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May 6, 2022

VIA eFILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
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**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-2021-3030012, P-2021-3030013, P-2021-3030014, and P-2021-3030021**

Dear Secretary Chiavetta:

Enclosed for filing in the above-captioned proceedings is the **Statement of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company in Support of Joint Petition for Partial Settlement** (“Statement in Support”). The Statement in Support will be served on presiding Administrative Law Judge Jeffrey A. Watson and all parties of record as indicated on the Certificate of Service.

If you have any questions, please do not hesitate to contact me.

Very truly yours,



Kenneth M. Kulak

KMK/tp
Enclosures

c: Per Certificate of Service (w/encls.)

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOINT PETITION OF	:	DOCKET NO. P-2021-3030012
METROPOLITAN EDISON COMPANY,	:	
PENNSYLVANIA ELECTRIC	:	DOCKET NO. P-2021-3030013
COMPANY, PENNSYLVANIA POWER	:	
COMPANY, AND WEST PENN POWER	:	DOCKET NO. P-2021-3030014
COMPANY, FOR APPROVAL OF	:	
THEIR DEFAULT SERVICE	:	DOCKET NO. P-2021-3030021
PROGRAMS	:	

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served copies of the **Statement of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company in Support of Joint Petition for Partial Settlement**, on the persons listed below, in the manner specified in accordance with the requirements of 52 Pa. Code § 1.54:

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Dated: May 6, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOINT PETITION OF METROPOLITAN	:	
EDISON COMPANY, PENNSYLVANIA	:	
ELECTRIC COMPANY,	:	DOCKET NOS. P-2021-3030012
PENNSYLVANIA POWER COMPANY	:	P-2021-3030013
AND WEST PENN POWER COMPANY	:	P-2021-3030014
FOR APPROVAL	:	P-2021-3030021
OF THEIR DEFAULT SERVICE	:	
PROGRAMS FOR THE PERIOD	:	
JUNE 1, 2023 TO MAY 31, 2027	:	

**STATEMENT OF METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY,
PENNSYLVANIA POWER COMPANY AND
WEST PENN POWER COMPANY
IN SUPPORT OF THE JOINT PETITION FOR PARTIAL SETTLEMENT**

May 6, 2022

TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. SUMMARY OF THE SETTLEMENT	2
III. THE SETTLEMENT IS IN THE PUBLIC INTEREST AND FULLY SATISFIES THE REQUIREMENTS OF THE COMPETITION ACT AND THE COMMISSION’S DEFAULT SERVICE REGULATIONS.....	7
A. Procurement and Implementation Plan (Joint Petition, Paragraphs 15-42).....	8
1. The Term of the Revised DSP VI Programs Is Proper	8
2. The Companies’ Procurement Classes Are Appropriate	8
3. The Revised DSP VI Programs Utilize Competitive Procurement Processes.....	9
4. The Procurement Plan for the Residential Customer Class Is in the Public Interest	10
5. The Procurement Plan for the Commercial Customer Class Is in the Public Interest	13
6. The Procurement Plan for the Industrial Customer Class Is in the Public Interest	14
7. Additional Procurement Issues	14
B. Rate Design and Cost Recovery (Joint Petition, Paragraphs 43-68)	18
1. The Settlement Will Establish a Fair and Reasonable Retail Rate Design That Complies Fully with the Commission’s Regulations and Policy Statement on Default Service	18
2. The Companies’ Revised DSP VI Programs Will Offer TOU Rates That Satisfy Act 129 Requirements and Are in the Public Interest	21
C. Customer Referral Program (Joint Petition, Paragraphs 69-79)	27
D. POR Clawback Charge (Joint Petition, Paragraphs 80-81)	29
E. CAP Customer Shopping (Joint Petition, Paragraphs 82-88).....	30
F. Third-Party Data Access Tariff (Joint Petition, Paragraphs 89-93).....	31
G. Additional Settlement Terms (Joint Petition, Paragraphs 94-95)	33

TABLE OF CONTENTS
(continued)

Page

IV. CONCLUSION.....	33
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOINT PETITION OF METROPOLITAN	:	
EDISON COMPANY, PENNSYLVANIA	:	
ELECTRIC COMPANY,	:	DOCKET NOS. P-2021-3030012
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**STATEMENT OF METROPOLITAN EDISON COMPANY,
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WEST PENN POWER COMPANY
IN SUPPORT OF THE JOINT PETITION FOR PARTIAL SETTLEMENT**

I. INTRODUCTION

On April 20, 2022, Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”) and West Penn Power Company (“West Penn”) (individually, a “Company,” and collectively, the “Companies”); the Pennsylvania Public Utility Commission (“Commission”) Bureau of Investigation and Enforcement (“I&E”); the Office of Consumer Advocate (“OCA”); the Office of Small Business Advocate (“OSBA”); the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, and West Penn Power Industrial Intervenors (collectively, the “Industrials”); Enerwise Global Technologies, d/b/a CPower Energy Management (“Enerwise”); Constellation Energy Corporation (“Constellation”); Shipley Choice, LLC d/b/a Shipley Energy (“Shipley”); the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”); and The Pennsylvania State University (collectively, the “Joint Petitioners”) filed with the Commission a Joint Petition For Partial Settlement (“Joint Petition”) of all but two issues in the

above-captioned proceeding.¹ The items reserved for litigation involve (1) the relevance of the Companies' treatment of excess energy from customer-generators to this proceeding and (2) Sunrise's assertions regarding the Companies' calculation of the Price-to-Compare ("PTC") with respect to costs for compliance with Pennsylvania's Alternative Energy Portfolio Standards ("AEPS") Act² and the use of loss factors. The Joint Petition sets forth the factual background and procedural history of this case. This Statement in Support (the "Statement") is filed pursuant to Paragraph 96 of the Joint Petition.

The settlement embodied in the Joint Petition (the "Settlement") was achieved only after an extensive investigation by the parties of the Companies' proposed sixth default service programs ("DSP VI") for the period from June 1, 2023 to May 31, 2027 ("Original Proposal"), which included substantial discovery, the submission of written direct, rebuttal and surrebuttal testimony, and an evidentiary hearing. In addition, over a period of several weeks, the parties engaged in discussions and negotiations about the terms of the Settlement.

The Companies are in full agreement with each of the reasons supporting the Settlement set forth in Paragraph 97 of the Joint Petition. In this Statement, following a summary of the Settlement, the Companies offer additional reasons why the Settlement is in the public interest and should be approved.

II. SUMMARY OF THE SETTLEMENT

The Original Proposal contained limited changes to the Companies' existing, Commission-approved default service programs ("DSP V Programs").³ Under the Settlement,

¹ Calpine Retail Holdings, LLC, the Retail Energy Supply Association ("RESA") and NRG Energy, Inc. ("NRG"), and John Bevec and Sunrise Energy, LLC (collectively, "Sunrise"), which are parties to this proceeding, have authorized the Joint Petitioners to represent that they do not oppose the Settlement.

² 73 P.S. §§ 1648.1 et seq.

³ See *Joint Petition of Metro. Edison Co., Pennsylvania Elec. Co., Pennsylvania Power Co., and West Penn Power Co. for Approval of Their Default Serv. Programs for the Period Beginning June 1, 2019 through May 31, 2023*, Docket Nos. P-2017-2637855 et al. (Opinion and Order entered Sept. 4, 2018) ("September 2018 Order"). In the September 2018 Order, the Commission approved a partial settlement of the Companies' DSP

the Companies' default service programs (the "Revised DSP VI Programs") are generally consistent with the Original Proposal. As originally proposed, the Revised DSP VI Programs will have a four-year term beginning June 1, 2023 and ending May 31, 2027. The Companies' default service customers will remain divided into three procurement classes: a residential class, a commercial class and an industrial class. The Companies will maintain the same procurement class definitions that were approved by the Commission in the DSP V Orders.

Except for the long-term solar procurement discussed in Paragraphs 22 and 23 of the Joint Petition, the Companies will acquire load-following, full requirements default service supply for the residential and commercial classes procured through a descending clock auction ("DCA"). The full requirements contracts for the residential class will include a fixed price established through the applicable DCA. For the first year of the DSP VI term, contracts for 76% of the load will have terms of 12 months, and contracts for the remaining 24% will have terms of 24 months. Beginning on June 1, 2024, contracts for 51% of the residential class load will have terms of 12 months, and contracts for the remaining 49% will have terms of 24 months.

Under the Settlement, as originally proposed, the Companies will also procure – through multi-year, fixed-price power purchase agreements ("PPAs") – the energy and solar photovoltaic alternative energy credits ("SPAECs") generated by one or more new in-state solar photovoltaic projects with total capacity of at least seven megawatts ("MW") and up to 20 MW. The winning project(s) will be selected through a competitive procurement process. The energy generated by the selected project(s) will be paired with spot purchases to satisfy a fixed quantity of residential

V proceeding ("DSP V Settlement") and resolved the remaining contested issues, including the residential procurement schedule, continuation of each Company's Customer Referral Program ("CRP"), and shopping by customers enrolled in each Company's Customer Assistance Program ("CAP"). On February 28, 2019, the Commission entered a Final Order ("February 2019 Order" and together with the September 2018 Order, the "DSP V Orders") adopting rules and procedures for the CAP shopping programs approved in the September 2018 Order and revising the Companies' CRP scripts.

default service load. The Joint Petitioners have agreed on solar procurement procedures, including a request for proposals (“RFP”) and form of PPA.

The commercial class products are 100% full requirements contracts with a fixed price established through the Companies’ DCA process. For the first year of the DSP VI term, the commercial class product mix will be comprised of 12-month contracts (74%) and 24-month contracts (26%). For the second year of the DSP VI term, the commercial class full requirements product mix will be comprised of 12-month contracts (49%) and 24-month contracts (51%). Beginning on June 1, 2025, contracts for 51% of the commercial class load will have terms of 12 months, and contracts for the remaining 49% will have terms of 24 months.

For the industrial class, the load will be served through 12-month full requirements contracts for hourly-priced service procured annually. Winning suppliers will be paid the winning price bid in the hourly-priced auction, the hourly PJM Interconnection, L.L.C. (“PJM”) real time zonal locational marginal price (“LMP”), and a fixed adder of \$4 per megawatt-hour to capture the estimated costs of other supply components, including capacity, ancillary services, AEPS compliance and other costs.

Under the Settlement, the Companies will satisfy most of their obligations under the AEPS Act with respect to sales to default service customers by requiring each full requirements default service supplier to transfer Tier I and Tier II alternative energy credits (“AECs”) to the applicable Company corresponding to the Company’s AEPS obligations associated with the amount of default service load served by that supplier. The Joint Petitioners have also agreed on a form supplier master agreement (“SMA”) and related documents to implement the Revised DSP VI Programs, as well as contingency plans in the event of failure to fully subscribe the default service load for any class, Commission rejection of the bid results for any procurement, supplier default, or the failure of PJM to conduct its base residual auction (“BRA”) in time for

default service suppliers to incorporate the auction results in their bids. The Joint Petitioners further resolved other procurement-related issues, including the appointment of CRA International, Inc. d/b/a/ Charles River Associates (“CRA”) as the independent third-party evaluator of the Companies’ DCAs and The Brattle Group (“Brattle”) as the independent third-party evaluator of the Companies’ long-term solar procurement.

In addition, the Joint Petitioners have agreed upon tariff and rate design changes to implement the Revised DSP VI Programs. As originally proposed, the Companies will adjust default service rates for the residential and commercial classes on a semi-annual, instead of quarterly, basis. In addition, costs and revenues will be reconciled on a semi-annual basis for all default service customers. Finally, the Joint Petitioners agreed to the Companies’ originally proposed time-of-use (“TOU”) rate options for the residential and commercial classes with limited modifications related to periodic updates to the Companies’ TOU pricing multipliers and the communications plan for the TOU rates.

The Companies will continue their existing, Commission-approved Customer Referral Program (“CRP”) until May 31, 2027, as agreed upon by the Joint Petitioners. The Companies will also allow customers to enroll in the program through their website. In addition, the Companies will convene a collaborative to explore the compilation of metrics related to the Companies’ CRPs.

The Joint Petitioners agreed to continuation of the clawback charge associated with the Companies’ purchase of receivables (“POR”) programs as a permanent provision in their Electric Generation Supplier Coordination Tariffs (“Supplier Tariffs”). The Companies will continue to assess a charge to those electric generation suppliers (“EGSs”) participating in the Companies’ POR programs whose individual write-offs exceed a set threshold as compared to total EGS write-offs for that Company, following application of an established two-prong test. The

revenues generated by the clawback mechanism accrue to customers over time by reducing uncollectible accounts expense that would otherwise have to be collected from the Companies' customers through retail rates.

The Joint Petitioners also resolved issues related to CAP customer shopping in the Companies' service areas. Under the Settlement, effective June 1, 2023, all of the Companies' CAP customers are required to be enrolled in default service at the applicable PTC. In addition, the Companies' Supplier Tariffs will include a new rule prohibiting EGSs from charging early cancellation, termination, or other fees to any shopping customer transitioning into a Company's CAP.

The Joint Petitioners further agreed to the implementation of new tariffs governing access to customer data by third parties that are not licensed EGSs. Under the Settlement, the Companies' Third-Party Data Access Tariffs will be limited to Conservation Service Providers registered with the Commission or Curtailment Service Providers that are PJM members and identified on PJM's list of demand response providers. The Companies committed to conduct randomized semi-annual audits to ensure that customer authorization is properly obtained by third parties when seeking access to customer data.

Finally, the Joint Petitioners agreed that several issues raised by opposing parties in their written testimony will not be addressed in this default service proceeding, including proposals for the Commission to open separate proceedings to reexamine the default service model on a statewide basis.

**III. THE SETTLEMENT IS IN THE PUBLIC INTEREST
AND FULLY SATISFIES THE REQUIREMENTS
OF THE COMPETITION ACT AND THE
COMMISSION'S DEFAULT SERVICE
REGULATIONS**

Under the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801 et seq. (the “Competition Act”), the Companies, as electric distribution companies (“EDCs”) and default service suppliers, are required to procure electric generation service for customers who contract for electric energy that is not supplied or who do not choose an EGS. Under Sections 2807(e)(3.1), (3.2) and (3.4) of the Competition Act, as amended by Act 129 of 2008 (“Act 129”), the Companies are required to obtain, through competitive procurement processes, a “prudent mix” of default service supply contracts designed to ensure “adequate and reliable service” at the “least cost to customers over time.”⁴

Under the Commission’s default service regulations, a default service program must include, among other things: (1) a default service procurement plan that sets forth the Companies’ strategy for procuring generation supply and complying with AEPS requirements; (2) an implementation plan identifying the schedule and other details of the Companies’ proposed competitive procurements for default supply, with forms of supplier documents and agreements and an associated contingency plan; and (3) a rate design plan to recover all reasonable costs of default service, including rates, rules and conditions of service and revisions to its tariff.⁵

In considering and approving a default service provider’s plan, the Commission is required to make specific findings that “the default service provider’s plan includes prudent steps necessary to negotiate favorable generation supply contracts...[and] includes prudent steps

⁴ 66 Pa.C.S. § 2807(e)(3.7).

⁵ 52 Pa. Code § 54.185(e).

necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis.”⁶

The Companies’ Revised DSP VI Programs contain all the elements required by the Commission’s default service regulations (52 Pa. Code §§ 54.181 – 54.189) and its Policy Statement on Default Service (52 Pa. Code §§ 69.1801- 69.1817), including implementation plans, procurement plans, contingency plans, rate design, and associated tariff pages. As described in the Settlement and in this Statement, the Companies’ Revised DSP VI Programs fully satisfy each of the requirements of the Competition Act and the applicable Commission regulations on default service.

A. Procurement and Implementation Plan (Joint Petition, Paragraphs 15-42)

1. The Term of the Revised DSP VI Programs Is Proper

The Commission’s regulations provide that the term of a default service program after the initial program will be determined by the Commission.⁷ In the Settlement, the Joint Petitioners agreed to the Companies’ original proposal for a four-year DSP VI term consistent with the four-year term approved by the Commission in its September 2018 Order. *See* Joint Petition, ¶ 15. The Revised DSP VI term is reasonable because, as the Commission recently noted, a longer program would minimize future litigation expenses and reduce administrative costs.⁸ *Met-Ed/Penelec/Penn Power/West Penn St. 1*, pp. 10-11.

2. The Companies’ Procurement Classes Are Appropriate

The Commission’s regulations (52 Pa. Code § 54.187) and Policy Statement (52 Pa. Code § 69.1805) provide that default service providers should design procurement classes based upon

⁶ 66 Pa.C.S. § 2807(e)(3.7).

⁷ *See* 52 Pa. Code § 54.182(d).

⁸ *See, e.g., Petition of Duquesne Light Co. for Approval of Its Default Serv. Plan for the Period from June 1, 2021 through May 31, 2025*, Docket No. P-2020-3019522 (Opinion and Order entered Jan. 14, 2021), p. 27; *Petition of PECO Energy Co. for Approval of Its Default Serv. Program for the Period from June 1, 2021 through May 31, 2025*, Docket No. P-2020-3019290 (Opinion and Order entered Dec. 3, 2020), pp. 20-31.

peak loads of 0-25 kW, 25-500 kW, and 500 kW and greater, but default service providers may propose to depart from these specific ranges, including to “preserve existing customer classes.”⁹ In the Settlement, the Joint Petitioners agree to the Companies’ original proposal to divide customers into three classes for purposes of default service procurement, consistent with their existing DSP V programs: the residential class, commercial class, and industrial class subject to the definitions that were approved in the DSP V Orders. Joint Petition, ¶¶ 16-17; Met-Ed/Penelec/Penn Power/West Penn St. 2, p. 6. To implement the procurement classes under the Settlement, the Joint Petitioners have requested that, if necessary, the Commission grant the Companies a waiver of the specific peak load class criteria in 52 Pa. Code § 54.187. Joint Petition, p. 27.

3. The Revised DSP VI Programs Utilize Competitive Procurement Processes

The Competition Act requires EDCs to use competitive procurement processes to obtain default service supply. In the Settlement, the Joint Petitioners agree to the Companies’ original proposal to procure electric generation supply for the residential, commercial and industrial classes through the use of a DCA process. Joint Petition, ¶¶ 18-19, & Ex. A. The DCA rules that guide the bid solicitation processes are consistent with those that are used by the Companies in their current, Commission-approved DSP V Programs and that have yielded competitive outcomes. Met-Ed/Penelec/Penn Power/West Penn St. 2, pp. 4-5, 11-16; Met-Ed/Penelec/Penn Power/West Penn St. 4, pp. 19-27, 29-31. The DCA rules are also designed so that the procurements follow the Commission’s codes of conduct and that bidder qualification requirements are fair and non-discriminatory consistent with the Commission’s regulations at 52 Pa. Code §§ 54.186(b)(6)(ii) and 54.186(c)(2). *See* Met-Ed/Penelec/Penn Power/West Penn St. 2, pp. 12-14, & Ex. JHC-2. Accordingly, continuation of the Companies’ existing DCA

⁹ *See* 52 Pa. Code § 69.1805.

processes as part of the implementation plan for the Revised DSP VI Programs satisfies the Competition Act's requirements regarding competitive procurement processes.

4. The Procurement Plan for the Residential Customer Class Is in the Public Interest

In their Original Proposal, the Companies proposed a full requirements product for the residential class with each tranche consisting of a 95% fixed price, load-following full requirements portion with 12-month and 24-month contract terms and a 5% variable price spot portion. Met-Ed/Penelec/Penn Power/West Penn St. 2, pp. 7-8, & 2R, p. 10; Met-Ed/Penelec/Penn Power/West Penn St. 4, pp. 6-9, 11-12. After the first auction for the DSP VI term in November 2022, the Companies proposed to hold DCAs semi-annually in March and September. *See* Met-Ed/Penelec/Penn Power/West Penn Ex. JHC-1. In addition, the Companies proposed to carve-out a block of residential default service load for each Company to be served by energy from long-term solar PPAs. Met-Ed/Penelec/Penn Power/West Penn St. 2, pp. 21-23; Met-Ed/Penelec/Penn Power/West Penn St. 4, pp. 28-29.

The OCA supported the Companies' proposal to procure 12- and 24-month full requirements products for the residential class. However, the OCA recommended elimination of the spot energy component of pricing for residential full requirements products, asserting that 5% of spot market supply may increase price volatility and lead to increases in the over/undercollection component of default service rates known as the "E-Factor." The OCA further recommended procurement schedule changes to accommodate default service contracts with terms extending into the Companies' next default service program. *See* OCA Sts. 1, pp. 10-16, & 1SR, pp. 3-6.

The OCA also generally supported the long-term solar procurement but recommended that the Companies allow bids of up to 20 years. *See* OCA St. 1, pp. 17-19, & 1SR, pp. 19-20. On the other hand, RESA/NRG opposed the long-term solar procurement, asserting that it would

hamper the ability of EGSs and developers to undertake solar projects and create a risk of inadequate solar supplies in the Commonwealth to meet AEPS requirements. RESA/NRG St. 1, pp. 37-41, & 1-SR, pp. 23-24.

Under the Settlement, the residential class procurement product is a 100% fixed price full requirements tranche with 12-month (76%) and 24-month (24%) delivery terms in the first year of the DSP VI term, followed by 12-month (51%) and 24-month (49%) delivery terms. The Companies will conduct DCAs for the residential class full requirements products twice per year in April and November, and the “hard stop” on May 31, 2027 originally proposed by the Companies will be replaced with overhanging full requirements contracts that cover the period from June 1, 2027 through May 31, 2028 (the first year of the Companies’ seventh default service programs). The Settlement also addresses Constellation’s concerns about the transparency of Network Integration Transmission Service (“NITS”) charges imposed by PJM on load serving entities (“LSEs”) in the Companies’ service areas¹⁰ by ensuring that the November auctions are held no earlier than one week following posting of West Penn’s NITS rates. *See* Joint Petition, ¶¶ 20-21, 26-27, & Ex. B.

All DCAs will be administered by an independent, third-party evaluator (CRA) in accordance with the DCA rules set forth in Exhibit A to the Joint Petition. Consistent with Section 54.185(3)(4) of the Commission’s regulations, suppliers participating in the DCAs will bid on tranches corresponding to a percentage of actual residential default service load. Winning suppliers will be responsible for fulfilling all the associated requirements of an LSE under applicable agreements with PJM, including energy, capacity, transmission, ancillary services, and PJM administrative expenses, as well as providing all necessary AECs for AEPS

¹⁰ *See* Constellation St. 1, pp. 16-19.

compliance.¹¹ Joint Petition, ¶¶ 18-19. The form SMA which suppliers will be required to execute is attached as Exhibit C to the Joint Petition.

In addition, the Settlement adopts the Companies' original proposal to offset a portion of residential default service load with energy purchased through long-term solar PPAs with terms between four and ten years. The solar RFP process agreed to by the Joint Petitioners is designed to obtain competitive, fixed-price supply contracts at least cost, and it will utilize an independent third-party RFP monitor (Brattle). Moreover, the solar RFP and related documents include terms and conditions that are typical of power purchase and solar renewable energy credit agreements. *See Met-Ed/Penelec/Penn Power/West Penn St. 2*, pp. 21-22, & Ex. JHC-6.

In sum, the Settlement resolves the parties' differences regarding the residential procurement plan, is consistent with the Competition Act's requirements and is in the public interest. The Companies believe that the combination of full requirements contracts and solar PPAs paired with spot market purchases as set forth in the Settlement constitutes a "prudent mix" of supply resources to obtain least cost generation supply on a long-term, short-term, and spot market basis and to ensure adequate and reliable service, as required by the Competition Act.¹² The use of 12-month and 24-month full requirements purchases provides some measure of price stability, a concern that the Commission is required to consider under the Competition Act.¹³ At the same time, the use of spot purchases in the long-term solar procurement provides a reflection of current market prices. Furthermore, the comprehensive DCA rules and solar RFP process agreed to by the Joint Petitioners satisfy the Competition Act's requirements of a

¹¹ Transmission requirements exclude Regional Transmission Expansion charges, Expansion Cost Recovery Charges, and other non-market-based ("NMB") transmission costs described in footnote 5 of the Joint Petition. Under the Settlement, the Companies will continue to assume responsibility for NMB transmission service on behalf of all LSEs in their service areas and recover the associated PJM charges through their non-bypassable Default Service Support ("DSS") Riders.

¹² *See* 66 Pa.C.S. § 2807(e)(3.7).

¹³ *See* Final Order, *Implementation of Act 129 of October 15, 2008; Default Serv. and Retail Elec. Mkts.*, Docket No. L-2009-2095604 (Oct. 4, 2011), p. 40.

competitive procurement process, with prudent steps to negotiate favorable generation supply contracts and obtain contracts at least cost. The Commission should therefore approve the procurement plan for the Companies' residential customers set forth in the Settlement.

5. The Procurement Plan for the Commercial Customer Class Is in the Public Interest

In their Original Proposal, the Companies proposed a commercial class procurement plan featuring a 100% fixed-price full requirements product with staggered 6-, 12-, and 24-month delivery terms. The Companies proposed to replace the 3-month contracts in the current DSP V supply portfolio with 6-month contracts to align with their proposed semiannual PTC adjustments and to smooth out the price swings from the 3-month commercial product. *See* Met-Ed/Penelec/Penn Power/West Penn St. 2, pp. 7-8; Met-Ed/Penelec/Penn Power/West Penn St. 4, pp. 15-16; Tr. at 62-66. The OSBA proposed to modify the Companies' commercial procurement schedule to extend purchases beyond the end of the DSP VI term to avoid potential market timing risk created by ending all contract purchases on a single date. The OSBA also expressed concern about potential risk premiums associated with shorter-term contracts. OSBA St. 1, pp. 13-16, & 1-S, pp. 2-5.

Under the Settlement, as originally proposed by the Companies, the commercial class procurement product is a 100% fixed-price full requirements tranche. For the first year of the DSP VI term, the commercial class full requirements product mix will be comprised of 12-month contracts (74%) and 24-month contracts (26%). For the second year of the DSP VI term, the commercial class full requirements product mix will be comprised of 12-month contracts (49%) and 24-month contracts (51%). Beginning on June 1, 2025, contracts for 51% of the commercial class load will have terms of 12 months, and contracts for the remaining 49% will have terms of 24 months. Joint Petition, ¶¶ 24-25. The Companies will procure the 12-month and 24-month

products for commercial class customers through DCAs in the same manner and at the same time as the residential DCAs. *See* Joint Petition, Ex. B.

As with the residential class, the procurement plan for commercial customers complies with the Competition Act’s requirement to use “competitive procurement processes” to obtain a “prudent mix” of contracts designed to ensure “adequate and reliable service” at the “least cost to customers over time.”¹⁴ The procurement plan also represents a compromise developed by the Joint Petitioners concerning the appropriate blend of supply resources to best serve the commercial class and resolves differences between the Companies and the OSBA with respect to the contract mix and timing of procurements.

6. The Procurement Plan for the Industrial Customer Class Is in the Public Interest

The Settlement adopts the Companies’ original proposal to continue to procure hourly-priced full requirements products annually for all default service supply for the industrial class, with one modification to the procurement schedule to conduct auctions in April 2023, 2024, 2025 and 2026. Joint Petition, ¶¶ 28-29 & Ex. B. Like the procurement plans for the other classes, the industrial class procurement plan complies with the Competition Act’s requirements.

7. Additional Procurement Issues

As set forth in the Settlement, the Joint Petitioners have also reached agreements on several issues that apply to multiple procurement classes.

AEPS Compliance. Both the Competition Act and the AEPS Act require default service providers, such as the Companies, to obtain a percentage of electricity sold to retail customers from alternative energy sources as measured by AECs.¹⁵ The AEPS Act also includes a “set-aside” that requires some of those AECs to be derived from solar photovoltaic (“PV”) facilities.

¹⁴ *See* 66 Pa.C.S. §§ 2807(e)(3.1), (3.2), (3.4).

¹⁵ *See* 66 Pa.C.S. § 2807(e)(3.6); 73 P.S. § 1648.3.

Under the Competition Act and the Commission’s AEPS regulations, EDCs, as well as EGSs, are required to use a competitive procurement process to obtain AECs.¹⁶

The Settlement adopts the Companies’ proposal to meet their AEPS Act obligations primarily through a combination of full requirements products and a long-term solar procurement to support solar energy facilities in the Commonwealth. As originally proposed by the Companies, each full requirements default service supplier will be required to transfer Tier I (including solar PV) and Tier II AECs to each Company corresponding to the AEPS obligations associated with the amount of default service load served by that supplier, with two exceptions. First, Met-Ed, Penelec, and Penn Power will continue to allocate SPAECs obtained through existing long-term contracts that expire on May 31, 2024 to default service suppliers and EGSs on a load-ratio basis. Second, the SPAECs that the Companies purchase through solar PPAs will be allocated to default service suppliers in proportion to the amount of residential load served over the course of the energy year. *See* Joint Petition, ¶¶ 33-35, & Exs. C, E-1 to E-4; Met-Ed/Penelec/Penn Power/West Penn St. 2, pp. 17-20; Met-Ed/Penelec/Penn Power/West Penn St. 3, pp. 6-7.

The SPAECs procured through the new long-term solar PPAs are expected to meet up to an estimated 32% of the Companies’ residential solar AEPS requirements under the Revised DSP VI Programs. If the Companies’ long-term solar procurement is not fully subscribed, the Companies will develop and file with the Commission an RFP for a five-year block of SPAECs. *See* Met-Ed/Penelec/Penn Power/West Penn St. 2, p. 23; Met-Ed/Penelec/Penn Power/West Penn St. 3, pp. 10-11. Under the Settlement, the Companies will disclose SPAEC allocations to default service suppliers in the transaction confirmation as recommended by Constellation. By

¹⁶ 66 Pa.C.S. § 2807(e)(3.5); *see also* 52 Pa. Code § 75.67(b) (requiring default service providers to demonstrate compliance with the Commission’s AEPS regulations by identifying a competitive procurement process for acquiring AECs in default service plans).

adopting the Companies' proposed solar RFP and contingency plan, the Settlement creates additional opportunities for solar generation in Pennsylvania, ensures that SPAECs are purchased at competitively determined prices, and resolves issues among the Companies, Constellation, and RESA/NRG regarding the Company's plan to meet a portion of their AEPS obligations associated with residential default service load with SPAECs purchased through solar PPAs. *Compare* Met-Ed/Penelec/Penn Power/West Penn St. 2R, pp. 7-9 *with* Constellation St. 1, pp. 19-21; RESA/NRG Sts. 1, pp. 40-41, & 1-SR, p. 23.

Contingency Plans. A default service program must include a contingency plan in the event of a supplier default.¹⁷ The Settlement appropriately provides for continuation of the contingency plans for full requirements procurements approved by the Commission in the Companies' DSP V proceeding that address the following possible scenarios: (i) an individual solicitation is not fully subscribed or the Commission rejects the bid results from a solicitation; and (ii) a winning supplier defaults prior to the start of the delivery period or at any time during the delivery period. Those contingency plans are described in Paragraphs 36 and 37 of the Joint Petition.

In addition, the Settlement adopts the Companies' original proposal to introduce a capacity proxy price ("CPP") in the Companies' auctions in the event PJM does not conduct a BRA in time for default service suppliers to incorporate the auction results in their bids, with clarifications on the CPP true-up methodology set forth in Paragraph 39 of the Joint Petition. The calculation of the CPP under the Settlement reflects a compromise between the Companies and Constellation to address Constellation's concern that the true-up cashflow may not align with the timing of capacity charges assessed by PJM to suppliers. *Compare* Met-Ed/Penelec/Penn Power/West Penn St. 3R, pp. 2-4 *with* Constellation St. 1, pp. 11-13.

¹⁷ See 52 Pa. Code § 54.185(e)(5).

SMA. The form of SMA that suppliers will be required to execute is attached as Exhibit C to the Joint Petition. The principal differences between the originally proposed SMAs and the Companies' current Commission-approved SMAs are: (1) modifications to reflect the changes in default service supplier responsibility for AEPS compliance discussed in Paragraph 26 of the Joint Petition; (2) the addition of several protections against supplier default, including adoption of a more conservative credit exposure methodology, an Independent Requirement Per Tranche ("ICRT") for winning bidders, and a standard supplier assignment agreement; and (3) revisions to add the CPP contingency plan. The only change to the SMA as originally proposed by the Companies is in Article 6 to include unsecured credit for the ICRT that was inadvertently omitted from the Companies' initial DSP VI filing. *See Met-Ed/Penelec/Penn Power/West Penn St. 2R, pp. 2-5.*

Load Cap. The Companies proposed to reduce their existing 75% load cap to 40% for fixed-price product auctions and maintain the 75% load cap for hourly-pricing product auctions. *Met-Ed/Penelec/Penn Power/West Penn Sts. 2, pp. 26-27, & 2R, pp. 10-11.* The OCA disagreed, arguing lowering the cap to 40% could, among other things, result in higher clearing prices. *OCA St. 1, pp. 28-30 & 1SR, pp. 15-17.* The Settlement adopts a 50% load cap for fixed-price product auctions and maintains the 75% load cap for hourly-priced product auctions. *See Joint Petition, ¶ 19 & Ex. A.* The reduced limit for fixed-priced auctions agreed to by the Joint Petitioners will diversify the load to additional suppliers, reduce the concentration risk, and reduce the potential collateral requirements on any one supplier that could lead to a default.

Third Party Evaluators. The Commission's default service regulations provide that the competitive bid solicitation process shall be subject to monitoring by the Commission or an independent third party selected by a default service provider in consultation with the

Commission.¹⁸ The Companies have proposed that CRA continue to serve as independent evaluator for their full requirements default service procurements. Met-Ed/Penelec/Penn Power/West Penn St. 2, p. 7. The Companies have also proposed that Brattle serve as the third-party independent evaluator for the long-term solar procurement. *See* Met-Ed/Penelec/Penn Power/West Penn St. 2, p. 22 & Ex. JHC-6.

The Joint Petitioners agree to the appointment of CRA as the independent third-party evaluator and auction manager for all DCAs and Brattle as the independent third-party evaluator for the long-term solar procurement. Joint Petition, ¶¶ 41-42.

Documentation. The Commission's default service regulations require a default service provider to include copies of the agreements (such as the SMA) and other documentation to be used in implementing a default service provider's procurement plan.¹⁹ The Joint Petitioners agree that the DCA rules attached to the Joint Petition as Exhibit A, the form SMA attached to the Joint Petition as Exhibit C and the solar RFP attached to Met-Ed/Penelec/Penn Power/West Penn Statement No. 2 as Exhibit JHC-6 should be utilized for implementation of the Companies' procurement plans. Joint Petition, ¶¶ 19, 23, 30.

B. Rate Design and Cost Recovery (Joint Petition, Paragraphs 43-68)

1. The Settlement Will Establish a Fair and Reasonable Retail Rate Design That Complies Fully with the Commission's Regulations and Policy Statement on Default Service

In the Original Proposal, the Companies proposed to maintain their current rate design with revised TOU rates, as discussed in Section III.B.2 below, and improvements to the default service rate adjustment and reconciliation process. The rate design set forth in the Settlement fully complies with the Commission's default service regulations and the Public Utility Code, whereby the Companies recover default service costs from default service customers through

¹⁸ *See* 52 Pa. Code § 54.186(c)(3).

¹⁹ *See* 52 Pa. Code § 54.186(e)(6).

each Company's Price to Compare Default Service Rate Rider ("PTC Rider") (residential and commercial classes) and Hourly Pricing Default Service Rate Rider ("HP Rider") (industrial class). Based on an assessment of their PTC history, the Companies proposed to adjust default service rates for the residential and commercial classes established pursuant to the PTC Rider and to reconcile the over/undercollection component of the PTC and HP Riders on a semi-annual, instead of a quarterly, basis. *See* Met-Ed/Penelec/Penn Power/West Penn Sts. 5, pp. 5-7, & 5R, pp. 9-10; Met-Ed/Penelec/Penn Power/West Penn Sts. 4, pp. 15-19, & 4R, pp. 2-5; Met-Ed/Penelec/Penn Power/West Penn Ex. PML-1. The Companies also proposed limited tariff revisions to align their PTC Riders and HP Riders with the procurement plans proposed for DSP VI. *See* Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 7-8, & Exs. PML-3 to PML-15.

The Companies currently have DSS Riders that impose non-bypassable charges. In the Original Proposal, the Companies proposed to continue to assume responsibility for the NMB charges for both default service suppliers and EGSs that serve load in the Companies' service areas and recover the costs from customers under the DSS Riders. However, Met-Ed and Penelec proposed to eliminate the non-utility generation ("NUG") component of their DSS Riders, along with their NUG Riders, because all NUG contracts have expired. In addition, Met-Ed, Penelec, and Penn Power proposed to continue recovering costs associated with legacy solar contracts that expire in 2024 through their non-bypassable Solar Photovoltaic Requirements Charge Riders approved by the Commission in the DSP V Orders. The Companies proposed to recover the costs associated with the long-term solar procurement from the residential class through the PTC Riders. Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 10-12, & Exs. PML-16 to PML-17; *see also* Met-Ed/Penelec/Penn Power/West Penn Exs. PML-7 through PML-10 (revising the definition of default service costs in each Company's PTC Rider to include costs associated with the administration of solar RFP and solar PPAs approved by the Commission).

The OCA proposed semi-annual E-Factor reconciliation using a 12-month refund or recovery period. OCA Sts. 1, pp. 25-27, & 1SR, pp. 13-14. Based on their view that the Companies improperly exclude certain administrative and overhead costs from the PTC and instead recover them through distribution rates, RESA/NRG recommended that the Commission initiate a generic, statewide proceeding to either (1) reexamine transitioning the role of default service provider from the Companies and other EDCs to EGSs, or (2) review the cost categories that EDCs currently include in their default service rates. RESA/NRG also recommended maintaining the Companies' existing quarterly PTC Rider adjustment on the ground that less frequent adjustment periods would purportedly result in a PTC price signal that diverges further from the underlying supply costs. RESA/NRG Sts. 1, pp. 42-56, & 1-SR, pp. 11-13, 25-31. Sunrise, in turn, recommended changes to the Companies' PTC and HP Rider rate calculations with respect to AEPS compliance costs and loss factors. Direct Testimony of David M. Hommrich, pp. 10-16; Second Direct Testimony of David M. Hommrich, pp. 2-12, 17.

Subject to resolution of the reserved issue relating to Sunrise's criticisms of the Companies' PTC and HP Rider formulas, the Settlement adopts the Companies' original proposed rate design. Joint Petition, ¶¶ 43-51. Under the Settlement, the Joint Petitioners agree that the Companies shall be permitted to file the retail electric service tariff pages set forth in Exhibits D-1 to D-4 to the Joint Petition to become effective June 1, 2023. *Id.*, ¶ 67.

This rate design also resolves the differences among the Companies, the OCA and RESA/NRG on the adjustment and reconciliation of the Companies' default service rates. Billing cycle lag results in a timing difference between revenue and expense that can produce significant fluctuations in the PTC that are not directly related to the underlying cost of default service supply. By using a semi-annual rather than a quarterly reconciliation schedule, fluctuations in default service prices will be smoothed out and result in clearer price signals for

both customers and EGSs. While the Commission’s regulations do not prescribe a period for reconciliation adjustments, the Companies believe that semi-annual reconciliation appropriately balances their goal of mitigating volatility with maintaining the PTC as a price signal for customers and EGSs. Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 6-7, & Ex. PML-2. In addition, moving to semi-annual rate adjustments under the Companies’ PTC Riders appropriately balances the responsiveness of the PTC to current market conditions and provides price stability benefits for customers. Met-Ed/Penelec/Penn Power/West Penn Sts. 4, pp. 15-19, & 4R, pp. 2-5. To implement semi-annual adjustment of default service rates for the commercial class and semi-annual reconciliation of the E-Factor for all default service customers under the Settlement, the Joint Petitioners have requested that, if necessary, the Commission grant the Companies a waiver of the rate design provisions in 52 Pa. Code § 54.187. Joint Petition, p. 27.

2. The Companies’ Revised DSP VI Programs Will Offer TOU Rates That Satisfy Act 129 Requirements and Are in the Public Interest

In addition to procurement of a “prudent mix” of default service supply contracts at the “least cost to customers over time,”²⁰ Act 129 requires EDCs to offer a TOU rate option to all default service customers with a smart meter.²¹ Based on these statutory requirements under Act 129, the Companies currently offer TOU rate options to residential default service customers through their Commission-approved Time-of-Use Default Service Riders (“TOU Riders” or “Rider K”).²² As part of the DSP V Settlement, the Companies agreed to make a specific proposal regarding their residential TOU rate offerings in the earlier of their first base rate case

²⁰ 66 Pa.C.S. §§ 2807(e)(3.1)-(3.2), (3.4) and (3.7).

²¹ 66 Pa.C.S. § 2807(f)(5).

²² See *Joint Petition of Metro. Edison Co., Pa. Elec. Co. Pa. Power Co., and West Penn Power Co. for Approval of their Default Serv. Programs*, Docket Nos. P-2011-2273650 et al. (Opinion and Order entered Feb. 15, 2013); *Pa. P.U.C. v. Metro. Edison Co.*, Docket No. R-2014-2428745 (Recommended Decision dated Mar. 9, 2015 (“Met-Ed Recommended Decision”), pp. 21, 29; *Pa. P.U.C. v. Pennsylvania Elec. Co.*, Docket No. R-2014-2428743 (Recommended Decision dated Mar. 9, 2015) (“Penelec Recommended Decision”) at 22, 29-30. The Commission adopted and approved the Met-Ed Recommended Decision and Penelec Recommended Decision by an Opinion and Order entered on April 9, 2015 at Docket No. R-2014-2428745 and Docket No. R-2014-2428743, respectively.

or default service proceeding following full implementation of smart meter back-office functionality. The Companies' smart meter back-office functionality is in place, and their smart meter plans are expected to be fully implemented as of December 31, 2022. Accordingly, in compliance with their DSP V settlement commitment, the Companies proposed new TOU rate options for the residential and commercial classes consistent with Commission guidance on TOU rate design and Act 129 requirements.²³ Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 13-14.

The Companies' original proposed TOU Riders reflect a balance of the following objectives: (1) simplicity; (2) cost-causation principles to connect the TOU pricing structure to wholesale markets and the Companies' standard, non-time varying PTC Riders; and (3) incentives for customer electric vehicle ("EV") adoption as envisioned by the Commission in its investigation of potential opportunities to better reflect wholesale cost causation into default service.²⁴ Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 14-15. As set forth in the Settlement, the Joint Petitioners have reached agreements regarding the rate design, customer eligibility, and the implementation plan for the revised TOU Riders, as described below.

TOU Product Structure and Rate Design. In the Settlement, the Joint Petitioners agree to the Companies' original proposed TOU rate design with differentiated pricing across three usage periods (on-peak, off-peak and super off-peak) throughout the year based on price

²³ Since the Commission's initial approval of Rider K for each Company, the scope of an EDC's obligation to offer TOU rates to default service customers was the subject of litigation before the Commission and Commonwealth Court. See *Petition of PPL Elec. Utils. Corp. for Approval of a New Pilot Time-of-Use Program*, Docket No. P-2013-2389572 (Order entered Sept. 11, 2014) (holding that Act 129 did not require PPL Electric Utilities Corp. ("PPL") to offer TOU rates directly to customer-generators); *Dauphin Cty. Indus. Dev. Auth. v. Pa. P.U.C.*, 123 A.3d 1124, 1136 (Pa. Cmwlth. 2015) ("*DCIDA*") (holding that Act 129 does not authorize default service providers to delegate the obligation to offer TOU rates to customers with smart meters to EGSs); *Petition of PPL Elec. Utils. Corp. for Approval of a New Pilot Time-of-Use Program*, Docket Nos. P-2013-2389572 and M-2016-2578051 (Secretarial Letter issued Apr. 6, 2017) ("April 2017 Secretarial Letter") (proposing a TOU design for PPL in accordance with the *DCIDA* decision and noting that the proposed TOU design "may provide future guidance to all EDCs" for incorporation into their own TOU proposals in their individual default service proceedings).

²⁴ See *Investigation into Default Serv. and PJM Interconnection, LLC Settlement Reforms*, Docket No. M-2019-3007101 (Secretarial Letter issued Jan. 23, 2020) ("January 2020 Secretarial Letter"), p. 7.

multipliers, with one revision to review those multipliers periodically as recommended by the OCA. *See* Joint Petition, ¶¶ 54-58. The on-peak and off-peak usage periods shown in Table 1 of the Joint Petition reasonably encompass the Companies' expected system peak usage times and account for the need for simplicity to encourage customer enrollment. Consistent with the January 2020 Secretarial Letter, the Settlement's TOU Riders include a super off-peak pricing period from 11 p.m. to 6 a.m. each day to encourage EV charging during overnight low-priced energy hours based on the Companies' system load patterns. Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 16-17, & Ex. PML-22. The Companies believe that these price-differentiated usage periods will provide eligible customers with a reasonable opportunity to shift usage and are therefore in the public interest.

The TOU price multipliers for each procurement class shown in Table 2 of the Joint Petition are designed to motivate shifting of usage from the higher-cost peak period to lower-cost off-peak periods consistent with the Commission's guidance in the April 2017 Secretarial Letter (p. 3). These multipliers reflect the ratios calculated from average PJM spot market prices as well as the cost of capacity during on-peak hours. Allocation of the cost of capacity to on-peak hours only under the Settlement will send cost-based price signals and create larger price differentials that are more likely to motivate customers to adjust the time of day they use electricity. Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 18-19, & Exs. PML-23 to PML-26.

Under the Original Proposal, the TOU multipliers for each procurement class would remain constant for the entire four-year DSP VI term. However, the OCA recommended that the Companies recalculate the TOU price multipliers annually using an updated four-year rolling average of LMPs, customer class loads, and zonal PJM capacity prices to reflect current market conditions. OCA St. 1, pp. 22-24, & 1SR, pp. 10-12. The Settlement adopts a modified form of

the OCA's proposal. Specifically, every two years, the Companies will review the TOU pricing multipliers set forth in Table 2 of the Joint Petition. Additional details on the threshold for updating the applicable TOU pricing multipliers are provided in Paragraph No. 56 of the Joint Petition. Accordingly, the Settlement resolves the differences between the Companies and the OCA regarding the TOU pricing multipliers.

The Settlement also documents agreement among the Joint Petitioners regarding the Companies' TOU rate calculations. Under the Settlement, the Companies will source both the standard and TOU default service for residential and commercial classes from the same supply portfolio for each procurement class. Joint Petition, ¶ 57. Under the Settlement's rate design, eligible default service customers will pay a discounted rate for off-peak usage and a higher rate for on-peak usage relative to the applicable Company's standard fixed-price PTC Rider rate. In addition, TOU customer kilowatt-hour ("kWh") sales and costs will be included in the semi-annual reconciliation of the over/undercollection component of the PTC Rider for the entire procurement class (i.e., residential or commercial). *Id.*, ¶ 58. This reconciliation process using a single E-Factor for each procurement class will help mitigate potential large swings in PTC Rider over/undercollections that could arise if customers switch between the Companies' standard default service rate and TOU default service rate. Met-Ed/Penelec/Penn Power/West Penn St. 5, p. 20. Notably, the Commission has previously authorized other EDCs to recover TOU over/undercollection amounts from all default service customers based on its finding that the TOU rates mandated by Act 129 are a "form of default service."²⁵

Customer Eligibility. As the Commission has recognized, Act 129 makes clear that an EDC's TOU program should be optional for default service customers.²⁶ The April 2017

²⁵ See *Pa. P.U.C. v. PPL Elec. Utils. Corp.*, Docket No. R-2011-2264771 (Opinion and Order entered Aug. 30, 2012), pp. 22-23.

²⁶ See January 2020 Secretarial Letter, p. 6. Act 129 provides that "[r]esidential or commercial customers *may* elect to participate in time-of-use rates or real-time pricing". 66 Pa.C.S. § 2807(f)(5) (emphasis added).

Secretarial Letter (p. 3) further provides that EDC TOU rates should be available to all default service customers who are not eligible for “spot only” default service and should incorporate existing consumer protections for CAP customers. In accordance with the Commission’s guidance, the Company’s voluntary TOU Riders under the Settlement will be available to residential and commercial default service customers with smart meters. Joint Petition, ¶¶ 59-61. The Settlement also includes restrictions on re-enrollment if a customer leaves the TOU for any reason. *Id.*, ¶ 62. This provision is in the public interest because it will reduce “free riders” who enroll in a TOU rate only for times of the year when they do not have to shift usage to save money. *Met-Ed/Penelec/Penn Power/West Penn St.* 5, p. 16.

The Settlement also adopts the Companies’ original proposal to exclude CAP customers from the residential TOU Riders to avoid potential adverse impacts on CAP benefits. Joint Petition, ¶ 59; *see also* *Met-Ed/Penelec/Penn Power/West Penn Sts.* 5, pp. 15-16, & 5R, p. 14. In addition, the Commission found that the recent settlement regarding PPL’s TOU program implemented pursuant to Act 129 was in the public interest because, among other things, the eligibility exclusion of CAP customers “protects low-income customers” by ensuring that vulnerable customers are not exposed to “potential rate volatility” associated with TOU rates.²⁷ The Settlement resolves issues between the Companies and RESA/NRG, which had objected to the “opt-in nature” of the Companies’ TOU Riders and the ineligibility of CAP customers. *See* *RESA/NRG St.* 1, pp. 18-23, & 1-SR, pp. 15-18.

Implementation Plan. The Original Proposal included communications to notify existing TOU customers about the changes to the Companies’ TOU Riders that will take effect

²⁷ *Proceeding Initiated to Comply with Directives Arising from the Commonwealth Court Order in DCIDA v. PUC*, 123 A3d 1124 (Pa. Cmwlth 2015) *Reversing and Remanding the Order of the Comm’n Entered Sept. 22, 2014 at Docket Number P-2013-2389572 in which the Comm’n had Approved PPL’s Time of Use Plan*, Docket Nos. M-2016-2578051 et al. (Recommended Decision issued Apr. 2, 2018) (“PPL TOU Recommended Decision”), p. 25. The Commission adopted the PPL TOU Recommended Decision without modification by Order entered on May 17, 2018.

on June 1, 2023, and educational materials regarding TOU rates, including tips on how customers can shift their electricity usage. The Companies proposed to recover the costs to implement their revised TOU Riders from residential and commercial default service customers through the PTC Riders. Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 21-22.

The OCA recommended that the Commission direct the Companies to explore a peak-time rebate program and perform an analysis to determine the potential bill impacts, peak load reductions and customer enrollment levels under their proposed TOU Riders and other TOU rate designs. OCA Sts. 2, pp. 16-17, & 2SR, pp. 3-4; *see also* OCA St. 1, pp. 19-20. CAUSE-PA recommended that the Companies provide a customized bill impact assessment and information about available universal service programs to vulnerable households seeking to enroll in the TOU Riders prior to enrollment. CAUSE-PA St. 1, pp. 40-43. In addition, CAUSE-PA recommended that the Companies track TOU customers' demographic information (e.g., age, race, ethnicity and disability status) and assess the impact of the Companies' TOU Riders on low-income and other vulnerable customers. *Id.*, p. 44.

Under the Settlement, to address CAUSE-PA's recommendation for additional consumer protections for non-CAP low-income customers and other vulnerable customers, the Companies will incorporate the specific disclosures outlined in Paragraph No. 64 of the Joint Petition in all TOU outreach and educational materials. The Settlement also provides stakeholders (including interested EGSs) with the opportunity to review and provide feedback on those materials. *See* Joint Petition, ¶ 63.

In sum, the TOU Rates under the Settlement reflect the Companies' prior experience with their existing TOU rate options, appropriately integrate the Commission's guidance on EDC rate structures to satisfy Act 129 requirements, and balance a variety of important objectives, including customer protections. Accordingly, implementation of the tariff changes set forth in

Exhibits D-1 to D-4 to the Joint Petition related to the Companies' TOU Riders is in the public interest.

C. Customer Referral Program (Joint Petition, Paragraphs 69-79)

The CRP was first established in the Companies' second default service proceeding, consistent with the Commission's guidelines in its Retail Markets Investigation.²⁸ The Companies' current CRP has evolved over the course of nearly a decade in four default service proceedings and is consistent with the parameters approved by the Commission in those cases. In the DSP V Orders, the Commission concluded that continuation of the CRP with the script improvements set forth in the February 2019 Order was in the public interest and "the easiest and safest way for a consumer to shop," notwithstanding the OCA's testimony in the DSP V case showing that some of the Companies' CRP customers paid prices above the PTC at certain points during the program.²⁹ To that end, in their Original Proposal, the Companies proposed to extend the CRP during DSP VI in the same format as in DSP V. Met-Ed/Penelec/Penn Power/West Penn Sts. 1, pp. 11-12, & 1R, pp. 4-6.

The OCA raised concerns about bill savings achieved by CRP customers and contended that the CRP must be terminated or amended. OCA Sts. 2, pp. 7-11, & 2SR, pp. 5-6. CAUSE-PA also opposed continuation of the CRP on the grounds that the Companies have not conducted an analysis of the price CRP customers pay for electric supply during or after the initial 12-month contract and have not performed customer satisfaction surveys. If the Commission approves continuation of the CRP, CAUSE-PA recommended script and design modifications

²⁸ See *Investigation of Pa.'s Retail Elec. Mkt.: Intermediate Work Plan*, Docket No. I-2011-2237952 (Final Order entered Mar. 2, 2012), p. 31; *Joint Petition of Metro. Edison Co., Pa. Elec. Co., Pa. Power Co. and West Penn Power Co. for Approval of Their Default Serv. Programs*, Docket Nos. P-2011-2273650 et al. (Opinion and Order entered Aug. 16, 2021), pp. 137-140, 144-146.

²⁹ February 2019 Order, pp. 38-42; see also September 2018 Order, pp. 31-32.

and that the Companies conduct a third-party assessment of the CRP within six months of the Final Order in this proceeding. CAUSE-PA Sts. 1, pp. 46-52, & 1-SR, pp. 8-10.

RESA/NRG recommended several operational and design changes to the CRP, including automatic CRP enrollment for all new customers who have not already made an affirmative choice of an EGS and implementation of an online CRP enrollment process through the Companies' websites. RESA/NRG St. 1, pp. 58-60. Shipley also argued that the Companies should allow CRP online web-enrollments and that the Companies should permit EGSs to opt in and out of the CRP each month. Finally, Shipley proposed a working group to revisit the Companies' CRP scripts, asserting that changes to the content of those scripts made in May 2017 have led to a decline in enrollment in the program. Shipley St. 1, pp. 6-10.

Under the Settlement, the Companies will continue the current CRP design, including the cost recovery mechanisms last approved by the Commission in the DSP V Orders, until May 31, 2027. Joint Petition, ¶ 69. To address the OCA's and CAUSE-PA's concerns regarding the prices that CRP customers pay for competitive generation service, the Companies will convene a collaborative to explore the compilation of metrics related to the Companies' CRPs. Additional detail regarding the collaborative is provided in Paragraphs 77 through 79 of the Joint Petition.

The Settlement also adopts certain operational and design changes recommended by RESA/NRG and Shipley. The Companies will allow customers to enroll in the CRP through their websites, effective June 1, 2023, with recovery of the costs associated with system changes necessary to implement web enrollments through their DSS Riders. *See* Joint Petition, ¶¶ 70-73, 75. CRP suppliers will continue to be able to begin and end participation in the CRP effective on the following dates each year: March 1, June 1, September 1, and December 1. Joint Petition, ¶ 74 & Ex. F.

The changes to the Companies' current CRP agreed to as part of the Settlement carefully balance the interests of customers and participating EGSs. Accordingly, continuation of the CRP under the Settlement is beneficial to customers and is in the public interest.

D. POR Clawback Charge (Joint Petition, Paragraphs 80-81)

Consistent with the September 2018 Order, the Companies extended the pilot for the POR clawback charge for the four-year period beginning with the 12 months ended August 31, 2018 and continuing annually through August 31, 2021. The clawback charge is assessed to EGSs whose write-offs as a percentage of revenues are 200% higher than their peers and whose average price per kWh is greater than 150% of the average PTC of the Company that is the default service provider for the customers served by the EGS in question. In addition, as required by the September 2018 Order, the Companies developed and now distribute an EGS-specific customer arrears report with unpaid aged account balances for EGSs participating in the Companies' POR programs. *See Met-Ed/Penelec/Penn Power/West Penn St. 1, pp. 6-7.*

The clawback charge, as approved in the Companies' prior two default service programs, is designed to collect a portion of uncollectible accounts expense from EGSs – specifically, those EGSs whose pricing practices are driving significantly higher write-offs as compared to other EGSs due to the types of offers they make to customers. Any charges assessed under the clawback provision are imposed based on the principle of cost causation. EGSs that have much higher-than-average write-offs and charge prices that are significantly higher than the PTC impose costs that, absent the clawback charge, would be borne entirely by the Companies and their customers. *See Met-Ed/Penelec/Penn Power/West Penn St. 1, pp. 13-16, & Ex. JMS-3.*

The Settlement adopts the Companies' original proposal to continue the clawback charge as a permanent part of their POR programs. Joint Petition, ¶¶ 80-81 & Exs. E-1 to E-4. The charge has been effective in achieving the Companies' goal of reducing the uncollectible

accounts expense that would otherwise have to be collected from the Companies' customers through retail rates. Continuing the clawback provision provides a reasonable approach to manage uncollectible accounts expense associated with the Companies' POR programs while avoiding creation of a subsidy for EGSs with disproportionately higher write-offs than their peers. This provision of the Settlement represents a compromise between the Companies and I&E, which had recommended that the Companies consider replacing the clawback provision with a POR discount rate. *Compare* Met-Ed/Penelec/Penn Power/West Penn St. 1R, pp. 11-13 *with* I&E Sts. 1, pp. 5-8, & 1-SR, pp. 4-5.

E. CAP Customer Shopping (Joint Petition, Paragraphs 82-88)

In the Original Proposal, the Companies proposed to continue the rules and procedures for CAP customer shopping adopted by the Commission in the DSP V Orders where CAP customers may only enter a contract with an EGS for a rate that is at or below the applicable Company's PTC and does not contain any early termination, cancellation, or other fees. However, under those rules, customers that enter CAP with pre-existing, fixed-duration EGS contracts at prices above the PTC are permitted to remain with that supplier until the end of the contract term (or, in the case of pre-existing month-to-month contracts, for 120 days from CAP enrollment). The Companies' current CAP shopping rules are consistent with the guidelines set forth in the Policy Statement on Electric Customer Assistance Program Participant Shopping proposed by the Commission on February 28, 2019.³⁰ Met-Ed/Penelec/Penn Power/West Penn Sts. 1, pp. 7, 17-18, & 1R, pp. 14-15.

CAUSE-PA and the OCA recommended that the Companies prohibit CAP customer shopping in their service areas based on data showing that the Companies' residential customers, including non-CAP confirmed low-income customers, have paid generation service rates greater

³⁰ *Elec. Distribution Co. Default Serv. Plans – Customer Assistance Program Shopping*, Docket No. M-2018-3006578 (Proposed Policy Statement Order entered Feb. 28, 2019).

than the applicable PTC since 2017. *See* OCA St. 2, pp. 12-13; CAUSE-PA St. 1, pp. 9-37. CAUSE-PA also proposed new rules that it believes are necessary to remove barriers to CAP enrollment for eligible low-income customers with pre-existing EGS contracts. CAUSE-PA St. 1, pp. 37-38.

Under the Settlement, effective June 1, 2023, CAP customers in the Companies' service areas will receive default service at the applicable PTC as recommended by the OCA and CAUSE-PA to address their concerns about enforcing the CAP rate protections for the subset of customers that may become eligible for CAP while they remain on an existing EGS contract. Joint Petition, ¶¶ 82-85, 87-88. The Joint Petitioners also agreed to new Supplier Tariff rules to ensure that low-income customers with pre-existing EGS contracts will be able to access CAP without facing fees as recommended by CAUSE-PA. *Id.*, ¶ 86 & Exs. E-1 to E-4.

The Companies believe the revised CAP shopping framework outlined in the Settlement strikes a reasonable balance among the Commission's policies of further developing Pennsylvania's competitive retail market, ensuring affordability of service for the Companies' low-income customers, and containing costs for all residential customers that pay for CAP.

F. Third-Party Data Access Tariff (Joint Petition, Paragraphs 89-93)

The Commission recently initiated an investigation of third-party access to customer data electronically from EDC data systems at Docket No. M-2021-3029018 ("Statewide Investigation").³¹ However, considering the increasing number of requests for customer data that the Companies are receiving (a greater than 87% increase since 2018), a structured framework governing electronic access to the Companies' customer data by third parties that are not licensed EGSs is appropriate in the immediate term while the Statewide Investigation advances.

³¹ *Investigation into Conservation Serv. Provider and Other Third-Party Access to Elec. Distribution Co. Customer Data*, Docket No. M-2021-3029018 (Secretarial Letter issued Feb. 8, 2022); *see also License Application of Enerwise Glob. Techs., LLC d/b/a CPower for Approval to Offer, Render, Furnish, or Supply Elec. or Elec. Generation Servs.*, Docket No. A-2019-3009271 (Final Order entered Oct. 7, 2021).

Accordingly, the Original Proposal included Third-Party Data Access Tariffs that would establish a registration process for a non-EGS entity seeking electronic access to customer data maintained by the Companies and impose continuing obligations for registered third parties to ensure the confidentiality of customer data. Met-Ed/Penelec/Penn Power/West Penn St. 6, pp. 5-9, 6R, pp. 3-5, & Exs. TLC-1 to TLC-4.

Enerwise generally supported the proposed Third-Party Data Access Tariffs but proposed the following two tariff changes: (1) eliminating the first sentence in Section 2.2.4 (“A Third Party is not an agent of the Customer”) and (2) extending the period of access to customer usage data from 12 consecutive months to a minimum of 24 months in Section 5.1.1. Enerwise St. 1, pp. 4-8. The OCA recommended that the Commission reject the Companies’ proposal, asserting that policies related to allowing third parties access to customer usage data should be developed, if at all, in the context of the Statewide Investigation, and proposed several modifications if the Commission considered the Third-Party Data Access Tariffs in this proceeding. OCA St. 2, p. 19, & 2SR, pp. 12-13. CAUSE-PA and the Industrials also recommended that the Commission reject the proposed Third-Party Data Access Tariffs based on concerns regarding safeguarding confidential customer information. *See* CAUSE PA St. 1, pp. 55-58; Industrials Sts. 1, pp. 5-6, & 1-S, pp. 2-3.

The Settlement modifies the Companies’ Original Proposal to limit third-party data access to Conservation Service Providers registered with the Commission or Curtailment Service Providers that are PJM members and identified on PJM’s list of demand response providers (as recommended by the OCA) and to eliminate the first sentence in Section 2.2.4 (as recommended by Enerwise). *See* Joint Petition, ¶ 90, & Exs. G-1 to G-4. In addition, to address concerns raised by several parties regarding confidentiality and security of customer data, the Settlement adopts a standard customer authorization form and the Companies agreed to conduct randomized

semi-annual audits of the participants under their new Third-Party Data Access Tariffs to ensure that customer authorization is properly obtained by third parties when seeking access to customer data. The Companies will also incorporate any best practices that emerge from the Statewide Investigation as appropriate. *Id.*, ¶¶ 89, 91-93.

In short, the Third-Party Data Access Tariffs, as revised by the Settlement, provide a reasonable framework to provide Conservation Service Providers and Curtailment Service Providers electronic access to customer data and appropriately balance confidentiality, efficiency and cost-effectiveness.

G. Additional Settlement Terms (Joint Petition, Paragraphs 94-95)

Paragraph 94 acknowledges that, to reach the Settlement, the following issues would not be addressed in this proceeding: i) proposals for the Commission to open one or more proceedings to reexamine the default service model and to revisit default service regulations and the default service policy statement to ensure that EDCs are recovering all default service costs through default service rates; (ii) RESA/NRG's proposal to revisit supplier consolidated billing; (iii) changes to the Companies' recovery of NITS costs; (iv) Constellation's proposal for the incorporation of a 24x7 load following clean energy product in future default service proceedings; and (v) credit requirement consistency among default service providers. Paragraph 95 sets forth the Joint Petitioners' agreement that, if RESA and/or NRG, files a petition with the Commission proposing to reexamine default service on a statewide basis, the record in this default service proceeding may be referenced therein.

IV. CONCLUSION

In sum, the Settlement provides a reasonable means of resolving all but two issues raised in this proceeding. It also reduces the administrative burdens on the Commission and the

litigation costs of all parties. Accordingly, for the reasons set forth above and in the Joint Petition, the Settlement is in the public interest and should be approved without modification.

Respectfully submitted,



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