COMMONWEALTH OF PENNSYLVANIA

May 15, 2018

**E-FILED**

Rosemary Chiavetta, Secretary
Pennsylvania 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:

I am delivering for filing today my Reply Brief, on behalf of the Office of Small Business Advocate ("OSBA"), in the above-captioned proceedings.

Copies will be served on all known parties in this proceeding, as indicated on the attached Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Sincerely,

Daniel G. Asmus
Assistant Small Business Advocate
Attorney ID No. 83789

*Enclosures*
cc: Judge Mary D. Long
Robert D. Knecht
Parties of Record

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

| | | |
|---|---|---|
| **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<br>P-2017-2637857<br>P-2017-2637858<br>P-2017-2637866** |

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**REPLY BRIEF**
**ON BEHALF OF THE**
**OFFICE OF SMALL BUSINESS ADVOCATE**

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**Daniel G. Asmus, Esq.**
**Assistant Small Business Advocate**
**Attorney ID # 83789**

**For: John R. Evans**
**Small Business Advocate**

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**300 North Second Street, Suite 202**
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**Dated: May 15, 2018**

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# I. INTRODUCTION AND PROCEDURAL HISTORY

On December 4, 2017, 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") filed a Joint Petition for approval of their default service programs ("Joint Petition") with the Pennsylvania Public Utility Commission ("Commission") pursuant to Section 2807(e) of the Public Utility Code, 66 Pa. C.S. §2807(e), and 52 Pa. Code §§54.181 – 54.189 and 69.1801 – 1817. The Joint Petition seeks approval of the Companies proposed Default Service Program ("DSP V") to secure default service supply for the Companies' customers for the period from June 1, 2019 through May 31, 2023.

The OSBA filed an Answer to the Joint Petition as well as a Notice of Intervention and Public Statement on January 2, 2018.

A Prehearing Conference took place on January 17, 2018, before Administrative Law Judge ("ALJ") Mary D. Long, where the parties agreed to a procedural schedule and discovery modifications. ALJ Long entered a Prehearing Order setting forth that procedural schedule on January 19, 2018.

The OSBA submitted the Direct Testimony, Rebuttal Testimony, and Surrebuttal Testimony of its witness, Robert D. Knecht.

Evidentiary hearings were held on March 13, 2018. The testimony of the parties was entered into the record along with certain stipulations.

Consistent with the Prehearing Order and subsequent agreements, the OSBA filed its Main Brief on May 2, 2018.

## II. OSBA'S GENERAL REPLY

In its Main Brief, the OSBA addressed the arguments made by the various parties on issues in which the OSBA has an interest. This Reply Brief responds only to specific arguments raised by FirstEnergy, the Retail Energy Supply Association ("RESA"), and the Pennsylvania State University ("PSU") on those issues in their Main Briefs.

## III. OSBA'S REPLY TO FIRSTENERGY WITH RESPECT TO COMMERCIAL CLASS PROCUREMENTS

OSBA witness Robert D. Knecht expressed concern over the increase in implied risk premiums for FirstEnergy's Commercial class default service procurements, particularly for 3-month contracts. To address this concern, Mr. Knecht recommended that the Companies conduct a review of Commercial class procurements at mid-point in the four-year cycle, coupled with a potential stakeholder meeting to address any continued increase in risk premiums that might warrant a change in procurement procedures.[1]

In their Main Brief, the Companies continued their opposition to Mr. Knecht's proposal, arguing that a mid-point modification to procurement procedures or schedules might confuse auction participants or otherwise increase the "time and expense" charged by suppliers to prepare bids, resulting in reduced supplier participation and increased prices for default service supply.[2]

FirstEnergy further argues that the 18 different procurements over the term of DSP V provide "temporal diversity" which "potentially smooths out any cyclical movements in risk

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[1] OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 9-12.

[2] FirstEnergy Main Brief at 20-21.

premiums."[3] The Companies then go on to note that the use of full-requirements load-following ("FRFL") contracts "has had a good track record in Pennsylvania."[4] They also posit that the procurement bidding rules permit the development of a revised schedule in the event of extraordinary events, and that the Commission is able to reject any auction results that do not align with market conditions.[5] Finally, the Companies argue that administrative and cost savings associated with a four-year DSP program may be lost if the Commission permits a mid-term correction such as the one recommended by Mr. Knecht.[6]

As noted in its Main Brief, the OSBA takes the position that the Companies' concerns regarding administrative costs and savings do not outweigh the continuing harm of increasing risk premiums associated with Commercial class procurements.

## IV. <u>OSBA'S REPLY TO RESA WITH RESPECT TO COMMERCIAL CLASS ELIGIBILITY</u>

The FirstEnergy proposal for DSP V is that customers who have 100kW or greater usage for *each of the preceding twelve months* would be offered hourly pricing. RESA's Main Brief sheds confusion on this proposal, stating that

[3] Id. at 21.

[4] Id

[5] Id.

[6] Id.

> RESA does not oppose the Company's [sic] proposal and recommends that the Companies use the method already existing in their tariff to apply the HPS threshold, ie. a customer whose billing demand is greater than or equal to 100-kW in two consecutive months during the 12 month review period would be classified as HPS.[8]

While RESA would appear to have no opposition to the use of 100kW as the line of demarcation for moving customers to hourly pricing, this quote from the Main Brief appears to mis-state the method existing in the current tariff. Right now, the over-under 400 kW demarcation [which is proposed in DSP V to be lowered to 100 kW] is rate class based, which is Rate 30 v. 35 for West Penn, and GS-Med v. GS-Large for the others. These current rate class demarcations are based on 2 consecutive months with billing demand over 400 kW.

While RESA supports the *2 consecutive months of billing demand* as the basis for demarcation, it does not appear anywhere in RESA's testimony that RESA supports the rate-classes as a basis for demarcation as laid out in the current tariff. The implication here, which is not correct, is that "we should do it this way instead, because the Companies are already doing it this way in their current tariff." The fact is, the Companies are *not* doing it this way in their current tariff.

The OSBA agrees with the analysis of FirstEnergy witness Kevin Seidt, who determined that the 2 consecutive month demarcation would increase the number of unsophisticated customers who do not have the resources to shop for generation or to manage hourly pricing and who have had the option to elect service under the hourly pricing rider for many years but haven chosen not to do so.[9] Because the Companies' proposal will have the least impact on the Commercial class of customers, the OSBA

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[8] RESA Main Brief at 5-6; RESA Statement No. 1, Direct Testimony of Richard J. Hudson, Jr. at 12.

[9] FirstEnergy Main Brief at 17, First Energy Statement No. 4-R, Rebuttal Testimony of Kevin Seidt at 15.

recommends that the Companies' proposal be adopted as filed.[10] As stated by the Companies, "the use of a standard requiring twelve months' data in excess of 100 kW will ensure that only the larger energy customers are required to move to hourly pricing."[11]

## V. OSBA'S REPLY TO THE PENNSYLVANIA STATE UNIVERSITY WITH RESPECT TO COMMERCIAL CLASS ELIGIBILITY

PSU agrees with RESA that the line of demarcation proposed by the Companies to determine which Commercial customers are moved to hourly pricing should not be adopted. PSU supports RESA's 2-consecutive month billing demand threshold.[12] However, PSU did not agree with RESA's alternative proposal, which was to base the classification on the customer's peak load contribution ("PLC") or installed capacity ("ICAP"). PSU believes that neither of these two measures would be transparent or clear to customers and would confuse customers.[13] While the OSBA tends to agree with PSU regarding customer confusion, the OSBA opposes the 2-consecutive month threshold for the same reasons outlined above. Finally, the OSBA also rejects RESA's alternative approach because RESA has failed to meet its burden of proving this alternative to be just and reasonable.

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[10] *See* OSBA Statement No. 1, Direct Testimony of Robert D. Knecht at 5-6.

[11] FirstEnergy Main Brief at 19.

[12] PSU Main Brief at 4; PSU Statement No. 1-SR, Surrebuttal Testimony of James Christ at 7-8.

[13] PSU Main Brief at 5.

## VI. OSBA'S REPLY TO RESA AND FIRSTENERGY REGARDING THE BYPASSBALE RETAIL MARKET ENHANCEMENT RATE MECHANISM

In its Main Brief, the OSBA set forth the reasons for its opposition to the Companies' proposed Bypassable Retail Market Enhancement Rate Mechanism ("BMERM") and the alternative plan offered by RESA. In the OSBA's opinion, neither RESA nor FirstEnergy have presented in Main Briefs any new arguments in favor of their respective positions, and therefore, no reply is necessary.

## VII. OSBA'S WITHDRAWAL OF IT'S MAIN BRIEF ARGUMENT REGARDING TIME OF USE RATES

The OSBA erred in its Main Brief by setting forth its arguments regarding FirstEnergy's time of use rates. The parties have entered into a stipulation with respect to time of use service, to which OSBA is a signatory. The stipulation defers the question of time of use rate offerings to either the next base rate increase proceeding or the next default service proceeding following the full implementation of smart meter back office functionality, estimated to be in the fourth quarter of 2019.

## VIII. CONCLUSION

The OSBA respectfully requests that the Commission adjudicate this proceeding in accordance with the arguments presented herein.

Respectfully submitted,

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Dated: May 15, 2018

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**CERTIFICATE OF SERVICE**

I hereby certify that true and correct copies of the foregoing have been served via email and/or First-Class mail (*unless other noted below*) upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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DATE: May 15, 2018

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