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September 30, 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 Duquesne Light Company For Approval of Default Service Plan for the Period June 1, 2015 Through May 31, 2017; Docket No. P-2014-2418242

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Reply Brief of the Duquesne Industrial Intervenors ("DII") concerning the above-referenced proceeding.

As evidenced by the attached Certificate of Service, all parties to the proceeding are being served with copies of this document. Thank you.

Very truly yours,

McNEES WALLACE & NURICK LLC

By 
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Counsel to the Duquesne Industrial Intervenors

PCP/sar

Enclosure

c: Administrative Law Judge Katrina Dunderdale
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 30th day of September, 2014, at Harrisburg, Pennsylvania

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Duquesne Light Company for :
Approval of Default Service Plan for the : Docket No. P-2014-2418242
Period June 1, 2015 through May 31, 2017 :
:

**REPLY BRIEF OF THE
DUQUESNE INDUSTRIAL INTERVENORS**

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I. PROCEDURAL HISTORY

On April 24, 2014, Duquesne Light Company ("Duquesne" or "Company") filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") a Petition for approval of its upcoming default service plan ("DSP"). *Petition of Duquesne Light Company For Approval of Default Service Plan for the Period June 1, 2015 Through May 31, 2017*, Docket No. P-2014-2418242 (Apr. 24, 2014).

On May 27, 2014, the Duquesne Industrial Intervenors ("DII") filed a Petition to Intervene in this proceeding. The Office of Consumer Advocate ("OCA") filed an Answer to the Petition. In addition, the Office of Small Business Advocate ("OSBA") and the Bureau of Investigation and Enforcement ("I&E") each assumed an active role in this proceeding. A Prehearing Conference was held on June 2, 2014, before Administrative Law Judge ("ALJ") Katrina L. Dunderdale. An evidentiary hearing was held in this proceeding on August 25, 2014, for the purposes of presenting testimony and stipulations into the record.

On September 15, 2014, Duquesne submitted a Settlement Stipulation resolving a number of issues in this proceeding. The following issues were reserved for litigation: the Small Commercial & Industrial ("C&I") procurement plan; the Medium C&I procurement plan; the Large C&I procurement plan; procurement of alternative energy credits; and the methodology of recovering certain transmission costs. Also on September 15, 2014, DII submitted a Main Brief ("M.B.") and received Main Briefs from Duquesne, the Retail Energy Supply Association ("RESA"), OSBA, Citizens' for Pennsylvania's Future ("PennFuture") and Noble Americas

Energy Solutions LLC ("Noble"). Pursuant to the procedural schedule of this proceeding, DII submits this Reply Brief in response to issues raised in the parties' Main Briefs.¹

II. SUMMARY OF ARGUMENT

DII's Reply Brief responds to the following issues as argued in RESA's Main Brief: 1) RESA's proposal to modify the methodology for procurement of the Large C&I default service product, and 2) the non-bypassable collection of transmission costs proposed by RESA and Exelon Generation Company, LLC ("ExGen").²

First, as argued in DII's Main Brief, RESA's proposal to modify the procurement of the Large C&I default service product must be rejected as inconsistent with the Competition Act. DII M.B., p. 5. RESA fails to provide consistent information related to the components within this product, in particular, the adder associated with this product. Without RESA showing that its proposed product satisfies the requirement for "least cost" over time default service, RESA's proposal for a third-party default service product must be rejected. *See* Section III.B.4, *infra*. DII reiterates that current methodology is working well and is not inhibiting retail competition. *See id.*

Second, RESA's proposal for a non-bypassable collection of transmission costs³ by Duquesne should be rejected. As DII has repeatedly demonstrated throughout this proceeding,

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

² ExGen did not submit a Main Brief in this proceeding. As a result, instead of referring to the non-bypassable NMB Transmission cost collection as the RESA/ExGen proposal, DII will only refer to this proposal as the RESA proposal. Notably, while ExGen did not submit a Main Brief in this proceeding, Noble, another electric generation supplier ("EGS"), submitted a Main Brief in opposition to a non-bypassable Non-Market Based Transmission cost collection.

³ The transmission costs identified for non-bypassable collection include the following: Network Integration Transmission Service ("NITS") costs, Regional Transmission Expansion Plan ("RTEP") costs, Transmission Enhancement Charges ("TEC"), Generation Deactivation costs, and Unaccounted for Energy costs (collectively, "Non-Market Based Transmission Costs" or "NMB Transmission Costs").

the Commission has systematically rejected identical proposals to require electric distribution companies ("EDC") to collect transmission costs from shopping customers instead of EGSs set forth in numerous prior DSP proceedings. *See* Section III.E.2, *infra*. RESA has failed to present evidence sufficient to satisfy its burden of proof to overcome these Orders and the rationales for rejection of a non-bypassable collection of transmission costs therein. *See id.* Moreover, a non-bypassable collection of transmission costs would raise significant competitive market and 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. *See id.* RESA has not presented any information regarding the implementation of a non-bypassable rider, including the terms of rate design and cost collection, thereby raising significant concerns of subsidization within the Large C&I class and the potential for inconsistency with cost causation principles. For these reasons, any proposal to implement a non-bypassable rider collection of transmission costs should be rejected.

III. ARGUMENT

A. LEGAL STANDARDS

The Legal Standards of DII's Main Brief are incorporated by reference. DII M.B., pp. 4-5.

B. DEFAULT SUPPLY PROCUREMENT ISSUES

1. Residential Procurement Issues

DII has no position on this issue.

2. Small C&I Procurement Issues

DII has no position on this issue.

3. Medium C&I Procurement Issues

DII has no position on this issue.

4. Large C&I Procurement Issues

a) *RESA's Third Party Procurement Proposal Should Be Rejected As Inconsistent with the Least Cost Procurement Mandates of the Competition Act*

RESA fails to meet its burden to demonstrate that a third party (*i.e.*, EGS) procurement should be adopted, particularly when the retail adder associated with this service would increase in violation of the Competition Act. 66 Pa. C.S. §§ 2807(e)(3.7), 2807(7). RESA provides an insufficient and contradictory description regarding the components of its proposed third-party default service. DII M.B., p. 6; *see also* Duquesne M.B., p. 25. Even assuming RESA maintains the same components currently included within Duquesne's in-house product, the retail adder associated with third-party service would increase. Duquesne M.B., p. 24 ("The Company's administrative costs for providing hourly priced service are largely tied to PJM interface and billing related costs that would remain even if a third party provided hourly priced service, and Duquesne Light continued to do the billing and reconciliation."). RESA further fails to explain how the retail adder will be calculated. *See* RESA M.B., p. 22 ("[t]his [proposed \$4.49/MWh adder] is essentially a proxy figure . . . and is not based on actual costs or bid prices."). In addition, the Commission Order referred to by RESA in support of third-party default service does not endorse default service that does not qualify as "least cost" over time. *See Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952, Final Order (Feb. 15, 2013). Because RESA both fails to provide specificity with respect to a third-party product and recommends a product that conflicts with the "least cost" over time requirement within the Competition Act, RESA's proposal should be denied.

b) *Duquesne's Current In-House Procurement Product Benefits Both Default Service and Shopping Large C&I customers*

DII submits that there is no need to modify Duquesne's Large C&I procurement methodology because the Company's current in-house procurement benefits both default service and shopping Large C&I customers. DII M.B., p. 7. None of the Large C&I default service customers identified by RESA have expressed complaints regarding the Company's procurement. In fact, Large C&I customers have expressed a continued preference for Duquesne's in-house product. Duquesne M.B., p. 24; DII M.B., p. 7. Shopping in the Duquesne service territory is at 96% of Large C&I customers, which indicates that Duquesne's in-house default service product in no way deters shopping. Duquesne M.B., p. 22. RESA does not identify any problems with Duquesne's procurement, other than its procurement by Duquesne as opposed to a third-party wholesale supplier. RESA M.B., p. 23. Accordingly, RESA's proposal to modify Duquesne's well-functioning and well-received Large C&I procurement product "regardless of how successful the program or significant the load" should be rejected.

C. ALTERNATIVE ENERGY CREDIT PROCUREMENT ISSUES

D. STANDARD OFFER PROGRAM

1. Continuation of the SOP

DII takes no position on this issue.

2. SOP Collaborative

DII takes no position on this issue.

3. Use of a Third-Party Vendor to Enroll SOP Customers

DII takes no position on this issue.

4. SOP Scripting

DII takes no position on this issue.

5. SOP Cost-Recovery

DII takes no position on this issue.

6. SOP Analysis and Customer Surveys

DII takes no position on this issue.

7. Miscellaneous SOP Issues

DII takes no position on this issue.

E. RATE DESIGN

1. Default Service Cost Unbundling Issues

DII takes no position on this issue.

2. Non-Bypassable Charge To Recover PJM Charges

a) RESA's Proposal for the Non-Bypassable Collection of NMB Transmission Costs Has Been Systematically Rejected by the Commission

RESA provides no new or novel evidence to support a non-bypassable collection of NMB Transmission costs, which has already been rejected by the Commission in multiple DSP proceedings. DII M.B., p. 17. The purported volatility of NMB Transmission costs does not justify their non-bypassable collection by Duquesne. RESA provides evidence that RTEP charges may be significant and that NITS costs fluctuate among EDCs. RESA, M.B., pp. 26-27. The Commission rejected similar evidence in the recent FirstEnergy default service proceeding as justification for a non-bypassable NMB Transmission cost collection. DII M.B., p. 17. Other EGSs, as well as Commission precedent, indicate that RESA may be overstating the risk associated with these costs. Noble M.B., p. 4; *see also Petition of PECO Energy Company For Approval of its Default Service Program II*, Order and Opinion, Docket No. P-2012-2283641 (Sept. 27, 2012), p. 60. NITS costs, specifically, "make up the majority of NMB Transmission costs" and are fixed each year, which certainly reduces their volatility. Duquesne M.B., p. 39.

RESA provides no evidence of volatility for the remaining NMB Transmission costs. *See* RESA M.B., p. 25. To the extent no evidence of volatility is offered, the collection of these NMB Transmission costs must not change.

Even assuming that the Commission concludes certain NMB Transmission costs are volatile, volatility by itself does not warrant the removal of charges from the competitive market. Generation charges are often volatile, which are unquestionably part of the competitive retail market charged to shopping customers by EGSs. Where EGSs believe that risk is associated with a certain charge, EGSs are permitted to charge a customer a risk premium for that charge where a fixed price is offered. The EGS is also permitted to offer a pass-through product to remove this risk. *See* DII M.B., p. 19. In contrast to EDCs, EGSs have the flexibility to offer both fixed price and pass-through products with respect to NMB Transmission costs. *See* DII M.B., p. 20. A non-bypassable collection of NMB Transmission costs would remove this flexibility from the competitive market. Certain EGSs value the ability to provide a range of competitive transmission products to customers and oppose a non-bypassable NMB Transmission cost collection. *See* Noble M.B., p. 4.

Contrary to RESA's position, the Commission's Fixed Price Order is inapplicable to non-bypassable NMB Transmission cost collections. *Guidelines for Use of Fixed Price Labels for Products with a Pass-Through Clause*, Docket No. M-2013-2362961, Final Order (Nov. 14, 2013). RESA contends that the Fixed Price Order prevents EGSs from offering fixed price products to customers with pass-through provisions, which justifies the removal of NMB Transmission costs from EGS contracts. RESA M.B., p. 29. In actuality, the Fixed Price Order merely provides labeling transparency regarding whether contracts include a fixed price or a price with pass-through components. DII M.B., p. 15. The Fixed Price Order is entirely silent

regarding whether a non-bypassable NMB Transmission cost collection is appropriate. In the recent FirstEnergy default service proceeding, the Commission held that the Fixed Price Order in no way supports a non-bypassable NMB Transmission cost collection. DII M.B., p. 17. Similarly, RESA errs in its contention that EGSs experience a competitive disadvantage as a result of Duquesne collecting NMB Transmission costs for default service customers while EGSs collect these costs from EGS customers. RESA M.B., pp. 28, 34. Because EGSs have the ability to offer either pass-through or fixed priced products, they are capable of allocating the risk of certain charges to customers. *See* DII M.B., p. 20.

Once again, the Fixed Price Order does not prevent EGSs from offering either fixed price or pass-through contracts. DII M.B., p. 15. Accordingly, EGSs are not subject to a competitive disadvantage as a result of Duquesne collecting NMB Transmission costs from default service customers on a pass-through basis, as EGSs may also do so. As a result, it is unnecessary for Duquesne to modify its collection of NMB Transmission costs from default service customers.

b) Public Utility Law and Commission Precedent Continue to Warrant Rejection of a Non-Bypassable NMB Transmission Cost Collection

RESA's contention that a NMB Transmission cost collection is consistent with law and Commission precedent is patently false. RESA M.B., pp. 30-31. The Commission considered and rejected non-bypassable NMB Transmission cost collections repeatedly in Pennsylvania EDCs' last default service proceedings, including within Duquesne's last DSP proceeding. *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; *Petition of PECO Energy Company For Approval of its Default Service Program II*, Order and Opinion, Docket No. P-2012-2283641 (Sept. 27, 2012), p. 60; *Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement*

Plan, Docket No. P-2012-2302074 (Jan. 24, 2013), p. 85; *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), p. 83. *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-2013-2391368, *et al.* (July 24, 2014), p. 31.

The Commission's approval of a partial settlement in the last FirstEnergy default service proceeding providing for the non-bypassable collection of certain NMB Transmission costs provides no precedential value in the instant proceeding. *See, e.g. Petition of Duquesne Light Company for Approval of Default Service Plan for Period June 1, 2015 through May 31, 2017*, Stipulation, Docket No. P-2014-2418242 (Sept. 15, 2014), p. 6 ("The Parties agree that this Stipulation shall not constitute or be cited as precedent in any other proceeding, except to the extent required to implement this Stipulation."). In fact, with respect to the remaining NMB Transmission cost that was reserved for litigation in the last FirstEnergy default service proceeding (*i.e.*, NITS), the Commission rejected a non-bypassable collection of NITS costs. *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 (July 24, 2014), p. 31.

Finally, as discussed in DII's Main Brief, public utility law and Commission regulations support a continued collection of NMB Transmission costs by EGSs for shopping customers. DII M.B., pp. 14, 19. The Competition Act unbundled generation, transmission, and distribution services, which had previously been offered as a bundled product by EDCs. 66 Pa. C.S. §

2802(13); *see also id.* § 2804(3). Since this unbundling, EGSs have offered shopping customers generation and transmission services, while EDCs have offered customers distribution services. Removing transmission from the competitive market would be contrary to the intent of the Competition Act as fewer products would be available to shopping customers. DII M.B., p. 19. Regulations further imply that distribution services should be offered by EDCs, while transmission and generations services should be offered by EGSs. 52 Pa. Code § 54.182; *see also id.* § 54.187(e). RESA's proposal for the non-bypassable collection of certain NMB Transmission costs should therefore be rejected.

c) Transitional Issues Associated with a Non-Bypassable NMB Transmission Cost Collection Would Not be Adequately Resolved under RESA's Suggested Approach.

RESA claims transitional issues associated with a non-bypassable NMB Transmission cost collection, such as the double collection of NMB Transmission costs by both the EDC and EGS, could be resolved by adopting transitional mechanisms included in the recent FirstEnergy default service proceeding. RESA M.B., p. 33. Although RESA provides very little explanation regarding what these transitional mechanisms would be, RESA only refers to one NMB Transmission cost, *i.e.*, Reliability Must Run ("RMR") costs, for which these transitional mechanisms could be adopted. RESA M.B., p. 33. RESA provides no evidence that these transitional mechanisms would be feasible with respect to RMR costs in the Duquesne service territory.

With respect to all other NMB Transmission costs, RESA's alleged transitional mechanisms would provide no protection against the potential for double cost collection. In fact, as part of the recent FirstEnergy default service proceeding to which RESA relies on for support, the Commission specifically found merit in the potential for double cost collection as a result of a non-bypassable NMB Transmission cost collection. *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-2013-2391368, *et al.* (July 24, 2014), p. 40. Other EGSs acknowledge the potential for such transitional issues, including double cost collection. *Noble M.B.*, p. 5. It is inappropriate for RESA to suggest that customers absorb the costs of NMB Transmission costs that EDCs begin collecting from shopping customers, as most regulatory change provisions would require that these costs be removed from a customer's price. *See RESA M.B.*, p. 33. In light of RESA's failure to adequately resolve the above-described transitional issues, RESA's proposal for the non-bypassable collection of NMB Transmission costs should be rejected.

F. TIME-OF-USE PROGRAM

DII takes no position on this issue.

G. SUPPLY MASTER AGREEMENT ISSUES

DII takes no position on this issue.

**H. REQUEST FOR PROPOSAL AND INDEPENDENT EVALUATOR
PROCESS ISSUES**

DII takes no position on this issue.

I. GENERAL MISCELLANEOUS ISSUES

DII takes no position on this issue.

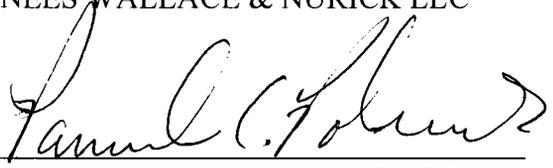
IV. CONCLUSION

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

- (1) Deny the third-party procurement of Large C&I default service;
- (2) Deny the collection of non-market based transmission costs through a non-bypassable rider; and
- (3) Grant any additional relief deemed appropriate and consistent with the above recommendations.

Respectfully submitted,

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