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

IN REPLY PLEASE
REFER TO OUR FILE

May 15, 2018

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

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

Dear Secretary Chiavetta:

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

Copies are being served on parties as identified in the attached certificate of service. If you have any questions, please contact me at 717-787-8754.

Sincerely,

Allison C. Kaster
Deputy Chief Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. No. 93176

Gina L. Miller
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. No. 313863

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Enclosure

cc: Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT

Allison C. Kaster
Deputy Chief Prosecutor
Attorney ID # 93176

Gina L. Miller
Prosecutor
Attorney ID # 313863

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Post Office Box 3265
Harrisburg, Pennsylvania 17105-3265
(717) 787-8754

Dated: May 15, 2018

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I. INTRODUCTION

The Bureau of Investigation & Enforcement ("I&E") incorporates, by reference, the Introduction contained in its Main Brief of May 1, 2018.[1] As the proponent of the DSP V, the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively the "Companies") have the burden of proof to establish that the terms of the proposed DSP V should be adopted. For the reasons contained in I&E's Main Brief and as explained more thoroughly below in this Reply Brief, the Companies have failed to satisfy their burden with respect to their proposed plan to (1) continue its purchase of receivables ("POR") clawback charge on a permanent basis; (2) establish a bypassable retail market enhancement rate mechanism, known as the Price to Compare Adder ("PTC Adder"); and (3) continue the status quo of permitting Customer Assistance Program ("CAP") customers to shop without restriction.[2]

II. PROCEDURAL HISTORY

I&E incorporates, by reference, the Procedural History contained in its Main Brief of May 1, 2018.[3] By way of supplemental information, alongside I&E, the Companies, the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Pennsylvania State University ("PSU"), NextEra Energy Marketing, LLC ("NextEra"), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), Met-Ed Industrial Users Group ("MEIUG")/Penelec

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1 I&E Main Brief, pp. 1-7.
2 Petition at ¶¶ 6-7.
3 I&E Main Brief, pp. 1-7.

Industrial Customer Alliance ("PICA")/West Penn Power Industrial Intervenors ("WPPII") (collectively, the "Industrials"), Respond Power, LLC, and the Retail Energy Supply Association also filed their Main Briefs on May 1, 2018. Pursuant to the procedural schedule and in accordance with Sections 5.501- 5.502[4] of the Pennsylvania Public Utility Commission ("Commission") regulations, I&E submits this Reply Brief.

III. DEFAULT SERVICE PLAN PORTFOLIO AND TERM

I&E takes no position on these issues.

IV. PURCHASE OF RECEIVABLES CLAWBACK PROVISION

I&E herein incorporates this section from its Main Brief, which supports the approval of Joint Stipulation No. 2, as entered into by I&E, the Companies, RESA, and Respond Power.[5] In its Main Brief, I&E outlined the terms of Joint Stipulation No. 2 and explained why its approval is in the public interest, and I&E reasserts that rationale here.

V. BYPASSABLE RETAIL MARKET ENHANCEMENT RATE MECHANISM

A. The Companies' PTC Adder

In its Main Brief, I&E explained that it opposed the Companies' proposal for a bypassable retail market enhancement rate mechanism identified as the Price to Compare Adder for several reasons. These reasons are as follows: (1) the PTC Adder violates the Public Utility Code's ("Code") requirement that it provide default electric service to customers at no greater cost than the cost of obtaining generation;[6] (2) the PTC Adder violates Section 1304 of the Code because it creates an unreasonable rate differences

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4 52 Pa. Code §§ 5.501-5.502.
5 I&E Main Brief, pp. 12-15.
6 66 Pa. C.S. § 2807(e); I&E Main Brief, pp. 16-17.

between classes of service;[7] (3) the PTC Adder fails to acknowledge and honor customer choice;[8] and (4) the Companies failed to produce any evidence that the PTC Adder is warranted.[9] Although each one of these defects provides an independent and viable basis for the rejection of the Companies' PTC Adder proposal, their combined weight makes it clear that the PTC Adder is unlawful, unsupported, arbitrary, and it must be rejected.

The Companies have failed to address the defects that I&E identifies, and instead point to the Commission's policy to encourage further development of the retail electric market as the driving force for their proposal.[10] Additionally, the Companies claim that the PTC Adder was designed to be revenue neutral to the Companies and to simultaneously reduce the impact upon customers while "providing a modest incentive to explore shopping opportunities available in the marketplace, thereby furthering the previously-stated goals of the Commission."[11] Although I&E agrees with the Companies that the Commission's policy encourages development of the retail electric market, I&E fundamentally rejects the notion that the Commission intended the Companies to impose an illegal and unwarranted surcharge upon default service customers to further that end.

Furthermore, although the Companies may deem it to be modest, the evidence in this proceeding proves that default service customers will be impacted by a PTC Adder Charge of approximately $1.25 per month,[12] an amount that may not be modest to those

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7 66 Pa. C.S. § 1304; I&E Main Brief, pp. 17-18).

8 I&E Main Brief, pp. 19-21; I&E Ex. No. 1-SR, Sch. 1; Public Input Hearing Tr. at p. 88; I&E Ex. No. 1-SR, Sch. 1, p. 2; Public Input Hearing Tr. at p. 97; Public Input Hearing Tr. at p. 120; Public Input Hearing Tr. at p. 279.

9 I&E Main Brief, pp. 21-22; I&E Ex. No. 1, Sch. 1, p. 3.

10 Companies' Main Brief, p. 28.

11 Id.

12 Companies' St. No. 1, pp. 24-25.

customers and which is not based upon cost to serve or usage. Although the Companies claim that 95% of the PTC Adder revenue will be refunded back to residential customers, this claim ignores the fact that any funds returned will be diluted because it will be distributed to all residential customers, not just to the residential default service customers who fund the PTC Adder.[13] The practical reality of the distribution is that residential default customers can only hope to receive an unknown fraction of the money that they pay to fund the PTC Adder.[14] Additionally, as CAUSE-PA noted, customers who remain on default service will pay for the PTC Adder twice: once for the right to remain on default service and again through the portion of costs borne by PCAP customers who remain default service customers.[15] Accordingly, the Companies' claims regarding the PTC Adder are without merit and the Companies have failed to meet their burden of proof with respect to the PTC Adder. For these reasons, and the others explained in I&E's Main Brief, I&E avers that the Companies' PTC Adder is illegal, unsupported, and unwarranted; therefore, it must be rejected.

B. RESA's Retail Rate Mechanism Proposal

As explained in more detail in I&E's Main Brief, RESA attempted to convert the Companies' PTC Adder proposal by repurposing it to suit its own agenda and referring to it as the retail rate mechanism.[16] Aside from changing the name of the mechanism, another key distinction is that RESA rejects the Companies' position that a mechanism is

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13 I&E St. No. 1, p. 8.
14 Id.
15 CAUSE-PA Main Brief, p. 12.
16 I&E Main Brief, p.24.

needed to "artificially incentivize customer shopping" and instead argues that it is necessary to correct market inequities occurring in the market design.[17] Despite the clear discord between the Companies' and RESA's positions, RESA's retail rate mechanism is still defective in the same ways as the Companies' PTC Adder proposal. Specifically, RESA's retail rate mechanism proposal (1) violates the Code's requirement that the Companies provide default electric service to their customers at no greater cost than the cost of obtaining generation;[18] (2) violates Section 1304 of the Code because it creates an unreasonable rate differences between the Companies' classes of service;[19] and (3) lacks an evidentiary basis.[20]

I&E will not belabor the identified defects, as they are already thoroughly set forth in its Main Brief, but instead points out only that these defects remain. I&E also notes that RESA's Reply Brief attempts to support the need for the retail rate mechanism by heavily relying upon the allegations that default service providers enjoy anti-competitive advantages over electric generation supplier ("EGS") provided service because of a failure to fully unbundle default service costs and because EDCs receive incumbent provider advantages.[21] Despite RESA's general claim regarding the inequities of default service, RESA fails to connect these allegations with evidence in this proceeding. I&E avers that RESA cannot and has not met its burden of proof by relying on generalizations, and its claims are simply not grounded in the evidentiary record in this case.

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17 RESA Main Brief, p. 9.
18 66 Pa. C.S. § 2807(e); I&E Main Brief, p. 26.
19 66 Pa. C.S. § 1304; I&E Main Brief, p. 26.
20 I&E Main Brief, p. 26.
21 RESA Main Brief, p. 9.

Accordingly, for this reason, and the others explained above and in I&E's Main Brief, RESA's retail rate mechanism must be rejected.

VI. NON-COMMODITY BILLING

I&E takes no position on this issue.

VII. CUSTOMER REFERRAL PROGRAM

I&E takes no position on this issue.

VIII. CUSTOMER ASSISTANCE PROGRAM SHOPPING

A. The Unrefuted Evidence Supports the Need to Restrict PCAP Shopping in the Companies' Service Territories

In its Main Brief, I&E outlined and supported its recommendation that the Companies' be compelled to develop a program that would prohibit their Pennsylvania Customer Assistance Program ("PCAP") customers from shopping for electricity where rates are greater than the Companies' PTC at any time throughout the term of the agreement.[22] I&E's recommendation was predicated upon the evidence in this case which revealed that excess PCAP shopping costs were being incurred within the Companies service territories as a result of PCAP customers shopping for rates that exceeded the Companies' PTC.[23] Specifically, as CAUSE-PA witness Geller explained, the net impact of unrestricted CAP shopping in the Companies' service territory, or shopping above the Companies' PTC, during the period of June 2013 through December 2017 is an increase in the cost of PCAP shopping program for other ratepayers and PCAP

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22 I&E Main Brief, pp. 36-39; I&E St. No. 1-SR, p. 24.

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

customers of over $17 million, or over $3.8 million per year.[24] Additionally, the Companies' data revealed that during the same 55-month period, an average of 63%, 62%, 65%, and 72% of Met-Ed, Penelec, Penn Power, and West Penn Power customer paid rates that exceeded the Companies' PTC, respectively.[25] In summary, I&E explained that these results offend I&E the Electricity Generation Customer Choice and Competition Act ("Choice Act")[26] and the Commission's regulations, warranting restriction of the scope of PCAP shopping.

In support of its position, I&E pointed to the legal and regulatory authority that warrants such restrictions under the circumstances borne out in the record in this case. More specifically, the Choice Act concluded that all customers should be able to obtain service on "reasonable terms and conditions,"[27] and it acknowledged the need to protect low income customers, mandating that "[t]he Commonwealth must, **at a minimum**, continue the protections, policies and services that now assist customers who are low-income to afford electric service."[28] To ensure the protection of low income customers, the Choice Act mandated that the Commission ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each EDC's territory.[29] I&E submits that the evidence in this case demonstrates that the

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24 CAUSE-PA St. 1, pp. 22-25.
25 I&E St. No. 1, pp. 19-20; I&E Ex. No. 1, Sch. 5.
26 66 Pa. C.S. §§ 2801 et seq.
27 66 Pa. C.S. § 2802(9).
28 66 Pa. C.S. § 2802(10) (emphasis added).
29 66 Pa. C.S. § 2804(9).

above-referenced tenets of the Choice Act have been compromised by the excessive PCAP shopping costs in the Companies' service territories.

Additionally, the Commission's goals for universal service programs, have been impeded by the results of the unrestricted scope of PCAP shopping. These goals of are identified as (1) protecting consumers' health and safety by helping low-income customers maintain electric service; (2) providing for affordable electric service by making available payment assistance to low-income customers; (3) assisting low-income customers conserve energy and reduce residential utility bills; and (4) establishing universal service and energy conservation programs are operated in a cost-effective and efficient manner.[30] In this case, the Companies' data reveals that unrestricted shopping has decreased the cost-efficiency of the Companies' PCAP programs by increasing costs that non-PCAP residents must pay through the Companies' universal service rider to fund the PCAP program. The higher costs are relevant because in evaluating universal service programs like PCAP, the Commission balances the interests of customers who benefit from the universal service programs with the interests of the customers who pay for the programs.[31]

B. The Companies' and RESA's Unsupported Opposition to PCAP Shopping Restrictions

Despite the clear authority and need for PCAP shopping restrictions, and despite Companies' acknowledgment that its own study revealed increased PCAP shopping

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30 52 Pa. Code § 54.73.

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

costs,[32] the Companies nonetheless oppose the adoption of PCAP shopping restrictions. More specifically, the Companies claim that the Choice Act requires that retail customers obtain direct access to a competitive generation market, and that restrictions would thwart such access.[33] Additionally, the Companies claim that guidance from the Commonwealth Court regarding the specific circumstances where CAP shopping limitations, such as a price ceiling are reasonable, has not yet been provided.[34] In support of the alleged lack of clear guidance, the Companies' pointed to the then-pending appeal of PPL Electric Utilities Corporation's Customer Assistance Program Standard Offer Program ("PPL CAP-SOP").[35]

Similar to the arguments made by the Companies, RESA asks the Commission to find that the PCAP shopping restrictions recommended by CAUSE-PA, I&E, and the OCA are inconsistent with the goals and objective of the Choice Act and with the tenets of a free market.[36] Additionally RESA alleges that the proponents of PCAP shopping restrictions have failed to support the need for the recommended restrictions, and that other more reasonable alternatives exist.[37] According to RESA, before implementing restrictions, the Commission should consider the following (1) increasing funding for universal service programs; (2) considering changes to the POR clawback mechanism;

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32 Companies' St. No. 1-R, pp. 28; Companies' Ex. KLB-35.
33 Companies' Main Brief, pp. 32-35.
34 Companies' Main Brief, p. 36.
35 Id., citing *Retail Energy Supply Ass'n v. Pa. PUC*, Docket No. 230 CD 2017 ("RESA's appeal of the PPL CAP-SOP").
36 RESA Main Brief, p. 23.
37 RESA Main Brief, p. 24.

(3) eliminating early termination fees for CAP customers; and (4) educating CAP customers about EGS offers that are lower than the PTC.[38]

I&E submits that the combined arguments of the Companies and RESA are without merit, as they are unsupported by evidence and contrary to the pertinent law. At the outset, both the Companies and RESA misinterpret the Choice Act and then use that misinterpretation as the primary basis for their opposition. In reaching their contrived conclusion that the Choice Act demands absolute unrestricted competition, the Companies have ignored the Choice Act's mandate that universal service and energy conservation policies, activities and services must be appropriately funded and available in each EDC's territory. Additionally, these parties have also ignored the clear guidance of the Commonwealth Court, which explains the Commission's authority to impose restrictions under certain circumstances:

> [T]he PUC has the authority under Section 2804(9) of the Choice Act, in the interest of ensuring that universal service plans are adequately funded and cost-effective, to impose, or in this case approve, CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits. The obligation to provide low-income programs falls on the public utility under the Choice Act, not on the EGSs. Moreover, the Choice Act expressly requires the PUC to administer these programs in a manner that is cost-effective for both the CAP participants and the non-CAP participants, who share the financial consequences of the CAP participants' EGS choice.[39]

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38 RESA Main Brief, p. 28.

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

The passage above clearly indicates that the Commission may restrict the scope of CAP shopping when, as is the case here, evidence proves that a public utility's CAP program is not operating in a cost-effective manner and negative consequences flow to both CAP and non-CAP ratepayers.

Importantly, although it was not available at the time that parties submitted their Main Briefs, the Commonwealth Court recently entered its opinion in RESA's appeal of the PPL CAP-SOP, and the result is determinative here. RESA's appeal arose out of a Commission order that restricted PPL's CAP customers to selecting an EGS through a special standard offer program known as the CAP-SOP.[40] PPL's CAP-SOP permitted PPL's CAP customers to shop only for electricity at prices at or below PPL's PTC, after PPL produced evidence that unrestricted CAP shopping caused a net increase of $2.7 million annually in energy charges paid to supply CAP customers.[41] In resolving RESA's appeal of the PPL CAP-SOP, the Commonwealth Court noted that the case provided it with the opportunity to conduct an examination into the extent to which the Commission could "bend competition."[42]

Ultimately, the Commonwealth Court upheld the Commission's approval of the CAP-SOP, focusing on the substantial evidence that supported the Commission's determination that unrestricted CAP shopping within PPL's service territory was

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40 *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 (Final Order entered Oct. 27, 2016).

41 *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 through May 31, 2021*, Docket No. P-2016-2526627, I&E Main Brief, p. 22.

42 *Retail Energy Supply Ass'n v. Pa. PUC*, Docket No. 230 CD 2017, WL 2027155 at 2 (Pa. Cmwlth. May 2, 2018).

harming both CAP and non-CAP ratepayers.[43] Key evidence that proved the harm to PPL's CAP and non-CAP ratepayers was the fact that PPL's data revealed the following:

> the evidence presented showed that between January 2012 and October 31, 2015, on average, nearly 10,000 CAP customers each month were paying above the PTC. These customers, together, were paying each month, on average, $298,406 more than had they simply paid the PTC. (R.R. at 123a, 147a.) Even when these overpaying CAP customers were considered together with those CAP customers who were paying below the PTC, the CAP was still more costly than the PTC, in the amount of $228,656 each month, or more than $2.7 million a year. This evidence was **"unrefuted."** This data did not focus "on a single point in time[;]" rather this data spanned 46 months.[44]

I&E submits that the determinative nature of the data to the Commonwealth Court's decision of RESA's appeal of the PPL CAP-SOP translates to the case at bar, only on a more significant basis since the data in the Companies' territory reflects more data and higher CAP shopping costs than the data in the PPL case.

Specifically, the net impact of unrestricted CAP shopping in the Companies' service territory, or shopping above the Companies' PTC, during the 55-month period of June 2013 through December 2017 is an increase in the cost of PCAP shopping program for other ratepayers and PCAP customers of over $17 million, or over $3.8 million per year.[45] No party has refuted these increased costs. Thus, the Companies' argument that the lack of guidance from the Commonwealth Court regarding the specific circumstances

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43 Id. at 14.

44 Id. (internal citations omitted).

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

where CAP shopping limitations are appropriate is now without merit, because the question has been clearly answered. The answer is that it was appropriate to bend competition in the PPL case where 46 months of data revealed increased CAP costs of $2.7 million per year, and therefore, are even more appropriate here where the Companies' increased CAP shopping costs have been evaluated over a 55-month period and are over $3.8 million per year.

Finally, RESA's argument regarding the alleged existence of reasonable alternatives to PCAP shopping restrictions is unsupported and inadequate. I&E notes that RESA first raised these alternatives in its surrebuttal testimony,[46] where it simply listed these enumerated "alternatives" without any analysis and without providing any evidence of their effectiveness in mitigating the Companies' increased CAP shopping costs. RESA appears to acknowledge its failure to develop these alternatives, because it contemplates the need to develop them further outside the context of this proceeding. Specifically, RESA simply "welcome[s] an opportunity to evaluate these [alternatives] and other options in the context of collaborative and stakeholder discussions with the parties."[47] I&E submits that the time for collaboration has passed, as the Companies already convened stakeholder collaborative sessions with parties to the prior default service settlement on September 13, 2016; November 30, 2016; May 25, 2017; and on October 4, 2017, and these sessions did not yield a PCAP shopping resolution.[48] While no resolution is reached, increased PCAP shopping costs persist and are unabated. In

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46 RESA St. No. 1-SR, pp. 11-12.
47 Id. at p. 12.
48 Companies' St. No. 1, p. 3.

summary, RESA has failed to provide any evidence that any alternative to limiting the scope of PCAP shopping to no greater than the PTC at any time would remediate PPL's increased CAP shopping costs. Accordingly, RESA's arguments regarding alleged reasonable alternatives are unsupported and they must be rejected.

IX. CONCLUSION

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

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

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

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

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

Respectfully submitted,

Allison C. Kaster
Deputy Chief Prosecutor
Attorney ID # 93176

Gina L. Miller
Prosecutor
Attorney ID # 313863

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Post Office Box 3265
Harrisburg, Pennsylvania 17105-3265
(717) 787-8754
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CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Reply Brief** dated May 15, 2018, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

Served via Electronic and First-Class Mail

Tori L. Giesler, Esquire
Lauren M. Lepkoski, Esquire
Teresa K. Harrold
FirstEnergy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19640-6001

Daniel G. Asmus, Esquire
Office of Small Business Advocate
300 North Second Street
Suite 202
Harrisburg, PA 17101

Hayley E. Dunn, Esquire
Aron J. Beatty, Esquire
Christy M. Appleby, Esquire
Office of Consumer Advocate
555 Walnut Street
5th Floor Forum Place
Harrisburg, PA 17101-1923

Charles E. Thomas III, Esquire
Thomas Niesen & Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101
(Counsel for Calpine Energy Solutions, LLC)

Charis Mincavage, Esquire
Alessandra L. Hylander, Esquire
Susan Bruce, Esquire
Vasiliki Karandrikas, Esquire
McNees Wallace & Nurick, LLC
100 Pine Street, P.O. Box 1166
Harrisburg, PA 17108-1166
(Counsel for "Industrials")

Todd S. Stewart, Esquire
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
(Counsel for NextEra Energy Marketing, LLC)

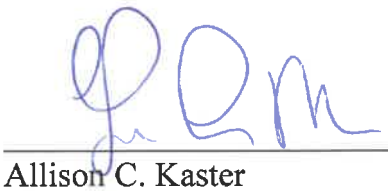
Deanne M. O'Dell, Esquire
Sarah C. Stoner, Esquire
Daniel Clearfield, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
(Counsel Retail Energy Supply Association)

Holly Rachel Smith
Exelon Business Services Corporation
701 9th Street, NW
Mailstop EP 2205
Washington, DC 20068
(Counsel for Exelon and Constellation NewEnergy)

Patrick M. Cicero, Esquire
Elizabeth R. Marx, Esquire
Kadeem G. Morris, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
(*counsel for CAUSE-PA*)

Karen Moury, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street 8th Floor
Harrisburg Pa 17101
(*Counsel for Respond Power, LLC*)

Thomas J. Sniscak, Esquire
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
(*Counsel for Pennsylvania State University*)



Allison C. Kaster
Deputy Chief Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. No. 93176

Gina L. Miller
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. No. 313863