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May 2, 2018

VIA EMAIL AND FIRST CLASS MAIL

The Honorable Mary D. Long
Administrative Law Judge
Piatt Pace, Suite 220
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PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

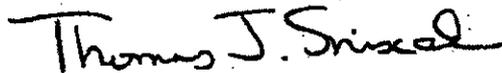
Re: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs; Docket Nos. P-2017-2637855, P-2017-2637857, P-2017-2637858 and P-2017-2637866; **MAIN BRIEF OF THE PENNSYLVANIA STATE UNIVERSITY**

Your Honor:

Enclosed you will find The Pennsylvania State University's Main Brief in the above-captioned dockets. Copies of this filing have been served in accordance with the attached Certificate of Service.

Should you have any questions or comments, please feel free to contact me directly.

Very truly yours,



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Counsel for The Pennsylvania State University

TJS/WEL/das
Enclosures

cc: Rosemary Chiavetta, Secretary
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Per the Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

MAIN BRIEF OF THE PENNSYLVANIA STATE UNIVERSITY

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TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. PROCEDURAL HISTORY 2

III. DEFAULT SERVICE PLAN PORTFOLIO AND TERM 2

 A. Residential Portfolio 2

 B. Commercial Portfolio..... 2

 C. Industrial Portfolio 2

 D. Procurement Classes 2

 Lowering the Hourly Pricing Threshold from 400kW to 100kW..... 2

 1. Company Proposal 2

 2. RESA’s Alternate Proposal 5

 E. Default Service Plan Term..... 5

IV. PURCHASE OF RECEIVABLES CLAWBACK PROVISION 5

V. BYPASSABLE RETAIL MARKET ENHANCEMENT RATE MECHANISM 6

VI. NON-COMMODITY BILLING 6

VII. CUSTOMER REFERRAL PROGRAM 6

VIII. CUSTOMER ASSISTANCE PROGRAM SHOPPING 6

IX. NON-MARKET BASED CHARGES..... 6

 Network Integration Transmission Service 6

X. TIME-OF-USE RATE..... 6

XI. CONCLUSION..... 6

APPENDIX A

APPENDIX B

TABLE OF AUTHORITIES

Cases

<i>In re Loudenslager's Estate</i> , 430 Pa. 33, 240 A.2d 477, 482 (1968)	Appendix B
<i>Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Programs</i> , Docket No. P-2009-2093053 and P-2009-2093054 (Opinion and Order entered November 6, 2009).....	5
<i>Reidel v. County of Allegheny</i> , 633 A.2d 1325, 1329 n. 11 (Pa.Cmwlth. Ct. 1993).....	Appendix B
<i>Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n</i> , 578 A.2d 600, 602 (Pa. Cmwlth. 1990)	4, Appendix B

Statutes

66 Pa. C.S. § 332(a)	4, Appendix B
66 Pa.C.S. § 2801 et seq	Appendix B

Rules

52 Pa.Code §§ 54.181-54.189	Appendix B
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I. INTRODUCTION

The Pennsylvania State University ("Penn State" or "PSU") is addressing one issue in this brief: First Energy Corporation's ("FirstEnergy" or "Company") procurement plan for medium and large commercial and industrial customers that proposes to continue hourly pricing service ("HPS") but also to lower the size threshold for the HPS service from 400 kW to 100 kW (Section III.D).

First Energy proposed a procurement plan for medium and large commercial and industrial customers that proposes to continue HPS but also proposes to lower the size threshold for the HPS from 400kW to 100kW. FirstEnergy also proposes a change to the method it uses to identify customers exceeding the 100kW threshold whereby if a customer's measured demand is below 100kW in any of the 12 months of the prior year then the customer will remain eligible for FirstEnergy's fixed-price procurement default service product.

Penn State has no issue with reducing the hourly pricing threshold from 400 kW to 100kW; however, FirstEnergy's proposed change to its method it uses to identify customers exceeding the 100kW threshold should be rejected because it has provided no support in the record why this change would be just and reasonable, especially in light of the fact that RESA witness, Mr. Hudson, testified that he does not believe "this approach appropriately categorizes the over 100-kW customers. Instead it would retain many customers who often exceed the 100kW demand level..." RESA St. 1 at 11-12. Mr. Hudson endorses First Energy's current method, as does Penn State, however, he also proposes an "alternative" method using a customer's Peak Load Contribution or Installed Capacity tag, which should also be rejected because it is more complex than the current use of metered billing demand and would add confusion to the process.

II. PROCEDURAL HISTORY

Provided by FirstEnergy.

III. DEFAULT SERVICE PLAN PORTFOLIO AND TERM

A. Residential Portfolio

Penn State takes no position on this issue.

B. Commercial Portfolio

Penn State takes no position on this issue.

C. Industrial Portfolio

Penn State takes no position on this issue.

D. Procurement Classes

Lowering the Hourly Pricing Threshold from 400kW to 100kW

1. Company Proposal

FirstEnergy, through its witness, Kimberlie L. Bortz, proposed a procurement plan for medium and large commercial and industrial customers that proposes to continue hourly pricing service (“HPS”) but also proposes to lower the size threshold for the HPS from 400kW to 100kW. FirstEnergy also proposes a change to the method it uses to identify customers exceeding the 100kW threshold whereby if a customer’s measured demand is below 100kW in any of the 12 months of the prior year then the customer will remain eligible for FirstEnergy’s fixed-price procurement default service product. Met-Ed/Penelec/PennPower/West Penn (“FE”) Statement No. 1 at 12:15 and 13:17-22.

Ms. Bortz testifies in FE Statement No. 1 at 12:15: “Exhibit KLB-9 presents the changes to West Penn Schedule 30” and *Id.* at 13:17-22: “The Companies will conduct a review each year of the measured demand for the period April 1 of the preceding year to March 31 of the current year for all customers. Based on that review, if the actual measured demand in any of the

twelve months is less than 100 kW, then to the extent that a customer chooses not to shop, the customer shall receive default service under the provisions of the PTC Rider. Otherwise, the Customer will receive default service under the provisions of the HP Rider.”

Ms. Bortz explains that the hourly pricing threshold is being reduced from 400kW to 100kW in compliance with FirstEnergy’s previous Default Service Plan (“DSP”) settlement and in Compliance with the Commission’s End State Order related to the Retail Market Investigation. FE Statement No. 1 at 10:5 – 11:16. Penn State has no issue with reducing the hourly pricing threshold from 400kW to 100kW.

However, as with RESA, Penn State does have an issue with the way FirstEnergy is proposing to identify customers exceeding the 100kW threshold. As RESA witness Mr. Hudson explains, the current tariff language defines the current threshold as customers who exceed the threshold in any 2 consecutive months:

If an existing Customer’s billing demand is equal to or greater than 400 kW for two (2) consecutive months in the most recent twelve-month period, the Customer may no longer be eligible for service under his Rate Schedule GS-Medium, and shall be placed on Rate Schedule GS-Large or such other Rate Schedule for which such Customer most qualifies.¹ RESA St. 1 at 12.

The Company has made this proposed threshold adjustment of “actual measured demand in any of the twelve months is less than 100kW” which is different from the “billing demand is equal to or greater than 400kW” as stated in the current tariff without any support in the record as to why this change is necessary or how it benefits customers in any way. Penn State agrees with RESA witness Mr. Hudson’s explanation of why the Company-proposed one month under standard is unreasonable and should not be adopted:

¹ Met-Ed Tariff, Electric Pa. P.U.C. No. 52 (Supp.37) at Fourth Revised Page 66.

I do not believe this approach appropriately categorizes the over 100-kW customers. Instead, it would retain many customers who often exceed the 100-kW demand level of the Companies' commercial fixed-price default service option. Under the Companies' proposal, a customer would have to exceed the 100-kW level in every month over a 12-month period to become classified as an HPS customer. A typical high-volume customer that experienced an anomalous month, for example due to a facility closure or some other one-time event, would be miscategorized if even a single month fell below this level. The Companies' proposal is also inconsistent with existing precedent in their current tariffs. RESA St. 1 at 11-12.

To maintain consistency with the current practice, I recommend using the existing method that the Companies' use for applying the 400-kW threshold. More specifically, any 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. RESA St. 1 at 12.

Penn State witness James Crist agrees, "The Company should continue to use the criteria of observing a customer's billing demand and if an existing customer's billing demand exceeds the threshold (current 400 kW but proposed to be 100kW) for two (2) consecutive months in the most recent twelve-month period then that customer should be shifted to HPS." PSU Statement No. 1-SR at 7:5-8. Therefore, the Companies' proposal to decrease the size threshold for the HPS from 400kW to 100kW should be adopted; however, the Companies' unexplained proposal to change the method the Companies identify customers exceeding the 100kW threshold whereby if a customer's measured demand is below 100kW in any of the 12 months of the prior year then the customer will remain eligible for FirstEnergy's fixed-price procurement default service product should be rejected because First Energy has not satisfied its burden of proof that this change is just and reasonable.²

² Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. 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." *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). Therefore, FirstEnergy has the burden of proving that its proposed default service provider program is just and reasonable.

2. RESA's Alternate Proposal

RESA witness Mr. Hudson recommended the existing method be maintained (exceeding the kW threshold for two consecutive months) but then muddied the water by suggesting as an alternative, that "the Companies could base the procurement classification on the customer's Peak Load Contribution or Installed Capacity ("ICAP") tag as measured under the PJM 5 CP model." RESA St. 1 at 12. Penn State disagrees with Mr. Hudson's recommendation of the alternative measurement method. As Penn State witness Mr. Crist explains:

The items that Mr. Hudson proposes, the PLC or ICAP are more complex than the customer's monthly metered billing demand, which is a measure that commercial customers in that size range would normally understand. Neither PLC or ICAP are presented on the monthly electric bill and would be difficult for a customer to verify. When implementing a change in threshold, it is important not to add confusion to the process and switching the threshold determination methodology would do just that. I recommend that Mr. Hudson's proposal to use either PLC or ICAP be rejected.

PSU Statement No. 1-SR at 8:13-19.

Penn State's position here emphasizes billing transparency and clarity to a customer, as is currently the case using billing demand and RESA's alternative proposal, using unclear measurement methods, such as PLC or ICAP should be rejected because RESA has not met its burden of proving that this alternative measurement method is just and reasonable.³

E. Default Service Plan Term

Penn State takes no position on this issue.

IV. PURCHASE OF RECEIVABLES CLAWBACK PROVISION

Penn State takes no position on this issue.

³ *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 10 (Opinion and Order entered November 6, 2009) (where competing proposals are introduced, the sponsoring party must show that the alternative proposal will better serve customers).

V. BYPASSABLE RETAIL MARKET ENHANCEMENT RATE MECHANISM

Penn State takes no position on this issue.

VI. NON-COMMODITY BILLING

Penn State takes no position on this issue.

VII. CUSTOMER REFERRAL PROGRAM

Penn State takes no position on this issue.

VIII. CUSTOMER ASSISTANCE PROGRAM SHOPPING

Penn State takes no position on this issue.

IX. NON-MARKET BASED CHARGES

Network Integration Transmission Service

The Parties, including Penn State, have reached a settlement regarding the treatment of NITS charges whereby NITS charges, through this Default Service Plan period, shall continue to be collected in the same manner as before, with no change to default wholesale suppliers' and EGS' responsibility in regard to said charges.

A Joint Petition for Settlement containing the NITS settlement language will be provided with Reply Briefs. Penn State's Reply Brief will include its Statement in Support/Non-Opposition to the NITS section of the Joint Petition for Settlement. Penn State, however, reserves its right to address its position in response to any other party's argument on this matter or to file Exceptions should Your Honor not approve the NITS settlement issue.

X. TIME-OF-USE RATE

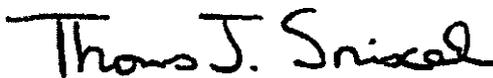
Penn State takes no position on this issue.

XI. CONCLUSION

The Pennsylvania State University requests Your Honor and the Commission approve the Company's proposed procurement plan for medium and large commercial and industrial

customers to the extent that it proposes to continue hourly pricing service but also lowers the threshold for the hourly pricing service from 400kW to 100kW but reject the Company's proposal that changes the billing demand threshold to one month under, and to continue the Company's current demand threshold of two months over, and reject RESA's alternative proposal to use Peak Load Contribution or Installed Capacity instead of billing demand.

Respectfully submitted,



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Dated: May 2, 2018

APPENDIX A

PROPOSED FINDINGS OF FACT

1. FirstEnergy proposed a procurement plan for medium and large commercial and industrial customers that proposes to continue hourly pricing service (“HPS”) but also proposes to lower the size threshold for the HPS from 400kW to 100kW. FirstEnergy also proposes to identify customers exceeding the 100kW threshold whereby if a customer’s measured demand is below 100kW in any of the 12 months of the prior year then the customer will remain eligible for FirstEnergy’s fixed-price procurement default service product. Met-Ed/Penelec/PennPower/West Penn (“FE”) Statement No. 1 at 12:15 and 13:17-22.
2. The hourly pricing threshold is being reduced from 400kW to 100kW in compliance with FirstEnergy’s previous Default Service Plan (“DSP”) settlement and in Compliance with the Commission’s End State Order related to the Retail Market Investigation. FE Statement No. 1 at 10:5 – 11:16
3. Under FirstEnergy’s current tariff, if an existing Customer’s billing demand is equal to or greater than 400 kW for two (2) consecutive months in the most recent twelve-month period, the Customer may no longer be eligible for service under his Rate Schedule GS-Medium, and shall be placed on Rate Schedule GS-Large or such other Rate Schedule for which such Customer most qualifies.⁴ RESA St. 1 at 12.
4. Under FirstEnergy’s proposal, a customer would have to exceed the 100-kW level in every month over a 12-month period to become classified as an HPS customer. RESA St. 1 at 11.

⁴ Met-Ed Tariff, Electric Pa. P.U.C. No. 52 (Supp.37) at Fourth Revised Page 66.

5. FirstEnergy's proposal does not appropriately categorize the over 100-kW customers. Instead, it would retain many customers who often exceed the 100-kW demand level on the Companies' commercial fixed-price default service option. RESA St. 1 at 11-12.
6. RESA's suggested alternative of basing the procurement classification on the customer's Peak Load Contribution or Installed Capacity ("ICAP") tag as measured under the PJM 5 CP model is more complex than the customer's monthly metered billing demand, which is a measure that commercial customers in that size range would normally understand. PSU Statement No. 1-SR at 8:13-15.
7. When implementing a change in threshold, it is important not to add confusion to the process and switching the threshold determination methodology would do just that. PSU Statement No. 1-SR at 8:16-18.

APPENDIX B
PROPOSED CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the parties and subject matter of this proceeding. 66 Pa.C.S. § 2801 et seq; 52 Pa.Code §§ 54.181-54.189.
2. The party seeking a rule or order from the Commission has the burden of proof in that proceeding. 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.” *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa.Cmwlt. 1990). Section 332(a) of the Public Utility Code, 66 Pa.C.S. § 332(a).
3. The Companies have the burden of proving they have met the requirements for approval of its proposed default service plan.
4. 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. See *In re Loudenslager’s Estate*, 430 Pa. 33, 240 A.2d 477, 482 (1968). 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. *Reidel v. County of Allegheny*, 633 A.2d 1325, 1329 n. 11 (Pa.Cmwth. Ct. 1993).
5. 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).

6. FirstEnergy's proposal to lower the lower the size threshold for the Hourly Pricing Service from 400kW to 100kW is just and reasonable.
7. FirstEnergy's proposal to change the method it identifies customers who exceed the 100kW threshold from two consecutive months over to one month under is not just and reasonable and is not in the public interest.
8. RESA's alternative proposal to have FirstEnergy base the procurement classification on the customer's Peak Load Contribution or Installed Capacity is not just and reasonable and is not in the public interest.

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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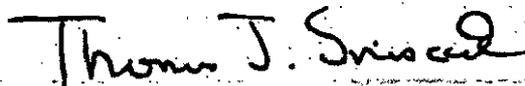
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