

**ECKERT
SEAMANS**
ATTORNEYS AT LAW

Eckert Seamans Cherin & Mellott, LLC
213 Market Street
8th Floor
Harrisburg, PA 17101

TEL 717 237 6000
FAX 717 237 6019
www.eckertseamans.com

Deanne M. O'Dell
717.255.3744
dodell@eckertseamans.com

May 2, 2018

Via Electronic Filing

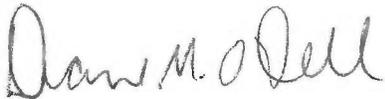
Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company,
Pennsylvania Power Company and West Penn Power Company for Approval of Their
Default Service Program (DSP-V) – Docket Nos. P-2017-2637855; P-2017-2637857;
P-2017-2637858; and P-2017-2637866

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Main Brief of the Retail Energy Supply Association
("RESA") with regard to the above-referenced matter. Copies to be served in accordance with
the attached Certificate of Service.

Sincerely,



Deanne M. O'Dell

DMO/lww
Enclosure

cc: Hon. Mary Long w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of RESA's Main Brief upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email and/or First Class Mail

Tori Giesler, Esq.
Lauren Lepkoski, Esq.
Teresa K. Harrold
FirstEnergy Service Company
2800 Pottsville Pike
PO Box 16001
Reading, PA 19612-6001
tgiesler@firstenergycorp.com
llepkoski@firstenergycorp.com
tharrold@firstenergycorp.com

Allison C. Kaster, Esq.
Gina L. Miller, Esq.
PA Public Utility Commission
Bureau of Investigation & Enforcement
PO Box 3265
Harrisburg, PA 17101-3265
akaster@pa.gov
ginmiller@pa.gov

Aron J. Beatty, Esq.
Hayley E. Dunn, Esq.
Christy M. Appleby, Esq.
Office of Consumer Advocate
555 Walnut St., 5th Floor, Forum Place
Harrisburg, PA 17101-1923
ABeatty@paoca.org
hdunn@paoca.org
cappleby@paoca.org

Daniel Asmus, Esq.
Office of Small Business Advocate
300 N. Second Street, Suite 202
Harrisburg, PA 17101
dasmus@pa.gov

Patrick Cicero, Esq.
Kadeem G. Moris, Esq.
Elizabeth R. Marx, Esq.
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@palegalaid.net

Susan E. Bruce, Esq.
Charis Mincavage, Esq.
Vasiliki Karandrikas, Esq.
Alessandra L. Hylander, Esq.
McNees Wallace & Nurick LLC
1 00 Pine Street
P.O. Box 1166
Harrisburg, P A 17108
sbruce@mwn.com
cmincavage@mwn.com
vkandrikas@mwn.com
ahylander@mcneeslaw.com

Thomas J. Sniscak, Esq.
William E. Lehman, Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
tjsniscak@hmslegal.com
welehman@hmslegal.com

Holly Rachel Smith, Esq.
Exelon Business Services Corp.
701 9th Street, NW Mailstop EP2205
Washington, DC 20068
Holly.Smith@exeloncorp.com

Todd S. Stewart, Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
tsstewart@hmslegal.com

Kenneth C Springirth
4720 Cliff Drive
Erie, PA 16511

Charles E. Thomas III, Esq.
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101
Cet3@tntlawfirm.com

Carl R. Shultz, Esq.
Eckert Seamans Cherin & Mellott
213 Market St., 8th Floor
Harrisburg, PA 17101
cshultz@eckertseamans.com

Via Hand Delivery and/ Email

Karen O. Moury, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
kmoury@eckertseamans.com

Dated: May 2, 2018



Deanne M. O'Dell, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MAIN BRIEF OF
RETAIL ENERGY SUPPLY ASSOCIATION**

Deanne M. O'Dell, Esquire
Attorney ID #81064
Sarah C. Stoner, Esquire
Attorney ID #313793
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
(717) 237-6000 (phone)
(717) 237-6019 (fax)

Date: May 2, 2018

Attorneys for Retail Energy Supply Association

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66 Pa.C.S. § 28023
66 Pa.C.S. § 28043
66 Pa. C.S. § 28072

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52 Pa.Code. § 54.87

I. INTRODUCTION

On December 4, 2017, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, “FirstEnergy” or “Companies”) filed for approval of their Default Service Programs for the period of June 1, 2019 through May 31, 2023. The Retail Energy Supply Association (“RESA”) is a trade association of electric generation suppliers (“EGSs”), many of whom are licensed in Pennsylvania and make competitive supply offerings available to consumers in the service territories of the Companies.¹ As such, this default service proceeding presents many issues of significant importance to RESA members and RESA has submitted various pieces of supporting testimony and exhibits in support of its preferred outcomes. While some of RESA’s concerns have been reasonably addressed through the various stipulations entered into the record, many issues are being briefed and presented to the Administrative Law Judge (“ALJ”) for issuance of a recommended decision.

A. SUMMARY OF RESA’S POSITIONS

A high-level summary RESA’s views on each of the issues that have not been resolved through the various stipulations is as follows:

- **POR Clawback issues:** The Companies should be directed (consistent with their agreement to do so) to develop an EGS-specific customer arrears report with unpaid aged EGS account balances on a quarterly basis beginning no later than October 22, 2018 reflecting EGS arrears for the third quarter 2018.
- **Bypassable Retail Rate Mechanism issues:** (1) The Companies’ proposed bypassable retail rate mechanism should be adopted as a means of levelling

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of twenty 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 service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

the playing field by partially mitigating the competitive advantage enjoyed by default service but not as a way to influence a customer's shopping decision. (2) The Companies' proposed calculation should be modified by dividing the \$30 acquisition costs over 12 months of residential consumption instead of 24 months. (3) Consideration should be given to allocating a portion of the revenues from the bypassable retail rate mechanism to increase funding for low income customer assistance programs.

- Customer Referral Program issues. The Companies CRP should be continued but: (1) FirstEnergy should be directed to immediately revert to the CRP protocols and scripts, including the third-party vendor scripts, that were in place prior to the DSP IV settlement; (2) FirstEnergy should be directed to convene a working group to investigate the causes of decline in enrollments in the CRP and discuss scripting changes that would not effectively discourage customers from participating in the Program; and, (3) FirstEnergy should be directed to allow EGSs to participate by utilizing bill-ready billing.
- Customer Assistance Program ("CAP") shopping: No restrictions should be placed on the ability of CAP participants to shop for an EGS.
- Network Integration Transmission Service ("NITS"): The Companies should be directed to assume the cost responsibility for residential customers through a non-bypassable rider similar to how the Companies are already assuming the cost responsibility for other Non-Market Based charges.

Each of these issues will be more fully discussed in the sections that follow but all recommendations are intended to modify the proposed default service plan to ensure that it is consistent with the law.

B. LEGAL STANDARDS

The Electricity Generation Customer Choice and Competition Act ("Competition Act") addresses the requirements that FirstEnergy, as the default service provider, must meet.² The Competition Act does not require a specific rate design methodology for non-shopping customers in the post transition period. Instead, it requires that the default service provider acquire electric energy through a "prudent mix"³ of resources that must be

² See 66 Pa. C.S. § 2807(e).

³ 66 Pa. C.S. § 2807(e)(3.2); "In interpreting the term 'prudent mix,' the PUC must exercise some balance and discretion under the circumstances of the case in order for the 'mix' in question to be

designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to customers over time; and, (iii) to achieve these results through competitive processes which includes auctions, requests for proposals and/or bilateral agreements.⁴

The “overarching goal of the Choice Act is competition through deregulation of the energy supply industry, leading to reduced electricity costs for consumers.”⁵ To achieve this, the Competition Act requires the Commission to “allow customers to choose among electric generation suppliers in a competitive generation market through direct access.”⁶ The Competition Act recognizes that greater competition in the electricity generation market benefits all classes of customers, including those of low income.⁷ In addition, the Competition Act requires the Commission to ensure that universal service plans are appropriately funded, available, and cost-effective.⁸

The Commission has the authority to “bend” competition to further other important aspects of the Competition Act but, can only do so upon a showing of substantial reasons why there are no reasonable alternatives to the proposed restriction on competition.⁹ Then, even if restrictions on competition are deemed the only way to address the concern, the Commission may rely on substantial evidence showing why such restrictions should be

‘prudent’.” *Popowsky v. Pennsylvania Pub. Util. Comm’n*, 71 A.3d 1112, 1117 (Pa. Cmwlth. 2013)(Petition for Allowance of Appeal Denied December 31, 2013, Docket No. 641 MAL 2013).

⁴ 66 Pa. C.S. § 2807e)(3.1).

⁵ *Coalition for Affordable Util. Servs. and Energy Efficiency in Pennsylvania, et al. v. Pa. Pub. Util. Comm’n*, 120 A.3d at 1101 (Pa. Commw. Ct. 2015), appeal denied, 2016 WL 1383864 (Pa. Apr. 5, 2016). (“*Commonwealth Court CAP Shopping Order*”); 66 Pa.C.S. § 2802(13).

⁶ 66 Pa.C.S. § 2804(2); See also *Popowsky*, 71 A.3d at 1116.

⁷ 66 Pa. C.S. § 2802(7); *Commonwealth Court CAP Shopping Order* at 1106.

⁸ 66 Pa. C.S. § 2804(9).

⁹ *Commonwealth Court CAP Shopping Order* at 1104, 1106.

rejected.¹⁰ This evidence can include a showing that the restrictions would adversely affect available choices for CAP participants.¹¹

II. PROCEDURAL HISTORY

RESA's Petition to Intervene was granted pursuant to Prehearing Order dated January 19, 2018. Consistent with the litigation schedule established for this proceeding, the following testimony and exhibits of Richard J. Hudson, Jr. on behalf of RESA were admitted into the record on April 10, 2018:

- Direct, St. No. 1; dated February 22, 2018
 - Exhibits included with Direct Testimony
 - RJH-1 List of Testimony
 - RJH-2 FE DSP IV Approved Procurement Plan
 - RJH-3 Excerpts RESA Testimony re: POR Clawback from DSP IV
 - RJH-4 FirstEnergy Discovery Response to RESA-I-5
 - RJH-5 FirstEnergy Discovery Response to OSBA-I-11
 - RJH-6 FirstEnergy Discovery Response to RESA-I-10
 - RJH-7 Sample Met-Ed Bill Inserts
 - RJH-8 FirstEnergy Discovery Response to RESA-I-16
 - RJH-9 Met-Ed Bill Insert Promoting Tree Care Services
 - RJH-10 Met-Ed Bill Insert Promoting SmartMart
 - RJH-11 FERC Docket No. EL05-121-009 Settlement dated June 15, 2016

- Rebuttal, St. No. 1-R; corrected version dated April 2, 2018
 - Exhibits included with Rebuttal Testimony
 - RJH-12 RESA Discovery Response to FirstEnergy I-1
 - RJH-13 SOP Savings Calculation for a Met-Ed Customer Enrolling 6/2016
 - RJH-14 FirstEnergy Discovery Responses to RESA, Set I, Nos. 12, 13, 15

- Surrebuttal, St. No. 1-SR; dated April 4, 2018

In addition to its testimony and exhibits, RESA was also a signatory on the following Stipulations entered into the record on April 10, 2018:

¹⁰ *Commonwealth Court CAP Shopping Order* at 1107-1108.

¹¹ *Commonwealth Court CAP Shopping Order* at 1107-1108.

- FE, OSBA, OCA, Industrials & RESA; addressing Non-Commodity Products, FERC 494 Settlement, Net Metering, Time of Use (“Joint Stipulation Regarding Various Issues”)
- FE, BIE, RESA & Respond Power; addressing POR Clawback (“Joint Stipulation Regarding POR Clawback”)
- RESA and CAUSE-PA; addressing Product Offer Bundling Energy Management Devices relied upon by RESA (“Joint Stipulation RESA and CAUSE-PA”)
- Calpine and RESA; addressing NMB Charges (“Joint Stipulation Calpine & RESA”)

III. DEFAULT SERVICE PLAN PORTFOLIO AND TERM

A. RESIDENTIAL PORTFOLIO

While RESA continues to remain concerned that the Companies’ reliance on contracts that are not in sync with contemporaneous market prices could result in future default service prices becoming divorced from (either significantly above or significantly below) EGS offer prices, RESA is not advancing an alternative procurement plan here.¹²

B. COMMERCIAL PORTFOLIO

RESA’s view of the proposed commercial portfolio is consistent with its view of the residential portfolio as explained in the previous section but RESA is not advancing an alternative procurement plan.¹³

C. INDUSTRIAL PORTFOLIO

RESA takes no position on this issue.

D. PROCUREMENT CLASSES

Consistent with the settlement approved by the Commission for its most recent default service plan, FirstEnergy plans to offer hourly pricing service (“HPS”) to commercial customers at or above 100-kW beginning June 1, 2021.¹⁴ RESA does not

¹² RESA St. No. 1 at 6-7.

¹³ RESA St. 1 at 6-7.

¹⁴ *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs,*

oppose the Company's proposal and recommends that the Companies use the method already existing in their tariff to apply the HPS threshold, i.e. a customer whose billing demand is greater than or equal to 100-kW in two consecutive months during the 12 month review period would be classified as HPS.¹⁵

E. DEFAULT SERVICE PLAN TERM

FirstEnergy has proposed a four-year plan term for DSP V and RESA does not oppose this plan duration.

IV. PURCHASE OF RECEIVABLES CLAWBACK PROVISION

A. THE COMPANIES' PROPOSAL

The Companies propose to continue the existing Purchase of Receivables ("POR") clawback mechanism which was approved by the Commission as a two-year pilot in the Companies' most recent default service proceeding. The POR clawback charge is triggered when two conditions are met: (i) the EGS' actual write-off percentage exceeds 200% of the average EGS write off percentage, and (ii) the EGS' average price charged exceeds 150% of the relevant EDC's price to compare over the defined twelve month period. When these conditions are met, the Companies assesses a financial penalty against the EGS. This financial penalty is calculated as the difference between the EGS' actual write-off amount and 200 percent of the average EGS write-off amount.¹⁶

Docket No. P-2015-2511333, P-2015-2511351, P-2015-2511355, P-2015-2511356, Joint Petition for Settlement dated April 1, 2016 at Section 2(A)(2)(d).

¹⁵ RESA St No. 1 at 12.

¹⁶ Met-Ed Electric Pa P.U.C. No. S-1 (Supp. 7) at First Revised Page No. 40.

B. RESA'S RECOMMENDATIONS

RESA does not oppose continuing the clawback mechanism with the modifications set forth in the Joint Stipulation Regarding POR Clawback. With the Companies agreement to develop an EGS-specific customer arrears report with unpaid aged EGS account balances on a quarterly basis beginning no later than October 22, 2018 reflecting EGS arrears for the third quarter 2018, EGSs can undertake a range of proactive measures to address customer non-payment if they are provided timely data about the customer's payment status.¹⁷

Concerns about the Companies providing EGSs payment information about their customers are unfounded. These customers continue to remain the customers of the EGSs and the Commission has already a customer's privacy is not compromised when a utility shares non-payment information with the non-billing party regarding the non-billing party's charges.¹⁸ Since they are the EGS's customers, EGSs are required – by both Commission regulations and other laws – to safeguard customer data.¹⁹ Giving EGSs important information about their customers is reasonable and, as is the case here, takes on even greater importance when that information is basis upon which the EGSs may be assessed a future financial penalty.

¹⁷ Joint Stipulation Regarding POR Clawback at ¶ 3.

¹⁸ See Secretarial Letter dated February 5, 1999 re: EDI – Providing Customer payment Information Docket No. M-00960890F.0015 (“ . . . the Commission believes that there is significant value in having the billing entity provide information to non-billing parties of a failure of a customer to make any payment. . . the Commission believes that the receipt of this data is just as important for a non-billing party who is being made whole by the billing party . . . provided, however, that billing parties share non-payment information relating only to the non-billing entity's charges, the Commission is satisfied that the customer's privacy would not be compromised.”).

¹⁹ 52 Pa.Code. § 54.8.

V. BYPASSABLE RETAIL MARKET ENHANCEMENT RATE MECHANISM

A. THE COMPANIES' PROPOSAL

The Companies are proposing a new retail rate mechanism that will be included as part of the bypassable price to compare for residential customers. The amount of the rate mechanism, which will be added to the residential price to compare, is derived from the charge that the Companies' asses EGSs for each customer that the EGS acquires through the standard offer referral program. The amount of this charge is \$30. This \$30 is divided by average residential kWh consumption over a 24 month period to derive the per kWh amount to be added to the price to compare, which calculates to \$0.00144.²⁰ The Companies propose to retain 5 percent of the revenue as an administrative fee. The remaining 95 percent will be refunded to all residential distribution customers.²¹ The Companies view the rate mechanism as a way to incent residential retail shopping.

B. RESA SUPPORTS THE COMPANIES' PROPOSAL FOR DIFFERENT REASONS AND RECOMMENDS THAT IT BE MODIFIED

RESA supports the Companies' proposal as a means of appropriately allocating costs to default service but does not support the mechanism as a way to influence a customer's shopping decision.²² Consistent with the Companies' proposal, determining the amount to be added to the price to compare ("PTC") by deriving a proxy value for (at least) avoided customer acquisition costs that the EDCs avoid (but EGSs must incur) is a reasonable. However, RESA recommends that the Companies' proposed calculation be modified by dividing the \$30 acquisition costs over 12 months of residential consumption instead of 24

²⁰ FE Exhibit KLB-31.

²¹ Companies St. No. 1 at 25.

²² RESA St. No. 1 at 23; RESA St. No. 1-R at 8.

months.²³ While RESA does not oppose the Companies' proposal to retain 5 percent of the generated revenue as an administrative fee, a portion of the revenues from the bypassable retail rate mechanism could also be used to increase funding for low income customer assistance programs.²⁴

1. The Retail Rate Mechanism Partially Mitigates The Anti-Competitive Advantage Enjoyed By The Default Service Product

As explained by RESA Witness Hudson, default service enjoys anti-competitive advantages over EGS provided service due to: (i) a failure to fully unbundle default service related costs from distribution rates and other non-bypassable tariff charges; and, (ii) incumbent-provider advantages given the EDC's placement as the "automatic" default service option.²⁵ Full and complete cost unbundling has been elusive given the opposing policy positions about how to allocate the costs of utility resources and assets used to provide default service.²⁶ In light of the unresolved nature of unbundling issues, the proposed retail rate mechanism is a reasonable way to partially address the second set of EDC advantages by recognizing that the utilities' price to compare does not include customer acquisition costs, which are real and legitimate costs that EGSs must reflect in their offers. As such, the purpose of the retail rate mechanism is not to artificially incentivize customer shopping, but rather to correct for market inequities occurring under

²³ RESA St. No. 1 at 23-26.

²⁴ RESA St. No. 1 at 26.

²⁵ RESA St. No. 1 at 23.

²⁶ RESA St. No. 1 at 25. As explained by RESA Witness Hudson, in a scenario where even one customer remains on default service, the utility will still need to use its resources and assets to provide that default service leaving unresolved the difficult question about how such costs should be allocated. RESA's position is that they should be split between default service and distribution rates while the utilities argue that such costs should remain in distribution rates (or other non-bypassable charges) so as not to create the risk of stranded costs.

today's market design.²⁷ Correcting for an unfair competitive advantage accruing to the benefit of the EDC's default service is a sound policy regardless of the level of customer shopping.²⁸

Further, the retail rate mechanism is not a penalty for not shopping. Rather, it is an administrative mechanism to correct for the unnatural competitive advantages associated with default service. Essentially, the current market design results in the EDC pricing the quasi-competitive default service below true competitive market levels. Because these costs advantages are supported by assets, resources and services that are paid for through monopoly distribution rates, it is EGS customers who are currently being penalized by shopping and it is EGS customers who are currently being forced to subsidize default service. The retail rate mechanism partially corrects for this market inequity.²⁹

Concerns that the retail rate mechanism will drive up the prices offered by EGSs are unfounded. EGSs face competition not only from the default service product but also from each other. An EGS that attempts to increase its offer prices by the amount of the retail rate mechanism would be undercut by a competing EGS offering its service at a lower price.

Additionally, customer shopping decisions are influenced by a number of factors beyond a simple comparison of the EGS price to the price to compare. Some customers will choose to shop to obtain additional price certainty from a fixed price offer. Others will choose higher renewable energy content. Others will be motivated by loyalty programs or other value-added benefits. Price competition, product differentiation and individual

²⁷ In fact, thinking about the retail rate mechanism in these terms implies that it is a purely artificial construct to push customers onto EGS service. RESA strongly disagrees with this premise. RESA St. No. 1-SR at 3.

²⁸ RESA St. No. 1-SR at 4-5.

²⁹ RESA St. No. 1-R at 9.

consumer value drivers will all influence the market clearing price for the range of products and services offered by EGSs.³⁰ Moreover, if true that an increase to the PTC could drive up the prices offered by EGSs, this would mean that the EDC can effectively set the clearing price at which its competitors (i.e., EGSs) price their services. Such ability, by definition means that the EDC default service has substantial market power (or even monopoly power) creating the risk of anticompetitive market outcomes and reducing consumer welfare which would require further investigation by the Commission about the competitiveness of the retail market and remedies that should be imposed to mitigate the dominant position of the EDC's default service.³¹

2. RESA Proposes Modifying The Companies' Calculation To Determine The Amount To Be Added To The PTC

As proposed by the Companies, the retail rate mechanism approximates an amount that is "saved" by the Companies but incurred by the EGSs for customer acquisition. The Companies propose to calculate the charge by dividing \$30 over 24 months of residential consumption. The \$30 is derived from the fee that EGSs pay for each enrollment through the Companies' CRP. Utilizing the \$30 per customer fee is a reasonable way to approximate some of the costs EGSs incur for acquiring customers because: (1) it was explicitly approved by the Commission for the standard offer program; and, (2) EGSs have demonstrated a willingness to incur this fee by agreeing to participate in the program. Therefore, it is reasonable to conclude that it is in line with or below the range of customer

³⁰ RESA St. No. 1-R at 10-11.

³¹ RESA St. No. 1-R at 11.

acquisition costs that EGSs incur through other marketing channels. Otherwise EGSs would not be willing to pay the fee.³²

RESA does, however, recommend that the Companies' proposal be modified to divide \$30 over 12 months of consumption since the contract term under the CRP is 12 months (and not 24 months). With this modification, the Companies' proposed retail rate mechanism would increase to \$0.00288 per kWh.³³ This increase is appropriate for a number of reasons.

First, as explained by RESA Witness Hudson there are numerous other costs (beyond customer acquisition) incurred by EGSs to make a retail electric product available in the market:

- Call center infrastructure and employees to maintain appropriate customer service;
- Outside and inside legal personnel to comply with the regulatory rules and requirements;
- IT employees;
- office space for all of those employees;
- administrative and human resources staff to support those employees;
- office supplies;
- IT infrastructure;
- accounting and auditing services;
- printing and postage to communicate with customers;
- working capital (e.g. the cost of money) to purchase electric supply for customers in advance and receive payment from those customers at a later date;
- Commission annual fee and other applicable revenue-based taxes.³⁴

³² RESA St. No. 1-R at 7-8.

³³ RESA St. No. 1 at 23-24.

³⁴ RESA St. No. 1 at 24-25.

The Companies' proposal does not factor into its calculation any of these additional costs incurred by EGSs focusing instead on a proxy for customer acquisition costs which, as explained by RESA Witness Hudson, likely significantly *under*-estimates the range of EGS customer acquisition costs for the residential segment.³⁵ Even if an EGS were to rely exclusively on papowerswitch.com, it must invest in IT systems, web-hosting infrastructure and website design, and must employ staff to post and maintain offers on the site. It is not reasonable to infer that papowerswitch.com, or any other marketing channel, is a cost-free acquisition method.³⁶

Second, while EDCs providing default service are not immune from costs, EDCs – unlike EGSs – can seek cost recovery from all ratepayers through distribution rates (or other non-bypassable mechanisms) bypassing the need to incorporate them into the PTC. For example, the Companies do not allocate costs to the PTC for legal or regulatory costs incurred through this proceeding, metering and related expenses, or billing and IT system costs.³⁷ Because of the ability to seek full cost recovery from all ratepayers, the PTC need not reflect these costs resulting in default service that is routinely priced below levels that would occur in a natural competitive environment.³⁸ The retail rate mechanism is a market design feature to correct for this fundamental inequity and is consistent with numerous examples of policies enacted by the Commission intended to create a fair and level playing field.³⁹

³⁵ RESA St. No. 1-R at 7-8.

³⁶ RESA St. No. 1-R at 8.

³⁷ See Exhibit RJH-6, FirstEnergy Discovery Response to RESA-I-10.

³⁸ RESA St. No. 1-SR at 3-4.

³⁹ For example, the implementation of the Purchase of Receivables programs, policies requiring EDCs to make customer data available to EGSs. RESA St. No. 1-SR at 3-4.

Third, in addition to the cost advantages enjoyed by default service because the costs of many functions, assets and resources used to support the provision of default service are not properly allocated to the price to compare, default service enjoys many competitive advantages over competitively priced EGSs due to the very nature of default service as the automatic “service of first resort” under Pennsylvania's retail market design. Default service enjoys branding and other perceptual advantages because of the monopoly utility's long-standing relationship with the customer. Default service enjoys advantages due to the status quo bias effect.⁴⁰ The impact of these advantages are clear given that the EDC's default service has a dominant position with market share ranging from 68 to 74 percent of the residential market.⁴¹ The retail rate mechanism is a way, albeit an imperfect one, to recognize and account for some of these advantages and level the playing field between EGSs and default service.

3. Consideration Should Also Be Given To Modifying The Distribution of the Revenues Collected

Although RESA does not oppose the Companies' original proposal to retain 5% of the revenue to recover administrative costs, the Commission could consider allocating a portion of the revenues from the retail rate mechanism for low-income customer assistance programs. This alternative has the benefit of: (1) alleviating concerns expressed by other parties that the 5% level may not bear any relationship to actual administrative costs; and, (2) providing significant benefit for low-income customers. The table below illustrates the potential annual revenue that could be available for such funding:⁴²

⁴⁰ RESA St. No. 1-R at 8-9.

⁴¹ RESA St. No. 1-SR at 2.

⁴² RESA St. No. 1-R at 26.

Companies' Proposal Retail Rate Mechanism: \$0.00144/kWh Mult. by Default Service Annual kWh: 13,166,402,702	Total Collected: \$18,959,619 10% for assistance programs: \$1,893,901
RESA's Proposal Retail Rate Mechanism: \$0.00288/kWh Mult. by Default Service Annual kWh: 13,166,402,702	Total Collected: \$37,878,028 10% for assistance programs: \$3,787,803
Annual Default Service kWh based on most recent residential customer counts from www.papowerswitch.com multiplied by the average annual residential consumption value of 10,428 as disclosed in KLB-31.	

In real terms, the \$3.7 million that could be utilized at the 10% level could pay for maximum annual bill credits for an additional 3,443 customer assistance program (“CAP”) participants.⁴³ As this example illustrates, the retail rate mechanism can be structured in a way to provide real financial benefits to low-income consumers and be a valuable source of supplemental funding for CAP and other universal service programs.

VI. NON-COMMODITY BILLING

In testimony, RESA raised concerns related to billing for non-commodity products and services and recommended that the Commission direct the Companies take action to address these concerns.⁴⁴ Consistent with the Joint Stipulation Regarding Various Issues, RESA has agreed that issues related to supplier consolidated billing shall be addressed in the Commission’s generic proceeding in Docket No. M-2018-2654254 subject to RESA’s right to recommend that the Commission take administrative notice of the record in this proceeding.⁴⁵

⁴³ RESA St. No. 1-R at 12-13.

⁴⁴ RESA St. No. 1 at 27-37.

⁴⁵ Joint Stipulation Regarding Various Issues at 2, Non-Commodity Products, ¶ 2.

VII. CUSTOMER REFERRAL PROGRAM

A. DESCRIPTION OF CRP

The Customer Referral Program (“CRP” or the “Program”) is a Commission-approved, retail access program. The CRP is intended to incent consumers who have never shopped to enter the competitive market by providing an initial guarantee of savings of 7% off of the then-current PTC.⁴⁶ The CRP is an integral part of the competitive electric retail market in Pennsylvania and has contributed significantly to the overall level of residential customer shopping over the years.⁴⁷ From June 2016 to May 2017, a total of 101,476 enrollments were completed through the Program for the FirstEnergy EDCs.⁴⁸ The overall statewide Standard Offer Program received the Best Customer Service Innovation Award in 2014 as part of a state agency innovation exposition.⁴⁹ Former Chairman Powelson stated: “From a PUC perspective, the Standard Offer Program has brought innovation and stimulated Pennsylvania’s robust competitive markets, producing extraordinary levels of participation in a very condensed timeframe – and providing stability to customers who were hesitant to enter the market during turbulent times with the run-up in variable rate prices.”⁵⁰

B. COMPANIES PROPOSAL AND RESA’S RECOMMENDATIONS

FirstEnergy has proposed to continue its current CRP through the DSP V term.⁵¹ RESA wholeheartedly supports the continuation of FirstEnergy’s CRP. The record,

⁴⁶ RESA St. No. 1-R at 16-18; Investigation of Pennsylvania's Retail Electricity Market Intermediate Work Plan, Docket No. I-2011-2237952, Final Order at 14, 31 (March 2, 2012).

⁴⁷ RESA St. No. 1-R at 15.

⁴⁸ RESA St. No. 1-R at 15.

⁴⁹ RESA St. No. 1-R at 16.

⁵⁰ PUC Reminds Consumers that Award-Winning Electric Choice Standard Offer Program Offers Immediate Savings, PUC Press Release (July 28, 2014); RESA St. No. 1-R at 17.

⁵¹ Companies St. No. 1 at 19.

however, demonstrates that there has been a significant decline in customer enrollment since 2017 due to changes in FirstEnergy's CRP scripts, including the scripts used by FirstEnergy's third-party enrollment vendor. RESA has several recommendations for improving customer enrollment and EGS participation in the Program:

- FirstEnergy should be directed to immediately revert to the CRP protocols and scripts, including the third-party vendor scripts, that were in place prior to the DSP IV settlement.
- FirstEnergy should be directed to convene a working group to investigate the causes of decline in enrollments in the CRP and discuss scripting changes that would address the concerns raised by the OCA without effectively discouraging customers from participating in the Program. The Commission's Office of Competitive Market Oversight ("OCMO") and FirstEnergy's third party contractor administering the CRP should be invited to participate in this working group.
- FirstEnergy should be directed to modify the CRP to allow EGSs to participate using bill-ready billing.

The record contains sufficient evidence to support RESA's recommendations for the immediate use of prior CRP scripts and for the establishment of a working group to investigate CRP enrollment and discuss modifications to the Program scripts. As RESA Witness Hudson explained in his testimony, FirstEnergy made modifications to its CRP scripts in the DSP IV Settlement.⁵² Mr. Hudson further testified that the number of customer enrollments in the CRP have "declined drastically since 2017, the start of the DSP period."⁵³ Specifically, Mr. Hudson explained that, across all of the FirstEnergy EDCs, there were 8,456 average monthly enrollments in the CRP program prior to the scripting changes, and only 999 enrollments following the scripting changes.⁵⁴ This 88% decline in

⁵² RESA St. No. 1 at 18; see also *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company For Approval of Their Default Service Programs for the Period June 1, 2017 through May 31, 2019*, Docket No. P-2015-2511333, *et. al.*, Recommended Decision at 15-16 (April 2016).

⁵³ RESA St. No. 1 at 18.

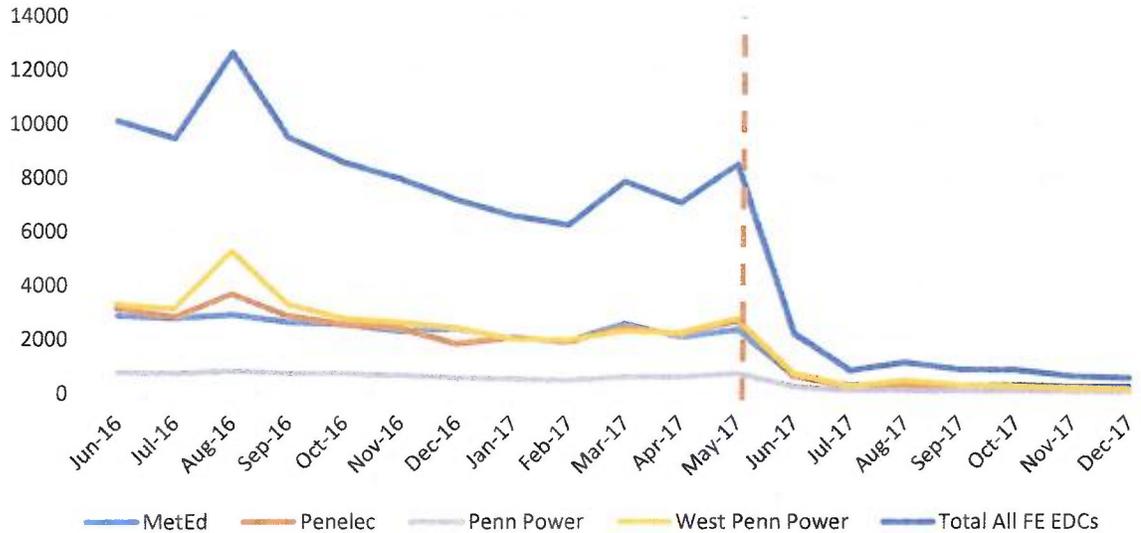
⁵⁴ RESA St. No. 1 at 18.

customer enrollments is illustrated in the following charts, which were included in Mr. Hudson's testimony:⁵⁵

Decline in Average Monthly SOP Enrollments



Decline in Monthly Residential Enrollments



Other than the scripting changes, the record demonstrates that there no other intervening changes that could explain this significant decline in enrollment.⁵⁶

⁵⁵ RESA St. No. 1 at 20.

⁵⁶ RESA St. 1 at 20.

To address the problem with declining customer enrollment, Mr. Hudson recommended that: (1) FirstEnergy and its third-party enrollment vendor revert to the CRP scripts and protocols that were in place prior to the DSP IV settlement; (2) the parties with the assistance of OCMO convene a working group to investigate the causes of the decline in customer enrollment and script changes that would address the OCA's scripting concerns without effectively discouraging customer participation; and, (3) FirstEnergy invite its third-party enrollment vendor to participate in the working group to offer its expert insights and opinions.⁵⁷ Given the successfulness of the CRP Program and the importance of the Program for the competitive electric retail market, and in light of the impacts of the recent scripting changes, the recommendations of Mr. Hudson are in the public interest and should be adopted.

The record also contains sufficient evidence to support RESA's proposal to allow EGSs to participate using bill-ready billing. As explained by Mr. Hudson:

Under the current rules, EGSs must utilize the rate ready billing option to bill customers who are enrolled through the standard offer program. This restriction unnecessarily limits the billing options available to suppliers. Many EGSs prefer to use bill-ready billing. I recommend modifying the standard offer program rules to allow EGSs to participate using bill-ready billing. This will encourage more EGSs to participate in the program.⁵⁸

Because the record demonstrates that allowing bill-ready billing will encourage more EGSs to participate in the Program, RESA's recommendation is in the public interest.

⁵⁷ RESA St. 1 at 21 (Mr. Hudson explained, "As the vendor for both FirstEnergy and PECO referral programs and given their expertise in customer service referrals across many different industries, I believe [FirstEnergy's third-party enrollment vendor] could offer useful information on how to improve the program.").

⁵⁸ RESA St. No. 1 at 21-22.

C. OCA PROPOSED MODIFICATIONS

While Ms. Alexander proposes several immediate revisions to the CRP, these well-meaning and seemingly innocuous scripting changes can impact the overall effectiveness of the Program.⁵⁹ On the other hand, Mr. Hudson's approach allows for the careful and deliberate consideration of the impact of any scripting changes and the time to develop language that addresses the OCA's concerns related to providing customers with full information about the terms and details of the program. As Mr. Hudson explained:⁶⁰

To the extent that any future changes are agreed upon, such changes should not be implemented full-scale until the impact of those changes can be assessed. For example, they should first be implemented on a testing or pilot basis only (such as for a limited sample of customer interactions or for a limited time period) to measure the impact of the changes on overall program effectiveness.⁶¹

Ms. Alexander's specific recommendations, including her recommendation to eliminate references to "potential savings" in the description of the program also pose some practical concerns. As Mr. Hudson noted, "it is factually accurate to describe the program as offering potential savings."⁶² Removing the reference to the program will diminish the attractiveness of the program, which has been an integral part of the competitive retail market in Pennsylvania. Additionally, Ms. Alexander's recommendations appear to have the effect of removing any favorable language to discuss the CRP, which undermines the effectiveness of this successful Program.⁶³

⁵⁹ OCA St. No. 2 at 4, 30-31; RESA St. No. 1-R at 13.

⁶⁰ RESA St. No. 1-R at 14.

⁶¹ RESA St. No. 1-R at 14.

⁶² RESA St. No. 1-R at 14.

⁶³ RESA St. No. 1-R at 16.

VIII. CUSTOMER ASSISTANCE PROGRAM SHOPPING

A. THE COMPANIES' PROPOSAL

The Companies did not propose any shopping restrictions on the low-income customer assistance population and expressed significant reservations about such restrictions.⁶⁴ RESA did not propose any modifications regarding this issue and does not support restrictions on the ability of low-income customers to shop. Other parties, however, proposed that restrictions be imposed on the shopping ability of customers participating in the Companies' Customer Assistance Program ("CAP").⁶⁵ The Companies oppose these proposed restrictions, as does RESA.

B. BURDEN OF PROOF

Section 332(a) of the Public Utility Code provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.⁶⁶ It is well-established that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible."⁶⁷ The burden of proof is comprised of two distinct burdens: the burden of production and the burden of persuasion. The burden of production tells the adjudicator which party must come forward with evidence to support a particular proposition.⁶⁸ The burden of persuasion determines which party must produce sufficient evidence to convince a judge that a fact has been established, and it never leaves the party on whom it is originally cast.⁶⁹ In this case, parties proposing rule restrictions on the ability

⁶⁴ Companies St. No. 1 at 3; Companies St. No. 1-SR at 8.

⁶⁵ Companies St. No. 1-R at 28.

⁶⁶ 66 Pa.C.S. § 332(a).

⁶⁷ *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

⁶⁸ See *In re Loudenslager's Estate*, 240 A.2d 477, 482 (1968).

⁶⁹ *Reidel v. County of Allegheny*, 633 A.2d 1325, 1329 n. 11 (Pa.Cmwlth.1993).

of CAP customers to shop have the burden of proof and ultimately the burden to persuade the Commission that there are no reasonable alternatives to their proposed restrictions on competition and the Commission may rely on substantial evidence to reject the proposed restriction.⁷⁰

C. OTHER PARTIES' PROPOSED RESTRICTIONS

CAUSE-PA Witness Geller argues that CAP customers should be prohibited from entering into contracts with EGSs for rates that may, at any time, exceed the price to compare or that include early termination fees.⁷¹ OCA Witness Alexander makes similar recommendations.⁷² I&E Witness Mr. Keller initially proposed that the Companies develop a CAP shopping program similar to that implemented for PPL wherein the only way an EGS can provide service to a PPL CAP participant is by participating in the special PPL CAP-SOP program and the EGS must follow the program's rules (including the requirement that EGS pricing must be 7% off the price to compare at the time of enrollment).⁷³

Mr. Keller's proposal for a special standard offer program for CAP customers was opposed by CAUSE-PA Witness Geller, OCA Witness Alexander and the Companies' Witness Ms. Bortz.⁷⁴ Ms. Bortz reiterated that the "Companies have significant reservations related to the establishment of limitations on CAP shopping."⁷⁵ Ms. Alexander and Mr. Geller concluded that I&E's CAP SOP proposal would not be a prudent approach because the PPL model has not yet been implemented and the price volatility of the Companies'

⁷⁰ *Commonwealth Court CAP Shopping Order* at 1106-1107.

⁷¹ CAUSE-PA St. No. 1 at 32.

⁷² OCA St. No. 2 at 35-39; I&E St. No. 1 at 19-24.

⁷³ I&E St. No. 1 at 23.

⁷⁴ OCA St. No. 2R at 14; CAUSE-PA St. No. 1-R at 3; FE St. No. 1-SR at 8.

⁷⁵ Companies St. No. 1-SR at 8.

PTC.⁷⁶ Based on responsive testimony, Witness Keller modified his recommendation in surrebuttal testimony and encouraged the Commission to require the Companies to develop a program that would “prohibit CAP customers from shopping for electricity where rates are greater than the PTC at any time throughout the term of the agreement.”⁷⁷ While I&E has moved away from its original proposal, the remaining proposal of I&E, CAUSE-PA and OCA that would require EGSs to agree to only ever offer below market priced electricity would deprive customers of the benefits of a fully functioning competitive retail market.

RESA does not support these proposals, the premise for which is that low-income assistance customers are not capable of making basic, well-informed decisions about their energy service. RESA believes that all customers should have the same access to competitive market alternatives regardless of income level or CAP participation status.⁷⁸ RESA urges the Commission to find that the desired prohibition set forth by CAUSE-PA, I&E Staff and OCA is inconsistent with the goals and objectives of the Choice and Competition Act and the basic tenants of a free and competitive market.⁷⁹ As RESA Witness Hudson explained, customers are in the best position to make a value judgment about their energy supply choices, just as they make decisions on a plethora of other products.⁸⁰

D. RESA SUPPORTS THE COMPANIES’ POSITION THAT RESTRICTIONS SHOULD NOT BE PLACED ON CAP CUSTOMERS’ ABILITY TO SHOP

While the Commission may consider imposing CAP rules limiting the type of EGS offer a CAP participant can choose in the interest in the interest of ensuring that universal

⁷⁶ OCA St. No. 2R at 14; CAUSE-PA St. No. 1-R at 2-3.

⁷⁷ I&E St. No. 1-SR at 24.

⁷⁸ RESA St. No. 1-R at 23.

⁷⁹ RESA St. No. 1-R at 23-24.

⁸⁰ RESA St. No. 1-R at 25.

service plans are adequately funded, cost-effective and affordable, the “overarching goal of the Choice Act is competition” and restrictions on the right to shop can only be considered upon a showing of substantial reasons why there are no reasonable alternatives to the proposed restriction on competition.⁸¹ Here, the analysis relied upon by the proponents does not support a finding that shopping restrictions are necessary, restrictions based on limiting the price an EGS may offer to the PTC will materially adversely affect the ability of CAP participants to shop, and, there are other more reasonable alternatives that should be more fully vetted before embarking upon restricting the right of CAP participants to shop.

1. Analysis Of Proponents Fails To Fully Portray Customers’ Shopping Experiences

The Commission should not be persuaded by the recommendations set forth by CAUSE-PA, I&E Staff and OCA to limit the ability of that customer sector to access the benefits of the competitive retail market. RESA encourages the Commission to fully evaluate the “evidence” presented by various parties that CAP customers who shop for their electricity are paying more than the applicable price-to-compare. While some parties base their recommendations on their analysis showing that some EGS customers are paying more than the price-to-compare, the same data shows that many customers are paying less by shopping for their electricity.⁸²

Mr. Geller, for example, utilizes data on the number and percentage of CAP shopping customers that paid higher than the comparable PTC or lower than the comparable PTC in a given month.⁸³ Despite his implications that CAP customers are being

⁸¹ *Commonwealth Court CAP Shopping Order* at 1103-1104,1106 (Pa. Commw. Ct. 2015).

⁸² RESA St. No. 1-R at 26.

⁸³ CAUSE-PA St. No. 1 at 21.

overwhelmingly harmed by shopping with EGSs, RESA presented clear evidence using that same data that CAP customers are often shopping for their supplier and being delivered lower prices than they would have been charged on default service. RESA Witness Hudson illustrated that during a 55-month period, there were 32 months where at least one-third of CAP customers paid less than they would have paid on default service and 12 months where a majority of EGS customers paid less.⁸⁴ Witness Hudson also looked at the total number of customers who are paying less with an EGS than the PTC and found that 7,802 CAP customers served by an EGS had paid less than the PTC.⁸⁵ These cost savings demonstrate that cost savings are being achieved by CAP customers.

Moreover, the data presented does not factor in the broader benefits that a competitive retail market can offer low-income customers such as value-added products and service or price stability.⁸⁶ Witness Bortz agrees that data showing that CAP customers are paying rates higher than the PTC do not take into account the value that the customer may receive from fixed priced or other value-added EGS-provided products.⁸⁷

Examples of value-added components include renewable energy content, energy management devices such as smart thermostats, loyalty rewards and airline miles or reward points.⁸⁸ While CAUSE-PA may not see the value in CAP customers accessing these benefits, some CAP customers do and should continue to have the ability to select the same options available to other customers. I&E Witness Keller finds that value-added services that do not contribute to reduction of CAP customers' bills are not a viable use of those

⁸⁴ RESA St. No. 1-R at 26-27.

⁸⁵ RESA St. 1-R at 27.

⁸⁶ RESA St. No. 1-R at 23-24.

⁸⁷ Companies St. 1R at 29.

⁸⁸ RESA St. No. 1-R at 23-24.

customers' CAP credits.⁸⁹ However, this raises a concern regarding the design of the CAP and not whether CAP customers should have the ability to shop for their electricity.

The analysis of the CAP shopping restriction proponents fails to account for energy efficiency related consumption reductions that CAP customers may experience as a result of value added components of their EGS product.⁹⁰ For example, a customer may enroll with an EGS product that includes a bundled smart thermostat and would likely experience an overall reduction in energy use. While the energy efficiency gains can result in total bill savings, the per kWh EGS supply charge may be higher than the PTC.⁹¹ RESA Witness Hudson provided a straightforward illustration of this scenario and a summary follows.⁹² A MetEd residential customer that consumes 10,428 kWhs per year and spends \$1,030 annually for natural gas enrolls in an EGS product that is 7.79 cents per kWh and includes a bundled smart thermostat.⁹³ The MetEd PTC of 6.181 cents would show a net annual loss for the customer of \$167.79 if the focus was solely on the EGS price to the MetEd PTC. However, a 10% reduction in total energy consumption as a result of the smart thermostat would result in net savings for the customer of \$66.53. The reduction of energy consumption as a result of the smart thermostat is a long-term benefit that would continue even if the customer returned to default service or switches to another supplier.⁹⁴ This example demonstrates how an inattentive view on the EGS price compared to the PTC can overlook benefits that offer value and savings to customers.

⁸⁹ I&E St. No. 1-SR at 21.

⁹⁰ RESA St. No. 1-R at 29.

⁹¹ RESA St. 1-R at 29.

⁹² RESA St. 1-R at 29-30.

⁹³ The product referenced in Mr. Hudson's testimony at RESA St. 1-R at 29, fn 12 is provided in Exhibit 1 to Joint Stipulation No. 6 (between RESA and CAUSE-PA).

⁹⁴ RESA St. 1-R at 29-30.

2. Restrictions Based On PTC Will Materially Adversely Affect Ability Of CAP Participants To Shop

Restrictions that would adversely affect available choices for CAP participants cannot be imposed.⁹⁵ The proposed shopping restrictions would require EGSs to agree to only ever offer below market priced electricity and materially adversely affect the choices available to CAP participants. As RESA Witness Hudson explained, while some EGSs are serving some CAP customers at rates below the PTC, these EGSs may not be able to offer guaranteed savings products.⁹⁶ Providing such a product (that guarantees price savings against an unknown future quarterly adjusted price to compare) would likely violate the risk policies of prudently operating EGSs. These EGSs would discontinue serving low income customers, resulting in elimination of the lower priced alternatives to default service.⁹⁷

The Companies and RESA agree that implementing the price restriction proposed by I&E, OCA and CAUSE-PA would drastically reduce the number of products available to CAP customers.⁹⁸ Witness Bortz presented data on the number of EGSs that are currently offering a “%-off PTC” product in the Companies’ territories and found that only two EGSs are serving a total of 70 customers on this type of product.⁹⁹ This is a strong indicator that there may be little to no competitive options for CAP customers if the proposed restrictions are adopted.¹⁰⁰ If the proposed shopping restriction is adopted and EGSs are required to guarantee their rates will never be above the comparable PTC, RESA anticipates that EGSs

⁹⁵ *Commonwealth Court CAP Shopping Order* at 1107-1108.

⁹⁶ RESA St. No. 1-R at 28.

⁹⁷ RESA St. No. 1-R at 28.

⁹⁸ Companies St. No. 1R at 29.

⁹⁹ Companies St. No. 1R at 29.

¹⁰⁰ RESA St. No. 1-SR at 11.

would discontinue serving low-income customers and those that continue to serve them would drastically reduce their offerings.¹⁰¹

3. Other Alternatives To Proposed Restrictions

Before the Commission may impose specifically proposed restrictions on shopping, must find that there are no reasonable alternatives to what is under consideration.¹⁰² For the reasons explained in the prior sections, the restrictions proposed here will materially adversely affect available choices for CAP customers and must be rejected. In its surrebuttal testimony, RESA offered less restrictive options than those presented by various parties in this proceeding to address concerns regarding CAP customers. If the Commission decides that concerns raised regarding CAP customers should be addressed, RESA encourages the Commission to consider:

- (1) Increasing funding for universal service programs as RESA has recommended by utilizing revenues from the retail rate mechanism.
- (2) Considering changes to the POR clawback mechanism to create further incentives for disciplined EGS pricing practices.
- (3) Prohibiting suppliers from assessing early termination fees for CAP customers.
- (4) Aggressively educating CAP customers about EGS offers that are lower than the PTC.¹⁰³

RESA submits that these options should be thoroughly evaluated before the Commission takes an extreme position that denies CAP customers access to a wide range of beneficial product options. RESA fully supports the Companies' decision to not seek

¹⁰¹ RESA St. No. 1-R at 28.

¹⁰² *Commonwealth Court CAP Shopping Order* at 1104.

¹⁰³ RESA St. No. 1-SR at 11-12.

restrictions on CAP shopping in this proceeding and understands its reservations in imposing such restrictions.

IX. NON-MARKET BASED CHARGES

The Companies classify certain PJM-related cost components as “non-market based” (“NMB”) charges and, for these cost components, the Companies have assumed the cost obligation on behalf of all load on their system, including default service load and load served by EGSs. The current list of non-market based charges include: Regional Transmission Expansion Plan charges (“RTEP”), Expansion Cost Recovery Charges (“ECRC”); Reliability Must Run/generation deactivation charges implemented after July 24, 2014; historical out of market tie line, generation and retail customer meter adjustments, and unaccounted for energy (“UFE”).¹⁰⁴ The Companies are proposing to add as an NMB charge charges related to the reallocation of PJM RTEP costs resulting from FERC Docket No. EL05-121-009. Consistent with the Joint Stipulation of Various Parties, RESA has agreed that the Companies’ proposal should be considered uncontested in this case.¹⁰⁵

While an issue related to NMB charges regarding the assignment of cost responsibility for Network Integration Transmission Service (“NITS”) was raised in the testimony, the parties have since reached an agreement to support maintaining the status quo.

¹⁰⁴ Companies’ St. No. 2 at 5-6.

¹⁰⁵ Joint Stipulation of Various Parties at 2, FERC 494 Settlement, ¶1.

X. TIME-OF-USE RATE

RESA did not raise any concerns related to the Companies' Time-Of-Use ("TOU") rate but other parties suggested that FirstEnergy's current TOU option may not comply with statutory requirements in consideration of a recent decision from the Commonwealth Court.¹⁰⁶ Pursuant to the Joint Stipulation Regarding Various Issues, the Companies have agreed to make a specific proposal regarding their residential TOU in the earlier of their first base rate increase requests or default service proceedings following full implementation of smart meter back office functionality.¹⁰⁷ Although settled for purposes of this proceeding, the *DCIDA Order* only requires EDCs to offer a TOU rate to customer-generators and does not, as some have argued, preclude the use of EGSs to fulfill an EDC's statutory requirement to offer TOU rates.¹⁰⁸

¹⁰⁶ OSBA St. No. 1 at 17-18; OCA St. No 1 at 19-20 discussing *Dauphin County Industrial Development Authority v. Pa. PUC*, 123 A.3d 1124 (Pa. Cmwlth. 2015) ("*DCIDA Order*").

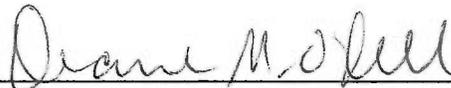
¹⁰⁷ Joint Stipulation Regarding Various Issues at 2-3, Time of Use, ¶1.

¹⁰⁸ See, *Re: Proceeding initiated to comply with directives arising from Commonwealth Court order in DCIDA v. PUC*, 123 A3d 1124, (Pa. Cmwlth. 2015) reversing and remanding the order of the PUC entered 9/22/14 at P-2013-2389572 in which the PUC had approved PPL's Time of Use (TOU) Plan, Docket No. M-2016-2578051, Comments of the Retail Energy Supply Association dated January 9, 2017 and Reply Comments of the Retail Energy Supply Association dated January 31, 2017.

XI. CONCLUSION

RESA recommends that the Companies' default service petition be modified consistent with the recommendations discussed herein.

Respectfully submitted,



Deanne M. O'Dell, Esquire, ID #81064
Sarah C. Stoner, Esquire, ID #313793
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
(717) 237-6000 (phone)
(717) 237-6019 (fax)

Date: May 2, 2018

Attorneys for Retail Energy Supply Association

Appendix A

Proposed Findings of Fact

XII. APPENDIX A – PROPOSED FINDINGS OF FACT

Purchase of Receivables Clawback Provision

1. The POR program is mandatory for EGSs. MetEd Supplier Tariff Section 12.9 (a).
2. An EGS assessed a POR clawback charge must pay the clawback charge and, if it does not, the Companies maintain the right to withhold the amount from the POR payments owed by the Companies to the EGS. Thus, with the POR clawback mechanism in place, EGSs are potentially subject to financial penalties if their customer base experiences an unusually high level of non-payment. RESA St. No. 1 at 15-16.
3. EGSs who may be experiencing higher than normal levels of customer non-payment do not have any advance notice that they are at risk of triggering the clawback charge, in part, because FirstEnergy does not actively transmit information about whether or not the EGS customer is paying the EGSs' charges. RESA St. No. 1 at 15-16.
4. FirstEnergy does not record a write-off until 80 days after a final bill is sent for the customer account. This creates a significant timing lag between when the actual nonpayment occurs and when the clawback charge is assessed. By the time the clawback charge is assessed it is too late for the EGS to do anything about the uncollectible expenses that are driving the penalty. RESA ST. No. 1 at 15-16.
5. Timely information from FirstEnergy about their customer's arrears will enable EGSs to undertake a range of proactive measures to address customer non-payment which could lessen the amount of uncollectible expense for all ratepayers. RESA St. No. 1 at 17.

Bypassable Retail Market Enhancement Rate Mechanism

6. The bypassable retail rate mechanism is not properly viewed as a way to influence a customer's shopping decision; rather, it is an administrative mechanism to correct for the unnatural competitive advantages associated with default service RESA St. No. 1 at 23; RESA St. No. 1-R at 8.
7. The bypassable retail rate mechanism is a reasonable way to level the playing field by partially mitigating the competitive advantage enjoyed by default service. RESA St. No. 1 at 26.
8. EDCs –unlike EGSs – can seek cost recovery from all ratepayers through distribution rates (or other non-bypassable mechanisms) bypassing the need to incorporate them into the PTC. Because of this, default service is routinely priced below levels that would occur in a natural competitive environment. RESA St. No. 1-SR at 3-4.
9. The current market design results in the EDC pricing the quasi-competitive default service below true competitive market levels. Because these costs advantages are supported by assets, resources and services that are paid for through monopoly distribution rates, it is EGS customers who are currently being penalized by shopping and it is EGS customers who are currently being forced to subsidize default service.

The retail rate mechanism partially corrects for this market inequity. RESA St. No. 1-R at 9.

10. Default service enjoys many competitive advantages over competitively priced EGSs due to the very nature of default service as the automatic “service of first resort” under Pennsylvania's retail market design. Default service enjoys branding and other perceptual advantages because of the monopoly utility's long-standing relationship with the customer. Default service enjoys advantages due to the status quo bias effect. The impact of these advantages are clear given that the EDC's default service has a dominant position with market share ranging from 68 to 74 percent of the residential market. RESA St. No. 1-R at 8-9; RESA St. No. 1-SR at 2.
11. The retail rate mechanism will not drive up the prices offered by EGSs as price competition, product differentiation and individual consumer value drivers will all influence the market clearing price for the range of products and services offered by EGSs. RESA St. No. 1-R at 10-11.
12. The Companies' proposed proxy for calculating the retail rate mechanism likely significantly *under*-estimates the range of EGS customer acquisition costs for the residential segment. RESA St. No. 1-R at 7-8. However, utilizing the \$30 per customer fee is a reasonable way to approximate some of the costs EGSs incur for acquiring customers because: (1) it was explicitly approved by the Commission for the standard offer program; and, (2) EGSs have demonstrated a willingness to incur this fee by agreeing to participate in the program. Therefore, it is reasonable to conclude that it is in line with or below the range of customer acquisition costs that EGSs incur through other marketing channels. RESA St. No. 1-R at 7-8.
13. There are numerous other costs (beyond customer acquisition) incurred by EGSs to make a retail electric product available in the market none of which are factored into the Companies' proposed calculation for the retail rate mechanism RESA St. No. 1 at 24-25.
14. Modifying the Companies' proposal to divide \$30 over 12 months of consumption is consistent with the 12-month contract term under the CRP. RESA St. No. 1 at 23-24.

Customer Referral Program

15. FirstEnergy has proposed to continue its current Customer Referral Program, also known as the Standard Offer Program, (“CRP” or the “Program”) through the DSP V term. FE St. 1 at 19.
16. FirstEnergy's current CRP is a Commission-approved, retail access program. The CRP is intended to incent consumers who have never shopped to enter the competitive market by providing an initial guarantee of savings of 7% off of the then-current Price to Compare. *Investigation of Pennsylvania's Retail Electricity Market Intermediate Work Plan*, Docket No. I-2011-2237952, Final Order at 14, 31 (March 2, 2012).
17. The CRP has contributed to the overall level of residential customer shopping over the years. See RESA St. 1-R at 15.

18. There has been a decline in customer enrollments in FirstEnergy's CRP since 2017 due to changes in FirstEnergy's CRP scripts, including the scripts used by FirstEnergy's third-party enrollment vendor. RESA St. No. 1 at 19-20.
19. Under FirstEnergy's current CRP, participating EGSs must use the rate-ready billing option. RESA St. 1 at 21.

Customer Assistance Program Shopping

20. Customers are in the best position to make a value judgment about their energy supply choices, just as they make decisions on a plethora of other products. RESA St. No. 1-R at 25.
21. Many low-income customers are paying less by shopping for their electricity. RESA St. No. 1-R at 26-27.
22. During a 55-month period, there were 32 months where at least one-third of CAP customers paid less than they would have paid on default service and 12 months where a majority of EGS customers paid less. RESA St. 1-R at 27.
23. Data showing that CAP customers are paying rates higher than the PTC do not take into account the value that the customer may receive from fixed priced or other value-added EGS-provided products. Companies' St. 1R at 29.
24. Examples of value-added components include renewable energy content, energy management devices such as smart thermostats, loyalty rewards and airline miles or reward points. RESA St. No. 1-R at 23-24.
25. While some EGSs are serving some CAP customers at rates below the PTC, these EGSs may not be able to offer guaranteed savings products. Providing such a product (that guarantees price savings against an unknown future quarterly adjusted price to compare) would likely violate the risk policies of prudently operating EGSs. These EGSs would discontinue serving low income customers, resulting in elimination of the lower priced alternatives to default service. RESA St. 1-R at 28.
26. If the proposed shopping restrictions are adopted and EGSs are required to guarantee their rates will never be above the comparable PTC, RESA anticipates that EGSs would discontinue serving low-income customers and those that continue to serve them would drastically reduce their offerings. RESA St. 1-R at 28.
27. RESA offered less restrictive options than those presented by various parties in this proceeding to address concerns regarding CAP customers. RESA St. 1-SR at 11-12.

Appendix B

Proposed Conclusions of Law

XIII. APPENDIX B – PROPOSED CONCLUSIONS OF LAW

1. The Electricity Generation Customer Choice and Competition Act (“Competition Act”) addresses the requirements that FirstEnergy, as the default service provider, must meet. 66 Pa. C.S. § 2807(e).
2. The Competition Act requires the Commission to “allow customers to choose among electric generation suppliers in a competitive generation market through direct access.” 66 Pa.C.S. § 2804(2).
3. The Competition Act recognizes that greater competition in the electricity generation market benefits all classes of customers. 66 Pa. C.S. § 2802(7); *Coalition for Affordable Util. Servs. and Energy Efficiency in Pennsylvania, et al. v. Pa. Pub. Util. Comm’n*, 120 A.3d 1087, 1106 (Pa. Commw. Ct. 2015), appeal denied, 2016 WL 1383864 (Pa. Apr. 5, 2016).
4. The “overarching goal of the Choice Act is competition through deregulation of the energy supply industry, leading to reduced electricity costs for consumers.” *Coalition for Affordable Util. Servs. and Energy Efficiency in Pennsylvania, et al. v. Pa. Pub. Util. Comm’n*, 120 A.3d 1087, 1101 (Pa. Commw. Ct. 2015), appeal denied, 2016 WL 1383864 (Pa. Apr. 5, 2016) (emphasis added); 66 Pa.C.S. § 2802(13).
5. The Competition Act directs the Commission to create a competitive market for the generation of electricity through a separation of the distribution and generation services that had been previously provided exclusively by the EDCs on a monopoly basis. 66 Pa.C.S. §§ 2801-2812.
6. The Competition Act requires that EDCs provide EGSs nondiscriminatory access to the EDC’s transmission and distribution system on “rates, terms of access and conditions that are comparable to the utilities own use of its system.” 66 Pa. C.S. §§ 2803, 2804(6).
7. The party seeking a rule or order from the Commission has the burden of proof in that proceeding. 66 Pa.C.S. §332(a).
8. Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, “FirstEnergy” or “Companies”) bear the burden of proof in this proceeding.
9. The Companies must prove by a preponderance of the evidence that their proposed default service plan is lawful, reasonable and prudent. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Commw. Ct. 1990).

Appendix C

Proposed Ordering Paragraphs

XIV. APPENDIX C – PROPOSED ORDERING PARAGRAPHS

THEREFORE, IT IS ORDERED:

10. The Companies' petition is approved subject to the modifications that follow.
11. The Joint Stipulation Regarding POR Clawback is adopted and the Companies are directed to develop an EGS-specific customer arrears report with unpaid aged EGS account balances on a quarterly basis beginning no later than October 22, 2018 reflecting EGS arrears for the third quarter 2018.
12. The Companies' proposed bypassable retail rate mechanism is modified to divide \$30 as a proxy for acquisition costs over 12 months of residential consumption.
13. The Companies' Customer Referral Program is approved with the following modifications:
 - (a) FirstEnergy is directed to immediately revert to the CRP protocols and scripts, including the third-party vendor scripts, that were in place prior to the DSP IV settlement.
 - (b) FirstEnergy is directed to convene a working group to investigate the causes of decline in enrollments in the CRP and discuss scripting changes that would address the concerns raised by the Office of Consumer Advocate ("OCA"), without effectively discouraging customers from participating in the Program.
 - (c) FirstEnergy is directed to allow EGSs to participate in the Customer Referral Program by utilizing bill-ready billing.
14. The Companies are directed to assume the cost responsibility for Network Integration Transmission Service ("NITS") charges for residential customers through a non-bypassable rider similar to how the Companies are already assuming the cost responsibility for other Non-Market Based charges.