, the plain language of the Choice Act imposes an obligation upon the Commission to ensure that ratepayers are receiving electric service on reasonable terms. I&E submits that the PCAP shopping data revealed by the Companies proves that unrestricted PCAP shopping in their service territories has produced results that are unreasonable and have jeopardized access to electric service for some low-income

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89 66 Pa.C.S. § 2802(5).
90 66 Pa. C.S. § 2802(9).
91 66 Pa. C.S. § 2802(9).
92 66 Pa. C.S. § 2802(10) (emphasis added).
93 66 Pa. C.S. § 2804(9).

customers, as further explained below. Furthermore, the Choice Act cites the continuation of protections and polices that the Commission had in place as a floor-level of protection, connoting an open invitation to do more. I&E submits that the PCAP shopping data produced by the Companies in this proceeding compels further action to protect their ratepayers.

Aside from the Choice Act, the Commission has already acknowledged the goals of universal service programs, and unrestricted PCAP shopping has impeded those goals in this case. The goals of universal service programs have been identified as (1) protecting consumers' health and safety by helping low-income customers maintain electric service; (2) providing for affordable electric service by making available payment assistance to low-income customers; (3) assisting low-income customers conserve energy and reduce residential utility bills; and (4) establishing universal service and energy conservation programs are operated in a cost-effective and efficient manner.[94] In this case, the Companies' data reveals that unrestricted shopping has decreased the cost-efficiency of the Companies' PCAP programs by increasing costs that non-PCAP residents must pay through the USR to fund the PCAP program. The higher costs are relevant because in evaluating universal service programs like PCAP, the Commission previously indicated that it balances the interests of customers who benefit from the universal service programs with the interests of the customers who pay for the

94 52 Pa. Code § 54.73.

programs.[95] In this case, the Companies' customers are more quickly exhausting their PCAP credits and non-PCAP customers are subject to paying higher costs.[96] In essence, each party considered in the Commission's balance of interests is at a loss under the Companies' current PCAP shopping program.

C. The Commission's Authority to Impose CAP Shopping Restrictions

Although no party in this proceeding appears to argue to the contrary, I&E notes that the Commission has the authority to impose PCAP shopping rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for PCAP. More specifically, the Commonwealth Court has previously explained the authority as follows:

> [T]he PUC has the authority under Section 2804(9) of the Choice Act, in the interest of ensuring that universal service plans are adequately funded and cost-effective, to impose, or in this case approve, CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits. The obligation to provide low-income programs falls on the public utility under the Choice Act, not on the EGSs. Moreover, the Choice Act expressly requires the PUC to administer these programs in a manner that is cost-effective for both the CAP participants and the non-CAP participants, who share the financial consequences of the CAP participants' EGS choice.[97]

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95 *See Final Investigatory Order on Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms (Final Investigatory Order),* Docket No. M-00051923, at 6-7 (Order entered December 18, 2006).

96 CAUSE-PA St. No. 1, pp. 24-25.

97 *Coal. for Affordable Util. Servs. & Energy Efficiency in Pennsylvania v. Pennsylvania Pub. Util. Comm'n*, 120 A.3d 1087, 1103 (Pa.Cmwlth. 2015), appeal denied, (Pa. Apr. 5, 2016), and appeal denied, (Pa. Apr. 5, 2016).

It is important to note that the Commission may impose a restriction on competition as long as it "provides substantial reasons why there is no reasonable alternative so competition needs to bend."[98] In this case, the substantial reasons why competition must bend are the increased PCAP shopping costs that have resulted from the Companies' unrestricted PCAP shopping program. Also, considering the multiple collaborative sessions that addressed the Companies' PCAP shopping issues, I&E submits that interested parties have had ample time to propose other reasonable alternatives, but none have emerged.

D. The Proven Increased Costs in the Companies' PCAP Shopping Program

In this case, the record revealed that excess PCAP shopping costs were being incurred within the Companies service territories as a result of PCAP customers shopping for rates that exceeded the Companies' PTC.[99] Specifically, as CAUSE-PA witness Geller explained, the net impact of unrestricted CAP shopping in the Companies' service territory, or shopping above the Companies' PTC, during the period of June 2013 through December 2017 is an increase in the cost of PCAP shopping program for other ratepayers and PCAP customers of over $17 million, or over $3.8 million per year.[100] I&E notes that in CAUSE-PA's assessment, witness Geller accounted for both PCAP customers who contracted for prices above the PTC as well as those who contracted for prices

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98 *Coal. for Affordable Util. Servs. & Energy Efficiency in Pennsylvania v. Pennsylvania Pub. Util. Comm'n*, 120 A.3d 1087, 1104 (Pa.Cmwlth. 2015), appeal denied, (Pa. Apr. 5, 2016), and appeal denied, (Pa. Apr. 5, 2016).

99 I&E St. No. 1-SR, p. 17.

100 CAUSE-PA St. 1, pp. 22-25.

below the PTC. As CAUSE-PA witness Geller correctly concluded, this data collected over 55 months demonstrates that "a significant majority of PCAP customers who switch to a competitive electric supplier are charged rates that create an obligation for greater costs to be incurred by PCAP than if these customers were charged the utility default service price for energy."[101] Additionally, the Companies' data revealed that during the same 55-month period, an average of 63%, 62%, 65%, and 72% of Met-Ed, Penelec, Penn power, and West Penn Power customer paid rates that exceeded the Companies' PTC, respectively.[102] These increased costs not only impact affordability of PCAP bills for PCAP customers, but the costs are borne by all of the Companies' non-PCAP residential customers, including more than 160,000 confirmed low income customers who are not enrolled in PCAP.[103] I&E submits that this result offends the Choice Act and the Commission's regulations and that restricting the scope of PCAP shopping is warranted by the evidence in this case.

E. Recommendations Regarding PCAP Shopping

1. I&E's Recommendation to Mitigate Increased PCAP Costs by Prohibiting PCAP Customers from Shopping for Electricity Rates that Exceed the Companies' PTC at Any Time

In recognition of the harm imposed by the increased costs of the Companies' unrestricted PCAP shopping program, I&E witness Keller recognized the need to address these costs through this proceeding. In the absence of any input from the Companies', witness Keller generally recommended that the Companies develop a PCAP shopping

101 CAUSE-PA St. No. 1, p. 24.
102 I&E St. No. 1, pp. 19-20; I&E Ex. No. 1, Sch. 5.
103 CAUSE-PA St. No. 1, p. 16.

program that would prohibit PCAP shoppers from paying prices that exceed the Companies' PTC.[104] As an example of the type of programming that could be implemented, witness Keller noted that PPL Electric Utilities Corporation ("PPL") faced increased CAP shopping costs in its service territory and thereafter implemented a CAP Standard Offer Program ("CAP-SOP"), which was supported by I&E in PPL's most recent default service proceeding.[105] PPL's CAP-SOP permitted PPL's CAP customers to shop only for electricity at prices at or below PPL's PTC, after PPL produced evidence that unrestricted CAP shopping caused a net increase of $2.7 million annually in energy charges paid to supply CAP customers.[106] However, witness Keller noted his reluctance to make a specific programming recommendation without being aware of the challenges that the Companies may face, and he clarified that his overall recommendation was that the Companies should implement a program that would restrict PCAP shoppers from paying EGS rates that exceed the Companies' PTC.[107] Witness Keller noted that his recommendation would enable the Companies' PCAP customers to continue to shop for electricity but at the same time, minimize the Companies' uncollectible expense, and improve bill affordability.[108]

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104 I&E St. No. 1, p. 23.

105 *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, pp. 67-71 (Order entered October 27, 2016).

106 *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, I&E Main Brief, p. 22.

107 I&E St. No. 1, p. 23.

108 I&E St. No. 1, p. 24.

As the proceeding progressed, the evidence submitted by OCA witness Alexander and CAUSE-PA witness Geller convinced witness Keller that a program modeled after the PPL CAP-SOP would not translate well to the Companies, as the Companies' PTC has proven to be far more volatile than PPL's PTC and therefore would not demonstrate cost savings.[109] Additionally, because the Companies failed to propose any solution for the proven harm incurred through the increased costs of its unrestricted PCAP shopping program, and taking into account the recommendations of OCA witness Alexander and CAUSE-PA witness Geller, witness Keller slightly modified his recommendation. Specifically, Mr. Keller's ultimate recommendation is that the Commission order the Companies to develop a program that would prohibit PCAP customers from shopping for electricity where rates are greater than the Companies' PTC at any time throughout the term of the agreement.[110]

In order to prevent continuing escalation of costs, witness Keller recommended that the Commission require the Companies to provide a timeline for the earliest possible implementation of the restricted shopping program.[111] Although witness Keller foresaw the need for immediate action to prevent further PCAP shopping harm, the Companies' failure to provide input and to participate in the design of PCAP shopping restrictions of any kind prevented him from making his recommendation more specific with respect to timing and detail. I&E is mindful that the Companies will likely face certain challenges associated with making necessary changes to implement any PCAP shopping restrictions,

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109 I&E At. No. 1-SR, p. 23, acknowledging OCA St. No. 2R, p. 14; CAUSE-PA 8 St. No. 1-R, pp. 2-3.
110 I&E St. No. 1-SR, p. 24.
111 I&E St. No. 1-SR, p. 24.

but the evidence in this case compels the need for Companies' input and participation. Accordingly, I&E recommends that Commission to compel the Companies' cooperation, as the facts of this case applied to the law and to the Commission's regulation support the need to restrict PCAP shopping in the Companies' service territories.

2. The Companies' Insufficient Status Quo Recommendation is Contrary to the Weight of the Evidence

At the outset, despite the Companies' unwillingness to propose or entertain PCAP shopping restrictions, the Companies' do not dispute that many PCAP customers are paying EGS rates higher than the Companies' PTC.[112] Importantly, I&E notes that the Companies' do not oppose CAUSE-PA's evidence that the net impact of unrestricted PCAP shopping in the Companies' service territory, or shopping above the Companies' PTC, during the period of June 2013 through December 2017 is an increase in the cost of PCAP shopping program for other ratepayers and PCAP customers of over $17 million, or over $3.8 million per year.[113] Instead, the Companies simply conclude that this data does not demonstrate the need to modify PCAP shopping parameters for two reasons. First, the Companies argue that comparing the EGS rate to the PTC rate at any one point in time does not take into account the value that a fixed-price EGS contract may have for a PCAP customer of other value-added services the EGS may offer, such as renewable power. Additionally, the Companies also claim that it is not their place to limit or police

112 Companies' St. No. 1-R, p. 28.
113 CAUSE-PA St. 1, pp. 22-25.

customer shopping.[114] I&E avers that these positions are contrary to the Choice Act and to the Commission's policies and regulations.

First, the Companies' argument that preserving the ability to access value-added services is a viable reason to allow continued escalation of PCAP shopping access is completely contrary to the Commission's policy regarding PCAP program design elements. As explained in the Commission's policy statement on customer assistance program, CAP design elements, an important control feature intended to limit program costs is the requirement that CAP credits should not be used to pay for nonbasic services that would increase monthly bills without contributing to bill reduction:

> A CAP participant may not subscribe to nonbasic services that would cause an increase in monthly billing and would not contribute to bill reduction. Nonbasic services that help to reduce bills may be allowable. CAP credits should not be used to pay for nonbasic services. [115]

I&E submits that the Companies have failed to offer any proof that implementing CAP shopping restrictions would deprive PCAP customers of value-added services that would reduce those customers' bills and therefore be an acceptable use of CAP credits. Additionally, even assuming, arguendo, that the Companies had produced such evidence, the Companies' obligations under the Choice Act to adequately fund their CAP program and to help low income customers to maintain their electric service, and the Commission's requirement that they operate their CAP program in a cost-effective and efficient manner supersede any perceived obligation they may have to promote the

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114 Companies' St. No. 1-R, pp. 28-31.

115 52 Pa. Code § 69.265(3)(ii), Nonbasic services.

availability of value-added products. Accordingly, the Companies do have a mandate to police PCAP shopping when, as it does in this case, evidence proves that escalated costs have resulted from the Companies' unrestricted PCAP shopping program and access to and affordability of electricity service is compromised.

3. RESA's Insufficient Status Quo Recommendation is Contrary to the Weight of the Evidence

Like the Companies, RESA also does not dispute the evidence offered in this proceeding regarding the increased costs of unrestricted PCAP shopping in the Companies territories, but instead RESA dismisses the information as "simplistic."[116] According to RESA witness Hudson, opposing parties' recommendation to restrict PCAP shopping in this proceeding fails to consider value-added components of EGS products.[117] Additionally, Mr. Hudson argues that opposing parties' recommendations are rooted in the notion that low income assistance customers should not be trusted to make decisions about their energy service and it is inconsistent with basic tenants of a free market.[118] RESA's arguments are without merit on each of these front.

First, as I&E explained regarding the Companies' argument for value-added products, the Commission has indicated customers' CAP credits should not be used to pay for nonbasic services that would increase their monthly bills without contributing to bill reduction. This is an important design feature of CAP programming intended to control the escalation of programming costs, which is a proven problem in the

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116 RESA St. No. 1-R, p. 23.
117 RESA St. No. 1-Sr, p. 23-24.
118 RESA St. No. 1-R, pp. 22-23.

Companies' service territories. I&E notes that witness Hudson presents a discussion of two examples of value-added benefits: Amazon Prime membership[119] and smart thermostat.[120] Although Mr. Hudson notes that an Amazon prime membership is a value-added service that could provide customers with cost savings on "everyday household essentials"[121] he does not tie the membership to reduction in the customers' electricity bill. In a more compelling example, witness Hudson claims that the value-added benefit of a smart thermostat would likely produce a reduction in the customers' energy usage and therefore energy costs.[122] However, witness Hudson admits that a net savings amount cannot be guaranteed,[123] and therefore, I&E submits the benefit is speculative. Furthermore, even if witness Hudson could guarantee long-term net savings for this example, I&E submits that the evidence in this case overwhelmingly supports the Companies' obligation to implement PCAP shopping restrictions at this time.

Additionally, I&E fundamentally rejects RESA's frivolous assertion that proponents of PCAP shopping restrictions in this proceeding are making their recommendations on the alleged basis that they believe that low income customers cannot be trusted to make decisions about their energy service. A simple review of the record in this case proves the proponents of PCAP shopping restrictions, including I&E, made their recommendations in order to ensure that the Companies' PCAP programming complies with their obligations under the law and under the Commission's regulations. The

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119 RESA St. No. 1-R, pp. 25-26.
120 RESA St. No. 1, pp. 29-30.
121 RESA St. No. 1-R, p. 26.
122 RESA St. No. 1-R, pp. 29-30.
123 RESA St. No. 1-R, p. 30.

evidence here proves that the result of the Companies' unrestricted CAP shopping is increased costs that dilute CAP benefits for recipients and increase costs for those that must pay for CAP programming, and the law permits the implementation of restrictions under such circumstances.

Finally, RESA's argument that the implementation of PCAP shopping restrictions is inconsistent with the tenets of a free market completely ignores the realities of the Choice Act. As previously indicated, the Choice Act concluded that electric service is a necessity, and that all customers should be able to obtain service on "reasonable terms and conditions."[124] The Choice Act also required that, at a minimum, universal service and energy conservation policies, activities and services be appropriately funded and available in each EDC's territory.[125] In essence, the Choice Act conditions competition vis a vis the free market upon electric customers' reasonable access to electricity and affordability of universal service programs like PCAP. Such access and affordability has been jeopardized under the Companies' unrestricted PCAP shopping scheme, and the market must bend under these circumstances.

IX. CONCLUSION

For the reasons outlined in this Main Brief, the Commission's Bureau of Investigation and Enforcement respectfully requests that Administrative Law Judge Mary D. Long A. recommend, and the Commission subsequently order the following:

(1) Joint Stipulation No. 2, as entered into by the Companies, I&E, RESA, and

124 66 Pa. C.S. § 2802(9).
125 66 Pa. C.S. § 2804(9).

Respond Power, and which is herein incorporated and attached as Exhibit A, is approved in its entirety; and

(2) The Companies' request to assess a Price to Compare Adder is denied;

(3) RESA's request for the Companies to assess a Retail Rate Mechanism is denied; and

(4) The Companies are ordered to develop a program that would prohibit PCAP customers from shopping for electricity where rates are greater than the Companies' PTC at any time throughout the term of the agreement. The Companies are further ordered to provide the Commission with a timeline for the earliest possible implementation of the restricted shopping program.

Respectfully submitted,

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Dated: May 1, 2018

Appendix A

PROPOSED FINDINGS OF FACT

1. On December 11, 2017, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively the "Companies") filed with the Pennsylvania Public Utility Commission ("Commission") a Petition for Approval of a Default Service Program and Procurement Plan for the Period of June 1, 2019 through May 31, 2023.

2. The Bureau of Investigation and Enforcement entered its appearance on January 12, 2018.

3. In accordance with Act 129, the Commission established the Bureau of Investigation and Enforcement to serve as the prosecutory bureau for the purposes of representing the public interest in ratemaking and service matters, and enforcing compliance with the Public Utility Code. 66 Pa.C.S. §§ 101 *et seq.,* and Commission regulations, 52 Pa. Code §§ 1.1 *et seq. See Implementation of Act 129 of 2008; Organization of Bureaus and Offices,* Docket No. M-2008-2071852 (Order entered August 11, 2011).

4. The instant proceeding warrants the Bureau of Investigation and Enforcement's participation because its outcome has ratemaking implications and because key components of the Public Utility Code and the Commission's regulations are at issue.

5. At present, the Companies purchase accounts receivables from EGSs at a zero discount rate, which means that the Companies pay the full value of the accounts receivable regardless of whether customers pay the full amount owed. I&E St. No. 1, p. 10.

6. The Companies recover their purchase of receivables ("POR") expenses from all ratepayers through the Default Service Support Rider ("DSS Rider"), meaning that ratepayers bear the risk of nonpayment and the costs of associated collection. I&E St. No. 1, p. 10; Companies' St. No. 1, p. 20.

7. The Companies impose an administrative charge upon EGSs only under limited circumstances, and they refer to this charge as the purchase of receivables clawback charge ("clawback charge"). The clawback charge is a charge that applies only to EGSs who meet both of the following criteria: (1) the EGS's write off percentage of revenues was 200% higher than their peers and (2) the EGS's average price per kilowatt hour is greater than 150% of the average PTC for the

operating company in which the EGS serves customers. EGSs that meet the both prongs of the criteria incur an annual charge that is equal to the difference between the EGS' actual write-offs and 200% of the average EGS percentage of write-offs. Companies St. No. 1, p. 21.

8. The Companies implemented the clawback charge on a two-year pilot basis for the twelve-month periods ended August 31, 14 2016 and August 31, 2017. Companies' St. No. 1, p. 2.

9. At the outset of this case, the Companies proposed to continue their POR program at a zero discount rate and to continue assessing the clawback charge on a permanent basis. Companies' St. No. 1, pp. 23-24.

10. The Companies noted the results of the two-year pilot of the clawback charge as follows: for the twelve months ended August 31, 2016 was assessed to three EGSs for 3 a total of $573,603.23, and for the twelve months ended August 31, 2017, the charge was invoiced to four EGSs for a total of $254,008.15. Companies' St. No. 1, p. 23.

11. The clawback charge does not address all EGS uncollectibles, as it only applies to EGSs over the 200% threshold of average supplier write offs. Therefore, continuation of the Companies' clawback charge is only appropriate on a pilot basis, so that parties and the Commission are not foreclosed of the opportunity to explore further options for addressing uncollectibles in future DSP proceedings. I&E St. No. 1, pp. 13-14.

12. The Companies uncollectible expense could be addressed through establishing a merchant function charge for default service customers and a POR discount rate addressed to EGSs for application to retail customers, which has been widely accepted by the Commission. I&E St. No. 1, pp. 13-14.

13. Joint Stipulation No. 2, entered into between the Companies, I&E, Respond Power, and RESA resolves these parties issues with respect to the clawback charge and provides as follows:

    (1) The parties agree to a four-year extension of the 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 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' POR programs on a quarterly basis, beginning no later than October 20, 2018, reflecting EGS arrears for 3Q 2018.

14. Joint Stipulation No. 2 is in the public interest because term protects the Companies, their ratepayers, and EGSs.

15. As part of this proceeding, the Companies proposed to establish a bypassable retail market enhancement rate mechanism surcharge ("PTC Adder") with the purpose of incenting residential retail shopping. Companies' St. No. 1, p. 24.

16. The Companies admit that they have no evidence that imposing the PTC Adder upon residential default service customers would have an identifiable effect on customer shopping rate. I&E Ex. No. 1, Sch. 1, p. 3.

17. The Companies admit that they have no opinion of the appropriate level of residential customer shopping, and that they have not set a specific shopping level at which point the PTC Adder surcharge would no longer be necessary.

18. Under the Companies' PTC Adder proposal, only residential default service customers will be compelled to pay the PTC Adder surcharge because it has the lowest level of customer shopping, with only about 30% of those customers

participating in the retail shopping market. Companies' St. No. 1, pp. 24-25. I&E Ex. No. 1, Sch. 1, p. 3.

19. The Companies have indicated that they will not track the PTC Adder administrative expenses. I&E Ex. No. 1, Sch. 1, p. 3.

20. The Companies calculate that the PTC Adder will result in a volumetric charge of $0.00144 per kWh for residential default service customers. Companies' St. No. 1, p. 25.

21. The Companies intend to refund 95% of the PTC Adder proceeds collected from residential default service customers to all residential customers through its Default Service Support Rider ("DSS Rider"). The Companies propose to retain the other 5% of the PTC Adder revenue for its administrative costs. Companies' St. No. 1, pp. 26-27.

22. The PTC Adder will result in an increased volumetric charge for residential default service customers, but it is not predicated on the cost of generation.

23. The PTC Adder is calculated arbitrarily and it is being assessed solely to influence residential default customers' decisions to enter the retail market.

24. The twenty-four month retention rate that underlies the Companies' PTC Adder is not based upon actual, verifiable data; therefore, fails to provide a valid basis to underlie calculation of a PTC Adder surcharge.

25. There is no evidence that assessing the PTC Adder to the Companies residential default service customers would in any way promote their Companies' provision of safe and reliable service to those customers. I&E St. No. 1-SR, p. 11.

26. In this case, there is no nexus of connection between the PTC Adder and the Companies' cost of serving the single class of customers that the Companies have decided to target, residential default service customers. Because the PTC Adder would inflate the volumetric charge of only residential customers, and no other customer class would be impacted, the Companies' proposal would produce an unreasonable difference in rates.

27. The Companies' PTC Adder proposal violates Section 1304 of the Code, resulting in rate discrimination; therefore, it must be rejected.

28. The Companies' PTC Adder unfairly penalizes residential default service customers who choose not to shop for electricity by adding the equivalent of $1.25 to their bills. I&E St. No. 1, pp. 6-7.

29. The Companies' PTC proposal infringes upon customers' rights to make choices about their electric supplier. I&E St. No. 1, pp. 6-7.

30. During the public input hearings held in this proceeding on held on March 13, 2018 in Penelec's service territory in Erie, Pennsylvania, over 60 Penelec customers expressed their concerns with the proposed PTC Adder.[126] Many of these customers testified on the record and indicated that they made a conscious, affirmative decision to remain default service customers of Penelec despite their knowledge of the availability of retail market options. *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, *et al.*, Public Input Hearing Tr., pp. 63-306; Public Input Hearing Tr. at p. 88; I&E Ex. No. 1-SR, Sch. 1., p. 2; Public Input Hearing Tr. at p. 97; Public Input Hearing Tr. at p. 120; Public Input Hearing Tr. at p. 279.

31. The evidentiary record proves that some of the Companies' customers have affirmatively chosen to remain default customers for many different, but viable reasons.

32. The Companies' calculation of the PTC Adder essentially assumes that all residential customers shop for electricity through referrals under the CRP Program and ignore other ways to shop for electricity such as using PAPowerSwitch.com. If a customer were to use PAPowerSwitch.com to shop for a supplier, the $30 CRP fee would not apply, and the actual costs incurred by the EGS' for customer acquisition is unknown. Therefore, the Companies are attempting to force all default service customers to pay an amount equal to the $30 CRP fee, regardless of how those customers might shop for electricity or any knowledge of actual EGS customer acquisition costs. I&E St. No. 1, pp. 5.

33. There is no relationship between the $30 CRP fee, which is the amount that the Commission agreed that the Companies could charge EGSs for referrals, and a PTC Adder that the Company will assess to incent residential default service customers to enter the electric shopping market. I&E St. No. 1-SR, pp. 4-5.

34. The twenty-four month retention rate relied upon in the Companies' PTC Adder calculation is not based upon actual, verifiable data; therefore, like the CRP fee, it

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126 *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, *et al.*, Public Input Hearing Tr., pp. 63-306.

too fails to provide a valid basis to underlie calculation of a PTC Adder surcharge. I&E St. No. 1-SR, pp. 4-5.; I&E Ex. No. 1, Sch. 1, p. 3.

35. The Companies propose to retain five percent of the revenues for administrative costs despite their admission that this figure only represents an estimate of the unknown costs. I&E Ex. No. 1, Sch. 1, p. 3.

36. Even if the Companies' PTC costs become identifiable, the Companies have indicated that they will not ever track the expense since the effort would only create additional costs. I&E Ex. No. 1, Sch. 1, p. 3.

37. RESA conditioned its support for the Companies' PTC Adder proposal upon several major modifications. These modifications are three-fold, and include revising the purpose for, the calculation of, and the proceed distribution of the PTC Adder. RESA St. No. 1, pp. 23-26

38. "Rather than operating as an incentive to shop, RESA views this [the Companies' PTC Adder] proposal as a means of levelling the playing field by partially mitigating the competitive advantage enjoyed by the default service product." RESA St. No. 1, p. 23.

39. RESA also proposes to revise its calculation by dividing the $30 CRP value by twelve months, instead of the twenty-four months relied upon by the Companies. To support this revision, RESA claims that the fixed CRP term of twelve months is a more appropriate basis for the calculation. The result increases the Companies' proposed PTC Adder to $0.00288 per kWh, and RESA adopts it as appropriate for the retail rate mechanism. RESA St. No. 1-R, p. 12.

40. RESA suggests that rather than adhering to their plan to withhold 5% of the PTC Adder revenue for its administrative costs and allocate the remaining revenue over the residential customer class, the Companies could devote a portion of those revenues to low-income customer assistance program. RESA's proposal was made, in part, in recognition of parties' concerns that the 5% of revenue that the Company intended to withhold may not bear any relationship to its actual costs. RESA St. No. 1-R, p. 12.

41. RESA's proposal also offends the Code in the same ways as the Companies' proposal, meaning that it is contrary to Section 2807(e) of the Code, and that it also constitutes rate discrimination under Section 1304.

42. To cure alleged cost advantage of default service, RESA indicates that ideally, the Companies should perform a full cost analysis, unbundle some the costs from

distribution rates and reallocated them to default service, but it quickly dismisses that plan by opining that the exercise would be costly and contentions, with parties disagreeing about which costs are related to default service. RESA St. No. 1, p. 25.

43. RESA resigns to adopting the retail rate mechanism as an "imperfect proxy" for full cost unbundling and alleges that it is a step towards addressing market inequities. RESA St. No. 1, p. 25.

44. The record does not identify and breakdown costs that should be unbundled or reveal how such alleged costs would support charging residential default service customers a $0.00288 per kWh.

45. RESA's proposal does not appear to exempt low income residential default service customers from being assessed with the retail rate mechanism, which is twice as much as the PTC Adder proposed by the Companies. I&E St. No. 1-R, p. 6.

46. Low-income customers would benefit more by not having to pay an unwarranted retail rate mechanism charge than by receiving back a small percentage of the proceeds from that charge. I&E St. No. 1-SR, p. 7.

47. The Companies' low-income residential CAP is called the Pennsylvania Customer Assistance Program ("PCAP"). Through PCAP, eligible customers receive discounted payment amounts and arrearage forgiveness for remaining current on their PCAP payment. The amount that PCAP customers pay is based on a percentage of their income, and they must be enrolled in an equal payment plan, which is based on the customers' usage over the last twelve months. The difference between the equal payment plan amount and the PCAP customer's asked to pay amount is the monthly PCAP credit. I&E St. No. 1, pp. 17-18; I&E Ex. No. 1, Sch. 2.

48. PCAP subsidy credits are paid for by all residential, non-PCAP customers through the Companies' Universal Services rider. I&E St. No. 1, pp. 17-18; I&E Ex. No. 1, Sch. 2.

49. In the instant proceeding, the Companies proposal regarding CAP shopping was simply to not propose any modifications to the scope of shopping, meaning that the Companies will continue to permit CAP customers to shop for alternative generation supply without restriction. Companies' St. No. 1, p. 3.

50. In this case, the record revealed that excess CAP shopping costs were being incurred within the Companies service territories as a result of PCAP customers shopping for rates that exceeded the Companies' PTC. I&E St. No. 1-SR, p. 17.

51. The net impact of unrestricted CAP shopping in the Companies' service territory, or shopping above the Companies' PTC, during the period of June 2013 through December 2017 is an increase in the cost of CAP shopping program for other ratepayers and CAP customers of over $17 million, or over $3.8 million per year. CAUSE-PA St. 1, pp. 22-25.

52. "A significant majority of PCAP customers who switch to a competitive electric supplier are charged rates that create an obligation for greater costs to be incurred by PCAP than if these customers were charged the utility default service price for energy." CAUSE-PA St. No. 1, p. 24.

53. The Companies' data revealed that during the period of June 2013 through December 2017, an average of 63%, 62%, 65%, and 72% of Met-Ed, Penelec, Penn power, and West Penn Power customer paid rates that exceeded the Companies' PTC, respectively. I&E St. No. 1, pp. 19-20; I&E Ex. No. 1, Sch. 5.

54. Increased costs not only impact affordability of PCAP bills for PCAP customers, but they costs are borne by all of the Companies' non-PCAP residential customers, including more than 160,000 confirmed low income customers who are not enrolled in PCAP. CAUSE-PA St. No. 1, p. 16.

Appendix B

PROPOSED CONCLUSIONS OF LAW

1. Act 129 of 2008 authorized the Commission to establish bureaus, offices and positions to, inter alia, take appropriate enforcement actions that are necessary to ensure compliance with the Public Utility Code and Commission regulations and orders. In accordance with Act 129, the Commission established the Bureau of Investigation and Enforcement to serve as the prosecutory bureau for the purposes of representing the public interest in ratemaking and service matters and enforcing compliance with the Public Utility Code. 66 Pa.C.S. § 308.2(a)(11); 66 Pa.C.S. §§ 101 *et seq.,* and Commission regulations, 52 Pa. Code §§ 1.1 *et seq. See Implementation of Act 129 of 2008; Organization of Bureaus and Offices,* Docket No. M-2008-2071852 (Order entered August 11, 2011); 66 Pa. C.S. § 332(a).

2. Pursuant to the Public Utility Code, the proponent of a rule or order bears the burden of proof. 66 Pa. C.S. § 332(a).

3. In a case such as this one, pending before an administrative tribunal, Courts have held that a "litigant's burden of proof is satisfied by establishing a preponderance of evidence which is substantial and legally credible." *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

4. Any party that offers a proposal that was not included in the Companies' original filing bear the burden of proof for such proposal. *Brockway Glass Co. v. Pa. Pub. Util. Comm'n,* 437 A.2d 1067 (Pa. Cmwlth. 1981).

5. In order to meet their respective burdens of proof, each proponent must "present evidence more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery v. Margulies,* 70 A.2d 854 (Pa. 1950).

6. Under the Public Utility Code, as electric distribution companies ("EDCs"), the Companies have an obligation to provide default service. EDCs' obligations to serve as set forth in the Public Utility Code, EDCs are required to provide default service electric to customers at no greater cost than the cost of obtaining generation. 66 Pa. C.S. § 2807(e).

7. While Section 1304 does not prohibit differences in rates, the Commonwealth Court has held that the utility must show that the differential is justified by the difference in costs required to deliver service to each class. *Philadelphia*

Suburban Water Co. v. Pennsylvania Public Utility Commission, 808 A.2d 1044, 1060 (Pa. Cmwlth. 2002).

8. The Companies' PTC Adder proposal violates Section 1304 of the Code, which provides as follows:

> No public utility shall, as to rates, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage. **No public utility shall establish or maintain any unreasonable difference as to rates, either as between localities or as between classes of service**. 66 Pa. C.S. § 1304

9. RESA's Retail Rate Mechanism proposal also offends the Public Utility Code in the same ways as the Companies' proposal, meaning that it is contrary to Section 2807(e) of the Code, and that it also constitutes rate discrimination under Section 1304.

10. The Electricity Generation Customer Choice and Competition Act ("Choice Act") became effective January 1, 1997. Under the Choice Act, which added Chapter 28 to the Public Utility Code, the generation of electricity would no longer be regulated as a public utility. 66 Pa.C.S.A. § 2802(14).

11. Under the Choice Act, electric utilities were required to unbundle their rates and services and to provide open access over their transmission and distribution systems to permit competitive suppliers to generate and sell electricity directly to consumers in this Commonwealth. 66 Pa.C.S.A. § 2802(14).

12. The Choice Act was prefaced, in part, with a finding that that competitive market forces are more effective than economic regulation in controlling the cost of generating electricity. 66 Pa.C.S.A. § 2802(5).

13. The Choice Act acknowledged the necessity of electric service as "essential to the health and well-being of residents, to public safety and to orderly economic development." 66 Pa. C.S. § 2802(9).

14. Because electric service is a necessity, the Choice Act concluded that all customers should be able to obtain service on "reasonable terms and conditions." 66 Pa. C.S. § 2802(9).

15. The Choice Act also highlighted the need to protect low income customers, mandating that "[t]he Commonwealth must, **at a minimum**, continue the protections, policies and services that now assist customers who are low-income to afford electric service." 66 Pa. C.S. § 2802(10).

16. To ensure the protection of low income customers, the Act mandated that the Commission ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each EDC's territory. 66 Pa. C.S. §2804(9)(emphasis added).

17. At a minimum, the plain language of the Choice Act imposes an obligation upon the Commission to ensure that ratepayers are receiving electric service on reasonable terms.

18. Aside from the Choice Act, the Commission has already acknowledged the goals of universal service programs, and unrestricted CAP shopping has impeded those goals in this case. The goals of universal service programs have been identified as (1) protecting consumers' health and safety by helping low-income customers maintain electric service; (2) providing for affordable electric service by making available payment assistance to low-income customers; (3) assisting low-income customers conserve energy and reduce residential utility bills; and (4) establishing universal service and energy conservation programs are operated in a cost-effective and efficient manner. 52 Pa. Code § 54.73.

19. "[T]he PUC has the authority under Section 2804(9) of the Choice Act, in the interest of ensuring that universal service plans are adequately funded and cost-effective, to impose, or in this case approve, CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits. The obligation to provide low-income programs falls on the public utility under the Choice Act, not on the EGSs. Moreover, the Choice Act expressly requires the PUC to administer these programs in a manner that is cost-effective for both the CAP participants and the non-CAP participants, who share the financial consequences of the CAP participants' EGS choice." *Coal. for Affordable Util. Servs. & Energy Efficiency in Pennsylvania v. Pennsylvania Pub. Util. Comm'n*, 120 A.3d 1087, 1103 (Pa.Cmwlth. 2015), appeal denied, (Pa. Apr. 5, 2016), and appeal denied, (Pa. Apr. 5, 2016).

20. The Commission may impose a restriction on competition as long as it "provides substantial reasons why there is no reasonable alternative so competition needs to bend." *Coal. for Affordable Util. Servs. & Energy Efficiency in Pennsylvania v. Pennsylvania Pub. Util. Comm'n*, 120 A.3d 1087, 1104 (Pa.Cmwlth. 2015), appeal denied, (Pa. Apr. 5, 2016), and appeal denied, (Pa. Apr. 5, 2016).

21. The Commission's policy statement regarding CAP program design elements provides as follows: A CAP participant may not subscribe to nonbasic services that would cause an increase in monthly billing and would not contribute to bill reduction. Nonbasic services that help to reduce bills may be allowable. CAP credits should not be used to pay for nonbasic services. 52 Pa. Code § 69.265(3)(ii), Nonbasic services.

Appendix C

PROPOSED ORDERING PARAGRAPHS

(1) Joint Stipulation No. 2, as entered into by the Companies, I&E, RESA, and Respond Power, and which is herein incorporated and attached as Exhibit A, is approved in its entirety; and

(2) The Companies' request to assess a Price to Compare Adder is denied;

(3) RESA's request for the Companies to assess a Retail Rate Mechanism is denied; and

(4) The Companies are ordered to develop a program that would prohibit PCAP customers from shopping for electricity where rates are greater than the Companies' PTC at any time throughout the term of the agreement. The Companies are further ordered to provide the Commission with a timeline for the earliest possible implementation of the restricted shopping program.

Exhibit A

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Petition of Metropolitan Edison	:	
Company, Pennsylvania Electric Company,	:	**Docket No. P-2017-2637855**
Pennsylvania Power Company and West	:	**P-2017-2637857**
Penn Power Company for Approval of	:	**P-2017-2637858**
their Default Service Programs	:	**P-2017-2637866**

JOINT STIPULATION OF METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY, PENNSYLVANIA POWER COMPANY AND WEST PENN POWER COMPANY, THE BUREAU OF INVESTIGATION AND ENFORCEMENT, RESPOND POWER, LLC AND THE RETAIL ENERGY SUPPLY ASSOCIATION

Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power") and West Penn Power Company ("West Penn") (collectively, the "Companies"), Bureau of Investigation and Enforcement ("BIE"), the Retail Energy Supply Association ("RESA") and Respond Power, LLC ("Respond") (collectively, the "Stipulating Parties"), by their respective counsel, hereby enter into this Joint Stipulation ("Stipulation") of certain issues in the above-captioned proceeding. The Stipulating Parties agree that the following settlement terms resolve the following issue raised in the above-captioned docket:

A. POR Clawback Charge

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.

Respectfully submitted,

Dated: April 10, 2018

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Main Brief** dated May 1, 2018, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

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