

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held August 23, 2018

Commissioners Present:

Gladys M. Brown, Chairman, Statement, concurring in part and dissenting in part
Andrew G. Place, Vice Chairman
Norman J. Kennard
David W. Sweet
John F. Coleman, Jr.

Petition of Metropolitan Edison Company for
Approval of a Default Service Program for
the Period Beginning June 1, 2019 through
May 31, 2023 P-2017-2637855

Petition of Pennsylvania Electric Company for
Approval of a Default Service Program for
the Period Beginning June 1, 2019 through
May 31, 2023 P-2017-2637857

Ellen L. Cooper C-2018-2643217
v.
Pennsylvania Electric Company

Betty Dusicsko C-2018-2643249
v.
Pennsylvania Electric Company

Joseph Dusicsko C-2018-2643274
v.
Pennsylvania Electric Company

Angela C. Esters C-2018-2643222
v.
Pennsylvania Electric Company

Debra A. Gibbs v. Pennsylvania Electric Company	C-2018-2643260
Catherine M. Hartzell v. Pennsylvania Electric Company	C-2018-2643211
Dennis T. Husted v. Pennsylvania Electric Company	C-2018-2643280
Cynthia Glover Muhammed v. Pennsylvania Electric Company	C-2018-2643212
David Nies v. Pennsylvania Electric Company	C-2018-2643243
Carl E. Palotas, Jr. v. Pennsylvania Electric Company	C-2018-2643225
Richard S. Powierza v. Pennsylvania Electric Company	C-2018-2643248
Bernadine Randhanie v. Pennsylvania Electric Company	C-2018-2643284
Matthew J. Sciarrino v. Pennsylvania Electric Company	C-2018-2643239
Mark L. Spaeder v. Pennsylvania Electric Company	C-2018-2643244

Kenneth C. Springirth v. Pennsylvania Electric Company	C-2018-2641907
Kathleen B. Walls v. Pennsylvania Electric Company	C-2018-2643213
Robert H. Walls v. Pennsylvania Electric Company	C-2018-2643214
Julie Whaling v. Pennsylvania Electric Company	C-2018-2643277
Robert G. Whaling, Sr. v.	C-2018-2643280
Joseph A. and Dianne L. Yochim v. Pennsylvania Electric Company	C-2018-2643246
Petition of Pennsylvania Power Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023	P-2017-2637858
Petition of West Penn Power Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023	P-2017-2637866

OPINION AND ORDER

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BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Joint Petition for Partial Settlement (Joint Petition or Partial Settlement) filed on May 15, 2018, by Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power) and West Penn Power Company (West Penn) (collectively, the Companies or FirstEnergy); the Office of Consumer Advocate (OCA); the Office of Small Business Advocate (OSBA); the Met-Ed Industrial Users Group (MEIUG), the Penelec Industrial Customer Alliance (PICA), and the West Penn Power Industrial Intervenors (WPPII) (collectively, the Industrials); and the Retail Energy Supply Association (RESA) (collectively, the Joint Petitioners).

Also, before the Commission for consideration and disposition are the Exceptions of the OCA and RESA, filed on June 28, 2018, to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Mary D. Long, issued on June 8, 2018. The Commission's Bureau of Investigation and Enforcement (I&E), the OCA, Respond Power LLC (Respond Power), the Industrials, and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed Replies to Exceptions on July 9, 2018.

For the reasons stated, *infra*, we shall adopt the Recommended Decision, as modified, consistent with this Opinion and Order, and approve the Joint Petition. Additionally, we shall grant the Exceptions of the OCA and RESA, in part, and deny them in part.

I. History of the Proceeding

On December 11, 2017, the Companies filed a joint petition for the approval of default service and procurement programs covering a four-year period from June 1, 2019 through May 31, 2023. By law, the Commission must render a final decision on the Companies' Default Service Programs (DSPs) on or before September 11, 2018.¹ This is the Companies' fifth DSP filing and is referenced as DSP V.

I&E, the OCA, and the OSBA (collectively, the Statutory Parties) each filed interventions. Petitions to intervene were also filed by Calpine Energy Solutions, LLC (Calpine), CAUSE-PA, Constellation NewEnergy, Inc. (Constellation) and Exelon Generation Company, LLC (ExGen), the Industrials, NextEra Energy Marketing, LLC (NextEra), Pennsylvania State University (PSU), RESA, and Respond Power. On January 8, 2018, Kenneth C. Springirth, a ratepayer, filed a formal complaint challenging the petition of Penelec.²

An additional nineteen formal complaints were filed by consumers which also challenged the petition of Penelec. Public input hearings were held on March 13, 2018, in Erie, the service territory of Penelec. Forty people testified at the hearing held at 1:00 p.m. and twenty-six additional people testified at the 6:00 p.m. hearing. The subject of the testimony was the Companies' proposed Bypassable Retail Market Enhancement Rate Mechanism or Price to Compare Adder (PTC Adder).

The Parties undertook discovery and served written direct, rebuttal and surrebuttal testimony. The evidentiary hearing convened on April 10, 2018. Although

¹ 66 Pa.C.S. § 2807(e)(3.6).

² Mr. Springirth's Complaint was filed at Docket No. C-2018-2641907.

the Parties had not achieved an agreement on all of the issues raised in the proceeding, all Parties agreed to waive the cross-examination of witnesses. Any argument necessary on the unresolved claims relied solely on the written testimony admitted into the record. Accordingly, the written testimony of the Companies, I&E, the OCA, OSBA, CAUSE-PA, the Industrials, PSU, Constellation and ExGen, Calpine, RESA, and Respond Power was admitted into the record.³ Additionally, six stipulations were admitted into the record as Stipulations 1-6:

Joint Stipulation	Stipulating Parties	Subject of the Joint Stipulation
No. 1	All parties	Non-commodity billing, FERC 494 Settlement, net-metering and time-of-use rates
No. 2	Companies, I&E, Respond Power, RESA	Purchase of Receivables (POR) Clawback Charge
No. 3	Companies and CAUSE-PA	Costs associated with unrestricted shopping by Customer Assistance Program (CAP) customers June 2013-March 2018
No. 4	Calpine and ExGen/Constellation	NITS and other Electric Generation Supplier (EGS) issues
No. 5	Calpine and RESA	NITS and other EGS issues
No. 6	RESA and CAUSE-PA	Bundling energy management devices referenced by RESA witness Richard J. Hudson in RESA St. 1-R as corrected April 2, 2018

³ Neither NextEra nor Direct Energy submitted written testimony for admission into the record.

Main briefs were filed by the Companies, I&E, the OCA, OSBA, CAUSE-PA, the Industrials, PSU, RESA and Respond Power. These briefs presented each Party's legal argument on issues regarding the default service plans that had not been resolved by settlement. Not every issue was of consequence to every Party. Each Party noted those issues upon which it either did not oppose or did not take a position in the litigation.

A Partial Settlement was filed on May 15, 2018, along with reply briefs. Parties joining the Settlement included statements in support of the relevant issues in their respective reply briefs.

By order dated May 16, 2018, parties who did not actively participate in the litigation were provided an opportunity to join or object to the Settlement. These responses were due on or before May 25, 2018. No objections were filed. By order dated May 29, 2018, the record was closed.

As noted, Exceptions were filed by the OCA and RESA on June 28, 2018. I&E, Respond Power, CAUSE-PA and the Industrials filed Replies to Exceptions on July 9, 2018.

II. Introduction

As a preliminary matter, we note that any issue that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); also see, generally, *University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

In her Recommended Decision, the ALJ made seventy-three Findings of Fact and reached eighteen Conclusions of Law. R.D. at 6-18, 81-84. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

A. Legal Standards

The policy of the Commission is to encourage settlements, and the Commission has stated that settlement rates are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code §§ 5.231, 69.401. A full settlement of all the issues in a proceeding eliminates the time, effort and expense that otherwise would have been used in litigating the proceeding, while a partial settlement may significantly reduce the time, effort and expense of litigating a case. A settlement, whether whole or partial, benefits not only the named parties directly, but, indirectly, all customers of the public utility involved in the case.

Regulatory proceedings are expensive to litigate, and the reasonable cost of such litigation is an operating expense recovered in the rates approved by the Commission. Partial or full settlements allow the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and replies to exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, yielding significant expense savings for the company's customers. For this and other sound reasons, settlements are encouraged by long-standing Commission policy.

Despite the policy favoring settlements, the Commission does not simply rubber stamp settlements without further inquiry. In order to accept a settlement such as

that proposed here, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. PUC v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991).

The Company has the burden of proof in this proceeding to establish that it is entitled to the relief it is seeking. 66 Pa. C.S. § 332(a). The Company must establish its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pennsylvania Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 602 A.2d 863 (Pa. 1992). To meet its burden of proof, the Company must present evidence more convincing, by even the smallest amount, than that presented by any opposing party. *Selling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). In this case, the Companies request that the Commission approve the filing establishing the proposed DSP. The Joint Petitioners have reached an accord on many of the issues and claims that arose in this proceeding and submitted the Partial Settlement. The Joint Petitioners have the burden to prove that the Partial Settlement is in the public interest.

B. Standards for Default Service

The requirements of a default service plan appear in Section 2807(e) of the Public Utility Code (Code),⁴ 66 Pa. C.S. § 2807(e). The requirements 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

⁴ *Electricity Generation Customer Choice and Competition Act, Act 138 of 1996*, (Competition Act) as amended by Act 129 of 2008, codified at 66 Pa.C.S. § 2801 *et seq.*

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. C.S. §§ 2807(e), 2807(f).

The Competition Act also mandates that customers have direct access to a competitive retail generation market. 66 Pa.C.S. § 2802(3). 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.” 66 Pa. C.S. § 2802(5). *See, Green Mountain Energy Company v. Pa. PUC*, 812 A.2d 740, 742 (Pa. Cmwlth. 2002). Thus, a fundamental policy underlying the Competition Act is that competition is more effective than economic regulation in controlling the costs of generating electricity. 66 Pa. C.S. § 2802(5).

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-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670 (Order entered August 16, 2012) at 7-8.

Also applicable are the Commission’s default service Regulations, 52 Pa. Code §§ 54.181-54.189, and a Policy Statement addressing default service plans, 52 Pa. Code §§ 69.1802-69.1817. The Commission has directed that electric distribution companies (EDCs) consider the incorporation of certain market enhancement programs into their DSPs in order to foster a more robust retail competitive market. *Investigation of Pennsylvania’s Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952 (Order entered December 16, 2011), and *Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan* Docket No. I-2011-2237952 (Final Order entered March 2, 2012) (*IWP Order*).

III. Joint Petition for Partial Settlement

A. Description and Terms of the Partial Settlement

On May 15, 2018, the Companies filed a Joint Petition for Partial Settlement, which resolved a number of issues related to the Companies' DSP filing. The OCA, OSBA, RESA and the Industrials are signatories to the Joint Petition. I&E, Direct Energy, PSU, CAUSE-PA, ExGen and Constellation, NextEra, and Respond Power, which are parties to this proceeding, have authorized the Joint Petitioners to represent that they do not oppose the Partial Settlement. Calpine takes no position on the Partial Settlement, and specifically does not oppose the Partial Settlement as it relates to Network Integration Transmission Services (NITS).

The Joint Petitioners state that the Partial Settlement was achieved after conducting extensive discovery and engaging in in-depth discussions over several weeks. The Joint Petitioners provide that the Partial Settlement terms and conditions constitute a carefully crafted package representing reasonable negotiated compromises on the issues addressed. They also state that the Partial Settlement is in the public interest for the reasons set forth in their reply briefs and the additional reasons found in Paragraph 13 of the Partial Settlement. Partial Settlement at ¶ 12-13.

The essential terms of the Partial Settlement are set forth in Paragraph 11.

11. The Partial Settlement consists of the following terms and conditions:

A. Non-Commodity Products

1. Subject to the appropriate approvals by the Commission, issues related to supplier consolidated billing

shall be addressed in the Commission's generic proceeding on the topic in Docket M-2018-2654254.

2. No party to this Partial Settlement will object to any other party to this Partial Settlement recommending at Docket M-2018-2654254 that the Commission take administrative notice of the record in this proceeding with respect to the issue of access to EDC bills for EGS non-commodity products, and no party will object to any other party's submittal of testimony of other record evidence from this DSP V proceeding in Docket M-2018-2654254.

B. FERC 494 Settlement

1. The parties agree that the Companies' proposal related to the distribution and recovery of FERC 494 Settlement allocations will be considered uncontested in this matter.

C. Net Metering

1. The parties agree that concerns related to net metering will not be addressed in this proceeding.

D. Time of Use ("TOU")

1. The Companies are currently providing residential TOU service under the terms and conditions of the Companies' Price to Compare Default Service Rate Riders as described in each Company's Rider K, Time-of-Use Default Service Rider. The Companies will make a specific proposal regarding their residential time of use rate offerings in the earlier of their first base rate increase requests or default service proceedings following full implementation of smart meter back office functionality, which is planned for fourth quarter 2019 as of the date of this Partial Settlement.

E. Network Integration Transmission Services

1. NITS will remain the responsibility of both default service and electric generation suppliers.

In addition to the specific terms to which the Joint Petitioners have agreed, the Partial Settlement contains certain general, miscellaneous terms. The Partial Settlement is conditioned upon the Commission's approval of the terms and conditions without modification. The Partial Settlement establishes the procedure by which any of the Joint Petitioners may withdraw from the Partial Settlement and proceed to litigate this case, if the Commission should act to modify the Partial Settlement. Partial Settlement at ¶ 15. In addition, the Partial Settlement provides that it is made without any admission against, or prejudice to, any position which any of the Joint petitioners might adopt during subsequent litigation of this case or any other case. Partial Settlement at ¶ 14.

The Joint Petitioners respectfully requested that the ALJ and the Commission approve the Partial Settlement as part of the Companies' DSP V. Partial Settlement at 7.

B. ALJ's Recommendation on Settlement

The ALJ found that the proposed Partial Settlement was reasonable, was in the public interest, and therefore, recommended its approval without modification. The ALJ noted that the settlement finds support from a broad range of parties with diverse interests. Furthermore, the ALJ stated that these parties in a collaborative effort have reached agreement on a broad array of issues, demonstrating that the Partial Settlement is in the public interest and should be approved. None of the parties representing other interests object to the terms of the Joint Petition. R.D. at 80.

The ALJ opined that resolution of this proceeding by negotiated settlement removes the uncertainties of litigation. In addition, she asserted that all Parties obviously benefit by the reduction in expense and conservation of resources made possible by adoption of the proposed settlement in lieu of litigation. *Id.*

The ALJ found the Partial Settlement embodied in the Joint Petition for Partial Settlement is both just and reasonable and its approval is in the public interest. As a result, she recommended that the Commission approve the Joint Petition. R.D. at 81.

C. Disposition on Settlement

As noted, prior to the evidentiary hearing, the Parties reached a Partial Settlement in principle on several issues. At the hearing, the Parties' pre-served testimony and exhibits were admitted into the record and cross-examination was waived. The Partial Settlement was not signed by all the Parties, but also was not opposed by any Party.

Based upon our review of the Partial Settlement, we agree with the ALJ, as well as the associated statements in support of the Settlement which were filed with the Reply Briefs, that the terms and conditions of the Partial Settlement are in the public interest and should be approved. We find that there are a number of settled issues within the Partial Settlement that are beneficial to customers. Among those provisions are: (1) the agreement to address issues related to supplier consolidated billing in the Commission's generic proceeding in Docket M-2018-2654254; (2) the agreement to the Companies' proposal regarding distribution and recovery of FERC 494 Settlement allocations; (3) the agreement that net metering concerns will not be addressed in this proceeding; (4) the agreement to the Companies' proposal for new time of use rate offerings; and (5) the agreement that NITS cost responsibilities remain unchanged.

The Partial Settlement resolves several of the issues impacting residential, consumers, business customers and the public interest at large and represents a fair balance of the interests of the Companies and their customers. The benefits of approving the Partial Settlement are numerous and will result in significant savings of time and

expenses for all Parties involved by avoiding the necessity of further administrative proceedings, as well as possible appellate court proceedings, conserving precious administrative resources. Moreover, the Partial Settlement provides regulatory certainty with respect to the disposition of issues which benefits all parties. For the reasons stated herein and in the settling Parties' Statements in Support, we agree with the ALJ's conclusion that the Joint Petition for Partial Settlement is in the public interest. Accordingly, we shall adopt the ALJ's recommendation to grant the Joint Petition and approve the Partial Settlement, without modification.

IV. Contested Issues

A. Residential Procurement Schedule Hard Stop

1. Background

This issue involves the Companies' proposal to end all supply contracts on May 31, 2023, which is referred to as a "hard stop" of all contracts in this proceeding. Under this proposal, the load of the residential class will be divided into tranches, approximately fifty megawatts each. Qualified suppliers will bid to serve tranches in simultaneous descending clock auctions for all four Companies. Companies M.B. at 3. The residential tranches will be secured over twelve procurement dates and residential products will have staggered twelve and twenty-four-month terms over the DSP V term from June 1, 2019, with a hard stop ending on May 31, 2023. Companies M.B. at 3, 12.

2. Positions of the Parties

a. Companies' Position

The Companies averred that the default service supply contracts under the Companies' DSPs have ended at the same time – the end of the prescribed DSP delivery period – since DSP II. The Companies noted that the Commission has historically supported supply contracts ending at the same time as the DSP term. They aver that the Companies' use of “shorter, more frequent procurements should ensure a smoother transition into the next procurement period without requiring the procurements extend beyond May 2015 . . .”⁵ The Companies explained that by adhering to a hard stop, the Companies remove any regulatory risk associated with significant changes in default service rules that may be implemented beyond the end of any particular DSP delivery period. Companies St. 2-R at 3-4.

b. OCA's Position

The OCA provided that all of the Companies' residential power supply contracts relied upon in the last year of the proposed DSP V default service plan period expire at the end of the period. This was also true for DSP IV⁶ and, therefore, there is no pricing continuity between the 2017-2019 plan period and the 2019-2013 plan period proposed in the current proceeding. According to the OCA, this reduces the degree to

⁵ *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-2011-2273850, *et al.* (Order entered August 16, 2012) (DSP II) at 26.

⁶ *Joint Petition of Met-Ed, Penelec, Penn Power, and West Penn Power for Approval of their Default Service Programs*, Docket No. P-2015-2511333, *et al.* (Order entered May 19, 2016) (DSP IV).

which residential customers can benefit from temporal diversification of the portfolio in the subsequent default service period that commences in 2023. OCA St. 1 at 11

The OCA proposed that in the final residential auction scheduled to take place under the proposed plan, sixteen of the forty-six twelve-month contracts be converted to two-year contracts. OCA St. 1 at 12.

3. ALJ's Recommendation

The ALJ found that the OCA was not able to demonstrate that the auction schedule proposed by the Companies will not provide adequate price stability for their customers. The ALJ acknowledged that the OCA's recommended approach of layering contracts is a viable alternative approach used by other EDCs, but the OCA did not identify a specific issue with the Companies' past procurements that would require a change in the procurement strategy. R.D. at 30.

4. The OCA's Exception No. 1 Regarding the OCA's Alternative Residential Procurement Schedule

The OCA contends that the specific issue it identified with regard to the Companies' procurement schedule is the unnecessary market timing risk for residential customers created by ending all contract purchases on a single date. OCA R. Exc. at 3 (citing OCA M.B. at 11). The OCA argues that it provided evidence that extending purchases beyond the term of the DSP is both a best practice and a common practice in Pennsylvania designed to avoid potential market timing risk and provide price stability. OCA Exc. at 3 (citing OCA M.B. at 11-12, OCA St. 1S at 6). The OCA opines that although it has demonstrated that the Companies' auction schedule would not provide adequate price stability, it is not required to do so. Rather, the OCA contends that the Companies' have the burden of proving that its proposed auction schedule provides

adequate price stability and the Companies have failed to refute evidence presented by the OCA that extending purchases beyond the term of the DSP is a best practice designed to avoid potential risk and provide price stability. OCA Exc. at 4 (citing OCA M.B. at 11-12, OCA St. 1S at 6).

5. Disposition

Based on our review of the record and the Parties' positions, we conclude that the OCA failed to satisfy its burden of proof regarding the need to modify the Companies' procurement schedule for the residential class. We concur with the ALJ that the OCA's arguments fail to demonstrate that the Companies' procurement strategy violates 66 Pa. C.S. § 2807. The Companies' default service supply contracts have ended at the prescribed DSP delivery period since DSP II with the Commission's support. In the DSP II proceeding, we stated that the Companies' proposed schedule of shorter, more frequent procurements, should ensure a smoother transition into the next procurement period without requiring that the procurements extend beyond the end of DSP II. We find that the OCA has proposed a viable alternative but has not shown its plan to be superior to the Companies' proposal at this time. Accordingly, we will deny the OCA's Exception No. 1.

B. Sharing Customer-Specific Payment Information with the EGSs

1. Background

Under each of the Companies' existing POR programs, accounts receivable are purchased from participating EGSs at a zero-discount rate (the Companies pay the face value of the account receivable regardless of what they are actually able to collect from customers), which eliminates the risk to EGSs of uncollectible accounts expense

associated with serving residential and small commercial customers. Companies St. 1 at 20.

The Companies implemented a POR program clawback mechanism as a two-year pilot for the two twelve-month periods ending August 31, 2016, and August 31, 2017. In DSP V, the Companies proposed a continuation of the clawback mechanism as a permanent element of the Companies' POR programs. Companies M.B. at 23.

The clawback charge, as approved in the DSP IV Settlement, was designed to collect a portion of uncollectible accounts expense from EGSs, specifically, those EGSs whose practices are driving significantly higher write-offs as a product of the types of offers they make to customers. Because collection is not an issue with which EGSs must concern themselves, the Companies believe that those EGSs with a higher percentage of write-offs are unfairly burdening the Companies and their customers, through their pricing practices, with disproportionality higher write-offs than their peers. Companies St. 1 at 21.

The clawback charge calculation is a two-part test used by the Companies to identify EGSs with the highest percentages of uncollectible accounts who also charge the highest rates. The charge recovers the amount of EGS write-offs over 200% of the operating company average and is billed to the EGS annually. *Id.*

Several parties (I&E, RESA and Respond Power) expressed concerns regarding the continuation of the clawback mechanism. I&E acknowledged that the results from the Companies' 2016 and 2017 clawback charge have indicated that EGSs have modified their pricing behaviors and reduced their uncollectibles, however, I&E expressed concern that the clawback charge fails to address all EGS uncollectibles. Therefore, I&E recommended addressing the Companies' uncollectible expense through establishing a merchant function charge for default service customers and a POR discount

rate addressed to EGSs for application to retail customers. RESA did not object to the clawback charge itself but recommended several modifications to the program. Respond Power opposed the clawback charge in its entirety, and also had specific criticisms related to the calculation of the clawback, the timing of its reestablishment or continuation, and various protections it believes should be established for EGSs to the extent the Commission permits the clawback as a permanent part of the Companies' POR programs. R.D. at 38-39. Joint Stipulation No. 2 resolves each of the Stipulating Parties' concerns regarding the clawback mechanism as follows:

1. The Stipulating Parties agree to a four-year extension of the Companies' Clawback Charge pilot, to begin with charges assessed in September 2018 based on a review of data for the twelve months ending August 31, 2018 and ending with charges to be assessed in September 2021.
2. The Companies will continue to use a two-prong test to determine the clawback charge. The first, as described in testimony will identify those electric generation suppliers (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 the EGS's actual write-offs and 200% of the average percentage of write-offs per operating company.
3. The Companies will develop an EGS-specific customer arrears report with unpaid aged EGS account balances. This report will be provided to EGSs participating in the Companies' purchase of receivables programs on a

quarterly basis, beginning no later than October 20, 2018, reflecting EGS arrears for third quarter 2018.

Joint Stipulation No. 2.

2. Positions of the Parties

a. Companies' Position

The Companies provided that their original proposal be modified consistent with Joint Stipulation No. 2, such that the continuation of the clawback would be for a four-year extension of the pilot which just concluded, using the same terms for the calculation of the charge. In addition, the Companies explained they will provide reports meeting the terms of paragraph 3 of the joint stipulation by the due dates set so as to better enable the EGSs' ability to manage their own write-offs, and in turn, the clawback charge exposure they bear. Companies M.B. at 26.

The Companies explained that the OCA raised concerns within its rebuttal testimony regarding the idea of the Companies reporting to EGSs about the payment behavior of those EGSs' customers. The Companies stated that this information is presently available to EGSs for their active customers today, and the Companies are not restricted from providing such information. To the extent such reports are provided, those reports would only include payment status for charges submitted by that EGS receiving the report, for current customers of that EGS. *Id.*

b. OCA's Position

The OCA provided that, while it may be appropriate to develop a reporting requirement by FirstEnergy to EGSs participating in the POR program on EGS-specific write-off or arrears balance trends, such information should not include customer specific

information. According to the OCA, the EGS has sold its receivables to the EDC and the EDC remains responsible for collecting unpaid supplier charges using the approved collection programs and consumer protection policies applicable to the EDC's regulated services. The EGS is no longer liable for collecting or communicating with individual customers concerning their payment profile and any such communications are likely to confuse and perhaps adversely impact the customer's abilities to interact with the EDC to obtain required rights and responsibilities, such as referral to Customer Assistance Program (CAP), the right to a payment plan, medical emergency declarations, and other requirements imposed on the EDC, most of which are not currently the responsibility of the EGS customer service representatives. OCA St. 2R at 9.

c. RESA's Position

RESA stated that, currently, the Companies do not provide a standard report or communication to EGSs regarding write-off percentages. RESA recommended that the Companies be directed to develop a reporting mechanism for conveying timely information to EGSs about the nonpayment of an EGSs' customers' charges. RESA explained that if an EGS is assessed a clawback charge, it 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. RESA explained further that there are misaligned timing issues regarding how the clawback charge is calculated. Under the clawback charge, the Companies only assess each EGSs' write off level once per year in August which determines the clawback charge that is billed to the EGS in September. This is based on the Companies' assessment of write-off amounts for the prior 12-month period. EGSs which 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 the Companies do not actively transmit information about whether or not the EGS customer is paying the EGSs' charges. Compounding the problem is that a write-off is only recorded 180 days after a final bill is sent for the

coatomer account. RESA provided that waiting until the charge is assessed and then attempting to validate the data relied upon by the Companies to assess the clawback charge is not a reasonable way to address this because the underlying data may be many years old and may involve end-users who are no longer customers of the EGS at the time the charge is assessed. RESA St. 1 at 15-16 (citing RESA Ex. RJH-5).

RESA explained that 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. An EGS may elect to contact the customer to determine the root cause of the nonpayment (*i.e.*, perhaps the customer is dissatisfied with the EGS's product or services) and could offer a different product or other value-add that would assist the customer with making payment. RESA St. 1 at 16.

RESA also stated that information regarding nonpaying customers could allow proactive EGS action with these customers that could lessen the amount of uncollectible expenses for all ratepayers. RESA St. 1 at 17.

d. Respond Power's Position

Respond Power averred that it is completely at the discretion of the Companies' collection efforts. It has no control over those activities or any ability to assist or influence the Companies' collection practices. Respond Power explained that if it knew that customers were not paying their bills, it would have the option of including additional outreach to non-paying customers, including the negotiation of a contract that is more affordable for the customer. Respond Power St. 1 at 11.

3. ALJ's Recommendation

The ALJ recommended that the Commission approve Joint Stipulation No. 2, Paragraph Nos. 1 and 2, as written, and approve Paragraph No. 3, but with a modification to clarify the scope of the customer arrearage information that is exchanged between the Companies and EGSs. R.D. at 42-43.

The ALJ explained that the OCA advocates an overly broad reading of 52 Pa. Code § 54.8(a), which provides for the privacy of customer information:

An EDC or EGS may not release private customer information to a third party unless the customer has been notified of the intent and has been given a convenient method of notifying the entity of the customer's desire to restrict the release of the private information. Specifically, a customer may restrict the release of either the following:

- (1) The customer's telephone number.
- (2) The customer's historical billing data.

The ALJ reasoned that in the context of the other regulations in the subchapter, the purpose of Section 54.8 is to protect consumers from unwanted marketing contact by suppliers. The ALJ noted that there is nothing in this Regulation, which addresses the exchange of customer information contemplated by Paragraph 3 of Joint Stipulation No. 2. The customers which are the subject of the agreement are the EGS' own customers and the EGS is not a "third party." These customers have already provided their address and telephone number to the EGS, and the customers' usage information is already exchanged between the EDC and the EGS. R.D. at 43.

The ALJ found that Section 54.8 of the Commission's Regulations does not prohibit the Companies from providing the arrearage reports contemplated by Paragraph 3 of Joint Stipulation No. 2. The ALJ was not persuaded by the OCA's argument that by

participating in the Companies' POR, the EGS has no collection responsibilities and therefore has waived all access to their customer's payment data. The ALJ explained that the clawback charge is meant, in part, to incent EGSs to provide customers with affordable supply contracts or face the potential consequence of the imposition of the charge. EGSs should have the ability to renegotiate more affordable agreements with their payment-troubled customers or return them to default service, which not only benefits the EGS by enhancing its ability to avoid assessment of the clawback charge but may also benefit the Companies and its rate payers by reducing uncollectible expenses. R.D. at 45.

According to the ALJ, the language of Paragraph 3 is somewhat vague in that it does not appear to explicitly limit the arrearage report that an EGS receives to the arrearages of only that EGS's customers. The ALJ recommended that the Commission approve Paragraph 3 as modified below to more explicitly limit the information that an EGS receives:

The Companies will develop an EGS-specific customer arrears report with unpaid aged EGS account balances. This report will be provided to EGSs participating in the Companies' purchase of receivables programs on a quarterly basis, beginning no later than October 20, 2018, reflecting EGS arrears for third quarter 2018.

Information contained in the customer arrears report provided to each EGS shall only contain information regarding customers of that specific EGS.

R.D. at 45.

4. The OCA’s Exception No. 2 Regarding Allowing Electric Generation Suppliers to be Provided Customer Specific Payment Information Without Affirmative Customer Consent and the Replies of RESA and Respond Power

The OCA notes that the information that is to be provided pursuant to Paragraph 3 of Stipulation No. 2 refers to customer-specific information, rather than aggregated information. OCA Exc. at 5 (citing OCA M.B. at 15). The OCA states that the EGSs are not entitled to receive or permitted to access such customer information without customers’ full, knowing consent. OCA Exc. at 6. The OCA explains that pursuant to the Commissions’ Regulations at 52 Pa. Code § 54.8, “private customer information” includes the “customer’s historical billing data.” The OCA does not support the release of customer specific data as called for in this provision of the Joint Stipulation. *Id.*

The OCA provides that there has been no showing that proper customer consent has been obtained or will be obtained by FirstEnergy for the stipulated release of information. OCA Exc. at 6 (citing OCA M.B. at 15). The OCA notes that this is particularly true when the EGS is not responsible for collecting unpaid charges from the customer. The EDC is responsible for collecting unpaid supplier charges as the EGS has sold its receivables to the EDC and “[t]he EGS is no longer liable for collecting or communicating with the individual customers concerning their payment profile and any such communications are likely to ...adversely impact the customer’s abilities to interact with the EDC to obtain required rights and responsibilities.” OCA Exc. at 6 (citing OCA M.B. at 16, OCA St. 2S at 13; OCA St. 2R at 9).

Regarding the ALJ’s recommended modification to Paragraph 3 of Stipulation No. 2, the OCA submits that these modifications, while an improvement, do not address the OCA’s concerns. The OCA states that customer-specific arrears information should not be automatically reported to EGSs as there is not specific

authorization for EGSs to receive this information as EGSs are not responsible for collecting unpaid charges from customers. OCA Exc. at 6-7.

In Reply, RESA notes that it fully supports the well-stated analysis of the ALJ explaining that the OCA advocates for an overly broad reading of 52 Pa. Code § 54.8 because this regulation is not intended to address the exchange of customer information. RESA R. Exc. at 2 (citing R.D. at 43). RESA states further that the OCA simply refuses to acknowledge that (1) the Purchase of Receivables program is mandatory for EGSs, and, (2) the clawback mechanism (a feature of the program) has the potential to assess EGSs a financial penalty that is rooted solely in the non-payment by the EGS's customers. RESA R. Exc. at 2.

According to Respond Power, the OCA's Exception No. 2 should be denied, and the Commission should adopt the portion of the Recommended Decision that approves Joint Stipulation No. 2 as modified. Respond Power states that it is imperative that EGSs be aware that their customers are not paying their bills if they are going to be subject to the imposition of clawback charges. Respond Power contends that the OCA's argument in Exception No. 2 overlooks the important fact that the Companies would be providing information to Respond Power about its own supply customers. Respond Power contends that the Commission has already concluded that 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.⁷ Respond Power explains that the companies have noted that this information is already available to EGSs for their active customers – through a process that Respond Power has described as being overly burdensome, which further supports the Companies' compilation of arrears reports as set forth in Joint Stipulation No. 2. Respond Power R. Exc. at 7.

⁷ See Secretarial Letter dated February 5, 1999 re: EDI – Providing Customer Payment Information, Docket No. M-00960890F0015 (*February 5, 1999 Secretarial Letter*).

5. Disposition

We are not persuaded by the OCA's argument that an EGS participating in the POR is a "third party" after it has sold its receivables and is no longer responsible for the collections of unpaid bills. As Respond Power noted *supra*, and the ALJ discussed on page 43 of the Recommended Decision, we have addressed the "third party" issue previously in our *February 5, 1991 Secretarial Letter* as follows:

We are aware that some concerns have been raised about the possibility of breaching customer privacy issues if billing parties disclose non-payment information to non-billing entities. 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. In fact, we note that under our customer information disclosure regulations at 52 Pa. Code §54.8, electric distribution companies and electric generation suppliers are restricted only from releasing private customer information to third parties absent the customer's consent. Since the non-billing party is providing electric service to the customer, it would not be viewed as a third party and is certainly entitled to know whether the customer is making payments toward its charges.

The EGSs are not "third parties" and would be receiving information about their own customers. We note that the EGSs who participate in the POR are subject to the clawback charge. The arrears report would give the EGSs the opportunity to contact customers with arrears before the clawback charges occur. The EGS would have options such as providing the customer a more affordable product or returning the customer to default service. The reduction of the clawback charges would benefit not only the EGSs but customers as well. Since an EGS with customers with arrears faces clawback charges, the EGS may make an effort to reduce its clawback charges and modify its

programs, to reduce arrears and provide better products. Accordingly, we shall deny the OCA's Exception No. 2.

C. Extending the Approval of the Customer Referral Program (CRP)

1. Background

The Companies implemented their CRP in 2013. The Companies offer their CRP to residential and small commercial customers that contact the Companies to establish new service, move within Companies' service territories, complain regarding a high bill, or learn about EGS shopping. R.D. at 58 (citing OCA St. 2 at 7-9). The Companies provide scripts to their customer service representatives (CSRs) as well as their third-party agent, AllConnect. The CSR scripts include a statement regarding "potential rate savings" associated with the CRP followed by a statement attempting to transfer the customer to a "connection program." Once transferred to AllConnect, the AllConnect representatives present the CRP to the customer and actively attempt to enroll the customer with an EGS. AllConnect earns a fee each time it enrolls a customer in the CRP. R.D. at 59 (citing OCA St. 2 at 8-9).

Customer referral programs have been encouraged by the Commission in order to encourage consumers to enter the competitive market.⁸ R.D. at 57. On March 2, 2012, the Commission provided guidance on the implementation of customer referral programs in its *IWP Order* addressing retail market enhancements. The *IWP Order* established, *inter alia*, the following guidelines for EDCs implementing CRPs: the terms and conditions of the standard offer must be presented to customers before they decide to enter the program, the program is voluntary for customers, and participating EGSs must

⁸ See *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952 (Final Order entered February 15, 2013).

offer a 7% reduction in the PTC as compared to the PTC effective on the date the offer is made. R.D. at 57 (citing *IWP Order* at 20, 31-32, 73-74).

2. Positions of the Parties

a. Companies' Position

The Companies provided that they propose to continue the CRP through May 31, 2023, the end date of the proposed DSP term. One minor modification will be made to the CRP – extending the date of the Customer Referral Program Agreement (CRP Agreement) between the Companies and participating EGSs through May 31, 2023. The CRP Agreement outlines the terms and conditions to which a supplier must agree and meet in order to qualify to serve load through the CRP. Companies St. 1 at 19.

b. OCA's Position

The OCA noted that FirstEnergy has not provided any basis for its proposal to extend the Customer Referral Program to 2023. The OCA averred that the current program should be immediately reformed to ensure that a truly educational and proper presentation of this program has been implemented and that the required disclosures and policies reflected in the DSP IV Settlement have been implemented for all EDC and AllConnect agents. The OCA made specific recommendations of script changes for both the EDC and AllConnect agents. The OCA further recommended that FirstEnergy either terminate the program after May 31, 2021 or provide a study detailing, *inter alia*, what customer benefits have been provided in the form of bill impacts during the 12-month term. OCA St. 2 at 3-4.

c. RESA's Position

RESA averred that the scripting program changes implemented under DSP IV most likely had a significant negative impact on the number of enrollments in the program. RESA provided that enrollment has fallen 88% in monthly enrollments after the scripting changes. RESA recommended (1) that the Companies revert to using the scripts that were in place prior to the DSP IV settlement; (2) that the parties convene a working group to investigate the causes of the decline in enrollments and revise the scripting; and (3) that the Companies invite AllConnect to participate in the working group. RESA St. 1 at 19-22.

3. ALJ's Recommendation

The ALJ recommended that the Commission approve the continuation of the Companies' CRP until the conclusion of DSP V. The ALJ provided that the design of the current CRP was negotiated and agreed to in DSP IV. The Commission approved the plan and concluded that its approval was in the public interest and met the Commission's requirements for a CRP. The ALJ noted that although the Companies' only articulated reason to continue the program without changes for an additional two years is convenience, no party has adduced any evidence of a change in circumstances since the time it was approved to support the plans' termination or alteration. R.D. at 62.

The ALJ noted that the OCA and CAUSE-PA objected to the continuation of the CRP and proposed modifications to the design of the CRP. The OCA recommends that the Companies should either terminate the program in its entirety at the end of its current term, May 31, 2021, or the Companies should make a filing which demonstrates why the program should continue, based on demonstrated benefits to customers. The OCA found concerns with the scripting and training materials currently in use, arguing that they do not provide sufficient customer disclaimers and education. R.D. at 6. RESA

supports the continuation of the CRP through 2023 but suggests changes to the current scripts and program rules, as well as the use of bill-ready billing. RESA suggests a stakeholder process be convened to develop new scripts and procedures. R.D. at 7.

The ALJ reasoned that the arguments made by the OCA in this proceeding are similar to arguments the OCA made regarding the scripting negotiated in DSP IV. The ALJ states that the OCA is “attempting to relitigate issues regarding the design of the CRP that have been raised and resolved in prior proceedings . . .” The ALJ found that the script adequately describes the relationship between the price-to-compare and the price offered through the CRP. Additionally, the ALJ noted that there does not appear to be any inherently deceptive language in the CRP as designed and previously agreed to by the OCA. The ALJ concluded that the Commission has already determined that the language agreed to by the parties in the DSP IV is in the public interest and compliant with Commission guidance and regulations. R.D. at 60.

Thus, the ALJ disagreed with the OCA’s contention that the CRP should be terminated or re-designed by Commission mandate. The ALJ explained that if the Companies are not properly implementing the program, the OCA could file a complaint and seek enforcement, or the Commission could institute an investigation. The ALJ noted that many witnesses in the public input testimony in this proceeding testified that the myriad of competitive offers were confusing and difficult to navigate and that the purpose of a CRP is to stimulate participation in the supply market by providing customers with a simplified offer formula rather than comparison shopping. At the same time, the ALJ also noted that the CRP is not designed to guarantee savings. R.D. at 61.

The ALJ also noted that RESA advocated that the script should change back to the version agreed to in DSP III as the changes to the DSP IV script have caused decreases in enrollment. The ALJ determined that like the OCA, RESA has failed to

prove that there is an inherent defect in the design of the Companies' CRP, or that it does not comply with the Commission's regulations. R.D. at 62.

The ALJ acknowledged that a stakeholder meeting proposed by RESA may be useful in resolving the OCA's concerns regarding the participation of AllConnect in the CRP process. R.D. at 61-62.

4. The OCA's Exception No. 3 Regarding the Approval of an Extension of the Customer Referral Program Through 2023 and RESA's Reply

The OCA disagrees with the ALJ's statement that the "OCA is attempting to relitigate issues regarding the design of the CRP that have been raised and resolved in prior proceedings without introducing any specific evidence that the design of the CRP actually confuses or misleads customers." OCA Exc. at 7 (citing R.D. at 60). The OCA contends that all issues regarding the design, implementation, and merit of the program are open to review by the parties and evaluation by the Commission, as the Companies are proposing a two-year extension of the CRP through 2023. The OCA submits that it provided evidence regarding the confusing nature of the CRP in its testimony and Main Brief. OCA Exc. at 7 (citing OCA M.B. at 39-41; OCA St. 2 at 22-24).

The OCA notes that it has suggested reforms to the CRP in past DSP proceedings, most recently, the Commission-approved reforms in DSP IV. OCA Exc. at 7 (citing OCA M.B. at 34-35; OCA St. 2 at 15-16, DSP IV). The OCA avers that it provided information in this proceeding regarding FirstEnergy's operation of the program since DSP IV because FirstEnergy committed to make certain changes to the program and failed to do so. OCA Exc. at 7-8.

Despite prior reforms to the CRP, the OCA claims a multitude of issues remain, namely that the description given to customers prior to enrollment is misleading and customers do not experience the advertised savings. OCA Exc. at 8.

The OCA further provides that it is not necessary or appropriate to address the issues raised by the OCA regarding the CRP in a separate proceeding. The OCA notes that the Companies' implementation of the CRP is squarely at issue in this default service proceeding in that retail market enhancement programs such as the CRP are considered, implemented, and reviewed in default service proceedings and FirstEnergy specifically requested to extend the CRP beyond what was approved in DSP IV as part of a Commission Order in this proceeding. OCA Exc. at 9-10 (citing OCA M.B. at 31; OCA St. 2 at 7; Companies St. 1 at 19). The OCA avers that the Commission must examine, as the OCA has done, whether the program is (1) providing benefits and savings to customers though bill impacts; (2) being implemented in accordance with prior Commission Orders; and (3) being accurately and fairly described by FirstEnergy customer service representatives and AllConnect agents, before determining whether an extension of the program is justified and appropriate. OCA Exc. at 10 (citing OCA M.B. at 31-32).

In Reply, RESA reiterates its argument that there has been a significant decline in customer enrollment since 2017 that it claims are due to changes in FirstEnergy's CRP scripts, including the scripts used by FirstEnergy's third-party enrollment vendor. RESA states that in lieu of eliminating the program, RESA offered recommendations intended to address its concerns about the significant decline in enrollment with the ultimate purpose of improving the program. RESA R. Exc. at 3 (citing RESA M.B. at 16; RESA St. 1-R at 15).

5. Disposition

We note that we previously have determined that the language agreed to by the parties in DSP IV is in the public interest and compliant with our guidance and regulations. The OCA participated in the development of the script language as part of

the settlement of DSP IV. In this proceeding, the OCA has not convinced us that the CRP must be terminated or redesigned because it does not comply with our guidance or regulations.

At the same time, however, we believe it is in the public interest to consider improvements to the CRP script. Therefore, we shall refer the issue of scripting for FirstEnergy's CRP to the Commission's Office of Competitive Market Oversight (OCMO) for its recommendations. The CRP is a voluntary program where a customer may be enrolled with an EGS at a rate that is 7% below the then-effective PTC for a period of twelve months with no early termination or cancellation fees. The OCA expressed concerns with the scripting and training materials currently in use, arguing that they do not provide sufficient education and disclaimers. The OCA further claims a multitude of issues remain, including concerns that the description given to customers prior to enrollment is misleading and customers do not experience the advertised savings. OCA St. 2 at 3-4 and OCA Exc. at 8. RESA avers that the scripting program changes implemented under FirstEnergy's current default service plan (DSP IV) most likely had a significant negative impact on the number of enrollments in the program as there has been an 88% decrease in monthly enrollments since their implementation. RESA recommends that: (1) FirstEnergy revert to using the scripts that were in place prior to the DSP IV settlement; (2) the parties convene a working group to investigate the causes of the decline in enrollments and revise the scripting; and (3) FirstEnergy invite AllConnect to participate in the working group. RESA St. 1 at 19-22 and RESA R. Exc. at 3. The ALJ recommended the continuation of FirstEnergy's existing CRP until the conclusion of the default service plan currently before us. The ALJ found that the script adequately describes the relationship between the PTC and the price offered through the CRP and directed the use of the existing script. R.D. at 61. However, the ALJ acknowledged the benefit of a stakeholder meeting to discuss the scripting issue and encouraged FirstEnergy to have such a meeting in preparation for its next default service plan proposal in 2023. *Id.* at 63.

We concur with RESA that this issue should be referred to a working group, which will be led by OCMO, as OCMO has the resources and expertise to address the scripting issue as well as to consider the consumer protection concerns of the OCA and the competitive concerns expressed by RESA. We have concerns, however, with deferring OCMO's work product to 2023, as envisioned by the ALJ. Instead, we shall direct that OCMO submit, by the end of January 2019, its recommendations to the Commission for our consideration.

Accordingly, the OCA's Exception No. 3 is granted, in part, and denied, in part.

D. Approval of the PTC Adder

1. Background

The Companies are proposing a retail market enhancement rate mechanism to incent residential retail shopping. A bypassable retail market enhancement rate mechanism (PTC Adder) is a surcharge added to the utilities' default service rate with the purpose of incentivizing non-shopping customers to participate in the retail market. Companies St. 1 at 24-25.

2. Positions of the Parties

a. Companies' Position

The Companies proposed a PTC Adder that would apply only to the residential customer class because this class has the lowest level of customer shopping. On average, only about 30% of the Companies' residential customers are shopping. The

Companies explained that it does not appear that commercial and industrial customers require additional incentives to shop for electricity because these types of customers are shopping in significantly greater proportion and are generally more aware of their electricity purchasing options.

The Companies explained that the PTC Adder is designed to be revenue neutral to the Companies. In this regard, they propose to retain 5% of the revenue collected through the PTC Adder to recover expenses associated with administering the PTC Adder and 95% of the revenues collected will be returned to all customers – shopping and non-shopping – through the Companies’ nonbypassable Default Service Support (DSS) Riders. Companies St. 1 at 25.

The Companies clarified that the PTC Adder is based on the \$30 Customer Referral Program Charge (CRP Charge) to EGSs for each customer enrolled by the EGS under the CRP. The \$30 CRP Charge is divided by an assumed EGS customer retention period of twenty-four months. This results in a charge of \$1.25 per residential default service customer per month. The Companies averred that the CRP Charge of \$30 has been in place since August 1, 2013, and therefore, it appears reasonable to use this amount as a proxy for the retail market enhancement rate mechanism. The \$1.25 per month charge is then divided by the average residential usage for the four Companies to arrive at a per kWh charge of \$0.00144 per kWh, which will be a component of the PTC Rider rate calculation. This charge will remain constant for the four-year DSP term. Companies St. 1 at 26.

b. OCA’s Position

The OCA acknowledged that while it is certainly true that a greater percentage of the Companies’ residential customers continue to receive default service relative to their commercial and industrial customers, that same relationship exists for

most EDCs in states that have restructured their electric industries. Thus, the OCA submits that there is no basis for assuming that residential customers are acting irrationally in selecting default service in greater percentages than commercial or industrial customers and there is no basis for assessing a tax on residential default service customers for availing themselves of the default service tariff. The OCA explained that the PTC Adder distorts the price signals for both the residential default service customers and for the residential shopping customers. Furthermore, the OCA asserted that the PTC Adder is not a cost of providing default service but is a cross-subsidy from residential default service customers to residential customers receiving competitive supply service. As competitive suppliers use the PTC as a pricing benchmark, the OCA explained that the PTC Adder may cause the prices of competitive suppliers to rise accordingly. This would be a subsidy from shopping customers to EGSs. OCA St. 1 at 17-18.

Regarding the 5% of the PTC Adder that the Companies propose to retain, the OCA noted that this percentage equates to approximately \$855,000 per year. The OCA is concerned because it is not clear whether this figure represents a reasonable approximation of the administrative costs and since the Companies are not planning to track these expenses, there will be no way to evaluate the reasonableness of the 5% retention. OCA St. 1 at 18.

c. RESA's Position

RESA stated that it is in favor of the PTC Adder, not as an incentive for residential shopping, but as a means of mitigating the competitive advantage that the default service product has over the EGSs' products. RESA noted that the PTC does not include customer acquisition costs, which the EGSs must reflect in their offers. RESA recommended that the calculation of the PTC Adder be modified by dividing the \$30 acquisition cost by twelve months of residential consumption instead of twenty-four months because the fixed term under the CRP is twelve months. RESA opined that the

PTC Adder could be even higher by including additional costs that EGSs incur rather than just the customer acquisition costs. These costs include, *inter alia*, call center infrastructure, legal personnel, IT infrastructure, accounting, auditing, postage, and working capital. RESA explained that the EDC recovers these costs from customers through distribution costs, while the EGSs cannot do so. RESA St. 1 at 23-24.

Additionally, RESA provided that the revenues the EDCs collect through the PTC Adder could be used to fund low income customer assistance programs. RESA St. 1 at 26.

d. I&E Position

I&E disagreed with the Companies' proposed PTC Adder for the following reasons: (1) the PTC Adder calculation is arbitrary as it is based on a \$30 CRP fee and assumes a twenty-four month EGS customer retention rate; (2) the cost of administering the PTC Adder is arbitrarily set at 5%; (3) the proposal penalizes residential service customers by forcing them to pay a surcharge for not shopping; (4) the PTC Adder has nothing to do with the provision of electric service to customers; and (5) the Companies previously proposed a similar mechanism in a prior DSP proceeding, the use of which was denied. I&E St. 1 at 4.

e. Industrials Position

The Industrials' provided that the PTC Adder would create an artificially inflated pricing in the electricity marketplace and would unjustly and unreasonably apply to and penalize customers who typically shop for their energy supply but may be dropped to default service if their energy supply contracts with their EGSs unexpectedly terminate. For example, a customer may be in transition between EGS contracts or pursuing other competitive options after their EGS exits the market due to unforeseen

circumstances, such as bankruptcy. A customer may have been returned to default service by the EGS. *Industrials M.B.* at 7-8.

The *Industrials* explained that an artificially increased PTC could cause EGSs to increase their prices. EGSs might offer a price lower than the PTC but might not offer prices as low as they would without the PTC Adder. *Industrials M.B.* at 8.

f. CAUSE-PA Position

CAUSE-PA stated that the PTC Adder will have the effect of arbitrarily increasing the cost of default service with the hope that this will push customers into the competitive electric market served by EGSs, some of whom – according to the Companies’ own filing – have “excessive pricing practices.” CAUSE-PA St. 1 at 37 (citing *Companies St. 1* at 22). CAUSE-PA provided that the PTC Adder appears to be inconsistent with the statutory mandate found in Act 129 that the Companies, as default service providers, must procure electricity at the “least cost to customers over time.” CAUSE-PA St. 1 at 39 (citing 66 Pa. C.S. § 2807(e)(3.4)(ii)). CAUSE-PA explained that the PTC Adder is an artificial price increase supported by no demonstrated benefit. The PTC Adder would increase the cost of service for residential customers twice because these customers would have to pay for the additional costs per kWh on the service that they use and would also have to pay increased CAP costs. CAUSE-PA St. 1 at 39.

3. ALJ’s Recommendation

The ALJ concluded that there is no justification for the PTC Adder and that the Companies failed to prove that the proposal is just and reasonable. The ALJ recommended that the Commission reject the proposal.

The ALJ reasoned that under the Public Utility Code, the Companies, as EDCs, have an obligation to provide default service to customers at no greater cost than the cost of obtaining generation.⁹ The ALJ explained that the Companies are entitled to full recovery of all costs of providing default service on a dollar-for-dollar basis through an automatic adjustment charge.¹⁰ The ALJ found that, contrary to these sections of the Code, the PTC Adder is not predicated on the cost of generation and will result in an increased volumetric charge for residential default service customers. Furthermore, the ALJ found that the PTC Adder is calculated arbitrarily with a sole purpose of being assessed on residential default customers to influence their decisions to enter the retail market. R.D. at 51-52.

The ALJ opined that although the stated purpose of the PTC Adder is to incent “shopping,” the real purpose of the adder is to incent “switching.” The Companies propose to charge the PTC Adder to residential customers who do not switch to an EGS. As pointed out by the public input testimony, many customers do review EGS offers and therefore “shop” but simple do not “buy.” These customers would be charged the PTC Adder even though they have shopped. R.D. at 52.

According to the ALJ, the calculation of the PTC Adder is speculative as it is based on the charge to EGSs for each customer enrolled in the Companies’ standard offer program. The ALJ was persuaded by the OCA’s expert who explained that using a proxy for EGS customer acquisition costs is unrelated to the stated purpose of the PTC Adder. R.D. at 52 (citing OCA St. 1-S at 10).

⁹ 66 Pa. C.S. § 2807(e).

¹⁰ 66 Pa. C.S. § 2807(e)(3.9).

Regarding the remainder of the PTC Adder calculation, the ALJ provided that the twenty-four-month EGS customer retention rate is also unsupported by actual, verifiable data, and not related to the stated purpose of the PTC Adder. R.D. at 52-53.

The ALJ noted that the Companies have offered no justification for the return of revenue collected from default service customers to all customers, nor do they explain how the return of revenue will incent switching. The ALJ noted further that the Companies admitted that they have no estimates of what their administrative costs will be, and they do not intend to track their costs. R.D. at 53.

The ALJ explained that the Commission rejected the Companies Market Adjustment Charge (MAC) in the DSP II proceeding. MAC was a proposal similar to the PTC Adder. MAC was designed to compensate the Companies for the risk they bear in providing default service and to compensate the Companies for the value they provide as default service providers. RESA recommended in the DSP II proceeding that the MAC be modified to cover the costs of implementing the retail market enhancements and leftover revenues be “returned to all ratepayers through a non-bypassable charge.”¹¹ The ALJ in DSP II concluded that charging non-shopping customers the MAC and returning leftover revenues to all customers was “inequitable on the surface” and rejected RESA’s recommendation. R.D. at 53-54.

The ALJ noted that the Commission in DSP II cited the ALJ’s reasoning on this point in its Order, which rejected the MAC in its entirety. The ALJ stated that as the ALJ concluded and the Commission agreed in DSP II, the practice of charging default customers the PTC Adder and returning revenues to all customers is “inequitable” *per se*. And as explained by OCA witness Estomin and OCA witness Alexander, the PTC Adder

¹¹ *Joint Petition of MetEd, Penelec, Penn Power, and West Penn for Approval of their Default Service Programs*, Docket No. P-2011-2273650, *et al.* (Recommended Decision issued June 15, 2012) at 57.

will allow the Companies to recover charges that are not demonstrated to be lawful – the charges do not reflect a cost of providing service – without any empirical support for measurable costs. R.D. at 55 (citing OCA St. 1 at 17, OCA St. 2 at 33-34).

4. RESA’s Exception No. 1 Regarding the Retail Rate Mechanism and Replies

RESA explains that it supports the Companies’ proposal as a step toward dealing with the market inequities that exist in today’s retail market design. The ALJ errs in recommending that the Commission reject the proposal because the Recommended Decision did not consider how the proposal: (1) is justified based on current market inequities; (2) could positively impact these inequities; and (3) could lead to a more functional competitive marketplace that benefits all consumers. RESA Exc. at 4.

RESA contends that the ALJ erred by denying the PTC Adder due to: (1) the mistaken belief that there are no “default service costs” that justify an increased PTC; and (2) opposition to the Companies’ view that the retail rate mechanism should be used to incentivize shopping. RESA explains that the proposed PTC Adder approximates the amount “saved” by the Companies but incurred by the EGSs for customer enrollment. RESA explains further that there are other costs related to default service that are not included in the PTC which are costs that EGSs also incur such as legal or regulatory or IT system costs. RESA reasons that even if the Commission is not inclined to require the Companies to include the avoided customer acquisition costs in the PTC, there is support in this proceeding to include an amount to account for the other costs related to default service that are not being recovered in the PTC. RESA Exc. at 5-6 (citing Exhibit RJH-6, FirstEnergy Discovery Response to RESA-I-10).

RESA disagrees with the ALJ’s conclusion that charging default service customers the additional cost of the PTC Adder and then returning 95% of the amounts

collected to all customers is “inequitable *per se*.” RESA contends that this view ignores the fact that all customers, through their distribution rates, are paying costs of default service that are only being used by default serve customers. RESA opines that requiring default service customers to pay the costs with the remainder credited to all distribution customers is fair and equitable. RESA Exc. at 10 (citing R.D. at 55).

Next, RESA submits that the Recommended Decision fails to consider its proposal that the Commission could direct a portion of the revenues from the retail rate mechanism to low-income customer assistance programs. RESA explains that 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. RESA Exc. at 10.

In its replies, the OCA submits that the method used to calculate the PTC Adder charge is not related in any way to the purpose of the PTC Adder. OCA R. Exc. at 3 (citing OCA M.B. at 18-20). OCA cites to its witness Estomin who explained:

[T]he PTC adder emanates from another retail market enhancement program, the CRP. The purported purpose for the CRP charge . . . does not bear any relationship to the rationale underlying the Companies’ proposal for the PTC adder; that is to supposedly induce residential customers to enter the competitive retail market in lieu of continuing to receive service under default service arrangements. It should be noted that the CRP charge and the purposed PTC adder are not even paid by the same market entities – the PTC adder is proposed to be paid by the residential default service customers and the CRP charge is paid by the EGSs.

OCA St. 1 at 16

The OCA notes that FirstEnergy witness Bortz did not provide any basis for her calculation of the PTC Adder in this matter and did not address claims regarding the arbitrary level of the charge. OCA R. Exc. at 4 (citing OCA M.B. at 19, OCA St. 2 at 23).

The OCA further asserts that the PTC Adder does not represent a cost of providing default service and cannot be collected by default service providers because they are prohibited from recovering “hypothetical expenses not actually incurred.” OCA R. Exc. at 4 (citing 66 Pa. C.S. § 2807(e); *Barasch v. Pa. PUC*, 507 Pa. 561, 493 A.2d 653, 655 (1985)). The OCA argues that the very fact that FirstEnergy proposes to return 95% of revenues collected through the PTC Adder to customers is evidence that it is not a cost. The OCA opines that the PTC Adder is merely a re-allocation scheme designed to collect revenues from default service customers and re-distribute funds to EGS customers. The OCA avers that there is no basis in the law for this scheme and allowing FirstEnergy to implement the PTC Adder would result in a substantial windfall to the Companies. OCA R. Exc. at 4 (citing OCA M.B. at 18, 20).

The OCA also disagrees with RESA’s assertion that the PTC Adder is needed to address market inequities suffered by the EGSs. The OCA avers that the competitive market is robust and is not characterized by oppressive economic barriers. The OCA further avers that the market inequities claimed by RESA do not exist, and, in any case, arbitrarily raising rates for default service customers is not a reasonable or legally permissible response. OCA R. Exc. at 5-6.

According to the OCA, RESA’s recommended modifications to the PTC Adder do not correct any of the deficiencies in FirstEnergy’s proposal. Under RESA’s modifications, all default service customers would be charged the PTC Adder, but only low-income assistance program customers would receive the benefit of any leftover revenues. OCA R. Exc. at 7 (citing OCA R.B. at 12).

In response to RESA's Exception No. 1, I&E provides that RESA's retail rate mechanism (RESA's version of the PTC Adder) is simply based upon the Companies' \$30 CRP charge. I&E argues that RESA's reliance upon this metric is misplaced because it assumes that none of the Companies' customers shop for electricity outside of the CRP, and it ignores other ways to shop for electricity, such as using PAPowerSwitch.com. I&E R. Exc. at 8 (citing I&E St. 1 at 5). RESA's retail rate mechanism is also arbitrarily calculated by assuming a twelve-month fixed CRP term rather than the twenty-four-month term used to calculate the PTC Adder. I&E R. Exc. at 8 (citing RESA St. 1 at 23-24). I&E contends that use of the \$30 CRP charge and the twelve-month CRP term serve to remove the retail rate mechanism from any connection to generation costs and this serves as a sufficient basis to deny the retail rate mechanism. I&E R. Exc. at 9.

I&E also takes issue with RESA's position that default service providers have embedded cost advantages because they can recover certain costs, including call center employees and infrastructure, from all ratepayers and not from the PTC. I&E asserts that RESA did not prove and quantify the existence of these costs specific to the Companies. Although RESA proposed that the Companies perform a full cost analysis and unbundle some costs from distribution rates and reallocate them to default service, RESA is resigned to adopting the retail rate mechanism as a first step to addressing market inequities. I&E R. Exc. at 9-10 citing (RESA St. 1 at 25). I&E opines that the ALJ correctly determined that RESA failed to prove a connection between its proposal and the costs to provide default service. I&E R. Exc. at 10 (citing R.D. at 56).

I&E states that while RESA's proposal to distribute a percentage of the retail rate mechanism revenue to low-income customers appears laudable, it would actually cause more harm than benefits to low-income customers because the low-income customers would not be exempt from being assessed with the retail rate mechanism and

would only receive a minor portion of the PTC Adder revenues in return. I&E R. Exc. at 11-12.

CAUSE-PA also disagrees with RESA's assertion that the ALJ erred in rejecting the PTC Adder. CAUSE-PA notes that RESA introduced no evidence demonstrating that the PTC Adder had any connection to the subsidy that it believes shopping customers are paying to support default service. CAUSE-PA believes that the ALJ correctly concluded that both the \$30 cost and the twelve-month retention period used in calculating the PTC Adder were fundamentally arbitrary. CAUSE-PA explains that instead of quantifying the actual costs by which it believes the PTC is understated, RESA accepted the arbitrary PTC Adder, then effectively doubled it by selecting a twenty-four-month retention period. CAUSE-PA concludes that RESA's proposal is at least as equally arbitrary as the Companies' proposal. CAUSE-PA R. Exc. at 3-4.

CAUSE-PA reasons that RESA's proposal to double the PTC Adder and direct some portion to universal service programs¹² is inconsistent with the Choice Act, does nothing to address or ameliorate harm to PCAP, and would be detrimental to the thousands of the Companies' low-income customers not enrolled in PCAP. CAUSE-PA R. Exc. at 5 (citing CAUSE-PA M.B. at 13).

The Industrials reply that that the Commission should accept the ALJ's conclusion that the PTC Adder be rejected. They believe that the PTC Adder is unjust and unreasonable because it conflicts with prevailing law, sets forth bad policy, and hinders the ability of natural market forces to create a truly competitive market for generation supply services. Industrials R. Exc. at 2 (citing Industrials M.B. at 5-9 and

¹² During the proceeding, RESA suggested utilizing 10% of the revenue from the PTC Adder to increase bill credits for CAP customers. On this issue, CAUSE-PA opines that the ALJ correctly concluded there was no support in the record that the funds could be collected in the first instance. CAUSE-PA R. Exc. at 5.

R.D. at 51-56). The Industrials also note that the Commission previously rejected a similar proposal to implement a bypassable charge on non-shopping residential customers and commercial customers (the “Market Adjustment Charge”) in the FirstEnergy Companies’ DSP II proceeding. Industrials R. Exc. at 3 (citing R.D. at 53 and Industrials R.B. at 4-5). The Industrials are not convinced by RESA’s allegation that the ALJ did not consider how the PTC Adder could benefit low-income customers. The Industrials note that the detriments of the PTC Adder outweigh any perceived benefits and that low-income customers would better benefit by not paying the PTC Adder than from receiving 5% of the PTC Adder proceeds. Industrials R. Exc. at 3. The Industrials also are not convinced that RESA has presented sufficient evidence to prove market inequities. The Industrials aver that RESA should provide evidence underlying its concerns about the competitive market and raise these issues in a separate filing. Industrials R. Exc. at 4.

5. Disposition

As discussed *supra*, the Companies proposed a similar measure termed the Market Adjustment Charge or MAC in DSP II. We found in DSP II that the MAC was not a “legitimate retail market enhancement tool and is an inappropriate and unnecessary financial adder.”¹³ In the instant proceeding, the Companies have not shown that the PTC Adder will incent shopping and that there is even a need to incent shopping. The Companies provided no substantial data to make an informed decision on what an appropriate level of shopping is. The public testimony indicated many customers have shopped or are currently shopping, yet they have experienced significant issues. The issues were troubling enough that these customers were motivated to testify about their experiences. For example, low income PCAP customers would be subject to the charge as well as low-income customers not participating in PCAP, and this would add an

¹³ *Joint Petition of MetEd, Penelec, Penn Power, and West Penn for Approval of their Default Service Programs*, Docket No. P-2011-2273650, et al. (Order entered August 2, 2012) at 58.

additional burden on those customers who experience difficulty paying their utility bills. The PTC Adder would add costs to the PCAP expenses paid for by the non-PCAP residential customers, including the 160,000 confirmed low-income non-PCAP customers.¹⁴

We are not persuaded by RESA's argument that the real purpose of the PTC Adder is to correct market inequalities. RESA has not proven these inequalities exist or that its proposed remedies would be effective. In this regard, we agree with the OCA that "a significant number of EGSs have been able to effectively compete in the residential generation supply market and continue to participate in that market by providing a range of products that the utility is unable to provide . . . different types of 'green product,' fixed-price products of varying durations."¹⁵ Furthermore, we are persuaded by OCA's witness Alexander who demonstrated that the average monthly number of residential customers served by EGSs in the Companies' territories increased by more than 13,000 from 2016 to 2017.¹⁶ For these reasons, we shall deny RESA's Exception No. 1.

E. Shopping by Customer Assistance Program Customers for Products Priced Above the Price to Compare

1. Background

The Companies' low-income residential CAP is called the Pennsylvania Customer Assistance Program (PCAP). Eligible customers receive discounted payment amounts and arrearage forgiveness for remaining current on their PCAP payments. The

¹⁴ CAUSE-PA R. Exc. at 6.

¹⁵ OCA R. Exc. at 5 (citing OCA M.B. at 23; OCA R.B. at 10; OCA St. 1R at 5).

¹⁶ OCA R. Exc. at 5 (citing OCA M.B. at 44-45; OCA St. 2 at 11).

PCAP customers are required to enroll in the Companies' Equal Payment Plan (EPP) which is based on the CAP customer's average usage over the last twelve months. The customer's "asked-to-pay" amount is based on a percentage of the customer's income. The difference between the EPP amount and the CAP customer's asked-to-pay amount is the monthly CAP credit which is recovered in rates from non-CAP residential customers. I&E St. 1 at 18 (citing I&E Exhibit 1, Schedule 2).

2. Positions of the Parties

a. Companies' Position

The Companies are not proposing changes to CAP shopping because their current DSP plans follow the Commission's recommendations in accordance with the *Investigation of Pennsylvania's Retail Electricity Market*¹⁷ in that CAP customer benefits are fully portable and allow CAP customers to shop in the competitive market without restriction. Companies St. 1-R at 26-27.

The Companies noted that their updated study comparing the price per kWh paid by CAP customers to EGSs as compared to the PTC for the fifty-five months running from June 2013 through December 2017 showed that on average, a greater number of CAP shopping customers paid amounts in excess of the PTC than paid less than the PTC for each of the Companies. Companies St. 1-R at 28 (citing Companies' Exh. KLB-35).

¹⁷ *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952(Final Order entered February 15, 2013) at 60-62.

b. OCA's Position

The OCA took the position that customers enrolled in CAP should not be allowed to select an EGS unless there is a program in place to ensure that participating EGSs undertake a contractual commitment to charge a price for generation supply that is equal to or less than the applicable PTC during the term of the agreement. The OCA avers that CAP customers are the most vulnerable customers and should not pay more than the PTC for essential electric service. The OCA submitted that allowing such higher prices not only harms the CAP customer by impacting their bill assistance calculation, but also shifts costs to other ratepayers and increases the costs of these Universal Service Programs without any benefit to the CAP customer or ratepayers generally. OCA St. 2 at 5.

The OCA recommended that FirstEnergy halt the enrollment of CAP customers with EGSs until a program is in place to ensure that participating EGSs make a contractual commitment to charge a price for generation supply that is equal to or less than the PTC during the term of the agreement. OCA St. 2 at 38.

c. RESA's Position

RESA stated that it does not support restrictions on the ability of low-income customers to shop. RESA explained that all customers should have the same access to competitive market alternatives regardless of income level or CAP participation status. RESA M.B. at 23 (citing RESA St. No 1-R at 23). RESA noted that while the Commission may consider imposing CAP rules limiting the type of EGS offer a CAP participant can choose in the interest of ensuring that universal service plans are adequately funded, cost-effective and affordable, the “overarching goal of the Choice Act is competition.” Further, RESA argued that restrictions on the right to shop can only be considered upon a showing of substantial reason why there are no reasonable alternatives

to the proposed restriction on competition. RESA M.B. at 24 (citing *Coalition for Affordable Util. Servs. and Energy Efficiency in Pa., et al. v. Pa. PUC*, 120 A.3d 1087, 1103-1104, 1106 (Pa. Cmwlth. 2015)).

RESA averred that the Commission should 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. RESA stated that 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. RESA M.B. at 24 (citing RESA St. 1-R at 26).

d. I&E Position

I&E explained that shopping for electric energy rates affects the asked-to-pay amount of PCAP customers because their monthly maximum CAP credits are based upon their average monthly electric burden less a percentage of their income. CAP customers are limited to the monthly maximum CAP credits that they receive. If a CAP customer selects an EGS with a rate above the PTC rate, the CAP customer could significantly exceed their monthly maximum CAP credits, and risk being charged an amount they may not be able to pay. An increase in unpaid bills from CAP customers will lead to an increase in uncollectible write-offs by the Companies. Increased uncollectibles affect all residential customers as these costs and CAP costs are paid by non-CAP residential customers through the Universal Service Cost (USC) Rider. I&E St. 1 at 18.

Using data from June 2013 through December 2017, I&E explained that on an annual basis, the estimated average yearly energy charges paid above the PTC were \$694,422 for Met-Ed, \$698,616 for Penelec, \$130,908 for Penn Power, and \$2,251,212 for West Penn. I&E St. 1 at 21 (citing I&E Exhibit 1, Schedule 5). I&E noted that for

three of the four Companies, nonpayment rates for CAP shopping customers were higher than CAP customers utilizing their default service provider from December 1, 2015 to December 31, 2017. I&E St. 1 at 21 (citing I&E Exh. 1, Schedule 6). I&E recommended that the Companies develop a CAP shopping program similar to the program developed by PPL, which offers CAP shoppers a 7% discount below PPL's PTC. I&E St. 1 at 23.

e. CAUSE-PA Position

CAUSE-PA explained that customers who enroll in PCAP do so because they are payment-troubled and cannot afford their bills at undiscounted rates. It is essential that PCAP be structured to provide the most assistance possible to maintain affordability for the program participants as well as for the customers who pay for it. CAUSE-PA stated that the principal purpose for any CAP program must be affordability, regardless of whether a CAP customer remains on default service or receives generation service from an EGS. The Companies' DSP, which allows PCAP customers to shop for generation supply, must start from the basic premise that it cannot compromise bill affordability for low income PCAP customers. CAUSE-PA St. 1 at 16.

CAUSE-PA explained further that ratepayer funds provide PCAP customers assistance to maintain an affordable utility bill. Increased costs for PCAP customers and other ratepayers because of prices higher than the price to compare does not provide more affordability for PCAP households and is not cost-effective for the PCAP program as a whole. CAUSE-PA St. 1 at 21.

CAUSE-PA proposed a transition plan for those PCAP customers who are currently being served by EGS contracts that is consistent with the transition plan

recently approved by the Commission in PPL's DSP Proceeding.¹⁸ CAUSE-PA recommended the following:

- Customers who are on a fixed duration contract with a supplier on June 1, 2019, may remain with that supplier until the expiration date of the fixed duration contract or the contract is terminated, whichever comes first. Once the customer's supplier contract expires or is terminated, the supplier can either offer a compliant contract that charges no more than the price to compare for the duration of the contract or return the PCAP customer to default service. This same process would be applicable *after* June 1, 2019 for customers on fixed duration contracts who subsequently are eligible for PCAP.
- PCAP customers who are receiving supply service from an electric generation supplier through a month to month contract on June 1, 2019 must be dropped by the electric generation supplier, and returned to default service within 120 days, or be offered and accept a contract that charges no more than the price to compare for the duration of the contract. This same process would be applicable *after* June 1, 2019 for customers on month to month contracts who subsequently are eligible for PCAP.

CAUSE-PA R.Exc. at 16 (citing CAUSE-PA St. 1 at 34)

¹⁸ See Petition of PPL Electric Utilities Corp. for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 through May 31, 2021, Docket No. P-2016-2526627 (Final Order entered Feb. 9, 2018).

3. ALJ's Recommendation

The ALJ recommended that the Commission direct the Companies to implement a PCAP shopping program which prohibits customers who wish to participate in the Companies' PCAP from entering into a contract with an EGS for a price which exceeds the PTC. This program should be phased in on the schedule recommended by CAUSE-PA and agreed upon by the Companies. The phased-in approach would permit the transition of PCAP customers to the limited price program without the necessity of immediately suspending shopping by PCAP customers as advocated by the OCA. The ALJ explained that directing the phase-in deadlines permits the Companies sufficient time to implement the program in a reasonable amount of time without the necessity of Commission approval of a timeline as suggested by I&E. R.D. at 71.

The Companies initial proposal, according to the ALJ, was not to propose any modifications to the scope of shopping, meaning that the Companies will continue to permit PCAP customers to shop for alternative generation supply without restriction. R.D. at 64 (citing Companies St. 1 at 3).

The ALJ provided that I&E, OCA and CAUSE-PA all contended that the evidence presented in this case demonstrates that unrestricted PCAP shopping allowed with the Companies' current programs results in continuing financial harm to both PCAP participants and non-PCAP residential ratepayers. Therefore, PCAP participants should be restricted from purchasing supply at a rate above the PTC. R.D. at 64.

The ALJ concluded that there is ample support in this record to conclude that unrestricted PCAP shopping is harming both PCAP participants and non-PCAP residential ratepayers. I&E, OCA and CAUSE-PA extensively reviewed data regarding shopping of PCAP participants and the resulting costs. The evidence also demonstrates

that of the PCAP customers who shopped, the overwhelming majority paid more than the PTC. R.D. at 66 (citing Companies St. 1-R at 28; Ex. KLB 35).

The ALJ stated that the economic impact of this unrestricted PCAP shopping is significant. From June 2013 through March 2018, the total net cost above PTC totaled more than \$18.3 million in increased PCAP costs. The ALJ noted that these increased costs affect the affordability of PCAP bills for PCAP customers and in turn increases costs for other customers who pay for PCAP. R.D. at 68.

The ALJ opined that the Choice Act expressly requires the Commission to administer these programs in a manner that is cost effective for the PCAP participants and the non-CAP participants, who share the financial consequences of a PCAP participants' EGS choice. The ALJ reasoned that there is no cost efficiency, and significant unnecessary and impermissible cost, in continued implementation of a PCAP shopping protocol permitting participants to accept any EGS offer above the PTC. R.D. at 68 (citing CAUSE-PA, 1020 A.3d at 1103).

The ALJ noted that the Companies support the implementation of a price ceiling as proposed within the record of this proceeding. R.D. at 69 (citing Companies R.B. at 20). The Companies could add PCAP participation flags to their eligible customer lists, which would inform suppliers before they attempt to enroll a PCAP customer. To enroll a PCAP customer, suppliers would agree to rate ready billing utilizing a percentage off variable priced product, which would allow the Companies to adjust the supplier's price by the required percentage off of the PTC for PCAP customers. Beginning June 1, 2019, any enrollment request by a supplier for a PCAP customer outside of those parameters would be automatically rejected by the Companies. All costs associated with implementing the Companies' system changes and notifying suppliers and PCAP customers regarding these changes would be recovered through the

Companies' PTC Default Service Riders. R.D. at 69-70 (citing Companies St. 1-R at 31-33).

The ALJ explained further that the Companies would support the transition plan proposed by CAUSE-PA. After June 1, 2019, at the end of a PCAP customer's contract, the customer could choose to be served by a supplier who agrees to the PCAP-approved percentage-off PTC product or return to default service. For PCAP customers enrolled in month-to-month contracts, within 120 days of June 1, 2019, suppliers would be obligated to either provide the customer the approved percentage off product or return the customer to default service. PCAP customers also would have the right to terminate their contracts early without a termination fee. R.D. at 70 (citing CAUSE-PA M.B. at 42-43).

4. RESA's Exception No. 2 Regarding Shopping by Customer Assistance Program Customers for Products Priced Above the Price to Compare and Replies

RESA disagrees with the ALJ's recommendation that the Companies be directed to implement a PCAP shopping program which prohibits customers who wish to participate in the Companies' PCAP from entering into a contract with an EGS for a price which exceeds the PTC. RESA Exc. at 11-12 (citing R.D. at 71). RESA states that the ALJ erred by concluding that harm has resulted from permitting CAP participants to shop. RESA also disagrees with the specific restrictions the ALJ recommended. RESA Exc. at 12.

RESA avers that it is not appropriate to analyze the impact of CAP shopping by limiting the comparison to what a CAP participant paid to an EGS vs. what they would have paid with the PTC. RESA notes that there are other potential benefits to CAP customers from EGS products that may be above the PTC. One such example could occur when a CAP customer receives a smart thermostat as part of a bundled product.

The CAP customer might experience an overall reduction in usage and the associated savings from that usage reduction that outweighs the energy costs above the PTC. RESA Exc. at 12-13.

RESA states that restricting shopping in the manner proposed by the ALJ would require EGSs to agree to only ever offer electricity priced below the PTC. While some EGSs are serving some CAP customers at rates below the PTC, these EGSs may not be able to offer guaranteed savings products because providing such a product would likely violate the risk policies of prudently operating EGSs. RESA Exc. at 14.

RESA contends that the operational processes (for both the utilities and EGSs) that need to be undertaken to transition existing shopping customers who are CAP participants off current contracts and to ensure that EGSs are able to comply with pricing restrictions for future CAP participants can be complicated and deserves a more thorough process than what has occurred here to get it right and ensure a smooth transition. RESA Exc. at 14-15.

In Reply, the OCA explains that the annualized cost of CAP shopping of \$18,336,440 over fifty-eight months (or \$3,793,746 annually) is a net figure. OCA R.B. at 22-24. The OCA contends that to the extent some CAP customers are shopping and receiving savings, those savings are reducing an even higher level of harm for those not experiencing savings. The OCA explains that as a result, the unaffordability concerns expressed in the case may, in fact, be understated.

The OCA also disagrees with RESA regarding the potential non-monetary benefits offered by EGSs to PCAP customers. The OCA states that RESA has not shown that the savings and benefits hypothesized by RESA offset the clear harm shown in this case. OCA R. Exc. at 9 (citing OCA R.B. at 23; OCA St. 2S at 15).

Regarding CAP shopping restrictions, the OCA disagrees with RESA's assertion that the ALJ erred by directing specific restrictions. The OCA provides that RESA's position fails to address the on-going harm of unrestricted CAP shopping and the record regarding the process to address this harm. OCA R. Exc. at 10-11.

According to I&E, the ALJ's analysis pertaining to PCAP shopping is consistent with Pennsylvania law, because the Choice Act mandates that all customers should be able to obtain service on "reasonable terms and conditions." I&E R. Exc. at 15 (citing I&E M.B. at 32; 66 Pa. C.S. § 2802(9)). I&E explains that the record in this case proves that the Companies' unrestricted PCAP shopping scheme has produced a result that does not meet this standard. Both CAP and non-CAP customers are being harmed by unrestricted CAP shopping, in this case, and Pennsylvania case law has made it clear that CAP shopping restrictions may be approved absent any other reasonable alternative. I&E R. Exc. at 15 (citing *Retail Energy Supply Association v. Pa. PUC*, 185 A.3d 1206 (Pa. Cmwlth. 2018)).

I&E disagrees with RESA's assertion that PCAP customers might benefit from other features of shopping such as a smart thermostat. I&E explains that the Commission's policies prohibit PCAP customers from subscribing to non-basic services that would increase their monthly bill without contributing to bill reductions. I&E notes that RESA has failed to show proof that any PCAP customers have benefited from value-added services that would reduce those customers' bills and therefore be an acceptable use of CAP credits. I&E R. Exc. at 16-17.

According to CAUSE-PA, there is no evidence in the record showing that any of the Companies' PCAP customers took advantage of any of the so-called "value-added" products RESA touts as a potential savings tool for PCAP customers. CAUSE-PA explains that the mere fact that some products are available in the market that may

mitigate higher prices does not matter if RESA cannot demonstrate whether any PCAP customers took advantage of these offers. CAUSE-PA R. Exc. at 7.

CAUSE-PA reasons that ALJ Long correctly concluded that “it is inappropriate to use PCAP credits to subsidize services when they are nonessential products and services which increase the commodity price for basic service and are in part paid by the PCAP customer and in part passed through the Companies’ universal service rider.” CAUSE-PA R. Exc. at 8 (citing R.D. at 69).

CAUSE-PA states that RESA provided no evidence quantifying any actual impact of limiting CAP customer choice to the PTC or why their concerns outweighed the current ongoing harm caused by unrestricted PCAP shopping. CAUSE-PA reasons that there has been no showing that in a competitive environment, lowering prices would limit choice. CAUSE-PA provides that the Choice Act does not demand unbridled competition. It demands a balancing of the need of the markets with the ability of vulnerable populations to afford service. CAUSE-PA reasons that the documented harm to PCAP customers and residential customers demands that protections be put in place, even if the protections could possibly result in fewer choices for CAP customers. CAUSE-PA R. Exc. at 12.

Regarding RESA’s suggested alternatives to the PTC price cap on PCAP customers, CAUSE-PA notes that none of RESA’s possible alternatives are sufficient to address the harm that has occurred because of unrestricted PCAP shopping: higher costs of approximately \$300,000 per month to PCAP customers and other ratepayers. CAUSE-PA argues that the ALJ correctly found that the evidence of economic harm was substantial and that the only reasonable restriction in the record was the price ceiling protections for PCAP participants proposed by CAUSE-PA, I&E, and the OCA. CAUSE-PA R. Exc. at 16 (citing R.D. at 69-71).

5. Disposition

We reject RESA's claim that the ALJ erred by discounting the value of shopping to CAP participants and by directing specific restrictions on the ability of CAP customers to shop. As noted by the ALJ, there is clear evidence demonstrating that a significant number of FirstEnergy's CAP customers paid significantly more than what they would have if they were default service customers. As outlined by I&E, this is important since the generation rates charged to FirstEnergy's CAP customers affect the asked-to-pay amounts for those customers since their monthly maximum CAP credits are based upon their average monthly electric burden less a percentage of their income. Therefore, higher rates make it more likely that CAP customers will exceed their monthly maximum CAP credits and incur charges they may not be able to pay. I&E St. 1 at 18. If CAP customers are unable to pay their bills, this leads to increased uncollectibles, which are recovered from the rest of the utility's residential ratepayers. As such, it is necessary to impose some restrictions on FirstEnergy CAP customer shopping in order to protect both CAP customers and the non-CAP residential rate base from increased and unnecessary costs.

We agree with the ALJ's recommendation that FirstEnergy implement a CAP shopping program where CAP customers may only enter into a contract with an EGS for a rate that is at or below the utility's PTC and does not contain an early termination or cancellation fee. However, we find that the mechanics and details of this program are not fully developed within the record of this proceeding to adequately ensure a program can be implemented in a successful fashion by June 1, 2019. Therefore, we shall adopt the ALJ's recommendation in so far as EGSs may not charge CAP customers a rate greater than the PTC, nor charge early termination or cancellation fees.¹⁹

¹⁹ The issue of whether the EGS rate must be below the PTC at the time of contracting, or below that and all future PTCs, is within the scope of this referral to OCMO.

Furthermore, we believe it is prudent to refer the program to OCMO to work with stakeholders on the details of the program in order to ensure a successful implementation. Accordingly, we direct that OCMO provide its recommendations to the Commission on, or before, January 31, 2019.

We believe the timeframes included herein provide both OCMO and the participating stakeholders with the time necessary to thoroughly and thoughtfully consider and provide recommendations on the CRP script issue and the CAP shopping program, while still allowing FirstEnergy the time needed to implement both programs effectively by June 1, 2019.

Therefore, RESA's Exception No. 2 is denied, in part, and granted, in part.

V. Conclusion

Based on our review of the record, and consistent with the foregoing discussion we shall: (1) grant, in part, and deny, in part, the Exceptions filed by the OCA in this proceeding; (2) grant, in part, and deny, in part, the Exceptions filed by RESA; and (3) modify the ALJ's Recommended Decision, consistent with this Opinion and Order; **THEREFORE,**

IT IS ORDERED:

1. That the Exceptions filed by the Office of Consumer Advocate on June 28, 2018, are granted, in part, and denied, in part, consistent with this Opinion and Order.

2. That the Exceptions filed by the Retail Energy Supply Association on June 28, 2018, are granted, in part, and denied, in part, consistent with this Opinion and Order.

3. That the Recommended Decision of Administrative Law Judge Mary D. Long, issued on June 8, 2018, is modified, consistent with this Opinion and Order.

4. That the Joint Petition for Partial Settlement filed on May 15, 2018, by Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company, the Office of Consumer Advocate, the Office of Small Business Advocate, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the West Penn Power Industrial Intervenors, and the Retail Energy Supply Association, is approved.

5. That Joint Stipulation No. 2, Paragraph Nos. 1 and 2, relating to the proposed “clawback” mechanism, are approved without modification.

6. That Joint Stipulation No. 2, Paragraph No. 3, is modified as follows:

The Companies will develop an EGS-specific customer arrears reports with unpaid aged EGS account balances. This report will be provided to EGSs participating in the Companies’ purchase of receivables programs on a quarterly basis, beginning no later than October 20, 2018, reflecting EGS arrears for third quarter 2018. Information contained in the customer arrears report provided to each EGS shall only contain information regarding customers of that specific EGS.

7. That the request for a Bypassable Retail Market Enhancement Rate Mechanism and concomitant adjustments to the PTC and DSS Riders is denied.

8. That the Office of Competitive Market Oversight is, hereby, directed to convene and coordinate a group of interested stakeholders for the purpose of collaboratively addressing the mechanics and details of the new Customer Assistance Program approved by this Opinion and Order and in which CAP customers may only enter into a contract with an Electric Generation Supplier for a rate that is at or below each FirstEnergy Company's Price to Compare and does not contain any early termination or cancellation fees, and provide a recommendation on the mechanics and details of the program to the Commission on, or before, January 31, 2019, to ensure a successful implementation of the program.

9. That the Office of Competitive Market Oversight is, hereby, directed to convene and coordinate a group of interested stakeholders for the purpose of collaboratively addressing the scripting and training materials associated with FirstEnergy's Customer Referral Program: (a) to ensure that such scripting and training materials will provide sufficient consumer education/protections and disclaimers to customers that are not misleading, and (b) to determine the impacts that such scripting and training materials may have on customer enrollment in the program as well as any other competitive concerns. A recommendation shall be provided to the Commission on, or before January 31, 2019.

10. That the proposed default service plans of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company are approved, except as set forth in the ordering paragraphs above.

11. That the following Formal Complaints against Pennsylvania Electric Company are sustained:

Ellen L. Cooper v. Pennsylvania Electric Company, Docket No. C-2018-2643217; Betty Dusicsko v. Pennsylvania Electric Company, Docket No. C-2018-2643249; Joseph Dusicsko v. Pennsylvania Electric Company, Docket No. C-2018-2643274; Angela C. Esters v. Pennsylvania Electric Company, Docket No. C-2018-2643222; Debra A. Gibbs v. Pennsylvania Electric Company, Docket No. C-2018-2643260; Catherine M. Hartzell v. Pennsylvania Electric Company, Docket No. C-2018-2643211; Dennis T. Husted v. Pennsylvania Electric Company, Docket No. C-2018-2643280; Cynthia Glover Muhammed v. Pennsylvania Electric Company, Docket No. C-2018-2643212; David Nies v. Pennsylvania Electric Company, Docket No. C-2018-2643243; Carl E. Palotas, Jr. v. Pennsylvania Electric Company, Docket No. C-2018-2643225; Richard S. Powierza v. Pennsylvania Electric Company, Docket No. C-2018-2643248; Bernadine Randhanie v. Pennsylvania Electric Company, Docket No. C-2018-2643284; Matthew J. Sciarrino v. Pennsylvania Electric Company, Docket No. C-2018-2643239; Mark L. Spaeder v. Pennsylvania Electric Company, Docket No. C-2018-2643244; Kenneth C. Springirth v. Pennsylvania Electric Company, Docket No. C-2018-2641907; Kathleen B. Walls v. Pennsylvania Electric Company, Docket No. C-2018-2643213; Robert H. Walls v. Pennsylvania Electric Company, Docket No. C-2018-2643214; Julie Whaling v. Pennsylvania Electric Company, Docket No. C-2018-2643277; Robert G. Whaling, Sr. v. Pennsylvania Electric Company, Docket No. C-2018-2643280; Joseph A. and Dianne L. Yochim v. Pennsylvania Electric Company, Docket No. C-2018-2643246.

12. That the proceeding at Docket No. R-2017-2624240 and the Complaint Dockets in Ordering Paragraph No. 11, above, be marked closed.

BY THE COMMISSION,

A handwritten signature in black ink, reading "Rosemary Chiavetta". The signature is written in a cursive, flowing style with a large initial "R".

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: August 23, 2018

ORDER ENTERED: September 4, 2018