

**COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**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**

**REPLY BRIEF OF  
EXELON GENERATION COMPANY, LLC**

Divesh Gupta  
(PA Bar # 307892)  
Asst. General Counsel  
Exelon Business Services Corp.  
100 Constellation Way, Suite 500C  
Baltimore, MD 21202  
Telephone: (410) 470-3158  
Facsimile: (443) 213-3556  
[divesh.gupta@exeloncorp.com](mailto:divesh.gupta@exeloncorp.com)

*Counsel for Exelon Generation Company, LLC*

**Dated: September 26, 2014**

## TABLE OF CONTENTS

I.	<b><u>INTRODUCTION</u></b>	4
II.	<b><u>COLLECTION OF NON-NITS NMB CHARGES</u></b>	7
A.	<b><u>THE COMPETITION ACT AND OTHER RECENT COMMISSION DECISIONS IN FACT SUPPORT RECONSIDERATION AND APPROVAL, RATHER THAN REJECTION, OF THE NMB PROPOSAL.</u></b>	7
1.	<i>The NMB Proposal will not result in a “rebundling” of transmission costs in contravention of the Competition Act.</i>	7
2.	<i>PPLICA will maintain the ability to seek out arrangements that would provide additional predictability with respect to transmission costs.</i>	10
B.	<b><u>THE NMB PROPOSAL DOES NOT VIOLATE COMMISSION REGULATIONS AND RECENT COMMISSION DECISIONS SUPPORT RECONSIDERATION OF PRIOR COMMISSION DECISIONS REGARDING SUCH PROPOSALS.</u></b>	11
1.	<i>PPLICA misconstrues the Commission’s Regulations and erroneously argues that they require EGSs to provide customers with transmission service.</i>	11
C.	<b><u>THE RISK OF “DOUBLE COLLECTION” IS A RED-HERRING AND SEVERAL MITIGATING FACTORS AND MECHANISMS EXIST TO REDUCE EVEN THE MINIMAL CHANCE OF A SHOPPING CUSTOMER PAYING TWICE FOR NMB CHARGES.</u></b>	15
D.	<b><u>A “LARGE C&amp;I” CARVE-OUT FROM THE NMB PROPOSAL IS UNNECESSARY IF THE COMMISSION ADOPTS ONE OR MORE OF THE MITIGATION MEASURES PRESENTED HEREIN.</u></b>	16
III.	<b><u>CONCLUSION</u></b>	16
	<b><u>APPENDIX –PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW</u></b>	18

## **TABLE OF AUTHORITIES**

1. *Act 129 of 2008*, 2008 Penn. Act 129 (enacted Oct. 15, 2008).
2. *Electric Generation Customer Choice and Competition Act*, 66 Pa. C.S. §§ 2801, et seq.
3. 66 Pa.C.S.A. §§ 2802 (13), (16); 2803; 2804 (3).
4. *Order on Ancillary Services Filing and Providing Guidance*, 119 FERC ¶ 61,311 (June 22, 2007).
5. *Order Conditionally Accepting the California Independent System Operator's Electric Tariff Filing to Reflect Market Redesign and Technology Upgrade*, 116 FERC ¶ 61,274 (Sept. 21, 2006).
6. *Devon Power, LLC*, et al., 111 FERC ¶ 63,063 (June 15, 2005).
7. 52 Pa. Code §§ 5.21-5.24; 54.3(1); 54.4(a) - (b); 54.5(c), (f); 54.182; 54.187(d).
8. *Pennsylvania Consumer's Dictionary for Electric Competition*, (available at [www.puc.state.pa.us/consumer\\_info/electricity/electric\\_competition\\_dictionary.aspx](http://www.puc.state.pa.us/consumer_info/electricity/electric_competition_dictionary.aspx))
9. *Final Order*, Commission Docket No. I-2011-2237952 (Feb. 14, 2013).

**REPLY BRIEF OF**  
**EXELON GENERATION COMPANY, LLC**

**I. INTRODUCTION**

Exelon Generation Company, LLC (“ExGen”) hereby submits its Reply Brief for consideration by the Pennsylvania Public Utility Commission (“Commission”), with regard to the Default Service Program and Procurement Plan filed by PPL Electric Utilities Corporation (“PPL Electric”) on April 18, 2014<sup>1</sup> (with supporting testimony from PPL Electric circulated on that same date<sup>2</sup>) in Docket No. P-2014-2417907, *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* (the filings collectively herein referred to as the “Default Service Plan” or “DSP”).

At the outset, ExGen stresses that, in order to meet the goals of *Act 129 of 2008* (“Act 129”),<sup>3</sup> all electric distribution companies’ (“EDCs”) Default Service plans must be designed in such a way as to promote the lowest costs for consumers, both by encouraging the broadest participation by wholesale suppliers, and by ensuring robust, competitive offerings from electric generation suppliers (“EGSs”) in the Commonwealth. PPL Electric’s DSP, as revised by the Joint Petition for Approval of Partial Settlement (“Partial Settlement”) executed by parties

---

<sup>1</sup> *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*, Commission Docket No. P-2014-2417907 (Apr. 18, 2014) (“PPL Electric Petition”).

<sup>2</sup> *Direct Testimony of PPL Electric Utilities Corporation*, Commission Docket No. P-2014-2417907 (Apr. 18, 2014) (collectively, the “PPL Electric Direct Testimony”).

<sup>3</sup> *Press Release, Governor Rendell Signs Energy Conservation Bill to Save Consumers Millions on Electricity; Urges Legislature to Pass Rate Mitigation Bill*, Pennsylvania Office of the Governor (Oct. 15, 2008) ([http://www.portal.state.pa.us/portal/server.pt?open=512&objID=2999&PageID=431162&mode=2&contentid=http://pubcontent.state.pa.us/publishedcontent/publish/global/news\\_releases/governor\\_s\\_office/news\\_releases/governor\\_rendell\\_signs\\_energy\\_conservation\\_bill\\_to\\_save\\_consumers\\_millions\\_on\\_electricity\\_\\_urges\\_legislature\\_to\\_pass\\_rate\\_mitigation\\_bill.html](http://www.portal.state.pa.us/portal/server.pt?open=512&objID=2999&PageID=431162&mode=2&contentid=http://pubcontent.state.pa.us/publishedcontent/publish/global/news_releases/governor_s_office/news_releases/governor_rendell_signs_energy_conservation_bill_to_save_consumers_millions_on_electricity__urges_legislature_to_pass_rate_mitigation_bill.html)).

(“Joint Petitioners”),<sup>4</sup> will be more consistent with the Competition Act<sup>5</sup> and the requirements of Act 129, if further revised with respect to application of PPL Electric’s Transmission Service Charge (“TSC”) Rider and collection of most of the “ancillary service charges and all non-market-based transmission service charges” or “NMB Charges” thereunder. Subject to cost recovery from all customers, PPL Electric should apply the TSC Rider to all customers – whether on Default Service or shopping with an EGS – and assume responsibility for *at least* procuring all NMB services other than Network Integration Transmission Service (“NITS”), for all load in its service territory. To be clear, PPL Electric should be responsible for procuring for, and recovering costs from, all customers for NMB services other than NITS, as defined in Section 1.1.5 of PPL Electric’s proposed *Default Service Request for Proposals (RFP) Process and Rules* (“Bidding Rules”), including: Transmission Enhancement Costs (“TEC”); Expansion Cost Recovery Costs; Regional Transmission Expansion Plan (“RTEP”) charges; and Generation Deactivation Charges.<sup>6</sup> While ExGen agrees with PPL Electric’s proposed procurement of and collection for all NMB charges (*including* NITS) for all Default Service customers, expanding the TSC Rider to apply to all distribution customers, for all NMB Charges *other than NITS* – whether shopping or on Default Service – (herein referred to as the “NMB Proposal”) will be a step in the right direction to level the playing field for EGS offers and, importantly, will support and/or be consistent with the Commission’s recent rulings regarding:

---

<sup>4</sup> The Joint Petitioners are: PPL Electric Utilities Corporation (“PPL Electric”), the Office of Consumer Advocate (“OCA”), the Office of Small Business Advocate (“OSBA”), PP&L Industrial Customer Alliance (“PPLICA”), Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), the Sustainable Energy Fund (“SEF”), Citizens for Pennsylvania’s Future (“PennFuture”), NextEra Energy Power Marketing, LLC (“NEPM”), Retail Energy Supply Association (“RESA”) and Direct Energy Services, LLC (“Direct Energy”), and Exelon Generation Company, LLC (“ExGen”).

<sup>5</sup> *Electric Generation Customer Choice and Competition Act*, 66 Pa. C.S. §§ 2801, et seq. (“Competition Act”).

<sup>6</sup> See PPL Electric Petition at Attachment A, *Default Service Request for Proposals (RFP) Process and Rules* (“Bidding Rules”) at p.6.

- (a) fixed price products in Docket No. M-2013-2362961 (the “FP Order”) by better enabling EGSs to continue to offer to customers truly fixed prices for longer terms;<sup>7</sup> and
- (b) the Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs (“FirstEnergy DSP Order”).<sup>8</sup>

With this limited change, PPL Electric’s proposed design will be more likely to encourage the broadest and most competitive participation by wholesale suppliers and EGSs, is likely to more effectively meet the goals of Act 129 and the Competition Act, and will be in the public interest.

Through this Reply Brief, ExGen responds primarily to the arguments of PPLICA against ExGen’s prior NMB proposal, which included NITS, (the “NITS-NMB Proposal”) and asks the Commission to reject PPLICA’s arguments on the basis that:

- The Competition Act and other recent Commission decisions in fact support reconsideration and approval, rather than rejection, of the NMB Proposal; and
- The risk of “double collection” of non-NITS NMB Charges represents a red-herring and several mitigation mechanisms exist to reduce even the minimal chance of a shopping customer paying twice for these NMB Charges.

While ExGen does not agree with PPLICA’s characterization of the Commission’s orders and alleged precedent set in the FirstEnergy DSP Order, through this Reply Brief, ExGen is willing to forgo collection of NITS by the EDC on behalf of all customers (i.e., the NITS-NMB

---

<sup>7</sup> See, generally, *Final Order on the Guidelines for Use of Fixed Price Labels for Products With a Pass Through Clause*, Commission Docket No. M-2013-2362961 (Nov. 14, 2013) (“FP Order”).

<sup>8</sup> See, generally, *Final Order on the Guidelines for Use of Fixed Price Labels for Products With a Pass Through Clause*, Commission Docket Nos. P-2013-2391368, P-2013-2391372, P-2013-2391375 and P-2013-2391378 (July 24, 2014) (“FirstEnergy DSP Order”).

Proposal), as was the narrow proposal rejected in that Order, and instead focus on collection of the remaining NMB Charges that were not rejected – and in fact were approved – by the Commission for collection by the EDC on behalf of all customers (i.e., the NMB Proposal).

## **II. COLLECTION OF NON-NITS NMB CHARGES**

Throughout its initial brief, PPLICA provides unsupported statements of fact and policy, and provides false citations to Commission Regulations that PPLICA purports, incorrectly and misleadingly, to support its positions. The Commission’s actual Regulations and recent decisions, as well as the weight of the evidence in the record, in fact support approval of the NMB Proposal, for good cause shown herein.

### **A. The Competition Act and Other Recent Commission Decisions in Fact Support Reconsideration and Approval, Rather than Rejection, of the NMB Proposal.**

#### ***1. The NMB Proposal will not result in a “rebundling” of transmission costs in contravention of the Competition Act.<sup>9</sup>***

PPLICA throughout its brief inappropriately interprets the Competition Act’s language requiring “unbundling of generation, transmission and distribution” to mean specifically that *transmission* must be competitively priced and removed from the EDCs’ bills and rates and that, therefore, the NITS-NMB Proposal would result in a “rebundling” of transmission costs in contravention to the Competition Act.<sup>10</sup> They argue incorrectly that the Competition Act “required that EDCs collect distribution costs from all customers, while generation and

---

<sup>9</sup> PPLICA Brief at p.16.

<sup>10</sup> PPLICA Brief at p.16.

transmission costs were unbundled and collected instead by EGSs from shopping customers.”<sup>11</sup>  
In support of their arguments, PPLICA continuously cites to 66 Pa.C.S.A. § 2802 (13) and § 2804 (3).<sup>12</sup>

Upon careful review of these sections, however, it cannot be said that the “plain language” of the Competition Act prohibits the NMB Proposal; arguably, the primary focus of the Competition Act is to encourage competition specifically for generation supplied to the Commonwealth’s customers. The primary section on which PPLICA relies, 66 Pa.C.S.A. § 2802 (13), provides in its entirety that:

Under current law and regulation there exists some competition in the wholesale market for the generation of electricity, but the *generation, transmission, distribution* and retail sale of electricity is provided generally by public utilities under bundled rates regulated by the commission. The procedures established under this chapter provide for a fair and orderly transition from the current regulated structure to a structure under which retail customers will have direct access *to a competitive market for the generation* and sale or purchase of electricity.<sup>13</sup>

66 Pa.C.S.A. § 2804 (3), meanwhile, provides that:

The commission shall require the unbundling of electric utility services, tariffs and customer bills *to separate the charges for generation, transmission and distribution*. The commission may require the unbundling of other services.<sup>14</sup>

First, nowhere in these Regulations is the Commission required to prohibit EDCs from collecting transmission costs (or any NMB Charges) from customers, nor is the Commission prohibited from requiring EDCs to in fact collect these costs on behalf of customers. Under PPLICA’s reading of these sections, if *transmission* costs are no longer allowed to be collected

---

<sup>11</sup> PPLICA Brief at p.16.

<sup>12</sup> See PPLICA Brief at p.16.

<sup>13</sup> 66 Pa.C.S.A. § 2802 (13) (*emphasis added*).

<sup>14</sup> 66 Pa.C.S.A. § 2804 (3) (*emphasis added*).

and charged by EDCs, then the EDCs must also be prohibited from collecting and charging for *distribution* costs, since both of these charges are included (along with generation) in the list of those three broad categories subject to “unbundling.” This cannot be true. The language more correctly requires that the Commission ensure that costs for these three components appear unbundled on customers’ bills and the EDCs’ tariffs, which could in fact continue be the case under the NMB Proposal.

On the other hand, in the sections on which PPLICA relies, the language specifically provides that retail customers should have “direct access to a competitive market for the *generation* and sale or purchase of electricity,” which would remain consistent even under the NMB Proposal. The Competition Act specifically defines “transmission and distribution” *together* as “[a]ll costs directly or indirectly incurred to provide transmission and distribution services to retail electric customers,”<sup>15</sup> and explains that “[i]t is in the public interest for the transmission and distribution of electricity to continue to be regulated as a natural monopoly subject to the jurisdiction and active supervision of the commission.”<sup>16</sup>

In fact, in this way, the NMB Proposal – to the extent NMB Charges are considered to be transmission costs – may be considered *more* consistent with these notions and the intent of the Competition Act, in that generation and its related products for which competitive hedging markets exist will be the primary focus of competitive offers from EGSs.

Moreover, the NMB Proposal would explicitly *exclude* transmission charges (i.e., NITS) and include only certain charges which are, in fact, simply other, non-hedgeable, administratively-determined charges which PPL Electric has deemed to be transmission

---

<sup>15</sup> 66 Pa.C.S.A. § 2803 (providing the definition of “Transmission and distribution costs”).

<sup>16</sup> 66 Pa.C.S.A. § 2802 (16).

“related,” and which the Commission has already approved for non-bypassable collection from all customers by the FirstEnergy EDCs pursuant to the FirstEnergy DSP Order. Thus, even under PPLICA’s incorrect reading, the NMB Proposal would not be explicitly excluded from consideration for the type of treatment contemplated herein.

***2. PPLICA will maintain the ability to seek out arrangements that would provide additional predictability with respect to transmission costs.***

PPLICA additionally argues that the NITS-NMB Proposal would undermine the spirit of the Competition Act by reducing the options that shopping consumers such as large commercial and industrial (“Large C&I”) customers may seek. They specifically claim that the NITS-NMB Proposal would “eliminate customers’ ability to obtain [contracts] with EGSs that include fixed pricing for transmission and transmission-based costs.”<sup>17</sup> However, this argument ignores the fact that – even subject to the NMB Proposal – a competitive market allows for innovation and creativity in the products offered by EGSs to meet customers’ specific needs.

For instance, if a Large C&I customer (“Customer A”) nevertheless seeks budget certainty on its full electric costs, including NMB costs, it could work to negotiate a contract under which the EGS (“EGS 1”) guarantees the costs that Customer A will pay to the EDC for NMB Charges (and, perhaps all other components *including* NITS and distribution). EGS 1 could, for instance, fix NMB Charges at \$XX/MWh; NMB Charges costs for a particular month can be readily identified on PJM Interconnection, L.L.C.’s (“PJM”) bills in a particular region and EDC zone. If the EDC charges Customer A more than \$XX/MWh for NMB Charges (or, alternatively, the PJM bill amounts for NMB Charges exceed this agreed upon NMB Charges rate in Customer A’s contract) during the course of Customer A’s contract term, EGS 1 could

---

<sup>17</sup> PPLICA Brief at p.19.

credit the difference to Customer A. In this way, Customer A could achieve the budget certainty it sought with respect to NMB Charges (and all other energy bill components).<sup>18</sup> Thus, PPLICA's members under the NMB Proposal will maintain the ability to seek out EGS arrangements that would provide additional predictability with respect to all costs.

**B. The NMB Proposal Does Not Violate Commission Regulations and Recent Commission Decisions Support Reconsideration of Prior Commission Decisions Regarding Such Proposals.**

***1. PPLICA misconstrues the Commission's Regulations and erroneously argues that they require EGSs to provide customers with transmission service.***

PPLICA once again raises the false notion that the NITS-NMB Proposal is inconsistent with the Commission's Regulations implementing the Competition Act,<sup>19</sup> this time arguing incorrectly that the NITS-NMB Proposal will be incongruent with 52 Pa. Code §§ 54.182 and 54.187(d).<sup>20</sup> 52 Pa. Code § 54.187(d) of the Commission's Regulations states in its entirety, however, as follows:

The rates charged for default service may not decline with the increase in kilowatt hours of electricity used by a default service customer in a billing period.<sup>21</sup>

---

<sup>18</sup> These types of contracts are not unheard of in the energy marketplace. *See, e.g., Order on Ancillary Services Filing and Providing Guidance*, 119 FERC ¶ 61,311 (June 22, 2007) at ¶ 74 (explaining that “load-serving entities will be able to enter into bilateral supply contracts . . . and a contract for differences or similar arrangement could then be used to hedge against potential price risk”); *see also Order Conditionally Accepting the California Independent System Operator's Electric Tariff Filing to Reflect Market Redesign and Technology Upgrade*, 116 FERC ¶ 61,274 (Sept. 21, 2006) at ¶ 465 (explaining that a “contract for differences” model is one “in which payment is made based on the difference between the [locational marginal price] at the inertia and the contract price”); *see also Devon Power, LLC, et al.*, 111 FERC ¶ 63,063 (June 15, 2005) at ¶ 420 (explaining that a “one-way contract for differences” (CFD) . . . specifies a price, and any revenues above that price must be returned to the CFD holder”).

<sup>19</sup> PPLICA Brief at pp.15-16.

<sup>20</sup> PPLICA Brief at pp.15-16.

<sup>21</sup> 52 Pa. Code § 54.187(d).

That is, 52 Pa. Code § 54.187(d), the section of the Commission’s Regulations on which PPLICA relies, refers only to declining block concerns, and makes no mention of how NMB Charges or NITS must be allocated as between EGSs and EDCs.

To be sure, these Regulations refer only to the costs which must be identified on the EDC’s bills *for default service*. These costs are specifically to include both generation and transmission. These Regulations *do not require* that EGSs *charge or bill* for transmission and NMB Charges. In fact, other Commission Regulations governing billing and EGSs’ disclosure statements support the notion that these costs need not be collected by EGSs. For example, with respect to the Commission’s Regulations that are applicable to Large C&I customers, EGSs are required only to “[u]se common and consistent terminology in customer communications, including marketing, billing and disclosure statements,” and to “[u]se the terms as defined in the Commission’s ‘Consumer’s Dictionary for Electric Competition’ (Dictionary) maintained on file in the Commission’s Office of Communications.”<sup>22</sup> The Dictionary, meanwhile, provides the following definitions:

**Generation Charges[:]** Part of the basic service charges on every customer’s bill for producing electricity. Generation service is competitively priced and is not regulated by the Public Utility Commission. This charge depends on the contract between the customer and the supplier.

\* \* \*

**Transmission Charges[:]** Part of the basic service charges on every customer’s bill for transporting electricity from the source of supply to the electric distribution company. The Federal Energy Regulatory Commission regulates retail transmission prices and services. This charge will vary with your source of supply.<sup>23</sup>

---

<sup>22</sup> 52 Pa. Code § 54.3(1).

<sup>23</sup> Dictionary (*avail. at* [www.puc.state.pa.us/consumer\\_info/electricity/electric\\_competition\\_dictionary.aspx](http://www.puc.state.pa.us/consumer_info/electricity/electric_competition_dictionary.aspx)) at “G” and “T”.

In this way, with respect to Large C&I customers, the Commission’s Regulations and policies do not require that NITS or other NMB Charges be charged by EGSs, rather they only require that EGSs use clear, defined terms when referencing generation versus transmission, and require that the EDC includes transmission costs in the Price-to-Compare for default service customers. These Regulations *do not* preclude the EDC from being the entity that procures and charges for transmission or other NMB Charges.

With respect to other, smaller customers, the Regulations provide additional color and also fail to preclude or prohibit the NITS-NMB or the NMB Proposal. For example, the Commission’s Regulations provide that, for smaller customers, “EGS prices billed must reflect the market prices and the agreed upon prices in the [EGS’s] disclosure statement,”<sup>24</sup> and that “an entity [that] has responsibility for billing customers” – i.e., the EDC in the case of utility-consolidated billing – must show in “distinct section[s]” of the bill<sup>25</sup> “(i) Generation charges . . . (ii) Transmission charges . . . [and] (iii) Distribution charges” among other items.<sup>26</sup> In addition, the Regulations state:

For customers who have chosen electric generation services from a competitive supplier, the customer’s bill shall include the following statements which may appear together in a paragraph:

- (i) “Generation prices and charges are set by the electric generation supplier you have chosen.”
- (ii) “The Public Utility Commission regulates distribution prices and services.”

---

<sup>24</sup> 52 Pa. Code § 54.4(a).

<sup>25</sup> 52 Pa. Code § 54.4(b).

<sup>26</sup> 52 Pa. Code § 54.4(b)(3)(i)-(ii).

(iii) “The Federal Energy Regulatory Commission regulates transmission prices and services.”<sup>27</sup>

The same language is required to appear in EGSs’ disclosure statements for small customers.<sup>28</sup> Finally, the Regulations state only that in these disclosure statements for small customers, “The contract’s terms of service shall be disclosed, including the following terms and conditions, if applicable: (1) Generation charges shall be disclosed according to the actual prices.”<sup>29</sup> These “terms and conditions” do not include any statement regarding transmission.<sup>30</sup> It is thus clear that, while the PTC that an EDC includes on retail customers’ bills must include generation and transmission, there is no requirement that provides that EGSs must supply to their customers *both* generation *and* transmission, along with other NMB Charges.

For all of these reasons, PPLICA has clearly misconstrued the nature of the Commission’s Regulations and has no basis in the Regulations to support the notion that an EGS must supply both generation and transmission or, for that matter, other NMB Charges. Once again, the NMB Proposal would explicitly *exclude* transmission charges (i.e., NITS) and include only certain charges which the Commission has already approved for non-bypassable collection from all customers by the FirstEnergy EDCs pursuant to the FirstEnergy DSP Order.

The NMB Proposal can and will operate appropriately within the Commission’s existing Regulations.

---

<sup>27</sup> 52 Pa. Code § 54.4(b)(10)(i)-(iii).

<sup>28</sup> 52 Pa. Code § 54.5(f)(1)-(3).

<sup>29</sup> 52 Pa. Code § 54.5(c)(1).

<sup>30</sup> 52 Pa. Code § 54.5(c)(1)-(13).

**C. The Risk of “Double Collection” Is a Red-Herring and Several Mitigating Factors and Mechanisms Exist to Reduce Even the Minimal Chance of a Shopping Customer Paying Twice for NMB Charges.**

From the outset, PPLICA’s primary argument against the NITS-NMB Proposal was an allegedly significant risk of having to pay twice for NITS and other NMB Charges – once through their existing EGS contracts, and again through PPL Electric’s bills. This argument is unfounded, however, because several existing mitigating factors and potential mitigating mechanisms are apparent based on a careful review of the record, which factors and mechanisms will more than adequately address any minimal risks of “double collection.” RESA lays out several of these factors well in its main brief.<sup>31</sup>

The Commission also provides mitigating structures which are meant to protect customers from EGSs from trying to take inappropriate actions to overcharge customers. For instance, any customer facing potential harm has the ability to file a complaint against an EGS (including a process for optional mediation),<sup>32</sup> with limited time and energy, to which the EGS will have to respond. To the extent that the complaint is not resolved by the parties, the Commission can make a determination as to an appropriate customer remedy or EGS penalty.

With existing mitigating factors and/or with any single or combination of the other mechanisms discussed by RESA, the Commission can more than adequately address the minimal risk of double collection perceived by PPLICA.

---

<sup>31</sup> RESA Brief at pp18-19.

<sup>32</sup> See 52 Pa. Code § 5.21-5.24.

**D. A “Large C&I” Carve-Out from the NMB Proposal Is Unnecessary if the Commission Adopts One or More of the Mitigation Measures Presented Herein.**

All of the reasons in support of the NMB Proposal stated herein apply equally to both small customers and Large C&I consumers. In particular, the NMB Proposal will – for all sizes of consumers – help to “create a structure where the market drives prices charged by EGSs, where EGSs expand their investment in Pennsylvania due to certainty and a more level playing field, and where consumers enjoy competitive prices and a wide variety of innovative product offerings.”<sup>33</sup> Moreover, with existing mitigating factors and/or with any single or combination of the mechanisms discussed by RESA, any perceived potential double collection risk will be appropriately addressed, regardless of the size of customer. For this reason, the Commission should reject PPLICA’s proposed alternative carve-out, and approve the NMB Proposal for all customer classes.

**III. CONCLUSION**

ExGen’s proposed improvement to PPL Electric’s Revised DSP is supported by substantial evidence in the record before the Commission. The PPL Electric Revised DSP, with the NMB Proposal, will encourage more competitive procurements for the DSP, more appropriate competitive options from EGSs and, in turn, will better assure that customers are able to receive benefits from the least costs for generation supply contracts, whether remaining on Default Service supply from PPL Electric or taking competitive service from an EGS.

---

<sup>33</sup> *Final Order*, Commission Docket No. I-2011-2237952 (Feb. 14, 2013) at p.15.

For all of the reasons herein, ExGen supports the following Ordering Paragraph:

**PPL Electric is ORDERED to collect NMB Charges from all distribution customers on a non-bypassable basis.**

Respectfully Submitted,



---

Divesh Gupta  
(PA Bar # 307892)  
Asst. General Counsel  
Exelon Business Services Corp.  
100 Constellation Way, Suite 500C  
Baltimore, MD 21202  
Telephone: (410) 470-3158  
Facsimile: (443) 213-3556  
[divesh.gupta@exeloncorp.com](mailto:divesh.gupta@exeloncorp.com)

*Counsel for Exelon Generation Company, LLC*

**Dated: September 26, 2014**

**APPENDIX –PROPOSED FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

***Proposed Findings of Fact***

1. Under the NMB Proposal, Large C&I customers will maintain the ability to seek out EGS arrangements that would provide additional predictability with respect to transmission costs.
2. The Commission’s Regulations do not require that EGSs charge or bill for NMB Charges.
3. Several existing mitigating factors and potential mitigating mechanisms are apparent based on a careful review of the record, which factors and mechanisms will more than adequately address any minimal risks of “double collection.”

***Proposed Conclusions of Law***

1. The Commission’s Regulations do not require that EGSs provide to and bill customers for transmission or other NMB Charges.
2. The Commission’s Regulations do not preclude the EDC from being the entity that procures and charges for transmission (NITS) or other NMB Charges.
3. The NMB Proposal is not prohibited under the Competition Act and the Commission’s Regulations.
4. The NMB Proposal is consistent with the Competition Act’s stated intent that “[i]t is in the public interest for the transmission and distribution of electricity to continue to be regulated as a natural monopoly subject to the jurisdiction and active supervision of the commission.”<sup>34</sup>.

---

<sup>34</sup> 66 Pa.C.S.A. § 2802 (16).