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May 15, 2018

VIA EMAIL AND FIRST CLASS MAIL

The Honorable Mary D. Long
Administrative Law Judge
Piatt Pace, Suite 220
301 5th Avenue
Pittsburgh, PA 15222

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 and P-2017-2637866; **REPLY BRIEF OF THE PENNSYLVANIA STATE UNIVERSITY**

Your Honor:

Enclosed you will find The Pennsylvania State University's Reply Brief in the above-captioned dockets. Copies of this filing have been served in accordance with the attached Certificate of Service.

Should you have any questions or comments, please feel free to contact me directly.

Very truly yours,

Thomas J. Sniscak

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TJS/WEL/das
Enclosures
cc: Rosemary Chiavetta, Secretary
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Per the Certificate of Service

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 No. P-2017-2637855** **P-2017-2637857** **P-2017-2637858** **P-2017-2637866**

REPLY BRIEF OF THE PENNSYLVANIA STATE UNIVERSITY

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Dated: May 15, 2018

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I. INTRODUCTION

The Pennsylvania State University ("Penn State" or "PSU") is addressing two issues in this reply brief: 1) First Energy Corporation's ("FirstEnergy" or "Company") procurement plan for medium and large commercial and industrial customers that proposes to continue hourly pricing service ("HPS") but also to lower the size threshold for the HPS service from 400 kW to 100 kW and also to change the current practice of identifying customers who would be shifted to hourly pricing service from its current tariff that uses a two-consecutive months usage over the threshold as the determination to a new determination standard that would not shift any customers that experience at least one-month usage under threshold (Section III.D); and, 2) Penn State's Statement of Non-Opposition regarding the settled issue of the treatment of Network Integration Transmission Service ("NITS") charges (Section IX).

First Energy proposed a procurement plan for medium and large commercial and industrial customers that proposes to continue HPS but also proposes to lower the size threshold for the HPS from 400kW to 100kW. FirstEnergy also proposes to identify customers exceeding the 100kW threshold whereby if a customer's measured demand is below 100kW in any of the 12 months of the prior year then the customer will remain eligible for FirstEnergy's fixed-price procurement default service product and not be shifted to HPS.

Penn State has no issue with reducing the hourly pricing threshold from 400 kW to 100kW; however, FirstEnergy's proposal to change the determination standard used to identify customers exceeding the 100kW threshold should be rejected because it has provided no support in the record why this change would be just and reasonable, especially in light of the fact that RESA witness, Mr. Hudson, testified that he does not believe "this approach appropriately categorizes the over 100-kW customers. Instead it would retain many customers who often exceed the 100kW demand level…" RESA St. 1 at 11-12.

Regarding the treatment of NITS charges, the Parties have settled this issue by agreeing that through this Default Service Plan period, Network Integration Transmission Service charges (NITS) shall continue to be collected in the same manner as before, with no change to default wholesale suppliers' and EGS' responsibility in regard to said charges. Penn State offers its reasons why it does not oppose this settled issue in Section IX below.

II. PROCEDURAL HISTORY

Provided by FirstEnergy in Main Brief.

III. DEFAULT SERVICE PLAN PORTFOLIO AND TERM

A. Residential Portfolio

N/A

B. Commercial Portfolio

N/A

C. Industrial Portfolio

N/A

D. Procurement Classes

Lowering the Hourly Pricing Threshold from 400kW to 100kW

1. Company Proposal

Penn State's position on this issue is set forth fully in its Main Brief on pages 2 through 5 and incorporates those arguments here as if set out in full. However, Penn State includes some of those arguments here for context in its reply to arguments set forth in FirstEnergy's Main Brief. As context, FirstEnergy, through its witness, Kimberlie L. Bortz, proposed a procurement plan for medium and large commercial and industrial customers that proposes to continue hourly pricing service ("HPS") but also proposes to lower the size threshold for the HPS from 400kW to 100kW. FirstEnergy also proposes to identify customers exceeding the 100kW threshold whereby if a customer's measured demand is below 100kW in any of the 12 months of the prior year then the customer will not be shifted to HPS but instead remain eligible for FirstEnergy's fixed-price procurement default service product. Met-Ed/Penelec/PennPower/West Penn ("FE") Statement No. 1 at 12:15 and 13:17-22.

As stated in its Main Brief, Penn State does not have an issue with reducing the hourly pricing threshold from 400kW to 100kW; however, Penn State does have an issue with the way FirstEnergy is proposing to identify customers exceeding the 100kW threshold. This change to the determination standard is a completely new adjustment to the way the Company now identifies customers that will be moved to hourly pricing. As such, FirstEnergy has the burden to prove that this new threshold identifier is just and reasonable and in the public interest.[1] As RESA witness Mr. Hudson explains, the current tariff language defines the current threshold as customers who exceed the threshold in any 2 consecutive months:

> If an existing Customer's billing demand is equal to or greater than 400 kW for two (2) consecutive months in the most recent twelve-month period, the Customer may no longer be eligible for service under his Rate Schedule GS-Medium, and shall be placed on Rate Schedule GS-Large or such other Rate Schedule for which such Customer most qualifies.[2] RESA St. 1 at 12.

The Company has made this proposed threshold adjustment of "actual measured demand in any of the twelve months is less than 100kW" which is different from the "billing demand is equal to or greater than 400kW" as stated in the current tariff without any support in the record as to why this change is necessary or how it benefits customers in any way. Penn State agrees with

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[1] Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is well-established that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible." *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). Therefore, FirstEnergy has the burden of proving that its proposed default service provider program is just and reasonable.

[2] Met-Ed Tariff, Electric Pa. P.U.C. No. 52 (Supp.37) at Fourth Revised Page 66.

RESA witness Mr. Hudson's explanation of why the Company-proposed one month under standard is unreasonable and should not be adopted:

> I do not believe this approach appropriately categorizes the over 100-kW customers. Instead, it would retain many customers who often exceed the 100-kWdemand level of the Companies' commercial fixed-price default service option. Under the Companies' proposal, a customer would have to exceed the 100-kW level in every month over a 12-month period to become classified as an HPS customer. A typical high-volume customer that experienced an anomalous month, for example due to a facility closure or some other one-time event, would be miscategorized if even a single month fell below this level. The Companies' proposal is also inconsistent with existing precedent in their current tariffs. RESA St. 1 at 11-12.
>
> To maintain consistency with the current practice, I recommend using the existing method that the Companies' use for applying the 400-kW threshold. More specifically, any 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. RESA St. 1 at 12.

In its Main Brief, First Energy criticizes Mr. Hudson's testimony as making broad assumptions based on inaccurate or incomplete data. FirstEnergy Main Brief at 17-19. However, it is not Mr. Hudson (nor Penn State) that has the burden of proof on this issue. The burden of proof lies with the Company, who is proposing a change to the threshold identifier (currently 2 months over and proposed by the Company as one-month under). The Company has done this without any statistical analysis in its filing or testimony that shows that this change is needed or benefits customers in any way. The Company has provided no examples (i.e., customer complaints) that show any type of pattern that the current identifier is unfair or burdens customers in any way.

Penn State witness James Crist agrees that the two-month identifier should remain as it currently is: "The Company should continue to use the criteria of observing a customer's billing demand and if an existing customer's billing demand exceeds the threshold (current 400 kW but proposed to be 100kW) for two (2) consecutive months in the most recent twelve-month period then that customer should be shifted to HPS." PSU Statement No. 1-SR at 7:5-8. Leaving the identifier threshold as is currently stated in the tariff provides continuity to customers who are used to doing business in this manner. Put simply, do not fix what is not broken.

OSBA in its Main Brief references the study data presented by Mr. Knecht (OSBA Main Brief at 6). Mr. Knecht's study simply cited the number of customers (1,511) that would be switched and comments on their diversity "a significant number of businesses in a wide range of industries will be affected" (OSBA Stmt 1 at 6). It provided no basis or claim "that the Companies' proposal is the best offer in this proceeding" (OSBA Main Brief at 8) and provides no evidence or claim that "If all of the customers under a less restrictive standard are kicked out of the Commercial class now, it will not be possible to undo the damage when a reasonable impact assessment is complete." (OSBA Main Brief at 8). OSBA's evidence does not support a change in the determination method.

Therefore, the Companies' unexplained proposal to change the way the Companies identify customers exceeding the 100kW threshold whereby if a customer's measured demand is below 100kW in any of the 12 months of the prior year then the customer will remain eligible for FirstEnergy's fixed-price procurement default service product should be rejected because First Energy has not satisfied its burden of proof that this change is just and reasonable.[3]

2. RESA's Alternate Proposal

RESA's alternative proposal of using PCL/ICAP as the threshold determinant was not supported by any party, including RESA, in briefs. We must conclude that the billing demand should and will continue to be used as the appropriate measurement.

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[3] *Lansberry*, 578 A.2d 600, 602.

E. Default Service Plan Term

N/A

IV. PURCHASE OF RECEIVABLES CLAWBACK PROVISION

N/A

V. BYPASSABLE RETAIL MARKET ENHANCEMENT RATE MECHANISM

N/A

VI. NON-COMMODITY BILLING

N/A

VII. CUSTOMER REFERRAL PROGRAM

N/A

VIII. CUSTOMER ASSISTANCE PROGRAM SHOPPING

N/A

IX. NON-MARKET BASED CHARGES

Network Integration Transmission Service

Penn State's Statement of Non-Opposition to the Settlement.

The issue of Network Integration Transmission Service ("NITS") has been settled by the Parties by agreeing that through this Default Service Plan period, Network Integration Transmission Service charges (NITS) shall continue to be collected in the same manner as before, with no change to default wholesale suppliers' and EGS' responsibility in regard to said charges.

Penn State's witness, Mr. James Crist, explained that non-market based charges ("NMB") "are cost-based charges that are not tied to supply and demand fundamental and transparent market outcomes." PSU Statement No. 1-R at 5:16-18. He further explained that a Network Integration Transmission Service ("NITS") charge is:

> [a] service that allows an electric transmission customer to integrate, plan, economically dispatch and regulate its network reserves in a manner

> comparable to that in which the Transmission Owner serves its end-use customers (also called "Native Load") that the Load-Serving Entity is obligated to serve. NITS charges are NMB Charges assessed by PJM for transmission related services and are cost-of-service rates that are imposed on all load serving entities ("LSEs") based on each LSE's share of load served. Accordingly, all customer load on an EDC's system is allocated a share of transmission service costs based on the customer's Network Service Peak Load Contribution. NITS cost-of-service based charges are ultimately paid for by all customers based on the customer's contribution to the system peak.

PSU Statement No. 1-R at 5:20 – 6:8.

The Commission has consistently directed that NITS charges remain the obligation of default service providers and the EGS providers and not be collected from any customer groups through a non-bypassable rider. *See* Docket Nos. P-2011-2273650; P-2013-2391368; P-2015-2511333.

Penn State witness Mr. Crist explained why NITS charges remaining the obligation of default service providers and the EGS providers and not be collected from any customer groups through a non-bypassable rider is in Penn State's and customers' interest:

> Suppliers are in the business of providing and pricing products to customers such as Penn State. ... the principles of a competitive market are to create the opportunity for clever marketers to develop products that meet customers' needs. Those marketers that succeed in developing such products will obtain the patronage of customers and those marketers that are unsuccessful in product development will not. ...
> In sum, NITS is an issue that should remain negotiated by a supplier and a shopping customer and should not be mandated in the supplier's favor.

PSU Statement No. 1-R at 10:13 – 11:21.

Mr. Crist went on to explain why shifting responsibility for the collection of NITS charges back to FirstEnergy would be detrimental to Penn State:

> [a] detailed discussion of the processes and procedures, and an estimate of the incremental development and on-going administrative costs ... would take substantial time and participation in such working groups which burdens customers, and EGSs.

PSU Statement No. 1-SR at 4:4-22.

> Penn State is one of the largest commercial customers on the West Penn Power system ... PSU includes the evaluation of how an EGS addresses NITS charges as part of its method to select an EGS and wishes to retain the ability to do so. In addition to the University Park campus, Penn State takes electric service for its other smaller commercial accounts and prefers to deal with the issue of NITS charges as it currently is through contractual arrangements with competitive EGSs and in some cases through sales service from First Energy. Making the change that Mr. Campbell proposes would then necessitate having to renegotiate existing contracts in an equitable manner which would require time and effort and could place customers at a financial disadvantage.

PSU Statement No. 1-SR at 5:2-11.

For these reasons, Penn State does not oppose the settled issue regarding the treatment of NITS charges whereby NITS charges, through this Default Service Plan period, shall continue to be collected in the same manner as before, with no change to default wholesale suppliers' and EGS' responsibility in regard to said charges.

X. TIME-OF-USE RATE

N/A

XI. CONCLUSION

The Pennsylvania State University requests Your Honor and the Commission approve the Company's proposed procurement plan for medium and large commercial and industrial customers to the extent that it proposes to continue hourly pricing service but also lowers the threshold for the hourly pricing service from 400kW to 100kW but reject the Company's proposal that changes the billing demand threshold to one month under, and to continue the Company's current demand threshold of two months over. Penn State also requests that Your Honor and the Commission approve the Settlement without modification whereby NITS charges, through this Default Service

Plan period, shall continue to be collected in the same manner as before, with no change to default wholesale suppliers' and EGS' responsibility in regard to said charges.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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