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VIA FIRST CLASS MAIL

VIA E-MAIL

Honorable Elizabeth H. Barnes
Administrative Law Judge
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105

Re: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of Their Default Service Programs
Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-20112273670

Dear Judge Barnes:

On behalf of Exelon Generation Company, LLC and Exelon Energy Company ("ExGen") enclosed please find ExGen's Reply Brief, electronically filed today with the Commission.

Copies have been served as indicated on the enclosed Certificate of Service.

Very truly yours,

Thomas McCann Mullooly
Trevor D. Stiles

cc: Service List
Rosemary Chiavetta, Secretary

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of Exelon Generation Company, LLC and Exelon Energy's Reply Brief in the above-captioned proceeding on the following as permitted by 52 Pa. Code § 1.54:

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition of Metropolitan Edison)	Docket Nos. P-2011-2273650
Company, Pennsylvania Electric Company,)	P-2011-2273668
Pennsylvania Power Company and West)	P-2011-2273669
Penn Power Company for Approval of Their)	P-2011-2273670
Default Service Programs)	

**REPLY BRIEF OF
EXELON GENERATION COMPANY, LLC
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I. INTRODUCTION

Exelon Generation Company, LLC and Exelon Energy Company (collectively, “ExGen”) hereby submit this Reply Brief for consideration with regard to the Default Service Programs (“DSPs” or “Programs”) filed by Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (collectively, the “Joint Petitioners”) on November 17, 2011, in Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670.

In this Reply Brief, ExGen focuses solely on last-minute and unsupported opposition to its proposal that the Joint Petitioners’ assume responsibility for Generation Deactivation charges and recover them through the Default Service Support Rider (“DSS Rider”) Generation Deactivation charges.¹ ExGen refutes the position taken by the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, the Penn Power Users Group, and the West Penn Power Industrial Intervenors (“The Industrials”) in their Main Brief when they raise, for the first time and without any factual support in the record, their opposition to ExGen’s Generation Deactivation charges proposal.

II. GENERATION DEACTIVATION CHARGES

Generation Deactivation charges were described in direct testimony and, up until the opening round of briefs, have attracted no controversy. As background, when and if a generator in PJM decides to deactivate a unit, it must provide PJM with notice of that intent at least ninety days prior to the unit’s proposed deactivation date.² PJM then studies the transmission system to

¹ See Joint Petitioners’ Main Brief at **III.D.1 and III.D.2.**

² ExGen St. 1 at 2

determine whether the proposed deactivation could adversely affect system reliability.³ PJM notifies the generation owner of (1) any specific reliability concerns and (2) the estimated period to construct required transmission upgrades.⁴ Although the generation owner retains the right to deactivate the unit even if PJM identifies reliability issues, to maintain system reliability, the generation owner may elect to continue to operate the unit past its planned deactivation date pending the completion of necessary transmission upgrades.⁵ A generation owner who chooses to continue to operate the unit pending completion of transmission upgrades beyond the requested deactivation date will recover its costs.⁶ PJM collects revenues for such generators by imposing a Generation Deactivation charge on certain entities.⁷

Load serving entities within zones where such reliability impacts are identified are allocated a proportional share of Generation Deactivation charges by PJM.⁸ These charges are not market-based and have the potential to be significant. Because suppliers cannot hedge these potentially significant costs, they may include a premium in their bids to cover the future uncertainty of those costs.⁹ These unknown, but potentially large, costs lack transparency and can cause customers to pay significantly more than required by the actual Generation Deactivation charges.¹⁰ That these costs are unknown, unknowable, and cannot be hedged could

³ *Id.*

⁴ *Id.* at 2-3.

⁵ *Id.* at 3

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 4.

¹⁰ *Id.*

drive up market prices, to the detriment of all parties.¹¹ Recovering the Generation Deactivation charges through the DSS Rider reduces these risks and makes these costs transparent to consumers.¹² For these reasons, and because of the similar treatment being proposed for other non-market based charges in the Joint Petitioners DSP, ExGen proposed in direct testimony that these charges be collected from all customers through the DSS Rider.¹³ No party contests this description of Generation Deactivation charges.

A. Summary of Positions and Record

(1) What Parties Testified to and Argued

Both in its pre-filed testimony¹⁴ and in its Main Brief¹⁵ ExGen proposed including Generation Deactivation charges within the scope of charges recovered by the Joint Petitioners through their DSS Rider. Nowhere in the parties' pre-filed testimony did any party directly oppose ExGen's proposal. In fact, as noted in ExGen's Main Brief, the Joint Petitioners support ExGen's proposal and incorporated it into their revised DSS Rider tariffs.¹⁶

In the Main Briefs, several parties indicated their support for ExGen's position: Dominion,¹⁷ the Joint Petitioners,¹⁸ and RESA.¹⁹ Only one party—The Industrials—opposed

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 4,7.

¹⁴ ExGen St. 1.

¹⁵ ExGen's Main Brief.

¹⁶ *See* Met-Ed/Penelec/Penn Power/West Penn Statement No. 2-R at 21; Exhs. REV-22 through REV-26.

¹⁷ Dominion's Main Brief at 12.

¹⁸ Joint Petitioners' Main Brief at 67.

¹⁹ RESA's Main Brief at 43.

ExGen's Generation Deactivation charges proposal.²⁰ The Industrials provide no substantive discussion of their opposition to the collection of Generation Deactivation charges through a non-bypassable rider. Rather, The Industrials simply adopt by reference their more general opposition to the pass-through of NMB transmission services through the DSS Rider.

The Industrials never previously voiced their opposition on this point, nor have they provided any testimony about Generation Deactivation charges. Only now for the first time have they identified their opposition to ExGen's proposal. In opposing ExGen's proposal, The Industrials fail to provide any specifics as for why they oppose the pass-through of Generation Deactivation charges. Even if they had provided specifics in their Main Brief, however, the record is devoid of any evidence that would support their contentions, as incorporated by reference.

Notwithstanding the paucity of evidence, The Industrials appear to insinuate that ExGen's Generation Deactivation charges proposal would introduce "double-counting" and transition issues. This contention fails. Consistent with 52 Pa. Code § 5.406, ExGen notes that a publicly available report issued by PJM²¹ indicates that Generation Deactivation charges are currently not being imposed in the Joint Petitioners' service territory.²² As discussed more fully

²⁰ The Industrials' Main Brief at 62.

²¹ PJM is a federally regulated regional transmission operator ("RTO") established in accordance with the directions of the Federal Energy Regulatory Commission. Though not directly a governmental entity, PJM is a public organization that fits with the § 5.406(a)(2) "similar entity" provision of the Commission's "public documents" rule.

²² See *Customer Guide to PJM Billing*, available at <http://www.pjm.com/~media/markets-ops/settlements/custgd.ashx>. Page 11 of the document discusses the allocation of Generation Deactivation charges and identifies the three most recently active agreements for which those charges are assessed. The report shows the zones allocated the costs and the percentage of allocation. The only Joint Petitioner zone identified is for Penelec, relating to an allocation of 2.24% of the costs relating to the Hudson facility. These charges ended in December 2011. No other costs are currently assessed for other Joint Petitioner utilities.

below, this contradicts The Industrials' claim that such charges would impose significant transition and double-counting concerns.

B. Argument

(1) The Industrials Fail to Support their Argument Against Passing NMB Transmission Service Charges through the DSS Rider

In their Main Brief, The Industrials argue that the Presiding Judge should reject the Joint Petitioners' proposal to pass NMB Transmission Service Charges through the DSS Rider.²³ In relevant part, The Industrials argue that passing such charges through the DSS Rider (1) violates the Competition Act, Pennsylvania regulations, and Commission policy;²⁴ and (2) causes seemingly intractable transition and standardization problems for industrial customers.²⁵ Neither of these over-arching arguments against the DSS Rider, and by incorporation, against ExGen's Generation Deactivation charges proposal, can succeed.

As a threshold matter, ExGen supports and adopts the arguments raised by the Joint Petitioners in their Main Brief as they relate to the DSS Rider and Generation Deactivation charges.²⁶ NMB charges, such as Generation Deactivation charges, are non-market based, unpredictable, and cannot be hedged.²⁷ Because they cannot be accurately predicted, electric generation suppliers ("EGSs") and wholesale suppliers are likely to build a price premium into their bids to mitigate their risk.²⁸ Removing the responsibility from these unpredictable charges

²³ The Industrials' Main Brief at 62.

²⁴ See The Industrials' Main Brief at 45-61.

²⁵ *Id.* at 48-51.

²⁶ Joint Petitioners' Main Brief at 53-67.

²⁷ ExGen St. 1 at 4.

²⁸ *Id.*

from suppliers and instead passing them through at cost provides pricing transparency to customers and reduces risk premiums built into bids, ultimately resulting in lower costs for customers.²⁹

The Industrials' argument that the Joint Petitioners' NMB proposal violates the Competition Act must also fail. The Industrials argue that the NMB proposal violates the Competition Act because it results in the "re-bundling" of generation and transmission,³⁰ which they assert violates the "plain language" of the Competition Act.³¹ The entire point of the Competition Act is to provide benefits to Pennsylvania ratepayers and reduce prices through embracing competition in electricity generation.³² Embracing competition does not require EGSs and wholesale suppliers to bear all costs capable of being borne; rather, the Competition Act focuses on ensuring competition in areas where competition provides benefits, while providing for the incumbent electric distribution company ("EDC") to provide services to ensure continued reliability.³³

As the Joint Petitioners identified in their Main Brief, nothing in the Competition Act precludes the EDC from recovering NMB-type charges.³⁴ The Commission has *already approved* Penn Power's proposal to recover RTEP costs on a non-bypassable basis under its DSS Rider,³⁵ validating such a competitively-neutral approach to what The Industrials term "re-

²⁹ *Id.* at 4, 7.

³⁰ The Industrials' Main Brief at 46-47.

³¹ *Id.* at 47.

³² *See generally* 66 Pa. C.S.A. § 2802(12) (emphasizing focus on competition in electric *generation*).

³³ *Id.* at (12) - (14).

³⁴ Joint Petitioners' Main Brief at 62.

³⁵ Joint Petitioners' St. 7 at 9; Joint Petitioners' Main Brief at 62.

bundling.” This approach complies with the goals of the Competition Act inasmuch as it provides transparency and lower prices for end-users. The Industrials may believe the DSS Rider is not the best means by which to accomplish these goals, but their argument that passing NMB charges through the DSS Rider is precluded by the Competition Act is simply not valid.

(2) The Primary Factual Reason the Industrials Articulate to Oppose Pass-through of NMB Charges — Double-Counting — Does Not Apply to Generation Deactivation Charges

In their Main Brief, The Industrials raise for the first time their opposition to the pass-through of Generation Deactivation charges. As noted above, much of their argument against NMB charges in general, which they incorporate by reference to use as justification for opposing the pass-through of Generation Deactivation charges, focuses on concerns about transition plans and double-counting. That is, The Industrials express concern that if the Joint Petitioners implemented the Generation Deactivation charges proposal, various industrial entities might be charged twice for these charges or experience difficulty standardizing their contracts.³⁶ The Industrials present no evidence to demonstrate this point. In fact, their entire discussion of Generation Deactivation charges amounted to the following sentence in Section III.D.2 of their Main Brief:

For the reasons discussed more fully in Section III.D.1, MEIUG, PICA, PPUG, and WPPII oppose any proposed collection of generation deactivation charges through a non-bypassable rider.³⁷

Even assuming, *arguendo*, that now is an appropriate time for The Industrials to first raise this issue, their argument fails: Generation Deactivation charges have not been and are not

³⁶ The Industrials’ Main Brief at 48-51.

³⁷ *Id.* at 62.

currently being assessed to entities within the Joint Petitioners' footprint in any meaningful way.³⁸ Rather, Generation Deactivation charges are infrequent events that only arise when a plant is designated for retirement but is determined to be needed for reliability. Over a given period of time, this may or may not occur in the Joint Petitioners' service territory. Because there currently are no material Generation Deactivation charges imposed in the Joint Petitioners' service territory, The Industrials' concerns about transition issues are illusory.

III. CONCLUSION

Like other non-market based charges, Generation Deactivation charges are uncertain and impossible to hedge. Because such charges cannot be reliably predicted, wholesale suppliers and EGSs may build a risk premium into their bid, ultimately driving up costs for consumers. As Mr. Berg testified, and as the Joint Petitioners agreed, it makes good sense to pass Generation Deactivation charges through the DSS Rider: doing so reduces risks, thus reducing consumer prices while providing additional transparency.

Additionally, the arguments The Industrials incorporate by reference against Generation Deactivation charges lack specific relevance inasmuch as no material Generation Deactivation charges are currently imposed on the Joint Petitioners' customers. Thus, there is no real transition or double-counting concern that applies here.

WHEREFORE, Exelon Generation Company, LLC and Exelon Energy Company request that the Administrative Law Judge issue a Recommended Decision including the approval of the revised tariff sheets contained in Met-Ed/Penelec/Penn Power/West Penn Exhibits REV-22 through REV-26, consistent with the recommendations set forth in this Reply Brief.

³⁸ *See supra* n.22.

Dated: May 16, 2012

Respectfully submitted,

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