

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

Public Meeting held August 2, 2012

Commissioners Present:

Robert F. Powelson, Chairman
John F. Coleman, Jr., Vice Chairman
Wayne E. Gardner, Partial Dissent, Statements
James H. Cawley
Pamela A. Witmer, Statement

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
P-2011-2273670

OPINION AND ORDER

Table of Contents

I.	Background.....	1
II.	History of the Proceeding.....	3
III.	The Joint Petition.....	4
IV.	Standards Applicable to Default Service.....	7
V.	Discussion.....	9
	A. Default Service Procurement and Implementation Plans	9
	1. Consolidation of West Penn's Service Types 20 and 30	9
	2. Terms and Mix of Residential, Commercial and Industrial Default Service Procurement.....	14
	3. Hold Back for Residential Opt-In Auction	27
	4. Supplier Load Caps	30
	5. West Penn Hourly–Priced Default Service Procurement	34
	6. Solar Photovoltaic Requirements	37
	B. Rate Design and Cost Recovery	47
	1. West Penn HP Default Service Rider – Conversion from kW to kWh Pricing.....	47
	2. West Penn HP Default Service Rider – Conversion from Day-Ahead to Real Time Pricing	50
	3. Market Adjustment Charge	53
	4. Recovery of Non-Market Based Transmission Charges through the Default Service Support Rider – Allocation of Costs to Large C&I Customers.....	63
	5. Recovery of Non-Market Based Transmission Charges through the Default Service Support Rider – Collection of Generation Deactivation and Unaccounted- for Energy Costs	78

6.	Recovery of Non-Market Based Transmission Charges through the Default Service Support Rider – Carve-Out of Network Integration Transmission Costs	.82
7.	Economic Load Response Charges	84
8.	Residential Time-of-Use Default Service Rider	87
9.	Reconciliation of the PTC Rider	94
10.	Potential Need for a Migration Rider.....	98
C.	Market Enhancement Programs	101
1.	Small Commercial and Industrial Customer Participation in the Market Enhancement Programs	101
2.	Shopping Customer Participation in the Market Enhancement Programs..	104
3.	Timing of the Retail Opt-In Customer Solicitation and EGS Auction	108
4.	ROI Aggregation Program Customer Participation Cap.....	109
5.	Supplier Participation Load Cap	112
6.	Retail Opt-In Discount from the Price to Compare	115
7.	Bonus Payments	118
8.	ROI Aggregation Agreement, Customer Contracts and Disclosure Statements.....	121
9.	Customer Testing Prior to the Retail Opt-In Auctions	124
10.	Post-Retail Opt-In Program Rates.....	127
11.	Structure of the Retail Opt-In Auction.....	129
12.	Recovery of Market Enhancement Program Costs	132
13.	Customers Solicited for Customer Referral Program – Customers with High Bill Complaints.....	137

14.	CAP Customer Participation in the Market Enhancement Programs	140
15.	Term of the Standard Offer Product and Length of the Seven Percent Discount.....	144
16.	Sequencing the ROI Auction Program and the Standard Offer Customer Referral Program	147
17.	Modifications to the New/Moving Customer Referral Program	150
18.	Operational Issues, EGS Access to Customer Data.....	155
VI.	Conclusion	157

BY THE COMMISSION:

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Recommended Decision of Administrative Law Judge (ALJ) Elizabeth H. Barnes issued June 15, 2012. Also before the Commission are the Exceptions of Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power) and West Penn Power Company (West Penn) (collectively, Companies); the Office of Consumer Advocate (OCA); the Office of Small Business Advocate (OSBA); Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (collectively, Constellation); Dominion Retail, Inc. (Dominion); First Energy Solutions Corporation (FES); Met-Ed Industrial Users Group (MEIUG), the Penelec Industrial Customer Alliance (PICA), the Penn Power Users Group (PPUG), and West Penn Power Industrial Intervenors (WPPII) (collectively, Industrials); The Pennsylvania State University (PSU); and the Retail Energy Supply Association (RESA) with respect thereto. Replies to Exceptions were filed by the Companies, the Bureau of Investigation and Enforcement (I&E); the OCA; the OSBA; Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA); Dominion; Exelon Generating Company, LLC and Exelon Generating Company (collectively, Ex-Gen); FES; Industrials; RESA and Washington Gas Energy Services, Inc. (WESA). Also before the Commission is the Joint Petition of the Companies for approval of their Default Service Programs (Joint Petition).

I. Background

Following the transition to a competitive market for electric generation in Pennsylvania, the Companies retained the obligation to serve as the default service providers for their retail customers pursuant to 66 Pa. C.S. § 2807(e)(3.1). Accordingly, each of the Companies filed plans to fulfill their default service obligations which were approved by the Commission. The Companies currently provide default service under

Commission-approved default service plans (DSPs) that will expire on May 31, 2013.¹ By the Joint Petition, the Companies seek Commission approval of their programs to provide default service from June 1, 2013 through May 31, 2015. Pursuant to 66 Pa. C.S. § 2807(e)(3.6), the Commission must issue a final order on the proposed programs before August 17, 2012.

Met-Ed is a wholly owned subsidiary of First Energy Corporation (First Energy) that provides service to approximately 553,000 electric utility customers in eastern Pennsylvania. Penelec is a wholly owned subsidiary of First Energy that provides service to approximately 591,000 electric utility customers in central and western Pennsylvania. Penn Power is a wholly owned subsidiary of the Ohio Edison Company, which in turn, is a wholly owned subsidiary of First Energy. Penn Power provides service to approximately 553,000 electric utility customers in western Pennsylvania. West Penn is a wholly owned subsidiary of Allegheny Energy, Inc., which in turn, is a wholly owned subsidiary of First Energy. West Penn provides service to approximately 717,000 electric utility customers in western Pennsylvania.

¹ See, *Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Program*, Docket Nos. P-2009-2093053, P-2009-2093054 (Order entered Nov. 6, 2009) (*Met-Ed/Penelec 2009 DSP Order*), *Petition of Pennsylvania Power Company for Approval of Default Service Program for the Period from January 1, 2011 through May 31, 2013*, Docket No. P-2010-2157862 (Order entered November 17, 2010) (*Penn Power 2010 DSP Order*), *Petition of the West Penn Power Co. d/b/a Allegheny Power for Approval of its Retail Elec. Default Serv. Program and Competitive Procurement Plan for Service at the Conclusion of the Restructuring Transition Period*, Docket No. P-00072342 (Order entered July 25, 2008) (*West Penn 2008 DSP Order*).

II. History of the Proceeding

On November 17, 2011, the Companies filed the Joint Petition requesting that the Commission approve their DSPs for the period from June 1, 2013, to May 31, 2015. Copies of the Joint Petition were served in accordance with 52 Pa. Code § 54.185(b), which includes service on the OCA, the OSBA, I&E and the Electric Generation Suppliers (EGSs) registered in the Companies' service areas. On December 3, 2011, a notice was published in the *Pennsylvania Bulletin*,² which set a complaint, protest and intervention deadline of December 19, 2011. Pursuant to 52 Pa. Code § 54.188(e)(1), each of the Companies provided public notice of the filing of the Joint Petition by publishing a notice in the major newspapers serving their respective service territories. These public notices were filed within thirty days of the filing of the Joint Petition and contained information about: the Companies' filing, their proposed competitive solicitations of generation resources, the Plan's potential effects on customers, the availability of the filings, the filing of comments or complaints, and the participation of customers in this proceeding. Companies St. 1 at 17.

A Prehearing Conference was held in Harrisburg on December 22, 2011, where a schedule was established for submitting written testimony, holding evidentiary hearings and filing briefs. Tr. at 13-14. In addition to the Parties identified, *supra*, the Anthracite Region Independent Power Producers Association; Direct Energy Services, LLC; PECO Energy Company and York County Solid Waste and Refuse Authority were granted active party status in this proceeding. R.D. at 2. In response to a Motion to Consolidate filed by the Companies, the ALJ consolidated the four above-captioned

² 41 Pa. B. 6484-6485.

dockets for purposes of litigation pursuant to 52 Pa. Code § 5.81. Amended Scheduling Order entered December 29, 2011, at 2.

The Parties engaged in extensive discovery. *Id.* The Companies responded to 294 interrogatories and the other Parties collectively responded to 149 interrogatories, many containing multiple subparts. Companies M.B. at 2. Evidentiary hearings were held in Harrisburg on April 11 and 12, 2012, where various witnesses were cross-examined and the testimony and exhibits of all parties were admitted into evidence. R.D. at 2.

At the conclusion of the April 12, 2012 hearing, the ALJ established a May 2, 2012 deadline for the filing of Main Briefs and a May 16, 2012 deadline for Reply Briefs. Tr. at 354. Main and Reply Briefs were filed by the Companies, I&E, the OCA, the OSBA, CAUSE-PA, Constellation, Dominion, Ex-Gen, FES, Industrials, and RESA. PSU and WES only filed Reply Briefs. The ALJ determined that all briefs were timely filed and the record was closed following the receipt of Reply Briefs on May 16, 2012. R.D. at 2.

The Recommended Decision was issued on June 15, 2012. Exceptions and Reply Exceptions were filed as noted, *supra*.

III. The Joint Petition

The Companies filed the Joint Petition requesting that the Commission approve their DSPs for the period from June 1, 2013 to May 31, 2015, and that the Commission find that the DSPs satisfy the criteria set forth at 66 Pa. C.S. § 2807(e)(3.7). The Companies aver their DSPs were designed to provide their Companies' default service customers access to an adequate, reliable generation supply at the least cost over time and to enable the Companies to recover their costs of furnishing that service. The

Companies submit that the DSPs contain all of the elements required by the Commission's default service regulations (*See*, 52 Pa. Code §§ 54.181 – 54.189) and its Policy Statement on Default Service (*See*, 52 Pa. Code §§ 69.1801-69.1817), including implementation plans, procurement plans, contingency plans, rate design plans, and associated tariff pages. In addition, the Companies explain that the DSPs contain certain competitive market enhancements in accordance with the Commission's recent Final Order in the case of *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, I-2011-2237952, (Final Order entered March 2, 2012) (*IWPF Order*). Companies M.B.

at 1.

The Petition specifically requests that the Commission:

- (1) Approve the Companies' proposed programs, including, each procurement plan, implementation plan, contingency plan and related bidder rules, supplier master agreements, credit documents, and other associated agreements for default service supply from June 1, 2013, through May 31, 2015;
- (2) Approve the Companies' proposed rate design and tariffs for default generation service, including recovery of all of the Companies' costs associated with the provision of default service;
- (3) Approve the Companies' proposed electric generation supplier (EGS) agreements for the provision of service under the Companies' proposed Retail Opt-in (ROI) Auction and Customer Referral Program, as well as time-of-use (TOU) service for Penn Power and West Penn;

(4) Approve CRA International, Inc. d/b/a Charles River Associates as an independent third-party evaluator for the Companies' default supply procurements and proposed ROI Auction;

(5) Approve the Brattle Group as the independent third-party evaluator for the Companies' solar photovoltaic alternate energy procurements and TOU procurements;

(6) Find that neither the Companies nor their affiliates have withheld from the market any generation supply in a manner that violates federal law;

(7) Find that the proposed programs include prudent steps necessary to negotiate favorable generation supply contracts;

(8) Find that the proposed programs include prudent steps necessary to obtain least-cost generation supply on a long-term, short-term and spot market basis;

(9) Grant a waiver of the rate design provisions of 52 Pa. Code § 54.187 and transmission related price-to-compare (PTC) provisions at §§ 54.182 and 54.187, to the extent necessary;

(10) Approve the Companies' supplier master agreements (SMAs) and EGS agreements as affiliated interest agreements under 66 Pa. C.S. § 2102; and

(11) Approve the Companies proposed terms and conditions of service for EGSs providing service under the Companies' proposed Retail Opt-In (ROI) Auction , Customer Referral program, or TOU service for West Penn and Penn Power, and grant

any additional waivers required for implementation of these programs. Joint Petition at 2-3.

IV. Standards Applicable to Default Service

The Companies have the burden of proof in this proceeding to establish that they are entitled to the relief they are seeking. 66 Pa. C.S. § 332(a). The Companies must establish their cases 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 their burden of proof, the Companies must present evidence more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950). In this case, the Companies request that the Commission approve the joint filing establishing the proposed DSPs.

The Competition Act³ requires that default service providers acquire electric energy through a “prudent mix” of resources that are designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to customers over time; and (iii) to achieve these results through competitive processes that include auctions, requests for proposals and/or bilateral agreements. 66 Pa. C.S. §§ 2807(e)(3.1) and 2807(e)(3.4). The Competition Act does not, however, require a specific default service rate design methodology. *Id.*

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

³ Electricity Generation Customer Choice and Competition Act, Act 138 of 1996, as amended by Act 129 of 2008 (Act 129), codified at 66 Pa. C.S. §§ 2801, *et seq.*

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).

In addition to the foregoing statutory guidelines, the Commission has enacted default service regulations, 52 Pa. Code §§ 54.181 to 54.189, and a policy statement, 52 Pa. Code §§ 69.1802 to 69.1817, addressing default service plans. The regulations first became effective in 2007 and recently have been amended to incorporate the Act 129 amendments to the Competition Act⁴.

The Commission also entered its Order in the *Investigation of Pennsylvania’s Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans*, Docket No. I-2011-2237952 (Order entered December 16, 2011) (*DSP Recommendations Order*). In the *DSP Recommendations Order*, the Commission directed that EDCs consider the incorporation of certain market enhancement programs into their DSPs in order to foster a more robust retail competitive market. Examples of such mechanisms include ROI auctions and customer referral programs.

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

V. Discussion

The following discussion addresses recommendations by the ALJ for which Exceptions were submitted by the Parties. The ALJ made twenty-three Findings of Fact and reached nine Conclusions of Law. The Findings of Fact, Conclusions of Law as well as the recommendations of the ALJ are adopted without comment unless either expressly or by necessary implication rejected or modified by this Opinion and Order.

As a preliminary matter, we note that any issue or Exception that we do not specifically address herein has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corporation 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).

A. Default Service Procurement and Implementation Plans

1. Consolidation of West Penn's Service Types 20 and 30

a. Companies' Proposal

In their DSPs, the Companies propose to procure default service supplies separately for each of three customer classes: a Residential Customer Class, a Commercial Customer Class, and an Industrial Customer Class. Each of these classes is comprised of specific rate schedules and tariffs. Companies' St. 2 at 3-5. The procurement classes recommended by the Companies for Met-Ed, Penelec, and Penn Power are identical to the procurement classes now in use by these Companies and

previously approved by the Commission.⁵ The only change proposed in this proceeding is to consolidate West Penn’s current four customer classes that were approved as part of West Penn’s initial default service proceeding,⁶ into three customer classes. This modification would make West Penn consistent with the other three FirstEnergy Companies. Companies St. 2 at 7.

Under West Penn’s current DSP, there are four customer classes, which are denominated as “Service Types.” *Id.* Service Type (ST) 10 is identical to West Penn’s proposed Residential Customer Class, and ST 40 is identical to West Penn’s proposed Industrial Customer Class. ST 20 consists of all rate schedules that would be included in the proposed Commercial Customer Class, except those customers on Rate Schedule 30 (general power service-large) that have billing demands below 500 kW. These customers currently make up a separate procurement group identified as ST 30. *Id.*

West Penn is proposing to consolidate ST 20 and ST 30 because the load profile and shopping rates of ST 20 and ST 30 customers are similar and because fewer than 600 customers (with a total load of less than 90 MW) currently remain in the ST 30 class. The Companies stated that combining the two procurement classes will reduce the costs and administrative burdens associated with having separate procurement classes and will achieve consistency across all of the Companies. The Companies presented evidence that the weighted fixed prices for tranche prices during 2011 and 2012 are “fairly close” for ST 20 and ST 30, which the Companies averred, shows that suppliers offered similar bids for both service types. Companies St. 2-R at 5. Therefore, the

⁵ See Met-Ed/Penelec 2009 DSP Order at 22-23 and Penn Power 2010 DSP Order at 4-5.

⁶ The four Service Type customer classes were established in West Penn’s initial default service proceeding. See West Penn 2008 DSP Order at 10.

Companies argued that there is no reason to retain ST 30 as a separate customer class.

Id.

b. Positions of the Parties

The Industrials opposed the consolidation of Service ST 20 and ST 30. The Industrials averred that the Companies failed to bear their burden of proof that the consolidation of these two service types would be structured in a manner to avoid cross-subsidization between rate classes. The Industrials pointed to 66 Pa. C.S. § 2807(e)(7) and *Lloyd v. Pa. PUC*, 904 A.2d 1010, 1020-21 (Pa. Cmwlth. 2006) to support its argument that cross-subsidization is not permitted by Act 129 or Commission precedent. The Industrials submitted that cross-subsidization is prohibited to safeguard customers, specifically default service customers, from proposals that would prevent them from receiving service at the least cost over time. Industrials M.B. at 4-6.

In his direct testimony, OSBA witness Mr. Knecht did not oppose the Companies' proposal to combine West Penn's ST 20 and ST 30 in order to achieve consistency with the other First Energy companies. Mr. Knecht also testified that combining ST 20 and ST 30 has offsetting effects. Mr. Knecht further explained that including ST 20 with ST 30 will add customers with a more attractive load shape, thereby putting downward pressure on wholesale bid prices, while those same customers have a higher propensity to shop, thereby putting upward pressure on wholesale bid prices. OSBA St. No. 1 at 14.

c. ALJ's Recommendation

The ALJ found that there was insufficient evidence to support the Industrials' witness Mr. Raia's contention that the consolidation of ST 20 and ST 30 will

have an adverse effect on customers. The ALJ could not accept the testimony of Mr. Raia, Energy Manager of Sheetz, Inc., as representative of the entire large Commercial and Industrial (C&I) customer classes. The ALJ specifically noted that Mr. Raia's testimony addressed only Sheetz, Inc.'s concerns and he testified that he was not presenting testimony on behalf of Latrobe Specialty Steel, Occidental Chemical Corporation, or other members of the Industrials. R.D. at 16.

In recommending that the Commission should approve the consolidation of West Penn's ST 20 and ST 30, the ALJ was persuaded by the Companies' testimony showing the average hourly usage per day of the default service customers in ST 20 and ST 30 exhibit very similar load profiles. The ALJ concluded that the record evidence supports a finding that no "cross-subsidization" will occur from combining ST 20 and ST 30. The ALJ was also persuaded by Mr. Knecht's testimony that the consolidation would bring consistency across the Companies and that there would be offsetting effects to ST 20 and ST 30 customers. R.D. at 16-17.

d. Exceptions to the Recommended Decision

In its Exceptions, the Industrials do not dispute the ALJ's position that the proposed consolidation would promote customer class consistency among the four Companies; however, the Industrials aver that the ALJ erred when she valued this consistency over the potential for cross-subsidization. The Industrials contend that the "offsetting effects" noted by the ALJ are in fact cross-subsidization effects. Industrial Exc. at 38-40. The Industrials are also concerned that differences between these classes would cause customers in one class to remit costs for infrastructure and billing changes that the customers have already incurred. The Industrials argue that the Companies provided no evidence that the costs of consolidation could be applied to the customers in each class in a manner that avoids cross-subsidization. Because the Companies failed to

provide this evidence, the Industrials recommend that the Commission reject the ALJ’s recommendation and deny the consolidation of ST 20 and ST 30. *Id.*

In response to the Industrial’s Exceptions, the Companies aver that the ALJ properly considered all of the evidence in recommending the approval of ST 20 and ST 30. The Companies opine that the ALJ found that the proposed consolidation should be approved based on two detailed analyses presented by West Penn. The first analysis showed that, contrary to the Industrials’ contentions, the average hourly usage of the default service customers in ST 20 and ST 30 revealed that they have very similar load profiles. The second analysis focused on the weighted average fixed prices for competitively procured tranche purchases that West Penn has used to calculate default generation rates for ST 20 and ST 30 since its default service program began. The Companies state that all of those prices are very close and, for the period of December 2011 to May 2012, the market prices for ST 20 and ST 30 varied by only 0.2%. Therefore, the Companies argue that there is no risk of any meaningful “cross-subsidization.” Companies R. Exc. at 4-5.

e. Disposition

We shall adopt the ALJ’s recommendation to approve the consolidation of ST 20 and ST 30 for the procurement of default service supplies for West Penn’s customers. We are persuaded by the evidence presented by the Companies that both service types presented very similar load profiles and that the market prices for four tranche purchases for ST 20 and ST 30 varied by only 0.2%. Therefore, consistent with the requirements of 66 Pa. C.S. § 2807(e)(7), there is not likely to be significant cross-subsidization between the current ST 20 and ST 30 customers if default service supplies are procured collectively for service rendered after June 1, 2013.

We are also not convinced that the costs for infrastructure and billing changes cited by the Industrials, *supra*, would outweigh the reduced administrative costs that would result by procuring default service for current ST 20 and ST 30 customers as a single group. Accordingly, the Exceptions of the Industrials on this issue are denied.

2. Terms and Mix of Residential, Commercial and Industrial Default Service Procurement

a. Companies' Proposal

For each of the Residential, Commercial and Industrial customer classes, the Companies have proposed to procure full-requirements, load-following energy and energy-related services for the default service customers of each of the four Companies. The load of each customer class would be divided into tranches, with each tranche constituting a fixed percentage of each Company's non-shopping load, and qualified suppliers would bid to serve tranches in simultaneous descending clock auctions (DCAs) for all four Companies. Winning suppliers would enter into an SMA and would be responsible for fulfilling all the obligations of a Load Serving Entity (LSE) imposed by the PJM Interconnection LLC (PJM). As such, each winning supplier would be required to provide energy, capacity, transmission service (excluding Network Integration Transmission Service (NITS)), Regional Transmission Expansion Plan charges (RTEP), any Transmission Enhancement Charges (TEC), Generation Deactivation charges, and unaccounted-for energy costs (UFE)), all ancillary service costs, PJM administrative expenses and any other services or fees as required by PJM. In addition, suppliers would also be responsible for meeting the requirements of Pennsylvania's Alternative Energy Portfolio Standards Act (AEPS) associated with their portion of default service load, except for forty percent of the AEPS solar photovoltaic requirement, which would be supplied by the Companies. Companies M.B. at 6-7.

Under the Companies' proposal, each residential and commercial class tranche would be comprised of a load-following full-requirements product with a ninety percent fixed-price portion and a ten percent variable-price spot portion. The fixed-price for the ninety percent portion would be established through the Companies' DCAs. The ten percent variable-price spot portion would be priced at the hourly PJM real-time zonal locational price for the applicable Company. Residential and commercial class suppliers would also receive a \$20/MWh adder for the spot portion, which is designed to cover associated costs for capacity, ancillary services, and AEPS compliance. *Id.* at 7.

The Companies have proposed that all contracts will have the same twenty-four-month term, expiring on May 31, 2015, and will be procured in November 2012 and January 2013, in order to bring time diversity and rate stability into the ultimate pricing for default service customers. A portion of the requirements of residential customers of Met-Ed, Penelec, and Penn Power will continue to be met through forty-eight-month long-term block energy contracts procured during the Companies' prior default service proceedings, which all expire on May 31, 2015. *Id.*

b. Positions of the Parties

The OCA submitted that it is not reasonable or prudent to rely on one product for all residential default service needs, nor is it reasonable to make all of those purchases in a short period of time. The OCA argued that reliance on a single type of contract, all of which start on the same day (June 1, 2013) and end on the same day (May 31, 2015) can hardly be deemed a "prudent mix" of purchases as mandated by Act 129. The OCA averred that by procuring all of their twenty-four-month full-requirements tranches in November 2012 and January 2013, the Companies are shifting the obligation of meeting default service demands to wholesale suppliers. The OCA opined that the suppliers are then exposed to the volumetric risk of an uncertain load responsibility that

would result in a higher risk premium in wholesale rates. By only conducting two procurements over a short period of time, the OCA was also concerned that the Companies are exposing default service customers to potential spikes in wholesale prices that may exist at the time of two procurements. The OCA also submitted that because all contracts would come to a hard stop in May 2015, default service customers may be exposed to sharp price increases in the next procurement cycle. OCA M.B. at 15-28.

To remedy these shortcomings in the Companies' proposed procurement plan, the OCA proposed that the Companies continue to utilize the same basic supply mix currently in place for Met-Ed and Penelec, which is a mix of one-year and two-year full-requirements contracts, one-year and four-year block energy contracts, and spot market purchases. The OCA opined that under their current default service plans, the Companies have procured a mix of a variety of products that has worked well for both non-shopping and shopping customers alike. *Id.* To avoid a hard stop in May 2015, the OCA proposed that thirty-five percent of the contracts for residential service extend beyond May 2015. OCA St. No. 1 at 25.

RESA argued that the Companies' reliance on two-year contracts and the OCA's proposal to add one 50 MW four-year block will almost certainly result in default service prices that are decoupled from wholesale market prices, resulting in the shattering of the little shopping that is occurring in the service territories of the Companies. RESA explained that the substantial reliance on full requirements contracts of two years with the addition of a four-year contract is likely to diverge significantly (either upward or downward) from the then-current market price which is not likely to produce the least cost for customers. RESA averred that such a procurement design virtually guarantees

that prices will be substantially out of line with current market conditions at the time of delivery and will not sustain retail market development. RESA M.B. at 16-17.

To address its concerns, RESA recommended that the Companies replace the twenty-four-month contracts with some twelve-month contracts. RESA proposed that for the residential class, there would be one auction that would include fifteen tranches of twenty-four-month contracts and two subsequent auctions to include a total of thirty tranches of twelve-month contracts. RESA explained that under its proposal, forty-five percent of the procurements would be comprised of twenty-four-month fixed price contracts, forty-five percent of the procurements would be comprised of twelve-month fixed price contracts and ten percent of the procurements would be based on spot purchases. For the commercial classes, RESA recommended that all 24-month contracts would be replaced with 12-month contracts. RESA explained that ninety percent of its commercial procurement would be comprised of twelve-month fixed price contracts and the remaining ten percent would be spot-priced procurements. *Id.* at 18.

RESA noted that under the Companies' proposal, all contracts would be procured at least five months prior to delivery and some would be procured seven months prior to delivery. RESA argued that if the timing of the auctions is too far in advance of the delivery date, the auctions will result in pricing that does not reflect the market price at the time of delivery for that corresponding supply. Accordingly, RESA recommended that the timing of the two proposed auctions be adjusted so that they will be closer in time to delivery. For the residential class, RESA recommended that the Companies' November 2012 auction should be moved to January 2013 for June 2013 delivery. RESA explained that this would shorten the lag time from seven months to five months. Also, for the residential class, RESA suggested that the January 2013 auction be moved to March 2013 for June 2013 delivery, shortening the lag time from five months to three

months. Finally, for the residential class, RESA proposed the addition of a third auction to be held in March 2014 for June 2014 delivery for a lag time of three months.

Id. at 21.

For the commercial class, RESA recommended that the November 2012 auction be moved to March 2013 for June 2013 delivery and that all the tranches for the proposed November and January auctions be combined and all procured in the March 2013 auction. RESA explained that this would shorten the lag time from seven months to three months. Likewise, RESA recommended that the proposed January 2013 auction be moved to March 2014 and that all tranches be procured at the same time for the second year of the default service plan period, again shortening the lag time from five months to three months prior to delivery in June 2014. *Id.* at 21-22.

FES supported the Companies' reliance on two-year full-requirements contracts. FES M.B. at 5. FES argued that residential default service contracts shorter than twenty-four months would not provide the rate stability envisioned by Act 129. *Id.* at 9-12. FES averred that the OCA's procurement proposal would not enable the Companies to minimize the procurement of default service after May 31, 2015, in a manner consistent with the *DSP Recommendations Order*. Accordingly, FES submitted that the OCA's proposed residential procurement plan would "contradict" the Commission's directive that default service contracts not extend beyond May 31, 2015. FES M.B. at 7.

OSBA witness Knecht characterized the Companies' procurement plan as not "unreasonable," but believed that it can be "improved upon" through the use of one-year and six-month contracts to reduce the potential for risk premiums. OSBA St. 1 at 15. Mr. Knecht also contended that the Companies' proposed procurement of two-year

contracts for the commercial class in November 2012 and January 2013 does not comply with the Commission’s Default Service Policy Statement at 52 Pa. Code § 69.1805, which provides that default service contracts for both small and medium non-residential customers should be procured using “a minimum of two competitive bid solicitations per year to further reduce the risk of acquisition at the time of peak prices.” *Id.* at 17. Consequently, the OSBA recommended that for small commercial and industrial customers, the Companies initially procure half of their procurements through six-month contracts and half through twelve-month contracts. As contracts expire at six-month intervals, the OSBA proposed that the Companies would replace the expiring contracts with new twelve-month contracts.

The OSBA also submitted that if the Commission maintains its policy specified in the *DSP Recommendations Order*, the final procurement would be a six-month contract ending in May 2015. The OSBA stated that if the Commission was satisfied that its proposed mechanism was “working reasonably,” this approach could simply be continued to avoid the potential for a large price change in June 2015. OSBA M.B. at 4-6.

In response to the arguments of the OCA and the OSBA that two-year full-requirements contracts will include higher supplier risk premiums than one-year contracts because of a longer contract term, the Companies provided detailed contract price data for one and two-year full-requirements contracts from their prior procurements to demonstrate that this was not necessarily true. As explained by the Companies’ witnesses Mr. Stathis and Dr. Reitzes, products with one-year or shorter terms can be more expensive than contracts with longer duration. The Companies submitted that to the extent there was any difference in the risk premium included by suppliers in the Companies’ one- and two-year contracts to date, the difference was not statistically

significant. Companies St. 4-R at 3-4, Tr. at 164-166, Companies' Ex. JDR-3. The Companies also argued that increasing the amount of one-year contracts could undermine the inherent volatility protection of full-requirements contracts and result in higher prices for customers if shorter-term contracts are procured during a time of high energy prices. Companies St. 4-R at 4.

c. ALJ's Recommendation

As a threshold matter, the ALJ stated that the Commission's Default Service Policy Statement at 52 Pa. Code § 69.1805, regarding electric generation supply procurement, does not constitute a rule, regulation, or other "binding norm" requiring semi-annual procurements of one-year contracts. R.D. at 29 In addition, the ALJ observed that while the Companies' proposed procurements of two-year contracts in November 2012 and January 2013 are not within the same calendar year, they are within the same PJM delivery year (June 1-May 31). Therefore, the ALJ found that the Companies' proposal is compliant with Section 69.1805 because the DSPs are synchronized with the PJM year. *Id.*

In response to RESA's concerns that the Companies' reliance on two-year contracts would result in default service rates that will be substantially out of line with current market conditions at the time of delivery, the ALJ noted that the Commission has previously observed that RESA's goals are inconsistent with the Public Utility Code's requirement that default service procurement be designed to achieve "least cost over time" and the objective of price stability. The ALJ cited the following language from the *Act 129 Final Rulemaking Order*:

We disagree with RESA's overall recommendations as to the proper interpretation of the "least cost" standard as mandating

that default service rates approximate, on a prospective basis, the market price of energy. Such an interpretation would signal retention of the “prevailing market price” standard that has been expressly replaced under Act 129. Moreover, this interpretation conflicts with the Act 129 objective of achieving price stability which dictates consideration of a range of energy products, not just those that necessarily reflect the market price of electricity at a given point in time. Price stability benefits are very important to some customer groups in that exposing them to significant price volatility through general reliance on short term pricing would be inconsistent with Act 129 objectives.

Act 129 Final Rulemaking Order at 39-40; R.D at 22.

The ALJ found that the Companies’ proposed procurement plan for the residential class, with ninety percent fixed-price and ten percent spot-priced two-year contracts obtained at market prices through competitive procurements, is consistent with the short-term contract purchase provisions of Act 129 and will also provide both a degree of cost stability and exposure to spot-market pricing. The ALJ stated that RESA’s witness Ms. Williams’ assertion that contract prices for the Companies’ two-year contracts “will *always* diverge from current market prices” (RESA St. 1-SR at 3, emphasis in original) is not necessarily correct. R.D. at 26. The ALJ concluded that there is, in fact, no certainty that current market prices one year after the Companies procure a two-year contract will be significantly different. *Id.*

The ALJ agreed with the Companies’ position, *supra*, that shorter procurement contracts proposed by the OCA, OSBA and RESA are unnecessary under the Companies’ programs for both the residential and commercial customer classes. The ALJ stated that she was persuaded to agree with the Companies and FES that the procurement length of twenty-four months is consistent with the Code’s requirement for a “prudent mix” of default supply contracts. *Id.* at 31.

In response to the concerns over the May 2015 “hard stop,” the ALJ noted that the proposed May 31, 2015 hard stop is consistent with the Companies’ current default service programs, in which all default service supply contracts (other than 50 MW long-term block contracts) will terminate on May 31, 2013. The ALJ opined that, while the Companies have not undertaken plans for default service supply after June 1, 2015, there is no reason that a future default service plan could not include similar multiple procurements to avoid a future hard stop in June 2015, as the Commission recommended in the *DSP Recommendations Order*. R.D. at 31-32.

The ALJ also recommended that, in light of the established benefits of full-requirements contracts and the results of the Companies’ procurements, the Commission should reject the OCA’s proposal to continue the use of the block and spot approach for default service supply. The ALJ presented the following summary of the Companies’ testimony in support of its proposed competitive full-requirements procurement process:

As explained by Dr. Reitzes, the use of a competitive procurement process for full requirements products is structured to induce aggressive bidding among suppliers who manage portfolios of energy, transmission and capacity products to meet the changing load obligations of customers at a fixed price (with a spot-priced component to expose customers in part to wholesale market pricing.) Diversity exists because full requirements suppliers assemble a diverse mix of products to meet their contractual obligations (Companies’ St. 6, pp. 9-12, 17). The results to date of the Companies’ full requirements procurements have demonstrated that the premiums full requirements suppliers may charge for managing the volumetric and pricing risks associated with varying customer load have been quite modest, with substantial participation by competing suppliers

to offer the lowest price for customers. (Companies' St. 6, pp. 12-16; Companies' St. 6-R, pp. 3-4).

R.D. at 32.

d. Exceptions to the Recommended Decision

In its Exceptions, RESA argues, *inter alia*, that the ALJ “layers” price stability on top of the other statutory requirements of default service to conclude that the default service plan must provide price stability without consideration of the impact on the competitive market or on the resulting default service rate. RESA Ex. at 6. RESA further argues that the ALJ’s reliance on the *Act 129 Final Rulemaking Order* and an “outdated” statutory requirement fails to recognize the broader course the Commission has established regarding default service. RESA Exc. at 11. RESA states that in the *Act 129 Final Rulemaking Order*, the Commission specifically stated that its evolving interpretation of the policy objectives for evaluating default service plans “does not represent a retreat by this Commission from its commitment to retail competition.” *Act 129 Final Rulemaking Order* at 42, RESA Exc. at 11. In addition, RESA opines that in its Retail Market Investigation (RMI)⁷, the Commission is undertaking a significant process to review the status of the competitive market and is contemplating far reaching changes. RESA submits that in the *DSP Recommendations Order*, the Commission made clear that the goals and purposes of the RMI process need to be achieved in upcoming default service plans. RESA Exc. at 11.

RESA cautions against relying on the Companies’ analysis that there was no difference in the risk premium between one and two-year contracts. RESA submits

⁷ *Investigation of Pennsylvania’s Retail Electricity Market*, Docket No. I-2011-2237952.

that the Companies relied on six specific point-in-time procurement auctions to conclude there is no difference in the costs. RESA avers that reliance on historical procurements at a specific point in time is not indicative of future procurements. RESA argues that the Companies' analysis on this point is meaningless and does not adequately rebut the point that the procurement of twenty-four month contracts with excessive time between procurement and delivery will result in a default service rate that is higher than if RESA's proposals were adopted. *Id.* at 8-11.

The OSBA avers that the ALJ erred in finding that the Companies' proposed small commercial class procurement complies with 52 Pa. Code § 69.105. The OSBA notes that the ALJ accepted the Companies' argument that its proposal satisfies the Commission's policy of two procurements per year by holding both procurements within the same PJM year. The OSBA submits that the ALJ and the Companies have forgotten about the 2013-2014 calendar year where the Companies have proposed no procurements. While the OSBA recognizes that the guidelines are not the same as a rulemaking, the OSBA states that the guidelines were carefully thought out and should not be lightly thrown away lightly. The OSBA argues that the guidelines provide two significant benefits to small commercial and industrial ratepayers: (1) two procurements per year limits the exposure of default service rates at the time any individual procurement is held, and (2) allows default service rates to adjust to changes in market prices in steps rather than in one hard stop. OSBA Exc. at 4-6.

e. Disposition

The Commission rigorously addressed the criteria for the procurement of default service supplies in the proceedings at L-2009-2095604 resulting in the *Act 129 Final Rulemaking Order* where Commission stated, *inter alia*:

As stated earlier in this Order, the “least cost over time” standard should not be confused with the presumption that default prices will always equal the lowest cost price for power at any particular point in time. In implementing default service standards, the Commission must be concerned about rate stability as well as other considerations such as ensuring a “prudent mix” of supply and ensuring safe and reliable service. In our view, a default service plan that meets the “least cost over time” standard should not have, as its singular focus, the achievement of the absolute lowest cost over the default service plan time frame but rather a cost for power that is both relatively stable and also economical relative to other options. In this regard, we agree with those points raised by both PECO and PPL. To reiterate our prior point, the “least cost over time” standard should not be viewed as synonymous with maximizing market timing benefits at the expense of price stability and economy.

Act 129 Final Rulemaking Order at 40.

In consideration of the record developed in this proceeding, we find that the procurement plan recommended by RESA for residential customers and the plan recommended by the OSBA for small commercial and industrial customers, as described *supra*, is preferable for the forthcoming procurement period. While the two-year procurements proposed by the Companies would certainly guarantee rate stability, we are not convinced that the Companies’ proposal would best meet the least cost over time criteria and presents a considerable risk that default service rates would not remain economical relative to other electric supply options. While default service rates should provide a level of price stability, two-year procurement contracts create a potential risk the default service rates may become inconsistent with competitive rates over an extended period of time. In addition, procuring default service supplies in two, two-year procurements creates an unnecessary risk that these procurements will be made at a time when market rates are significantly above average. Consequently, we believe that the

mixture of twelve and twenty-four-month contracts proposed by RESA for residential customers and utilization of six-month and twelve- month contracts for small commercial and industrial contracts proposed by the OSBA emphasize the least cost over time and rate stability, while also acknowledging a viable competitive environment between default service and the prices offered by the EGSSs.

RESA has recommended that the default service procurements be made closer to the time periods in which the corresponding default service will be provided. We concur with RESA that shortening the procurement lag time will increase the probability that default service rates are more reflective of current market rates. While it appears that the seven-month lag proposed by the Companies' for the first November 2012 procurement is too long, we are not inclined to adopt the specific deadlines recommended by RESA. As an alternative, we shall allow the Companies to determine the appropriate timing for their default service procurements, but shall direct that no procurements be made more than five months prior to the time the Companies are scheduled to first provide service under those procurements.

While it is not our intention to establish a precedent in this proceeding regarding the utilization of block procurements for default service, we believe that the utilization of DCAs as proposed by RESA and the OSBA may pose less risk for the Companies given our concern over the risk associated with the potential decline in default service load in the future.

The OCA and the OSBA have recommended that a portion of default service procurements extend beyond May 2015, to avoid rate shock that may result from a hard stop in the Companies' contracts. We believe our decision that the Companies

utilize shorter, more frequent procurements should ensure a smoother transition into the next procurement period without requiring that procurements extend beyond May 2015.

The Exceptions related to the terms and mix of residential and commercial and default service procurement discussed, *supra*, are granted to the extent they are consistent with the foregoing discussion, and are denied in all other respects.⁸

3. Hold Back for Residential Opt-In Auction

a. The OCA’s Recommendation

As discussed in greater detail, *infra*, the Companies have proposed a ROI Aggregation Program whereby the EGSs would bid in a ROI Auction to provide competitive retail service to not more than fifty percent of each Company’s residential default service customers at a price that is at least five percent below the applicable PTC. Companies’ St. 7 at 23-24 and St. 7-R at 31-34.

The OCA recommended that twenty percent of the non-shopping load be held back from the default service procurement for use in the ROI auction. OCA M.B. at 30. The OCA estimated that based on the historic shopping trends in the Companies’ service areas, twenty percent of default service customers could participate in the ROI program. The OCA averred that an abrupt migration of default service customers to the ROI program could expose default service providers to greater volumetric risk and this risk perception would be priced into default service rates. The OCA argued that as a result the rate discount achieved by the ROI program could be “illusory.” OCA M.B. at 28-30.

⁸ Other issues related to the composition of full requirements default service are addressed, *infra*.

b. Companies' Position

The Companies argued that the OCA's recommendation is unnecessary. The Companies submitted that the suppliers are fully capable of properly assessing and mitigating any volumetric risk that may be associated with the ROI Auction and premiums for full-requirements contracts have been small even in times of uncertainty regarding potential load migration. The Companies cautioned that in the event that the ROI Aggregation Program is under-subscribed, there is a risk that suppliers will decline to purchase the additional tranches of default service supply that were held back. If that occurs, the Companies could be required to enter into new block energy contracts, which could compound the costs already incurred by customers if that block energy later had to be sold into the PJM markets. Companies M.B. at 17-18.

c. ALJ's Recommendation

The ALJ found that the OCA proposal presents significant additional risk for customers by increasing the amount of block and spot supply in each Company's portfolio in the event the ROI Auction is substantially undersubscribed and current default service suppliers decline the opportunity to purchase additional tranches of supply. The ALJ recommended that the Commission reject the OCA's "hold back" proposal. R.D. at 32-33.

d. Exceptions to the Recommended Decision

In its Exceptions, the OCA avers that the ALJ did not address the interplay between her recommendation to adopt two-year full-requirements contracts for default service and the revised ROI Aggregation Program that has a term of one year. The OCA argues that failing to address and mitigate the risk of this initiative will unnecessarily add

risk premiums and cost to default service prices contrary to the requirements of Act 129. The OCA states that it supports the implementation of a ROI Auction in this proceeding, but submits that it must be done in a way that not only benefits participating customers but also does not harm remaining default service customers. The OCA submits that its proposed procurement methodology, *supra*, and its proposed “hold back” methodology to address the risk of the auction, will allow this program to successfully move forward without undue harm. OCA Exc. at 13-14.

The OCA argues that the ALJ’s concern regarding the consequences of an under-subscription of the ROI program is misplaced. The OCA submits that the risk of under-subscription would be less under the OCA’s proposal to limit customer participation in an ROI program to twenty percent, discussed *infra*, and there is no evidence to suggest that default service suppliers would decline to accept the additional tranches that would be available if the ROI Aggregation Program is undersubscribed. OCA Exc. at 18-19.

e. Disposition

We will adopt the ALJ’s recommendation to reject the OCA’s proposal. Our decision, *supra*, to include twelve-month contracts in the residential default service auctions should mitigate some of the risks associated with the one-year initial duration of the ROI Aggregation Program. Moreover, our decision not to require the Companies to meet a portion of their default service supply through block procurements will eliminate the risk that the Companies are saddled with unneeded supplies in the event that participation in the ROI Program is greater than expected and the Companies’ default service requirements are less than expected. Accordingly, the OCA’s Exceptions on this issue are denied.

4. Supplier Load Caps

a. Companies' Proposal

As part of their respective procurement plans, the Companies have proposed to set a limit of seventy-five percent on the available tranches that any one supplier can win in their default service supply auctions. Companies Exh. BAM-1, Section 4.2. In support of their recommendation, the Companies submit that the Commission evaluated the proper load cap in Met-Ed and Penelec's first default service proceeding, where RESA argued for a fifty-percent load cap. The Companies noted that the Commission recognized in that proceeding:

The level at which the load cap is set must balance supplier diversity and achieving the lowest price in the supply auctions. All other things being equal, supplier diversity would mitigate the impact on customers of a supplier's default. However, a load cap would also limit the amount of default generation supply that the lowest cost bidder can provide, which would necessarily increase the total average cost to serve default load.

Met-Ed/Penelec 2009 DSP Order at 16.

b. RESA's Position

RESA argued that even though the Commission previously approved a seventy-five percent load cap for Met-Ed, Penelec and Penn Power, this was done prior to the merger of these companies with West Penn Power. RESA explained that with approval of the 2011 merger, more than one-third of Pennsylvania's customers are served by the four Companies and their service territories cover seventy percent of the Commonwealth in terms of square miles. RESA submitted that with a lower load cap,

the Commission will prevent the wholesale supply agreements from being concentrated in one or a few large wholesale suppliers. RESA avers that this issue should be of particular concern to the Commission given the fact that “the FirstEnergy family of companies” includes EDCs, and that an affiliate, FES, has been a successful wholesale bidder in the Companies’ past wholesale auctions. RESA M.B. at 29-32.

c. ALJ’s Recommendation

The ALJ recognized that the four Companies together have more market power, but found that there was not enough evidence to support a deviation from the Commission’s prior holding that a seventy-five percent load cap appropriately balances the interests of supplier diversity and obtaining the lowest cost bid for the “least cost over time” standard. The ALJ explained that when the Commission approved the load cap for Met-Ed and Penelec, it noted that the ALJ in that proceeding had found: (1) that the Ohio FirstEnergy affiliates had a seventy-five percent load cap and (2) that the FirstEnergy Ohio companies had recently conducted a procurement without any load cap at all, and obtained significant participation (*Met-Ed/Penelec 2009 DSP Order* at 16). The ALJ noted that the Public Utilities Commission of Ohio currently enforces a load cap of eighty percent for the FirstEnergy Ohio companies.⁹ The ALJ concluded that the Companies’ proposed load cap of seventy-five percent is reasonable. R.D at 35-36.

d. Exceptions to the Recommended Decision

In its Exceptions, RESA states that, while the ALJ noted that the four EDCs have more market power now than in 2009, she appears to give no consideration to what this means. RESA avers that allowing one or a few suppliers to dominate the FirstEnergy

⁹ See *Re Ohio Edison Co.*, No. 10-388-EL-SS0, 2010 WL 3442143 (Ohio PUC Aug. 25, 2010) (discussing imposition of 80% load cap).

wholesale auctions could result in controlling pricing such that other competitors are eventually driven out of this market. RESA adds that this is exacerbated for these particular EDCs because FES, a FirstEnergy company, is a wholesale supplier and past winner of the FirstEnergy wholesale supplier auctions. RESA points out that, despite these very real market power concerns, the FirstEnergy companies (both the EDCs and the affiliated wholesale supplier) vehemently opposed providing the Commission more specific details about previous auctions to enable a comprehensive review about whether or not there are market power concerns which need to be addressed.¹⁰ RESA submits that in light of this, the ALJ's conclusion that there is not "enough evidence" to support deviation from the Commission's prior holding is a "self-fulfilling prophesy" and must be rejected. RESA Exc. at 17. RESA argues that despite the withholding of information by the FirstEnergy companies, the limited information that was admitted into the record still showed that the effect of the seventy-five percent load cap for Met-Ed, Penelec and West Penn Power appears to have been negligible. *Id.*

RESA avers that, to the extent the ALJ was persuaded by the Ohio experience as set forth either in the prior 2009 default service proceeding for Met-Ed and Penelec or this proceeding, a comprehensive review of the situation shows that the Ohio Commission is concerned about the market power issue raised by RESA here and has implemented a process to monitor the situation. More specifically, RESA states that the Ohio Commission requires all bidders to disclose to Ohio Commission staff all information regarding the bid including "all prices, terms and conditions for any post-auction assignments of tranches." *Id.* In addition, RESA explains that the eighty percent load cap was adopted by stipulation and the Ohio Commission specifically reserved the

¹⁰ RESA cites ALJ Barnes' *Order Denying the Retail Energy Supply Association's Motion To Compel*, March 16, 2012 (*March 2012 Motion to Compel Order*) from this proceeding.

right “to modify and alter the load cap” if it “deems necessary based on” the Ohio Commission’s “continuing review” of the process. *Id.* at 17-18. RESA argues that this is in stark contrast to the situation here where the FirstEnergy companies, the EDCs and the affiliated successful wholesale supplier in the Companies’ past wholesale auctions, opposed the release of any such detailed information. *Id.* at 17-18.

e. Disposition

With respect to RESA’s concerns regarding the availability of information on the Companies’ auctions, we note that the Companies’ default service supply auction procurements are governed by rules approved by the Commission and these rules are administered by an independent evaluator approved by the Commission.¹¹ The independent evaluator determined that the Companies’ first auction was conducted in strict compliance with the auction rules as was confirmed by the Commission when it approved the auction results. *March 2012 Motion to Compel Order* at 5-6. We also note that these auction rules intentionally impose a cloak of confidentiality specifically to prevent parties from mining historical data to try to obtain a competitive advantage that would compromise the integrity of future auction processes.

We share RESA’s concerns that there needs to be a viable competitive market for default supplies and will direct the Companies to lower the load cap to fifty percent. By ensuring that there is a healthy level of supplier diversity, we believe that the competitive auctions will result in the lowest supply prices over the long run.

¹¹ A full copy of the Auction Rules is available on the Companies’ procurement website at: www.firstenergycorp.com/upp/pa/power_procurements/auction/supplier_documents.html.

Accordingly, RESA's Exceptions on the supplier load cap are granted to the extent that the load cap shall be reduced to fifty percent.

5. West Penn Hourly–Priced Default Service Procurement

a. Companies' Proposal

West Penn currently manages the acquisition of energy, capacity and ancillary services in its role as a default service provider, and resells it to industrial default service customers. The Companies propose to implement the same competitive third-party procurement method that has been approved for the other three FirstEnergy companies. Consistent with the migration to competitive, third-party procurement, the Companies propose that effective June 1, 2013, West Penn will adopt an Hourly-Priced (HP) Default Service Rider that employs the same kinds of charges, calculated in the same manner as set forth in the HP Default Service Riders of Met-Ed, Penelec, and Penn Power. The Companies explain that by doing so, the rate design for hourly- priced service will be consistent across all Companies as required by the terms of the Merger Joint Settlement. Companies M.B. at 39.

b. Industrials' Position

The Industrials explained that in this proceeding, the Companies propose to bid out the procurement of West Penn's HP default service. The Industrials submitted that winning suppliers would receive a fixed adder to compensate the supplier for, among other things, the administrative costs associated with procurement, as well as profit.¹²

¹² The Companies' proposed fixed adder of five dollars per MWh is intended to cover the costs of other supply components, including ancillary services, AEPS, and PJM administrative fees. Companies M.B. at 22.

The Industrials stated that West Penn currently procures its HP default service product in-house at minimal customer expense. Industrials M.B. at 13.

The Industrials argued that the Companies' proposal to bid out the procurement of West Penn's HP default service is inconsistent with the least cost over time requirements of the Competition Act. The Industrials averred that if an EDC is choosing between two default service designs, all other things being equal, the EDC should choose the option that will result in the least cost to customers. The Industrials stated that this "least cost" requirement is especially important for Pennsylvania businesses because their ability to compete on a broad scale is facilitated by lowered electric costs. *Id.*

The Industrials also averred that West Penn's current approach to HP service procurement has served its hourly default service customers well. The Industrials stated that West Penn's current administrative costs associated with HPS procurement are so modest that it is unclear why the Companies would interfere with West Penn's current approach. The Industrials submit that according to West Penn's report to the Commission, the total administrative expenses in 2011 for West Penn's Large C&I default service customers, who are the primary recipients of HPS, was approximately \$40,000. Considering the limited resources expended by West Penn in its procurement of the hourly product, the Industrials argued that a modified procurement arrangement appears quite unnecessary. The Industrials recommended that West Penn should continue to procure the hourly product in-house, and the Companies' proposal should be rejected. *Id.* at 14-15.

c. ALJ's Recommendation

Citing the *Met-Ed/Penelec 2009 DSP Order*, the ALJ stated that the Commission has previously approved this type of hourly-priced service for the default service industrial customers of each Company and no party to this proceeding opposed its continued use.¹³ Therefore, the ALJ recommended the adoption of the Companies' proposal with regard to this issue. R.D. at 37.

d. Exceptions to the Recommended Decision

In their Exceptions, the Industrials aver that the ALJ erred in failing to address any of their arguments in opposition to West Penn's HP Default Service Rider modifications.

The Companies respond to the Industrials' Exceptions by noting that this issue was raised for the first time in the Industrials' Main Brief. The Companies point out that the Companies' witnesses did not build a factual record during the proceeding. The Companies note that they propose to implement the same procurement method for West Penn that is currently used by Met-Ed, Penelec and Penn Power, and there was no opposition to the proposed DSPs for those companies. The Companies explain that West Penn currently manages the acquisition of energy, capacity and ancillary services that, in its role as a default service provider, it resells to industrial default service customers. The Companies argue that there is no record evidence to support the Industrials' contention that the Companies' proposal to use competitive procurements for HPS would cost customers more than the current practice of West Penn being the buyer and seller of the product. Companies R. Exc. at 13-15.

¹³ See, *Met-Ed/Penelec 2009 DSP Order* at 25-26; *Penn Power 2010 DSP Order* at 8-9; *West Penn 2008 DSP Order* at 50-53.

e. Disposition

We concur with the Companies that there is insufficient record evidence to support a finding that the entire cost of HP default service for West Penn's industrial customers will be higher under the competitive procurement process employed by the other three FirstEnergy companies. In addition, as noted by the ALJ, the Commission has previously approved this type of HP default service for the default service industrial customers of the other FirstEnergy Companies and no party to this proceeding opposed its continued use for those companies. Accordingly, the Industrials' Exceptions are denied and finding it otherwise reasonable, we adopt the recommendation of the ALJ.

6. Solar Photovoltaic Requirements

a. Companies' Proposal

Under the current default service programs of Met-Ed, Penelec, and Penn Power, the solar AEPS requirements associated with the customer load of both default service customers and shopping customers are met with solar photovoltaic alternative energy credits (SPAECs) obtained entirely (one hundred percent) by those Companies through separate SPAEC-only procurements. West Penn, in turn, procures SPAECs sufficient to meet the AEPS requirements associated with its default service load, while EGSS remain obligated to obtain one hundred percent of the SPAECs necessary to satisfy AEPS requirements associated with the load of their customers. Companies St. 2 at 29; Companies St. 4-R at 12.

Consistent with commitments made by FirstEnergy, and subsequently approved by the Commission as part of the FirstEnergy-Allegheny Energy merger proceedings, the Companies proposed to procure forty percent of the SPAECs required to meet AEPS requirements for both default service and shopping customer load in each of

their service territories through 2021 using ten-year contracts. Companies St. 1 at 26; Companies' St. 4 at 17.¹⁴ In order to implement this obligation through the term of the proposed default service programs, the Companies proposed to conduct a series of SPAEC procurements based upon the same RFP model currently used by Met-Ed, Penelec, and Penn Power in accordance with the schedule set forth in the Companies Exhibit DWS-3. Companies St. 4 at 16-17. The Brattle Group, which served as the independent evaluator in prior SPAEC procurements by the Companies, will also administer these RFPs. Companies' St. 6 at 22-27. The Companies aver that the SPAEC procurement is designed to achieve the "least cost over time." Companies St. 6 at 32-33.

Consistent with the Companies' prior SPAEC procurements, each supplier will be obligated to enter into a SPAEC Purchase and Sale Agreement (PSA), which describes the terms upon which the SPAECS will be supplied, the quantity of SPAECs to be delivered, the relevant purchase price of the SPAECs, credit requirements, and provisions that become effective in the event of default. The agreement also includes general provisions similar to those contained in the SMA, including provisions for indemnification, confidentiality, performance during a force majeure event, and assignment of the SPAEC PSA. Companies St. 3 at 11-14.

b. Positions of the Parties

In response to the Companies' SPAEC proposals, the Industrials asserted that customers who have entered into multi-year supply contracts with EGSSs could be adversely affected by the procurement of forty percent of SPAECs by the Companies, instead of one hundred percent, because they would have to monitor their EGSSs to avoid

¹⁴ Joint Petition for Partial Settlement, ¶ 25 (Docket Nos. A-2010-2176520 and A-2010-2176732) (Merger Joint Settlement).

overcharging, and could have difficulties standardizing their EGS contracts or may need to renegotiate contracts where they may be party to a fixed-price contract. Industrials M.B. at 20-25.

RESA acknowledged that the Companies' proposal was "workable," but advocated that the Companies continue to require the procurement of one hundred percent of the SPAECs for both shopping and default service customers to avoid "transition" issues that may also burden EGSSs. However, unlike the Industrials, RESA did not suggest that EGSSs would seek to overcharge customers for SPAECs or that industrial customers entering into contracts with EGSSs will be confused by a percentage allocation of responsibilities between EDCs and EGSSs for AEPS solar compliance. RESA St. 1-R at 13-14.

c. ALJ's Recommendation

The ALJ recommended that the Commission approve the Companies' proposal to procure forty percent of the SPAEC procurements in accordance with the Companies' commitments as approved by the Commission in the Merger Joint Settlement proceeding. The ALJ was persuaded by the testimonies of the Industrials' witnesses that they can closely monitor their EGS bills and be able to determine whether their respective companies are being properly charged for SPAECs. In addition, she was persuaded that the Companies' proposed approach, in accordance with the approval of the merger by the Commission, strikes an appropriate balance between SPAECs obtained through long-term EDC contracts and SPAECs obtained by EGSSs, which can apply their procurement and hedging experience and strategies to meet their AEPS obligations to the benefit of the overall SPAEC market. R.D. at 41-42.

d. Exceptions to the Recommended Decision

In its Exceptions, the Industrials aver that the ALJ erred in recommending that the Companies' proposal to modify the procurement of SPAEC's for large C&I shopping customers be approved. The Industrial argue that the ALJ misconstrued the requirements of the Merger Joint Settlement and fails to provide consideration of the evidence presented by the Industrials regarding the detrimental impact that this proposal would have on the public interest and on large C&I shopping customers. Additionally, the Industrials submit that the ALJ incorrectly discounts the evidence they presented refuting the Companies' claims that this proposal would benefit the overall SPAEC market. The Industrials also claim that the ALJ completely ignored their request for a carve-out of large C&I shopping customers in order to mitigate the Companies' unreasonable proposal. The Industrials request that the Commission require the Companies to maintain the status quo, or alternatively, implement a carve-out for large C&I shopping customers. Industrials Exc. at 24-25.

The Industrials and PSU note that the ALJ does not recognize that West Penn is exempt from this provision of the Merger Joint Settlement upon which the Companies base their claim. The Industrials point out that the provision of the Merger Joint Settlement that addresses the forty percent SPAEC procurement applies only to Met-Ed, Penelec, and Penn Power. According to the Industrials, absent a strong public policy reason, the terms of the Merger Joint Settlement should not be extrapolated to include West Penn customers. Industrials Exc. at 25.

PSU states that the ALJ did not cite the precise language of the Merger Joint Settlement she relied upon for her conclusion that West Penn is obligated to procure forty percent of SPAECs. PSU avers that examination of that language shows that it does

not extend any such obligation to West Penn. Specifically, the Merger Joint Settlement that the Commission approved, in pertinent part, states:

...post-merger FirstEnergy EDCs that **have** an existing SPVRC Rider will propose in the default service filings for the period beginning June 1, 2013, to procure 40% of their solar requirements for the period 2011 through 2021 using long-term contracts of 10 years in length ...¹⁵

PSU Exc. at 2.

The Industrials also assert that the ALJ failed to recognize that the Merger Joint Settlement does not hold the Companies to a forty percent procurement. Rather, the Industrials aver that the Merger Joint Settlement indicates that Met-Ed, Penelec, and Penn Power will propose to procure forty percent of their solar requirements under the instant default service proceeding (DSP II) using long-term contracts. However, the Industrials contend that nothing in the Merger Joint Settlement language prohibits the Companies from proposing a procurement amount greater than forty percent (*i.e.*, retaining the status quo of one hundred percent procurement). The Industrials note that the Merger Joint Settlement does not require West Penn to modify its procurement at all. Industrials Exc. at 26. The Industrials argue that the Merger Joint Settlement recognized that the Parties to the DSP II proceeding may not agree with the Companies' initial proposal, as the language of the Merger Joint Settlement explicitly notes that the Parties to the Merger Joint Settlement may propose changes to this percentage requirement. *Id.* at 26.

Citing the *Petition of Metropolitan Edison Company for Approval of Solar Photovoltaic Alternative Energy Credit Purchase Agreement with Air Products and*

¹⁵ Companies Exhibit DWS-7 at 12.

Chemicals, Inc., Docket No. P-2011-2264304 (Order entered December. 1, 2011), the Industrials opine that the Commission has recently held that the terms of the Merger Joint Settlement can be set aside when they are contrary to the public interest. The Industrials maintain that they have provided substantial evidence that the Companies' proposal is not in the public interest. Accordingly, the Industrials request that the Companies' proposal should be modified to ensure an SPAEC procurement that aligns with the interest of all of the Companies' customers, including large C&I shopping customers. Industrials Exc. at 26-27.

The Industrials state that while the ALJ recognized that transitional issues will occur as a result of the Companies' proposed modification, she dismissed these issues by summarily rejecting the concerns of customers with pass-through contracts; ignoring the plight of customers with fixed price contracts; and overlooking the changes that have occurred in the SPAEC market over the past few years. Specifically, the Industrials aver that the Companies have failed to address how the transitional burdens that will be placed on customers, especially large C&I customers, outweigh any purported claim of benefit either to customers or the SPAEC market. Industrials Exc. at 27.

The Industrials explain that the proposed modifications to SPAEC procurement would be implemented on June 1, 2013, which, while allowing for an easy transition for the Companies, would create a problem for large C&I shopping customers who do not necessarily have contracts with their EGSs that coincide with the timing of the Companies' DSPs. The Industrials submit that due to this differential in timing, large C&I shopping customers would have to renegotiate their EGS contracts either to incorporate a sixty percent SPAEC procurement and cost collection, as in the case of customers on the Met-Ed, Penelec, and Penn Power systems, or remove forty percent of

the SPAEC procurement and cost collection, as in the case of West Penn's customers. The Industrials state that this renegotiation, coupled with the unusual forty/sixty split, adds an extra burden and layer of confusion for customers attempting to confirm that both their EDC and EGS are collecting the correct percentage of SPAECs. According to the Industrials, the ALJ inappropriately dismissed their concerns by finding that the Industrials' witnesses' monitoring of their individual bills should resolve any and all concerns for the entirety of the large C&I class. Industrials Exc. at 28-29.

The Industrials aver that while failing to allocate the appropriate weight to the evidence set forth by the Industrials regarding the detrimental impact on large C&I customers, the ALJ placed too great of a weight on the Company's claim that this proposal will "strike an appropriate balance between SPAECs obtained through long-term EDC contracts and SPAECs obtained by EGSs...to the benefit of the overall SPAEC market." Industrials Exc. at 29. The Industrials maintain that although the Companies seem to intend for this "benefit" to outweigh the aforementioned transition cost issues that will burden customers, the Companies fail to provide any evidence that current SPAEC market conditions render the Companies' proposal necessary or cost-effective. The Industrials argue that the purported benefits of this proposed SPAEC modification have not been substantiated, and, as such, cannot outweigh the transitional burdens that will plague customers. Therefore, the Industrials submit that the Commission must reject the ALJ's recommendation and require the Companies to maintain the status quo with respect to SPAEC procurement. *Id.* at 29-30.

While the Industrials would prefer to retain the status quo, in the alternative, the Industrials state that they would be amenable to all of the Companies procuring zero percent of the SPAECs required for large C&I shopping customers, thereby permitting EGSs to procure one hundred percent of the SPAECs for these

customers, as is currently the situation in the West Penn service territory. The Industrials submit that this alternative would address large C&I shopping customer concerns, while still providing the purported benefits claimed by the Companies. By retaining the status quo for West Penn, the Industrials explain that these large C&I customers would not have to incur any of the burdens resulting from renegotiation of their EGS contracts. According to the Industrials, by reducing the Met-Ed, Penelec, and Penn Power procurement to zero percent, large C&I shopping customers would only have to allow for a one-time modification to their current EGS contracts. Industrials Exc. at 31-32.

The Industrials also submit that preserving the status quo would eliminate the need for customers to devise complex strategies for calculating the costs associated with the Companies' proposed forty/sixty procurement split, while also minimizing the risk of customers being overcharged by the EDC or EGS due to this complex split. The Industrials aver that because this carve-out would only apply to large C&I shopping customers, the Companies' goal, of allowing for long-term contracts with EDCs while utilizing the procurement and hedging experiences of EGSs, would still be met through the residential and small commercial customers. Accordingly, the Industrials submit that by utilizing the Industrials' proposal, the goals of the Companies, the aim of the ALJ and the concerns of the large C&I shopping customers would all be met in a manner that is just, reasonable, in the public interest, and in accordance with PUC precedent. Industrials Exc. at 32-33.

In its Exceptions, PSU avers that the Merger Joint Settlement does not mandate that West Penn change the status quo nor is it a substitute for evidentiary support. PSU explains that, presently, West Penn large users, through their EGS, are responsible for procuring one hundred percent of SPAECs to meet the requirements

under the AEPS. 73 P.S. §§ 1648.1 *et seq.* PSU avers that the ALJ erred in accepting that West Penn must change the status quo for procurement of SPAECs so it will procure forty percent of SPAECs and the customer via its EGS sixty percent because of a mandate from the Commission Order approving the Joint Merger Settlement. As discussed *supra*, the Merger Joint Settlement and the Commission Order approving it do not require West Penn to procure forty percent of SPAECs. PSU Exc. at 2.

PSU points out that West Penn did not have an SPVRC Rider at the time the Merger Joint Settlement was approved so it was not included in the “FirstEnergy EDCs” referenced. PSU Exc. at 3. Moreover, according to PSU, even if the Merger Joint Settlement did apply to West Penn on this issue, which it does not, West Penn’s implication that the alleged Merger Joint Settlement mandate that it must procure forty percent and is preclusive on the Parties, is also incorrect as the Merger Joint Settlement states: “nothing herein shall be construed as prohibiting the Signatory Parties from opposing, or recommending changes in, those filings with regard to SPAECs”*Id.*

PSU opines that the record is clear that large shopping customers would have to renegotiate their EGSs contracts in order to implement the forty percent SPAECs procurement and cost allocation. According to PSU, the record also shows this will add to confusion for customers attempting to confirm that their EDCs and EGSs are collecting the correct percentages of SPAECs that qualify under the AEPS. PSU, as a large West Penn shopping customer, agrees that there are more detriments than benefits under West Penn’s proposal to change the status quo. PSU respectfully requests that the Commission reject the change for SPAECs procurement for West Penn, and that the status quo continue. In the alternative, according to PSU, if the Commission were to change the status quo for SPAECs, which it should not, it should be done prospectively

and existing contracts should be grandfathered and subject to the status quo. PSU Exc. at 3-4.

e. Disposition

We are persuaded by the arguments of the Industrials that the Companies should maintain the status quo for each Company with regard to the procurement of SPAECs. We find that the Companies' proposal to modify the status quo is unreasonable in this instance due to the complexity and the burden it places on the Companies' customers. We agree with the Industrials that they should be permitted to maintain the negotiated terms within their existing EGS contracts without being required to renegotiate these as a result of the Companies' proposal.

We also find that, contrary to the Companies' claim, the Merger Joint Settlement does not mandate that the SPAEC procurement be held at forty percent of AEPS requirements. It is important to note that the Merger Joint Settlement specifically recognized that parties may object to a procurement that was not customer friendly or not in the public interest. We are in agreement with the Industrials and PSU that the Companies' proposal is detrimental to the public interest as it requires large C&I customers to renegotiate existing EGS contracts and adds unnecessary complexity and confusion for these customers.

Accordingly, we grant the Exceptions of the Industrials and PSU, and reject the ALJ's recommendation to adopt the Companies' proposal to modify the SPAEC procurement.

B. Rate Design and Cost Recovery

1. West Penn HP Default Service Rider – Conversion from kW to kWh Pricing

a. Companies’ Proposal

The industrial default service rates of the Companies, except West Penn, are charged through an HP Default Service Rider that is part of each Company’s tariff. This Rider applies to industrial customers, but it may also be elected, on a voluntary basis, by qualifying commercial customers that have smart metering in place. West Penn currently has an HP Default Service Rider in its tariff to recover the cost of providing hourly-priced service to ST 40 customers. West Penn’s HP Default Service Rider differs in certain material respects from the HP Default Service Rider used by Met-Ed, Penelec and Penn Power and, therefore, West Penn proposes to adopt an HP Default Service Rider like the one used by the other Companies, including the changes to that Rider that are proposed in this case. Companies St. 2 at 15-16.

For Met-Ed’s, Penelec’s and Penn Power’s industrial class and West Penn’s ST 40, default service rates are currently based upon the PJM hourly locational marginal price (LMP) for each Company’s respective PJM-designated transmission zone plus associated costs, such as capacity, ancillary services, PJM administrative expenses and costs to comply with AEPS requirements that are incurred to provide HP service. The default service rates also include an “E” factor to reconcile costs and revenues on a quarterly basis. Companies’ St. 2 at 17-19.

Met-Ed, Penelec, and Penn Power propose to revise their HP Default Service Riders to: (1) add a cost of credit component; (2) make minor textual changes so that the HP Default Service Rider can be used for all the Companies, including West

Penn and (3) remove the provision for recovering in HP Default Service rates NITS charges and any direct transmission owner charges imposed by PJM that result from the Companies providing HP service. Companies St. 2 at 16.¹⁶

West Penn's current HP Default Service Rider prices capacity on a per-kilowatt (kW) day basis instead of the per-kWh basis employed in the HP Default Service Rider of Met-Ed, Penelec, and Penn Power. The Companies propose that, effective June 1, 2013, West Penn will adopt an HP Default Service Rider that employs the same kinds of charges, calculated in the same manner, set forth in the HP Default Service Riders of Met-Ed, Penelec, and Penn Power Companies' St. 2 at 17.

b. WPPII's Position

WPPII opposed the conversion from kW to kWh capacity pricing for West Penn's HP hourly default service customers because it is inconsistent with cost causation principles. WPPII explained that the Companies incur capacity charges based on customers' average demand during the five highest peak days on the PJM system or peak load contribution (PLC). WPPII argued that if the Companies' proposal is approved, large C&I default service customers would be charged for capacity in a manner that is unrelated to how they incur capacity costs under PJM rules and they could not manage their capacity costs by lowering their demand. WPPII averred that industrial customers would be discouraged from adopting demand reduction strategies that would lower their PLC. As a result, WPPII concluded that the conversion to kWh capacity pricing creates perverse market signals for large C&I customers and discourages conservation behavior intended by Act 129. Industrials M.B. at 16.

¹⁶ These changes are set forth in the proposed HP Default Service Riders provided as Companies' Exhibits REV-5 through REV-7.

c. ALJ's Recommendation

The ALJ found that the hourly-priced service to be offered under the HP Default Service Riders is consistent with the Commission's regulations at 52 Pa. Code § 54.187(i) and (j), other applicable provisions of those regulations, the Joint Merger Settlement and the Commission's prior approval of the Companies' customer class definitions and service offerings. R.D. at 54.

d. Exceptions to the Recommended Decision

WPPII submits that the Commission should reject the ALJ's recommendation and deny the conversion to kWh capacity pricing in West Penn's HP Default Service Rider. WPPII argues that the Companies do not provide any evidence that supports converting West Penn's rate design to mirror the other Companies' rate designs. Considering the cost causation concerns discussed, *supra*, WPPII avers that the Companies have not met their burden of proof with respect to the proposed conversion to kWh capacity pricing. Industrials Exc. at 36-37.

In their Reply Exception, the Companies submit, *inter alia*, that our policy statement at 52 Pa. Code § 69.1810 states that the PTC should not incorporate declining blocks, demand charges or similar elements. The Companies argue that the Commission has already considered this issue on a generic basis "and come solidly against the Industrials' position." Companies R. Exc. at 19.

e. Disposition

We concur with the ALJ's recommendation to adopt the Companies' proposed modifications to the HP Default Service Riders. As reflected in our policy

statement and guidelines at 52 Pa. Code § 69.1810, one of the fundamental tenants of the development of the PTCs is that they should be structured on a kWh basis and not include demand charges or similar elements. Accordingly, WPPII's Exceptions on this issue are denied.

2. West Penn HP Default Service Rider – Conversion from Day-Ahead to Real Time Pricing

a. The Companies' Proposal

As discussed, *supra*, West Penn proposes to adopt an HP Default Service Rider like the one used by the other Companies including the changes to that Rider that are proposed in this case. Under Met-Ed's, Penelec's and Penn Power's currently effective HP Default Service Riders, the price of HP default service is based on PJM's real time LMP. Therefore, each of those Companies acquires hourly-priced generation service at real-time LMPs to serve its Industrial class default service load. The Company explained that this rate design and associated procurement were approved for each Company in its last default service proceeding. Companies M.B. at 39.

West Penn proposed to adopt the rate design employed by the other Companies, which includes pricing HP default services at the PJM real time LMP and procuring generation on that basis to serve HPS load. Under West Penn's current rate design, the quantity of HPS load "nominated" by a customer each day for purchase the next day at PJM's day-ahead LMP is acquired at that price, and any differences between the daily nomination load and the customer's actual load are priced (*i.e.*, settled) at the PJM real-time LMP. As a result, the Companies aver that even West Penn's current "day-ahead" price is really a hybrid of day-ahead and real-time LMPs. Companies R. Exc. at 20.

b. WPPII's Position

WPPII opposed the conversion to real-time hourly default service pricing because it is traditionally more expensive for customers, which is inconsistent with the “least cost over time” requirement. WPPII avers that it is unreasonable to pay suppliers for real-time prices if they bid into the day-ahead market when the day-ahead prices have been historically lower. WPPII stated that in five of the past six years, average real-time prices were lower than day-ahead prices and ninety percent of suppliers chose to bid into the day-ahead market. WPPII argued that while the Companies’ other EDCs may not follow West Penn’s market example and charge on a real-time basis, the circumstances within West Penn’s service territory are separate and distinct and should be viewed as such. WPPII submitted that the Companies’ proposal appears to be inconsistent with the “least cost over time” requirement within the Public Utility Code and recommended that the Commission should deny the conversion. Industrials M.B. at 15-16.

c. ALJ's Recommendation

The ALJ did not specifically address this issue in the Recommended Decision. However, as discussed, *supra*, the ALJ generally found that the HP default service to be offered under the HP Default Service Riders is consistent with the Commission’s regulations at 52 Pa. Code § 54.187(i) and (j), other applicable provisions of those regulations, the Merger Joint Settlement and the Commission’s prior approval of the Companies’ customer class definitions and service offerings. R.D. at 54.

d. Exceptions to the Recommended Decision

WPPII states that the ALJ erred in failing to address its arguments in opposition to West Penn’s HP Default Service Rider modifications. In addition to

WPPII's arguments discussed, *supra*, WPPII is also concerned that the Companies' proposal would permit default service suppliers to bid into the day-ahead market when they are being paid real-time prices. WPPII submits that if suppliers serving West Penn's hourly default service customers are permitted to bid into the day-ahead market and receive real-time payments, these suppliers could be overcompensated, especially considering the traditionally lower day-ahead prices. Industrials Exc. at 37-38.

WPPII states that “[o]nce again, the Companies provide no evidence supporting that this modification to West Penn’s HP Default Service Rider is just and reasonable for large C&I default service customers.” *Id.* at 38. WPPII argues that although the Companies claim that the proposal creates more consistency among the Companies’ rates and riders, this proposal is inappropriate if adopted at the expense of customers. *Id.*

In their Reply Exceptions, the Companies aver that the Industrials should have presented their factual averments (regarding suppliers bidding into the day-ahead market when they are being paid real-time prices) on the record so that other parties could test the proposition and present responsive testimony. The Companies explain that, in contrast to the Industrials’ contention, the day-ahead LMP in West Penn’s load zone was actually higher, not lower, than the real-time LMP during 2011. Companies R. Exc. at 19-20.

The Companies also submit that the possibility that default suppliers may choose to "hedge" their real-time obligation by bidding into the day-ahead market has no bearing on the reasonableness of West Penn's rate design. Companies R. Exc. at 21. The Companies reason that the default service providers no doubt engage in many other "hedging" strategies, and there is no reason that the pricing of default service must,

therefore, be reconciled back to the suppliers' "hedged" prices. *Id.* The Companies explain that suppliers are paid the real-time price regardless of the success or failure of their "hedging" strategies. *Id.*

e. Disposition

We concur with the Companies' proposal and deny WPPII's Exceptions. We are not inclined to reconcile the HP Default Service Rider back to a hedged day-ahead price when suppliers are not uniformly hedging their procurements and hedging is a strategy undertaken at the risk of the supplier.

3. Market Adjustment Charge

a. Companies' Proposal

The Companies are proposing to include a market adjustment charge (MAC) in their PTC Riders. As explained by the Companies, the MAC is a bypassable charge that would be imposed on non-shopping residential and commercial customers at a rate of 5 mills (\$0.005) per kWh and recovered as part of the PTC. The Companies explained that the MAC is designed to compensate the Companies for the risks they bear and the value they provide as default service providers, which the Companies characterize as "reasonable costs" to furnish default service. Companies M.B. at 40. The Companies submitted that these costs are not currently recognized anywhere in the rates charged for default service and that EDCs are entitled to recover under the Public Utility Code. The Companies cited 66 Pa. C.S. § 2807(e)(3.9) which states:

The default service provider shall have the right to recover on a full and current basis, pursuant to a reconcilable automatic adjustment clause under section 1307 (relating to sliding scale of rates; adjustments), all reasonable costs incurred under this

section and a commission-approved competitive procurement plan.

Companies M.B. at 40.

The Companies noted that other jurisdictions, including Maryland and New Jersey, have recognized that default service providers are not adequately compensated unless the prices they charge include an increment to reflect the value they provide and the risks they bear as the providers of last resort for non-shopping customers. The Companies averred that the Commission's assertion of authority under 52 Pa. Code § 54.183(c) to reassign the default service obligation to a default service provider other than an EDC implicitly acknowledges that some mechanism should exist to compensate a default service provider for the risks it assumes and the value it creates. The Companies argued that, otherwise, is impossible to envision why any alternative default service provider would be interested or willing to assume the responsibility now exercised by EDCs. Companies M.B. at 40.

The Companies also argued that, unless default service providers are properly compensated for the obligations they assume in that role, the price of default service is artificially depressed, which may impede the development of the competitive retail market. The Companies explained that EGSs, which must charge prices that are adequate to cover their costs, including a reasonable margin, are at a decided disadvantage if they must "compete" against default service prices that do not properly compensate default service providers for assuming the substantial contractual and statutory obligations of serving as providers of last resort. The Companies concluded that the MAC would also function as an important competitive market enhancement. *Id.*

b. Positions of the Parties

I&E, the OCA, the OSBA and the Industrials opposed the MAC, while RESA and Dominion proposed modified versions of the proposed MAC. The Parties opposed to the MAC voiced four principal objections: (1) that a MAC is not permitted under 66 Pa. C.S § 2807(e)(3.9); (2) that the Companies have not been able to document or quantify the costs or lost earnings that result from providing default service; (3) that the Companies are not entitled to earn a return on goodwill, and (4) that a MAC would not foster greater competition and EGSSs would simply raise their prices.

I&E stated, *inter alia*, that the Commission has not allowed the addition of a return component to a default service rate as sought by the Companies. I&E submitted that, within the EDC's "obligation to serve" set forth in 66 Pa. C.S § 2807(e), the Code states that the EDCs shall provide default service to retail customers at no greater than the cost of obtaining generation. I&E averred that this obligation is generally recognized as not allowing the EDCs to add a profit margin to the price of their default service electric power. I&E M.B. at 11.

The OCA calculated that if the Companies are authorized to implement the proposed MAC, the Companies would receive over \$190 million in additional pre-tax profit from default service customers. The OCA argued that there are no offsetting costs or risks associated with adding the 0.5 cents per kWh charge to the PTC. The OCA explained that as justification for the MAC, the Companies argued that they bear the risk of failing to recover costs associated with providing default service including:

- (1) EDC infrastructure and personnel costs that might be needed in the event of wholesale supplier default;
- (2) Unanticipated costs of the purchase of receivables from EGSSs;

- (3) Increases in uncollectible costs for default service; and
- (4) Incremental working capital costs that an EDC might incur in the event of wholesale supplier default.

The OCA stated that it requested information on these four risk items including cost data, a detailed description of the cost items and potential lost earnings estimates for the FirstEnergy Companies. The OCA also stated that the Companies' response did not provide any description, documentation or quantification. Therefore, the OCA averred there is no indication that such costs have ever been incurred by the Companies, nor is there any available evidence that any of the listed items constitute a material risk of earnings loss. OCA M.B. at 36-40.

The OCA also addressed the Companies' proposal that they should be able to extract a premium price for default service based on "goodwill." The OCA averred that the Commission has held on several occasions that goodwill cannot be considered in setting rates and that the issue of goodwill provides no support for the inclusion of the MAC in the Companies' DSP. OCA M.B. at 45-47.

The OSBA argued that the Companies have not supported the costs to be recovered through the MAC and, therefore, the Commission should not adopt the MAC. However, the OSBA suggested that if the Commission decides that the Companies, as DSPs, are unfairly treated because they are unable to recoup some vague, unidentifiable costs from default service rates, the Commission should replace the Companies as DSPs with an alternative DSP(s), determined through a competitive process. OSBA M.B. at 15.

The Industrials argued that the Companies erred in reasoning that the MAC would encourage default service customers to shop and that the MAC is an inappropriate

mechanism for encouraging shopping among residential and commercial default service customers. The Industrials stated that contrary to the intent of the Competition Act, the MAC interferes with competitive forces in the electric market. The Industrials projected that the EGSs would offer prices below the PTC to attract customers, but those prices may not be as low as they might be without the presence of the MAC. The Industrials submitted that an artificially increased default service price created by the MAC would not only punish default service customers, but also competitive supply customers who are offered higher rates by their EGSs in response to an artificial increase in the PTC.

Industrials M.B. at 37-39.

RESA recommended that the MAC be used to create a fund that would compensate the Companies for costs they actually incur in providing default service - but not for the alleged risks of providing default service. RESA stated that the proceeds generated by the MAC should only be used to pay for: (1) the costs of implementing improvements to the market structure in the EDC's service territory, with a corresponding adjustment to the non-bypassable DSS rider; and (2) costs related to any of the risks identified by FirstEnergy that actually materialize. RESA proposed that any amounts collected over and above these should be returned to all distribution customers in the form of a credit. RESA M.B. at 38-41.

In response to the arguments made by the Industrials that a MAC would result in higher prices from EGSs, *supra*, RESA averred that the existence of the MAC is not likely to influence EGS pricing. RESA submitted that the EGSs do more than compete against the PTC. RESA opined that EGSs would still be competing against each other and have an incentive to lower their prices below not only the PTC but also their competitor's prices. RESA pointed to evidence presented on the record that retail prices

offered by EGSs tracked very close to wholesale market pricing rather than remaining at some fixed amount below the PTC. *Id.* at 41-42.

Dominion recommended that the Companies' proposed MAC be increased from \$0.005 to \$0.01 (one cent) per kWh for a temporary period of three to five years until fifty percent of the customers shop. Dominion stated that the facts show that substantial savings are necessary to motivate customers and the MAC is a means to create the headroom that will allow EGSs make those savings offers. Dominion averred that under its proposal there is little room for harm because most of the MAC revenues would flow back to customers through the Non-Market Based (NMB) rider. Dominion M.B. at 10-11.

c. ALJ's Recommendation

The ALJ recommended that the MAC proposed by the Companies be rejected. She found that the MAC qualifies as an impermissible return, it fails to qualify as a legitimate retail market enhancement tool, and is an inappropriate and unnecessary financial adder. The ALJ also noted that the Companies did not provide any calculations to show how the five mills per kWh charge was calculated and that the MAC would probably result in increased EGS charges for consumers who accept a percent-off-the-default service price offering. R.D. at 56-57.

The ALJ found that the MAC is in conflict with the Public Utility Code in several respects, particularly since the Companies receive full recovery of all costs of providing default service on a dollar-for-dollar basis through an automatic adjustment surcharge as provided by 66 Pa. C.S. § 2807(e). The ALJ stated that even assuming fewer customers will remain on default service in the future, the 0.5 cent per kWh charge will almost certainly provide tens of millions of dollars in profits over and above the

costs incurred by the Companies to provide default service. The ALJ submitted that Pennsylvania has not allowed the addition of a return component within the EDCs' obligations to serve, as set forth in 66 Pa. C.S. § 2807(e). The ALJ opined that EDCs are required to provide default service electric power to retail customers at no greater cost than the cost of obtaining generation. The ALJ stated that there is no substantial evidence to support the Companies' claim that there is material risk associated with default service that warrants a profit adder such as the MAC. R.D. at 56.

The ALJ also rejected the Companies' argument that they should be able to extract a premium price for default service based on "goodwill." The ALJ stated:

However, "goodwill" is not considered as part of a ratemaking process. *Des Moines Gas Company v. City of Des Moines*, 238 U.S. 153 (1915). The Supreme Court held that good will has no place in the fixing of valuation for the purpose of rate-making. *Id.* at 165 (*citing Wilcox v. Consolidated Gas Co.*, 212 U.S. 19, 52 (1909)). The Commission has also made similar holdings in *Application of PPL for Approval of Restructuring Plan*, Docket No. R-00973952 at 64-65 (Order entered April 1, 1998) and *Application of Shenango Valley Water Co.*, Docket No. A-21275F0002 at 10 (Order entered July 12, 1994).

R.D. at 57.

The ALJ found that the modifications to the MAC proposed by RESA and Dominion appear to be "inequitable on the surface." *Id.* The ALJ noted that only default service customers would be charged for the MAC but all residential customers would receive the credit from any leftover MAC revenues. *Id.*

d. Exceptions to the Recommended Decision

The Companies except to the ALJ’s finding that the MAC provides a “return” and, for that reason, should not be considered a “cost” that EDCs may recover under 66 Pa. C.S. § 2807(e)(3.9). Companies Exc. at 12. The Companies state that in the regulated sphere, a “return” is granted in order to compensate utilities for the opportunity costs they incur by dedicating their resources to meet their statutory service obligations. *Id.* The Companies argue that a “return” is an integral part of the “cost of service” and not a non-cost based “adder” as the ALJ seemed to suggest. *Id.* at 13. The Companies submit that contrary to the ALJ’s assessment, this cost is real and significant. The Companies aver that they could deploy their credit capacity in many ways, but choose to use it to avoid collateral requirements under their SMAs. The Companies further explain that this one factor alone, namely, the Companies’ dedication of credit capacity to default service, generates benefits to default service customers of between one and two mills (\$0.001 – \$0.002) per kWh.¹⁷ *Id.*

The Companies except to the ALJ’s characterization of the MAC as simply an attempt to compensate the Companies for their investment in goodwill. The Companies submit that their position is much different from its characterization in the Recommended Decision. The Companies state that their explanations regarding their investment in goodwill were part of their response to Parties who argued that the MAC would provide a return for which there is not a corresponding investment. The Companies aver that, while the Companies do not have an investment in generating facilities that furnish default service, they clearly have assumed a significant liability by contracting for generation to meet default service customers’ needs. The Companies argue that the risks that attend the Companies’ obligations, while different from those

¹⁷ Companies’ St. 7-R, at 12-13.

associated with the ownership of tangible assets, are, nonetheless, a significant form of investment for which the Companies should be compensated. *Id.* at 14.

In their Exceptions, the Companies submit that, contrary to the ALJ's assessment, the MAC is not an "unnecessary financial adder," but rather is a reasonable way to assure that the price of default service offered by incumbent EDCs is not artificially depressed. *Id.* at 16. The Companies explain that customers' purchasing decisions reflect, in large part, the trust and brand loyalty that EDCs have built with customers over many years of providing service. The Companies aver that in competitive markets for other goods and services, the added value that customers attach to a seller's brand supports a higher price. The Companies state that the current pricing structure for default service fails to properly account for the increment in price necessary to reflect the brand equity inherent in EDC-provided service. The Companies argue that if that increment is not reflected, then customers will rationally conclude that the price-to-value ratio favors default service making it very difficult for EGSSs to compete on the basis of price. *Id.*

The Companies also argue that the ALJ's finding that the MAC would probably result in increased EGS charges for consumers who accept a percent-off-the-default service price offering does not provide a valid basis for rejecting the MAC. The Companies aver, *inter alia*, that simply because an increase in the PTC might diminish slightly the level of benefit accruing to a customer that purchased a "percent-off" product is no reason to preclude an EDC from recovering the legitimate cost that such an increase is designed to recover. *Id.* at 17-18.

In its Exceptions, RESA states that while the ALJ was rightly concerned about the use of the MAC as a profit adder, she erroneously failed to recognize the

bundled costs of default service that could appropriately be recovered through the MAC. RESA Exc. at 19. RESA also states that the ALJ erred in concluding that RESA's proposal to collect the MAC from default service customers "and return it to all distribution customers appears to be inequitable on the surface." *Id.* at 20. RESA explains that in Pennsylvania, there has not been a full unbundling of generation, transmission and distribution charges as required by the Competition Act. RESA submits that, as a result, there are costs of providing default service that are embedded in the distribution rates paid by all customers. RESA avers that its proposal to recover the costs of default service from default service customers through the MAC and returning any excess revenue to all customers is both equitable and ensures that the Companies do not receive a profit on default services. *Id.* at 19-20.

RESA also avers that the ALJ's position that the current default service reconciliation mechanism is available to recover the default service costs paid today by all distribution customers is flawed. RESA submits that, the current default service reconciliation mechanism recovers the difference between projected and actual wholesale power costs and actual timing differences between actual costs and billing, but does not recover the bundled costs from default service customers. RESA argues that the reconciliation mechanism is an inappropriate way to recognize the bundled costs that exist today. *Id.* at 21.

e. Disposition

For the reasons presented by the ALJ, *supra*, we reject the MAC proposed by the Companies. While under the Code, the Companies are entitled to recover all actual costs to provide default service on a dollar-for-dollar basis, the Companies and other Parties failed to provide sufficient empirical support for any actual known and measurable costs that are not being recovered through existing or proposed rates and

riders. Accordingly, we adopt the ALJ's recommendation and deny the Exceptions related to the establishment of a MAC.

4. Recovery of Non-Market Based Transmission Charges through the Default Service Support Rider – Allocation of Costs to Large C&I Customers

a. Companies' Proposal

Met-Ed, Penelec and Penn Power currently have Default Service Support (DSS) Riders in their respective tariffs that impose non-bypassable charges to recover the following four categories of costs:

- (1) The remaining balance of transmission costs that Met-Ed and Penelec were permitted to defer, amortize over ten years and recover pursuant to the Commission's Final Order in their 2006 transition base rate cases at Docket Nos. R-00061366 and R-00061367;
- (2) The final reconciliation of transmission costs and revenues, as of December 31, 2010, under the Companies' Transmission Service Charge (TSC) Riders, which were also approved in their 2006 transition base rates cases;¹⁸

¹⁸ Met-Ed and Penelec's TSC costs and revenues as of December 31, 2010 have been fully reconciled. In addition, the marginal transmission line loss charges that Met-Ed and Penelec recovered under their TSC Riders and that the Commission disallowed by its Order entered March 3, 2010, at Docket Nos. M-2008-2036188, *et al.* (*TSC Order*) will be fully refunded by May 31, 2013. Consequently, the DSS Riders proposed by Met-Ed and Penelec in this case will no longer contain a TSC reconciliation component. However, Met-Ed and Penelec are seeking further appellate review of the *TSC Order*. In addition, they have filed a Complaint in the United States District Court for the Eastern District of Pennsylvania challenging the *TSC Order* and seeking an order permitting them to recover PJM-imposed marginal transmission line loss charges. It is not known when a decision might be rendered in each case. Consequently, Met-Ed and

- (3) The generation-related portion of uncollectible accounts expense; and
- (4) Retail enhancement costs.

Companies St. 2 at 21-22.

Penn Power's DSS Rider currently recovers the following four categories of costs:

- (1) Uncollectible accounts expense associated with default service;
- (2) Midwest ISO (MISO) Transmission Expansion fees, PJM integration fees, and MISO exit fees associated with Penn Power's move from MISO to PJM;
- (3) Customer education expenses; and
- (4) Beginning June 1, 2013, PJM RTEP costs, as approved in Penn Power's last Default Service Plan proceeding¹⁹

Companies St. 2 at 22.

Met-Ed and Penelec proposed to continue to recover under their DSS Riders the amortization of the 2006 deferred transmission service charges, default

Penelec reserve the right to recover through their DSS Riders or otherwise any previously-disallowed marginal transmission line loss charges, together with interest thereon, that they may hereafter be authorized to recover based on further appellate review or a decision of the United States District Court. Companies St. 2 at 23.

¹⁹ *Penn Power 2010 DSP Order* at 20; Raia Cross-Examination Ex. 1, ¶ 47 at 20. *See also* Companies St. 7 at 9 (explaining the Commission's approval of DSS Rider recovery of RTEP costs for Penn Power).

service-related uncollectible accounts expense, and retail enhancement costs. However, Met-Ed and Penelec proposed to revise their DSS Riders as follows:

- (1) To recover costs for customer education (excluding costs that are recovered under the Consumer Education Program Cost Recovery Rider);
- (2) To recover costs incurred for the proposed Retail Opt-In Aggregation Program and the proposed Standard Offer Customer Referral Program, under the Companies' primary proposal for cost recovery;
- (3) To include a Non-Market Based (NMB) Services Transmission Charge to recover charges imposed by PJM for NITS, RTEP, Expansion Costs and Generation Deactivation costs;
- (4) To include UFE costs on a non-bypassable basis; and
- (5) To make minor changes to the text of the DSS Rider so that it can be adopted by West Penn and be uniform across all the Companies.

Penn Power's proposed DSS Rider will continue to recover default service-related uncollectible accounts expenses; any FERC-approved charges imposed by MISO and PJM in connection with Penn Power's transfer from MISO to PJM (including MISO Transmission Expansion fees, PJM integration fees, and MISO exit fees); customer education costs; and, beginning June 1, 2013, RTEP costs. Companies St. 2 at 24. Penn Power proposed to revise its DSS Rider as follows:

- (1) To recover costs incurred for the proposed Retail Opt-In Aggregation Program and the proposed Standard Offer Customer Referral Program, under the Companies' primary proposal for cost recovery;

- (2) To include a NMB Services Transmission Charge to recover NITS, Expansion Costs and Generation Deactivation costs, in addition to RTEP costs that were previously approved for recovery under Penn Power's DSS Rider;
- (3) To include UFE costs on a non-bypassable basis;
- (4) To recover programming and implementation costs associated with competitive market enhancements approved by the Commission, including consultant fees and other costs to develop and implement the proposed Time-Of-Use Default Service Rider for the Residential Customer Class; and
- (5) To make minor changes to the text of the DSS Rider so it can be adopted by West Penn and be uniform across all the Companies.

Companies St. 2 at 24.

West Penn proposed to adopt a DSS Rider to its Tariff Nos. 37 and 39 to become effective on June 1, 2013. West Penn's DSS Rider will include an NMB Services Transmission Charge and will recover the customer costs associated with the proposed Retail Opt-In Aggregation Program and the proposed Standard Offer Customer Referral Program under the Companies' primary proposal for cost recovery. West Penn's DSS Rider will also include programming and implementation costs associated with competitive market enhancements approved by the Commission, including consultant fees and other costs to develop and implement the proposed TOU Default Service Rider for the Residential Class. Companies St. 2 at 24.

The Companies explained that the proposed DSS Riders will employ a flat per-kWh rate design for the Residential and Commercial Classes and a demand-based rate design for the Industrial Class. The Companies stated that the demands of customers

in the Industrial Class will be determined in the same way they are determined under their applicable distribution rate schedule. The Companies submitted that this rate design is consistent with the current metering capabilities of the various customer classes. The Companies also explained that, under the DSS Riders, the rates will change annually on June 1 of each year, unless the Commission directs or approves otherwise. Companies Exhs. REV-22 through REV-26; Companies St. 2 at 25.

As explained, *supra*, NMB Services Transmission Charges consist of the charges PJM imposes for NITS, RTEP and Expansion Costs. The Companies explained that currently, for default service, these costs are embedded in the Companies' PTC.²⁰ The Companies submitted that EGSs serving shopping customers, as LSEs, bear these costs. In this case, the Companies proposed to acquire all NMB transmission services on behalf of both their default service generation suppliers and EGSs serving load in their respective service areas. The Companies proposal would remove the associated costs from their PTC and recover NMB transmission service costs under the NMB Services Transmission Charge of their DSS Riders as a non-bypassable charge imposed on a competitively neutral basis on all shopping and non-shopping customers. Also as discussed, *supra*, for Penn Power, this proposed change only needs to encompass NITS and Expansion Costs because the Commission previously approved Penn Power's recovery of RTEP costs under its DSS Rider. Companies Sts. 2 at 7 and 8.

The Companies explained that all NMB transmission charges, like the RTEP component of NMB transmission charges approved for DSS Rider recovery in Penn Power's last Default Service Plan proceeding, are embedded, cost-of-service rates

²⁰ Some components of NMB Services Transmission Charges are borne directly by default service generation suppliers while others are acquired by the Companies on behalf of their default service generation suppliers and added to the PTC. Companies St. 7 at 10.

that are imposed on the basis of an EDC's total native load, regardless of the source of the generation used to serve that load. Therefore, the Companies submitted that the way NMB transmission charges are imposed does not differentiate between EDC load served by default generation suppliers and load served by EGSSs. The Companies averred that separating those charges between default service and shopping customers, as occurs under the existing cost-recovery mechanisms, is a distinction that does not reflect how the associated costs are actually incurred. The Companies argued that recovering NMB transmission charges on a competitively-neutral basis from all customers is a more appropriate way to recover such costs that conforms to how those costs are actually incurred. Companies St. 7 at 9.

The Companies averred that default service generation suppliers and EGSSs find it difficult to financially hedge NMB transmission charges because they are embedded cost-of-service rates that reflect an EDC's total load. The Companies opined that default service generation suppliers and EGSSs have a strong preference not to procure NMB transmission services, as evidenced by their favorable responses to the Companies' proposal. *Id.*

The Companies explained that, by allowing the Companies to provide NMB transmission services and to recover the associated costs from all customers through a reconcilable, non-bypassable charge, competitive neutrality will be maintained and all customers will benefit. The Companies further averred that by allowing them to acquire NMB transmission services and recover the associated costs on a reconcilable basis, it will lower the risk profile for both default service generation suppliers and EGSSs. Given the difficulty of financially hedging such costs, the Companies submitted that both default suppliers and EGSSs can reduce the premium included in their rates that reflects the uncertainty of these costs. *Id.*

b. Positions of the Parties

The Industrials, through their witnesses Mr. Fried and Mr. Raia, employees of Proctor & Gamble Paper Products Co. (“P&G”) and Sheetz,²¹ respectively, were the only witnesses that opposed the Companies proposal’ to acquire NMB transmission services and recover the associated costs under their DSS Riders.²² The Companies submitted that RESA, Dominion, Ex-Gen and Constellation, a group that reflects the views of both default service generation suppliers and EGSSs that participated in this case, affirmatively supported the Companies’ proposal. Companies St. 2 at 6.

First, the Industrials argued that the Companies’ proposal to recover NMB Services Transmission Charges from all customers on a non-bypassable basis will raise their cost of delivery service while allegedly reducing the cost their EGSSs incur to supply generation to the Companies’ load zones. According to the Industrials, this realignment raises the specter that their employers will be “double charged” because, under any existing EGS contracts that extend past June 1, 2013, the possibility exists that they could pay NMB transmission charges in both delivery rates, pursuant to the DSS Rider, and as part of the price of generation purchased from their competitive suppliers. Fried St. 1 at 8.

²¹ Although Mr. Fried purported to submit testimony on behalf of MEIUG, PICA and PPUG and Mr. Raia purported to submit testimony on behalf of the same groups plus WPPII, the Companies argue that both witnesses could only represent the interests of their respective employers. Tr. 285-286, 310-311.

²² OSBA witness Knecht supported the Companies’ proposal but recommended a one-year “transition” period before implementing that proposal to allow EGSSs and their customers additional time to adjust their existing contracts to reflect a realignment of NMB transmission charges from EGSSs to the Companies. *See* OSBA St. 3 at 14. Mr. Knecht’s recommendation is discussed, *infra*, in connection with a similar proposal by Mr. Raia.

Second, the Industrials recommended that the Companies' proposal in this case should be rejected because Met-Ed's and Penelec's proposal to recover NITS charges in their first Default Service Proceeding was not implemented and that the Companies' proposal transfers risk from EGSSs to their customers. Raia St. 1 at 7. Also, the Industrials contended that the Companies' proposal prevents customers from standardizing their procurement process with all of the EGSSs in Pennsylvania. *Id.* at 6-7.

Additionally, the Industrials, per Mr. Fried, contended that the Companies' proposal could adversely affect P&G's overall transmission costs because transmission charges would be based on average data across an entire customer class. The Industrials averred that under the Companies' proposal, the transmission costs would not be based upon an individual customer's transmission obligation, but rather, would be calculated based upon a customer class' average demand. The Industrials argued that it is better to provide customers with a charge that is based on individual cost-causation to preserve adequate market signals. Fried Sts. 1 at 8-9 and 1-S at 4.

Finally, the Industrials requested that the Companies develop a "Transition Plan" for customers with EGSS contracts extending beyond June 1, 2013. Raia St. 1 at 5-6.

In response to the Industrials' concerns, the Companies contended that if any implementation issues exist, they are customer and EGSS-specific and, therefore, should be negotiated between such customers and their EGSSs with regard to the remaining terms of any existing contracts. Companies St. 2-R at 7.

c. ALJ's Recommendation

The ALJ found in favor of the Companies' position on the issue of "double charging." First, she noted that some customers are billed transmission charges from their EGSs by means of a direct pass-through as the contracts provide that the EGS may charge only for the transmission costs it actually incurs. Therefore, according to the ALJ, if the EGS ceases to incur NMB transmission charges because the Companies' proposal is implemented, the EGS would be contractually obligated to not bill those costs to its customers. As a result, she stated that for customers billed with such a provision in their EGS contracts, there would be no need to do anything to avoid even the possibility of "double billing" of NMB transmission charges. R.D. at 63-64.

The ALJ opined that, even if direct pass-through billing were not the norm, EGSs have a great deal of flexibility to set prices and to establish pricing options, which is the hallmark of the competitive retail electric market. She noted that EGSs may offer elements of the service they furnish at prices that are above market, below market, or on a direct pass-through basis. The ALJ submitted that only EGSs are in a position to know for sure how their prices align with their costs and trying to assess any one component of EGS service in isolation will not accurately depict whether, or to what extent, an EGS's overall price conforms to the EGS's costs and profit expectations. Therefore, she found that the assumption underlying the Industrials' position, namely, that each component of an EGS's price can be reconciled, on a dollar-for-dollar basis, to a specific cost, is unconvincing. R.D. at 64.

The ALJ also found that the concern expressed by the Industrials applies only with regard to contracts that extend beyond June 1, 2013, which is almost seventeen months from the date the Companies filed the instant Joint Petition. Therefore, the ALJ concluded that, if customers believe that the Companies' proposal might warrant a

reduction in their EGS's contract prices, they have the flexibility to renegotiate that pricing in the interim. The ALJ discounted the Industrials' contention that doing so would be burdensome. R.D. at 64-65.

With regard to the Industrials' contentions related to Met-Ed's and Penelec's first DSP proceeding, the ALJ noted that the Companies withdrew their proposal to remove NITS charges from the PTC, and instead, proposed to recover such costs under their DSS Riders in order to reach a broad consensus among many parties as part of the complete resolution of virtually all issues.²³ According to the ALJ, that settlement, like all settlements, required give and take on various positions by all the settling parties. As the settlement must be viewed as a whole, the ALJ found that it is improper and inaccurate to characterize the agreement reached by the parties as the equivalent of a rejection by the Commission of their NITS proposal. The ALJ opined that nothing concerning the merits of the Companies' proposal in this case can or should be inferred from the fact that a similar proposal was not incorporated in the prior settlement. R.D. at 65.

Next, the ALJ found that contrary to Mr. Raia's contention, the Companies' proposal would not transfer "risk" from EGSs to their customers. According to the ALJ, for any customer that is charged transmission costs by its EGS through direct pass-through billing, no additional "risk" would be transferred to it because it already bears that risk. Furthermore, she stated that even if such costs were not transferred to customers via pass-through billing, any EGS "risk" would arise from the possibility that

²³ *Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Programs*, Docket Nos. P-2009-2093053 and P-2009-209354 (August 1, 2009). A copy of the Joint Petition for Settlement in the 2009 case was placed in the record as part of OCA Cross-Examination Exhibit No. 1.

its prices would be insufficient to recover all of the NMB transmission charges it incurs. R.D. at 66.

Additionally, the ALJ stated that the Industrials' witness Raia disregarded the fact that Penn Power will recover RTEP costs under its DSS Rider pursuant to the Commission's approval granted in the *Penn Power 2010 DSP Order*. According to the ALJ, for that reason, among others, there is no "standardization" with respect to recovery of NMB transmission charges under the status quo. Moreover, the ALJ noted that Mr. Raia confirmed that Sheetz conducts separate auctions for the load of its facilities located in each EDC service territory and separate supply auctions provide more than enough flexibility to reflect the different products offered by EGSSs in each EDC's territory, and there is no evidence that the Companies' proposal will add any incremental burden to that process. The ALJ further stated that Sheetz has facilities served by the Companies' affiliated electric utilities in Ohio, where NMB transmission charges were removed from their equivalent of the PTC effective June 1, 2011. Consequently, the ALJ found that the Companies' proposal will not be a roadblock to contract "standardization." R.D. at 67.

With regard to the Industrials' concern over allocation, the ALJ found that because NMB Services Transmission Charges are imposed by PJM on a demand basis, the Companies' proposal for allocating such costs is consistent with the methodology PJM uses to allocate these transmission-related costs. However, according to the ALJ, these charges will be billed to individual customers in accordance with the rate structure proposed for the DSS Rider, which is based on the individual demand for each industrial customer. Consequently, as an individual customer's demand decreases, the NMB transmission charges will decrease as well; likewise, if the customer's demand increases, the NMB transmission charge increases. R.D. at 68.

Finally, the ALJ found that Sheetz, P&G and the other customers comprising the Industrials will have had over eighteen months to “transition” to NMB transmission charges being recovered in the Companies’ DSS Riders. She noted that even if the period for “transition” were not deemed to begin until a final Commission order in this proceeding is issued in August 2012, there will be a nine-month interval until the implementation of the Companies’ proposal on June 1, 2013. R.D. at 68-69.

Therefore, the ALJ recommended that NMB transmission services should be acquired by the Companies on behalf of default service generation suppliers and EGSSs serving load in the Companies’ service areas and such costs should be removed from the PTC and recovered through the DSS Rider on a competitively-neutral, non-bypassable basis. According to the ALJ, the objections to that proposal voiced by the Industrials’ witnesses Fried and Raia are not supported by substantial evidence for the Commission to withhold its approval. Also, she found that an additional transition period beyond the substantial lead time already provided under the existing implementation schedule does not appear to be needed and should not be required. R.D. at 69.

d. Exceptions to the Recommended Decision

In its Exceptions, the Industrials aver that the ALJ erred in failing to address that, under the Companies’ proposal, NMB transmission charges would be inappropriately collected from large C&I customers in a manner that is inconsistent with cost causation principles. According to the Industrials, the Companies’ proposal departs from principles that have been fundamental to the implementation of the Competition Act from the outset; specifically, that transmission costs should be collected by the entity providing a customer with generation services. The Industrials state that this proposed change creates numerous problems for large C&I shopping customers, not the least of which is the fact that the Companies incorrectly request that the aforementioned

transmission costs be collected based upon a customer's monthly distribution demand. From the large C&I customer perspective, the collection of transmission costs based upon a customer's distribution demand is the most significant modification proposed in the instant proceeding. Industrials Exc. at 1-2.

The Industrials explain that to understand the inappropriateness of the Companies' cost collection proposal endorsed by the ALJ, it is helpful to know the basis upon which the transmission costs are established. According to the Industrials, a key element of PJM's management of the regional transmission system is recovering the cost of using the transmission system from all LSEs, which include both EDCs serving as default service providers and EGSSs, within the PJM region for transmission based on their respective transmission obligations. The Industrials note that the ALJ accurately reflected the methodology that PJM utilizes to allocate charges to EDCs which the Industrials describe as follows:

“All NMB transmission charges ... are imposed on the basis of an EDCs’ total native load, regardless of the source of the generation used to serve that load.” R.D. at 62.

Subsequently, the EDCs report the one coincident peak (“1-CP”) demand for each of the LSEs (*e.g.*, EGSSs) in their service territories to PJM for billing purposes. *See* Industrials M.B., p. 41. The total transmission obligation for the Companies’ zones is based on the demand of each of their customers during the “1-CP” established by PJM. Industrials R.B., p. 18. The 1-CP methodology measures the daily load of all retail customers located within a transmission zone coincident with the annual peak of that transmission zone. *See* PJM Open Access Transmission Tariff, Section 34.1. LSEs – either EDCs serving as default service providers or EGSSs – pay for transmission service based on peak load responsibility within each zone. Peak load responsibility is based on the portion of the yearly single coincident peak for the zone attributed to the LSE. *See* Industrials M.B., p. 41.

PJM charges each LSE for annual transmission costs based on its peak load responsibility. *See id.* (footnotes omitted).

Industrials Exc. at 3-4.

The Industrials maintain that the Companies' proposal would charge customers for NMB transmission charges based on their monthly distribution demand rather than their 1-CP transmission demand. They aver that the ALJ misunderstands this crucial difference, stating “[b]ecause NMB Services Transmission Charges are imposed by PJM on a demand basis, the Companies' proposal for allocating such costs is consistent with the methodology PJM uses to allocate transmission-related costs.” R.D. at 68. According to the Industrials, the ALJ confused monthly distribution demand with 1-CP transmission demand. The Industrials opine that to be consistent with cost causation principles, if NMB transmission charges are to be collected through a regulated charge, large C&I customers must be charged for transmission costs based on their demand during the 1-CP. Industrials Exc. at 4-5.

Additionally, the Industrials aver that the Companies' proposal to collect transmission costs based upon a customer's monthly distribution demand would lead to inflated transmission costs for certain large C&I customers, cross-subsidization among large C&I customers, and stifled private investments into demand reduction strategies by large C&I customers, contrary to the underlying purpose of Act 129 . They claim that the ALJ failed to address any of these concerns. The Industrials aver that collection of NMB transmission charges based on the monthly distribution demand of large C&I customers is contrary to fundamental principles within the Public Utility Code that promote competition and demand reduction, and prohibit unfair discrimination. Accordingly, the Companies' proposal to collect NMB transmission charges through non-bypassable riders should not be applied to large C&I customers. If, however, the Commission chooses not to allow for a carve-out for large C&I customers, then the Industrials request that this

class of customers must at least continue to be charged for NMB transmission charges based upon their individual 1-CP. *Id.* at 7-12.

Finally, the Industrials aver that the Companies' proposal to collect NMB transmission charges through non-bypassable riders would inappropriately re-bundle transmission and distribution costs, thereby eliminating the competitive products for pricing transmission available to large C&I customers. They maintain that this elimination of competitive products for pricing transmission reduces the attractiveness of the competitive market and hinders market development. According to the Industrials, the ALJ is silent with respect to the impact of this competitive market interference on large C&I customers, who are the largest participants in Pennsylvania's retail electric market. The Industrials further maintain that the Companies' proposal is unjust and unreasonable because it forces large C&I customers to enter into contract renegotiation; involves no transition plan for customers; and interferes with procurement and contracting standardization throughout the Commonwealth. *Id.* at 12-15.

e. Disposition

We are persuaded by the argument of the Industrials that the Companies' proposal to collect NMB transmission charges through a non-bypassable rider based on a monthly billing demand violates the principle of cost causation, creates perverse incentives for customers not to respond rationally to PJM rules and reduce their transmission obligations, and contradicts provisions of the Code and Competition Act. We also are in agreement with the Industrials' position that the Companies' rate design proposal is unfair as it would collect large C&I transmission obligations from customers based upon a customer's monthly demand. This proposal discriminates against customers that have invested in strategies to reduce their transmission obligation, and

results in cross-subsidization among this customer class. We find that the Companies have failed to satisfy their burden of proving that their requested change in allocation from the traditional 1-CP allocation of transmission costs to one based on monthly distribution demand is in the public interest.

Accordingly, we shall grant the Exceptions of the Industrials, and reject the ALJ's recommendation to adopt the Companies' proposed allocation of NMB transmission charges.

5. Recovery of Non-Market Based Transmission Charges through the Default Service Support Rider – Collection of Generation Deactivation and Unaccounted-for Energy Costs

a. Companies' Proposal

As explained by the Companies, generation deactivation charges compensate generation owners for the continued operation of one or more generating units beyond their planned deactivation date pending the completion of transmission upgrades that PJM determines are necessary to sustain system reliability. The Companies contended that generation deactivation charges are similar in concept to RTEP charges, which are a component of NMB transmission charges, since both RTEP and generation deactivation charges are allocated by PJM on a demand basis, are non-market-based, are impossible to hedge, and are assessed by PJM to preserve system reliability. Accordingly, the Companies proposed to collect these charges on a non-bypassable basis from all customers through the DSS Rider. Companies St. 2-R at 21.

The Companies explained that Unaccounted-for Energy Costs (UFE) is the difference between an EDC's system load, determined from the summation of generation and net inflows and outflows over its transmission lines, compared to the summation of

all customer loads, both shopping and non-shopping, plus line losses. According to the Companies, such differences, which can fluctuate between a charge and a credit, are attributable to four main factors:

- (1) the difference between customer class average line loss factors (which remain constant) and the actual loss factor (which varies hour by hour);
- (2) the difference between customer class load profiles and the actual load used by customers;
- (3) estimated bills; and
- (4) the estimates used in submitting generation and transmission tie-line meter information in determining the zonal load.

Companies St. 2-R at 22.

The Companies noted that because UFE is allocated to all EGSs (wholesale and retail) on an energy basis, all retail customers are currently paying for UFE either through default service generation charges or EGS charges. However, the Companies averred that UFE is unpredictable, and cannot be hedged, which means that EGSs likely include a risk component in their prices in an attempt to compensate for this unmanageable risk. Therefore, to mitigate that risk, the Companies argued that it is reasonable for EDCs to collect such charges on a non-bypassable basis from all customers. *Id.*

In their rebuttal testimony, the Companies accepted the recommendation of Dominion that UFE be borne by the Companies and recovered on a non-bypassable basis in the DSS Riders. Therefore, the Companies revised their DSS Riders, as set forth in Companies' Exhibits REV-22 through REV-26, to reflect that change. To maintain

consistency with other components of the DSS Rider, the UFE net costs would be collected from the Residential and Commercial Customer Classes on an energy basis and from the Industrial Customer Class on a demand basis. *Id.*

b. Positions of the Parties

Ex-Gen recommended that the Companies revise their DSP proposal such that they would be responsible for generation deactivation charges imposed by PJM and recover those charges from all customers on a non-bypassable basis under their respective DSS Riders. Ex-Gen St. 1 at 2. Ex-Gen explained that generation deactivation charges have the same characteristics as NMB transmission charge, (they are uncertain, lack transparency, are volatile and cannot be hedged) and therefore, the same rationale for recovering NMB transmission charges under the Companies' DSS Riders applies with equal force to generation deactivation charges. Ex-Gen St. 1 at 4.

The Companies' averred that they made the appropriate changes to their DSS Riders to incorporate Ex-Gen's recommendation, as shown in the Companies' Exhibits REV-22 through REV-26.

c. ALJ's Recommendation

The ALJ agreed with the Companies' revised proposals that it is reasonable to recover such costs in the NMB transmission charges that the Companies proposed to add to their DSS Riders. R.D. at 70 and 72.

d. Exceptions to the Recommended Decision

In their Exceptions, the Industrials aver that the ALJ erred in failing to address the Industrials' opposition to the collection of generation deactivation and UFE costs via non-bypassable Default Service Support Riders. Contrary to the Recommended Decision, the Industrials contend they explicitly opposed the proposals of Ex-Gen and Dominion regarding the collection of generation deactivation and UFE costs via the Companies' non-bypassable riders. Industrials Exc. at 20.

The Industrials oppose the collection of generation deactivation costs, described as an additional NMB Transmission charge, for all of the reasons they oppose the collection of NITS, RTEP, and expansion costs, *supra*. In addition, although the Companies classify UFE costs as separate from NMB transmission charges, the Industrials argue that their concerns related to contracting and double cost collection would be just as applicable to UFE costs because the Companies also propose to collect these costs through their non-bypassable DSS Riders. Industrials Exc. at 20-21.

e. Disposition

We shall also reject the inclusion of generation deactivation and UFE costs within the DSS Rider. For both proposed charges, we are concerned that the collection of these charges through non-bypassable riders would interrupt long-term shopping contracts and may force contracts to be renegotiated. In addition, these proposals would increase the likelihood of double cost collection by the Companies and EGSSs while increasing the risk for customers. Accordingly, we shall grant the Exceptions of the Industrials and reject the Companies' proposal to collect generation deactivation and UFE costs through the DSS Rider.

6. Recovery of Non-Market Based Transmission Charges through the Default Service Support Rider – Carve-Out of Network Integration Transmission Costs

a. Companies' Proposal

As discussed, *supra*, NMB Services Transmission Charges consist of the charges PJM imposes for NITS, RTEP and Expansion Costs. Currently, for default service customers, these costs are embedded in the Companies' PTC. In this proceeding, the Companies propose to collect these charges from all customers on a non-bypassable basis through the DSS Rider. Companies Sts. 2 at 25 and 7 at 8.

b. ALJ's Recommendation

The ALJ did not specifically address the carve-out of NITS costs. As discussed, *supra*, the ALJ recommended the approval of the recovery of NMB transmission charges through the DSS Rider as proposed by the Companies. R.D. at 69.

c. Exceptions to Recommended Decision

In their Exceptions, the Industrials aver that the ALJ erred by failing to acknowledge that the differences among non-market based transmission costs, generation deactivation, and unaccounted-for energy costs could lend themselves to different collection methodologies, if certain elements of the Companies' proposal are approved by the Commission. The Industrials argue that, assuming that the Commission agrees with the Companies' position that NMB Transmission costs should be collected through non-bypassable riders, they urge the Commission to permit the Companies to collect only costs that are truly "non-market based" or incidental to transmission service. The Industrials request that while the ALJ does not differentiate among the NMB

Transmission costs, if the Commission permits the Companies to collect any transmission costs, the NITS cost collection should remain the responsibility of EGSs. Industrial Exc. at 22.

The Industrials explain that NITS costs are directly related to the transmission service offered to customers, generally referred to simply as “transmission” costs. Moreover, the Industrials aver that because the NITS charge is considered the traditional transmission charge, NITS costs are distinguishable from other so-called NMB costs because all customers have to remit transmission costs on an annual basis, which is not the case for other NMB Transmission costs. In addition, the Industrials submit that all NMB Transmission costs, besides NITS, are either incidental or impact only certain customers in the Companies’ service territories, and therefore, are more unpredictable. Therefore, the Industrials opine that considering the magnitude and predictability of the NITS charge, the EGSs should retain the collection of NITS costs from their customers. Industrials Exc. at 22-23.

d. Disposition

We concur with the Industrials. NITS costs are directly related to the transmission service offered to customers and should continue to be collected by the EGSs instead of being collected for all customers through the DSS Rider, as proposed by the Companies. Accordingly, we shall grant the Exceptions of the Industrials on this issue and modify the ALJ’s recommendation.

7. Economic Load Response Charges

a. Companies' Position

The Companies explained that Economic Load Response (ELR) charges provide market-based compensation to demand-response resources when those resources can cost-effectively be used. Cost-effectiveness is determined by PJM on the basis of a net benefits test. As proposed by PJM, demand response resources would be compensated at the LMP when the LMP is at or above a “net benefit” threshold price. ELR costs are then allocated to any area where the price that is paid to a demand response resource is at or above the threshold price. Companies St. 2-R at 23. As explained, *infra*, the Companies recommended that the ELR charges be recovered from the EGS providing wholesale default service supply.

b. Positions of the Parties

Constellation recommended that ELR charges be borne by the Companies, be removed from the PTC and be recovered as part of the DSS Riders. Constellation contended that ELR charges, which have not yet been implemented, change the “market structure” in ways that are “unknown at this time” and “will be difficult for potential default service suppliers to predict and manage.” Constellation St. 1 at 24. For that reason, Constellation believed that EDCs, rather than default service suppliers, should bear any costs that flow from the full implementation of ELR charges. Constellation St. 1 at 22-24.

The Companies opposed Constellation’s recommendation. The Companies contended that, unlike generation deactivation charges and UFE costs, proposed ELR charges are, in fact, market-based. The Companies explained that the basis for their

proposal for NMB transmission charges and their acceptance of similar treatment for generation deactivation and UFE costs was that those costs are not market-based and cannot be hedged. Because the same is not true for ELR charges, the Companies averred that ELR charges should remain the responsibility of EGSs and default service suppliers. According to the Companies, demand response resources will ultimately help EGS and default service suppliers with peak-shaving during high-usage periods, thereby providing them benefits in terms of an improved overall load shape. Companies St. 2-R at 23.

c. ALJ's Recommendation

The ALJ recommended that Constellation's request that ELR charges be collected through the non-bypassable DSS Riders be rejected. The ALJ stated that transferring responsibility for ELR charges to the EDC can only be accomplished for default service generation suppliers and, therefore, EGSs would have to retain responsibility for ELR charges. She concluded that what Constellation proposed cannot be done on a competitively neutral basis and cannot be done under the proposed structure of the DSS Rider. R.D. at 73-74.

d. Exceptions to the Recommended Decision

In its Exceptions, Constellation avers that the ALJ erred in not ordering the Companies to include the new ELR charges in their NMB charges collected through the DSS Riders. Constellation argues that the ALJ erred because the Recommended Decision: (1) erroneously concluded that the new ELR Charges are market-based; (2) failed to acknowledge that the new ELR charges are unpredictable and unhedgeable in the same way as generation deactivation, UFE and other NMB Charges; and (3) dismissed, without explanation uncontroverted evidence in the record supporting the fact

that new ELR Charges can be recovered on a non-bypassable, competitively-neutral basis, from both default service and EGS customers. Constellation Exc. at 3-7.

Constellation claims that, as with all of the other NMB Charges, if default service suppliers and EGSs, rather than EDCs, are responsible for these unknown and unpredictable new ELR Charges that may occur, then, in order to account for such risk, such suppliers will need to factor a premium into their fixed prices for such potential charges regardless of the frequency and extent to which such new ELR Charges actually occur. Constellation avers that prudent suppliers would have to consider the costs that they could incur for compensating ELR participants taking advantage of the new opportunity provided under FERC Order No. 745. Constellation Exc. at 2.

Constellation also maintains that its proposal to include the new ELR Charges in the NMB Charges collected through the DSS Riders is supported by substantial evidence in the record, will be competitively neutral, and will lead to more competitive costs for both default service supply and alternative EGS supply for consumers. For purposes of this proceeding, Constellation requests that the Commission reject the ALJ's recommendation and require that the Companies include the new ELR Charges in its NMB Charges collected through the DSS Riders. *Id.* at 8.

e. Disposition

We concur with the ALJ. We are persuaded by the arguments of the Companies that these charges are market-based and should not be included within the non-bypassable DSS Rider as proposed by Constellation in this proceeding. Accordingly, we deny the Exceptions of Constellation and adopt the recommendation of the ALJ.

8. Residential Time-of-Use Default Service Rider

a. Companies' Proposal

Section 2807(f)(5) of the Public Utility Code, 66 Pa. C.S. § 2807(f)(5), provides that default service providers must submit one or more TOU rates and real-time price plans to the Commission in their default plans. That Section states:

By January 1, 2010, or at the end of the applicable generation rate cap, whichever is later, a default service provider shall submit to the commission one or more proposed time-of-use rates and real-time price plans. The commission shall approve or modify the time-of-use rates and real-time price plan within six months of submittal. The default service provider shall offer the time-of-use rates and real-time price plan to all customers that have been provided with smart meter technology under paragraph (2)(iii). Residential or commercial customers may elect to participate in time-of-use rates or real-time pricing. The default service provider shall submit an annual report to [sic] the price programs and the efficacy of the programs in affecting energy demand and consumption and the effect on wholesale market prices.

In compliance with Section 2807(f)(5), Penn Power and West Penn have each proposed a new Residential TOU Default Service Rider (TOU Rider). Companies' St. 7 at 19. The Companies stated that the TOU Riders will be available to residential customers that have been provided a smart meter pursuant to Penn Power's and West Penn's respective Commission-approved Smart Meter Plans. *Id.* Enrollment will be available for up to 15,000 new customers per Company per year during an enrollment period running from April 1 through May 31 of each year. *Id.* After May 31 of each year, the TOU Rider would be closed to new applicants until the following year.

According to the Companies, their TOU proposal also follows the Commission's recommendation in the *DSP Recommendations Order* which recommended that EDCs consider contracting with a Commission approved EGS to satisfy the TOU requirement. The Companies proposed that an EGS would be selected through an annual auction process. Companies St. 6 at 42-44. Penn Power and West Penn would solicit a twelve-month, fixed price, on-peak and off-peak product. The results of the auction would be submitted to the Commission for approval, and the winning bidder would be required to execute a contract in the form established by the Companies in this proceeding. Companies St. 7 at 19. The winning bidder would provide service to all customers that enroll under the Residential TOU Rider for a term of up to twelve months that begins with the customer's June meter reading and ends with the customer's May meter reading. *Id.*

Customer enrollment in the TOU program would begin after each auction is completed and would last for two months. Information would be provided to non-shopping residential customers with smart meters by bill inserts or direct mail. The information would include the TOU price and terms and conditions for participation in the program. Enrollment would be on an opt-in basis and could occur through return of a post card to the winning bidder, via telephone to the successful bidder, over the internet or through contacts to West Penn and Penn Power's call centers by interested customers who would be referred to the successful bidder. Companies St. 7 at 20. The winning bidder would be responsible for processing enrollments, consistent with each Company's meter reading schedule and the switching rules of its supplier tariff. *Id.*

Each EDC would bill for service under the TOU Rider using rate-ready consolidated billing. West Penn and Penn Power are in the process of developing systems to bill TOU rates based on the on-peak and off-peak hours specified in the TOU

Rider. That system will be multi-functional because, once completed, all EGSs will be able to offer TOU rates using the on-peak and off-peak periods set forth in each EDC's TOU Rider. EGSs using different periods would be required to use each EDC's bill-ready consolidated billing. Companies St. 7 at 20-21.

The Companies proposed that customers electing to take service under the TOU Rider would not be able to return to standard default service until June 1 of the year following their enrollment. However, those customers would be able to switch to any EGS, without penalty, including the EGS which offers the TOU service. Companies' St. 7 at 21. At the end of the TOU contract year, customers receiving service under the TOU Rider would be advised by the TOU provider that the contract is coming to a close and they have the right to select another EGS or return to default service. Unless the customer takes affirmative action to switch, the customer will remain with the TOU EGS. The EGS may establish new TOU prices in accordance with the Commission's notice requirements at 52 Pa. Code § 54.5(g)(1), relating to written notice to customers regarding a change in terms at the end of a fixed term contract. *Id.* The TOU supplier will also advise participating customers that they may affirmatively re-enroll for TOU service for a subsequent twelve-month term. *Id.*

The Companies argued that the proposed TOU Riders satisfy the requirements of Section 2807(f)(5) of the Code and may provide a competitive market enhancement since West Penn and Penn Power will only offer standard default service. By providing for an EGS TOU provider, the Companies asserted that enrolled customers will be in a direct contractual relationship with the EGS TOU provider and will receive bills from the EDC noting that particular EGS as the customers' TOU service provider. The Companies further noted that at the end of the TOU service term, the participating

customers will remain customers of the EGS unless they affirmatively elect a different EGS or return to default service. Companies St. 7 at 22-23.

b. Positions of the Parties

The OCA argued that the Companies' proposal for a residential TOU Rider should not be implemented at this time. The OCA asserted that the number of smart meters which would be installed in the West Penn and Penn Power service territories from June 2013 to May 2015 would be too small to enable a cost-effective implementation of the program. As an alternative, the OCA recommended that the existing TOU rate options for both Companies should be continued. OCA St. 2 at 21-22; OCA St. 1 at 36.

RESA proposed an alternative approach to that offered by the Companies. RESA suggested that each utility should be required to identify those EGSs who offer or intend to offer a time-differentiated rate for at least a twelve-month period. The Companies could then post that information on a website and direct interested customers to that source. RESA St. 2 at 8.

c. ALJ's Recommendation

The ALJ recommended that Companies' proposal be rejected. The ALJ agreed with the OCA's argument that there is little assurance that sufficient smart meters capable of managing a TOU service will be installed in the West Penn and Penn Power service territories in time to enable a cost-effective program. R.D. at 78. The ALJ also expressed reservations about whether customers would agree to incur higher on-peak rates and shift their usage to the off-peak periods set forth in the Companies' proposal. The ALJ further found that given that the on-peak period represented sixteen hours of

every weekday, and the very limited availability of smart meters in the relevant service territories, the TOU auction process appeared to be overly expensive without providing consumer benefits. *Id.* at 78-79. The ALJ recommended that the Companies' proposal be deferred until there is a larger penetration of smart meters. The ALJ further recommended that the Companies seek to continue the existing TOU rate options in the West Penn and Penn Power service territories in the interim. *Id.* at 79.

The ALJ also commented that, while RESA's proposal may merit further consideration, there was insufficient information to enable her to determine whether the proposal could be implemented as part of the proposed DSP for West Penn and Penn Power. R.D. at 79. The ALJ also expressed the concern that RESA's proposal may not conform to the requirements of Section 2807(f)(5) of the Code. Finally, the ALJ observed that it did not appear that any EGS was offering TOU rates in the relevant service territories which raised additional doubts on the potential for RESA's suggestion. *Id.* at 80.

d. Exceptions to the Recommended Decision

The Companies argue that the ALJ erred by relying on OCA's arguments when she recommended against the Companies' proposal. According to the Companies, West Penn will have more than 15,000 smart meters installed prior to the summer of 2013. The Companies further argue that the OCA's witness agreed that 15,000 smart meters would be sufficient to support the proposed TOU Rider in West Penn's service territory. The Companies also point out that the costs of the TOU program will be recovered from all residential customers under the Companies' DSS Rider which makes the proposed program cost effective for residential customers as well as participating EGSs. Companies Exc. at 20-21.

The Companies also assert that the OCA’s concerns that the designated peak and off-peak periods will not provide residential customers with meaningful cost savings is premature. The Companies first argue that the rate differential between the two periods cannot be known until the TOU procurement process is implemented. The Companies further argue that the peak and off-peak periods coincide with the wholesale market’s definitions which will enable bidding EGSSs to appropriately hedge their offerings. Absent that opportunity, the Companies warn that few EGSSs would be interested in participating in the proposed program. Companies Exc. at 21.

The Companies maintain that in the event their proposal is not approved, then the Commission must approve the alternative, administratively-determined on-peak and off-peak factors for TOU service in order to comply with Section 2807(f)(5) of the Code. In that instance, TOU customers will be served at the rates set forth in the Companies’ PTC Riders adjusted by on-peak and off-peak factors. Companies Exc. at 22.

RESA argues that there is no need to reject the RESA proposed alternative to the Companies’ TOU auction process. According to RESA, its concept can be adopted with a direction that the Parties develop any additional details which may be required through a collaborative process. RESA also argues that its approach conforms to Section 2807(f)(5) of the Code in a fashion substantially similar to that of the Companies’ proposal. According to RESA, its approach also provides that EGSSs will provide the TOU service which customers may select at their discretion. RESA Exc. at 26-27.

The OCA replies to both the Companies and RESA and argues that the ALJ correctly determined that there was insufficient evidence to adopt either Party’s proposal. The OCA reiterates that the evidence supports a finding that there will be insufficient

penetration of smart meters in either West Penn or Penn Power’s service territory to make the Companies’ proposal feasible. OCA R. Exc. at 34. The OCA also reiterates its concerns that the peak and off-peak periods provide no real opportunities for residential customers to sufficiently shift load in order to realize substantial savings from the rate differential. *Id.*

The OCA responds to RESA and notes that the RESA proposal merits further consideration. However, the OCA argues that there is insufficient evidence of record to support the adoption of the RESA proposal at this time. In the event the Commission would entertain a collaborative process as suggested by RESA, the OCA suggests that “such a process should be open to considering a full spectrum of ideas.” OCA R. Exc. at 36.

e. Disposition

Although we disagree with the ALJ’s conclusion that the Companies’ proposed TOU Riders should be rejected because of a current lack of deployed smart meters, we do find that the terms and conditions of the TOU Riders (specifically the overly expansive on-peak time period) renders the proposed programs unreasonable at this time. Rather than simply approving continuation of existing time-differentiated rates as recommended by the ALJ, we will require the Companies to submit a revised TOU proposal for West Penn and Penn Power within sixty days or earlier for our review and approval, including expedited hearings, if necessary. We strongly encourage the Companies to meet with stakeholders, including, but not limited to, the statutory advocates and EGSSs, to seek their input prior to making their filing in compliance with this directive.

9. Reconciliation of the PTC Rider

a. Companies' Proposal

Consistent with the Commission's default service regulations at 52 Pa. Code § 54.187(f) and its approval of the existing DSPs for Met-Ed, Penelec, Penn Power and West Penn, the Companies have incorporated a reconciliation component in the generation rates proposed in each DSP. Companies St. 1 at 20. The Companies proposed reconciling adjustments that will be made on a quarterly basis for the duration of each DSP. The Companies included this reconciliation feature in both their PTC Riders and HP Default Service Riders. Companies' St. 2 at 31-33.

The Companies stated that each month, the costs to provide default service will be compared to default service revenues from retail customers, and any resulting over- or under-collection will be recorded on each of the Companies' books. According to the Companies, these calculations will be done separately by Company and by customer class. Each quarter, the cumulative over- or under-collection recorded on the Companies' books will be used to compute a new reconciliation charge, or "E" factor. The "E" factor will be calculated to refund or recover, as appropriate, the net over-or under-collection per customer class, including carrying charges, on a per-kWh basis, over the prospective three-month rate application period. Carrying charges will be calculated at the interest rates specified in the default service regulations. *Id.*

The Companies further explained that the basic default service charges for the Residential and Commercial Classes will be adjusted on a quarterly basis. This will require the Companies to make quarterly compliance filings with the Commission in order to have their proposed retail rates approved for billing purposes. The new

generation rates would include the latest “E” factor adjustment for each Company. As a result, default service rates would change four times per year. Companies St. 1 at 21-22.

b. Positions of the Parties

The OCA recommended that costs and revenues under the PTC Rider continue to be reconciled on a quarterly basis, but that the net balance of each quarter’s reconciliation be collected or refunded over a prospective twelve-month period instead of a prospective three-month period. The OCA averred that refunding or recovering quarterly over- or under-collections over a prospective twelve-month period “should contribute to . . . rate smoothing and less volatility” for the “E” factor component of the PTC. OCA St. 1 at 49-50.

In response to the OCA’s proposal, the Companies opined that if a customer class has a tendency to under-collect more often than over-collect, or vice-versa, the reconciliation rate will tend to compound and continually grow as either a charge or credit. Therefore, the Companies explained that, rather than “smoothing” the “E” factor component, the OCA’s recommendation could instead increase the magnitude of each change and create more volatility. Companies St. 2-R at 15.

c. ALJ’s Recommendation

The ALJ recommended that the current reconciliation methodology for the PTC Rider consisting of quarterly reconciliations and quarterly rate adjustments should be maintained. The ALJ further recommended that the OCA’s proposal should be rejected because it contained three major flaws. First, she stated that the OCA assumed that the net balance from each quarter alternates between an over-collection and under-collection, with the potential to achieve some offsetting effects over time. The ALJ

stated that the OCA did not offer any empirical evidence to suggest that this assumption had any basis in fact. The ALJ found the Companies' argument compelling in this regard. R.D. at 81

Second, the ALJ submitted that the OCA's proposal failed to recognize the larger amount of interest an over-collection or under-collection will accrue if the balance is refunded or collected over twelve months instead of three. By extending the period during which interest accrues, the ALJ concluded that the OCA's proposal may, for that reason alone, add to the magnitude of each "E" factor change, not reduce it. R.D. at 82.

Third, the ALJ found that the OCA's proposal assumed that simply lengthening the reconciliation recovery period will produce less volatility in the default service generation rate. However, the ALJ also found that the OCA failed to consider the greater impact that increased levels of shopping would exert on the "E" factor if the OCA's recommendation were accepted.

Given these defects, the ALJ concluded that the OCA's recommendation would not achieve its stated purpose of "smoothing" the PTC and reducing "volatility" and, in fact, could promote the exact opposite effect. Accordingly, she found the Companies' quarterly reconciliation to be reasonable and consistent with the Code. R.D. at 82.

d. Exceptions to the Recommended Decision

In its Exceptions, the OCA states that the ALJ erred by not ordering the Companies to modify the PTC Rider reconciliation methodology. The OCA explains that it did not oppose the Companies' proposal to continue the practice of changing its PTC rate on a quarterly basis. However, the OCA maintains its position that an annual, rather than

quarterly, reconciliation period would be of benefit to consumers and would also create a more positive shopping atmosphere. The OCA states that its position is that a twelve - month reconciliation method would have the effect of smoothing out the PTC, as a longer time frame is being averaged out. According to the OCA, less volatility in the PTC should lead to greater consumer confidence in accepting EGSS's' offers that provide savings over a current PTC. The OCA notes that the suggested twelve-month reconciliation method is currently used in natural gas cost reconciliations for the major natural gas distribution utilities, and should be a relatively simple changeover for the Companies to adopt. OCA Exc. at 23-24.

The OCA further states that it agrees with the Companies that customer shopping can be expected to increase over time, particularly when compared to pre-2010 levels of shopping. The OCA further agrees that the ROI Program has the potential to provide a one-time jolt to residential shopping. The OCA submits that these expected increases in shopping are all the more reason why a twelve-month amortization is probably more appropriate and more consistent with rate stability. The OCA explains that if default loads shrink over time due to increased shopping, then amortizing a given deferred balance over a smaller three-month sales projection will result in a larger reconciliation charge or credit than using a twelve-month sales projection, even with the expected declining default service sales. Therefore, the OCA disagrees with the Companies that a three-month amortization period provides greater rate stability than a twelve-month amortization, and the Companies have not provided any evidence to support its proposal. OCA Exc. at 24-25.

The OCA submits that a longer reconciliation period would also serve to promote a more successful ROI Aggregation Program, as customers could be more

confident in accepting an EGS's offer due to the reduced volatility in the PTC. OCA Exc. at 25.

e. Disposition

Based upon review and analysis of the evidence of record, we agree with the ALJ's recommendation to adopt the Companies' proposal to use a three-month recovery or refund period. We concur with the Companies that the OCA's alleged PTC uncertainty and instability problem does not currently exist with the Companies' reconciliation of the PTC Rider. As noted by the Companies, after the effects of the initial ramp-up period of the PTC had played out, the Companies' E-factors have declined to relatively low and stable levels. We are concerned that the longer reconciliation period suggested by the OCA would cause customers to be subjected to increasing levels of interest charges, thus compounding and increasing the unrecovered balances that will disassociate market costs from rates and distort potential pricing signals to customers. Consequently, the OCA's proposal may result in inaccurate price signals that could distort customer shopping decisions because the actual default service cost will not be passed on to consumers in a timely manner. Accordingly, we shall deny the Exceptions of the OCA and adopt the recommendation of the ALJ to maintain the Companies' existing quarterly reconciliation procedure.

10. Potential Need for a Migration Rider

a. Positions of the Parties

The OSBA suggested that the Commission could eliminate the "E" factor from the PTC Rider and require the Companies to adopt a migration rider that would impose on customers an obligation, or grant them an entitlement, to the "E" factor

recoupment or refund balance for twelve months following their decision to switch to a competitive supplier. OSBA St. 1 at 25.

The Companies responded that a migration rider as suggested by the OSBA might become an appropriate remedy if, because of extensive shopping, the number of default service customers in a particular class became very low and, therefore, the reconciliation balance became disproportionately high relative to the customer base. However, the Companies submitted that this situation does not currently exist. Companies St. 2-R at 19.

RESA noted that a migration rider would create additional price distortions, not reduce variability as suggested by the OSBA. RESA St. at 7.

b. ALJ's Recommendation

The ALJ concluded that a migration rider is not needed at this time. She agreed with the Companies that it might become an appropriate remedy in the future, but that the situation the OSBA described is not currently the case. In addition, the ALJ concluded that instituting a migration rider would create additional, unnecessary EDC programming costs. She also noted that the migration rider may be confusing to customers, whose bills would display an EDC-imposed generation reconciliation charge potentially long after they switched to an EGS. R.D. at 87.

The ALJ observed that a migration rider along the lines that the OSBA proposed would recover or refund any “E” factor balance over a rolling twelve-month period. Therefore, the migration rider suffers from the same defects of the twelve-month collection/refunding reconciliation proposal offered by the OCA, *supra*. R.D. at 88.

c. Exceptions to the Recommended Decision

In its Exceptions, RESA states that while the ALJ correctly rejected proposed modifications to the Companies' reconciliation mechanism, the ALJ erred in concluding that a migration rider might become an appropriate remedy in the future if, because of extensive shopping, the number of default service customers in a particular class became very low and, therefore, the reconciliation balance became disproportionately high relative to the customer base. RESA argues that migration riders improperly assign default service related costs to customers who are no longer receiving default service from the Companies. RESA opines that this assignment of costs is contrary to the Commission's regulations and policy that all default service related costs must be reflected in the PTC. RESA also maintains that the ALJ's finding is premature as what may or may not become appropriate in the future cannot be known now and should not be prejudged here. RESA, therefore, requests that Finding of Fact No. 19 be rejected. RESA Exc. at 25.

d. Disposition

We concur with the ALJ that a migration rider is not warranted at this time. We also concur with RESA to the extent that the question of whether a migration rider may or may not be appropriate in the future cannot be determined from the record in this proceeding. Consequently, we will adopt the ALJ's recommendation to the extent it applies to the utilization of a migration rider in the Companies' DSP and reject any findings regarding the application of a migration rider in future DSP filings. Accordingly, we expressly reject Finding of Fact No. 19 on page 5 of the Recommended Decision as proposed by RESA, and grant their Exceptions.

C. Market Enhancement Programs

1. Small Commercial and Industrial Customer Participation in the Market Enhancement Programs

a. Companies' Proposal

The Companies proposed to implement a ROI Aggregation Program and a Standard Offer Referral Program (Market Enhancement Programs) for residential customers. The Companies proposed to exclude small commercial customers because of their widely varying business usage patterns and the fact that they do not have rate schedules dedicated solely to a small commercial customer segment. Companies St. 7 at 23-25.

b. Positions of the Parties

RESA recommended that small business customers, those with loads of up to 25 kW or, in the alternative, customers in the smallest commercial rate class, should also be eligible to participate in the Market Enhancement Programs. RESA St. 2 at 15-17.

The Companies opposed RESA's recommendation. The Companies explained that customers in either of the loosely-defined categories suggested by RESA have widely-varying usage patterns that make it very difficult to create homogeneous tranches for bidding purposes. In addition, the Companies submit that some of the largest companies in the nation can be considered small commercial customers if electrical usage at individual service locations is a defining criterion. Companies St. 7R at 19.

c. ALJ's Recommendation

The ALJ recommended that RESA's proposal be rejected. The ALJ found that the Commission previously considered this issue and decided not to include small commercial customers in retail opt-in programs. The ALJ cited the *IWPF Order* where the Commission stated:

The Commission recognizes the lack of shopping in the small C&I segment and, as such, requested comments on the inclusion of these customers in the Retail Opt-in Auctions. Parties were almost equally split between including and excluding small C&I customers. While the Commission agrees that shopping can be improved in this segment, it maintains its original proposal that small C&I customers should not be eligible to participate. Because there is no consistency across the EDCs in defining "small commercial," the Commission believes it would be inappropriate to include a segment of customers that may reflect a wide variation in electric load. The definitions vary across EDCs and, as such, do not produce comparable groups of customers when reviewing shopping offers and statistics.

IWPF Order at 42. The ALJ concluded that deviation from the Commission's *IWPF Order* was not justified. R.D. at 93-94.

d. Exceptions to the Recommended Decision

In its Exceptions, RESA avers that the ALJ erred in recommending that small commercial customers should be precluded from participating in the Companies' Market Enhancement Programs. RESA opines that the ALJ applied incorrect reasoning in determining that the Commission decided not to include small business customers in these programs. RESA submits that this conclusion ignores the fact that the Commission

looked at shopping statistics on a state-wide basis²⁴ and not the special circumstances presented by the very low levels of shopping in the Companies' service territories or the specific issue of limiting this customer class to the 25kW breakpoint established in the Commission's regulations regarding consumer protection. RESA Exc. at 29.

RESA also submits that the ALJ ignored the other evidence presented in this proceeding to justify inclusion of the small commercial customers in the Market Enhancement Programs. RESA avers that small business customers add to the potential value for EGSs and to the ROI Auction viability. RESA opines that the auctions will likely be more successful and improved with this group included since to date, there has been a very low shopping experience in the FirstEnergy territories for small business customers to date. According to RESA, small business customers exhibit many of the same characteristics as residential customers when it comes to their familiarity with competitive electricity markets and possible unfounded concerns about the effects of switching away from the EDC. Finally, RESA states that it should be administratively easy to include small business customers since the EDC already must take steps to identify the customer's load characteristics in order to place them on the correct rate schedule. RESA notes that the details of the auction as applied to small business customers could easily be determined in a stakeholder process. RESA Exc. at 29-30.

e. Disposition

Based upon our review and analysis of the evidence of record, we are persuaded by the arguments of RESA that the Companies' Market Enhancement Programs should include small commercial customers as defined by RESA. While we recognize that this decision deviates from our conclusions within our recent *IWPF Order*, we find that RESA's position with regard to the relatively low levels of current shopping

²⁴ *DSP Recommendations Order* at 32-33.

in the Companies' service territories is compelling. In particular, the record indicates that over half of the small commercial customers in the Companies' service territories are not participating in the competitive market and the reasons for these customers not shopping are similar to those for residential customers.

We conclude that adopting RESA's proposal to include small commercial customers in the Market Enhancement Programs will further the objectives of the Competition Act by inducing more customers to shop and ultimately reduce the costs of electric generation. Therefore, we shall adopt RESA's Exceptions by directing the Companies to include commercial customers in the Market Enhancement Programs and reject the ALJ's recommendation.

2. Shopping Customer Participation in the Market Enhancement Programs

a. Companies' Proposal

The Companies proposed that all residential customers would be eligible to participate in the Market Enhancement Programs, including those already shopping. The Companies stated that although customers that are already shopping are not the target for participation, they will be eligible to participate if they so choose. The Companies averred that it would be administratively difficult to attempt to make shopping customers ineligible. Companies St. 7 at 23-24.

b. Positions of the Parties

RESA recommended that customers who are already shopping should be barred from participating in the Market Enhancement Programs. RESA averred that the

purpose of these programs is to try a new approach to reach those default service customers who have failed to take advantage of EGS offers. RESA argued that it makes no sense to permit a customer who is already participating in the competitive market to participate in the Market Enhancement Programs. RESA St. 2 at 14-15.

c. ALJ's Recommendation

The ALJ noted that the Commission previously considered recommendations like RESA's as reflected in the following guidance on the ROI Auctions contained in the *IWPF Order*:

While the Commission agrees with those parties who state that the intent of a Retail Opt-in Auction is to encourage shopping by those customers who, for whatever reason, have shown an aversion to shopping, it disagrees with the parties who believe customers that are currently shopping should be deemed ineligible for such auctions. The Commission maintains its original position that Retail Opt-in Auctions should be open to both residential default service and residential shopping customers. The Commission agrees with those parties that expressed discomfort in the possibility of EDCs rejecting shopping customer participation. The Commission believes that would cast a shadow over the auctions and appear to be discriminatory against those who have already entered into the retail electric market. Additionally, the Commission believes this will prevent shopping customers from returning to default service in order to participate, which may result in cancelled contracts and the imposition of early termination fees/penalties.

However, to ensure the focus of this competitive enhancement is on those customers who have not shopped, the Commission will also maintain its original position that all marketing, notifications and consumer education efforts for Retail Opt-in Auctions should be targeted to non-shopping, residential, default service customers. As such,

although a shopping customer may become aware of the Retail Opt-In Auction and request participation, the auction materials themselves will be directed toward the non-shopping segment of the residential sector.

Intermediate Work Plan Final Order at 42. R.D. at 97-98.

The ALJ found the Companies' proposal to be in accordance with the Commission's *IWPF Order* because the Companies have represented that their marketing, notifications and customer education efforts will only be targeted at non-shopping residential customers, even though all residential customers would be eligible to participate in the ROI Aggregation Program. Therefore, she recommended that shopping customers be permitted to participate in the Market Enhancement Programs, but recommended that the Companies should not target their marketing efforts to shopping customers. R.D. at 96.

d. Exceptions to the Recommended Decision

In its Exceptions, RESA avers that the ALJ ignored the record evidence in this proceeding supporting RESA's proposal. RESA argues that competition is too meager and the market is too fragile in these territories to allow inclusion of shopping customers. RESA notes that the most recent statistics from the Commission show that the Companies' service territories continue to lag other areas around the Commonwealth.²⁵ RESA Exc. at 27-28.

²⁵ According to the June 20, 2012 PaPowerSwitch Switching Statistics, the combined average number of residential shopping customers for the four FirstEnergy EDCs (23.1%) is below the total average for Duquesne, PECO and PPL (34.5%) and below the total statewide average (29.4%). West Penn Power has the second smallest amount of residential shopping customers (19.2%) of all the EDCs in the Commonwealth. See, <http://www.papowerswitch.com>.

RESA reiterates that customers who are receiving service from a competitive supplier are already experiencing the benefits of the competitive market. RESA maintains that the ALJ recommendation ignores the record evidence demonstrating the potential negative impacts to EGSs that are already serving these customers, the negative impact to customers who may have agreed to early cancellation fees, and the possibility of customers switching back and forth to essentially gain permanent discounts. According to RESA, the current status of competition in the Companies' service territories, in addition to the record evidence presented in this proceeding, justify RESA's recommended deviation from the *IWPF Order* to preclude shopping customers from participating in the retail opt-in auction. RESA Exc. at 28-29.

e. Disposition

While we understand RESA's concerns over the potential migration of shopping customers to the Market Enhancement Programs, we are not convinced that we should deviate from our positions on this issue expressed in the *IWPF Order*. As we stated in the *IWPF Order*, the possibility of EDCs rejecting shopping customer participation in the ROI Aggregation Program would cast a shadow over this program and would appear to be discriminatory against those customers who have already entered into the competitive retail electric market. Additionally, the Commission believes this will prevent shopping customers from returning to default service in order to participate, which may result in cancelled contracts and the imposition of early termination fees/penalties. Accordingly, we shall reject the Exceptions of RESA and adopt the ALJ's recommendation.

3. Timing of the Retail Opt-In Customer Solicitation and EGS Auction

The Companies proposed that the product to be offered through the ROI Aggregation Program be procured through an auction. Under the Companies' proposal, the Companies planned to conduct a ROI Auction after their proposed January 2013 default service supply procurement, but not later than March 2013. Companies St. 7 at 25. Under the Companies' proposal, after the ROI Auction has been conducted and the results approved by the Commission, each Company will notify its residential customers of the ROI Aggregation Program by means of a first-class direct mailing containing the terms and conditions necessary for a customer to make an informed decision. Companies St. 7-R at 28.

Constellation, Dominion and RESA recommended that the ROI Auction be held after customer enrollment so that the total number of participating customers will be known before EGSSs bid in the auction. The ALJ recommended that we adopt the Companies' proposal to conduct the ROI Auction before customers are invited to participate because, *inter alia*, customers cannot reasonably be expected to shop without knowing the price and terms of the product they hope to buy. R.D. at 97-98. Dominion excepted to the ALJ's recommendation. Dominion Exc. at 6.

Although we agree with the ALJ that customers need sufficient pricing information to make an informed decision to participate in the ROI Aggregation Program, the issue of the timing of the ROI Auction is now moot. As discussed, *infra*, we have modified the Companies' proposal by eliminating the proposed ROI Auction. Instead, we are directing the Companies to implement an ROI Aggregation Program, consisting of a one-year product of comprised of five percent off the PTC at the time of enrollment for four months, a fixed price for the remaining eight months and inclusion of

a fifty dollar bonus, to be paid at the conclusion of the initial four-month period.²⁶ Consequently, there is no need for a DCA to be run in order to solicit EGS participation in the ROI Program.

Because the ROI Auction, as proposed by the Companies has been rejected, the corresponding customer notification and opt-in enrollment procedures will have to be modified. Therefore, within sixty days of the entry of this Opinion and Order, the Companies, in consultation with the EGSs, shall update their proposals for customer notification, opt-in enrollment and customer assignment to coordinate with this revised ROI Program design, *infra*.

4. ROI Aggregation Program Customer Participation Cap

a. Companies' Proposal

As initially proposed, the Companies' ROI Aggregation Program did not include any customer participation cap. Companies St. 7 at 24. However, after reviewing the *IWPF Order*, the Companies revised their proposal to limit customer participation to fifty percent of each Company's default service residential customer base as of the date of the ROI Auction. According to the Companies, the customer participation cap would be implemented by limiting the number of customers each winning EGS can enroll to fifty percent of the customers included in the tranches that they win in the ROI Auction. Specifically, for each 10,000 customer tranche an EGS wins in the auction, the EGS would be entitled to enroll 5,000 customers. Companies St. 7-R at 29.

²⁶ Although we have modified the ROI Aggregation Program, the implementation period proposed by the Companies' shall remain unchanged (June 2013 through May 2014).

b. Positions of the Parties

The Companies' proposed fifty percent customer participation cap is supported by RESA, RESA St. 2-SR at 14, Dominion, Dominion St. 1-SR at 4, and Constellation, Constellation St. 1 at 32.

The OCA recommended that the Companies limit customer participation to twenty percent of their residential customers. The OCA argued that the larger potential pool of ROI Program customers will contribute to uncertainty in the default service auctions which will increase the risk premium and increase the price for default service. OCA St. 2 at 11.

In response to the OCA's proposal, the Companies averred that reducing the participation cap to twenty percent could result in customer dissatisfaction and a negative view of shopping if significant numbers of residential customers are turned away from participating in the ROI Program. Companies St. 7-R at 29.

c. ALJ's Recommendation

The ALJ found that the Companies' proposal to limit customer participation to fifty percent of each EDC's default service customer base is in compliance with the Commission guidelines in the *IWPF Order*, wherein the Commission stated:

While the Commission understands those parties' comments suggesting that the cap be lower than 50% in order to provide more meaningful certainty to the EGSSs, the Commission does not want to impose a limit that may lead to the rejection of

customers wishing to participate in the Retail Opt-in Auctions. However, the Commission believes that a lack of a cap would provide no estimate of customer participation to both wholesale and retail suppliers. We believe the 50% cap provides both a large customer participation pool, while providing some level of certainty to those EGSSs opting to participate in the Retail Opt-in Auctions.

* * *

We also disagree with the parties who stated that the customer participation cap may deter EGSSs from participating in the Retail Opt-in Auctions. The Commission believes the 50% cap provides a large number of customers to be served by the EGSSs in the auctions while still providing those same EGSSs with some certainty as to the maximum number of customers they are expected to serve.

Intermediate Work Plan Final Order at 59-60. The ALJ noted that the OCA's proposal may be detrimental to the balance the supplier load cap is intended to achieve. R.D at 102-104.

d. Exceptions to the Recommended Decision

In its Exceptions, the OCA avers that the ALJ erred by not adopting its recommended twenty percent customer participation cap for the Companies' ROI Aggregation Program. The OCA explains that its concern with the proposed fifty percent cap is that a larger pool of potential ROI Aggregation Program enrollees will directly contribute to uncertainty for Full Requirement Suppliers (FRSs) bidding in the Companies' default service procurement auctions that will take place prior to the ROI Aggregation Program. The OCA avers that such uncertainty will likely increase the level of risk premiums that such FRSs will include in their default service bids, and thus the price paid by default service customers will be higher than is reasonably necessary. The OCA submits that FRSs are subject to a much higher degree of risk if shortly after they

bid and win the right to supply a portion of the default load, up to fifty percent of the customers they bid on could very quickly leave for the ROI Aggregation Program. The OCA states that its proposal is meant to curb this risk, while at the same time ensuring a successful program for all stakeholders. OCA Exc. at 26-27.

In its Reply Exceptions, FES states that the ALJ correctly rejected the OCA's proposed twenty percent limit. FES argues that the impact of a larger customer pool of ROI Program participants on the default service procurements is overstated. FES R. Exc. at 24.

e. Disposition

We are not persuaded by the arguments of the OCA that we should deviate from the position set forth in the *IWPF Order*. We continue to believe that the fifty percent cap provides both a large customer participation pool, while providing some level of certainty to those EGSs opting to participate in the ROI Aggregation Program. Moreover, we don't want to unduly place a constraint that may hamper the success of the ROI Aggregation Program. Accordingly, we shall adopt the recommendation of the ALJ and deny the Exceptions of the OCA.

5. Supplier Participation Load Cap

a. Companies' Proposal

Initially, the Companies' proposed ROI Aggregation Programs did not include a supplier participation load cap. However, after reviewing the *IWPF Order*, the Companies modified their proposals to provide that no EGS would be able to win more

than fifty percent of the available tranches in the ROI Aggregation Program. Companies' St. 7-R at 30.

b. Positions of the Parties

Dominion recommended a supplier participation load cap be imposed that would not allow an EGS to win more than twenty-five percent of the auction load. Dominion St. 1 at 7.

RESA recommended that the ROI Auction include, in addition to the Companies' proposed load cap, a requirement of at least four winning bidders. RESA opined that this requirement would "help EGSs that otherwise might not be able to participate in the market to do so" and, thus, provide winning bidders "a critical mass of customers in a service territory." RESA St. 2-SR at 14-15.

c. ALJ's Recommendation

The ALJ recommended the adoption of the Companies' proposal and the rejection of Dominion's and RESA's proposals. The ALJ concluded that a twenty-five percent load cap would skew the balance the Commission tried to achieve and create an unacceptable risk that the ROI Aggregation Program would produce prices too high to be justified by the modest additional "diversity" that a twenty-five percent cap might produce. The ALJ further found that, because the goal of the ROI Aggregation Program is to induce greater customer interest in shopping, achieving the lowest prices is important to the success of the program. R.D. at 103-104.

The ALJ found that RESA had not furnished good cause, supported by substantial evidence, to depart from the Commission's guidance within the *IWPF Order*

which implicitly disfavored requirements for a minimum number of winners like the one RESA recommended. She also concluded that, if RESA intended the four-winning-bidders requirement to mean that each winner should have an equal or near-equal portion of the ROI load, then that recommendation is simply a twenty-five percent load cap under a different name. R.D. at 103-104.

d. Exceptions to the Recommended Decision

In its Exceptions, RESA states that the ALJ erred in rejecting RESA's proposed minimum requirement of at least four winning bidders for each auction. RESA avers that the ALJ's reasoning is incorrect because in the *IWPF Order*, the Commission specifically directed that the issue of a minimum number of bidders be determined in each default service proceeding.²⁷ RESA asserts that the ALJ's conclusion that this issue has already been addressed is simply wrong. RESA Exc. at 34-35.

Additionally, RESA asserts that its proposal is not a twenty-five percent cap in disguise. RESA submits that there may "be an infinite number of combinations" whereby four winning suppliers could have varying portions of the load up to fifty percent. RESA states that the purpose of requiring a minimum number of winners is to promote supplier diversity, which will enable a variety of suppliers to bring their own "individual strengths and business models" to the auction for the benefit of retail end users. RESA opines that depending on the EGS, even a ten percent share of the load could be considered a significant market share for that EGS. RESA Exc. at 34-35.

²⁷ *IWPF Order* at 64.

e. Disposition

Consistent with our recent conclusions within our *IWPF Order*, we shall adopt the recommendation of the ALJ and reject RESA's Exceptions. We continue to believe that a fifty percent cap strikes the appropriate balance between diversity of EGS participation and competitive supply pricing.

6. Retail Opt-In Discount from the Price to Compare

a. Companies' Proposal

The Companies aver that the revised ROI Aggregation Program is in substantially the form outlined in the *IWPF Order*. Under the Companies' proposed ROI Aggregation Program, EGSs would bid in an ROI Auction to provide competitive retail service that is at least five percent below the applicable PTC on the date of the ROI Auction. Winning bidders would be required to provide service under the terms of an Opt-In Aggregation Agreement beginning with the customers' June 2013 meter reading and ending with the customers' May 2014 meter reading. Companies M.B. at 92; Exh. CVF-10.

b. The OCA's Recommendation

The OCA recommended that instead of a fixed rate based on five percent below the PTC at the time of the ROI Auction, this program should offer a guaranteed percent off the PTC for the one-year duration of the ROI contract term. The OCA was concerned that ROI Aggregation Program participants could be harmed if the PTC were to fall during the twelve-month term and the rate under the ROI Program was higher than the PTC. The OCA submitted that its proposal would provide a strong incentive for

customers to both sign up for default service and not migrate back to default service. OCA M.B. at 72-75.

c. ALJ's Recommendation

The ALJ recommended that the Companies' revised proposal be adopted. The ALJ noted that the OCA previously made similar arguments before the Commission, and the Commission rejected these arguments as reflected in the following portion of the *IWPF Order*:

While the Commission understands that a percent-off the default PTC may be attractive from a customer's perspective because it guarantees that the price he or she is paying will never exceed the utility default price, we agree with Direct Energy that this is an unrealistic expectation from the supplier's perspective. As Direct Energy points out, the utility's default service rate is not fully reflective of the market because it is also impacted by the reconciliation process. Predicting market prices in advance is always challenging; we think that adding to this the vagaries of the reconciliation process is asking too much. This same problem afflicts FES and OCA's suggested model of adjusting an otherwise fixed price down to match or beat the default service rate. As such, we think a fixed-price product is the most reasonable monthly pricing option

IWPF Order at 70; R.D. at 105-106.

d. Exceptions to the Recommended Decision

In its Exceptions, the OCA argues, *inter alia*, that the *IWPF Order* at 69 provided a vision of the ROI product as something "unique and eye-catching, and as customer-friendly as possible." The OCA argues that the Companies' proposal as adopted by the ALJ fails to capture this vision. OCA Exc. at 30-31.

Dominion, RESA and WGES support the ALJ's recommendation. Dominion avers that if block and spot procurements are not included in the default service auctions, then the volatility of the PTC is less likely. Dominion also avers that the Companies' proposal should attract many suppliers to participate in the ROI Program and the actual discount may exceed five percent, which would decrease the likelihood that the PTC will be below the discounted ROI rate. Dominion submits that customers will receive the benefit of a fixed-price product and they are free to switch back to default service if the PTC does fall below the ROI rate. Dominion R. Exc. at 5-6.

RESA states that requiring EGSs to commit to a long-term discount price without knowing how the PTC may change during the four quarters of the program year may discourage EGS participation and could lead to an unsuccessful program. RESA avers that there is nothing wrong with providing introductory discounts which are common in other markets, such as wireless telephone and cable television. RESA R. Exc. at 10-12.

e. Disposition

Upon further review of the *IWPF Order*, as well as the Recommended Decision, Exceptions and Reply Exceptions in this proceeding, we find that the ALJ's recommendation to adopt the Companies' revised proposal should be rejected. Instead, we direct the Companies to develop a twelve-month ROI product, comprised of a fifty dollar bonus (addressed, *infra*), a four-month guaranteed five percent discount off of the PTC at the time of enrollment, and an EGS-provided fixed-price product for the

remaining eight months.²⁸ In order to receive the bonus, customers must remain in the ROI Program for at least the initial four-month period.²⁹ So that we can fully evaluate the terms of this program, we will require that participating EGSs provide to the Commission for review and approval, the terms and conditions of the eight-month ROI fixed-price offering. With these improvements, we believe this product offering will be attractive enough to garner EGS support and, more importantly, customer participation in the ROI Program.

7. Bonus Payments

a. Companies' Proposal

The Companies opposed the use of a bonus for the ROI Aggregation Program for three primary reasons. First, the Companies argue that the Commission's view that a "bonus" of fifty dollars is an "attractive unique feature" is not supported by the reality of the competitive market, where the payment of "bonuses" of fifty dollars or more is commonplace. Companies St. 7-R, at 31-32. Second, the product the Companies propose, namely, a fixed-price for a full twelve-month term, is different from products already being offered because, *inter alia*, it avoids what customers perceive to be "gimmicks" that come with a "catch," like an up-front "bonus." *Id.* Third, the

²⁸ We note that this proposal closely mirrors RESA's recommendation for the Standard Offer Program addressed in its Exceptions that the Commission adopt a standard offer term of four months at seven percent off the PTC at the time of the offer, with a requirement that the EGS provide a fixed price for the remaining eight months. *See, RESA Exceptions at 42.*

²⁹ Consistent with the Companies' original proposal, customers may leave the ROI Aggregation Program at any time during the twelve-month term by contracting with a different EGS or returning to default service. Customers that leave the ROI Aggregation Program will not be charged an early termination fee and will not be able to return to the Program.

Companies argue that the payment of a “bonus” is not consistent with the goal of ROI Aggregation Program to create a rewarding shopping experience for participating customers and, in that way, assure them that participating in the competitive market provides long-term benefits and does not contain traps for the unwary that could cause them to pay more than they would for default service. Companies’ St. 7-R at 33-34.

The Companies further explained that, requiring a “bonus” in addition to a price below the PTC at the time of the ROI Auction would create an unacceptable risk of attracting bidders who plan to use the opt-in product as a “loss leader” in order to take advantage of a perceived status quo bias so that they can charge above-market prices after the initial service period expires. *Id.* The Companies submit, if that were to occur, then it can reasonably be expected that customers will eventually, figure out that they are paying more than the competitive market price for power. The Companies argued that as a result, the ROI Aggregation Program would not only fail to achieve its goal of encouraging customers to participate in the competitive market, but could confirm pre-existing misperceptions that shopping poses an unacceptable risk that customer could pay more than the PTC. *Id.*

b. Positions of the Parties

RESA proposed the use of a fixed pre-determined signing bonus amount to be determined by the Commission in consultation with EGSSs, the EDC and a market consultant, with the goal of trying to make the ROI Aggregation Program as successful as possible in terms of overall value delivered to customers. RESA further proposed that customers should be required to stay with the selected EGS for at least three months before the bonus is paid. RESA St. 2 at 20.

c. ALJ’s Recommendation

The ALJ agreed with the Companies’ concerns and found the Companies’ testimony to be credible that the current market conditions show that a fifty dollar bonus plus a fixed price of at least five percent below the PTC is likely to be merely a “loss leader” and not a sustainable price. She also was persuaded by the Companies’ contention that if customers have an unsatisfying experience in the ROI Aggregation Program because they believe they were enticed to participate by short-term “gimmicks” that they perceive as a form of “bait and switch,” the EDCs’ reputations may be tarnished because of their involvement in the process that selected EGSSs to participate in the program. R.D. at 107-108. Therefore, the ALJ recommended that the Commission find that the Companies’ decision to exclude a “bonus” provision from their ROI Aggregation Program is a justifiable departure from the Commission’s guidance regarding bonus offerings. *IWPF Order* at 6-7; R.D. at 108.

d. Exceptions to the Recommended Decision

In its Exceptions, RESA avers that the ALJ erroneously recommended adopting the Companies’ proposal not to require any bonus payments to customers participating in the ROI Aggregation Program even though the Commission’s guidance in the *IWPF Order* at 70 is that a fifty dollar bonus payment should be required. According to RESA, the ALJ’s decision to disregard the Commission’s Order as “a guideline” should be rejected. RESA submits that the ALJ ignored substantial evidence set forth in the record showing that a bonus is necessary if the ROI Aggregation Program has any hope of being successful. RESA maintains that potential customer focus groups research revealed that customers generally want to receive an upfront “signing bonus” as an inducement for participating in an opt-in program. RESA Exc. at 35-36.

Finally, RESA asserts that the ALJ improperly disregarded the documented flaws with the Companies' analysis. RESA submits that one of the attractive features of an opt-in program to retail suppliers will be that they will not have to make the same type of investment to acquire an opt-in customer as they do to win a customer on a one-by-one basis. Therefore, RESA avers that the EGS should be able to not only offer a rate at least five percent below the shopping credit for the six or twelve month term, but to also offer the bonus without needing to resort to imposing non-market based price hikes on customers in subsequent periods. RESA Exc. at 37.

e. Disposition

We shall grant RESA's Exceptions and require the Companies to implement a fifty dollar bonus. Consistent with our recent conclusions within our *IWPF Order* at 70, we believe that without an attractive unique feature, the ROI Aggregation Program customer offers will look too similar to routine supplier offers that the targeted customers have already ignored. We also continue to believe that a bonus payment of fifty dollars is a reasonable incentive and should be large enough to attract customers' attention. However, in order to receive the bonus, customers must remain in the ROI Program for at least the initial four month period. Accordingly, the ALJ's recommendation is rejected.

8. ROI Aggregation Agreement, Customer Contracts and Disclosure Statements

a. Companies' Proposal

Under the Companies' proposed ROI Aggregation Program, winning bidders in the ROI Auction would be required to enter into an Opt-In Aggregation Agreement. Companies' Ex. CVF-10. Appendix B to that agreement is the Consumer

Contract and Disclosure Statement that the winning EGSs would enter into with the customers they serve under the program.

b. Positions of the Parties

RESA was the only party that took issue with the Companies' proposed Opt-In Aggregation Agreement and Consumer Contract and Disclosure Statement. RESA contended that requiring participating EGSs to enter into the Opt-In Aggregation Agreement and comply with the Consumer Contract and Disclosure Statement would be an unnecessary intrusion upon the competitive market. RESA Sts. 2 at 24-25 and 2-SR at 10-12.

The Companies responded that the competitive selection of EGS opt-in service providers is based on the lowest fixed price. Therefore, the Companies aver that uniform terms and conditions of service are essential so that the ROI Auction can focus on price competition alone. Companies St. 7-R at 35-36.

RESA responded that it does not object to uniform terms and conditions, but does object to using a specific ROI Aggregation Agreement drafted by the Companies, as the basis for the contractual relationship between the EGS and the customer. RESA further asserted that each EGS has its own disclosure statement which must have material terms and conditions that conform to the Commission's *IWPF Order* and Pennsylvania rules for such documents. RESA averred that the Companies should have no role in this process. RESA St. 2-SR at 10-11.

c. ALJ's Recommendation

The ALJ concurred with the Companies that “the competitive selection of EGS opt-in service providers based on the lowest fixed price, which the Commission recommends and the Companies have proposed, requires that the Companies establish common terms and conditions of service so that the Retail Opt-In Auction can focus on price competition alone.” Consequently, she found that the uniform terms and conditions are essential. The ALJ also noted that no Party has objected to the terms and conditions set forth in the form agreement submitted by the Companies. Accordingly, the ALJ recommended that the Commission adopt the Companies’ proposal to require all winning EGSSs to sign its Opt-In Aggregation Agreement which includes a Consumer Contract and Disclosure Statement that the winning EGSSs would be required to enter into with the auction customers. R.D. at 108-109.

d. Exceptions to the Recommended Decision

In its Exceptions, RESA states that the ALJ erred by requiring participating EGSSs to enter into the Opt-In Aggregation Agreement and utilize a Customer Contract and Disclosure Statement with their customers. According to RESA, the ALJ ignored or rejected important RESA evidence that demonstrated that the relationship between an EGS and an EDC is already governed by existing agreements such as the supplier tariff and the billing services agreement. RESA maintains that any additional agreements may conflict with or dilute the clarity of the agreements under which EGSSs and EDCs are currently doing business. RESA Exc. at 38.

RESA maintains that the adoption of the ALJ’s recommendation would disrupt the current practice whereby an EGS uses its own Commission-approved disclosure statements to govern its relationship with its customers. RESA explains that,

unlike EGSs, the Companies' EDCs are not as familiar with, nor are they required to utilize, disclosure statements when enrolling new customers. RESA Exc. at 38-39.

e. Disposition

We are persuaded by the arguments of RESA not to require all winning EGSs to sign the Companies' proposed Opt-In Aggregation Agreement, which includes a Consumer Contract and Disclosure Statement. We concur with RESA that the relationship between an EGS and EDC is already governed by existing agreements. In addition, any EGS seeking to receive a license to operate in Pennsylvania is required, as a part of the application process, to submit a proposed form for its disclosure statement to the Commission for review. None of the other Pennsylvania EDCs have similar requirements and we believe the procedures for the Companies should not be handled any differently. Accordingly, we shall grant the Exceptions of RESA, and reject the ALJ's recommendation.

9. Customer Testing Prior to the Retail Opt-In Auctions

a. RESA's Recommendation

During the rebuttal stage of this proceeding, RESA proposed that the Commission direct a testing of the various methods of customer enrollment for the ROI Aggregation Program in a manner that will both inform the Commission's decision as to which methods are most effective and provide quantitative insight into likely levels of eventual customer enrollment in the auctions. RESA explained that the testing would materially improve the performance of the auction, while also providing wholesale suppliers with valuable information regarding likely auction participation. RESA M.B. at 73. RESA recommended that a testing method be designed and implemented by a special

“task force” that the Commission should form specifically for that purpose RESA St. 2-R at 13-14.

b. Companies’ Position

In response to RESA’s proposal, the Companies argued that there is not enough time to conduct the testing RESA proposed and to implement the ROI Aggregation Program by June 1, 2013, as the Commission has recommended in the *IWPF Order* at 46. The Companies submitted that the Final Order in this proceeding is scheduled to be issued in August 2012. As such, the Companies averred that there will only be about six months between the issuance of that Order and the ROI Auction, which must be conducted no later than March 2013, to support customer enrollment beginning in June 2013, as the Companies have proposed. The Companies estimated that if the pre-implementation testing, analysis and reporting that RESA’s proposal entails were conducted, a final Commission order selecting the preferred marketing channels would likely not be issued before June 2013, at the earliest. The Companies claimed that because the Companies would need approximately six months following the issuance of that Order to implement the program, power could not start to flow to ROI customers until January 2014, at the earliest and might not start until July 2014. Companies St. 7-SR at 3-4.

The Companies also argued that the testing method outlined by RESA would not provide meaningful information about the likely success of various approaches to marketing the ROI Aggregation Program because RESA proposed testing only a certain percentage of customers that sign up for an offer based on the marketing channel used. As such, the Companies submitted that this testing method would not assess customer responses at the appropriate point in time, namely, the end of the service period, when “testing” could determine the number of customers that either elected to return to

default service, selected an EGS other than the one that furnished opt-in service, or remained with their opt-in EGS after the opt-in contract term expired. Companies' St. 7-SR at 5.

c. ALJ's Recommendation

The ALJ concurred with the Companies that the Commission has agreed with their assessment that there is insufficient time to conduct such a "pilot" and that the results of any "pilot" are unlikely to have any value. The ALJ cited the *IWPF Order* at 47, wherein we found that pilot programs should not be implemented for the ROI Aggregation Program because constructing a pilot for a 2012 implementation date is burdensome given the condensed timeframe in which it will have to be developed. Therefore, the ALJ recommended that the Commission find in favor of the Companies on this issue. R.D. at 110-111.

d. Exceptions to the Recommended Decision

In its Exceptions, RESA asserts that the ALJ erred in recommending that testing not be conducted prior to the ROI Aggregation Program. RESA submits that in light of the ALJ's flawed recommendation to conduct the auction prior to enrollment, RESA's proposed pre-program survey should have been given more consideration as a way to both inform the Commission's decision as to which methods are most effective and provide quantitative insight into likely levels of eventual customer enrollment in the auctions. RESA opines that the testing would materially improve the performance of the auction and give EGSs some basis upon which to predict the level of customer participation they can expect. RESA argues that the ALJ's determination that "there is insufficient time" to conduct the survey overlooks the fact that it would be a simple and

easy way to address the sequencing issue to enhance the likelihood of success. RESA Exc. at 33-34.

e. Disposition

We are not convinced by the arguments of RESA that we should modify our findings in the *IWPF Order*. We continue to believe that conducting a pilot prior to the ROI Aggregation Program period beginning in June 2013 burdensome given the condensed timeframe within which it would have to be conducted. In the *IWPF Order*, we specifically addressed the recommendation that a pilot be limited to the (FirstEnergy) Companies and we concluded that a “rushed” pilot program was not warranted to incite shopping in these Companies’ territories prior to the full scale ROI Aggregation Program. *IWPF Order* at 47. Accordingly, we shall adopt the recommendation of the ALJ and deny the Exceptions of RESA on this issue.

10. Post-Retail Opt-In Program Rates

a. Companies’ Proposal

The Companies averred that their ROI Aggregation Program is consistent with the guidelines in the *IWPF Order* in terms of customer options at the end of the ROI Aggregation Program term and the notices customers must receive. The Companies explained that after receiving the required notices, if a customer does not affirmatively choose to receive service from a different EGS or elect default service, the customer will remain with the EGS that previously provided service under the ROI Aggregation Program. For customers that remain with the EGS that provided opt-in service, that EGS may set a different price at which it will offer service to those customers after furnishing the required notices. Companies’ St. 7 at 27.

b. Positions of the Parties

The OCA argued in this case that customers who choose to participate in the ROI Auction Program and do not affirmatively respond to the end-of-program notices should stay with their current EGS on a fixed-price, month-to-month product. OCA St. 2 at 11-12.

c. ALJ's Recommendation

The ALJ found that the Companies' proposal was in compliance with 52 Pa. Code § 54.5(g) (relating to disclosure statements) and that the Companies' proposed ROI Aggregation Program is consistent with the Commission's guidelines in terms of customer options upon expiration of their opt-in contract and the notices they will be provided. The ALJ based this conclusion on our guidelines as provided in the *IWPF Order* at 73-74. She stated that for the most part, this aspect of the Companies' program was not controversial. R.D. at 92 and 112.

d. Exceptions to the Recommended Decision

In its Exceptions, the OCA avers that the ALJ erred by not clarifying that non-responding ROI Aggregation Program customers must be given a fixed-price product at the end of the initial program term. The OCA submits that the ALJ does not provide the level of clarity on this important issue that is required, as perhaps the OCA's argument on this point was overlooked. According to the OCA, it argued in this case that customers who choose to participate in the ROI Auction Program and do not affirmatively respond to the end-of-program notices would stay with their current EGS on a fixed-price, month-to-month product. The OCA submits that this month-to-month product should be fixed-price, and not a variable priced product that is inherently subject

to substantial variations. Consistent with the OCA's proposal, at the end of the ROI Aggregation Program period customers should not be placed on a variable price rate by their EGS unless the customer affirmatively chooses such a rate. OCA Exc. at 31-32.

e. Disposition

We are not inclined to adopt the OCA's recommendation that ROI customers remain on a fixed rate if they make no election following the expiration of the ROI Program. A fixed price may not be fair to either the customer or the EGS if market prices change significantly and the fixed rate is significantly above or below market rates. Furthermore, we find that placing customers on a variable rate is not unreasonable since customers are free to leave the EGS at any time without penalty. Accordingly, we shall adopt the recommendation of the ALJ and deny the OCA's Exception on this issue.

11. Structure of the Retail Opt-In Auction

a. Companies' Proposal

The Companies proposed to conduct the ROI Auction using a DCA process similar to the one that will be used to procure default service supply. The price being bid will be a fixed price, with the price starting in round one of bidding at five percent below the applicable PTC at the time of the auction, and with the price decreasing round-by-round until the auction closes with the winning bids being the lowest-price. The Companies averred that their ROI Auction DCA is designed to provide a fair, transparent competitive bidding process that will facilitate the submission of the lowest-price bids for all the Companies. Companies M.B. at 116.

b. Positions of the Parties

Dominion, RESA and the OCA contended that a sealed-bid RFP could obtain equally competitive prices, would cost less to conduct and would be less complicated. Dominion St. 1 at 8; RESA St. 2 at 23; OCA St. 1 at 16.

The Companies responded to the recommendations for a sealed bid RFP by arguing that a sealed bid is not necessarily less expensive than a DCA because many of the most substantial costs to procure products for regulated utilities (*e.g.*, marketing and promotion of the procurement, educating and qualifying bidders, responding to bidder requests for information) are largely independent of the bidding format. The Companies also argue that a sealed-bid RFP would make it difficult for bidders to formulate their best bids because, without the ability to re-bid in response to different sets of prices, they would be forced to submit bids on each product not knowing what they are committing to or what they may win with respect to other products. The Companies also noted that Dominion and RESA did not consider any of the benefits that will accrue from using the DCA to procure multiple products across four different Companies, including an active, real-time “price discovery” process that ensures the lowest prices and avoids possible large disparities in prices among Companies that could occur if a sealed bid RFP were used. Companies M.B. at 117-118.

c. ALJ’s Recommendation

The ALJ recommended that the Commission approve the Companies’ use of a DCA for the ROI Auction because there was no quantifiable evidence to support a finding that a sealed-bid RFP process would constitute a substantial amount of savings in comparison to the DCA. R.D. at 115.

d. Exceptions to the Recommended Decision

Dominion avers that the ALJ erred in recommending a DCA for the ROI procurement on the basis that there was no quantifiable evidence to support the sealed bid auction. Dominion argues that the Companies have the burden of proving that their proposed plan is in the public interest. Dominion Exc. at 4-6. The OCA adds that the Commission should accept the testimony of Dominion's witness regarding the sealed-bid RFP based on his first-hand experience with auctions of this type. OCA Exc. at 32.

FES supports the ALJ's recommendation noting that Dominion's witness offered no substantive support for the sealed-bid RFP over the DCA, much less evidence quantifying the costs of DCA. FES R. Exc. at 19-20.

e. Disposition

We direct the Companies to eliminate the ROI Auction. Instead, we direct the Companies to implement an ROI Aggregation Program consisting of a one-year product comprised of five percent off the PTC at the time of enrollment for four months, a fixed price for the remaining eight months and the inclusion of a fifty dollar bonus. As discussed, *supra*, we believe this product offering will be attractive enough to garner EGS support and, more importantly, customer participation in the ROI Program. With these modifications, there is no need for a DCA to be run in order to solicit EGS participation in the ROI Program. Conversely, because the ROI Product is essentially a "set" amount, there is no reason that an alternative mechanism to determine EGS participation cannot be used. As such, the ALJ's recommendation to adopt the Companies' proposal for a DCA is moot and will not be adopted.

12. Recovery of Market Enhancement Program Costs

a. Companies' Proposal

The Companies proposed that the costs of the ROI Aggregation Program and the Standard Offer Referral Program be recovered from all customers as a non-bypassable component of their DSS Riders. Companies' St. 7 at 27.

The Companies recognized that their proposal is not consistent with the *IWPF Order* where the Commission stated, "Having the participating EGSs pay for the auction implementation is a prudent way to recover the auction costs, given that the participating EGSs are the entities reaping the possible customer acquisition benefits resulting from the auction." *IWPF Order* at 78. The Companies averred that they have presented substantial evidence demonstrating that there is good cause to justify deviating from the Commission's recommendation because attempting to recover the Market Enhancement costs from "participating EGSs" presents at least three significant risks of which the Commission was not aware and did not consider before issuing the *IWPF Order*. First, the Companies state that there is a risk that the EDCs' costs will not be recovered if no EGSs elect to participate in the programs. Second, the Companies submit that there is increased risk that assigning cost responsibility to participating EGSs could make them decide not to participate in the programs at all. Third, the Companies averred that there is the risk that the Commission's recommended approach is likely to make the Market Enhancement Programs far less attractive to residential customers because either the market clearing price received in the auction may not be favorable or the only EGSs that participate will be those that plan on leveraging a perceived status quo bias in order to charge above-market prices after the initial service period. The Companies argued that if the Commission wants the Market Enhancement Programs to be successful, the

Companies should collect the cost of the auction from all residential customers through the DSS Riders, as they have proposed in this filing. Companies M.B. at 118-119, 127.

b. Positions of the Parties

The OCA opposed the Companies' proposal and argued that the costs of implementing the Market Enhancement Programs should not be imposed on the EDC's residential distribution service customers. The OCA stated that these programs will provide substantial market share to the participating EGSSs without the EGS incurring any of the typical marketing and acquisition costs. Therefore, the OCA recommended that the winning EGS should pay for the incremental administrative costs to conduct the bidding, select the winning EGS and provide the necessary disclosures to customers. The OCA did agree that additional costs incurred by the EDCs' calling center to interact with customers during the customer opt-in process are properly allocated to the EDCs through the DSS Rider. OCA St. 2 at 12.

The OCA also supported the Companies' proposal for cost recovery in the event the Commission finds that costs for the Market Enhancement Programs are to be recovered from the EGSSs. The Companies' witness Fullum proposed:

If the Commission directs that EGSSs pay for the program, the best way to do so would be for the cost of the auction itself to be divided equally among participating EGSSs, with each EGS being required to pay the Companies their share before the beginning of the auction. Winning EGSSs would then be responsible for all costs associated with the marketing and mailing of opt-in notices to the residential customers included in the tranches that they win. The mailing of the opt-in material would be contingent upon payment being received from each EGS. Companies St. 7-R at 40.

Dominion supported the Companies' proposal to recover the program costs from all customers. However, if the Commission does not permit recovery from all customers, Dominion recommended that the winning EGSSs be responsible for the incremental costs on a prorated, per customer share basis. Dominion M.B. at 23.

RESA recommended that the costs of the auction and other retail market enhancements should be recovered either through the MAC, paid only by default service customers, or through a non-bypassable charge applied to all customers. RESA M.B. at 77.

c. ALJ's Recommendation

For the ROI Customer Aggregation Program, the ALJ found that the Companies have not presented sufficient evidence to justify deviating from the Commission's recommendation in the *IWPF Order*. The ALJ opined that the EGSSs benefit from the auctions and should bear the costs as opposed to the customers. The ALJ also recommended that the Commission adopt the Companies' alternative proposal that costs of the auction itself would be divided equally among participating EGSSs, with each EGS required to pay the Companies its share before the auction is held. Winning EGSSs would then be responsible for all costs associated with the marketing and mailing of opt-in notices to the residential customers included in the tranches that they win. The mailing of the opt-in material would be contingent upon payment being received from each EGS. R.D. at 116-117.

For the Standard Offer Customer Referral Program, the ALJ found that the Companies' alternate plan for recovery is a reasonable manner to collect the program costs. Accordingly, the ALJ recommended the adoption of the alternate plan as follows:

- (1) to require each participating EGS, not less than six months before the program starts, to make a \$100,000 payment toward initial start-up costs;
- (2) to provide that, beginning June 1, 2013, the ongoing costs for the Standard Offer Customer Referral Program Implementation team be billed monthly to participating EGSS by dividing the monthly expenses by the number of participating EGSSs;
- (3) to specify that ongoing costs will include a two-year (June 1, 2013 to May 31, 2015) amortization of start-up costs that exceed the \$100,000 up-front payments received from participating EGSSs; and
- (4) to provide that the program only move forward if a minimum of five EGSSs execute the Standard Offer Customer Referral Program Agreement and make the initial payments so that the Companies will have some assurance that they will recover at least a portion of their start-up costs

R.D. at 127-128.

d. Exceptions to the Recommendation Decision

Dominion opposes the ALJ's recommendation on the cost recovery of the ROI Aggregation Program. Dominion argues that adding significant upfront costs to suppliers before they have a chance to bid will ensure that the ROI Aggregation Program is a failure. Dominion submits that recovering the costs from customers is appropriate because participating customers will benefit immediately from savings and all customers

will benefit from a robust competitive market. Dominion proposes that, as an alternative, customers and suppliers should share the costs and suppliers should be assessed based on the ROI tranches they win. Dominion Exc. at 3-4.

FES opposes the ALJ's reliance on the *IWPF Order* because the Order's guidelines were not intended to replace formal litigated proceedings. FES argues that the Companies' proposal to recover these costs from residential customers is the most equitable because these customers will benefit from both programs. FES submits that placing the costs on the EGSs will result in less than optimal EGS participation. FES Exc. at 3-9.

e. Disposition

Upon review of the Recommended Decision and the record in this proceeding, we find that we do not have sufficient information to adopt the proposal for the cost recovery of the ROI Aggregation Program and Standard Offer Customer Referral Program as recommended by the ALJ. At this time, we have significant concerns that the \$100,000 required up-front cost for EGS participation may be a significant barrier to entry. Likewise, the costs for the newly designed ROI Aggregation Program have not been discussed during the course of this proceeding. Accordingly, the Companies, with the cooperation of the EGSs, are directed to resubmit a plan or proposal within sixty days for Commission review regarding how EGSs will pay for the Standard Offer Customer Referral Program and the redesigned ROI Aggregation Program.

We believe that the resolution of this issue is particularly important, as it is the cornerstone to the success of these programs. The thrust of the *IWPF Order* was to suggest programs that would be implemented during this round of DSPs in order to bolster customer participation in the retail electric market. However, these steps can only

jumpstart the market if they are effectively implemented. We urge the EGSSs and Companies to come to an agreement on how to minimize these costs and allocate these costs in order to carry out these programs in a cost-effective manner and bring more retail customers to the competitive electric market.³⁰

**13. Customers Solicited for Customer Referral Program –
Customers with High Bill Complaints**

a. Companies' Proposal

Under the Companies' originally proposed Standard Offer Customer Referral Program, the Companies would have conducted a Weekly Customer Referral Solicitation to select the lowest twelve-month and twenty-four-month fixed-price offers from EGSSs that agreed to participate in the program and submitted offers in the solicitation. The Companies would advise residential customers that contacted them regarding a high bill complaint or a new service request that they had the ability to purchase power from an EGS at favorable prices and would offer to transfer those customers' calls to a member of the Companies' Customer Referral Plan Implementation Team. At that stage, the Customer Referral Plan Implementation Team would: (1) explain customer choice; (2) advise the customer where to obtain additional information in order to assess various offers from EGSSs; (3) tell the customer that he or she could be referred to an EGS with the lowest 12-month or 24-month fixed price products being offered that week; and (4) describe those offers. If a customer expressed the desire to pursue one of the EGS offers, the Customer Referral Plan Implementation Team would transfer the call to the EGS making that offer. Companies St. 7 at 28.

³⁰ If an agreement on the allocation of these costs is not reached within the allotted time period, the Commission may order an allocation of costs that comes from one of the proposals submitted by the stakeholders.

b. OCA's Recommendation

The OCA recommended that the Customer Referral Program should be affirmatively offered to new customers, those customers moving within the EDC service territory, and those who specifically inquire about customer choice or the referral program. However, other customer calls to the EDC should not trigger a requirement to explain or offer the Referral Program. The OCA was concerned that customers with a high bill complaint would be referred to the referral program. OCA St. 2-SR at 14.

c. ALJ's Recommendation

The ALJ failed to address the OCA's argument that customers calling with a high bill complaint should not be solicited for the referral program. The ALJ addressed other customer eligibility issues in relation to the Customer Referral Program but omitted the OCA issue. R.D. at 123.

d. Exceptions to the Recommended Decision

In its Exceptions, the OCA states that the ALJ should have recommended that customers calling with a high bill complaint not be among the group solicited for the Customer Referral Program. The OCA opines that the ALJ erred by not addressing its recommendation on this issue since the OCA provided specific testimony and recommendations as to customer eligibility for the Referral Program. The OCA explains that the Customer Referral Program should be affirmatively offered to new customers, those customers moving within the EDC service territory, and those who specifically inquire about customer choice or the Referral Program, but other customer calls to the EDC should not trigger a requirement to offer the Referral Program. The OCA avers that

this approach will serve to offset any perceived bias in favor of default service and also tend to minimize program costs. OCA Exc. at 34-35.

CAUSE-PA supports the position of the OCA on this issue. CAUSE-PA notes that the Commission indicated in its *IWPF Order* at 32 that customers calling concerning a high bill should be referred to an EGS “only and explicitly after the customer’s concerns were satisfied.” CAUSE-PA requests that the Commission take this opportunity to reexamine this conclusion, stating that utilities should conduct a thorough examination of all possible reasons for a high bill and work with the customer to lower his or her usage instead of offering the hope of lower bills in the future based on service from an EGS. CAUSE-PA R. Exc. at 16-17.

RESA states that the Commission already addressed this issue in the *IWPF Order*, concluding that customer calls with high bill complaints are appropriate contacts for the Customer Referral Program. RESA opines that customers calling with high bill complaints are likely those customers that can most directly benefit from becoming informed about such competitive offers. RESA R. Exc. at 9-10.

e. Disposition

We are not persuaded by the arguments of the OCA and CAUSE-PA to alter our recent conclusion within the *IWPF Order* at 32, wherein we stated that we would permit that a customer be presented the standard offer during customer contacts to the EDC call center for high bill issues, *only and explicitly after the customer’s concerns were satisfied*. We concur with RESA that customers calling with high bill complaints are likely those customers that can most directly benefit from becoming informed about competitive offers such as the Customer Referral Program. Again, we emphasize the

referral should only occur after the customer's high bill concerns are satisfied.

Accordingly, we shall deny the Exceptions of the OCA on this issue.

14. CAP Customer Participation in the Market Enhancement Programs

a. Companies' Proposal

The Companies proposed that customers participating in the Companies' Customer Assistance Program (CAP) be eligible to participate in the Market Enhancement Programs. Companies St. 7-R at 42-43.

b. CAUSE-PA's Recommendation

CAUSE-PA stated that CAP customers should be permitted to participate in the ROI Aggregation Program only if they are guaranteed to pay less than they would have paid had they remained on default service. CAUSE-PA averred that these customers must be returned to default service at the conclusion of the Program term. CAUSE-PA also took the position that CAP customers should be excluded from the pool of customers that may be referred to the Customer Referral Program. CAUSE-PA St. 1 at 3-4. However, in surrebuttal, CAUSE-PA averred that the Companies should modify their tariffs to require CAP customers to remain with the EDCs on default service. CAUSE-PA modified its position and argued that CAP customers should not be able to participate in the Market Enhancement Programs. CAUSE-PA St. 1SR at 21.

c. ALJ's Recommendation

The ALJ disagreed with the Companies and instead recommended that CAP customers be excluded from the Market Enhancement Programs. The ALJ

explained that this is consistent with the Commission’s *IWPF Order*, wherein it was expressly stated that CAP customers should be excluded from the Standard Offer Customer Referral Program. The ALJ noted that the *IWPF Order* referred this issue to the RMI’s Universal Service subgroup. R.D. at 121, 137

The ALJ also agreed with CAUSE-PA that the Companies’ CAP structures combined with a lack of guaranteed affordable payments for CAP customers participating in the retail market indicates that CAP customers should be precluded from participation in the ROI Aggregation Program and Customer Referral Program at this time. However, the ALJ stated that she would not go as far as the recommendation of CAUSE-PA that those CAP customers who are currently shopping should be gradually transitioned back to default service.³¹ R.D. at 121.

d. Exceptions to the Recommended Decision

In their Exceptions, the Companies disagree with the ALJ’s recommendation that CAP customers should be barred from participating in the Companies’ market enhancement programs. The Companies aver that CAP customers should be permitted to participate in the proposed Market Enhancement Programs because they are already permitted to shop under the terms of the Companies’ existing, Commission-approved retail tariffs. The Companies maintain that the ALJ’s concerns about alleged “increased risks” to which CAP customers would be exposed are not specific to the proposed Market Enhancement Programs, but, instead, would apply to any “shopping” by CAP customers. According to the Companies, the concerns expressed by

³¹

See, CAUSE-PA Statement No. 1-SR at 15-16.

the ALJ could be addressed only by barring CAP customers from “shopping” in any form, which the ALJ specifically refused to do. Companies Exceptions at 27-28.

The Companies further aver that their proposal to allow CAP customers to participate in the Market Enhancement Programs satisfies the “no harm” standard that the Commission articulated in the *IWPF Order* at 43, which states: “CAP customers should not be subject to harm, *i.e.*, loss of benefits, if they are deemed eligible to participate in the auctions.” The Companies stated that, “no harm” to CAP customers is assured because, under the terms of the Companies’ Commission-approved Universal Service Programs, CAP funding is entirely “portable” and CAP benefits cannot be diminished if a customer switches to an EGS. Companies Exc. at 29.

Moreover, the Companies also assert that under the ROI Aggregation Program, the Companies’ systems for enrolling customers do not have the capability to identify and reject enrollments from CAP customers. Therefore, if they were directed to preclude CAP customers from participating in the ROI Aggregation Program, the Companies state the only way they could try to implement that directive is not to send direct-mail opt-in materials to CAP customers. However, the Companies explain that a CAP customer nonetheless could opt-in online or by telephone after obtaining information about the program from another source or could use a return mailer obtained from another customer. If that were to occur, the Companies claim they would have no way to screen the customers from enrollment because the Companies do not have the capability to block such enrollments. Consequently, the Companies submit that operational constraints would present an obstacle to fully implementing the ALJ’s recommendation with respect to the ROI Aggregation Program. Companies Exc. at 29-30.

In its Exceptions, FES avers that all customers should be allowed to participate in retail enhancement programs and opines that the ALJ's conclusion otherwise is inconsistent with good policy and unsupported by record evidence. FES asserts that the guidelines within the *IWPF Order* at 43 do not preclude CAP customers from participating in the ROI Program and left this issue to be determined in each default service proceeding. According to FES, as a result, there was no need for the Companies to justify a deviation from the *IWPF Order*. FES Exc. at 10-11.

e. Disposition

We are persuaded by the Companies' arguments that: (1) CAP customers are already permitted to shop under the terms of the Companies' existing retail tariffs; (2) under their Commission-approved Universal Service Programs, CAP funding is entirely "portable" and CAP benefits cannot be diminished if a customer switches to an EGS; and (3) the Companies' proposed Market Enhancement Programs assure that the customer will receive a price lower than the PTC at the time of enrollment or referral. If the EGS price would become higher than the PTC during the term of the program, the customer can return to default service without penalty. While we recognize that this decision deviates from our conclusion within our recent *IWPF Order* at 31, we find that the Companies have provided sufficient justification within this proceeding to alter that approach within their service territories. Accordingly, we shall grant the Exceptions of the Companies with regard to this issue and reject the ALJ's recommendation.

15. Term of the Standard Offer Product and Length of the Seven Percent Discount

a. Companies' Proposal

After reviewing the *IWPF Order*, the Companies modified their Standard Offer Customer Referral Program to offer a seven percent discount from the PTC at the time of referral for a term of twelve months. Companies St. 7-R at 43.

b. Positions of the Parties

RESA disagreed with the Companies' proposal that the Standard Offer Customer Referral Program should provide a seven percent discount from the PTC at the time of referral for a one-year service term. RESA contended that the Companies' proposal is inconsistent with the *IWPF Order* because "while the term of the contract can be twelve months, the discount should last for four months." RESA St. 2-SR at 24.

c. ALJ's Recommendation

The ALJ concluded that the Companies' proposal is consistent with the Commission's guidance within the *IWPF Order* at 31. The ALJ referenced that Order's statement that the seven percent discount from the PTC at the time of the referral may be offered for a term between four months and one year in length. The ALJ stated that contrary to RESA's interpretation, the Commission's guidance did not create any distinction between the "term of the contract" and the standard offer "discount" such that the contract "term" could be up to a year in duration but the "discount" would have to terminate after four months. Therefore, the ALJ recommended adoption of the Companies' proposal. R.D. at 123-124.

d. Exceptions to the Recommended Decision

In its Exceptions, RESA avers that the ALJ erroneously recommended that the Commission adopt the Companies' proposal to require EGSs participating in the Standard Offer Customer Referral Program to offer a price that is always seven percent off the PTC for the entire one year service term. According to RESA, this conclusion is not correct and the Commission should direct that the seven percent off the PTC price be offered for the first four months of the one year service term and, after that introductory period, the price offered by the EGS should revert to one that is disclosed to the customer in a mailing from the EGS serving the customer. RESA explains that the ALJ failed to address the fact that the PTC changes every quarter and how that conforms with the *IWPF Order*. RESA Exc. at 41-42.

RESA argues that the ALJ's recommendation overlooked the Commission's clear directive that "[t]he 7% reduction is a constant price established against the PTC effective on the date the standard offer is made." RESA asserts that by this clear language, the Commission did not establish that the seven percent discount is required to change quarterly with the PTC. RESA Exc. at 42.

RESA also submits that the Commission's specific directive was for a seven percent off offer for a term of between four and twelve months. RESA's recommendation is that the Commission adopt a standard offer term of four months, at seven percent off the PTC at the time of the offer, with a requirement that the EGS provide a fixed price for the remaining eight months. RESA opines that this approach would provide protection for customers while permitting EGSs to participate in the Standard Offer Customer Referral Program. According to RESA, offers under the Companies' proposal may well not occur, except for one or two EGSs, if the term and offer are not corrected. RESA Exc. at 42.

In its Exceptions, the OCA avers that the ALJ erred by accepting the Companies' proposed term and product pricing for the Standard Offer Customer Referral Program. The OCA notes that the ALJ did not address its position on this issue. The OCA explains that the entire discussion as to the length of the offer and the length of the discount within the Recommended Decision focuses on an issue raised by RESA. The OCA submits that, while the *IWPF Order* does provide recommendations as to the structure for a Standard Offer Customer Referral Program, it has a continuing concern as to the discount mechanism. It is the OCA's position that customers participating in the Standard Offer Customer Referral Program should be guaranteed to pay a price that is lower than the PTC during the contract term, which it recommends be a four-month term for the referral program. According to the OCA, this method would ensure that customers participating in the program would receive guaranteed benefits in the form of savings for this four month term. Therefore, the OCA proposes that the contract term should be decreased to four months and the seven percent off the PTC should be for every month of that term. OCA Exc. at 32-34.

e. Disposition

Consistent with our recent conclusions within the *IWPF Order*, we concur with the ALJ's recommendation that the Companies Standard Offer Customer Referral Program should be based upon a seven percent discount from the PTC *at the time the offer is made* and should extend for a one-year service term. We are not persuaded by the positions espoused by RESA and the OCA to alter our previous guidance on these parameters. We conclude that customers participating in this referral program should be assured that the standard offer discount will be in place for the duration of the contract term. Therefore, the Exceptions of RESA and the OCA are denied on this issue.

16. Sequencing the ROI Auction Program and the Standard Offer Customer Referral Program

a. Companies' Proposal

The Companies proposed that the Standard Offer Customer Referral Program would roll out beginning in June of 2013, in very close proximity to the implementation of the ROI Aggregation Program. The auction for the ROI Aggregation Program was proposed to be scheduled after the Companies' January 2013 default service supply procurement but no later than March of 2013. Companies St. 7 at 25 and 31.

b. Positions of the Parties

The OCA recommended that the Companies scale back and modify its Standard Offer Customer Referral Program in order to provide a more gradual implementation. The OCA suggested that the Companies be directed to delay offering a Standard Offer Customer Referral Program until after the one-time ROI Aggregation Program has concluded. The OCA averred that these two programs share many similarities and could easily cause unnecessary levels of customer confusion. Consistent with a more gradual, reasonable implementation of a Standard Offer Customer Referral Program, the OCA supported a bifurcated approach to implementation that would include a more basic first-year program along with a ramped up program for year two. OCA St. 2-SR at 13-14.

CAUSE-PA supported the OCA's recommendation that the Customer Referral Program be delayed. CAUSE-PA St. 1at 31.

In response to the OCA's proposals, the Companies stated that their revised Standard Offer Customer Referral Program proposal conforms to the Commission's

guidelines, and is a straight-forward fixed price for a one-year term at a discount of seven percent from the PTC at the time of referral. Given the modifications they proposed, the Companies stated that the OCA's concerns about customer confusion were now moot. Companies St. 7R at 47.

c. ALJ's Recommendation

The ALJ agreed with the OCA's suggestion that the Companies be directed to delay offering a Standard Offer Customer Referral Program until after the one-time ROI Auction has concluded. The ALJ reasoned that this is necessary in order to avoid unnecessary customer confusion. R.D. at 130-131.

d. Exceptions to the Recommended Decision

In its Exceptions, RESA avers that the ALJ erred in recommending adoption of the OCA's proposal to delay implementation of the Standard Offer Customer Referral Program until after the ROI Aggregation Program's conclusion. According to RESA, the ALJ was mistakenly persuaded by the OCA to recommend that the Companies be directed to delay offering the Customer Referral Program until after the one-time ROI Aggregation Program has concluded based on concerns for potential customer confusion given the perceived similarities of the programs which have very different outcomes. RESA avers that the ALJ made this recommendation notwithstanding the fact that the Commission has already determined that the Standard Offer Customer Referral Program should go forward at the same time as the ROI Aggregation Program. RESA also avers that the OCA presented no special circumstances affecting the Companies or any particular justifiable basis to support adoption of its recommendation in spite of the Commission's *IWPF Order*. RESA Exc. at 39.

RESA submits that both programs have the same purpose; to encourage customers to participate in the competitive market. RESA further states that if shopping customers are excluded from participation in these programs, as it has previously recommended, there is no reason to assume consumers would be confused. According to RESA, only those customers remaining on default service would be eligible to participate and consumers would learn about the two programs through different channels.

Moreover, RESA asserts that the Commission determined in 2007 “[t]hat the public interest would be served by consideration of customer referral programs in which retail customers are referred to EGSSs” and has been considering that concept since that time.³² Therefore, RESA opines that there is simply no reason upon which to further delay implementation of a customer referral program. RESA Exc. at 40.

In its Exceptions, FES avers that the ALJ’s conclusion that the Standard Offer Customer Referral Program should be deferred is unsupported by record evidence. FES states that the record shows that non-shopping customers will have been solicited for the ROI Program in the second quarter of 2013 and participants will be enrolled in the one-time program by June 1, 2013. FES states that only after that will the Standard Offer Customer Referral Program commence with incoming customer calls. FES opines that the timelines of the programs provide for very little overlap and should not cause customer confusion. Furthermore, FES submits that comparing prices and terms of service in the two programs is no different than comparing any two limited time offers available in the competitive retail market. Therefore, FES maintains that the ALJ’s recommended delay of the Standard Referral Customer Referral Program is unnecessary. FES Exc. at 9-10.

³²

See, 52 Pa Code § 69.1815.

e. Disposition

We are persuaded by the arguments made by FES that there is very little overlap between the two programs and customer confusion should be minimal. Shopping customers will have been solicited for the ROI Program in the second quarter of 2013 and participants will be enrolled in the one-time program by June 1, 2013. The Companies proposed that the Standard Offer Customer Referral Program would be implemented beginning in June 2013. However, even if some overlap would occur, we agree with the position of FES that comparing prices and terms of service in the two programs is no different than comparing any two limited time offers available in the competitive retail market. Accordingly, we shall grant the Exceptions of FES, and reject the recommendation of the ALJ that the Standard Offer Customer Referral Program be delayed.

17. Modifications to the New/Moving Customer Referral Program

a. Companies' Proposal

The Companies explained that the Commission recommended that all EDCs implement a New/Moving customer referral program by the end of the fourth quarter of 2012. The Companies stated that under the program outlined by the Commission, residential and small commercial customers that call an EDC to initiate service or to transfer service within an EDC's service territory would be provided information about the competitive marketplace so that they would not harbor the erroneous assumption that EDC-provided default service is their first (or only) option for generation supply. The Companies submitted that if such a customer knows which EGS he or she wants to select, then the EDC should have processes in place to transfer the caller to his or her chosen EGS. The Companies averred that if a customer does not

select a specific EGS, he or she should be referred to www.PAPowerSwitch.com.

Companies St. 7-R at 9-10.

The Companies noted that RESA has proposed that the New/Moving customer referral program be dropped and that the Companies focus their attention on implementing the Standard Offer Customer Referral Program, with the goal of doing so by the end of 2012. The Companies agreed with RESA that the New/Moving customer referral program as envisioned by the Commission should not be implemented. Although the Companies currently offer information on retail shopping to customers when they call to initiate service or to change their service location, the Companies estimated that the earliest they could implement any proposed modifications to their existing program would be December 2012. The Companies note that December 2012 is just six months prior to the start of the DSPs proposed in this case, which will begin on June 1, 2013, and, if approved as proposed, will include a Standard Offer Customer Referral Program. The Companies explained that the resources required to develop the processes, scripts, programming, and training guides to implement the New/Moving customer referral program are the same resources needed to develop the Standard Offer Customer Referral Program. The Companies also submitted that training call center representatives in the new protocols associated with the New/Moving customer referral program would be time consuming and expensive. Therefore, the Companies agreed with RESA that it is not cost effective for them to incur the expenses associated with a New/Moving customer referral program that will be used for only six months. Companies St. 7-SR at 9-12.

b. Position of the Parties

RESA submitted that, for the most part, the Companies' proposed New/Moving customer referral program is too complicated and, most importantly, is not likely to encourage customers to participate in the competitive market and to begin the

process of putting competitive supply on a level playing field with default service. RESA explained that ten to fifteen percent of the market establishes new service or service after a move each year so this is not an unimportant area of concern.

RESA submitted that the Commission's recommendation (apparently adopted by FirstEnergy) is that customers unfamiliar with choice be directed to its PowerSwitch website and only those customers who already know which EGS they want to select will be "hot transferred" to the EGS. RESA explained that this procedure requires the customer to end the call with the service representative, go to the internet, navigate to the Commission's choice website and then study the offers listed to determine whether or not the customer should switch. RESA averred that by designing this program in this way, the core purpose of any customer referral program, to give the customer a one-stop shopping experience whereby he or she can learn about choice and make an easy and convenient decision at the time to switch to an EGS or choose an EGS at service initiation, is not being fulfilled. Accordingly, RESA argued that, rather than implement the full scale New/Moving Customer program as outlined by the Commission, the Standard Offer Customer Referral Program should be implemented as soon as possible. RESA M.B. at 86-87.

RESA also recommended that, if the New/Moving customer program goes forward, the Companies should implement a procedure whereby an applicant or moving customer that already knows the EGS to which he or she wishes to subscribe should be enrolled with that EGS by the EDC. RESA averred that this would be a simpler process than "hot transferring" the customer to the EGS, who would thereupon enroll the customer and then send the information back to the EDC. *Id.* at 87.

c. ALJ’s Recommendation

As discussed, *supra*, the ALJ recommended the adoption of the OCA’s proposal that the implementation of the Standard Offer Customer Referral Program be deferred until June 2014. As an interim measure, the ALJ recommended that the Companies be required to comply with the Commission’s recommendation that all EDCs implement a New/Moving Customer Referral Program by the end of the fourth quarter of 2012, and that the New/Moving Customer Referral Program would be in existence until replaced by the Standard Offer Customer Referral Program’s implementation. R.D. at 132.

d. Exceptions to the Recommended Decision

In its Exceptions, RESA avers that the ALJ failed to address its concerns that the New/Mover Customer Referral Program is not likely to be worth the cost and effort and should be transformed into a “New York style” standard offer program. RESA Exc. at 40. RESA also stated that the ALJ failed to address its proposal that customers that know which EGS they wish to subscribe should be automatically enrolled by the EDC instead of being “hot transferred” to the EGS. *Id.* at 41.

e. Disposition

As indicated in our *IWPF Order*, we “determined that the New/Moving Customer Referral Program will be restricted to those customers calling to initiate service or calling to move service within an EDC’s service territory.” *IWPF Order* at 17. In that Order, we further explained our expectation that the EDCs would be able to provide general information about Pennsylvania’s retail electric market and could do something as simple as refer a customer to PAPowerSwitch.com or complete a “hot transfer” to an

EGS if the customer knew which EGS they would like to select. *Id.* at 18-19. Although we directed EDCs to merge or consolidate the New/Moving Customer Referral Program with the Standard Offer Customer Referral Program in their next default service plans, we made it clear that “the New/Moving Customer Referral Program can be implemented on its own in a relatively short period of time with a minimum amount of effort.”³³

Id. at 20.

With these facts in mind, it was disconcerting that RESA and the Companies suggested “dropping” the New/Moving Customer Referral Program entirely, and instead, focusing its resources solely on the Standard Offer Customer Referral Program. We find it significant that the Companies “currently offer information on retail shopping to customers when they call to initiate service or change their service location” as well as the Companies’ claim that “the earliest they could implement any proposed modifications to their existing program is... [by] December 2012.” R.D. at 131.

If anything, these facts clearly support our position that the New/Moving Customer Referral Program can be implemented in a relatively short period of time with minimal effort on the part of an EDC. Accordingly, rather than wait until December 2012 to implement the New/Moving Customer Referral Program as articulated in the Recommended Decision, the Companies should be required to begin this program as soon as possible, while anticipating refinement of the program once the RMI working group is able to finalize the “call center scripts” as described in the *IWPF Order*. See, *IWPF Order* at 20.

³³ We further directed that a working group be established to expeditiously develop appropriate call center scripts for this program, with the expectation that the New/Moving Customer Referral Program be implemented no later than the fourth quarter of 2012. *IWPF Order* at 20.

18. Operational Issues, EGS Access to Customer Data

a. Parties' Positions

RESA asserted that delays are inherent in the process currently used by the Companies. RESA contrasted its members' experiences with the Companies' systems to that of PECO where a secure website called the "PECO Presentment Customer Usage" is available to licensed EGSs. RESA M.B. at 91. RESA recommended that the Companies investigate creating a similar website which could provide electronic access to key customer usage and account data. EGS access would be limited to those EGSs with proper authorization and subject to legally mandated customer privacy protections. *Id.*

RESA argued that with proper implementation, a secure website such as PECO's could enable EGSs to provide customers with a simple shopping experience. Using the customer information obtained from the Companies' website, EGSs could develop their own secure website which would enable customers to input their own relevant data which would be matched against the information contained on the Companies' website. At that point, the customer could receive a price offer for service and go forward with an acceptance and an agreement without leaving the EGS's website. Alternatively, RESA suggests that if the customer is deemed ineligible for an offer from that particular EGS, the customer could be referred to the Commission's PaPowerSwitch.com website for information about alternative suppliers. RESA M.B. at 92-93.

The Companies argued that this issue was not properly raised in this proceeding. Instead, the Companies stated that this was an issue which should be referred to the Commission's *RMI* proceeding. Companies' St. 2-R at 29.

b. ALJ's Recommendation

The ALJ agreed with the Companies and recommended that RESA's suggestion be referred to a working group within the Commission's *RMI* proceeding. The ALJ found that this issue fell within the purview of a working group already established by the Commission's *IWPF Order* that was directed to address issues surrounding language contained in Letters of Authorization which grant access to customer account information by EGSs. The ALJ noted that current practices within each EDC service territory were to continue pending the outcome of that working group's efforts. The ALJ also determined that in the event the Companies were directed to pursue creation of a website as suggested by RESA, the Companies must be given the opportunity to recover implementation costs through their DSS Riders or from all EGSs through their supplier tariffs. R.D. at 139-140.

c. Exceptions to the Recommended Decision

RESA argues that the ALJ erred in recommending that this issue be referred to the Commission's *RMI* proceeding. RESA asserts that referral of this issue to the *RMI* proceeding is not an efficient or reasonable way to resolve RESA's concerns with the delays inherent in the Companies' systems. According to RESA, based upon the record in this proceeding, there is no reason why examination of a website devoted to the access to the Companies' customer information should be referred to a broader, statewide stakeholder proceeding. RESA Exc. at 44.

The Companies respond and reiterate that this issue falls within the purview of the working group established in the *IWPF Order* to work with the issue of customer specific bills and letters of authorization. Like the ALJ, the Companies observed that the

status quo in each EDC service territory was to be maintained pending the outcome of that working group's efforts. Companies R. Exc. at 39-40.

d. Disposition

We agree with RESA that deferring the issues of customer data availability and EGS access to a statewide stakeholder group is neither an efficient nor reasonable way to improve the status of the competitive market in the short-term. Among other concerns, we note that the mission of the working group referenced by the Companies and the ALJ is focused on customer-specific bills and language contained in letters of authorization with a view to a universal, statewide resolution. *IWPF Order* at 96-99. Here, RESA has suggested a mechanism to eliminate delays in customer interactions inherent in these Companies' systems. Accordingly, rather than defer this issue to an *RMI* working group, we will refer this issue to the Commission's Office of Competitive Markets Oversight (OCMO). So as to have this effort resolved in a timely manner, we will require that OCMO provide a report to the Commission on this issue no later than February 15, 2013.

VI. Conclusion

Based on the foregoing discussion, we shall: (1) grant, in part, and deny, in part, the Exceptions to the Recommended Decision, consistent with this Opinion and Order; (2) adopt the Recommended Decision, as modified by this Opinion and Order; (3) approve, in part, and deny, in part, the Joint Petition, as set forth in this Opinion and Order; (4) direct the Companies to file a revised DSP, as set forth in this Opinion and Order; (5) direct the Companies, in collaboration with interested EGSs, to submit a proposal to the Commission on how EGSs pay for the costs of the ROI Customer Aggregation Program and the Standard Offer Referral Program; (6) direct the Companies,

in collaboration with interested EGSSs to submit a proposal for customer notification, opt-in enrollment and customer assignment that facilitates the implementation of the ROI Customer Aggregation Program; (7) direct the EGSSs, licensed by the Commission, that elect to participate in the ROI Customer Aggregation Program, to submit for Commission review and approval the terms and conditions of their eight-month ROI Customer Aggregation Program offering; (8) refer the issues related to customer data availability for electric generation suppliers to OCMO for the development of a report to the Commission; and (8) direct the Companies to begin the New/Moving Customer Program as soon as possible, but no later than sixty days following the entry date of this Opinion and Order; **THEREFORE**,

IT IS ORDERED:

1. That the Exceptions filed by Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to the Recommended Decision of Administrative Law Judge Elizabeth H. Barnes are granted in part and denied in part, consistent with this Opinion and Order.
2. That the Exceptions filed by the Office of Consumer Advocate to the Recommended Decision of Administrative Law Judge Elizabeth H. Barnes are granted in part and denied in part, consistent with this Opinion and Order.
3. That the Exceptions filed by the Office of Small Business Advocate to the Recommended Decision of Administrative Law Judge Elizabeth H. Barnes are granted in part and denied in part, consistent with this Opinion and Order.
4. That the Exceptions filed by Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. to the Recommended Decision of

Administrative Law Judge Elizabeth H. Barnes are granted in part and denied in part, consistent with this Opinion and Order.

5. That the Exceptions filed by Dominion Retail, Inc. to the Recommended Decision of Administrative Law Judge Elizabeth H. Barnes are granted in part and denied in part, consistent with this Opinion and Order.

6. That the Exceptions filed by FirstEnergy Solutions Corporation to the Recommended Decision of Administrative Law Judge Elizabeth H. Barnes are granted in part and denied in part, consistent with this Opinion and Order.

7. That the Exceptions filed by Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Penn Power Users Group, and West Penn Power Industrial Intervenors to the Recommended Decision of Administrative Law Judge Elizabeth H. Barnes are granted in part and denied in part, consistent with this Opinion and Order.

8. That the Exceptions filed by the Pennsylvania State University to the Recommended Decision of Administrative Law Judge Elizabeth H. Barnes are granted in part and denied in part, consistent with this Opinion and Order.

9. That the Exceptions filed by the Retail Energy Supply Association to the Recommended Decision of Administrative Law Judge Elizabeth H. Barnes are granted in part and denied in part, consistent with this Opinion and Order.

10. That the Recommended Decision of Administrative Law Judge Elizabeth H. Barnes, issued on June 15, 2012, is adopted as modified by this Opinion and Order.

11. That the Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for approval of their Default Service Programs, filed on November 17, 2011, is granted in part and denied in part, consistent with this Opinion and Order.

12. That Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company, in collaboration with interested electric generation suppliers, are directed to submit a proposal to the Commission on how electric generation suppliers will pay for the costs of the Retail Opt-In Aggregation Program and the Standard Customer Offer Referral Program as modified by this Opinion and Order. This proposal shall be submitted as part of the revised Default Service Plan to be filed pursuant to Ordering Paragraph No. 18, *infra*.

13. That Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company, in collaboration interested electric generation suppliers, are directed to submit a proposal for customer notification, opt-in enrollment and customer assignment that facilitates the implementation of the Retail Opt-In Aggregation Program, as modified by this Opinion and Order. This proposal shall be submitted as part of the revised Default Service Plan to be filed pursuant to Ordering Paragraph No. 18, *infra*.

14. That licensed electric generation suppliers that elect to participate in the Retail Opt-In Aggregation Program shall submit for Commission review and approval the terms and conditions of their eight-month Retail-Opt-In Aggregation Program offering. These filings shall be submitted to the Commission no later than forty-five days before offers are extended to potential customers.

15. That the issues related to customer data availability for electric generation suppliers is referred to the Commission's Office of Competitive Markets Oversight for the development of a report to the Commission by no later than February 15, 2013.

16. That Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company are directed to begin the New/Moving Customer Program as soon as possible, but no later than sixty days following the entry date of this Opinion and Order. This Program shall be initiated while anticipating refinement of the call center scripts by the working group established in the Commission's Final Order in the case of *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, I-2011-2237952, (Final Order entered March 2, 2012).

17. That the Default Service Supply Riders of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company shall be revised consistent with this Opinion and Order. The revised Default Service Supply Riders shall not include: the costs of the Retail Opt-In Aggregation Program or the Standard Offer Customer Referral Program, unaccounted-for energy costs, generation deactivation charges or network integration transmission service costs. Furthermore, the costs of the remaining components of the Non-Market Based

Transmission Charge, included within the Default Service Supply Riders, are to be allocated based upon the one coincident peak allocation methodology, consistent with this Opinion and Order.

18. That with the exception of the matters addressed in Ordering Paragraphs Nos. 14, and 15, *supra*, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company shall file a revised Default Service Plan, including associated tariff supplements, which reflect *all* of the revisions set forth in this Opinion and Order. This revised Default Service Plan shall be filed within sixty days of the entry of this Opinion and Order and shall be served on the active Parties to this proceeding.

19. That any directive, requirement, disposition, or the like contained in the body of this Opinion and Order, which is not the subject of an individual Ordering Paragraph, shall have the full force and effect as if fully contained in this part.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta".

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: August 2, 2012

ORDER ENTERED: August 16, 2012