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May 6, 2022

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
400 North Second 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 for the Period From June 1, 2023 through May 31, 2027; Docket Nos. P-2021-3030012, P-2021-3030013; P-2021-3030014; P-2021-3030021

Dear Secretary Chiavetta:

This Letter of Non-Opposition is submitted on behalf of the Retail Energy Supply Association (“RESA”)<sup>1</sup> and NRG Energy, Inc. (“NRG”)<sup>2</sup> in response to the Joint Petition for Partial Settlement (“Partial Settlement”) that was filed on April 20, 2022 by Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, “the Companies”) in the above-referenced matter.

Although RESA and NRG are not signatories to the Partial Settlement, they do not oppose the ultimate result and, in fact, support approval of several provisions as discussed below as in the

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<sup>1</sup> The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas at retail to residential, commercial and industrial energy customers. More information on RESA can be found at [www.resausa.org](http://www.resausa.org).

<sup>2</sup> NRG subsidiaries hold electric generation supplier licenses as follows: Direct Energy Business, LLC – Docket No. A-11025; Direct Energy Business Marketing, LLC – Docket No. A-2013-2368464; Direct Energy Services, LLC – Docket No. A-110164; Energy Plus Holdings LLC – Docket No. A-2009-2139745; Gateway Energy Services Corporation – Docket No. A-200902137275; Independence Energy Group LLC d/b/a Cirro Energy – Docket No. A-2011-2262337; Reliant Energy Northeast LLC d/b/a NRG Home/NRG Business/NRG Retail Solutions – Docket No. A-2010-2192350; Green Mountain Energy Company – Docket No. A-2009-2139745; Stream Energy Pennsylvania, LLC – Docket No. A-2010-2181867; and XOOM Energy Pennsylvania, LLC – Docket No. A-2012-2283821.

public interest. However, because RESA and NRG question how electric generation suppliers (“EGSs”) are expected to address existing legally binding supplier contracts in the context of eliminating shopping by customers enrolled in the Companies’ customer assistance programs (“CAP”), RESA and NRG were unable to support the Partial Settlement. This is particularly true in light of the Commission’s notice regulations and prior Commission direction regarding similar transitions.

Nonetheless, RESA and NRG made a business decision to conserve resources and forego further litigation of this matter. For ease of reference, following a summary of the recommendations advanced by RESA and NRG in this proceeding, this Letter addresses issues in the order set forth in the Common Outline for Statements in Support of the Partial Settlement.

I. Summary of RESA/NRG Recommendations

Through testimony of Travis Kavulla, former Chairman/Commissioner at the Montana Public Service Commission and former President of the National Association of Regulatory Utility Commissioners, RESA and NRG offered general observations about the competitive retail market, noting the unfortunate reality that “competition in Pennsylvania’s electric market is stagnating.”<sup>3</sup> In reaching this conclusion, Mr. Kavulla pointed to the steady and significant decline in the percentage of customers who are shopping for supply in the competitive market over the past five years. For instance, while in January 2017, 35.3% of Pennsylvania’s residential customers were purchasing supply from EGSs, that percentage declined to 24.7% in January 2022.<sup>4</sup> In the Companies’ service areas, the percentage of residential customers shopping for electricity have similarly declined as shown below:<sup>5</sup>

Operating Company	January 2017	January 2022
Metropolitan Edison Company	34.96%	22.14%
Pennsylvania Electric Company	30.96%	19.47%
Penn Power Company	28.17%	18.79%
West Penn Power Company	28.14%	18.6%

In former Chairman/Commissioner Kavulla’s opinion, this downward trend is significant and warrants recognition by the Commission of the need to make structural changes to the market. Without structural changes, it is not realistic to expect that competitive retail offerings will flourish, drive significant generation investment, or result in innovative product offerings. “In essence, Pennsylvania has a choice – either let electric distribution companies (“EDCs”)

<sup>3</sup> RESA/NRG Statement No. 1 at 7.  
<sup>4</sup> RESA/NRG Statement No. 1 at 7-8.  
<sup>5</sup> RESA/NRG Statement No. 1 at 8.

continue to monopolize the market, or to take steps to leverage the competitive market to its original, intended purposes.”<sup>6</sup>

Former Chairman/Commissioner Kavulla offered his views as to the reasons for the stagnant market, which he described as boiling down to the presence of a domineering default service provider (“DSP”) and a persistently unlevel playing field between the DSP and EGSs. As he explained, this dynamic arises in the persistent cross-subsidization that causes distribution customers, including those who have chosen a product other than the Companies’ default service, to nevertheless pay for costs related to that default service.<sup>7</sup>

Based upon these realities, RESA and NRG offered several recommendations, including: (i) a Commission commitment to launch a separate proceeding that focuses on transitioning the DSP role from EDCs to EGSs; (ii) to the extent that the existing structure with EDCs in this role is retained, a commitment to examining default service rates to ensure that they recover all costs related to the provision of default service, including indirect costs incurred by an EDC on a company-wide basis; (iii) adoption of the time-of-use (“TOU”) rate as the default service rate; (iv) rejection of the Companies’ proposal to transition from quarterly to semi-annual adjustments of default service rates; (v) discontinuance of the use of the misnomer “price to compare” when referring to default service rates; (vi) rejection of the Companies’ proposal to solicit new ten-year contracts for solar energy; and (vii) implementation of modifications to the existing Customer Referral Program (“CRP”) to encourage greater participation by consumers.<sup>8</sup>

## II. Procurement and Implementation Plans

The only aspect of the Companies’ Procurement and Implementation Plans that RESA and NRG addressed through testimony relates to the procurement and allocation of solar energy and solar photovoltaic alternative energy credits (“SPAECs”) and the recovery of solar energy and SPAECs costs. RESA and NRG raised concerns about the Companies’ proposals: (i) to enter into long-term solar procurement contracts that extend beyond the default service plan (“DSP”) program period; and (ii) to allocate SPAECs only to wholesale default service suppliers but to recover the costs from all distribution customers.<sup>9</sup>

Under the Partial Settlement, the Companies agree to recover the costs of solar energy and SPAECs only from default service customers.<sup>10</sup> This cost recovery approach properly reflects the Companies’ allocation of SPAECs only to wholesale default service suppliers. While this provision does not address the concern raised by RESA and NRG about long-term solar procurement, the proper recovery of SPAECs costs represents a balancing of the conflicting positions. As such, it is consistent with the public interest and should be approved.

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<sup>6</sup> RESA/NRG Statement No. 1 at 8-9.

<sup>7</sup> RESA/NRG Statement No. 1 at 9.

<sup>8</sup> RESA/NRG Statement No. 1 at 12.

<sup>9</sup> RESA/NRG Statement No. 1 at 37-42.

<sup>10</sup> Partial Settlement, ¶ 34.

### III. Rate Design and Cost Recovery: Time-of-Use Rates

The Companies proposed a new TOU rate design, with prices that are differentiated across three periods, including on-peak, super off-peak and off-peak. RESA and NRG submitted testimony emphasizing the importance of the availability of TOU rates to customers given their handsome investment in smart meter development. One of the often-promised benefits of smart meters is their ability to create an enhanced retail experience, including time-varying rates that better reflect the cost of energy at wholesale and the opportunity to respond to this more dynamic price signal.<sup>11</sup>

#### A. TOU as the Default Service Rate

Given the abysmal participation by customers in the existing TOU rate – in which the Companies have enrolled less than one hundred customers – RESA and NRG proposed making the TOU rate *the* default service rate available to non-shopping customers. Those customers who do not wish to be on the TOU rate would be free to opt-out to an EGS product. Making the TOU rate the default service rate would produce a rate structure that better reflects underlying market-price dynamics and basic principles of cost allocation.

While the Partial Settlement does not address this proposal, RESA and NRG urge the Commission in the future to consider this approach that takes advantage of consumers' significant investment in smart meter technology. Other jurisdictions, including Michigan, California and Ontario, have already implemented default TOU rates after concluding that opt-in approaches are not successful. These jurisdictions have chosen to make use of the advanced-metering infrastructure to advance reforms that align residential rates more closely with actual cost of service.<sup>12</sup>

#### B. Supplier Consolidated Billing

RESA and NRG also emphasized the importance of relying on EGSs in the competitive market to offer TOU as a way of improving customer adoption and ensuring that the benefits of investment in smart meter technology are realized. However, a significant barrier faced by EGSs in making TOU rate offerings is the inability to effectively present TOU rates on bills in a way that shows customers how their shifts in usage affect their energy costs.<sup>13</sup>

The sole options that EGSs in Pennsylvania have for issuing bills to their customers are to send a dual bill, so that the customers are receiving two electric bills – one from their EDC and one from the EGS, or to rely on the EDCs to issue utility consolidated bills containing both the EDC's distribution and the EGS's supply charges. Consumers have repeatedly told EGSs that they want to receive a single bill containing both the distribution and generation supply charges.

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<sup>11</sup> RESA/NRG Statement No. 1 at 18-19.

<sup>12</sup> RESA/NRG Statement No. 1 at 19-20, 23-29.

<sup>13</sup> RESA/NRG Statement No. 1 at 30-34.

Despite the value that EGSs can offer in terms of TOU pricing and leveraging the investment in smart meter technology, the limitations of the EDC consolidated bill significantly hamper EGSs' efforts. For customers to understand how their shifts in energy usage are affecting their costs, they need to see these price signals. Therefore, the implementation of SCB warrants another review by the Commission (in a separate proceeding) to ensure that consumers are benefitting from their massive investment in smart meters.

#### IV. Customer Referral Program

In their filing, the Companies proposed the continuation of the existing CRP.<sup>14</sup> Through testimony, RESA and NRG supported the continuation of the CRP since it offers customers a risk-free way to participate in the competitive market and could be an effective introduction that gives customers an opportunity to understand the benefits that EGSs offer. However, noting the steady decline in participation over the past few years, RESA and NRG recommended specific improvements, including automatic enrollment in CRP of all new customers who have not made an affirmative choice of an EGS, online enrollments and more prominent featuring of the CRP on the Companies' websites.<sup>15</sup>

Under the Partial Settlement, the Companies agree to implementing online enrollments and to more prominently featuring the CRP on the Companies' websites.<sup>16</sup> Since consumers in 2022 expect the ability to enroll in programs online and the Companies already permit new customers to request service through their websites, online enrollments in CRP are an improvement. Additionally, making it easier for customers to access information about the CRP should enhance participation. These are positive measures designed to optimize the number of customers enrolling in CRP, where they receive a 7% discount off the existing default service rate and have the ability to terminate service at any time without penalty. These provisions are in the public interest and should be approved without modification.

#### V. CAP Customer Shopping

The Partial Settlement eliminates shopping by customers enrolled in CAPs in the Companies' service areas as of June 1, 2023 and establishes the process for informing customers of this change to the program rules.<sup>17</sup> RESA and NRG have a serious concern about the lack of any provisions in the Partial Settlement to avoid the abrogation of existing EGS contracts or to provide guidance for addressing situations in the future when EGS customers enroll in CAPs.

In the default service plan proceeding of PPL Electric Utilities Corporation ("PPL") in 2016 when shopping for CAP customers was eliminated, the Commission recognized the need to address implementation issues associated with the elimination of CAP customer shopping on how to handle customers who are currently participating in a CAP or enroll in the CAP in the

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<sup>14</sup> Companies' Statement No. 1 at 11-12.

<sup>15</sup> RESA/NRG Statement No. 1 at 57-60.

<sup>16</sup> Partial Settlement, ¶¶ 70, 73, 75.

<sup>17</sup> Partial Settlement, ¶¶ 82-88.

future.<sup>18</sup> At that time, the Commission took measures to ensure that it was not directing the abrogation of contracts between EGSs and their customers.<sup>19</sup> The Commission permitted CAP customers to return to default service upon the expiration of their contracts.<sup>20</sup>

Similarly, in the Companies' last default service proceeding, the Companies modified the conditions for CAP customers to receive supply from EGSs by requiring the price to be below the default service rate for the entire term of the contract. Notably, in its February 2019 Order, the Commission reiterated that it was not "requiring suppliers to revise existing contracts" or "encouraging suppliers to revise existing contracts."<sup>21</sup> Rather, the Commission emphasized that it has "stated repeatedly that customers served under a fixed-duration contract who subsequently enroll" in CAP "may remain with their EGS until the expiration of the fixed duration contract or the contract is terminated, whichever comes first."<sup>22</sup> The Commission further stated that "[c]hanging the terms of a deal – abrogating the promises a supplier made to a customer – before the expiration of that contract is clearly a serious matter that should not be entered into lightly."<sup>23</sup>

Notwithstanding this precedent, the terms of the Partial Settlement addressing the transition of CAP shopping customers to default service do not acknowledge the contractual nature of the relationship of the EGS customer who may already be enrolled in CAP or become enrolled in CAP after entering into a legally binding contract with an EGS. Most significantly, missing from the Partial Settlement is direction to the EGSs about how to manage their regulatory requirements to provide notice to their existing customers before changing the terms of the contract.<sup>24</sup>

The Partial Settlement's oversight of these important transition issues, which have been previously addressed by the Commission, is concerning and risks creating unintended consequences as each EGS in the marketplace will need to evaluate how to manage this situation in light of the terms of their legally binding contract with the customer, Commission precedent and the Partial Settlement. Unfortunately, EGSs choosing to follow the terms of their contracts with customers consistent with Commission regulatory notice requirements and precedent regarding transitioning CAP shopping customers, may be viewed as not complying with the terms of the Partial Settlement. For these reasons, RESA and NRG believe the Partial Settlement would have benefited from making clear that EGSs are expected to honor existing contracts and comply with both the Commission's regulatory notice requirements and previously decided

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<sup>18</sup> *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 Through May 3, 2021*, Docket No. P-2016-2526627 (Order entered February 9, 2019 at 1-2).

<sup>19</sup> *Id.* at 7-9.

<sup>20</sup> *Id.* at 21 and Ordering Paragraphs 1-3.

<sup>21</sup> *Petition of Metropolitan Edison Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 Through May 31, 2023, et al*, Docket Nos. P-2017-2637855, et al. (Order entered February 28, 2019 at 23-24).

<sup>22</sup> *Id.* at 24.

<sup>23</sup> *Id.* at 25-26.

<sup>24</sup> See 52 Pa. Code § 54.10 which requires EGSs to provide two notices to customers prior to the expiration of a fixed term contract or prior to a change in contract notice starting 45 to 60 days prior to the expiration date of the fixed term contract or the effective date of the proposed change in terms.

processes to return CAP participants to default service. Because of the lack of this clarity, RESA and NRG were unable to support the Partial Settlement as submitted.

VI. Additional Settlement Terms

Paragraph 95 of the Partial Settlement preserves the ability of RESA and NRG to rely on the record developed in this proceeding in a petition filed with the Commission to reexamine default service issues on a statewide basis. This provision is important since RESA and NRG devoted significant resources during this proceeding to pursue critical issues designed to improve the overall functioning of the retail market. Ultimately, however, the Partial Settlement is silent on many of these recommendations. While RESA and NRG do not oppose that silence, Paragraph 95 gives them an opportunity to separately pursue these issues based on the evidence it has been produced here, while preserving all parties' rights to challenge this evidence. As such, it is in the public interest and should be approved.

Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

*Karen O. Mowry*

KOM/lww

Enclosure

cc: Hon. Jeffrey A. Watson w/enc. (via first class mail and email)  
Cert. of Service w/enc. (via email only)

## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of RESA and NRG Energy's Letter of Non-Opposition to the Partial Settlement upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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May 6, 2022

*/s/ Karen O. Moury*

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