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November 29, 2012

VIA eFILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17105-3265

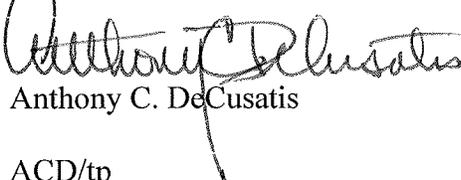
**Re: Joint Petition Of Metropolitan Edison Company, Pennsylvania Electric Company,
 Pennsylvania Power Company And West Penn Power Company For Approval Of
 Their Default Service Programs
 Docket No. P-2011-2273650, Docket No. P-2011-2273668,
 Docket No. P-2011-2273669 and Docket No. P-2011-2273670**

Dear Secretary Chiavetta:

Enclosed for filing is the unbound original of the **Answer of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to Petition for Appeal of Staff Action and, in the Alternative, Reconsideration of Secretarial Letter Approving Their Revised Default Service Plan Compliance Filing** (the "Answer") in the above-captioned proceeding.

As indicated on the enclosed Certificate of Service, copies of the Answer are being served on all active parties and the Administrative Law Judge.

Very truly yours,


Anthony C. DeCusatis

ACD/tp
Enclosures

c: Per Certificate of Service

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Moscow New York Palo Alto Paris Philadelphia Pittsburgh Princeton San Francisco Tokyo Washington Wilmington

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOINT PETITION OF METROPOLITAN	:	
EDISON COMPANY, PENNSYLVANIA	:	DOCKET NOS. P-2011-2273650
ELECTRIC COMPANY, PENNSYLVANIA	:	P-2011-2273668
POWER COMPANY AND WEST PENN	:	P-2011-2273669
POWER COMPANY FOR APPROVAL OF	:	P-2011-2273670
THEIR DEFAULT SERVICE PROGRAMS	:	

CERTIFICATE OF SERVICE

I hereby certify and affirm that I have this day served copies of the **Answer of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company to Petition for Appeal of Staff Action and, in the Alternative, Reconsideration of Secretarial Letter Approving Their Revised Default Service Plan Compliance Filing** upon the following persons, in the matter specified below, in accordance with the requirements of 52 Pa. Code § 1.54:

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Dated: November 29, 2012

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOINT PETITION OF METROPOLITAN	:	
EDISON COMPANY, PENNSYLVANIA	:	DOCKET NOS. P-2011-2273650
ELECTRIC COMPANY, PENNSYLVANIA	:	P-2011-2273668
POWER COMPANY AND WEST PENN	:	P-2011-2273669
POWER COMPANY FOR APPROVAL OF	:	P-2011-2273670
THEIR DEFAULT SERVICE PROGRAMS	:	

**ANSWER OF
METROPOLITAN EDISON COMPANY,
PENNSYLVANIA ELECTRIC COMPANY,
PENNSYLVANIA POWER COMPANY AND
WEST PENN POWER COMPANY**

**To Petition For Appeal Of Staff Action And, In The Alternative, Reconsideration Of
Secretarial Letter Approving Their Revised Default Service Plan Compliance Filing**

I. INTRODUCTION AND OVERVIEW

Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”) and West Penn Power Company (“West Penn”) (collectively, or any combination of the foregoing, the “Companies”) hereby reply to the Petition by four *ad hoc* groups of industrial customers (hereafter, the “Industrials”)¹ for appeal of staff action or, in the alternative, for reconsideration of the November 8, 2012 Secretarial Letter approving the Companies’ Revised Default Service Plan Compliance Filing (“Compliance Filing”) with respect to the recovery of certain non-market based (“NMB”) transmission costs through non-bypassable tariff riders (“Secretarial Letter”). The Compliance Filing was made on September 6, 2012 pursuant to Ordering Paragraphs 18 and 19 of the Pennsylvania Public Utility Commission’s (“Commission” or the “PUC”) Order entered on August 16, 2012 in this proceeding (“August 16 Order”). By that Order, the Commission approved, with modifications, the Default Service Programs for the period from June 1, 2013 to May 31, 2015 (“DSPs”) that

¹ The Industrials consist of the Met-Ed Industrial Users Group (“MEIUG”), the Penelec Industrial Customer Alliance (“PICA”), the Penn Power Users Group (“PPUG”) and the West Penn Power Industrial Intervenors (“WPPII”).

the Companies filed on November 17, 2011.

The Compliance Filing was submitted to reflect all changes in the Companies' DSPs needed to comply with the August 16 Order exclusive of those areas for which the Commission required additional consultation among interested parties, namely, retail market enhancement programs for all Companies and time of use programs proposed by West Penn and Penn Power. Accordingly, the Compliance Filing included the following:

- A revised Default Service Supplier Master Agreement ("SMA") for the Residential/Commercial Customer Classes ("Residential/Commercial SMA");
- A revised Default Service SMA for the Industrial Customer Class (Hourly Pricing Service) ("Industrial SMA");
- Revised Bidding Rules to Procure Default Service Products;
- Revised Solar Photovoltaic Requirements Charge Riders for Met-Ed, Penelec and Penn Power and Revised Solar Photovoltaic Alternative Energy Credit Rules;²
- Revised Price to Compare Default Service Rate Riders ("PTC Riders"), Hourly Pricing Default Service Riders ("HP Riders"), and Default Service Support Riders ("DSS Riders"); and
- Revised Rules, Regulations and Rate Schedules for West Penn.

On September 17, 2012, the Industrials filed Comments that questioned whether relevant parts of the Compliance Filing conform to the Commission's decision on the Companies' proposal to obtain NMB transmission services for both shopping and default service customers and recover the associated costs on a non-bypassable basis through their DSS Riders. *See* August 16 Order, pp. 63-86. Specifically, the Industrials claimed, *inter alia*, that the August 16 Order directs that: (1) Penn Power, but not Met-Ed, Penelec and West Penn, shall recover charges imposed by PJM Interconnection LLC ("PJM") for Regional Transmission Expansion Planning ("RTEP") costs under Penn Power's DSS Rider; and (2) that none of the Companies

² Consistent with the Order (p. 46), West Penn will not implement a Solar Photovoltaic Requirements Charge Rider.

may recover Transmission Enhancement Charges (“TEC”) under their respective DSS Riders (Comments, p. 7 and footnote 10). As explained in the Companies’ Reply to the Industrials’ Comments, which was filed on September 24, 2012, the Industrials’ position is directly contradicted by the plain language of the August 16 Order (pp. 82-83) and, in particular, Ordering Paragraph 17 (pp. 161-162). *See* Reply to Industrials’ Comments, pp. 5-7. (A copy of the Companies’ Reply to Industrials’ Comments is attached as Appendix A to this Answer.)

The Companies initially proposed to procure Network Integration Transmission Service (“NITS”), RTEP and TEC for all retail load (i.e., both default service load and load served by electric generation suppliers (“EGSs”)) and recover the associated costs on a non-bypassable basis under their DSS Riders. Exelon Generation Company, LLC and Exelon Energy Company (“Exelon”) and Dominion Retail Inc. (“Dominion”), respectively, proposed expanding the Companies’ proposal to include Generation Deactivation charges and unaccounted-for energy (“UFE”) costs imposed by PJM. The Companies agreed with, and adopted, the Exelon and Dominion proposals. The Commission rejected the Companies’ expanded proposal with respect to all such costs except RTEP and TEC. As to RTEP and TEC, the Commission held that those costs should be recovered under the Companies’ DSS Riders and should be allocated on the basis of contributions to the single coincident peak transmission load or “1-CP.” *See* August 16 Order, pp. 77-78, 82-83, 161-162. Notably, if, as the Industrials contend, the Commission had not authorized recovery of RTEP and TEC from **all** customers under the Companies’ DSS Riders, there would have been no reason for the Commission to direct the Companies to employ the 1-CP allocation method.

Exelon, Constellation Energy Commodities Group, Inc. and Constellation NewEnergy, Inc. (“Exelon/Constellation”) filed a petition for reconsideration of the August 16 Order in which they asked the Commission to reconsider and reverse its decision excluding Generation Deactivation charges from the Companies’ DSS Riders in light of purportedly new evidence of the magnitude and unpredictable nature of those charges. In its Opinion and Order entered on September 27, 2012, the Commission denied Exelon/Constellation’s petition on its merits and reaffirmed its earlier holding that Generation Deactivation charges should remain the

responsibility of default service generation suppliers and EGSs.³ Although parties other than Exelon and Dominion also filed Petitions for Reconsideration or Clarification of the August 16 Order, the Industrials did not. Moreover, no party questioned the clarity or prudence of the Commission's directive, in Ordering Paragraph 17 of the August 16 Order, that the Companies should recover RTEP and TEC costs under their respective DSS Riders. Accordingly, the Industrials' Petition purporting to "appeal" "staff action" reflected by the Commission's November 8, 2012 Secretarial Letter, or, alternatively, seeking "reconsideration" of the Secretarial Letter is simply a belated attempt to have the Commission reconsider the unambiguous directive set forth in Ordering Paragraph 17.

In accordance with the August 16 Order, the Secretarial Letter approved the Compliance Filing, including the components of the Compliance Filing providing that: (1) all transmission services except RTEP and TEC will be the responsibility of EGSs, for the shopping load they serve, and default service generation suppliers, for the default service load that they serve; (2) the transmission costs borne by default service suppliers are to be recovered under the PTC Rider and HP Rider for fixed-price and hourly-priced service, respectively; (3) the transmission costs borne by EGSs will have to be recovered by EGSs in the prices they charge for competitive generation service; and (4) RTEP and TEC costs are to be recovered from industrial customers under the Companies' DSS Riders based on customers' Network Service Peak Load, which is PJM's measure of customers' contribution to the 1-CP.

In their Petition, the Industrials have renewed their request, first set forth in their Comments, that the Commission direct the Companies to revise their Compliance Filing to remove RTEP and TEC costs from Met-Ed's, Penelec's and West Penn's DSS Riders, to remove TEC costs from Penn Power's DSS Rider, and to require those costs to be borne by default service generation suppliers and EGSs for default service and "shopping" load, respectively. The Industrials offer four purported reasons for this request, none of which are valid.

³ See Opinion and Order, *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 No. P-2011-2273650, et al. (entered Sept. 27, 2012), p. 10 ("September 27 Order").

First, the Industrials argue that collecting RTEP and TEC from all customers on a non-bypassable basis is allegedly inconsistent with language in the August 16 Order that they contend validates their argument that NMB transmission costs should be borne by a customer's load serving entity ("LSE"). As explained below and in the Companies' Reply to the Industrials' Comments, the Industrials' "interpretation" of the August 16 Order directly conflicts with the plain language of both Ordering Paragraph 17 (August 16 Order, pp. 161-162) and the Commission's decision to "carve out" NITS from the NMB transmission costs that will be recovered under the Companies' DSS Riders. *See* August 16 Order, pp. 82-83. Indeed, had the Commission ruled as the Industrials contend, it would not have been necessary to "carve out" anything. *See* Reply to the Industrials' Comments, pp. 5-8.

Second, the Industrials argue that because the Secretarial Letter does not discuss, or specifically reject, their Comments, the Commission should reconsider its decision that the NMB transmission cost recovery components of the Compliance Filing comply with its directives in the August 16 Order. *See* Petition, p. 7. To the contrary, it is well settled under Pennsylvania appellate court jurisprudence that the Commission is not required to discuss expressly or at length every contention by a non-prevailing party. Where the Commission is faced simply with a choice of actions, each action is fully explained in the record, and the Commission chooses one over the other, it is clear that the Commission's choice amounts to acceptance of the underlying thesis of the party that prevailed and the rejection of the contentions of the loser. *See UGI Corp. v. Pa. P.U.C.*, 410 A.2d 923, 935 (Pa. Cmwlth. 1980).

Third, based on a selective reading of the September 27 Order, the Industrials claim that the Commission somehow validated the convoluted interpretation of the August 16 Order they are espousing now (Petition, pp. 5-7). In fact, the September 27 Order did not even purport to address the issue the Industrials are attempting to raise, and the Industrials' entire argument hinges on a single sentence in that Order in which the Commission provided only a shorthand summary of the August 16 Order's lengthy, precise and detailed discussion of the costs to be recovered under the Companies' DSS Riders.

Fourth and finally, the Industrials contend that the Secretarial Letter is inconsistent with the Commission’s decision in the default service proceeding for PECO Energy Company (“PECO”) (“PECO DSP II Order”),⁴ which was entered on October 12, 2012. However, in that case, PECO never proposed to procure any NMB transmission services or to recover any such costs under PECO’s equivalent of the Companies’ DSS Riders. Rather, PPL Energy Plus, LLC (“PPL”) proposed that the responsibility for Generation Deactivation charges should be shifted from LSEs to PECO, while the Retail Energy Supply Association (“RESA”) supported PPL and contended that PPL’s proposal should be expanded to include other NMB transmission charges, including NITS. No party offered the middle ground that was proposed in this case, and adopted by the Commission, of “carving out” NITS and authorizing the recovery of RTEP and TEC costs on a non-bypassable basis from all customers. *See PECO DSP II Order*, pp. 56-60. This case is further distinguished because the Commission has previously approved the recovery of RTEP costs from all customers under Penn Power’s DSS Rider in that Company’s prior default service proceeding and, in the same case, adopted the consensus of the settling parties – which included PPUG – that Met-Ed and Penelec should be authorized to do the same **in this proceeding**. *See Petition of Pennsylvania Power Co. for Approval of Default Service Program for the Period from January 1, 2011 through May 31, 2013*, Docket No. P-2010-2157862 (Final Order entered Nov. 17, 2010), p. 20.

As discussed below, the Industrials have not provided any valid reason for the Commission to review, reconsider and/or reverse the decision memorialized in the Secretarial Letter, namely, that the Compliance Filing conforms to the August 16 Order and, therefore, the Companies should bear RTEP and TEC costs on behalf of all their customers and recover those costs on a non-bypassable basis under their DSS Riders beginning June 1, 2013. Accordingly, the Petition should be denied.

⁴ *Petition of PECO Energy for Approval of its Default Service Program II*, Docket No. P-2012-2283641 (Final Order entered Oct. 12, 2012).

II. ANSWER

A. **The Industrials' Position Is Directly Contrary To The Plain Language Of The August 16 Order, Which Clearly Provides That All Of The Companies, Not Just Penn Power, Are To Recover RTEP And TEC Costs On A Non-Bypassable Basis Through Their DSS Riders**

The Industrials' principal contention is that the Commission should review or reconsider the Secretarial Letter because, notwithstanding the determination therein that the Companies Compliance Filing conforms fully to the directives of the August 16 Order, the Companies' erroneously provided for the recovery of RTEP and TEC costs under their respective DSS Riders. *See* Petition, p. 5. Specifically, the Industrials contend that the August 16 Order prohibited the Companies from recovering any NMB transmission costs on a non-bypassable basis under their DSS Riders, with the sole exception of Penn Power's recovery of RTEP costs, which the Commission approved in Penn Power's prior default service proceeding. The Industrials' argument is not supported by the August 16 Order. In fact, it is directly contrary to the Commission's decision to "carve out" NITS from the ALJ's recommendation that the Commission adopt the Companies' proposal to recover all NMB transmission costs under their DSS Riders.⁵ By expressly adopting the "carve-out" of NITS that the Industrials themselves had proposed, the Commission made it abundantly clear in discussing this issue that it was accepting the ALJ's recommendation as to costs not "carved out" (i.e., RTEP and TEC), which would be borne by the Companies and recovered under their DSS Riders:

⁵ As previously noted, the Industrials' position is also contradicted by the Commission's order approving the settlement of Penn Power's prior default service proceeding in which the Commission approved a settlement that expressly authorized Penn Power to recover RTEP costs from all customers on a non-bypassable basis under its DSS Rider and, as part of the same settlement, affirmed the settling parties' consensus that "Penn Power's affiliates, Metropolitan Edison Company and Pennsylvania Electric Company, will recover RTEP in a manner consistent with this Settlement." *Petition of Pennsylvania Power Company for Approval of Default Service Program for the Period from January 1, 2011 through May 31, 2013, supra*, at 20. PPUG – one of the Industrials that joined in filing the Industrials' Petition filed in this case, was a signatory to the Penn Power settlement. *Id.* West Penn was not mentioned in the Penn Power settlement because, at the time, it was not a subsidiary of FirstEnergy Corporation ("FirstEnergy"). West Penn became an affiliate of the other Companies when its parent, Allegheny Energy, Inc., merged with FirstEnergy in February 2011 pursuant to the Commission's prior approval.

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.*

August 16 Order, pp. 82-83 (emphasis added).

Notably, the Commission stated it was granting the Industrials' Exception set forth "at 22-23." At those pages of their Exceptions, the Industrials offered an alternative that explicitly applied to **all** "the Companies," not just Penn Power: "While the R.D. 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." Industrials' Exc., p. 22 (emphasis added). Indeed, if the Commission did not retain RTEP and TEC as "NMB transmission costs" to be recovered under **all** the Companies' DSS Riders, there would have been no reason even to consider the Industrials' Exception requesting a "carve out" of NITS. In short, the interpretation of the August 16 Order the Industrials advocate would make the Commission's "carve out" meaningless and superfluous. Perhaps for that reason, the Industrials never mentioned the Commission's "carve out" decision in their Petition or their earlier Comments.

Finally, the second sentence of Ordering Paragraph 17 explicitly limits NMB transmission costs to be excluded from the DSS Riders to UFE, Generation Deactivation charges and NITS. The sentence that follows states that the "remaining components" of NMB transmission charges not specified in the previous sentence are to be collected through the Companies' DSS Riders and allocated using the 1-CP methodology advocated by the Industrials. In other words, RTEP and TEC are the NMB transmission costs that the Commission did **not** exclude from recovery under the Companies' DSS Riders. Moreover, there is nothing in the August 16 Order to suggest that the Commission was authorizing Penn Power, but not the other

Companies, to recover RTEP and TEC under its DSS Rider.⁶ To the contrary, Ordering Paragraph 17, by its terms, applies to all the Companies:

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.

August 16 Order, pp. 161-162 (emphasis added).

In light of the foregoing, the Industrials' contention that the August 16 Order required the Companies to collect all NMB transmission costs, including RTEP and TEC, from LSEs is belied by the plain language of the Commission's directives concerning NMB transmission cost recovery. For that reason alone, the Industrials' request should be denied. Furthermore, by citing the September 27 Order and the *PECO DSP II Order* in support of their positions, the Industrials are trying to go beyond the clear language of the August 16 Order to find some basis for convincing the Commission that Ordering Paragraph 17 means something other than what it unmistakably says. There is no ambiguity in the August 16 Order with respect to NMB transmission cost recovery. Ordering Paragraph 17 properly distinguishes among the NMB transmission costs the Commission held should be a part of each Company's price-to-compare ("PTC") and those that should be recovered under the Companies' DSS Riders. It is particularly telling that the Industrials never sought reconsideration or clarification of the language that they now assert cannot be properly interpreted without resorting to external evidence. However, as explained in Sections II.C. and D., *infra*, even that external evidence does not support the

⁶ Ordering Paragraph 17 erroneously calls the DSS Riders "Default Service Supply Riders," although it is clear that the Commission was referring to "Default Service Support Riders."

Industrials' position.⁷ Accordingly, the Industrials' erroneous interpretation of the August 16 Order does not provide any valid basis for the Commission to reconsider or revise the Secretarial Letter.

B. The Industrials' Comments And The Companies' Reply Were, For All Practical Purposes, Addressed By The Secretarial Letter

The Industrials' second purported reason for urging the Commission to review or reconsider the Secretarial Letter is the Commission's alleged failure to address the Industrials' Comments and the Companies' Reply to the Industrials' Comments. Contrary to the Industrials' assertion, the Commission was not required to consider expressly or at length every contention by the Industrials. *Wheeling v. Pa. P.U.C.*, 778 A.2d 785, 794 (Pa. Cmwlth. 2001). To the contrary, Pennsylvania appellate courts have consistently held that the requirement of Section 703(e) of the Public Utility Code (66 Pa.C.S. § 703(e)) that the Commission make "findings" sufficient to discern the controverted issue and assess the weight given to the evidence is satisfied where the Commission "was presented with a choice of actions, each fully developed in the record and its choice on each issue amounted to an implicit acceptance of one party's thesis and the rejection of the other party's contention." *Barasch v. Pa. P.U.C.*, 101 Pa. Cmwlth. 76, 84, 515 A.2d 651, 655 (1986). *Accord UGI Corp. v. Pa. P.U.C.*, 410 A.2d 923, 935 (Pa. Cmwlth. 1980).

In issuing the Secretarial Letter, the Commission was faced with two clear choices, namely, to approve the Compliance Filing as in conformity with the August 16 Order or not. The only "issue" presented was the one raised by the Industrials' Comments. The Companies' position on that issue was fully developed in their Reply to the Industrials' Comments, which set forth the errors in the Industrials' argument. *See* Appendix A. Moreover, as the Secretarial Letter expressly states, the Commission's advisory staff conducted an independent review of the Compliance Filing in light of the August 16 Order. Based on that review, the Secretarial Letter

⁷ Moreover, evidence external to the four corners of a document may be consulted only where the document's meaning is not clear on its face. External evidence is never appropriately used to try to change the meaning of language that is clear and not ambiguous, as the Industrials are trying to do here.

was issued finding and concluding that the Compliance Filing, including the DSS Riders and related provisions, complies with the terms of the August 16 Order. By doing so, the Companies' interpretation of the August 16 Order was accepted and validated while the contentions raised by the Industrials in their September 17 Comments were rejected. In short, there has been an appropriate review of the Compliance Filing in light of the August 16 Order, and the Secretarial Letter properly memorialized the conclusion that the Compliance Filing accurately implements the Commission's directives set forth in that Order. Neither Pennsylvania appellate authority nor prior Commission practice supports the Industrials' contention that the Commission should reconsider the Secretarial Letter simply to elaborate on a decision that is clear on the face of that document.

C. The Industrials' Efforts To Manufacture A Conflict Between The August 16 Order And The September 27 Order Are Unavailing

In a tacit admission that the plain language of the August 16 Order does not support their position, the Industrials attempt to drag extraneous external evidence into the discussion to try to convince the Commission that Ordering Paragraph 17 of the August 16 Order does not mean what it actually says. To that end, the Industrials point to the Commission's September 27 Order that addressed on the merits Petitions for Reconsideration or Clarification that were filed by various parties.⁸

Although they now aver that there might be "confusion" about what the Commission intended by Ordering Paragraph 17 of the August 16 Order (*see* Petition, p. 5), the Industrials did not file a timely petition to clarify any alleged "confusion" they purportedly perceive. Of course, there is nothing "confusing" about the Commission's directives, as explained in Section II.A., *supra*. Moreover, no other party was "confused" by Ordering Paragraph 17. Indeed, no other party shares the Industrials' view that the Companies' Compliance Filing does not conform to the pertinent terms of the August 16 Order. Accordingly, for that reason, the September 27

⁸ Petitions for Reconsideration and/or Clarification were filed by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Companies, Exelon/Constellation, the Office of Consumer Advocate, the Office of Small Business Advocate and RESA.

Order, on which the Industrials rely, never even addressed the issue of RTEP and TEC cost recovery that was decided with finality in the August 16 Order.

As previously explained, Exelon/Constellation petitioned the Commission to reconsider its rejection of their proposal to have the Companies bear Generation Deactivation charges and recover those costs from all customers on a non-bypassable basis under the Companies' DSS Riders. *See* September 27 Order, pp. 4-10. In its brief discussion of the general background of this narrow issue, the Commission summarized its earlier decision in the following short-hand fashion: "[W]e rejected both the recovery of NMB transmission charges and generation deactivation charges in the Companies' DSS Riders." *Id.* at 4. Based on that single sentence, the Industrials contend the Commission intended to impart to Ordering Paragraph 17 of the August 16 Order a meaning that is entirely contrary to its plain language. The Industrials' position is untenable.

To reiterate, the September 27 Order did not address RTEP and TEC cost recovery because that topic was never presented for the Commission's reconsideration or clarification. Accordingly, the Industrials' attempt to use the September 27 Order as a basis for reinterpreting the August 16 Order is unwarranted and illogical. Moreover, the single sentence from the September 27 Order the Industrials have chosen to focus upon must be read in context. It provides a broad summary that was never intended to delineate precisely or in detail all of the subsidiary issues the August 16 Order resolved concerning cost recovery under the Companies' DSS Riders. In fact, given the narrow grounds for reconsideration asserted by Exelon/Constellation, there was no need to get into any of those details.

Furthermore, if, as the Industrials now contend, the sentence from the September 27 Order on which they rely was intended to impart a meaning at odds with Ordering Paragraph 17's plain language, the Commission chose an improper vehicle for doing so. Even if the Industrials' position were given any credence, the Commission could not pull such an abrupt about-face without furnishing interested parties an "opportunity to be heard," as required by 66 Pa.C.S. § 703(g) before its prior decision could be rescinded or amended. Obviously, that never occurred. More to the point, if the Commission intended the single sentence identified by the

Industrials to be the key to unraveling a hidden meaning concealed beneath the plain language of Ordering Paragraph 17, the Commission would not have buried its intent in a cursory reference within the discussion of an unrelated issue. In short, the Industrials' reliance on the September 27 Order should be seen for what it is, namely, clutching at straws to try to supported a tortured interpretation of Ordering Paragraph 17 that is directly contrary to the plain language of that paragraph and completely inconsistent with the Commission's discussion of the contested issue in the August 16 Order. *See* Section II.A., *supra*.

D. Contrary To The Industrials' Assertion, The Commission's Issuance Of The PECO DSP II Order Does Not Warrant Reconsideration Of The Secretarial Letter

Finally, the Industrials contend that the Commission should reconsider the Secretarial Letter because it is allegedly inconsistent with the Commission's recent decision in the *PECO DSP II Order*. In that Order, the Commission rejected PPL's proposal that responsibility for Generation Deactivation charges be shifted from LSEs to PECO and also rejected RESA's attempt to expand PPL's proposal to encompass other NMB transmission charges, including NITS. However, the *PECO DSP II Order* is not inconsistent with the recovery of RTEP and TEC costs under the Companies' DSS Riders. In PECO's case, no one supported – or even offered – the middle ground of “carving out” NITS while authorizing the recovery of RTEP and TEC costs on a non-bypassable basis from all customers. *See PECO DSP II Order*, pp. 56-60. The “carve-out” proposal was, in fact, the position the Commission accepted and approved for the Companies to implement. This case is also distinguished from PECO's because the Commission had previously approved the recovery of RTEP costs from all customers under Penn Power's DSS Rider in that Company's prior default service proceeding and, in the same case, had adopted the consensus of the settling parties – which included PPUG – that Met-Ed and Penelec should be authorized to do the same **in this proceeding**. *Petition of Pennsylvania Power Co. for Approval of Default Service Program for the Period from January 1, 2011 through May 31, 2013, supra*, p. 20.

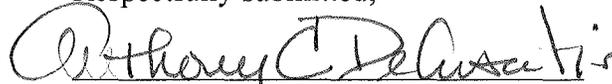
The Industrials claim that failing to reconsider the Secretarial Letter's treatment of RTEP and TEC would result in “a patchwork of different requirements with respect to RTEP and TEC

costs across the Commonwealth.” See Petition, pp. 7-8. The Industrials are simply wrong. Indeed, even the Industrials concede that the current methods of recovering of certain PJM charges (e.g., RTEP) are not consistent among Pennsylvania EDCs because the Commission previously approved collection of RTEP through a non-bypassable charge for Penn Power. (And, as previously noted, the Commission affirmed the principle that Penn Power’s affiliates at the time should recover RTEP through their DSS Riders as well.) Accordingly, the Industrials’ claim that recovering RTEP and TEC costs through the Companies’ DSS Riders would introduce a level of “inconsistency” that does not already exist is unfounded.

III. CONCLUSION

For the reasons set forth above and in the Companies’ Comments, the Commission should deny the Industrials’ Petition for Appeal of Staff Action and, In the Alternative, Reconsideration of the Secretarial Letter. The Compliance Filing conforms to the August 16 Order and, therefore, the Commission appropriately issued the Secretarial Letter, which should not be reconsidered or revised.

Respectfully submitted,



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Dated: November 29, 2012

APPENDIX A

**The Companies' Reply To The "Comments"
Filed By The Industrials To The Companies' Compliance Filing**

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOINT PETITION OF METROPOLITAN	:	
EDISON COMPANY, PENNSYLVANIA	:	DOCKET NOS. P-2011-2273650
ELECTRIC COMPANY, PENNSYLVANIA	:	P-2011-2273668
POWER COMPANY AND WEST PENN	:	P-2011-2273669
POWER COMPANY FOR APPROVAL OF	:	P-2011-2273670
THEIR DEFAULT SERVICE PROGRAMS	:	

**REPLY OF
METROPOLITAN EDISON COMPANY, PENNSYLVANIA ELECTRIC COMPANY,
PENNSYLVANIA POWER COMPANY AND WEST PENN POWER COMPANY
TO THE COMMENTS OF THE MET-ED INDUSTRIAL USERS GROUP, PENELEC
INDUSTRIAL CUSTOMER ALLIANCE, PENN POWER USERS GROUP AND
WEST PENN POWER INDUSTRIAL INTERVENORS ON THE REVISED
DEFAULT SERVICE PLAN COMPLIANCE FILING**

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September 24, 2012

TABLE OF CONTENTS

	Page
I. INTRODUCTION AND OVERVIEW	1
II. REPLY TO THE INDUSTRIALS' COMMENTS.....	5
A. The August 16 Order Clearly Provides That All Of The Companies Are To Recover RTEP And Transmission Enhancement Costs On A Non- Bypassable Basis Through Their DSS Riders.....	5
B. The Compliance Filing Is Not "Too Broadly Worded" Nor Does It "Conflict" With The Commission's Decision On NMB Transmission Cost Recovery	8
C. The Companies' DSS Riders Are Clear That RTEP and Transmission Enhancement Costs Are To Be Recovered From Industrial Customers Based On Each Such Customer's Contribution To The 1-CP	11
III. CONCLUSION	14

I. INTRODUCTION AND OVERVIEW

Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”) and West Penn Power Company (“West Penn”) (collectively, or any combination of the foregoing, the “Companies”) hereby reply to Comments filed by the four *ad hoc* groups of industrial customers (hereafter, the “Industrials”)¹ with respect to the Companies’ Revised Default Service Plan Compliance Filing (“Compliance Filing”). The Compliance Filing was made on September 6, 2012 pursuant to Ordering Paragraphs 18 and 19 of the Pennsylvania Public Utility Commission’s (“Commission” or the “PUC”) Order entered on August 16, 2012 in this proceeding (“August 16 Order”). By that Order, the Commission approved, with modifications, the Default Service Programs for the period from June 1, 2013 to May 31, 2015 (“DSPs”) that the Companies filed on November 17, 2011.

The Compliance Filing was submitted to reflect all changes in the Companies’ DSPs needed to comply with the August 16 Order exclusive of those areas for which the Commission has required additional consultation among interested parties, namely, retail market enhancement programs for all Companies and time of use programs proposed by West Penn and Penn Power. Accordingly, the Compliance Filing included the following:

- A revised Default Service Supplier Master Agreement (“SMA”) for the Residential/Commercial Customer Classes (“Residential/Commercial SMA”);
- A revised Default Service SMA for the Industrial Customer Class (Hourly Pricing Service) (“Industrial SMA”);
- Revised Bidding Rules to Procure Default Service Products;

¹ The Industrials consist of the Met-Ed Industrial Users Group (“MEIUG”), the Penelec Industrial Customer Alliance (“PICA”), the Penn Power Users Group (“PPUG”) and the West Penn Power Industrial Intervenors (“WPPH”).

- Revised Solar Photovoltaic Requirements Charge Riders for Met-Ed, Penelec and Penn Power and Revised Solar Photovoltaic Alternative Energy Credit Rules;²
- Revised Price to Compare Default Service Rate Riders (“PTC Riders”), Hourly Pricing Default Service Riders (“HP Riders”), and Default Service Support Riders (“DSS Riders”); and
- Revised Rules, Regulations and Rate Schedules for West Penn.

On September 17, 2012, the Industrials filed Comments that question whether relevant parts of the Compliance Filing conform to the Commission’s decision on the Companies’ proposal to obtain Non-Market Based (“NMB”) transmission services for both shopping and default service customers and recover the associated NMB transmission costs on a non-bypassable basis through their DSS Riders. *See* August 16 Order, pp. 63-86. As initially proposed by the Companies, NMB transmission costs included charges imposed by PJM Interconnection LLC (“PJM”) for Network Integration Transmission Service (“NITS”), Regional Transmission Expansion Planning (“RTEP”) and Transmission Enhancement (also referred to in this proceeding as Transmission Expansion costs). Exelon Generation Company, LLC, and Exelon Energy Company (“Exelon”) and Dominion Retail Inc. (“Dominion”), respectively, proposed that the Companies’ proposal be expanded to include Generation Deactivation charges and unaccounted-for energy (“UFE”) costs, and the Companies agreed. The Commission rejected the Companies’ proposal with respect to all such costs except RTEP and Transmission Enhancement (*see* August 16 Order, pp. 82-83, 161-162) and, as to RTEP and Transmission Enhancement, held that such costs should be recovered based on customers’ contributions to the single coincident peak or “1-CP.” August 16 Order, pp. 77-78, 162.

In accordance with the August 16 Order, the various components of the Compliance Filing establish that: (1) all transmission services except RTEP and Transmission Enhancement will be the responsibility of electric generation suppliers (“EGSs”), for the shopping load they

² Consistent with the Order (p. 46), West Penn will not implement a Solar Photovoltaic Requirements Charge Rider.

serve, and default service suppliers, for the default service load that they serve; (2) default service suppliers must bear the costs of all transmission services needed to supply default service load except RTEP and Transmission Enhancement; (3) the transmission costs borne by default service suppliers are to be recovered under the PTC and HP Riders for fixed-price and hourly-priced service, respectively; and (4) RTEP and Transmission Enhancement costs are to be recovered from all (shopping and default service) customers under the DSS Rider based on customers' Network Service Peak Load, which is PJM's measure of their contribution to the 1-CP.

The foregoing provisions were implemented through the revised SMAs and revised PTC, HP and DSS Riders included in the Companies' Compliance Filing. Specifically: (1) the SMAs require default service suppliers to furnish and pay for all transmission costs except RTEP and Transmission Enhancement;³ (2) transmission costs borne by default service suppliers pursuant to the SMAs are included in the reconcilable default service rates imposed under the PTC and HP Riders;⁴ (3) all transmission costs that are recovered on a reconcilable basis under the PTC and HP Riders (i.e., all transmission costs except RTEP and Transmission Enhancement) are expressly **excluded** from the DSS rate;⁵ and (4) all capacity-related costs recovered through the

³ See Compliance Filing, Exhibit B (Residential/Commercial SMA), Appendix D (PJM Invoice EDC/Supplier Billing Responsibility) and Exhibit C (Industrial SMA), Appendix C (PJM Invoice EDC/Supplier Billing Responsibility). Copies of Appendix D to the Residential/Commercial SMA and Appendix C to the Industrial SMA are provided as **Attachments 1 and 2** to this Reply. See also Compliance Filing, pp. 4-5 (¶ 9).

⁴ See, e.g., Compliance Filing, Exhibit H (Met-Ed Rider N – Price-to-Compare Service Rate Rider), p. 185 (“Payments made to winning bidders”) and Exhibit I (Met-Ed Rider O – Hourly Pricing Default Service Rider), pp. 189 (defining “HP Cap-AEPS-Other Charges” to include “any other charges incurred by the Supplier . . .”) and 191 (“Payments made to winning bidders”). Copies of Met-Ed’s Riders N and O are provided as **Attachments 3 and 4** to this Reply. (The corresponding riders of Penelec, Penn Power and West Penn contain the same provisions as Attachments 3 and 4. For that reason, only Met-Ed’s riders are attached, although all the Companies’ tariffs are provided in the Compliance Filing.)

⁵ See, e.g., Compliance Filing, Exhibit J (Met-Ed DSS Rider), p. 206 (excluding from recovery “transmission charges that will not be reconciled through the Company’s Price To Compare Default Service Rate Rider and/or Hourly Pricing Default Service Rider.” A copy of Met-Ed’s DSS Rider is provided as **Attachment 5** to this Reply. (The corresponding riders of Penelec, Penn Power and West Penn contain the same provisions as Attachment 5.

(continued)

DSS Rider, namely, RTEP and Transmission Enhancement costs, are billed to the Industrials' members on the basis of kilowatts ("kW") of demand that, under the terms of the DSS Rider "shall be the Network Service Peak Load ('NSPL'), as calculated by the Company in accordance with PJM rules and requirements."⁶

In their Comments, the Industrials raise three issues. **First**, they claim that the August 16 Order directs that Penn Power, but not Met-Ed, Penelec and West Penn, shall recover RTEP costs under its DSS Rider and that none of the Companies' may recover Transmission Enhancement costs in that fashion (Comments, p. 3-6). As explained below, the Industrials' interpretation of the August 16 Order directly conflicts with the plain language of both Ordering Paragraph 17 (August 16 Order, p. 161-162) and the Commission's decision to "carve out" NITS from the NMB transmission costs that will be recovered under the Companies' DSS Riders. *See* August 16 Order, pp. 82-83.⁷ Indeed, had the Commission ruled as the Industrials contend, it would not have been necessary to "carve out" anything. **Second**, the Industrials contend that the Companies' DSS Riders are "too broadly worded" and "possibly" could authorize the recovery of NITS from Industrial Customers under their DSS Riders (Comments, pp. 6-10). The Industrials' comments in this regard reflect their erroneous interpretation of the Companies' HP and DSS Riders and their apparent failure to consider the operative provisions of the revised SMAs. As discussed previously, the interrelated provisions of the SMAs and the PTC, HP and

For that reason, only Met-Ed's rider is attached, although all the Companies' DSS Riders are provided in the Compliance Filing.)

⁶ *See, e.g.*, Attachment 5, p. 203. (As previously explained, under PJM rules and requirements, NSPL represents a customer's contribution to the 1-CP.)

⁷ The Industrials' position is also contrary to the Commission's order approving the settlement of Penn Power's prior default service proceeding. In that case, the Commission-approved settlement authorized Penn Power to recover RTEP costs from all customers on a non-bypassable basis under its DSS Rider and, at the same time, affirmed the settling parties' consensus that "Penn Power's affiliates, Metropolitan Edison Company and Pennsylvania Electric Company, will recover RTEP in a manner consistent with this Settlement." *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 (Final Order entered Nov. 17, 2010), p. 20.

DSS Riders clearly establish that the Compliance Filing conforms fully with the August 16 Order. **Third**, the Industrials contend that the DSS Rider does not, in their estimation, make it clear enough that “Large C&I customers” will be billed “on an individual customer 1-CP basis” (Comment, p. 12). To the contrary, Network Service Peak Load, as the term is used in the DSS Rider, refers to each customer’s contribution to the 1-CP for those customers billed on a kW basis. *See, e.g.*, Compliance Filing, Exhibit J, pp. 203 and 208.

II. REPLY TO THE INDUSTRIALS’ COMMENTS

A. The August 16 Order Clearly Provides That All Of The Companies Are To Recover RTEP And Transmission Enhancement Costs On A Non-Bypassable Basis Through Their DSS Riders

The Industrials contend that the August 16 Order provides that Penn Power, but not the other Companies, should recover RTEP costs on a non-bypassable basis through its DSS Rider and that none of the Companies may recover Transmission Enhancement costs in that manner (Comments, p. 6). The Industrials’ contention is not supported by the August 16 Order. In fact, the Industrials’ position is directly contrary to the Commission’s decision to “carve out” NITS from the ALJ’s recommendation the Commission adopt the Companies’ proposal to recover all NMB transmission costs under their DSS Riders. In so doing, the Commission made clear that, as to costs not “carved out” (i.e., RTEP and Transmission Enhancement), it was accepting the ALJ’s recommendation:

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.*

August 16 Order, pp. 82-83 (emphasis added).

Notably, the Commission stated it was granting the Industrials' Exception set forth "at 22-23." At those pages of their Exceptions, the Industrials offered an alternative that explicitly

applied to **all** “the Companies,” not just Penn Power: “While the R.D. 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.” Industrials’ Exc., p. 22 (emphasis added). Indeed, if the Commission did not retain RTEP and Transmission Enhancement as “NMB transmission costs” to be recovered under **all** the Companies’ DSS Riders, there would have been no reason even to consider the Industrials’ Exception requesting a “carve out” of NITS. In short, the interpretation of the August 16 Order the Industrials advocate would make the Commission’s “carve out” meaningless and superfluous. Perhaps for that reason, the Industrials never mentioned the Commission’s “carve out” decision in their Comments.

Finally, Ordering Paragraph 17 contains nothing that would suggest the Commission was authorizing Penn Power, but not the other Companies, to recover RTEP costs, but not Transmission Enhancement costs, under its DSS Rider.⁸ To the contrary, Ordering Paragraph 17, by referring to the DSS Riders in the plural, encompasses all the Companies in the Commission’s ruling:

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.

August 16 Order, pp. 161-162 (emphasis added).

The Companies have accurately interpreted the plain language of the August 16 Order, and their Compliance Filing conforms fully to the Commission’s directives therein concerning

⁸ Ordering Paragraph 17 erroneously calls the DSS Riders “Default Service Supply Riders,” although it is clear that the Commission was referring to “Default Service Support Riders.”

NMB transmission cost recovery. Accordingly, the Industrials' Comments are incorrect and should be disregarded

B. The Compliance Filing Is Not “Too Broadly Worded” Nor Does It “Conflict” With The Commission’s Decision On NMB Transmission Cost Recovery

At pages 6-7 of their Comments, the Industrials make the following contentions:

[T]he Companies' Compliance Filing is too broadly worded where it allows for the collection of any and all transmission costs (including, possibly, future costs imposed by PJM of which the parties are not currently aware) and may contravene the PUC's rejection of the collection of NITS charges through the DSSRs. As such the Companies' Compliance Filing must be clarified to comply with the Commission's August 16 Order.

The Industrials' contentions are flatly incorrect and are the product of the Industrials' apparent failure to consider the operative provisions of the SMAs (*see* Attachments 1 and 2) and their resulting erroneous interpretation of the Companies' HP and DSS Riders. Contrary to the Industrials' assertions, the Companies' DSS Riders do not “[allow] for the collection of any and all transmission costs.” As discussed in Section I, *supra*, the SMAs and the PTC, HP and DSS Riders are interrelated, and their operative provisions must be read together, which the Industrials clearly failed to do.⁹

The Industrial SMA. The analysis must begin with the Industrial SMA (Compliance Filing, Exhibit C) because it demarcates the PJM costs that are to be borne by default generation suppliers and the Companies, respectively. This demarcation of costs establishes where (i.e., the HP Rider or DSS Rider) such costs are to be recovered.

Under Section 2.2(a) of the Industrial SMA, the “DS [default service] Supplier” is obligated to provide the “DS Supply,” as defined in Article 1 (p. 4) thereof, which includes “Transmission Services including Network Integration Transmission Service, . . . and such other services or products that the DS Supplier may be required, by PJM or any governmental body

⁹ Because the Industrials' Comments are directed to tariff provisions that apply to Industrial customers and because the operative provisions of the PTC Rider were discussed in Section I, *supra*, this section explains the relevant operation of the HP Rider in relation to the Industrial SMA and the DSS Rider.

having jurisdiction, to provide in order to meet the DS Supplier Responsibility Share for serving DS Load under this Agreement.” *Id.*¹⁰ “Transmission Services” are defined in Article 1 (p. 9) as: “Those services identified in Appendix C hereto as an obligation of the Seller as well as those transmission services specified in the PJM OATT including Network Integration Transmission Services.”

Appendix C to the Industrial SMA, which is provided as Attachment 2 to this Reply, details the responsibilities of the DS Supplier and the electric distribution company (“EDC”) for each element of Transmission Services. Appendix C provides that RTEP (PJM Identification Number 1730) and Transmission Enhancement costs (PJM Identification Number 1108) are borne by the EDC while the DS Supplier is responsible for NITS, Generation Deactivation, and “[o]ther charges that are the responsibility of a Load Serving Entity as defined by PJM.” In short, Appendix C provides that all transmission services and costs other than RTEP and Transmission Enhancement are the responsibility of the DS Supplier.

The HP Rider. The HP Rider (*see* Attachment 4) describes how the Companies are to calculate the Hourly Pricing Service Charge for default service furnished to customers receiving distribution service on Rate Schedules GS-Large, GP and TP. (The Industrials’ members receive distribution service under these rate schedules.) The formula for the Hourly Pricing Service Charge is:

$$\text{Hourly Pricing Service Charges} = (\text{HP}_{\text{Energy Charge}} + \text{HP}_{\text{Cap-AEPS-Other Charge}} + \text{HP}_{\text{Administrative Charge}} + \text{HP}_{\text{Reconciliation Charge}}) \times [1/1 - T]$$

Attachment 4, p. 188.¹¹

Transmission costs imposed on DS Suppliers under the Industrial SMA are recovered under the HP Rider. Those costs are included in the Hourly Pricing Service Charges on a

¹⁰ Additionally, Section 2.2(a)(ii) of the Industrial SMA (pp. 10-11) requires the DS Supplier “[t]o procure those services provided by PJM OI [Office of Interconnection] and to perform such functions as may be required by the PJM OI that are necessary for the delivery of DS Supply required hereunder . . .”

¹¹ The variable defined as $[1/1 - T]$ is the “gross-up” for Pennsylvania Gross Receipts Tax.

prospective basis as part of the HP_{Cap-AEPS-Other Charge}, which is defined to encompass, in addition to capacity costs and Alternative Energy Portfolio Standards (“AEPS”) costs, “any other costs incurred by the Supplier” (Attachment 4, p. 189). Additionally, transmission costs are subject to reconciliation through the HP_{Reconciliation Charge}, which includes as a reconcilable cost component:

The cumulative costs to provide Hourly Pricing Default Service incurred by the Company through the end of the previous Default Service Quarter including but not limited to the following:

- Payments made to winning bidders

Attachment 4, p. 191 (describing components of DS_{HPEXP2}).

In summary, all of the transmission costs borne by DS Suppliers under the Industrial SMA (i.e., all transmission costs except RTEP and Transmission Enhancement costs) are to be recovered on a fully reconcilable basis under the HP Rider. As explained below, this factor is critical to a proper understanding of the terms of the DSS Riders.

The DSS Rider. The DSS Rider (*see* Attachment 5) describes how the Companies are to calculate the Default Service Support (“DSS”) Rate. The formula for the DSS Rate is:

$$\text{DSS rate} = [\text{UE} + \text{TSC}_1 + \text{NMB} + \text{RE} = \text{CEC}] \times [1 - 1/T]$$

Each component of the formula is defined in the DSS Rider. For present purposes, the relevant element is “NMB,” which is defined as “[t]he charge to be applied to Delivery Service Customers served under this rider for Non-Market Based Service Transmission Charge costs incurred by the Company” (Attachment 5, p. 206). Non-Market Based Service Transmission costs or “NMB_C” are defined in relevant part as follows:

Forecasted NMB costs shall include costs for PJM Regional Transmission Expansion Plan charges, PJM Expansion Cost Recovery, as well as other FERC-approved PJM transmission charges *that will not be reconciled through the Company’s Price to Compare Default Service Rate Rider and/or Hourly Pricing Default Service Rider.* (Emphasis added.)

Additionally, Non-Market Based Transmission Costs are subject to reconciliation, pursuant to the “E” factor of the NMB formula, based on costs actually incurred by the Companies (Attachment 5, p. 206).

The definitions and descriptions of elements of the DSS Rate, set forth above, establish that the costs recovered on a reconcilable basis through the HP Rider may **not** be recovered under the DSS Rider. And, under the terms of the Industrial SMA and the HP Rider, the costs recovered on a reconcilable basis under the HP Rider include all transmission costs that are or may be incurred by the DS Supplier in providing default service during the period of the Companies' DSPs, except RTEP and Transmission Enhancement costs.¹² Accordingly, there is no basis for the Industrials' contention that the Companies' DSS Riders are "too broadly worded" or that the DSS Riders would "allow for the collection of any and all transmission costs (including, possibly, future costs imposed by PJM of which the parties are not currently aware)."

In summary, the relevant provisions of the Industrial SMA, the HP and PTC Riders and the DSS Rider clearly conform to the Commission's decision on recovery of Non-Market Based transmission costs. The Industrials' contentions to the contrary are based on their erroneous interpretation of the relevant tariff provisions and an apparent failure to review the SMAs. Furthermore, the computation of the Companies' charges under the HP Rider, the PTC Rider and the DSS Rider will be entirely transparent when they file those charges with the Commission following the completion of their competitive procurements. Those filings, which will be subject to review by the parties and by the Commission, will show that the Companies' computation of the DSS Charges under the formula set forth in the DSS Rider fully conforms with the Commission's decision in the August 16 Order.

C. The Companies' DSS Riders Are Clear That RTEP and Transmission Enhancement Costs Are To Be Recovered From Industrial Customers Based

¹² The language used in the DSS Rider was carefully considered and carefully drafted. For all the reasons set forth above, there should not be any transmission cost other than RTEP and Transmission Enhancement costs to be recovered through the DSS Riders. However, it is at least conceivable that a Non-Market Based transmission cost might be imposed directly upon the EDCs with respect to the EDCs total (shopping and non-shopping load) and that such a cost might not be deemed to be the responsibility of DS Suppliers under the SMA. In that event, the EDCs will need some provision in their tariffs to recover those costs from their delivery customers. Hence, the operative language of the DSS Riders was crafted to address that conceivable, although remote, contingency.

On Each Such Customer's Contribution To The 1-CP.

In their Comments (p. 11), the Industrials contend that “the Companies’ Compliance Filing does not provide clear language ensuring that the collection of any permitted NMB Transmission costs would occur based upon an individual customer’s 1-CP.” The Industrials’ contention is not correct. The Companies’ DSS Riders provide that, for customers served on Rate Schedules GS-Large, GP and TP (which include the Industrials’ members), the “NMB Rate” is to be stated and collected “as a dollar kW NSPL [Network Service Peak Load]” (Attachment 5, p. 208). Additionally, the DSS Rider provides that:

A Default Service Support (“DSS”) rate shall be applied to DSS Sales delivered by Met-Ed to Delivery Service Customers under this rider as determined to the nearest one-thousandth of a cent per kWh or per kW, as applicable. The kW under this rider shall be the Network Service Peak Load (“NSPL”), as calculated by the Company in accordance with PJM rules and requirements.

Attachment 5, p. 203 (emphasis added).

The DSS Rider’s language unmistakably states that Non-Market Based transmission costs are to be collected on the basis of a rate stated on the basis of “a dollar kW NSPL” applied to kW demand consisting of “the Network Service Peak Load (“NSPL”), as calculated by the Company in accordance with PJM rules and requirements.” The NSPL is, by definition, a customer’s contribution to the 1-CP.¹³ Contrary to the Industrials’ contention, no further clarification of the

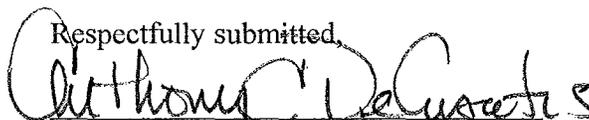
¹³ See, e.g., Pennsylvania Electronic Data Exchange Working Group EDI Change Control #087, p. 6 (“Network Service Peak Load: Customer’s peak load contribution provided to PJM for the Transmission Service calculation (coincident with LDC peak).”). EDI Change Control #087 was adopted by the Commission in *Standards for Electronic Data Transfer and Exchange Between Electric Distribution Companies And Electric Generation Suppliers*, Docket No. M-00960890F0015 (Final Order entered May 10, 2012), pp. 8-10, and *PJM Manual 35* (<http://www.pjm.com/documents/manuals.aspx>) (defining “NSPL” as the value “[u]sed to determine network transmission charges and/or allocate network service FTRs [Firm Transmission Rights] or ARRs [Auction Revenue Rights].” See also West Penn’s Supplier Tariff (Tariff Electric Pa. P.U.C. No. 2S), Original Page No. 7 (“Network Service Peak Load (‘NSPL’) – A Customer’s contribution to the metered demand coincident with the APS Zone peak hour.”).

language in the DSS Rider is needed to establish that point which, in any event, is explicitly affirmed by the Reply. Accordingly, the Industrials' Comment should be disregarded.

III. CONCLUSION

For the reasons set forth above, the Comments filed by the Industrials are without merit and should be disregarded. The Compliance Filing conforms fully to the August 16 Order and, therefore, the Commission should not take any action that would interfere with or delay the effectiveness of the Compliance Filing. As explained in the Companies' Petition for Clarification filed on August 31, 2012, it is critically important that the Companies have the authority to proceed with DSP procurement and implementation by October 1, 2012, in order to assure that the necessary procurements can occur on a schedule that conforms with the terms of the August 16 Order.

Respectfully submitted,



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