COMMONWEALTH OF PENNSYLVANIA

OFFICE OF CONSUMER ADVOCATE
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

FAX (717) 783-7152
consumer@paoca.org

May 15, 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 Reply Brief in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

Hayley E. Dunn

Hayley E. Dunn
Assistant Consumer Advocate
PA Attorney I.D. 324763
E-Mail: HDunn@paoca.org

Enclosures:
cc: Honorable Mary D. Long
Certificate of Service
*249339

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 Reply 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:

Dated this 15th day of May 2018.

SERVICE BY E-MAIL AND INTER-OFFICE MAIL

Gina L. Miller, Esquire
Allison C. Kaster, Esquire
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
Counsel for I&E

SERVICE BY E-MAIL AND FIRST CLASS MAIL, POSTAGE PREPAID

William E. Lehman, Esquire
Thomas J. Sniscak, Esquire
Hawke, McKeon, & Sniscak, LLP
100 North Tenth Street
Harrisburg, PA 17101
Counsel for PSU

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

Tori L. Giesler, Esquire
Lauren M. Lepkoski, Esquire
Teresa K. Harrold, Esquire
First Energy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612
Counsel for First Energy

H. Rachel Smith
Exelon Business Service Corporation
701 Ninth Street
NW Mailstop EP 2205
Washington, DC 20068
Counsel for Constellation NewEnergy & Exelon Generation

Susan E. Bruce, Esquire
Alessandra L. Hylander, Esquire
Vasiliki Karandrikas, Esquire
Charis Mincavage, Esquire
McNees, Wallace, & Nurick, LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108
Counsel for MEIGU, PICA, & WPPIII

Daniel Clearfield, Esquire
Sarah C. Stoner, Esquire
Deanne M. O'Dell, Esquire
Eckert, Seamans, Cherin, & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
Counsel for RESA

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

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

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

Karen O. Moury, Esquire
Eckert, Seamans, Cherin, & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
Counsel for Respond Power LLC

Derek Rykaczewski, Esquire
Gexa Energy, L.P.
20455 State Highway 249
Suite 200
Houston, TX 77070
Counsel for NextEra Energy

Carl R. Schultz, Esquire
Eckert, Seamans, Cherin, & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
Counsel for Direct Energy

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

Kenneth Springirth
4720 Cliff Drive
Erie, PA 16511

/s/ Aron J. Beatty
Aron J. Beatty
Senior Assistant Consumer Advocate
PA Attorney I.D. 86625
E-Mail: ABeatty@paoca.org

Hayley E. Dunn
Assistant Consumer Advocate
PA Attorney I.D. 324763
E-Mail: HDunn@paoca.org
*249340

Counsel for Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: May 15, 2018

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

REPLY BRIEF OF THE OFFICE OF CONSUMER ADVOCATE

Aron J. Beatty
Senior Assistant Consumer Advocate
PA Attorney I.D. # 86625
E-mail: ABeatty@paoca.org

Hayley E. Dunn
Assistant Consumer Advocate
PA Attorney I.D. # 324763
E-Mail: HDunn@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Dated: May 15, 2018

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I. INTRODUCTION

The Office of Consumer Advocate (OCA) files this Reply Brief pursuant to the procedural schedule set forth by Administrative Law Judge (ALJ) Mary D. Long. The OCA responds primarily to the arguments raised in the Main Briefs of 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) and the Retail Energy Supply Association (RESA). The OCA notes that many of the arguments raised in these respective Main Briefs were addressed fully in the OCA's Main Brief and will not be repeated here. The OCA further notes that no averments in any of the parties' Main Briefs alter the OCA's positon in this proceeding.

First, the OCA recommends that the Companies' residential portfolio be modified to ensure that reasonable default service is provided. In particular, the OCA submits that the Companies should discontinue the proposed "hard stop" and, instead, layer purchases to extend beyond May 31, 2023. Adopting such a practice will alleviate the market timing risk that results from replacing 100% of residential default service energy supplies simultaneously. In addition, the OCA supports the use of a four-year default service plan term by FirstEnergy.

Second, the OCA maintains that the Purchase of Receivables (POR) Clawback Provision of the Joint Stipulation of FirstEnergy, the Bureau of Enforcement and Investigation (I&E), and RESA, which provides for the automatic reporting of customer-specific arrears information to electric generation suppliers (EGS), must be rejected. EGSs are not entitled to this information without customers' full, knowing consent and neither FirstEnergy nor the signatories of the Joint Stipulation have shown that customer consent has been or will be obtained.

Third, the OCA submits that the bypassable retail market enhancement rate mechanism, the Price-to-Compare (PTC) Adder, must be rejected in its entirety. Both FirstEnergy and RESA argue in support of the PTC Adder. The OCA, however, has demonstrated that any purported basis for the PTC Adder is without merit. In addition, the PTC Adder does not represent a cost of providing default service and is not supported by any actual costs. Therefore, the OCA submits that the PTC Adder must be rejected by the Commission as unlawful, unjustified, and inequitable as it was in the DSP II proceeding.[1]

Fourth, the OCA recommends immediate reforms to the Customer Referral Program (CRP) to provide customers with educational and accurate factual information regarding the program. The program information currently offered to customers is inaccurate and the scripts and disclosures result in customers being enrolled without knowledgeable consent. These problems have been exacerbated by FirstEnergy's failure to fully implement prior settlement reforms. As such, the OCA submits that the CRP should be immediately modified in accordance with the OCA's recommendations here and terminate on May 31, 2021, in accordance with the DSP IV settlement.[2]

Fifth, the OCA submits that the Commission must suspend Customer Assistance Program (CAP) shopping until the Companies' implement a program that ensures that shopping CAP customers pay no more than the PTC, using the percentage-off billing option. FirstEnergy argues that the legality of placing protections on CAP customer shopping remains unresolved, while RESA argues that the OCA's proposal should not be allowed absent another reasonable

[1] 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 62).

[2] 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); 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).

alternative. The OCA, however, has demonstrated that the Commission has full authority to require protections and that requiring that CAP customers pay no more than the Price-to-Compare is the most reasonable approach. The protections recommended by the OCA fully comport with the Commonwealth Court's decision. See RESA v. Pa. PUC, Docket No. 230 CD 2017 (Slip Op., May 2, 2018) (RESA).

Lastly, the OCA supports the non-commodity billing, Network Integration Transmission Services (NITS), and Time-of-Use (TOU) rate provisions of the Joint Partial Settlement Agreement in this proceeding and submits that, for the reasons discussed in Sections VI, IX, and X herein, the Commission approve the respective provisions of the Partial Settlement.

II. PROCEDURAL HISTORY

The OCA filed its Main Brief on May 2, 2018.[3] As noted in the OCA's Main Brief, the procedural history in this proceeding is set forth in FirstEnergy's Main Brief.[4] OCA M.B. at 7.

[3] A one-day extension was requested by Exelon Generation Company, LLC and Constellation NewEnergy, Inc. (ExGen) and granted by ALJ Long on May 1, 2018.

[4] 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

As discussed fully in the OCA's Main Brief, FirstEnergy's proposal for a "hard stop" of all contracts on May 31, 2023, exposes the Companies to market conditions at the time of the procurements for its next default service plan and creates unnecessary market timing risk for residential customers. See OCA M.B. at 8-13. 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). Id. Therefore, 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.

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

As noted in the OCA's Main Brief, a four-year default service plan term will avoid the time and expense associated with more frequent filings, resulting in savings that will ultimately accrue to ratepayers. See OCA M.B. at 14. In addition, all major Pennsylvania EDCs have transitioned to four-year default service plans. See OCA M.B. at 14, n. 7. Accordingly, the OCA supports the use of four-year default service plans and submits that FirstEnergy's commitment to utilize a four-year default service plan going forward is appropriate.

IV. PURCHASE OF RECEIVABLES CLAWBACK PROVISION

As discussed fully in the OCA's Main Brief, EGSs are not entitled to receive, or permitted to access, private customer information without customers' full, knowing consent. See OCA M.B. at 14-16. Therefore, the OCA submits that the Commission must reject Section A.3 of the Joint Stipulation of FirstEnergy, I&E, and RESA, which provides for the automatic reporting of customer-specific arrears information from FirstEnergy to EGSs. Joint Stipulation No. 2.

V. BYPASSABLE RETAIL MARKET ENHANCEMENT RATE MECHANISM

A. Introduction

In its Main Brief, the OCA argued that the PTC Adder must be rejected as unjustified and unlawful. See OCA M.B. 17-27. The OCA notes that, in their respective Main Briefs, the following parties also argue that the PTC Adder is unjustified and unlawful: CAUSE-PA, I&E, OSBA, the Industrials, and NextEra. CAUSE-PA M.B. at 10-14; I&E M.B. at 16-24; Industrials M.B. at 7; OSBA M.B. at 8-11; NextEra M.B. at 2. Respond Power, an EGS, and PSU take no position on the imposition of this charge, while Calpine and Direct Energy, also EGSs, did not file Main Briefs. Respond Power at 15; PSU M.B. at 6. Only FirstEnergy and RESA support the PTC Adder and neither of these parties provide any record evidence of actual default service costs associated with the PTC Adder or support for the alleged basis of the PTC Adder – whether it be incentivizing non-shopping residential customers to shop, or correcting for claimed market inequities affecting EGSs. The OCA addressed many of the arguments in FirstEnergy's and RESA's Main Briefs in its Main Brief and will address any additional arguments below.

B. The PTC Adder is Not Supported by Actual, Known, and Measurable Costs.

FirstEnergy claims that the amount of the PTC Adder – 1.44 mills per kWh, or $15.00 per year for the average residential customer – is reasonable as it is based on a "proxy for customer acquisition fees." FE M.B. at 28; OCA M.B. at 17. The level of the PTC Adder, however, is entirely arbitrary. See OCA M.B at 19, n. 9; OCA St. 1S at 10. In particular, because the purpose of the PTC Adder is to incentivize residential customers to participate in the retail market, a proxy for EGS customer acquisition costs is unrelated to that purpose and, "consequently, is fundamentally an arbitrary figure." OCA St. 1S at 10.

FirstEnergy further claims that the PTC Adder is "designed to be revenue neutral" based on its proposal to return of 95% of the revenues from the charge. FE M.B. at 27. The percentage of the revenues from the PTC Adder retained by FirstEnergy will result in substantial windfall to the Company. See OCA M.B. at 19. The percentage retained by the Company equates to $855,000 per year, if only 30 percent of FirstEnergy's residential customers remain on default service. OCA M.B. at 19; OCA St. 1 at 18, Exh. SLE-2. However, 70 percent of FirstEnergy's residential customers are on default service, meaning that the Company will retain an amount significantly higher than $855,000 for the foreseeable future, as there is no evidence that the PTC Adder will increase customer enrollment with EGSs. OCA M.B. at 19, 23; OCA St. 1 at 16, 18; OCA St. 1S at 11-12. In addition, the Companies' return of 95% of the revenues collected is evidence that the PTC Adder does *not* represent cost of providing default service, but is merely a scheme designed to re-distribute funds to EGS customers. See OCA M.B. at 18. Moreover, while the FirstEnergy suggests that the charge is "revenue neutral" to the Companies, it is certainly not revenue neutral as between customers and customer classes.

With regard to the five percent retained by FirstEnergy, FirstEnergy states that the "Companies have *no actual data* from which to determine what their administrative costs of implementing the PTC Adder would be" and that "5% was selected as a reasonable assumption absent data to inform otherwise." FE M.B. at 29 (emphasis added). As discussed in the OCA's Main Brief, FirstEnergy is permitted to recover only the actual costs of providing default service described in Section 2807(e) of the Electric Generation Customer Choice and Competition Act, 66 Pa. C.S. §§ 2801, *et seq*. See OCA M.B. at 17-18. The Companies may not pass along to customers hypothetical expenses under the guise of recovering operating expenses.[5] See OCA

[5] As NextEra notes, "The lack of empirical evidence support led the Commission to reject a similar adder stating: '. . . the Companies and other Parties failed to provide sufficient empirical support for any actual known and

M.B. at 17-18; see also Barasch v. Pa. PUC, 493 A.2d 653, 655 (Pa. 1985); Cohen v. Pa. PUC, 468 A.2d 1143, 1150 (Pa. Commw. 1983). Further, FirstEnergy notes that "no party recommended a different value to be retained," rather than the proposed five percent. FE M.B. at 9. The OCA maintains, however, that no other value would be justified or lawful because the PTC Adder does not represent a cost of providing default service. See OCA M.B. at 18-20.

C. The Commission Rejected FirstEnergy's Previous PTC Adder and Must Reject the PTC Adder on the Same Grounds Here.

FirstEnergy avers that the design of the PTC Adder here is distinct from the design of the retail market enhancement rate mechanism the Commission rejected in DSP II. FE M.B. at 28. It is correct that FirstEnergy's proposal in this proceeding differs from the Market Adjustment Charge (MAC) proposed in DSP II.[6] 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). In DSP II, however, RESA recommended that the MAC be modified to return excess revenues to all ratepayers.[7] Id. at 57. The ALJ and the Commission rejected RESA's modifications in addition to the proposal by FirstEnergy because no actual costs were shown and the re-distribution of funds collected from default service customers to all ratepayers was inequitable. Id. at 58-59, 67. As discussed in the OCA's Main Brief, FirstEnergy's proposal to return revenues collected from the PTC Adder in excess of five percent to all customers mimics RESA's recommended modification of the MAC in DSP II. See OCA

measurable costs that are not being recovered through existing or proposed rates and riders." NextEra M.B. at 2; see also 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 62).

[6] In DSP II, FirstEnergy proposed to retain all revenues collected through the MAC as compensation for the risks it bears as a default service provider. 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).

[7] RESA proposed to use revenues from the MAC to fund improvements to market structure in the EDC's service territory and costs related to risks identified by FirstEnergy that materialize, and to return revenues over and above this amount to distribution customers. Id. at 57.

M.B. 20-22. Therefore, the proposed design of the PTC Adder does not differ from what the Commission previously rejected as unjustified and unlawful in the DSP II proceeding.

Moreover, FirstEnergy relies on the Commission's "policy" of encouraging the development of the retail market as support for the imposition of the PTC Adder. FE Main Brief at 28, 29. While the Commission may have such a policy, the Commission also has a *statutory duty* to ensure that rates are just and reasonable and that default service is provided to customers at the least cost over time.[8] 66 Pa. C.S. § 1301; 66 Pa. C.S. § 2807(e)(3.4). The PTC Adder is in conflict with this statutory duty, as well as the DSP II Order, and must be rejected.

D. RESA's Alleged Basis for the PTC Adder is Without Merit.

RESA claims that the PTC Adder is intended to correct for "an unfair competitive advantage accruing to the benefit of the EDC's default service." RESA M.B. at 10. RESA argues that the PTC Adder is necessary to create a "fair and level playing field" for EGSs. RESA M.B. at 10, 13. As discussed in the OCA's Main Brief, however, the competitive market, is robust and is not characterized by oppressive economic barriers. OCA M.B. at 23; OCA St. 1R at 4. OCA witness Estomin stated 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 M.B. at 23; OCA St. 1R at 5. Further, OCA witness Alexander demonstrated that the average monthly number of residential customers served by EGSs for the FirstEnergy EDCs *increased* by more than 13,000 from 2016 to 2017. OCA M.B. at 44-45; OCA St. 2 at 11.

[8] As CAUSE-PA notes, "the PTC Adder violates the statutory requirements of Act 129, which requires EDCs to procure electric at the least cost generation to customers over time." CAUSE-PA M.B. at 10.

RESA also claims that the PTC Adder is a "reasonable way" to "correct for market inequities occurring under today's market design." RESA M.B. at 9-10. As noted above and in the OCA's Main Brief, market inequities are not present. OCA M.B. at 23; 44-45. Yet, even if market inequities did exist, raising rates for default service customers is not a reasonable or legally permissible response. FirstEnergy's default service customers are entitled to adequate and reliable service at the least cost over time and FirstEnergy is permitted only to recover the actual costs of providing default service. See Preamble to Act 129, 2008 Pa. Laws 129; 66 Pa. C.S. § 2807(e)(3.4); see also supra, Section V.B, Section V.C. FirstEnergy is not permitted to impose a charge on customers to "correct" purported "market inequities."

E. RESA's Proposed Modifications to the PTC Adder Must Be Rejected.

RESA proposes to increase the amount of the PTC Adder, doubling the charge to 2.88 mills per kWh. RESA M.B. at 12. In addition, RESA proposes that the Commission "consider allocating a portion of the revenues from the retail rate mechanism for low-income assistance programs." RESA M.B. at 14. In particular, RESA suggests that 10% of the revenue collected from the PTC Adder be used to fund universal service programs. RESA M.B. at 14-15.

RESA's basis for increasing the amount of the PTC Adder is without merit. As OCA witness Alexander explained, "Mr. Hudson's suggested changes are clearly intended to increase the PTC Adder and the resulting PTC price so as to allow EGSs to charge higher prices against an artificially inflated PTC." OCA St. 2R at 8. This proposal should be rejected for the reasons discussed in the OCA's Main Brief regarding the meritless "basis" for the PTC Adder as claimed by FirstEnergy and RESA as well as the harm to customers through increased charges for default service customers and EGS customers. See OCA M.B. at 22, 24-26; see also supra, Section V.D.

Moreover, RESA's recommended modifications to the PTC Adder do not correct any of the deficiencies in FirstEnergy's proposal identified in Sections V.B and V.C – the PTC Adder does not represent a cost of providing default service and it is inequitable to re-distribute revenues from the charge. In DSP II, the ALJ found and the Commission agreed that it is "inequitable on the surface" to implement a charge in which "only default service customers would be charged . . . but all residential customers would receive the credit." 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). Under RESA's modifications in the instant proceeding, all default service customers would be charged the PTC Adder, but only low-income assistance program customers would receive the benefit of any leftover revenues. This re-distribution scheme is inequitable and has no basis in the law.

Further, the OCA notes that the parties identified in Section V.A – CAUSE-PA, I&E, OSBA, the Industrials, and NextEra – who oppose FirstEnergy's proposal, also oppose RESA's modifications to the PTC Adder. CAUSE-PA M.B. at 13-14; I&E M.B. at 24-29; OSBA M.B. at 10-11; Industrials M.B. at 9; NextEra M.B. at 2.

VI. NON-COMMODITY BILLING

The OCA supports the provisions of the Joint Partial Settlement Agreement pertaining to the issue of non-commodity billing, which provide as follows:

> 1. Subject to the appropriate approvals by the Commission, issues related to supplier consolidated billing shall be addressed in the Commission's generic proceeding on the topic in Docket M-2018-2645254.
>
> 2. No party to this settlement will object to any other party to this settlement recommending at Docket M-2018-2654254 that the Commission take administrative notice of the record in this proceeding with respect to the issue of access to EDC bills for EGS non-commodity products, and no party will object to any other party's submittal of testimony or other record evidence from this DSP V proceeding in Docket M-2018-2645254.

The issues related to supplier consolidated billing (SCB) in this matter are consistent with those identified in the Commission's March 27, 2018 Secretarial Letter, which provides that the proceeding and *en banc* hearing will address: "(1) whether SCB is legal under the Public Utility Code and Commission regulations; (2) whether SCB is appropriate and in the public interest as a matter of policy; and (3) whether the benefits of implementing SCB outweigh any costs associated with implementation."[9] *En Banc* Hearing on Implementation of Supplier Consolidated Billing, Docket No. M-2018-2645254 (Secretarial Letter March 27, 2018, at 1). Further, addressing the issues in this proceeding in the generic proceeding will conserve administrative resources and costs associated with fully litigating supplier consolidated billing issues in two separate proceedings. Therefore, the OCA submits that the Commission should approve the non-commodity billing provisions of the Joint Partial Settlement Agreement. [10]

[9] The issues in this matter are also consistent with those detailed in the Commission's "list of issues concerning implementation of SCB and potential alternatives to SCB" provided with the March 27, 2018 Secretarial Letter. See *En Banc* Hearing on Implementation of Supplier Consolidated Billing, Docket No. M-2018-2645254 (Secretarial Letter March 27, 2018, at 3-5).

[10] The OCA submits that non-commodity billing and SCB issues are distinct from issues derived from FirstEnergy's marketing and sales of non-utility services through its third-party agent, Allconnect. OCA M.B. at 41-42.

VII. CUSTOMER REFERRAL PROGRAM

A. Introduction

In its Main Brief, the OCA argued that FirstEnergy's CRP is not presented to customers in an educational, accurate manner and that the "savings" advertised are not actually experienced by customers who participate in the CRP. See OCA M.B. at 29-46. The OCA recommended that the CRP be immediately reformed and terminated on May 31, 2021.[11] The OCA notes that CAUSE-PA supports the immediate reform of the CRP. CAUSE-PA M.B. at 16-17. The OCA also notes that I&E, OSBA, the Industrials, NextEra, Respond Power, and PSU took no position on this issue, while Calpine and Direct Energy did not file Main Briefs in this proceeding. The OCA addressed many of the arguments in FirstEnergy's and RESA's Main Briefs in its Main Brief and will address any additional arguments below.

B. FirstEnergy and RESA's Arguments regarding the CRP are Without Merit, and the CRP Must be Immediately Reformed.

The OCA supports the immediate reform of the CRP to ensure that customers are provided with an educational and accurate factual presentation of the program. See OCA M.B. at 29-46. In response to the OCA's recommendations for a reform of the CRP, FirstEnergy claims that "tak[ing] issue with those scripts and demand[ing] changes to them puts the Companies in the position of continually having to modify their scripts." FE M.B. at 31. FirstEnergy also notes that making changes to the scripts may result in lengthy scripts that could disrupt the Companies' ability to meet contact center performance metrics. FE M.B. at 30-31.

[11] FirstEnergy proposes to extend its CRP through May 31, 2023. FirstEnergy's proposal to extend its CRP through 2023 is in conflict with the Commission's Order in its prior default service proceeding, which approved the extension of FirstEnergy's CRP only 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, at 13); 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).

The OCA submits that FirstEnergy must present accurate and clear information to customers regarding the CRP. FirstEnergy "offers no evidence or facts to support" claims that script changes may lead to lengthy scripts or an inability to meet contact center performance metrics. OCA St. 2S at 9. As OCA witness Alexander stated:

> [T]he notion that spending more time actually educating the customers eligible for this program . . . about what the program is and soliciting a more properly informed consent to refer the customer to Allconnect for additional details and actual enrollment is going to have significant impact on the EDC's annual call center performance is not supported.

OCA St. 2S at 9. In addition, OCA witness Alexander explained as follows:

> [I]t is the EDC's decision to rely on Allconnect to present the Referral Program and take the necessary steps to secure the customer's agreement and forward this to the proper EGS for enrollment implementation. FirstEnergy charges the participating EGSs $30 per enrollment to cover its costs. There is no reason why FirstEnergy could not allocate that fee to cover a reallocation of fee revenues to the EDC and Allconnect, eliminate the Allconnect role altogether, or charge a larger fee to cover incremental costs.

OCA St. 2S at 9-10.

Similarly, RESA argues that the OCA's proposed script changes will negatively impact the effectiveness of the program. RESA M.B. at 20. The OCA submits, however, that educational and accurate factual information regarding the CRP must be presented to customers in an unbiased manner. See OCA M.B. at 29-46. RESA claims that it is "factually accurate" to describe the CRP as a "savings program." RESA M.B. at 20; RESA St. No. 1R at 14. As detailed in the OCA's Main Brief and OCA witness Alexander's Testimony, however, customers who enroll in the program do not always receive the advertised discount or any savings at all. See OCA M.B. at 32-34. The record shows, as it pertains to customers using 1,000 kWh per month who enrolled in the CRP in January 2016 and remain for one year:

- Met-Ed customers paid $89.71 *more* than the PTC
- Penelec customers paid $12.94 *more* than the PTC
- Penn Power customers paid $66.48 *more* than the PTC
- West Penn customers experienced savings of only $7.21, *not* equating to 7%

OCA M.B. at 32; OCA St. 2 at 26; Exh. BA-2. In addition, as it pertains to customers using 1,000 kWh per month who enrolled in the CRP in January 2017 and remained for one year:

- Met-Ed customers paid $35.83 *more* than the PTC
- Penelec customers paid $57.28 *more* than the PTC
- Penn Power customers paid $78.33 *more* than the PTC
- West Penn customers experienced savings of only $25.12, *not* equating to 7%

OCA M.B. at 32; OCA St. 2 at 26-27; Exh. BA-2.

Currently, customers have no shown an understanding that advertised discount applies only to the fixed price compared to the PTC when the customers enrolls, not the bill impact that customers will experience during the duration of their enrollment in the CRP. OCA M.B. at 33; OCA St. 2 at 27. Customers enrolled in the CRP experience "relatively tiny savings," if any. OCA M.B. at 32; OCA St. 2 at 26. Additionally, the trend of customers experiencing less than the advertised savings, and no savings at all, has been documented in both the 2013 DSP III proceeding and the 2015 DSP IV proceeding. See OCA M.B. at 33-34.

RESA further avers "that there has been a significant decline in customer enrollment since 2017 due to changes in FirstEnergy's CRP scripts." RESA M.B. at 17. The OCA submits that, while some DSP IV script changes were implemented by FirstEnergy, not all changes were incorporated into the training materials or fully implemented.[12] As OCA witness Alexander stated, "the sample call recordings did not reveal any connection between this reduced level of enrollment with the reaction by customers to the FirstEnergy EDC statements or the expanded

[12] FirstEnergy's CSRs now inform customers that the EDC transaction has been completed prior to transferring customers to Allconnect. OCA M.B. at 43, n. 22; OCA St. 2 at 22. FirstEnergy, however, has not revised its CSR training and scripting materials in a comprehensive manner to implement the DSP IV settlement and recent training materials did not include the agreed upon scripting language. OCA M.B. at 35; OCA St. 2 at 17, 18-19.

disclosures made by Allconnect agents." OCA M.B. at 43-44; OCA St. 2R at 6. As discussed in the OCA's Main Brief, many factors contribute to CRP enrollment and FirstEnergy's CRP has experienced swings since its implementation in 2013. OCA M.B. at 44; OCA St. 2 at 9-10. For instance, enrollment increased in 2014 and 2016, but decreased in 2015 (post-Polar Vortex) and 2017 (low PTC rates caused lower EGS enrollment). Id. Moreover, swings in CRP enrollment do not reflect the average monthly number of customers served by EGSs. OCA M.B. at 44-45, OCA St. 2 at 11.

C. Recommendation

As described above and in the OCA's Main Brief, the CRP must be immediately reformed. See OCA M.B. at 45-46. FirstEnergy should take the following steps identified by OCA witness Alexander to reform the 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 M.B. at 45-46; OCA St. 2 at 31.

The CRP should then terminate on May 31, 2021, and after that date, if FirstEnergy wishes to extend the program, the Commission should require the following: (1) an affirmative

showing as to why FirstEnergy's CRP should continue, (2) a study regarding what, if any, customer benefits have been provided in the form of bill impacts during the 12-month term, (3) a study regarding the impact of customer experience after the 12-month term as it pertains to the EGS renewal process and the prices charged, and (4) a program proposal that addresses the difference between the fixed rate CRP agreement and the PTC quarterly changes. OCA M.B. at 46; OCA St. 2 at 32.

VIII. CUSTOMER ASSISTANCE PROGRAM SHOPPING

A. Introduction

In its Main Brief, the OCA detailed the legal basis upon which CAP customer shopping protections were based. See OCA M.B. at 48-52. As detailed in the Main Brief, the OCA argued that the Commonwealth Court's decision in 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) 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. See OCA M.B. at 50.

In its Main Brief, FirstEnergy explains why it is not proposing to place protections on CAP customer shopping, and argues that the "legality and reasonableness of such restrictions remains unresolved." FE M.B. at 32. In its Main Brief, RESA argues that CAP shopping, "[r]estrictions that would adversely affect available choices for CAP participants cannot be imposed." RESA M.B. at 27 (citing CAUSE-PA at 1107-1108). RESA opposes CAP shopping proposals restricting EGS offers to prices at or below the PTC, speculating that such protections would "likely violate" the policies of EGS and eliminate market offers. RESA M.B. at 27. The OCA respectfully submits that both the Companies' positon and RESA's position do not comport with Pennsylvania law.

B. The Commonwealth Court's Decision in RESA v. Pa. PUC Authorizes the Commission to Implement CAP Shopping Protections.

On May 2, 2018, the due date of Main Briefs in this proceeding, the Commonwealth Court issued an Order in RESA v. Pa. PUC, concerning RESA's appeal of the Commission's approval of CAP shopping protections in PPL Electric Utilities most recent default service proceeding. In its decision, the Court affirmed the OCA's legal analysis of the CAUSE-PA

decision that CAP shopping protections are appropriate if supported with substantial evidence. RESA, Slip Op. at 21-24. In addressing its prior decision in CAUSE-PA, the Commonwealth Court stated:

> [W]e concluded that PUC has the authority under the Choice Act to impose or 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[,]" including approving an EGS price ceiling and prohibiting early cancellation fees. CAUSE-PA, 120 A.3d at 1103-1104.

RESA, Slip Op. at 23.

As the Court held, where the Commission finds there is substantial evidence to impose CAP rules, such as a price ceiling, it has the authority to do so. Here, the record clearly demonstrates the harm that unrestricted CAP shopping has had on rate affordability and program cost-effectiveness. See OCA M.B. at 52-55. 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 Court in RESA held that PPL CAP shopping customers were paying on average $298,406 more each month than had they paid the PTC. RESA, Slip Op. at 36. The Court concluded that "in short, substantial evidence supports PUC's determination that unrestricted shopping for CAP customers was resulting in harm both to CAP and non-CAP customers." RESA, Slip Op. at 37. Here, the evidence shows that the Companies' "net Monthly Cost Above PTC Costs" is $316,146 per month. Joint Stipulation No. 3. The OCA submits that the harm present here clearly meets the standard for the implementation of CAP shopping protections.

The Companies argue that the Commonwealth Court had not identified "specific circumstances" in which "extreme CAP shopping limitations, such as a price ceiling, are reasonable." FE M.B. at 36. In RESA, however, the Court affirmed PPL's "CAP-SOP" program, by which CAP customers could receive EGS service only at an initial 7% discount below the PTC. The OCA submits that allowing EGSs to offer CAP customers service at or below the PTC as proposed by the OCA is less of what the Companies call an "extreme CAP shopping limitation" than what the Court *affirmed* in RESA. The OCA's proposal is clearly within the parameters contemplated by the Court in RESA. While the Companies argue that CAP shopping protections that limit prices to "at or below" the PTC would eliminate supplier offerings, such arguments are speculation. FE M.B. at 38. Regardless, the Court made it clear that the Commission has the authority to put protections in place that ensure CAP affordability and program cost-effectiveness. RESA, Slip Op. at 24-30.

C. RESA's Alternative CAP Protections are Insufficient.

In lieu of CAP protections supported by the OCA, CAUSE-PA, and I&E, RESA offers alternative approaches to address the problem that range from increased CAP program funding, education initiatives, Purchase-of-Receivable Clawback modifications, and elimination of cancellation fees for CAP customers. RESA M.B. at 28. The proposed alternatives are not fully developed and will not directly remedy the continuing financial harm demonstrated in this case.

As ALJ Colwell stated in her PPL DSP Recommended Decision, such alternatives are inadequate. In PPL, the ALJ addressed proposals to encourage CAP customers to voluntarily choose Standard Offer Program service when shopping, and found such an approach lacking:

> Therefore, RESA's recommendation is to impose no restrictions on CAP shopping and to encourage CAP customers to use the SOP if they do shop. This "cross your fingers and hope they will listen" approach is simply insufficient. It fails to protect the CAP shoppers from the negative effects of paying more than the PTC

> and reduces the ability of the individual customers to stay on CAP as long as possible. It reduces the overall ability of the CAP program to offer participation to as many customers as possible within the permitted expenditure as well as maximizes the burden on other residential ratepayers who fund CAP, some of whom are themselves low-income customers.

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 60) (PPL I.D.).

D. The Evidence of CAP Shopping Harm is Irrefutable.

RESA further argues that the actual net harm resulting from CAP customer shopping does not fully portray customer experience. RESA M.B. at 24-26. RESA argues that some customers are shopping and receiving lower rates than the PTC. RESA M.B. at 25. The annualized cost of CAP shopping, $3,793,746 (Joint Stipulation No. 3), however, is a net figure. To the extent some CAP customers are shopping and receiving savings, those savings are reducing an even higher level of harm for those not experiencing savings. As a result, the unaffordability concerns expressed in the case may be understated.

To the extent other benefits are being received, the OCA submits that the affordability of CAP service must be measured in dollars and cents, not non-monetary benefits. See OCA St. 2S at 14-15. While RESA claims "broader benefits" are being experienced by CAP EGS customers, only general examples of benefits are provided. RESA M.B. at 25. As OCA witness Alexander testified, RESA witness Hudson "does not include any terms and conditions, disclosures, prices, or other credible evidence to support his examples." OCA St. 2S at 15. Mr. Hudson attempts to demonstrate savings enjoyed by a hypothetical CAP EGS customer that has service including a bundled smart thermostat. RESA M.B. at 26. RESA develops a scenario where energy savings

could result in lower energy costs than if that hypothetical CAP EGS customer was served at the PTC. RESA M.B. at 26. OCA witness Alexander responded to this speculative customer, as follows:

> Q. DOES MR. HUDSON PROVIDE ANY FACTS OR EVIDENCE ABOUT THE IMPACT OF ANY OF HIS HYPOTHETICAL EFFICIENCY PROGRAMS ON CAP CUSTOMER USAGE AND AFFORDABILITY OF SERVICE?
>
> A. No. Instead, Mr. Hudson uses a completely made-up example that assumes a 10% reduction in usage by a CAP customer. Furthermore, he ignores the current weatherization and other efficiency programs targeted to CAP and low income customers through the Low Income Usage Reduction Program (LIURP), the costs of which are included in other customer rates. There is no reason for ratepayers to subsidize these hypothetical EGS conservation programs to these same customers when there is no oversight or evaluation of their value or impact.
>
> Q. DOES MR. HUDSON PROVIDE ANY FACTS OR EVIDENCE ABOUT THE SCOPE AND SCALE OF ANY OF THESE EXAMPLES IN TERMS OF THE NUMBER OF EGSs MAKING SUCH OFFERS OR THE NUMBER OF CAP CUSTOMERS WHO HAVE ACCEPTED AND ENROLLED WITH THESE OFFERS?
>
> A. No.
>
> Q. DOES MR. HUDSON RECOGNIZE THE IMPACT OF HIGH EGS PRICES ON CAP CUSTOMER AFFORDABILIY OF SERVICE OR THE IMPACT ON OTHER RATEPAYERS IN HIS ALLEGATIONS OF VALUE ASSOCIATED WITH HIS OFFERS TO CAP CUSTOMERS?
>
> A. No.

OCA St. 2S at 15. As OCA witness Alexander explained, there is simply no substantive evidence showing that the savings and benefits hypothesized by RESA are, in fact, offsetting the clear harm shown in this case. The OCA further submits that it is not reasonable for non-CAP residential customers supporting CAP subsidies to fund non-monetary benefits.

As the Court in RESA and 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 supports the provision of the Joint Partial Settlement Agreement pertaining to the issue of NITS, which provides as follows:

> 1. NITS will remain the responsibility of both default service and electric generation suppliers.

The DSP IV settlement provided that NITS would "remain the obligation of default service providers and electric generation service providers during the default service delivery period beginning June 1, 2017." 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 14).[13] The default service delivery period agreed to in DSP IV spans four years, from June 1, 2017, through May 31, 2021. Id. at 8. As the four year period ends on May 31, 2021, and any changes to NITS in instant proceeding would become effective before that date on June 1, 2019, maintaining the status quo is reasonable and appropriate at this time. Therefore, the OCA submits that the Commission should approve the non-market based charges provision of the Joint Partial Settlement Agreement.

[13] 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).

X. TIME-OF-USE RATE

The OCA supports the provisions of the Joint Partial Settlement Agreement pertaining to the issue of the time-of-use (TOU) rate, which provide as follows:

> 1. The Companies are currently providing residential TOU service under the terms and conditions of the Companies' Price to Compare Default Service Rate Riders as described in each Company's Rider K, Time-Of-Use Default Service Rider. The Companies will make a specific proposal regarding their residential time of use rate offerings in the earlier of their first base rate increase requests or default service proceedings following full implementation of smart meter back office functionality, which is planned for fourth quarter 2019 as of the date of this Partial Settlement.

The DSP IV settlement provided that "[FirstEnergy] currently offers an optional time-of-use (TOU) pricing rate to residential customers and will continue to do so in the manner approved by the Commission in the previous DSP proceeding (for Penn Power and West Penn) and in the most recent Met-Ed and Penelec base rate proceedings." 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 14).[14] At this time, it is appropriate to maintain the status quo. In addition, it is appropriate for the Companies to make a specific proposal regarding TOU rates after the build out of their smart meter infrastructure has been completed. Therefore, OCA submits that the Commission should approve the TOU rate provision of the Joint Partial Settlement Agreement.

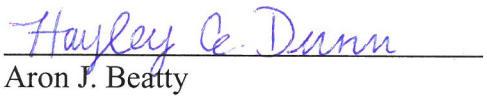
[14] See supra, n. 13.

XI. CONCLUSION

As detailed above and in the OCA's Main Brief, OCA submits the following: (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 POR Clawback stipulation includes the impermissible automatic release of private customer information to EGSs and must be rejected, (3) the PTC Adder does not reflect a cost of providing default service and must be rejected as illegal, unjustified and inequitable, (4) the Companies should immediately reform the CRP and the CRP should terminate on May 31, 2021, and (5) CAP protections are needed for shopping CAP customers to avoid paying more than the PTC.

The OCA respectfully requests that the Commission adopt the OCA's residential supply mix proposal, reject Section A.3 of the POR Clawback Stipulation, reject the PTC Adder in its entirety, require the Companies to reform the CRP and terminate the CRP on May 31, 2021, and suspend CAP shopping until FirstEnergy implements a program to ensure that CAP customers pay no more than the PTC using the percentage-off billing option. Further, the OCA respectfully requests that the Commission approve the non-commodity billing, NITS, and TOU rate provisions of the Joint Partial Settlement Agreement for the reasons set forth above.

Respectfully Submitted,



Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Aron J. Beatty
Senior Assistant Consumer Advocate
PA Attorney I.D. #86625
E-Mail: ABeatty@paoca.org

Hayley E. Dunn
Assistant Consumer Advocate
PA Attorney I.D. #324763
E-Mail: HDunn@paoca.org

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