BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Metropolitan Edison Company for Approval of Its Default Service Plan for the Period From June 1, 2023 through May 31, 2027	:	P-2021-3030012
Petition of Pennsylvania Electric Company for Approval of Its Default Service Plan for the Period From June 1, 2023 through May 31, 2027	:	P-2021-3030013
Petition of Pennsylvania Power Company for Approval of Its Default Service Plan for the Period From June 1, 2023 through May 31, 2027	:	P-2021-3030014
Petition of West Penn Power Company for Approval of Its Default Service Plan for the Period From June 1, 2023 through May 31, 2027	:	P-2021-3030021

RECOMMENDED DECISION

Before
Jeffrey A. Watson
Administrative Law Judge

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I. INTRODUCTION

This Decision recommends that the Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company (collectively Company or Companies), the Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, West Penn Power Industrial Intervenors, Enerwise Global Technologies, d/b/a CPower Energy Management, Constellation Energy Corporation, Shipley Choice, LLC d/b/a Shipley Energy, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, and The Pennsylvania State University, for Approval of Partial Settlement be approved without modification, as it is supported by substantial evidence and is in the public interest. This Decision finds that the Partial Settlement complies with the relevant Sections of the Public Utility Code regarding petitions for approval of proposed plans for the terms and conditions under which the Companies would supply default service and is consistent with the Pennsylvania Public Utility Commission regulations promoting settlements.

Two issues were not resolved through settlement which are, (i) the relevance of the Companies' treatment of excess energy from customer-generators to this proceeding and (ii) Sunrise Energy LLC's (Sunrise) assertions regarding the Companies' calculation of the Price-to-Compare with respect to costs for compliance with Pennsylvania's Alternative Energy Portfolio Standards Act[1] and the use of loss factors.

First, as to the relevance of the Companies' treatment of excess energy from customer-generators to this proceeding, this Decision agrees with the Companies' position that their treatment of excess energy is unrelated to the Companies' default service supply plans. Second, as to Sunrise's assertions regarding the Companies' calculation of the Price-to-Compare with respect to costs for compliance with Pennsylvania's Alternative Energy Portfolio Standards

[1] 73 P.S. §§ 1648.1 *et seq.*

Act[2] and the use of loss factors, this Decision recommends that this issue be decided against John Bevec and Sunrise Energy LLC and in favor of the Companies, finding that the Companies default service supply plans are appropriately accounting for and recovering costs associated with the Alternate Energy Portfolio Standards Act compliance.

The statutory deadline for the Commission to act in this proceeding is September 9, 2022.

II. HISTORY OF THE PROCEEDING

On December 14, 2021, the Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power), and West Penn Power Company (West Penn) petitioned the Pennsylvania Public Utility Commission (PUC or Commission) for approval of a proposed plan for the terms and conditions under which the Companies would supply default service from June 1, 2023, through May 31, 2027.[3] The Petition was filed pursuant to Pennsylvania's Electricity Generation Customer Choice and Competition Act (Competition Act) at 66 Pa.C.S. § 2801, Act 129 of 2008, the Commission's default service regulations at 52 Pa. Code §§ 54.181-54.190, and the Commission's default service policy statement at 52 Pa. Code §§ 69.1801-1817.

On December 23, 2021, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), filed a Petition to Intervene.

Notice of the Companies' filing was published in the *Pennsylvania Bulletin* on January 1, 2022.[4]

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[2] 73 P.S. §§ 1648.1 *et seq.*

[3] *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 No. P-2021-3030012, (Dec. 14, 2021) (Joint Petition or DSP VI).

[4] 52 Pa.B. 143 (Jan. 1, 2022).

On January 3, 2022, the Commission issued a Prehearing Conference Notice, scheduling a pre-hearing conference for Friday, January 21, 2022. On the same day, a Prehearing Conference Order was entered requiring parties to file a Prehearing Conference Memorandum on or before Thursday, January 20, 2022.

On January 13, 2022, the Office of Consumer Advocate (OCA) filed its Notice of Intervention and Public Statement in response to the Companies' Petition.

On January 14, 2022, the Met-Ed Industrial Users Group (MEIUG), the Penelec Industrial Customer Alliance (PICA), and the West Penn Power Industrial Intervenors (WPPII) (collectively, the Industrials), filed Joint Petitions to Intervene.

On January 17, 2022, Joint Petitions to Intervene were filed by John Bevec (Bevec) and Sunrise Energy LLC (Sunrise) (Collectively Bevec and Sunrise or Sunrise).

On January 18, 2022, the Office of Small Business Advocate (OSBA) filed Answers, Notices of Appearance, Notices of Intervention, and Public Statements at the above-captioned dockets.

On January 18, 2022, Petitions to Intervene were filed by the Retail Energy Supply Association (RESA) and NRG Energy Inc. (NRG).

On January 18, 2022, a Petition to Intervene was filed by Shipley Choice, LLC d/b/a Shipley Energy (Shipley).

On January 18, 2022, The Pennsylvania State University (University or PSU) filed a Petition to Intervene.

On January 18, 2022, a Petition to Intervene was filed by Enerwise Global Technologies d/b/a CPower Energy Management (CPower or Enerwise). Michael A. Gruin, Esquire filed a Notice of Appearance on behalf of CPower on January 21, 2022.

On January 18, 2022, a Petition to Intervene was filed by Exelon Generation LLC (ExGen) and Constellation New Energy Inc. (Constellation).

On January 19, 2022, the Bureau of Investigation and Enforcement (I&E) of the Pennsylvania Public Utility Commission filed a Notice of Appearance.

On January 20, 2022, Calpine Retail Holdings LLC (Calpine) filed a Petition to Intervene.

On January 20, 2022, Colleen Kartychak, Esq., legal counsel for ExGen and Constellation, filed a Motion For Admission Pro Hac Vice of John M. White, Esq. to appear and participate on behalf of ExGen and Constellation in this proceeding. The Motion For Admission Pro Hac Vice Of John M. White was discussed at the Prehearing Conference on January 21, 2022 and no objection has been raised by any Party.

Prehearing Memoranda were filed by the Companies, OCA, OSBA, I&E, CAUSE-PA, MEIUG, PICA, WPPII, Shipley, PSU, ExGen, Constellation, RESA, NRG, Bevec and Sunrise, and Calpine on January 20, 2022.

The Prehearing Conference was convened as scheduled on January 21, 2021. The Company, OCA, OSBA, I&E, CAUSE-PA, MEIUG, PICA, WPPII, Shipley, PSU, ExGen, Constellation, CPower, RESA, NRG, Bevec and Sunrise attended and were represented by legal counsel. Calpine also attended the Prehearing Conference.

At the Prehearing Conference, the Parties agreed upon a discovery and litigation schedule and other procedural issues. In addition, the Petitions to Intervene filed by CAUSE-PA, MEIUG, PICA, WPPII, Shipley, PSU, ExGen, Constellation, CPower, RESA, NRG, and Calpine were granted by the undersigned Administrative Law Judge (ALJ) at the prehearing conference, without objection, and memorialized in the Prehearing Order entered on January 25, 2022. The Companies indicated they intended to file a responsive pleading to the Petitions to Intervene filed by Bevec and Sunrise on or before February 7, 2022. A discussion was also held

at the Prehearing Conference regarding the scheduling of a public input hearing and no Party requested the scheduling of a public input hearing and the Parties were requested to advise the undersigned ALJ as soon as possible in the event that any Party should request a public input hearing in this proceeding.

On January 20, 2022, the Company filed a Prehearing Memorandum. Attached to the Prehearing Memorandum was a Protective Order proposed by the Company. The proposed protective Order was addressed at the Prehearing Conference and no objection was raised. Accordingly, a Protective Order was entered on January 26, 2022. An Amended Protective Order was entered on January 27, 2022 to provide and approve a written acknowledgement as identified in the Protective Order, for use by the Parties.

On January 20, 2022, the Company filed a Motion For Consolidation of the four proceedings into a single proceeding. The Motion For Consolidation was discussed at the Prehearing Conference held on January 21, 2022 and no objection was raised.

In the Motion For Consolidation, the Companies explained that the Joint Petition was assigned four docket numbers, one for each Company: P-2021-3030012 (Met-Ed); P-2021-3030013 (Penelec); P-2021-3030014 (Penn Power); and P-2021-3030021(West Penn).[5]

On January 25, 2022, a Motion For Admission Pro Hac Vice of James H. Laskey, Esquire, to appear and participate on behalf of Calpine, was filed.

On January 27, 2022, an interim order was entered consolidating the Petitions filed at Docket Numbers P-2021-3030012, P-2021-3030013, P-2021-3030014 and P-2021-3030021 in this proceeding for the purpose of conducting one evidentiary hearing and to issue one recommended decision to address all of the matters properly raised in the proceedings.

[5] The Joint Petition was assigned four docket numbers for compliance filings and other such administrative purposes.

On January 28, 2022, the *Pro Hac Vice* Motion was granted and John M. White, Esquire, was admitted *Pro Hac Vice* in the above-captioned case to appear as an attorney on behalf of Exelon and Constellation. [6]

On January 28, 2022, a Call-In Telephone Hearing Notice was issued, scheduling the evidentiary hearing in this proceeding on April 13-14, 2022, beginning each day at 10:00 a.m.

On February 2, 2022, a Motion For Admission *Pro Hac Vice* of Brian R. Greene, Esquire, to appear and participate on behalf of CPower, was filed.

On February 7, 2022, the Company filed an Answer and New Matter To The Petition To Intervene Of John Bevec and Sunrise, pursuant to 52 Pa. Code § 5.66.

On February 11, 2022, Bevec and Sunrise filed their Reply to New Matter.

On February 16, 2022, an interim order was entered granting the Motion For Admission *Pro Hac Vice* of Brian R. Greene, to appear as an attorney on behalf of CPower in this proceeding.

On February 23, 2022, Bevec and Sunrise filed a Motion to Extend Time Permitted to Conduct Discovery and Submit Testimony of John Bevec and Sunrise Energy, LLC (Motion to Extend). No Notice to Plead was attached to the Motion to Extend. The regulations provide a Party has 20 days to file a responsive pleading or objections to the Motion to Extend, or until March 15, 2022. At the time of the filing of the Motion to Extend, discovery was ongoing and the litigation schedule provided for the exchange of written direct testimony by February 25, 2022, well before the deadline of March 15, 2022, to file responses and objections to the Motion to Extend.

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[6] ExGen did not present evidence, participate in the hearing, object to the Settlement or file briefs in this proceeding.

On February 28, 2022, an interim order was entered permitting Bevec and Sunrise to intervene in this proceeding, subject to the terms set forth in the order.

On February 28, 2022, an interim order was entered permitting the filing of any responsive pleading or Objection to the Motion to Extend Time Permitted to Conduct Discovery and Submit Testimony of John Bevec and Sunrise Energy, LLC, on or before March 1, 2022. The Companies timely filed a response opposing the Motion.

On March 2, 2022, an interim order was entered granting the Motion to Extend Time Permitted to Conduct Discovery and Submit Testimony of John Bevec and Sunrise Energy, LLC. Bevec and Sunrise were directed to serve its discovery requests necessary to prepare its Second Direct Testimony no later than March 4, 2022. Bevec and Sunrise were also directed to file their Second Direct Testimony no later than March 18, 2022. Finally, the Parties were permitted to serve supplemental rebuttal testimony in response to the issues presented by Bevec and Sunrise in its Second Direct Testimony, no later than March 31, 2022.

On March 9, 2022, the Companies filed Objections to the Interrogatories (Set 1) of Sunrise and Bevec. On March 11, 2022, Bevec and Sunrise filed their Motion to Dismiss the Joint Petitioners' Objections and Direct Them to Answer the Interrogatories and Produce Documents.

On March 15, 2022, the Companies filed their Answer in opposition to the Motion of Bevec and Sunrise to Dismiss Objections and Direct the Companies to Answer Interrogatories and Produce Documents.

On March 16, 2022, an interim order was entered granting the Motion to Dismiss the Joint Petitioners' Objections and Direct Them to Answer the Interrogatories and Produce Documents regarding Interrogatory Numbers 24, 25, 26 and 27. The Motion to Dismiss the Joint Petitioners' Objections and Direct Them to Answer the Interrogatories and Produce Documents regarding Interrogatory Number 28 was denied. The Companies were directed to serve upon

counsel for Intervenors, Bevec and Sunrise full and complete responses to Interrogatory Numbers 24, 25, 26 and 27, on or before March 18, 2022.

On March 17, 2022, the undersigned presiding officer received an email from counsel for the Companies, which was copied to all parties, communicating an agreement regarding a modification of the litigation schedule. The undersigned presiding officer provided the Parties with an email response indicating that the modification would be approved as agreed upon by the Parties. On March 18, 2022, counsel for the Companies provided the undersigned presiding officer with an email detailing the agreement between the Parties. On March 21, 2022, an interim order was entered modifying the Interim Order entered on March 2, 2022, providing that all responses to pending Sunrise discovery to the Companies would be served by March 18, 2022; that Sunrise would file its Second Direct Testimony on March 23, 2022; and that the Parties may serve supplemental rebuttal testimony in response to the issues presented by Bevec and Sunrise in their Direct and Second Direct Testimony no later than April 4, 2022.

On April 4, 2022, an interim order was entered directing the parties to consult with each other and identify and exchange all written testimonies and exhibits they intend to introduce into evidence at the evidentiary hearing as well as all documents and materials that each party intends to use at the evidentiary hearing, as well as a list of such written testimonies, exhibits, and all such documents and materials, not later than Friday, April 8, 2022, and to provide a list of all such written testimonies, exhibits, and all such documents and materials to the undersigned presiding officer not later than Friday, April 8, 2022. The parties were also directed to prepare a witness matrix including the identification of witnesses for each party, indicating which parties intend to cross-examine witnesses and the approximate amount of time for examination of each witness by each Party and cross-examination by each Party, to be provided to the undersigned presiding officer not later than Monday, April 11, 2022. On April 7, 2022, the undersigned presiding officer received an email from the Parties requesting clarification of the deadlines and the Parties were advised that the deadlines were extended through April 12, 2022.

The evidentiary hearing was convened on April 13, 2022, as scheduled. All Parties, with the exception of ExGen, were present and represented by counsel. The hearing was concluded on April 13, 2022 and the hearing scheduled for April 14, 2022 was cancelled.

On April 13, 2022, an interim order was entered approving the Joint Stipulation For Admission of Testimony, Exhibits and Certain Responses to Discovery, filed on April 12, 2022, which included admission of the evidence identified in Attachment 1 to the Joint Stipulation For Admission of Testimony, Exhibits and Certain Responses to Discovery. The Order provided requirements for briefs to be submitted by the Parties and cancelled the evidentiary hearing scheduled for April 14, 2022.

On April 13, 2022, the undersigned presiding officer received an email from counsel for the Companies providing an update regarding the procedural status of settlement negotiations between the Parties and proposing modifications to the litigation schedule. The undersigned presiding officer provided an email to the Parties requesting that any objections to the proposed modifications to the litigation schedule be provided to the undersigned by 4:00 p.m. this date. No objections were received.

On April 15, 2022, an interim order was entered requiring the Parties to confer and agree upon a common list of issues to be addressed in the Statements in Support of Settlement and the Briefs to be filed by the Parties, with a list of common issues to be submitted to the undersigned presiding officer on or before April 27, 2022. In addition the litigation schedule was modified, requiring the Settling Parties to file their Joint Petition for Settlement, without the filing of Statements in Support of Settlement by April 20, 2022; requiring the Settling Parties to file Statements in Support of Settlement and Briefs in support of settlement, and Main Briefs addressing any issues reserved for briefing, to include each party's Proposed Findings of Fact with specific citations to the record, Conclusions of Law and Ordering Paragraphs by May 6, 2022; requiring the Non Settling Parties to file Objections to Settlement and Briefs in opposition to Settlement, and Main Briefs addressing any issues reserved for briefing, to include each party's Proposed Findings of Fact with specific citations to the record, Conclusions of Law and Ordering Paragraphs, by May 6, 2022; and requiring the Parties to file

Reply Briefs in support of/opposition to the Settlement and addressing any issues reserved for briefing by May 16, 2022.

On April 20, 2022, the Settling Parties filed their Joint Petition For Partial Settlement.[7] The Joint Petitioners reserved two issues for briefing involving (i) the relevance of the Companies' treatment of excess energy from customer-generators to this proceeding and (ii) 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) Act[8] and the use of loss factors.

On April 27, 2022, Counsel for the Companies provided the undersigned presiding officer with a list of common issues agreed to by a majority of the parties. On April 28, 2022, the remaining parties provided the undersigned with emails indicating they had no objection to the proposed list of common issues.

On May 6, 2022, counsel for Calpine filed a letter with the Commission advising that it does not oppose the Settlement and a letter advising it would not be filing a brief addressing the issues reserved for litigation in the Joint Settlement.

On May 6, 2022, Main Briefs were filed by the Companies, Bevec and Sunrise.

On May 6, 2022, CAUSE PA, Shipley, CPower, OSBA, I&E, OCA, PSU, Constellation, the Industrials and the Companies filed Statements in Support of the Settlement in this proceeding. RESA, NRG, Calpine, Bevec and Sunrise did not join in the Settlement.

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[7] The Settlement provides that Calpine Retail Holdings, LLC, the Retail Energy Supply Association and NRG Energy, Inc., and John Bevec and Sunrise Energy, LLC, which are parties to this proceeding, authorized the Joint Petitioners to represent that they do not oppose the Settlement. In addition, Enerwise supports the provisions in Section J (Third Party Data Access Tariff) of the Joint Petition but takes no position on the other provisions in the Settlement. See Joint Petition at 1.

[8] 73 P.S. §§ 1648.1 *et seq.*

On May 16, 2022, Reply Briefs were filed by the Companies and Bevec and Sunrise.

A. Legal Standards

The Companies have the burden of proof in this proceeding to establish that they are entitled to the relief they are seeking.[9] The Companies must establish their case by a preponderance of the evidence.[10] To meet their burden of proof, the Companies must present evidence more convincing, by even the smallest amount, than that presented by any opposing party.[11]

In this case, the Companies request that the Commission approve the joint filing establishing the proposed DSPs. They must prove that their proposed default service provider program is just and reasonable. Any party contesting it has the burden of persuading the Commission that the filing is not just and reasonable.[12] Where competing proposals are introduced, the sponsoring party must show that the alternative proposal will better serve customers.[13]

The Competition Act[14] requires that default service providers acquire electric energy through a "prudent mix" of resources that are designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to customers over time; and (iii) to achieve these

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[9] 66 Pa.C.S. § 332(a).

[10] *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992)

[11] *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

[12] *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

[13] *Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Programs*, Docket No. P-2009-2093053 and P-2009-2093054 at 19 (Opinion and Order entered November 6, 2009).

[14] *Electricity Generation Customer Choice and Competition Act*, Act 138 of 1996, as amended by Act 129 of 2008 (Act 129), codified at 66 Pa.C.S. §§ 2801, *et seq*.

results through competitive processes that include auctions, requests for proposals and/or bilateral agreements.[15] The Competition Act does not, however, require a specific default service rate design methodology.[16]

The Competition Act also mandates that customers have direct access to a competitive retail generation market.[17] This mandate is based on the legislative finding that "competitive market forces are more effective than economic regulation in controlling the cost of generating electricity."[18] Thus, a fundamental policy underlying the Competition Act is that competition is more effective than economic regulation in controlling the costs of generating electricity.[19]

In addition to the foregoing statutory guidelines, the Commission has enacted default service regulations,[20] and a policy statement,[21] addressing default service plans. The regulations first became effective in 2007 and have been amended to incorporate the Act 129 amendments to the Competition Act.[22]

This is the Companies' sixth DSP filing and is often referenced as DSP VI, with a term of four years, beginning June 1, 2023 and ending May 31, 2027.

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[15] 66 Pa.C.S. §§ 2807(e)(3.1) and 2807(e)(3.4).

[16] *Id.*

[17] 66 Pa.C.S. § 2802(3).

[18] 66 Pa.C.S. § 2802(5). *See, Green Mountain Energy Company v. Pa. Pub. Util. Comm'n*, 812 A.2d 740, 742 (Pa. Cmwlth. 2002).

[19] 66 Pa.C.S. § 2802(5).

[20] 52 Pa. Code §§ 54.181 to 54.189.

[21] 52 Pa. Code §§ 69.1802 to 69.1817.

[22] *See* Implementation of Act 129 of October 15, 2008; Default Service and Retail Electric Markets, Docket No. L-2009-2095604 (Final Rulemaking Order entered October 4, 2011) (Act 129 Final Rulemaking Order).

III. FINDINGS OF FACT

A. Background

1. Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company are electric distribution companies and default service providers as defined in the Pennsylvania Public Utility Code, pursuant to 66 Pa.C.S. § 2803.

2. As default service providers, the Companies provide electric generation service to those customers who do not select an electric generation supplier (EGS) or who return to default service after being served by an EGS that becomes unable or unwilling to serve them.[23]

3. The Companies' current default service programs (DSP V) expire on May 31, 2023.[24]

4. This proceeding was initiated on December 14, 2021, when the Companies filed a Joint Petition (DSP VI Petition) requesting that the Pennsylvania Public Utility Commission approve the Companies' proposed sixth default service programs (DSP VI or Programs) for the period June 1, 2023 through May 31, 2027 in accordance with the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801 *et seq.*, as amended by Act 129 of 2008 (Act 129).

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[23] 66 Pa.C.S. § 2807(e).

[24] *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 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 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.

5. As described in the DSP VI Petition, the Companies proposed to continue most of the existing programs as approved by the Commission in the DSP V Orders.

6. Copies of the DSP VI Petition filed by the Companies on December 14, 2021, were served on other organizations and entities as required by 52 Pa. Code § 54.185(c).

7. In the Joint Petition for Partial Settlement filed on April 20, 2022, the Joint Petitioners requested that the Commission approve DSP VI as proposed by the Companies, with certain modifications to the procurement plans for residential and commercial default service customers, revisions to the originally proposed Time-of-Use (TOU) Default Service Riders and Third-Party Data Access Tariffs, the addition of online CRP enrollment, and new rules that prohibit CAP customers from receiving generation service from electric generation suppliers and allow eligible low-income customers with pre-existing EGS contracts to enroll in CAP without facing early termination or cancellation fees.[25]

8. The two issues reserved for briefing in the Joint Petition involve 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 Price-to-Compare with respect to costs for compliance with Pennsylvania's Alternative Energy Portfolio Standards Act[26] and the use of loss factors.[27]

9. Consistent with prior default service programs approved by the Commission, under the Settlement, the Companies have proposed to procure, as part of the solicitation of default service supply, all the necessary Tier I (Non-Solar) and Tier II AECs, and

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[25] *See* Joint Petition, ¶¶ 15-95.

[26] 73 P.S. §§ 1648.1 *et seq*.

[27] Joint Petition, p. 2.

a portion of the necessary SPAECs to satisfy their Section 3 AEPS[28] requirements. In addition, the Companies will directly purchase some SPAECs as part of a long-term solar procurement.[29]

10. The Companies have consistently met their Section 3 AEPS requirements associated with default service load, as demonstrated by the annual AEPS compliance reports prepared by the Commission in cooperation with the Pennsylvania Department of Environmental Protection and the absence of any AEPS Act penalties assessed against the Companies.[30]

11. Excess energy is kilowatt-hours (kWh) received from the customer-generator in excess of the kWh delivered by the applicable Company to the customer-generator.[31]

12. The Companies current and proposed procurement plans do not use excess energy from net-metering customer-generators to serve default service load. Default service load is served by winning bidders in the Companies' DCAs that do not buy or sell excess energy from the Companies' customer-generators.[32]

13. The record evidence shows that excess energy is recognized through a financial netting process at the PJM level instead of a physical load netting process as Sunrise contends.[33]

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[28] *See* 73 P.S. § 1648.3.

[29] *See* Joint Petition, ¶¶ 22, 33-36 and Ex. C; Met-Ed/Penelec/Penn Power/West Penn St. 2, pp. 17-23.

[30] *See, e.g.,* Alternative Energy Portfolio Standards Act of 2004 Compliance for Reporting Year 2021 (Pa. P.U.C. Mar. 2022); Alternative Energy Portfolio Standards Act of 2004 Compliance for Reporting Year 2020 (Pa. P.U.C. Feb. 2021); Alternative Energy Portfolio Standards Act of 2004 Compliance for Reporting Year 2019 (Pa. P.U.C. Sept. 2020). The annual AEPS Act reports for compliance years prior to 2019 are available on the Commission's website at https://www.puc.pa.gov/filing-resources/reports/alternative-energy-portfolio-standards-aeps-reports/; Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 5-6.

[31] Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, p. 6.

[32] *See* Met-Ed/Penelec/Penn Power/West Penn St. 2, p. 3; Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 7-8; Tr. 83.

[33] *See* Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 9-14.

14. When there is excess energy from a net-metering customer-generator who is taking service under a Company's net-metering rider, the Company (not a default service wholesale supplier) receives recognition of the load reduction in the form of a credit from PJM valued at the locational marginal price.[34]

15. That customer-generator is subsequently paid "full retail value" for its excess energy, with the financial inputs and outputs ultimately netted in default service rates. Default service customers receive the value of the PJM credits related to the load reduction and pay the costs to compensate customer-generators for their excess energy at the full retail value.[35]

16. The Companies will utilize the contingency plans for full requirements procurements for default service programs. Specifically, if a scheduled solicitation is not fully subscribed following the initial proposed procurement or if the Commission rejects the bid results from a solicitation, the Companies will rebid the unfilled tranches from that solicitation in the next scheduled procurement for which there is sufficient calendar time to include the tranches. For any unfilled tranches remaining, the Companies will purchase the necessary physical supply through PJM-administered markets.[36]

17. If a winning bidder defaults prior to the start of, or during, the delivery period, the Companies will offer the unfilled tranches to the other qualified bidders who participated in the most recent solicitation of full-requirements, load-following products. If the Companies are not able to enter into an agreement with qualified bidders and at least 30 calendar days remain prior to the start of the delivery period, the Companies will seek to bid the defaulted tranches in a separate supplemental competitive solicitation. If insufficient time exists to conduct an additional competitive solicitation, or if the supplemental solicitation is unsuccessful, the Companies will supply the tranches by purchasing power in the PJM-administered markets.[37]

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[34] *See* Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 9-14.

[35] *See* Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 9-14.

[36] Joint Petition, ¶ 36; Met-Ed/Penelec/Penn Power/West Penn St. 3, p. 10.

[37] Joint Petition, ¶ 37; Met-Ed/Penelec/Penn Power/West Penn St. 3, pp. 11-12.

18. In addition, effective June 1, 2023, the Companies will use a capacity proxy price (CPP) in their DCAs if PJM does not conduct a base residual auction (BRA) in time for default service suppliers to incorporate the BRA results in their bids.[38]

19. If the Companies' long-term solar procurement is not fully subscribed, the Companies will develop and file an RFP with the Commission to procure SPAECs for a five-year period in an amount designed to satisfy up to an estimated 32% of the solar AEPS requirements for the Companies' residential default service load. If the RFP is undersubscribed, the Companies will go to the spot market to procure the SPAEC shortfall. Energy will not be procured in the contingency plan.[39]

20. The record evidence demonstrates the Companies' PTC and HP Riders are generally designed to recover Section 3 compliance costs, including the types of costs specified in the Commission's regulations at 52 Pa. Code § 75.67(a).[40]

21. The record evidence demonstrates that the Companies' PTC and HP Riders appropriately exclude the costs of interconnecting distributed generation to the Companies' distribution systems. The Companies' costs related to interconnection of customer-owned small generation facilities to their distribution systems (net of interconnection application fees) are recovered through contributions in aid of construction and distribution base rates.[41]

22. System planning and connections of any kind are a well-established distribution function, and socializing the fees charged to distributed generation interconnection

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[38] Joint Petition, ¶ 38; Met-Ed/Penelec/Penn Power/West Penn St. 3, p. 12.

[39] Joint Petition, ¶ 40; Met-Ed/Penelec/Penn Power/West Penn St. 3, pp. 10-11.

[40] *See* Met-Ed/Penelec/Penn Power/West Penn St. 5R Supplemental, pp. 3-4; Met-Ed/Penelec/Penn Power/West Penn St. 2, pp. 17-23.

[41] Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, pp. 4-5; Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 17-18; *see also* Met-Ed/Penelec/Penn Power/West Penn St. 5R, pp. 2-9.

applicants among all default service customers, is not consistent with long-standing cost-of-service principles.[42]

23. While AECs do not suffer line losses, the wholesale default supply contract prices that form the basis of the retail charges recovered through the PTC and HP Riders established in Commission-approved default service procurements are not broken out by the different costs of the many components of default supply, and those prices reflect losses for which the supplier is responsible.[43]

24. By applying loss factors to the costs of wholesale default service, the Companies are simply treating the AEPS compliance costs embedded in wholesale contract prices in a manner consistent with all the other components of default service.[44]

25. If the Companies failed to apply loss factors, the result would cause underpayments to suppliers, which would necessarily have to be recovered from customers through reconciliation.[45]

26. The Companies' loss factors are appropriate based on the actual difference between the aggregate zonal load (the amount of energy consumed by a Company's entire zone administered by PJM) and the retail load "grossed up" for losses based on the Company's load factors. The difference, known as "unaccounted for energy," or UFE, varies between 1.68% and -1.55% is reasonable when considering the factors that impact UFE, such as broken meters and installation of batteries.[46]

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[42] Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, pp. 4-5; Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 17-18; *see also* Met-Ed/Penelec/Penn Power/West Penn St. 5R, pp. 2-9.

[43] Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, pp. 5-7 and Ex. PML-35; Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 3-4; Tr. 81; *see also* Joint Petition, Ex. C.

[44] *Id.*

[45] Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, pp. 5-7 and Ex. PML-35; Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 3-4; Tr. 81; *see also* Joint Petition, Ex. C.

[46] Tr. 80-81; Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 15-16.

27. The Companies must pay gross receipts tax (GRT) on all default service sales at a rate of 5.9%, and therefore the proposal to exclude AEPS costs from the GRT costs in the PTC would preclude the Companies from recovering approximately $6 out of every $100 of AEPS compliance costs associated with default service supply, resulting in customers paying for those undercollections with interest in a future reconciliation period.[47]

28. The Commission reviews the Companies' default service rate calculations when they are filed each quarter, as well as the annual reconciliation statement for the PTC and HP Riders. The Companies' default service rates are also subject to annual review and audit by the Commission.[48]

29. Following the completion of the current long-term solar procurement contracts for Met-Ed, Penelec and Penn Power, all costs related to the procurement of solar energy and/or SPAECs will be recovered through the Companies' PTC Riders.[49]

30. The Companies currently offer Time-of-Use (TOU) rate options to residential default service customers through their Commission-approved Time-of-Use Default Service Riders (TOU Riders or Rider K).[50]

31. The April 2017 Secretarial Letter (p. 3) 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.

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[47] Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, pp. 7-8.

[48] Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, pp. 4, 6.

[49] Joint Petition, ¶ 51 and Exs. D-2 to D-4; Met-Ed/Penelec/Penn Power/West Penn St. 5R, pp. 8-9.

[50] *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); *Pa.P.U.C. v. Pennsylvania Elec. Co.,* Docket No. R-2014-2428743 (Recommended Decision dated Mar. 9, 2015) (Penelec Recommended Decision). 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; Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 13-14.

32. Consistent with the January 2020 Secretarial Letter (p. 7), the Companies also designed their proposed TOU Riders in the context of EV expansion in the Commonwealth. Specifically, the Companies' proposed TOU rate design includes a super off-peak pricing period from 11 p.m. to 6 a.m. to provide cost savings opportunities to customers who charge their EVs during overnight, low-priced energy hours.[51]

33. The Companies will recover the costs to implement their revised TOU Riders from residential and commercial default service customers through their PTC Riders.[52]

34. 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.[53]

35. The Companies' currently effective CRPs, including the cost recovery mechanisms last approved by the Commission in the DSP V Orders, will continue until May 31, 2027.[54]

36. Distributed generation is the process of generating electricity where it is needed, as opposed to centralized generation, which must be distributed sometimes over long distances.[55]

37. "Excess energy" is kilowatt-hours (kWh) received from a customer-generator that are in excess of the energy consumed by the customer-generator.[56]

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51 Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 15, 17-18.

52 Joint Petition, ¶ 65; Met-Ed/Penelec/Penn Power/West Penn St. 5, p. 20.

53 Met-Ed/Penelec/Penn Power/West Penn Sts. 1, pp. 11-12, and 1R, pp. 4-6.

54 Joint Petition, ¶¶ 69, 74 and Ex. F.

55 John Bevec and Sunrise Energy, LLC Statement No. 1 at p. 3:3-7.

56 *See*, Statement No. 8R-Supplemental at p. 6:12-16.

IV. DISCUSSION

The Settlement presented here is not a full settlement given that Calpine Retail Holdings, LLC, the Retail Energy Supply Association, NRG Energy, Inc. and John Bevec and Sunrise Energy, LLC, did not oppose the Settlement but did not join in the Settlement and the Parties did not reach an agreement regarding two of the issues raised in this proceeding. In addition, Enerwise supports the provisions in Section J (Third Party Data Access Tariff) of the Joint Petition but takes no position on the other provisions in the Settlement. The Companies, I&E, OCA, OSBA, CAUSE-PA, Constellation, CPower, the Industrials, and Shipley agreed to the terms of the Joint Petition.

On May 6, 2022, counsel for Calpine filed a letter with the Commission advising that it does not oppose the Settlement. Calpine identified Paragraph 95 of the Settlement that provides that RESA and/or NRG may "file a petition with the Commission proposing to reexamine default service on a statewide basis . . ." However, Calpine submits this paragraph does not endorse such a proceeding, but is limited to confirming that the testimony and exhibits in this proceeding may be referred to in that potential future proceeding. The paragraph further clarifies that all parties reserve the right to object to the admission of the record in this proceeding or in any future proceeding based on relevance or other appropriate grounds, depending on the proposed use of the testimony and exhibits. Subject to these limitations, Calpine stated it has no objection to the paragraph.

On May 6, 2022, counsel for Retail Energy Supply Association [57] and NRG Energy, Inc.[58] filed a Letter of Non-Opposition in response to the Joint Petition for Partial

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[57] RESA explained that the comments expressed in this filing represent the position of the Retail Energy Supply Association 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.

[58] 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

Settlement. RESA and NRG acknowledge they are not signatories to the Partial Settlement, they do not oppose the ultimate result and that they support approval of several provisions being in the public interest. However, because RESA and NRG question how electric generation suppliers are expected to address existing legally binding supplier contracts in the context of eliminating shopping by customers enrolled in the Companies' customer assistance programs, RESA and NRG did not join in the Partial Settlement.

Sunrise and Bevec did not join in the Joint Petition for Partial Settlement, as they dispute how the Companies should be required to handle cost recovery under the AEPS Act.

A. Uncontested Issues

The term of the Companies' DSPs is proposed to be for the forty-eight months spanning June 1, 2023 through May 31, 2027. Certain aspects of the Companies' proposed default service plans were not contested by any parties and are described below.

B. Terms And Conditions Of Settlement

1. The Settlement consists of the following terms and conditions:

(a) Procurement And Implementation Plans

(i) Term

(a)The Companies' Revised DSP VI Programs shall each have a term of four years, beginning June 1, 2023 and ending May 31, 2027 (DSP VI Term).[59]

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.

[59] Joint Petition ¶ 15, pp. 5-6.

(ii) Procurement Groups

2. The Companies' default service customers shall be divided into three classes for purposes of default service procurement: the residential class, the commercial class, and the industrial class.[60]

3. The Companies will maintain the same residential, commercial, and industrial class definitions that were approved by the Commission in the DSP V proceeding.[61]

(iii) Residential And Commercial Class Procurement

4. Except for the long-term solar procurement discussed in Paragraphs 8 and 9 below, the Companies will procure 100% of the supply required to serve residential and commercial default service customers during the DSP VI Term through a descending clock auction (DCA) for full requirements service. Winning suppliers will bid on "tranches" corresponding to a percentage of the actual residential and commercial default service customer load and be responsible for fulfilling all the associated requirements of a load serving entity (LSE) under their agreements with PJM, including energy, capacity, transmission,[62] ancillary services, PJM administrative expenses, as well as providing all necessary alternative energy credits described in Paragraph 19 below for AEPS compliance.[63]

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[60] Joint Petition ¶ 16, p. 6.

[61] Joint Petition ¶ 17, p. 6.

[62] These transmission requirements exclude Regional Transmission Expansion Plan (RTEP) charges, Expansion Cost Recovery Charges; Reliability Must Run/generation deactivation charges associated with generating plans for which specific RMR charges begin after July 24, 2014; historical out-of-market tie line, generation, and retail customer meter adjustments; unaccounted for energy; or any Federal Energy Regulatory Commission (FERC) approved reallocation of PJM RTEP charges related to Docket No. EL05-121-009 (collectively, referred to as non-market based charges or NMB charges). The Companies will continue to assume these NMB charges for both default service suppliers and EGSs that serve load in the Companies' service areas, and the associated costs will be recovered from customers in a competitively neutral manner through the Companies' non-bypassable Default Service Support (DSS) Riders. See footnote 5 in Joint Petition.

[63] Joint Petition ¶ 15, pp. 5-6.

5. The Joint Petitioners agree to the rules for the DCA attached to the Joint Petition as Exhibit A. Exhibit A is a revised version of Met-Ed/Penelec/Penn Power/West Penn Exhibit JHC-2 to reflect the procurement plan and products set forth in this Settlement. Under the Revised DSP VI Programs, the Companies will employ a 50% load cap for fixed-price product auctions and a 75% load cap for hourly-pricing product auctions.[64]

6. Each residential tranche is a fixed-price full requirements, load-following product. The fixed price will be established through the Companies' DCAs. [65]

7. For the first year of the DSP VI Term, contracts for 76% of the residential class 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. [66]

8. During the DSP VI Term, the Companies will also procure – through multi-year, fixed-price power purchase agreements (PPAs) – the energy and solar photovoltaic alternative energy credits generated by one or more new in-state solar photovoltaic projects with total capacity of at least 7 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 default service load. [67]

9. The Joint Petitioners agree to the use of the RFP rules for solar procurements and the form of PPA, which each winning bidder will be required to execute, set forth in Met-Ed/Penelec/Penn Power/West Penn Exhibit JHC-6.[68]

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[64] Joint Petition ¶ 18, p. 6.

[65] Joint Petition ¶ 20, p. 7.

[66] Joint Petition ¶ 21, p. 7.

[67] Joint Petition ¶ 22, p. 7.

[68] Joint Petition ¶ 23, p.7.

10. The full requirements contracts for the commercial class will include a fixed price for 100% of the supply and will be procured through DCAs in the same manner and at the same time as the residential class.[69]

11. 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.[70]

12. Each of the residential and commercial full requirements products will be procured through semi-annual auctions in April and November each year, and the first auction of the DSP VI Term will be held in November 2022. West Penn's Network Integration Transmission Service (NITS) rates are scheduled to be published on or before October 31 of each calendar year or the next business day thereafter. As such, the Companies will ensure that their November auctions are held no earlier than one week following posting of this data.[71]

13. The procurement schedule for the residential and commercial class contracts are set forth in Exhibit B. Exhibit B is a revised version of Met-Ed/Penelec/Penn Power/West Penn Exhibit JHC-1. As shown on Exhibit B, the "hard stop" at May 31, 2027 originally proposed by the Companies will be replaced with overhanging full requirements contracts that cover the period of June 1, 2027 through May 31, 2028 (the first year of the Companies' seventh default service programs).[72]

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[69] Joint Petition ¶ 24, p. 7.

[70] Joint Petition ¶ 25, pp. 7-8.

[71] Joint Petition ¶ 26, p. 8.

[72] Joint Petition ¶ 27, p. 8.

(v) Industrial Class Procurement

14. The industrial class product is an hourly-priced service product based upon PJM real-time zonal hourly market prices. Suppliers will bid for the right to serve a portion of the hourly-priced service load for twelve-month terms. Winning suppliers will be paid the winning price bid in the hourly-priced auction, the hourly PJM real time zonal locational marginal price (LMP), and a fixed adder of $4/MWh to capture the estimated costs of other supply components, including capacity, ancillary services, AEPS compliance and other costs.[73]

15. The Companies will procure default service supply for the industrial class load annually as shown on Exhibit B.[74]

C. Supplier Master Agreement

16. Attached as Exhibit C to the Joint Petition is the form of the Supplier Master Agreement (SMA) that each Company will execute with wholesale suppliers that are successful bidders in the Companies' default service supply procurements.[75]

17. The Joint Petitioners agree to the following changes to the Companies' current Commission-approved SMAs: (1) modifications to reflect the changes in default service supplier responsibility for AEPS compliance discussed in Paragraphs 19 and 20 below; (2) the addition of several protections against supplier default, including an Independent Credit Requirement Per Tranche for winning bidders; and (3) revisions to introduce a capacity proxy price (CPP) in the Companies' auctions in the event PJM does not conduct a base residual auction (BRA) discussed in Paragraphs 24 and 25 below.[76]

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[73] Joint Petition ¶ 28, p. 8.

[74] Joint Petition ¶ 29, p. 8.

[75] Joint Petition ¶ 30, p. 9.

[76] Joint Petition ¶ 31, p. 9.

18. Exhibit C is a revised version of Met-Ed/Penelec/Penn Power/West Penn Exhibit WZ-1R to reflect an independent credit threshold for suppliers based on the credit ratings of the supplier or its guarantor and clarifications on the application of the CPP set forth in the Settlement.[77]

D. Alternative Energy Portfolio Standards Act Compliance

19. For DSP VI, the Companies will satisfy most of their AEPS Act requirements as part of the solicitation of default service supply. Under the SMA, winning suppliers of full-requirements default service products in the Companies' service territories will be responsible for meeting all Tier I and Tier II requirements, including solar photovoltaic requirements, with two exceptions described in this Settlement.[78]

20. The Joint Petitioners agree that in the first year of the DSP VI Term, 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. In addition, the Joint Petitioners agree that the SPAECs that the Companies purchase through their proposed 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.[79]

21. The Companies will provide in each transaction confirmation a quantity of SPAECs that will be allocated to the default service supplier, either as a percentage of the supplier's obligation or as a fixed quantity.[80]

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[77] Joint Petition ¶ 32, p. 9.

[78] Joint Petition ¶ 33, p. 9.

[79] Joint Petition ¶ 34, pp. 9-10.

[80] Joint Petition ¶ 35, p. 10.

E. Contingency Plans

(i) Full Requirements

22. The Joint Petitioners agree that the Companies will continue utilizing the contingency plans approved in the DSP V proceeding to 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. Specifically, if a scheduled solicitation is not fully subscribed following the initial proposed procurement or if the Commission rejects the bid results from a solicitation, the Companies will rebid the unfilled tranches in the next scheduled procurement for which there is sufficient calendar time to include the tranches. For any unfilled tranches remaining, the Companies will purchase the necessary physical supply for the remaining tranches for that class through PJM-administered markets. The Companies will not enter into hedging transactions to attempt to mitigate the associated price or volume risks to serve such unfilled tranches. The Companies will secure any AEPS Act compliance requirements for unfilled tranches at market prices.[81]

23. The Joint Petitioners agree that, in the event a winning bidder defaults prior to the start of or during the delivery period, the Companies will offer the unfilled tranches to the other qualified suppliers. If this is unsuccessful and a minimum of 30 calendar days exists prior to the start of the delivery period, the tranches will be bid out in a separate solicitation. If insufficient time exists to conduct an additional solicitation, or if the supplemental solicitation is unsuccessful, the Companies will supply the tranches using PJM-administered markets.[82]

24. Effective June 1, 2023, the Joint Petitioners agree that if PJM does not conduct the BRA in time for default service suppliers to incorporate the auction results in their bids, the CPP will be the average of the capacity prices from the previous two known delivery

[81] Joint Petition ¶ 36, p. 10.

[82] Joint Petition ¶ 37, pp. 10-11.

year capacity market auctions conducted by PJM. The Companies will calculate reconciliations for those default service suppliers impacted by utilizing their daily unforced capacity obligation by class, tranches served by class, and the differential between the CPP and the final capacity price.[83]

25. The Companies will apply the CPP true-up across the entire contract term, and the calculation of the day weighted average capacity price adjustment for purposes of determining the true-up amount will reflect final unforced capacity (UCAP) quantity weighting. For example, for a 24-month contract term, the Companies will calculate the relevant 24-month average capacity price adjustment by appropriately weighting the amount of capacity (i.e., the final UCAP quantity) purchased by the supplier at each PJM capacity price.[84]

(ii) AEPS Requirements

26. If the Companies' long-term solar procurement is not fully subscribed, the Companies will develop and file an RFP with the Commission to procure SPAECs for a five-year period in an amount designed to satisfy up to an estimated 32% of the solar AEPS requirements for the Companies' residential default service load. If the RFP is undersubscribed, the Companies will go to the spot market to procure the SPAEC shortfall. Energy will not be procured in the contingency plan.[85]

F. Independent Evaluators

27. The Joint Petitioners agree to the appointment of CRA International, Inc. d/b/a/ Charles River Associates (CRA) as the independent third-party evaluator for the Companies' default service procurements.[86]

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[83] Joint Petition ¶ 38, p. 11.

[84] Joint Petition ¶ 39, p. 10.

[85] Joint Petition ¶ 40, p. 11.

[86] Joint Petition ¶ 41, p. 12.

28. The Joint Petitioners agree to the appointment of The Brattle Group as the independent third-party evaluator for the long-term solar procurement.[87]

G. Rate Design And Cost Recovery

(ii) Price To Compare Default Service Rate Rider

29. The Companies will continue to recover the cost of default service for the residential and commercial classes through their Price to Compare Default Service Rate Riders (PTC Riders) consistent with the PTC Riders approved by the Commission in the DSP V proceeding. Default service rates established pursuant to the PTC Riders will consist of a single per-kWh energy charge, which will change semi-annually instead of quarterly. These rates will continue to recover: (1) generation costs, transmission costs (excluding NMB charges described in footnote 69 above), and ancillary service costs; (2) supply management and administrative costs, as provided in 52 Pa. Code § 69.1808; and (3) applicable taxes. In addition, the default service rates will include a reconciliation component, or "E-Factor," to recoup or refund, as applicable, under or over-collections from prior periods. The Joint Petitioners agree that over/undercollections of default service costs for the residential and commercial classes will be reconciled on a semi-annual instead of a quarterly basis.[88]

30. The Joint Petitioners agree that the Companies shall be permitted to file the PTC Riders set forth in Exhibits D-1 to D-4 attached to the Joint Petition to become effective as of June 1, 2023, subject to resolution of the issues reserved for litigation related to the AEPS Act. Exhibits D-1 to D-4 are clean versions of the tariff changes reflected in Met-Ed/Penelec/Penn Power/West Penn Exhibits PML-3 to PML-17 and PML-27 to PML-30 and incorporate the tariff changes described in Paragraph 53 below.[89]

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[87] Joint Petition ¶ 42, p. 12.

[88] Joint Petition ¶ 43, p. 12.

[89] The Electric Service Tariff pages referenced in this Joint Petition do not change the Companies' current treatment of AEPS compliance costs in their PTC Riders and Hourly Pricing Default Service Riders (HP Riders); Joint Petition ¶ 44, pp. 12-13.

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(ii) Hourly Pricing Default Service Rider

31. The Companies will continue to use their HP Riders approved by the Commission in the DSP V proceeding to recover the cost of default service for industrial class customers. Default service rates established pursuant to the HP Riders will continue to be based upon the PJM hourly LMP for each Company's respective PJM-designated transmission zone plus associated costs, such as capacity, ancillary services, PJM administrative expenses and costs to comply with AEPS requirements that are incurred to provide hourly pricing default service. The Joint Petitioners agree that the default service rates also will include an E-Factor to reconcile costs and revenues on a semi-annual instead of quarterly basis. [90]

32. The Joint Petitioners agree that the Companies shall be permitted to file the HP Riders set forth in Exhibits D-1 to D-4 to become effective as of June 1, 2023, subject to resolution of subject to resolution of the issues reserved for litigation related to the AEPS Act.[91]

(iii) Default Service Support Rider

33. Each Company's tariff will include a DSS Rider that imposes non-bypassable charges to recover the same categories of costs approved by the Commission in the DSP V proceeding, with the elimination of the non-utility generation (NUG) cost component of Met-Ed and Penelec's DSS Riders. [92]

34. The Companies' DSS Riders will continue to recover four categories of costs: (1) the uncollectible accounts expense incurred through the provision of default service and on behalf of EGSs through the purchase of receivables programs for residential and small commercial customers; (2) retail enhancement costs for the CRPs; (3) customer education costs; (4) NMB charges; and (5) clawback charge credit. Penn Power's DSS Rider may also recover

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[90] Joint Petition ¶ 45, p. 13.

[91] Joint Petition ¶ 46, p. 13.

[92] Joint Petition ¶ 47, p.13.

any FERC-approved Midcontinent Independent System Operator (MISO) Transmission Expansion Plan costs, PJM integration fees, and MISO exit fees associated with Penn Power's move from MISO to PJM.[93]

35. The Joint Petitioners agree that the Companies shall be permitted to file the Met-Ed and Penelec DSS Riders set forth in Exhibits D-1 and D-2 to become effective as of June 1, 2023. The Joint Petitioners further agree that Penn Power and West Penn will continue to use their DSS Riders approved by the Commission in the DSP V proceeding.[94]

(iv) Solar Photovoltaic Requirements Charge Rider

36. To recover the costs associated with legacy solar contracts that expire in 2024, Met-Ed, Penelec and Penn Power will continue to use the non-bypassable Solar Photovoltaic Requirements Charge Riders (SPVRC Riders) approved by the Commission in the Companies' DSP V proceeding.[95]

37. Following the completion of the current long-term solar procurement contracts for Met-Ed, Penelec and Penn Power, all costs related to the procurement of solar energy and/or SPAECs will be recovered through the Companies' PTC Riders.[96]

(v) Time-of-Use Rates

38. The Companies currently offer an optional time-of-use pricing rate to residential customers through their Commission-approved Time-of-Use Default Service Riders. Eligible residential customers contract with a Commission-certified EGS for TOU default

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[93] Joint Petition ¶ 48, pp. 13-14.

[94] Joint Petition ¶ 49, p. 14.

[95] Joint Petition ¶ 50, p.14.

[96] Joint Petition ¶ 51, p. 14.

service under the switching rules set forth in the Companies' Electric Generation Supplier Coordination Tariffs (Supplier Tariffs).[97]

39. During DSP VI, the Companies will offer new TOU default service rate options for eligible residential and commercial customers to comply with the Companies' obligations under Act 129 of 2008 (Act 129) to offer TOU and real-time rates to all default service customers with smart meters.[98]

(vi) TOU Product Structure and Rate Design

40. The Companies' TOU Riders will differentiate prices across three usage periods that are constant throughout the year as shown in Table 1 below.

Table 1

TOU Pricing Period	Year-Round Days/Hours Included
On-Peak	2 p.m. – 9 p.m. Monday through Friday
Super Off-Peak	11 p.m. – 6 a.m. Every day
Off-Peak	All other hours

These TOU pricing periods will be identical for the residential and commercial classes.[99]

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97 Joint Petition ¶ 52, p. 14.

98 66 Pa.C.S. §§ 2807(f)(5). The hourly-priced default service rate for the industrial class already meets Act 129 requirements; Joint Petition ¶ 53, p. 15.

99 Joint Petition ¶ 54, p. 15.

41. The Joint Petitioners agree to the TOU rate multipliers for each procurement class shown in Table 2 below. These multipliers reflect the ratios calculated from average PJM spot market prices, as well as allocation of the cost of capacity to on-peak hours only.[100]

Table 2

		On-Peak	Super Off-Peak	Off-Peak
Met-Ed	Commercial	2.0558	0.5298	0.7277
	Residential	2.0180	0.5438	0.7285
Penelec	Commercial	1.9532	0.5582	0.7686
	Residential	1.9367	0.5669	0.7633
Penn Power	Commercial	2.0271	0.5202	0.7409
	Residential	2.0140	0.5331	0.7377
West Penn	Commercial	1.9416	0.5663	0.7870
	Residential	1.8632	0.5749	0.7821

42. The Companies agree to review the TOU rate multipliers set forth in Table 2 every two years, and all TOU rate multipliers shall be updated if the calculation of at least one TOU rate multiplier results in a 15% or larger change in any direction.[101]

43. The Companies will source both the standard and TOU default service for residential and commercial customers from the same supply portfolio for each procurement class. The Companies will use the standard default service price as calculated in the PTC Riders as the reference price by class for their TOU rate calculations.[102]

[100] Joint Petition ¶ 55, pp. 15-16.

[101] Joint Petition ¶ 56, p. 16.

[102] Joint Petition ¶ 57, p. 16.

44. The TOU default service rates for each Company will be determined by multiplying the PTC Rider rate by the multiplier for the applicable customer class and TOU pricing period. The Companies will calculate the TOU rates on a semi-annual basis, synchronized with the PTC Rider adjustment periods for the residential and commercial classes. TOU customer 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).[103]

(vii) Customer Eligibility

45. The Companies' TOU Riders will be available to residential and commercial default service customers with smart meters. However, customers enrolled in a Company's Customer Assistance Program (CAP) will not be eligible for the TOU Rider during the DSP VI Term to avoid potential adverse impacts on CAP benefits.[104]

46. Customer-generators, except for virtual net metering customers, will be eligible for the Companies' TOU Riders.[105]

47. Eligible default service customers may enroll in the TOU Rider online or by contacting the Companies' Customer Care Service Center. Participating customers will remain on the TOU Rider until they affirmatively elect to return to the applicable Company's standard default service rate or switch to an EGS.[106]

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[103] Joint Petition ¶ 58, p. 16.

[104] Joint Petition ¶ 59, p. 16.

[105] Joint Petition ¶ 60, p. 17.

[106] Joint Petition ¶ 61, p. 17.

48. Customers who select the TOU Rider may leave at any time without incurring related penalties or fees. However, if those customers subsequently leave the TOU Rider for any reason, they may not re-enroll for twelve months.[107]

(viii) Implementation Plan and Cost Recovery

49. The Companies agree to provide the parties to the Settlement with draft educational and/or outreach materials regarding their TOU rates and will solicit their feedback for consideration.[108]

50. All TOU outreach and education materials will include, at a minimum, the following statements, with the title: Important Information About Time of Use Rates:

(a)"Time of Use Rates may not be beneficial for customers that cannot change the time of day that they rely on electricity, such as those with medical devices that require electricity or customers who are home during peak hours."
(b)"If you are a customer with low or moderate income, other programs, including grant assistance, monthly bill credits, and debt forgiveness, may be available to help you afford your bill. Contact [Met-Ed, Penelec, Penn Power, West Penn] at [telephone number / website] for more information and to apply."[109]

51. The Companies will recover the costs to implement their revised TOU Riders from customers through the PTC Riders.[110]

52. Effective June 1, 2023, the Companies shall be permitted to implement the TOU Riders set forth in Exhibits D-1 to D-4.[111]

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107 Joint Petition ¶ 62, p. 17.

108 Joint Petition ¶ 63, p.17.

109 Joint Petition ¶ 64, p. 17.

110 Joint Petition ¶ 65, p. 18.

111 Joint Petition ¶ 66, p. 18.

(ix) Additional Tariff Changes

53. The Joint Petitioners agree that effective June 1, 2023, the Companies shall be permitted to implement the changes to the Companies' retail electric service tariffs set forth in Exhibits D-1 to D-4, including changes to tariff definitions to accommodate the procurement plan set forth in the Settlement and elimination of Met-Ed and Penelec's NUG Riders and references to those expired riders throughout their tariffs.[112]

54. As shown on Exhibits E-1 to E-4 attached to the Joint Petition, language related to transferring SPAECs to EGSs has been eliminated, language describing the purchase of receivables (POR) program clawback provision as a pilot with an end date has been eliminated, and the prohibition against early termination/cancellation fees for customers transitioning into a Company's CAP described in Section II.I below has been added in each Company's Supplier Tariff.[113]

H. Customer Referral Program

55. Each Company's CRP, as it is currently operated, will terminate as of May 31, 2027. In their default service filing for the period commencing June 1, 2027, the Companies will address whether a successor CRP program should be implemented and is necessary and provide the reasons for their proposal.[114]

56. The Companies will provide the option for customers to enroll in the CRP through the Companies' website no later than June 1, 2023.[115]

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[112] Joint Petition ¶ 67, p. 18.

[113] Joint Petition ¶ 68, pp. 18.

[114] Joint Petition ¶ 69, p. 18.

[115] Joint Petition ¶ 70, p. 18.

57. Consumer disclosures and standard programmatic information will be integrated into the web portal in plain language and will be programmed to require consumers to read and affirmatively indicate their acceptance of the disclosure and program terms. [116]

58. The Companies agree that they will provide the scripting and disclosure language to be used on the web portal to the parties to this proceeding, along with a description of how the information will be presented to consumers and how consumers will indicate their acceptance of each disclosure, by no later than April 1, 2023. The Companies will provide the parties with an opportunity to make suggested revisions to the scripting for the purpose of additional clarification of the existing CRP.[117]

59. No later than June 1, 2023, the Companies will make information about the CRP more easily accessed by customers on their website by including a direct link on the Customer Choice page, as well as notify customers through bill inserts, or other means such as newsletters, about the availability of online enrollment in the CRP.[118]

60. As shown on Exhibit F to the Joint Petition, CRP suppliers will continue to be able to begin participation in the CRP effective on the following dates each year: March 1, June 1, September 1, and December 1.[119]

61. The CRP enrollment fee to be paid by EGSs will remain at $30 per customer enrollment for those enrollments completed by the Companies' third-party service provider. There will be no EGS fee for those customers who elect to utilize the Companies' web enrollment program to participate in the CRP without using the third-party service provider.[120]

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[116] Joint Petition ¶ 71, p. 19.

[117] Joint Petition ¶ 72, p. 19.

[118] Joint Petition ¶ 73, p. 19.

[119] Joint Petition ¶ 74, p. 19.

[120] Joint Petition ¶ 75, p. 19.

62. All costs of the program in excess of the EGS fee, including the cost of the web-based enrollment platform, shall be recovered through the Companies' DSS Riders.[121]

63. Within 90 days following entry of the Commission's final order at these dockets, the Companies agree to convene an initial stakeholder collaborative open to the signatories of this Settlement to explore the compilation of metrics related to the Companies' CRPs. Thirty days prior to the initial CRP collaborative meeting, the Companies will provide potential fields for data collection to begin at the start of the DSP VI Term on June 1, 2023.[122]

64. During the CRP collaborative meeting, the Companies and meeting participants will discuss the potential data collection fields proposed by the Companies and consider any additional data fields that may be requested. The Companies will work in good faith to accommodate requests for additional data collection fields.[123]

65. The Companies commit to convening a meeting 90 days prior to filing their next default service programs to review the results of the data compiled and address any questions by the parties.[124]

I. <u>POR Clawback Charge</u>

66. As of June 1, 2023, the clawback charge will no longer be a pilot provision of the Companies' POR programs.[125]

67. The Companies will continue to use a two-prong test to determine the clawback charge. The first, as described in testimony, will identify those EGSs whose average

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[121] Joint Petition ¶ 76, p. 19.

[122] Joint Petition ¶ 77, pp. 19-20.

[123] Joint Petition ¶ 78, p. 20.

[124] Joint Petition ¶ 79, p. 20.

[125] Joint Petition ¶ 80, p. 20.

percentage of write-offs as a percentage of revenues over the twelve-month period ending August 31 each year exceeds 200% of the average percentage of total EGS write-offs as a percentage of revenues per operating company. The second prong of the test will identify, of those EGSs identified in the first test, EGSs whose average price charged over the same twelve-month period exceeds 150% of the average price-to-compare for the period. For those EGSs identified by both prongs of the test, the annual clawback charge assessed each September would be the difference between that EGS's actual write-offs and 200% of the average percentage of write-offs per operating company.[126]

J. CAP Customer Shopping

68. Effective June 1, 2023, all customers enrolled in the Companies' CAP are required to be enrolled in default service at the applicable PTC.[127]

69. The Companies will develop a letter to be sent to all CAP customers enrolled with an EGS notifying those customers of the pending change to the program rules and their options related thereto. The letter will be available in English and Spanish, and will inform CAP shopping customers of the following:

1. All CAP shopping customers are required to return to default service by June 1, 2023 in order to remain enrolled in the Companies' CAP.
2. CAP shopping customers have the choice to voluntarily withdraw from CAP by June 1, 2023, if they wish to remain with their current EGS.
3. CAP shopping customers who take no action by June 1, 2023 will be automatically returned to default service and will remain enrolled in CAP without interruption.
4. CAP shopping customers will not incur any early cancellation, termination, or other fees if they choose to return to default service and remain in CAP.[128]

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[126] Joint Petition ¶ 81, p. 20.

[127] Joint Petition ¶ 82, p. 21.

[128] Joint Petition ¶ 83, p. 21.

70. The Companies will share a draft of the letter described in the preceding paragraph with the parties to this proceeding by February 1, 2023 and will provide those parties with the opportunity to provide suggested revisions to the letter. Once finalized, the letter will be sent to all CAP customers who are enrolled with a supplier as of April 1, 2023, and May 1, 2023.[129]

71. Within 90 days of a final order in this proceeding, the Companies will begin advising all new CAP enrollees of the pending rule change. If the CAP enrollee is actively shopping at the time of enrollment, they will be informed of the option to voluntarily withdraw from the program if they choose to remain with their current supplier as of June 1, 2023.[130]

72. No EGSs will be permitted to charge early cancellation, termination or other fees to any shopping customer transitioning into one of the Companies' CAP programs. The Companies' Supplier Tariffs will be updated to reflect this restriction.[131]

73. The Companies will continue to include a CAP flag for each CAP customer on the Eligible Customer List.[132]

74. All administrative and programing costs incurred by the Companies to implement the aforementioned CAP shopping restriction will be collected from residential customers through the Companies' PTC Riders.[133]

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[129] Joint Petition ¶ 84, p. 21.

[130] Joint Petition ¶ 85, pp. 21-22.

[131] Joint Petition ¶ 86, p. 22.

[132] Joint Petition ¶ 87, p. 22.

[133] Joint Petition ¶ 88, p. 22.

K. Third-Party Data Access Tariff

75. Beginning June 1, 2022, the Companies will implement a standard form of authorization, which is appended to the Third Party Data Access Tariffs set forth in Exhibits G-1 to G-4 of the Joint Petition, to be used for all new requests from third parties seeking customer data through the terms of the Companies' Third-Party Data Access Tariffs. Any other standard form of authorization, dated prior to June 1, 2022 will be accepted as a standard form of authorization under the terms of the Third-Party Data Access Tariffs until the expiration date of such form, at which point the Companies will require the use of the standard form of authorization included in this Settlement.[134]

76. As shown on Exhibits G-1 to G-4, third-party data access shall be limited to Conservation Service Providers registered with the Public Utility Commission or Curtailment Service Providers that are PJM members and identified on PJM's list of demand response providers available at www.pjm.com.[135]

77. The Companies will conduct periodic, randomized internal audits of the participants under their new Third-Party Data Access Tariffs to ensure that letters of authorization are being properly obtained by third parties governed thereunder when seeking access to customer data. Such audits will occur at least semi-annually and will include at least 10% of active third parties governed by the tariff. All third parties found to be noncompliant will be permanently restricted from further access to customer data under the tariffs.[136]

78. This Settlement does not create a precedent for third-party utility data sharing practices in Pennsylvania. All parties reserve the right to take a different position on the

[134] Joint Petition ¶ 89, p. 22.

[135] Joint Petition ¶ 90, p. 22.

[136] Joint Petition ¶ 91, p. 23.

issues addressed in the Settlement in the context of the statewide proceeding at Docket M-2021-3029018.[137]

79. Upon conclusion of the statewide proceeding at Docket M-2021-3029018, the Companies will assess whether their current system is consistent with any final Commission orders on the matter and will make subsequent filing(s) with the Commission to amend their tariffs if required. All parties to this proceeding will be served with a copy of any such filings.[138]

L. Additional Settlement Terms

80. As a condition of the Settlement, the Joint Petitioners agree that the following issues will not be addressed in this default service 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.[139]

81. The Joint Petitioners agree that if RESA and/or NRG file a petition with the Commission proposing to reexamine default service on a statewide basis, including issues related to: (i) the appropriate entity to be in the default service provider role; (ii) supplier consolidated billing; (iii) the allocation of indirect or overhead costs to the default service rate; and (iv) continued use of the term "price to compare," the testimony and exhibits admitted into the record in this proceeding may be referenced therein, pursuant to the Commission's regulations at 52 Pa. Code §§ 1.33 (incorporation by reference) and 5.407 (records of other

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[137] Joint Petition ¶ 92, p. 23.

[138] Joint Petition ¶ 93, p. 23.

[139] Joint Petition ¶ 94, p. 23.

proceedings). The Joint Petitioners reserve the right to object to the admission of the record in this proceeding or in any future proceeding based on relevance or other appropriate grounds, depending on the proposed use of the testimony and exhibits.[140]

82. The Companies, I&E, the OCA, the OSBA, CAUSE-PA, Constellation, Enerwise, the Industrials, and Shipley will submit Statements in Support on May 6, 2022 setting forth the bases on which they believe the Settlement is in the public interest. [141]

83. The Joint Petitioners submit that the Settlement is in the public interest for the following additional reasons:

> [t]he Settlement amicably and expeditiously resolves a number of important and contentious issues. The administrative burden and costs to litigate these matters to conclusion would be substantial.
>
> . . . The Joint Petitioners arrived at the Settlement terms after conducting extensive discovery and engaging in in-depth discussions over several weeks. The Settlement terms and conditions constitute a carefully crafted package representing reasonable negotiated compromises on the issues addressed herein. Thus, the Settlement is consistent with the Commission's rules and practices encouraging negotiated settlements (*see* 52 Pa. Code §§ 5.231, 69.391 and 69.401), and is supported by a substantial record.[142]

84. The Joint Petitioners agree that this Settlement, subject to the Commission resolution of the issues reserved for briefing, represents the default service procurement plan for all the Companies' customer classes for the DSP VI Term. The Companies shall be entitled to recover all costs reasonably incurred by them under their procurement plan as set forth in this Settlement, and the Joint Petitioners agree that they shall neither challenge nor seek disallowance of such costs (including pursuant to 66 Pa.C.S. §§ 2807(e)(3.8) and (3.9)), provided that the Companies' procurements are made in accordance with the approved plan.[143]

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[140] Joint Petition ¶ 95, p. 24.

[141] Joint Petition ¶ 96, p. 24.

[142] Joint Petition ¶ 97, pp. 24-25.

[143] Joint Petition ¶ 98, p. 25.

85. This Settlement is proposed by the Joint Petitioners to settle the instant case and is made without any admission against, or prejudice to, any position which any Joint Petitioner might adopt during subsequent litigation of this case or any other case. It is understood, however, that the preceding paragraph shall be binding upon the Joint Petitioners should the Settlement be approved.[144]

86. This Settlement is conditioned upon the Commission's approval of the terms and conditions contained herein without modification. If the Commission should disapprove the Settlement or modify the terms and conditions herein, this Settlement may be withdrawn upon written notice to the Commission and all active parties within five business days following entry of the Commission's Order by any of the Joint Petitioners and, in such event, shall be of no force and effect. In the event that the Commission disapproves the Settlement or the Company or any other Joint Petitioner elects to withdraw as provided above, the Joint Petitioners reserve their respective rights to fully litigate this case, including but not limited to presentation of witnesses, cross-examination and legal argument through submission of Briefs, Exceptions and Replies to Exceptions.[145]

87. If the Administrative Law Judge, in his Recommended Decision, recommends that the Commission adopt the Settlement as herein proposed without modification, the Joint Petitioners agree to waive the filing of Exceptions. However, the Joint Petitioners do not waive their rights to file Exceptions with respect to any modifications to the terms and conditions of this Settlement, or any additional matters proposed by the Administrative Law Judge in his Recommended Decision. The Joint Petitioners also reserve the right to file Replies to any Exceptions that may be filed.[146]

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[144] Joint Petition ¶ 99, p. 25.

[145] Joint Petition ¶ 100, pp. 25-26.

[146] Joint Petition ¶ 101, p. 26.

V. STATEMENTS IN SUPPORT OF SETTLEMENT

1. Procurement and Implementation Plans

A. The Companies' Position

The Companies explain the Joint Petitioners agreed to the Companies' original proposal to divide customers into three classes for purposes of default service procurement: the residential class, commercial class, and industrial class subject to the definitions that were approved in the DSP V Orders.[147] 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.[148]

The Joint Petitioners agreed to the Companies' original proposal to procure electric generation supply for the residential, commercial and industrial classes through the use of a DCA process.[149] The Companies note that 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.[150]

The Companies explain, 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

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[147] Joint Petition, ¶¶ 16-17; Met-Ed/Penelec/Penn Power/West Penn St. 2, p. 6.

[148] Joint Petition, p. 27.

[149] Joint Petition, ¶¶ 18-19, & Ex. A.

[150] 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.

contracts that cover the period from June 1, 2027 through May 31, 2028 (the first year of the Companies' seventh default service programs). The Companies also note that the Settlement also ensures that the November auctions are held no earlier than one week following posting of West Penn's NITS rates.[151]

All DCAs will be administered by independent, third-party evaluator CRA in accordance with the DCA rules set forth in Exhibit A to the Joint Petition. The Companies explain that 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 compliance.[152]

The Settlement also 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 Companies submit 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 independent third-party RFP monitor Brattle. In addition, the solar RFP and related documents include terms and conditions that are typical of power purchase and solar renewable energy credit agreements.[153]

The Companies explain that under the Settlement, the commercial class procurement product is a 100% fixed-price full requirements tranche. For the first year of the

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[151] *See* Joint Petition, ¶¶ 20-21, 26-27, & Ex. B; Met-Ed/Penelec/Penn Power/ West Penn St. in Support, p.p. 10-11.

[152] 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; Companies St. in Support, p.p. 111-12.

[153] *See* Met-Ed/Penelec/Penn Power/West Penn St. 2, pp. 21-22, & Ex. JHC-6; Met-Ed/Penelec/Penn Power/ West Penn St. in Support, p. 2.

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.[154] 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.[155]

The Companies explain the Settlement also adopts its 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.[156]

B. OCA's Position

OCA explains that the Settlement provides that the Companies will incorporate overhanging contracts that will layer into the Companies' next DSP VII plan through May 31, 2028 to avoid a "hard stop" at the end of DSP VI.[157] OCA explains an overhanging contract in the context of the Companies' proposed DSP VI is a full requirements contract with a delivery period that extends into the subsequent DSP period.[158]

OCA explains the Settlement also eliminates the Companies' proposed 5% spot component for the residential customer procurement.[159] OCA recommended that the 5% spot

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154 Joint Petition, ¶¶ 24-25.

155 *See* Joint Petition, Ex. B; Met-Ed/Penelec/Penn Power/ West Penn St. in Support, p.p. 13-14.

156 Joint Petition, ¶¶ 28-29 & Ex. B; Met-Ed/Penelec/Penn Power/ West Penn St. in Support, p. 14.

157 Settlement at ¶ II.19, II.27, Exh. A.

158 OCA St. 1 at 10.

159 Settlement at ¶ II.21.

component be eliminated as unnecessary when balancing the benefits and additional costs.[160] According to OCA, the elimination of the spot market component will provide for greater price stability for residential customers. In addition, OCA explains, the inclusion of the proposed long-term solar power purchase agreements (PPAs) in the residential default service portfolio will expose residential default service customers to some degree of spot market purchases.[161]

C. OSBA Statement In Support

OSBA raised concerns regarding the replacement of short-term procurement contracts for the Commercial class, and the elimination of the "hard stop" for procurement contracts. OSBA witness, Robert D. Knecht, agreed with the Companies' proposal to eliminate the three-month procurement contracts, which he determined (1) did not provide lower prices, (2) did not provide lower risk premiums, and (3) increased rate instability.[162] Mr. Knecht further recommended that the six-month procurement contracts proposed by the Companies to replace the three-month contracts for Commercial customers be rejected, and that "Commercial procurement move much closer to the Residential model, namely a mix of 12-month and 24-month products."[163] OSBA explains the *Joint Petition* adopts Mr. Knecht's recommendations and provides that the Commercial class full requirements product mix will be comprised of 12-month and 24-month contracts.[164]

Mr. Knecht further made recommendations for changing the full requirements load following (FRLF) Commercial approach, attempting to (1) meet the 35 tranches of Commercial load used by the Companies in their model, (2) retain the Companies' goal to hold procurements bi-annually, (3) rely on 12-month and 24-month products, (4) "ladder" the

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160 OCA St. 1 at 15-16.

161 OCA St. 1 at 16; OCA St. in Support, p. 8.

162 OSBA St. No. 1, at p. 14. OSBA St. No. 1, at p. 14.

163 OSBA St. No. 1, at p. 14.

164 Joint Petition, at pp. 7-8, ¶ 25; OSBA St. in Support, p. 2.

contracts, thereby reducing rate volatility, and (5) eliminate the "hard stop" feature of the Companies' plans, where all contacts would end at May 31, 2027.[165] OSBA explains the FRLF Commercial approach set forth in the *Joint Petition* adopts Mr. Knecht's recommendations that the "hard stop" at May 31, 2027 be eliminated and replaced with overhanging FRLF contracts that cover the period of June 1, 2027 through May 31, 2028.[166] OSBA submits the adopted approach should reduce rate volatility and reduce the amount of load that "turns over" at a particular time.[167]

OSBA submits that the historical risk premiums in competitive bids for the procurement plan for Commercial contracts have been far higher than those for residential customers and that the *Joint Petition* adopts changes it proposed to Commercial procurement that attempt to make Commercial products more attractive to bidders as being of a larger overall size and being a closer substitute to Residential products.[168]

D. Constellation's Position

Constellation submits the Settlement improves price transparency and the allocation of risk in ways that will ultimately benefit consumers by obligating West Penn to publish its NITS rates on or before October 31 of each calendar year.[169] Constellation explained that NITS charges, like other non-market based charges, are not "hedgeable" costs for suppliers.[170] Thus, Constellation explains, to the extent such charges will be borne by suppliers (and not the Companies), improved transparency is critical to allow suppliers to accurately

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[165] OSBA St. No. 1, p. 15. OSBA St. No. 1, at p. 15; OSBA St. in Support, p. 2.

[166] Joint Petition, p. 8, ¶ 27.

[167] OSBA St. No. 1, at p. 15; OSBA St. in Support, pp. 2-3.

[168] OSBA Statement No. 1, p. 14, OSBA Statement No. 1-S, p. 4.

[169] Settlement ¶ 26.

[170] Campbell Testimony at 17; Constellation St. in Support, pp. 2-3.

reflect the expected NITS charges in their bids, and that the Settlement achieves this objective by requiring a public posting of NITS charges for West Penn prior to the fall auction.[171]

Constellation notes the Settlement incorporates an independent credit threshold for suppliers based on the supplier's credit rating,[172] providing that suppliers with good credit will receive unsecured credit to satisfy the new ICRT. Constellation asserts the introduction of the independent credit threshold appropriately balances collateral costs, which are ultimately borne by customers, with actual credit risk.[173]

The Settlement also provides that, in connection with the proposed solar procurement, the Companies will include in each transaction confirmation the quantity of SPAECs that will be allocated to the supplier, either as a percentage of the supplier's obligation or as a fixed quantity.[174] Constellation submits this provision recognizes that suppliers cannot accurately forecast the quantity of SPAECs that will be produced by a solar facility that the supplier neither owns nor controls. By defining a specific quantity of SPAECs to be allocated to the supplier, Constellation asserts, the Settlement obviates the need for supplier bid premiums to mitigate that quantity risk.[175]

Regarding the CPP mechanism, Constellation submits the Settlement provides a clarification with respect to how any applicable true-up will be calculated.[176] The Settlement provides that the average capacity price used to calculate the true-up will reflect final unforced capacity quantity weighting. This clarification, according to Constellation, ensures that the true-up will accurately reflect the actual quantity of capacity procured at each PJM capacity price.[177]

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[171] The Companies' transmission-owning affiliate, MAIT, makes a similar public posting each year.

[172] Settlement ¶ 32; *see also* Settlement, Exhibit C, section 6.4 (Supplier Master Agreement).

[173] Constellation St. in Support, p. 3.

[174] Settlement ¶ 35.

[175] Constellation St. in Support, p. 3.

[176] Settlement ¶ 39.

[177] Constellation St. in Support, p. 3.

E. CAUSE-PA's Position

CAUSE-PA notes that a key provision of the Partial Settlement will ensure that the procurement schedule for the residential class will not be subject to a "hard stop" at the end of the Companies' DSP VI Plan as originally proposed, and will instead include overhanging full requirements contracts that will extend through the first year of the Companies DSP VII Plan.[178] CAUSE-PA submits this provision will help to smooth the transition between plans and prevent spikes in the default service price over the longer term.[179]

F. Other Settling Parties Positions

I&E, Shipley, CPower, PSU, and the Industrials did not specifically address the issues related to the procurement and implementation plans.

G. Discussion

The Commission's regulations provide that the term of a default service program after the initial program will be determined by the Commission.[180] 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.[181] 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.

The Commission's regulations at 52 Pa. Code § 54.187 and Policy Statement at 52 Pa. Code § 69.1805, provide that default service providers should design procurement classes

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178 Joint Petition, p. 8, ¶ 27.

179 CAUSE-PA Statement in Support, p. 4.

180 *See* 52 Pa. Code § 54.182(d).

181 *See* Joint Petition, ¶ 15.

based upon 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."[182] The Joint Petitioners agreed 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.[183] 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.[184]

The Competition Act requires EDCs to use competitive procurement processes to obtain default service supply. The Joint Petitioners agreed to the Companies' original proposal to procure electric generation supply for the residential, commercial and industrial classes through the use of a DCA process.[185] The DCA rules that guide the bid solicitation processes are consistent with those that are used by the Companies in their current DSP V Programs and that have yielded competitive outcomes.[186] 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).[187] Accordingly, continuation of the Companies' existing DCA processes as part of the implementation plan for the Revised DSP VI Programs satisfies the Competition Act's requirements regarding competitive procurement processes.

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[182] *See* 52 Pa. Code § 69.1805.

[183] Joint Petition, ¶¶ 16-17; Met-Ed/Penelec/Penn Power/West Penn St. 2, p. 6.

[184] See Joint Petition, p. 27.

[185] Joint Petition, ¶¶ 18-19, & Ex. A.

[186] 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. 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.

[187] *See* Met-Ed/Penelec/Penn Power/West Penn St. 2, pp. 12-14, & Ex. JHC-2.

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.[188] After the first auction for the DSP VI term in November 2022, the Companies proposed to hold DCAs semi-annually in March and September.[189] 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.[190]

OCA supported the Companies' proposal to procure 12-month and 24-month full requirements products for the residential class, but 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." OCA also recommended procurement schedule changes to accommodate default service contracts with terms extending into the Companies' next default service program.[191]

OCA did not oppose the long-term solar procurement but recommended that the Companies allow bids of up to 20 years.[192] In addition, 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.[193]

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[188] 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.

[189] *See* Met-Ed/Penelec/Penn Power/West Penn Ex. JHC-1.

[190] Met-Ed/Penelec/Penn Power/West Penn St. 2, pp. 21-23; Met-Ed/Penelec/Penn Power/West Penn St. 4, pp. 28-29.

[191] *See* OCA Sts. 1, pp. 10-16, & 1SR, pp. 3-6.

[192] *See* OCA St. 1, pp. 17-19, & 1SR, pp. 19-20.

[193] 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. Beginning June 1, 2024, contracts for 51% for the residential class load will have terms of 12 months and the remaining 49% will have terms of 24 months.[194] 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 areas[195] by ensuring that the November auctions are held no earlier than one week following posting of West Penn's NITS rates.[196]

As set forth in Exhibit A to the Joint Petition, all DCAs will be administered by independent, third-party evaluator CRA in accordance with the DCA rules. 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 compliance.[197] The form SMA which suppliers will be required to execute is attached as Exhibit C to the Joint Petition.

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[194] See Joint Petition, ¶ 21, P. 7.

[195] *See* Constellation St. 1, pp. 16-19.

[196] *See* Joint Petition, ¶¶ 20-21, 26-27, & Ex. B.

[197] 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.

The Settlement also 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 will utilize independent third-party RFP monitor Brattle. In addition, the solar RFP and related documents include terms and conditions that are typical of power purchase and solar renewable energy credit agreements.[198]

As the Companies explained, 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 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.[199] In addition, the use of 12-month and 24-month full requirements purchases provides a measure of price stability.[200] At the same time, the use of spot purchases in the long-term solar procurement provides a reflection of current market prices.

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 and expressed concern about potential risk premiums associated with shorter-term contracts.[201]

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-

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[198] *See* Met-Ed/Penelec/Penn Power/West Penn St. 2, pp. 21-22, & Ex. JHC-6.

[199] *See* 66 Pa.C.S. § 2807(e)(3.7).

[200] *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.

[201] OSBA St. 1, pp. 13-16, & 1-S, pp. 2-5.

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.[202] 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.[203]

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."[204] 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.

The Settlement also 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.[205] Like the procurement plans for the other classes, the industrial class procurement plan complies with the Competition Act's requirements.

The Joint Petitioners have also reached agreements on several issues that apply to multiple procurement classes, as follows.

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[202] Joint Petition, ¶¶ 24-25.

[203] *See* Joint Petition, Ex. B.

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

[205] Joint Petition, ¶¶ 28-29 & Ex. B.

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.[206] The AEPS Act also includes a "set-aside" that requires some of those AECs to be derived from solar photovoltaic (PV) facilities. 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.[207]

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 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. 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. In addition, 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.[208]

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.[209] The Settlement requires the Companies to disclose SPAEC allocations to

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

[207] 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).

[208] *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.

[209] *See* Met-Ed/Penelec/Penn Power/West Penn St. 2, p. 23; Met-Ed/Penelec/Penn Power/West Penn St. 3, pp. 10-11.

default service suppliers in the transaction confirmation as recommended by Constellation. By 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.[210]

Contingency Plans. A default service program must include a contingency plan in the event of a supplier default.[211] Paragraphs 36 and 37 of the Joint Petition provide 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.

In addition, the Settlement adopts the Companies' 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.[212]

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

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[210] *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.

[211] *See* 52 Pa. Code § 54.185(e)(5).

[212] *Compare* Met-Ed/Penelec/Penn Power/West Penn St. 3R, pp. 2-4 *with* Constellation St. 1, pp. 11-13.

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 Settlement provides that the SMA will include unsecured credit for the ICRT.[213]

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. [214] OCA argued that lowering the cap to 40% could, among other things, result in higher clearing prices.[215] The Settlement adopts a 50% load cap for fixed-price product auctions and maintains the 75% load cap for hourly-priced product auctions.[216] The Settling Parties anticipate 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. OCA agreed that a 50% load cap is a reasonable compromise in furtherance of the Settlement and is in the public interest.

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.[217] The Companies proposed that CRA continue to serve as independent evaluator for their full requirements default service procurements[218] and that Brattle serve as the third-

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[213] *See* Met-Ed/Penelec/Penn Power/West Penn St. 2R, pp. 2-5.

[214] Met-Ed/Penelec/Penn Power/West Penn Sts. 2, pp. 26-27, & 2R, pp. 10-11.

[215] OCA St. 1, pp. 28-30 & 1SR, pp. 15-17.

[216] *See* Joint Petition, ¶ 19 & Ex. A.

[217] *See* 52 Pa. Code § 54.186(c)(3).

[218] Met-Ed/Penelec/Penn Power/ West Penn St. 2, p. 7.

party independent evaluator for the long-term solar procurement.[219] The Joint Petitioners agreed 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.[220]

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.[221] The Joint Petitioners agreed 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.[222]

2. Rate Design and Cost Recovery

A. The Companies' Position

In their Original Proposal, the Companies proposed to maintain their current rate design with revised TOU rates, and improvements to the default service rate adjustment and reconciliation process. The rate design set forth in the Settlement provides for the Companies to recover default service costs from default service customers through 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). 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

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219 *See* Met-Ed/Penelec/Penn Power/West Penn St. 2, p. 22 & Ex. JHC-6.

220 Joint Petition, ¶¶ 41-42.

221 *See* 52 Pa. Code § 54.186(e)(6).

222 Joint Petition, ¶¶ 19, 23, 30.

HP Riders on a semi-annual, instead of a quarterly, basis.[223] The Companies also proposed limited tariff revisions to align their PTC Riders and HP Riders with the procurement plans proposed for DSP VI.[224]

The Companies currently have DSS Riders that impose non-bypassable charges. In addition, the Companies proposed to recover the costs associated with the long-term solar procurement from the residential class through the PTC Riders.[225]

OCA proposed semi-annual E-Factor reconciliation using a 12-month refund or recovery period.[226] RESA/NRG recommended maintaining the Companies' existing quarterly PTC Rider adjustment, asserting that less frequent adjustment periods would result in a PTC price signal that diverges further from the underlying supply costs.[227] Sunrise and Bevec recommended changes to the Companies' PTC and HP Rider rate calculations with respect to AEPS compliance costs and loss factors.[228]

Subject to resolution of the reserved issue relating to the issues raised by Bevec and Sunrise regarding the Companies' PTC and HP Rider formulas, the Settlement adopts the Companies' original proposed rate design.[229] Under the Settlement, the Joint Petitioners agreed

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223 *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; Companies St. in Support, p.p. 8-9.

224 *See* Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 7-8, & Exs. PML-3 to PML-15.

225 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); Met-Ed/Penelec/Penn Power/ West Penn St. in Support, p. 19.

226 OCA Sts. 1, pp. 25-27, & 1SR, pp. 13-14.

227 RESA/NRG Sts. 1, pp. 42-56, & 1-SR, pp. 11-13, 25-31.

228 Direct Testimony of David M. Hommrich, pp. 10-16; Second Direct Testimony of David M. Hommrich, pp. 2-12, 17; Met-Ed/Penelec/Penn Power/ West Penn St. in Support, p. 20.

229 Joint Petition, ¶¶ 43-51.

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.[230]

The Companies explain they currently offer TOU rate options to residential default service customers through their Commission-approved Time-of-Use Default Service Riders.[231] 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 or default service proceeding following full implementation of smart meter back-office functionality. The Companies explain their 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.[232]

The Companies also assert the April 2017 Secretarial Letter 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. Accordingly, the Company's voluntary TOU Riders under the Settlement will be available to

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230 *Id.*, ¶ 67; Met-Ed/Penelec/Penn Power/ West Penn St. in Support, p. 20.

231 *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); *Met-Ed Recommended Decision*, at 21, 29; *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.

232 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); *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); Met-Ed/Penelec/Penn Power/ West Penn St. in Support, p.p. 20-21.

residential and commercial default service customers with smart meters.[233] The Settlement also includes restrictions on re-enrollment if a customer leaves the TOU for any reason.[234] The Companies submit 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.[235]

B. OCA's Position

OCA explains it recommended if the TOU program was implemented, that the multipliers used to calculate the TOU rates be changed each year based on the rolling four-year average Locational Marginal Prices (LMP), customer class loads, and the PJM capacity prices applicable to the PJM Delivery Year to prevent the price multipliers from getting misaligned with market conditions.[236] OCA submits the multipliers included in the Companies' filing are based on five years of historical data beginning in 2015 (for capacity costs) and 2016 (for energy costs) and that by the end of the proposed default service program period (May 2027), some of the data on which the multipliers would be based would be more than 10 years old.[237] Under the Settlement, the Companies will adopt the OCA recommendation, in part, and will review the TOU rate multipliers every two years. The Companies will update the calculation of the TOU rate multipliers if at least one of the TOU rate multipliers results in a 15% or larger change in any direction.[238] OCA believes the Settlement represents a reasonable compromise of the issue because the review of the rate multipliers will ensure that the rates more appropriately align with market conditions during the four year duration of the DSP.[239]

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[233] Joint Petition, ¶¶ 59-61.

[234] *Id.*, ¶ 62.

[235] Met-Ed/Penelec/Penn Power/West Penn St. 5, p. 16.

[236] OCA St. 1, p. 22-24.

[237] *See* OCA St. 1, p. 22-23.

[238] Settlement at ¶¶ II.I.55-56.

[239] OCA St. in Support, pp. 9-10.

OCA recommended that, in contrast to a TOU rate option, the Companies should be required to explore and, if cost effective, propose a Peak Time Rebate program that rewards customers for reducing usage during certain critical peak hours or days.[240] While a Peak Time Rebate program was not adopted in the Settlement, the OCA believes that, taken as a whole, the Settlement achieves a reasonable compromise of contentious issues that are within the range of likely outcomes in the event of full litigation of the case. [241]

C. OSBA's Position

OSBA explains it did not take issue with the Companies' proposals for the Price to Compare Default Service Rate Rider, the Hourly Pricing Default Service Rate Rider, the Default Service Support Rider, the Solar Photovoltaic Requirements Charge Rider and certain additional tariff changes.

OSBA explains at paragraphs 52 to 66, the Joint Petition adopts the Companies' Time-of-Use Rates proposal, with certain changes, including a biennial review of the rate multipliers with an adjustment if the underlying data result in a more than 15 percent change to any parameter, an opportunity for interested parties to comment on educational materials, and addition of some clarifying language to the educational materials regarding potential impacts for certain types of residential customers.[242]

D. Shipley's Position

Shipley notes the Companies have certain legacy contracts for solar photovoltaic energy that will continue to be used to satisfy the Alternative Energy Portfolio Standards Act requirements for default service providers and EGSs on its system as well. Those contracts, for Met-Ed, Penelec and PennPower, terminate as of the end of May 2023. Shipley explains its

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[240] OCA St. 2, p. 13-17.

[241] OCA St. in Support, pp. 9-10.

[242] OSBA St. in Support, pp. 3-4.

review of the Companies' presentation in this case led Shipley to suspect that the Companies intended to recover costs associated with the future procurement of solar photovoltaic energy and associated SPAECs through riders that are not recovered in the default service rate. As part of the Settlement, Shipley submits the Companies have made the affirmative statement that all the costs associated with procuring and providing solar photovoltaic energy and the associated SPAECs, will be recovered in the default service rate. Shipley explains that is a satisfactory and enforceable result that Shipley appreciates and supports.[243]

E. CAUSE-PA's Position

CAUSE-PA did not take a position on the price to compare default service rate rider, the hourly pricing default service rider, the default service support rider, or the solar photovoltaic requirements charge rider.

With regard to the Companies' Time of Use Rate proposal, CAUSE-PA was supportive of the Companies' proposal to exclude CAP customers from its proposed TOU rates, but raised concerns that the TOU rate proposal did not contain adequate protections for other uniquely vulnerable groups, including non-CAP low income households and households with medical usage. [244]

CAUSE-PA explained that time-varying electricity pricing can be very expensive for households with fixed or inflexible usage patterns that cannot shift their energy usage, noting that economically vulnerable households often have very little discretionary energy usage like washers and dryers, and are more likely to live in smaller, energy inefficient homes with fewer electrical outlets and fewer lights, "all factors which make it difficult to shift load during peak periods."[245] CAUSE-PA also identified a recent study of time-varying rates across sociodemographic groups, which found that " 'assignment of TOU [rates] … disproportionately

[243] Shipley St. in Support, p. 4.

[244] CAUSE-PA St. 1, pp. 41-44.

[245] *Id*. at 41.

increases bills for households with elderly and disabled occupants, and predicts worse health outcomes for households with disabled or ethnic minority occupants than those for non-vulnerable counterparts." [246]

Given the unique vulnerabilities of low income and medically vulnerable consumers, CAUSE-PA explains it recommended a number of measures to help ensure that consumers can make an educated and informed decision about whether time-varying usage rates would be right for them.,[247] including enhanced screening and universal service program referrals; individualized bill assessments and creation of a bill impact assessment tool; and enhanced tracking and evaluation to help assess whether TOU rates are having a detrimental impact on different sociodemographic groups.[248]

The Settlement did not adopt all of these recommendations, however CAUSE-PA submits that the agreement nevertheless strikes an appropriate balance of the interests in this proceeding. Specifically, the Partial Settlement preserves the exemption for low income customers enrolled in CAP.[249] CAUSE-PA submits that when CAP rates exceed the default service rate, the additional costs exacerbate rate unaffordability, placing more households at risk of termination. In turn, excessive pricing also increases the cost of the program, which is supported through residential rates. Given the risk that TOU can substantially increase rates for those who are unable to shift their usage to off-peak hours, and the fact that low income households often have very little discretionary energy usage, CAUSE-PA asserts it is prudent to exclude CAP customers from TOU rates to prevent negative financial impacts to vulnerable low income customers and other residential ratepayers.[250] CAUSE-PA explains that, in addition to preserving the TOU CAP exemption, the Partial Settlement also requires the Companies to

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[246] CAUSE-PA St. 1 at 43, *quoting* Lee White & Nicole Sintov, Health and Financial Impacts of Demand-Side Response Measures Differ Across Sociodemographic Groups, J. Nature & Energy Vol. 5 (Jan. 2020).

[247] CAUSE-PA St. 1 at 43-44.

[248] *Id*; CAUSE-PA St. in Support, pp. 5-6.

[249] Joint Petition, p. 16.

[250] CAUSE-PA St. in Support, p. 6.

provide draft outreach and educational materials to the parties and to solicit the parties' feedback for consideration.[251]

F. Other Parties Positions

I&E, C-Power, PSU, Constellation, and the Industrials did not specifically address these issues.

G. Discussion

The rate design set forth in the Settlement complies with the Commission's default service regulations and the Code, whereby the Companies recover default service costs from default service customers through 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). 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.[252] The Companies also proposed limited tariff revisions to align their PTC Riders and HP Riders with the procurement plans proposed for DSP VI.[253]

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,

[251] Joint Petition at 17, ¶ 63; CAUSE-PA St. in Support, p. 6.

[252] *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.

[253] *See* Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 7-8, & Exs. PML-3 to PML-15.

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.[254]

OCA proposed semi-annual E-Factor reconciliation using a 12-month refund or recovery period, arguing the Companies improperly exclude certain administrative and overhead costs from the PTC and instead recover them through distribution rates.[255] RESA/NRG recommended that the Commission initiate a 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.[256] Sunrise and Bevec recommended changes to the Companies' PTC and HP Rider rate calculations with respect to AEPS compliance costs and loss factors.[257]

Subject to resolution of the reserved issue relating to Sunrise and Bevec's issues raised regarding the Companies' PTC and HP Rider formulas, the Settlement adopts the Companies' original proposed rate design,[258] permitting the Companies to file the retail electric

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[254] Rider to include costs associated with the administration of solar RFP and solar PPAs approved by the Commission). 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

[255] OCA Sts. 1, pp. 25-27, & 1SR, pp. 13-14.

[256] RESA/NRG Sts. 1, pp. 42-56, & 1-SR, pp. 11-13, 25-31.

[257] Direct Testimony of David M. Hommrich, pp. 10-16; Second Direct Testimony of David M. Hommrich, pp. 2-12, 17.

[258] Joint Petition, ¶¶ 43-51.

service tariff pages set forth in Exhibits D-1 to D-4 to the Joint Petition to become effective June 1, 2023.

The Settlement regarding 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. 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. 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.[259]

In addition to procurement of a prudent mix of default service supply contracts at the least cost to customers over time,[260] Act 129 requires EDCs to offer a TOU rate option to all default service customers with a smart meter.[261] 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.[262] The Companies explained that, as part of the DSP V Settlement, the Companies agreed to make a specific

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259 Joint Petition, p. 27.

260 66 Pa.C.S. §§ 2807(e)(3.1)-(3.2), (3.4) and (3.7).

261 66 Pa.C.S. § 2807(f)(5).

262 *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); *Met-Ed Recommended Decision*, at 21, 29; *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.

proposal regarding their residential TOU rate offerings in the earlier of their first base rate case or default service proceeding following full implementation of smart meter back-office functionality. The Companies' explained its 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.

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.

In the Settlement, the Joint Petitioners agreed 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 multipliers, with one revision to review those multipliers periodically, as recommended by the OCA.[263] The on-peak and off-peak usage periods shown in Table 1 of the Joint Petition 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.[264]

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

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[263] *See* Joint Petition, ¶¶ 54-58.

[264] Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 16-17, & Ex. PML-22.

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.[265]

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.[266] 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.

With regard to the Companies' TOU rate calculations, the Settlement provides that 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.[267] 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).[268] The agreed upon reconciliation process using a single E-Factor for each procurement class will help mitigate

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[265] Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 18-19, & Exs. PML-23 to PML-26.

[266] OCA St. 1, pp. 22-24, & 1SR, pp. 10-12.

[267] Joint Petition, ¶ 57.

[268] *Id.*, ¶ 58.

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.[269]

Customer Eligibility. 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.[270] The Settlement also includes restrictions on re-enrollment if a customer leaves the TOU for any reason.[271] This provision is in the public interest because it will reduce customers who enroll in a TOU rate only for times of the year when they do not have to shift usage to save money.[272]

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.[273] 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.[274] 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.[275]

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[269] Met-Ed/Penelec/Penn Power/West Penn St. 5, p. 20.

[270] Joint Petition, ¶¶ 59-61.

[271] *Id.*, ¶ 62.

[272] Met-Ed/Penelec/Penn Power/West Penn St. 5, p. 16.

[273] Joint Petition, ¶ 59; *see also* Met-Ed/Penelec/Penn Power/West Penn Sts. 5, pp. 15-16, & 5R, p. 14.

[274] *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.

[275] *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 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.[276]

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.[277] 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.[278] 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.[279]

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 agreed to 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.[280]

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[276] Met-Ed/Penelec/Penn Power/West Penn St. 5, pp. 21-22.

[277] OCA Sts. 2, pp. 16-17, & 2SR, pp. 3-4; *see also* OCA St. 1, pp. 19-20.

[278] CAUSE-PA St. 1, pp. 40-43.

[279] *Id.*, p. 44.

[280] *See* Joint Petition, ¶ 63.

3. Customer Referral Program

A. The Companies' Position

In their Original Proposal, the Companies proposed to extend the CRP during DSP VI in the same format as in DSP V.[281]

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.[282]

B. OCA's Position

OCA explains the Settlement ensures that each Company's CRP, as it is currently operated, will terminate as of May 31, 2027.[283] In addition, in the Companies next default service filing, the Companies will address whether a new CRP program should be implemented and is necessary, as well as provide reasons for their proposal.[284]

OCA Witness Alexander testified there is not a sufficient value to consumers to continue the CRP.[285] Ms. Alexander noted that the program has served its initial purpose and that there is no need for the EDC to act as the marketing agent for the EGSs since the retail market has been in effect for over a decade.[286] OCA submits terminating the CRP as of May 31, 2027 is a reasonable compromise and is in the public interest.

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[281] Met-Ed/Penelec/Penn Power/West Penn Sts. 1, pp. 11-12, & 1R, pp. 4-6.

[282] Joint Petition, ¶ 69.

[283] Settlement at ¶ II.G.69.

[284] *Id.*

[285] OCA St. 2 at 8.

[286] OCA St. 2 at 9.

OCA further explains that the Companies also committed to convening multiple CRP collaborative meetings, including a meeting 90 days prior to filing of their next DSP to review the results of data collected by the Companies in regard to the CRP.[287] According to OCA, the collaboratives will provide the parties with an opportunity to negotiate data to be collected for the CRP review process and will provide the parties with useful data to evaluate a new CRP, if proposed.[288]

C. Shipley's Position

Shipley raised concerns with the Companies' proposal for its CRP, including the impacts from the Companies' proposal to switch to a six-month reconciliation period, from the present three-month period. According to Shipley, the proposal included putting the CRP on a six-month schedule as well, which from a rate perspective is not ideal, but from an opt-in/out perspective would be harmful due to the risk of having to hold an offer open for six months.[289] As an alternative, Shipley Witness Greenholt-Tasto recommended a monthly opt-in/out program similar to the program run by PECO.[290] Shipley submits the settlement preserves the status quo, which is not ideal from Shipley's perspective, but when compared to the proposed 6-month opt-in/out proposed by the Companies, is far better.[291]

Shipley also expressed concern that the Companies did not allow online CRP enrollments even though the trend for enrollments generally, and for electric service in particular, is that online enrollments as a percentage of all enrollments is increasing year over year.[292] Ms. Greenholt-Tasto testified that it is discriminatory to allow customers to enroll for

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287 Settlement at ¶ II.G.77-79.

288 OCA St. in Support, pp. 10-11.

289 Shipley St. No.1, pp. 5-8.

290 Shipley St. No. 1, 8:6-17.

291 Joint Petition, ¶ 74.

292 Shipley St. No. 1, 8:15-9-13.

default service online and to deprive them of the same opportunity for the CRP. The Settlement requires the Companies to provide for Online Enrollment no later than June 1, 2023. As part of the online offering, the Companies will provide much more information about the program and a process to ensure that customers understand the program before they enroll. The Companies will also make additional information about the CRP available through other means as well. [293]

Shipley also expressed concern that the number of enrollments for the program had experienced a significant drop-off in 2017 and that the lower levels of enrollments have persisted to date. Ms. Greenholt-Tasto suggested that scripting changes may have had something to do with the decline in enrollment. While the Settlement does not directly address this issue, the inclusion of online enrollment and the attendant increase in the amount of information about the program that will be available online, Shipley submits those enrollment numbers have a good chance of rebounding.

Shipley explains the Settlement requires that the current program will expire as of May 31, 2027, however, the Companies are compelled to address the future of the CRP in their next default service filing. The Companies will either propose a replacement program, maintain some form of the existing program or suggest eliminating the program entirely. Regardless of what is proposed, Shipley submits the interested parties will have an opportunity to address the ongoing need for such a program and how it should be run, in the Companies' next default service proceeding. Shipley submits the eventual discontinuation of the program is not a forgone conclusion as long as the Commission recognizes the ongoing need for such programs. [294]

D. CAUSE-PA's Position

CAUSE-PA submits the Companies have not conducted any analysis or evaluation of its CRP to determine whether the program has been successful in achieving the key

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[293] Joint Petition, ¶'s 71-73.

[294] Shipley St. in Support, pp. 4-6.

programmatic goals (education and bill savings) envisioned when the program concept was originally endorsed through the RMI.

CAUSE-PA further submits the available evidence (including call scripts, training materials, and shopping data) appeared to indicate that CRP, in its current iteration, "acts as a funnel, sending residential consumers into the competitive market without providing the proper supports for the customer to learn about and engage in the market and determine whether shopping is right for them."[295] CAUSE-PA explains that from August 2017 to December 2021, the Companies' residential shopping customers paid more than $431M in excess of the default service price.[296] On a per customer basis in 2021, residential shopping customers paid between $244.37 and $352.32 more than the default service price.[297] CAUSE-PA submits the negative financial consequences of this higher pricing are severe, explaining that average account write-offs, payment troubled rates, and involuntary termination rates are all substantially higher for residential shopping customers compared to default service customers.[298] Taken together with the fact that nearly 50,000 residential consumers have participated in the Companies CRP just since June 2019, CAUSE-PA submits this data is indicative that the Companies' CRP is likely not working as intended to educate consumers and drive bill savings.[299]

E. Other Parties' Positions

OSBA, I&E, C-Power, PSU, Constellation, and the Industrials did not specifically address this issue.[300]

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[295] CAUSE-PA St. 1 at 48.

[296] *Id*. at 9.

[297] *Id*. at 11.

[298] *Id*. at 18-22.

[299] *Id*. at 45, 48-49; CAUSE-PA St. in Support, pp. 7-9.

[300] RESA and NRG submitted a letter of non-opposition to the Partial Settlement.

F. Discussion

The CRP was first established in the Companies' second default service proceeding.

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.[301] 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.[302]

OCA raised concerns about bill savings achieved by CRP customers and contended that the CRP must be terminated or amended.[303] CAUSE-PA also opposed continuation of the CRP as 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 and that the Companies conduct a third-party assessment of the CRP within six months of the Final Order in this proceeding.[304]

OCA explained the Settlement ensures that each Company's CRP, as it is currently operated, will terminate as of May 31, 2027.[305] In addition, in the Companies next default service filing, the Companies will address whether a new CRP program should be implemented and is necessary, as well as provide reasons for their proposal.[306]

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

302 Met-Ed/Penelec/Penn Power/West Penn Sts. 1, pp. 11-12, & 1R, pp. 4-6.

303 OCA Sts. 2, pp. 7-11, & 2SR, pp. 5-6.

304 CAUSE-PA Sts. 1, pp. 46-52, & 1-SR, pp. 8-10.

305 Settlement at ¶ II.G.69.

306 *Id.*

OCA concluded terminating the CRP as of May 31, 2027 is a reasonable compromise and is in the public interest. OCA further explained that the Companies also committed to convening multiple CRP collaborative meetings, including a meeting 90 days prior to filing of their next DSP to review the results of data collected by the Companies in regard to the CRP.[307] According to OCA, the collaboratives will provide the parties with an opportunity to negotiate data to be collected for the CRP review process and will provide the parties with useful data to evaluate a new CRP, if proposed.

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.[308]

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.[309] 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. As set forth 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.[310] CRP suppliers will

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[307] Settlement at ¶ II.G.77-79.

[308] Shipley St. 1, pp. 6-10.

[309] Joint Petition, ¶ 69.

[310] *See* Joint Petition, ¶¶ 70-73, 75.

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.[311]

The Partial Settlement allows the CRP to continue until May 31, 2027, but requires the Companies to identify and track program metrics identified by parties and stakeholders through a structured collaborative process.[312] Over the course of its current DSP, the Companies will compile the data - and must share the results with the parties at least 90 days prior to filing its next DSP.[313] If the Companies decide to propose a successor program to its current CRP in the context of its next Default Service Plan proceeding, the Partial Settlement requires the Companies to justify the proposal and explain why a successor program is necessary.[314]

CAUSE-PA submits that the terms of the Partial Settlement provide a prudent path forward to better evaluate the Companies' CRP, and assess whether the program is achieving its overarching goals to improve consumer education and assist consumers to achieve bill savings. While CAUSE-PA recommended that the Commission end CRP now, in this proceeding, it asserts the Partial Settlement represents a reasonable compromise that will ultimately improve the ability of the parties and the Commission to better assess the effectiveness of the Companies' CRP and appropriately inform future decisions about any successor programming.

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

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[311] Joint Petition, ¶ 74 & Ex. F.

[312] Joint Petition at 18, 19-20, paras. 69, 77-78.

[313] Joint Petition at 20, ¶ 79.

[314] Joint Petition at 18, ¶ 69.

4. POR Clawback Charge

A. The Companies' Position

The Companies explain the Settlement adopts the Companies' original proposal to continue the clawback charge as a permanent part of their POR programs.[315] The Companies submit 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 and 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 disproportionally higher write-offs than their peers.[316]

B. OCA's Position

OCA witness Alexander also recommended that the purchase of receivables clawback charge should continue to be implemented as proposed by the Companies.[317]

C. OSBA's Position

The OSBA supports these Settlement provisions and the continued use of the clawback charge, as "[b]ased on the Companies' data, over 13 percent of the [electric generation supplies ("EGSs")] representing a similar percentage of shopping revenues for YE August 2021 were subject to the clawback charge, meaning they have extremely high prices and a poor collections rate."[318]

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315 Joint Petition, ¶¶ 80-81 & Exs. E-1 to E-4.

316 Met-Ed/Penelec/Penn Power/ West Penn St. in Support, pp. 29-30.

317 OCA St. 2R at 1.

318 OSBA St. No. 1, at p. 5; OSBA St. in Support, pp. 4-5.

D. I&E's Position

I&E submits the Settlement provides that the Companies will continue to use a two-prong test to determine the clawback charge, which has previously been approved by the Commission. The first prong will identify those EGSs whose average percentage of write-offs as a percentage of revenues over the twelve-month period ending August 31 each year exceeds 200% of the average percentage of total EGS write-offs as a percentage of revenues per operating company. The second prong of the test will identify, of those EGSs identified in the first test, EGSs whose average price charged over the same twelve-month period exceeds 150% of the average price-to-compare for the period. For those EGSs identified by both prongs of the test, the annual clawback charge assessed each September would be the difference between that EGS's actual write-offs and 200% of the average percentage of write-offs per operating company.[319]

E. CAUSE PA's Position

According to CAUSE-PA, average account write-offs for residential shopping accounts greatly exceeds the average account write-offs for residential default service accounts. In 2021, the average account write-off for residential shopping accounts was $1,204.99, compared to $767.27 for residential default service accounts.[320] The same disparities are present in comparing average write-offs for confirmed low income and CAP shopping accounts.[321] CAUSE-PA submits this adds costs for all residential consumers and causes substantial financial harm and other severe consequences to individual consumers.[322]

CAUSE-PA further submits while the POR Clawback Charge does not address harm to individual consumers, it does help to shield other residential consumers from bearing the

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319 I&E St. in Support, pp. 4-5.

320 CAUSE-PA St. 1 at 18 & Exh. 4.

321 *Id*.

322 *Id*. at 19.

collective burden of unnecessarily high uncollectible expenses. CAUSE-PA submits this Settlement term is a positive step to help reduce the financial impact of excessive pricing on residential consumers as a whole. [323]

F. Other Parties' Position

Shipley, C-Power, PSU, Constellation, and the Industrials did not take a position on this issue.

G. Discussion

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.[324]

The Companies explained that the clawback charge 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. 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.[325]

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[323] CAUSE-PA St. in Support, pp. 9-10.

[324] *See* Met-Ed/Penelec/Penn Power/West Penn St. 1, pp. 6-7.

[325] *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.[326] According to the Companies, 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 appears to provide a reasonable option to manage uncollectible accounts expense associated with the Companies' POR programs while avoiding creation of a subsidy for EGSs with disproportionally higher write-offs than their peers. The Companies noted that 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.[327]

I&E explained that it did not raise an issue with the continuation of the two-prong test; however, in testimony, I&E recommended that the clawback clause continue to be implemented as a pilot, rather than permanent, program. I&E explained it believes that that the clawback clause should continue as the record shows that EGS' have modified their pricing behaviors and the Companies' exposure to excessive EGS write-offs has been reduced over the past four years.[328] However, I&E expressed concern that the clawback clause does not recognize that all EGS uncollectibles burden the Companies and ratepayers. Under the current clawback and as proposed in Settlement, I&E argued only EGS' over the 200% of average supplier write-offs threshold are charged while EGS' under the 200% threshold, even at a high rate such as 175%, continue to recoup the full amount of receivables without any discount even though not all customers will pay. As a result, a concern remains that suppliers under the 200% threshold may not have an incentive to maintain or reduce uncollectibles.[329] Under the circumstances, I&E recommended that the clawback clause continue on a pilot basis until the next DSP proceeding in order to allow parties the ability to further evaluate its effectiveness and possible need for

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[326] Joint Petition, ¶¶ 80-81 & Exs. E-1 to E-4.

[327] *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.

[328] I&E Statement No. 1, p. 4.

[329] I&E Statement No. 1, p. 5.

modifications. Although the Settlement does not incorporate this recommendation, I&E argued that it and other parties have the ability to evaluate and propose modifications to the clawback in a future DSP proceeding if such recommendations are in the public interest. Under the circumstances, continuation of the clawback charge as proposed in Settlement is appropriate as it has reduced uncollectibles and potential modifications to the clawback, if any, can be proposed in a future proceeding.

5. CAP Customer Shopping

A. The Companies' Position

The Companies explain, 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.[330] 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.[331]

B. OCA's Position

OCA explains the Settlement adopted OCA witness Alexander's recommendation and includes a provision that all customers enrolled in the Companies' CAP are required to be enrolled in default service at the applicable PTC.[332] OCA explains that Ms. Alexander performed an analysis as to the prices CAP customers of the Companies' EDCs were charged compared to the PTC and found that the EGSs do not always charge CAP customers an amount

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[330] Joint Petition, ¶¶ 82-85, 87-88.

[331] *Id.*, ¶ 86 & Exs. E-1 to E-4; Met-Ed/Penelec/Penn Power/ West Penn St. in Support, pp. 30-31.

[332] Settlement at ¶ II.I.82.

equal to or less than the PTC.[333] According to OCA, data presented by other parties in this proceeding demonstrated that the current CAP customer protections were not working and that as a result of CAP-customer participation in the competitive electric market these customers and the other ratepayers who pay for CAP were paying millions of dollars more than they otherwise would have paid had all CAP customers been on default service.[334]

C. CAUSE PA's Position

CAUSE-PA submits that when CAP customers pay rates in excess of the default service price, it causes two harms: (1) the CAP participant's pre-calculated monthly credit does not cover as much of the bill, resulting in higher monthly rates and, ultimately, greater payment trouble, involuntary termination rates, and uncollectible expenses; and (2) the cost of the program increases over time, which in turn increases the Universal Service rider recovered from all ratepayers.[335]

According to CAUSE-PA, in the Companies' DSP V proceeding, after data showed that CAP customers were charged $18.3 million more than the default service price over a 5-year period, the Commission approved comprehensive CAP shopping rules, which restricted the ability of CAP customers to contract for supplier prices in excess of the applicable default service price.[336]

CAUSE-PA asserts that data in this proceeding shows that the Companies' CAP shopping rules failed to stem the harms identified in the Companies' DSP V proceeding. Since June 2019, when the CAP shopping rules were implemented, CAP shopping customers across the four FirstEnergy Companies paid $4,022,308.41 more than the applicable default service

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[333] OCA St. 2 at 12.

[334] *See* CAUSE-PA St. 1 at 37.

[335] *Id*. at 29; CAUSE-PA St. in Support, pp. 11-12.

[336] *Id*. at 30-31; CAUSE-PA St. in Support, pp. 11-12.

price.[337] On a per customer basis from July 2019 to December 2021, CAP shopping customers paid on average between $520.62 (Penelec) and $1,316.46 (MetEd) more than the applicable default service price.[338]

CAUSE-PA submits these high prices have had a correspondingly stark impact on rates of payment troubled CAP customers, involuntary termination rates, and uncollectible expenses recovered from all residential ratepayers. In 2021, two years after FirstEnergy implemented the current CAP shopping rules, the average write-off balance for CAP shopping accounts was $1,876.11, compared to $1,038.69 for CAP default service accounts.[339] In that same year, 9.4% of CAP shopping customers were "payment troubled", while just 1.8% of CAP default service customers were "payment troubled"; and, 29.5% of CAP shopping customers were involuntarily terminated, compared to 8.8% for CAP default service customers.[340]

CAUSE-PA concluded that FirstEnergy's attempts to restrict CAP shopping failed to stem identified, sustained, and severe financial harm to low income CAP customers and other residential consumers.

CAUSE-PA submits the Partial Settlement, proposes to establish a new CAP rule requiring all CAP customers to be enrolled in default service effective June 1, 2023,[341] and that CAP shopping, even with restrictions, results in excessive pricing for CAP customers, increased payment trouble, involuntary terminations, increased programmatic costs, increased collections activities, and higher uncollectible expenses.

CAUSE-PA concludes that together, the CAP shopping provisions of the Partial Settlement are fairly balanced and squarely in the public interest and that the Partial Settlement

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337 *Id.* at 33.

338 *Id*; CAUSE-PA St. in Support, p. 12.

339 *Id*. at 34 & Exh. 4.

340 *Id*. at 34 & Exhs. 5 & 6; CAUSE-PA St. in Support, pp. 12-13.

341 Joint Petition at 2 & 21, ¶ 82.

will help ensure that FirstEnergy's economically vulnerable consumers are able to access and maintain affordable utility services to their home. [342]

D. Other Parties' Positions

OSBA, I&E, Shipley, CPower, PSU, Constellation and the Industrials did not specifically address this issue.

E. Discussion

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. 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).

CAUSE-PA and 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 than the applicable PTC since 2017.[343] 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.[344]

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

[342] CAUSE-PA St. in Support, pp. 14-15.

[343] *See* OCA St. 2, pp. 12-13; CAUSE-PA St. 1, pp. 9-37.

[344] CAUSE-PA St. 1, pp. 37-38.

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.[345] 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.[346]

The Partial Settlement also provides opportunities for the parties to meaningfully participate in crafting CAP customer notices and requires the Companies to share a draft of its CAP notice with the parties to this proceeding, and allow for an opportunity for the parties to provide suggested revisions.[347] These opportunities for engagement should help ensure balanced and accessible messaging to consumers.

To ensure that CAP remains accessible to all low income customers, regardless of their shopping status, the Partial Settlement prohibits suppliers from charging early cancellation or termination fees to any shopping customer who transitions into the Companies' CAP, [348] to ensure CAPs are available to those in need.[349] By ensuring that low income shopping customers can enroll in CAP without cancellation or termination fees, CAUSE-PA explained the Partial Settlement will help to reduce the accumulation of avoidable arrears and will help consumers access vital assistance without undue barriers.

As OCA explained, the settlement adopts a reasonable set of rules for CAP customers and those customers who pay for CAP so as to ensure that the program is adequately funded consistent with law, but that non-CAP customers are not paying more to support the program than is reasonably necessary and that CAP customers are not paying rates that exacerbate energy unaffordability. Under the circumstances, the record amply demonstrates that

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[345] Joint Petition, ¶¶ 82-85, 87-88.

[346] *Id.*, ¶ 86 & Exs. E-1 to E-4.

[347] Partial Petition at 21, ¶ 84.

[348] Partial Petition at 22, ¶ 86.

[349] 66 Pa.C.S. § 2804(9).

the elimination of CAP shopping is in the public interest and this provision should be adopted consistent with the practices of all EDCs in the Commonwealth.

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.

6. Third-Party Data Access Tariff

A. The Companies' Position

The Companies explain 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 CPower).[350] In addition, to address concerns raised by several parties regarding confidentiality and security of customer data, the Companies explain 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.[351]

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[350] *See* Joint Petition, ¶ 90, & Exs. G-1 to G-4.

[351] *Id.*, ¶¶ 89, 91-93; Met-Ed/Penelec/Penn Power/ West Penn St. in Support, pp. 31-32.

B. OCA's Position

OCA explains that while it opposed the Companies' proposed third party data access tariff,[352] several of the enumerated protections as recommended by OCA witness Alexander were adopted in the Settlement, [353] including limiting access to electronic data exchange from the EDC to approved Conservation Service Providers (CPSs).[354] The Settlement limits data access to CSPs either registered with the PUC or Curtailment Service Providers that are PJM members and are identified on PJM's list of demand response providers available on PJM's website.[355] OCA also recommended that CPower's standard authorization form be utilized by the Companies for third parties seeking access to customer data, [356] which was included in the Settlement.[357]

OCA also notes that, under the Settlement, all parties reserve their rights for the generic proceeding and there is no precedent created for third-party utility data sharing practices as a result of this proceeding.[358] The Settlement also noted that, upon the conclusion of the generic proceeding on third-party data access, the Companies will assess whether their current system is consistent with any final Commission orders on the matter and will make additional filings to amend their tariffs, if required.[359]

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352 OCA St. 2 at 18-19.

353 *See*, Settlement at ¶ II.J.89-93.

354 OCA St. 2SR at 12.

355 Settlement at ¶ II.J.90.

356 OCA St. 2SR at 13.

357 Settlement at ¶ II.J.89; OCA St. in Support, pp. 12-13.

358 Settlement at ¶ II.J.92.

359 Settlement at ¶ II.J.93; OCA St. in Support, p. 13.

C. OSBA's Position

OSBA explained it supported the positions of the Office of Consumer Advocate and the Industrials on the issue of access to customer data by entities other than EGSs.[360] Both OCA and the Industrials recommended, among other things, that third-party data access policies should be developed in the context of the Commission's generic proceeding at Docket No. M-2021-3029018.[361] The Companies acknowledged that these issues would be addressed in the generic proceeding, but they indicated that certain issues need to be resolved more quickly.[362]

OSBA submits the *Joint Petition* recognizes that the Commission's generic proceeding will determine the ultimate outcome for these issues, while reasonably addressing the near-term needs cited by the Companies. The OSBA determined that, in addressing the near-term needs, the *Joint Petition* creates adequate safeguards for customers in order to protect their customer usage data. The *Joint Petition* provides that the Companies will implement a standard form of authorization beginning June 1, 2022; this standard form requires the customer to provide authorization for third-party data access.[363] The *Joint Petition* also limits to whom third-party data access is given, providing "third-party data access shall be limited to Conservation Service Providers registered with the Public Utility Commission or curtailment Service Providers that are PJM members and identified on PJM's list of demand response providers.[364]

As to the longer-term resolution of these issues, OSBA submits the *Joint Petition* affirms that these provisions do not create a precedent for third-party data sharing, that all parties to the *Joint Petition* may take different positions in the context of the proceeding at Docket No. M-2021-3029018, and that at the conclusion of the proceeding at Docket No. M-2021-3029018,

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[360] OSBA St. No. 1-R, at p. 7.

[361] OCA St. No. 2, at p. 19; Industrials St. No. 1, p. 6.

[362] Met-Ed/Penelec/Penn Power/ West Penn St. No. 6R, pp. 3- 4.

[363] Joint Petition, p. 22, ¶ 89, Exhibit G-1 to G-4.

[364] OSBA St. in Support, pp. 5-6.

the Companies will evaluate their third-party data access system and conform the system to any final Commission orders issued in the generic proceeding.[365]

D. C-Power's Position

CPower submits that the Settlement provides much needed clarity and standardization around the rules for access to customer data.

The Settlement calls for the Companies to "implement a standard form of authorization … to be used for all new requests from third parties seeking customer data through the terms of the Companies' Third-Party Data Access Tariffs, "[366] which CPower explained will essentially continue the existing consent requirement.[367]

CPower notes the Settlement also grandfathers existing signed authorization forms, providing that, "any other standard form of authorization, dated prior to June 1, 2022 will be accepted as a standard form of authorization under the terms of the Third Party Data Access Tariffs until the expiration date of such form"[368] creating efficiencies for companies by eliminating the need to contact existing customers to re-execute an authorization for the same information on a slightly different form.[369]

CPower explains the Settlement also calls for FirstEnergy to "conduct periodic, randomized internal audits of the participants under [the] new Third Party Data Access Tariffs."[370] These audits must occur at least semi-annually and "include at least 10% of active

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365 Joint Petition, at p. 23, ¶¶ 92-93; OSBA St. in Support, p. 6.

366 Settlement at ¶ 89.

367 CPower Statement No. 1-R at 2:9-11; C-Power St. in Support, pp. 4-5.

368 Settlement at ¶ 89.

369 C-Power St. in Support, p.p. 5-6.

370 Settlement at ¶ 91.

third parties governed by the tariff."[371] If a third party is found to be noncompliant with the tariff, it will be permanently restricted from further access to customer data.[372]

As CPower noted, the periodic, randomized audits create a standardized process for the Companies to ensure good faith compliance by third party providers and deter bad actors. If a third party egregiously or intentionally fails to comply with any of the requirements in the tariff, including the requirement to maintain authorization from the customer to access or retrieve data, then the utility may terminate the third party's access to data. "This is a powerful deterrent because without this access, third parties cannot do business."[373] As CPower explains, this is a better approach than requiring the utility to manage tens of thousands of consent forms.[374]

Although CPower explains it believes that the minimum access for usage data should be twenty-four months, as opposed to the twelve months provided for in the tariff, CPower intends to participate in the statewide proceeding in Docket M-2021-3029018 and will address the implications of PJM's changes to its market rules and the minimum access period for which customer usage data is available to a third party in that proceeding. Accordingly, CPower is supportive of addressing the third party data access issue in this proceeding, permitting the parties to take a different position in the statewide generic proceeding, and requiring FirstEnergy to make updates to their proposed tariff if necessary.[375]

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[371] *Id*.

[372] *Id;* C-Power St. in Support, pp. 6-7.

[373] CPower Statement No. 1 at 5:6-15.

[374] *See* CPower Statement No. 1 at 5:17; CPower Statement No. 1-R at 2:18-20; C-Power St. in Support, p. 7.

[375] C-Power St. in Support, pp. 8-9.

E. PSU's Position

PSU supports the Third-Party Data Access Tariff as modified by the Settlement,[376] explaining the Third-Party Data Access Tariff could allow potential 'bad actors' to access sensitive customer data.

PSU submits the modifications under the Settlement will help ensure that third party data access to sensitive customer information is not abused. Thus, PSU submits that these modifications are necessary and in the public interest.[377]

F. The Industrial's Position

The Industrials explain the Settlement does not create a precedent for third-party utility data sharing practices in Pennsylvania, and all parties reserve the right to take a different position on the issues addressed in this Settlement from the generic statewide proceeding at Docket No. M2021-3029018.[378] Upon conclusion of the generic statewide proceeding, the Companies will assess whether their current practices are consistent with any final Commission orders and will make subsequent filings to amend their Tariffs, if required.[379] All parties to these proceedings will be served with a copy of any such filings.[380] For these reasons, the Industrials submit that the terms of the Third-Party Data Access Tariffs are reasonable and in the public interest.[381]

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[376] *See*, Joint Petition, ¶¶ 89-93.

[377] PSU St. in Support, pp. 5-6.

[378] *See*, Joint Petition, ¶ 92.

[379] *Id.*, ¶ 93.

[380] *Id.*

[381] Industrials St. in Support, pp. 4-5.

G. CAUSE-PA's Position

CAUSE-PA submits the partial settlement provides that the Companies' initially proposed third-party data access tariff will now apply only 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.[382]

CAUSE-PA stresses the partial settlement is explicit that it does not create a precedent for third-party utility data sharing practices, that each party retains the right to advocate for a different approach to data sharing in the context of the commission's ongoing statewide proceeding, and that FirstEnergy must revise its tariff to comply with any commission orders issued at the conclusion of the statewide proceeding.[383]

CAUSE-PA concludes the Settlement will help prevent unauthorized disclosure of sensitive consumer data and information and by limiting the scope of the proposal to include only conservation and curtailment service providers that register with the commission or are members of PJM, the partial settlement helps ensure that only those with a legitimate purpose are utilizing the tariff to obtain access to sensitive third party data. Additionally by standardizing the customer consent form and auditing compliance with explicit consequences for violations, the partial settlement will also help improve compliance with the tariff standards. CAUSE-PA notes, the partial settlement ensures that the tariff can be changed if the commission establishes different or conflicting policies and procedures for third party data sharing.[384]

H. Other Parties' Position

I&E, Shipley, and Constellation did not specifically address this issue.

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[382] Joint Petition at 22, ¶ 90; CAUSE-Pa St. in Support, p. 15.

[383] Joint Petition at 23, ¶¶ 92-93; CAUSE-PA St. in Support, p. 16.

[384] CAUSE-PA St. in Support, p. 16.

I. Discussion

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).[385] However, as the Companies explained, 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. Accordingly, the Companies' 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.[386]

CPower 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.[387] 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.[388] 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.[389]

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[385] *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).

[386] Met-Ed/Penelec/Penn Power/West Penn St. 6, pp. 5-9, 6R, pp. 3-5, & Exs. TLC-1 to TLC-4.

[387] Enerwise St. 1, pp. 4-8.

[388] OCA St. 2, p. 19, & 2SR, pp. 12-13.

[389] *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 CPower).[390] 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.

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

7. Additional Settlement Terms

A. The Companies' Position

The Companies explain that Paragraph 94 acknowledges, 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

[390] *See* Joint Petition, ¶ 90, & Exs. G-1 to G-4.

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.[391]

B. OCA's Position

As recommended by OCA, none of the RESA/NRG proposals regarding default service and retail market reforms were adopted in the Settlement. OCA explains the Joint Petitioners also agreed to allow RESA and/or NRG to incorporate their testimony into future proceedings on these issues with all parties reserving the right to object.[392]

C. OSBA's Position

OSBA explains it supports the narrowing of the issues to be litigated in this proceeding as it minimizes the costs (both monetary and time) of further proceedings. OSBA further agrees with Paragraph 95 as it reserves the parties' rights to object to the admission of the record in this proceeding or any future proceeding based on appropriate grounds.[393]

D. PSU's Position

PSU notes that Constellation witness Campbell testified, among other things, that FirstEnergy should retain responsibility for all costs associated with Network Integration Transmission Service,[394] or NITS, for both shopping and non-shopping customers and recover

[391] Met-Ed/Penelec/Penn Power/ West Penn St. in Support, p. 33.

[392] Settlement at ¶ II.J.95; OCA St. in Support, p. 13.

[393] See *Joint Petition*, ¶ 95; OSBA St. in Support, p. 6.

[394] PSU witness Crist explained that NITS is:

> [A] service that allows an electric transmission customer to integrate, plan, economically dispatch and regulate its network reserves in a manner comparable to that in which the Transmission Owner serves its end-use customers (also called "Native Load") that the Load-Serving Entity is obligated to serve. NITS charges are NMB Charges assessed by PJM for transmission

those costs through the Companies' default service supply rider.[395] PSU explains, if approved, this would change the existing requirement, that NITS costs should remain the responsibility of both the default service suppliers and electric generation suppliers.[396] Recognizing that this position has been rejected by the Commission in past default service proceedings, Mr. Campbell recommended that, in the alternative, the Companies commit that its new transmission affiliate, Keystone Appalachian Transmission Company (KATCo), provide its Projected Transmission Revenue Requirement (PTRR) to PJM and interested parties by October 5th of each year, which is similar to the practice of another FirstEnergy transmission affiliate, Mid-Atlantic Interstate Transmission, LLC (MAIT).[397]

PSU served Rebuttal Testimony of James L. Crist, PSU St. 1-R, recommending that the Commission reject Constellation witness Campbell's recommendation that the Companies retain responsibility for NITS costs and recover it through the non-bypassable DSS Rider.[398]

Mr. Crist agreed with Mr. Campbell's alternative recommendation seeking a commitment that FirstEnergy's transmission affiliate, KATCo, provide its PTRR by October 5th

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> related services and are cost-of-service rates that are imposed on all load serving entities ("LSEs") based on each LSE's share of load served. Accordingly, all customer load on an electric distribution company's ("EDC") system is allocated a share of transmission service costs based on the customer's Network Service Peak Load Contribution. NITS cost-of-service based charges are ultimately paid for by all customers based on the customer's contribution to the system peak.

PSU St. 1-R at 5:20 – 6:9.

[395] The DSS Rider is a non-bypassable charge assessed to all FirstEnergy customers in the same manner regardless of whether a customer is taking default supply service. Constellation St. 1 at 14:13-18; Constellation St. 1 at 17:1-10.

[396] Constellation St. 1 at 15:14 – 16:2.

[397] KATCo is expected to acquire transmission assets from its affiliates Potomac Edison and West Penn Power Company and, thereafter, provide transmission service over those facilities pursuant to the rates, terms, and conditions of the PJM Tariff. *See PJM Interconnection, L.L.C.*, Compliance Filing to Place Settlement Rates Into eTariff, Section II.D, FERC Docket No. ER17-211-004 (Jun. 13, 2018); Constellation St. 1 at 19:2-6; Constellation St. 1 at 19:2-6; PSU St. in Support, p.p. 6-7.

[398] PSU St. 1-R at 13-15.

every year to allow suppliers to incorporate such information into their pricing proposals and bids.[399]

PSU explains the Companies submitted the Rebuttal Testimony of Patricia M. Larkin, Companies St. No. 5-R, responding to, *inter alia*, Constellation Witness Campbell. PSU submits Ms. Larkin acknowledged that Mr. Campbell's position regarding NITS cost recovery was contrary to well-settled Commission precedent and should not be adopted at this time.[400] Ms. Larkin also rejected Mr. Campbell's alternative recommendation citing due process concerns as KATCo was not a party to this proceeding. Ms. Larkin also testified that Met-Ed, Penelec, and Penn Power do not have transmission assets and, thus, do not have a PTRR.[401]

PSU submits the Settlement reaches a reasonable compromise among these competing positions. In particular, the Settlement provides that changes to the Companies' recovery of NITS costs will not be addressed in this proceeding, consistent with the positions of PSU and FirstEnergy.[402] Moreover, the Settlement provides that West Penn's NITS rates "are scheduled to be published on or before October 31 of each calendar year or the next business day thereafter. As such, the Companies will ensure that their November auctions are held no earlier than one week following posting of this data."[403] Thus, the Companies agreed to provide the PTRR of West Penn, which owns transmission assets and is a party to this proceeding, by a date certain allowing suppliers to incorporate this information into their pricing proposals and bids. [404]

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399 PSU St. 1-R at 13:15-16; PSU St. in Support, p.p. 7-8.

400 Met-Ed/Penelec/Penn Power/ West Penn. 5-R at 19:19-22.

401 Met-Ed/Penelec/Penn Power/ West Penn. 5-R at 20:1-7; PSU St. in Support, p. 8.

402 Joint Petition, ¶ 94.

403 Joint Petition, ¶ 26.

404 PSU St. in Support, pp. 8-9.

E. CAUSE-PA's Position

CAUSE-PA explains this section also includes a provision allowing RESA and NRG to incorporate testimony and exhibits from this proceeding into any future petition filed with the commission on various recommendations raised by these parties through the course of this proceeding.[405] This provision memorializes existing rights of all parties to incorporate records of other proceedings, while preserving the right of any party to object to the admission of record information.[406] This provision represents a reasonable compromise that preserves and memorializes the rights of all parties in future proceedings.[407]

F. Discussion

Paragraph 94 of the Settlement provides 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.

The additional settlement terms in the Joint Petition list certain disputed proposals that are not addressed in the partial settlement, and that will not be subject to further litigation in

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405 Partial Settlement, ¶ 95.

406 *Id*.

407 CAUSE-PA St. in Support, p. 17.

this proceeding. The Settling Parties agreed that these provisions help to streamline litigation, promote judicial efficiency, is in the public interest and preserves resources in this proceeding.

VI. RECOMMENDATION

The Commission encourages parties in contested on-the-record proceedings to settle cases.[408] Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission's decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails.

By definition, a "settlement" reflects a compromise of the positions that the parties of interest have held, which arguably fosters and promotes the public interest. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the agreement reached suits the public interest.[409] In their supporting statements, the Joint Petitioners conclude, after extensive discovery and discussion, that this Partial Settlement resolves various contested issues in this case, fairly balances the interests of the company and its ratepayers, is in the public interest, and is consistent with the requirements of the Public Utility Code.

In reviewing the settlement terms and the accompanying statements in support, the Joint Petition for Partial Settlement provides sufficient information to support the conclusion the settlement terms are in the public interest. For the reasons set forth by the parties above, the Commission should approve these provisions of the settlement without modification.

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[408] *See*, 52 Pa. Code § 5.231.

[409] *Pa. Pub. Util. Comm'n v. CS Water and Sewer Associates*, 74 Pa. PUC 767, 771 (1991). *See also Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. Philadelphia Electric Company*, 60 Pa. PUC 1 (1985).

Also, of note, the settlement finds support from a broad range of parties with diverse interests. Each of these advocates maintain that the interests of their respective constituencies have been adequately protected and they further represent that the terms of the Settlements are in the public interest. These parties in a collaborative effort have reached agreement on a broad array of issues, demonstrating that the Settlements are in the public interest and should be approved. None of the parties representing other interests object to the terms of the Joint Petition.

Resolution of these issues by negotiated settlement removes the uncertainties of litigation. In addition, all parties obviously benefit by the reduction in expense and the conservation of resources made possible by adoption of the proposed settlement in lieu of litigation.

All of the Parties were served with a copy of the Joint Petition for Partial Settlement and offered an opportunity to comment or object to the terms and demonstrate why the case should be litigated rather than settled. No objections were filed. Therefore, their due process rights have been fully protected.[410]

For all of the foregoing reasons, I find the settlements embodied in the Joint Petition for Partial Settlement are both just and reasonable and their approval is in the public interest. I recommend the Commission approve the Settlement without modification.

Contested Issues

Two issues were not resolved through settlement which are, (i) the relevance of the Companies' treatment of excess energy from customer-generators to this proceeding and (ii) Sunrise's assertions regarding the Companies' calculation of the Price-to-Compare with respect

[410] *See Schneider v. Pa. Pub. Util. Comm'n*, 479 A.2d 10 (Pa. Cmwlth. 1984) (Commission is required to provide due process to the parties; when parties are afforded notice and an opportunity to be heard, Commission requirement to provide due process is satisfied).

to costs for compliance with Pennsylvania's Alternative Energy Portfolio Standards Act[411] and the use of loss factors.

Issue Number 1

The relevance of the Companies' treatment of excess energy from customer-generators to this proceeding.

The Companies' Position

The Companies assert their treatment of excess energy is wholly unrelated to the Companies' default service supply plans and will demonstrate how they are appropriately accounting for and recovering costs associated with AEPS Act compliance.

The Companies submit that Section 3 of the AEPS Act, 73 P.S. § 1648.3, requires EDCs, in their role as default service providers, and EGSs to obtain a percentage of electricity sold to the Commonwealth's retail customers from certain alternative energy sources, such as, wind, solar energy, and biomass. Compliance is measured through AECs that are equal to one MWh of energy from approved "Tier I" or "Tier II" alternative energy sources. The AEPS Act also includes a solar "set-aside," which mandates that a specific portion of the Companies' Tier I requirements be satisfied through AECs derived from solar photovoltaic energy (i.e., SPAECs).[412] The Tier I, Tier II, and SPAEC percentage requirements during the term of DSP VI are more fully described in Met-Ed/Penelec/Penn Power/West Penn Exhibit JHC-5.[413]

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[411] 73 P.S. §§ 1648.1 et seq.

[412] In addition, pursuant to Commission directives implementing Act 40 of 2017, SPAECs must be generated by facilities located within the Commonwealth (subject to limited exceptions). *See* Docket No. M-2017-2631527.

[413] Met-Ed/Penelec/Penn Power/West Penn St. 2, p. 17; Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, pp. 9-10.

In recognition of the Companies' AEPS Act obligations as default service providers, with regard to how the Companies will procure the AECs necessary to satisfy AEPS Act requirements associated with default service load, the Companies explain they have proposed to procure all the necessary Tier I, Non-Solar and Tier II AECs, and a portion of the necessary SPAECs, as part of the overall default service supply that will be provided by winning default service bidders. The Companies are also proposing to make some direct SPAEC purchases as part of a long-term solar procurement.[414] In each case, the Companies propose to utilize a competitive process to procure the AECs consistent with obligations under the Public Utility Code[415] and the Commission's AEPS regulations.[416]

Whether AECs are obtained directly by the Companies or are embedded in wholesale default service supply, the Companies submit the obligation to satisfy Section 3 AEPS Act requirements associated with default service load remains with the Companies as default service providers. [417]

The Companies submit that Section 5 of the AEPS Act, 73 P.S. § 1648.5, establishes separate requirements related to net-metered customer-generators. In addition to requiring the Commission to develop technical and net-metering interconnection rules, Section 5 mandates that excess energy from net-metered customer-generators "receive full retail value for all energy produced on an annual basis." Excess energy is kilowatt-hours (kWh) received from the customer-generator in excess of the kWh delivered by the Company to the customer-generator. The Commission's regulations require EDCs to file a tariff that provides for net

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[414] *See* Met-Ed/Penelec/Penn Power/West Penn St. 2, pp. 17-23.

[415] *See* 66 Pa.C.S. § 2807(e)(3.5).

[416] *See* 52 Pa. Code § 75.67(b); Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, p. 10.

[417] *See, e.g.,* Alternative Energy Portfolio Standards Act of 2004 Compliance for Reporting Year 2021 (Pa. P.U.C. Mar. 2022); Alternative Energy Portfolio Standards Act of 2004 Compliance for Reporting Year 2020 (Pa. P.U.C. Feb. 2021); Alternative Energy Portfolio Standards Act of 2004 Compliance for Reporting Year 2019 (Pa. P.U.C. Sept. 2020). The annual AEPS Act reports for compliance years prior to 2019 are available on the Commission's website at https://www.puc.pa.gov/filing-resources/reports/alternative-energy-portfolio-standards-aeps-reports/; Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, p. 10.

metering as well as a tariff providing net metering protocols that enables EGSs to offer net metering to customer-generators taking service from EGSs.[418] The regulations further detail how net metered customer-generators should be credited for excess kWhs.[419]

The Companies assert, consistent with Section 5 of the AEPS Act and the Commission's net metering regulations, that they each have a Commission-approved net metering rider under which customer-generators are paid "full retail value" for their excess energy. If a customer-generator produces energy in excess of the customer-generator's consumption in a particular month, that excess is "banked" for the following month. Energy in excess of a customer-generator's consumption in that following month is again credited at the "full retail value." If credits remain at the end of the year, then the excess energy is credited at the PTC.[420] The Companies submit customer generators taking service from an EGS will receive compensation for excess energy from their EGS, not the Companies.[421]

The Companies submit the treatment of excess energy is not relevant to this proceeding because excess energy is not utilized to satisfy any default service supply obligations. Although Sunrise contends that excess energy from net-metered customer generators becomes "part of the total energy for default service" [422], the Companies submit wholesale markets do not recognize such energy as supply. The Companies explain net-metered customer generator projects do not register with PJM or go through the PJM queue process to be recognized as a supply resource. Further, these projects do not sign on to PJM's Reliability Assurance Agreement or other governing documents that request certain types of asset performance. Instead, the Companies submit customer-generator net metered assets are compensated through

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[418] 52 Pa. Code § 75.13(c).

[419] 52 Pa. Code § 75.13(d)-(f); Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, p. 11.

[420] Tr. 84; *see also* Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 6-7.

[421] Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, p. 7; Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, p.p. 11-12.

[422] Direct Testimony of David N. Hommrich on behalf of Sunrise (hereafter, Sunrise Direct Testimony), p. 9.

retail programs that utilize intermittent resources to deliver aggregate load reductions on the demand side of the energy accounting equation.[423]

The Companies' submit their default service procurement plans reflect the reality that excess energy is not wholesale supply. Neither the Companies' existing, nor their proposed default service supply plans, use excess energy from net-metering customer generators to serve default service load. Instead, non-shopping load is served by winning bidders in the Companies' default service supply auctions.[424] The Companies submit these wholesale suppliers are not billed for, nor do they sell, excess energy from customer-generators,[425] and that excess energy from customer-generators is not sold to other retail customers.[426]

The Companies' witness, Edward B. Stein, testified excess energy is recognized through a financial netting process at the PJM level instead of a physical load netting process. Mr. Stein testified, when there is excess energy from a net-metering customer generator who is taking service under a Company's net-metering rider, the Company (not a default service wholesale supplier) receives recognition of the load reduction in the form of a credit from PJM valued at the locational marginal price. He further explained that customer-generator is subsequently paid "full retail value" for its excess energy, with the financial inputs and outputs ultimately netted in default service rates. Mr. Stein explained, default service customers receive the value of the PJM credits related to the load reduction and also pay the costs to compensate customer-generators for their excess energy.[427]

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[423] *See* Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 7-8. Sunrise agrees that net-metering is a retail load reduction mechanism, but erroneously assumes that excess energy is used by and sold to other retail customers. *See* Rebuttal Testimony of David N. Hommrich on behalf of Sunrise (hereafter, Sunrise Rebuttal Testimony), pp. 7-8 (acknowledging the retail load reduction); Second Direct Testimony of David N. Hommrich on behalf of Sunrise (hereafter, Sunrise Second Direct Testimony), p. 15 (arguing that excess energy is sold to other retail customers); Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, p. 12.

[424] *See* Met-Ed/Penelec/Penn Power/West Penn St. 2, p. 3; Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, p. 8.

[425] Tr. 83.

[426] *See* Sunrise Second Direct Testimony, p. 15 (quoting the Companies' response to a Sunrise discovery question); Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, p.p. 12-13.

[427] Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 9-14; Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, p. 13.

The Companies submit their treatment of excess energy from net-metered customer generators is wholly unrelated to how default service supply is procured or deployed to satisfy default service load. The Companies further submit the Commission should recognize the separate and distinct obligations that arise from Section 3 and Section 5 of the AEPS Act and find that the treatment of excess energy is irrelevant to the Companies' DSP VI Programs. [428]

The Companies submit the record evidence makes clear, the Companies do not use excess energy purchased from customer-generators to serve default service load.

The Companies assert their treatment of excess energy from net-metered customer-generators is unrelated to how default service supply is procured or deployed and that their AEPS Act obligations associated with default service supply are separate and distinct from the AEPS Act obligations related to excess energy. The Companies assert that Bevec and Sunrise did not refute the record evidence demonstrating that Bevec and Sunrise's proposal to disaggregate AEPS compliance costs included in current generation supply costs and recover those costs in a new variable that is not grossed up for loss factors and GRT would result in an undercollection of current default service costs in the PTC and HP Riders.[429]

Bevec and Sunrise's Position

Bevec and Sunrise argue that the inclusion of certain AEPS Act obligations into a utility's proposed default service plan was addressed by the Commonwealth Court in *Dauphin County Indus. Development Authority v. Pennsylvania Public Utility Comm'n,* 123 A.3d 1124 (Pa. Cmwlth. 2015), *appeal denied*, 123 A.3d 1124 (Pa. 2016) (*DCIDA*). There, an EDC filed a petition for approval of its Default Service Plan in the PUC's administrative law docket.[430] The

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[428] Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, p. 13.

[429] Met-Ed/Penelec/Penn Power/ West Penn Reply Brief, p. 3.

[430] *DCIDA*, 123 A.3d at 1128-1129.

proposed settlement, approved by the Commission, did not address net metering involving EGSs.[431]

Bevec and Sunrise assert the Development Authority in *DCIDA* took issue with the settlement, arguing primarily that the EDC's time-of-use solution required that the new rates be offered to all customers[432] and that the Development Authority argued that the time-of-use program was defective because it did not require EGSs to offer net metering with time-of-use rates to customer-generators, thus undermining the purpose of the Act, arguing this effectively allowed the EDC to bypass the statutory mandate for offering customer-generators net metering under the Act.[433]

Bevec and Sunrise submit the *DCIDA* Court concluded there was no ambiguity in the Competition Act's mandate that all customers who have smart meter technology shall be entitled to time-of-use rates,[434] and that the Commonwealth Court concluded the PUC's refusal to provide time-of-use rates to EGS customers, despite a clear legislative mandate to do so, was improper. [435]

Bevec and Sunrise also assert that Statutory obligations under the AEPS Act were also discussed in *Hommrich v. Pennsylvania Public Utility Commission*, 231 A.3d 1027 (Pa. Cmwlth. 2020), *aff'd. per curiam*, 245 A.3d 637 (Pa. 2021), where the petitioner challenged several PUC regulations as running afoul of the Legislative intent of the AEPS Act.[436] Bevec and Sunrise note the Commonwealth Court explained that the PUC's ability to regulate stems from a legislative grant of power.[437]

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431 *Id*. at 1129; Sunrise Initial Brief, p. 5.

432 *Id*. at 1130.

433 *Id;* Sunrise Initial Brief, pp. 5-6.

434 *Id*. (citing 66 Pa.C.S. § 2807(f)(5)).

435 *Id*. at 1136; Sunrise Initial Brief, p. 6.

436 *Hommrich*, 231 A.3d at 1032-1033.

437 *Id*. at 1034; Sunrise Initial Brief, p. 6.

Bevec and Sunrise submit the Commonwealth Court in *Hommrich* concluded that Section 75.1 of the PUC's Regulations addressing net metering impermissibly added the phrase "a retail electric customer that is" to the legislature's definition of "customer-generator, " and took notice, that the addition of the definition of "[U]tility," which is not contained in the Act, was an attempt to fundamentally alters the legislature's definition of "customer-generator."[438] In that regard, Bevec and Sunrise submit, by adding the wording to the definition of "customer-generator" along with the newly created definition of "[U]tility," the PUC created a new restriction on who is entitled to net meter as a customer-generator under the Act. [439]

Bevec and Sunrise submit the *Hommrich* Court ultimately concluded that the PUC's regulatory definitions of "customer-generator" and "utility" were unenforceable because they redefine statutory eligibility standards and curtail the development of alternative energy in conflict with the AEPS Act. Accordingly, Bevec and Sunrise assert that certain portions of the proposed default service plan do not adhere to the statutory mandates of the AEPS Act, and that Intervenors' proposals should be accepted by the Commission.[440]

Bevec and Sunrise further assert that distributed generation is the process of generating electricity where it is need, as opposed to centralized generation, which is generated and then transmitted over long distances;[441] that centralized generation suffers from power loss associated with transformation of line voltage and from line losses;[442] that distribution losses can be as low at 2%-3% based upon the configuration of the distributed generation system and its distance to nearby customers;[443] that whenever a distributed generation system, such a customer-

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438 *Hommrich*, 231 A.3d at 1038-1039.

439 *Id*. at 1039; Sunrise Initial Brief, p. 7.

440 Sunrise Initial Brief, p. 8.

441 Bevec and Sunrise Statement No. 1, p. 3:3-7.

442 *Id*. at p. 3:9-13.

443 *Id*.

generator who produces excess power, delivers power to the grid, that power does not dissipate over long distances, but instead, it is immediately consumed by the customers.[444]

Bevec and Sunrise submit, in his Supplemental Rebuttal Testimony, Edward Stein agreed that "excess energy" is kWh received from a customer-generator in excess of the energy consumed by that customer-generator,[445] but stated that net-metered projects are not considered as supply in the wholesale markets.[446] Bevec and Sunrise explained that Mr. Stein testified that excess energy is not used as supply to service default load but is instead recognized financially as aggregate load reduction.[447]

Bevec and Sunrise submit, according to Mr. Stein, when a net metering customer produces energy the resulting load reduction is credited to that customer at full retail rate.[448] They further assert that, according to Mr. Stein, the Companies then submit the load reduction under the account of the Load Servicing Entity that has the obligation to recognize the reduction, and credit is given to the LSE valued at the locational marginal price.[449]

Bevec and Sunrise assert, the problem with the Companies rationale is two-fold. First, in not accounting for distributed generation on the supply side of the equation, rate payers do not get the benefit of a decreased line loss factor. Second, despite what the Companies say, the laws of physics dictate that the extra energy produced by customer-generators must flow to the closest load on the system. Therefore, according to Bevec and Sunrise, excess energy that is delivered into the distribution system goes where it is needed; *i.e.* to other customers located on the Joint Petitioners' distribution systems and even though the Joint Petitioners did not pay to

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[444] *Id*. at p. 5:16-20; Sunrise Initial Brief, p. 8.

[445] *See*, Statement No. 8R-Supplemental at p. 6:12-16.

[446] *Id*. at p. 7:12-14.

[447] *Id*. at p. 8:3-8; Sunrise Initial Brief, pp. 8-9.

[448] *Id*. at p. 9:15-20.

[449] Sunrise Initial Brief, pp. 8-9.

acquire the excess energy, their customers are still billed for it as though they had. According to Bevec and Sunrise, these AEPS expenses are later calculated into the PTC, which means that the Joint Petitioners are then paying for the same energy twice: once when the excess energy is billed by and paid to the Companies, and then again when these AEPS expenses (namely the credit given to excess generators) is factored into the PTC.[450]

Therefore, Bevec and Sunrise contend, in order to fully comply with the AEPS Act, the Companies, under their Default Service Plan, should be required to calculate excess energy produced by customer-generators as part of their supply since the energy is consumed by the customers. Bevec and Sunrise submit the Companies customers should not be required to pay the respective Companies for the energy produced by a customer-generator on a monthly basis while simultaneously having to pay cost recovery based upon monies paid by Joint Petitioners to customer-generators as part of the cost recovery in the PTC calculation.[451]

Bevec and Sunrise, in their reply brief, submit while the Companies continue to deny the use of excess generation to supply non-shopping customers' needs, it is only because the Companies choose to recognize excess generation theoretically through a "financial netting process" rather than acknowledging the reduction in load that actually occurs. Bevec and Sunrise assert, what actually occurs, is that the excess energy produced by customer-generators is used by default service (non-shopping) customers who are billed for the same at the "full retail value" and that once per year, the Companies pay "full retail value" to customer-generators who produce excess energy.[452] According to Bevec and Sunrise, default service customers then, through EDC cost recovery, "pay the costs to compensate customer-generators for their excess energy."[453] Bevec and Sunrise submit, this ignores that default service customers are paying for the same energy twice, once when they consume the excess generation, and again when they pay

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450 Sunrise Initial Brief, pp. 9-10.

451 Sunrise Initial Brief, p. 10.

452 *See*, Joint Petitioners' Initial Brief, p. 13.

453 *Id*.

via cost recovery the costs associated with compensating customer-generators for excess energy.[454]

Applicable Law

When a utility seeks approval of its default service plan, the burden of proof is on the utility. *Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2017 through May 31*, 2021, 2016 WL 7242224, *3 (Pa.P.U.C. December 8, 2016). Therefore, the Companies must establish by a preponderance of the evidence that their default service plans are acceptable. *Id*. (citing *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n,* 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 602 A.2d 863 (Pa. 1992). Moreover, the Joint Petitioners must present substantial evidence in the record. *Id*. (citing *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*, 413 A.2d 1037 (Pa. 1980)).

Nevertheless, when a party, like Intervenors, offers a proposal in addition to what is found in the Petition, that party filing bears the burden of proof for such a proposal. *Id*. at *4 (citing *Pa. Pub. Util. Comm'n, v. Metro. Edison Co*., Docket No. R-00061366C0001 (Order entered January 11, 2007)).

In 2004, the Pennsylvania legislature recognized the need for clean and green alternatives to fossil fuel energy production, and as a result, it passed the AEPS Act, 73 P. S. §§ 1648.1-1648.8. The AEPS Act permits alternative energy producers to generate their own energy utilizing one of the approved alternative energy production methods. Importantly, the Act requires Electric Distribution Companies to purchase any net energy produced by these alternative energy providers at the full retail price. As part of the Act, the Legislature authorized the PUC only to "…convene a stakeholder process to develop Statewide *technical and net metering interconnection rules for customer-generators*…" 73 P.S. § 1648.5.

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[454] Sunrise Reply Brief, pp. 1-2.

Discussion

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 with respect to costs for compliance with Pennsylvania's Alternative Energy Portfolio Standards Act[455] and the use of loss factors.

Under the Electricity Generation Customer Choice and Competition Act,[456] as an EDC, each Company serves as the default service provider to retail electric customers within its service territory in accordance with its obligations under Section 2807(e) of the Code. Under Sections 2807(e)(3.1), (3.2) and (3.4) of the Competition Act, 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."[457] The Code also applies these requirements to energy and alternative energy credits (AECs) that default service providers are required to purchase for AEPS compliance.[458] The Competition Act further provides that EDCs are entitled to full recovery of all costs of furnishing default service.[459]

Section 3 of the AEPS Act requires default service providers, like the Companies, to obtain specified percentages of electricity sold to retail customers from alternative energy sources as measured by AECs and defined by the AEPS Act.[460] The AEPS Act further provides that EDCs should recover costs related to Section 3 compliance activities as a cost of generation

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455 73 P.S. §§ 1648.1 *et seq.*

456 66 Pa.C.S. §§ 2801 *et seq.*

457 66 Pa.C.S. § 2807(e)(3.7).

458 66 Pa.C.S. § 2807(e)(3.5).

459 66 Pa.C.S. § 2807(e)(3.9); *See* ME/PE/PP/WP Initial Br., p. 20.

460 73 P.S. § 1648.3.

supply under Section 2807 of the Code.[461] Consistent with prior Commission-approved default service programs, during DSP VI, the Companies explained they will meet their AEPS Act obligations primarily through a combination of full requirements wholesale power contracts and direct purchases of AECs.[462]

Section 5 of the AEPS Act establishes separate requirements related to net-metered customer-generators. Section 5 requires EDCs to credit excess energy from net-metered customer-generators at the full retail value.[463] Consistent with Section 5 of the AEPS Act and the Commission's net metering regulations, each Company has a Commission-approved net-metering rider.

Bevec and Sunrise did not present evidence to dispute that the Companies' Programs set forth in the Settlement will maintain the same rate design with respect to AEPS cost recovery that the Commission has determined complies with the Code and its regulations in prior default service proceedings. In addition, the record testimony[464] establishes that the PTC and HP Riders outlined in the Settlement are designed to recover Section 3 AEPS compliance costs during DSP VI, including the types of costs specified in the Commission's regulations at 52 Pa. Code § 75.67(a).[465] Bevec and Sunrise contend that changes are required to the Companies' default service rate calculation formulas based principally on its view of the impact of distributed generation on the Companies' default service load.

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[461] 73 P.S. § 1648.3(a)(3)(ii); *see also Proc. to Evaluate Transition to Corrected Non-Solar Tier I Calculation Methodology*, Docket No. M-2009-2093383, 2016 WL 6024509 at *7 n.5 (Final Order entered Oct. 6, 2016) (noting that EDCs receive full and current recovery for the cost of complying with Section 3 of the AEPS Act through default service rates).

[462] *See* Met-Ed/Penelec/Penn Power/ West Penn Initial Br., pp. 9-10.

[463] 73 P.S. § 1648.5; *see also Hommrich v. Pa. Pub. Util. Comm'n*, 231 A.3d, 1027, 1033 (Pa. Cmwlth. 2015) ("*Hommrich*") ("Section 5 of the AEPS Act requires EDCs to purchase any net energy produced by [customer-generators] at the full retail value.").

[464] See Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, pp. 14-17.

[465] In its Initial Brief, the Companies assert that Sunrise appears to abandon Mr. Hommrich's claim that the Companies' PTC and HP Riders improperly exclude "indirect" costs associated with the purchase of alternative energy, such as the costs of processing net metering and interconnection applications for customer-generators under Section 5 of the AEPS Act. *See* Sunrise Initial Br., p. 4 n. 2 (noting that Sunrise would not pursue claims of "cost recovery except as it applies to distributed generation and line loss").

As the Companies argued, Bevec and Sunrise conflate the separate obligations under Sections 3 and 5 of the AEPS Act to support the proposition that the Companies are obligated to incorporate excess energy produced by customer-generators into their default service rate design. In support of that contention, Bevec and Sunrise cite language from *DCIDA*[466] and *Hommrich* purporting to show that the Companies cannot rely on the Commission's prior approval of their default service calculations to support the existing treatment of AEPS compliance costs in the PTC and HP Riders. As the Companies pointed out, neither of these cases involved the Commission's interpretation of Section 3 of the AEPS Act, which establishes obligations related to default service supply. In addition, Bevec and Sunrise failed to explain how the Commonwealth Court's findings in *DCIDA* and *Hommrich* regarding Section 5 of the AEPS Act preclude the Commission from determining that a default service program mandated by the Code appropriately addresses Section 3 AEPS Act requirements and recovers the associated costs.[467]

Bevec and Sunrise argue that the Companies should be required to "calculate excess energy produced by customer-generators as their supply,"[468] and that by not treating excess energy as supply, the Companies are preventing default service customers from having the benefit of the lower loss factors that could apply to excess generation as compared to wholesale default service supply.[469] Bevec and Sunrise also assert that excess energy is paid for twice, citing the credit received by customer-generators and the recovery of excess energy costs under the PTC.[470]

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466 123 A.3d 1124 (Pa. Commw. Ct. 2015).

467 *See DCIDA*, 123 A.3d at 1133-35 (holding that the Code required EDCs to offer time-of-use rates directly to net-metering customer-generators to ensure they receive compensation for excess electricity at the full retail rate); *Hommrich*, 231 A.3d at 1037-40 (finding that the PUC's definitions of "customer-generator" and "utility" are unenforceable because they redefine eligibility standards for net metering established in Section 5 of the AEPS Act).

468 Sunrise Initial Br., p. 10.

469 *Id.*, p. 9.

470 *Id.*, pp. 9-10.

As the Companies contend, their separate treatment of excess energy and default service supply is consistent with the Companies' statutory obligations and wholesale market realities. As default service providers, the Companies are required to competitively procure wholesale default service supply,[471] including the AECs necessary to satisfy obligations under Section 3 of the AEPS Act.[472] The Companies argue excess energy from net-metered customer-generators is appropriately excluded from the Companies' procurement plans because such energy is neither wholesale supply nor competitively procured. No evidence or authority was established to the contrary by Bevec and Sunrise. The Companies explained that intermittent excess generation from net metered customer-generators is not recognized as a supply resource in PJM Interconnection LLC and cannot be counted on as default service supply.[473] In addition, wholesale sales are FERC-jurisdictional under section 201(b)(1) of the Federal Power Act, 16 U.S.C. § 824(b)(1), but FERC has held that excess energy from net-metered generators are not a wholesale sale of power at all.[474] As explained by the Companies, because this excess energy is not a wholesale sale, it cannot be wholesale supply. Further, the Companies' obligation to credit net-metered customer-generators is derived from a different section of the AEPS Act (Section 5)[475] that is unrelated to default service supply obligations. Under the circumstances, there is no basis to include excess generation from net-metered customer-generators as part of default service supply.

In addition, as the Companies contend, because excess energy from net-metered customer-generators is separate from default supply, there is no reason to reflect any line loss differences between excess generation and wholesale default supply in the cost of default supply. Bevec and Sunrise do not address EGS load and offers no discussion of how substation-based loss factors could be incorporated in the retail shopping statutory framework.[476] As the

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471 66 Pa.C.S. § 2807(e)(3.1).

472 66 Pa.C.S. § 2807(e)(3.5); 73 P.S. § 1648.3.

473 *See* Met-Ed/Penelec/Penn Power/ West Penn Initial Br., p. 12; Tr. 82.

474 *See Sun Edison LLC*, 129 FERC ¶ 61,146 (2009).

475 73 P.S. § 1648.5.

476 *Id*., p. 16.

Companies' explained, the unaccounted for energy (UFE) measured on their system, which is the difference between the amount of energy used in the Companies' zones as calculated by PJM and the amount of energy used by customers, confirms that the Companies' existing loss factors are reasonable.

Finally, although Bevec and Sunrise assert that excess energy is paid for twice, no record evidence exists to support this position. The Companies have reasonably explained how both the financial inputs and outputs associated with excess generation are netted out in default service rates. The cost of crediting net-metered customer-generators under a Company's Commission-approved net-metering rider is recovered from default service customers. In addition, default service customers receive the value of PJM credits related to the load reduction from excess generation.[477] As the Companies contend, the fact that the costs and credits occur at different times is neither unusual nor evidence of any improper billing.

Based on the record evidence and the argument of the Parties, the claims asserted by Bevec and Sunrise concerning improper treatment of excess generation will be denied.

<u>Issue Number 2</u>

Sunrise's assertions regarding the Companies' calculation of the Price-to-Compare with respect to costs for compliance with Pennsylvania's Alternative Energy Portfolio Standards Act and the use of loss factors

<u>The Companies' Position</u>

The Companies assert Section 3 of the AEPS Act details obligations associated with default service supply that are separate from obligations in other sections of the Act. The

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[477] *See* ME/PE/PP/WP Initial Br., p. 13.

recovery of costs related to Section 3 compliance activities is addressed in the AEPS Act as follows:

> [a]fter the cost-recovery period, any direct or indirect costs for the purchase by electric distribution of resources *to comply with this section*, including, but not limited to, the purchase of electricity generated from alternative energy sources, payments for alternative energy credits, cost of credits banked, payments to any third party administrators for performance under this act and costs levied by a regional transmission organization to ensure that alternative energy sources are reliable, shall be recovered on a full and current basis pursuant to an automatic energy adjustment clause under 66 Pa.C.S. § 1307 as a cost of generation supply under 66 Pa.C.S. § 2807.[478]

The Companies note the Commission's regulations further address cost recovery for AEPS Act obligations associated with default service supply. Specifically, those regulations (52 Pa. Code § 75.67(a)) provide that a default service provider may recover the following AEPS Act compliance costs from default service customers:

> (1) The costs of electricity generated by an alternative energy system, purchased by a default service provider, and delivered to default service customers for purposes of compliance with § 75.61 (relating to EDC and EGS obligations).
>
> (2) The costs of alternative energy credits purchased and used within the same reporting period for purposes of compliance with § 75.61.
>
> (3) The costs of alternative energy credits purchased in one reporting period and banked for use in later reporting periods, consistent with § 75.69 (relating to banking of alternative energy credits).
>
> (4) The costs of alternative energy credits purchased in the true-up period to satisfy compliance obligations for the most recently concluded reporting period, consistent with § 75.61(e).

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478 73 P.S. § 1648.3(a)(3) (emphasis added).

(5) Payments to the alternative energy credits program administrator for its costs of administering an alternative energy credits program, consistent with § 75.64 (relating to alternative energy credit program administrator).

(6) Payments to a third party for its costs in operating an alternative energy credits registry, consistent with § 75.70 (relating to the alternative energy credit registry).

(7) The costs levied by a regional transmission organization to ensure that alternative energy sources are reliable.

(8) The costs of alternative compliance payments made under § 75.66 (relating to force majeure).[479]

The Companies explain their PTC and HP Riders are generally designed to recover Section 3 compliance costs, including the types of costs specified in the Commission's regulations. As explained in the direct testimony of the Companies' witness James H. Catanach, with certain limited exceptions for solar photovoltaic requirements, default service suppliers will be responsible for delivering AECs to satisfy 100% of the Tier I and Tier II AEPS Act requirements associated with the Companies' default service load. The Companies therefore expect default service suppliers to include all AEPS compliance costs, including the cost items listed in Section 3 of the AEPS Act and the Commission's regulations at 52 Pa. Code § 75.67, in their wholesale power prices, which are recovered through the Companies' PTC and HP Riders.[480] In addition, according to the Companies, all costs associated with the Companies' proposed long-term solar procurement, which is expected to meet up to an estimated 32% of the Companies' solar AEPS requirements associated with residential default service load during DSP VI, will be recovered through the PTC Riders.[481] The Companies also recover the direct

[479] Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, pp.14-15.

[480] There is an exception for SPAEC-related costs for Met-Ed, Penelec, and Penn Power procured under legacy long-term contracts that expire on May 31, 2024, to satisfy all customer load (default service and shopping customers) in their service territories, which are collected through the Companies' Solar Photovoltaic Requirements Charge Riders on a non-bypassable basis. *See* Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, p. 3.

[481] Met-Ed/Penelec/Penn Power/West Penn St. 2, pp. 17-23.

costs of purchasing AECs and maintaining their PJM Generation Attribute Tracking System accounts to manage AECs through their PTC and HP Riders.[482]

The Companies submit their PTC and HP Riders appropriately exclude the costs of interconnecting distributed generation to the Companies' distribution systems,[483] contending they appropriately handle interconnection matters in their capacity as distribution utilities, not default service providers. The Companies further submit that system planning and connections of any kind are a well-established distribution function, and socializing the fees charged to distributed generation interconnection applicants among all default service customers, is not consistent with long-standing cost-of-service principles, and this allocation of costs is consistent with the fact that the shopping status of a customer is unrelated to the interconnection process or interconnection costs.[484]

The Companies explain their costs related to interconnection of customer-owned small generation facilities to their distribution systems (net of interconnection application fees) are recovered through contributions in aid of construction and distribution base rates. Each Company's electric service tariff therefore, according to the Companies, includes provisions under which a customer seeking interconnection must pay an application fee and additional costs for certain system improvements that may be required for interconnection.[485] The Companies explain those costs are entirely unrelated to default service and are properly not recovered as AEPS costs under default service rates.[486]

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[482] *See* Sunrise Second Direct Testimony, Ex. 1; Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, pp. 15-16.

[483] *See* Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, pp. 4-5; Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, p. 17; *see also*, Met-Ed/Penelec/Penn Power/West Penn St. 5R, pp. 2-9 (describing the costs reflected in default service rates).

[484] Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, p. 17; Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, p.p. 16-17.

[485] *Id.*

[486] Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, p.p. 16-17.

The Companies also submit that grossing up the current cost of default supply for loss factors in the PTC and HP Riders is proper "because, as a physical reality, there are losses associated with the transmission of energy to an individual customer's meter" and "[t]hose losses must be accounted for, and paid for, when calculating the amount of energy that must be bought and be delivered to a default service customer."[487] The Companies contend consideration of loss factors in default service supply is well-recognized by the Commission, which requires the provision of loss factors to wholesale default service suppliers under default service implementation plans[488] and that wholesale suppliers are responsible for the costs of transmission and distribution losses associated with the load they serve under the Companies' supplier master agreements, just as they are responsible for providing AECs to meet their AEPS obligations.[489]

The Companies assert that Bevec and Sunrise propose to disaggregate AEPS compliance costs included in current generation supply costs and recover those costs in a new variable that is not grossed up for loss factors in PTC and HP Rider rate calculations.[490] In support of that proposal, Mr. Hommrich points to the fact that AECs do not suffer line losses.[491] However, as the Companies' witnesses Stein and Larkin explained, the wholesale default supply contract prices that form the basis of the retail charges recovered through the PTC and HP Riders established in Commission-approved default service procurements are not broken out by the different costs of the many components of default supply, and those prices reflect losses for which the supplier is responsible.[492] By applying loss factors to the costs of wholesale default service, the Companies are treating the AEPS compliance costs embedded in wholesale contract

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[487] Tr. 80; Companies Initial Brief, p. 18.

[488] 52 Pa. Code § 54.186(c)(1)(E).

[489] *See* Joint Petition, Ex. C (Default Service Supplier Master Agreement), Art. 1 (defining "DS Supply" to include "AECs for AEPS Act compliance" as well as all transmission and distribution losses); Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, p. 18.

[490] *See* Sunrise Second Direct Testimony, pp. 4-5, 7-8.

[491] *See Id.* at 3-4.

[492] Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, pp. 5-6; Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 3-4.

prices in a manner consistent with all of the other components of default service.[493] In addition, if the Companies failed to apply loss factors, the Companies submit the result would result in underpayments to suppliers, which would necessarily have to be recovered from customers with interest through reconciliation.[494]

Bevec and Sunrise also assert that the Companies' use of loss factors to convert wholesale power contract costs to retail rates has led to overcharging customers for AEPS compliance costs.[495] According to Mr. Hommrich, the Companies' loss factors used in their default service calculations could result in a windfall to the Companies because customers are being overcharged for energy.[496] However, as Mr. Stein explained, the Companies do know that their loss factors are appropriate based on the actual difference between the aggregate zonal load (the amount of energy consumed by a Company's entire zone administered by PJM) and the retail load "grossed up" for losses based on the Company's load factors. The difference, known as "unaccounted for energy," or UFE, varies between 1.68% and -1.55%, which Mr. Stein explained was reasonable when considering the factors that impact UFE, such as broken meters and installation of batteries.[497] In addition, the Companies assert there is no windfall to the Companies; the amounts recovered based on these loss factors in the PTC and HP Riders are paid to suppliers consistent with their contract prices established in competitive, Commission-approved procurements.[498]

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[493] Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, p. 6.

[494] Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, pp. 6-7 and Ex. PML-35; *see also* Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 4-5; Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, pp. 18-19.

[495] Sunrise Second Direct Testimony, pp. 2-3.

[496] *See* Sunrise Second Direct Testimony, pp. 10-14; Sunrise Rebuttal Testimony, pp. 12-13.

[497] Tr. 80-81; Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 15.

[498] Tr. 81 (explaining that the amounts are "the precise cost of electricity for which non-shopping customers pay – not a penny more – not a penny less"); Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, p.p. 18-20.

The Companies submit that Mr. Hommrich's criticism of their inclusion of a gross-up for GRT on all default service costs recovered through the PTC and HP Riders is also flawed. Under the Code, the electric generation service the Companies are required to purchase and provide in their role as default service providers includes both energy and AECs.[499] Pennsylvania law similarly provides that the Companies must pay the GRT on all sales of energy,[500] and the Commission's Policy Statement on Default Service expressly provides that default service rates should be designed to recover applicable taxes.[501] Because the Companies must pay GRT on all default service sales at a rate of 5.9%, the Companies assert Mr. Hommrich's proposal to exclude AEPS costs from the application of the GRT in the PTC and HP Riders would preclude the Companies from recovering approximately $6 out of every $100 of AEPS compliance costs associated with default service supply, resulting in customers paying for those undercollections with interest in a future reconciliation period in light of the Companies' rights to recover all default service costs.[502]

In their Reply Brief, the Companies assert they do not use excess energy purchased from customer-generators to serve default service load.

The Companies' submit that their treatment of excess energy from net-metered customer-generators is wholly unrelated to how default service supply is procured or deployed and that the Companies' AEPS Act obligations associated with default service supply are separate and distinct from the AEPS Act obligations related to excess energy.

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[499] 66 Pa. Code § 2807(e)(3.5).

[500] 72 Pa. Stat. § 8101(b), (b)(1); Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, pp. 7-8.

[501] *See* 52 Pa. Code § 69.1808(a)(5).

[502] *See* 66 Pa.C.S. § 2807(e)(3.9); 52 Pa. Code § 54.187; *see also* Final Order, *Guidelines for Use of Fixed Price Labels for Products With a Pass-Through Clause*, Docket No. M-2013-2362961 (Final Order entered Nov. 14, 2013, p. 28 (explaining in the context of EGS pricing that the PTC is "all-inclusive" of the pricing components for default service, including gross receipts tax, and noting only the "notable exception" of sales tax); Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, p. 20.

The Companies pointed out that Bevec and Sunrise did not present evidence to dispute that the Companies' Programs set forth in the Settlement will maintain the same rate design with respect to AEPS cost recovery that the Commission has determined complies with the Code and its regulations in prior default service proceedings. In addition, the record evidence establishes that the PTC and HP Riders outlined in the Settlement are designed to recover Section 3 AEPS compliance costs during DSP VI, including the types of costs specified in the Commission's regulations at 52 Pa. Code § 75.67(a).[503] Regardless, Bevec and Sunrise argue for changes to the Companies' default service rate calculation formulas based principally on its view of the impact of distributed generation on the Companies' default service load.[504]

<u>Bevec And Sunrise's Position</u>

In their Initial Brief, Bevec and Sunrise assert, in not accounting for distributed generation on the supply side of the equation, rate payers do not get the benefit of a decreased line loss factor, and despite what the Companies may say, extra energy produced by customer-generators must flow to the closest load on the system. Therefore, Bevec and Sunrise contend excess energy that is delivered into the distribution system goes where it is needed; *i.e.* to other customers located on the Companies distribution systems. Thus, Bevec and Sunrise assert, even though the Companies did not pay to acquire the excess energy, their customers are still billed for it as though they had, and these AEPS expenses are later calculated into the PTC, which means that the Joint Petitioners are then paying for the same energy twice: once when the excess energy is billed by and paid to the Companies, and then again when these AEPS expenses (namely the credit given to excess generators) are factored into the PTC.[505]

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[503] In its Initial Brief, Sunrise appears to abandon Mr. Hommrich's claim that the Companies' PTC and HP Riders improperly exclude "indirect" costs associated with the purchase of alternative energy, such as the costs of processing net metering and interconnection applications for customer-generators under Section 5 of the AEPS Act. *See* Sunrise Initial Br., p. 4 n. 2 (noting that Sunrise would not pursue claims of "cost recovery except as it applies to distributed generation and line loss"); Met-Ed/Penelec/Penn Power/ West Penn M.B. at p.5.

[504] Met-Ed/Penelec/Penn Power/ West Penn Reply Brief, p. 5.

[505] Sunrise Initial Brief, pp. 8-10.

Bevec and Sunrise submit, in order to fully comply with the AEPS Act, the Companies, under their Default Service Plan, should be required to calculate excess energy produced by customer-generators as part of their supply since the energy is consumed by Joint Petitioners' customers. In addition, Bevec and Sunrise assert the Companies customers should not be required to pay the respective Companies for the energy produced by a customer-generator on a monthly basis while simultaneously having to pay cost recovery based upon monies paid by the Companies to customer-generators as part of the cost recovery in the PTC calculation.[506]

Bevec and Sunrise submit that Patricia M. Larkin, testifying on behalf of the Companies, relied upon a PUC policy statement to justify the inclusion of AEPs costs as taxable pursuant to the Gross Receipts Tax.[507] According to Bevec and Sunrise, the policy statement to which Ms. Larkin refers is found at 52 Pa. Code § 69.1808 (the Policy Statement) and is entitled Default Service Cost Elements. Bevec and Sunrise assert Ms. Larkin testified that Policy Statement offer guidance that "default service rates should be designed to recover applicable taxes,"[508] however, Bevec and Sunrise submit the actual language from the Policy Statement is "[t]he PTC should be designed to recover all generation, transmission and other related costs of default service,"[509] without mention of the gross receipt tax. [510]

Bevec and Sunrise assert that the Policy Statement provides that the PTC should include all taxes "excluding Sales Tax."[511] Bevec and Sunrise submit there is no authority within

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506 Sunrise Initial Brief, pp. 9-10.

507 *See*, Statement No. 5R-Supplemental, p. 7:12-16.

508 *See*, *Id*. at 7:16-19.

509 52 Pa. Code § 69.1808.

510 Sunrise Initial Brief, pp. 9-10.

511 52 Pa. Code § 69.1808(a)(5).

the AEPS Act that permits associated costs to be taxed,[512] and asserts nothing in the AEPS Act permits the collection of taxes for costs recovered. [513]

Sunrise points to Mr. Hommrich's testimony to support his proposal to disaggregate AEPS compliance costs from the current cost of generation supply and recover those costs through a separate variable that is not grossed up for line losses or GRT. Mr. Hommrich claimed that distributed generation reduces line losses and that the loss factors used in the Companies' default service calculations are inaccurate because they do not account for the excess energy produced by customer-generators. According to Mr. Hommrich, this alleged inaccuracy could result in a windfall to the Companies because customers are being overcharged for energy.[514] Mr. Hommrich also argued that the Companies are overcharging customers by applying GRT to AEPS compliance costs recovered through default service rates.[515]

In response, the Companies assert the wholesale default supply contract prices that form the basis of the retail charges under the Companies' PTC and HP Riders do not separately quantify the costs of meeting AEPS requirements associated with default supply, and those prices reflect losses for which the supplier is responsible. The Companies submit they have the right to recover all default service costs on a full and current basis. However, performing default service calculations under the Companies' PTC and HP Riders without the gross-up for loss factors results in undercollection of current wholesale power contract costs. Those undercollections will ultimately be recovered from customers with interest in accordance with the Commission's regulations at 52 Pa. Code § 54.190(c).[516]

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[512] *See*, Bevec and Sunrise Statement No. 2 at p. 4:13-20.

[513] Sunrise Initial Brief, p. 11.

[514] *See* Sunrise Second Direct Testimony, pp. 10-14; Sunrise Rebuttal Testimony, pp. 12-13; Companies R.B. p.p. 8-9.

[515] Sunrise Second Direct Testimony, p. 4; Met-Ed/Penelec/Penn Power/ West Penn Reply Brief, p. 8.

[516] *See* ME/PE/PP/WP Initial Br., pp. 20-21; R.B. p.p. 9-10.

In addition, the Companies assert that Bevec and Sunrise's contention that distributed generation reduces the loss factors used in the Companies' default service calculations seems to be based on Mr. Hommrich's claim that line losses should be calculated in real-time at the substation level, however Bevec and Sunrise did not offer any evidence to explain how EGSs would incorporate substation-based loss factors into their load forecasting or address how Mr. Hommrich's new line loss methodology routine would account for routine switching of distribution lines feeding into the Companies' substations.[517] The Companies submit they have shown that the loss factors currently utilized in the PTC and HP Riders are appropriate because the average levels of UFE on the Companies' system are within a reasonable range, when considering other factors that impact UFE. Ultimately, the Companies assert, the amounts recovered through the Companies' PTC and HP Riders are equal to payments to suppliers at contract prices established in competitive, Commission-approved procurements.[518]

The Companies also explained that the PTC and HP Riders properly apply GRT to all default service costs, consistent with the Code's default service provisions incorporating AEPS Act compliance under Section 2807(e)(3). Bevec and Sunrise argue that the Companies improperly rely upon the Commission's Policy Statement on Default Service, which expressly provides that the Companies' PTC should be designed to recover "applicable taxes" as part of the "related" costs of default service.[519] Bevec and Sunrise assert this reliance is improper because the Policy Statement does not explicitly reference the GRT, is not binding, and the AEPS Act does not expressly address the collection of taxes associated with AEPS compliance costs.[520]

The Companies submit there is no legal basis to exclude AEPS-related costs that EDCs incur as part of their statutory default service obligations from an EDC's default service revenues subject to GRT.

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517 *See* Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, p. 16; R.B. pp. 9-10.

518 *See* Met-Ed/Penelec/Penn Power/ West Penn Initial Br., pp. 19-20; Reply Brief, p.p. 9-10.

519 Met-Ed/Penelec/Penn Power/ West Penn Reply Brief pp. 10-11.

520 Met-Ed/Penelec/Penn Power/ West Penn Reply Brief, p. 10.

The Companies submit that Bevec and Sunrise's interpretation of the Policy Statement is also flawed. The Companies assert that Bevec and Sunrise's proposal to exclude AEPS compliance costs recovered through default service rates from application of the GRT levied on all electric utility sales in the Commonwealth is contrary to the Code and AEPS Act provisions that confer the right to full cost recovery on default service providers. Furthermore, Section 69.1808 of the Policy Statement separately lists a variety of default service-related costs that are also subject to the GRT, including wholesale energy costs and administrative costs. The Companies submit there is no language in the Policy Statement to support Sunrise's assertion that the listing of AEPS costs in the exact same manner as other costs should somehow be interpreted to reflect a Commission intent to exclude AEPS costs from other default service costs for tax purposes.[521]

Bevec and Sunrise witness David N. Hommrich assert that the use of loss factors to gross up the current cost of supply in the Companies' PTC and HP Riders for energy losses inherent in the transmission and distribution of energy to customers is inaccurate, resulting in a windfall to the Companies.[522] In addition, Mr. Hommrich asserts that the Companies are improperly applying a gross receipts tax (GRT) factor to AEPS compliance costs recovered through default service rates.[523]

Bevec and Sunrise also contend that the excess energy produced by customer-generators is used by default service (non-shopping) customers who are billed for the same at the "full retail value." Once per year, Joint Petitioners pay "full retail value" to customer-generators who produce excess energy.[524] According to Bevec and Sunrise, default service customers then, through EDC cost recovery, "pay the costs to compensate customer-generators for their excess energy."[525] According to Bevec and Sunrise, what this ignores is that default service customers

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[521] Met-Ed/Penelec/Penn Power/ West Penn Reply Brief, pp. 10-11.

[522] Sunrise Second Direct Testimony, pp. 11, 13; Sunrise Rebuttal Testimony, pp. 11-14.

[523] Sunrise Second Direct Testimony, p. 4; Companies Initial Brief, pp. 17-18.

[524] *See*, Joint Petitioners' Initial Brief at p. 13; Sunrise R.B. p.2.

[525] *Id*.

are paying for the same energy twice, once when they consume the excess generation, and again when they pay via cost recovery the costs associated with compensating customer-generators for excess energy. [526]

Bevec and Sunrise further assert that line loss associated with distributed generation is significantly lower than that which occurs in a centralized generation system, yet AEPS Act expenses are still grossed up for this expense because Joint Petitioners are "simply treating the AEPS compliance costs" in a "manner consistent with all of the other components of default service. [527]

Bevec and Sunrise submit expenses under the AEPS Act are clearly not like "other components" of default services. When there are not any line losses associated with the distributed generation provided by a customer-generator, Bevec and Sunrise submit, it makes no sense that Joint Petitioners are then able to gross up the expenses paid for compensating customer-generators for the excess energy provided. [528]

Discussion

Bevec and Sunrise argue that the Companies are improperly excluding certain AEPS Act compliance costs from their PTC and HP Riders, including "indirect" costs associated with Company personnel spending time processing interconnection and net metering applications.[529] The Companies assert the scope of AEPS Act-related costs recovered in each Company's PTC and HP Rider is consistent with the AEPS Act, the Commission's regulations and prior Commission-approved cost allocations between default service and distribution.

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[526] Sunrise R.B. p. 2.

[527] *Id*. at 19; Sunrise R.B. p. 2.

[528] Sunrise R.B. p. 3.

[529] *See* Sunrise Second Direct Testimony, p. 16 (claiming the Companies are failing to recover AEPS Act costs in accordance with Section 3 of the AEPS Act); Sunrise Direct Testimony, p. 13 (identifying interconnection application processing and administrative personnel as indirect costs that should be recovered pursuant to Section 3 of the AEPS Act).

Section 3 of the AEPS Act details obligations associated with default service supply that are separate from obligations in other sections of the Act. The recovery of costs related to Section 3 compliance activities is addressed in the AEPS Act and provides for the recovery of direct or indirect costs for the purchase by electric distribution of resources on a full and current basis pursuant to an automatic energy adjustment clause under 66 Pa.C.S. § 1307 as a cost of generation supply under 66 Pa.C.S. § 2807.[530]

In addition, the Commission's regulations further address cost recovery for AEPS Act obligations associated with default service supply. Those regulations (52 Pa. Code § 75.67(a)) provide that a default service provider may recover certain enumerated AEPS Act compliance costs from default service customers, including the costs of electricity generated by an alternative energy system, purchased by a default service provider, and delivered to default service customers for purposes of compliance with § 75.61 (relating to EDC and EGS obligations).

The Companies' PTC and HP Riders are generally designed to recover Section 3 compliance costs, including the types of costs specified in the Commission's regulations. Companies' witness James H. Catanach explained, with certain limited exceptions for solar photovoltaic requirements, default service suppliers will be responsible for delivering AECs to satisfy 100% of the Tier I and Tier II AEPS Act requirements associated with the Companies' default service load. The Companies therefore expect default service suppliers to include all AEPS compliance costs, including the cost items listed in Section 3 of the AEPS Act and the Commission's regulations at 52 Pa. Code § 75.67, in their wholesale power prices, which are recovered through the Companies' PTC and HP Riders.[531] In addition, all costs associated with the Companies' proposed long-term solar procurement, which is expected to meet up to an estimated 32% of the Companies' solar AEPS requirements associated with residential default

[530] 73 P.S. § 1648.3(a)(3)(emphasis added).

[531] There is an exception for SPAEC-related costs for Met-Ed, Penelec, and Penn Power procured under legacy long-term contracts that expire on May 31, 2024, to satisfy all customer load (default service and shopping customers) in their service territories, which are collected through the Companies' Solar Photovoltaic Requirements Charge Riders on a non-bypassable basis. *See* Met-Ed/Penelec/Penn Power/West Penn St. 5R- Supplemental, p. 3.

service load during DSP VI, will be recovered through the PTC Riders.[532] The Companies also recover the direct costs of purchasing AECs and maintaining their PJM Generation Attribute Tracking System accounts to manage AECs through their PTC and HP Riders.[533]

Companies' witnesses Patricia M. Larkin and Edward B. Stein explained the Companies' PTC and HP Riders appropriately exclude the costs of interconnecting distributed generation to the Companies' distribution systems.[534] Sunrise argues such costs are appropriate to recover through the PTC and HP Riders,[535] however the Companies handle interconnection matters in their capacity as distribution utilities, not default service providers. As Mr. Stein explained, system planning and connections of any kind are a well-established distribution function, and socializing the fees charged to distributed generation interconnection applicants among all default service customers is not consistent with long-standing cost-of-service principles. In addition, as the Companies explain, this allocation of costs is consistent with the fact that the shopping status of a customer is unrelated to the interconnection process or interconnection costs.[536]

The Companies explain their costs related to interconnection of customer-owned small generation facilities to their distribution systems (net of interconnection application fees) are recovered through contributions in aid of construction and distribution base rates. Each Company's electric service tariff therefore includes provisions under which a customer seeking interconnection must pay an application fee and additional costs for certain system improvements that may be required for interconnection.[537] The Companies explained that those

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[532] Met-Ed/Penelec/Penn Power/West Penn St. 2, pp. 17-23.

[533] *See* Sunrise Second Direct Testimony, Ex. 1; Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, pp. 14-16.

[534] *See* Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, pp. 4-5; Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, p. 17; *see also* Met-Ed/Penelec/Penn Power/West Penn St. 5R, pp. 2-9 (describing the costs reflected in default service rates).

[535] Sunrise Direct Testimony, p. 13.

[536] Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, p. 17; Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, pp. 15-17.

[537] *Id.*

costs are entirely unrelated to default service and are properly not recovered as AEPS costs under default service rates.[538]

Based upon the record evidence and the arguments of the parties, the Commission should reject Sunrise's claims that the Companies are improperly excluding certain AEPS Act costs from their PTC and HP Riders.

Bevec and Sunrise request that the Commission conclude that AEPS Act expenses should not be grossed up for line losses and/or be subject to the gross receipts tax.

Sunrise witness David N. Hommrich asserted that the use of loss factors to gross up the current cost of supply in the Companies' PTC and HP Riders for energy losses inherent in the transmission and distribution of energy to customers is inaccurate, resulting in a windfall to the Companies.[539] Mr. Hommrich further asserted that the Companies are improperly applying a gross receipts tax (GRT) factor to AEPS compliance costs recovered through default service rates.[540]

Mr. Stein testified that grossing up the current cost of default supply for loss factors in the PTC and HP Riders is proper "because, as a physical reality, there are losses associated with the transmission of energy to an individual customer's meter" and "[t]hose losses must be accounted for, and paid for, when calculating the amount of energy that must be bought and be delivered to a default service customer."[541] The Companies explained that consideration of loss factors in default service supply is well-recognized by the Commission, which requires the provision of loss factors to wholesale default service suppliers under default service

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[538] Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, p. 17.

[539] Sunrise Second Direct Testimony, pp. 11, 13; Sunrise Rebuttal Testimony, pp. 11-14.

[540] Sunrise Second Direct Testimony, p. 4; Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, pp. 17-18.

[541] Tr. 80.

implementation plans.[542] As the Companies explained, wholesale suppliers are responsible for the costs of transmission and distribution losses associated with the load they serve under the Companies' supplier master agreements, just as they are responsible for providing AECs to meet their AEPS obligations.[543]

Mr. Hommrich explains that AECs do not suffer line losses[544] and proposes to disaggregate AEPS compliance costs included in current generation supply costs and recover those costs in a new variable that is not grossed up for loss factors in PTC and HP Rider rate calculations.[545] However, witnesses Stein and Larkin explained, the wholesale default supply contract prices that form the basis of the retail charges recovered through the PTC and HP Riders established in Commission-approved default service procurements are not broken out by the different costs of the many components of default supply, and those prices reflect losses for which the supplier is responsible.[546] By applying loss factors to the costs of wholesale default service, the Companies are simply treating the AEPS compliance costs embedded in wholesale contract prices in a manner consistent with all of the other components of default service.[547] In addition, if the Companies failed to apply loss factors, the result would result in underpayments to suppliers, which would necessarily have to be recovered from customers with interest through reconciliation.[548]

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542 52 Pa. Code § 54.186(c)(1)(E).

543 *See* Joint Petition, Ex. C (Default Service Supplier Master Agreement), Art. 1 (defining "DS Supply" to include "AECs for AEPS Act compliance" as well as all transmission and distribution losses); Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, pp. 17-18.

544 *See Id.* at 3-4.

545 *See* Sunrise Second Direct Testimony, pp. 4-5, 7-8.

546 Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, pp. 5-6; Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 3-4.

547 Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, p. 6.

548 Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, pp. 6-7 and Ex. PML-35; *see also* Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 4-5; Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, pp. 18-19.

Mr. Hommrich also asserts that the Companies' use of loss factors to convert wholesale power contract costs to retail rates has led to overcharging customers for AEPS compliance costs, [549] asserting the Companies' loss factors used in their default service calculations are "off" because the Companies "have not revisited their loss factors in some time," and this alleged inaccuracy could result in a "windfall" to the Companies because customers are being overcharged for energy.[550] However, Mr. Stein explained the Companies do know that their loss factors are appropriate based on the actual difference between the aggregate zonal load (the amount of energy consumed by a Company's entire zone administered by PJM) and the retail load "grossed up" for losses based on the Company's load factors. The Companies explained the difference, known as unaccounted for energy varies between 1.68% and -1.55%, which Mr. Stein explained was reasonable when considering the factors that impact UFE, such as broken meters and installation of batteries.[551] In addition, Bevec and Sunrise failed to establish there is any windfall to the Companies as the amounts recovered based on these loss factors in the PTC and HP Riders are paid to suppliers consistent with their contract prices established in competitive, Commission-approved procurements.[552]

Mr. Hommrich also objects to the Companies' inclusion of a gross-up for GRT on all default service costs recovered through the PTC and HP Riders. However, the Companies explained that under the Code, the electric generation service the Companies are required to purchase and provide in their role as default service providers includes both energy and AECs.[553] Pennsylvania law provides that the Companies must pay the GRT on all sales of energy,[554] and

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[549] Sunrise Second Direct Testimony, pp. 2-3.

[550] *See* Sunrise Second Direct Testimony, pp. 10-14; Sunrise Rebuttal Testimony, pp. 12-13; Companies Initial Brief, p.19.

[551] Tr. 80-81; Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, pp. 15.

[552] Tr. 81 (explaining that the amounts are "the precise cost of electricity for which non-shopping customers pay – not a penny more – not a penny less"); Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, pp. 19-20.

[553] 66 Pa. Code § 2807(e)(3.5).

[554] 72 Pa. Stat. § 8101(b), (b)(1); Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, pp. 7-8.

the Commission's Policy Statement on Default Service expressly provides that default service rates should be designed to recover applicable taxes.[555] The Companies explained, because the Companies must pay GRT on all default service sales at a rate of 5.9%, Mr. Hommrich's proposal to exclude AEPS costs from the application of the GRT in the PTC and HP Riders would preclude the Companies from recovering approximately $6 out of every $100 of AEPS compliance costs associated with default service supply, resulting in customers paying for those undercollections with interest in a future reconciliation period in light of the Companies' rights to recover all default service costs.[556]

Witness Larkin further noted the Companies' PTC calculations are subject to extensive review as the Commission reviews the Companies' default service rate calculations when they are filed each quarter, as well as the annual reconciliation statement for each of the Companies' default service riders.[557]

In its Reply Brief, the Companies note that Bevec and Sunrise do not dispute that the Companies' Programs set forth in the Settlement will maintain the same rate design with respect to AEPS cost recovery that the Commission has determined complies with the Code and its regulations in prior default service proceedings. In addition, the record testimony[558] established that the PTC and HP Riders outlined in the Settlement are designed to recover Section 3 AEPS compliance costs during DSP VI, including the types of costs specified in the Commission's regulations at 52 Pa. Code § 75.67(a).

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555 *See* 52 Pa. Code § 69.1808(a)(5).

556 *See* 66 Pa.C.S. § 2807(e)(3.9); 52 Pa. Code § 54.187; *see also* Final Order, *Guidelines for Use of Fixed Price Labels for Products With a Pass-Through Clause*, Docket No. M-2013-2362961 (Final Order entered Nov. 14, 2013, p. 28 (explaining in the context of EGS pricing that the PTC is "all-inclusive" of the pricing components for default service, including gross receipts tax, and noting only the "notable exception" of sales tax); Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, pp. 19-20.

557 Met-Ed/Penelec/Penn Power/West Penn St. 5R-Supplemental, pp. 4, 6 (noting the multiple, prior Commission reviews of the PTC and HP Riders); Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, p. 21.

558 *See* Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, p.p. 14-17; Met-Ed/Penelec/Penn Power/ West Penn Reply Brief, p. 5.

Bevec and Sunrise challenge the Companies' default service rate calculation formulas primarily based on their view of the impact of distributed generation on the Companies' default service load. As the Companies point out, Bevec and Sunrise appear to conflate the separate obligations under Sections 3 and 5 of the AEPS Act to support their position that the Companies are obligated to incorporate excess energy produced by customer-generators into their default service rate design, relying in part on the decisions in *DCIDA*[559] and *Hommrich.* Bevec and Sunrise appear to assert that the Companies cannot rely on the Commission's prior approval of their default service calculations to support the existing treatment of AEPS compliance costs in the PTC and HP Riders. However, neither of these cases involved the Commission's interpretation of Section 3 of the AEPS Act, which establishes obligations related to default service supply. As the Companies concluded, Bevec and Sunrise failed to establish how the Commonwealth Court's findings in *DCIDA* and *Hommrich* regarding Section 5 of the AEPS Act (and, in the case of *DCIDA*, time-of-use obligations) preclude the Commission from determining that a default service program mandated by the Code appropriately addresses Section 3 AEPS Act requirements and recovers the associated costs.[560]

In its Reply Brief, the Companies further address Mr. Hommrich's testimony supporting the proposal to disaggregate AEPS compliance costs from the current cost of generation supply and recover those costs through a separate variable that is not grossed up for line losses or GRT. Mr. Hommrich asserted that distributed generation reduces line losses and that the loss factors used in the Companies' default service calculations are inaccurate because they do not account for the excess energy produced by customer-generators. Mr. Hommrich concluded this could result in a windfall to the Companies because customers are being overcharged for energy.[561] Mr. Hommrich also concluded the Companies are overcharging

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[559] 123 A.3d 1124 (Pa. Commw. Ct. 2015) ("*DCIDA*").

[560] *See DCIDA*, 123 A.3d at 1133-35 (holding that the Code required EDCs to offer time-of-use rates directly to net-metering customer-generators to ensure they receive compensation for excess electricity at the full retail rate); *Hommrich*, 231 A.3d at 1037-40 (finding that the PUC's definitions of "customer-generator" and "utility" are unenforceable because they redefine eligibility standards for net metering established in Section 5 of the AEPS Act); Met-Ed/Penelec/Penn Power/ West Penn Reply Brief, pp. 5-6.

[561] *See* Sunrise Second Direct Testimony, pp. 10-14; Sunrise Rebuttal Testimony, pp. 12-13; Companies Reply Brief, p. 8.

customers by applying GRT to AEPS compliance costs recovered through default service rates.[562]

As the Companies explained, the wholesale default supply contract prices that form the basis of the retail charges under the Companies' PTC and HP Riders do not separately quantify the costs of meeting AEPS requirements associated with default supply, and those prices reflect losses for which the supplier is responsible. In addition, the Companies have the right to recover all default service costs on a full and current basis. However, performing default service calculations under the Companies' PTC and HP Riders without the gross-up for loss factors results in undercollection of current wholesale power contract costs. Those undercollections will ultimately be recovered from customers with interest in accordance with the Commission's regulations at 52 Pa. Code § 54.190(c).[563]

As the Companies argued, Bevec and Sunrise's contention that distributed generation reduces the loss factors used in the Companies' default service calculations rests on Mr. Hommrich's claim that line losses should be calculated in real-time at the substation level. However, Bevec and Sunrise did not offer any evidence to explain how EGSs would incorporate substation-based loss factors into their load forecasting or address how Mr. Hommrich's new line loss methodology routine would account for routine switching of distribution lines feeding into the Companies' substations.[564] To the contrary, Mr. Stein explained the Companies have shown that the loss factors currently utilized in the PTC and HP Riders are appropriate because the average levels of UFE on the Companies' system are within a reasonable range, when considering other factors that impact UFE. Ultimately, the amounts recovered through the Companies' PTC and HP Riders are equal to payments to suppliers at contract prices established in competitive, Commission-approved procurements.[565]

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[562] Sunrise Second Direct Testimony, p. 4; Companies Reply Brief, pp. 8-9.

[563] Met-Ed/Penelec/Penn Power/ West Penn Initial Brief , p.p. 17-21; Met-Ed/Penelec/Penn Power/ West Penn Reply Brief, p. 9.

[564] *See* Met-Ed/Penelec/Penn Power/West Penn St. 8R-Supplemental, p. 16; Met-Ed/Penelec/Penn Power/ West Penn Reply Brief, p. 9.

[565] *See* Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, p.p. 19-20; Met-Ed/Penelec/Penn Power/ West Penn Reply Brief, pp. 9-10.

The Companies' also explained that the PTC and HP Riders properly apply GRT to all default service costs, consistent with the Code's default service provisions incorporating AEPS Act compliance under Section 2807(e)(3).[566] Bevec and Sunrise argue that the Companies improperly rely upon the Commission's Policy Statement on Default Service, which expressly provides that the Companies' PTC should be designed to recover "applicable taxes" as part of the "related" costs of default service. Bevec and Sunrise argue this reliance is improper because the Policy Statement does not explicitly reference the GRT, is not binding, and the AEPS Act does not expressly address the collection of taxes associated with AEPS compliance costs. However, as Bevec and Sunrise concedes,[567] Section 2810 of the Code requires an EDC to pay tax on its gross receipts, which indisputably include revenues associated with the provision of default service. Under Section 2807(e) of the Code and the AEPS Act, EDCs are required to procure energy and AECs to meet AEPS Act requirements and recover the associated cost on a full and current basis. As the Companies conclude, there is simply no legal basis to exclude AEPS-related costs that EDCs incur as part of their statutory default service obligations from an EDC's default service revenues subject to GRT.[568]

The Companies further explained that, Section 69.1808 of the Policy Statement separately lists a variety of default service-related costs that are also subject to the GRT, including wholesale energy costs and administrative costs. There is no language in the Policy Statement to support Sunrise's assertion that the listing of AEPS costs in the exact same manner as other costs should somehow be interpreted to reflect a Commission intent to exclude AEPS costs from other default service costs for tax purposes.[569]

Based upon the record evidence and the arguments of the parties, the evidence supports a conclusion that the Companies are appropriately accounting for and recovering AEPS

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[566] Met-Ed/Penelec/Penn Power/ West Penn Initial Brief, p.p. 20-21; Met-Ed/Penelec/Penn Power/ West Penn Reply Brief, p. 10.

[567] See Sunrise Initial Brief, p. 10; Met-Ed/Penelec/Penn Power/ West Penn Reply Brief, p. 10.

[568] Met-Ed/Penelec/Penn Power/ West Penn Reply Brief, p. 10.

[569] Met-Ed/Penelec/Penn Power/ West Penn Reply Brief, pp. 10-11.

compliance costs through default service rates. Accordingly, Bevec and Sunrise's proposed changes to the PTC and HP Riders agreed to by the Joint Petitioners should be denied.

Recommendation

With regard to the contested issues, as to the relevance of the Companies' treatment of excess energy from customer-generators to this proceeding, this Decision agrees with the Companies position that their treatment of excess energy is unrelated to the Companies default service supply plans. The Companies established they will procure the AECs necessary to satisfy AEPS Act requirements associated with default service load, proposing to procure all the necessary Tier I, Non-Solar and Tier II AECs, and a portion of the necessary SPAECs, as part of the overall default service supply that will be provided by winning default service bidders. The Companies are also proposing to make some direct SPAEC purchases as part of a long-term solar procurement. In each case, the Companies propose to utilize a competitive process to procure the AECs consistent with obligations under the Code and the Commission's AEPS regulations.

Consistent with Section 5 of the AEPS Act and the Commission's net metering regulations, the Companies each have a Commission-approved net metering rider under which customer-generators are paid "full retail value" for their excess energy. Customer generators taking service from an EGS will receive compensation for excess energy from their EGS, not the Companies.

Further, the treatment of excess energy is not relevant to this proceeding because excess energy is not utilized to satisfy any default service supply obligations. Neither the Companies' existing plans, nor their proposed default service supply plans, use excess energy from net-metering customer generators to serve default service load. Instead, non-shopping load is served by winning bidders in the Companies' default service supply auctions. These wholesale suppliers are not billed for, nor do they sell, excess energy from customer-generators, and that excess energy from customer-generators is not sold to other retail customers. In

addition, the Companies do not use excess energy purchased from customer-generators to serve default service load.

The Companies must establish by a preponderance of the evidence that their default service plans are acceptable by presenting substantial evidence in the record. Here, based upon the record evidence, the Companies have established, by a preponderance of the evidence, that their default service plans are acceptable and that the Companies treatment of excess energy from net-metered customer generators, under the circumstances presented in this case, are appropriate and unrelated to how default service supply is procured or deployed to satisfy default service load.

Bevec and Sunrise contend the Companies, under their Default Service Plan, should be required to calculate excess energy produced by customer-generators as part of their supply since the energy is consumed by the customers. Bevec and Sunrise submit the Companies customers should not be required to pay the respective Companies for the energy produced by a customer-generator on a monthly basis while simultaneously having to pay cost recovery based upon monies paid by Joint Petitioners to customer-generators as part of the cost recovery in the PTC calculation.

When a party, like Intervenors, offers a proposal in addition to what is found in the Petition, that party bears the burden of proof for such a proposal. Despite Bevec's and Sunrise's arguments to the contrary, based upon the record evidence, Bevec and Sunrise did not establish by a preponderance of the evidence that the Companies treatment of excess energy from net-metered customer generators is not appropriate, contrary to existing law or that their proposals should be incorporated in the Companies DSP VI Programs.

As to Sunrise's assertions regarding the Companies' calculation of the Price-to-Compare with respect to costs for compliance with Pennsylvania's Alternative Energy Portfolio Standards Act[570] and the use of loss factors, this Decision recommends that this issue be decided

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[570] 73 P.S. §§ 1648.1 *et seq.*

in favor of the Companies, finding that the Companies default service supply plans are appropriately accounting for and recovering costs associated with Alternate Energy Portfolio Standard Act compliance.

Bevec and Sunrise argue that the Companies are improperly excluding certain AEPS Act compliance costs from their PTC and HP Riders, including indirect costs associated with Company personnel spending time processing interconnection and net metering applications. However, the Companies PTC and HP Riders are generally designed to recover Section 3 compliance costs, and the Companies expect default service suppliers to include all AEPS compliance costs, including the cost items listed in Section 3 of the AEPS Act and the Commission's regulations at 52 Pa. Code § 75.67, in their wholesale power prices, which are recovered through the Companies' PTC and HP Riders. The Companies' evidence established that the PTC and HP Riders appropriately exclude the costs of interconnecting distributed generation to the Companies' distribution systems.

Bevec and Sunrise argue such costs are appropriate to recover through the PTC and HP Riders, however the Companies appropriately handle interconnection matters in their capacity as distribution utilities, not default service providers. Each Company's electric service tariff therefore, according to the Companies, includes provisions under which a customer seeking interconnection must pay an application fee and additional costs for certain system improvements that may be required for interconnection.[571] Those costs are unrelated to default service and are properly not recovered as AEPS costs under default service rates.

Bevec and Sunrise also argued the Companies' use of loss factors to convert wholesale power contract costs to retail rates has led to overcharging customers for AEPS compliance costs. The Companies argued their loss factors are appropriate based on the actual difference between the aggregate zonal load (the amount of energy consumed by a Company's entire zone administered by PJM) and the retail load "grossed up" for losses based on the Company's load factors. The Companies established there is no windfall to the Companies as the amounts recovered based on these loss factors in the PTC and HP Riders are paid to suppliers

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[571] *Id.*

consistent with their contract prices established in competitive, Commission-approved procurements.

Bevec and Sunrise argue the Companies failed to account for distributed generation in their default service calculations and that the formulas employed in the Companies' PTC Riders and HP Riders are inappropriate because they gross up the current cost of default service supply for losses and apply GRT to AEPS compliance costs. However, the Companies' established their treatment of excess energy from net-metered customer-generators is unrelated to how default service supply is procured or deployed and that the Companies' AEPS Act obligations associated with default service supply are separate and distinct from the AEPS Act obligations related to excess energy.

Bevec and Sunrise also argued that, even though the Companies did not pay to acquire the excess energy, their customers are still billed for it as though they had, and these AEPS expenses are later calculated into the PTC, which means that the Joint Petitioners are then paying for the same energy twice. Bevec and Sunrise contend, in order to fully comply with the AEPS Act, the Companies, under their Default Service Plan, should be required to calculate excess energy produced by customer-generators as part of their supply since the energy is consumed by Joint Petitioners' customers. Bevec and Sunrise further argued that the Companies are overcharging customers by applying GRT to AEPS compliance costs recovered through default service rates.

The Companies established the wholesale default supply contract prices that form the basis of the retail charges under the Companies' PTC and HP Riders do not separately quantify the costs of meeting AEPS requirements associated with default supply, and those prices reflect losses for which the supplier is responsible. The Companies have the right to recover all default service costs on a full and current basis. However, performing default service calculations under the Companies' PTC and HP Riders without the gross-up for loss factors results in undercollection of current wholesale power contract costs. Those undercollections will ultimately be recovered from customers with interest in accordance with the Commission's regulations at 52 Pa. Code § 54.190(c).

In addition, under Section 2807(e) of the Code and the AEPS Act, EDCs are required to procure energy and AECs to meet AEPS Act requirements and recover the associated cost on a full and current basis. No legal basis was shown to exclude AEPS-related costs that EDCs incur as part of their statutory default service obligations from an EDC's default service revenues subject to GRT.

In this proceeding, the Companies established by a preponderance of the evidence that their default service plans including the scope of costs recovered in the PTC and HP riders are appropriate and that the Companies properly incorporate loss factors and gross receipt taxes in default service rate calculations.

Based upon the record evidence, Bevec and Sunrise did not establish by a preponderance of the evidence that their proposal regarding the calculation of the PTC with respect to the AEPS Act and request that the Commission conclude that AEPS Act expenses should not be grossed up for line losses or be subject to the gross receipts tax, is appropriate or that their proposals should be incorporated in the Companies DSP VI Programs. Therefore, I recommend that the contested issues presented by Bevec and Sunrise be denied.

VII. CONCLUSIONS OF LAW

Jurisdiction and Burden of Proof

1. The Commission has jurisdiction over the parties and the subject matter of this dispute. 66 Pa.C.S. §§ 2801 *et seq.*

2. The party seeking affirmative relief from the Commission bears the burden of proof. 66 Pa.C.S. § 332.

3. Any party that offers a proposal that was not included in the Companies' original filing bears the burden of proof for such proposal. *Brockway Glass Co. v. Pa. Pub. Util. Comm'n*, 437 A.2d 1067 (Pa. Cmwlth. 1981).

4. Where competing proposals are introduced, the sponsoring party must show that the alternative proposal will better service customers. *Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Programs*, Docket No. P-2009-2093053 and P-2009-2093054 at 19 (Opinion and Order entered November 6, 2009).

5. The requirements of a default service plan include that the default service provider follow a Commission-approved competitive procurement plan, that the competitive procurement plan include auctions, requests for proposal, and/or bilateral agreements, that the plan include a prudent mix of spot market purchases, short-term contracts, and long-term purchase contracts designed to ensure adequate and reliable service at the least cost to customers over time, and shall offer a time-of-use program for customers who have smart meter technology. 66 Pa. Code §§ 2707(e), 2708.

6. A party's burden of proof is met by establishing a preponderance of the evidence, which requires proof by a greater weight of the evidence. *See Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

7. When a utility has made a proposal and presented evidence sufficient to establish a prima facie case, the burden shifts to an opposing party to present "some evidence" to support an alternative approach. *NRG Energy, Inc. v. Pa. Pub. Util. Comm'n*, 2020 WL 2843488 (June 2, 2020) at *10.

Standards Applicable To Default Service

A. Default Service Supply Procurement and Implementation Plan

8. As a Pennsylvania EDC, each Company serves as default service provider to retail electric customers within its service territory in accordance with its obligations under Section 2807(e) of the Code (66 Pa.C.S. § 2807(e)).

9. Under Sections 2807(e) (3.1)-(3.2) and (3.4) of the Competition Act, 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." 66 Pa.C.S. § 2807(e)(3.7).

10. The Companies' Programs, as modified by the Settlement, contain all the elements required by the Commission's default service regulations (52 Pa. Code §§ 54.181-54.190) and its Policy Statement on Default Service (52 Pa. Code §§ 69.1801-69.1817), including a procurement plan, an implementation plan, contingency plans, a default service rate design plan, and associated tariff pages.

11. The Companies' Programs, as modified by the Settlement, comply with 66 Pa.C.S. § 2807(e)(3.7) in that: (1) they include prudent steps necessary to negotiate favorable generation supply contracts; (2) they include prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis; and (3) neither the Companies nor their affiliated interests have withheld from the market any generation supply in a manner that violates Federal law.

12. The Companies' Programs, as modified by the Settlement, comply with 66 Pa.C.S. § 2807(e) (3.7) in that they include a prudent mix of default service supply contracts designed to ensure adequate and reliable service at the least cost to customers over time.

B. Compliance with Section 3 of the AEPS Act

13. Section 3 of the AEPS Act requires default service providers like the Companies to obtain specified percentages of electricity sold to retail customers from alternative energy sources as measured by AECs and defined by the AEPS Act. The AEPS Act also includes a "set-aside" that requires some of those AECs to be derived from solar photovoltaic facilities. 73 P.S. § 1648.3(b)(2).

14. Under 71 P.S. § 714, the Companies must meet their future solar AEPS requirements using SPAECs generated from solar energy facilities in the Commonwealth of Pennsylvania.

15. The Companies' DSP VI Programs set forth in the Settlement utilize a competitive process to procure the AECs necessary to satisfy Section 3 AEPS obligations associated with default service load consistent with the Public Utility Code. 66 Pa.C.S. § 2807(e)(3.5); 71 P.S. § 714; 52 Pa. Code § 75.67(b).

C. Other AEPS Obligations

16. Section 5 of the AEPS Act, 73 P.S. § 1648.5, establishes separate requirements related to net-metered customer-generators. In addition to requiring the Commission to develop technical and net-metering interconnection rules, Section 5 mandates that excess energy from net-metered customer-generators "receive full retail value for all energy produced on an annual basis." 73 P.S. § 1648.5.

17. The Commission's regulations require EDCs to file a tariff that provides for net metering as well as a tariff providing net metering protocols that enables EGSs to offer net metering to customer-generators taking service from EGSs. Those regulations further detail how net metered customer-generators should be credited for excess kWhs. 52 Pa. Code § 75.13(c)-(f).

D. Rate Design and Cost Recovery

18. The Companies' proposed rate design, including the PTC Riders, HP Riders, DSS Riders, SPVRC Riders and TOU Riders, are consistent with the applicable provisions of the Public Utility Code. 66 Pa.C.S. §§ 2804(3) and 2807(e)(7); 52 Pa. Code §§ 54.185(e)(3) and 54.187; 52 Pa. Code §§ 69.1808-69.1810.

19. A default service provider may recover certain enumerated AEPS Act compliance costs from default service customers. 73 P.S. §§ 1648.1 *et seq*.

20. A default service provider may recover certain enumerated AEPS Act compliance costs from default service customers, including the costs of electricity generated by an alternative energy system, purchased by a default service provider, and delivered to default service customers for purposes of compliance with § 75.61 (relating to EDC and EGS obligations). 52 Pa. Code § 75.67(a).

21. The Companies are entitled to full and current recovery of all default service costs. 66 Pa.C.S. § 2807(e)(3.9); 52 Pa. Code § 54.187.

22. The electric generation service the Companies are required to purchase and provide in their role as default service providers includes both energy and AECs. 66 Pa. Code § 2807(e)(3.5).

23. Consideration of loss factors in default service procurement and rate design plans requires the provision of loss factors to wholesale default service suppliers under default service implementation plans. 52 Pa. Code § 54.186(c)(1)(e).

24. The Companies must pay GRT on all sales of energy, including the costs of AEPS compliance and applicable taxes. 72 P.S. § 8101(b), (b)(1); 52 Pa. Code § 69.1808(a)(5).

25. EDCs "shall offer" a TOU rate option to all default service customers with a smart meter. 66 Pa.C.S. § 2807(e)(3.1-3.2), (3.4), and (3.7), (f)(5).

26. An EDC's TOU program should be optional for default service customers. 66 Pa.C.S. § 2807(f)(5); *see* January 2020 Secretarial Letter, p. 6.

27. 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". *See Pa. Pub. Util. Comm'n v. PPL Elec. Utils. Corp.*, Docket No. R-2011-2264771 (Opinion and Order entered Aug. 30, 2012), pp. 22-23.

E. Customer Referral Program

28. The 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." *February 2019 Order*, pp. 38-42; *see also September 2018 Order*, pp. 31-32.

F. Legal Standards Regarding Settlements

29. In order to approve a settlement, the Commission must determine that the proposed terms and conditions, viewed in the context of the settlement as a whole, are in the public interest. *See Pa. Pub. Util. Comm'n v. CS Water & Sewer Assocs.*, 74 Pa. P.U.C. 767, 771 (1991); *Pa. Pub. Util. Comm'n v. Phila. Elec. Co.*, 60 Pa. P.U.C. 1, 22 (1985).

30. The Commission encourages parties to resolve contested proceedings by settlement. 52 Pa. Code §§ 5.231, 69.401.

31. "The results achieved from a negotiated settlement or stipulation, or both, in which the interested parties have had an opportunity to participate *are often preferable to those achieved at the conclusion of a fully litigated proceeding*" (emphasis added). 52 Pa. Code §§ 5.231, 69.401.

VIII. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Partial Settlement filed on April 20, 2022 is granted and the Settlement is approved without modification.

2. That the modifications to the Companies' PTC and HP Riders proposed by John Bevec and Sunrise Energy LLC are denied.

3. That the claims regarding the Companies' treatment of excess energy from net-metered customer-generators asserted by John Bevec and Sunrise Energy LLC are dismissed.

4. CRA is approved to continue as the independent third-party evaluator for the Companies' default service auctions.

5. Brattle is approved as the independent third-party evaluator for the Companies' long-term solar procurement.

6. The Companies' request for a waiver of the Commission's regulations at 52 Pa. Code § and 54.182 and 54.187 is granted to the extent that is necessary to permit the Companies' to: (1) continue to procure generation for three procurement classes; (2) implement semi-annual rate adjustments and reconciliation for commercial customers under the PTC Rider and semi-annual reconciliation of HP Rider over/under collections for the industrial class; and (3) continue to recover the NMB charges through the non-bypassable DSS Riders rather than the PTC Riders.

7. The Companies' currently effective Customer Referral Programs, including the associated cost recovery mechanisms approved in the Companies' prior default service proceedings, is permitted to continue, subject to the applicable provisions set forth in the Settlement.

8. The proposed default service programs for the period June 1, 2023 through May 31, 2027 is approved, except as set forth in the ordering paragraphs above.

9. The Companies shall file tariff supplements as set forth in the Joint Petition.

10. This proceeding filed at Docket Numbers P-2021-3030012, P-2021-3030013, P-2021-3030014 and P-2021-3030021 shall be marked closed.

Date: June 29, 2022

/s/
Jeffrey A. Watson
Administrative Law Judge