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October 22, 2012

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

VIA ELECTRONIC FILING

**RE: Petition of Duquesne Light Company For Approval of Default Service Plan for the
Period June 1, 2013 Through May 31, 2015; Docket No. P-2012-2301664**

Dear Secretary Chiavetta:

Enclosed please find for filing with the Pennsylvania Public Utility Commission ("PUC" or "Commission") the original of the Reply Brief of the Duquesne Industrial Intervenors ("DII"), in the above-referenced proceeding.

As shown by the attached Certificate of Service, all parties to this proceeding are being duly served. Thank you.

Sincerely,

McNEES WALLACE & NURICK LLC

By 
Teresa K. Schmittberger

Counsel to Duquesne Industrial Intervenors

Enclosures

c: Administrative Law Judge Katrina L. Dunderdale (via E-mail and First Class Mail)
Edward Berzonsky, TUS (via E-mail)
Certificate of Service

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Dated this 22nd day of October, 2012, at Harrisburg, Pennsylvania.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company for :
Approval of a Default Service Program and : Docket No. P-2012-2301664
Procurement Plan for the Period June 1, :
2013 through May 31, 2015 :

**REPLY BRIEF OF THE
DUQUESNE INDUSTRIAL INTERVENORS**

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Petition of PECO Energy Company for Approval of its Default Service Program II, Opinion and Order, Docket No. P-2012-2283641 (Oct. 12, 2012)..... 2,6,11,13,15

I. PROCEDURAL HISTORY

On October 5, 2012, the Duquesne Industrial Intervenors ("DII") filed a Main Brief ("M.B.") with the Pennsylvania Public Utility Commission ("PUC" or "Commission") addressing certain issues raised during Duquesne Light Company's ("Duquesne" or "Company") default service plan ("DSP") proceeding. DII received Main Briefs from Duquesne, the Office of Consumer Advocate ("OCA"); the Office of Small Business Advocate ("OSBA"); the Retail Energy Supply Association ("RESA"); Constellation NewEnergy, Inc., and Exelon Generation Company, LLC ("CNE"), and NextEra Energy Services Pennsylvania, LLC, and NextEra Energy Power Marketing, LLC (collectively, "Joint Suppliers"); the Coalition for Affordable Utility Services & Energy Efficiency in PA ("CAUSE-PA"); FirstEnergy Solutions Corp. ("FES"); Dominion Retail, Inc., and Interstate Gas Supply, Inc. ("Dominion"); and Citizen Power.

DII's Main Brief provides a comprehensive review of certain parties' proposed modifications to Duquesne's DSP and the problems that would result for Large Commercial and Industrial ("C&I") customers if these modifications were implemented. DII files this Reply Brief to respond to arguments set forth in the various parties' Main Briefs. Specifically, DII submits that the following proposals should be rejected as unjust, unreasonable, or inappropriate: (1) RESA's proposal to implement a non-bypassable rider to recover non-market based ("NMB") Transmission costs; (2) RESA's proposal to collect a \$5.00 per MWh adder from default service customers; and (3) certain EGSs' proposals to recover retail market enhancement ("RME") costs from customers rather than electric generation suppliers ("EGS").¹

¹ DII will not respond to every argument contained in all of the parties' Main Briefs, but only those issues necessitating additional response. DII's decision not to respond to all arguments should not be construed as agreement with the positions of any party on any of the outstanding issues in this proceeding.

II. SUMMARY OF ARGUMENT

Most of these issues addressed herein were resolved by the Commission's Order in the default service proceeding for the FirstEnergy Corporation ("FirstEnergy") companies. *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Opinion and Order, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670 (Aug. 16, 2012) ("Aug. 16, 2012, Order").² Following the submission of DII's Main Brief, the Commission issued an Order in PECO Energy Company's ("PECO") recent default service proceeding, again denying several of the proposals set forth by parties in this proceeding. *Petition of PECO Energy Company for Approval of its Default Service Program II*, Opinion and Order, Docket No. P-2012-2283641 (Oct. 12, 2012) ("Oct. 12, 2012, Order").

Consistent with the Commission's Orders in the FirstEnergy and PECO proceedings, the Joint Suppliers, including CNE, declined to continue arguing in favor of a non-bypassable collection of NMB Transmission costs by Duquesne. Despite this clear Commission precedent, however, RESA maintained support for this proposal. For the reasons discussed below, as well as those included in DII's Main Brief, RESA's NMB Transmission proposal must be denied.

Similarly, RESA's proposal to implement a \$5.00 per MWh adder was also considered and rejected in the by the Commission in the FirstEnergy and PECO proceedings. As demonstrated in DII's Main Brief, RESA's proposed adder would subject default service customers to unjust and unreasonable rates and must be rejected by the Commission.

² The Commission subsequently issued an Order on Reconsideration in the same proceeding. *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of Their Default Service Programs*, Opinion and Order, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670 (Sept. 27, 2012) ("Sept. 27, 2012, Order").

Finally, the FirstEnergy and PECO Orders found that RME program costs should be recovered from EGSs. Any alternative cost recovery proposals should be rejected or modified to ensure that all RME program costs are recovered from EGSs. Alternatively, the Commission should clarify that RME program costs may be assessed only upon customers eligible to participate in such programs. Accordingly, any proposal to assign responsibility for RME program costs to Large C&I customers must be rejected.

III. ARGUMENT

A. LEGAL STANDARDS

The Legal Standards of DII's Main Brief are incorporated by reference. DII M.B., pp. 3-4.

B. DEFAULT SUPPLY PROCUREMENT ISSUES

1. Residential Procurement Issues

DII has no position on this issue.

2. Small C&I Procurement Issues

DII has no position on this issue.

3. Medium C&I Procurement Issues

DII has no position on this issue.

4. Large C&I Procurement Issues

DII has no remaining concerns related to this issue.

5. Default Supply Load CAP Issues

DII has no position on this issue.

6. Procurements for Delivery Beyond May 31, 2015

DII has no position on this issue.

7. Miscellaneous Procurement Issues

DII has no additional procurement issues.

C. MARKET ENHANCEMENT PROGRAMS

1. Retail Opt-In Program

DII has no position on this issue.

a) Auction vs. ROI Program

DII has no position on this issue.

b) Term of Offer

DII has no position on this issue.

c) Discount Percentage

DII has no position on this issue.

d) \$50 Bonus Payment

DII has no position on this issue.

e) Guaranteed Savings

DII has no position on this issue.

f) Customer Participation Cap

DII has no position on this issue.

g) Supplier Load Cap

DII has no position on this issue.

h) Enrollment Process

DII has no position on this issue.

i) Mailings and Communications

DII has no position on this issue.

j) Opt-In Electric Generation Supplier Service Program Request for Proposals and Agreement Between Duquesne Light and EGSs

DII has no position on this issue.

2. Standard Offer Program

DII has no position on this issue.

a) Term of Offer

DII has no position on this issue.

b) Discount Percentage

DII has no position on this issue.

c) Guaranteed Savings

DII has no position on this issue.

d) Program Start Date

DII has no position on this issue.

e) Program Suspension

DII has no position on this issue.

f) High Bill Callers

DII has no position on this issue.

g) Choice Referral Team

DII has no position on this issue.

h) Standard Offer Customer Referral Program Rules and Supplier Agreement Between Duquesne Light and EGSs

DII has no position on this issue.

3. Market Enhancement Program Cost Recovery

As stated above, the Commission recently held in two separate default service proceedings that RME costs should be recovered from EGSs. Aug. 16, 2012, Order, p. 136; Oct. 12, 2012, Order, p. 148. Consistent with these holdings, Duquesne proposes to recover RME costs from EGSs participating in the programs. Duquesne M.B., pp. 68-69. DII concurs with Duquesne's proposal, and opposes any attempt to recover RME program costs from customers, particularly with respect to those ineligible to participate in the programs. DII M.B., p. 8. To that end, DII notes that RESA's and Dominion's Main Briefs state that Duquesne recover RME program costs from "all customers." RESA M.B., p. 64; Dominion M.B., p. 16. As a point of clarification, DII submits that both parties have previously indicated that "all customers" does not include customers ineligible to participate in the RME programs. *See* DII M.B., p. 8. If the Commission interprets the language in RESA's and Dominion's Main Briefs as a change in position, DII submits that RME program costs must not be recovered from customers receiving no direct benefits from these programs.³ DII M.B., pp. 8-9. As established in DII's Main Brief, Large C&I customers are ineligible to participate in Duquesne's proposed RME programs and therefore, the Commission should reject any proposal to collect RME program costs from Large C&I customers. *Id.*

4. CAP Customer Participation in Market Enhancement Programs

DII has no position on this issue.

5. Shopping Customer Participation in Market Enhancement Programs

DII has no position on this issue.

³ This observation relates to any cost recovery mechanism applied to recover RME program costs, including the \$5.00 per MWh Adder. *See* Section C.8., *infra*.

6. Small C&I Customer Participation in Market Enhancement Programs

DII has no position on this issue.

7. Customer Status at the End of the Market Enhancement Product

DII has no position on this issue.

8. Miscellaneous Market Enhancement Program Issues

In the instant proceeding, RESA has proposed that the PUC require Duquesne to implement a \$5.00/MWh Adder ("Adder"), which would recover various default service costs, including RME program costs, from default service customers. RESA M.B., p. 86. The Commission has previously denied such an Adder in both the FirstEnergy and PECO default service proceedings. Likewise, DII opposes the Adder based on its adverse policy implications for competitive market development in Pennsylvania and its inequitable cost recovery structure. DII M.B., pp. 9-11. Simply put, the Adder is an unjust and unreasonable increase to the price of default service.

DII reiterates that RESA's proposal would recover excess costs from default service customers, artificially inflate the PTC, and inappropriately refund costs recovered from default service customers to all customers. DII M.B., p. 9. To the extent that RME program costs are included as recoverable costs, the Adder could also require Large C&I default service customers to pay RME program costs despite being ineligible to participate and unable to derive direct benefits from the programs. *See* DII M.B., pp. 8-9.

According to RESA, implementation of the Adder would serve the purposes of ensuring that shopping customers are not subsidizing default service customers, recovering costs of RME programs, and incentivizing robust implementation of RME programs. RESA M.B., pp. 87-88. In addition to recovering RME program costs, RESA also proposes to reward Duquesne for

implementing the RME programs by allowing the Company to retain 10% of the funds collected, with any remaining excess refunded to all ratepayers. *Id.* at 88. As discussed below, this proposal does not comply with Pennsylvania public utility law.

RESA has failed to provide any evidence indicating that Duquesne requires additional funds to adequately recover its default service costs from default service customers. By contrast, Duquesne has explained that imposition of the Adder would result in overcompensation. DII M.B., p. 10. As the default service provider, Duquesne is permitted to recover the costs of procurement pursuant to the terms of its procurement plans; however, such costs may only be collected if they are "reasonable." 66 Pa. C.S. § 2807(e)(3.9); *see also id.* § 1307(a). Thus, Duquesne has opposed implementation of the Adder, indicating that the Company expects to adequately recover default service charges through existing mechanisms. DII M.B., p. 10.

The sheer magnitude of dollars to be inequitably redistributed under the Adder renders it inappropriate and contrary to cost-based rates. Duquesne has estimated that the Adder would result in an over collection equal to ten times the estimated RME costs. *Id.* Previously, the Commission has found that a fully competitive market must include a default service option "designed to avoid distortions in the market." *Id.* at 11. Certainly, such a collection would be considered a distortion of the market, both in terms of the substantial increase to the PTC and the inequity of issuing refunds to customers that were not responsible for the underlying costs. *See id.* Moreover, the increased PTC could lead to ripple effects by encouraging EGSs, who compare their prices to default service prices, to offer higher prices to shopping customers. *See id.*

Moreover, recovering RME program costs through the Adder could result in unreasonable charges to Large C&I customers. DII's Main Brief addresses recovery of RME

program costs, establishing that Large C&I customers are ineligible for participation in RME programs, derive no benefits from the programs, and therefore should not pay the costs of such programs. DII M.B., pp. 8-9. Moreover, RESA has specifically acknowledged that Large C&I customers are ineligible for RME programs. *Id.* at 8. This observation relates to any cost recovery mechanism applied to recover RME program costs, including the Adder.

RESA's proposed Adder is directly contrary to the Public Utility Code, as it is unjust, unreasonable, and precisely the opposite of a "least cost over time" procurement process. The Adder would inappropriately increase default service rates and violate basic cost causation principles, including the potential for collecting RME program costs from Large C&I customers who are ineligible to participate in such programs. Accordingly, the Adder must be rejected, as the Commission has done in both prior default service proceedings. Alternatively, if RESA's proposal is approved, the Commission must ensure that customers ineligible to participate in RME programs are not allocated RME program costs through the Adder.

D. RATE DESIGN

1. Reconciliation Issues

DII has no position on this issue.

2. Price to Compare Calculation Date

DII has no position on this issue.

3. Non-Bypassable Charge To Recover PJM Charges

a) Introduction

Despite the recent Commission Orders in the FirstEnergy and PECO default service proceedings, and the Joint Suppliers' changed position with respect to NMB Transmission costs, RESA continues to propose that Duquesne collect NMB Transmission costs through a non-bypassable rider.⁴ As the party proposing to transfer cost collection responsibility for NMB Transmission costs⁵ from EGSs to EDCs, RESA bears the burden of proving that such a modification is just, reasonable, and in the public interest. DII's Main Brief addresses a litany of problems that would arise for Large C&I customers if such a proposal were implemented, including the fact that RESA's proposed NMB Transmission collection restricts competitive options and fails to address transitional concerns. Not surprisingly, RESA has failed to provide any evidence indicating that the purported benefits of this transfer would outweigh the detrimental costs to Large C&I customers. The clear Commission precedent, as well as the reasons discussed herein and in DII's Main Brief, justify denial of RESA's proposal.

b) Recent Commission Orders, As Well As CNE's Abandonment of the NMB Transmission Proposal, Warrant Rejection of this Proposal.

As discussed in DII's Main Brief, the Commission rejected an analogous NMB Transmission proposal in two separate Orders issued during the FirstEnergy default service proceeding. DII M.B., p. 15. After reviewing these Orders, CNE declined to continue to argue in favor of the proposal. Joint Suppliers M.B., pp. 8-9. Subsequently, the Commission issued an additional Order in the PECO default service proceeding denying the non-bypassable collection

⁴ In addition, for the first time in this proceeding, RESA begins to support the collection of NITS costs via a non-bypassable rider.

⁵ For purposes of the Reply Brief, NMB Transmission costs shall include Network Integration Transmission Service ("NITS"), Regional Transmission Expansion Plan ("RTEP"), Transmission Expansion, Generation Deactivation, Economic Load Response ("ELR"), or any other costs included in RESA's NMB Transmission proposal. DII M.B., p. 14.

of NMB Transmission costs. Oct. 12, 2012, Order, p. 60. DII submits that RESA's continued support for this proposal is unsupported by evidence and counter to these significant legal developments. Accordingly, RESA's proposal for Duquesne to collect NMB Transmission costs via a non-bypassable rider must be rejected.

As addressed in DII's Main Brief, CNE and RESA each submitted testimony in this proceeding supporting the implementation of a non-bypassable rider for recovery of NMB Transmission costs. DII M.B., p. 14. Following the Aug. 16, 2012, and Sept. 27, 2012, Orders, which supported recovery of NMB Transmission costs by the load-serving entity ("LSE") (*i.e.*, either the EDC or EGS depending on shopping status), CNE, as part of the Joint Suppliers, declined to further pursue the issue in this proceeding. Joint Suppliers M.B., pp. 8-9. DII submits that the Joint Suppliers' abandonment of this position is an acknowledgement that there is insufficient justification to support the NMB Transmission proposal, particularly in light of the Commission Orders in the FirstEnergy proceeding.

The Joint Suppliers' changed position is reinforced by the recent Commission Order in the PECO default service proceeding. The Commission rejected many of the same arguments set forth by RESA in the instant proceeding, ultimately holding that customers should be charged by their LSEs for NMB Transmission costs. Oct. 12, 2012, Order, p. 60. The Commission further found no evidence that price distortions would occur if EGSs continue to charge their customers for NMB Transmission costs. *Id.*

The Commission's repeated rejection of a non-bypassable collection of NMB Transmission costs, as well as the Joint Suppliers' concession with respect to the precedential effect of this rejection, warrant denial of RESA's NMB Transmission proposal in the instant proceeding.

c) Contrary to RESA's Assertions, RESA's Proposed NMB Transmission Collection Would Re-Bundle Distribution and Transmission Services, Eliminate Competitive Options Currently Available to Shopping Customers, and Create Serious Transitional Issues in Contravention of the Competition Act and Commission Precedent.

RESA has provided insufficient justification for a non-bypassable NMB Transmission collection. If adopted, the non-bypassable collection would result in an elimination of competitive transmission products, re-bundling of transmission and distribution, and significant transitional issues in contravention of the Electric Generation Customer Choice and Competition Act ("Competition Act"). For these reasons, as the Commission has acknowledged in both recent default service proceedings, RESA's NMB Transmission proposal must be denied.

For many years, Duquesne's Large C&I customer class has embraced retail shopping, with approximately 90% of this class load currently supplied through EGSs in Duquesne's service territory. DII Cross-Examination Exhibit No. 1. The market has developed various products to meet the diverse needs of the Large C&I class and the EGSs that serve them. Considering the robust shopping in the Large C&I retail market thus far, it would seem that EGSs should consider the experiences and needs of their most active customers prior to advocating significant policy modifications. The reverse has occurred in this proceeding, as RESA proposes to re-bundle transmission costs and distribution costs without regard to the disruptive competitive effects upon Large C&I customers.

In an attempt to support its NMB Transmission proposal, RESA outlines several alleged market flaws, each of which affects Large C&I customers in a unique manner separate and apart from that put forth by RESA. As such, viewing these purported "flaws" in the context of the Large C&I market renders RESA's proposal unjust and unreasonable. RESA first laments the risk premiums EGSs charge to customers to account for the risk of fixed-price contracts,

claiming that EGSs are forced to include these premiums due to the unpredictable status of some transmission costs. RESA M.B., p. 80. Second, RESA argues that the pricing signals sent to customers are distorted when EGSs charge for NMB Transmission costs. RESA, M.B., p. 79. RESA's observations share a common thread in that each completely ignores certain aspects of the uniquely dynamic retail market and important elements of Pennsylvania public utility law.

Initially, as similarly acknowledged in the Commission's Oct. 12, 2012, Order, there is insufficient evidence supporting risk premiums or price distortions created by EGS responsibility of NMB Transmission costs. Oct. 12, 2012, Order, p. 60. To the contrary, with respect to Large C&I customers, the existing market offers transmission products that address each of the concerns raised by RESA. *See* DII M.B., p. 17. If a customer desires cost stability for transmission costs, then it may pay a slight premium to obtain that goal; however, the customer may choose to avoid any risk premium by agreeing to a pass-through of transmission costs. RESA's NMB Transmission proposal would unreasonably constrict the market by eliminating these options. *See* Stipulation of DII and CNE. Therefore, the NMB Transmission proposal would not contribute additional market benefits, but would serve only to remove competitive options currently available to Large C&I customers. *C.f.* RESA M.B., p. 81. Contrary to RESA's claims, the removal of competitive transmission products from the retail electric market violates both the Competition Act and Commission precedent. DII M.B., pp. 16-18.

RESA's primary argument, that the NMB Transmission proposal is necessary to eliminate risk premiums caused by volatile NMB Transmission costs, ignores the demand for such competitive transmission products. In reference to NMB Transmission costs, RESA claims that "the pricing signal sent to customers is distorted because default service customers are paying the full costs of the charges while shopping customers may or may not pay the full cost depending

on an EGS' accuracy in predicting the charges." RESA M.B., p. 79. For Large C&I customers, the pricing signal is not distorted because Large C&I customers under fixed-price arrangements are there by choice. *See* DII M.B., p. 17. The current market allows Large C&I customers to choose between fixed-price arrangements and pass-through arrangements. *Id.* Large C&I customers that select fixed-price arrangements for NMB Transmission costs do so because the fixed-price structure offers benefits other than least-cost, such as pricing stability. *Id.* As EGSs are not compelled to offer fixed-price arrangements for NMB Transmission costs, the very existence of the mechanism shows that Large C&I customers desire the product and are willing to pay the risk premium set by the EGSs in return for price stability.

RESA's argument that the non-bypassable collection of NMB Transmission costs is necessary to address EGS losses from understated risk premiums is similarly misguided because the existing Large C&I market allows EGSs to bypass such risk through a pass-through contract. *Id.* RESA compares EGSs to EDCs, alleging that EDCs are entitled to full recovery of NMB Transmission costs, but "EGSs that inaccurately predict these costs do not have the same ability to recover the shortfall from their customers." RESA M.B., p. 79. Again, this statement ignores the availability of pass-through arrangements in the Large C&I retail market. When costs are flowed through a pass-through arrangement, the customer takes on the risk of the volatility of any costs, as the EGS effectively "passes through" the exact charges to the customer. As a result, the EGS avoids the risk of inaccurate projections and fully recovers the actual NMB Transmission costs incurred by the customer. DII M.B., p. 17. As an EGS can elect to offer either pass-through or fixed-cost arrangements to Large C&I customers, any EGS desiring to avoid risk and ensure full cost recovery of NMB Transmission costs from Large C&I customers

already possesses the tools to do so. The PUC should not assume the role of protecting EGSs from losses incurred due to bad business planning or poor forecasting.

In addition to providing little benefit to shopping customers, RESA's proposed NMB Transmission collection is seemingly in violation of the Competition Act. The Competition Act explicitly requires the unbundling of distribution, transmission, and generation services, allowing for EGSs to provide both transmission and generation services to shopping customers. 66 Pa. C.S. § 2802(13); *see also id.* § 2804(3). In addition, the regulations adopted pursuant to the Competition Act indicate that generation and transmission-related charges should be imposed by the same entity. *See* 52 Pa. Code § 54.182. RESA's contention that "non-market based" transmission services are excluded from this requirement is plainly false. *See* RESA M.B., p. 81. As acknowledged by Duquesne, and reinforced by the Commission in its recent default service Orders, it is irrelevant whether transmission costs are deemed "non-market based." Duquesne M.B., p. 79. The relevant issue is which entity charges the customer for generation. *See id.*; Sept. 27, Order, p. 10; Oct. 12, 2012, Order, p. 60. To be consistent with these Commission Orders, the LSE providing generation service to the customer should likewise provide transmission service to the same customer.

The drafters of the Competition Act clearly did not envision the removal of practically all transmission costs from the competitive market as RESA currently proposes. RESA M.B., p. 81. The initial unbundling decision made in the restructuring proceedings to ensure that EGSs were responsible for both generation and transmission accurately reflects the legislative intent of the Competition Act. Moreover, in its Main Brief, RESA begins to argue that NITS costs, the central component of transmission costs, should be transferred from EGSs to EDCs. *Id.* at 76. Not only is this proposal directly contrary to the Commission's Aug. 16, 2012, Order, but this

proposal is inconsistent with RESA's proposal at earlier stages of the instant proceeding. In testimony, RESA only supported the non-bypassable collection of RTEP, Expansion, Generation Deactivation, and ELR costs. *See* Direct Testimony of Aundrea Williams on behalf of RESA, pp. 21-22. With respect to NITS costs, even RESA did not initially agree with a non-bypassable collection.

Finally, in its Main Brief, RESA incorrectly submits that a transition period would prevent customers from being overcharged for transmission service. RESA M.B., p. 81. As explained in DII's Main Brief, Large C&I customers are at risk of double charges for NMB Transmission costs because these costs may be impossible to remove from currently-existing EGS contracts.⁶ DII M.B., p. 19. Moreover, risk remains for all shopping customers to attempt contract renegotiation related to these costs. *See id.* A transition period would merely postpone when shopping customers would face such double charging and renegotiation issues. Because shopping customers could face serious transitional issues, RESA's proposal conflicts with the Competition Act's directive to address competitive transitional issues in a manner "fair" to customers. *See* 66 Pa. C.S. § 2802(8).

RESA fails to provide sufficient evidence to justify a non-bypassable NMB Transmission cost collection. The elimination of competitive transmission products from the retail electric market, as well as the potentially serious transitional issues, warrant the rejection of RESA's NMB Transmission proposal. Moreover, the re-bundling of distribution and transmission conflicts with the Competition Act and its associated regulations. Finally, as this unjust and unreasonable proposal is also directly contrary to recent PUC precedent, it must be rejected.

⁶ In its Main Brief, although OSBA does not oppose a non-bypassable collection of NMB Transmission costs, OSBA expresses a number of concerns regarding RESA's instant proposal, including the inclusion of NITS costs and potential double billing issues. OSBA M.B., pp. 19-20. As a result, DII submits that the OSBA provides no additional evidence supporting a non-bypassable collection of NMB Transmission costs.

d) Conclusion

After the Commission's repeated rejection of a non-bypassable collection of NMB Transmission costs in the FirstEnergy and PECO default service proceedings, there is only one reasonable conclusion in the instant proceeding. NMB Transmission costs must be charged to customers by their LSE, *i.e.*, EGSs for shopping customers and EDCs for default service customers. If RESA's NMB Transmission proposal is adopted, adverse competitive market and transitional issues would arise that the Commission has previously found justify rejection of the proposal. For the reasons included herein and within DII's Main Brief, RESA's NMB Transmission proposal must be denied.

4. Time-of-Use program

DII has no position on this issue.

5. Supply Master Agreement Issues

DII has no position on this issue.

6. Data/EGS Coordination Issues

DII has no position on this issue.

7. General Miscellaneous Issues

DII has no additional issues.

IV. CONCLUSION

WHEREFORE, the Duquesne Industrial Intervenors respectfully request that the Pennsylvania Public Utility Commission:

- (1) Deny the collection of retail market enhancement costs from all customers not eligible for participation in retail market enhancement programs; and
- (2) Deny the collection of a \$5.00 per MWh Adder; and
- (3) Deny the collection of non-market based transmission costs through a non-bypassable rider; and
- (4) Grant any additional relief deemed appropriate and consistent with the above recommendations.

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