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May 2, 2018

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Building
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:

Attached for electronic filing please find the Office of Consumer Advocate's Main Brief in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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cc: Honorable Mary D. Long
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CERTIFICATE OF SERVICE

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

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

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

MAIN BRIEF OF THE OFFICE OF CONSUMER ADVOCATE

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I. INTRODUCTION

A. Summary of Argument

The Office of Consumer Advocate (OCA) files this Main Brief in the Joint Petition of the FirstEnergy Companies for approval of their Default Service Plans in accordance with the procedural schedule approved by Administrative Law Judge (ALJ) Mary D. Long. The Joint Petition addresses the provision of default electricity service plans for Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power), and West Penn Power Company (West Penn) (collectively, FirstEnergy or the Companies). The Companies filed default service plans (DSP) for service beginning on June 1, 2019, and ending May 31, 2023. The proposed plans have been identified as "DSP V." FirstEnergy's current plans, identified as "DSP IV," were approved as four year plans set to expire on May 31, 2021.[1] The settlement of DSP IV required the Companies to make filings concerning multiple settlement commitments by January 31, 2018. The Companies determined, however, that the lack of consensus in DSP IV settlement stakeholder meetings required the filing of a new DSP at this time. See FE St. 1 at 7.

The OCA submits that the primary task in this proceeding is to ensure that default service is provided in a reasonable manner consistent with Pennsylvania law. In addition, issues concerning the retail market and low income customer rate affordability, among others, have been raised by the Companies and parties in this proceeding that must be addressed to ensure appropriate consumer protections are put in place during DSP V.

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[1] In the Commission-approved settlement of DSP IV, paragraph A.1.a stated, "The Parties agree that the plan term will be four years." Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn for Approval of their Default Service Programs, Docket No. P-2015-2511333, *et al.* (Recommended Decision issued April 15, 2016, at 8).

1. The OCA's Residential Supply Mix Proposal

The OCA recommends modifications to the residential procurement plan to ensure that reasonable default service is the base from which the entire program operates.[2] The Companies propose to purchase 12 and 24-month full requirements contracts for all of their residential default supply needs for the June 1, 2019 to May 31, 2023 period. The Companies' proposal would price 5% of the residential full requirement supply at spot market prices. The Companies' procurement schedule would result in all contracts ending on May 31, 2023. The OCA submits that the Companies should layer purchases to extend beyond May 31, 2023, to reduce the market timing risk associated with replacing 100% of residential default service energy supplies at one time. The layering of purchases beyond the end date of the plan represents a "best practice" that has been adopted by Pennsylvania's major electric distribution companies (EDC) and should be approved here.

2. The Price To Compare Adder Must Be Rejected In Its Entirety

The Companies propose to modify their default service rate through a 0.144 cent per kWh adder they have termed a "retail market enhancement rate mechanism." The

[2] The OCA was assisted in its review of the Companies' filings by Dr. Steven Estomin, a Senior Economist and principal with Exeter Associates, Inc. and Barbara Alexander, a Consumer Affairs Consultant. Dr. Estomin holds B.A., M.A., and Ph.D. degrees in economics from the University of Maryland. His areas of academic concentration included industrial organization, environmental economics, and econometrics. Dr. Estomin is an accomplished energy professional employed in the area of energy, utility, and telecommunications consulting for the past 36 years working on a wide range of issues. Most of his work has addressed electric utility integrated planning, load forecasting, environmental issues, power supply procurement, and renewable energy issues. In recent years, the focus of much of his professional work has been in the areas of electric power supply procurement; renewable energy project analysis; and market analysis related to electric energy, capacity, and renewable energy. Dr. Estomin's qualifications are detailed in OCA St. No. 1 at 1-3 and Appendix A. Ms. Alexander works on consumer protection and customer service issues associated with utility regulation. Ms. Alexander is an attorney, and a graduate of the University of Michigan (1968) and the University of Maine School of Law (1976). Prior to opening her consulting practice in 1996, she spent nearly ten years as the Director of the Consumer Assistance Division of the Maine Public Utilities Commission. Her current consulting practice is directed to consumer protection, customer service and low-income issues associated with both regulated and retail competition markets. Ms. Alexander's qualifications are detailed in OCA St. 2 at Attachment BA-1.

Companies claim that the Price to Compare (PTC) Adder is being proposed to "incent residential retail shopping." FE St. 1 at 24. The Companies' proposed PTC Adder must be rejected.

Initially, the OCA notes that no other Pennsylvania EDC has sought any such premium on top of its actual default service costs. The Companies have previously attempted to recover a PTC Adder, and the Commission soundly rejected the attempt in 2012. As the Commission recognized at that time, a default service provider is permitted to recover the actual costs of its approved DSP. Here, the proposed PTC adder is not a default service cost. In addition, the Companies' customers strenuously objected to the proposed PTC Adder during Public Input Hearings held in Erie, Pennsylvania – where over 60 customers testified and hundreds of customers attended in opposition to this proposal. As detailed further in this Main Brief, the PTC Adder is unsound policy and Pennsylvania law is clear that a utility may not recover "phantom" expenses in order to inflate default service rates.

3. Issues Concerning the Companies' Customer Referral Program Must Be Addressed To Ensure Transparency.

The Companies propose to extend the operation of its Customer Referral Program (CRP) through the May 31, 2023. The OCA has fully evaluated the CRP and, importantly, a review of the data in this case shows that customers are not receiving the 7% savings that forms the foundation of CRP marketing efforts. The OCA proposes modifications to the program to ensure that customers are fully informed prior to making a shopping decision through the CRP.

4. CAP Shopping Protections are Needed.

The Commission-approved settlement of DSP IV established that Customer Assistance Program (CAP) shopping would be addressed in a stakeholder collaborative, and that data would be provided showing the impact that CAP customer shopping has had on affordability and cost-effectiveness. On an annual basis, FirstEnergy's CAP customers receiving electric service from

electric generation suppliers (EGS) paid, on a net basis, $3,793,746 more per year than the Price to Compare. As detailed below, the OCA submits that CAP shopping rule modifications are needed.

5. Conclusion

In this proceeding, the Commission must ensure that default service customers continue to receive reasonable, adequate and stable service, designed to provide the least cost to customers over time. The OCA submits that its proposed modifications to the Companies' default service plans, as detailed in this Main Brief, will ensure that customers continue to receive default service consistent with Pennsylvania law.

B. Burden of Proof

Section 332(a) of the Public Utility Code provides that "the proponent of a rule or order has the burden of proof." 66 Pa. C.S. § 332(a). As the proponent in this matter, FirstEnergy has the burden of proof.[3] In addition, the proponent must provide substantial evidence of record as support for its case before the Commission.[4] 2 Pa. C.S. § 704. The Pennsylvania Supreme Court has also stated that the party with the burden of proof has a formidable task before its position can be adopted by the Commission. In particular, even where a party has established a prima facie case, the litigant must establish:

> The elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.

Burleson v. Pa. PUC, 461 A.2d 1234, 1236 (Pa. 1983) (Burleson).

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[3] In Se-Ling Hosiery, Inc. v. Margulies, 70 A.2d 854 (Pa. 1950), the Pennsylvania Supreme Court held that the term "burden of proof" refers to a duty to establish a fact by a preponderance of the evidence.

[4] The Pennsylvania Supreme Court, Superior Court, and Commonwealth Court as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion has defined the term "substantial evidence". More is required than a mere trace of evidence or a suspicion that a fact might exist. See Norfolk & Western Ry. Co. v. Pa. PUC, 413 A.2d 1037 (Pa. 1980), Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa. 1961); Murphy v. Dep't Pub. Welfare, 480 A.2d 382 (1984).

Moreover, "[t]he term 'burden of proof" is comprised of two distinct burdens, the burden of production and the burden of persuasion." Hurley v. Hurley, 754 A.2d 1283, 1285 (Pa. Super. 2000). The burden of production dictates which party has the duty to introduce enough evidence to support a cause of action. Id. at 1286. The burden of persuasion determines which party has the duty to convince the finder-of-fact that a fact has been established. Id. "The burden of persuasion never leaves the party on whom it is originally cast." Hurley at 1286; see also Pa. PUC v. Equitable Gas Co., 57 Pa. PUC 423, 471 (1983).

"It is well-established that the evidence adduced by a utility to meet this burden must be substantial." Lower Frederick Twp. v. Pa. PUC, 409 Pa. PUC 505, 507 (1980). The Pennsylvania Supreme Court has stated that even where a party establishes a prima facie case by producing enough evidence to support a cause of action, the party does not satisfy its burden of persuasion unless the elements of that cause of action are proven with substantial evidence. Burleson at 436. Thus, a utility has an affirmative burden to produce enough evidence to establish the justness and reasonableness of every component of its request, and in order to persuade the finder-of-fact, there must be substantial evidence that each component of its request is in fact just and reasonable. See e.g., Sharon Steel Corp. v. Pa. PUC, 468 A.2d 860, 862 (1978); Johnstown v. Pa. PUC, 133 A.2d 246, 250 (Pa. Super. 1957).

In addition to meeting the general burden of proof described above, in proceedings involving the rates of a public utility, the proponent, FirstEnergy, must meet certain standards with regard to reasonable rates. Specifically, Section 315 of the Public Utility Code provides that, "[i]n any proceeding upon the motion of the commission, involving any proposed or existing rate of any public utility . . . the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility." 66 Pa. C.S. § 315(a).

In conclusion, the OCA submits that FirstEnergy must affirmatively demonstrate the reasonableness of its claims in this proceeding in addition to showing that any resulting rates and proposals are just, reasonable, and consistent with Pennsylvania law.

II. PROCEDURAL HISTORY

The procedural history of this case is set forth in FirstEnergy's Main Brief.[5]

[5] On April 10, 2018, during the evidentiary hearings in this matter, ALJ Long clarified that each party is not required to present a procedural history in its main brief and that the parties may submit one procedural history, which should be set forth in FirstEnergy's Main Brief.

III. DEFAULT SERVICE PLAN PORTFOLIO AND TERM

A. Residential Portfolio

1. Legal Standard for Default Service

Default service is the basic service that Pennsylvania's electric customers are entitled by law to receive if they do not switch to an alternative retail electric generation supplier (EGS), or if their alternative EGS fails to provide them with service. The FirstEnergy Companies are the default service providers in their service territory, and as such must offer default service that meets specific legal requirements. Act 129 of 2008 (Act 129) and the Commission's regulations provide the framework that default service must meet and sets forth specific parameters for the procurement of electric default service in Pennsylvania.

The General Assembly in 2008 set forth a definition of the default service provider and established procurement standards for the provision of default service at the least cost over time. Under Section 2807 of the Public Utility Code, FirstEnergy, as the default service provider, is required to provide electric generation supply service to all of its default service customers through a Commission-approved competitive procurement plan. 66 Pa. C.S. § 2807(e). Under Act 129, generation is to be obtained through competitive procurement processes, such as auctions, requests for proposals, and bilateral agreements. Id. Specifically, the procurement requirements must meet the following criteria:

> The electric power acquired shall be procured through competitive procurement processes and shall include one or more of the following:
>
> (i) Auctions.
> (ii) Requests for proposal.
> (iii) Bilateral agreements . . .

66 Pa. C.S. § 2807(e)(3.1). As part of a procurement plan, Act 129 requires a mix of power as follows:

> The electric power procured pursuant to paragraph (3.1) shall include a prudent mix of the following:
>
> (i) Spot market purchases.
> (ii) Short-term contracts.
> (iii) Long-term purchase contracts, entered into as a result of an auction, request for proposal or bilateral contract that is free of undue influence, duress or favoritism, of more than four and not more than 20 years.

66 Pa. C.S. § 2807(e)(3.2).

The Act requires that default supply shall include a prudent mix of the various types of contracts. Under Act 129, the mix of contracts must be designed to achieve certain goals, as follows:

> The prudent mix of contracts entered into pursuant to paragraphs 3.2 and 3.3 shall be designed to ensure:
>
> (i) Adequate and reliable service.
> (ii) The least cost to customers over time.
> (iii) Compliance with the requirements of paragraph (3.1).

66 Pa. C.S. § 2807(e)(3.4).

Act 129 further requires that the Commission evaluate whether the default supplier's plan meets the requirements of the Act. The Commission must take several factors into consideration, and must make specific findings that the default supplier's plan meets the requirements of the Act, as follows:

> (3.7) At the time the commission evaluates the plan and prior to approval, in determining if the default electric service provider's plan obtains generation supply at the least cost, the commission shall consider the default service provider's obligation to provide adequate and reliable service to customers and that the default service provider has obtained a prudent mix of contracts to obtain least cost of a long-term, short-term and spot market basis and shall make specific findings which shall include the following:
>
> > (i) The default service provider's plan includes prudent steps necessary to negotiate favorable generation supply contracts.

> (ii) The default service provider's plan includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis.
>
> (iii) Neither the default service provider nor its affiliated interest has withheld from the market any generation supply in a manner that violates Federal law.

66 Pa. C.S. § 2807(e)(3.7).

Act 129 commenced by identifying three "public policy findings" and "objectives of the Commonwealth" that were to be served by the Act. The first of these finding included the need to ensure the availability to all Pennsylvanians of "adequate, reliable, affordable, efficient and environmentally sustainable electric service at the least cost, taking into account any benefits of price stability over time." Preamble to Act 129, 2008 Pa. Laws 129. The General Assembly declared that it is in the public interest to adopt "energy procurement requirements designed to ensure that electricity obtained reduces the possibility of electric price instability, promotes economic growth and ensures affordable and available electric service to all residents." Id.

2. The Companies' Filing Should Be Modified To Reduce The Risk Of Rate Shock at the Conclusion of DSP V.

In their filing, the Companies propose to procure 12 and 24-month full requirements contracts (FRCs), with a 5% portion of each contract priced at spot market prices. FE St. 2 at 7-10. The basic proposal is similar to what was approved in DSP IV, providing a mix of contract terms and spot market pricing. The OCA supported the mix of products in the DSP IV settlement, as it provides a laddered mix of 12 and 24-month contracts, while incorporating a 5% spot market pricing which is consistent with Pennsylvania law and provides diversification benefits.

OCA witness Estomin explained the basic function of the residential procurement plan presented by the Companies:

> The EDCs will use a competitive process to acquire a series of FRCs to provide generation service for the existing default service load. Contracts will have terms of 12 months and 24 months that cover the 4-year default service plan period. The FRCs would be procured using a descending-price clock auction ("DCA"). The Companies plan to conduct a series of auctions to procure the residential default service load requirement, with the first auction to be conducted in late October or early November 2018.

OCA St. 1 at 8.

OCA witness Steven Estomin reviewed the Companies' procurement plan and recommended one key modification to ensure price stability through the end of the DSP term. OCA St. 1 at 11-12. While the OCA does not oppose the continued use of 12 and 24-month FRCs, concerns remain regarding the Companies' proposal to end all supply contracts on May 31, 2023, *i.e.*, a "hard stop" of all contracts. By terminating all contracts on a single date, the Companies will be fully exposed to market conditions at the time of the procurements for its next default service plan.

OCA witness Estomin explained why ending all contract purchases on a single date creates unnecessary market timing risk for residential customers, as follows:

> All of the residential power supply contracts relied upon in the last year of the default service plan period expire at the end of the period. This reduces the degree to which residential default service customers can benefit from temporal diversification of the portfolio in the subsequent default service period, that is, the one that would commence June 1, 2023.

OCA St. 1 at 11.

Energy markets have been subject to volatility, and the Companies' plan would fully expose customers to potentially dramatic rate increases on June 1, 2023. Eliminating the "hard stop" reduces the potential for price volatility at the end of the DSP term and is consistent with Act 129 "least cost to customers over time" mandate as well as the goals of the General

Assembly that default service achieve "price stability over time." 66 Pa. C.S. § 2807(e)(3.4); Preamble to Act 129, 2008 Pa. Laws 129.

To rectify the concerns presented by a "hard stop" for all contracts, Dr. Estomin developed a procurement plan modification that layered purchases into the subsequent default service plan period. OCA St. 1 at 12-13. Dr. Estomin proposed the following modifications:

> [I]n the final residential auction scheduled to take place under the proposed plan, 16 of the 46 12-month contracts be converted to two-year contracts. This would allow the subsequent default service planning period, i.e., the one to commence in June 2023, to avoid the lack of temporal diversification that characterizes the currently proposed plan through the elimination of the "hard stop" at the end of the default service plan period.

OCA St. 1 at 12.

In Rebuttal Testimony, Companies' witness Catanach argues in favor of a "hard stop" for three reasons. First, he argues that the Companies have traditionally employed a hard stop. Second, he argues that the Commission looked favorably on this practice in 2012. Third, adherence to a "hard stop" removes regulatory risk associated with significant changes in default service rules that may be implemented at a later date.[6] See FE St. 2R at 3-4. The OCA submits that the reasons posited by the Companies do not sufficiently outweigh the risk inherent in such an approach.

OCA witness Estomin responded that the concerns identified by the Companies have been addressed by other Pennsylvania EDCs. Dr. Estomin explained:

> While the Commission's Order issued in Docket Nos. P-2011-2273650 et al., did not adopt the inclusion of overhanging contracts, the Commission did not close the door on overhanging contracts.
>
> Furthermore, certain Pennsylvania utilities currently provide default service that relies on overhanging contracts to avoid precisely the "hard stop" problem that I identified in my Direct Testimony. PPL Electric Utilities and PECO both include

[6] RESA witness Hudson testified in opposition to OCA witness Estomin's proposed modifications on similar grounds as the Companies. See RESA St. 1R at 3.

> overhanging products as part of their residential default service portfolios to avoid the "hard stop" problem.

OCA St. 1S at 6 (footnote omitted).

The OCA submits that the concerns expressed by the Companies and RESA of layering contracts beyond May 31, 2023, can be addressed if needed. As OCA witness Estomin explained:

> [I]f significant changes to default service arrangements are adopted at some point in the future, there is no reason to believe that the contracts that I recommended, which would entail a 12-month overhang period for approximately 20 percent of the residential load, would impede the ability of the FirstEnergy Companies to implement the directed changes. For example, the energy associated with the overhang contracts could be transferred to a third-party supplier. In the alternative, the remaining 80 percent of residential default service could be contracted for one year and the new arrangements would then take effect at the termination of that first delivery year, that is, the year ending May 2019. It is seen that there are multiple methods available to address this issue in the unlikely event that a significant modification to the way that residential default service is provided.

OCA St. 1-S at 5.

The potential harms that can result from the "hard stop," such as having to replace all power supplies residential service at once in a potentially volatile market, are substantial and should be avoided when possible. Here, OCA witness Estomin provided a procurement schedule that would alleviate these concerns and match the "best practices" of laddered procurement currently practiced by PPL and PECO while better achieving the goals of Act 129.

B. Commercial Portfolio

The OCA has no position on this issue.

C. Industrial Portfolio

The OCA has no position on this issue.

D. Procurement Classes

The OCA has no position on this issue.

E. Default Service Plan Term

The Companies' propose a four-year default service plan term, beginning May 31, 2019, through May 31, 2023. The settlement of the Companies' current DSP IV anticipated a four year DSP ending May 31, 2021. In 2016, the Commission approved four year default service plans for PPL Electric Utilities, PECO Energy, and Duquesne Light Company.[7]

Company witness Bortz testified that a four-year term provides certainty for customers and EGSs regarding the terms of the DSP, while also providing administrative efficiencies and cost savings for customers compared to filing on a more frequent basis. ME/PN/WP/PP St. 1. The OCA strongly supports the use of four year DSPs. A four year plan will avoid the time and expense associated with more frequent filings, savings that will ultimately accrue to ratepayers. The OCA submits that all of the major EDCs have transitioned to four year DSPs and that FirstEnergy's commitment to four year plans going forward is appropriate.

IV. PURCHASE OF RECEIVABLES CLAWBACK PROVISION

The OCA does not object to the Section A.1-2 of the April 10, 2018 Joint Stipulation of FirstEnergy, I&E, and RESA pertaining to the Purchase of Receivables (POR) Clawback, but objects to Section A.3. of the Joint Stipulation which states:

> The Stipulating Parties agree that the following settlement terms resolve the following issue raised in the above-captioned docket:

[7] See Petition of PPL Electric Utilities Corp 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 (Order entered October 27, 2016); Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2017 through May 31, 2021, Docket No. P-2016-2534980 (Order entered December 8, 2016); Petition of Duquesne Light Company for Approval of a Default Service Plan for the Period June 1, 2017 through May 31, 2021, Docket No. P-2016-2543140 (Order entered December 22, 2016).

A. POR Clawback Charge

. . .

> 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.

Joint Stipulation No. 2.

The information that is to be provided pursuant to this provision of the stipulation refers to customer-specific information, rather than aggregate information. The OCA submits that EGSs are not entitled to receive or permitted to access such customer information without customers' full, knowing consent. Pursuant to the Commission's regulations, "private customer information" includes the "customer's historical billing data." 52 Pa. Code § 54.8. Also pursuant to the Commission's regulations, "[a]n EDC . . . may not release private customer information to a third party unless the customer has been notified of the intent and has been given a convenient method of notifying the entity of the customer's desire to restrict he release of the private information." 52 Pa. Code § 54.8; see also 66 Pa. C.S. § 2807(f)(3) ("Electric distribution companies shall, *with customer consent*, make available direct meter access and electronic access to customer meter data.") (emphasis added). A customer has a right to restrict the release of billing information and arrears information should not be automatically relayed to EGSs by an EDC. This is particularly the case when the EDS is not responsible for collecting unpaid charges from the customer.

There has been no showing that proper customer consent has been obtained or will be obtained by FirstEnergy for the stipulated release of customer information. Moreover, as explained by OCA witness Alexander, with regard to a "mechanism to share customer specific payment histories with the customer's EGS," there is no "specific authorization that allows the

EGS to obtain the customer's EDC billing information, particularly as it pertains to partial payments, the allocation of partial payments between the EDC and the EGS, payment arrangement terms, receipt of financial assistance, etc." OCA St. 2S at 13. In addition, OCA witness Alexander noted that, even if it were appropriate to "develop reporting requirements by FirstEnergy to EGSs participating in the POR program with EGS-specific write off or arrears balance trends, such information should *not* include customer specific information." OCA St. 2S at 13 (emphasis added); OCA St. 2R at 9. OCA witness Alexander further explained:

> The EGS has sold its receivables to the EDC and the EDC remains responsible for collecting unpaid supplier charges using the approved collection programs and consumer protection policies applicable to the EDC's regulated services. The EGS is no longer liable for collecting or communicating the individual customers concerning their payment profile and any such communications are likely to confuse and perhaps adversely impact the customer's abilities to interact with the EDC to obtain required rights and responsibilities, such as referral to CAP, the right to a payment plan, medical emergency declaration, and other requirements imposed on the EDC, most of which are not currently the responsibility of the EGS customer service representatives. The customer does not owe any funds to the EGS under the current POR program.

OCA St. 2S at 13, OCA St. 2R at 9. Therefore, customer-specific arrears information must not be automatically reported to EGS. The OCA submits that the Commission should reject this provision of the April 10, 2018 Joint Stipulation of FirstEnergy, I&E, and RESA.

V. BYPASSABLE RETAIL MARKET ENHANCEMENT RATE MECHANISM

A. Introduction

1. FirstEnergy's Proposal

FirstEnergy proposes a bypassable retail market enhancement rate mechanism in the form of a PTC Adder. OCA St. 2 at 32. FirstEnergy claims that the PTC Adder is intended to "incent residential retail shopping." OCA St 1 at 15 (citing FE St. 1 at 24). FirstEnergy proposes that the PTC Adder be applied only to residential default service customers, or non-shopping residential customers. OCA St. 1 at 15. FirstEnergy also proposes that the PTC Adder be implemented in the amount of 1.44 mills per kWh. OCA St. 1 at 15 (citing FE St. 1 at 26). The charge of 1.44 mills per kWh is equivalent to $1.25 per month, or $15.00 per year, for the average residential customer. OCA St. 1 at 15 (citing FE St. 1 at 26). The Companies propose to redistribute 95% of revenue collected through the PTC Adder to both shopping and default service residential customers through the non-bypassable DSS Rider. OCA St. 2 at 32. In addition, the Companies propose to retain five percent of the revenues from the PTC Adder to cover administrative costs associated with the program. OCA St. 2 at 32.

2. Legal Standards for Default Service Costs

Section 2807(e)(3.9) of the Electricity Generation Customer Choice and Competition Act provides that "[t]he default service provider shall have the right to recover on a full and current basis, pursuant to a reconcilable automatic adjustment clause under Section 1307 (relating to sliding scale of rates; adjustments), all reasonable costs incurred under this section and a commission-approved competitive procurement plan." 66 Pa. C.S. § 2807(e)(3.9). Further, the costs under "this section" are the costs of procuring service supply. 66 Pa .C.S. § 2807(e)(3.9).

The Pennsylvania Supreme Court has provided:

> Although the Commission is vested with broad discretion in determining what expenses incurred by a utility may be charged to the ratepayers, the Commission has no authority to permit, in the rate-making process, the inclusion of *hypothetical expenses not actually incurred.* When it does so . . . it is an error of law subject to reversal on appeal.

Barasch v. Pa. PUC, 493 A.2d 653, 655 (Pa. 1985) (emphasis added). Also on the issue of hypothetical expenses, the Commonwealth Court has provided: "[A] utility may pass along to its customers only those expenses or costs it actually incurs. Any other approach would permit the utility, by charging higher rates than necessary, to *gain a profit from its customer under the guise of recovering operating expenses.*" Cohen v. Pa. PUC, 468 A.2d 1143, 1150 (Pa. Commw. 1983) (Cohen) (citations omitted).

B. The Commission Must Reject the PTC Adder as Unjustified and Unlawful.

1. The PTC Adder Does Not Reflect a Cost of Providing Default Service.

The Companies propose to recover a PTC Adder in this case for the stated purpose of incenting retail competition. The Electricity Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801, *et seq.*, however, does not permit the recovery of such incentive mechanisms. Simply stated, the PTC Adder is not a cost for providing default service as described in Section 2807(e) of the Act. 66 Pa. Code § 2807(e). No other default service provider in Pennsylvania attempts to recover such a PTC Adder. The very fact that FirstEnergy's proposal would return 95% of revenues collected through the charge back to customers is evidence that it is not a cost. Fundamentally, the PTC Adder is a re-allocation scheme designed to collect revenues from default service customers and re-distribute funds to EGS customers. There is no basis in the law for this scheme.

OCA witness Estomin explained that the PTC Adder is based on the charge to EGSs for each customer enrolled in the Standard Offer Program, which is $30. OCA St. 1 at 15. In this

regard, OCA witness Estomin stated: "By assuming that the EGS retains the customer for 24 months, the charge of $1.25 is obtained by dividing $30 by 24 months. Dividing the $1.25 by average monthly residential usage (869 kWh) results in a per-kWh charge of (approximately) 1.44 mills."[8] OCA St. 1 at 15-16; see also OCA St. 2 at 32 (citing FE St. 1 at 25, 26). OCA witness Estomin emphasized the method used to calculate the charge is not in any way related to the purpose of the PTC Adder. As OCA witness Estomin explained:

> [T]he PTC adder emanates from another retail market enhancement program, the CRP. The purported basis for the CRP charge . . . does not bear any relationship to the rationale underlying the Companies' proposal for the PTC adder; that is to supposedly induce residential customers to enter the competitive retail market in lieu of continuing to receive service under default service arrangements. It should be noted that the CRP charge and the purposed PTC adder are not even paid by the same market entities – the PTC adder is proposed to be paid by the residential default service customers and the CRP charge is paid by the EGSs.

OCA St. 1 at 16. In addition, OCA witness Alexander noted that FirstEnergy witness Bortz did not provide any basis for her calculation of the PTC Adder in this manner.[9] OCA St 2 at 33.

The five percent retained by FirstEnergy to cover administrative costs equates to $855,000 per year if approximately 30 percent of the Companies' residential customers remain on default service after the program is implemented. OCA St. 1 at 18, Exh. SLE-2. Currently, 70 percent of FirstEnergy's residential customers are default service customers. OCA St. 1 at 16. As such, the amount retained by FirstEnergy would be significantly higher than $855,000 at the inception of the program or if customers do not switch to an EGS as a result of the program.

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[8] RESA witness Hudson suggested doubling the charge by using 12 months in the calculation, instead of 24 months, as this is the term of the CRP contract. OCA witness Alexander rejected this calculation for the same reason she rejected the Companies' calculation of the PTC Adder. OCA St. 2R at 8.

[9] In her Rebuttal Testimony, FirstEnergy witness Bortz claimed that "the 1.44 mills per kWh PTC Adder was based on the amount that EGSs have demonstrated that they are willing to pay for customers referred by an EDC." OCA St. 1S at 10 (citing FE St. 1 at 23). As OCA witness Estomin explained, FirstEnergy witness Bortz's explanation of the basis for the charge does not address concerns regarding the arbitrary level of the PTC Adder. OCA St. 1S at 10. Specifically, "[s]ince the purpose of the PTC Adder is to incentivize residential customers to participate in the competitive retail market a proxy for EGS customer acquisition costs is unrelated to the purpose and consequently is fundamentally an arbitrary figure." OCA St. 1S at 10.

In addition, OCA witness Estomin noted that the Companies do not intend to track administrative expenses and an "ex post evaluation of the reasonableness of the 5 percent retention would not be able to be conducted." OCA St. 1 at 18. This confirms further that the PTC Adder does not represent actual costs incurred by the Company and that the PTC Adder will result in a substantial windfall for FirstEnergy. FirstEnergy's proposal is an impermissible attempt to earn a profit under the guise of "administrative expenses." Cohen at 1150.

2. The Commission Rejected the Companies Previous Request for a PTC Adder as Unjustified and Inequitable, and Must Reject the PTC Adder on the Same Grounds Here.

In the Companies' DSP II proceeding, FirstEnergy proposed a Market Adjustment Charge (MAC). As proposed, the MAC was a "bypassable charge that would be imposed on non-shopping residential and commercial customers." Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn for Approval of their Default Service Programs, Docket No. P-2011-2273650, *et al.* (Order entered August 2, 2012, at 53). RESA recommended that the MAC be modified to cover the costs of implementing the retail market enchantments and leftover revenues be "returned to all ratepayers through a non-bypassable charge." Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn for Approval of their Default Service Programs, Docket No. P-2011-2273650, *et al.* (Recommended Decision issued June 15, 2012, at 57). Under RESA's modifications, "[o]nly default service customers would be charged for the MAC, but all residential customers . . . would receive the credit from the leftover MAC revenues." Id. As such, the MAC was a non-cost based charge similar to the PTC Adder proposed here.

In this regard, the OCA argued in DSP II that "recovery of retail opt-in costs though the MAC is particularly inappropriate since the default service customers who would pay the MAC are the very customers who, by definition, will not be participating in the auction program." Id.

at 126. The ALJ concluded that charging non-shopping customers the MAC and returning leftover revenues to all customers was "*inequitable* on the surface" and rejected RESA's recommendation. Id. at 57. The Commission cited the ALJ's reasoning on this point in its Order, which rejected the MAC in its entirety. Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn for Approval of their Default Service Programs, Docket No. P-2011-2273650, *et al.* (Order entered August 2, 2012, at 59).

In its Order, the Commission further noted that the ALJ determined that the MAC is not a "legitimate retail market enhancement tool, and is an inappropriate and unnecessary financial adder." Id. at 58. In addition, the MAC conflicted with the Public Utility Code because "the Companies receive full recovery of all costs of providing default service on a dollar-for-dollar basis through an automatic adjustment surcharge as provided by 66 Pa. C.S. § 2807(e). Id. Moreover, EDCs are obligated to provide default service "at no greater than the cost of obtaining generation." Id. at 59. The Commission concluded as follows:

> For the reasons presented by the ALJ, *supra*, we reject the MAC proposed by the Companies. While under the Code the Companies are entitled to recover all actual costs to provide default service on a dollar-for-dollar basis, the Companies and other Parties failed to provide sufficient empirical support for any actual known and measurable costs that are not being recovered through existing or proposed rates and riders. Accordingly, we adopt the ALJ's recommendation and deny the Exceptions related to the establishment of a MAC.

Id. at 62.

In the instant proceeding, as detailed in Section V.A, FirstEnergy proposes a PTC Adder intended to "incent residential retail shopping." OCA St 2 at 32 (citing FE St. 1 at 25). The PTC Adder is a bypassable charge that will be imposed on residential default service customers. OCA St. 2 at 32. FirstEnergy proposes to use 5% of the PTC Adder to cover "administrative costs" associated with the retail market enhancement rate mechanism and return 95% of revenues to ratepayers through a non-bypassable Rider. OCA St. 2 at 32.

FirstEnergy's present proposal is comparable to RESA's modification of FirstEnergy's proposal in the DSP II proceeding. Only default service customers will be charged for the PTC Adder, but all residential customers will receive the credit from the PTC Adder revenues. As the ALJ concluded and the Commission agreed in DSP II, the practice of charging non-shopping customers the PTC Adder and returning revenues to all customers is "*inequitable.*"[10] In addition, as explained by OCA witness Estomin and OCA witness Alexander, the PTC Adder will allow FirstEnergy to recover charges that are not demonstrated to be lawful – the charges do not reflect a cost of providing service – without any empirical support or measurable costs. OCA St. 1 at 17; OCA St. 2 at 33, 34. FirstEnergy receives full recovery of all costs for default service and failed to provide support for any actual costs that are not being recovered through existing rates or tariff provisions.[11] Therefore, the Commission must reject FirstEnergy's proposal.

3. FirstEnergy's Alleged Basis for the PTC Adder is Without Merit.

FirstEnergy claims that the PTC Adder is necessary to "incent residential retail shopping." As OCA witness Estomin explained, however, FirstEnergy's claimed purpose for the PTC Adder is flawed. OCA witness Estomin explained:

> Implementing a charge on residential customers that choose not to switch, or have been put on default service by the inability of their EGS to continue providing competitive service, suggests that these customers are continuing to receive default service in numbers that exceed what should be the case. While it is certainly true that a greater percentage of the Companies' residential customers continue to receive default service relative to their commercial and industrial customers, the same relationship exists for most EDCs in states that have restructured their electric industries. There is no basis for assuming that residential customers are acting irrationally in selecting default service in greater percentages than commercial or industrial customers and there is certainly no

[10] See Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn for Approval of their Default Service Programs, Docket No. P-2011-2273650, *et al.* (Order entered August 2, 2012, at 59) (emphasis added).

[11] See Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn for Approval of their Default Service Programs, Docket No. P-2011-2273650, *et al.* (Order entered August 2, 2012, at 58-59) (emphasis added).

basis for, in essence, assessing a tax on residential default service customers for availing themselves of the default service tariff.

OCA St. 1 at 16-17. The OCA notes that no other Pennsylvania EDC has sought to implement such a charge, despite similar shopping statistics. OCA St. 1 at 17.

RESA witness Hudson suggests that, contrary to FirstEnergy witness Bortz's testimony, the purpose of the PTC Adder is to "rectify an inequity in the retail market, that is, [EGSs] incur customer acquisition costs whereas default supply providers do not." OCA St. 1S at 9 (citing RESA St. 1R at 7). This argument does not provide support for FirstEnergy's proposal. OCA witness Estomin characterized the current competitive market as "robust" and "not a market characterized by oppressive economic barriers." OCA St. 1R at 4. He concluded that "a significant number of EGSs have been able to effectively compete in the residential generation supply market and continue to participate in that market by providing a range of products that the utility is unable to provide . . . different types of 'green products,' and fixed-price products of varying durations." OCA St. 1R at 5. Therefore, FirstEnergy has not established a need for a program designed to "incent residential retail shopping."

Additionally, as OCA witness Estomin provided, "the Companies themselves state that there is no evidence that the proposed program will foster measurable results." OCA St. 1 at 18. OCA witness Alexander also pointed out that FirstEnergy witness Bortz did not provide any evidence to support her suggestions that the PTC Adder will increase customer enrollment with EGSs.[12] Therefore, the OCA submits that the Company has not met their burden of proof with regard to the purported necessity of the PTC Adder.

[12] In her Rebuttal Testimony, FirstEnergy witness Bortz speculates that a higher PTC due to the PTC Adder will make EGS offers more attractive. OCA St. 1S at 11 (citing FE St. 1-R at 24). As OCA witness Estomin notes, however, higher PTCs are more likely than not to result in higher EGSs offers – discussed fully in Section V.B.4 – as the EGSs use the PTC as a pricing benchmark. OCA St. 1S at 11-12. Therefore, EGS offers would not be more attractive than the PTC. OCA St. 1S at 12.

4. The PTC Adder Will Result in Harm to Customers.

In addition to increasing rates for non-shopping customers, the PTC Adder will increase rates for shopping customers. As OCA witness Estomin pointed out, competitive EGSs "use the PTC as a pricing benchmark and as basis of comparison for marketing purposes." OCA St. 1 at 18. An artificially inflated default service rate will result in increased EGS charges for customers. Therefore, the PTC adder would not only represent a subsidy from residential default service customers to residential customers receiving competitive service, it would also represent a subsidy from residential customers receiving competitive service to EGSs." OCA St. 1 at 18. These subsidies represent unnecessary rate increases that are not in accordance with the Public Utility Code and do not result in just and reasonable rates for non-shopping or shopping customers. 66 Pa. C.S. § 315(a).

Further, with regard to the impact of the PTC Adder on customers, due to a high level of consumer interest in this proceeding, Public Input Hearings were scheduled and held on March 13, 3018, in Erie, Pennsylvania, a portion of FirstEnergy's service territory, at 1:00 p.m. and 6:00 p.m. An approximate total of 350 customers attended the Public Hearings with 250 in attendance at the first Hearing and 100 in attendance at the second Hearing. Tr. 116. Of those 350 customers, a total of 66 customers testified on the record in this matter. Tr. 47-48, 212-213. The overwhelming majority of customers who testified *opposed* (1) the PTC Adder, (2) customer shopping, and (3) competitive suppliers generally.[13]

Customers recognized that there is no basis for the PTC Adder and stated that the competitive market should not be aided by artificial charges, such as the PTC Adder. Kenneth

[13] Only one customer who opposed the PTC Adder indicated that he supported shopping. Tr. 195. He explained that he saved $21.72 per year, or 3%, by signing up with Ambit Energy, which he identified as the "only . . . ethical, reputable [EGS] company." Tr. 195. He noted that the Commission is "not vetting these people" and that he would "go as far as to say you have let organized crime be suppliers of the gas and electric in this state." Tr. 197.

Springirth, a Formal Complainant in this matter, expressed that "the proposed surcharge undermines the requirement that rates shall be just and reasonable."[14] Tr. 67. He explained that the PTC Adder "is an artificial charge that is not needed by [FirstEnergy] but is being used to make non-shopping customer[s] believe that they will get a better rate by shopping." Tr. 67. Similarly, an AARP Citizen Advocate noted that the Commission should not approve the PTC Adder, which will "allow suppliers to 'compete' by permitting FirstEnergy to artificially raise the price of default service over and above the cost of providing that service." Tr. 90. In addition, one customer noted that competitive suppliers are "putting pressure on [FirstEnergy]" to impose the PTC Adder to "level the playing field." Tr. 148.

Customers expressed their belief that making an informed decision *not* to move to a competitive supplier is "shopping." Tr. 97, 262, 134. In particular, a number of customers explained that they reviewed available supplier offers using PA Power Switch and decided to remain a customer of Firstenergy. Tr. 99, 135-136, 186-187. As one customer stated, "not to change is a choice." Tr. 97, 262, 134. Another customer noted, that "[a] choice is not a choice if you have to pay for the privilege of not choosing," rather that is "a force of hand." Tr. 101. Customers also stated that, through the PTC Adder, FirstEnergy will penalize default service customers for not shopping. Tr. 90, 134, 162, 275. Customers expressed frustration that they will be penalized by the Company that they support. Id.

Further, customers detailed numerous negative experiences that they have had with competitive suppliers, which contributes to their concerns regarding any purported "incentive" to

[14] Mr. Springirth also pointed out that the notice published by FirstEnergy did not mention the PTC Adder or its impact on rates. Tr. 65-66, 82. In particular, Mr. Springirth stated that in "the Legal Notice that appeared in our paper, the Erie Times-New, for Tuesday, December 19th of 2017, page A5" there was "absolutely no mention of this surcharge." Tr. 65. Mr. Springirth stated that "the utility must be required to talk about a rate increase of any kind in that Legal Notice." Tr. 66. One customer noted, "I would have had no idea about this surcharge were it not for his insight to put a letter into the Meadville paper." Tr. 101.

shop. Customers noted that the supplier contract terms are unable to be easily understood by the public. Tr. 117-118, 122, 186. Customers also complained of egregious sales tactics, including telemarketing campaigns. Tr. 275, 283. One customer stated that she was "scared" into switching and told that the PTC for "Penelec is going to go up next month 11 cents." Tr. 175. Another customer, who works with low-income customers, noted that "customers say that salespeople, for the alternative suppliers, are aggressive in their tactics and won't take 'no' for an answer." Tr. 105. The same customer stated: "Some reported that when they answered the questions, 'Would you like to save money on your electric bill' with a 'yes,' they were automatically signed up to the alternative supplier without their knowledge or consent." Tr. 105. This customer also provided a specific example in which a customer was "paying 25 cents per kilowatt hour, nearly four times the price [to] compare rate at that time" and noted that such "abuses by alternative suppliers" are "happening every day . . . under the PUC's watch." Tr. 106, 107. In addition, other customers also indicated negative bill impacts after switching to a competitive supplier. Tr. 149, 153, 178-179.

Customer testimony regarding the PTC Adder, shopping, and competitive suppliers generally revealed that customers do not consider the PTC Adder an "incentive" to shop, but believe that it is penalty fee and that customers who elected not to shop after reviewing offers on PA PowerSwitch or stopped shopping after a negative experience with a supplier, will likely not be "incented" by the PTC Adder to begin or return to shopping.

C. Conclusion

As detailed above, the FirstEnergy failed to (1) show that that the PTC Adder reflects actual costs incurred by the Company, (2) meet its burden of proof as to the basis of the PTC Adder, and (3) demonstrate that the PTC Adder will result in just and reasonable rates for all

customers. The OCA submits that the Commission must reject the PTC Adder for a lack justifiable costs and inequitable redistribution of revenues consistent in its DSP II Order. The OCA further submits that the PTC Adder will harm both default service and shopping customers through increased rates and notes that customers adamantly oppose the Companies' imposition of the charge. Therefore, the Commission must reject FirstEnergy's proposed PTC Adder.

VI. NON-COMMODITY BILLING

The OCA notes that a Joint Partial Settlement Agreement has been set forth as it pertains to the issue of non-commodity billing. The OCA will address the provisions of the Joint Partial Settlement Agreement on this issue in its Reply Brief.[15]

[15] On April 10, 2018, during the evidentiary hearing, ALJ Long clarified that the parties should submit Main Briefs, then submit a Joint Petition for Partial Settlement and address the provisions of the Settlement in Reply Briefs.

VII. CUSTOMER REFERRAL PROGRAM

A. Background

On September 14, 2007, the Commission adopted Section 69.1815 of its regulations, 52 Pa. Code § 69.1815, which provides that "[t]he public interest would be served by consideration of customer referral programs in which retail customers are referred to EGSs." On March 2, 2012, the Commission provided guidance on the implementation of customer referral programs in its Intermediate Work Plan (IWP) Order addressing retail market enhancements. See Investigation of Pennsylvania's Retail Electricity Market, Docket No. I-2011-2237952 (Order entered March 2, 2012) (IWP Order). The IWP Order established the following guidelines for EDCs implementing customer referral programs:

- The terms and conditions of the standard offer must be presented to customers before they decide to enter the program;
- The program will be on an "opt-in" basis for customers, or voluntary;
- Participating EGSs must offer a 7% reduction in the PTC as compared to the PTC effective on the date the offer is made;
- The contract term must be a minimum of four months and a maximum of 12 months;
- There will be no termination fee during the term of the contract;
- Prior to the end of the program, EGSs must notify participating customers of options to continue service – without the obligation of a 7% discount – and inform customers that they will remain with the EGS on a month-to-month basis unless they take affirmative action to select a product offered by the EGS, select a product offered by another EGS, or move to default service; and
- The bulk of the costs, including costs for maintaining the programs once they are put into place, will be the responsibility of the participating EGSs.

Id. at 20, 31-32, 73-74; OCA St. 2 at 6. The IWP Order further provided that, if an EDC deviates from these guidelines, "differences must be justified by good cause . . . or supported by evidence

produced during an EDC's default service proceeding and supported substantially by interested parties in the default service proceeding." IWP Order at 6-7.

In FirstEnergy's concurrent default service proceeding, DSP II, the Commission ordered that FirstEnergy's Customer Referral Program (CRP) must provide participating customers a "seven percent discount *at the time the offer is made* and should extend for a one-year service term." Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn for Approval of their Default Service Programs, Docket No. P-2011-2273650, *et al.* (Order entered August 2, 2012, at 156) (emphasis in original); OCA St. 2 at 6. On reconsideration, the Commission clarified that the "customer will be offered a rate of seven percent below the prevailing PTC at the time the offer is made and that rate will then be *fixed* for a period of twelve months," meaning that even if the PTC changed, the offer would not. Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn for Approval of their Default Service Programs, Docket No. P-2011-2273650, *et al.* (Reconsideration Order entered September 27, 2012, at 20) (emphasis added); OCA St. 2 at 6-7.

FirstEnergy implemented its CRP in 2013. OCA St. 2 at 7. FirstEnergy offers its CRP to residential and small commercial customers that contact the Companies to establish new service, move within FirstEnergy's service territory, complain regarding a high bill, or learn about EGS shopping. OCA St. 2 at 8. In terms of program design, FirstEnergy undertakes a bifurcated presentation of the CRP. OCA St. 2 at 9. In particular, FirstEnergy provides scripts to its customer service representatives (CSR) as well as its third party agent, Allconnect. OCA St. 2 at 8-9. The CSR scripts include a statement regarding "potential rate savings" associated with the CRP followed by a statement attempting to transfer the customer to a "connections program." OCA St. 2 at 8-9. Once transferred to Allconnect, the Allconnect representatives present the

CRP to the customer and actively attempt to enroll the customer with an EGS. OCA St. 2 at 9. Allconnect earns a fee each time it enrolls a customer in the CRP. Id.

B. FirstEnergy Should Immediately Take Steps to Reform its CRP and the Program Should Terminate on May 31, 2021.

In the instant proceeding, FirstEnergy proposes to extend its CRP from June 1, 2019, through May 31, 2023. FE St. 1 at 19. FirstEnergy's proposal to extend its CRP through 2023 is in conflict with the settlement and the Commission's Order in its prior default service proceeding, DSP IV, and, at the very least, the proposal is premature. In the DSP IV proceeding, the Commission explicitly approved the extension of FirstEnergy's CRP only through 2021. The settlement in that case set forth the following:

> a. The currently effective Customer Referral Program (CRP), including the cost recovery mechanisms last approved in the previous DSP proceeding, will continue until May 31, 2021.

Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn for Approval of their Default Service Programs, Docket Nos. P-2015-2511333, *et al.* (Recommended Decision issued April 15, 2016, at 13).[16] OCA witness Alexander noted that FirstEnergy witness Bortz has not identified "the difference between the DSP IV Settlement that explicitly extended the program only until May 31, 2021 and her recommendation to continue the program until May 31, 2023." OCA St. 2 at 7. Further, "FirstEnergy has not provided any basis for its proposal to extend the Customer Referral Program." OCA St. 2 at 30-31.

Nonetheless, because FirstEnergy's CRP is set to continue through 2021, the OCA has reviewed the program, including an assessment of the following: (1) the bill impacts and percentage of savings, if any, experienced by residential customers as a result of enrolling in the

[16] The Commission adopted the Recommended Decision approving the Joint Petition for Settlement as its action. Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn for Approval of their Default Service Programs, Docket No. P-2015-2511333, *et al.* (Order entered May 19, 2016).

CRP, (2) FirstEnergy's compliance with the most recent default service proceeding settlement and Commission Order in DSP IV, (3) a sample of recorded telephone calls[17] between FirstEnergy CSRs and customers as well as Allconnect representatives and customers, and (4) the level of customer enrollment. These items are addressed herein in Sections VII.B.1-VII.B.4.

1. The Advertised CRP 7% Discount Does Not Reflect Actual Participant Experience.

In terms of bill impacts, some customers enrolled in the CRP either pay *more* than the PTC or experience "relatively tiny savings" over the 12-month period. OCA St. 2 at 26. For example, with regard to customers using 1,000 kWh per month who enrolled in the program in January 2016 and remained in the program for 12 months, Met-Ed customers paid $89.71 *more* than the PTC, Penelec customers paid $12.94 *more* than the PTC, and Penn Power customers paid $66.48 *more* than the PTC, while West Penn customers experienced savings of only $7.21. OCA St. 2 at 26; Exh. BA-2. Likewise, with regard to customers using 1,000 kWh per month who enrolled in the program in January 2017 and remained in the program for 12 months, Met-Ed customers paid $35.83 *more* than the PTC, Penelec customers paid $57.28 *more* than the PTC, and Penn Power customers paid $78.33 *more* than the PTC, while West Penn customers experienced savings of only $25.12. OCA St. 2 at 26-27; Exh. BA-2.

Accordingly, in terms of the "seven percent discount," very few FirstEnergy customers enrolled in the CRP experience 12 months of a seven percent discount, or any discount at all. OCA St. 2 at 26. For instance, with regard to customers who enrolled in the program in 2016, Met-Ed and Penelec customers only experienced a discount for 12 months if they enrolled in the program between June and August, and West Penn customers only experienced a discount for 12

[17] The Companies provided the call recordings reviewed by OCA witness Alexander in its response to OCA-II-2, marked highly confidential. By agreement with FirstEnergy reached February 21, 2018, and confirmed February 22, 2018, all customer identifying information in the call recordings is confidential, while the general substance of the call recordings is public. As such, customer information is not used in testimony or this Main Brief.

months if they enrolled in the program between June and November, while no Penn Power customers received a discount for 12 months.[18] OCA St. 2 at 26, Exh. BA-2.

The trend of customers experiencing less than 7% savings is not new. OCA witness Alexander has documented this trend in both the 2013 DSP III proceeding and the 2015 DSP IV proceeding. Specifically, in the 2013 proceeding, OCA witness Alexander found that:

> "[R]esidential customers either did not realize the full value of this discount (i.e. receiving an actual discount of less than 7% as a result of changes to the PTC) or, in some cases, actually ended up paying more than the PTC shortly after entering the program because the PTC dropped (in some cases, the month after enrollment) during the 12-month Referral contract term."

OCA St. 2 at 25. Similarly, in the 2015 proceeding, OCA witness Alexander found that there was a "wide disparity in the actual discount levels" and that some "customers experienced wild swings in savings and losses compared to the PTC." OCA St. 2 at 25. OCA witness Alexander concluded that, although customers experience a fixed price under the CRP, the PTC changes and "has a dramatic, and, in some cases, immediate impact on the presentation of this program as a '7% discount.'" OCA St. 2 at 25.

The seven percent discount applies only to the discount of the fixed price compared to the PTC when a customer enrolls. It does not reflect the bill impact that a customer will experience while enrolled in the CRP as demonstrated above. OCA St. 2 at 27. As OCA witness Alexander stated, "it is not reasonable . . . to assume that customers understand this distinction or the actual meaning of the 7% discount language used to present this program." OCA St. 2 at 27.

In prior default service proceedings, the OCA has sought to address the presentation of this program by the FirstEnergy CSRs and FirstEnergy's third party agent, Allconnect. While some changes have been implemented, not all changes have been fully executed. Moreover, the continued lack of any savings even approximating the "7% discount" used to present this

[18] Complete data is not available for 2017, but a similar trend appears to date. OCA St. 2 at 26.

program to customers raises significant concerns as to whether customer are receiving complete and accurate information. As discussed below, given FirstEnergy's failure to fully comply with the 2015 DSP IV settlement and its failure to adequately explain the program to customers, the CRP should not be extended until 2023 as proposed. Additionally, further changes in the script, disclosures, and training materials are needed to ensure that customers are receiving adequate and accurate information to make an informed choice. 66 Pa. C.S. § 2807(d)(2).

2. FirstEnergy Has Not Fully Complied with the DSP IV Settlement and Order and, As Such, Its Presentation of the CRP is Flawed.

First Energy has not fully complied with its obligations as to the CRP script, disclosures, and training materials set forth in prior default service proceedings and, in particular, the 2015 DSP IV proceeding. OCA St. 2 at 16-24. In the 2015 proceeding, the Commission approved a settlement, which included the following reforms to the CRP:

> b. The Customer Referral Program scripts will be modified to include the following:
>
> - AllConnect script will continue to state that the EGS "rate could be higher or lower than the PTC;" and
>
> - The Companies CSR script initiating the transition to the program specialist will provide as follows: "In Pennsylvania, you can choose the company that provides your electricity without impacting the quality of service. Would you like to speak to a representative who can offer you a potential savings opportunity by enrolling with an electric generation supplier?"
>
> - The AllConnect script will be revised to include the following language: "The CRP offers a fixed price of __/kWh for one year provided by an Electric Generation Supplier. The fixed CRP price provides an initial discount off of today's Price to Compare which is __/kWh. The Price to Compare will change again on [March/ June/ September/ December] first. The CRP price will not change through twelve monthly bills, but the PTC could be higher or lower than the CRP during this period."

OCA St. 2 at 15-16 (citing Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn for Approval of their Default Service Programs, Docket No. P-2015-2511333, *et al.* (Order entered May 19, 2016)).

Following the 2015 DSP IV settlement and Commission Order, FirstEnergy's CRP scripts were not integrated with the training materials and, as OCA witness Alexander noted, FirstEnergy "did not revise its customer training and scripting materials in a comprehensive manner to implement . . . the DSP IV settlement."[19] OCA St. 2 at 18-19. In fact, FirstEnergy acknowledged that certain, recent training materials "did not include the scripting language agreed to in the DSP IV Joint Petition for Settlement." OCA St. 2 at 17. As OCA witness Alexander explained, the Companies' "lack of any internal comprehensive training and instructions for the EDC customer service representatives is troubling." OCA St. 1 at 18.

In addition, with regard to the training materials for Allconnect representatives, OCA witness Alexander noted the following:

> Attachment C and Attachment D include "talking points" about the Referral program that raise additional concerns and recommendations that are likely to contradict or weaken the impact of the required disclosures. Throughout Attachment C (in effect from September 6, 2016 to present), Allconnect representatives are urged to claim this program is "low risk" on the grounds that the customer can "call back and re-enroll at any time." I never heard any Allconnect agent discuss this option in my review of call recordings provided in response to OCA-II-2. Furthermore, this term "low risk" is misleading since the customer's SOP rate has been higher than the PTC during many months of the 12-month term of service. While these materials emphasize that the decision to enroll in the Referral Program is optional and that the role of the Allconnect agent is "educational," that was not the approach reflected in the call recordings provided in response to OCA-II-2 that I discuss in more detail below. Instead, the Allconnect agent never explicitly asks if the customer wants to enroll in the program, but after giving the required "mandatory" sentences, immediately asks the customer if they know which supplier the customer wants to select.

[19] OCA witness Alexander has conducted two prior reviews of FirstEnergy's CRP in which she documented defects in the program as well concerns with the implementation of the program and made recommendations as to how to address those defects and concerns. OCA St. 2 at 7.

OCA St. 2 at 20. Allconnect's training materials are not neutral or fact-based and do not demonstrate that agents are familiar with the variable savings, if any, that customers experience while enrolled in the CRP. OCA St. 1 at 21. OCA witness Alexander explained that the training materials "clearly document that Allconnect views its role as a marketing and promotional agent for the program." OCA St. 2S at 8. Allconnect representatives are advised that it is their "responsibility to . . . encourage participation" in the CRP, rather than provide a truly educational presentation to customers. OCA St. 2 at 20-21. Further, training aids did not include the required disclosures or information about the PTC. OCA St. 2S at 8-9.

FirstEnergy admittedly has not made any effort to determine whether it is in compliance with the 2015 DSP IV settlement and Order. OCA St. 2 at 21, 22. As OCA witness Alexander pointed out, FirstEnergy's response to discovery questions regarding internal audits or compliance analyses "documents that their review of EDC representatives and Allconnect representatives call recordings concerning this program do not reflect any attempt to determine whether the required disclosures in the DSP IV settlement are being made." OCA St. 2 at 21, 22.

Moreover, FirstEnergy has failed to fully implement the CRP provisions set forth in other Commission-approved prior default service proceeding settlements. OCA St. 2 at 16-24. In the 2013 DSP III proceeding, the Commission approved a settlement, which included the following reforms to the CRP:

> 61. Within ninety days of the Commission's approval of the Settlement, the Companies will add the following messages and disclosures to all customer service representative scripts and written documents regarding the CRP:
>
> - The initial discount of 7% is based on the current PTC;
>
> - The PTC will change quarterly with the next change in [month];

- The percentage savings a customer will experience will vary as the PTC changes; and

- The CRP rate may be higher or lower than the next PTC.

OCA St. 2 at 12 (citing Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn for Approval of their Default Service Programs, Docket No. P-2013-2391368, *et al.* (Order entered July 24, 2014)). After the DSP III settlement, OCA witness Alexander reviewed the FirstEnergy CSR scripts and training materials as well as the Allconnect scripts and training materials. Her review revealed that no CSR documents contained all of the required disclosures and that the scripts and training materials remained unchanged. OCA St. 2 at 13. Likewise, the Allconnect script and training material "disclosures did not include the required statement that the standard offer price may be higher or lower than the next PTC quarterly change" and examples provided for Allconnect responses to questions remained the same. OCA St. 2 at 15 (emphasis in original).

The purpose of the DSP III and DSP IV reforms were to attempt to include language in the scripts, disclosures, and training materials that presents a neutral, fact-based presentation of the CRP to customers so that they can make informed decisions as to whether or not to enter the program. 52 Pa. Code § 54.1 (electricity providers, including EDCs, are required to "enable customers to make informed choices regarding the purchase of electricity service offered by providing adequate accurate customer information" in an "understandable format"). FirstEnergy's failure to fully implement its obligations under the settlements and Orders in these proceedings has resulted in scripts, disclosures, and training materials that do not accurately present the CRP to customers. A program that does not provide clear disclosures is not in the public interest as the Commission intended the CRP to be. 52 Pa. Code § 69.1815 ("[t]he public interest would be served by consideration of customer referral programs").

RESA witness Hudson claims that there is "nothing untoward about FirstEnergy or Allconnect presenting the program in favorable terms or encouraging customer participation." RESA St. 1R at 16. As OCA witness Alexander clarified, however, "the EDC and its agent should be obligated to provide educational and *neutrally* accurate information." OCA St. 2S at 6 (emphasis added). The current scripts and disclosures do not present an accurate and full disclosure for the program and its risks. OCA witness Alexander noted that, even "Mr. Hudson agree[s] that there is no guarantee of savings for this program, stating, 'The relative savings will depend on when the customer enrolls and what happens to future PTCs which no one can safely predict.'" OCA St. 2S at 7 (quoting RESA St. 1R at 17-18).

Accordingly, more accurate scripts, disclosures, and training materials are necessary to avoid misleading customers regarding "savings," if any, available under the CRP. One suggestion by OCA witness Alexander is that the program be advertised as a "fixed-price" program, rather than a "savings program" because, as discussed in Section VII.B.1, customers experience a fixed-price, but do not necessarily experience a certain level of savings or any savings. If the program is advertised as providing benefits through a fixed-price, customers must still be educated regarding the pros and cons of a fixed-price contract with no quarterly changes. OCA St. 2S at 7. The OCA submits that the CRP should be immediately reformed and sets forth its complete recommendations in Section VII.C below.

3. FirstEnergy CSRs and Allconnect Representatives Do Not Adequately Explain the Nature of the Transfer to Allconnect.

After reviewing a sample of recorded telephone calls between (1) FirstEnergy CSRs and customers, and (2) Allconnect representatives and customers, OCA witness Alexander confirmed that, as noted in Section VII.B.2 above, the CRP enrollment process is not a neutral, fact-based

process and does not allow customers to make informed decisions regarding enrollment.[20] OCA St. 2 at 22. OCA witness Alexander also noted that Allconnect's marketing of additional services is not adequately explained leading to further confusion among customers.

a. FirstEnergy's Presentation of the CRP

With regard to FirstEnergy's presentation of the CRP, based on recorded telephone calls between FirstEnergy CSRs and customers, OCA witness Alexander explained:

> The EDC representative on . . . transactions relating to new or transferred service states, "I have completed your order," but asks permission to transfer to "our connections program" to get a confirmation number and give information about "other services" and the "choice program." This reference to a "confirmation number" is not reflected in the allowed script set forth in the DSP IV Settlement. Furthermore, FirstEnergy acknowledges that this "confirmation number" has nothing to do with the EDC transaction, but that it is a reference to an internal number to allow FirstEnergy and Allconnect to track the customer's call. *This statement and the meaning of the reference to a "confirmation number"* is *not at all clear to the customer*. I find that FirstEnergy's stated purpose for this reference to a "confirmation number" is unreasonable.

OCA St. 2 at 22-23 (footnotes omitted) (emphasis added). The FirstEnergy CSRs' mention of a "confirmation number" that is not provided until the customer is transferred to Allconnect may mislead a customer to think that the "confirmation number" relates to the regulated-utility transaction and that the EDC transaction will not be complete unless they are transferred to Allconnect. OCA witness Alexander pointed out that this "reference to a 'confirmation number' is not reflected in the allowed script set forth in the DSP IV settlement." OCA St. 2 at 22-23. OCA witness Alexander also noted that "[u]nder no circumstances should customers be enticed into agreeing to this transfer" due to the impression that it is linked to the completion of the regulated-utility transaction. OCA St. 2R at 6, 7. The EDC must complete the entirety of the regulated-utility transaction to ensure adequate and reliable service to customers before any

[20] FirstEnergy witness Bortz "ignore[d] the evidence [OCA witness Alexander] presented to document the lack of oversight and training concerning the EDC and Allconnect agents in their actual implementation of the required disclosures and their failure to properly educate customers." OCA St. 2S at 8; FE St. 1-R.

discussion of the CRP or the transfer to Allconnect. 52 Pa. Code § 56.1 ("This chapter assures adequate provision of residential public utility service." "Every . . . duty required under this chapter imposes an obligation of good faith, honesty and fair dealing in its enforcement.") Accordingly, any referenced to a "confirmation number" should be removed.

It is also significant that customers are never informed of their right to default service by the FirstEnergy CSRs or otherwise. OCA witness Alexander stated:

> *At no time is the customer informed of their right to remain with the EDC for default service.* In one call in which the EDC representative actually discussed the Referral Program with a customer who called about a recent high winter bill, *the representative used inappropriate "scare" tactics about the potential changes to the PTC* to suggest that the Referral Program would "save you some money."

OCA St. 2 at 23 (footnote omitted) (emphasis added). Customers should also be made aware that the CRP is an optional program and that EDCs are obligated to serve customers that elect not to participate in the CRP by enrolling with an EGS. 52 Pa. Code § 54.184 ("an EDC as default service provider shall be responsible for the reliable provision of default service to retail customers who are not receiving generation services from an alternative EGS.") Therefore, the CRP must reformed as set forth in Section VII.C to provide accurate information regarding the factual differences between the fixed rate CRP and the PTC quarterly changes.

b. Allconnect's Presentation of the CRP

Based on recorded telephone calls between Allconnect representatives and customers, OCA witness Alexander explained the customer is provided with a hasty, but lengthy disclosure and then is immediately questioned as to which EGS they wish to select, without being explicitly asked if they are opting to enroll in the program. OCA St. 2 at 24. In particular, OCA witness Alexander stated as follows:

> [T]he [Allconnect] agent typically reads a required disclosure very quickly as required by the applicable Stipulation, including the current PTC, the offered 7%

> discount rate, the fact that the PTC will change in the stated months, and that the Price to Compare could be higher or lower than the Referral price, but then, without any pause, immediately asks the customer if he/she knows the name of the supplier to select and offers to select a supplier if the customer prefers. *The customer is not explicitly asked if they choose to enroll in this optional program* . . . a practice that would be a violation of the Commission's enrollment and verification protocols applicable to EGSs. Instead, after this rapid disclosure, the Allconnect agent immediately asks about the customer's choice of a supplier and *it is apparent to me that in several of these calls, the customer hesitates and is confused about having to answer this question*, but proceeds to allow Allconnect to choose the customer's supplier.

OCA St. 2 at 24 (footnotes omitted) (emphasis added). Customers are caught off-guard and, without being adequately informed about the nature of the transaction or the CRP, are unable to make a decision regarding enrollment in the program or a decision to select a particular EGS. The result is that Allconnect assigns customers an EGS that they otherwise may not have selected, if those customers would have opted to participate in the program at all. Accordingly, the CRP must be reformed as set forth in Section VII.C in order to allow customers to provide knowledgeable consent prior to entering the program.

c. Allconnect's Marketing of Non-Utility Services

The marketing of additional, non-utility services by Allconnect to customers transferred by FirstEnergy creates further confusion among customers. OCA St. 2 at 28. Allconnect not only serves to enroll customers in the CRP, but sells non-utility services, such as third-party television, internet, and telephone bundled services.[21] OCA St. 2 at 29. Specifically, the relationship between Allconnect and FirstEnergy is unclear. OCA witness Alexander explained:

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[21] OCA witness Alexander noted that "customers are given a very hard sell for some of these products and services." OCA St. 2 at 29. As OCA witness Alexander described:

> In one call, an individual who claimed she did not have an email address, did not use internet, and had a converter box on her TV to avoid cable subscription was sold an internet service for $35 per month with a $60 installation charge. In another transaction, the Allconnect agent pushed the customer into considering a bundled service that included both internet and TV after the customer explicitly refused the need for cable TV service.

OCA St. 2 at 29.

> When calling the EDC for a regulated transaction, customers are transferred to "our connections program," with the clear suggestion that the transfer is related to FirstEnergy. *FirstEnergy does not identify their third party agent as separate from FirstEnergy* and the transfer is made with the implication that this is part of FirstEnergy's business operations. Furthermore, *Allconnect has the customer's personal identifying information from their FirstEnergy account* in front of them to "validate" their EDC transaction before trying to sell these services, a benefit that other vendors for these programs do not have. Once transferred, customers who are establishing new service or transferring to a different location are greeted with an announcement of speaking to "connections" and the agent presents "discounts" and "savings" to "preferred FirstEnergy customers."
>
> . . .
>
> *Some customers express confusion about the nature of this presentation* after being transferred from FirstEnergy, but the Allconnect agents repeatedly emphasize the FirstEnergy connection to the transaction and how being a "preferred" customer with FirstEnergy qualifies them for special discounts and savings, urging customers to make a commitment to take advantage of discounts that may not be available later.

OCA St. 2 at 28-29. Aside from the failure to identify Allconnect as an entity separate from FirstEnergy, it is improper that "Allconnect has the customer's personal identifying information from their FirstEnergy account" to sell these non-utility services. OCA St. 2 at 28. Pursuant to 52 Pa. Code. 69.1812, with regard to information and data access, "due consideration" should be given to "customer privacy" and "security of information" as well as "an opportunity to restrict access to nonpublic customer information" should be provided. Further, pursuant to 52 Pa. Code § 54.8, "[a]n EDC . . . may not release private customer information to a third-party unless the customer has been notified of the intent and has been given a convenient method of notifying the entity of the customer's desire to restrict the release of the private information." It is wholly unclear how the arrangement with Allconnect outside of the CRP meets those requirements. Accordingly, the OCA submits that the Commission should investigate the arrangement between FirstEnergy and Allconnect. OCA St. 2 at 30.

4. Necessary Changes in the CRP Script and Disclosures Have Not Affected Residential Customer Enrollment in the Program.

As noted, changes in the CRP script were proposed in the 2015 DSP IV proceeding in order to ensure that FirstEnergy completes the entirety of the regulated-utility transaction before transferring customers to Allconnect and that certain additional disclosures were made. While not all changes were incorporated into the training materials or fully implemented, FirstEnergy is now completing the regulated-utility transaction before transferring customers to Allconnect.[22] OCA witness Alexander explained that, although the decrease in enrollment in 2017 "appears to be correlated to FirstEnergy's change in policy to actually complete the customer's EDC transaction" before transferring the customer to Allconnect, such changes were necessary and appropriate, and it is "more likely than not that customers will choose not to be transferred for a variety of reasons." OCA St. 2 at 10. For instance, calls to set up service at a new location can sometimes be lengthy and a customer may simply desire to hang-up to undertake other tasks, rather than be transferred to an Allconnect representative.[23]

Although FirstEnergy has not fully implemented its obligations set forth by the 2015 DSP IV settlement as discussed in Section VII.B.2 above, RESA witness Hudson's attempts to link the reduced enrollment in the CRP to changes in the CRP "protocols." OCA St. 2 at 6. OCA witness Alexander examined the call recordings discussed in Section VII.B.3 as well as enrollment trends and noted that the call recordings "did not reveal any connection between this

[22] As OCA witness Alexander stated, the FirstEnergy CSR now "informs the customer that the transaction has been completed." OCA St. 2 at 22. FirstEnergy is now completing the regulated transaction before its CSRs transfer customers to Allconnect, however, the FirstEnergy CSRs' reference to a "confirmation number" to be provided by the Allconnect representatives after the transfer. This reference is not included in the DSP IV settlement language and may mislead customers to believe that they must be transferred to Allconnect to receive the "confirmation number." OCA St. 2 at 22-23. Accordingly, as noted earlier and in Section VII.C, this reference should be removed.

[23] As discussed in Section VII.B.3 above, customers are entitled to complete their EDC transactions without any obligation to be transferred to Allconnect. OCA St. 2 at 10.

reduced level of enrollment with the reaction by customers to the FirstEnergy EDC statements or the expanded disclosures made by Allconnect agents." OCA St. 2R at 6.

Instead, many factors contribute to swings in CRP enrollment. OCA St. 2 at 9-10. In particular, a decrease in enrollment occurred after the Polar Vortex in 2014, at which time complaints, formal investigations, and public controversy plagued many EGSs in Pennsylvania and elsewhere. OCA St. 2 at 9-10. In addition, a decrease in enrollment occurred in 2015 when PTC rates were low causing lower EGS enrollment in the CRP.[24] OCA St. 2 at 9-10.

FirstEnergy's CRP has experienced swings in residential customer enrollment since the Companies implemented its CRP 2013. OCA St. 2 at 9. For instance, enrollment increased in 2014 and 2016, but decreased in 2015 and 2017 as shown below.

NUMBER OF RESIDENTIAL CUSTOMERS ENROLLED IN FIRSTENERGY'S CRP PER YEAR	
Year	**Customer Enrollment**
2013	49,930
2014	102,335
2015	70,245
2016	101,422
2017	43,142

OCA St. 2 at 9.

It should also be noted that, while enrollment from the CRP has experienced swings, the average monthly number of residential customers served by EGSs has not. OCA St. 2 at 11. For example, from 2016 to 2017, the "average monthly number of residential customers that are served by EGSs for each FirstEnergy EDC has not dramatically changed" as noted by OCA witness Alexander and as shown below. OCA St. 2 at 11.

[24] In January 2015, no EGSs participated in the CRP and, between February 2015 and May 2015, very few EGSs participated in the program. OCA St. 2 at 10.

AVERAGE MONTHLY NUMBER OF RESIDENTIAL CUSTOMERS SERVED BY EGSs FOR FIRSTENERGY EDCs		
FirstEnergy EDC	**2016**	**2017**
Met-Ed	165,173	172,819
Penelec	149,777	151,661
Penn Power	36,968	39,894
West Penn	172,267	173,392
Total	524,185	537,766

Therefore, customers are continuing to enroll with EGSs outside of the CRP as they did before its implementation in 2013 and as OCA witness Alexander explained, "it is clear from this level of customer choice activity that the Referral Program is not the driving force in residential customer enrollments with an EGS." OCA St. 2 at 11.

C. Recommendation

As established above, and as identified by OCA witness Alexander, "FirstEnergy's customers are misled about the nature of this program, are not provided with neutral consumer education and information about the program, and are enrolled without knowledgeable consent." OCA St. 2 at 8. These problems have been furthered by FirstEnergy's failure to implement "the spirit and letter of the agreed upon reforms." OCA St. 2 at 8. Therefore, the OCA submits that the Commission should require FirstEnergy to immediately take the following steps identified by OCA witness Alexander in order to reform its CRP:

> FirstEnergy's EDC representatives should continue to make clear that the EDC transaction has been completed, delete the reference to the unnecessary "confirmation number," delete the reference to "potential savings," and instead emphasize the opportunity to hear about a fixed price offer to enroll with a supplier for the supply portion of the bill. FirstEnergy customer service representatives must be prepared to . . . properly describe the Referral Program prior to transferring the customer to their third party agent. Allconnect agents should reform their disclosures to emphasize the fixed rate nature of the Referral agreement rather than an emphasis on a "discount" or "potential savings." Most importantly, Allconnect's agents should not immediately ask if the customer wants to select a supplier after providing required disclosures. Rather, after the required disclosures, the customer should be asked if they are interested in hearing more about the program and/or interested in participating in the program.

> Customers should be explicitly asked if they choose to enroll and informed that it is an optional program and that the customer can remain with the EDC to receive the default service PTC price. Furthermore, customers should never be told that the program is "low risk" or that the benefits will sell the program since it is clear that there is no promise of benefits or bill savings with this program.

OCA St. 2 at 31. Taking these steps will ensure that customers receive both an educational and accurate presentation of the CRP that reflects the required disclosures and policies set forth in the settlement and Commission's Order in the DSP IV proceeding. OCA St. 2 at 31.

The OCA further submits that FirstEnergy's CRP should terminate on May 31, 2021, in accordance with the settlement and the Commission's Order in the DSP IV proceeding. OCA St. 2 at 32. As stated by OCA witness Alexander, "[t]he combination of the actual sales techniques, the customer bill impacts, and the lack of training and oversight . . . justify . . . objection to a four-year extension of this program." OCA St. 2S at 8. After May 31, 2021, should the Companies seek to continue the CRP, FirstEnergy should be required to demonstrate a need for the program and reevaluate the design. OCA St. 2 at 32. As OCA witness Alexander recommended, the Commission should require that FirstEnergy do the following, if it seeks to extend the program after 2021: (1) make an affirmative showing as to why its CRP should continue, (2) study what, if any, customer benefits have been provided in the form of bill impacts during the 12-month term, (3) study the impact of customer experience after the 12-month term as it pertains to the EGS renewal process and the prices charged, and (4) propose a program that addresses the difference between the fixed rate CRP agreement and the PTC quarterly changes. OCA St. 2 at 32. In addition, the OCA submits that the Commission should investigate the relationship between FirstEnergy and Allconnect with regard to the transfer of personal identifying information for the purpose of marketing of non-utility services.

VIII. CUSTOMER ASSISTANCE PROGRAM SHOPPING

A. Introduction

The OCA submits that FirstEnergy's current CAP Shopping Plan needs to be modified in order to meet the requirements of the Customer Choice Act. The Customer Choice Act requires that CAP programs be designed to provide affordable rates for low-income customers in a cost-effective manner. 66 Pa. C.S. §§ 2802(9), (10), (14), (17), 2803, 2804(8)-(9). The evidence of record in this proceeding demonstrates that unrestricted CAP customer shopping allowed by the FirstEnergy Companies has impacted the overall affordability and cost-effectiveness of the Companies' CAP programs. FirstEnergy analyzed the impact of unrestricted CAP shopping on customers for the period of June 2013 through March 2018. During that 58 month period, the FirstEnergy Companies' shopping CAP customers paid a "Total Net Cost Above PTC Costs" of $18,336,440. Joint Stipulation No. 3. On an annual basis, FirstEnergy's CAP customers receiving electric service from EGSs paid, on a net basis, $3,793,746 more per year than the Price to Compare. Joint Stipulation No. 3. CAP customers receiving higher priced EGS service will pay more for energy and these higher costs will increase the total CAP program costs that are ultimately paid by other residential customers.

The Commission has an obligation to ensure cost-effective CAP programs that provide affordable service to low-income customers. In order to ensure affordable service, FirstEnergy's unrestricted CAP shopping program must be suspended and CAP customers should only be able to be served by an EGS at a price that is at or below the price to compare with no termination or cancellation fee. FirstEnergy has stated that it is able to implement this protection in its billing system and has implemented this necessary protection in affiliate service territories. FE St. 1-R

at 30-31. These protections will help to ensure CAP customer bill affordability, as well as CAP program cost effectiveness, consistent with Pennsylvania law.

B. Legal Standards Applicable to CAP Shopping

Under the Public Utility Code, in particular the Electricity Generation Customer Choice and Competition Act (Customer Choice Act), the Commission has the clear authority, as well as a duty, to maintain affordable, cost-effective universal service programs. 66 Pa. C.S. §§ 2802(9), (10), (14), (17), 2803, 2804(8)-(9). The Court has found that the Commission has the authority, and may exercise it, to implement program rules, including a price protection rule. CAUSE-PA at 1103-1104. The Public Utility Code provides the Commission with full authority over public utilities and every other person or corporation subject to the Public Utility Code to carry out the provisions of the Public Utility Code. 66 Pa. C.S. §501(a) and (c).

Universal service programs are defined in the Customer Choice Act as follows:

> **"Universal service and energy conservation."** Policies, protections and services that help low-income customers to maintain electric service. The term includes customer assistance programs, termination of service protection and policies and services that help low-income customers to reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction program, application of renewable resources and consumer education.

66 Pa. C.S. § 2803. The Customer Choice Act specifically requires that universal service and energy conservation are to be maintained and supported as part of the restructuring of the electric industry. Specifically, Section 2802(10) provides:

> The Commonwealth must, at a minimum, continue the policies, protections and services that now assist customers who are low-income to afford electric service.

66 Pa. C.S. §2802(10). Section 2802(17) also requires the following:

> There are certain public purpose costs, including programs for low-income assistance, energy conservation and others, which have been implemented and

> supported by public utilities' bundled rates. The public purpose is to be promoted by continuing universal service and energy conservation policies, protections and services, and full recovery of such costs is to be permitted through a nonbypassable rate mechanism.

66 Pa. C.S. § 2802(17). These purposes are specifically recognized along with the essential nature of electric service and the need for electric service to be available on reasonable terms and conditions to all customers. The Act provides:

> Electric service is essential to the health and well-being of residents, to public safety and to orderly economic development, and electric service should be available to all customers on reasonable terms and conditions.

66 Pa. C.S. § 2802(9).

The Customer Choice Act restructured the electric industry, and in so doing, the General Assembly established standards for the "oversight of the transition process and regulation of the restructured electric utility industry" to promote the purposes declared by the Act. 66 Pa. C.S. § 2804. Key among these standards is the requirement that universal service and energy conservation policies, activities and services be appropriately funded and available in each electric distribution service territory and that the programs be operated in a cost-effective manner. 66 Pa. C.S. § 2804(9). The statute explicitly states in relevant part:

> Programs under this paragraph shall be subject to the administrative oversight of the Commission which will ensure that the programs are operated in a cost-effective manner.

66 Pa. C.S. § 2804(9).

In the seminal case regarding the Commission's authority regarding universal service programs, the Commonwealth Court affirmed the Commission's authority over CAP shopping. CAUSE-PA, *et al.* v. Pa. PUC, 120 A.3d 1087 (Pa. Cmwlth. Ct. July 14, 2015), *cert denied* 2016 Pa. LEXIS 723 (Pa. April 5, 2016) (CAUSE-PA). In the CAUSE-PA case, PECO sought to implement a CAP shopping program in which EGSs who voluntarily participated would charge a

price that was at or below the PTC. CAUSE-PA at 1090. The Commission denied PECO's proposed CAP shopping plan because the Commission concluded that it lacked the authority to regulate EGS prices. CAUSE-PA at 1092. While the Commonwealth Court did not reverse the Commission's determination regarding the price protections under PECO's CAP Shopping Plan, the Commonwealth Court did affirm the Commission's authority to implement CAP Shopping rules, including a price protection rule if the Commission found it necessary based on the evidence of record. CAUSE-PA at 1103-1104.

The Commonwealth Court specifically recognized the Commission's duty under the Act regarding both universal service and retail choice. The Commonwealth Court addressed these obligations 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 can accept and remain eligible for CAP benefits. The obligation to provide low-income programs falls on the public utility under the Choice Act, not the EGSs. Moreover, the Choice Act expressly requires the PUC to administer these programs in a manner that is cost effective for the CAP participants and the non-CAP participants, who share the financial consequences of the CAP participant's EGS choice.

CAUSE-PA at 1103. The Commonwealth Court concluded that:

> So long as it "provides substantial reasons why there is no reasonable alternative so competition needs to bend" to ensure adequately-funded cost-effective, and affordable programs to assist customers who are low-income to afford electric service...the PUC may impose CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits – e.g. EGS rate ceiling, prohibition against early termination/cancellation fees."

CAUSE-PA at 1104.

In PPL's most recent Default Service Proceeding the Commission approved program rules to maintain affordable service for CAP customers being served by an EGS. Petition of PPL Electric Utilities Corporation for Approval of a Default Service Plan for the Period June 1, 2017

Through May 31, 2021, Docket No. P-2016-2526627 (Order entered October 27, 2016, at 53-56) (PPL Order). In that proceeding, Administrative Law Judge Susan D. Colwell recognized the fundamental importance of CAP affordability within the restructured electricity industry, finding as follows:

> Accordingly, the EDCs, including PPL Electric, must maintain viable and fully-funded CAP and other universal service programs for the assistance of low-income customers. The funding, although monitored through the reports and litigated program filings, see 52 Pa.Code §§ 54.75 and 54.76, is provided by the other ratepayers in the class. The Commission must ensure that every rate is just and reasonable, 66 Pa.C.S. §1301, and non-discriminatory, 66 Pa.C.S. §1304. In other words, the charge that pays for universal service and CAP must be reasonable.

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 (Initial Decision of Administrative Law Judge Susan D. Colwell issued August 10, 2016 at 41-48) (PPL I.D.). The OCA submits that the ALJ succinctly captured the legal requirements for a CAP program – the CAP customer rate must be affordable and the program costs borne by non-CAP residential customers must be just and reasonable.

The Commission addressed the CAUSE-PA decision in the PPL DSP proceeding, recognizing its obligation to maintain CAP affordability, as follows:

> In that case, the Court held that we have the authority under Section 2804(9) of the Competition Act, for the purpose of ensuring that universal service plans are adequately funded and cost-effective, to approve CAP rules that would limit the terms of an offer from an EGS which a customer could accept and remain eligible for CAP benefits.

PPL Order at 53.

The Commission is authorized and required by the Public Utility Code to take the steps necessary to maintain affordable service for low-income CAP customers in the retail choice environment and to ensure the cost effectiveness of the programs. As the evidence of record in

this case demonstrates, allowing CAP customers to be charged an EGS price without any limitation and with cancellation fees would compromise both affordability of service for CAP customers and the cost-effectiveness of the program. The Commission not only has the authority, but also the obligation, to provide the necessary protections for low-income customers in accord with the Customer Choice Act and to ensure that the rates paid by non-CAP residential customers to support the program are just and reasonable.

C. CAP Shopping Rules Are Needed To Maintain Affordability and Cost Effectiveness.

1. Introduction

The OCA submits that the evidence presented in this case demonstrates that CAP shopping allowed within the Companies' current program results in continuing financial harm to both CAP participants and non-CAP residential ratepayers in violation of Pennsylvania law. Currently, FirstEnergy's CAP customers may shop with electric generation suppliers without any limitations. In 2017, the majority of CAP customers taking EGS service (72% Met-Ed, 76% Penelec, 69% West Penn, and 84% Penn Power) were, on average, paying more than the PTC. CAUSE-PA St. 1 at 23. The net annualized cost of CAP customers taking EGS service is $3,793,746. Joint Stipulation No. 3. This pattern has been seen for the past 58 months with a cumulative net cost of $18,336,440. Joint Stipulation No. 3. The OCA submits that affordability and cost-effectiveness cannot be maintained when, year over year, CAP customers are paying higher prices with EGSs.

The Customer Choice Act recognized the need to protect essential electric service for CAP customers in the retail competitive environment, and in order to preserve that affordability, changes to FirstEnergy's CAP Shopping Plan must be implemented. See 66 Pa. C.S. §§ 2802(9),(10), 2804(9).

2. Higher Cost EGS Service Harms Both CAP and Non-CAP Residential Ratepayers.

The evidence presented in this case demonstrates that both CAP customers and non-CAP residential ratepayers have been harmed by the unrestricted CAP customer shopping within FirstEnergy's CAP programs. The FirstEnergy Companies provided data showing the aggregate financial harm resulting from unrestricted CAP shopping. This evidence was further updated by stipulation at the Evidentiary Hearing.

UNRESTRICTED CAP SHOPPING NET COSTS			
Company	**Total Net Cost Above PTC Costs 58 Months (June 2013 - March 2018)**	**Net Monthly Cost Above PTC Costs**	**Net Annualized Cost Above PTC Costs**
Met Ed	$3,421,210	$58,986	$707,837
Penelec	$3,414,520	$58,871	$706,452
Penn Power	$653,044	$11,259	$135,113
West Penn	$10,847,665	$187,029	$2,244,345
Total	$18,336,440	$316,146	$3,793,746

Joint Stipulation No. 3.

The evidence presented demonstrates that CAP customer shopping has resulted in net harm on a FirstEnergy wide basis of $18.3 million since June 2013. Joint Stipulation No 3. This harm impacts CAP customers through higher bills above the CAP credit. As a result, affordability of electric service suffers and degrades the effectiveness of CAP generally. When the CAP credit is eventually adjusted, these higher costs are borne by non-CAP residential ratepayers.

OCA witness Alexander first explained how CAP customers are harmed through EGS prices higher than the PTC. OCA witness Alexander explained as follows:

> The CAP customer under the most recent Universal Service Program plans for the FirstEnergy EDCs is required to pay the difference between their actual monthly electric bill and the fixed monthly credit provided under the program. The fixed monthly credit is calculated on the customer's previous 12 months electric bill and represents the difference between the annual electric bill and the customer's energy burden. The energy burden is based on the CAP customer's obligation to pay no more than 3% of their household income for non-electric usage and 9% of household income for electric heat usage. However, this calculation also reflects a minimum payment burden that assumes a certain level of income for non-heat and heat accounts that operates to increase the otherwise minimum monthly payments that would otherwise be required by the calculation of the fixed monthly credit. Finally, the monthly credits will be recalculated quarterly "to allow for participants' most recent 12-month energy burden history to be reflected in monthly bill subsidy credits."

OCA St. 2 at 37 (footnote omitted); see also, CAUSE-PA St. 1 at 11-15.

As a result of how the CAP program calculates CAP credits, CAP customer credits will be insufficient to maintain an affordable bill if a shopping decision drives up the energy portion of that customer's electric bill. OCA witness Alexander summarized this key point, as follows:

> In other words, by selecting an EGS, the CAP customer's monthly bill would increase if the EGS price is higher than the PTC and decrease if the EGS price is lower than the PTC since the minimum monthly payment is fixed. Upon the quarterly review, the customer's actual 12-month billing history will be used to recalculate the fixed monthly credit so that if the EGS prices were higher than the PTC, the customer would see a slightly higher monthly credit in the future, which in turn will result in higher costs for the program paid by residential customers.

OCA St. 2 at 37-38; see also, CAUSE-PA St. 1 at 16, 18-20. CAP customers receiving service from higher priced EGSs must pay the larger portion of their bill above their CAP credit until the CAP credit is recalculated. OCA St. 2 at 38.

CAUSE-PA witness Geller explained why increased CAP costs is of particular concern for low-income customers. Mr. Geller explained:

> [L]ow income customers already struggle to afford service, and therefore any increase in cost only exacerbates this affordability problem. The Companies' PCAP customers participate in PCAP because they are payment troubled, economically vulnerable, and require assistance to afford their electric bills and to maintain electric service. It is precisely their status as PCAP customers that renders them distinct from other residential customers. Ratepayer funds provide PCAP customers assistance to maintain an affordable utility bill. Increased costs for PCAP customers and other ratepayers because of prices higher than the price to compare does not provide more affordability for PCAP households and is not cost-effective for the PCAP program as a whole. This is particularly significant given that the ability to control increases in costs related to PCAP customer shopping are within the control of the utilities' CAP-shopping design and subject to the Commission's oversight responsibilities.

CAUSE-PA St. 1 at 21.

In addition, all non-CAP residential customers must pay the costs of the universal service program. The amount that is paid by non-CAP residential customers is referred to as the CAP Shortfall. The CAP Shortfall is the difference between the amount of the CAP customer bill and the full residential customer rate. As CAP customers shop and pay higher prices, their average bill increases thus increasing the credit needed to maintain an affordable bill. The increased credit is fully subsidized by non-CAP residential customers. OCA witness Alexander explained:

> When a CAP customer has to pay the higher EGS charges and the fixed monthly credit is revised to reflect these higher charges, the additional costs of the CAP program are included in rates paid by other residential ratepayers. These CAP program costs also include bad debt and uncollectible expenses associated with CAP customer bill collection activities. Residential ratepayers pay the costs and write-offs associated with the CAP program through a Universal Service charge.

OCA St. 2 at 38.

The record evidence shows substantial and continuing financial harm as a result of the Companies' current CAP shopping. The OCA submits that program changes must be made to ensure affordable CAP service and to ensure cost effective universal service programs as required by the Electric Choice Act.

3. The Commission Must Implement CAP Shopping Rules To Maintain Affordability And Cost Effectiveness.

In the Commission-approved settlement of the Companies' last DSP proceeding, the parties agreed to address the issue of CAP shopping in a collaborative. The Companies further agreed to provide data assessing the impact of CAP shopping. That data has been provided and updated, showing conclusively that CAP shopping is harming CAP affordability and CAP program cost effectiveness. In addition, the prior settlement provided that CAP shopping would be addressed in a collaborative, and that a proposal on issues in the collaborative would be addressed in this (the next) DSP filing, as follows:

> The Companies will make proposals in a docketed proceeding related to these issues following discussion and input from the collaboratives in the earlier of the next available default service proceedings filed following the close of the collaboratives or January 31, 2018.

Settlement at Section II.J.

In this proceeding, the Companies have not proposed any CAP shopping protections. Both FirstEnergy and RESA argue that CAP shopping protections are unnecessary in the face of clear evidence of harm, and that restrictions would improperly harm competition. FE St. 1-R at 28; RESA St. 1-R at 22-23.

The OCA submits that arguments in favor of the status quo are misplaced. In the most recent PPL Electric Utility's Default Service Proceeding, the Commission addressed the same fact pattern presented here, *i.e.*, CAP shopping net financial harm. In that case, the record showed that unrestricted CAP shopping had resulted in an aggregate "net loss" of approximately $2.7 million on an annual basis. See, PPL Order at 27. To address this ongoing harm, the Commission approved a "CAP-SOP" program that established rules on how CAP customers could receive service from EGSs. PPL Order at 53.

In her PPL Initial Decision, ALJ Colwell addressed this issue, and convincingly explained why ignoring the history and importance of CAP programs to advance other goals was inconsistent with the development of low-income protections. ALJ Colwell explained:

> The commitment of the Commission and the Pennsylvania Legislature to providing additional safeguards and programs for the assistance and protection of low-income Pennsylvanians has been unwavering. The Public Utility Code mandates these programs and requires the Commission to oversee them. The Commission recognizes the importance of the mandate and wrote its regulations to provide clear direction in the development and implementation of the programs which are meant to act as a safety net to catch the most vulnerable customers. After years of Commission vigilance in the enforcement of protections and programs for the well-being of low-income families, it is simply inconsistent to find that the unfettered vibrancy of the competitive market supersedes the value of ensuring the success of the customer assistance programs that are vital to assist those families in meeting their energy bills.

PPL I.D. at 44.

ALJ Colwell further explained:

> The Act acknowledges that the Commonwealth must continue the protections, policies and service that now assist customers who are low-income to afford electric service, and this Commission interprets this to include the provision of customer assistance programs. CAP programs are subsidized by the residential rate class customers, and those customers pay higher bills in order to make the CAP programs meaningful for low-income customers. Therefore, *it should go without saying that those CAP programs must be administered in a financially responsible fashion and not used to pay higher prices than necessary to third-party EGSs who do not subsidize the CAP.*

PPL I.D. at 56 (emphasis added).

The Commission agreed with the ALJ and approved rules for CAP shopping to address the unrefuted harms presented in that case. The Commission held as follows:

> We conclude that our decision to approve the CAP-SOP is consistent with the Commonwealth Court's decision in CAUSE-PA. In that case, the Court held that we have the authority under Section 2804(9) of the Competition Act, for the purpose of ensuring that universal service plans are adequately funded and cost-effective, to approve CAP rules that would limit the terms of an offer from an EGS which a customer could accept and remain eligible for CAP benefits.

PPL Order at 53.[25]

In its Order the Commission explained that the parties had presented substantial evidence demonstrating customer harm as a result of unrestricted CAP shopping. PPL Order at 54. Upon reviewing the PPL data, the Commission found:

> The data provided by PPL in this proceeding demonstrated the economic harm experienced as the result of unrestricted CAP customer shopping decisions. The identified economic harm affects the ability of CAP customers to remain on CAP, as higher costs result in a quicker erosion of the CAP customers' limited allocation of CAP credits and also affects non-CAP customers by increasing the subsidy they incur to support the universal service objectives within the Competition Act. We find that this unrefuted evidence is sufficient to permit the Commission to impose CAP rules that may partially restrict or limit the ability of these customers to shop for electricity.

PPL Order at 54.

The Commission concluded:

> [B]ased upon the substantial and unrefuted evidence presented by PPL in this proceeding, it is incumbent upon the Commission to address this matter in a reasonable and prudent fashion to balance the competing objectives within the Competition Act. *It is vitally important that the existing CAP programs be administered in a financially responsible fashion* consistent with our obligations under the Competition Act to foster competitive electric markets.

PPL Order at 53 (emphasis added).

Here, the unrefuted evidence shows that CAP customers are paying more as a result of unrestricted shopping. The OCA submits that the Commission must suspend CAP shopping until program modifications are made that cure the current deficiencies identified above. The Commission must require that any CAP shopping program be designed to ensure that CAP customers do not pay above the price to compare. OCA witness Alexander testified as follows:

> FirstEnergy should halt the enrollment of CAP customers with EGSs until a program is in place that ensures that participating EGSs make a contractual commitment to charge a price for generation supply that is equal to or less than

[25] The PPL Order was on appeal in the Commonwealth Court at 230 C.D. 2017 with regard to CAP shopping. On May 2, 2018, the due date of this Brief, the Court issued an Order ***affirming*** the Commission's decision.

> the applicable Price to Compare during the term of the agreement. CAP customers are the most vulnerable customers and should not pay more than the PTC for essential electric service. Allowing such higher prices not only harms the CAP customer (impacting their bill assistance calculation), but also shifts costs to other ratepayers and increases the costs of these Universal Service Programs without any benefit to the CAP customer or ratepayers generally.

OCA St. 2 at 38-39. CAUSE-PA witness Geller proposed similar rules for CAP shopping, as follows:

> I am recommending that the Companies create structures whereby PCAP customers are prohibited from contracting with EGSs for a price that would ever be higher than the price to compare. This is both permissible and prudent. No one – except EGSs who are paid 100% of their billed costs through the Companies' POR program – benefits when PCAP customers pay more than the price to compare. As explained above, unbridled PCAP shopping causes PCAP costs to increase for no legitimate reason. In my judgment, this is poor public policy.

CAUSE-PA St. 1 at 30.

I&E witness Keller expressed the same concerns and recommended that a methodology must be put in place that prevents ongoing harm resulting from unrestricted CAP shopping. I&E St. 1 at 21-24. Witness Keller explained that:

> Regardless of the exact methodology, I am convinced by the Companies' data that excess CAP shopping costs are being incurred within the service territories and that some mechanism should be implemented that would prohibit CAP shoppers from paying prices that exceed the Companies' PTC on a regular basis.

I&E St. 1 at 23.

CAP shopping protections are necessary to meet the statutory requirements of universal service programs. CAUSE-PA witness Geller further explained how such a proposal could work, as follows:

> EGS products could be marketed and structured as a percent off the price to compare – this percent could be 0% off, meaning that the EGS would match the PTC, or the discount amount could be as high as the EGS wants. At a minimum, the following principles are integral to the development of any CAP shopping plan and should be included in any plan developed:

- CAP shopping participants should be prohibited from entering into a contract with an EGS in which they will obligate themselves or the program to, at any time, bear the cost of rates greater than the price to compare.

- CAP shopping participants should be prohibited from entering into a contract with an EGS that includes early cancellation or termination fees.

CAUSE-PA St. 1 at 32.

The Companies testified that adopting a "percentage off" program as proposed by CAUSE-PA witness Geller is feasible. FE St. 1-R at 30-32. In her Rebuttal Testimony, Companies' witness Bortz explained that the Companies billing system is currently programmed to handle "percentage off" products in their service territories. FE St. 1-R at 31. In addition, the Companies currently offer "percentage off" billing in their Ohio affiliates' service territories. FE St. 1-R at 30. Given the Companies' experience with these types of offers, OCA witness Alexander recommended as follows:

> Ms. Bortz acknowledges that FirstEnergy could probably implement a billing option for EGSs that offer a "percentage off" product that applies a specific discount as compared to that month's PTC as the EGS price stated on the customer's bill. In fact, Ms. Bortz states that such a billing option is widely used in Ohio with certain programs. As a result of FirstEnergy's experience in Ohio and its admission that such a program could be implemented in Pennsylvania, I agree this would be a reasonable approach to pursue.

OCA St. 1-S at 16-17.[26] The OCA submits that a "percentage off" program for CAP shopping is a reasonable method of ensuring CAP customer affordability and overall CAP program cost-effectiveness. The Commission should direct the FirstEnergy Companies to expeditiously implement such a program, and the necessary rules, for its CAP programs.

[26] In addition to Ohio, OCA witness Alexander testified that New York has implemented protections for low income customer shopping, by requiring suppliers to obtain a waiver to serve such customers under conditions "that prohibit charging more than the applicable default service rate over a 12 month period." OCA St. 2S at 17.

4. RESA and FirstEnergy's Arguments In Favor of Unrestricted CAP Shopping Are Speculative And Do Not Ameliorate The Documented Harm.

Both FirstEnergy and RESA argue against any restrictions on CAP customer shopping. RESA witness Hudson testified that CAP customer net financial harm above the price to compare fails to consider the broader benefits of the retail market. RESA St. 1-R at 23. FirstEnergy witness Bortz argues that additional non-monetary benefits must be considered despite the clear financial harms documented by the Companies. ME/PN/WP/PP St. 1-R at 28. Critically, neither RESA nor the Companies have supplied meaningful evidence of actual benefits to CAP customers.

OCA witness Alexander testified that any potential and speculative benefits experienced by CAP customers, even if demonstrated, would not justify continued CAP shopping. Ms. Alexander testified as follows:

> The Commission should reject RESA's unsupported claim of benefits to CAP customers. Whether or not an EGS may offer some non-basic energy service or product to CAP customers, or claim to offer a higher percentage of renewables than already exists in the current generation mix for the PJM market, as justification for a higher price for generation supply service is not dispositive of the most important and legally required consideration of ensuring compliance with the goal of making essential basic energy service affordable for low income customers.

OCA St. 2S at 16; see also, CAUSE-PA St. 1 at 31-32. Even if "non-monetary" benefits were demonstrated, non-CAP residential ratepayers should not be required to support those offerings. OCA St. 2-S at 14.

In the recent PPL DSP, the ALJ succinctly captured the problem with RESA's argument, as follows:

> RESA's pointing out that the CAP customers may have enjoyed some other benefit is not persuasive where the actual knowledge of these theoretical benefits is within the records of RESA's own members and not within the records of any other party, including the Company. Pointing out what might have happened is not sufficient to counter the weight of the real data presented by the Company, the veracity of which has not been challenged.

PPL I.D. at 54.

Upon reviewing the options presented in PPL, the Commission supported the ALJ's Initial Decision. The Commission held that doing nothing was simply unacceptable, as follows:

> We further agree with the ALJ that RESA's recommendation to impose no restrictions on CAP shopping and to only encourage CAP customers to use the SOP if they do shop is simply insufficient. We conclude that this recommendation fails to protect CAP shoppers from the negative effects of paying more than the PTC and maximizes the burden on other Residential customers who fund the CAP program and, as such, is not a viable alternative.

PPL Order at 55.

The OCA submits that RESA's argument on this point has been rejected by the Commission and must fail here. The status quo is untenable and arguments in support of continued unrestricted CAP shopping must be rejected.

D. Conclusion

As the Court in CAUSE-PA and the Commission in PPL recognized CAP shopping rules, including price protection, are permissible to ensure a properly functioning CAP program. Here, FirstEnergy's CAP customers are paying over $3.7 million annually more than the price to compare on a net basis. The harm of unrestricted CAP shopping on both CAP customer affordability and program cost effectiveness is unrefuted. As such, the OCA submits that the Commission should direct the FirstEnergy Companies to suspend CAP customer shopping until a CAP shopping program is implemented that limits the price the CAP customer pays to no more

than the price to compare and prohibits termination or early cancellation fees. The FirstEnergy Companies billing option for percentage off products should be used as the basis for these programs.

IX. NON-MARKET BASED CHARGES

The OCA notes that a Joint Partial Settlement Agreement has been set forth as it pertains to the issue of non-market based charges. The OCA will address the provisions of the Joint Partial Settlement Agreement on this issue in its Reply Brief.[27]

[27] See supra, n.15.

X. TIME-OF-USE RATE

The OCA notes that a Joint Partial Settlement Agreement has been set forth as it pertains to the issue of the time-of-use (TOU) rate. The OCA will address the provisions of the Joint Partial Settlement Agreement on this issue in its Reply Brief.[28]

[28] Id.

XI. CONCLUSION

As detailed fully above, OCA submits the following with regard to FirstEnergy's proposed defaults service plans: (1) the Companies should layer purchases to extend beyond May 31, 2023, to reduce the market timing risk associated with replacing all residential default service energy supplies at one time, (2) the proposed PTC Adder does reflect a cost of providing default service and must be rejected as illegal, unjustified and inequitable, (3) the Companies should immediately reform the CRP to ensure the presentation of the program is accurate and neutral, and the CRP should terminate on May 31, 2021, and (4) CAP modifications are necessary in order to avoid shopping CAP customers paying more than the PTC. The OCA further submits that the Commission must ensure that FirstEnergy provides default service in a reasonable manner consistent with the Commission's regulations and Pennsylvania law.

Therefore, the OCA respectfully requests that the Commission adopt the OCA's residential supply mix proposal, reject the PTC Adder, require the Companies to reform the CRP and terminate the CRP on May 31, 2021, and suspend CAP shopping until FirstEnergy implements a program that ensures that the price shopping CAP customers pay is no more than the PTC using the percentage-off billing option.

Respectfully Submitted,

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Dated: May 2, 2018

APPENDIX A

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

PROPOSED FINDINGS OF FACT
PROPOSED CONCLUSIONS OF LAW, AND
PROPOSED ORDERING PARAGRAPHS
OF THE OFFICE OF CONSUMER ADVOCATE

I. PROPOSED FINDINGS OF FACT

1. In their filing, the Companies propose to procure 12 and 24-month full requirements contracts (FRCs), with a 5% portion of each contract priced at spot market prices. FE St. 2 at 7-10.

2. The Companies propose to end all supply contracts on May 31, 2023, i.e., a "hard stop" of all contracts. OCA St. 1 at 11-12.

3. Ending all contract purchases on a single date creates unnecessary market timing risk for residential customers. OCA St. 1 at 11.

4. Concerns expressed by the Companies and RESA of layering contracts beyond May 31, 2023, can be addressed if needed. OCA St. 1S at 5.

5. The Companies have proposed a four-year default service plan term, beginning May 31, 2019, through May 31, 2023. OCA St. 1 at 4.

6. The settlement of the Companies' current DSP IV anticipated a four year DSP ending May 31, 2021. Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn for Approval of their Default Service Programs, Docket Nos. P-2015-2511333, *et al.* (Recommended Decision issued April 15, 2016).

7. A four-year term provides certainty for customers and EGSs regarding the terms of the DSP, while also providing administrative efficiencies and cost savings for customers compared to filing on a more frequent basis. ME/PN/WP/PP St. 1.

8. The information that is to be provided pursuant to Section A.3 of Joint Stipulation No. 3, which addresses the POR Clawback, is customer-specific information, rather than aggregate information. Joint Stipulation No. 2.

9. There has been no showing that proper customer consent has been obtained or will be obtained by FirstEnergy for the stipulated release of customer information pursuant to the POR Clawback stipulation. Joint Stipulation No. 2.

10. Customer-specific arrears information should not be provided pursuant to the POR Clawback stipulation. OCA St. 2S at 13; OCA St. 2R at 9.

11. The EGS sold its receivables to the EDC and the EDC remains responsible for collecting unpaid supplier charges using the approved collection programs and consumer protection policies applicable to the EDC's regulated services. OCA St. 2S at 13; OCA St. 2R at 9.

12. FirstEnergy proposes a bypassable retail market enhancement rate mechanism in the form of a PTC Adder. OCA St. 2 at 32.

13. FirstEnergy proposes that the PTC Adder be applied only to residential default service customers, or non-shopping residential customers. OCA St. 1 at 15.

14. FirstEnergy proposes that the PTC Adder be implemented in the amount of 1.44 mills per kWh, which is equivalent to $1.25 per month, or $15 per year, for the average residential customer. OCA St. 1 at 15; FE St. 1 at 26.

15. The Companies propose to redistribute 95% of revenue collected through the PTC Adder to both shopping and default service residential customers through the non-bypassable DSS Rider, and retain five percent of the revenues to cover administrative costs associated with the program. OCA St. 2 at 32.

16. The method used to calculate the charge is not related to FirstEnergy's claimed purpose for the PTC Adder of "incenting" residential retail shopping. OCA St. 1 at 16; FE St. 1 at 24.

17. The five percent retained by FirstEnergy to cover administrative costs equates to $855,000 per year if approximately 30 percent of the Companies' residential customers remain on default service after the program is implemented. OCA St. 1 at 18, Exh. SLE-2.

18. Currently, 70 percent of FirstEnergy's residential customers are default service customers. OCA St. 1 at 16.

19. The Companies do not intend to track administrative expenses and an "ex post evaluation of the reasonableness of the 5 percent retention would not be able to be conducted." OCA St. 1 at 18.

20. The current competitive market is robust and not characterized by oppressive economic barriers. OCA St. 1R at 4.

21. With regard to the competitive market, a significant number of EGSs have been able to effectively compete in the residential generation supply market and continue to participate in that market by providing a range of products that the utility does not provide, and fixed-price products of varying durations. OCA St. 1R at 5.

22. There is no evidence that the proposed program will foster measurable results. OCA St. 1 at 18.

23. The PTC Adder will increase rates for shopping customers because competitive EGSs use the PTC as a pricing benchmark and an artificially inflated default service rate will result in increased EGS charges for customers. OCA St. 1 at 18.

24. The PTC Adder is a subsidy from residential default service customers to residential customers receiving competitive service as well as a subsidy from residential customers receiving competitive service to EGSs. OCA St. 1 at 18.

25. Customers who testified at and attended the Public Input Hearing in Erie, Pennsylvania opposed the PTC Adder, customer shopping, and competitive suppliers generally. Tr. 67, 90, 99, 105, 106-107, 117-117-118, 135-136.

26. FirstEnergy implemented its CRP in 2013. OCA St. 2 at 7.

27. FirstEnergy undertakes a bifurcated presentation of the CRP and provides scripts to its customer service representatives (CSR) as well as its third party agent, Allconnect. OCA St. 2 at 8, 9.

28. The CSR scripts include a statement regarding "potential rate savings" associated with the CRP followed by a statement attempting to transfer the customer to a "connections program." OCA St. 2 at 8-9.

29. The Allconnect representatives present the CRP to the customer and actively attempt to enroll the customer with an EGS. OCA St. 2 at 9.

30. Allconnect earns a fee each time it enrolls a customer in the CRP. OCA St. 2 at 9.

31. FirstEnergy proposes to extend its CRP from June 1, 2019, through May 31, 2023. FE St. 1 at 19.

32. Some customers enrolled in the CRP either pay *more* than the PTC or experience "relatively tiny savings" over the 12-month period. OCA St. 2 at 26.

33. With regard to customers using 1,000 kWh per month who enrolled in the program in January 2016 and remained in the program for 12 months, Met-Ed customers paid $89.71 *more* than the PTC, Penelec customers paid $12.94 *more* than the PTC, and Penn Power customers paid $66.48 *more* than the PTC, while West Penn customers experienced savings of only $7.21. OCA St. 2 at 26; Exh. BA-2.

34. With regard to customers using 1,000 kWh per month who enrolled in the program in January 2017 and remained in the program for 12 months, Met-Ed customers paid $35.83 *more* than the PTC, Penelec customers paid $57.28 *more* than the PTC, and Penn Power customers paid $78.33 *more* than the PTC, while West Penn customers experienced savings of only $25.12. OCA St. 2 at 26-27; Exh. BA-2.

35. Very few FirstEnergy customers enrolled in the CRP experience 12 months of a 7% discount, or any discount at all. OCA St. 2 at 26.

36. Customers have received less than a 7% discount as shown in both the 2013 DSP III proceeding and the 2015 DSP IV proceeding. OCA St. 2 at 25.

37. First Energy has not fully complied with its obligations as to the CRP script, disclosures, and training materials set forth in prior default service proceedings and, in particular, the 2015 DSP IV proceeding. OCA St. 2 at 16-24.

38. Following the 2015 DSP IV settlement and Commission Order, FirstEnergy's CRP scripts were not integrated with the training materials and FirstEnergy did not revise its customer training and scripting materials in a comprehensive manner to implement the DSP IV settlement. OCA St. 2 at 18-19.

39. Allconnect's training materials are not neutral or fact-based and do not demonstrate that agents are familiar with the variable savings, if any, that customers experience while enrolled in the CRP. OCA St. 1 at 21.

40. FirstEnergy acknowledged that certain, recent training materials did not include the scripting language agreed to in the DSP IV Joint Petition for Settlement. OCA St. 2 at 17.

41. FirstEnergy CSRs' mention a "confirmation number" that is not provided until the customer is transferred to Allconnect. OCA St. 2 at 22-23.

42. The FirstEnergy CSRs' reference to a 'confirmation number' is not in the allowed script set forth in the DSP IV settlement. OCA St. 2 at 22-23.

43. Customers are never informed of their right to default service by the FirstEnergy CSRs or otherwise. OCA St. 2 at 23.

44. Customers are provided with a hasty, but lengthy disclosure by Allconnect representatives and then are immediately questioned as to which EGS they wish to select, without being explicitly asked if they are opting to enroll in the program. OCA St. 2 at 24.

45. The marketing of additional, non-utility services by Allconnect to customers transferred by FirstEnergy creates confusion among customers. OCA St. 2 at 28.

46. The arrangement between FirstEnergy and Allconnect requires further evaluation to determine the impact on the customer choice market and retail market enhancement programs as well. OCA St. 2 at 30.

47. FirstEnergy did not make all changes provided for by the 2015 DSP IV settlement, but FirstEnergy now completes the customer's EDC transaction before transferring the customer to Allconnect. OCA St. 2 at 10.

48. Many factors contribute to swings in CRP enrollment. OCA St. 2 at 9-10.

49. A decrease in CRP enrollment occurred after the Polar Vortex in 2014, at which time complaints, formal investigations, and public controversy plagued many EGSs in Pennsylvania and elsewhere. OCA St. 2 at 9-10.

50. A decrease in CRP enrollment occurred in 2015 when PTC rates were low causing lower EGS enrollment in the CRP. OCA St. 2 at 9-10.

51. While enrollment from the CRP has experienced swings, the average monthly number of residential customers served by EGSs has not. OCA St. 2 at 11.

52. From June 2013 to March 2018, the FirstEnergy Companies' shopping CAP customers paid a "Total Net Cost Above PTC Costs" of $18,336,440. Joint Stipulation No. 3.

53. On an annual basis, FirstEnergy's CAP customers receiving electric service from EGSs paid, on a net basis, $3,793,746 more per year than the Price to Compare. Joint Stipulation No. 3.

54. In 2017, the majority of CAP customers taking EGS service (72% Met-Ed, 76% Penelec, 69% West Penn, and 84% Penn Power) were, on average, paying more than the PTC. CAUSE-PA St. 1 at 23.

55. As a result of how the CAP program calculates CAP credits, CAP customer credits will be insufficient to maintain an affordable bill if a shopping decision drives up the energy portion of that customer's electric bill. OCA St. 2 at 37-38.

56. All non-CAP residential customers must pay the costs of the universal service program. As CAP customers shop and pay higher prices, their average bill increases thus increasing the credit needed to maintain an affordable bill. The increased credit is fully subsidized by non-CAP residential customers when the CAP credit is recalculated. OCA St. 2 at 38.

57. The Companies testified that adopting a "percentage off" program as proposed by CAUSE-PA witness Geller is feasible. FE St. 1-R at 30-32.

58. The Companies currently offer "percentage off" billing in their Ohio affiliates' service territories. FE St. 1-R at 30.

II. PROPOSED CONCLUSIONS OF LAW

1. The FirstEnergy Companies are the default service providers) in their service territory, and as such must offer default service that meets specific legal requirements. 66 Pa. C.S. § 2807(e).

2. Under Section 2807 of the Public Utility Code, FirstEnergy, as the default service provider, is required to provide electric generation supply service to all of their default service customers through a Commission-approved competitive procurement plan. 66 Pa. C.S. § 2807(e).

3. Eliminating the "hard stop" reduces the potential for price volatility at the end of the DSP term and is consistent with Act 129 "least cost to customers over time" mandate as well as the goals of the General Assembly that default service achieve "price stability over time." 66 Pa. C.S. § 2807(e)(3.4); Preamble to Act 129, 2008 Pa. Laws 129.

4. The OCA's procurement schedule would alleviate concerns regarding the "hard stop" and better achieve the goals of Act 129. 66 Pa. C.S. 2807(e)(3.4); Preamble to Act 129, 2008 Pa. Laws 129.

5. The POR Clawback stipulation involves the release of "private customer information" that includes the "customer's historical billing data" as defined by the Commission's regulations. Joint Stipulation No. 3; 52 Pa. Code § d54.8.

6. The stipulation to release of private customer information violates the Commission's regulations, which provide that "[a]n EDC . . . may not release private customer information to a third party unless the customer has been notified of the intent and has been given a convenient method of notifying the

entity of the customer's desire to restrict the release of the private information." 52 Pa. Code § 54.8; see also 66 Pa. C.S. § 2807(f)(3).

7. Section 2807(e)(3.9) of the Electricity Generation Customer Choice and Competition Act provides that "[t]he default service provider shall have the right to recover on a full and current basis, pursuant to a reconcilable automatic adjustment clause under Section 1307 . . . all reasonable costs incurred under this section and a commission-approved competitive procurement plan," which are the costs of procuring service default supply. 66 Pa. C.S. § 2807(e)(3.9).

8. The Commission "has no authority to permit, in the rate-making process, the inclusion of hypothetical expenses not actually incurred." Barasch v. Pa. PUC, 493 A.2d 653, 655 (Pa. 1985).

9. A utility is permitted to "pass along to its customers only those expenses or costs it actually incurs" and "[a]ny other approach would permit the utility, by charging higher rates than necessary, to gain a profit from its customer under the guise of recovering operating expenses." Cohen v. Pa. PUC, 468 A.2d 1143, 1150 (Pa. Commw. 1983) (Cohen).

10. The PTC Adder is not a cost for providing default service as described in Section 2807(e) of the Electricity Generation Customer Choice and Competition Act. 66 Pa. Code § 2807(e).

11. FirstEnergy's proposed PTC Adder is an impermissible attempt to earn a profit under the guise of "administrative expenses." Cohen at 1150.

12. In the DSP II proceeding, FirstEnergy proposed a Market Adjustment Charge (MAC), which was a "bypassable charge that would be imposed on non-shopping residential and commercial customers." Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn for Approval of their Default Service Programs, Docket No. P-2011-2273650, *et al.* (Order entered August 2, 2012, at 53).

13. In DSP II, RESA proposed to modify the proposed MAC and under RESA's proposal, "[o]nly default service customers would be charged for the MAC, but all residential customers . . . would receive the credit from the leftover MAC revenues." Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn for Approval of their Default Service Programs, Docket No. P-2011-2273650, *et al.* (Recommended Decision issued June 15, 2012, at 57).

14. With regard to the MAC in DSP II, the ALJ concluded that charging non-shopping customers the MAC and returning leftover revenues to all customers was "inequitable on the surface" and rejected RESA's recommendation. Id.

15. In its DSP II Order, the Commission cited the ALJ's reasoning as to RESA's modification of the MAC and rejected the MAC entirely. Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn for Approval of their Default Service Programs, Docket No. P-2011-2273650, *et al.* (Order entered August 2, 2012, at 59).

16. In its DSP II Order, the Commission concluded: "While under the Code the Companies are entitled to recover all actual costs to provide default service on a dollar-for-dollar basis, the Companies and other Parties failed to provide sufficient empirical support for any actual known and measurable costs that are not being recovered through existing or proposed rates and riders." Id. at 62.

17. FirstEnergy's present proposal is comparable to RESA's modification of FirstEnergy's proposal in the DSP II proceeding in that only default service customers will be charged for the PTC Adder, but all residential customers will receive the credit from the PTC Adder revenues. Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn for Approval of their Default Service Programs, Docket No. P-2011-2273650, *et al.* (Recommended Decision issued June 15, 2012, at 57).

18. As the ALJ concluded and the Commission agreed in DSP II, the practice of charging non-shopping customers the PTC Adder and returning revenues to all customers is "inequitable." See Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn for Approval of their Default Service Programs, Docket No. P-2011-2273650, *et al.* (Order entered August 2, 2012, at 59) (emphasis added).

19. The subsidies resulting from the PTC Adder represent unnecessary rate increases that are not in accordance with the Public Utility Code and do not result in just and reasonable rates for customers. 66 Pa. C.S. § 315(a).

20. In the DSP IV proceeding, the Commission explicitly approved the extension of FirstEnergy's CRP through 2021. Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn for Approval of their Default Service Programs, Docket Nos. P-2015-2511333, *et al.* (Recommended Decision issued April 15, 2016).

21. The purpose of the DSP III and DSP IV CRP reforms were to attempt to include language in the scripts, disclosures, and training materials that presents a neutral, fact-based presentation of the CRP to customers so that they can make informed decisions as to whether or not to enter the program. 52 Pa. Code § 54.1 (electricity providers, including EDCs, are required to "enable customers to make informed choices regarding the purchase of electricity service offered by providing adequate accurate customer information" in an "understandable format").

22. A CRP that does not provide clear disclosures is not in the public interest as the Commission intended the CRP to be. 52 Pa. Code § 69.1815 ("[t]he public interest would be served by consideration of customer referral programs").

23. The EDC must complete the entirety of the regulated-utility transaction to ensure adequate and reliable service to customers before any discussion of the CRP or the transfer to a third party such as Allconnect. 52 Pa. Code § 56.1 ("This chapter assures adequate provision of residential public utility service." "Every . . . duty required under this chapter imposes an obligation of good faith, honesty and fair dealing in its enforcement.")

24. Customers should also be made aware that the CRP is an optional program and that EDCs are obligated to serve customers that elect not to participate in the CRP by enrolling with an EGS. 52 Pa. Code § 54.184 ("an EDC as default service provider shall be responsible for the reliable provision of default service to retail customers who are not receiving generation services from an alternative EGS.")

25. The Customer Choice Act requires that CAP programs be designed to provide affordable rates for low-income customers in a cost-effective manner. 66 Pa. C.S. §§ 2802(9), (10), (14), (17), 2803, 2804(8)-(9).

26. In CAUSE-PA, *et al.* v. Pa. PUC, 120 A.3d 1087, 1103-1104 (Pa. Cmwlth. Ct. July 14, 2015), *cert denied* 2016 Pa. LEXIS 723 (Pa. April 5, 2016), the Commonwealth Court affirmed the Commission's authority to implement CAP Shopping rules, including a price protection rule if the Commission found it necessary based on the evidence of record.

27. In PPL's most recent Default Service Proceeding the Commission approved program rules to maintain affordable service for CAP customers being served by an EGS. 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 (Order entered October, 27, 2016).

28. The Customer Choice Act recognized the need to protect essential electric service for CAP customers in the retail competitive environment, and in order to preserve that affordability, changes to FirstEnergy's CAP Shopping Plan must be implemented. See 66 Pa. C.S. §§ 2802(9),(10), 2804(9).

III. PROPOSED ORDERING PARAGRAPHS

1. That FirstEnergy's proposal to end all supply contracts on May 31, 2023, *i.e.*, a "hard stop" is denied.

2. That the Office of Consumer Advocate's proposal to layer purchases to extend beyond May 31, 2023, to reduce the market timing risk associated with replacing all default service energy supplies at one time is approved.

3. That FirstEnergy's proposal for a four-year default service plan term beginning May 31, 2019, through May 31, 2023, is approved.

4. That the proposal set forth in Section A.3 of the Joint Stipulation No. 3 pertaining to an automatic report containing customer-specific arrears information from FirstEnergy to EGSs, is denied.

5. That FirstEnergy's proposal to implement a PTC Adder is denied.

6. That the Office of Consumer Advocate's recommendations for immediate reform of FirstEnergy's CRP are approved.

7. That FirstEnergy's proposal to extend its CRP through May 31, 2023 is denied.

8. That FirstEnergy's CAP shopping program is suspended until FirstEnergy implements a program that ensures the price CAP customers pay is no more than the PTC.