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December 1, 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: Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2015 through May 31, 2017
Docket No. P-2014-2417907**

Dear Secretary Chiavetta:

Enclosed please find PPL Electric Utilities Corporation's Replies to Exceptions for the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink that reads "Michael Hassell". The signature is written in a cursive, flowing style.

Michael W. Hassell

MWH/skr
Enclosure

cc: Honorable Susan D. Colwell
Certificate of Service

CERTIFICATE OF SERVICE

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).

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Date: December 1, 2014



Michael W. Hassell

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities :
Corporation for Approval of a Default : Docket No. P-2014-2417907
Service Program and Procurement Plan for :
the Period June 1, 2015 through May 31, :
2017 :

**PPL ELECTRIC UTILITIES CORPORATION
REPLY TO EXCEPTIONS**

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I. INTRODUCTION

PPL Electric Utilities Corporation (“PPL Electric” or the “Company”) herein submits this Reply to the Exceptions of Retail Energy Supply Association (“RESA”). This Reply is limited to RESA’s Exception No. 2.¹ In its Exceptions, RESA argues that the Recommended Decision (“RD”) of Administrative Law Judge Susan D. Colwell (“ALJ”) erred in recommending that the Pennsylvania Public Utility Commission (“Commission”) reject the proposal of RESA and Exelon Generation Company, LLC (“ExGen”) regarding the cost responsibility for Non-market-based Transmission Service Charges (“NMB Charges”). RESA and ExGen seek to require PPL Electric to bear the cost of all NMB Charges incurred by electric generation suppliers (“EGSs”), and recover all NMB Charges, both for default service customers and customers served by EGSs, through a non-bypassable surcharge assessed to all retail customers.²

RESA contends that the record evidence supports rejecting the RD and adopting RESA’s NMB proposal. RESA’s Exceptions, however, simply summarize its own evidence and arguments, and fail to address the evidence, arguments, and legal precedent presented by the Company and credited by the RD. RESA incorrectly contends that wholesale suppliers receive discriminatory access to the electric distribution companies’ (“EDCs”) systems that is not provided to EGSs. Moreover, RESA does not address the fact that, as found by the RD, RESA

¹ RESA’s Exception No. 1 opposes the recommendation in the RD that the Commission reject PPL Electric’s proposal to reduce the demand level for the Small Commercial & Industrial Class from 500 kW to 100 kW. PPL Electric also has filed an Exception to this recommendation.

² In its testimony, ExGen proposed that NMB Charges be recovered from all retail customers through a non-bypassable surcharge. ExGen, however, did not file an Initial Brief in this proceeding to support its proposal. When parties have been ordered to file briefs and fail to include all the issues they wish to have reviewed, the issues not briefed have been waived. *Pa. PUC v. Metropolitan Edison Company*, Docket Nos. R-00061366 *et al.*, 2006 Pa. PUC LEXIS 116 (Order entered October 31, 2006) (citing *Jackson v. Kassab*, 812 A.2d 1233 (Pa. Super 2002); *Brown v. PA Dep’t of Transportation*, 843 A.2d 429 (Pa. Cmwlth. 2004)); *see also Pa. PUC v. Columbia Gas of Pennsylvania*, Docket Nos. R-00049783, 2005 Pa. PUC LEXIS 14 at *165-66; 245 P.U.R.4th 1 (November 4, 2005) (concluding as reasonable the ALJ’s recommendation that when parties have been directed to file briefs and fail to include an issue in their briefs, the unbriefed issues may properly be viewed as having been waived). Not only did ExGen fail to file an Initial Brief, it also failed to take any exceptions to the RD. Therefore, ExGen has waived its proposal to modify the cost responsibility for NMB Charges.

and ExGen failed to meet their burden to demonstrate that the Commission should alter its decision from the fully litigated DSP II Program proceeding, wherein the Commission rejected the very same NMB proposal.

For these reasons, as more fully explained below and in PPL Electric's Initial Brief and Response Brief, which are incorporated herein, the Commission should adopt the recommendation of the RD and reject the proposal of RESA and ExGen that PPL Electric assume the cost responsibility for NMB Charges on behalf of EGSs and recover all NMB Charges, both for default service and shopping customers, through a non-bypassable surcharge assessed to all retail customers.

II. REPLY TO RESA EXCEPTION NO. 2

The RD correctly found that PPL Electric has not proposed nor is it seeking any changes to the cost responsibility for NMB Charges in this proceeding. Therefore, the RD properly concluded that RESA and ExGen bear the burden of proof to demonstrate that their NMB proposal should be adopted. (RD p. 46) Based on a review of the evidence and arguments presented by the parties, the RD concluded that RESA and ExGen failed to meet their burden of proof, stating that the "record in this case contains no persuasive evidence to support a modification of the present method used by PPL Electric for the collection of transmission and transmission-related costs." (RD p. 51) RESA takes exception to the RD, arguing that, according to RESA, "the record evidence fully supports rejecting the ALJ's recommendation and adopting RESA's proposal." (RESA Exceptions, p. 9) RESA's argument is fundamentally flawed and should be rejected.

A. RESA FAILED TO MEET ITS BURDEN OF PROOF

PPL Electric's proposal in this case is identical to the cost responsibility for NMB Charges that was fully litigated and approved in PPL Electric's DSP II Program. Under the DSP

II Program, each EGS currently is responsible for the market-based and non-market based costs for the customers they serve, and PPL Electric is responsible for the market-based and non-market based costs for its Default Service customers. (PPL Electric Statement No. 1-R, p. 42) There is no dispute that PPL Electric has not proposed nor is it seeking any changes to the cost responsibility for NMB Charges in its DSP III Program. Because RESA's and ExGen's proposal to modify the cost responsibility for NMB Charges is entirely outside the proposals set forth in PPL Electric's proposed DSP III Program, the RD correctly concluded that RESA and ExGen bear the burden of proof on their proposal to modify the cost responsibility for NMB Charges.³ (RD p. 46) Notably, RESA does not take any exception to the RD's conclusion.

In this case, RESA conceded that its proposal to shift the cost responsibility of NMB Charges was previously considered and rejected by the Commission in PPL Electric's DSP II Program proceeding.⁴ (See RESA IB, p. 16) Therefore, RESA and ExGen had the burden to proffer credible evidence sufficient to demonstrate a change in circumstances from DSP II to DSP III that would warrant a departure from the cost responsibility for NMB Charges previously approved by the Commission. See *Joint Petition of Metropolitan Edison Company*,

³ A party that offers a proposal not included in the original filing bears the burden of proof for such proposal. See *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981); *Pa. PUC v. Duquesne Light Company*, Docket Nos. R-2013-2372129, et al. (Opinion and Order entered Apr. 23, 2014); *Pa. PUC v. Columbia Gas of Pennsylvania, Inc.*, Docket Nos. R-2010-2215623, et al., 2012 Pa. PUC LEXIS 420 (Opinion and Order entered Mar. 15, 2012); *Pa. PUC v. Metropolitan Edison Company, et al.*, Docket Nos. R-00061366, et al., 2007 Pa. PUC LEXIS 5 (Opinion and Order entered Jan. 11, 2007); *Pa. PUC v. Philadelphia Gas Works*, Docket Nos. R-00061931, et al., 2007 Pa. PUC LEXIS 45 (Opinion and Order entered Sept. 28, 2007).

⁴ In rejecting this proposal, the Commission stated as follows:

[W]e will reaffirm our finding that the imposition of a non-bypassable charge for the recovery of transmission-based costs is inappropriate for the reasons given in the FE DSP II Order. Moreover, we agree with PPLICA that Electric Competition Law as well as Commission regulations require that transmission costs be treated as unbundled supply-related costs, and are more properly recovered from customers by the particular entity that provides generation service to those customers.

Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan, Docket No. P-2012-2302074, Slip Op. p. 85 (Jan. 24, 2013).

Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs, Docket Nos. P-2013-2391368, et al., 2014 Pa. PUC LEXIS 552, *50-51, Slip Op. pp. 31-32 (July 24, 2014) (“*FirstEnergy DSP III Order*”) (holding that parties seeking approval of a previously rejected proposal had the burden to demonstrate that the Commission should alter its prior decision by presenting evidence sufficient to show changed circumstances that would warrant a departure from the Commission’s prior order). In an effort to meet its burden to prove that the Commission should alter its decision from PPL Electric’s DSP II proceeding, RESA asserted several arguments in this proceeding.

First, RESA argued that NMB Charges are unpredictable and cannot be hedged by EGSs. (RESA IB., pp. 9-11) However, this proves nothing. RESA seems to suggest that EGSs should bear costs to serve their own shopping customers only when those costs can be hedged. There simply is no basis in law, fact or policy for this position. Moreover, as PPL Electric explained in its Initial Brief, there simply is no record evidence to suggest that NMB Charges have become any more or less predictable or hedgable than they were in the DSP II Program proceeding. (PPL Electric IB, p. 19) Further, the Commission very recently rejected this very same argument in the *FirstEnergy DSP III Order*. (See PPL Electric IB, pp. 21-22) RESA has not offered any reason or evidence to depart from the Commission’s reasoning in the *FirstEnergy DSP III Order*.

Second, RESA asserted that the cost responsibility for NMB Charges approved in PPL Electric’s DSP II Program and proposed in its DSP III Program results in an inequitable treatment of wholesale and retail suppliers. (RESA IB, pp. 11-12) As explained in more detail below, EGSs and wholesale suppliers are not similarly situated; one is providing wholesale power to EDCs and the other is providing retail competitive generation supply to shopping customers. Furthermore, RESA failed to offer any evidence to suggest that default service

wholesale suppliers and retail suppliers will be treated differently under the proposed DSP III Program than they were under the DSP II Program, *i.e.*, that the treatment of wholesale and retail suppliers has changed since the DSP II Program. (PPL Electric RB, pp. 16-18)

Third, RESA argued that its proposal should be adopted because EGSs have a limited ability to pass through unanticipated changes in costs such as NMB costs as a result of the Commission's decision in *Guidelines for Use of Fixed Price Labels for Products With a Pass Through Clause*, Docket No. M-2013-2362961 (Final Order entered Nov. 14, 2013) (hereinafter "*Fixed Price Order*"). (RESA IB, p. 17) Although the *Fixed Price Order* was issued after the Commission's order in the DSP II Program, the *Fixed Price Order* did not foreclose the ability of EGSs to pass through unanticipated NMB Charges as suggested by RESA. (PPL Electric IB, pp. 20-21) Moreover, the Commission very recently rejected this very same argument in the *FirstEnergy DSP III Order*. (See PPL Electric IB, pp. 21-22) RESA has not offered any reason or evidence to depart from the Commission's reasoning in the *FirstEnergy DSP III Order*.

Fourth, RESA asserted that its proposal is consistent with the Commission's decision in the *FirstEnergy DSP III Order*. (RESA IB, pp. 15-17) Although the *FirstEnergy DSP III Order* was issued after the Commission's order in the DSP II Program, the Commission's decision in the *FirstEnergy DSP III Order* to allow the FirstEnergy EDCs to assume the cost responsibility of some, but not all, NMB Charges was the result of a settlement. Moreover, the Commission's decision in the *FirstEnergy DSP III Order* unequivocally rejected the very same arguments raised by RESA in this proceeding. (PPL Electric IB, p. 20; PPL Electric RB, pp. 19-20)

Finally, RESA has failed to provide any details regarding how its proposal would be implemented, including the methodology to recover the costs through the proposed non-bypassable rider. Without such information, it is impossible to assess to what extent the proposal

may shift costs between shopping and non-shopping customers. These are fundamental issues that must be addressed on the record before the Commission could even consider RESA's and ExGen's proposal to change the cost responsibility for NMB Charges. RESA and ExGen have failed to do so in this proceeding and, therefore, their proposal must be rejected.

Based upon a review of the evidence and arguments advanced by the parties on the NMB proposal, the RD concluded that "the record in this case contains no persuasive evidence to support a modification to the present method used by PPL Electric for the collection of transmission and transmission-related costs." (RD p. 51) Stated otherwise, the RD found that RESA and ExGen failed to meet their burden to demonstrate that the Commission should alter its decision from the fully litigated DSP II Program.

For these reasons, as more fully explained in PPL Electric's Initial and Reply Briefs, the RD correctly concluded that RESA and ExGen failed to meet their burden to demonstrate that the Commission should alter its decision from the fully litigated DSP II Program. Therefore, the Commission should adopt the recommendation of the RD and reject the proposal of RESA and ExGen that PPL Electric assume the cost responsibility for NMB Charges on behalf of EGSs and recover all NMB Charges, both for default service and shopping customers, through a non-bypassable surcharge assessed to all retail customers.

B. RESA FAILED TO DEMONSTRATE THAT THE COST RESPONSIBILITY FOR NMB CHARGES IS DISCRIMINATORY OR CONTRARY TO THE PUBLIC UTILITY CODE

Under the assigned cost responsibility for NMB Charges that was fully litigated and approved in PPL Electric's DSP II Program, each EGS currently is responsible for the market-based and non-market based costs for the customers they serve, and PPL Electric is responsible for the market-based and non-market based costs for its Default Service customers. (PPL Electric Statement No. 1-R, p. 42) In its Exceptions, RESA argues that the current cost

responsibility for NMB Charges approved in PPL Electric's DSP II Program is discriminatory and contrary to Sections 2803 and 2804(6) of the Public Utility Code, 66 Pa.C.S. §§ 2803, 2804(6). (RESA Exceptions, pp. 12-13) For the reasons explained below, RESA's arguments are without merit and should be rejected.

RESA contends that the cost responsibility for NMB Charges approved in PPL Electric's DSP II Program is discriminatory because, according to RESA, it treats EGSs and wholesale suppliers differently. RESA's discriminatory treatment argument is fundamentally flawed because EGSs and wholesale suppliers are not similarly situated. EGSs provide retail competitive electric generation supply to end-use shopping customers. Wholesale suppliers, on the other hand, do not serve end-use customers but, rather, provide wholesale electric generation supply to EDCs that serve as the Default Supply Provider to non-shopping customers. EGSs provide service pursuant to a contract by and between the EGSs and the shopping customers; whereas, wholesale suppliers provide supply to EDCs pursuant to a wholesale contract by and between the wholesale suppliers and the EDCs that is obtained through a competitive procurement under a Commission-approved default service plan. The terms of these contracts, and the products acquired, vary among EDCs and within the mix of products acquired by an EDC.⁵ Further, the terms, conditions, and duration of the contracts between EGSs and shopping customers and contracts between wholesale suppliers and EDCs are markedly different. Similarly, the risks, premiums, terms, and conditions of participating in the wholesale market are clearly different than the retail competitive market. Accordingly, EGSs and wholesale suppliers are not the same and, therefore, different treatment of these different entities does not and cannot

⁵ For example, PPL Electric uses only full requirements contracts for Small C&I default service customers, but has separate contracts for block and solar products, in addition to full requirements products, for its Residential default service customers.

constitute discrimination as suggested by RESA. Although RESA advocates for a “level playing field,” RESA fails to recognize that EGSs and wholesale suppliers are “playing different sports.”

RESA argues that Sections 2803 and 2804(6) of the Public Utility Code mandate that both EGSs and wholesale suppliers receive nondiscriminatory access to the EDCs right of cost recovery. (RESA Exceptions, pp. 12-13) There are several fundamental flaws to this argument.

First, these provisions have nothing to do with cost recovery of NMB Charges. Sections 2803 and 2804(6) of the Public Utility Code provide, in pertinent part as follows:

- “Direct access.” --The right of electric generation suppliers and end-use customers *to utilize and interconnect with the electric transmission and distribution system on a nondiscriminatory basis* at rates, terms and conditions of service *comparable to the transmission and distribution companies' own use of the system* to transport electricity from any generator of electricity to any end-use customer.⁶
- Consistent with the provision of section 2806, the commission shall require that a public utility that owns or operates jurisdictional transmission and distribution facilities *shall provide transmission and distribution service* to all retail electric customers in their service territory and to electric cooperative corporations and electric generation suppliers, affiliated or nonaffiliated, on rates, terms of access and conditions that are *comparable to the utility's own use of its system.*⁷

Despite RESA’s assertion to the contrary, the focus of Sections 2803 and 2804(6) is not about access to PPL Electric’s default service cost recovery mechanism but, rather, on equal and open access to the Company’s transmission and distribution systems.⁸ There simply is nothing in the record to suggest that EGSs do not have equal and open access to PPL Electric’s transmission and distribution facilities.

⁶ 66 Pa.C.S. § 2803.

⁷ 66 Pa.C.S. § 2804(6).

⁸ Even assuming, *arguendo*, that Sections 2803 and 2804(6) could be construed to require equal access to an EDCs cost recovery mechanism as suggested by RESA, the plain language of these provisions clearly requires equal access only among EGSs, not equal access among EGSs and wholesale suppliers. Indeed, Sections 2803 and 2804(6) fail to even mention wholesale suppliers. Here, there is nothing in the record to suggest that all EGSs are not treated the same with respect to PPL Electric’s NMB Charges cost recovery mechanism.

Second, RESA asserts that EGSs should have equal access to PPL Electric's cost recovery mechanism for NMB Charges to place them in an "equal" position with wholesale suppliers. However, this is PPL Electric's cost recovery mechanism, not the wholesale suppliers' mechanism. There simply is no basis to assert wholesale suppliers have preferential "access" to the Company's cost recovery mechanism.

Third, under the rules of PJM Interconnection, LLC ("PJM"), all load serving entities ("LSEs") are charged market-based and NMB costs based on each LSE's share of the load served. (PPL Electric Statement No. 3-R, p. 13) Indeed, RESA concedes that LSEs are obligated to pay NMB Charges. (RESA IB, p. 9) It is undisputed that EGSs are the LSEs for shopping customers and PPL Electric is the LSE for default service customers. This means that each EGS bears the costs for the customers served by that EGS, and PPL Electric bears the costs for its default service customers. (See PPL Electric IB, pp. 16-17) Although RESA admits that LSEs are obligated to pay NMB Charges, RESA conveniently overlooks and fails to refute that EGSs are the LSEs for shopping customers, not PPL Electric.

Fourth, the Commission has previously concluded in a fully litigated proceeding that NMB Costs should be recovered from customers by the entity that serves the customers. *See Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan*, Docket No. P-2012-2302074, Slip Op. p. 85 (Jan. 24, 2013) ("we agree with PPLICA that Electric Competition Law as well as Commission regulations require that transmission costs be treated as unbundled supply-related costs, and are more properly recovered from customers by the particular entity that provides generation service to those customers"). As explained above, RESA has failed to introduce to evidence demonstrating that the Commission

should alter its decision from the fully litigated DSP II Program and shift responsibility for certain costs from EGSs to PPL Electric.

For these reasons, as more fully explained in PPL Electric's Initial and Reply Briefs, RESA failed to demonstrate that the cost responsibility for NMB Charges that was fully litigated and approved in PPL Electric's DSP II Program is discriminatory or contrary to Sections 2803 and 2804(6) of the Public Utility Code. Therefore, the Commission should adopt the recommendation of the RD and reject the proposal of RESA and ExGen that PPL Electric assume the cost responsibility for NMB Charges on behalf of EGSs and recover all NMB Charges, both for default service and shopping customers, through a non-bypassable surcharge assessed to all retail customers.

C. RESA'S RELIANCE ON THE FIRSTENERGY COMPANIES' NMB COST RECOVERY IS MISPLACED AND INAPPROPRIATE

RESA contends that if the Commission adopts the recommendation of the RD and rejects RESA's and ExGen's NMB Charges proposal, the Commission would be treating NMB Charges differently for PPL Electric than it does for the FirstEnergy EDCs. RESA therefore recommends that the Commission issue a decision that aligns PPL Electric's NMB Charges with the outcome of the *FirstEnergy DSP III Order*. (RESA Exceptions, pp. 14-15) RESA's reliance on the *FirstEnergy DSP III Order* is misplaced and should be rejected for several reasons.

First, the Commission's decision in the *FirstEnergy DSP III Order* to allow the FirstEnergy EDCs to assume the cost responsibility of some, but not all, NMB Charges was the result of a settlement. The fact that the FirstEnergy Companies were willing to voluntarily agree to assume this cost responsibility as part of a settlement does not mean that it is acceptable for all other EDCs.

Second, the settlement petition in the FirstEnergy DSP III proceeding clearly indicates that it is not binding on any parties, including the settling parties. *See FirstEnergy DSP III Order*, Slip Op. p. 18. Clearly that settlement, which PPL Electric was not a party to, is not binding on PPL Electric or any other party to this proceeding. Further, the agreement reached by the parties in the FirstEnergy DSP III proceeding was a compromise of competing interests. No such agreement has been reached in this case.

Third, contrary to RESA assertion otherwise, RESA's proposal is not consistent with the *FirstEnergy DSP III Order*. In this proceeding, RESA proposes that PPL Electric assume the cost responsibility for all NMB Charges for both default service and shopping customer load. In support, RESA argues that the unpredictable and unhedgable nature of NMB Charges and the Commission's *Fixed Price Order* justified the non-bypassable collection of NMB Charges. However, as explained above and in PPL Electric's Initial Brief, these very same arguments were rejected by the Commission in the *FirstEnergy DSP III Order*. (See PPL Electric IB, pp. 21-22)

Finally RESA's alternative proposal that wholesale suppliers bear the cost responsibility for the same NMB Charges voluntarily agreed to by the FirstEnergy Companies, if adopted, would require new contracts with wholesale suppliers. Current DSP II contracts with wholesale suppliers do not require the suppliers to be responsible for NMB Charges. The DSP II contracts, however, extend for various terms into the DSP III period. Therefore, it would not be possible to require these wholesale suppliers to bear these costs without new contracts. (PPL Electric Statement No. 1-R, pp 44-45). Further, as RESA concedes, PPL Electric's Default Service Master Supply Agreement ("SMA") would have to be modified if RESA's alternative proposal were adopted. (RESA IB, p. 19) However, RESA has failed to provide any details regarding

how its alternative proposal would be implemented, including what changes would need to be made to the SMA.

Based on the foregoing, it cannot reasonably be maintained that RESA's proposal is consistent with the *FirstEnergy DSP III Order*. For these reasons, as more fully explained in PPL Electric's Initial and Reply Briefs, the Commission should adopt the recommendation of the RD and reject the proposal of RESA and ExGen that PPL Electric assume the cost responsibility for NMB Charges on behalf of EGSs and recover all NMB Charges, both for default service and shopping customers, through a non-bypassable surcharge assessed to all retail customers.

III. CONCLUSION

WHEREFORE, for all the foregoing reasons, as well as those more fully explained in its Initial and Response Briefs, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission deny the Exceptions of the Retail Energy Supply Association and adopt the recommendation of Administrative Law Judge Susan D Colwell to reject the proposal that PPL Electric assume the cost responsibility for Non-market-based Transmission Service Charges on behalf of electric generation supplies and recover all Non-market-based Transmission Service Charge, both for default service and shopping customers, through a non-bypassable surcharge.

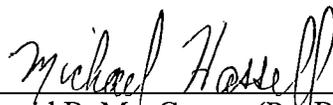
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Dated: December 1, 2014



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