

COMMONWEALTH OF PENNSYLVANIA



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June 28, 2018

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

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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Exceptions in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in cursive script that reads "Hayley E. Dunn".

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cc: Honorable Mary D. Long  
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CERTIFICATE OF SERVICE

Re: Joint Petition of Metropolitan Edison :  
Company, Pennsylvania Electric Company : Docket Nos: P-2017-2637855  
Pennsylvania Power Company, and West : P-2017-2637857  
Penn Power Company for Approval of : P-2017-2637858  
Their Default Service Programs : 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 Exceptions, 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 28<sup>th</sup> day of June 2018.

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Dated: June 28, 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

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EXCEPTIONS  
OF THE OFFICE OF CONSUMER ADVOCATE

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Dated: June 28, 2018

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## I. INTRODUCTION

On June 8, 2018, Administrative Law Judge (ALJ) Mary D. Long issued her Recommended Decision (R.D.) in the default electricity service plan proceedings for 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). The Companies filed default service plans (DSPs) for service beginning on June 1, 2019, and ending May 31, 2023. The proposed plans have been identified as “DSP V.” FirstEnergy’s current plans, identified as “DSP IV,” were approved as four-year plans set to expire on May 31, 2021.

The OCA supports ALJ Long’s well-reasoned decision in many respects. Relevant to these Exceptions, however, ALJ Long recommended that FirstEnergy’s proposed residential procurement plan design, which does not include residential default supply contracts beyond the end date of the plan, be approved. The OCA submits that the “hard stop” design, while approved in prior DSPs for FirstEnergy, should be modified at this time. Substantial evidence has been presented in this proceeding which demonstrates that modifying the procurement schedule will provide safeguards for future service that should be adopted in DSP V.

The OCA also files an Exception in this proceeding regarding the proposed release of customer specific information to electric generation suppliers (EGSs). Certain parties in this proceeding agreed to a stipulation that would address a Purchase of Receivables (POR) “Clawback” provision designed to reduce EGS driven uncollectibles. The OCA does not object to the Clawback mechanism. The OCA submits, however, that EGSs that are compensated through the Companies’ purchase of receivables program should not be given data on the status of bill payments of individual customers without affirmative customer consent.

Lastly, the OCA files an Exception to ALJ Long's decision regarding the Companies' Customer Referral Plan (CRP). The OCA presented testimony demonstrating customer confusion as to the CRP and evidence that the CRP does not provide the advertised savings. The OCA submits that the program should not be extended and, if extended, must be subject to the recommended improvements. In addition, the OCA submits that FirstEnergy's implementation of the CRP is a quality of service issue that is properly before the Commission and must be addressed in this default service proceeding.

For the reasons set forth in these Exceptions, the OCA respectfully submits that the ALJ erred in recommending (1) the continuation of the "hard stop" in FirstEnergy's DSP V, (2) the release of customer-specific payment data to EGSs absent affirmative consent, and (3) the extension of FirstEnergy's CRP without necessary improvements to the program. The OCA requests that the Commission grant these Exceptions and adopt the modifications and recommendations herein and in the OCA's Main Brief and Reply Brief.



## II. EXCEPTIONS

OCA Exception No. 1: The ALJ Erred in Her Recommendation to Reject the OCA's Alternative Residential Procurement Schedule. (R.D. at 27-30; OCA M.B. at 8-13; OCA R.B. at 5)

In her R.D., ALJ Long determined that the OCA's proposed modifications to the Companies' residential supply procurement plan should not be adopted. R.D. at 30. ALJ Long concluded that, "[w]hile OCA's recommended approach of layering contracts is a viable alternative approach used by other EDCs, OCA has not identified a specific issue with the Companies' past procurements that would require a change in procurement strategy." R.D. at 30. The OCA respectfully submits, however, that the specific issue it identified with regard to the Companies' past procurements is the unnecessary market timing risk for residential customers created by ending all contract purchases on a single date. See OCA M.B. at 11.

In addition, ALJ Long concluded that the "OCA has not demonstrated that the auction schedule proposed by the Companies will not provide adequate price stability for customers." R.D. at 30. The OCA respectfully submits that the ALJ erred in this conclusion for two reasons.

First, the OCA presented evidence that extending purchases beyond the term of the DSP is a best practice designed to avoid this potential risk and provide price stability. OCA M.B. at 11-12; OCA St. 1S at 6. OCA witness Steven Estomin explained why ending all contract purchases on a single date creates an unnecessary market timing risk, as follows:

All of the residential power supply contracts relied upon in the last year of the default service plan period expire at the end of the period. This reduces the degree to which residential default service customers can benefit from temporal diversification of the portfolio in the subsequent default service period, that is, the one that would commence June 1, 2023.

OCA M.B. at 11; OCA St. 1 at 11. The OCA provided further testimony that integrating contracts into a subsequent DSP is a common practice in Pennsylvania. OCA M.B. at 12-13;

OCA St. IS at 6. OCA witness Estomin stated that the concerns identified by the Companies have been addressed by other Pennsylvania EDCs. OCA witness Estomin explained:

While the Commission's Order issued in Docket Nos. P-2011-2273650 et al., did not adopt the inclusion of overhanging contracts, the Commission did not close the door on overhanging contracts.

Furthermore, certain Pennsylvania utilities currently provide default service that relies on overhanging contracts to avoid precisely the "hard stop" problem that I identified in my Direct Testimony. PPL Electric Utilities and PECO both include overhanging products as part of their residential default service portfolios to avoid the "hard stop" problem.

OCA St. IS at 6 (footnote omitted).

Second, although the OCA demonstrated that FirstEnergy's auction schedule would not provide adequate price stability, the OCA was not required to do so. A utility has an affirmative burden to produce enough evidence to establish the justness and reasonableness of every component of its request and, in order to persuade the finder-of-fact, there must be substantial evidence that each component of its request is in fact just and reasonable. See Sharon Steel Corp. v. Pa. PUC, 468 A.2d 860, 862 (1978); Johnstown v. Pa. PUC, 133 A.2d 246, 250 (Pa. Super. 1957). FirstEnergy had the burden of proving that its proposed auction schedule provides adequate price stability and FirstEnergy failed to refute evidence presented by the OCA that extending purchases beyond the term of the DSP is a best practice designed to avoid potential risk and provide price stability. OCA M.B. at 11-12; OCA St. IS at 6. Further, the OCA submits that it is not necessary or appropriate for the Commission to require residential customers to experience rate volatility between DSPs before the OCA can support a remedy.

Therefore, the OCA submits that the evidence in this proceeding supports modifications designed to reduce the potential for rate shock between DSP periods. OCA witness Estomin

provided the following modifications to the Companies' proposed residential procurement schedule designed to address this issue:

[I]n the final residential auction scheduled to take place under the proposed plan, 16 of the 46 12-month contracts be converted to two-year contracts. This would allow the subsequent default service planning period, i.e., the one to commence in June 2023, to avoid the lack of temporal diversification that characterizes the currently proposed plan through the elimination of the "hard stop" at the end of the default service plan period.

OCA St. 1 at 12. As such, OCA submits that the Commission should adopt the modifications proposed by OCA witness Estomin to reduce the risk of rate shock between DSP periods.

OCA Exception No. 2: The ALJ Erred in Her Recommendation to Allow Electric Generation Suppliers to be Provided Customer Specific Payment Information Without Affirmative Customer Consent. (R.D. at 42-45; OCA M.B. at 14-16; OCA R.B. at 6)

In its Main Brief, the OCA expressed concerns with the unauthorized release of customer specific information to Electric Generation Suppliers (EGSs) as part of the proposed "Clawback" mechanism. See OCA M.B. at 14-16. The Joint Stipulation regarding the POR Clawback states:

The Stipulating Parties agree that the following settlement terms resolve the following issue raised in the above-captioned docket:

A. POR Clawback Charge

3. The Companies will develop an EGS-specific customer arrears report with unpaid aged EGS account balances. This report will be provided to EGSs participating in the Companies' purchase of receivables programs on a quarterly basis, beginning no later than October 20, 2018, reflecting EGS arrears for third quarter 2018.

Joint Stipulation No. 2.

The information that is to be provided pursuant to this provision of the Joint Stipulation refers to customer-specific information, rather than aggregate information. OCA M.B. at 15. The OCA submits that EGSs are not entitled to receive or permitted to access such customer

information without customers' full, knowing consent. Pursuant to the Commission's regulations, "private customer information" includes the "customer's historical billing data." 52 Pa. Code § 54.8. As such, the OCA does not support the release of customer specific data as called for in this provision of the Joint Stipulation.

There has been no showing that proper customer consent has been obtained or will be obtained by FirstEnergy for the stipulated release of customer information. OCA M.B. at 15. As explained by OCA witness Barbara Alexander, with regard to a "mechanism to share customer specific payment histories with the customer's EGS," there is no "specific authorization that allows the EGS to obtain the customer's EDC billing information, particularly as it pertains to partial payments, the allocation of partial payments between the EDC and the EGS, payment arrangement terms, receipt of financial assistance, etc." OCA M.B. at 15-16; OCA St. 2S at 13. This is particularly the case when the EGS is not responsible for collecting unpaid charges from the customer. The EDC is responsible for collecting unpaid supplier charges as the EGS has sold its receivables to the EDC and "[t]he EGS is no longer liable for collecting or communicating with the individual customers concerning their payment profile and any such communications are likely to . . . adversely impact the customer's abilities to interact with the EDC to obtain required rights and responsibilities." OCA M.B. at 16, OCA St. 2S at 13; OCA St. 2R at 9.

Nonetheless, in her R.D., ALJ Long rejected the OCA's position, finding that the EGSs in question are already the specific EGSs of those customers whose information would be released. R.D. at 43. The ALJ found, however, that Paragraph 3 of the Joint Stipulation was vague and offered the following modifications to that provision:

3. The Companies will develop an EGS-specific customer arrears report with unpaid aged EGS account balances. This report will be provided to EGSs participating in the Companies' purchase of receivables programs on a quarterly basis, beginning no later than October 20, 2018, reflecting EGS arrears for third

quarter 2018. **Information contained in the customer arrears report provided to each EGS shall only contain information regarding customers of that specific EGS.**

R.D. at 45 (emphasis in original). The OCA respectfully submits that these modifications, while an improvement to the Joint Stipulation, do not address the OCA's concerns.

Therefore, the OCA submits that customer-specific arrears information should not be automatically reported to EGSs as there is no specific authorization for EGSs to receive this information and EGSs are not responsible for collecting unpaid charges from customers.

OCA Exception No. 3: The ALJ Erred in Her Recommendation to Approve an Extension of the Customer Referral Program Through 2023 at this Time. (R.D. at 56-63; OCA M.B. at 29-46; OCA R.B. at 14-18)

a. The OCA Introduced Evidence that the Customer Referral Program Actually Confuses and Misleads Customers.

In her R.D., ALJ Long stated that "the OCA is attempting to relitigate issues regarding the design of the CRP that have been raised and resolved in prior proceedings without introducing any specific evidence that the design of the CRP actually confuses or misleads customers." R.D. at 60. The OCA submits that, in this case, where the Companies are proposing a two-year extension of the CRP through 2023, all issues regarding the design, implementation, and merit of the program are open to review by the parties and evaluation by the Commission. Further, the OCA respectfully disagrees with the ALJ's statement that the OCA did not introduce evidence regarding the confusing nature of the CRP and submits that the OCA presented such evidence in testimony and its Main Brief. See OCA M.B. at 39-41; OCA St. 2 at 22-24.

The OCA has suggested reforms to the CRP in past DSP proceedings, most recently, the Commission approved reforms in DSP IV. OCA M.B. at 34-35; OCA St. 2 at 15-16 (citing 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 provided information in this proceeding regarding FirstEnergy’s operation of the program since DSP IV because FirstEnergy committed to make certain changes to the program and failed to do so. As OCA witness Alexander noted, FirstEnergy “did not revise its customer training and scripting materials in a comprehensive manner to implement . . . the DSP IV settlement” and recent training materials “did not include the scripting language agreed to in the DSP IV Joint Petition for Settlement.” OCA M.B at 35; OCA St. 2 at 17, 18-19. As such, despite prior reforms to the CRP, a multitude of issues remain, namely that the description given to customers prior to enrollment is misleading and customers do not experience the advertised savings.

OCA witness Alexander analyzed numerous recordings of calls between FirstEnergy customer service representatives (CSRs) and calls between Allconnect representatives and customers during March 2017, July 2017, October 2017, and January 2018 – after FirstEnergy was required to implement the DSP IV reforms. As discussed in the OCA’s Main Brief, OCA witness Alexander found:

- The statement and meaning of the FirstEnergy CSRs’ reference to a confirmation number is *not at all clear to the customer* and may lead to the customer being under the impression that the regulated-utility transaction has not been completed. OCA M.B. at 39-40; OCA St. 2 at 22-23; OCA St. 2R at 6, 7.
- The FirstEnergy CSRs use *inappropriate scare tactics* regarding the potential changes in the PTC and do not inform customers regarding their right to remain with the default service provider. OCA M.B. at 40; OCA St. 2 at 23.
- Allconnect agents *do not explicitly ask customers to enroll in the CRP* and, instead, ask which supplier the customer would like to select immediately after reading a hasty, lengthy disclosure. OCA M.B. at 40-41; OCA St. 2 at 24.
- *Customers hesitate and are confused* regarding the question by the Allconnect agent regarding which supplier they elect, but allow the agent to proceed to select a supplier for them. OCA M.B. at 40; OCA St. 2 at 24.

In addition, the record in this proceeding shows that customers enrolled in the CRP experience “relatively tiny” savings that are less than advertised, or no savings at all – a trend that has been documented in DSP III and DSP IV as well. OCA M.B. at 32, 33-34; OCA R.B. at 16; OCA St. 2 at 26. In particular, as it pertains to customers using 1,000 kWh per month who enrolled in the CRP in January 2016 and remained 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 R.B. at 16; OCA St. 2 at 26; Exh. BA-2. 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 R.B. at 16; OCA St. 2 at 26-27; Exh. BA-2.

As OCA witness Alexander noted, “FirstEnergy’s customers are misled about the nature of this program, are not provided with neutral consumer education and information about the program, and are enrolled without knowledgeable consent” and do not experience the advertised savings. OCA St. 2 at 8. Therefore, the OCA submits that the Commission should not approve any extension of the CRP and, if it does approve an extension, the Commission must require FirstEnergy to immediately take the steps identified by the OCA in order to reform the CRP. See OCA M.B. at 45-46; OCA R.B. at 17-18.

- b. It is Not Necessary or Appropriate to Address the Issues Raised by the OCA Regarding FirstEnergy’s CRP in a Separate Proceeding.

In rejecting the OCA’s claims regarding the CRP, ALJ Long stated that “the purpose of this proceeding is to review the design of the CRP” and that “[i]f the Companies are not properly

implementing the program, as with any tariff or Commission-approved rule, the OCA could file a complaint and seek enforcement.” R.D. at 61. The OCA respectfully submits that a separate complaint proceeding is not required to address its claims regarding the CRP.

The Companies’ implementation of the CRP is squarely at issue in this default service proceeding in that retail market enhancement programs such as the CRP are considered, implemented, and reviewed in default service proceedings *and* FirstEnergy specifically requested to extend the CRP beyond what was approved in DSP IV as part of a Commission Order in this proceeding. OCA M.B. at 31; OCA St. 2 at 7; FE St. 1 at 19. FirstEnergy has placed this program at issue and, accordingly, the Commission must examine, as the OCA has done, whether the program is (1) providing benefits and savings to customers through bill impacts, (2) being implemented in accordance with prior Commission Orders, and (3) being accurately and fairly described by FirstEnergy CSRs and Allconnect agents, before determining whether an extension of the program is justified and appropriate. OCA M.B. at 31-32.

Moreover, in Pa. PUC v. Philadelphia Gas Works, Docket Nos. R-2017-2586783, *et al.* (Reconsideration Order entered May 18, 2018) (PGW), the Commission held that its “duties and powers under the Code to appropriately remedy a quality of service issue . . . are not limited or diminished” based on the context of the proceeding in which the issue arises. Id. at 15. In PGW, a base rate proceeding, the OCA raised claims regarding PGW’s practices for applying partial payments. Id. at 14. The Commission recognized these claims as “involving PGW’s quality of service to its customers.” Id. The Commission stated that its authority to address and remedy quality of service claims is not limited by the context of a proceeding. Id. at 15. The Commission noted that the parties submitted written testimony on the OCA’s claims and addressed the claims extensively in their briefs. Id. at 16. The Commission concluded that “it



would not promote judicial efficiency to require the OCA to file another complaint raising the same claims . . . and to require the Parties to present their evidence again and start anew on arguing the merits of the OCA's claims." Id. at 16. Therefore, the Commission determined "that a separate on-the-record proceeding is not required to address the OCA's claims." Id. at 16.

FirstEnergy's program implementation is directly tied to whether the CRP should be extended for two additional years and, as in PGW, raises quality of service issues. The Commission's failure to address the OCA's claims regarding FirstEnergy's CRP would result in a "judicial waste of resources when all parties have already had the required due process in this proceeding" and "the Company has had the full opportunity to respond to the OCA's claims in this matter, including the opportunity for responsive testimony, hearings, and briefs on the matter." Id. at 10-11. The OCA submits that re-litigation of these issues would *not* promote the conservation of administrative resources or efficiency.

Accordingly, the OCA respectfully requests that the Commission consider the merits of the OCA's argument regarding FirstEnergy's implementation of CRP in this proceeding, rather than requiring the OCA to file a separate complaint and re-litigate these issues.

### III. CONCLUSION

For the reasons set forth above, and for the reasons set forth in the OCA's Briefs, the OCA respectfully submits that the ALJ erred in her recommendation to allow the continuation of the "hard stop" in the Companies' DSP. The OCA also submits that the Commission should not allow the release of customer-specific payment data to EGSs absent affirmative consent. Lastly, the OCA submits that the ALJ erred in her recommendation to extend the CRP. Therefore, the OCA requests that the Commission grant these Exceptions and adopt the modifications and recommendations herein and in the OCA's Main Brief and Reply Brief.

Respectfully Submitted,



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Dated: June 28, 2018