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December 1, 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 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:

Please find enclosed for filing with the Pennsylvania Public Utility Commission the Reply Exceptions of the PP&L Industrial Customer Alliance ("PPLICA") in the above-referenced proceeding.

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

Very truly yours,

McNEES WALLACE & NURICK LLC

By

A handwritten signature in black ink, appearing to read 'A. Bakare', is written over a horizontal line.

Adeolu A. Bakare

Counsel to PP&L Industrial Customer Alliance

Enclosures

c: Administrative Law Judge Susan D. Colwell (via e-mail and First-Class Mail)
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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Adeolu A. Bakare

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Dated this 1st day of December, 2014, at Harrisburg, Pennsylvania

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY EXCEPTION OF THE
PP&L INDUSTRIAL CUSTOMER ALLIANCE**

Air Products and Chemicals, Inc.
Armstrong World Industries, Inc.
General Dynamics-OTS Scranton
Harristown Enterprises, Inc.
Hercules Cement Company

Linde LLC
SAPA Extrusions, Inc.
The Hershey Company
TIMET North America
Wegmans Food Markets, Inc.

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Dated: December 1, 2014

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I. INTRODUCTION

On April 18, 2014, PPL Electric Utilities Corporation ("PPL" or "Company") filed with the Pennsylvania Public Utility Commission ("PUC" or "Commission") a Petition for Approval of the Company's Third Default Service Program ("DSP III"). *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 (Apr. 18, 2014) (hereinafter, "Petition"). On May 9, 2014, the PP&L Industrial Customer Alliance ("PPLICA")¹ filed a Petition to Intervene and Answer to the Company's Petition.² A Prehearing Conference was held on June 5, 2014, before Administrative Law Judge ("ALJ") Susan D. Colwell where the ALJ approved a joint litigation schedule submitted by the parties.

On October 30, 2014, following discovery, testimony, hearings, and briefs, ALJ Colwell issued a Recommended Decision ("R.D.") in this proceeding. In the R.D., ALJ Colwell addressed, among other issues, whether PPL should implement a non-bypassable rider for the collection of certain transmission and transmission-related charges ("PJM Charges").³

On November 19, 2014, PPLICA received Exceptions from PPL and RESA. PPLICA hereby files this Reply to the Exceptions of RESA responding to RESA's Exception No. 2 and supporting the R.D.'s determination that the Commission should deny RESA's proposed non-bypassable rider.

¹ PPLICA's compilation is listed on the cover page of this Reply Exception.

² Other intervenors include the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), the Retail Energy Supply Association ("RESA"), Noble Americas Energy Solutions LLC ("Noble"), the Sustainable Energy Fund ("SEF"), NextEra Energy Power Marketing, LLC ("NEPM"), Citizens for Pennsylvania's Future ("PennFuture"), and Exelon Generation Company, LLC ("ExGen").

³ As identified in the R.D., RESA supports recovery of transmission or Network Integration Transmission Services ("NITS") costs and transmission-related costs, including Transmission Enhancement; Expansion Cost Recovery; Non-firm Point to Point Transmission Service Credits; Generation Reactivation or Reliability-Must-Run, and Regional Transmission Expansion ("RTEP") costs. R.D., p. 46. Consistent with the R.D., transmission and transmission-related costs are collectively referenced herein as "PJM Charges."

II. REPLY TO EXCEPTION

1. Reply Exception 1: The ALJ correctly determined that RESA failed to furnish persuasive evidence to support the proposed recovery of certain PJM Charges through a non-bypassable rider.

The R.D. correctly rejected RESA's proposal for PPL to adopt a non-bypassable rider for recovery of various PJM Charges. In response, RESA filed Exceptions alleging that the R.D. failed to set forth a "detailed analysis" and that the record supports adoption of the proposed non-bypassable rider. RESA Ex., pp. 9-13. RESA's Exceptions argue that maintaining PPL's current rate design, where PPL and Electric Generation Suppliers ("EGSs") assume responsibility for PJM Charges on a load-following basis, would subject EGSs to unmanageable rate volatility and expose customers to unreasonable risk premiums. *See* RESA Ex., pp. 10-11. More specifically, RESA alleges that volatile PJM Charges force EGSs to either apply a risk premium that would likely exceed the cost of any adjustments to PJM Charges or forego the risk premium and absorb such costs. *See* RESA Ex., p. 11. RESA premises this perceived dilemma on its position that a recent PUC Order restricts EGSs from using pass-through arrangements to recover PJM Charges.⁴ RESA Ex., p. 11. RESA also claims that the existing load-following recovery method violates the provision of the Electricity Generation Choice and Competition Act ("Competition Act") granting all Load Serving Entities ("LSEs") equal and nondiscriminatory access to PPL's distribution and transmission infrastructure. *See* RESA Ex., p. 13.

RESA's Exceptions overlook or ignore the well-reasoned analysis of the record and applicable law set forth in the R.D. and should be summarily rejected. *See* R.D., pp. 46-51. The R.D. cited to the extensive record evidence showing that adopting the proposed non-bypassable rider would adversely affect customers by eliminating their freedom to negotiate fixed-price

⁴ RESA cites to the *Guidelines for Use of Fixed Price Labels for Products With a Pass-through Clause*, Docket No. M-2011-2362961, Final Order entered November 14, 2013 ("Fixed Price Order") as a change in circumstance allegedly negating EGSs ability to utilize pass-through clauses. *See* RESA Ex., p. 11.

arrangements for PJM Charges and exposing customers to unreasonable risk of double-collection. *See* R.D., p. 51. Additionally, the R.D. provided a thorough analysis of the Competition Act and relevant precedents showing that PPL's existing methodology assigning recovery of PJM Charges on a load-following basis is entirely consistent with both PJM rules and the Competition Act. *See* R.D., p. 49. Therefore, as set forth in more detail below, the Commission should deny RESA's Exceptions and adopt the R.D. without modification

First, with regard to RESA's allegations of unpredictable rate volatility, the R.D. agreed with evidence presented by PPL, PPLICA, and Noble, showing that PPL failed to show evidence of unmanageable volatility of PJM Charges. *See* R.D., p. 47. Although RESA emphasized parties' acknowledgement that the NITS rate in PPL's service territory have increased in recent years, the R.D. appropriately found such adjustments to be manageable, stating that:

NITS costs, in particular, are predictable from year to year. PPL witness Johnson explained that "NITS charges are the largest portion of the transmission service charge and the NITS rate is set by PJM on an annual basis, thereby reducing the volatility to which any entity is exposed."

R.D., p. 47 *citing* Noble M.B., p. 3 *citing* PPL St. No. 3-R at 15. Additionally, PPLICA's Main Brief explained that the any annual adjustments to NITS rates are initially published 30 days in advance and further confirmed 15 days before taking effect on June 1. *See* PPLICA R.B., p. 5. The only other purported indication of volatile or unpredictable PJM Charges offered by RESA was a reference to PJM data described in RESA's Main Brief as a \$1.4 million PPL zone allocation of \$26 million in historic transmission upgrades to be recovered through RTEP charges throughout PJM. *See id.* However, as discussed in PPLICA's Reply Brief, the "historic" costs cited by RESA date back to 2005 and include projected costs through 2019. *See id.* It is not clear how a projected \$1.4 million allocation of the total \$26 million RTEP costs

over a 14-year period relates to rate volatility. Taken as a whole, the evidence offered by RESA fails to show any volatility that would necessitate or even support a change to PPL's current methodology for recovering PJM Charges.

Further, the R.D. cited to extensive record evidence clarifying that any EGS concerned with volatility of PJM Charges already has authority to recover PJM Charges on a pass-through basis. *See* R.D., p. 11. While RESA continues to portray the Fixed Price Order as a change in circumstances, the Commission has repeatedly confirmed that the Fixed Price Order has no effect on EGSs' authority to apply pass-through arrangements. *See* R.D., p. 50 *citing* PPLICA M.B., pp. 14-15. Moreover, this point was directly addressed by Chairman Robert F. Powelson and Vice-Chairman John F. Coleman, Jr. during the Commission's November 13, 2014 Public Meeting. At the Public Meeting, Chairman Powelson and Vice-Chairman Coleman entered a Joint Motion in a proceeding addressing a Declaratory Order filed by OSBA with regard to the Commission's jurisdiction over certain charges imposed by FirstEnergy Solutions Corporation ("FES") upon small business customers. In support of its Declaratory Order, OSBA alleged that the Commission previously exercised authority over EGS rates in the Fixed Price Order, prompting the following clarification from Chairman Powelson and Vice-Chairman Coleman:

Further, the Fixed Price Order did not prohibit EGSs from marketing contracts that include pass-through clauses. Indeed, such a prohibition would exceed the Commission's authority. Rather, pursuant to our mandate to ensure that marketing materials can clearly be understood by customers, the Commission, on a going-forward basis, prohibited contracts with pass-through clauses from being marketed as fixed-price contracts.

John R. Evans, Small Business Advocate v. First Energy Solutions Corporation, Docket No. P-2014-2421556, Joint Motion of Chairman Robert F. Powelson and Vice-Chairman John F. Coleman, Jr. (November 13, 2014) (attached hereto as Appendix A). The Chairman and Vice-

Chairman's comments are equally relevant here and firmly establish that EGSs already possess the resources necessary to reasonably recover PJM Charges.

Additionally, the R.D. correctly observed that the risk premiums charged by EGSs to account for PJM Charges comprise part of a valued fixed-price service that should not be eliminated. *See* R.D., p. 50. In its Exceptions, RESA suggested that imposition of risk premiums disadvantages customers by potentially forcing the customer to remit more than the actual PJM Charges incurred by the EGS on behalf of said customer. *See* RESA Ex., p. 11. Conversely, the R.D. recognized that customers, particularly Large C&I customers, may be willing to pay the risk premium in exchange for greater rate stability. *See* R.D., p. 50. *citing* PPLICA M.B., p. 15 *citing* PPL St. No. 1-R, p. 44. As acknowledged by RESA, Electric Distribution Companies ("EDCs") are not authorized to utilize fixed price recovery arrangements, and therefore customers would lose this option if the Commission approves the non-bypassable rider. *See* RESA Ex., p. 10 (confirming that PJM Charges recovered through the EDC would be recovered based on actual costs, *i.e.*, passed-through). Therefore, as made abundantly clear in the R.D., approving RESA's proposed non-bypassable rider would actually limit the competitive retail options currently available to customers in Pennsylvania.

Further, RESA's proposal lacks consideration for the Company's customers. While RESA purports to be concerned with remedying a perceived injustice to customers, RESA's Exceptions ignore the fact that approval of the non-bypassable rider would expose customers to significant risk of double charges. *See* R.D., p. 51; *see also* PPLICA M.B., pp. 18-22; PPLICA R.B., pp. 10-14. As articulated by PPL Witness Bethany Johnson,

[i]f the EDC were to develop a non-bypassable clause for the non-market based charges, every customer with every EGS would need a revised contract effective on the date in which the change took place. Otherwise, customers would be paying the EGS price that

includes transmission costs, as well as being charged by the EDC for transmission costs.

PPLICA M.B., p. 20 *citing* PPL St. No. 3-R, p. 15. Similarly, the record contains no detail regarding the cost allocation or rate design structure to be applied to the proposed non-bypassable charge, leaving much uncertainty as to how the mechanism could be implemented on PPL's system. *See* R.D., p. 49; *see also* PPLICA M.B., pp. 22-23. Even assuming, *arguendo*, that RESA had met its burden of proof as to need for the proposed non-bypassable rider, the R.D. correctly observed that RESA had failed address transitional and cost allocation issues that would have to be addressed before implementation of such a rider could occur.⁵

The R.D. also appropriately rejected RESA's claim that PPL's current practice of recovering PJM Charges on a load-following basis violates the "equal access" provisions of the Competition Act. *See* R.D., p. 49. RESA submits that PPL currently violates the Competition Act by assuming responsibility for PJM Charges for wholesale suppliers contracted to serve its default service customers, while leaving EGSs to directly recover such costs from shopping customers. RESA Ex., p. 13.⁶ As observed in the R.D., PPL's current practice is supported by PJM rules assigning responsibility for PJM Charges to each LSE. *See* R.D., p. 49. PPLICA's Reply Brief further clarifies that wholesale suppliers serving PPL are not LSEs under PJM rules or electric suppliers under the Competition Act. *See* PPLICA R.B., p. 7. As stated in PPLICA's Reply Brief, "RESA imagines that the Competition Act establishes a parity requirement for retail electric suppliers and wholesale electric suppliers when in fact, the Competition Act requires

⁵ By way of example, if the Commission were to approve RESA's proposed non-bypassable rider, the Commission should adopt a carve-out of Large C&I customers based on the unique effects of the proposal upon the existing Large C&I market where 98.6% of load has already switched to competitive supply. *See* PPLICA M.B., p. 23, n. 13; *see also* PPLICA R.B., p. 15, n. 16.

⁶ If the Commission adopts RESA's alternative proposal for the wholesale default service suppliers to be responsible for NITS, then the Commission must address cost-allocation issues, including confirming whether the wholesale suppliers would be required recover PJM Charges in a manner consistent with the litigated cost-based rate design set forth in PPL's Transmission Service Charge for Large C&I – Transmission customers. *See* RESA Ex., p. 15.

only that PPL offer use of its system to EGSs on terms comparable to its own use of the system." *See id.* Because both PPL and the EGSs remain responsible for PJM Charges incurred on behalf of their respective default service and competitive retail customers, PPL has satisfied the "equal access" provision with regard to PJM Charges.

Finally, the Commission has previously rejected RESA's proposal to force EDCs to involuntarily create non-bypassable riders for recovery of PJM Charges on multiple occasions. *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. There is no valid reason to depart from that precedent here.

As set forth above, the R.D. addressed each of the contentions raised in RESA's Exceptions based on record evidence and applicable law. RESA's attempts to demonstrate a change in circumstance since the Commission denied a similar proposal for non-bypassable recovery of PJM Charges during PPL's DSP II proceeding are unpersuasive and must be denied. Accordingly, PPLICA requests that the Commission deny RESA's Exception No. 2 consistent with the above arguments.

III. CONCLUSION

WHEREFORE, the PP&L Industrial Customer Alliance respectfully requests that the Pennsylvania Public Utility Commission grant the following relief:

- (1) Deny the Retail Energy Supply Association's Exception No. 2;
- (2) Deny any proposal to implement a non-bypassable rider to collect any transmission and/or transmission-related costs from shopping customers;
- (3) Alternatively, approve a carve-out for Large C&I customers applicable to any non-bypassable rider for the recovery of any transmission and/or transmission-related costs; and
- (4) Grant any additional relief deemed appropriate and consistent with the above recommendations.

Respectfully submitted,

McNEES WALLACE & NURICK LLC

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Dated: December 1, 2014

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

John R. Evans, Small Business
Advocate

Public Meeting November 13, 2014
2421556-OSA
Docket No. P-2014-2421556

v.

FirstEnergy Solutions Corporation

**JOINT MOTION OF
CHAIRMAN ROBERT F. POWELSON AND
VICE CHAIRMAN JOHN F. COLEMAN, JR.**

Before the Commission for consideration and disposition is the Petition for Interlocutory Review and Answer to Material Question filed on August 8, 2014 by FirstEnergy Solutions Corporation (FES). The Petition was filed during the pendency of the Small Business Advocate's (OSBA) Petition for a Declaratory Order, filed May 15, 2014.

The OSBA's Petition asks the Commission to prevent FES from recovering certain charges from small business customers pursuant to electricity supply contracts. We are of the opinion, however, that in doing so, the OSBA misapprehends the Commission's jurisdiction over retail electricity generation suppliers (EGSs). Thus, we believe it is prudent for the Commission to exercise its discretion¹ to not address the merits of the Petition for a Declaratory Order.

It is a basic tenet of Public Utility Law that the Commission only has those powers that are enumerated to it.² The Commission's jurisdiction over EGSs is set forth in Sections 2807 and 2809 of the Public Utility Code³ and implemented in Chapter 54 of our Regulations.⁴ A review of this authority makes it clear that Commission jurisdiction does not extend to interpreting the terms and conditions of a contract between an EGS and a customer to determine whether a breach has occurred or setting the rates an EGS can charge. Instead, the Commission can only ensure that an EGS is abiding by the standards of conduct and disclosure,⁵ the marketing and sales Regulations,⁶ the contract expiration/change-of-terms notice requirements⁷ and that the rate billed by an EGS was calculated in accordance with those materials.

¹ 66 Pa. C.S. § 331(f).

² *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

³ 66 Pa. C.S. §§ 2807, 2809.

⁴ 52 Pa. Code § 54.1, *et seq.* (Sections 54.4-54.10 apply to residential and small business customers only. Small business customers are defined as having a maximum peak load less than 25 kW in the prior 12 months. *See* 52 Pa. Code § 54.2).

⁵ 52 Pa. Code § 54.5.

⁶ 52 Pa. Code §§ 54.3, 54.6, and 54.7; 52 Pa. Code §§ 54.43(1) and 54.43(f); 52 Pa. Code § 54.122(3).

⁷ 52 Pa. Code § 54.10.

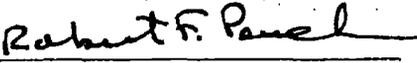
A review of the filings in this matter reveals that the OSBA's initial Petition requested the Commission to issue an Order "declaring that FES is not permitted to recover the costs billed to it by PJM for ancillary services costs as a 'pass-through event' under the terms of its fixed priced contract with its customers."⁸ In order to make such a declaration, the Commission would need to interpret language in the FES contract. The Commission has no such authority.

While the OSBA does appear to raise issues regarding the marketing of the contracts in question, over which the Commission could have jurisdiction, those issues were not raised until the OSBA's Brief Opposing Interlocutory Review (Brief). This is not enough to change the character of the original request for two reasons. First, allowing the OSBA to raise assertions in its Brief that were not raised in its original Petition changes the nature of the proceeding, which could negatively impact FES's due process rights. Second, an inquiry into whether FES violated the Public Utility Code or the Commission's Regulations during the marketing of these contracts would be very fact intensive, and as such, is not appropriate raised in a Petition for a Declaratory Order.

As a final point of clarification, the OSBA relied heavily upon our *Guidelines for Use of Fixed Price Labels for Products With a Pass-Through Clause Order*⁹ in asserting its claim. This reliance is misplaced. The contracts implicated by the OSBA's Petition were entered into prior to our issuance of the Fixed Price Order. This Order was prospective in its effect and made no determination regarding contracts that pre-dated its effective date. Further, the Fixed Price Order did not prohibit EGSs from marketing contracts that include pass-through clauses. Indeed, such a prohibition would exceed the Commission's authority. Rather, pursuant to our mandate to ensure that marketing materials can clearly be understood by customers, the Commission, on a going-forward basis, prohibited contracts with pass-through clauses from being marketed as fixed-price contracts.

THEREFORE, WE MOVE THAT:

1. The Commission decline to issue a Declaratory Order in this matter;
2. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.


ROBERT F. POWELSON
CHAIRMAN


JOHN F. COLEMAN, JR.
VICE CHAIRMAN

DATE: November 23, 2014

⁸ OSBA Petition at 7.

⁹ Docket No. M-2013-2362961, Order entered November 14, 2013 (*Fixed-Price Order*).