

COMMONWEALTH OF PENNSYLVANIA



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October 30, 2009

James J. McNulty
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

RE: Petition of PPL Electric Utilities
Corporation Requesting Approval of a Voluntary
Purchase of Accounts Receivables Program and
Merchant Function Charge
Docket No. P-2009-2129502

Dear Secretary McNulty:

Enclosed for filing is the Main Brief of the Office of Consumer Advocate, in the above-referenced proceeding.

Copies have been served as indicated on the Certificate of Service.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Candis A. Tunilo".

Candis A. Tunilo
Assistant Consumer Advocate
PA Attorney I.D. # 89891

Enclosures

cc: Honorable Louis G. Cocheres
Dennis J. Buckley, Office of Special Assistants
Thomas P. Maher, Bureau of Audits

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities Corporation :
Requesting Approval of a Voluntary : Docket No. P-2009-2129502
Purchase of Accounts Receivables Program :
and Merchant Function Charge :

MAIN BRIEF OF THE
OFFICE OF CONSUMER ADVOCATE

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Dated: October 30, 2009

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I. INTRODUCTION

On August 11, 2009, the Pennsylvania Public Utility Commission (Commission) entered an Order specifying a number of steps that it was directing PPL Electric Utilities Corporation (PPL or Company) to undertake as its generation rate cap is lifted at the end of 2009. The Commission's Order directed PPL to implement a number of steps to minimize barriers to retail competition as PPL's Competitive Bridge Program (CBP) begins on January 1, 2010. The Competitive Bridge Program was a program implemented by PPL for the one-year period between the end of its generation rate cap and the end of the generation rate cap for most other major electric distribution companies (EDCs) in Pennsylvania. Under the CBP, PPL has acquired electric supply for 2010 through a series of purchases in the wholesale generation markets. The retail rate that PPL will charge its customers in 2010 is a fixed rate based on the results of these wholesale purchases, as approved by the Commission.

Among the steps that the Commission directed PPL to take was a modification of its existing Purchase of Receivables (POR) Program. The Commission directed PPL to modify this existing program for its residential and small commercial customers only. The existing program will remain in effect for large commercial and industrial customers. The Commission directed that these modifications be designed to eliminate any unfair subsidies and improve the climate for competition. PPL Electric Utilities Corporation Retail Markets, Docket No. M-2009-2104271, *slip op.* at 29 (Order entered August 11, 2009)(Retail Markets Order). On September 10, 2009, PPL filed a Petition for approval of a voluntary Purchase of Accounts Receivables Program and Merchant Function Charge. In its Petition, PPL proposed the implementation of a new Purchase of Receivables Program for residential and small commercial customers. Of particular concern to the OCA, the Company proposed that it be permitted to terminate its

regulated distribution service to customers for failure to pay unregulated EGS charges, even where those EGS charges exceed the Company's own default service generation rates that have been determined to be just and reasonable by the Commission.

The termination of essential utility distribution service based on unregulated generation charges raises significant issues of law and policy. The OCA has presented its position on these matters on several occasions to the Commission. These issues are not easily addressed but can have significant impacts on the health and safety of the residents of this Commonwealth. The OCA presents its position on these issues in this Brief, identifying its primary concern that customers could be terminated under PPL's proposed POR for generation charges that are higher than the PPL default service rate found to be just and reasonable by the Commission.

In its Order directing PPL to establish a POR for the year 2010, the Commission recognized that the parties to PPL's recent default service settlement have agreed to conduct a number of collaborative meetings to attempt to develop a POR program that would address the variety of market conditions and offers that might develop when the transition period is completed for all EDCs in Pennsylvania. These same parties, however, are now in the position of developing a one-year program for PPL before these collaborative meetings have occurred.

As can be seen by the Settlement being filed this day by the OCA, the Company and other parties, negotiated solutions to address most of the relevant issues for this one-year period have been developed and represent a reasonable approach to this limited transition period for PPL. The issue of whether consumers can be terminated for a failure to pay unregulated EGS charges that exceed PPL's default service rate remains unresolved, however. The OCA has presented two possible alternatives for this one-year period to ensure adequate consumer

protections in this developing market while the parties work toward a longer lasting resolution. The OCA's primary alternative is based on the already established POR programs in Duquesne Light Company's service territory and in New York State where termination is not permitted for charges that exceed the default service rate of the EDC. Using these already approved and tested programs would allow for efficiency in operation and should remove controversy regarding the operation of the programs. As the Commission has already suggested, the New York model has supported the development of a robust retail market.

Recognizing the concerns raised about the potential for additional time and cost needed to implement a program modeled after Duquesne and New York, however, the OCA offered a simple, easy to implement alternative interim solution to the OCA's concerns regarding the termination of essential utility service based on unregulated charges that are higher than the PPL default service charge. Understanding that for this one-year period only, PPL will be offering a fixed default service rate based on the wholesale purchases that have already been completed, the OCA recommends that any EGS who wishes to participate in the POR program simply certify that its charges will not exceed the PPL default service rate during the 2010 CPB period. As mentioned above, the PPL default service rate for 2010 will be a fixed rate for the entire period and will be available to EGSs and the public very soon. Unlike its post-2010 default service plan, PPL will not be making any additional purchases for the CBP or changing the underlying default service rate for the 2010 period.¹ The design of the 2010 Competitive Bridge Program provides a unique opportunity for EGSs to offer savings to customers based on a known price for this one-year period. EGSs are free to offer higher priced supply service to

¹ There will be a quarterly reconciliation to sales, but that adjustment will be only a true up of projected and actual sales, so it should be a small adjustment. The "E" factor reconciliation will not change the underlying default service rate.

customers, but under this proposed alternative, they would not be able to participate in a POR program that permits termination of utility service for those supply services.

The primary criticism of this approach raised by the EGSs is that they may want to offer multiyear products that may be priced higher than the default service rate in future years. Those offers can still be made during 2010 if an EGS determines to make such an offer. During 2010, however, the price may not exceed the PPL fixed default service rate if the EGS wishes to participate in the interim CBP POR program.

The Commission must be mindful of the admonition of the General Assembly that competition was not to come at the expense of consumer protection or customer service. 66 Pa.C.S. §§ 2807(d), 2802(9). As detailed in this Brief, there are at least two options for maintaining necessary consumer protections of essential utility service while allowing the POR to go forward to support the further development of the retail market in 2010. The OCA urges the Commission to implement the necessary consumer protections outlined in this Brief for the one year program for PPL. The parties to PPL's default service proceeding will then be able to engage in the collaborative process to develop a more informed, and longer term resolution of this issue.

II. BACKGROUND

On September 10, 2009, PPL filed its Petition Requesting Approval of a Voluntary Purchase of Accounts Receivables Program and Merchant Function Charge (Petition). In its Petition, PPL requests Commission approval of (1) a voluntary revised POR program for the period of January 1, 2010, through December 31, 2010; (2) a MFC by which the Company proposes to unbundle generation-related uncollectible accounts expense from base rates; and (3) a tariff supplement containing the provisions necessary to implement the 2010 POR program and MFC and reducing base rates to account for the MFC.

PPL's Petition stems from the Commission's Opinion and Order entered August 11, 2009, at Docket No. M-2009-2104271 (Retail Markets Order). The Retail Markets Order is directed at the interim period between the end of PPL's generation rate caps, January 1, 2010, and the implementation of the approved measures in the settlement of the Company's default service program and procurement plan for the period beginning January 1, 2011, through May 31, 2014.² See Retail Markets Order at 3. One of the measures the Commission directed PPL to take for the interim period from January 1, 2010, to December 31, 2010, was to file tariff supplements necessary to implement a revised POR Program for 2010. Id. at 29. The Commission specifically directed PPL to implement modifications to its existing POR program, which it believes will "eliminate unfair subsidies and improve the climate for competition." Id.

By Secretarial Letter dated September 25, 2009, the matter was assigned to the Office of Administrative Law Judge for hearings and certification of the record to the Commission for final decision at the November 19, 2009, Public Meeting. The Secretarial Letter also set the procedural schedule, which is as follows: Prehearing Conference on October 7, 2009;

² See Petition of PPL Electric Utilities Corporation for Approval of a Default Service and Procurement Plan for the Period January 1, 2011 Through May 31, 2014, Docket No. P-2008-2060309, (Order entered January 30, 2009).

Evidentiary Hearings on October 22-23, 2009; Main Briefs due by noon on October 30, 2009; and Reply Briefs due by noon on November 6, 2009. Administrative Law Judge Louis G. Cocheres (ALJ) was assigned to preside over this matter.

On September 30, 2009, the OCA filed an Answer to PPL's Petition recommending certain modifications to the PPL's proposed revised 2010 POR Program. The Office of Trial Staff (OTS) and the the Office of Small Business Advocate (OSBA) participated in this proceeding. At the Prehearing Conference, Petitions to Intervene in this matter were granted for: the PPL Industrial Customers Association (PPLICA), RESA, Direct Energy, Dominion Retail, Inc., FirstEnergy Solutions and Constellation. On October 6, 2009, the Company submitted the Direct Testimony of Joseph M. Kleha (PPL Electric St. 1) and Douglas A. Krall (PPL Electric St. 2). On October 16, 2009, the OCA submitted the Direct Testimony of Barbara R. Alexander (OCA St. 1).³ Also on October 16, 2009, RESA submitted the Direct Testimony of Richard J. Hudson, Jr. (RESA St. 1), and Dominion submitted the Direct Testimony of James L. Crist (Dominion St. 1).

Hearings were held in this matter in Harrisburg before ALJ Cocheres on October 22, 2009. The following witnesses appeared at the hearing and provided Rebuttal Testimony and were cross examined by the parties: PPL witnesses Kleha and Krall, OCA witness Alexander, Dominion witness Crist, and RESA witness Hudson.

³ Ms. Alexander is an independent consultant on consumer protection, customer service and low-income issues associated with utility regulation and retail competition markets since 1996. Prior to opening her own consulting practice, Ms. Alexander was the Director of the Consumer Assistance Division of the Maine Public Utilities Commission. She is a 1968 graduate of the University of Michigan and earned her Juris Doctor degree from the University of Maine Law School in 1976. Ms. Alexander's resume is attached to her Direct Testimony as Exhibit BA-1.

III. SUMMARY OF ARGUMENT

The Office of Consumer Advocate respectfully submits that PPL's proposed purchase of receivables program, even as modified by the partial Settlement filed this day, remains deficient in that it does not include necessary consumer protections related to the termination and reconnection of essential electric service. The OCA supports the Settlement and the establishment of a modified POR program for PPL's service territory to attempt to remove any unnecessary barriers to the development of a competitive market. The OCA cannot support, however, the elimination of fundamental consumer protections that are required under the Public Utility Code.

The OCA submits that there are model POR programs in place in both the Duquesne service territory in Pennsylvania and in New York State that support the development of a competitive market and provide the necessary consumer protections regarding termination and reconnection of essential utility service. The OCA recommends that the provisions in the Duquesne POR program and the New York program that preclude termination of essential utility service based solely on unregulated EGS charges that are higher than the default service rates be implemented for PPL's POR for 2010.

In the event the Commission finds that implementing the provisions of the Duquesne and New York POR programs may be too time consuming or cumbersome for 2010, the OCA submits that its alternative proposal should be adopted. Under the OCA's alternative proposal, to participate in the POR program, the EGS would certify that its charges to customers do not exceed the fixed default service rate that will be in effect for 2010. This proposal can be easily and simply implemented for the 2010 program year.

IV. ARGUMENT

A. Purchase Of Receivables (POR) Program

1. General Design Issues

The OCA's position regarding POR design is contained below.

2. Discount Rate Issues

Resolved by the Settlement.

3. Merchant Function Charge

Resolved by the Settlement.

4. Customer Termination Issues

- a. The Public Utility Code And The Commission's Guidelines Prohibit Termination Of Essential Electric Service When A Customer Fails To Pay Unregulated EGS Charges That Exceed The Utility's Charges For The Same Service.

Of primary concern to the OCA throughout this proceeding is PPL's proposal that it be allowed to terminate customers for non-payment of unregulated supplier charges even if those charges are higher than the regulated default service rate. In addition, PPL requests authority to require the full payment of uncollected supplier charges, even if those charges were higher than the regulated default service rate, prior to reconnecting a terminated customer. Petition, ¶¶44-48. In other words, even if a customer pays an amount equal to PPL's distribution, transmission and default service charges, PPL will disconnect (and refuse to reconnect) that customer if he or she does not pay an even higher unregulated EGS charge.

The OCA has extensively commented to the Commission on this topic and does not support a POR program that does not contain essential consumer protections regarding the potential for termination (or denial of reconnection) based on unregulated charges that have not been found by the Commission to be just and reasonable. The Public Utility Code and its

accompanying regulations are clear that termination of an essential service, such as electric distribution service, should only occur if a customer does not pay Commission-approved rates that have been found to be just and reasonable. See 66 Pa.C.S. §§ 1301, 1406; 52 Pa. Code Chapter 56. Section 1301 of the Public Utility Code sets forth the fundamental principle as follows:

Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with the regulations or orders of the commission.

66 Pa.C.S. § 1301.

OCA witness Alexander explained the importance of this fundamental principle as follows:

The termination of electric service for residential customers raises crucial health and safety concerns. Electricity is essential to operate a furnace or other device to provide heat and essential lighting. The Commission should take particular care when asked to open the door to allowing entities other than regulated public utilities to decide when a residential customer can be denied essential electricity service and establish the condition for reconnection of electricity service.

OCA St. 1 at 10.

The Commission's regulations and practices have long recognized the essential nature of electric service and have limited the use of termination. 52 Pa. Code § 56.83(3). Ms. Alexander testified as to the Commission's long-standing regulations and practice:

Prior to retail choice, customers could not be terminated based on charges that had not been found by the Commission to be just and reasonable and which were not directly regulated by the Commission. The Commission's regulations have long prohibited the threat of termination or the termination of essential electricity

service for products or services offered by the utility which were not regulated by the Commission.

OCA St. 1 at 10.

The Pennsylvania General Assembly sought to continue the consumer protections outlined in the Public Utility Code and Chapter 56 of the Commission's regulations in the introduction of competition in the electric industry. Specifically, Section 2807(d) of the Public Utility Code provides:

The electric distribution company shall continue to provide customer service functions consistent with the regulations of the commission, including meter reading, complaint resolution and collections. Customer services shall, at a minimum, be maintained at the same level of quality under retail competition.

66 Pa.C.S. § 2807(d).

Based on Section 2807(d), this Commission in its initial review of these issues as retail choice was initiated was clear that there can be no termination of essential regulated electric service based on unregulated electric service charges. The Commission's determination on this point was set forth in its Order dated July 10, 1997, to assure compliance with the mandate in Section 2807(d) of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §2807(d), that service quality be maintained. See Final Order Re: Guidelines for Maintaining Customer Services at the Same Level of Quality Pursuant to 66 Pa. C.S. §2807(D), and Assuring Conformance with 52 Pa. Code Chapter 56 Pursuant to 66 Pa. C.S. §2809(E) and (F), Docket No. M-00960890 F. 0011 (Order entered July 10, 1997) (1997 Electric Order). In its 1997 Electric Order, the Commission specifically addressed termination in the context of POR programs:

5. Where an EDC purchases accounts receivables from a supplier, the EDC shall not use the Chapter 56 termination process for nonpayment of these supply charges. Instead the EDC must treat

the delinquent supply charges in the same manner as suppliers. Only when the customer is receiving supply from the provider of last resort may the EDC utilize the Chapter 56 termination process for nonpayment of these supply charges.

See 1997 Electric Order at 39.⁴

The OCA submits that a POR program that has at its heart the termination of essential electric utility service based on unregulated charges *without* adequate protections for consumers cannot be squared with the requirements of the Public Utility Code. The most critical protection for consumers is that customers be subjected to termination (or refused reconnection) based only on a level of charges that the Commission has found to be just and reasonable.

A POR program can be established by PPL that does not compromise essential consumer protections that were to be maintained in a retail choice environment. In this case, the OCA has provided two possible approaches to addressing this issue for the one-year period (2010) of the Competitive Bridge Program. With either approach, the necessary consumer protections can be preserved while allowing a POR to be put in place for the one-year period. During the one-year CBP period, the parties to PPL's settlement of its post-2010 default service proceeding will be able to work through the collaborative process provided for in that settlement to develop a long term POR program for PPL. The OCA discusses each approach below, but submits that either alternative provides a reasonable basis to establish necessary consumer protections for the proposed POR for this one-year period. The OCA respectfully submits that

⁴ Of note, PPL agreed with the Commission's comments regarding termination based on EGS charges. See 1997 Electric Order at 42. PPL witness Kleha notes in his testimony that the guidelines applicable to Natural Gas Distribution Companies (NGDCs) have changed to permit termination of natural gas service for a customer's failure to pay Natural Gas Supplier (NGS) charges. See PPL Electric St. 1 at 14. See also Establishment of Interim Guidelines for Purchase of Receivables (POR) Programs, Docket No. M-2008-2068982, I-00040103F0002, (Order entered December 19, 2008), at Annex A. The regulations addressing the design of these programs and the necessary consumer protections, however, are still pending before the Commission. Rulemaking Re: Natural Gas Distribution Companies and the Promotion of Competitive Retail Markets, Docket. No. L-2008-2069114. There has been no final resolution of this issue for NGDCs.

without these necessary consumer protections, PPL's POR program would not be in accordance with the law.

- b. POR Programs That Provide The Necessary Consumer Protections Are In Place And Can Be Implemented By PPL.
 - i. The Consumer Protections In The Duquesne Light POR And The New York PORs Should Be Implemented By PPL.

In existence today in Duquesne Light Company's service territory and in New York—the POR program that the Commission references as an example in the Retail Markets Order – are POR programs that provide the essential consumer protections that the OCA recommends as the primary approach for PPL's POR. See Retail Markets Order at 29-30. As OCA witness Alexander states in her Direct Testimony, using these existing and approved models for the POR would be efficient and would reduce controversy. As Ms. Alexander testified:

There are two concerns relating to the Commission's approach [in requiring PPL to develop a revised POR Program for 2010] that should be considered in the review of PPL's Petition. First, it would be economical and fair to implement a POR program for this one-year period that has already been developed, approved, and implemented in Pennsylvania. Such an approach is likely to result in a POR program that can be most readily implemented at the lowest cost and with the least amount of controversy. Second, it would not make sense to undertake the development of a POR program that will be costly and that is likely to be controversial and potentially unable to be replicated for the POR program adopted for 2011 and beyond.

OCA St. 1 at 4. In her Rebuttal Testimony, Ms. Alexander went on to state the Duquesne POR model should be followed by PPL because "that would allow [PPL's] proposal to move forward with the least amount of litigation and controversy because [Duquesne's POR model] is in place

and approved by both the consumer representatives and the supplier community.” See Tr. at 118.

Under the Duquesne model POR, Duquesne is permitted to terminate customers for failure to pay EGS charges, but only to the extent that the customer’s payments would not cover the amount the customer would have been billed if the customer were on default service. In other words, as long as the customer pays an amount that is equal to or greater than the applicable Duquesne default service rates, the customer will not be terminated. OCA St. 1 at 11. As to reconnection, under the Duquesne POR program, Duquesne will reconnect the customer if the customer pays the lesser of the charges of the alternative supplier or what would have been billed under default service. Id.

Duquesne’s POR program consumer protection provisions regarding termination and reconnection are as follows:

- (1) Duquesne is permitted to pursue its normal collection activities for customers including termination for nonpayment of unregulated supplier charges, but the ability to terminate is limited to that portion of the EGS receivables equal to or less than the amount the customer would have been billed if the customer had received POLR service from Duquesne during the nonpayment period; and
- (2) If terminated for nonpayment, the customer may be reconnected upon payment of the lesser of (a) the sum of unpaid distribution charges (plus any applicable reconnection fees or deposits) and the amount billed for EGS service (or a payment arrangement required by applicable law) or (b) the sum of the unpaid distribution charges (plus any applicable reconnection fees or deposits) and the amount the customer would have been billed by Duquesne for its POLR

service during the nonpayment period (or a payment arrangement required by applicable law).

See, PPL Exh. JMK-1R at ¶ 12.1.7.5. The OCA submits that these consumer protections should be embodied in the PPL POR program.

The OCA would also note that the New York POR model, that the Commission used as an example of a POR that has removed barriers to competition and allowed retail choice to develop in New York, has termination and reconnection provisions that produce a similar result to the protections utilized by Duquesne in its POR program. The New York POR program does not result in termination of essential utility service based solely on amounts that exceed the regulated supply service offering of the utility. OCA St. 1 at 11. If termination does occur, just as in the Duquesne Light program, customers are reconnected when the customer pays an amount equal to the regulated supply service charge. Id.

As explained by OCA witness Alexander:

The New York [POR] program is based on the New York statute entitled the Home Energy Fair Practices Act (HEPFA) and the Billing Services Agreement (BSA) executed by the EGS and the EDC. HEPFA, in relevant part, provides as follows:

5.(d) Such suspension shall end . . . upon the receipt of payments by or on behalf of the customer to the terminating utility such that the amount paid by such customer to the terminating utility plus the amount previously paid the terminating utility plus any other charges paid to the utility providing distribution service during the period when such customer's arrears accrued **is equal to or greater than the amount such customer would have paid if the entire utility service had been obtained from the utility providing distribution services during such period.**

HEPFA, Section 32(5)(d)(emphasis added).

See OCA St. 1 at 11-12.

Ms. Alexander then provided the following excerpt from the Billing Services Agreement of Central Hudson Gas and Electric to show how any receivables for amounts above the regulated rate are handled in New York:

E. If any customer pays an amount that is less than the amount due for natural gas and/or electricity supply provided by [the NGS] but is sufficient to end the suspension of service to that customer pursuant to [HEPFA] 32(5)(d), [the NGS] shall deduct the difference between the payment received and the full amount owed from the next schedule payment by Central Hudson to the [NGS].

OCA St. 1 at 12, Exh. BA-2.

In the Retail Markets Order, the Commission asserted its support of the New York POR model by stating its hopes that the experience in Pennsylvania will mirror that of New York. See Retail Markets Order at 30. The OCA submits that the essential consumer protections contained in the Duquesne POR program and the New York programs can, and should, be included in PPL's POR program for 2010.

As such, the OCA recommends that PPL implement a revised POR Program that incorporates these consumer protections as follows:

- PPL's right to terminate must be limited to that portion of the EGS receivables that are equal to or less than the amount the customer would have been billed if the customer had received default service from PPL during the non-payment period. In other words, the amount due stated on any termination notice issued by PPL must be no higher than the amount that would have been due to PPL for default service for the period when the arrearage accrued.
- With regard to a customer's right to reconnection of service, if terminated for nonpayment, the customer may be reconnected upon paying the lesser of (a) the sum of unpaid distribution charges (plus any applicable reconnection fees or deposits) and the amount billed for EGS service (or a payment arrangement required by applicable law); or (b) the sum of the unpaid distribution charges (plus any applicable reconnection fees or deposits) and the amount the customer would have been billed

by PPL if the customer had received default service during the non-payment period (or a payment arrangement required by applicable law).

See OCA St. 1 at 13.

The OCA submits that a POR that includes the consumer protections found in the Duquesne Light POR program and in the New York POR programs is appropriate and reasonable for the 2010 CBP. Use of the protections that are already in place in these existing programs should provide efficiency and reduce controversy. The OCA urges consideration of this proposal as a means to provide the necessary consumer protections.

- ii. PPL's Criticisms Of The OCA's Proposal To Adopt The Duquesne Light And New York Consumer Protections Are Overstated For the CBP Year.

PPL objected to this OCA proposed alternative on the grounds that implementing this essential consumer protection could not be done by January 1, 2010, due to needed modifications to its billing systems.⁵ Dominion Retail and RESA echo these concerns about the cost and time needed to modify the billing system. The OCA submits, however, that PPL's concerns for the one year period associated with this POR program are overstated.⁶

According to PPL, it cannot implement the billing system requirements necessary to employ the Duquesne POR model's termination and reconnection provisions before January 1, 2010. See PPL Electric St. 2 at 12-13. PPL Electric witness Krall asserts that certain functionalities need to be installed into PPL's billing system allowing the "creation of parallel paths, the need for logic to determine which of the paths is to be followed in a particular

⁵ As discussed below, the OCA's alternative model would not require the modifications to the billing system that PPL has expressed concerns about.

⁶ Dominion Retail and RESA argue against all OCA alternatives based on their view that the consumer protections are unnecessary. The OCA will discuss Dominion Retail and RESA's arguments in Section IV.A.4.d., below.

circumstance, and the need for tracking information from multiple paths,” and any further limitation on collectible amounts will require the “creation of a shadow billing capability and the tracking of three different amounts – amount billed, default service amount, and amount paid.”

See Id. at 12.

However, there is no need to continuously shadow customers’ bills in order to implement the Duquesne POR model for this one-year period of 2010. In her Rebuttal Testimony, OCA witness Alexander explained why shadow billing capabilities are not necessary to implement the Duquesne POR model for 2010. See Tr. at 118-19. Specifically, Ms. Alexander stated:

[T]here is a simple mathematical calculation that is needed to determine, during this period in which the customer accrued the arrears, the distinction between the EGS charges and the utility default service charges, and the termination notice is then written with the lower amount of those two items.

...
[The calculation] would be done at the time the customer is eligible to obtain a termination notice, so that it would be done in a way to affect the dollar amount that appears on the termination notice.

Tr. at 119. To be clear, the only time a calculation need be made regarding default service charges and EGS charges is at the time the customer would be subject to a termination notice. Further, there is no need for PPL to change any of its existing termination/reconnection literature (*e.g.*, 10-Day Shut Off Notice). The only detail that PPL must incorporate in order to implement the Duquesne POR model for 2010 is to determine which amount is lower, the EGS charges or the default service charges for the same service period, and include that amount on correspondence to the customer regarding avoidance of termination or commencement of reconnection.

It is important to note that PPL cannot terminate residential customers with incomes less than 250% of the Federal Poverty Level from essential electric service between the time the revised POR Program begins on January 1, 2010, and April 1, 2010. 66 Pa.C.S. § 1406(e). If PPL determined that it wished to make billing system modifications to implement this consumer protection for 2010, PPL would not be issuing termination notices for most customers (or perhaps not for any customers) on January 1, 2010. This would give PPL additional time to implement any necessary billing capabilities to calculate the termination/reconnection amount for shopping customers. Even if PPL could not implement into its billing system by January 1, 2010, the components necessary to complete the above-described calculation upon termination eligibility, there are alternatives that PPL can utilize until the necessary components are installed.

iii. Conclusion

The OCA submits that the consumer protections that it proposes regarding termination of essential electric service should be included in the POR program approved for PPL. These protections are already included in the Duquesne Light POR program and in the POR programs in New York. The protections could be put in place for the one-year CBP period without significant modifications to the billing system or other systems.

- c. The OCA's Alternative Termination/Reconnection Proposal Cost-Effectively Addresses All Parties' Concerns For This One-Year POR Program.
 - i. A Simpler Method That Provides The Necessary Consumer Protections Could Be Utilized For The One-Year CBP
Simpler Method That Provides The Necessary Consumer
Protections Could Be Utilized For The One Year CBP.

While the OCA does not agree with the Company's assertions of the complexity of billing functions necessary to implement the requirements of the Public Utility Code and the

Commission's regulations regarding termination for nonpayment of unregulated charges, the OCA understands PPL's concern about implementing a revised POR Program, the duration of which is only one year. Therefore, the OCA proposed an alternative to the Duquesne model, which will implement the required consumer protections *vis-a-vis* termination and reconnection for this one-year period. The OCA's alternative proposal is outlined by OCA witness Alexander as follows:

Since PPL is providing a one-year fixed price as its default service price in 2010 under its Competitive Bridge Program (CBP), it is possible to have EGSs certify that their charges are at or below the default service price as a condition of participating in the POR for this one-year program. [Footnote omitted]. This approach would remove my concern regarding PPL's proposal to allow it to terminate service to residential customers for the failure to pay for unregulated EGS charges for basic service.

See OCA St. 1 at 14.

It is important to note that during 2010, PPL is providing service under its Competitive Bridge Program and has already procured all supply that it will need to serve its customers. PPL's price for 2010 will be known shortly, and can easily be combined with the transmission rates to establish the price to compare for 2010. As PPL witness Kleha testified, during 2010, the underlying rate for generation supply service will not change.⁷ Tr. at 67. EGSs will be able to compete against this known price to provide savings to customers during this rather unique market period. Under the OCA's alternative, an EGS simply has to confirm, or certify, to PPL that the price being charged to the customer in the POR program during the year

⁷ The only change will be for reconciliations based on the variation in sales from the as projected amounts, not for changes in the underlying price to compare. Tr. at 66-67.

2010 is at or below this known default service price.⁸ This proposed alternative would not require any billing system modifications by PPL or any “shadow billing.”

The Company did not provide rebuttal testimony indicating that it could not implement the OCA’s alternative proposal by January 1, 2010, nor did the Company otherwise indicate that it disagreed with the proposal. The OCA submits that this alternative proposal provides a simple method for ensuring consumer protections without undue expense during the one-year Competitive Bridge Program for PPL. As PPL has already committed to a collaborative process to develop a POR program for 2011 and beyond that conforms to the requirements of the settlement agreement of its default service proceeding, this easily implemented solution would provide a necessary and appropriate bridge to 2011.

ii. EGS Criticisms Of The OCA’s Alternative Proposal Are Unfounded.

In his Rebuttal Testimony, Dominion witness Crist stated that the OCA alternative approach “should be rejected” but failed to provide any reasoning behind his opinion. Tr. at 159. Mr. Crist acknowledged that Dominion’s current competitive offering in Duquesne’s service territory is, in fact, less than the default service price. Tr. at 165. To the extent that EGSs have made public announcements of their offerings to PPL customers that are at or below PPL’s 2010 generation price, the EGSs would readily qualify for the POR plan in the manner proposed by the OCA.

In his Rebuttal Testimony, RESA witness Hudson asserts that the OCA’s alternate proposal is unreasonable and should not be accepted. Tr. at 192. Mr. Hudson claims that the OCA’s alternate proposal “would make EGSs very unlikely to participate in POR” and “would

⁸ If the EGS did not want to provide this confirmation or is offering a price higher than the default service rate for 2010, the EGS would not be able to participate in the POR program for 2010.

effectively prevent EGSs participating in POR from providing value-added products and services.” Tr. at 192-93.

These criticisms are unfounded. First, under the OCA alternate proposal, EGSs can participate in the POR program and offer any product they wish to customers, so long as it is priced at or below the default service price of PPL for 2010. EGSs can also charge rates higher than the default service price if they wish, but those offers would not be covered in the POR Program. Moreover, the OCA proposal would only apply to prices charged in 2010, a period in which PPL’s price will be fixed and has already been determined through a series of procurements that are now complete. The nature of the POR program after 2010 is to be established in the collaborative established in the PPL post-2010 default service settlement.

RESA witness Hudson argued that PPL’s 2010 default service rate will change quarterly (Tr. at 187), making it possibly confusing to track. Company witness Kleha, however, explained the quarterly reconciliation process and provided assurance that “the underlying rate for generation supply service provided to the company by suppliers will not change.” Tr. at 67. Consequently, since PPL’s underlying rate will remain the same for all of 2010, it will be relatively simple for the Company to implement the OCA’s alternate approach. Also, it will be relatively simple for EGSs to determine whether or not they can certify that their prices are at or below PPL’s default service rate for 2010.

iii. Conclusion

Based on the foregoing, it is clear that the OCA’s alternate proposal – to permit terminations of POR customers as long as participating EGSs certify that their rates are no higher than PPL’s default service rates – is the most viable and efficient choice for PPL’s 2010 POR Program. It meets the Public Utility Code’s and the 1997 Electric Order’s requirements that

consumer protections and quality of service be maintained in the new competitive marketplace. The proposal can be easily implemented by the Company without additional billing system changes. Furthermore, EGSs, as competitive businesses, can offer whatever programs they wish, with those programs offering commodity prices at or lower than PPL's default service rate eligible to participate in the POR Program. Therefore, the Commission should adopt the OCA's alternate proposal in this matter.

d. The EGSs Arguments That Consumer Protections Are Unnecessary Or Harm A Competitive Market Must Be Rejected.

i. The Protections Afforded By The Public Utility Code Continue to Apply

In his Direct Testimony, RESA witness Hudson asserts that the OCA's termination/reconnection argument is flawed because, *inter alia*, "the Commission does not 'approve' the default rate as just and reasonable." See RESA St. 1 at 25. Dominion witness Crist mirrored Mr. Hudson's sentiment regarding the Commission's failure to approve rates as just and reasonable in his Rebuttal Testimony. See Tr. at 158-59. Based on these assertions, RESA and Dominion Retail have objected to any attempt to develop necessary consumer protections.

The EGSs make these arguments even in light of Section 1301 of the Public Utility Code. Again, Section 1301 states:

Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, **shall be just and reasonable**, and in conformity with the regulations or orders of the commission.

66 Pa.C.S. § 1301. (Emphasis added). The notion that the Commission is allowing PPL to charge a default service rate that the Commission does not consider just and reasonable is incorrect.

The enactment of the Electric Choice Act (Act) did not repeal the “just and reasonable” rate standard of Section 1301 of the Public Utility Code as the EGSs try to suggest. 66 Pa.C.S. § 1301. The Act declared that competitive forces rather than traditional cost-based regulation would be used to bring about just and reasonable rates for electric generation. It is still within the purview of this Commission to determine whether, in fact, the rates for default service meet the just and reasonable standard. In the 2008 Pike County Complaint proceeding, the Commission considered the issue of Pike’s generation rates (i.e., default service rates) after Pike conducted its first default service procurement. In considering the legal standards that applied to the generation rates charged by Pike, the Commission concluded:

The rates that PCL&P charges must meet the standard set forth in Section 1301 of the Code, 66 Pa.C.S. § 1301. Section 1301 states:

Every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable, and in conformity with regulations or orders of the Commission . . .

County of Pike v. Pike County Light & Power Company, Docket No.C-200065942, *et al.*, slip *op.* at 7 (Order entered March 10, 2008).

The actions of the Commission in ensuring that the default service rates charged by PPL are just and reasonable, in contrast to the ability of EGSs to charge whatever they wish, were clearly set forth on the record. First, through a proceeding, the Commission approved the procurement methodology that PPL used to secure its supply ensuring that it met all statutory and regulatory requirements for default service. Then, as PPL witness Kleha testified, after the receipt of the bids, the Commission and its staff reviewed information, including the bids, before issuing an approval of the winning bid. Mr. Kleha testified:

Following the request for proposals and the filing of the sealed bids, a third-party administrator, NERA, reviewed the proposals,

ranked the proposals based upon winning and non-winning bids under the number of tranches that were available to be filled at that point in time. That information was submitted directly to the Commission, and this Commission reviewed and in some instances had individuals on-site helping to review the bids and watch the bidding process, and the Commission then would approve the solicitation and the information that was provided to the Commission by the third-party administrator, NERA, and the company would receive a letter saying it was approved.

Tr. at 61-62. As PPL witness Kleha also explained, the Company must now file with the Commission a tariff in November or December 2009 with its 2010 rates, and the Commission will have to approve this tariff before the rates can actually go into effect.⁹ See Tr. at 66.

In contrast, as RESA witness Hudson acknowledged, the Commission does not review the prices that an EGS offers or charges, it does not approve the specific procurement methodology used by the EGS, and it does not review whether EGSs purchasing or prices are intended to provide the least cost to customers over time. Tr. at 208-209.

The EGSs' argument that the Commission does not approve PPL's rates as just and reasonable is completely unsupported in the law and should be given no weight. Indeed, under the EGS argument, the Commission would be unable to protect ratepayers at all, a result that is clearly not intended by, or supported by, the Electric Choice Act.

ii. The OCA's Proposals Maintain A Competitive Environment For Unregulated EGSs.

As discussed at length above, the OCA's proposals to implement its alternative POR model termination and reconnection provisions meet all of the requirements of the Public Utility Code and the Commission's regulations, which are the current prevailing EDC POR

⁹ Upon cross-examination, RESA witness Hudson acknowledged that the Commission sent a Secretarial Letter dated October 8, 2009, to PPL after its sixth and final supply solicitation for 2010, wherein it is specifically stated that the Commission approves the bid results. See Tr. at 206; Exh. RJH-4. Mr. Hudson also admitted that as a non-lawyer, his statement that the Secretarial Letter is not an approval of rates as "just and reasonable" is not an opinion as to the legal ramifications of the Letter. See Tr. at 206.

program standards. The arguments by RESA and Dominion that the consumer protections against termination for failure to pay EGS charges are not necessary and will harm the competitive market do not comport with the existing law on these topics. RESA witness Hudson asserts that the OCA's proposal to implement the Duquesne POR model termination and reconnection provisions are rooted in the OCA's belief that consumers need to be protected from excessive pricing. Tr. at 189. Mr. Hudson asserts that there is no need for such consumer protections because there are existing protections in place, such as the Commission's formal and informal complaint process. Id. The formal and informal complaint process does not adequately address the potential that the customer will be terminated, and will be without essential electric service, based on unregulated charges. The consumer protections sought by the OCA are rooted in the fact that electric service is essential to the health and safety of the public, and the Public Utility Code and the Commission's regulations have clearly identified the need to proceed with all due caution before depriving a customer of this essential service. See, OCA St. 1 at 10.

The EGS assertions that there is no need for consumer protections against termination for failure to pay EGS charges are unfounded. The following line of questioning of RESA witness Hudson illustrates this best:

Q. Mr. Hudson, as a point of clarification, under your POR proposal, EGSs would be guaranteed a hundred percent recovery of their charges, is that correct, without risk?

A. EGSs, as I've mentioned, would still be subject to financial risk, market-to-market risk, and my proposal does adopt the company's administrative discount factor, so EGSs would be reimbursed for 100 percent of their charges, less the administrative discount.

Q. The 0.05 percent?

A. Correct.

Q. So are you classifying the 0.05 percent as a risk?

A. I'm not classifying it as a risk, but you said EGSs would be guaranteed 100 percent. I'm simply making the factual clarification that it's not 100 percent.

Q. So EGSs would be guaranteed 99.95 percent of the recovery of their charges to customers?

A. Yes.

Q. Without uncollectible risk; correct?

A. Yes.

Tr. at 217.

The EGSs are not regulated and are free to charge whatever they wish. But here they seek not only to have the regulated utility provide consolidated billing for their serve, but want the utilities to terminate their customers' regulated distribution service for failure to pay the EGSs' unregulated generation charges. It is this demand that calls for some level of consumer protection, such as that provided in the Duquesne POR program and in New York State.

It is important to note the ramifications should RESA's and Dominion's POR positions be adopted for PPL's 2010 POR Program. PPL's current POR Program will continue in 2010 for large commercial and industrial customers. See e.g. Tr. at 55-56. Under PPL's existing program, PPL pays a participating EGS the entire amount for undisputed EGS charges regardless of whether full payment was received from the customer for 90 days. After 90 days of not receiving payment for a customer's purchased receivables, PPL cannot terminate the customer's electric service but can revert to dual billing and require the EGS to thereafter bill and collect its own generation charges or, if the EGS so elects, the EGS can cancel its contract with the customer, which would revert the customer back to default generation service with PPL. See PPL Electric St. 2 at 4; Tr. at 54-55. As PPL made clear during the hearings, this existing program will continue for large C&I customers.

If termination for failure to pay EGS charges is permitted for PPL's 2010 POR Program, residential customers in the POR Program could have their essential electric service terminated for failure to pay unregulated EGS charges. Yet, large commercial and industrial customers could not be terminated from electric service in the same scenario. Rather, those customers would have their EGS contract cancelled and would be returned to PPL's default service upon a failure to pay.

The Commission must not simply eliminate essential consumer protections for residential customers in PPL's 2010 POR Program. The necessary consumer protections are contained in both the OCA's proposal to implement the Duquesne model's termination/reconnection provisions and the OCA's alternate proposal requiring EGS certification that its prices are at or below the default service rate. The EGSs' arguments that consumer protections are not necessary within the POR are without merit and should be dismissed.

5. All-In/All-Out Requirements

Resolved by the Settlement.

6. Company Alternative To All-in/All-out Requirements

Resolved by the Settlement.

7. Basic Generation Supply Service Issues

In Paragraphs 21 and 22 of its Petition, PPL states that its POR program is applicable only for basic generation supply services provided by EGSs. In other words, PPL will not purchase receivables associated with other products and services that may be offered by the EGS, such as wire or line maintenance services, appliances, or the like. PPL proposes to have the participating EGS certify that the receivables sold to PPL are only for basic generation

supply service. The OCA supports this component of the POR. As set forth by OCA witness Alexander:

This provision is an important consumer protection because it continues the long-standing practice that prohibits the use of the utility's regulated collection activities and the threat of termination of basic service for nonpayment of services and products that are not regulated by the Commission and that are not defined as "basic service" by the Commission's regulations in its Electric Generation and Customer Choice regulations.

OCA St. No. 1 at 5. In its Direct Testimony, RESA states that it can accept PPL's premise that its POR program is applicable only for basic generation supply services provided by EGSs so long as basic service is understood to not exclude renewable, or other attribute-based energy products. See RESA St. No. 1 at 21.

In response to this issue, PPL clarified that basic supply service is a generation product but does not include attribute-type products. Tr. at 107. As an example, PPL witness Krall referred to an attribute-type product, such as PPL's own "Green Power Option" program, where an additional charge is collected to support development of renewable resources generally, but no specific renewable generation is delivered on behalf of the customer. Mr. Krall explained that PPL's "Green Power Option" is deemed separate from Basic Utility Supply Service. See PPL Electric Exh. 6. As such, PPL does not include the additional amounts paid by customers under this program as charges for which the customer can be terminated. Id. The OCA shares PPL's concern about termination for such optional, attribute-based service.¹⁰

The OCA submits, however, that under both OCA alternative proposals this restriction could be addressed. In particular, the OCA proposes that PPL's right to terminate be limited to that portion of the EGS receivables that are equal to or less than the amount the

¹⁰ The OCA would note that these forms of attribute-based services are not the same as products unrelated to energy delivery such as insider wire maintenance contracts, appliance purchases and the like. These attribute-based products, however, are not related to specific generation being provided for the customer.

customer would have been billed if the customer had received default service from PPL during the non-payment period. Alternatively, since PPL is providing a one-year fixed price as its default service price in 2010 under its Competitive Bridge Program, it is possible to have EGSs certify that their charges are at or below the default service price as a condition of participating in the POR for this one-year program. Under either OCA alternative, if the total price including the attribute-based price is at or below the Company's default service rate, the customer could be terminated for unpaid charges. Such termination would be allowable as the customer would be paying a generation price at or below PPL's Basic Utility Supply Service rate. Consequently, the OCA submits that customers receiving EGS service including an attribute-based energy product would be treated just like customers on PPL's green power option, i.e., they would not be subject to termination for failure to pay these charges so long as the charges are at or below PPL's basic service rate.

Absent application of the OCA's suggested proposal, the issues regarding termination for unregulated EGS charges when addressing attribute-based products do raise concerns. The OCA agrees with PPL that Chapter 56 of the Commission's regulations does not permit termination of essential utility service for optional services such as attribute-based products that are added to the cost of basic utility service. See 52 Pa. Code Ch. 56.

8. Credit Check Requirements

Resolved by the Settlement.

9. 12-Month Stay Provision

Resolved by the Settlement.

10. Program Availability for Large Commercial and Industrial Customers

Resolved by the Settlement.

11. POR Program Contingencies

The OCA has no position for its Main Brief.

B. Subsequent Recovery Of Uncollected Receivables And Unrecovered Administrative Costs

Resolved by the Settlement.

C. Customer Notification Issues Related to Termination

In its Petition, PPL proposes that in the event the Commission approves its proposed revised POR Program as filed, it will inform all its customers that their essential electric service may be terminated for failure to pay EGS supply charges via an article in its newsletter *Connect* and via its enrollment letter sent to customers at the time they select an EGS. See Petition at 16. According to PPL witness Krall, the Company will not have sufficient time between the Commission's expected decision in this matter on November 19, 2009, and the beginning of the revised POR Program on January 1, 2010, to prepare a separate bill insert to customers notifying them of the change in termination and reconnection provisions. See Tr. at 103. The Company also proposed to modify its "enrollment letter" that is sent to the customer when the customer selects an EGS to inform the customer of the termination procedures for the EGS charges.

It is crucial that changes in customer rights regarding termination and reconnection be disseminated to customers conspicuously and through various avenues. As explained by OCA witness Alexander:

This significant change in customer rights requires a separate notice in the bill, with identifying information on the billing envelope that important information regarding customer rights and responsibilities is included.

* * *

This change in policy should require the EGS to notify not only new customers, but also any existing customers of this change in policy. This change in customer rights is a significant change in customer expectations and assumptions about the operation of the competitive market in Pennsylvania and should be widely disseminated to customers in multiple venues.

See OCA St. 1 at 15. An article in PPL's *Connect* newsletter is not conspicuous, especially in light of the vital information at issue here.

In Rebuttal, PPL witness Krall recognized the OCA's concern with its notification procedures, particularly for customers that are already enrolled with an EGS or who may enroll before the new enrollment letter is in place. PPL witness Krall proposed to go back through the customer data system to identify those customers that have already shopped and send them individualized letters informing them of the change in procedures. Tr. at 101-102.

The OCA submits that PPL's proposal to notify customers already enrolled, or who may enroll before the new enrollment letter is in place, of the change in termination procedures through a separate letter should be approved. In addition, PPL should continue its efforts to modify its enrollment letter and it should continue with its plan to use its *Connect* newsletter to generally inform customers of any revised termination procedures.

V. CONCLUSION

The OCA submits that PPL's proposed POR Program requires modification, as set forth in this Main Brief, prior to Commission approval.

Respectfully Submitted,



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Dated: October 30, 2009

119180

CERTIFICATE OF SERVICE

Petition of PPL Electric Utilities Corporation :
Requesting Approval of a Voluntary : Docket No. P-2009-2129502
Purchase of Accounts Receivables Program :
and Merchant Function Charge :

I hereby certify that I have this day served a true copy of the foregoing document, the Main Brief of the Office of Consumer Advocate, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

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