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September 12, 2014

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

VIA ELECTRONIC FILING

RE: Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2015 Through May 31, 2017; Docket No. P-2014-2417907

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Main Brief of the PP&L Industrial Customer Alliance ("PPLICA") concerning the above-referenced proceeding.

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

Very truly yours,

McNEES WALLACE & NURICK LLC

By

A handwritten signature in black ink, appearing to read 'Adeolu A. Bakare', written over a horizontal line.

Adeolu A. Bakare

Counsel to PP&L Industrial Customer Alliance

Enclosures

c: Administrative Law Judge Susan D. Colwell (via e-mail and First-Class Mail)
Certificate of Service

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CERTIFICATE OF SERVICE

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

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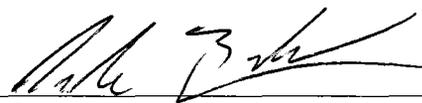
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Dated this 12th day of September, 2014, at Harrisburg, Pennsylvania

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities Corporation :
for Approval of a Default Service Program and : Docket No. P-2014-2417907
Procurement Plan for the Period From :
June 1, 2015 Through May 31, 2017 :

**MAIN BRIEF OF THE
PP&L INDUSTRIAL CUSTOMER ALLIANCE**

Air Products and Chemicals, Inc.
Armstrong World Industries, Inc.
General Dynamics-OTS Scranton
Harristown Enterprises, Inc.
Hercules Cement Company

Linde LLC
SAPA Extrusions, Inc.
The Hershey Company
TIMET North America
Wegmans Food Markets, Inc.

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Dated: September 12, 2014

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I. INTRODUCTION AND PROCEDURAL HISTORY

On April 18, 2014, PPL Electric Utilities Corporation ("PPL" or "Company") filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") a Petition for Approval of the Company's Third Default Service Program ("DSP III"). *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2015 Through May 31, 2017*; Docket No. P-2014-2417907 (Apr. 18, 2014) (hereinafter, "Petition"). On May 9, 2014, the PP&L Industrial Customer Alliance ("PPLICA")¹ filed a Petition to Intervene and Answer to the Company's Petition. A Prehearing Conference was held on June 5, 2014, before Administrative Law Judge ("ALJ") Susan D. Colwell.

PPLICA received the Company's Direct Testimony on April 25, 2014. Pursuant to the procedural schedule, on July 1, 2014, PPLICA received Direct Testimony from the following parties: the Office of Consumer Advocate ("OCA"); the Office of Small Business Advocate ("OSBA"); the Retail Energy Supply Association ("RESA"); the Sustainable Energy Fund ("SEF"); NextEra Energy Power Marketing, LLC ("NEPM"); Citizens for Pennsylvania's Future ("PennFuture"); and Exelon Generation Company, LLC ("ExGen"). On July 11, 2014, PPLICA received Supplemental Direct Testimony from OSBA. On July 28, 2014, PPLICA received Rebuttal Testimony from the following parties: the Company; OCA; OSBA; and RESA. PPLICA received the Company's Supplemental Rebuttal Testimony on August 6, 2014. On August 8, 2014, PPLICA received Surrebuttal Testimony from the Company, OCA, OSBA, RESA; SEF; NEPM; and PennFuture.

An evidentiary hearing was held in this proceeding on August 19, 2014, for the purposes of presenting testimony and performing cross-examination. During this hearing, the parties

¹ PPLICA's compilation is listed on the cover page of this Main Brief.

confirmed the process for submitting Briefs. Pursuant to the procedural schedule, PPLICA submits this Main Brief to address various issues raised in this proceeding.

Specifically, PPLICA's Main Brief will address the proposals of RESA and ExGen for implementation of a non-bypassable rider for the recovery of "certain PJM charges."² PPLICA submits that RESA and ExGen failed to meet their burden of proof with respect to implementing such a rider. For example, RESA and ExGen have not proven that the requested rider is consistent with PUC precedent; have not established that the costs at issue are volatile; have not considered the contractual implications for Large Commercial and Industrial ("C&I") customers, including the potential for double collection; and have not provided a fully vetted proposal that would enable Large C&I customers to directly address the implications of such a rider. See Section II.B.2-4, *infra*. Most importantly, the RESA and ExGen arguments on this subject have been rejected by the Commission multiple times, including in FirstEnergy ("FE") Companies' most recent DSP.³

A. Summary of Briefing Party's Position

Pursuant to PPL's DSP I proceeding, the Commission approved the collection of costs for generation and transmission services by EGSs for shopping customers. *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period January 1, 2011 through May 31, 2014*, Opinion and Order, Docket No. P-2008-2060309 (June 30, 2009) ("PPL DSP I Order"). Although RESA proposed the implementation of a non-bypassable rider in PPL's DSP II proceeding for the collection of certain transmission and

² PPLICA will more fully describe the "certain PJM charges" at issue in Section B., *infra*.

³ The FirstEnergy Companies are the Electric Distribution Companies ("EDCs") of Metropolitan-Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company, all of whom have the same parent company of FirstEnergy. See *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of a Default Service Program for the Period Commencing June 1, 2015 Through May 31, 2017*, Final Order, Docket Nos. P-2013-2391368, *et al.* (July 24, 2014) ("FE DSP III Order").

transmission-related charges, both PPL and PPLICA opposed this change in collection due to the issues that would be created, especially for Large C&I customers. Importantly, the PUC agreed with PPL and PPLICA, denying RESA's request. *Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan*, Docket No. P-2012-2302074 (Jan. 24, 2013) ("PPL DSP II Order"), p. 85 ("PPL DSP II Order"). As a result, since June 1, 2013, PPL has been collecting generation, distribution, and transmission costs from its non-shopping (*i.e.*, default) customers, while EGSs have been collecting generation and transmission costs from their shopping customers, leaving PPL to collect only distribution costs and other non-distribution riders, such as the ACR, from shopping customers.

While PPL proposes no changes to the collection for transmission or transmission-related charges for shopping customers in this proceeding, both RESA and ExGen submitted Direct Testimony requesting that the PUC require PPL to implement a non-bypassable rider for the recovery by PPL from both shopping and non-shopping customers of the certain PJM charges, including: Network Integration Transmission Services ("NITS"), Transmission Enhancement Costs ("TEC"), Non-Firm Point-to-Point Transmission Service Credits ("Non-Firm Credits"), Regional Transmission Enhancement Plan ("RTEP"), Reliability Must Run/Generation Deactivation ("RMR"), and Unaccounted for Energy ("UFE").⁴ *See* RESA St. 1, p. 18 (listing all charges except TEC and Non-Firm Credits); *see also* ExGen St 1, pp. 4-5 (listing all charges).

⁴ During the course of this proceeding, the term NMB charges has been applied to the costs sought by RESA and ExGen to be collected through a non-bypassable rider. A clearer and more accurate description would be to recognize that NITS are "transmission costs," as a customer's transmission charge is effectively the customer's NITS charge. *See 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, et al. (Aug. 16, 2012) ("FE DSP II Order"), p. 83 ("NITS costs are directly related to the transmission service offered to customers, generally referred to simply as 'transmission' costs."). Similarly, TEC, Expansion Costs, Non-Firm Credits, RTEP, RMR, and UFE charges are "transmission-related costs." For purposes of PPLICA's Main Brief, PPLICA will refer to NITS as either NITS or "transmission costs," TEC, Non-Firm Credits, RTEP, RMR, and UFE charges combined as "transmission-related costs."

As discussed more fully herein, any proposal to implement a non-bypassable rider for the collection of transmission and/or transmission-related costs must be rejected by the PUC on several grounds. First, none of the parties seeking implementation of such a rider have met their burden of proving this rider would conform to PUC precedent or regulations, including a showing that these costs are "volatile," thereby necessitating a non-bypassable rider. *See* Section B.2. and 3., *infra*. Second, a non-bypassable rider would raise significant contractual issues, especially for Large C&I customers, who could not only lose competitive market product options, but also face double-collection of these costs due to the timing of any change in collection. *See* Section B.4, *infra*. Third, none of the parties have presented any information regarding the implementation of such a rider, including the terms of rate allocation and cost collection, thereby raising significant concerns of subsidization within the Large C&I class, as well as the possibility of sending incorrect economic signals. *Id.* For these reasons, any proposal to implement a non-bypassable rider for the collection of transmission and/or transmission-related costs should be rejected.⁵

II. ARGUMENT

A. Recovery of Certain PJM Charges

1. Background.

In 1996, Pennsylvania adopted the Electricity Generation Customer Choice and Competition Act ("Competition Act") to encourage more affordable, safe, and reliable electric service, as well as promote business and industry throughout the Commonwealth. *See generally* 66 Pa. C.S. § 2802. In order to allow EGSs to sell electricity directly to customers in the Commonwealth, the Competition Act provided for an unbundling of generation, transmission,

⁵ Assuming *arguendo*, that the PUC determines that a non-bypassable rider is necessary for the residential and small commercial customer classes, PPLICA submits that a carve-out should apply for Large C&I customers.

and distribution services, which had previously been offered as a bundled product by EDCs. *Id.* at § 2802(14); *see also id.* at § 2804(3). As a result of this unbundling, customers could negotiate with competitive retail suppliers (*i.e.*, EGSs) who would provide such "shopping" customers with both generation and transmission service, while the customer would continue to receive distribution service from the EDC. Conversely, "non-shopping" customers, who chose to remain with the EDC, would receive generation, transmission, and distribution service under the EDC's "provider of last resort" default service. *See id.* § 2802(16). Moreover, the PUC adopted regulations, consistent with the Competition Act, that assign responsibility for generation and transmission service to the entity that provides the supply service for the customer, *i.e.*, the EDC must provide generation and transmission service for non-shopping customers, and the EGS must provide generation and transmission service for shopping customers. 52 Pa. Code § 54.182; *see also id.* at § 54.187(d). Stated another way, Commission regulations designate transmission service as a load-following expense, meaning that the entity providing a customer's generation service must also take responsibility for the provision of transmission services and collection of the associated costs.

Pursuant to the Competition Act, generation became a competitive product available to all customers throughout the Commonwealth. Although the PUC retained jurisdiction over EDCs' provision of distribution service, the Federal Energy Regulatory Commission ("FERC") regulates the terms and conditions of transmission service, including wholesale transmission rates. To that end, PJM is charged with the safe and reliable operation of the PJM transmission region, which includes PPL's service territories. *See* Operating Agreement of PJM, Third Revised Rate Schedule FERC No. 24, Second Revised Sheet No. 32, Section 7.7(i)(A). As part of this responsibility, PJM determines each transmission owner's (*i.e.*, also the EDC in the case

of PPL) transmission obligation for the forthcoming year as set during the one coincident peak ("1-CP") during the previous year. Specifically, prior to January 1 of each year, PJM alerts an EDC as to its transmission obligation for the previous year. The EDC then determines each customer's individual obligation based upon that customer's 1-CP usage. *See* Supplement No. 133 Tariff – Electric Pa. P.U.C. No. 201, pp. 19Z-19Z.1 ("PPL TSC Tariff"). The EDC is then able to provide PJM with the overall transmission obligations of all of the EGSs on the EDC's system, in addition to the EDC's transmission obligation as it relates to the provision of default service. For customers that do not receive default supply, PJM bills each load-serving-entity ("LSE") (which serve as EGSs under Pennsylvania's rules) for the transmission costs incurred during the year based upon that LSE's transmission obligation.⁶

Because one of the purposes of the Competition Act was to grant customers the ability to negotiate for energy service, and the Commission's regulations state that EGSs should charge shopping customers for both generation and transmission, Large C&I shopping customers on PPL's system generally have two options with respect to transmission and transmission-related costs: (1) a pass-through arrangement; or (2) a fixed-price arrangement. *See, e.g. Guidelines for Use of Fixed Price Labels for Products With a Pass Through Clause*; Docket No. M-2013-2362961, Final Order entered November 14, 2013 ("Fixed Price Order"), p. 32 (eliminating use of pass-through language on EGS contracts for Residential and Small C&I contracts, but preserving availability of pass-through arrangements for Large C&I customers).

Under a pass-through transmission arrangement, the EGS directly flows through to the customer the actual transmission and transmission-related costs incurred by the customer based upon the individual customer's 1-CP transmission obligation. *See* PPL St. No. 3-R; *see also* PPL

⁶ PJM Open Access Transmission Tariff, July 31, 2014 available at <http://www.pjm.com/markets-and-operations/~media/documents/agreements/tariff.aspx> (last visited July 31, 2014).

TSC Tariff. Because this is a direct "flow-through" of such costs, the EGS does not incur any risk in the event that transmission costs either increase or decrease over the course of the customer's contract. *See* ExGen St. No. 1, p. 5 (stating that "...EGS market variable price products to customers, or include premiums in their fixed price offers to customers..."). *Id.* Rather, the customer takes the risk of changing transmission costs, but the customer is able to avoid any "risk premium" that might be included by the EGS in its energy price if this direct pass-through did not occur. *See id.*

By contrast, under a fixed-price transmission product, the EGS may include a "risk premium" in the customer's overall price that would allow the EGS to hedge fluctuating transmission and transmission-related costs over the course of a contract. *See* PPL St. No. 1-R, p. 44. In return, however, the customer pays the premium for the EGS to shoulder such risk.

To support a competitive marketplace, the Competition Act requires EDCs such as PPL to recover generation and transmission services separately from distribution charges. As described above, PPL customers utilizing an EGS for competitive supply pay PPL for distribution service and secure a fixed-price or pass-through contractual arrangement with an EGS for generation and transmission services.⁷ Similarly, a customer taking default service from PPL pays traditional tariff rates for distribution service but pays for generation and transmission services through separate pass-through riders. PPL's Large C&I default service customers pay for generation and transmission-related services through the Generation Supply Charge-2 ("GSC-2") and Transmission Service Charge ("TSC") riders, respectively. Supplement No. 154 Tariff – Electric Pa. P.U.C. No. 201, pp. 19Z.6-19Z.7; Supplement No. 133 Tariff – Electric Pa.

⁷ All customers also pay PPL for certain non-distribution costs, such as ACR and CER.

P.U.C. No. 201, pp. 19Z-19Z.1A. PPL does not offer a fixed-price rate to Large C&I customers for generation or transmission services. PPL St. No. 3-R, p. 14.

With the onset of the Competition Act, PPL's DSP I addressed the aforementioned collection of costs related to generation, transmission, and distribution services as applied to both shopping and non-shopping customers. During PPL's DSP I, none of the parties sought to implement a non-bypassable rider, and, as such, PPL began collecting distribution costs from shopping customers, while these customers' EGSs began collecting costs related to transmission and generation services. *See generally* *Petition of PPL Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period January 1, 2011 Through May 31, 2014, Order*, Docket No. P-2008-2060309 (June 30, 2009) ("PPL DSP I Order").

As part of PPL's DSP II, PPL did not propose any changes to the aforementioned collection of costs from shopping customers; however, RESA sought to impose a non-bypassable rider for the collection of various transmission and transmission-related charges. Both PPL and PPLICA opposed the change in collection of these costs, and the PUC agreed that RESA had not met its burden of proof with respect to its request to rebundle distribution and transmission services. PPL DSP II Order, p. 85. According to the Commission, "the imposition of a non-bypassable charge for the recovery of transmission-based costs is inappropriate for the reasons set forth in the *FE DSP II Order*" *Id.*

As referenced by the Commission in the PPL DSP II Order, the FE Companies, as part of their DSP II proceeding, also sought to implement a non-bypassable rider. Specifically, the FE Companies sought to collect a majority of transmission and transmission-related costs from all customers (*i.e.*, both shopping and non-shopping). Not surprisingly, the Large C&I customers in the FE Companies' service territories opposed this collection of costs. At the end of the FE

Companies' DSP II proceeding (which was actually prior to the conclusion of PPL's DSP II proceeding), the PUC found that the FE Companies could collect RTEP and TEC costs via a non-bypassable rider, as the FE Companies had met their burden of proving that, in approximately 2012, these costs were volatile. FE DSP II Order, p. 83 (finding that the record indicated that RTEP and TEC charges "are either incidental or impact only certain customers in the [FE] Companies' service territories, and therefore, are more unpredictable.")⁸

The FE Companies, in their DSP III plan, which was filed on November 4, 2013, sought to add the collection of RMR, meter collection costs, and eventually NITS to their non-bypassable rider. This proceeding was resolved via a partial settlement, which allowed for the collection of UFE, RMR, and meter correction charges via the non-bypassable rider; however, the PUC denied the FE Companies' and RESA's requests to collect NITS through this rider. *See* FE DSP III Order, pp. 31, 42. Although RESA and ExGen inexplicably seems to suggest that the results of the Commission's decision regarding any settlement in the FE Companies DSP III proceeding would apply to PPL, the clear language from the Commission specifies that the FE DSP III Order applies only to the FE Companies. *See* FE DSP III Order, p. 18 (observing that "the Partial Settlement states that it does not constitute an admission against, or prejudice to, any position which any of the Settling Parties might adopt during subsequent litigation of this case or any other case."). In this case, there is no agreement among the parties to create a new surcharge for any category of PJM costs, and PPL and PPLICA specifically oppose the RESA and ExGen proposals. This places the burden of proof on RESA and ExGen.

⁸ As evidenced by the Commission's later declaring non-bypassable recovery of transmission and transmission-related costs in to be "inappropriate" in the PPL DSP II Order, it is clear that non-bypassable recovery is not the rule and was granted to the FE Companies under the limited and distinct circumstances of that proceeding. *See* PPL DSP II Order, p. 85 *cf.* FE DSP II Order, p. 83.

RESA and ExGen fail to meet their burden of proof as it applies to implementing a non-bypassable rider on PPL's system. As such, any proposal for the implementation of a non-bypassable rider for the collection of transmission and/or transmission-related costs must be rejected.

2. RESA and ExGen Have Not Met Their Burden of Proof that the Proposed Non-bypassable Riders are Consistent With the Competition Act, Commission Precedent, and Commission Regulations.

As the parties presenting the proposed modification to the collection of transmission and transmission-related costs, RESA and ExGen bear the burden of proof in this proceeding. As set forth herein, RESA and ExGen fail to provide a preponderance of evidence that supports a non-bypassable collection of transmission and transmission-related costs by PPL as the EDC. Accordingly, because insufficient evidence has been provided, RESA and ExGen's proposals for PPL to collect transmission and transmission-related costs from shopping and non-shopping customers must be firmly denied.

Section 332(a) of the Public Utility Code requires the following with respect to burden of proof: "[e]xcept as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part or other relevant statute, the proponent of a rule or order has the burden of proof." 66 Pa. C.S. § 332(a). In addition, under Section 315, "[i]n any proceeding... involving any proposed or existing rate of any public utility... the burden of proof to show that the rate involved is just and reasonable shall be upon the utility." *Id.* § 315(a).

According to the PUC, the "party seeking a rule or order from the Commission has the burden of proof" in a proceeding. *Pa. Pub. Util. Comm'n v. Jackson Sewer Corp.*, Docket No. R-00005997, at 5-7 (Nov. 13, 2001). In carrying this burden, a complainant must establish a case before an administrative tribunal using a preponderance of evidence as the requisite degree of

proof. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlt. 1990). The standard of preponderance of the evidence is defined as the greater weight of the evidence, in view of all of the facts and circumstances of the case. *See Se-Lin Hosiery, Inc. v. Margulies*, 70 A.2d 854, 856 n.1 (Pa. 1950).

RESA and ExGen fail to meet this burden of proof for numerous reasons. As a threshold matter, the non-bypassable rider proposals violate the Competition Act and contravene the Public Utility Code in several important respects. Initially, the RESA and ExGen proposals contradict explicit Commission regulations and recent Commission precedent providing that generation and transmission should remain with a customer's retail supplier. *See* Section B.3., *infra*. RESA and ExGen's proposals to shift responsibility for procuring transmission and transmission-related costs from the competitive retail market to a regulated service also represent a direct violation of the Competition Act and a step backward in the evolution of Pennsylvania's retail market. *Id*. Equally troubling, these proposals present a concrete risk that customers who have existing EGS arrangements that include fixed prices may be overcharged for transmission as these customers would face a double-collection of transmission costs by both their EGS and EDC. *See* Section B.4., *infra*.

Because RESA and ExGen fail to provide any evidence to overcome these logistical challenges and this adverse legal precedent, RESA and ExGen have failed to meet its burden of proof, and the status quo collection of transmission and transmission-related costs by EGSs on PPL's system must be retained.

3. RESA and ExGen Have Not Produced Record Evidence Supporting Non-Bypassable Recovery of Transmission or Transmission-Related Charges.

As part of this proceeding, the proposal has been made to shift the collection of transmission and transmission-related costs from EGSs to the EDC for shopping customers.

Although RESA claims the need for the change in collection is due to the volatility of these costs, review of PUC precedent and record evidence in this proceeding indicates that these costs, especially NITS, are not volatile costs requiring a change in collection. Even assuming that some volatility exists, the record confirms that the scheduled nature of NITS increases enables EGSs concerned about risk management to easily pass-through such costs without subjecting customers to the adverse effect of a non-bypassable rider. RESA and ExGen also inappropriately attempt to characterize the PUC's Fixed Price Order as support of the proposed non-bypassable riders, even though a clear reading of this Order not only shows no such support from the Order, but also directly provides support for a carve-out for Large C&I customers. Moreover, any change in collection in transmission and transmission-related costs would represent a step backwards in the evolution of the retail market by rebundling transmission service with distribution service. Based upon the totality of the record, any proposal to collect transmission and transmission-related costs through a non-bypassable rider should be rejected.

Although RESA claims that the collection of transmission and transmission-related costs through a non-bypassable rider is necessary due to the volatility related to these costs, in actuality, both past, present, and extremely recent PUC precedent has held that such costs (and most recently NITS costs specifically) do not have a volatility level sufficient to support such change in collection.

In PPL's DSP II proceeding, the Commission held that transmission and transmission-related costs should continue to be collected by EGSs rather than by PPL via a non-bypassable rider. PPL DSP II Order, p. 85. Specifically, the Commission noted that because EGSs are LSEs for shopping customers, in the same way EDCs are LSEs for default service customers, the EGSs must be responsible for collecting all transmission costs from customers. *Id.* In addition,

the Commission "expressed concern that the imposition of such a non-bypassable charge would interrupt long-term shopping contracts and may force contracts to be renegotiated." *Id.* The Commission further observed that non-bypassable recover of transmission and transmission-related costs "would increase the likelihood of double cost collection by the EDCs and EGSs, while increasing the risk for customers." *Id.*

In an attempt to distinguish the present circumstances from the Commission's denial of RESA's efforts to implement non-bypassable recovery of transmission and transmission-related costs through PPL's DSP II proceeding, RESA generally describes the costs at issue as "unpredictable." RESA St. 1, p. 20. As support for its allegations of volatility, RESA offers a single instance of significant increase in NITS charges showing that the NITS rate increased by 52% in the PPL zone between January 1, 2013 and June 1, 2013. *See* RESA St. No. 1-SR, p. 14. However, as noted by RESA, the NITS rate increased by a moderate 6% between June 1, 2013 and June 1, 2014. *Id.* Further, as no other Pennsylvania EDC experienced a change in NITS exceeding 15% (which was a decrease in the Duquesne Light Company service territory), the 52% increase occurring between January 1, 2013 and June 1, 2013 should be considered an outlier. *See id.* Finally, as noted by PPL Witness Bethany Johnson, NITS are calculated systematically on an annual basis, with any new rates taking effect on the first day of the PJM Planning Year (June 1) with tentative 30 day notice provide on May 30 and final notice of the new rate provide in Mid-may. *See* PPL St. No. 3-R, p. 7. Accordingly, any EGS concerned about mitigating NITS volatility can easily and accurately pass through such costs. *See id.*

Most notably, on July 24, 2014, the PUC found in the FE Companies DSP III proceeding that NITS should **not** be recovered through a non-bypassable rider because the evidence of a single increase offered to show volatility in NITS costs was "unconvincing." FE DSP III Order,

p. 31. The Commission approved additional non-bypassable recovery only for those transmission-related charges proposed for non-bypassable recovery through a settlement.

In the current proceeding, PPL Witness James M. Rouland confirms that "[n]othing has changed from DSP II to DSP III warranting a change to this [non-bypassable rider language]." PPL St. No. 1, p. 45. Mr. Rouland's testimony confirms that the reasons cited to justify rejecting a non-bypassable rider for transmission and transmission-related costs in PPL's DSP II proceeding, and more recently in the FE Companies' DSP III proceeding, remain valid for purposes of PPL's current proceeding. *See* PPL St. No. 1-R, pp. 43-45.

RESA and ExGen also allege that the Commission's recent "Fixed Price Order" presents changed circumstances from earlier (*i.e.*, DSP II) determinations that transmission and transmission-related costs should not be recovered through a non-bypassable charge.⁹ *See* RESA St. No. 1, p. 21; *see* ExGen St. No. 1, pp 5-6. In actuality, the Commission's Fixed Price order focuses only on the nomenclature to be used by EGSs for contracts, thereby rendering it inapplicable to the current issues. In the Fixed Price Order, the Commission finds that customers, specifically residential and small commercial customers, may be deceived by a fixed price contract that includes variable price components or regulatory-out clauses. Fixed Price Order, pp. 21-23 ("It is simply unrealistic to expect the average residential consumer to understand electric markets to this level of granularity, with many of them still struggling with the basic distinctions of generation, transmission, and distribution."). Importantly, as observed by PPL Witness James Rouland, the Fixed Price Order specifically contemplated that EGSs would remain responsible for recovery of transmission-related charges *See* PPL St. No. 1-R, p. 43. Specifically, Mr. Rouland notes that the Fixed Price Order explains that the "price an EGS

⁹ *See, e.g. Guidelines for Use of Fixed Price Labels for Products With a Pass Through Clause*; Docket No. M-2013-2362961, Final Order entered November 14, 2013 ("Fixed Price Order").

presents to residential or small business customers is expected to be 'all inclusive' – including all of the pricing components found in the PTC for default customers (generation, *transmission where applicable*, gross receipts tax, etc.)." *Id.* (Emphasis added). Finally, the conclusions of this Fixed Price Order specifically carved-out Large C&I customers for applicability purposes. Fixed Price Order, p. 30.

RESA further argues that PPL's current practice of assigning responsibility for collecting NITS on a load-following basis creates competitive inequities because PPL can pass-through any NITS charges without reflecting a risk premium in the Price to Compare, whereas an EGS "must account for the current transmission rate and the risk that this rate may increase in prices offered to retail customers." RESA St. 1, p. 20. RESA fails to recognize, however, that if an EGS is concerned regarding the level of risk premiums it would need to include within a fixed price contract, that EGS can negotiate a pass through clause with its customers, as has been done by many Large C&I customers.¹⁰ See ExGen St. No. 1, pp. 5-6. By contrast, Large C&I customers are often willing to pay a risk premium to EGSs for various reasons, including avoiding market volatility and establishing firm budgets. See PPL St. No. 1-R, p. 44. Unfortunately, contrary to the intent of the Competition Act, implementation of a non-bypassable rider would remove this options for Large C&I customers.

The Competition Act indicates that the framers of the legislation intended to provide customers with prices and products to stimulate increased retail competition among EGSs rather than practically eliminate it altogether. The Competition Act provides for "the unbundling of electric utility services, tariffs and customer bills to separate the charges for generation,

¹⁰ The same point applies to RESA's argument that EGSs are prejudiced by PPL's practice of assuming transmission and transmission-related costs on behalf of wholesale suppliers. See RESA St. No. 1-SR, p. 14. Transmission and transmission-related costs can be passed-through by EGSs, thereby absolving them of any risk. See ExGen St. No. 1.

transmission and distribution." 66 Pa. C.S. § 2802(13); *see also id.* § 2804(3). As a fundamental part of the restructuring of Pennsylvania's retail electric market, the Competition Act required that EDCs collect distribution costs from all customers, while generation and transmission costs were unbundled and collected instead by EGSs from shopping customers. 66 Pa. C.S. § 2802(14); *see also id.* § 2804(3). All EGSs currently participate in the retail marketplace in this manner, *i.e.*, offering products that include both generation and transmission costs to shopping customers.

By contrast, any proposal for a non-bypassable rider would rebundle distribution and transmission because only PPL would be permitted to collect transmission costs from customers, regardless of whether or not the customers are shopping. In other words, with generation and transmission costs being unbundled, EGSs may offer a range of products to attract Large C&I customers, as well as customers in smaller customer classes. Requiring PPL to begin collecting transmission costs equates to a rebundling of transmission and distribution in contravention of the Competition Act. As a result, such proposals are contrary to the plain language of the Competition Act, which requires that only distribution costs should continue to be charged by a shopping customer's EDC.

Accordingly, any proposal to remove the collection of transmission and transmission-related costs from EGSs and transfer them to PPL for collection would run contrary to PUC precedent, inappropriately rebundle transmission and distribution service contrary to the Competition Act; and would eliminate numerous products from the competitive marketplace in direct contradiction to the needs of Large C&I customers for contracting purposes. For these reasons, any proposal to collect transmission and transmission-related costs through a non-bypassable rider must be rejected.

4. The Collection of Transmission and Transmission-Related Costs Through a Non-bypassable Rider Would Raise Significant Contractual and Double Collection Concerns for Large C&I Customers.

Collection of transmission and transmission-related costs through a non-bypassable rider would not just raise precedential concerns, but would also bring about significant contractual and double-collection concerns for Large C&I customers. Unfortunately, as part of this proceeding, RESA and ExGen did not address how customers can be protected from the issues that would arise if a change in collection were to occur in the middle of customers' contracts, especially those customers with fixed-price contracts. Moreover, RESA and ExGen did not provide any detail regarding how the allocation and collection of any costs collected through a non-bypassable rider would occur in order to ensure that subsidization among and between the customer classes does not result. Similarly, because incorrect cost collection could send inappropriate market signals, especially to Large C&I customers, lack of details regarding implementation raises further concerns. Because of these overarching issues that remain outstanding, any proposal to recover transmission and transmission-related costs through a non-bypassable rider should be rejected.

i. *Collection of Transmission and Transmission-Related Costs Through a Non-bypassable Rider Would Raise Significant Contractual and Double Collection Concerns for Large Commercial and Industrial Customers.*

RESA and ExGen contend that utilizing a non-bypassable rider for the collection of transmission and transmission-related costs would benefit EGSs because EGSs would no longer have to place a risk premium into customers' contracts. RESA St. No. 1, p. 20, ExGen St. No. 1, p. 5. In focusing on the benefits to EGSs, RESA and ExGen fail to recognize the resulting problems that will occur for customers, especially Large C&I customers, including contractual concerns. Because of the potential harm that could arise to Large C&I customers, any proposal to collect transmission and transmission-related charges through a non-bypassable rider must be rejected.

The Commission has previously recognized the inherent problems that can be faced, especially by Large C&I customers, due to non-bypassable riders. In PPL's previous DSP proceeding, the Commission opposed non-bypassable transmission cost collection, noting the forced renegotiation of shopping contracts and increased likelihood of double cost collection by EDCs and EGSs. PPL DSP II Order, p. 85. Similarly, in Duquesne Light Company's last DSP proceeding, the Commission held that the current collection of transmission costs by EGSs is "consistent with the Commonwealth's continued migration to a more competitive retail market, and that RESA's proposal would be a step backward because it would result in the rebundling of transmission costs with distribution rates." *Petition of Duquesne Light Company For Approval of Default Service Plan For The Period of June 1, 2013 Through May 31, 2015*, Opinion and Order, Docket No. P-2012-2301664 (Jan. 25, 2013), p. 222.

Currently, Large C&I customers may choose to utilize the option of allowing for either pass-through or fixed price arrangements by negotiating with their EGS to apply a pass-through

of some transmission/transmission-related charges while including other transmission/transmission-related charges within a fixed price. PPL St. No. 1-R, pp. 44-45; *see also* ExGen St. No. 1, p. 5. While customers are currently able to obtain fixed price payment arrangements for transmission and transmission-related charges by paying a risk premium to an EGS, or request pass-through treatment for such costs, PPL offers only a pass-through option for default service customers. *Id.*; *see* PPL St. No. 3-R, p. 14 (stating that PPL passes through transmission costs for current default service customers). Therefore, any proposal to shift the collection of these costs to the EDC would effectively eliminate customers' ability obtain a contracts with EGSs that include fixed pricing for transmission and transmission-based costs. *See Id.*

Importantly, ExGen presents a distorted and misleading analysis of the effect non-bypassable recovery of transmission and transmission-related charges. *See* ExGen St. No. 1, pp. 5-6. ExGen states that allowing transmission and transmission-related charges to be collected by the EDC would "best allow EGSs to continue offering competitive fixed price contracts to new and existing shopping customers." *Id.* What ExGen leaves out is the fact that any fixed-price contracts available after implementation of its proposed non-bypassable charge would not include transmission or transmission-related costs. *See id.*; *cf.* PPL St. No. 3-R, p. 14. Essentially, Large C&I customers would be able to obtain fixed-price arrangements for generation charges, but would have to pay transmission and transmission-related charges through the EDC, with no remaining option to bundle such costs in a competitively priced product.

In addition to removing customer choice options, any change in collection would further interfere with customers' contracts by raising fundamental transition issues for Large C&I customers that have competitive supply contracts. Customers with fixed price contracts are

particularly susceptible to the unfair transitional issues associated with a non-bypassable proposal. As stated by PPL Ms. Johnson,

If the EDC were to develop a non-bypassable clause for the non-market based charges, every customer with every EGS would need a revised contract effective on the date in which the change took place. Otherwise, customers would be paying the EGS price that includes transmission costs, as well as being charged by the EDC for transmission costs.

PPL St. No. 3-R, p. 15. With awareness of the fact that Large C&I customers may be under EGS fixed-price contracts, PPL appropriately asked the Commission to reject the RESA and ExGen non-bypassable rider proposals out of concern for adverse effects on Large C&I customers. *See* PPL St. No. 1-R, p. 44. Specifically PPL Witness James Rouland testified that:

Third, the Company does not support making a substantial change to the structure of the existing Transmission Service Charge Rider ("TSC rider") during the two-year period that the DSP III Program is in effect. In my view, this is not the time to be making significant changes to the construct of the TSC Rider, especially when certain commercial and industrial customers may already have contracts with EGSs with pricing that includes risk premiums for these NMB charges.

Id. For customers with fixed price configurations for recovery of transmission and transmission-related charge, the EGS may not be certain what portion of the fixed price should be reduced to represent the transmission and transmission-related costs that would be transferred to PPL for collection. Moreover, the burden would then fall on the customer to ensure that the EGSs have properly removed these costs (possibly mid-way through a contract term) to avoid any double-collection.

As recognized by the Commission in the recent FE DSP III Order, the FirstEnergy Companies were permitted to collect RTEP and TEC costs as part of their DSP II proceeding; however, the removal of these costs from EGSs led to disputes between customers and EGSs. *See* FE DSP III Order, p. 42 (stating that "there is merit in the concerns expressed by

[Industrials] with regard to a possible double-collection."). Thus, while the benefits may be viable for EGSs under this proposal, Large C&I customer concerns continue to mount.

Similarly, RESA's purported "solutions" to the foregoing transitional issues suggested by RESA fail to resolve the potential for double collection or contract unwinding. RESA indicates that collection of transmission costs by EGSs could be delayed by one year after PPL's DSP III goes into effect, (*i.e.*, from June 1, 2015, to June 1, 2016). *See* RESA St. 1-SR, p. 15. Although RESA contends this additional time period will allow contracts that collect transmission and/or transmission-related costs to expire, RESA fails to acknowledge that customers are currently negotiating contracts that do not necessary track with the timing of PPL's DSP proceedings. *See* PPL St. 3-SR, p. 17 (stating that implementation of a non-bypassable rider would require customers to revise contracts on the date in which the rider become effective.)

RESA also proposes to bifurcate non-bypassable recovery of RMR charges such that only new RMR charges developed after the effective date of a Commission Order approving a proposed non-bypassable rider would be recovered through the rider. In other words, RMR charges already in place before the effective date of such a Commission Order would be recovered consistent with PECO's current practice, while any new RMR charges occurring after the Commission Order would be collected through the rider. This proposal fails to address the transitional risks for various reasons. First, the proposal would be inapplicable to non-bypassable recovery of NITS, because NITS charges are not billed on a cumulative basis as RMR and other transmission-related costs may be. Second, bifurcation still carries risks of double-collection for customers under long-term fixed-price contracts because the bifurcation date, *i.e.* date of the applicable Commission Order, would not be tied to the termination of customers' current contracts. *See* PPL St. 3-SR, p. 17. Therefore, the proposed bifurcation of

RMR charges fails to mitigate the transitional risks created by implementation of the proposed non-bypassable riders.¹¹

Accordingly, because of the contractual concerns raised for customers, especially the Large C&I customer class, the purported and speculative benefits claimed by EGSs outweigh the concerns raised by customers.¹² For these reasons, any proposal to collect transmission and transmission-related costs through a non-bypassable rider must be rejected.

ii. None of the Parties Proposing a Non-bypassable Rider Have Provided Adequate Information Regarding the Rate Allocation and Collection of These Costs.

Although RESA and ExGen have proposed a non-bypassable rider for the collection of certain transmission and transmission-related costs, neither company presented any detail regarding the actual implementation of such a non-bypassable rider. Specifically, RESA and ExGen have not presented any details regarding the means by which these costs would be allocated among the rate classes; the methodology that would be used to collect these costs from customers; or a tariff supplement providing the applicable language governing the implementation of such a mechanism on PPL's system. Because of the lack of specificity regarding both proposals, they must be denied by the Commission.

For example, because RESA and ExGen fail to specify a cost collection method, current shopping customers cannot determine whether the proposed non-bypassable rider would

¹¹ Although PPLICA primarily submits that the proposed bifurcation of RMR charges is an inadequate remedy for the transitional risks identified above, if the Commission approves non-bypassable recovery of transmission and/or transmission related costs, any application of the bifurcation methodology for RMR costs should be approved and further modified to apply to RTEP and TEC costs, as well. To do otherwise could result in an extrapolation of transitional problems for Large C&I customers with respect to the determining the amount of each cost component to be collected by the various entities, as well as with respect to the timing of the collection of each cost component.

¹² For example, RESA claims its member EGSs are prejudiced because PPL collects transmission and transmission-related costs on behalf of wholesale suppliers "presumably because wholesale suppliers were concerned about the risk of future NITS cost increases and successfully negotiated SMA provisions in prior default service proceedings that assigned this cost and risk to PPL." RESA St. No. 1, p. 19. This statement is purely speculative as RESA made no attempt to develop a record as to PPL's past negotiations with wholesale suppliers and offered no citations or references to any prior default service proceedings addressing negotiations between wholesale suppliers and PPL.

continue utilizing the CP-1 cost collection set forth in PPL's current TSC or adopt an alternative methodology. See PPL St. No. 1-R, p. 44. If PPL were to implement a non-bypassable rider that would allocate transmission and transmission-related costs among Large C&I customers based on a customer's previous month's peak demand, a Large C&I customer would no longer have the choice to be allocated its own individual transmission obligation, but rather, would be allocated a portion of the Large C&I class transmission obligation in a manner that is not consistent with how cost responsibility for the transmission system is established under PJM's rules.

Similarly, PPL's Direct Testimony indicated that approval of a non-bypassable charge for recovery of transmission or transmission-related costs would require the Company to phase out its TSC. PPL St. No. 1-R, p. 45. Neither RESA nor ExGen, the parties bearing the burden of proof that with regard to the proposed non-bypassable riders, addressed this issue. Accordingly, the record does not indicate how PPL would recover the costs of phasing out its TSC or how this adjustment would impact customers.

Because of the lack of clarity regarding these proposals, combined with the significant problems that could arise, including subsidization among and between classes, as well as the sending of incorrect market signals, these proposals must be rejected.¹³

¹³ Assuming, *arguendo*, however, that the Commission approves a non-bypassable rider for collection of any transmission or transmission-related charges PJM Charges, then the Commission should also approve a carve-out for Large C&I customers. Large C&I customers' unique involvement in Pennsylvania's retail electric market warrants divergent treatment with respect to transmission and transmission-related costs. Large C&I customers in PPL's service territory have utilized the existing market structure, with 98.6% of Large C&I customers taking competitive supply from EGSs (the highest percentage of any EDC customer group in Pennsylvania. PPL Electric Exhibit JMR-1. **With 98.6% of the Large C&I load already shopping there is no need to make changes creating unnecessary restrictions on available competitive products (i.e. eliminating fixed price arrangements for transmission and transmission-related costs) and imposing transitional risks to Large C&I customers in PPL's service territory.** See *id.*

III. CONCLUSION

WHEREFORE, the PP&L Industrial Customer Alliance respectfully requests that the Pennsylvania Public Utility Commission:

- (1) Deny any proposal to implement a non-bypassable rider to collect any transmission and/or transmission-related costs from shopping customers;
- (2) Alternatively, approve a carve-out for Large C&I customers applicable to any non-bypassable rider for the recovery of any transmission and/or transmission-related costs; and
- (3) Grant any additional relief deemed appropriate and consistent with the above recommendations.

Respectfully submitted,

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