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May 15, 2018

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

VIA ELECTRONIC FILING

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 for electronic filing with the Pennsylvania Public Utility Commission, please find the Reply Brief of the Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA") and the West Penn Power Industrial Intervenors ("WPPII") (collectively, the "Industrials") in the above-captioned docket.

We have served copies of this filing in accordance with the attached Certificate of Service. If you have any questions regarding this electronic filing, please contact the undersigned.

Sincerely,

McNEES WALLACE & NURICK LLC

By 

Alessandra L. Hylander

Counsel to the Met-Ed Industrial Users Group,
the Penelec Industrial Customer Alliance and
the West Penn Power Industrial Intervenors

Enclosure

c: Administrative Law Judge Mary D. Long (via e-mail and First-Class Mail)
Stephen Jakob, Bureau of Technical Utility Service (via e-mail)
Certificate of Service

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CERTIFICATE OF SERVICE

I hereby certify that I am this day serving a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant).

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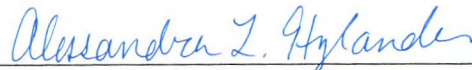
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Dated this 15th day of May, 2018, at Harrisburg, Pennsylvania

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY BRIEF OF THE MET-ED INDUSTRIAL USERS GROUP,
THE PENELEC INDUSTRIAL CUSTOMER ALLIANCE, AND
THE WEST PENN POWER INDUSTRIAL INTERVENORS**

Airgas USA, LLC
Appvion, Inc.
Carpenter Technology Corporation
East Penn Manufacturing Company
Electralloy, a G.O. Carlson, Inc., Co.
Ellwood National Steel
Erie Forge & Steel, Inc.
Ervin Industries
Glen-Gery Corporation
Hanover Foods Corporation
Indiana Regional Medical Center
Knouse Foods Cooperative, Inc.
Latrobe Specialty Metals
Lebanon Valley College

Lehigh Specialty Melting (Whemco)
Magnesita Refractories Co.
MERSEN USA St Marys-PA Corp.
Pittsburgh Glass Works
Royal Green LLC
Sheetz, Inc.
Standard Steel
Sweet Street Desserts, Inc.
Team Ten, LLC - American Eagle Paper Mills
The Plastek Group
The Proctor & Gamble Paper Products Co.
U.S. Silica Company
Wegmans Food Markets, Inc.

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Dated: May 15, 2018

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APPENDIX A: STATEMENT IN SUPPORT OF PARTIAL SETTLEMENT

I. INTRODUCTION

On May 2, 2018, the Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), and the West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrials") filed a Main Brief¹ with the Pennsylvania Public Utility Commission ("PUC" or "Commission") opposing certain aspects of the proposed fifth default service plans ("DSP Vs") of Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power"), and West Penn Power Company ("West Penn") (collectively, "Companies").² The Industrials received Main Briefs from the Companies, the Office of Small Business Advocate ("OSBA"), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), the Retail Energy Supply Association ("RESA"), the Office of Consumer Advocate ("OCA"), the PUC's Bureau of Investigation and Enforcement ("I&E"), Respond Power, LLC ("Respond Power"), The Pennsylvania State University ("PSU"), and NextEra Energy Marketing, LLC ("NextEra").³

The Industrials' Main Brief ("M.B.") fully discusses their concerns regarding the Companies' proposed DSP Vs.⁴ Accordingly, the Industrials are filing this Reply Brief in order to respond to specific arguments raised in other parties' Main Briefs. In particular, this Reply Brief

¹ For a more detailed account of the procedural history in this proceeding, please consult Section II of the Industrials' Main Brief filed on May 2, 2018, in this proceeding. See Industrials' M.B., pp. 1-4. The Industrials simplified the structure of this Reply Brief because it will not respond to every argument contained in the parties' Main Briefs but only those issues necessitating additional response. The Industrials' decision not to respond to all arguments should not be construed as agreement with the positions of any party on any of the outstanding issues in this proceeding.

² *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Docket Nos. P-2017-2637855, et al. (Dec. 11, 2017).

³ Direct Energy Services, LLC ("Direct Energy"), Constellation NewEnergy, Inc. and Exelon Generation Company, LLC (collectively, "Exelon"), and Calpine Energy Solutions, LLC ("Calpine") did not file Main Briefs.

⁴ Because the Companies jointly filed their proposed DSP Vs, the Industrials' M.B. referred to them collectively as the "DSP V." For purposes of clarity, the Industrials refer to the Companies' DSPs as "DSP Vs" in this Reply Brief.

focuses on the Companies' misguided view that the revenue-neutral nature of the proposed Bypassable Retail Market Enhancement Mechanism ("PTC Adder") renders it just and reasonable. Companies' M.B., p. 28. Moreover, this Reply Brief addresses RESA's unsubstantiated allegations that the PTC Adder would be appropriate with modifications. RESA's M.B., p. 8-15. As discussed in Section V, *infra*, the PTC Adder, with or without RESA's proposed modifications, is unjust, unreasonable, and should not be adopted.

In addition, while the majority of parties either support or do not oppose the imposition of a four-year term for each of the Companies' DSP Vs, the OSBA's Main Brief proposes "a mid-term review of the issue of risk premiums for the Commercial class of customers [receiving default service]" and requests "a stakeholder process to address any problems that arise with respect to risk premiums." OSBA's M.B., pp. 4-5. As discussed in Section III, *infra*, the Companies have raised reasonable concerns that OSBA's proposal could create confusion during default service supply auctions and impede the administrative efficiencies achieved by a four-year plan. Companies' M.B., p. 20-21. The Industrials share similar concerns and are troubled by the notion that OSBA's proposal would permit other parties to request mid-term modification of the DSP Vs. As a result, the Industrials support the Commission adopting a four-term term for the DSP Vs without allowing mid-term modification. However, if the PUC adopts the OSBA's recommendation, then the mid-term review should be limited specifically to the issue of risk premiums for the commercial procurement class and not give rise to any other issues involving any other classes or other issues (*e.g.*, the mid-term review should not allow for reopening to address the issue of NITS cost recovery).

Finally, although complete settlement could not be achieved in this proceeding, parties were able to address and resolve specific issues of concern, including the following issues:

(i) Network Integration Transmission Service ("NITS") charges; (ii) Non-Commodity Products; (iii) FERC 494 Settlement; (iv) Net Metering; and (v) Time-of-Use service. Accordingly, on May 15, 2018, the Companies filed a Joint Petition for Partial Settlement ("Partial Settlement") identifying the terms of the parties' agreement on those issues.⁵ The Industrials have attached a Statement in Support of that Partial Settlement to this Reply Brief as Appendix A.

III. DEFAULT SERVICE PLAN PORTFOLIO AND TERM

E. Default Service Plan Term

One of the issues not resolved through the Partial Settlement is the matter of the DSP V term. As noted in Section I, *supra*, while the majority of parties either support or do not oppose the imposition of a four-year DSP V term for each of the Companies, the OSBA's Main Brief proposes "a mid-term review of the issue of risk premiums for the Commercial class of customers [receiving default service]" and requests "a stakeholder process to address any problems that arise with respect to risk premiums." OSBA's M.B., pp. 4-5. The Companies have raised several reasonable concerns as to why the OSBA's proposal should not be adopted. For instance, the Companies indicated that OSBA's recommendation could "create confusion for participants in default service supply auctions" and could have a negative impact on the bidding process. Companies' M.B., pp. 20-21. Furthermore, the Companies indicated a mid-term review would impede the administrative efficiencies achieved by a four-year plan (such as the avoided time and expense associated with more frequent filings). *Id.* at 21. Moreover, the Companies suggested that under OSBA's proposal, "any party would be entitled to submit a petition for a mid-term modification of the DSPs." *Id.* at 20.

⁵ The NITS issue was not settled until May 1, 2018, and, accordingly, NITS was not included in the list of resolved issues provided to ALJ Long in Joint Stipulation No. 1 at the April 10, 2018 hearing. However, as noted above, the NITS issue has been added to Partial Settlement.

The Industrials share similar concerns. Notably, the Industrials are troubled by the idea that a mid-term review may present other parties with the opportunity to propose overarching changes to the DSP Vs. As a result, the Industrials support the Commission adopting a four-term term for the DSP Vs without allowing mid-term modification. However, if the PUC adopts OSBA's recommendation, then the mid-term review should be limited specifically to the issue of risk premiums for the commercial procurement class and not give rise to any other issues involving any other classes or other issues. In other words, the Industrials would oppose allowing a mid-term review to address the issue of NITS cost recovery.

IV. PURCHASE OF RECEIVABLES CLAWBACK PROVISION

The Industrials understand that the Companies have reached a stipulation with RESA, I&E, and Respond Power advancing a proposal that, in their view, resolves their concerns regarding the clawback charge. Notably, this stipulation provides for continuation of the Companies' Clawback Charge pilot for a four-year period and provides for the development of a quarterly EGS-specific customer arrears report. Companies' M.B., pp. 25-26. The Industrials continue to take no position on this issue at this time. However, the Industrials respectfully request that, to the extent further analysis incurs additional costs, such costs should not be inappropriately shifted to large commercial and industrial ("Large C&I") customers.

V. BYPASSABLE RETAIL MARKET ENHANCEMENT RATE MECHANISM ("PTC ADDER")

As noted in the Industrials' Main Brief, the Companies proposed to implement and apply a PTC Adder to residential default service customers in order to incentivize those customers to begin shopping for their electricity supply. Industrials' M.B., pp. 5-9. The Companies attempted to distinguish the PTC Adder from the Market Adjustment Charge, a similar rate mechanism that the PUC rejected during the Companies' DSP II proceeding, on the basis that the PTC Adder is

intended to be "revenue neutral to the Companies." Companies' M.B., p. 28. The fact that the PTC Adder is allegedly revenue neutral does not change the fact that the PTC Adder itself is unjust and unreasonable because it conflicts with prevailing law, sets forth bad policy, and hinders the ability of natural market forces to create a truly competitive market for generation. *See* Industrials' M.B., pp. 5-9. Accordingly, the PTC Adder must be denied for the reasons expressed in the Industrials' Main Brief.

Most of the other parties to this proceeding also oppose the imposition of the PTC Adder. *See, e.g.*, OSBA's M.B., pp. 8-11. RESA, however, supports the imposition of the PTC Adder not because it would allegedly incentivize residential default customers to shop for their electricity supply, but because the PTC adder would allegedly mitigate the anti-competitive advantage enjoyed by the EDCs' default service product. RESA's M.B., pp. 8-11. RESA proposes certain modifications to the Companies' calculation of the PTC Adder and suggests changing the manner in which revenues collected by the PTC Adder are distributed. *Id.* at pp. 8-15. As noted above and in the Industrials' Main Brief, the PTC Adder is wholly unjust and unreasonable and conflicts with applicable law. Industrials' M.B., pp. 5-9. None of RESA's proposed modifications would make the PTC Adder a just and reasonable mechanism. Accordingly, RESA's proposed modification to the Companies' PTC Adder should also be rejected.

VI. NON-COMMODITY BILLING

As indicated in Section I, *supra*, the parties have resolved the issue of non-commodity billing through the Partial Settlement. *See* Partial Settlement, Section II.A. The Industrials' Statement in Support of the Partial Settlement is attached hereto as Appendix A.

VII. CUSTOMER REFERRAL PROGRAM

The Industrials continue to take no position on this issue at this time. However, the Industrials understand that other parties have requested further analysis of this issue. *See, e.g.,* OCA M.B., pp. 29-46. Thus, the Industrials respectfully request that to the extent the PUC approves any additional analysis or collaborative discussions on this issue, the costs incurred for such analysis should not be inappropriately shifted onto Large C&I customers.

VIII. CUSTOMER ASSISTANCE PROGRAM SHOPPING

The Industrials continue to take no position on this issue at this time. However, the Industrials understand that other parties recommend modifying the Companies' Customer Assistance Program ("CAP") to impose certain limitations on CAP customer shopping. *See, e.g.,* OCA's M.B., pp. 47-63. Thus, the Industrials respectfully request that to the extent the PUC approves any additional analysis or collaborative discussions on this issue, the costs of such analysis or discussion should not be inappropriately shifted onto Large C&I customers.

IX. NON-MARKET BASED CHARGES⁶

The Partial Settlement resolves issues pertaining to Non-Market Based Charges and specifically alleviates the Industrials' concerns regarding NITS cost recovery by confirming that the EGSs and default suppliers will continue to remain responsible for NITS cost collection. *See* Partial Settlement, Section II.E and Appendix A, ¶ 8. Although RESA agreed to this settlement provision, and while RESA included a statement to that effect in its Main Brief (*see* RESA's Main Brief, p. 29), several portions of RESA's Main Brief advocate in favor of altering that status quo. *See, e.g.,* RESA Main Brief, p. 2 & Appendix C, Proposed Ordering Paragraph No. 14. The

⁶ Issues related to (i) net metering and (ii) distribution and recovery of FERC 494 Settlement allocations were resolved via the Partial Settlement. *See* Partial Settlement, Section II.B-C. The Industrials' Statement in Support of the Partial Settlement is attached hereto as Appendix A.

Industrials assume that these recommendations to modify the NITS cost recovery process were inadvertent errors. If, however, those statements were intentional, then the Commission must reject those recommendations for all of the reasons listed in MEIUG, PICA, WPPII Statement No. 1.

X. TIME OF USE RATES

As indicated in Section I, *supra*, the parties have resolved the issue of time-of-use rates. *See* Partial Settlement, Section II.D. The Industrials' Statement in Support of the Partial Settlement is attached hereto as Appendix A.

XI. CONCLUSION

WHEREFORE, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, and the West Penn Power Industrial Intervenors respectfully request:

- (a) that the Pennsylvania Public Utility Commission approve the Joint Petition for Partial Settlement;
- (b) deny OSBA's proposal for a mid-term review of the DSP V, or, if the PUC accepts OSBA's proposal, then limit that mid-term review to specifically the issue of risk premiums for the commercial procurement class; and
- (c) deny the imposition of a PTC Adder.

Respectfully submitted,

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Dated: May 15, 2018

APPENDIX A

STATEMENT IN SUPPORT OF THE MET-ED INDUSTRIAL USERS GROUP, THE PENELEC INDUSTRIAL CUSTOMER ALLIANCE, AND THE WEST PENN POWER INDUSTRIAL INTERVENORS

The Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), and the West Penn Power Industrial Intervenors ("WPPII") (collectively, "Industrials"), by and through their counsel, submit that the Joint Petition for Partial Settlement ("Partial Settlement") filed in the above-captioned proceeding is in the public interest and represents a fair, just, and reasonable resolution of certain issues relating to the above-captioned Joint Petition of Metropolitan Edison Company ("Met-Ed"), Pennsylvania Electric Company ("Penelec"), Pennsylvania Power Company ("Penn Power"), and West Penn Power Company ("West Penn") (collectively, "Companies") for approval of their fifth default service plans ("DSP Vs"). As a result of settlement discussions, the Companies; the Industrials; the Office of Consumer Advocate ("OCA"); the Office of Small Business Advocate ("OSBA"); and the Retail Energy Supply Association ("RESA") (collectively, "Parties" or "Joint Petitioners") have agreed upon the terms embodied in the Partial Settlement.¹ The Industrials offer this Statement in Support to further demonstrate that the Partial Settlement is in the public interest and should be approved without modification.

¹ The Bureau of Investigation and Enforcement ("I&E"), Direct Energy ("Direct"), the Penn State University ("Penn State"), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), Exelon Generation Company, LLC and Constellation NewEnergy, Inc. ("Exelon"), NextEra Energy Services ("NextEra"), and Respond Power, LLC ("Respond"), which are parties to this proceeding, have authorized the Joint Petitioners to represent that they do not oppose the Partial Settlement. In addition, Calpine Energy Solutions, LLC ("Calpine") takes no position on the Partial Settlement, and specifically does not oppose the Partial Settlement as it relates to Network Integration Transmission Services ("NITS").

I. BACKGROUND

1. On December 11, 2017, the Companies filed with the Commission their joint request for approval of their DSP Vs. Specifically, the Companies set forth a proposed plan to establish the terms and conditions under which the Companies will supply default service from June 1, 2019, through May 31, 2023.²

2. On December 22, 2017, the Industrials filed a Joint Petition to Intervene in the above-captioned proceeding. The Industrials are *ad hoc* associations of energy-intensive commercial and industrial customers receiving electric service in Met-Ed's, Penelec's, and West Penn's service territories. As users of substantial volumes of electricity in the Companies' service territories, the Industrials are directly impacted by changes to the terms and conditions of their electricity service, and thus, were concerned with the Companies' proposed DSP Vs.

3. A Prehearing Conference was held on January 17, 2018, before presiding Administrative Law Judge ("ALJ") Mary D. Long. A procedural schedule was established for discovery, written testimony, settlement discussions, and hearings.

4. At the evidentiary hearing on April 10, 2018, the Parties informed the ALJ that they had resolved the following issues: Non-Commodity Products, FERC 494 Settlement, Net Metering, and Time-of-Use service. That settlement was entered into the record as Joint Stipulation No. 1. Subsequently, on May 1, 2018, the parties resolved the issue relating to Network Integration Transmission Service ("NITS") cost recovery. The issues set forth in Joint Stipulation No. 1 and the NITS cost recovery resolution were combined into the Partial Settlement filed by the Companies on May 15, 2018.

² Although the Companies delivered their Joint Petition to implement DSP Vs to the Commission on December 4, 2017, a copy of the filing was not posted on the docket for this proceeding until December 11, 2017. That copy of the filing was dated December 11, 2017.

II. STATEMENT IN SUPPORT

5. The Commission has a strong policy favoring settlements. As set forth in the Commission's regulations, "[t]he Commission encourages parties to seek negotiated settlements of contested proceedings in lieu of incurring the time, expense and uncertainty of litigation." 52 Pa. Code § 69.391; *see also* 52 Pa. Code § 5.231. Consistent with the Commission's policy, the Joint Petitioners engaged in several negotiations to resolve the issues raised by the various parties. These ongoing discussions produced the foregoing Partial Settlement.

6. The Joint Petitioners agree that approval of the proposed Partial Settlement is overwhelmingly in the best interest of the parties involved.

7. The Joint Petition is in the public interest for the following reasons:

- a. As a result of the Partial Settlement, expenses incurred by the Joint Petitioners and the Commission for addressing all of the issues in this proceeding will be substantially less than they would have been if all of the issues in this proceeding had been fully litigated.
- b. Uncertainties regarding further expenses associated with possible appeals from the Final Order of the Commission regarding Non-Commodity Products, FERC 494 Settlement, Net Metering, Time-of-Use service, and NITS are avoided as a result of the Partial Settlement.
- c. The Partial Settlement results in terms and provisions that present a just and reasonable resolution for a portion of the issues raised regarding the Companies' proposed DSP Vs.
- d. The Partial Settlement reflects compromises on all sides presented without prejudice to any position any Joint Petitioner may have advanced so far in this proceeding. Similarly, the Partial Settlement is presented without prejudice to any position any party may advance in future proceedings involving the Companies.

8. In addition, the Partial Settlement satisfies the specific concerns of the Industrials by providing: (a) that, subject to the appropriate approvals by the PUC, issues related to supplier consolidated billing shall be addressed in the Commission's generic proceeding on that topic in

Docket No. M-2018-2654254, *see* Partial Settlement, Section II.A; (b) that the Companies' proposal related to the distribution and recovery of FERC 494 Settlement allocations will be considered uncontested in this matter, *see* Partial Settlement, Section II.B; and (c) that NITS cost recovery will remain as the status quo (*i.e.*, EGSs and default suppliers will continue to collect NITS costs from customers), *see* Partial Settlement, Section II.E.

9. The Industrials support the Partial Settlement because it is in the public interest; however, in the event the Partial Settlement is rejected by the ALJ or the Commission, the Industrials will resume their litigation position.

10. As set forth above, the Industrials submit that the proposed Partial Settlement is in the public interest and adheres to the Commission's policies promoting negotiated settlements. The Partial Settlement was achieved after numerous settlement discussions. While Joint Petitioners have invested time and resources in the negotiation of the Partial Settlement, this process has allowed the Parties, and the Commission, to avoid expending the substantial resources that would have been required to fully litigate all of the issues in this proceeding, while still reaching a just, reasonable, and non-discriminatory result. The Joint Petitioners have thus reached an amicable resolution to certain issues in dispute as embodied in the proposed settlement. Approval of the Partial Settlement will permit the Commission and Joint Petitioners to avoid incurring the additional time, expense, and uncertainty of further litigation of certain issues in this proceeding. *See* 52 Pa. Code § 69.391.

III. CONCLUSION

WHEREFORE, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, and the West Penn Power Industrial Intervenors request that the Pennsylvania Public Utility Commission approve the Joint Petition for Partial Settlement submitted in this proceeding.