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October 7, 2014

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Joint Application of PPL Interstate Energy Company and PPL Electric Utilities Corporation for All of the Necessary Authority, Approvals, and Certificates of Public Convenience (1) for the Transfer of PPL Corporation's Ownership Interests in PPL Interstate Energy Company to Talen Energy Corporation, and Certain Post Closing Transactions Associated therewith; (2) for the Transfer of Certain Property Interests Between PPL Electric Utilities Corporation and PPL Energy Supply, LLC and its Subsidiaries in Conjunction with the Transfer of All of the Interests of PPL Energy Supply, LLC and its Subsidiaries to Talen Energy Corporation; (3) for any Modification or Amendment of Associated Affiliated Interest Agreements; and (4) for any Other Approvals Necessary to Complete the Contemplated Transactions
Docket Nos. A-2014-2435752 & A-2014-2435833

Dear Secretary Chiavetta:

Enclosed for filing is the Answer and Objection of PPL Interstate Energy Company and PPL Electric Utilities Corporation to the Motion to Intervene Out of Time of Monitoring Analytics, LLC, in the above-referenced proceedings. Copies will be provided as indicated on the certificate of service.

Sincerely,

David B. MacGregor

DBM/jl

Rosemary Chiavetta, Secretary
October 7, 2014
Page 2

Enclosures

cc: Honorable Susan D. Colwell
Certificate of Service

CERTIFICATE OF SERVICE

Docket Nos. A-2014-2435752 & A-2014-2435833

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL & FIRST CLASS MAIL

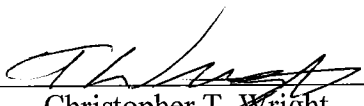
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Date: October 7, 2014



Christopher T. Wright

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Application of PPL Interstate Energy :
Company and PPL Electric Utilities :
Corporation for All of the Necessary : Docket Nos. A-2014-2435752
Authority, Approvals, and Certificates of : A-2014-2435833
Public Convenience (1) for the Transfer of :
PPL Corporation’s Ownership Interests in :
PPL Interstate Energy Company to Talen :
Energy Corporation, and Certain Post- :
Closing Transactions Associated therewith; :
(2) for the Transfer of Certain Property :
Interests Between PPL Electric Utilities :
Corporation and PPL Energy Supply, LLC :
and its Subsidiaries in Conjunction with the :
Transfer of All of the Interests of PPL :
Energy Supply, LLC and its Subsidiaries to :
Talen Energy Corporation; (3) for any :
Modification or Amendment of Associated :
Affiliated Interest Agreements; and (4) for :
any Other Approvals Necessary to :
Complete the Contemplated Transactions :

**ANSWER AND OBJECTION OF
PPL INTERSTATE ENERGY COMPANY AND
PPL ELECTRIC UTILITIES CORPORATION TO THE
MOTION TO INTERVENE OUT OF TIME
OF MONITORING ANALYTICS, LLC**

TO ADMINISTRATIVE LAW JUDGE SUSAN D. COLWELL:

PPL Interstate Energy Company (“PPL IEC”) and PPL Electric Utilities Corporation (“PPL EU”) (hereinafter, collectively the “Applicants”), pursuant to 52 Pa. Code § 5.66(a), hereby file this Answer and Objection to the Comments and Motion to Intervene Out of Time of Monitoring Analytics, LLC acting as the Independent Market Monitor for PJM Interconnection,

L.L.C. (“Market Monitor”). For the reasons explained below, the Applicants submit that the Market Monitor’s Motion to Intervene Out of Time should be denied, and that the Market Monitor’s Comments not be included in the record of this proceeding. In support thereof, the Applicants state as follows:

I. INTRODUCTION

On July 30, 2014, the Applicants filed the instant Joint Application along with Appendices A through O. Pursuant to Secretarial letter dated August 5, 2014, the Applicants published notice of the Application on August 11, 12 and 13, 2014, in newspapers having a general circulation in the areas involved. On August 29, 2014, the Applicants filed Affidavits for Proof of Publication.

On August 16, 2014, notice was published in the *Pennsylvania Bulletin*, 44 Pa.B. 5547, which set a deadline of September 5, 2014 for protests and interventions. A separate hearing notice was issued on August 25, 2014, containing the same information. On August 29, 2014, Administrative Law Judge Susan D. Colwell (“ALJ”) issued a Prehearing Order which set forth, among other things, the requirements for becoming a party.

Pursuant to the notice published in the *Pennsylvania Bulletin* and the August 29, Prehearing Order, protests and petitions to intervene were required to be filed on or before September 5, 2014. Timely notices of appearance and/or petitions to intervene were filed by the following parties: the Office of Consumer Advocate (“OCA”); the International Brotherhood of Electrical Workers, Local 1600 (“IBEW”); and Allegheny Electric Cooperative, Inc. The only timely protest was filed by the Office of Small Business Advocate (“OSBA”). No other parties filed timely notices of appearance, protests, and/or petitions to intervene.

The prehearing conference was held as scheduled on September 18, 2014. The timely petitions to intervene were unopposed and granted in the Second Prehearing Order dated September 22, 2014. A litigation schedule was established at the prehearing conference and adopted in the Second Prehearing Order.

On September 23, 2014, the Applicants filed a Motion for Protective Order. No active parties objected to the Motion and the Protective Order was issued September 24, 2014.

On September 25, 2014, twenty days after the deadline for protests or interventions, the Market Monitor filed its Comments and Motion to Intervene Out of Time. Therein, the Market Monitor requests that its comments submitted in a proceeding before the Federal Energy Regulatory Commission (“FERC”), which were attached to the Market Monitor’s Comments and Motion to Intervene Out of Time, be admitted to the record and considered by the Pennsylvania Public Utility Commission (“Commission”). The Market Monitor also requests that it be granted intervenor status.

For the reasons explained below, the Market Monitor’s Motion to Intervene should be denied, and the Comments should not be included in the record.

II. OBJECTION TO UNTIMELY INTERVENTION

The Market Monitor’s Motion to Intervene fails to assert an interest, direct or otherwise, that can be affected by this proceeding in which it seeks to intervene. Indeed, the interest alleged by the Market Monitor is beyond the Commission’s jurisdiction in this case. Further, the Market Monitor’s Motion to Intervene was filed twenty days after the deadline for protests or interventions and fails to meet the standards required for late intervention. For these reasons, as further explained below, the Market Monitor’s Motion to Intervene should be denied.

A. The Market Monitor Has Failed to Assert Any Interest, Direct or Otherwise, that Can Be Affected by this Proceeding

Pursuant to the Commission's regulations, a petition to intervene may be filed by a person claiming, *inter alia*, an interest that may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding. *See* 52 Pa. Code § 5.72(a). The purpose of the requirement of standing is to protect against improper parties. In order to meet that requirement, a party must allege and prove an interest in the outcome of the action that surpasses the common interest of all citizens in procuring obedience to the law. To surpass the common interest, the interest is required to be, at least, substantial, direct, and immediate. *Application of Biester*, 487 Pa. 438, 442-443, 409 A.2d 848, 851 (1979) (citing *William Penn Parking Garage v. City of Pittsburgh*, 464 Pa. 168, 192, 346 A.2d 269, 281 (1975)).

A petition to intervene must set out clearly and concisely: (1) the facts from which the alleged intervention right or interest can be determined, (2) the grounds of the proposed intervention, and (3) the petitioner's position on the issues raised in the proceeding. *See* 52 Pa. Code § 5.73(a). Finally, intervention is a matter of discretion for the Commission. *See PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2011 through 2013*, Docket No. M-2010-2179796, 2011 Pa. PUC LEXIS 1997 at *20 (May 5, 2011).

In this case, the Market Monitor fails to assert any interest, direct or otherwise, that can be affected by this proceeding before the Commission in which it seeks to intervene. In its Comments and Motion to Intervene, the Market Monitor states that its interest in this proceeding is the alleged potential impact that the Proposed Transaction may have on wholesale market power issues. Specifically, the Market Monitor takes issue with the proposed spinoff of PPL

Corporation's ("PPL Corp.") deregulated generation assets and the combination of those assets with the competitive generation assets of the RJS Entities¹ to form Talen Energy Corporation. The Market Monitor's issues are not properly before the Commission for several reasons.

First, the Commission lacks subject matter jurisdiction over the deregulated wholesale generation assets. The Electric Generation Customer Choice and Competition Act ("Competition Act") of December 3, 1996 (P.L. 802, No. 138), codified at 66 Pa. C.S. §§ 2801, *et seq.*, required EDCs to unbundle transmission, distribution and generation rates for retail customers. The Competition Act also deregulated electricity generation and provided all customers in Pennsylvania with the opportunity to choose their electricity generation supplier. 66 Pa.C.S. § 2806(a). In accordance with the Competition Act, the Commission required PPL EU to divest itself of its generation facilities and transfer its electric generation to a separate corporate affiliate. *Application Of Pennsylvania Power & Light Company For Approval Of Restructuring Plan Under Section 2806 Of The Public Utility Code*, Docket No. Docket No. R-00973954 (Final Order entered August 27, 1998). As a result of deregulation and the divestiture of PPL EU's wholesale generation assets, the Commission lacks jurisdiction over PPL Corp.'s deregulated generation assets and the combination of those assets with the competitive generation assets of the RJS Entities.

It is FERC, not the Commission, that has jurisdiction over the deregulated wholesale generation assets at issue in the Market Monitor's Comments and Motion to Intervene. FERC is authorized by Congress with jurisdiction over the interstate wholesale market for electricity. Federal Power Act of 1935, 16 USC 791, *et seq.* As a state regulatory commission, the

¹ The RJS Entities are Raven Power Holdings LLC ("Raven"), C/R Energy Jade LLC ("Jade"), and Sapphire Power Holdings LLC ("Sapphire") (hereinafter, collectively referred to as the "RJS Entities"), which are ultimately controlled by Riverstone Holdings LLC ("Riverstone").

Commission is obligated to recognize and respect the actions of FERC with regard to matters within its own jurisdiction. *See, Nantahala Power & Light Co. v. Thornburg*, 476 U.S. 953 (1986); *Mississippi Power & Light Co. v. Mississippi ex rel. Moore*, 487 U.S. 354 (1988). PPL Corporation and RJS Power Holdings LLC have filed an application with FERC at Docket No. EC14-112-000 seeking approval to spinoff and combine the deregulated wholesale generation assets at issue in the Market Monitor's Comments and Motion to Intervene. FERC will review and decide the market power issues related to the deregulated wholesale generation assets at issue.

Second, issues associated with the combination of PPL Corp.'s deregulated wholesale generation assets are not before the Commission. Indeed, nowhere in the Joint Application do the Applicants request Commission review and approval of the spinoff of PPL Corp.'s deregulated generation assets or the combination of those assets with the competitive generation assets of the RJS Entities. To the contrary, the Joint Application explicitly states that the Applicants are not seeking Commission approval of the spinoff and combination of the deregulated generation assets.

Third, it must be stressed that the Market Monitor's only role as the Independent Market Monitor for PJM is to monitor the wholesale market power and efficiency and competitiveness of the wholesale markets.² However, in this proceeding, the Applicants are seeking Commission

² Pursuant to the Market Monitoring Services Agreement by and between the Market Monitor and PJM, the Market Monitor's core functions are: (i) evaluating existing and proposed market rules, tariff provisions and market design elements and recommending proposed rule and tariff changes, (ii) evaluating, reviewing and reporting on the performance of the wholesale markets, (iii) monitoring the conduct of PJM market participants to identify anomalous or suspect behavior that evidence a scheme to manipulate prices, distort market outcomes, or avoid the intended application of market rules and (iv) monitoring PJM's implementation of the PJM Market Rules and operation of the PJM Markets. *See* Market Monitoring Services Agreement

approval to transfer PPL IEC, a “public utility” and “natural gas distribution company” (“NGDC”) as defined in Sections 102 and 2202 of the Public Utility Code, 66 Pa.C.S. §§ 102, 2202. PPL IEC does not own or control any generation assets. Clearly, the transfer of control of PPL IEC’s oil and gas assets to Talen Energy, which is the transaction pending for Commission approval, will have no impact on the electric market power issues alleged by the Market Monitor. Stated another way, Commission review and approval of the transfer of PPL IEC will not and cannot have any impact or effect on Market Monitor’s legitimate interests.

Fourth, Chapter 22 of the Public Utility Code does not provide the Commission with jurisdiction over wholesale market power issues. Section 2210(a) of the Public Utility Code obligates the Commission to consider whether a proposed merger or consolidation of a NGDC or a natural gas supplier (“NGS”) is likely to result in anticompetitive or discriminatory conduct. 66 Pa.C.S. § 2210(a). This section appears to apply to the Proposed Transaction because the Commission has jurisdiction to approve the change of control of PPL IEC, a NGDC. However, Section 2210(a) is limited to only to the anticompetitive effects of the merger or consolidation of a NGDC or NGS, not deregulated competitive generation assets. Clearly, Section 2210(a) does not grant the Commission jurisdiction over the potential market power issues from the combination of the deregulated generation assets.

By And Between PJM Interconnection, L.L.C. And Monitoring Analytics, LLC, available at: http://www.monitoringanalytics.com/company/docs/PJM_MA_Market_Monitoring_Services_Agreement_%2020130716.pdf (last visited Oct. 6, 2014); *see also* Attachment M, PJM Market Monitoring Plan, available at:

http://www.monitoringanalytics.com/company/docs/Attachment_M_PJM_Market_Monitoring_Plan_20130205.pdf (last visited Oct. 6, 2014).

Fifth, Chapter 28 of the Public Utility Code also does not provide the Commission with jurisdiction over wholesale market power issues. Section 2811(e)(1) of the Public Utility Code provides:

In the exercise of authority the commission otherwise may have to approve the mergers or consolidations by electric utilities or electricity suppliers, or the acquisition or disposition of assets or securities of other public utilities or electricity suppliers, the commission shall consider whether the proposed merger, consolidation, acquisition or disposition is likely to result in anticompetitive or discriminatory conduct, including the unlawful exercise of market power, which will prevent retail electricity customers in this Commonwealth from obtaining the benefits of a properly functioning and workable competitive retail electricity market.

66 Pa.C.S. § 2811(e)(1) (emphasis added). As explained above, the Applicants are not seeking Commission review and approval of the spinoff of PPL Corp.'s deregulated generation assets or the combination of those assets with the competitive generation assets of the RJS Entities. Further, the Proposed Transaction does not involve the merger, consolidation, or the disposition of assets of PPL EU, an electric utility, and no approval is required for the proposed change in control of PPL EnergyPlus, LLC, an electric supplier.³ Clearly, Section 2811(e)(1) does not apply to the Proposed Transaction pending for Commission approval.

³ See *Joint Application of PECO Energy Company and Public Service Electric and Gas Company for Approval of the Merger of Public Service Enterprise Group, Inc. with and into Exelon Corporation*, Docket No. A-110550F0160, 2006 Pa. PUC LEXIS 2, 248 P.U.R. 4th 1 (Opinion and Order entered Feb. 1, 2006); *Re DQE, Inc.*, Docket No. A-110150,F.0015, 1998 Pa. PUC LEXIS 48, 186 P.U.R.4th 39 (Opinion and Order entered Apr. 30, 1998). In these proceedings, the applicants specifically sought Commission approval of the merger/disposition of electric distribution companies. Because the Commission had jurisdiction over the merger of the electric distribution companies in those proceedings, it also had the obligation under Section 2811(e)(1) to consider whether the mergers were likely to result in anticompetitive or discriminatory conduct.

Finally, to the extent that the Market Monitor seeks to raise market power issues related to the deregulated wholesale generation assets, the Market Monitor's remedy is to raise those issue before the appropriate forum. Indeed, as the Market Monitor concedes in its Comments and Motion to Intervene, the Market Monitor has in fact intervened and raised its market power issues in the pending FERC proceeding. The Market Monitor should not be permitted to bypass FERC's review and findings of the market power issues related to the deregulated wholesale generation assets by raising those issues here, particularly where the Commission lacks subject matter jurisdiction over the deregulated wholesale generation assets.

Based on the foregoing, the Market Monitor has failed to allege any interest, direct or otherwise, that can be affected by this proceeding before the Commission in which it seeks to intervene and, therefore, the Market Monitor's untimely Motion to Intervene must be denied pursuant to 52 Pa. Code § 5.72(a).

B. The Market Monitor Has Failed to Satisfy the Requirements for Late Intervention

The Market Monitor submitted its Motion to Intervene twenty days after the deadline for protests or interventions, and requests that it be granted intervention status out of time. For the reasons explained below, the Market Monitor has failed to satisfy the standards required to grant a late intervention.

The Commission has held that without a showing of good cause, the failure to file a timely protest is a bar to participation in the proceeding. *Artesian Water; Re. Milton Transportation, Inc.*, 56 Pa. PUC 623 (1982) (citing *Re: S.T.S. Motor Freight, Inc.*, 54 Pa. PUC 343, 344 (1980)). The Commission has permitted late intervention where the party requesting intervenor status establishes the following: (1) the requesting party has a reasonable excuse for

its untimely filing; (2) the proceeding is contested at the time of filing the protest; (3) the grant of intervention will not delay the orderly progress of the case; and (4) the grant of intervention will not significantly broaden the issues or shift the burden of proof. Each of these requirements must be satisfied. *Re. Milton Transportation, Inc., supra.* In this matter, the Market Monitor clearly has not met these standards.

The only reason that the Market Monitor has offered for its untimely filing is “administrative oversight.” However, the Market Monitor has failed to even attempt to explain what the alleged “administrative oversight” was and, moreover, why it prevented the Market Monitor from filing a timely intervention. Without more, the Market Monitor has failed to show good cause for its untimely intervention.

Pursuant to the notice published in the *Pennsylvania Bulletin*, the August 29, 2014 Prehearing Order, and the newspaper notices published on August 11, 12 and 13, 2014, all protests and petitions to intervene were required to be filed on or before September 5, 2014. Clearly, notice of the date by which protests or petitions to intervene was provided consistent with the requirements of the Commission’s regulations and the Secretarial Letter dated August 5, 2014. Notably, the Market Monitor fails to allege that these notices were somehow insufficient or even that the Market Monitor did not receive notice.

In addition, the Market Monitor concedes that it did in fact have knowledge of the Proposed Transaction. Indeed, the Market Monitor prepared and submitted a very lengthy, over 100 pages, analysis of the Proposed Transaction in the FERC proceeding. Under these circumstances, it is clear that the Market Monitor’s bare allegation of “administrative oversight” should not be credited.

Further, and perhaps most importantly, the issues that the Market Monitor intends to raise will significantly broaden the issues to be decided in this matter. In the Joint Application, the Applicants are seeking approval of (1) the transfer of all of PPL Corp.'s ownership interests in PPL IEC to Talen Energy Corporation, and certain post-closing transactions associated therewith; (2) the transfer of certain property interests between PPL EU and subsidiaries of PPL Energy Supply, LLC ("PPL Energy Supply") in order to fully separate and define certain property rights among PPL EU and the PPL Energy Supply subsidiaries; and (3) to the extent required, any modifications or amendments to affiliated interest agreements among and between PPL EU, PPL Energy Supply and its subsidiaries, including PPL IEC. In its Comments and Petition to Intervene, the Market Monitor states that it seeks to raise market power issues related to the deregulated wholesale generation assets. These issues clearly are beyond the approvals sought from the Commission and no other party has raised such issues in this proceeding.

As explained above, it is FERC, not the Commission, that has jurisdiction over the deregulated wholesale generation assets at issue in the Market Monitor's Comments. PPL Corporation and RJS Power Holdings LLC have filed an application with FERC at Docket No. EC14-112-000 seeking approval to spinoff and combine the deregulated wholesale generation assets at issue in the Market Monitor's Comments and Motion to Intervene. Numerous parties, including the Market Monitor have intervened in the FERC proceeding. FERC will review and decide the market power issues related to the deregulated wholesale generation assets at issue. Simply stated, the Market Monitor's issues are not properly before the Commission but, rather, will be fully addressed in the FERC proceeding. And, moreover, no approval is needed or sought for disposition of the generating assets here.

Based on the foregoing, the Market Monitor has not offered a reasonable excuse for its untimely filing and the issues it intends to raise will significantly broaden the issues to be decided in this matter. Accordingly, the Market Monitor has failed to make the showing necessary to grant the late intervention and, therefore, the untimely Motion to Intervene must be denied.

III. OBJECTION TO COMMENTS

In its Comments, the Market Monitor explains that it submitted comments in an ongoing proceeding before FERC at Docket No. EC14-112-000, regarding alleged potential market power issues associated with the proposed spinoff of PPL Corp.'s deregulated generation assets and the combination of those assets with the competitive generation assets of the RJS Entities to form Talen Energy Corporation. The Market Monitor also attached a copy of its FERC comments and requested that the "Commission include these comments in the record and afford them due consideration...." The Market Monitor's Comments request to include its FERC Comments in the record in this proceeding should be denied.

As a preliminary matter, the Market Monitor is not a party to this proceeding unless and until its untimely Motion to Intervene is granted. To the extent that the Market Monitor wants the Commission to consider its issues, concerns, and arguments, the Market Monitor must first properly become a party to the proceeding, and then submit testimony and/or exhibits in accordance with the litigation schedule adopted by the ALJ in her Second Prehearing Order. Simply stated, the Market Monitor's comments are, at a minimum, premature.

The Market Monitor's FERC Comments that it seeks to have included in the record and considered by the Commission is truly testimony. It is well established that any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence

of record. *Met-Ed Indus. Users Grp. v. Pa. PUC*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704). Before the Commission may consider information, it must first be offered and admitted to the record. *Helsel v. Commonwealth, DOT*, 605 A.2d 454, 455 (Pa. Cmwlth. 1992). Indeed, for an agency to rely on facts withheld from the record is a denial of due process. *See Kyu Son Yi v. State Bd. of Veterinary Med.*, 960 A.2d 864, 873 (Pa. Cmwlth. 2008) (holding that information that has not been offered into the record cannot be used to sustain an adjudication); *see also Ohio Bell Telephone Co. v. Pa. PUC*, 301 U.S. 292, 302-03, 57 S. Ct. 724, 81 L. Ed. 1093 (1937) (explaining that due process requires that the party against whom evidence is presented must “see the evidence or hear it [or be able to] parry its effect ... and challenge the deductions made from them.”).

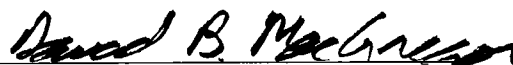
The Market Monitor’s FERC Comments have not properly been sponsored by a witness, authenticated, and offered for admission into the record, nor have they been admitted to the record. If the Market Monitor is granted intervenor status in this proceeding and wishes to have its FERC Comments admitted in this proceeding, due process requires that the Market Monitor submit its comments/testimony in this proceeding, in accordance with the litigation schedule adopted by the ALJ and subject to timely objections and cross-examination. *See Murphy v. Department of Education*, 460 A.2d 398 (Pa. Cmwlth. 1983) (due process before administrative agencies requires that cross-examination be afforded where credibility is an issue); *Wells v. Pittsburgh Board of Public Education*, 374 A.2d 1009 (Pa. Cmwlth. 1977) (certain procedural errors including lack of opportunity for cross-examination constituted denial of due process). However, the Market Monitor has not yet done so here and, therefore, due process requires that the Market Monitor’s Comments not be included in the record of this proceeding.

Based on the foregoing, to the extent that the Market Monitor's untimely Motion to Intervene is granted, which the Applicants object to for the reasons stated below, the Market Monitor's Comments should not be admitted into the record of this proceeding and, instead, properly offered into the evidentiary record in accordance with due process requirements.

IV. CONCLUSION

WHEREFORE, PPL Interstate Energy Company and PPL Electric Utilities Corporation respectfully request that Administrative Law Judge (i) deny the Motion to Intervene Out of Time of Monitoring Analytics, LLC, and (ii) deny the request of Monitoring Analytics, LLC to include its FERC Comments in the record in this proceeding.

Respectfully submitted,



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Of Counsel:
Post & Schell, P.C.

Date: October 7, 2014

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