COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

July 9, 2018

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
Commonwealth Keystone Building, Second Floor
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:

Enclosed please find the Bureau of Investigation and Enforcement's (I&E) **Reply Exceptions** in the above-captioned proceeding.

Copies are being served on parties as identified in the attached certificate of service. If you have any questions, please contact me at 717-783-7998.

Sincerely,

Allison C. Kaster
Deputy Chief Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. No. 93176

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Enclosure

cc: Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Petition of Metropolitan Edison	:	
Company, Pennsylvania Electric	:	**Docket No. P-2017-2637855**
Company, Pennsylvania Power Company	:	**P-2017-2637857**
and West Penn Power Company for	:	**P-2017-2637858**
Approval of their Default Service	:	**P-2017-2637866**
Programs	:	

REPLY EXCEPTIONS
OF THE
BUREAU OF INVESTIGATION & ENFORCEMENT

Allison C. Kaster
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PA Attorney ID #93176

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Dated: July 9, 2018

I. INTRODUCTION

The Bureau of Investigation and Enforcement ("I&E") incorporates the Introduction section of its Main Brief filed in this matter on May 1, 2018.[1] I&E notes that the introductory information referenced included an overview of both the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively the "Companies") and the Retail Energy Supply Association's ("RESA") proposals that are the subject of these Reply Exceptions.[2] By way of further explanation, during the course of this proceeding, I&E opposed each of the bypassable retail market enhancement rate mechanisms proposed by the Companies and RESA in this proceeding. Additionally, I&E rejected each of these parties' positions that that the scope of the Companies' Pennsylvania Customer Assistance Program ("PCAP") shopping need not be restricted in this proceeding. As explained more fully below, Administrative Law Judge Mary D. Long ("ALJ Long" or "the ALJ") properly recommended the rejection of both the Companies' and RESA's respective positions regarding these issues, and while the Companies do not except, RESA's Exceptions are without merit and they should be denied.

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1 I&E Main Brief, pp. 1-5.

2 Although the Companies have not excepted the ALJ's recommendations in this case, RESA has excepted And implicitly relies upon some of the Companies' arguments for support. Therefore, any of I&E's references to the Companies' arguments and positions are made solely for purposes of context and to facilitate a full response to RESA.

A. Summary of the Argument

1. Bypassable Retail Market Enhancement Rate Mechanisms

For purposes of context, these mechanisms were identified as the Price to Compare Adder ("PTC Adder") proposed by the Companies, and the retail rate mechanism proposed by RESA.[3] The Companies proposed the PTC Adder for the purpose of incenting residential retail shopping.[4] The PTC Adder would result in a volumetric charge of $0.00144 per kWh for residential default service customers.[5] The Companies relied upon their $30 Customer Referral Program Charge ("CRP Charge") as the basis for calculating the PTC Adder, and they divide this amount by twenty-four months, based on the assumption that shopping customers stay with an EGS for twenty-four months.[6] The CRP-based calculation produces a charge of $1.25 per month, which the Companies divide by an average monthly residential usage of 869 kWh to result in the PTC Adder of $0.00144 per kWh. The Companies intended to refund 95% of the PTC Adder proceeds collected from residential default service customers to all residential customers through its Default Service Support Rider. Finally, the Companies proposed to retain the other 5% of the PTC Adder revenue for its administrative costs.[7]

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3 Although the Companies have not excepted to the ALJ's recommendation that the Commission reject their PTC Adder proposal, RESA excepts to the ALJ's recommendation that the Commission reject its retail rate mechanism, which is largely based on the Companies' PTC Adder proposal, but with some modification. A discussion of the PTC Adder is necessary only to inform the Commission of the nexus between the Companies' and RESA's proposals, which RESA has failed to explain in its Exceptions.
Adder is included solely because RESA's proposal is inextricably linked with it and it cannot otherwise be accurately described.

4 Companies' St. No. 1, p. 24.

5 Companies' St. No. 1, p. 25.

6 Companies' St. No. 1, p. 26.

7 Companies' St. No. 1, pp. 26-27.

On the other hand, RESA attempted to convert the Companies' PTC Adder proposal by repurposing it to suit its own agenda and referring to it as the retail rate mechanism. Specifically, RESA conditioned its support for the Companies' PTC Adder proposal upon several major modifications.[8] These modifications are three-fold and include revising the purpose for, the calculation of, and the proceed distribution of the PTC Adder. First, RESA indicates that "[r]ather than operating as an incentive to shop, RESA views this [the retail rate mechanism] proposal as a means of levelling the playing field by partially mitigating the competitive advantage enjoyed by the default service product."[9] RESA's retail rate mechanism was also calculated differently than the Companies' PTC Adder because RESA divided the $30 CRP value by twelve months, instead of the twenty-four months relied upon by the Companies.[10] The result increases the volumetric charge to $0.00288 per kWh, and RESA adopts this value for its retail rate mechanism.[11] Doing so adds approximately $2.50 to residential bills in lieu of the $1.25 proposed by the Companies. Finally, RESA indicated that in lieu of adhering to the Companies' plan to withhold 5% of the PTC Adder revenue for its administrative costs and allocating the remaining revenue over the residential customer class, the retail rate mechanism would devote a portion of those revenues to low-income customer assistance program.[12]

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8 RESA St. No. 1, p. 23.
9 RESA St. No. 1, p. 23.
10 RESA St. No. 1, p. 24.
11 RESA St. No. 1, p. 24.
12 RESA St. No. 1-R, p. 12.

In both cases, the PTC Adder and retail rate mechanism proposals unfairly target the Companies' residential default service customers for application of an artificial and unsupported charge. Each of these proposals violated the Public Utility Code's ("Code") requirement that electric distribution companies provide default service electric to customers at no greater cost than the cost of obtaining generation,[13] violate fundamental ratemaking principles,[14] and fail to acknowledge customer choice.[15] Notwithstanding these identified defects, the Companies and RESA also failed to produce evidence that warrants the need for their proposals.[16] After carefully reviewing and analyzing the PTC Adder and retail rate mechanism proposals, ALJ Long cited the lack of evidentiary support for these mechanisms and the lack of a nexus between them and the costs of electric generation;[17] therefore, she properly recommended that they be denied. Although RESA excepts to the ALJ's recommendation, its Exceptions do nothing to overcome the identified defects; accordingly, its Exceptions should be denied.

2. The Scope of PCAP Shopping

The record refutes the Companies' and RESA's positions that the scope of PCAP shopping need not be restricted in this proceeding. On the contrary, and as explained in more detail below, the evidence in this case revealed that, over 58 months, the economic impact of this unrestricted PCAP reflected a net impact of more than $18.3 million in increased PCAP shopping costs were being incurred within the Companies' service

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13 66 Pa. C.S. § 2807(e).
14 I&E Main Brief, pp. 16-17, 26.
15 I&E Main Brief, pp. 18-21, 26.
16 I&E Main Brief, pp. 21-29; RD at 51-55.
17 RD at 51-52, 56.

territories as a result of PCAP customers shopping for rates that exceeded the Companies' PTC.[18] As ALJ Long's Recommendation Decision ("RD") correctly acknowledged, the Companies do have a mandate to restrict the scope of CAP shopping under certain circumstances.[19] Chief among these circumstances, and pertinent to this case, is the necessity to restrict CAP shopping when evidence proves that escalated costs have resulted from the Companies' unrestricted CAP shopping program and access to and affordability of electricity service is compromised. For this reason, and in conjunction with the Companies' obligations to appropriately fund cost-effective universal service programs, I&E, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), and the Office of Consumer Advocate ("OCA") proposed that the Companies mitigate PCAP shopping costs by prohibiting PCAP customers from shopping for electricity rates that exceed the Companies' PTC at any time,[20] and the ALJ recommended approval of that proposal.[21] Although RESA now excepts to the ALJ's recommendation, I&E submits that its Exceptions are unsupported and fail to acknowledge the weight of the evidence in this proceeding; therefore, RESA's Exceptions should be denied.

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18 RD at 67-68.
19 RD at 68.
20 RD at 69.
21 RD at 71, 85.

B. Procedural History

I&E incorporates the Procedural History section of its Main Brief filed in this matter on May 1, 2018.[22] By way of supplemental information, alongside I&E, the Companies, the OCA, CAUSE-PA, the Office of Small Business Advocate, the Pennsylvania State University, NextEra Energy Marketing, LLC ("NextEra") the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), Met-Ed Industrial Users Group ("MEIUG")/Penelec Industrial Customer Alliance ("PICA")/West Penn Power Industrial Intervenors, Respond Power, LLC, and RESA also filed their Main Briefs on May 1, 2018. Pursuant to the procedural schedule and in accordance with Sections 5.501- 5.502[23] of the Pennsylvania Public Utility Commission ("Commission") regulations, I&E and all aforementioned parties other than NextEra submitted timely Reply Briefs on or by May 16, 2018.

On June 8, 2018, ALJ Long issued a RD that, inter alia, (1) recommended the denial of request for a bypassable retail market enhancement rate, encompassing a denial of the retail rate mechanism proposed by RESA;[24] and (2) recommended that the Commission direct the Companies to implement a PCAP shopping program which prohibits customers who wish to participate in the Companies' PCAP from entering into a contract with an EGS for a price which exceeds the PTC.[25] On June 28, 2018, both the OCA and RESA excepted to ALJ Long's RD. While I&E takes no position on the

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22 I&E Main Brief, pp. 5-8.
23 52 Pa. Code §§ 5.501-5.502.
24 RD at 55-56; RD at 85.
25 RD at 71, 85.

OCA's Exceptions, I&E now files these timely Reply Exceptions in response to RESA's Exceptions.

II. REPLY EXCEPTIONS

A. Reply to RESA Exception No. 1: The ALJ Correctly Determined that the Retail Rate Mechanism is Unjustified and that the Proposal us Unjust and Unreasonable (FOF Nos. 42-46; RD at 51-56: COL Nos. 8-9)

In its Exceptions, RESA alleges that the ALJ's determination is flawed in two ways: (1) the ALJ failed to consider evidence supporting its retail rate mechanism proposal and how it could address current market inequities and (2) the ALJ did not consider how the retail rate mechanism could positively benefit low-income customers. I&E submits that each of these allegations is false. On the contrary, a simple review of the record demonstrates that RESA failed to provide evidentiary support for its proposal. Additionally, the record reflects that the ALJ did consider the impact of the retail rate mechanism and determined that the impact was not beneficial. Therefore, as explained more fully below, RESA's Exceptions are without merit and they should be denied.

1. The Record Does Not Provide Cost-Based Support for RESA's Retail Rate Mechanism

RESA excepts to the ALJ's determination that the costs that RESA proposes to add to the PTC in conjunction with its retail rate mechanism are not predicated on the cost of generation and that they lack a direct connection to the costs to provide default service.[26] According to RESA, an alleged nexus between these costs and the retail rate mechanism exists because the Companies' default service supply rates save customer

[26] RESA Exceptions, p. 5.

service and enrollment costs that the electric generation suppliers ("EGSs") incur and cannot avoid.[27] Additionally, RESA generally alleges that there are other default service costs not included in the PTC, and that all ratepayers absorb such costs, harming shopping customers and placing EGSs at a competitive disadvantage.[28] On these bases, RESA argues that the retail rate mechanism is consistent with the Commission's prior actions in creating a level playing field for EGSs and that the record evidence in this case justifies adoption of the mechanism.[29]

Regardless of RESA's attempt to make a connection between the retail rate mechanism and the costs of providing service, there is simply no nexus between its proposal and the cost of generating electricity. Instead, like the Companies' PTC Adder proposal, RESA's retail rate mechanism is simply based upon the Companies' $30 CRP charge, which is the amount that the Commission agreed that the Companies could charge EGSs for referrals. As the record reveals, RESA's reliance upon this metric is misplaced because it assumes that none of the Companies' customers shop for electricity outside of the CRP program, and it ignores other ways to shop for electricity, such as using PAPowerSwitch.com.[30] On top of being grounded in an unsupported assumption, RESA's retail rate mechanism is also calculated arbitrarily by assuming a twelve-month retention rate, simply because twelve months is the length of the fixed CRP term.[31] As the ALJ correctly noted in her RD, the retention rate is "not based upon actual verifiable

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27 Id.
28 Id. at 7.
29 Id. at 9.
30 I&E St. No. 1, p. 5.
31 RESA St. No. 1, pp. 23-24.

date; therefore, like the CRP fee, it too fails to provide a valid basis to underlie the calculation of a PTC Adder [retail rate mechanism] surcharge."[32] Taken together, RESA's combined assumptions only serve to remove its retail rate mechanism from any connection to generation costs, and this alone serves as a sufficient basis to deny the retail rate mechanism.

Aside from failing to tie the retail rate mechanism to the cost of generation, another fatal flaw in RESA's argument is that the record contains no evidence that assessing it to the Companies' default service customers would resolve the inequities that RESA alleges exist. In an attempt to generally support its claim regarding the competitive disadvantage of EGSs, RESA argued that default service providers have embedded cost advantages because they can recover certain costs, including call center employees and infrastructure, legal personnel, office space, accounting and auditing services, printing, and postage, from all ratepayers through distribution rates, and not from the PTC.[33] Despite this general allegation, RESA did not prove and quantify the existence of these costs specific to the Companies.

Instead, RESA simply opined that ideally, the Companies should perform a full cost analysis, unbundle some costs from distribution rates and reallocate them to default service; however, it quickly dismissed that plan by opining that the exercise would be costly and contentious.[34] Noting these challenges, RESA resigned to adopting the retail rate mechanism as an "imperfect proxy" for full cost unbundling and alleges that it is a

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32 RD at 52-53.
33 RESA St. No. 1, pp. 24-25.
34 RESA St. No. 1, p. 25.

step towards addressing market inequities.[35] Consequently, the record does not identify and breakdown costs that should be unbundled or reveal how such alleged costs would support charging residential default service customers an additional $0.00288 per kWh, as RESA proposes. Although I&E agrees that full cost unbundling may be burdensome and contentious, that is not an adequate reason to arbitrarily adopt an unsupported charge in the hopes that it will somehow level a playing field that has not been proven to need leveling. Accordingly, the ALJ correctly determined that RESA failed to prove a connection between its proposal and the costs to provide default service[36] and RESA's Exceptions should be denied.

2. The ALJ Considered the Impact of the Retail Rate Mechanism and Determined that It Was Not Beneficial to Consumers

RESA argues that the ALJ erred by failing to determine that the retail rate mechanism charge is fair and equitable and that it would provide a significant benefit for low-income customers.[37] In support, RESA claims that the retail rate mechanism benefits customers because it requires default service customers to pay costs of default service that they are currently avoiding.[38] Additionally, RESA cites to its proposal to direct a portion of the revenues from the retail rate mechanism to low-income assistance programs as a benefit that the ALJ did not properly consider.[39] I&E submits that each of these claims is without merit.

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35 RESA St. No. 1, p. 25.
36 RD at 56.
37 RESA Exceptions, p. 10.
38 Id.
39 Id.

First, and consistent with the discussion above regarding the lack of a cost basis for the retail rate mechanism, RESA has failed to provide direct evidence that the retail rate mechanism is connected to costs of default service. Because of this, there was simply no basis in the record for the ALJ to determine that the retail rate mechanism would operate as an equalizer between default service customers and shopping customers. Accordingly, the ALJ could not determine that the retail rate mechanism charge was fair and equitable.

On the other hand, the record was fully developed regarding the unfair and inequitable imposition of a retail market enhancement charge, as is evident in the RD's recognition of the public input provided by over 60 citizens of Erie who testified at the March 13, 2018 public input hearings held in this matter. Notably, all without exception, opposed to adoption of a retail market enhancement charge, and as recognized in the RD, "many complained that 'a choice is not a choice if you have to pay for the privilege of not choosing' and felt that it was unfair to impose a charge for choosing default service."[40] Additionally, many customers did not want to be forced to switch to an EGS simply to avoid paying the charge, and they cited to both their own experiences and that of others they knew.[41] Importantly, many witnesses expressed concern about how low-income people would be impacted by an additional charge. These concerns included the impact customers might face if they were forced into the retail market in order to avoid an additional charge, including lack of access to budget billing and issues regarding

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40 RD at 46-47.

41 Public Input Hearing Tr. at p. 88; I&E Ex. No. 1-SR, Sch. 1, p. 2; Public Input Hearing Tr. at p. 97; Public Input Hearing Tr. at p. 120; Public Input Hearing Tr. at p. 279; I&E Ex. No. 1-SR, Sch. 1, pp. 4-6.

qualification for heating assistance.[42] Although these are just a few examples, and the record in this case provides many more, there was more than ample support for the ALJ's determination that the retail rate mechanism should be denied. RESA errs by arguing to the contrary, as it failed to meet the burden of proof for its proposal and its Exception should be denied.

Furthermore, the RESA's argument regarding the potential benefit of the retail rate mechanism to low-income customers is also contrary to the record evidence in this case. Specifically, RESA proposes that the Companies should devote a portion of the revenue to low-income customer assistance programs.[43] Although RESA did not commit to the percentage of revenues that it advocates returning through its retail rate mechanism proposal, it estimated that using ten percent of that revenue for customer assistance programs would generate an additional $3.78 million in funding.[44]

While RESA's proposal to distribute a percentage of the retail rate mechanism revenue to low-income customers appears laudable, the undisputed evidence in this case proves that the detriments that low-income customers would face under RESA's proposal would far outweigh any benefits that they may hope to receive. More specifically, RESA's proposal did not appear to exempt low income residential default service customers from being assessed with the retail rate mechanism, which is twice as much as the PTC Adder initially proposed by the Companies.[45] As I&E witness Keller explained,

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42 RD at 50.
43 RESA St. No. 1-R, p. 12.
44 RESA St. No. 1-R, p. 12; RESA Exceptions, p. 11.
45 I&E St. No. 1-R, p. 6.

low-income customers would benefit more by not having to pay this unwarranted cost than by receiving back a small percentage of the proceeds.[46] RESA did not offer evidence to dispute Mr. Keller's conclusion and therefore appear to tacitly admit that low-income customers would benefit more from not paying a retail market enhancement charge than they would by receiving a small portion of their payments back through low-income programming. Accordingly, the ALJ did not err because there was no basis to determine that the retail rate mechanism charge would be beneficial to low-income customers.

B. Reply to RESA Exception No. 2: The ALJ's Determination Regarding CAP Shopping Restrictions Is Supported by the Evidentiary Record and Consistent with Applicable Law (FOF Nos. 66-71; RD at 63-71)

In this case, the ALJ recommended that the Companies be required to implement a revision to its PCAP that would prohibit PCAP customers from entering into a contact with an EGS for a price in excess of the Companies' PTC.[47] The ALJ further recommended that the revised PCAP program should be phased in to permit the transition of PCAP customers to the limited price program without immediate impact.[48] To reach this recommendation, the ALJ concluded that "there is ample support in this record to conclude that unrestricted PCAP shopping is harming both PCAP participants and non-PCAP residential ratepayers."[49] To be sure, the RD reflects the fact that I&E, the OCA and CAUSE-PA extensively reviewed data regarding shopping of PCAP participants and

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46 I&E St. No. 1-SR, p. 7.
47 RD at 71.
48 Id.
49 RD at 66.

the resulting costs over a 55-month period.[50] The ALJ noted that the evidence revealed (1) a significant number of the Companies' PCAP customers are shopping;[51] (2) of the PCAP customers who shopped, the overwhelming majority paid more than the price to compare;[52] and (3) the economic impact of this unrestricted PCAP shopping is significant, reflecting a net impact of more than $18.3 million in increased PCAP costs over a 58-month period.[53]

Consistent with the analysis of the uncontested PCAP shopping data, the ALJ determined that unrestricted PCAP shopping produced a result that is inconsistent with the Electricity Generation Customer Choice and Competition Act ("Choice Act") and that it harms both PCAP and non-PCAP customers alike:

> These increased costs effect the affordability of PCAP bills for PCAP customers on a monthly basis – particularly before their PCAP bill subsidy credits are adjusted to catch up to these increased costs or when they already receive the maximum monthly bill credit. In turn, other ratepayers who pay for PCAP also bear cost increases in the aggregate because of the currently permitted unrestricted PCAP shopping. None of the $18.3 million in additional PCAP costs – which translates into $3.79 million more per year – are used to promote universal service goals under the Choice Act to assist low-income customers to better meet their home energy needs. CAUSE-PA argues that because program costs are intended to assist low-income customers to afford and maintain essential utility service, they should not be increased by more than $3.79 million more per year simply to pay an EGS charging rates higher than the default service price. This is especially so when the higher EGS payments result in

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50 As indicated in the RD, some of the data was updated to include the period of June 2013 through March 2018, a 58-month period. RD at 66, footnote 193, citing See Joint Stipulation No. 3.

51 RD at 66 citing CAUSE-PA St. 1 at 22, Table 6 (citing Companies Response to CAUSE-PA Interrogatory Set I, No. 2(b) and (c), attached to CAUSE-PA St. No. 1 as Appendix B). Totals were calculated by summing the total for each Company for each year from 2013-2017.

52 RD at 66, citing Companies St. 1-R at 28; Ex. KLB 35.

53 RD at 67-68; Joint Stipulation No. 3, ¶ 3.

> tangible harm to low-income PCAP customers and other residential ratepayers, including the more than 160,000 confirmed low-income customers who are not enrolled in PCAP. The Choice Act expressly requires the Commission to administer these programs in a manner that is cost effective for the PCAP participants and the non-CAP participants, who share the financial consequences of a PCAP participant's EGS choice.202 There is no cost efficiency, and significant unnecessary and impermissible cost, in continued implementation of a PCAP shopping protocol permitting participants to accept any EGS offer above the price to compare.[54]

The ALJ's analysis is consistent with Pennsylvania law, because, as I&E explained in its Main Brief, the Choice Act mandates that all customers should be able to obtain service on "reasonable terms and conditions."[55] The record in this case proves that the Companies' unrestricted PCAP shopping scheme has produced a result that does not meet this standard. When this standard is not met, and evidence proves, as it does here, that both CAP and not CAP customers are harmed by unrestricted CAP shopping, Pennsylvania case law has made it resoundingly clear that CAP shopping restrictions may be approved absent any other reasonable alternative.[56] In this case, no party disputed the impact of unrestricted PCAP shopping in the Companies' service territories, and no party offered any reasonable alternative to the PCAP shopping restrictions recommended by I&E, CAUSE-PA, and OCA and recommended for approval by the ALJ.

Importantly, RESA's Exceptions do not dispute the PCAP shopping data. Instead, RESA generally claims, without any supporting analysis, that "[a]s a threshold matter,

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54 RD at 68.

55 I&E Main Brief, p. 32; 66 Pa. C.S. § 2802(9).

56 *Retail Energy Supply Ass'n v. Pa. PUC*, Docket No. 230 CD 2017, WL 2027155 at 2 (Pa. Cmwlth. May 2, 2018).

the ALJ erred by concluding that harm has resulted from permitting CAP participants to shop."[57] I&E submits that RESA's unsupported assertion here must be rejected, as it is completely contrary to the record in this case, as fully set forth in the discussion above. The only other grounds that RESA alleges for excepting to the ALJ's recommendation regarding PCAP shopping restrictions are (1) that the ALJ erred in discounting the value of shopping to CAP participants; and (2) that the ALJ erred by directing specific restrictions on the ability of CAP customers to shop.[58] As explained more fully below, each of these claims is easily refuted by a simple review of the evidentiary record in this case.

1. RESA's Argument Fails to Respect Important CAP Control Features that Limit Programming Costs

First, RESA claims that the ALJ failed to adequately value the broader benefits of the competitive retail shopping market that can be offered to low-income customers.[59] RESA cites a smart thermostat as an example of an alleged benefit: "a customer enrolling with an EGS product that includes a bundled smart thermostat would **likely** experience an overall reduction in energy use."[60] I&E submits that the ALJ considered such broader benefits, but properly found that RESA not only failed to substantiate the alleged benefits, but that the Commission's policies prohibit PCAP customers from subscribing to non-basic services that would increase their monthly bill without contributing to bill reductions:

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57 RESA Exceptions, p. 12.
58 RESA Exceptions, p. 13.
59 RESA Exceptions, p. 12.
60 Id (emphasis added).

> RESA contends that the analysis of the harm caused by unrestricted PCAP shopping fails to consider value-added components of EGS products. RESA's witness provides examples of value-added components such as Amazon Prime membership and smart thermostats. However, RESA offers no data to substantiate its claims that these benefits result in savings on PCAP customers' utility bills. Further, it is inappropriate to use PCAP credits to subsidize services when they are nonessential products and services which increase the commodity price for basic service and are in part paid by the PCAP customer and in part passed through the Companies' universal service rider. The Commission's PCAP Policy Statement explicitly prohibits PCAP participants from subscribing to "nonbasic services that would cause an increase in monthly billing and would not contribute to bill reduction." While the policy statement *provides that nonbasic services may be allowed if the service* reduces the customer's bills, **RESA's testimony falls far short of proving that any of these services in fact lower any customer's bills.**[61]

Importantly, the ALJ's analysis honors important control feature imposed by the Commission, which is intended to limit program costs is the requirement that CAP credits should not be used to pay for nonbasic services that would increase monthly bills without contributing to bill reduction.[62] On the other hand, RESA has failed to offer any proof that implementing the recommended restrictions would deprive PCAP customers of value-added services that would reduce those customers' bills and therefore be an acceptable use of CAP credits. Accordingly, RESA's Exceptions are without merit and they should be denied.

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61 RD at 68-69 (emphasis added).

62 I&E Main Brief, p. 40.

2. RESA's Arguments Against the Recommended PCAP Restrictions Lack Evidentiary Support

In another vein, RESA claims that the ALJ erred by directing specific restrictions on the ability of PCAP customers to shop because (1) shopping restrictions would materially limit and adversely affect the choices available to PCAP participants because EGSs would likely discontinue serving low-income customers; (2) the Commission should consider options other than imposing PCAP shopping restrictions; and (3) the operational process for the Companies and EGSs impacted by the restrictions will be complex and deserve more attention than was granted in this proceeding. At the outset, it is important to note that RESA's third issue regarding operational process challenges was not developed in the record and appears to be raised for the first time in its Exceptions.[63] Therefore, this issue was never properly before the ALJ, and I&E and other parties have never had an opportunity to evaluate this position as part of the proceeding. Accordingly, I&E will not address this issue here, but will defer to the Commission as to whether and in what capacity it ought to be considered. However, I&E will address the first two points.

First, RESA's prediction that EGSs will likely discontinue serving PCAP customers under the terms of the restrictions recommended in this case is based on pure speculation. To be sure, it is impossible to predict future EGS participation at this juncture. Furthermore, even assuming, arguendo, that RESA's dire, unsupported

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[63] RESA witness Hudson does not include a discussion of this topic in any portion of the testimony he submitted on RESA's behalf. Additionally, neither RESA's Main Brief nor its Reply Brief discuss this topic, meaning that no opportunity for consideration of this position existed until June 28, 2018 when RESA served its Exceptions.

prediction materializes and either no or few EGSs elect to serve PCAP customers, the Companies' obligations under the Choice Act to adequately fund their CAP program and to help low income customers to maintain their electric service, and the Commission's requirement that they operate their PCAP program in a cost-effective and efficient manner must still be honored. Therefore, the ALJ did not err, as RESA did not and could not prove that all EGSs able to serve jurisdictional customers would be unwilling to serve PCAP customers under the revised programming. Additionally, I&E submits that RESA also did not and could not prove that such potential unwillingness would be a viable basis to allow PCAP shopping harm to continue unabated.

Finally, RESA's argument that the Commission should consider options other than imposing PCAP shopping is unsupported and inadequate. I&E notes that RESA first raised alleged alternatives in its surrebuttal testimony,[64] where it simply listed these enumerated "alternatives" without any analysis and without providing any evidence of their effectiveness in mitigating the Companies' increased CAP shopping costs. RESA appeared to acknowledge its failure to develop these alternatives, because it contemplated the need to develop them further outside the context of this proceeding. Specifically, RESA simply "welcome[s] an opportunity to evaluate these [alternatives] and other options in the context of collaborative and stakeholder discussions with the parties."[65]

I&E submits that the time for collaboration has passed, as the Companies already convened stakeholder collaborative sessions with parties to the prior default service

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64 RESA St. No. 1-SR, pp. 11-12.

65 Id. at p. 12.

settlement on September 13, 2016; November 30, 2016; May 25, 2017; and on October 4, 2017, and these sessions did not yield a PCAP shopping resolution.[66] In summary, RESA has failed to provide any evidence to enable the ALJ to conclude that any alternative to limiting the scope of PCAP shopping to no greater than the PTC at any time would remediate the Companies' increased PCAP shopping costs. Accordingly, RESA's arguments regarding alleged reasonable alternatives are unsupported and do not provide a viable basis for exception; therefore, RESA's Exceptions should be denied.

[66] Companies' St. No. 1, p. 3.

III. CONCLUSION

For the reasons stated herein, the Bureau of Investigation & Enforcement respectfully requests that the Commission deny the exceptions of the Retail Energy Supply Association and adopt the Recommended Decision of the Administrative Law Judge Mary D. Long.

Respectfully submitted,

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Petition of Metropolitan Edison	:	Docket No. P-2017-2637855
Company, Pennsylvania Electric Company,	:	Docket No. P-2017-2637857
Pennsylvania Power Company and West Penn	:	Docket No. P-2017-2637858
Power Company for approval of their	:	Docket No. P-2017-2637866
Default Service Programs	:	

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Reply Exceptions** dated July 9, 2018, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

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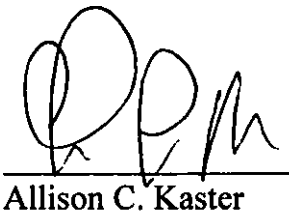

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