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November 24, 2014

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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 Exceptions 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  ^{EPT}
Pamela C. Polacek

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PCP/sar
Enclosures

c: Administrative Law Judge Katrina L. Dunderdale (via E-mail and First Class Mail)
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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 24th day of November, 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 EXCEPTIONS OF THE
DUQUESNE INDUSTRIAL INTERVENORS**

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Dated: November 24, 2014

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I. INTRODUCTION

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"). The Duquesne Industrial Intervenors ("DII") filed a Petition to Intervene in this proceeding on May 27, 2014.

On September 15, 2014, Duquesne submitted a Settlement Stipulation resolving a number of issues in this proceeding. Several issues were reserved for litigation,¹ including, in relevant part, (1) the Retail Energy Supply Association's ("RESA") proposal to modify the methodology for procurement of the Large Commercial & Industrial ("C&I") default service product; and (2) RESA's proposal to collect Non-Market Based ("NMB") Transmission Costs on non-bypassable basis.² On October 28, 2014, Administrative Law Judge ("ALJ") Katrina L. Dunderdale issued a Recommended Decision ("R.D.") in this proceeding. In the R.D., ALJ Dunderdale recommends that RESA's hourly priced services proposal for Large C&I default service procurement be denied. R.D., p. 28. ALJ Dunderdale further recommends that RESA's proposal for the non-bypassable collection of NMB Transmission Costs be rejected as anti-competitive and inconsistent with Commission precedent. *See id.*, p. 36.

On November 14, 2014, Duquesne, RESA and Noble Americas Energy Solutions LLC ("Noble") filed Exceptions to the R.D.³ Among other issues, RESA's Exceptions responded to the R.D.'s recommendation to deny RESA's proposals with respect to Large C&I procurement

¹ The Company's Small C&I procurement plan; Medium C&I procurement plan; and procurement of alternative energy credits were also reserved for litigation. DII's Reply Exceptions take no position with respect to these issues.

² NMB Transmission Costs identified for non-bypassable collection included the following: Network Integration Transmission Service ("NITS") cost, Regional Transmission Expansion Plan ("RTEP") costs, Transmission Enhancement Charges ("TEC"), Generation Deactivations costs, and Unaccounted for Energy costs.

³ DII's Reply Exceptions will not respond to every argument contained in the parties' Exceptions but only those issues necessitating additional response. DII'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.

and the non-bypassable collection of NMB Transmission Costs. RESA Exceptions, pp. 23-36. DII wholly supports the R.D.'s holdings with respect to both of these issues. Accordingly, DII submits the following Reply Exceptions.

II. REPLY EXCEPTIONS

A. Reply Exception No. 1: The Recommended Decision correctly rejected RESA's Large C&I third-party procurement proposal

The Commission should uphold the R.D.'s recommendation to deny RESA's third-party (*i.e.*, electric generation supplier ("EGS")) procurement proposal for Large C&I default service. The R.D. correctly determined that RESA's hourly pricing proposal "is not clearly defined and RESA has not shown the potential or likelihood of benefit(s) to Large C&I customers." R.D., p. 28. The R.D. further concludes that RESA's third party procurement proposal "would increase costs for Large C&I customers but provide no benefit in exchange for the increased costs." *Id.* Given RESA's failure to provide specificity with respect to a third-party product and in light of the increased cost to customers over time with no discernible benefit, the Commission should adopt the R.D.'s recommendation to deny RESA's Large C&I procurement proposal.

RESA argues that ALJ ignored applicable law in rejecting RESA's third-party procurement proposal. RESA Exceptions, p. 24 (citing *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952, Final Order (Feb. 15, 2013) ("End State Order")). RESA further asserts that the ALJ failed to apply the appropriate test for least cost default service procurement in rejecting RESA's proposal, arguing that the correct standard is "whether the final price is the result of a competitive process." *Id.*, p. 25.⁴

⁴ RESA offers no legal authority in support of this standard.

The R.D. correctly concludes that RESA failed to satisfy its burden to demonstrate that a third party procurement should be adopted, particularly when the retail adder associated with this service would increase with no benefit to customers. Contrary to RESA's assertion, the plain language of the Competition Act obligates default service providers to provide "least cost" service to customers. 66 Pa. C.S. § 2807(e)(3.7). Any "competitive" third party procurement must comport with this mandate. RESA further misinterprets the Commission's findings in the End State Order in support of its Large C&I proposal. Although the Commission indicated its preference for an hourly pricing product, the End State Order does not endorse default service that does not qualify as "least cost" over time. DII R.B., p. 4.

As the record in this proceeding clearly demonstrates, RESA's third party procurement proposal would increase the retail adder associated with Large C&I default service. *See* Duquesne M.B., p. 24; DII M.B., p. 6. RESA fails to explain how the retail adder would be calculated. *See* RESA Exceptions, p. 24 ("[O]ther retail servicing costs are approximated through an administratively set adder of \$4.49/MWh. This is essentially a proxy figure . . . and is not based on actual costs or bid prices."). By contrast, Duquesne's current in-house procurement product benefits both default service and shopping Large C&I customers. *See* Duquesne M.B., p. 24; DII M.B., p. 7; DII R.B., p. 5. RESA may not subvert Duquesne's obligations under the Competition Act in favor of an undefined hourly priced product that will increase customer costs. The Commission should therefore reject RESA's third party procurement proposal as inconsistent with the least cost procurement mandates of the Competition Act.

B. Reply Exception No. 2: The Recommended Decision correctly held that a non-bypassable collection of transmission costs should be rejected based on Commission precedent.

Pursuant to Commission precedent, the Commission should accept the ultimate conclusion of the R.D. that a non-bypassable collection of NMB Transmission Costs must be rejected. The Commission considered and rejected non-bypassable NMB Transmission Costs in the last round of default service plan ("DSP") proceedings for all major electric distribution companies ("EDCs"), including Duquesne's DSP proceeding. DII R.B., pp. 8-9. RESA's attempt to rehash arguments made in those proceedings to once again support a non-bypassable collection of NMB Transmission Costs should be disregarded by the Commission based on its prior findings. Moreover, as the R.D. correctly concludes, the Commission's Fixed Price Order is inapplicable to non-bypassable NMB Transmission Cost collections. *See* R.D., p. 36. For all the reasons fully litigated and rejected by the Commission in the last round of DSP proceedings for all Pennsylvania EDCs, a non-bypassable collection of NMB Transmission Costs should once again be denied.

In the last round of DSP proceedings, the Commission's systematic rejection of a non-bypassable collection of transmission costs was based on a number of different legal and factual findings, ranging from consistency with the Competition Act, proper development of a robust retail electric market, and harm to competitive market participants. *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), p. 83; *Petition of PECO Energy Company For Approval of its Default Service Program II*, Order and Opinion (Sept. 27, 2012), p. 60; *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 PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan*, Docket No. P-2012-2302074 (Jan. 24, 2013), p. 85. Each of these prior DSP proceedings contained extensive factual records, with arguments both in support and opposition of a non-bypassable transmission cost collection, that were fully considered by the Commission. *See* DII R.B., pp. 6-7; *see also* DII M.B., p. 17. Nevertheless, despite the Commission's previous rejection of this non-bypassable collection and reasons in support of the collection, RESA rehashes arguments that have already been fully considered and rejected by the Commission.

For example, RESA argues that a non-bypassable transmission cost collection is appropriate because current collection of NMB Transmission Costs shifts a competitive advantage to Duquesne's default service. RESA Exceptions, pp. 27-28. Yet, the Commission has already considered and rejected this argument for a non-bypassable transmission cost collection. In Duquesne's last DSP proceeding, the Commission held that the current collection of NMB Transmission Costs by EGSs is "consistent with the Commonwealth's continued migration to a more competitive retail market, and that RESA's proposal would be a step backward because it would result in the rebundling of transmission costs with distribution rates." *Petition of Duquesne Light Company For Approval of Default Service Plan For The Period of June 1, 2013 Through May 31, 2015*, Opinion and Order, Docket No. P-2012-2301664 (Jan. 25, 2013). As a result, the Commission has already considered the non-market based characteristics of transmission costs raised by RESA and still concluded that their non-bypassable collection is inappropriate.

Similarly, RESA argues that a non-bypassable collection of NMB Transmission Costs would satisfy the requirement of the Competition Act regarding nondiscriminatory access.

RESA Exceptions, p. 31. Commission precedent holds otherwise. In PECO's 2012 DSP proceeding, the Commission held that NMB Transmission Costs should continue to be collected by EGSs rather than by PECO via a non-bypassable rider. *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. Specifically, the Commission noted that because EGSs are load serving entities ("LSEs") for shopping customers, in the same way EDCs are LSEs for default service customers, the EGSs must be responsible for collecting all NMB Transmission Costs from customers. *Id.* In addition, the Commission found that RESA was unable to provide sufficient evidence that, "absent a NMB Rider, price distortions will occur and that supply costs will increase due to risk premium add-ons...." *Id.* Finally, in PPL's previous DSP proceeding, the Commission opposed a non-bypassable NMB Transmission Cost collection, noting the forced renegotiation of shopping contracts and increased likelihood of double cost collection by EDCs and EGSs. *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. Considering this repeated rejection of non-bypassable collections of NMB Transmission costs in EDCs' previous DSP proceedings on a variety of different grounds, Commission precedent clearly establishes that a non-bypassable collection of NMB Transmission costs is inappropriate.

Finally, the R.D. correctly dismisses RESA's assertion that the Fixed Price Order requires Duquesne to collect NMB Transmission Costs on a non-bypassable basis. R.D., p. 36. RESA contends that the Fixed Price Order prevents EGSs from offering fixed price products to customers with pass-through provisions, justifying removal of NMB Transmission Costs from EGS contracts. RESA Exceptions, pp. 33-34. In actuality, the Fixed Price Order merely provides labeling transparency regarding whether contracts include a fixed price or a price with

pass-through components. See DII M.B., p. 17 (citing *Guidelines for Use of Fixed Price Labels for Products with a Pass-Through Clause*, Docket No. M-2013-2362961, Final Order (Nov. 14, 2013)). The Fixed Price Order is entirely silent regarding whether a non-bypassable NMB Transmission Cost collection is appropriate. Moreover, as the R.D. notes, the Commission specifically rejected this argument in the recent FirstEnergy DSP proceeding. See R.D. at 36 (citing *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. 58)). RESA's reliance on the Fixed Price Order to justify non-bypassable collection of NMB Transmission Costs is therefore misplaced.

RESA's arguments in support of a non-bypassable transmission cost collection merely repeat arguments that have been fully considered and rejected by the Commission in prior DSP proceedings and reflect Commission precedent inapplicable to the collection of NMB Transmission Costs. Accordingly, consistent with its prior holdings and reasoning, the Commission should once again reject a non-bypassable transmission cost collection for Duquesne.

III. CONCLUSION

WHEREFORE, the Duquesne Industrial Intervenors respectfully request that the Pennsylvania Public Utility Commission approve the Recommended Decision in its entirety.

Respectfully submitted,

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