

## 2016 Act 129 Statewide Evaluator Contract

This Contract is entered into by **NMR Group, Inc.** (“Contractor”), **EEC Pennsylvania Evaluations** (“Contracting Entity”), and the **Pennsylvania Public Utility Commission** (“Commission”).

**Incorporation by Reference.** The Request for Proposal and all exhibits, appendices, addenda, and other attachments thereto, the Contractor’s Proposal and all exhibits, appendices, addenda, and other attachments thereto, the Preproposal Conference Questions and Answers, and Exhibits 1 through 5, are hereby incorporated into this Contract by reference.

### **I. Covenants of the Parties.**

The parties to this Contract agree and promise that:

- A. Subject in all respects to the terms and conditions of this Contract and to the duties and limitations contained in the statutory and common law of the Commonwealth of Pennsylvania, the Contractor shall perform as the Act 129 Statewide Evaluator for the Commission. The duties of the Act 129 Statewide Evaluator shall be completed as outlined in and in accordance with the promises, warranties and representations contained in the Contractor’s Proposal (“Proposal”) and the Request For Proposals (“RFP”). The RFP and all exhibits, appendices, addenda, and other attachments thereto, and the Contractor’s Proposal and all exhibits, appendices, addenda, and other attachments thereto are hereby incorporated into this Contract by reference.
- B. The EDCs shall cooperate with the efforts of the Contractor and the Contracting Entity shall pay the Contractor promptly upon submission to it of invoices for payment as described below. Subject to the terms and conditions of this Contract and the statutory and common law of Pennsylvania, Duquesne Light Company, Metropolitan Edison Company, PECO Energy Company, Pennsylvania Electric Company, Pennsylvania Power Company, PPL Electric Utilities Corporation, and West Penn Power Company (“EDC or EDCs”) shall make available to the Contractor all employees with the direct knowledge and data necessary for the Contractor to evaluate expeditiously and draw conclusions. Every effort shall be made by the parties to limit disruption to both the EDCs’ ongoing operations and to the performance of the Contractor’s work plan contained in the Proposal and RFP.
- C. The Commission by its agent, the Project Officer and other designated staff, as described below, shall have the right and opportunity to participate actively in the activities of the Contractor and the EDCs, and to this end shall have immediate access to all data, models, and other materials or information provided to the Contractor and the EDCs except that the Contractor may withhold such data, models, materials, or information to which the Commission does not otherwise have a right of access or inspection. The Commission shall be advised if any data, models, materials, or information is being so designated and may contest such designation.

II. Evaluation Procedures.

A. Project Officer and Party Representatives.

1. The Commission has designated **Darren Gill**, Bureau of Technical Utility Services, (717) 783-5244, [dgill@pa.gov](mailto:dgill@pa.gov) (and/or his designated alternative) as its staff contact (“Project Officer”) and has authorized him/her to act on behalf of the Commission under this Contract. The Project Officer may appoint members of the Commission staff or its designees to represent him/her as appropriate.
2. The Contracting Entity has designated **Donna M. J. Clark, Esq.**, (717) 901-0631, [dclark@energypa.org](mailto:dclark@energypa.org) as its staff contact (“Contracting Entity’s Representative”) and has authorized her to act as the lead contact on behalf of the Contracting Entity under this Contract.
3. Each EDC designates the following person as its staff contact (“EDC Representative”) and has authorized him/her to act as the lead contact on behalf of the EDC under this Contract:

Duquesne Light Company:

**David Defide**  
(412) 393-6107  
[ddefide@duqlight.com](mailto:ddefide@duqlight.com)

Metropolitan Edison Company:

**Kurt Turosky**  
(330) 384-5847  
[turoskyk@firstenergycorp.com](mailto:turoskyk@firstenergycorp.com)

PECO Energy Company:

**Nicholas DeDominicis**  
(215) 841-4309  
[Nicholas.DeDominicis@exeloncorp.com](mailto:Nicholas.DeDominicis@exeloncorp.com)

Pennsylvania Electric Company:

**Kurt Turosky**  
(330) 384-5847  
[turoskyk@firstenergycorp.com](mailto:turoskyk@firstenergycorp.com)

Pennsylvania Power Company:

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2. The Contracting Entity has designated **Donna M. J. Clark, Esq.**, (717) 901-0631, [dclark@energypa.org](mailto:dclark@energypa.org) as its staff contact (“Contracting Entity’s Representative”) and has authorized her to act as the lead contact on behalf of the Contracting Entity under this Contract.
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(412) 393-6107  
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Pennsylvania Power Company:

**Kurt Turosky**  
(330) 384-5847  
[turoskyk@firstenergycorp.com](mailto:turoskyk@firstenergycorp.com)



PPL Electric Utilities Corporation: **Peter D. Cleff**  
(610) 774-4530  
[pdcleff@pplweb.com](mailto:pdcleff@pplweb.com)

West Penn Power Company: **Kurt Turosky**  
(330) 384-5847  
[turoskyk@firstenergycorp.com](mailto:turoskyk@firstenergycorp.com)

Contractor will coordinate with each individual EDC Representative when working with a particular EDC. Each EDC Representative shall be given advance notification of the identities of Commission and Contractor personnel who will be on that EDC's premises and the dates of their visits to specific EDC facilities.

4. The Contractor has designated **Lynn Hoefgen**, President of NMR Group, Inc., (617) 284-6230 extension 6, [lhoefgen@nmrgroupinc.com](mailto:lhoefgen@nmrgroupinc.com) as its staff contact ("Contractor Representative") and has authorized him/her to act as the lead contact on behalf of the Contractor under this Contract.
5. The Project Officer and Contracting Entity's Representative shall have primary responsibility and authority on behalf of the Commission and the EDCs, respectively, to administer this contract and to agree upon procedures for coordinating the efforts of the EDCs and the Contractor.
6. The parties agree to communicate fully with each other through the designated representatives and to keep each other informed of all pertinent matters and developments relating to the Act 129 Statewide Evaluator Project.
7. The Contractor shall provide the Project Officer with reasonable notice of and opportunity to attend all high-level planning meetings with the EDCs.
8. The EDCs will provide an atmosphere conducive to the free flow of information between the Contractor and the EDCs' employees. Any process which may inhibit employees from expressing their ideas, opinions or suggestions shall be discouraged.

B. Expenses and Payment.

1. Payment. As provided in Section I-28 "Payment" of the RFP and hereafter.
2. The Project Officer shall have the right and opportunity to approve, in whole or in part, each invoice. The basis for the Project Officer's approval shall be a finding that the expenses are reasonable, necessary and correct and billed in accordance with the

provisions of this Contract. Such approval or payment may be withheld if the following items are not included in the invoice:

- a) A list of the individuals, by name and title, who have worked during the invoice period;
  - b) The hourly rates of these individuals as stated in the Proposal;
  - c) The number of hours spent by each individual;
  - d) A listing by category of materials and supplies purchased during the invoice period;
  - e) A list of transportation lodging, and meal expenses by each individual incurring such costs during the invoice period and the basis for calculating such costs; and
  - f) The specific dates when services were rendered.
3. The approval of the Project Officer may also be withheld as to any costs that are not just, reasonable, or in conformity with costs in the Proposal.
  4. The total amount paid the Contractor under this Contract shall not exceed the following amounts except as provided in the RFP regarding approved additional expenditures.

**Total Contract Price: \$10,984,162**

5. No expenditures will be reimbursed if they were incurred before the effective date of this contract.
6. All charges for services and other costs charged by the Contractor are subject to review at any time by the Contracting Entity and the Commission.
7. It is presumed that the EDCs will cooperate fully with the Contractor and will provide all relevant data, as well as all employees with the direct knowledge necessary for the Contractor to perform expeditiously its evaluation and draw conclusions. Total payments under this contract will not exceed the total cost quoted in the proposal. However, the total cost may be exceeded if, after the draft Annual and/or Five-Year Reports are released, the EDCs come forth with substantial quantities of new or additional information requiring significant review and analysis by the Contractor. Those costs will be paid in accordance with the payment terms of the Contract; however, those costs will be in addition to and billed separately from the base contract amount at the salary rates provided in the Contractor's Proposal.

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  - b) The hourly rates of these individuals as stated in the Proposal;
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### III. Other Rights of Parties.

#### A. Commission's Right to Disapprove Expenditures.

The Commission shall have the right to approve or disapprove invoice expenditures and may adjust payment to the Contractor for the amount of any disapproved expenditure. The Contractor will not be paid for any cost incurred for services not in compliance with the terms of this contract. Nothing herein shall preclude the Contracting Entity from questioning the reasonableness or propriety of any invoice, or any portion of an invoice, submitted by Contractor, prior to payment of the same.

#### B. Commission's Right to Make Amendments and Changes to Contract.

Subject to the terms and conditions of this Contract and to the statutory and common law of the Commonwealth of Pennsylvania, the Commission shall have the right to make changes in the Statement of Work in the Proposal, provided that any such changes are within the general scope of the Statement of Work, that payment for work performed under such changes shall be made pursuant to the Proposal, and that the total cost of this contract is not exceeded. Approval of the Contracting Entity for such changes shall not be required; however, prior to making any such change the Commission will consult with the Contracting Entity.

#### C. Confidentiality.

1. The parties recognize that it will be necessary for the Contractor to review certain proprietary information of the EDCs. Accordingly, the Contractor, the EDCs, and the Commission have or will execute Nondisclosure Agreements that are substantially similar to the Nondisclosure Agreement attached hereto as Exhibit 1. The Nondisclosure Agreement, including any Nondisclosure Agreement utilized by any EDC which may differ from Exhibit 1, is hereby incorporated into this Contract by reference.
2. The executed Contract, the Contractor's Proposal, and the Annual Report and Five-Year Report may be released by the Commission, subject to confidentiality restrictions. Any other information that is not otherwise public will be released only after consent of the Contractor, the Contracting Entity, and the EDCs.
3. If the release is to the media, the Commission agrees to inform the Contracting Entity and the relevant EDCs prior to such release and to provide a copy of the release to the Contracting Entity and the relevant EDCs.

4. No release of any information concerning the Act 129 Statewide Evaluator Project other than the existence and nature of the Contractor may be made by the Contractor, the Contracting Entity, or the EDCs without the prior written approval of the Commission's Project Officer or his/her designee.

D. Termination.

The Commission reserves the right to terminate this Contract with thirty (30) days notice to the Contractor if the Contractor's performance is, in the sole view of the Commission, unsatisfactory and not in keeping with the Proposal and the RFP, and/or for any material breach of the terms contained herein. In the event of a material breach of the Contract terms, the Project Officer shall inform the Contractor's Representative of the breach. The Contractor shall have ten days in which to cure the breach to the satisfaction of the Commission. This provision shall not be construed as a limitation on remedies by the Commission or the Contracting Entity for breach of this Contract by the Contractor.

IV. Other Agreements by the Parties.

A. Status of Contractor.

The parties hereto agree that the Contractor and any agents and employees of the Contractor shall act, in the performance of this Contract, in an independent capacity and not as officers, employees or agents of the Commission, the Contracting Entity, or the EDCs.

B. Interest of Contractor.

The Contractor warrants that it presently has no interest and promises that it shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Contractor agrees that in the performance of this Contract, it shall not knowingly employ any person having such interest. The Contractor further certifies that no member of the board of the Contractor or any of its officers or directors have such an adverse interest. Contractor personnel who perform the services are employees of the Contractor (or its subcontractors) and the Contractor will be solely responsible for payment of compensation to such persons. The Contractor agrees to indemnify, defend, and hold harmless the Commission, the Contracting Entity, or any EDC for any claim asserted against the Commission, the Contracting Entity, or any EDC alleging that the Commission, the Contracting Entity, or any EDC is an employer, co-employer or joint employer of any Contractor personnel. The Contractor

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will assume full responsibility for payment of all federal, state, provincial and local taxes, withholding or contributions imposed or required under unemployment insurance, social security and income tax laws with respect to such persons. Should the Commission, the Contracting Entity, or any EDC be required to pay any amount to a governmental agency for failure to withhold any amount as may be required by law, the Contractor agrees to indemnify, defend and hold harmless the Commission, the Contracting Entity, or any EDC for any amount so paid, including interest, penalties and fines. The Contractor is not an agent of the Commission, the Contracting Entity, or any EDC and has no authority to represent the Commission, the Contracting Entity, or any EDC as to any matters, except as expressly authorized in this Contract.

C. Disputes.

All questions arising respecting any matter pertaining to this Contract or any part thereof or any breach of contract arising thereunder shall be referred to the Project Officer. Any dispute which cannot be settled by negotiations after submission to the Project Officer shall then be submitted to the Commission for resolution. The provisions of this paragraph shall not be construed to limit the remedies of the Commission, the Contractor, and the Contracting Entity for breach of this Contract, nor shall it limit the Commission, the Contractor, and the Contracting Entity's rights to appeal to the Commonwealth Court after resolution by the Commission. This provision shall not be construed as an arbitration provision that provides the Commission with arbitration powers.

D. Conflicts between the Contract, the RFP, and the Proposal.

Whenever a provision of the Proposal conflicts with the Contract or the RFP, the provisions of the Contract and the RFP will prevail over the Proposal. If there is a conflict between the Contract and the RFP, the Contract will prevail over the RFP.

E. Integration Clause.

This Contract, and all exhibits, appendices, addenda, and other attachments thereto, constitutes the entire agreement between the parties, subject to the provisions of paragraph F "Amendments" below. No other agreements, whether oral or written, or outside conditions, warranties, or understandings regarding the subject matter of this Contract shall be deemed to exist for purposes of interpreting this Contract, nor shall any such agreements be enforceable against the Commission, the Contracting Entity, the Contractor, or any EDC.

F. Amendments.

No amendment or modification changing the scope or terms of this Contract shall have any force or effect unless it is in writing and signed by all parties except as provided in this Contract.

G. Applicable Law.

This Contract shall be interpreted, construed, and governed by the laws of the Commonwealth of Pennsylvania. Contractor expressly submits to the personal and subject matter jurisdiction of the Courts of the Commonwealth of Pennsylvania.

H. Assignment and Delegation.

Neither this Contract nor any of its benefits or duties may be assigned or delegated by subcontract or otherwise, except for those subcontracts specifically identified by the Proposal, without prior written approval by the Commission, who shall first consult with the Contracting Entity. Any subcontract shall contain all of the provisions of this Contract.

I. Severability.

If any provision of this Contract is invalid, the remainder of the Contract shall not be affected thereby if the essential terms and conditions of the Contract remain valid, legal and enforceable.

J. Non-Waiver.

No provision of this Contract can be waived by any party unless made in writing and signed by the party against whom waiver is sought; nor shall the failure by any party to, at any time or on multiple occasions, require performance of any provision hereof be construed as a waiver of future enforcement thereof; nor shall waiver by any party of any breach hereof be construed as a waiver of any future breach.

K. Time of the Essence.

Time is of the essence in this Contract and any failure to perform any of the terms hereof in the time and manner specified shall be deemed a material breach of this contract.

L. Effective Dates.

The effective date of this Contract shall be fixed by the Issuing Office after the Contract has been fully executed by the Contractor, the Contracting Entity, and the Commission and all approvals required by the Commonwealth contracting procedures have been obtained.

M. Insurance.

During the performance of the work covered by this Contract, the Contractor shall maintain the following minimum insurance coverage at no additional cost to the Commission, the Contracting Entity, or the EDCs:

1. Workers' Compensation Insurance as required by law.
2. Employer's Liability Insurance (bodily injury) of \$1,000,000 per accident, and Employer's Liability Insurance (occupational diseases) of \$1,000,000 per person and \$2,000,000 in the general aggregate.
3. Comprehensive General Liability Insurance of \$1,000,000 each person; \$1,000,000 each occurrence for bodily injuries; and \$1,000,000 for property damage.
4. Comprehensive Automobile Liability Insurance covering all owned and hired vehicles of \$1,000,000 each person, \$1,000,000 each accident for bodily injuries, and \$1,000,000 each accident for property damage.

The insurance called for above is subject to the normal limitations and exclusions applying to each type of insurance; provided, however, that first dollar coverage shall be provided for each type. The Commission, the Contracting Entity, and all the EDCs (each listed individually by name) will be named as an additional insured on the policies referred to in 2, 3, and 4 above and such insurance shall be endorsed to require the insurer to furnish the Commission, the Contracting Entity and the EDCs with ten (10) days written notice prior to the effective date of any cancellation of insurance.

Upon request, the Contractor shall furnish the Commission, the Contracting Entity, or the EDCs with certificates or other documentary evidence showing that the insurance to be carried by the Contractor in accordance with this paragraph has been arranged.

O. Indemnity.

The Contractor agrees and undertakes to indemnify, defend, and hold harmless the Commission, the Contracting Entity, the EDCs, and their respective agents and employees and subcontractors against all liabilities, claims, damages, causes of action, judgments, costs and expenses, including reasonable attorneys' fees, in any way relating to or arising out of any action or operation of the Contractor, or its agents, employees, or subcontractors under this Contract, including but not limited to personal injury or property damage, including but not limited to injury or damage to the person or property of the Commission, the Contracting Entity, the EDCs, or the Contractor, or their respective agents, employees, or subcontractors, and shall, at the request of the Commission, the Contracting Entity or any of the EDCs, defend any and all actions brought against the Commission, the Contracting Entity or the EDCs, and their respective agents, employees, or subcontractors based upon any such claims or demands. This Indemnity shall not apply relating to any penalty imposed by the Commission on the Contracting Entity or an EDC. The Contractor expressly waives use of the "statutory employer" defenses provided in the Pennsylvania Worker's Compensation Act at 77 P.S. § 481(a) and (b) and 77 P.S. § 52 with regard to this indemnity.

P. LIMITATION OF LIABILITY.

**IN NO EVENT, WHETHER BASED ON CONTRACT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE OR GROSS NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL ANY PARTY OR THEIR RESPECTIVE AGENTS OR EMPLOYEES OR SUBCONTRACTORS, BE LIABLE TO ANY PARTY OR THEIR RESPECTIVE AGENTS OR EMPLOYEES OR SUBCONTRACTORS, FOR SPECIAL INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS OR REVENUE OR COST OF CAPITAL.**

The Contractor's indemnification, defense, and hold harmless obligations found in Paragraph O "Indemnity" under this Agreement shall not exceed \$8 million.

Q. Final Report Copies.

The Contractor shall provide an electronic version of each Final Annual or Five-Year Report that is compatible with the Commission's network software to the Commission and the Contracting Entity for disbursement to the EDCs.



R. Immunity.

Nothing contained in this Contract shall be construed as a waiver of the immunity of the Commonwealth or the Commission against suit.

S. Potential Conflicts of Interest.

In order to ensure an impartial review of the EDCs' Energy Efficiency and Conservation Programs, other than in performance of duties under this Contract, the Contractor or any of its subcontractors, or any parent or related entities to the Contractor or any of its subcontractors, or any of the Contractor's or any of its subcontractors' employees, may not provide evaluation or energy efficiency or conservation services to any of the Pennsylvania-based EDCs during the Contract term. In addition, the contract or will seek review and approval from the Project Officer on a case-by-case basis before contracting with electric distribution utilities located outside of Pennsylvania that are affiliates of Pennsylvania-based EDCs or who share the same corporate parent company. Factors to be considered by the Commission include, but are not limited to, the following: 1) whether the contract oversight for the non-Pennsylvania-based EDC involves the same staff that are involved in contract oversight of the Act 129 program contracts; 2) whether the staff that are involved in the Commission contract are the same or different from the staff that would work on the out-of-state contract; and 3) whether the nature of the work on the out-of-state contract involves EM&V and EE&C program design work or other work such as market research. Requests for review from the Contractor should include information on these factors as well as other factors that may be relevant to potential conflicts of interest.

T. Jurisdiction.

It is understood and agreed that actions undertaken by the Contractor this shall be limited to matters within the jurisdiction of the Commission.

U. Employees, Background Checks, Substance Abuse.

1. Contractor shall employ for the work only persons known to it to be experienced, qualified, reliable, and trustworthy. At the request of the Commission staff, EDC staff, or Contracting Entity staff, the credentials of any of Contractor's employees assigned to perform the work shall be submitted to them in advance of such assignment. During the performance of the work, the Commission staff, EDC staff, or Contracting Entity staff may object to any Contractor's employee, who, in their opinion, does not meet these criteria. In such case, Contractor shall at its expense and risk, immediately replace and remove such employee and promptly advise the Commission's Project Officer.

2. Background checks. Contractor shall make best efforts to ensure that Contractor's employees assigned to work on this Project do not have criminal records and are not involved in criminal activity which could create a risk of fraud/embezzlement and/or a risk to the Commission's or EDCs' property and employees, and/or to any EDCs' customers or customers' property.

Contractor will obtain criminal background checks for all employees, including but not limited to employees of all subcontractors, for this Project who will visit or otherwise have physical contact with any of the customers of the EDCs or such customers' premises or property prior to such employee performing work on the Project. Criminal background checks will be checked at least every year for such employees. Contractor will maintain up to date records evidencing such criminal background checks.

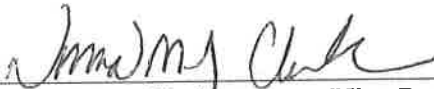
Upon actual knowledge of a criminal record or involvement in a potentially criminal activity, including but not limited to threats, harassment, or other abuse, Contractor shall immediately remove any such employee or employees from the work and immediately contact the Project Officer and the Contracting Entity's Representative to inform them of the circumstances. Commission staff, EDC staff, or Contracting Entity staff, at any time, may request Contractor to verify that an employee or employees do not possess a criminal record.

- a. Contractor shall provide certification for each of the Contractor's employees who are authorized as part of the work to have electronic or unescorted physical access to critical cyber assets (as the same are identified from time to time), that such employee (i) has submitted to a Background Check within the past seven years whereby no evidence of a criminal record or criminal activity was discovered; (ii) is subject to a seven-year cycle re-check of the Background Check; and (iii) has received the Contractor-sponsored security awareness training or will receive such training prior to accessing critical cyber assets. These requirements are subject to audit by Commission staff, EDC staff, or Contracting Entity staff.
3. Substance Abuse. Contractor agrees to comply with all applicable state and federal laws regarding a drug-free workplace. Contractor shall make a good faith effort to ensure that all Contractor's employees undertaking work will not be under the influence, purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs in any way. Upon actual knowledge of such activity or any such potential activity, Contractor shall immediately remove any such employee or employees from the work and immediately contact the Project Officer and the Contracting Entity's Representative to inform them of the circumstances.


IN WITNESS THEREOF, intending to be legally bound, the Contractor, the Contracting Entity, and the Commission, have caused this 2016 Act 129 Statewide Evaluator Contract to be approved and executed under their signatures with a duplicate copy being provided to each of the parties.

  
Lynn Hoefgen President  
NMR Group, Inc.  
Contractor

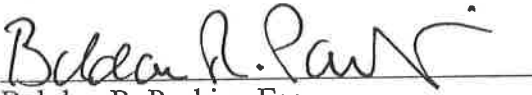
2/22/16  
Date

  
Donna M. J. Clark, Esq. Vice President  
EEC Pennsylvania Evaluations  
Contracting Entity

2/29/16  
Date

  
Robert C. Gramola  
Director of Administration  
Pennsylvania Public Utility Commission

2/19/16  
Date

  
Bohdan R. Pankiw, Esq.  
Chief Counsel  
Pennsylvania Public Utility Commission

2-19-16  
Date