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September 26, 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 Reply 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 
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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Dated this 26th 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 :

**REPLY 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
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Table of Contents

	Page
I. INTRODUCTION	1
II. ARGUMENT	2
1. Introduction.....	2
2. RESA Fails to Present Credible Evidence of Volatile Costs or any Additional Change in Circumstances Warranting Implementation of a Non-bypassable Rider.	3
a) RESA Has Not Proven Transmission or Transmission- Related Costs to be Volatile or Unpredictable.....	4
b) PPL's Current Rate Design for Recovery of Transmission or Transmission-Related Costs Does Not Create Inequitable Treatment for EGSs.	6
c) The Commission's Fixed Price Order Provides No Support For Non-bypassable Recovery of Transmission or Transmission-Related Costs.....	8
d) Conclusion	9
3. Non-bypassable Recovery of Transmission or Transmission-Related Costs Would Impose Permanent Restrictions on Customer Contract Negotiations and Transitional Risks of Double-Collection.	10
III. CONCLUSION.....	15

I. INTRODUCTION

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.

Pursuant to the procedural schedule adopted at the Prehearing Conference, on September 12, 2014, PPLICA filed its Main Brief ("M.B.") and received Main Briefs from the following parties: PPL, the Retail Energy Supply Association ("RESA"), Office of Small Business Advocate ("OSBA"), and Noble Americas Energy Solutions LLC ("Noble").

PPLICA hereby files this Reply Brief to respond to the issues set forth in the Main Brief filed by RESA regarding the proposed implementation of non-bypassable riders that would allow PPL to recover, from both shopping and non-shopping customers, all or some of the following "certain PJM charges:" Network Integration Transmission Services ("NITS"), Regional Transmission Enhancement Plan/Transmission Enhancement/Expansion Cost Recovery (collectively "RTEP/TEC"), Unaccounted for Energy ("UFE") and Reliability Must

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

Run/Generation Deactivation ("RMR").² Although RESA filed a Main Brief proposing non-bypassable recovery of transmission or transmission-related costs,³ RESA presented no credible evidence that would warrant implementation of the proposed non-bypassable riders charges. As such, the PUC should reject the proposal, or, in the alternative, allow for a carve-out of any such non-bypassable rider for Large C&I customers.⁴

II. ARGUMENT

1. Introduction

The collection of transmission costs (*i.e.*, NITS costs) or transmission-related costs (*i.e.* RTEP/TEC, and RMR) by PPL through a non-bypassable rider is unjust and unreasonable and must not be approved. The record in this proceeding contains no persuasive evidence supporting a modification to PPL's current methodology for the collection of transmission and transmission-related costs, which appropriately requires PPL to collect transmission and transmission-related costs from its non-shopping (*i.e.*, default) customers, while Electric Generation Suppliers ("EGSs") must collect transmission and transmission-related costs from their shopping customers. Modifying the existing cost collection structure to implement a non-bypassable rider would hinder competitive market participation and, in many cases, have significant adverse effects on Large C&I customers.

² During the course of this proceeding, the term "NMB charges" has been applied to the costs sought by RESA 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, RTEP/TEC, UFE, and RMR charges are "transmission-related costs." For purposes of PPLICA's Reply Brief, PPLICA will refer to NITS as either NITS or "transmission costs," and RTEP/TEC, UFE, and RMR charges combined as "transmission-related costs."

³ Further, Noble filed a Main Brief opposing non-bypassable recovery of transmission or transmission-related costs.

⁴ PPLICA's Reply Brief will not respond to every argument contained in the parties' Main Briefs but only those issues necessitating additional response. PPLICA'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.

RESA has failed to furnish evidence sufficient to meet its burden of proving a non-bypassable rider is in the public interest. RESA offers three irrelevant evidentiary claims purporting to establish a change in circumstances from PPL's DSP II Order, where the Commission rejected a similar proposal to recover transmission and transmission-related costs on a non-bypassable basis. Specifically, RESA cites to unpersuasive and inapplicable allegations of rate volatility, alleges that PPL's rate design is discriminatory as compared to the FirstEnergy ("FE") Companies⁵ rate design, and attempts to demonstrate a change in circumstances based upon the Commission's unrelated Fixed Price Order.⁶ As detailed below, RESA's arguments lack any basis in fact or law and must be rejected.

Accordingly, because RESA has met its burden of proof, the need for a non-bypassable rider does not exist on PPL's system. Moreover, RESA has failed to recognize the competitive restrictions that such a rider would place on Large C&I customers, while also choosing to ignore the risks of double collection that would arise therein. For these reasons, the PUC should reject the implementation of a non-bypassable rider on PPL's system.⁷

2. RESA Fails to Present Credible Evidence of Volatile Costs or any Additional Change in Circumstances Warranting Implementation of a Non-bypassable Rider.

While RESA's Main Brief recognizes that the Commission rejected non-bypassable recovery of transmission and transmission-related costs in PPL's DSP II, RESA nonetheless asks the Commission to revisit the matter in this DSP III proceeding based upon claims that

⁵ 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")

⁶ *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").

⁷ If for any reason, the PUC approves non-bypassable recovery of transmission or transmission-related costs, Large C&I customer should be excluded from the non-bypassable rider.

circumstances have changed since PPL's DSP II. Specifically, RESA bases its support for the non-bypassable rider on a limited sample of NITS cost adjustments across the PJM region, purported differences between PPL's rate design and the FE Companies' rate design, and the Commission's recent Fixed Price Order. *See* RESA M.B., pp. 11-17. In actuality, RESA has not furnished credible evidence showing transmission or transmission-related costs to be volatile and/or unpredictable or demonstrated any meaningful difference between PPL's rate design and the FE Companies' rate design that would impact recovery of these costs. Moreover, the Commission's *Fixed Price Order*, while having no application to the issues at hand, also provides a carve-out for Large C&I customers, rendering this Order completely inapplicable to cost recovery for PPLICA members. For the above reasons, RESA's proposal must be rejected as meritless.

a) *RESA Has Not Proven Transmission or Transmission-Related Costs to be Volatile or Unpredictable.*

With regard to transmission costs, RESA claims that volatile transmission costs warrant a change to the collection of transmission costs, but offers little evidence of volatility and even less proof of any unpredictability. *See* RESA M.B., pp. 10-11. To establish rate volatility, RESA provided unpersuasive evidence of volatile NITS costs in certain PJM zones, most of which are located outside of Pennsylvania. First, the information offered by RESA spans only the period from January 2013 – July 2014. During this 18-month period, NITS rates were adjusted only twice, in June 2013 and again in June 2014. *See* PPLICA M.B., p. 13; *see also* RESA M.B., p. 10 (noting that NITS rates are recalculated on an annual basis). Rendering a finding on the volatility of NITS rates based solely on a limited snapshot of rate data would be imprudent, particularly where the evidence provided for Pennsylvania EDCs includes what appears to be

outliers.⁸ Moreover, even assuming that the annual increases exhibit some degree of volatility, RESA fails to consider that the rate adjustments occur on a fixed schedule, with the tentative rate adjustments published 30 days before the effective date and confirmed 15 days prior to taking effect. *See* PPLICA M.B., p. 13. As emphasized in PPLICA's Main Brief and reiterated below, any EGS concerned with maintaining rates reflecting the current NITS costs already possesses the tools to take advantage of PJM's orderly and predictable methodology for adjusting NITS rates and pass-through any rate adjustments. *See id.*; *see* Noble M.B., p. 4. Therefore, the evidence offered by RESA fails to show any volatility of transmission costs that would warrant a change in the collection of these costs.

RESA offers even less evidence to support its claims of volatility for transmission-related costs. RESA offers primarily unsupported averments claiming that all transmission-related costs are "unpredictable." RESA M.B., p. 9. Although not provided through testimony, RESA's Main Brief includes a reference to \$26 billion of historic transmission upgrades recovered through RTEP rates, including a \$1.4 million allocation to the PPL zone. *Id.* at 9-10. This information is completely unreliable as an indicator of volatility or the significance of such charges. *Cf. id.* at 10. First, the timeframe through which these costs were incurred is uncertain. Although the spreadsheet available on the PJM website link cited by RESA is voluminous, the listed transmission upgrades appear to date back to at least 2005. *Id.* at 10 n.32. Even more concerning, the costs are not historical as represented by RESA. The transmission upgrade costs include projections leading up to at least 2019. *Id.* Spread out over a 14-year period, the total

⁸ As referenced in PPLICA's Main Brief, the PPL zone NITS rate increased by 52% in June of 2013, which was three times the next highest percentage increase for a Pennsylvania EDC (15% for Pennsylvania Power Company) and almost doubles the next highest percentage increase experienced by an EDC outside of Pennsylvania (29% for Delmarva Power & Light). Particularly when viewed in light of the more moderate 6% increase for PPL observed in June 2014, it becomes apparent that the 52% figure is an outlier that should not be considered in light of the very limited sample offered by RESA.

RTEP costs, particularly the \$1.4 million allocation to PPL, hardly evidences volatile or significant costs. Further, the recovery of transmission-related costs remains unchanged since the Commission denied non-bypassable recovery of such costs in PPL's DSP II. *See* PPLICA M.B., p. 14; *see also* PPL M.B., p. 19. As RESA offers no evidence herein warranting a different result in PPL's DSP III proceeding, the Commission should deny RESA's proposal to transfer recovery of transmission-related costs to PPL via non-bypassable rider.

b) PPL's Current Rate Design for Recovery of Transmission or Transmission-Related Costs Does Not Create Inequitable Treatment for EGSs.

Moreover, even assuming that transmission or transmission-related costs fluctuate, no inequitable treatment of transmission or transmission-related charges exists on PPL's system because EGSs are already equipped with the means to address such volatility without a non-bypassable rider. *Contra* RESA M.B., pp. 11-12. Specifically, EGSs may continue to offer pass-through products if they are unwilling to hedge for the fluctuations associated with transmission and/or transmission related costs.⁹ *See* PPLICA M.B., p. 15. For example, Noble, an EGS and member of RESA, confirmed its preference for preserving PPL's originally proposed load-following recovery of transmission and transmission-related costs to facilitate continued customization of customer pricing. Noble M.B., p. 5; *see also* RESA M.B., p. 1 (identifying Noble as a RESA member). Noble contends that, "a customer's ability to manage its NITS costs enables the customer and their supplier to effectively manage their load obligations and allows for further development of product and service offerings in the marketplace which provide a meaningful benefit to retail electric service customers regardless of size." Noble M.B., p. 4. In addition, for EGSs that include transmission on the fixed price, it may be possible for the EGS to

⁹ Because pass-through products are available to EGSs, EGSs are not at a competitive disadvantage to EDCs as default service providers. *Contra* RESA M.B., p. 12. In fact, EGSs are arguably at a competitive advantage because they have the ability to offer either fixed price or pass-through transmission products.

continue making a profit on the contract despite a transmission cost increase if other costs are lower than expected. Considering that EGSs currently offer fixed price products, including transmission and transmission-related costs, such competitive products should not be removed from competitive markets.

RESA further attempts to establish inequitable cost-recovery treatment based on the fact that PPL recovers transmission and transmission-related costs on behalf of wholesale suppliers while the FE Companies do not. *See id.* This comparison is inapt because wholesale suppliers are not Load Serving Entities ("LSEs") under PJM rules or electric suppliers under the Competition Act. *See PPL M.B.*, p. 16 n.10; *see also* 66 Pa. C.S. § 2803. RESA imagines that the Competition Act establishes a parity requirement for retail electric suppliers and wholesale electric suppliers when in fact, the Competition Act requires only that PPL offer use of its system to EGSs on terms comparable to its own use of the system. *See RESA M.B.*, pp. 14-15. RESA's interpretation of the Competition Act conflicts with the express definition of "electric suppliers" which extends only to suppliers serving end-use customers. *See* 66 Pa. C.S. § 2803. RESA's intimation that the Competition Act requires parity between EGSs and wholesale suppliers is completely baseless.

The Competition Act does entitle EGSs to use of an EDC's transmission and distribution facilities. *See RESA M.B.*, pp. 14-15 *citing* 66 Pa. C.S. § 2804(6). Under the standard set forth in the Competition Act, inequitable cost recovery treatment would only exist if EGSs were subject to costs or terms that are not comparable to the costs and terms imposed on PPL for its use of the same facilities. *See id.* No such circumstances exist on PPL's system. As explained in PPL's Main Brief, PPL must, for its default service load, account for the same transmission and transmission-related costs as RESA's member EGSs. *PPL M.B.*, p. 16. Whether an EDC

assigns such costs to contracted wholesale suppliers or recovers the cost directly from customers is completely irrelevant to the question of whether EGSs are offered comparable access to the EDCs facilities.¹⁰ Further, while PPL is entitled to full and current cost recovery as a default service suppliers, EGSs are also permitted to pass real-time costs directly onto customers. *See PPLICA M.B.*, p. 15 n.10 *citing* ExGen St. No. 1.

RESA's attempt to draw parallels between EGSs and wholesale suppliers misconstrues the retail market structure implemented by the Competition Act reflected in PJM's rules. Accordingly, these arguments should not be considered by the Commission.

c) The Commission's Fixed Price Order Provides No Support For Non-bypassable Recovery of Transmission or Transmission-Related Costs.

In addition, RESA's efforts to portray the Commission's Fixed Price Order as a change in circumstances also fail to justify the proposed non-bypassable rider. *See PPLICA M.B.*, p. 14. RESA raised the same argument in the context of the FE DSP III proceeding, where the Commission found that nothing in the Fixed Price Order constitutes a "changed circumstance" justifying non-bypassable recovery of transmission or transmission-related costs.¹¹ FE DSP III Order, p. 31. As observed by the Commission in the FE DSP III Order, the purpose of the Fixed Price Order is to provide transparency to the nomenclature regarding EGSs' fixed and pass-through products to customers. *See* FE DSP III Order, pp. 28-29, 31. At no point does this

¹⁰ By way of further example, any of RESA's member EGSs could elect to use a similar cost recovery structure by collecting transmission and transmission-related costs directly from their customers through a pass-through mechanism and subcontracting all other costs to another supplier.

¹¹ Although parties to the FE DSP III proceeding reached a non-precedential settlement on many issues ("FE Settlement"), RESA's proposal to recover transmission costs through a non-bypassable rider, including the applicability or inapplicability of the Fixed Price Order to the matter, was contested and reserved for litigation before the Commission. *See* FE DSP III Order, p. 23.

Fixed Price Order address components that should be included in EGS contracts.¹² *Id.* As a result, the Fixed Price Order provides no support for non-bypassable treatment of transmission or transmission-related costs.¹³

As indicated above, the record in this proceeding contains no evidence of a change in circumstances meriting any modification to the Commission's prior finding on the matter of non-bypassable recovery of transmission or transmission-related costs in PPL's service territory. RESA introduced no evidence of volatile transmission or transmission-related costs and relied on a misapplication of the Commission's Fixed Price Order. As RESA's recommendation lacks any basis in fact and law, the Commission should deny RESA's proposed non-bypassable rider.

d) Conclusion

The evidence offered by RESA fails to establish a change in circumstances from the Commission's prior determination that PPL should be responsible for transmission and transmission-related costs incurred by default service customers and EGSs should be responsible for transmission and transmission-related costs incurred by shopping customers. *See* PPL DSP II Order, p. 85. RESA offers insufficient data to support its allegations of rate volatility, and ignored the fact that its members already have the freedom to pass-through transmission and transmission-related costs. RESA further draws inappropriate and unfounded comparisons to wholesale suppliers without recognizing that wholesale suppliers are not LSEs under PJM rules or electric suppliers under the Competition Act. Finally, RESA mischaracterizes the Fixed Price Order as a prohibition against pass-through mechanisms where the Order addressed only the

¹² It is somewhat ironic that RESA relies on the Commission's Fixed Price Order, which focuses on improving transparency of fixed price contracts, to justify a proposal that would create numerous transitional challenges for Large C&I customers under fixed price contracts.

¹³ As discussed in PPLICA's Main Brief and further addressed below, the Fixed Price Order also confirmed that the provisions therein shall not be applicable to Large C&I customers, thereby obviating any relevance with regard to collection of transmission and transmission-related costs from Large C&I customers. *See* PPLICA M.B., pp. 14-15.

labeling of such products. As RESA has not met its burden of proof with regard to the proposed non-bypassable rider, the Commission should deny RESA's recommendation and affirm PPL's proposal to preserve load-following recovery of transmission and transmission-related costs.

3. Non-bypassable Recovery of Transmission or Transmission-Related Costs Would Impose Permanent Restrictions on Customer Contract Negotiations and Transitional Risks of Double-Collection.

In addition to failing to furnish evidence supporting its proposed non-bypassable rider, RESA fails to address significant customer concerns with non-bypassable recovery of transmission or transmission-related costs. To the contrary, the proposed non-bypassable rider would limit the scope of competitive products available through contract negotiations and raise transitional issues for customers. *See* Noble M.B., p. 4; PPLICA M.B., p. 19. Therefore, the Commission should deny the relief requested by RESA.

RESA set forth no evidence indicating that significant or unreasonable risk premiums are currently embedded in fixed-price arrangements for the collection of transmission and/or transmission related costs nor that EGS offers would be discounted to remove such premiums if transmission costs are extracted from competitive offers. To the contrary, RESA claims that its proposed non-bypassable rider would "be a good result for consumers." RESA M.B., pp. 17-18. RESA's understanding of consumers' preferences overlooks the fact that Large C&I customers may prefer to negotiate competitive products that include transmission and transmission-related charges, as well as the fact that Large C&I customers are willing to remit risk premiums to ensure stable annual budgeting. PPLICA M.B., p. 15 *citing* PPL St. No. 1-R, p. 44; Noble M.B., p. 4; *see also* PPL M.B., p. 21. Further, one EGS (Noble) submitted a Main Brief affirming its desire to preserve flexible recovery of transmission and transmission-related costs, *i.e.* fixed-price or pass-through, to accommodate customer demand for such arrangements. Noble M.B., p. 4. Because customers value the ability to negotiate for competitive products that include

transmission costs, even if a risk premium were included, this option should not be removed from the competitive market. *See* PPLICA, M.B., pp. 15-16.

In stark contrast to RESA's proposal to erode competition options currently available to retail electric customers, the Commission has addressed the importance of continuing to incentivize EGSs to offer innovative competitive fixed-price products. In support of the Commission's *End State Order*, Chairman Robert F. Powelson and Vice Chairman John F. Coleman, Jr. issued a Joint Statement observing that "customers wanting price stability have every opportunity to purchase such a product from a competitive supplier in the form of a fixed-price product." *See* RESA M.B., p. 10 *citing Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952, Joint Statement of Chairman Robert F. Powelson and Vice Chairman John F. Coleman (February 14, 2013). In contravention of this precedent cited by RESA, shifting recovery of transmission or transmission-related costs to PPL would eliminate customers' ability to structure competitive fixed-price arrangements for such costs. Thus, contrary to the position of RESA, at no point do the Commission's Regulations or Commission precedent regulate what products an EGS may offer shopping customers. Innovative products that include transmission and transmission-related costs should continue to be offered to customers to facilitate continued growth of and participation in the Pennsylvania retail electric market.

Further, while RESA attempts to minimize the significance of the transitional issues associated with its proposal, the non-bypassable collection of transmission and transmission-related costs would unquestionably lead to serious transitional concerns, including potential double collection of costs. *See* RESA M.B., pp. 18-19. As observed in the FE DSP III Order, double collection of transmission costs is not mere speculation. *See* FE DSP III Order, pp. 41-

42. When the FE Companies began collecting RTEP/TEC costs via their non-bypassable riders at the start of their last DSPs, certain EGSs refused to remove these costs from shopping contracts or attempted to utilize the opportunity to "reopen" fixed price customers' contracts. *See* FE DSP III Order, p. 41.

In addressing concerns set forth through contested litigation in the FE DSP III proceeding, the Commission reviewed the evidence adduced on the record and found that "there is merit in the concerns expressed by [Industrials] with regard to a possible double-collection." As these observations arose from actual events addressed in a recently litigated proceeding, they are relevant to the Commission's consideration of the non-bypassable rider proposed by RESA.

Based on the experiences in the FE service territories, PPLICA remains highly skeptical of RESA's unsubstantiated assurances that implementation of a non-bypassable rider will benefit consumers. *See* RESA M.B., p. 18. PPL's customers should not be subject to such unnecessary risks, particularly where EGSs already have the means to account for any changes in transmission or transmission-related costs by implementing pass-through mechanisms under the existing cost recovery structure. *See* PPLICA M.B., pp. 18-19. Similarly, forcing Large C&I customers to face potential double collection, contract renegotiation, and additional confusion regarding the collection of transmission and/or transmission-related costs must be avoided, especially when no evidence of any benefit resulting from a change in collection has been presented. Moreover, from a policy standpoint, EGSs should not be permitted to advocate for change at the Commission and then subsequently be unjustly enriched by the change.

Finally, RESA offers no feasible solutions to sufficiently minimize these transitional issues. The only transitional plan referenced in RESA's Main Brief was 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. *See* RESA M.B., p. 18. In other words, RMR charges already in place before the effective date of such a Commission Order would be recovered consistent with PPL's current practice, while any new RMR charges occurring after the Commission Order would be collected through the rider.¹⁴ 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. Lastly, as evidenced by the efforts to reopen fixed price contracts referenced in the FE DSP III Order, the transitional risk imposed on customers could include overcharges resulting from EGS misunderstandings, errors, unanticipated interpretations of the Commission's Order, or even intentional reopening of fixed price contracts by EGSs. *See* FE DSP III Order, p. 41. Therefore, the proposed bifurcation of RMR charges fails to mitigate the transitional risks created by implementation of the proposed non-bypassable riders.¹⁵

¹⁴ Moreover, RESA's proposal to bifurcate recovery of RMR costs based on the date of Commission approval of PPL's DSP III could complicate Large C&I customers' transition issues further. RESA is not clear as to whether the proposed bifurcation would occur as of a Commission Final Order in this proceeding or as of implementation of a non-bypassable rider. Most likely, the PUC will enter an Order prior to the end of 2014; however, assuming *arguendo* that a non-bypassable rider is permitted, implementation of that rider would occur on June 1, 2015. Notwithstanding the fact that the bifurcation proposal fails to address transitional risks borne by customers, the more appropriate bifurcation date for RMR costs would be the effective date of DSP III, *i.e.* June 1, 2015.

¹⁵ 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/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.

RESA also suggested that implementation of non-bypassable recovery of transmission costs should be delayed by one-year, from June 1, 2015, to June 1, 2016. *See* RESA M.B., p. 19. As set forth in PPLICA's Main Brief, this recommendation is also insufficient, as Large C&I supply contracts span periods as long as three years. *See* PPLICA M.B., p. 21; *see also* Noble M.B., p. 4 (cautioning that implementing non-bypassable recovery of transmission or transmission-related costs could adversely impact existing contracts because "retail electric contracts, particularly contracts with large commercial and industrial customers, can often carry three (3) year terms").

RESA inappropriately attempts to minimize the significance of reducing competitive products available through contract negotiations and the transitional issues associated with a non-bypassable collection of transmission costs. In actuality, the contractual and transitional issues create unnecessary customer burdens, both in terms of long-term reductions in customers' freedom to contract for fixed-price recovery of transmission and transmission-related costs and short-term risks of double collection of costs, unnecessary contract renegotiation, and additional customer confusion. *See* PPLICA M.B., pp. 18-20; *see also* PPL St. No. 1-R, p. 44 (stating that "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."). RESA offers no

viable solutions for resolving these concerns. Accordingly, the proposed non-bypassable rider must be denied.¹⁶

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; and
- (2) Grant any additional relief deemed appropriate and consistent with the above recommendations.

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¹⁶ As argued in PPLICA's Main Brief, 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 **when 98.6% of the Large C&I load already shopping.** See PPLICA M.B., p. 23 n.13. As evidenced by the high percentage of shopping load and further indicated by the exemption from the Commission's Fixed Price Order, Large C&I customers' unique involvement in Pennsylvania's retail electric market warrants divergent treatment with regard to certain retail market policies, including potential non-bypassable recovery of transmission and transmission-related costs. See *id*; see also Fixed Price Order, p. 32. Moreover, the Commission recognized that a carve-out of Large C&I customers from non-bypassable recovery of transmission (*i.e.* NITS) costs may be appropriate. See FE DSP III Order, p. 46 (finding "merit" in the proposed carve-out of Large C&I customers from non-bypassable recovery of NITS, but ultimately dismissing the proposal as moot due to rejection of any non-bypassable recovery of NITS). Therefore, if the Commission approves a non-bypassable rider for collection of any transmission or transmission-related charges, then the Commission should also approve a carve-out for Large C&I customers.