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December 17, 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 Exceptions 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)
Office of Special Assistants (via E-mail: ra-OSA@pa.gov)
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 17th day of December, 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 EXCEPTIONS OF THE
DUQUESNE INDUSTRIAL INTERVENORS**

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Dated: December 17, 2012

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A. INTRODUCTION

On April 27, 2012, the Duquesne Light Company ("Duquesne" or "Company") filed its proposed Default Service Plan ("DSP") with the Pennsylvania Public Utility Commission ("PUC" or "Commission"). On November 15, 2012, Administrative Law Judge ("ALJ") Katrina Dunderdale issued a Recommended Decision ("R.D.") in which, in particular, she: (1) rejected the Retail Energy Supply Association's ("RESA") proposal to collect Non-Market Based ("NMB") Transmission costs through a non-bypassable rider; (2) rejected RESA's proposal to implement a non-bypassable \$5.00 per MWh Adder; and (3) accepted Duquesne's proposal to collect Retail Market Enhancement ("RME") costs from Electric Generation Suppliers ("EGSs").

On December 5, 2012, the Duquesne Industrial Intervenors ("DII") received Exceptions from the Company; the Office of Consumer Advocate ("OCA"); the Office of Small Business Advocate ("OSBA"); RESA; FirstEnergy Solutions Corp. ("FES"); and Dominion Retail, Inc. and Interstate Gas Supply, Inc. ("Dominion/IGS"). DII did not receive Exceptions from Constellation NewEnergy, Inc., and Exelon Generation Company, LLC ("CNE").

DII now files these Replies to the Exceptions of RESA, Dominion/IGS, and FES. Specifically, DII responds to: (1) RESA's Exception to the ALJ's recommendation to reject the recovery of NMB Transmission costs through a non-bypassable rider; (2) RESA's Exception to the ALJ's recommendation to deny the \$5.00 per MWh Adder; and (3) RESA's, Dominion/IGS's, and FES' Exceptions to the ALJ's approval of Duquesne's proposal to collect RME costs from EGSs.

B. REPLIES TO EXCEPTIONS

1. Reply to RESA Exception No. 21: The Administrative Law Judge Was Correct in Determining that the Record and PUC Precedent Warrant the Rejection of a Non-Bypassable Collection of NMB Transmission Costs.

- (a) The record in this proceeding supports the ALJ's recommendation to reject RESA's proposal to require Duquesne to recover NMB Transmission costs from all customers through a non-bypassable rider.**

Under Duquesne's current DSP, EGSs are responsible for collecting NMB Transmission costs¹ from shopping customers, while Duquesne is tasked with collecting NMB Transmission costs from default service customers. As part of this proceeding, Duquesne did not propose any changes to this transmission cost collection methodology. Nevertheless, RESA proposed that Duquesne begin collecting NMB Transmission costs from both shopping and default service customers via a non-bypassable rider. Throughout this proceeding, DII and Duquesne provided substantial justification for the rejection of such a non-bypassable rider. Based on this record, the ALJ appropriately rejected RESA's proposed non-bypassable NMB Transmission cost collection.

RESA's only support for its position in Exceptions is as follows: the proposed non-bypassable NMB Transmission collection (1) increases costs, and (2) "distorts the ability of consumers to compare the default service rate with the prices offered by EGSs." RESA Exceptions ("Ex."), pp. 39-40. Both of these arguments have been fully addressed and refuted by DII and Duquesne in their Main Briefs ("M.B.") and Reply Briefs ("R.B."). As explained by DII, there is no evidence that transmission costs are increased or distorted as a result of EGSs' collection of NMB Transmission costs. DII R.B., p. 13. In fact, the competitive market

¹ For purposes of these Replies to Exceptions, 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.

(i.e., EGSs) already offers pass-through transmission products, as Duquesne would under RESA's proposal, the existence of which refute the concerns raised by RESA. *See id.* Moreover, RESA's NMB Transmission proposal would have the anti-competitive effect of eliminating customer choices for competitive transmission products. *See* Stipulation of DII and CNE. Duquesne supports this notion, testifying that "Customer Choice was designed such that the transmission component of the rates was unbundled and 'potable.'" Rebuttal Testimony of William V. Pfrommer on behalf of Duquesne, Duquesne St. No. 4-R, p. 23. Accordingly, the R.D. rightfully concluded that RESA's proposal "is a step backwards in attaining the goal of improving competition within Pennsylvania," and must be rejected. R.D., p. 196. In effect, RESA's proposal rebundles transmission costs with distribution rates, in violation of Section 2804(3) of the Competition Act. 66 Pa. C.S. §2804(3).

The R.D. correctly and appropriately disposed of RESA's proposed NMB Transmission collection, recognizing that the record supports rejection of this proposal. Further, the R.D. rightly concluded that RESA's proposal is inconsistent with the goals of the Competition Act. R.D., p. 196. Accordingly, the ALJ's decision with respect to the proposed non-bypassable collection of NMB Transmission costs appropriately evaluated the record, correctly applied the Public Utility Code, and should be adopted by the Commission.

(b) The Recommended Decision Followed Commission Precedent in Rejecting a Non-Bypassable Collection of NMB Transmission Costs.

The R.D. correctly concluded that recent Commission precedent warranted the rejection of a non-bypassable NMB transmission collection in the instant proceeding. The R.D. explained that "[t]he Commission and the Competition Act consistently and clearly intend for generation and transmission charges to be borne by the EGS if the EGS supplies that service or product." R.D., p. 196. In Exceptions, even RESA admits that the Commission has disagreed with such a

non-bypassable collection of these transmission costs. RESA Ex., p. 39. As a result, the Commission should deny RESA's Exceptions and uphold the R.D.'s rejection of the proposed non-bypassable collection of NMB Transmission costs.

In two prior default service proceedings, the Commission has rejected similar NMB Transmission proposals by RESA.² DII M.B., p. 15. In both proceedings, the Commission rejected RESA's position with respect to NMB Transmission costs, and specifically held that shopping customers should be charged by their generation providers (*i.e.*, their EGSs) for all NMB Transmission costs. Oct. 12, 2012, Order, p. 60. In excepting to the R.D., RESA acknowledges that the Commission has held that identical non-bypassable collections are inappropriate. RESA Ex., p. 39.

Accordingly, the R.D. judiciously rejected the proposed NMB Transmission collection pursuant to the Commission's actions in the prior PUC proceedings addressing precisely this same collection. Therefore, consistent with the terms of the prior Commission Orders, the Commission should uphold the R.D.'s parallel recommendation to reject the NMB Transmission collection proposed by RESA.

(c) Conclusion

The R.D. reflects that the record and Commission precedent justify the rejection of RESA's proposal in the instant proceeding. Moreover, RESA has only repeated arguments in Exceptions that have been fully refuted by DII and Duquesne in Main and Reply Briefs. For the foregoing reasons, the Commission should deny the Exceptions of RESA, adopt the findings of

² *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company For Approval of Their Default Service Programs*, Docket Nos. P-2011-2273650, *et. al.*, Opinion and Order (Aug. 16, 2012) (August 16, 2012, Order); *see also 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").

the R.D., and reject any proposal to recover NMB Transmission costs through a non-bypassable rider.

2. Reply to RESA Exception No. 18: The Recommended Decision Correctly Rejected RESA's Proposal to Implement a Non-Bypassable \$5.00 per MWh Adder.

The R.D. correctly rejected RESA's proposed \$5.00 per MWh Adder, holding that such an Adder "constitutes a wealth transfer from default service customers to shopping customers that is unsupported by any concept of cost causality and is on its face inequitable." R.D., p. 179. Moreover, with respect to the reasonableness of the proposed Adder, the R.D. further finds the Adder "contrary to the public interest and as contrary to the established law in Pennsylvania." In general, the R.D. correctly concluded that RESA's proposed Adder violates fundamental ratemaking principles and must be denied.

DII opposes RESA's Adder for the same reasons cited in the R.D. Throughout this proceeding, DII established that the proposed Adder would artificially increase default service costs beyond costs incurred by Duquesne, lead to excess cost recovery from default service customers, and inappropriately refund costs to both shopping and default service customers. DII M.B., p. 9. In addition, increased default service prices could incentivize EGSs to offer comparably increased prices to shopping customers. *See id.* at 11. Finally, because the Commission has twice rejected the imposition of a similar Adder within other electric distribution companies' ("EDC") default service proceedings, the R.D. correctly adhered to Commission precedent and similarly rejected RESA's proposed Adder. *See* August 16, 2012, Order, p. 62; *see also* October 12, 2012, Order, p. 76.

In Exceptions, RESA fails to provide any additional support for the Adder, merely referring to the Adder as a means for recovering RME costs and other "verifiable" default service costs. RESA Ex., p. 35. Nevertheless, Duquesne has explained that RESA's proposed Adder

would result in charges to default service customers that significantly exceed any legitimate default service costs. *See* Rebuttal Testimony of Neil S. Fisher on behalf of Duquesne, Duquesne St. No. 3-R, p. 82. Moreover, RESA's proposal provides for default service customers to remit costs that would be refunded to shopping customers, a truly unreasonable example of cross-subsidization among customers. DII M.B., p. 9. Based on these flaws in RESA's position, as well as the contrary Commission precedent opposing such an Adder, the Commission must reject RESA's Exception and deny implementation of the \$5.00 per MWh default service Adder.

3. Reply to RESA Exception No. 14, Dominion/IGS Exception No. 2, and FES Exception No. 3: The Recommended Decision Correctly Accepted Duquesne's Proposal to Collect Retail Market Enhancement Costs from Electric Generation Suppliers.

The R.D. approved Duquesne's proposed cost recovery for RME programs from EGSs, specifically stating that "[t]his proposal is consistent with prior Commission direction specifying that EGSs must be responsible for the costs of the programs that enhance the retail market." R.D., p. 152. This R.D. holding is consistent with two prior Commission Orders in other EDCs' default service proceedings, which also called for the collection of RME costs from EGSs. Aug. 16, 2012, Order, p. 136; Oct. 12, 2012, Order, p. 148. DII agrees with the R.D. that all RME costs are properly recoverable from EGSs.

Nonetheless, RESA, Dominion/IGS, and FES provide Exceptions in favor of RME cost recovery from customers, generally relying on the existence of RME collaboratives in other EDC service territories, in which cost recovery remains an issue. *See* RESA, Ex., p. 31; Dominion/IGS Ex., p. 3; FES Ex., p. 9. DII continues to oppose any RME cost collection from customers, as indicated in its Main and Reply Briefs. EGSs are directly benefiting from these RME programs, and can expect an increased customer base and revenue stream as a result. *See* DII R.B., p. 6. If the Commission is sympathetic to the concerns of RESA, Dominion/IGS, and

FES, however, DII would note that because Large C&I customers are ineligible to participate in these programs, no costs may be recovered from them. *See* DII M.B., p. 8. RESA and Dominion/IGS have both previously indicated that they are not proposing to collect RME costs from ineligible customers. *See id.* In addition, in Exceptions, FES specifically stated that its position is only for cost recovery from RME-eligible customers. FES Ex., p. 9.

Accordingly, DII supports the R.D.'s holding that all RME costs be recovered from EGSs. This is consistent with principles of cost causation, as well as recent Commission precedent. If, however, the Commission diverges from the R.D., no RME cost recovery should be permitted from Large C&I customers.

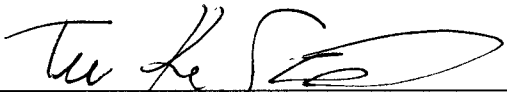
C. CONCLUSION

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

- (a) Deny RESA's Exception No. 21, and adopt the Recommended Decision's rejection of any non-bypassable collection of Non-Market Based Transmission costs;
- (b) Deny RESA's Exception No. 18 and adopt the Recommended Decision's rejection of the \$5.00 per MWh Adder;
- (c) Deny RESA's Exception No. 15, Dominion/IGS Exception No. 2, and FirstEnergy Solutions Exception No. 3, and adopt the Recommended Decision's approval of Duquesne's collection of retail market enhancement costs from electric generation suppliers; and
- (d) Take any other actions as deemed necessary and appropriate consistent with these Reply Exceptions and the Recommended Decision.

Respectfully submitted,

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