COMMONWEALTH OF PENNSYLVANIA

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July 9, 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 Reply Exceptions in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

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cc: Honorable Mary D. Long
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Certificate of Service
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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 Reply 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 9th day of July 2018.

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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 EXCEPTIONS
OF THE OFFICE OF CONSUMER ADVOCATE

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Dated: July 9, 2018

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I. INTRODUCTION

On June 8, 2018, Administrative Law Judge (ALJ) Mary D. Long issued a Recommended Decision (R.D.) in the default service plan proceedings 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 Companies).

The Office of Consumer Advocate (OCA) agrees with the well-reasoned decision of ALJ Long in many respects. On June 28, 2018, the OCA filed Exceptions as to the ALJ's recommendation to include a "hard stop" in the Residential procurement schedule, allow the release of customer-specific payment information to electric generation suppliers (EGSs) as part of the Purchase of Receivables (POR) Clawback Stipulation, and extend the Customer Referral Program (CRP) through 2023. Also, on June 28, 2018, the Retail Energy Supply Association (RESA) filed Exceptions with regard to the ALJ's recommendation to (1) reject the Companies' proposed bypassable retail market enhancement rate mechanism, or Price-to-Compare (PTC) Adder, and (2) impose reasonable limits on Customer Assistance Program (CAP) customer shopping. No other party to this proceeding filed Exceptions.[1]

For the reasons set forth in these Reply Exceptions, the OCA submits that ALJ Long properly recommended that: (1) the PTC Adder be rejected because it is not supported by known, measurable costs and the Companies did not demonstrate that the proposal is just and reasonable or otherwise in accordance with the law, and (2) shopping CAP customers be limited from purchasing electric supply at rates above the Companies' PTC to end financial harm to CAP participants and non-CAP residential customers evidenced by the record in this proceeding. As such, the OCA respectfully requests that the Commission deny RESA's Exceptions, adopt the

[1] The following parties filed separate letters indicating that they would not be filing Exceptions in this proceeding: FirstEnergy, OSBA, CAUSE-PA, Respond Power, PSU, NextEra, Calpine, ExGen, and MEIUG, PICA, and WPPII.

ALJ's R.D. as to the issues discussed in these Reply Exceptions, and modify the R.D. in the manner set forth in the OCA's Exceptions.

II. REPLY EXCEPTIONS

OCA Reply Exception No. 1: The ALJ Properly Concluded That There is No Justification for the PTC Adder and That the PTC Adder is Not Just and Reasonable. (R.D. at 45-56; OCA M.B. at 17-27; OCA R.B. at 7-12)

A. The PTC Adder is Not Supported by Empirical Evidence or Measurable Costs and Does Not Represent a Cost of Providing Default Service.

In her R.D. ALJ Long determined that the "calculation of the PTC Adder itself is speculative and based on false assumptions." R.D. at 52. The ALJ stated:

> The PTC Adder rate was calculated based on the charge to EGSs for each customer enrolled in the Companies' standard offer program. Ms. Bortz testified on behalf of the Companies that the EGS charge for participating in the standard offer program was used because it is the "amount that EGSs have demonstrated that they are willing to pay for customers referred by an EDC." I agree with OCA's expert who explains that using a proxy for EGS customer acquisition costs is unrelated to the stated purpose of the PTC Adder, and "is fundamentally an arbitrary figure."

R.D. at 52. The ALJ also noted that the inclusion of a twenty-four month period in the calculation of the PTC Adder is "unsupported and not related to the purpose of the PTC Adder." R.D. at 52.

In its Reply Exceptions, RESA argued that the PTC Adder "does have a specific cost foundation" that is supported by the record. RESA Excepts. at 5 (emphasis omitted). In particular, RESA claimed that the PTC Adder is based on the "amount that is 'saved' by the Companies but incurred by the [EGSs] for customer enrollment." RESA Excepts. at 5. RESA further claimed and that "there are other costs related to default service that are not included in the PTC which are the costs that EGSs incur such as legal or regulatory and IT system costs." RESA Excepts. at 5.

As discussed in the OCA's Main Brief, however, the method used to calculate the charge is ***not*** related in any way to the purpose of the PTC Adder. See OCA M.B. at 18-20. Specifically, OCA witness Estomin explained:

> [T]he PTC adder emanates from another retail market enhancement program, the CRP. The purported basis for the CRP charge . . . does not bear any relationship to the rationale underlying the Companies' proposal for the PTC adder; that is to

> supposedly induce residential customers to enter the competitive retail market in lieu of continuing to receive service under default service arrangements. It should be noted that the CRP charge and the purposed PTC adder are not even paid by the same market entities – the PTC adder is proposed to be paid by the residential default service customers and the CRP charge is paid by the EGSs.

OCA M.B. at 19; OCA St. 1 at 16. In addition, FirstEnergy witness Bortz did not provide any basis for her calculation of the PTC Adder in this manner and did not address claims regarding the arbitrary level of the charge. OCA M.B. at 19; OCA St. 2 at 23.

Moreover, the PTC Adder does ***not*** represent a cost of providing default service. See OCA M.B. at 17-20. As explained in the OCA's Main Brief, default service providers are permitted only to recover the costs of providing default service. OCA M.B. at 17-18. Default service providers are prohibited from recovering "hypothetical expenses not actually incurred." 66 Pa. C.S. § 2807(e); Barasch v. Pa. PUC, 493 A.2d 653, 655 (Pa. 1985).[2] The very fact that FirstEnergy proposes to return 95% of revenues collected through the PTC Adder to customers is evidence that it is not a cost. The PTC Adder is merely a re-allocation scheme designed to collect revenues from default service customers and re-distribute funds to EGS customers. OCA M.B. at 18. There is no basis in the law for this scheme and allowing FirstEnergy to implement the PTC Adder would result in a substantial windfall to the Company. OCA M.B. at 20.

Therefore, ALJ Long properly concluded that the PTC Adder is fundamentally an arbitrary figure that is not supported by record evidence or based on costs actually incurred by the Companies. R.D. at 52; OCA M.B. at 19, n.9.

[2] The Commonwealth Court has provided: "[A] utility may pass along to its customers only those expenses or costs it actually incurs. Any other approach would permit the utility, by charging higher rates than necessary, to *gain a profit from its customer under the guise of recovering operating expenses*." Cohen v. Pa. PUC, 468 A.2d 1143, 1150 (Pa. Commw. 1983) (citations omitted).

B. The Correction of Market Inequities is Not the Purpose of the PTC Adder and Such Purported Market Inequities Do Not Exist.

In her R.D. ALJ Long noted that, despite the Companies' claims, "the real purpose of the [PTC Adder] is to incent 'switching.'" R.D. at 52. The ALJ further noted that, "[e]ven if the PTC Adder represented a cost of providing default service, none of the expert testimony provided by the Companies in support of the PTC Adder provides any data or explanation which demonstrates how the PTC Adder will result in increased switching." R.D. at 55.

In its Reply Exceptions, RESA argued that the true purpose of the PTC Adder is to remedy market inequities, rather than to incentivize residential customer "switching" as the ALJ determined. RESA Excepts at 7. RESA claimed that default service providers have an unfair competitive advantage and that the PTC Adder is necessary to create a "fair and level playing field" for EGSs. RESA Excepts. at 8. Further, RESA inaccurately characterized the market inequities to which it referred as "undisputed." RESA Excepts. at 1, 7.

As discussed in the OCA's Main Brief and Reply Brief, the competitive market is robust and is not characterized by oppressive economic barriers. See OCA M.B. at 23; OCA R.B. at 10-11. OCA witness Estomin explained 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 R. B. at 10; 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. The market inequities claimed

by RESA do ***not*** exist and, in any case, arbitrarily raising rates for default service customers is not a reasonable or legally permissible response.[3]

Additionally, as the ALJ recognized, there is no evidence that the PTC Adder will incent "switching." OCA witness Estomin noted that "the Companies themselves state that there is no evidence that the proposed program will foster measurable results." OCA M.B. at 23; OCA St. 1 at 18. FirstEnergy witness Bortz merely speculated that a higher PTC due to the PTC Adder will make EGS offers more attractive. OCA M.B. at 23, n. 12; OCA St. 1S at 11. As OCA witness Estomin explained, however, higher PTCs are more likely than not to result in higher EGSs offers because EGSs use the PTC as a pricing benchmark and, as such, EGS offers would not be more attractive. OCA M.B. at 23; OCA St. 1S at 11-12.

Therefore, ALJ Long appropriately concluded that the actual purpose of the PTC Adder is to incentivize residential customer to "switch" rather than shop and that there is no record evidence that the PTC Adder will be effective. R.D. at 52, 55.

C. Both the PTC Adder and RESA's Proposed Modifications to the PTC Adder are Inequitable and Unlawful and Should be Rejected on These Grounds.

In her R.D., ALJ Long explained why the proposed PTC Adder is inequitable and unlawful R.D. at 54-55. ALJ Long stated as follows:

> Like the MAC proposed in DSP II, the Companies propose a PTC Adder intended to "incent residential retail shopping." The PTC Adder is a bypassable charge that will be imposed on residential default service customers. The Companies propose to use 5% of the PTC Adder to cover unspecified "administrative costs" . . . and return 95% of revenues to all ratepayers through a non-bypassable rider. As the ALJ concluded and the Commission agreed in DSP II, the practice of charging default customers the PTC Adder and returning revenues to all customers is **"inequitable"** *per se*. In addition, as explained by OCA witness Estomin and OCA witness Alexander, the PTC Adder will allow the Companies to recover charges

[3] 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).

> that are not demonstrated to be lawful – the charges do not reflect a cost of providing service – without any empirical support or measurable costs. Therefore, the Commission must reject the Companies' proposal.

R.D. at 54-55 (footnotes omitted) (emphasis added). The ALJ further noted as follows: "The modifications of RESA do not resolve the lack of connection between the proposed PTC Adder and the costs to provide default service. Nor does RESA's proposal resolve the lack of data to support the calculation of the adder." R.D. at 56.

Nonetheless, in its Exceptions, RESA argued that its modifications to the Companies' PTC Adder – doubling the charge and allocating a portion of the revenues to low-income assistance programs – should be adopted as a "valuable source of supplemental funding for CAP and other universal service programs." RESA Excepts. at 11; OCA R.B. at 11.

As discussed in the OCA's Reply Brief, RESA's basis for increasing the amount of the PTC Adder is without merit. See OCA R.B. at 11-12. 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 R.B. at 11; OCA St. 2R at 8. RESA's recommended modifications to the PTC Adder do not correct any of the deficiencies in FirstEnergy's proposal. Moreover, under RESA's modifications, 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. OCA R.B. at 12. Accordingly, this re-distribution scheme is ***inequitable***. [4]

[4] 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).

Therefore, the ALJ properly concluded that both the Companies' PTC Adder and RESA's proposed modifications are inequitable and unlawful and must be rejected on these grounds as was the Companies' prior request for a PTC Adder.

OCA Reply Exception No. 2: The ALJ Properly Concluded that CAP Customers Should Be Restricted From Shopping at Rates Above FirstEnergy's PTC. (R.D. at 37-71; OCA M.B. at 47-63; OCA R.B. at 19-24)

A. The Record Evidence Demonstrates that Unrestricted CAP Customer Shopping Has Resulted in Harm to CAP Participants and Non-CAP Residential Customers.

In her R.D. the ALJ determined that "PCAP participants should be restricted from purchasing supply at a rate above the Companies' PTC." R.D. at 64. The ALJ explained:

> There is ample support in this record to conclude that unrestricted PCAP shopping is harming both PCAP participants and non-PCAP residential ratepayers. BIE, OCA, and CAUSE-PA extensively reviewed data regarding shopping of PCAP participants and the resulting costs over a 55-month period. First, the evidence demonstrates that a significant number of the Companies' PCAP customers are shopping.
>
> . . .
>
> Second, the evidence demonstrates that of the PCAP customers who shopped, the overwhelming majority paid ***more*** than the price to compare. CAUSE-PA witness Mr. Geller concluded that this data collected demonstrates that "a significant majority of PCAP customers who switch to a competitive electric supplier are charged rates that create an obligation for greater costs to be incurred by PCAP than if these customers were charged the utility default service price for energy. Additionally, the Companies' data revealed that during the same period, an average of 63%, 62%, 65%, and 72% of . . . PCAP customers paid rates that exceeded the Companies' PTC.

R.D. at 66-67 (footnotes omitted) (emphasis added). The ALJ also explained that the "economic impact of this unrestricted PCAP shopping is significant" and that "[f]rom June 2013 through March 2018, the evidence in the record shows . . . net harm to PCAP customers and other ratepayers" in the amount of $18,336,440 over 58 months (or $3,793,746 annually). R.D. at 67 (emphasis in original). The ALJ further stated, "This more than $18.3 million in increased PCAP

costs . . . is a direct result of the Companies' current practice of allowing customer to accept any EGS offer regardless of cost." R.D. at 68.

In its Exceptions, RESA argued that "the ALJ erred by concluding that the data in this proceeding supports restrictions on the ability of CAP customers to shop." RESA Excepts. at 13. RESA also claimed that it is not appropriate to analyze the impact of CAP customer shopping by comparing "what CAP participants paid an EGS vs. what they would have paid with the PTC." RESA Excepts. at 12 (footnote omitted). RESA claimed that other "benefits," such as smart thermostats should be considered. RESA Excepts. at 12.

As discussed in the OCA's Reply Brief, the annualized cost of CAP shopping of $3,793,746 is a net figure. See OCA R.B. 22-24. To the extent that 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, in fact, be understated. Moreover, with regard to comparing "what CAP participants paid an EGS vs. what that would have paid with the PTC" and not considering other EGS "benefits" offered by EGSs," the affordability of CAP service must be measured in dollars and cents, not non-monetary benefits. As OCA witness Alexander explained and, as the ALJ recognized, 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. OCA R.B. at 23; OCA St. 2S at 15; R.D. at 69. Further, as OCA witness Alexander explained, "current weatherization and other efficiency programs [are] targeted to CAP and low income customers through the Low Income Usage Reduction Program (LIRUP)" and the costs of these programs are "included in other customer rates." OCA St. 2S at 15. As such, it is not reasonable for non-CAP residential customers supporting CAP subsidies to fund non-monetary benefits.

Therefore, the ALJ properly determined that unrestricted CAP customer shopping has harmed shopping CAP customers and non-CAP residential customers.

B. The Commission Has the Authority to Appropriately Impose Reasonable Limits on CAP Customer Shopping in This Proceeding.

In her R.D., ALJ Long explained that the Commission has the authority to impose limits on CAP customer shopping, as follows:

> The Commission has the necessary authority to impose reasonable PCAP shopping restrictions. As explained by the Commonwealth Court, the universal service provisions of the Choice Act tie the affordability of electric service to a customer's ability to pay for that service.
>
> . . .
>
> The Commonwealth Court recently refined this framework in the recent case of *RESA v. Pa. Public Utility Commission*, where the Court held that there must be evidence to show a substantial reason why a restriction is necessary. A restriction on competition is necessary "when one, there is harm associated with competition, and two, there is no reasonable alternative to the rule that restricts the competition."
>
> . . .
>
> Any plan which allows the Companies' PCAP customers to receive service from an EGS must continue to tie the affordability of electric service to a customer's ability to pay for that service through policies, practices, and services that help low income customer maintain utility service.

R.D. at 65-66 (footnotes omitted).[5] As detailed above, the ALJ concluded, "there is ample support in this record to conclude that unrestricted PCAP shopping is harming both PCAP participants and non-PCAP residential ratepayers." R.D. at 66.

In its Exceptions, RESA argued that "the ALJ erred by directing specific restrictions that should be implemented." RESA Excepts. at 13. In this regard, RESA claimed that the choices offered by EGSs to CAP participants would be adversely affected by restrictions on CAP customer shopping and that the operational processes for EGSs and utilities to remove existing shopping

[5] In RESA v. Pa. PUC, Docket No. 230 CD 2017, Slip. Op. at 43, the Commonwealth Court affirmed PPL's "CAP-SOP" program, in which CAP customers can receive EGS service only at an initial 7% discount below the PTC. See OCA R.B. at 19-21.

CAP customers can be complicated. RESA Excepts. at 13, 14-15. RESA further argued that, if the Commission determined that CAP shopping restrictions are approved, alternatives that do not address the on-going financial harm should be adopted instead. RESA Excepts.at 14.

The OCA submits that RESA's position fails to address the on-going harm of unrestricted CAP shopping and the record regarding the process to address this harm. As the ALJ noted, with regard to the choices offered to CAP participants by EGSs, "RESA offers no data to substantiate its claims that these benefits [such as value-added components of EGS products] result in savings on PCAP customer's utility bills." R.D. 68-69. In addition, with regard to operational processes to remove existing CAP customers, the Companies have the capability to "add PCAP participation flags to their eligible customer lists, which would inform suppliers before they attempt to enroll a PCAP customer" and the capability to utilize a "percentage off" program to "adjust the supplier's price by the required percentage off of the PTC Adder for PCAP customers.[6] R.D. at 69-70; OCA M.B. at 60; OCA St. 1S at 16-17; FE ST. 1-R at 30.

Moreover, as noted in the OCA's Reply Brief, RESA's proposed alternatives are not fully developed and will not directly remedy the continuing financial harm demonstrated in this case. See OCA R.B. at 21-22. In the PPL case, the ALJ addressed similar proposals to encourage CAP customers to voluntarily choose Standard Offer Program service, and concluded as follows:

> 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

[6] The Commission previously addressed and resolved operational issues concerning the implementation of CAP shopping restrictions in the PPL case. See Petition of PPL Electric Utilities Corp. 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 (Final Order entered February 9, 2018); see also Petition of PPL Electric Utilities Corp. 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 (Tentative Order entered November 8, 2017)

> 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 Corp. 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). Likewise, in this proceeding, RESA's recommendations do not address the harms to shopping CAP customers and non-CAP residential customers evidenced by the record and, as such, these recommendations are not a reasonable alternative to CAP shopping restrictions.

Therefore, ALJ Long properly determined that the Commission has the authority to impose limitations on CAP customer shopping in this proceeding and that RESA's alternative recommendations are inadequate to address the harms resulting from unrestricted CAP shopping.

III. CONCLUSION

For the reasons set forth above, and for the reasons set forth in the OCA's Main Brief, Reply Brief, and Exceptions, the OCA submits that the ALJ properly recommended that the Commission should reject PTC Adder because it is not supported by known, measurable costs and is not just and reasonable or otherwise in accordance with the law. The OCA also submits that the Commission should limit shopping CAP customers from purchasing electric supply at rates above the Companies' PTC to end financial harm to CAP participants and non-CAP residential customers. Therefore, the OCA respectfully requests that the Commission deny RESA's Exceptions, adopt the ALJ's R.D. as to the issues discussed herein, and modify the R.D. in the manner set forth in the OCA's Exceptions.

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Dated: July 9, 2018