ECKERT SEAMANS
ATTORNEYS AT LAW

Eckert Seamans Cherin & Mellott, LLC
213 Market Street
8th Floor
Harrisburg, PA 17101

TEL 717 237 6000
FAX 717 237 6019
www.eckertseamans.com

Deanne M. O'Dell
717.255.3744
dodell@eckertseamans.com

August 29, 2012

Via Electronic Filing
Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission v. Petition of PPL Electric Utilities Corporation, Docket No. R-2012-2290597

Dear Secretary Chiavetta:

On behalf of Direct Energy Services LLC("Direct Energy") enclosed please find the original of its Main Brief with regard to the above referenced matter. Copies have been served in accordance with the attached Certificate of Service.

Sincerely,

Deanne M. O'Dell

DMO/lww
Enclosure

cc: Hon. Susan D. Colwell, w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of Direct Energy's Main Brief upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email and/or First Class Mail

Regina L. Matz, Esq.
Bureau of Investigation and Enforcement
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265
rmatz@pa.gov

Steven C. Gray, Esq.
Daniel Asmus, Esq.
Sharon Webb, Esq.
Office of Small Business Advocate
Suite 1102, Commerce Building
300 North Second St.
Harrisburg, PA 17101
sgray@pa.gov
dasmus@pa.gov
swebb@pag.gov

David B. MacGregor, Esq.
John H. Isom, Esq.
Post & Schell
Four Penn Center
1600 John F. Kennedy Blvd.
Philadelphia, PA 19103-2808
dmacgregor@postschell.com
jisom@postschell.com

Scott J. Rubin, Esq.
333 Oak Lane
Bloomsburg, PA 17815-2036
Scott.j.rubin@gmail.com

Paul E. Russell
PPL Services Corp.
Two North Ninth St.
Allentown, PA 18106
perussell@pplweb.com

Tanya J. McCloskey, Esq.
Candis A. Tunilo, Esq.
Office of Consumer Advocate
555 Walnut St., 5th Floor
Harrisburg, PA 17101-1923
tmccloskey@paoca.org
ctunilo@paoca.org

Todd S. Stewart
Hawke McKeon & Sniscak LLP
PO Box 1178
100 N. Tenth St.
Harrisburg, PA 17101
tsstewart@hmslegal.com

Joseph L. Vullo, Esq.
Burke Vullo Reilly Roberts
1460 Wyoming Ave.
Forty Fort, PA 18704
jvullo@aol.com

Kenneth L. Mickens
316 Yorkshire Dr.
Harrisburg, PA 17111
Kmickens11@verizon.net

Adeolu Bakare, Esq.
McNees Wallace & Nurick
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
abakare@mwn.com

Eric Joseph Epstein
4100 Hillsdale Road
Harrisburg, PA 17112
lechambon@comcast.net

Edmund "Tad" Berger, Esq.
Berger Law Firm, P.C.
2104 Market St.
Camp Hill, PA 17011
tberger@bergerlawfirm.net

Mr. Frank J. Richards
Richard Energy Group, Inc.
781 South Chiques Road
Manheim, PA 17545
frichards@richardsenergy.com

John Lucas
112 Jessup Ave.
Jessup, PA 18434

Helen Schwika
1163 Lakeview Dr.
White Haven, PA 18661

William Andrews
40 Gordon Ave.
Carbondale, PA 18407

Dave A. Kenney
577 Shane Dr.
Effort, PA 18330

Robert Kurrell
591 Little Mountain Rd
Sunbury, PA 17801-5540

Dated: August 29, 2012

Deanne M. O'Dell, Esq.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	Docket No. R-2012-2290597
v.	:	
	:	
PPL Electric Utilities Corporation	:	

MAIN BRIEF OF DIRECT ENERGY SERVICES, LLC

Daniel Clearfield, Esquire
Attorney ID #26183
Deanne O'Dell, Esquire
Attorney ID # 81064
Carl Shultz, Esquire
Attorney ID # 70328
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
(717) 237-6000 (phone)
(717) 237-6019 (fax)

Attorneys for Direct Energy Services, LLC

Date: August 29, 2012

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Administrative

I. INTRODUCTION

A. Statement of the Case

(1) Overview of Direct Energy's Position

Direct Energy Services, LLC ("Direct Energy") recommends that the Commission reject the proposal of PPL Electric Utilities Company ("PPL" or the "Company") to increase the amount of uncollectible accounts expense it seeks to collect from generation customers through the Merchant Function Charge ("MFC") and Purchase of Receivables ("POR") discount rate (collectively "MFC/POR discount") mechanism. PPL seeks approval to increase the uncollectible expense factor for residential customers from 1.80% to 2.23%,[1] and for small C&I customers from 0.10% to 0.23%.[2] These proposed changes will result in a increase of 23.89% for residential customers and of 56.52% for small commercial customers.[3] Direct Energy recommends that this proposal be rejected because: (1) there is no record basis to support PPL's claimed uncollectible accounts expense level for shopping customers being served via PPL's Purchase of Receivables Program ("POR"); (2) PPL's uncollectible accounts expense percentage for generation-related services does not attempt to reflect the actual uncollectible cost for the group of customers being required to pay for it; and, (3) PPL's proposal will stall development of a fully robust competitive retail market.

Instead of continuing PPL's current and less than ideal recovery mechanism, Direct Energy recommends that the Commission direct PPL to continue to unbundle uncollectable

---

1 Direct Energy St. No. 1 at 7-8.

2 Direct Energy St. No. 1 at 7-8.

3 Direct Energy St. No. 1-SR at 2. After netting out the administrative factor of the POR program discount rate that PPL proposes to discontinue collecting, the net increase is 17.04% for residential customers and 34.78% for small commercial customers.

accounts expense but to recover the unbundled amounts in a non-bypassable charge applicable to all customers, similar to the approach used by the majority of the other electric distribution companies ("EDCs") in Pennsylvania. The advantage of this approach is that it does not require a calculation of actual generation uncollectible accounts expense generally, or the uncollectible expense level attributable to shopping customers in particular. Direct Energy's proposal would fairly allocate the costs of uncollectible accounts expense across all customers consistent with traditional rate-making principles and avoids the potential that shopping customers pay an excessive amount for uncollectible accounts expense although they may be contributing a lower level of generation-related uncollectible accounts expense. Direct Energy's proposal would also result in a simpler and more attractive POR program which would entice more EGSs to enter the market. In turn, this would result in a wider diversity of product options for customers and allow suppliers to better manage the cost of uncollectible accounts expense.

If, however, the Commission chooses not to adopt Direct Energy's proposed mechanism to allocate the uncollectible accounts expense, then the percentage proposed by PPL in its POR discount rate must be adjusted in two ways: (1) reduce the discount rate to reflect the amount of late payment charges that the Company collects and which offset its net uncollectibles account expense (but which are now credited 100% to distribution customers); and, (2) reduce the discount factor by an administrative cost *credit* to return to the EGSs the amounts that have been collected through the administrative cost adder but which PPL admits it has not tracked or identified.[4]

---

[4] Direct Energy St. No. 1 at 15.

(2) Procedural History

On or about March 30, 2012, PPL filed a request for a distribution rate increase. In this filing, PPL is proposing to increase the discount rate at which PPL will purchase the accounts receivable served by EGSs. Specifically, PPL proposes to continue to unbundle generation-related uncollectible accounts expense from its distribution base rates and collect the them through both PPL's Price to Compare ("PTC") for default service customers and the discount at which PPL purchases the accounts receivable of the EGS for shopping customers. While PPL is not proposing to change this program structure,[5] it is seeking approval to increase the discount rate at which PPL purchases an EGSs' accounts receivables for residential customers by 17.04% and for small commercial customers by 34.78%.[6]

Formal complaints against this proposed tariff were been filed by: the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), PP&L Industrial Customer Alliance ("PPLICA"), William Andrews, Eric Joseph Epstein, Dave A. Kenney, Roberta Kurrell, Donald Leventry, John G. Lucas, and Helen Schwika. Petitions to intervene were filed by the Commission on Economic Opportunity ("CEO"), Direct Energy, Dominion Retail, Inc. d/b/a Dominion Energy Solutions ("Dominion"), Granger Energy of Honey Brook LLC and Granger Energy of Morgantown LLC (collectively "Granger" or "Granger Energy"), the International Brotherhood of Electrical Workers, Local 1600 ("IBEW"),

---

5 PPL's current POR program became effective January 1, 2010 after a series of Commission proceedings and through a settlement that was supported by Direct Energy. The currently effective discount rates were established during PPL's most recent distribution rate case at docket number R-2010-2161694.

6 Direct Energy St. No. 1-SR at 6.

the Sustainable Energy Fund ("SEF") and Richards Energy Group, Inc. ("REG").[7] The Commission's Bureau of Investigation and Enforcement ("I&E") filed a Notice of Appearance.

This proceeding was assigned to Administrative Law Judge ("ALJ") Susan D. Colwell. The prehearing conference was held, as scheduled, on May 31, 2012. At that time, *inter alia*, Direct Energy's timely Petition for Intervention was granted. A Scheduling Order was issued on June 1, 2012. A few modifications were made to the Commission's discovery regulations according to the unopposed requests of the OCA and I&E. On June 11, 2012, PPL filed a Motion for a Protective Order, which was granted as unopposed by Order issued July 3, 2012. On June 18, 20, and 21, the public input hearings were held as scheduled.

The evidentiary hearing commenced on August 6, 2012 and ended on August 9, 2012.[8] At the hearing, pre-filed written testimony and exhibits were admitted into the record, and party witnesses were made available for cross examination.

B. Burden of Proof

(1) Burden of Proof

PPL has the ultimate burden of proof in the proceeding and the initial burden of going forward with evidence showing that its proposals are lawful and reasonable. Section 332(a) of the Public Utility Code provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.[9] It is axiomatic that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a

---

7 The Petition of REG to Intervene Out-of-Time is granted on July 26, 2012.

8 Hearings lasted three days. No hearing was held on Wednesday, August 8, 2012.

9 66 Pa. C.S. § 332(a).

preponderance of evidence which is substantial and legally credible."[10] A preponderance of the evidence means evidence which is more convincing, by even the smallest amount, than that presented by the other party.[11] Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.[12] More information is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.[13]

(2) Standards Applicable to POR Programs

The Electric Generation Competition and Customer Choice Act[14] ("Competition Act") sets forth the obligations of PPL, as an EDC, to provide electric service as a result of the implementation of competition in the retail electric market in Pennsylvania.[15]

The Competition Act mandates that customers have direct access to a competitive retail generation market.[16] This is based on the legislative finding that "competitive market forces are more effective than economic regulation in controlling the costs of generating electricity."[17] Thus, a fundamental policy underlying the Public Utility Code is that competition is more

---

10 *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

11 *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

12 *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Cmwlth. 1993).

13 *Norfolk and Western Ry. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

14 66 Pa. C.S.A. §§ 2801 to 2812, *as amended by* Act 129.

15 *See* 66 Pa. C.S.A. § 2807(e).

16 66 Pa. C.S.A. § 2802(3).

17 66 Pa. C.S.A. § 2802(5). *See Green Mountain Energy Company, et al. v. Pa. PUC,* 812 A.2d 740, 742 (Pa. Cmwlth. 2002).

effective than economic regulation in controlling the costs of generating electricity.[18] Another fundamental policy of the Public Utility Code is that electric service is an essential service and should be available to all customers "on reasonable terms and conditions."[19]

Through a POR program, the EDC purchases the accounts receivable of the competitive supplier, adds the supplier's charges (which have now become the EDC's charges) to the customer's distribution bill, and sends the customer one bill with all of his or her electricity charges. This enables competitors to efficiently and reasonably reach customers and, therefore, is a critical component to establishing robust retail competition.

Concerning POR programs, the Commission has found that:[20]

> [Based] on several years' experience during the transition period, it is the Commission's judgment that a viable POR program is an essential element to the creation of a competitive market for generation in Pennsylvania, as envisioned by the Competition Act. 66 Pa. C.S. § 2802(2). Moreover, we are convinced that establishment of a properly structured POR program by the end of the transition period is necessary to faithfully carry out the provisions of Chapter 28. 66 Pa. C.S. § 510(a). And that absent a viable POR program in place to coincide with the expiration of rate caps and substantial increase in default service rates, consumers in [an EDC's] service territory will not likely have the competitive market and customer choice that the legislation intended when the rate caps expire [for that EDC].

The Commission has also stated that:[21]

> ... any discount in the purchase of receives should, as much as possible, reflect only the Company's actual expenses. This should not be a mechanism for the Company to make money. A properly functioning

---

18 66 Pa. C.S.A. § 2802(5).

19 66 Pa. C.S.A. § 2802(9).

20 *PPL Electric Utilities Corporation Retail Markets,* Final Order entered at Docket No. M-2009-2104271**Error! Bookmark not defined.** on August 11, 2009 at 27.

21 *Id.* at pp. 29-30.

> POR program can reduce costs for shopping customers and, therefore, be an incentive for the Company to minimize its own cost of electricity for DSP customers. This appears to have been the experience of other states, most notably New York and Ohio. We anticipate that our experience will be no different.

In approving PPL's current POR program structure in PPL's last distribution rate case, the Commission noted at that time that "it is fair to allow additional time for full implementation of the current POR program and subsequent evaluation of its effectiveness before directing major changes" and that "the newness of the PPL POR program prevents actual costs from being used in calculating the uncollectible accounts expense factor."[22]

The Commission is not precluded from changing the structure of PPL's POR program despite the fact that, at the present time, PPL voluntarily proposed a POR program. Once a utility proposes rate, term or condition of service, that rate or term must be found to be just and reasonable, non-discriminatory and to constitute adequate and reasonable service.[23] Moreover, nothing in the prior settlement[24] or the November 2009 Order[25] preclude consideration of

---

22 *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-2010-2161694, Opinion and Order entered December 21, 2012 at 94-95.

23 This Commission has the statutory mandate, authority and responsibility to adjudicate whether proposed rates are just and reasonable and non-discriminatory and whether they constitute adequate and reasonable service. *See* 66 Pa. C.S. § 1301 (rates to be just and reasonable), 1304 (discrimination in rates), 1501 (character of service and facilities; adequate, safe and reasonable). *See also PUC v. PPL Electric Utilities Corporation*, Docket No. R-2010-2161694, Opinion and Order entered June 21, 2012, 2012 Pa. PUC LEXIS 989 (requiring PPL to provide service to Donsco at a discount would constitute unreasonable discrimination in rates in violation of Section 1304 of the Code, and would result in rates that are neither just nor reasonable in violation of Section 1301 of the Code).

24 *Petition of PPL Utilities Corporation Requesting Approval of a Voluntary Purchase of Accounts Receivables Program and Merchant Function Charge*, Docket No. M-2009-2129502, Opinion and Order entered November 19, 2009.

25 *Petition of PPL Utilities Corporation Requesting Approval of a Voluntary Purchase of Accounts Receivables Program and Merchant Function Charge*, Docket No. M-2009-2129502, Opinion and Order entered November 19, 2009 at 24.

whether the MFC/POR discount methodology should be revised by the Commission.[26] Nor do those prior decisions bar the Commission from fully assessing whether PPL has provided support for its proposed rate increase request – the key issue in this case.[27]

II. SUMMARY OF ARGUMENT

See supra Section I.A(1).

III. RATE BASE

Direct Energy takes no position on the issues in Section III.

IV. REVENUES

Direct Energy takes no position on the issues in Section IV.

V. EXPENSES

Direct Energy takes no position on the issues in Section V.

VI. TAXES

Direct Energy takes no position on the issues in Section VI.

VII. RATE OF RETURN

Direct Energy takes no position on the issues in Section VII.

VIII. RATE STRUCTURE

Direct Energy takes no position on the issues in Section VIII.

IX. MISCELLANEOUS ISSUES

---

26 Direct Energy St. No. 1-SR at 8-9.

27 Direct Energy St. No. 1-SR at 8-9.

A. Purchase of Receivables

PPL purchases, at a discount, the accounts receivable of EGS customers who participate in the POR program.[28] The discount at which the accounts receivable is purchased is composed of two parts: (1) an uncollectible accounts expense percentage factor, and (2) a POR development, implementation, and administrative factor.[29] PPL's proposal to increase the uncollectible accounts expense factor by 23.89% for residential customers and 56.52% for small commercial customers must be rejected. Instead, Direct Energy's proposes to permit PPL to recover 100% of its uncollectible accounts expense (at a level determined to be just and reasonable by the Commission) by implementing a non-bypassable (but non-reconcilable) charge applicable to all customers. If, however, the Commission chooses not to adopt Direct Energy's proposal to modify PPL's collection mechanism, the percentage proposed by PPL in its discount rate must be adjusted in two ways: (1) reduce the discount rate to reflect the amount of late payment charges that the Company collects and which offset its net uncollectible accounts expense; and, (2) reduce the discount factor by an administrative cost *credit* to return to the EGSs the amounts that have been collected through the administrative cost adder but which PPL admits it has not tracked or identified.[30]

(1) PPL's Proposed Increase To The Uncollectible Accounts Expense Percentage Factor Must Be Rejected

Direct Energy and PPL disagree as to whether PPL has adequately supported the uncollectible accounts expense percentage factor that it proposes to charge to EGSs via the POR discount, and which, in turn, will be charged to EGS customers. To calculate the uncollectible

---

28 Direct Energy St. No. 1 at 7.

29 Direct Energy St. No. 1 at 7, 8.

30 Direct Energy St. No. 1 at 15.

expense factor for the POR discount rate, PPL used *the total distribution revenues and uncollectible accounts expense* from its base rate increase proposal, which, in turn, were developed from future test year data for the 12 months ending December 31, 2012.[31] In this case, PPL seeks approval to increase the uncollectible expense factor for residential customers from 1.80% to 2.23%,[32] and for small C&I customers from 0.10% to 0.23%.[33] These proposed changes will result in a increase of 23.89% for residential customers and of 56.52% for small commercial customers.[34]

PPL's proposal must be rejected for three reasons. First, there is no record basis upon which to support PPL's assumptions that the uncollectible experience will be the same regardless of whether a customer is a default service customer or an EGS customer. Second, there is no record basis upon which to support allocating an increased uncollectible accounts expense factor. Simply put, PPL did not calculate the actual level of uncollectible accounts expense that it has experienced solely from EGS customers in the POR program as compared to PPL's default service customers. Third, because of the way PPL proposes to recover uncollectible accounts expense, it has created an unnecessarily restrictive POR program which undermines its effectiveness.

---

31 Direct Energy St. No. 1 at 9; PPL St. No. 8 at 28-29; PPL Exhibit JMK 4.

32 Direct Energy St. No. 1 at 7-8.

33 Direct Energy St. No. 1 at 7-8.

34 Direct Energy St. No. 1-SR at 2.

(a) There is no record basis to support PPL's proposal to allocate to generation service customers its proposed uncollectible accounts expense percentage

PPL experiences uncollectible accounts expense when customers receive service, do not pay for it and their arrearage (plus any unpaid late payment charges) is written off.[35] Historically, PPL has recovered this cost by allocating it among all its ratepayers and reflecting it in regulated utility rates as a typical cost of providing service.[36] In other words, the cost of uncollectible accounts expense – customers who receive service and do not pay for it – is borne by customers who receive service and pay for it.

PPL has chosen to divide generation customers into two categories – shopping (those in the POR program) and non-shopping (sometimes referred to as "default" customers).[37] To calculate its uncollectible accounts expense for both types of customers, PPL has used system-wide uncollectible accounts expense and total revenues, rather than calculating a service specific level for each type of service. Thus, PPL is proposing that both sets of customers pay at the same percentage level.[38]

PPL, however, has not shown that using this same system-wide uncollectible accounts expense fairly allocates the true uncollectible accounts expense associated with each category of non-paying customers to the assigned category.[39] At the hearing, PPL Witness Kleha did

---

35 Direct Energy Exhibit RMC-3, which includes the following discovery responses from PPL: PPL Answer to DES Interrogatory I-5(b); and PPL Answer to DES Interrogatory I-5(c).

36 PPL allocates the cost of generation-related uncollectible accounts expense for the residential and small C&I customers to default service customers through the Merchant Function Charge ("MFC") and to shopping customers through the discounted rate at which it purchases the EGS's account receivable for the POR program. Direct Energy St. No. 1 at 8.

37 Direct Energy St. No. 1 at 10.

38 Direct Energy St. No. 1 at 10.

39 Direct Energy St. No. 1 at 10; Direct Energy St. No. 1-SR at 2.

confirm that PPL does not track write-offs as between shopping customers and non-shopping customers.[40] He further confirmed that, even though PPL tracks *revenues* from EGSs, PPL could not determine if the customers of any EGS were responsible for any write-offs.[41] Notably, PPL previously acknowledged that "it is capable of gathering actual data related to the uncollectible accounts expense of shopping customers and that developing such a report is 'not a major undertaking.'"[42]

It is quite possible that shopping customers, as a whole, are better paying customers which would support recovering less uncollectible accounts expenses (i.e., a lower discount rate) from shopping customers.[43] But, PPL has done nothing to ensure that the uncollectible accounts expense associated with generation customers and, further, shopping vs. non-shopping customers, reflects their actual uncollectible experience.[44] If the majority of shopping customers pay their bills, then why should they be required to absorb the costs of an uncollectible accounts expense that contemplates that a higher percentage of non-shopping customers do not pay their bills?[45]

Nothing in the record demonstrates that using this same system-wide uncollectible accounts expense fairly allocates the true uncollectible accounts expense associated with either the shopping or the non-shopping customers who fail to pay their bills. In fact, PPL Witness Kleha never responded to the concern that PPL has not provided sufficient support for the rates it

---

40 Tr. 404.

41 Tr. 404-405.

42 *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-2010-2161694, Opinion and Order entered December 21, 2012 at 84.

43 Direct Energy St. No. 1 at 10; Direct Energy St. No. 1-SR at 2.

44 Direct Energy St. No. 1-SR at 11.

45 Direct Energy St. No. 1-SR at 11.

seeks to assess to EGSs through the POR discount.[46] In fact, PPL has admitted in discovery responses that it does not know the uncollectible costs associated with shopping customers notwithstanding the fact that PPL's generation rate cap expired December 31, 2009.[47] Accordingly, the record does not reveal, even after several years of PPL's POR program, whether shopping customers pay their bills and generate uncollectible costs, at a greater or lesser rate than default service customers.[48] Nor does the record identify whether the uncollectible accounts expense is more directly associated with the distribution service portion of the Company's rates (which have seen increases in the last few years) or with the generation charge portion of the bill.[49]

Importantly, as the proponent of the proposed, new uncollectible accounts expense percentage and discount factor, PPL has the burden of demonstrating by substantial evidence that the rate it proposes to charge is: 1) just and reasonable; 2) not discriminatory.[50] As PPL has not provided *any* evidence to justify the proposed amount of uncollectible accounts expense it wishes to impose on *shopping* residential and small C&I customers through the POR program's discount rate (as opposed to justifying the overall uncollectible accounts expense), its proposal cannot be found to be just and reasonable and must be rejected.

---

46 Direct Energy St. No. 1-SR at 2.

47 Direct Energy St. No. 1 at 10-11.

48 Direct Energy St. No. 1 at 10.

49 Direct Energy St. No. 1 at 10.

50 66 Pa. C.S. § 1301 (rates to be just and reasonable), 1304 (discrimination in rates).

(b) PPL's proposal will stall development of a fully robust competitive retail market

The POR discount is a rate charged by PPL.[51] PPL is requesting a significant increase in that rate.[52] In addition to the fact that the requested increase must be just, reasonable the resulting rate must also be in the public interest.[53] In this regard, PPL's proposed approach to the discount rate must be judged in light of its potential effect on advancing the Commission's goal – mandated by the Choice Act – of developing robust and sustainable retail electric market in the PPL service territory. The level of competition in PPL's service territory is good, but it could be much better.[54] The current levels of shopping need not only to be sustained but increased in order to meet the Commonwealth's goal of a fully competitive retail electric market.[55] PPL's service territory presents the best opportunity to do that, but only if the Commission continues to remain vigilant about properly allocating costs to EGSs.[56]

A properly structured POR program is and will remain an important part of competitive market development because it keeps "barriers to entry" down, reduces costs and places competitive supply on an equal footing with default service in terms of collection. Accordingly, an attractive POR program must be continued if the Commission's goals are to be realized and

---

51 "Rate" is defined as: "Every individual, or joint fare, toll, charge, rental, or other compensation whatsoever of any public utility, or contract carrier by motor vehicle, made, demanded, or received for any service within this part, offered, rendered, or furnished by such public utility, or contract carrier by motor vehicle, whether in currency, legal tender, or evidence thereof, in kind, in services or in any other medium or manner whatsoever, and whether received directly or indirectly, and any rules, regulations, practices, classifications or contracts affecting any such compensation, charge, fare, toll, or rental." 66 Pa. C.S. § 102 (definitions).

52 Direct Energy St. No. 1-SR at 2.

53 66 Pa. C.S. § 1301 (rates to be just and reasonable).

54 Direct Energy St. No. 1 at 6.

55 Direct Energy St. No. 1 at 13.

56 Direct Energy St. No. 1 at 13.

customers and the Commonwealth are to have complete access to all the benefits of a fully competitive retail electric market.[57]

It is improper to characterize a POR program as a "voluntary" program that EGSs can simply utilize or not, without any negative consequences.[58] There really is no viable alternative today to a properly structured POR program to enable EGSs to cost efficiently provide service to the mass market.[59] Thus, a POR program that is not properly structured is likely to result in EGSs choosing not to enter the market or, if they have already entered, to exit.[60] Maintaining their own accounts receivables (especially when they have no ability to terminate service to a non-paying customers) is not a realistic alternative to a poorly structured POR program.[61]

It should be plain that the levels of uncollectible discount that PPL is proposing to charge through the POR program will have a significant effect on the continued development of competition. Here Direct Energy submits that PPL's proposed discount level is too high and could have a negative effect on the continued development of the competitive market in PPL's service territory, particularly for residential and small commercial and industrial customers, who continue to lag significantly in shopping compared to larger customers.[62] Accordingly, Direct Energy believes that this factor – the potential negative effect on retail competition – justifies the adoption of Direct Energy's proposal to continue to unbundle uncollectibles account expense but to recover the unbundled charge from all customers through a non-bypassable charge.

---

57 Direct Energy St. No. 1 at 5-6.

58 Direct Energy St. No. 1-SR at 4-5.

59 Direct Energy St. No. 1-SR at 5.

60 Direct Energy St. No. 1-SR at 5.

61 Direct Energy St. No. 1-SR at 5.

62 Direct Energy St. No. 1 at 6.

(2) Direct Energy's Proposal For A Non-Bypassable Charge Applicable To All Customers Should Be Adopted To Recover The Uncollectible Accounts Expense

PPL has proposed the continuation of the MFC/POR discount approach for its POR program. But, as explained above, PPL has failed to provide convincing evidence to support its proposals and, therefore, its proposals should be rejected.

The Commission is not precluded from changing the structure of PPL's POR program and replacing it with Direct Energy's proposal. If the Commission does not continue to monitor how the current POR program is functioning and how PPL's continued rate increases (this is now PPL's second request to increase the discount rate) impact the effectiveness of the program, then the value of the POR program will be negatively impacted to the detriment of consumers and the retail electricity competitive market for this service territory.[63] Moreover, nothing in the prior settlement[64] or the November 2009 order[65] preclude consideration of whether the MFC/POR discount methodology should be revised by the Commission.[66] Nor do they bar the Commission from fully assessing whether PPL has provided support for its proposed rate increase request – the key issue in this case.[67]

---

63 Direct Energy St. No. 1-SR at 7.

64 *Petition of PPL Utilities Corporation Requesting Approval of a Voluntary Purchase of Accounts Receivables Program and Merchant Function Charge*, Docket No. M-2009-2129502, Opinion and Order entered November 19, 2009.

65 *Petition of PPL Utilities Corporation Requesting Approval of a Voluntary Purchase of Accounts Receivables Program and Merchant Function Charge*, Docket No. M-2009-2129502, Opinion and Order entered November 19, 2009 at 24.

66 Direct Energy St. No. 1-SR at 8-9.

67 Direct Energy St. No. 1-SR at 8-9.

In approving the MFC/POR discount mechanism in PPL's last distribution rate case, the Commission noted that "it is fair to allow additional time for full implementation of the current POR program and subsequent evaluation of its effectiveness before directing major changes" and that "the newness of the PPL POR program prevents actual costs from being used in calculating the uncollectible accounts expense factor."[68] But, in the year and a half that has passed since this Commission decision, PPL still has not implemented any mechanism to determine the amount of actual uncollectible accounts expense associated with generation customers and shopping customers so that the actual generation related uncollectible costs could be used for its MFC and POR discount calculations.[69]

Direct Energy's proposal should be adopted because it will encourage more competitors to come into the market thus fulfilling the goals of the Choice Act. Further, Direct Energy's proposal is consistent with the way POR programs are currently structured for the majority of EDCs in Pennsylvania. Finally, Direct Energy has shown why its proposal is the most efficient way to handle recovery of the cost of uncollectible expense account for the benefit of all customers. Rather than continue the MFC/POR discount approach in any form, Direct Energy proposes that PPL use a non-bypassable charge applicable to all customers.

(a) Direct Energy's proposal does not require a calculation of actual generation uncollectible accounts expense and is the methodology used by the majority of EDCs in Pennsylvania

Direct Energy recommends the use of a mechanism that does not require a calculation of actual generation uncollectible expense and is utilized by several other EDCs in the

---

68 *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-2010-2161694, Opinion and Order entered December 21, 2012 at 94-95.

69 Direct Energy St. No. 1-SR at 3.

Commonwealth with the Commission's approval.[70] Specifically, Direct Energy proposes that the Commission modify the PPL discount factor approach to collect its total projected uncollectible accounts expense through a non-bypassable charge that applies to all distribution customers.[71] Since all customers, whether they are shopping or non-shopping customers, are being asked to pay for the costs of uncollectible accounts expense for those other customers who do not pay their bills, there would not be the need to determine the actual uncollectible accounts expense for shopping and non-shopping customers.[72] Direct Energy's proposal, like PPL's proposal, essentially socialize uncollectible account expense and provide PPL with an opportunity to fully recover this cost.[73] But, Direct Energy's proposal is superior because it avoids the potential that shopping customers are being forced to pay an excessive amount for uncollectible expense when the POR customers may be imposing lower levels of uncollectible accounts expense.[74]

Direct Energy's proposal would not result in shopping non-POR customers being "double-charged" for uncollectible accounts expense by their EGS. It is true that EGSs need to recover all the costs of doing business in the prices that they charge to customers.[75] Uncollectible costs, like other overhead expenses, would be one of many components built into the margin that an EGS earns.[76] But, calculating a specific cost (uncollectible expense) for a

---

70 Direct Energy St. No. 1-SR at 3.

71 Direct Energy St. No. 1 at 12.

72 Direct Energy St. No. 1-SR at 10-11.

73 Direct Energy St. No. 1 at 12; Direct Energy St. No. 1-SR at 6.

74 Direct Energy St. No. 1 at 12.

75 Direct Energy St. No. 1-SR at 11.

76 Direct Energy St. No. 1-SR at 12.

specific customer (non-POR customer) would not be done in the normal course of business – because EGSs may be serving a multitude of different customers in many different states on a variety of billing platforms.[77] These customers would include those in and out of POR as well as various different rate classes.[78]

Additionally, it should be noted that EGSs have no incentive to "double-charge" shopping non-POR customers.[79] The margin earned by EGSs is mitigated by competitive market forces.[80] So, even if it were possible to narrowly identify the "premium" built into EGS offers to account for uncollectible expense, this "premium" would be substantially mitigated by the fact that the EGS must compete against the pricing of other EGSs (including those serving customers in the POR program) as well as the default service rate.[81] Instead of charging prices outside the market rate, EGSs would seek to minimize the risk of uncollectible accounts expense by credit screening or utilizing the POR program.[82] So, shopping non-POR customers would pay for the costs of uncollectible accounts expense twice under Direct Energy's proposal – because the ultimate protection for customers if they are offered a rate that is higher for this (or any other) reason is that they can simply choose to take service from an EGS that does utilize POR and is thus offering a lower rate.[83]

---

77 Direct Energy St. No. 1-SR at 12.

78 Direct Energy St. No. 1-SR at 12.

79 Direct Energy St. No. 1-SR at 12.

80 Direct Energy St. No. 1-SR at 12.

81 Direct Energy St. No. 1-SR at 12.

82 Direct Energy St. No. 1-SR at 12.

83 Direct Energy St. No. 1-SR at 12.

Finally, Direct Energy's proposal is not a re-bundling of collectibles expense. Any unbundling concept presupposes that it is possible to identify and separate the portion of the cost that is associated with default service verses distribution, or those that are associated with shopping customers.[84] The approach supported by Direct Energy has been adopted by other major EDCs, so the necessary programming is clearly feasible.[85] The adoption of Direct Energy's proposal would also make PPL's POR program consistent with those of five of the other six major electric companies in the Commonwealth, making it easier for EGSs to participate state-wide.[86] This also would benefit competition.[87]

(b) Direct Energy's proposal would result in a simpler and more attractive POR program which will encourage EGSs to enter the market and allow them to better manage the cost of uncollectible accounts expense

Because of the lack of evidentiary support and its failure to take account of the potentially negative effect on competition, Direct Energy proposes that PPL recover 100% its uncollectible accounts expense via an unbundled "Merchant Function Charge" that would be assessed against all customers on a non-bypassable basis.[88] Direct Energy's proposal would result in a simpler and more attractive POR program which would entice more EGSs to enter the market resulting in a wider diversity of product options for customers and allow suppliers to better manage the cost of uncollectible account expense.[89]

---

84 Direct Energy St. No. 1 at 14.

85 Direct Energy St. No. 1 at 14-15.

86 Direct Energy St. No. 1-SR at 10.

87 Direct Energy St. No. 1-SR at 10.

88 Direct Energy St. No. 1 at 11-15; Direct Energy St. No. 1-SR at 2-12.

89 Direct Energy St. No. 1 at 12-13.

For example, PPL's current program contains an "all-in, all-out" requirement for the residential sector (though Commission-ordered narrow exceptions are included) and a mechanism that allows PPL to charge a higher, individual uncollectible discount rate for small commercial and industrial customers.[90] Both of these provisions were included in order to address PPL's concern over EGSs selectively placing only "bad credit risk" customers on POR.[91] While there is absolutely no evidence that this is occurring (or has ever occurred) this program remains a potential threat to EGSs who must be concerned that they may be subject to an action by PPL under this provision, and incur the time and expense (and potential harm to their good reputation) from such a charge. Under Direct Energy's proposal, this complicated process would not be necessary because PPL would recover its uncollectible account expense through an unbundled non-bypassable charge and EGSs would have no incentive (in terms of bad debt expense) to selectively place accounts on POR.[92]

Direct Energy's proposal will also allow suppliers to better manage the cost of uncollectible account expense.[93] Under PPL's approach, the MFC and the discount rate are subject to change. In fact, with this proceeding, the overall increases proposed by PPL to the discount rate for residential customers (after netting out the administrative factor) is 17.04% and for small commercial customers the increase is 34.78%.[94] Currently effective EGS pricing offers may not have been able to anticipate such an increase which would directly impact the prices

---

90 Direct Energy St. No. 1-SR at 6.

91 Direct Energy St. No. 1-SR at 6.

92 Direct Energy St. No. 1 at 12; Direct Energy St. No. 1-SR at 6.

93 Direct Energy St. No. 1-SR at 6.

94 Direct Energy St. No. 1-SR at 6.

offered.[95] Under Direct Energy's proposal, the uncollectible cost component of the discount rate would be zero, providing better cost certainty for suppliers, and the benefit of better price stability for customers.[96]

(c) Direct Energy's proposal would create consistency with the other major EDCs.

Only one other major EDC – Duquesne Light Company ("DLC" or "Duquesne") – recovers generation related uncollectible accounts expense via a charge applicable to default service and a discount to POR accounts receivable payments. First Energy, the company with the largest service territory in Pennsylvania collects uncollectible accounts expense in precisely the same manner as Direct Energy is proposing.[97] While First Energy utilizes an unbundled, non-bypassable Merchant Function Charge, PECO has continued to recover uncollectible accounts expense in its distribution rates, thereby socializing the recovery in a similar manner.[98]

While DLC does use a method of recovering generation related uncollectible accounts expense that is similar to that proposed by PPL, notably, PPL's proposed uncollectible accounts expense factor for residential customers (2.23%)[99] is significantly higher that the uncollectible accounts expense factor for DLC residential customers, DLC's uncollectible accounts factor is .42%. Moreover, while the DLC POR program does utilize a discount rate that includes a component for uncollectible accounts expense, upon careful examination, it is not similar to what

---

95 Direct Energy St. No. 1-SR at 6.

96 Direct Energy St. No. 1 at 13; Direct Energy St. No. 1-SR at 6-7.

97 *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*, Docket Nos. P-2011-2273650; P-2011-2273668; P-2011-2273669; P-2011-2273670, Opinion and Order entered August 16, 2012.

98 *See PUC v. PECO Energy Company*, Docket No. R-2010-2161575, et seq., Opinion and Order entered December 21, 2010.

99 Direct Energy St. No. 1 at 7-8.

PPL is proposing here.[100] The uncollectible accounts expense factor of .42% that is embedded in the DLC POR program discount rate was the product of a negotiated settlement intended to compensate DLC for the risk of assuming incremental uncollectible account risk for the 20 percent of customers who were actually shopping. The discount rate does not and was never intended to reflect the class average uncollectible account expense as PPL proposes here.[101] Moreover, also unlike PPL's proposal, all DLC distribution customers (which include shopping and non-shopping customers) pay for the costs of default service related uncollectible accounts expense that may exceed the level of the negotiated uncollectible accounts expense rate.

(3) If PPL's Proposal Is Adopted, Then Credit Should Be Given To The Uncollectible Accounts Expense Percentage For Late Payment Charges And The Collected Administrative Costs

If, however, the Commission chooses not to adopt Direct Energy's proposal to reallocate the uncollectible accounts expense recovery, then the percentage proposed by PPL in its discount rate must be adjusted in two ways: (1) reduce the discount rate to reflect the amount of late payment charges that the Company collects and which offset its net uncollectible accounts expense; and, (2) reduce the discount factor by an administrative cost *credit* to return to the EGSs the amounts that have been collected through the administrative cost adder but which PPL admits it has not tracked or identified.[102]

---

100 *Petition of Duquesne Light Company for approval of a Default Service Plan for the Period January 1, 2008 Through December 31, 2010*, Docket No. P-00072247, Order entered June 22, 2007**Error! Bookmark not defined.**. The Commission recently approved continuation of DLC's POR program in its current form including use of the same uncollectible accounts factor in the discount rate. *See Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2011 Through May 31, 2013*, Docket No. P-2010-2135500, Opinion and Order entered June 21, 2010**Error! Bookmark not defined.**, Attachment at 8.

101 Direct Energy St. No. 1-SR at 13.

102 Direct Energy St. No. 1 at 15.

(a) Credit For Late Payment Charges

PPL's proposed uncollectible accounts expense factors are not sufficiently justified and are likely overstated because they fail to properly credit customers for other revenue PPL receives which reduces its net uncollectible expense – for example, late payment charges.[103]

To begin, there is a relationship between late payment charges and uncollectible accounts expense. If a residential customer does not pay his or her bill within 20 days, then PPL assesses a late payment charge of 1.25% per month.[104] Therefore, late payment charges exist because a customer has not paid his or her bill in a timely manner.[105] When PPL pursues collection of its unpaid bills, it also seeks collection of its late payment charges.[106] Finally, if a customer continues to fail to pay, PPL writes off the total arrearage, including the uncollected late payment charges.[107] Therefore, customer responsibility for non-paying customers is a net amount, consisting of the write-offs (adjusted to accommodate the Company's provision for uncollectibles) less the late payment charges that the Company does collect, and which are treated as an additional source of revenue.[108] Thus, late payment charges are directly related to uncollectible accounts expense. This relationship is supported by Commission decisions.[109] This relationship is also recognized in other jurisdictions. For example, the late payment revenue

---

103 Direct Energy St. No. 1 at 15.

104 Direct Energy St. No. 1-SR at 14.

105 Direct Energy St. No. 1-SR at 14. See Exhibit RMC-3, according to PPL late payment charges are "imposed to offset the carrying costs of overdue accounts receivables."

106 Direct Energy St. No. 1-SR at 14.

107 Direct Energy Exhibit RMC-3, which includes the following discovery responses from PPL: PPL Answer to DES Interrogatory I-5(b); and PPL Answer to DES Interrogatory I-5(c).

108 *Id.*

109 *See, e.g., PUC v. PAWC*, Docket No. R-00038304 (Opinion and Order entered January 29, 2004), 2004 Pa. PUC LEXIS 29; 1996 Pa. PUC LEXIS 183 (December 11, 1996).

collected by Baltimore Gas & Electric ("BGE") is used as an offset to POR costs.[110] For BGE's current program which started July 2012, five of the six discount rates for the electric and gas rate classes are negative.[111] This is largely due to the application of late payment charge revenue received by BGE as an offset to the POR discount rates.[112] The negative discount rates are set to zero.[113]

PPL admits that late payment charges are used to reduce PPL's accounts receivable balance.[114] In turn, PPL's write-offs are lower (because there is less to write off) yet by failing to unbundle this significant amount – $13 million in the future test year[115] – PPL gives the entire reduction value to distribution customers.[116] Rather than credit distribution revenues, the late payment charges would be properly allocated to generation customers.[117] But, the late payment credit should not be used in both places.[118] So, if this modification is adopted, PPL would need to reduce the amount of late payment charge revenue it credits to *pro forma* distribution revenues for the purposes of determining revenue requirement.[119]

---

110 Direct Energy St. No. 1-SR at 14, citing, Maryland PSC, Letter Approval of June 21, 2012 for Maillog Nos. 138019, 139110 and 139589, RR-2642.

111 *See* Maryland PSC Maillog No. 138019 and 139110, RR-2642.

112 *See* Column C on Attachment 1 to Maryland PSC Maillog No. 138019.

113 Direct Energy St. No. 1-SR at 14

114 Direct Energy St. No. 1 at 15-16.

115 PPL's response to OCA, Set V, Q10.

116 Direct Energy St. No. 1 at 15-16, *citing*, Exhibit RMC-3 and PPL Answer to DES Interrogatory I-5(b).

117 Direct Energy St. No. 1-SR at 15. The question of whether cash working capital costs should also be unbundled and separately charged is a separate question, and it should not slow the Commission from properly allocating the late payment charges. Direct Energy St. No. 1-SR at 16.

118 Direct Energy St. No. 1-SR at 15.

119 Direct Energy St. No. 1 at 16, n.14; Direct Energy St. No. 1-SR at 15.

Notably, Direct Energy's proposal does not take any revenue or earnings away from PPL (it is already crediting ratepayers for this revenue in its pro forma revenue calculation); it merely allocates the late payment charges to both the distribution and generation customers (or the distribution and generation parts of the bill). This is appropriate because the level of late payment charges is directly affected by the level of generation charges billed to the customers (since the charge is assessed as a percentage of the total bill).

Allocation of credit to generation customers reduces PPL's uncollectible accounts expense factors. Based on PPL's Cost of Service Study, residential customers are responsible for 82.85% of the late payment charges.[120] Accordingly, 82.85% of the *pro forma* amount in the future test year ($13,000,000 as claimed by PPL), which is $10,770,500, should be applied as an offset to the uncollectible accounts expense ultimately used by PPL to calculate the POR discount rate for residential customers.[121] The corresponding calculation for small C&I customers is 9.65% and $1,254,500.[122] Netting late payment charges results in a revised uncollectible cost discount rate of 1.63% for residential customers and 0.07% for small C&I customers.[123] A corresponding adjustment must be made to reduce PPL's test year pro forma distribution revenues by an identical amount, to reflect this partial allocation of the revenues to the generation portion of the uncollectibles accounts expense.[124]

These calculations are shown in greater detail in the following tables:

---

120 Direct Energy St. No. 1 at 16,

121 Direct Energy St. No. 1 at 16; Direct Energy Exhibit RMC-4

122 Direct Energy St. No. 1 at 16; Direct Energy Exhibit RMC-4.

123 *Id.* Note that this unbundling requires that PPL reduce the amount of late payment charge revenue it credits to *pro forma* distribution revenues for the purposes of determining revenue requirement.

124 Direct Energy St. No. 1 at 18-19.

Expense % Net of Late Payment Charges[125]

Residential:

PPL Claim for Uncollectible Account Expense	$39,958,222
Total Forfeited Discounts/Late Payment Revenue	$13,000,000
% Allocation to Residential Class	82.85%
Forfeited Discount Offset to Residential Class	$10,770,500
Adjusted Uncollectible Account Expense	**$29,187,722**
Residential Revenue	$1,789,413,551
As a % of Residential Revenue	**1.63%**

Small C&I:

PPL Claim for Uncollectible Account Expense	$1,829,122
Total Forfeited Discounts/Late Payment Revenue	$13,000,000
% Allocation to Small C&I Classes	9.65%
Forfeited Discount Offset to Small C&I Classes	$1,254,500
Adjusted Uncollectible Account Expense	**$574,622**
Small C&I Revenue	$807,579,695
As a % of Small C&I Revenue	**0.07%**

(b) Credit For Collected Administrative Costs

PPL collected an administrative discount factor (under the current POR program) from all EGSs through the administrative component of 0.05% in the total discount on the accounts receivables generated from customers billed via the POR.[126] PPL indicated that the administrative adder has collected some $856,322 from 2010 through the first quarter of 2012, and projects that it will collect an additional $331,752 (for a total of $1,188,074) by the end of

---

125 Direct Energy Exhibit RMC-4.

126 Direct Energy St. No. 1 at 17.

the year.[127] At the hearing, PPL witness Kleha confirmed that PPL has collected approximately one million dollars through the administration of the POR program.[128]

If PPL's proposal to continue the current MFC/POR discount methodology is adopted, then an administrative credit should be applied to the discount rate to refund to EGSs the administrative costs collected by PPL under the current POR program. Such a credit is necessary because: (1) PPL has collected money from EGSs through the administrative factor of the discount rate but has failed to account for how it used the amounts it has collected; and, (2) PPL has not shown that any incremental costs incurred for the POR program have not already been recovered in distribution rates.

PPL has failed to account for how the money that it has collected from the inception of the POR program for administrative costs has been utilized to pay for the incremental costs of the POR program. PPL has not conducted any analysis of its administrative costs.[129] In fact, PPL witness Kleha has conceded that "based on its limited experience regarding the operation of its current POR Program, the Company has not yet conducted a comprehensive analysis of that program including application costs."[130] No explanation for the failure to track these costs has been offered. This is despite the fact that PPL agreed in its last distribution rate case to implement an annual reporting requirement regarding administrative costs on a prospective basis to address concerns raised about transparency of this portion of the discount rate.[131] PPL has not

---

127 See attached Exhibit RMC-1, PPL Answer to DES Interrogatory I-2(a).

128 Tr. 415.

129 Direct Energy St. No. 1 at 17-18.

130 PPL St. 8 at 29.

131 Tr. at 416-417. *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-2010-2161694, Opinion and Order entered December 21, 2012, PPL St. No. 7-R at 41.

kept that commitment and, consequently, there is no record evidence to support that the costs previously collected from EGSs to compensate PPL for incremental costs associated with administering the POR program were in fact utilized for their intended purpose.

On the contrary, PPL witness Kleha stated that the costs associated with start-up and implementation of the purchase of receivables program "were not tracked specifically but were part of the overall retail markets order[132] costs" that PPL incurred.[133] Notably, PPL has never stated that it has incurred "incremental" costs, i.e., out-of -pocket costs over and above costs reflected in its base rates.[134] And, it is not clear that PPL itself actually incurred *incremental* expenses that it anticipated it would incur to implement and administer the program.[135] Rather than incur incremental expenses, it appears that PPL was able to use existing PPL personnel, procedures and outside vendor contracts to accomplish these tasks.[136] Since those costs were already included in PPL's prior expense claims on which its existing distribution rates were based it would be improper to charge EGSs customers for these costs as well. At the very least, PPL needed to present some evidence of what it actually spent to implement POR, and that these amounts were over and above the amounts that it been permitted to recover in its rates for the relevant personnel and services that accomplished these tasks.

---

132 *PPL Electric Utilities Corporation Retail Markets*, Docket No. M-2009-2104271 (Order entered August 11, 2009).

133 Tr. 416.

134 Direct Energy St. No. 1-SR at 17.

135 Direct Energy St. No. 1 at 17-18. Here, PPL is asserting a claim for prior administrative costs based on the expenses allegedly incurred by an affiliate.[135] If changes related to PPL's billing system were not made by PPL (as discussed above), they were made by a subcontractor (Accenture) of PPL Services, an affiliated company of PPL.[135]

136 See Exhibit RMC-5, PPL Answer to DES Interrogatory I-3(a).

The Commission clearly stated that "the discount rate shall reflect only actual incremental costs incurred by PPL."[137] Direct Energy fully acknowledges that PPL should be permitted to recover its legitimate, reasonable and verifiable expenses associated with POR implementation . . . But Direct Energy does not believe that the Commission intended to hand PPL a *carte blanche* to simply collect over $1 million from EGSs without the slightest proof that it had such incremental costs, not otherwise recovered in rates.

PPL's principal argument against refunding these unsupported charges is that the administrative fee in the POR discount was "not reconcilable," and that if PPL, in implementing POR, had incurred more than the amount that it had collected, EGSs would have objected to making PPL whole. While the administrative fee was not made explicitly "reconcilable" by the Commission, it also was expressly or implicitly contingent upon PPL actually incurring incremental costs. Here the requirement of support and justification was deferred until the Company actually incurred the costs – but it wasn't eliminated. Why else would the Commission order PPL to submit an annual report on actual costs incurred in POR implementation[138] – a report that PPL failed to produce. As to EGS reaction to a PPL claim that additional costs were incurred and needed to be recovered, Direct Energy notes that there is no specific termination date for the administrative fee and PPL would have been well within its rights to continue to charge the fee until it recovered 100% of its actually incurred, incremental costs. The bottom line is that, for whatever reason, PPL simply overlooked or failed to keep

---

137 *PPL Electric Utilities Corporation Retail Markets*, Docket No. M-2009-2104271 (Order entered August 11, 2009) at 29. ("... any discount in the purchase of receives should, as much as possible, reflect only the Company's actual expenses. This should not be a mechanism for the Company to make money. Therefore, the request for clarification of RESA is granted and the discount rate reflect only actual incremental costs incurred by PPL.").

138 Tr. 416-417; *Pennsylvania Public Utility Commission v. PPL Electric Utilities Corporation*, Docket No. R-2010-2161694, Opinion and Order entered December 21, 2012.

track of the costs that it incurred in implementing PPL, most likely because it did not incur any costs over and above those for which it was already recovering. In fairness, the Commission should not simply ignore PPL's failure, modest as it might be (in the general scheme of things).

Accordingly, Direct Energy recommends that PPL be required to refund the administrative adder collected under the current POR program:[139] Specifically, if PPL's proposal is adopted, PPL should include a credit of 0.05 % to the POR discount until the $1.2 million is returned.[140] If, in the future, PPL identifies incremental costs, not otherwise included in its existing rates that it believes it should be permitted to recover from EGSs through the POR discount it can make a claim for such costs.[141] At that time, it should obviously fully document the need for the incremental expenditures and show that the costs are not being recovered elsewhere.[142]

This adjustment would further reduce the uncollectible accounts expense factor as shown in the following tables:

---

139 Direct Energy St. No. 1 at 17-18.

140 Direct Energy St. No. 1 at 17-18.

141 Direct Energy St. No. 1 at 18.

142 Direct Energy St. No. 1 at 18.

Expense % Net of Late Payment Charges[143]

Residential:

As a % of Residential Revenue (as shown above in prior table at Section IX.A(3)(a))	**1.63%**
Return of Prior Administrative Discount Adder	(0.05%)
Adjusted % of Residential Revenue	**1.58%**

Small C&I:

As a % of Small C&I Revenue (as shown above in prior table at Section A(3)(a))	**0.07%**
Return of Prior Administrative Discount Adder	(0.05%)
Adjusted % of Small C&I Revenue	**0.02%**

(c) PPL's discount factor, should be made consistent with the final determination of uncollectible accounts expense.

Additionally, it should be noted that if the Commission adopts PPL's proposal to allocate the same uncollectible accounts expense factor to both default service customers and shopping customers in the manner proposed by PPL but directs a change to the level of uncollectible accounts expense used to determine PPL's revenue requirement, then this adjustment should also be made in the uncollectible accounts expense percentage included in the POR discount rate.[144] For example, several parties have argued that PPL's pro forma uncollectible accounts expense is overstated. If the Commission adopts any one of those arguments, the same adjustment needs to be made to both the MFC (charged to default customers) and the POR discount (charged to shopping customers being served via POR).

---

[143] Direct Energy Exhibit RMC-4.

B. CER/RMI

Direct Energy supports PPL's proposal to create a reconcilable rider to recover Commission-approved consumer education and programs and other activities through a Competitive Enhancement Rider ("CER"). Direct Energy also supports the proposal of PPL to use the CER to recover the costs of competitive enhancements directed by the Commission to be considered by PPL in its default service plan proceeding.[145] While the issue of cost recovery for the retail market enhancement initiatives recovery of retail markets enhancements is being addressed in PPL's default service proceeding,[146] Direct Energy supports PPL's proposal to put in place a recovery mechanism for whatever portion of such costs are determined to be recovered from distribution ratepayers. Direct Energy also supports application of the CER to the classes of customers that receive the direct benefits from the enhancements. So, if only residential customers receive a mailer for which cost recovery is sought, the rider should apply only to residential distribution customers.[147]

C. OTHER ISSUES

Direct Energy takes no position on the issues in Section IX(E).

---

145 PPL St. 5 at 39.

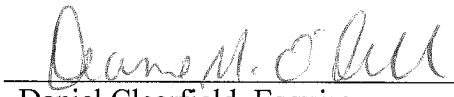
146 *Petition of PPL Electric Utilities Corporation for approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015*, Docket No. P-2012-2302074, decision pending.

147 Direct Energy St. No. 1 at 19.

X. CONCLUSION

Direct Energy respectfully requests that the Administrative Law Judge issue a Recommended Decision consistent with Direct Energy's positions and recommendations in this proceeding.

Respectfully submitted,



Daniel Clearfield, Esquire
Attorney ID #26183
Deanne O'Dell, Esquire
Attorney ID # 81064
Carl Shultz, Esquire
Attorney ID # 70328
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
(717) 237-6000 (phone)
(717) 237-6019 (fax)

Attorneys for Direct Energy Services, LLC

Date: August 29, 2012