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October 30, 2009

Via Electronic Filing
James McNulty, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

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:

On behalf of the Retail Energy Supply Association ("RESA") and Direct Energy Services, LLC ("Direct Energy") enclosed please find its Main Brief along with the electronic filing confirmation with regard to the above-referenced matter. Copies have been served in accordance with the attached Certificate of Service.

Sincerely yours,

Deanne M. O'Dell, Esq.

DMO/lww

Enclosure

cc: Hon. Louis G. Cocheres, w/enc. (via email service only)
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of RESA and 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.

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Dated: October 30, 2009

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

MAIN BRIEF OF

THE RETAIL ENERGY SUPPLY ASSOCIATION

AND

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I. INTRODUCTION

On January 1, 2010, consumers in the service territory of PPL Electric Utilities Corporation ("PPL") may have the chance to save money and mitigate the effects of generation price increases by finally being able to choose the company that provides their electricity generation supply. But this will happen only if the Commission rejects the OCA's demanded restrictions and establishes rules for PPL's Purchase of Receivables ("POR") program that place EGSs on a level playing field with default service in terms of billing and collection rules and do not limit the products and services that the competitive market can offer.

Since the legislature's decision in 1996 to establish retail competition as the policy of the Commonwealth,[1] the Commission has been diligent in establishing rules and policies intended to guide the development of a robust competitive market. Generally, these rules have been intended to lay the groundwork to enable electric generation suppliers ("EGSs") to offer service in competition with electric distribution companies ("EDCs") like PPL. As the law makes clear, "[c]ompetitive market forces are more effective than economic regulation in controlling the cost of generating electricity."[2] Now that artificial, below market rate caps are finally at an end, it is crucial that the operational rules be designed to facilitate – and not stymie – competitive market offerings. One such crucial step is the implementation of a properly structured POR program.

Through a POR program, an EDC purchases the receivables of an EGS. Upon the purchase, the EDC owns the customer relationship with the POR customer. The EDC adds the EGS's charges to the customer's distribution bill and the EDC can terminate service to the customer for non-payment in the same manner it does for its own default service charges. POR

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1 66 Pa. C.S. § 2801 *et. seq.* known as the Electricity Generation Customer Choice and Competition Act ("Choice Act").

2 66 Pa. C.S.A. § 2802(5).

programs are in place in dozens of service territories across the country including the service territories of Duquesne Light Company ("Duquesne") and Pike County Light & Power Company ("PCL&P") in Pennsylvania. POR programs are a key component in developing a successful retail energy market as they enable EGSs to offer service to all residential customers and small business customers, regardless of their credit experience or the size of their load, and reduces the risks to the EGS of providing such service. This results in a broader segment of consumers enjoying the benefits of retail competition, including lower prices, innovative products, and the ability to select from multiple renewable energy options.

Because a functioning POR program is so crucial for the facilitation of competition, the Retail Energy Supply Association ("RESA")[3] and Direct Energy Services, LLC ("Direct Energy") (collectively "RESA/Direct Energy") reached a settlement with all parties in this proceeding to implement a compromise program for 2010 only which permits PPL to move forward with implementing a POR program this coming January. The settlement addresses almost all of the program's elements including how EGSs will be able to enroll small commercial and industrial ("C&I") customers into PPL's POR program for 2010. Although RESA/Direct Energy do not support all aspects of the settlement as the appropriate long-term policy for POR programs (and reserve their rights to challenge those aspects in the future), implementation of a workable POR program on January 1, 2010 was the ultimate goal.

Unfortunately, however, the parties could not reach a universal settlement regarding PPL's 2010 POR program for residential customers. The point of disagreement concerns

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[3] RESA's members include ConEdison Solutions; Direct Energy Services, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Gexa Energy; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; RRI Energy; Sempra Energy Solutions LLC. The comments expressed in this filing represent the position of RESA as an organization but may not represent the views of any particular member of RESA.

whether customers enrolled in POR can have their service terminated for failure to pay EGS charges that may, in some cases, exceed PPL's default service rates, and what charges the customer will be required to pay to have that service reconnected. The Office of Consumer Advocate ("OCA") claims that the amount of the charges used for both termination and reconnection must equal the default service rate. As an alternative, OCA recommends that EGSs be required to certify, as a condition of using POR, that their charges will, in all cases, be "at or below" the default service rate.

Neither PPL nor any of the fifteen EGSs that participated in this proceeding supports this position. Aside from the implementation difficulties that would be caused by adopting OCA's approach, the fact is that PPL purchases the accounts receivable from the EGS and the price the customer has agreed to pay the EGS become PPL's charges. This amount is then used to determine when termination and/or reconnection is appropriate in accordance with the Commission regulations. The vast majority of POR programs across the country operate this way and PPL is prepared to implement its POR program on January 1, 2010 using this approach. RESA/Direct Energy urge the Commission to reject OCA's contrary proposals. While there are numerous reasons why OCA's position should be rejected, the most important is that it will forestall implementation of this very important program and deprive residential customers of the benefits of a competitive retail market.

From a practical standpoint, PPL has made clear that it cannot reconfigure its billing systems to accommodate OCA's approach by January 1, 2010. Without POR for residential customers, the field of competitive offers will be dramatically limited and all consumers will be harmed from the lack of ability to turn to the competitive market as a way to ameliorate generation rate increases. Imposing OCA's limitation would also prevent EGSs from offering a

wide variety of attractive energy products, including "green energy" and multi-year fixed products, just because the EGS contract price now or in the future might exceed the default service rate.

Moreover, OCA's position is not legally justified. First, OCA's proposal would be a regulation of EGS pricing which is completely antithetical to the legislature's intention that the prices for generation service should be derived from the competitive market. OCA's demands are, in effect, price controls which are clearly illegal under the Public Utility Code. Second, the default service rate is not some legally mandated cap on termination because the Commission does not declare the default service rate to be just and reasonable as OCA claims. The Commission does not have the authority to regulate any generation charges and approval of an EDC's competitive default service procurement plan does not result in a Commission determination that the default rate is the only just and reasonable rate. Indeed, to the extent that the Commission relies on competitive market forces to assure itself that resulting default rates are reasonable, those same competitive markets produce the EGS charges, and provide the same assurance that EGS charges will be reasonable. Finally, utilities are not legally prohibited from terminating service for non-payment of charges which have not been deemed to be just and reasonable by the Commission. There is no legal basis upon which default service charges could be subject to full termination while EGS charges are denied such treatment.

On a factual basis, OCA's concern that EDCs and their generation charges provide more consumer protections than an EGS's generation charges ignore the reality that EGSs are subject to comprehensive licensing requirements and provide generation service in accordance with a variety of regulatory requirements and market-based consumer protections. If a customer is terminated for non-payment of an EGS generation charge, the customer can utilize the full range

of due process procedures that the Commission has established to assure that a customer's service was not illegally terminated. Moreover, the prices that EGSs charge emanate from the same wholesale competitive market as the default service rates charged by PPL. There is little danger that EGS could successfully impose prices in excess of the market without customers simply moving to another supplier or to default service.

From an evidentiary standpoint, OCA has provided nothing to demonstrate why its approach is even necessary. Even though there are dozens of POR programs across the country (including in Pennsylvania) that do not have OCA's proposed restriction, OCA has not provided any quantifiable evidence showing that these have lead to the concern identified by OCA in this proceeding. In essence, OCA's proposal is a solution in search of a problem and, especially in light of the significant harm it would impose on this nascent competitive market, the Commission should reject it.

II. BACKGROUND

Pursuant to the Choice Act, the generation of electricity is deregulated and the Commission is required to take all actions necessary to establish a competitive retail market wherein consumers can purchase generation supply from electricity generation suppliers ("EGSs").[4] Since the Choice Act, the Commission has taken numerous steps to fulfill its statutory responsibilities including the issuance of a *Tentative Order* on May 15, 2009 directing PPL to take certain market-opening activities in advance of the expiration of its generation rate cap on January 1, 2010.[5] Among the market-opening activities directed by the Commission was the implementation of a POR program. Specifically, the Commission ordered that PPL's

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4 66 Pa. C.S. § 2801 et. seq.

5 *PPL Electric Utilities Corporation Retail Markets,* Tentative Order entered at Docket No. M-2009-2104271 on May 15, 2009 ("*Tentative Order*").

program: (1) have little or no discount; (2) remove the provision requiring a customer account to revert to dual billing after an accumulation of 90 days of arrearages; (3) maintain the ability of PPL to terminate service to customers in accordance with Commission regulations; (4) not contain any "all-in, all-out" provisions; and (5) only be available for basic supply service. No restriction on the termination for nonpayment of charges was mentioned.

In response to the *Tentative Order's* directions regarding POR, PPL filed comments advocating that it should not be required to file a POR program. Subsequently, the Commission issued its *Final Order* which directed PPL to file a POR program within 30 days in accordance generally with the requirements set forth in the *Tentative Order*.[6]

In response, PPL filed the instant Petition which sets forth the specifics of the POR Program PPL proposes to implement effective January 1, 2010.[7] In its Petition, PPL proposes program designs beyond those directed by the Commission and also proposes to unbundled its generation related accounts expense from distribution rates and collect them from EGSs (through the POR discount rate PPL will pay the EGSs to buy their accounts) and from default service customers (through a Merchant Function Charge, or "MFC," added to default service rates). On September 15, 2009, PPL filed its proposed tariff supplements to implement the POR program set forth in its Petition.[8]

By Secretarial Letter dated September 25, 2009, the Commission established a litigation schedule for PPL's Petition and the following parties intervened in this proceeding: OCA, Office of Small Business Advocate, Office of Trial Staff, RESA, Direct Energy Services, LLC,

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6 *PPL Electric Utilities Corporation Retail Markets,* Final Order entered at Docket No. M-2009-2104271 on August 11, 2009 ("*Final Order*").

7 Ex. JMK-4.

8 Ex. JMK-5.

("Direct Energy") the PP&L Industrial Customer Alliance ("PPLICA"), FirstEnergy Solutions, Constellation NewEnergy, Inc., Dominion Retail, Inc. ("Dominion")

PPL submitted direct testimony on October 6, 2009[9] and the following parties submitted direct testimony on October 16, 2009: OCA, Dominion, and RESA.[10] Rebuttal outlines were subsequently submitted by the same parties and a hearing was held on October 22, 2009. In accordance with the schedule set forth by the Commission, main briefs are due on October 30, 2009 and reply briefs are due on November 6, 2009. The Commission has stated that it would issue a decision on this matter at its November 19, 2009 public meeting.

III. SUMMARY OF ARGUMENT

A. OCA's Proposal Regarding Termination and Reconnections Must Be Rejected

OCA's proposal that PPL only be permitted to terminate service to POR customers for charges at or below the default service rate and its alternate proposal that, in order to use POR, an EGS must certify that its generation charges are and will be at or below the default service rate should be rejected for the following reasons:

- PPL has made clear that it cannot reconfigure its billing systems to accommodate OCA's approach by January 1, 2010.
- Without POR for residential customers or with POR containing OCA's restrictions, development of the competitive market will be stymied.
- OCA's proposal is an unlawful regulation of EGS pricing.
- OCA is incorrect that the Commission has declared the default service rate to be just and reasonable, and default rate is the only charge for which termination is legally permissible.
- PPL is not restricted to terminating service for non-payment of charges only if the charge has been declared just and reasonable by the Commission.

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9 PPL St. No. 1 and PPL St. No. 2.

10 OCA St. No. 1, Dominion Retail St. No. 1, and RESA St. No. 1.

- EGSs are subject to licensing requirements and, likely default service, provide generation service contracts in accordance with a variety of regulatory requirements.

- Like default service, the prices that EGSs charge emanate from the same wholesale competitive market from which the default service rates charged by PPL are derived.

- OCA has provided no evidence to demonstrate why its approach is necessary.

B. The Definition Of Basic Services Must Be Clarified To Permit Value-Added Products Based On The Underlying Attributes Of The Energy To Be Included In PPL's POR Program

POR should be available to bill a customer for an attribute-type product when the customer is receiving generation service from that EGS, because such products are connected to the sale of generation.

IV. ARGUMENT

Burden of Proof

The proponent of a rule or order has the burden of proof.[11] The Pennsylvania Supreme Court has held that the term "burden of proof" means a duty to establish a fact by a preponderance of the evidence.[12] The term "preponderance of the evidence" means that one party has presented evidence which is more convincing, by even the smallest amount, than the evidence presented by the other side. If a party has satisfied its burden of proof, it must then be determined whether the opposing party has submitted evidence of "co-equal" value or weight to refute the first party's evidence.[13]

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11 66 Pa. C.S. §332(a).

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

13 *Morrissey v. Commonwealth of Pennsylvania, Department of Highways*, 225 A.2d 895 (Pa 1987).

Further, any order of this Commission must be based on substantial evidence.[14] The term "substantial evidence" has been defined by the Pennsylvania courts as such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.[15]

A. Purchase of Receivables Program

1. General Design Issues

See Joint Petition for Settlement.

2. Discount Rate Issues

See Joint Petition for Settlement.

3. Merchant Function Charge

See Joint Petition for Settlement.

4. Customer Termination Issues

a. OCA's Proposed Modification For Non-Payment Terminations Is Fatally Flawed And Should Be Rejected By The Commission

OCA contends that PPL's POR program should be modified to preclude termination of distribution service for the portion of unpaid generation charges that are higher than PPL's default service charge.[16] If a termination takes place for non-payment, OCA's modification would require that generation supply be restored to the customer upon payment of an amount

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14 *Dutchland Tours, Inc. v. Pennsylvania Public Utility Commission*, 337 A.2d 922, 925 (Pa. Cmwlth. 1975).

15 *Murphy v. Department of Public Welfare, White Haven Center*, 480 A.2d 382, 386 (Pa. Cmmwlth 1994); *Erie Resistor Corporation v. Unemployment Compensation Board of Review*, 166 A.2d 96, 97 (Pa. Super. 1961).

16 OCA St. 1 at 9-13.

equal to PPL's charges for default service. OCA would further require that any uncollected amounts for generation charges in excess of PPL's default service charges be borne by the suppliers.[17] OCA's proposal must be rejected for a host of reasons.

i. OCA's Proposed Modifications Can Not Be Implemented In Time To Be Included In A POR Program For 2010.

As the party asking the Commission to issue an order modifying PPL's proposal, OCA bears the burden of proof.[18] OCA has not met its burden. OCA's proposal is not legally required and, indeed would perpetuate an unequal playing field between termination practices for EDC default services compared to EGS charges. Moreover, OCA has not provided any evidence to show why its proposal is necessary even if the Commission did have the legal authority to adopt it. On the contrary, there is substantial evidence on the record showing that OCA's proposal is not necessary and, if adopted, will have a chilling effect on the development of competition in PPL's service territory. Just as important, the record shows that OCA's demands cannot be implemented in 2010 and any order requiring them would effectively eliminate a POR program for PPL next year – a result which is directly contrary to the Commission's clear prior directives in this case.

The Commission has already concluded that a properly structured POR program for PPL's service territory on January 1, 2010 is necessary. Specifically, the Commission stated:

> [W]e 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. 68 Pa. C.S. § 519(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,

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17 OCA St. 1 at 9-13.

18 66 Pa. C.S. §332(a).

> consumers in PPL's service territory will not likely have the competitive market and customer choice that the legislation intended when the rate caps expire on December 31, 2009.[19]

PPL proposes to purchase the EGS's receivables and to terminate service to these customers (or reconnect service) based on the nonpayment of EGS charges.[20] PPL Witness Krall specifically detailed the mechanics of how this is currently handled through EDI transactions and stated that the programming changes PPL would need to undertake to implement PPL's proposal (which does not limit termination/reconnection to default service rates) is "all the programming that the Company can do successfully in the time available."[21] PPL emphatically stated that it cannot accommodate OCA's proposal and have the POR program ready on January 1, 2010 because it would "require the creating of a shadow billing capability and the tracking of three different amounts."[22]

OCA offers no analysis or study to respond to PPL's implementation concerns.[23] Rather, it concedes that changes to PPL's billing system would not be "simple."[24] If PPL is correct and it cannot implement POR on January 1, 2010 because it is required to incorporate OCA's proposal, then the Commission's expressed goals will not be achieved.

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19 *PPL Electric Utilities Corporation Retail Markets*, Docket No. M-2009-2104271, Opinion and Order entered August 11, 2009 at 27. (emphasis original).

20 PPL St. No. 1 at 13-14.

21 PPL St. No. 2 at 12.

22 PPL St. No. 2 at 12-13. According to PPL Witness Krall, OCA's proposal presents "a very significant practical issue." Tr. at 100. Dominion Witness Crist also testified that Duquesne required well over six months to implement the programming permitting it to restrict the amounts for which terminations would occur to only levels up to the default service rate (Tr. 157) and that OCA's proposal "involves a lot of calculations through a lot of customers on a real-time basis and would not be simple to implement." *Id.*

23 Tr. at 130-131.

24 Tr. at 142, 144.

ii. OCA's Proposed Modification Would Result in EGSs Not Utilizing POR and Not Offering Service to PPL Residential Customers

Even if OCA's proposal could somehow be implemented by January 1, 2010, adoption of it would destroy the development of the competitive market in PPL's service territory. This is because OCA's proposal compares an EGS's price per kilowatt hour to the default service rate kilowatt hour. Such a simple comparison ignores the fact that customer choice involves price choices and product choices that belie such simplistic comparison. There are many legal and legitimate situations where the price per kilowatt hour from an EGS may be higher than the price per kilowatt hour for default service. In fact, EGSs are poised to offer a number of different products, such as "green" energy products, multi-year contracts and variable rate products, in which the price may change monthly or more frequently.[25] Any one of these products might include a charge that could equal or exceed the then effective default service rate. Indeed, even a simple guaranteed fixed price offering that today appears to be below the default service rate might be at risk because the EGS has no way of knowing today, exactly what the Price to Compare will be throughout 2010. This is because the Price to Compare rate will be subject to a quarterly reconciliation which could make the total rate fluctuate below an EGS price during the year.[26]

If the OCA demand is adopted, many EGSs will simply choose not to offer services to residential customers. This is because the OCA would require EGSs to assume the risk of any unpaid amounts over the default service rate. If a customer does not face service termination for failure to pay its bills, it is unlikely that the EGS would have any realistic means of collecting its

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25 Tr. at 156, 189.

26 Tr. at 66.

charges.[27] Additionally, OCA's "certification" proposal is actually worse, because an EGS might not be able to certify that its price will always be below a changing default rate (because of reconciliation), and, thus, may not be able to offer any products, for fear of violating its "certification." The result will be that EGSs will choose not to utilize the POR program to serve residential customers. In turn, the all-in/all-out requirement for residential customers, coupled with OCA's proposal regarding service termination, would effectively prevent EGSs from offering value-added products to *any* residential customers, not just those customers on POR.[28] Most EGSs use consolidated billing to serve residential customers because most residential customers want the convenience of a single bill.[29] An EGS that wishes to avail itself of EDC consolidated billing for the residential market must use POR and consolidated billing for *all of its residential customers* under the "all-in, all-out" requirement. Because of this, the OCA proposal limiting EGS charges to amounts below the default rate would effectively prevent an EGS serving residential customers from offering any type of value added product that would carry a price above the default rate, and, thus, they may choose not to enter the market altogether. If the Commission wants PPL's residential customers to have a choice of money saving, innovative offers and products from EGSs it must reject OCA's proposal.

iii. OCA's Proposed Modification Will Result In The Regulation Of EGS Pricing

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27 Tr. 175.

28 While OCA and PPL both attempt to present the use of POR as voluntary, the structure of PPL's program makes it anything but – any EGS who wishes to serve customers using EDC consolidated billing will be required to utilize PPL's POR program, and even if the ability to use dual billing existed many EGSs do not have the billing capability to provide their own billing (Tr. 67-69). Certainly an EGS would not be able to acquire and implement its own billing capability in the short time before the market opens in 2010.

29 Tr. 68.

The Choice Act mandates that customers have direct access to a competitive generation market.[30] The reason for this is the legislative finding that "competitive market forces are more effective than economic regulation in controlling the costs of generating electricity."[31] Accordingly, a fundamental policy underlying the Choice Act is that competition is more effective than economic regulation in controlling the costs of generating electricity.[32]

Restructuring should create real competition. It was never intended that the Commission attempt to control market prices being charged by an EGS because doing so is unnecessary and counter-productive under a competitive market model. Nevertheless, OCA asks the Commission to establish a rule that will result in restricting prices charged by an EGS to the current default service rate being charged by PPL. By preventing collection of charges over the default service rate, the Commission would be establishing a ceiling price for the electricity sold under contracts between the EGS and the customer and would be engaging in price regulation.[33]

While OCA would argue that the EGSs can charge whatever they want as only the termination/reconnection would be capped by the default service rate, the reality is quite different. As explained by Dominion Witness Crist, an EGSs have little ability to collect charges above the termination/reconnection cap because the EGS cannot terminate a customer's supply of electricity.[34] As long as the non-paying customer is receiving electricity, there is little chance

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30 66 Pa. C.S. § 2802(3).

31 66 Pa. C.S. § 2802(5); *see*, *Green Mountain Energy Company, et al v. Pa. PUC*, 812 A.2d 740, 742 (Pa. Cmwlth. 2002).

32 66 Pa. C.S. § 2802(5).

33 The same effect would be exacerbated pursuant to OCA's alternative recommendation that EGSs be required to "certify" that their rates are at or below the default service rate as a condition of participating in POR. OCA St. No. 1 at 14. In either scenario, EGSs' ability to offer innovative products and services will be stymied or simply not permitted by what amounts to price controls.

34 According to Dominion Witness Crist, normal credit and collection procedures against a former customer who is receiving service from default supply will have a "dismal" chance of success. Tr. at 174, 176-178.

the EGS will receive payment for past due charges. Moreover, as discussed above, many EGSs will be required to utilize POR to gain access to EDC consolidated billing. Thus, the OCA rule would result in illegal regulation of EGS generation charges – antithetical to the very purpose and intent of the Choice Act.

iv. OCA Has Not Offered Any Viable Legal Or Factual Basis To Support Its Proposal

According to OCA, its proposal is appropriate because the only charges that can serve as the basis for service termination (and reconnection) are the default service rates charged by PPL (rather than the contract prices charged by EGSs).[35] But, OCA's position is based upon several incorrect legal and factual assumptions: (a) that PPL's default service rate is a regulated rate and only the default rate can be considered to have been found "just and reasonable" by the Commission; (b) that a utility is prohibited from terminating a customer's utility service for non-payment of EGS charges; (c) that EGSs are not sufficiently "regulated" to permit the Commission to utilize their charges for termination and/or reconnection purposes; and, (d) that generation supply offered through default service is somehow superior or offers greater consumer protections than generation supply offered by EGSs. As explained below, none of these assumptions are true.

(a) The Default Service Rate Is Not Deemed To Be Just And Reasonable By The Commission

The default rate is not declared by the Commission to be "just and reasonable" because the Commission does not have the legal authority to do so. The Choice Act makes clear that "[t]he generation of electricity shall no longer be regulated as a public utility service or

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35 OCA St. 1 at 10.

function."[36] The Choice Act requires the Commission to establish the rates for the distribution and transmission services of the EDC and states that these regulated rates shall be governed by Chapter 13 of the Public Utility Code (which sets forth the "just and reasonable" standard for all jurisdictional rates). Pursuant to the law, generation (whether provided by EDC or EGS) is not a public utility service or function and it is not regulated by the Commission pursuant to its ratemaking authority in Chapter 13.[37] Therefore, the Commission does not establish any "just and reasonable" charges for generation (whether provided by EDC or EGS) that could serve to satisfy OCA's criteria that terminations/reconnections be tethered by Commission determined "just and reasonable" rates.

OCA concedes that the default service rate is not specifically determined by the Commission to be "just and reasonable."[38] Nonetheless, OCA continues to advocate that the default service rate is the highest amount of charges for which termination/reconnection may be permitted based on the theory that the Commission approves the competitive procurement process that ultimately determines the final default service rate and, because of this process, the Commission "regulates" the default service rate.[39] This argument is fundamentally flawed. Approval of the competitive procurement process does not translate to Commission approval that the default service rate is "just and reasonable," or even "regulated." What is regulated (pursuant

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36 66 Pa. C.S. §§ 2802(14), 2806(a).

37 66 Pa. C.S. § 2804(10).

38 In response to the question of whether she would agree that generation rates are not regulated by the Commission, OCA Witness Alexander stated: "Well, in the old fashion term 'regulated' under the cost of service issue, once the rate caps are off, they would not be regulated in that way, but the process as I described earlier, the process by which default service appears on the customer's bill is a regulated process." (emphasis added); Tr. at 136. OCA Witness Alexander also testified "I'm using those words [just and reasonable] to describe this process." Tr. at 129.

39 Tr. at 121

to Chapter 28 of the Code) is the plan by which an EDC procures default supply – not the rates themselves.

Pursuant to the Choice Act, the Commission is required to approve PPL's plan for procuring generation for default service supply.[40] The confidential results of the procurement process are submitted by PPL to the Commission so the Commission can ensure compliance with the approved procurement plan.[41] This review is conducted in a short period of time.[42] If the results appear to have been conducted in accordance with the previously approved process, the results are "approved" by way of a Secretarial Letter.[43] An average of the results of all of these bids is used to calculate the default service rate that is ultimately charged to customers by the EDC and included in a tariff page of the utility. But that fact is legally irrelevant.[44] At no point in this process does the Commission indicate that it is making a determination of the lawfulness or reasonableness of the default service rates. Indeed, the Commission Secretarial Letter addressing the result of PPL's final auction conducted pursuant to its approved procurement plan for 2010 states:

> Further investigation does not appear to be warranted at this time, since the bid results from the Sixth Solicitation appear to have been conducted in accordance with the RFP Process and Rules, filed pursuant to the Commission's Opinion and Orders.

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40 66 Pa. C.S. § 2807(e)(3.1) ("Following the expiration of an electric distribution company's obligation to provide electric generation supply service to retail customers at capped rates, if a customer contracts for electric generation supply service and the chosen electric generation supplier does not provide the service or if a customer does not choose an alternative electric generation supplier, **the default service provider shall provide electric generation supply service to that customer pursuant to a commission-approved competitive procurement plan**.") (emphasis added).

41 Tr. at 61-62, 65-66.

42 Ex. RJH-4 (The results of PPL's sixth solicitation were submitted on October 6 and approved on October 8.)

43 Ex. RJH-4, Tr. at 61-62, 186.

44 Tr. at 59, 85.

> Therefore, we approve the bid results submitted for the Sixth Solicitation.[45]

This language makes sense because PPL's final default service rates for 2010 are not known at this point in time.[46] The procurement results approved by the Commission are actually a range of market prices resulting from the competitive procurement process. The final rate will be based on an average of the bid results, with some actual bids being higher and other bids being lower than the average.[47] Thus, OCA's proposed "benchmark of reasonableness" will likely go up and down throughout 2010. Given all of these facts, it makes no sense to suggest that an EGS price is somehow unreasonable because it may exceed the average of a variety of market derived prices that result in a rate which will vary throughout the year.

Notwithstanding this, OCA may well assert that, section 1301 of the Code does nonetheless apply and that a utility may only charge rates determined to be "just and reasonable."[48] According to the OCA, the fact that the Commission permits PPL to charge its default service rates, means they must be determined to be just and reasonable by the Commission. Even if the Commission were to conclude that section 1301 applies using OCA's logic, the Commission determination of "just and reasonable" in this context is based on the fact that rates produced through an unbiased competitive market process are *per se* just and reasonable. This is consistent with FERC which has long held that "market-based rates can

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45 Ex. RJH-4 (emphasis added).

46 According to RESA Witness Hudson, the final default rate will not be known until December 2009. Tr. at 187.

47 According to PPL Witness Kleha, the default rate for 2010 includes the generation supply cost, which is an average of the results of the solicitation, and costs associated with administering the program and for the third party administrator. Tr. at 66.

48 66 Pa. C. S. § 1301.

satisfy the just and reasonable standard of the [Federal Power Act]."[49] What the Commission must not overlook (if it agrees with OCA on this theory) is that EGS generation charges are also derived from the same market process; therefore, EGS charges are no less "just and reasonable," and should not be disregarded.

OCA has not met its burden of proving that the Commission should cap the generation charges amount for termination/reconnection purposes at PPL's 2010 default rates based on the theory that the default rate is found by the Commission to be "just and reasonable" – because they are not. Even if one were to conclude that default rates are subject to and required to meet a "just and reasonable" standard, they do so in the same way as EGS rates, and there is no legal reason to restrict termination and reconnection of electric services to the default charge over the EGS generation charges.

(b) Utilities Are Not Prohibited From Terminating Service For Non-Payment Of Charges Not Found To Be Just And Reasonable

Another underlying flaw in OCA's legal argument is the assumption that there is a prohibition against a utility terminating a customer's service for non-payment of charges that are not adjudged to be "just and reasonable."[50] On the contrary, utilities frequently charge customers rates that have not been finally determined to be just and reasonable but, nonetheless, they serve as the basis for termination if those charges are not paid. For example, the purchased gas adjustment charge for natural gas distribution utilities is set for a prospective year on the basis of authorized fuel procurement plans and projections of costs, but the final determination of

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49 *See*, FERC Order No. 697-A, RM04-7-001 at ¶ 408; *State of California, ex rel. Bill Lockyer v. FERC*, 383 F.3d 1006 (9th Cir. 2004), *cert. denied*, S. Ct. Nos. 06-888 and 06-1100 (June 18, 2007); *Morgan Stanley Capital Group, Inc. v. Pub. Util. Distr. No. 1*, 128 S.Ct. 2733 (2008).

50 OCA St. 1 at 7-8.

whether those charges are indeed just and reasonable and in accordance with law comes only after the charges are in place for the year.[51] Obviously utility customers who do not pay these charges while they are in place (and reflected in the NGDC's tariff) are subject to termination and must pay (or agree to pay) the full amount of such unpaid charges, including the utility's projected purchased gas costs, in order to be reconnected. There are many other examples of utilities charging rates that are only determined to be just and reasonable after the fact – indeed any rate that a utility charges but which is subject to refund and not a "commission made rate" fits this category.[52]

The OCA's claim may also be based upon false analogy that the Commission, pursuant to its billing and collection regulations in Chapter 56, prohibits energy utilities from terminating utility service for non-payment of non-utility charges, such as appliance repair or sales.[53] But

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51 Section 1307(f) and the Commission's regulations require the gas utility to file a statement for the 12 month period ("historical period") ending 2 months prior to the utility's annual Section 1307(f) filing showing the actual Section 1307(f) revenues and expenses incurred and explaining how the actual gas costs incurred "are consistent with a least cost fuel procurement policy as required by Section 1318 (relating to determination of just and reasonable gas costs rates)." 66 Pa. C.S. § 1307(f)(3); 52 Pa. Code § 53.64(i)(1). After review of the historical period statement, the Commission determines the just and reasonable rates and requires the refund of overcollection or authorizes the recovery of undercollection of the rates determined to be just and reasonable. 66 Pa. C.S. § 1307(f)(5); 52 Pa. Code § 53.64(i)(3). On the contrary, the statute provides that the rates to be charged prospectively for 12 months ("projected period") "are subject to the same types of audits, reports and proceedings required by subsection (d) [relating to fuel cost adjustment audits]." 66 Pa. C.S. § 1307(f)(2); 52 Pa. Code § 53.64(h). Accordingly, the prospective rates have not been determined to be just and reasonable, and these rates are not "Commission-made rates" insulated from retroactive adjustments required as part of the just and reasonable determination. *Equitable Gas Co. v. Pa. P.U.C.*, 526 A.2d 823, 830-31 (Pa.Cmwlth. 1987) (As the Commission did not render final determination as to reasonableness of costs or rates, projected gas costs recovered through automatic rate mechanism were not "Commission-made rates"); *Duquesne Light Co. v. Pa. P.U.C.*, 507 A.2d 433, 438 n. 10 (Pa.Cmwlth. 1986) (net energy clause); *Metropolitan Edison Co. v. Pa. P.U.C.*, 437 A.2d 76, 79-80 (Pa.Cmwlth. 1982) (fuel cost surcharge). It is the subsequent review of the historical period that results in the just and reasonable rate determination and renders the prospective approval of automatic fuel cost adjustment rates compliant with due process. *Allegheny Ludlum Steel Corporation v. Pa. P.U.C.*, 459 A.2d 1218, 1221 (Pa. 1983).

52 *Id.*

53 *See*, e.g., 52 Pa. Code § 56.83(3).

OCA's argument is seriously misplaced for several reasons. First, under a POR program the generation charges billed to customers are purchased by the utility, and, therefore, by definition, they become utility charges for the electric generation supply used by the customer and are not "non-utility" charges.[54] Just as the EDC purchases generation supply from wholesale generators to provide default service to customers, an EDC providing a consolidated bill to a retail EGS's customer pursuant to a POR program purchases the EGS's accounts receivable. Moreover, the terms of PPL's POR program limit the charges to basic energy, which includes "green" products, *i.e.*, commodity service. There is no dispute among the parties on this point.[55] Thus, there is no likelihood that a customer will be faced with termination of his/her utility service for non-payment of a charge for some non-energy related items, such as an appliance. Finally, unlike the sale of appliances by utilities, the Commission actually licenses EGSs and the EGS contracts for residential customers and activities are subject to a variety of Commission regulations. When a utility sells appliances it does so on a totally unregulated basis. For all of these reasons, OCA's concern that a utility will be able to terminate service for charges not found to be just and reasonable is unwarranted.

(c) EGSs Offering Competitive Generation Supply Are Licensed and Regulated by the Commission and their prices are constrained by Market Forces

OCA advocates that EGS charges for generation should not determine the amount by which a customer's service can be terminated (or restored) because it would "open the door to . .

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54 This fact also negates OCA's "concern" that a POR program somehow turns PPL into a "collection agent." OCA St. 1 at 8, n. 2. Under POR, PPL is seeking to collect generation charges that it has purchased and these charges no longer belong to the EGS.

55 *See infra* Section IV.A.7.

. entities other than regulated public utilities."[56] OCA's argument ignores the fact that EGS generation charges are for the same product – generation service – as is being provided by the EDC, and are imposed through a contract with the customer and only after an EGS obtains a license pursuant to the Public Utility Code. In the licensing process, EGSs are required to prove to the Commission that they are financially and technically fit to render service.[57] EGSs also have to meet stringent standards to participate as a market participant in the PJM market. In order to supply electricity for retail use within the PJM Control area, suppliers must become a PJM member and must sign the PJM Operating Agreement.[58] Once licensed, the Commission has a variety of processes in place to protect customers from inappropriate conduct by an EGS including regulations regarding: (1) billing,[59] (2) disclosures,[60] (3) contract rules,[61] (4) marketing and advertising,[62] and (5) complaint resolution.[63]

OCA ignores some important facts about the effect of these regulations. First, a complaint can be filed against any "bad acting" EGS by Commission staff, OCA, PPL or a consumer at any time which could ultimately result in revoking the EGSs' license.[64] Second, for residential and small business customers, the Commission requires the use of EGS disclosure statements to explain prices, terms and conditions and exemplary disclosure statements must be

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56 OCA St. 1 at 10.

57 Tr. at 187-188.

58 The application form for membership and the operating agreement may be accessed on PJM's website at: http://www.pjm.com/about-pjm/member-services/become-a-member.aspx. These standards include the posting of significant credit. RESA St. 1 at 25-26, Tr. at 188.

59 52 Pa. Code § 54.4.

60 52 Pa. Code § 54.5.

61 52 Pa. Code § 54.5(d) (rescission period); 73 P.S. § 201-7, et. seq.

62 52 Pa. Code § 54.7(c).

63 52 Pa. Code § 57.177.

filed as part of the application process.[65] By comparing prices between suppliers and the default service rate, the customer can determine whether or not he or she is likely to save money or obtain other benefits by switching. Thus, the Commission's regulations ensure that consumers are given all the tools they need to make informed decisions about who they want to provide them generation services.

Additionally, EGS consumers will receive additional protections through POR. Because EGS charges will be treated as amounts owed to PPL through POR, consumers will receive one bill from PPL. In addition to providing the convenience of receiving a single bill, PPL will also send legally mandated termination and suspension notices to the customer pursuant to the Commission regulations. The customer will be informed by PPL of his or her rights to dispute the termination and, if the consumer files a complaint, the suspension may be stayed pending the outcome. In the complaint proceeding, the Commission may assess the price and is free to make a determination about it at that point.

(d) All Generation Supply Is Acquired From the Same Wholesale Energy Market

OCA claims that the default service rate is superior to the charges assessed by EGSs for generation service. This, however, ignores the fact that, as noted above, both default service supply and EGS generation service supply are acquired from the same wholesale energy market and wholesale energy suppliers are heavily regulated by FERC and wholesale energy prices are deemed just and reasonable pursuant to FERC's market-based rate authority.[66] Ultimately, therefore, generation charges – including both default service charges and prices offered by

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64 RESA has does not support bad acting EGSs and has an interest in ensuring that the Commission has a process in place to deal with them.

65 52 Pa. Code § 54.5 (Disclosure statement for residential and small business customers).

66 Tr. 188. See, FERC Order No. 697-A, RM04-7-001 at ¶ 943; Order No. 697-A, p. 408-409.

EGSs – are fundamentally derived from the same market and are similarly constrained by market forces. Just as the Commission relies on competitive market forces to produce acceptable rates for default service supply, those same market forces assure that retail prices charged to consumers by EGSs will be similarly acceptable. Market forces will drive EGS generation charges to the market price and any EGSs that try to gouge customers will be unsuccessful.

v. OCA Has Not Met Burden Of Proving That Additional Consumer Protections For Customers Participating In POR Are Necessary Or Will Achieve The Result Desired By OCA

Even though OCA has the burden of proving that its proposal is necessary, OCA has not presented any empirical data or statistics showing that EGS customers served through POR are unreasonably or improperly terminated from service (or denied reconnection) for unreasonably high EGS generation charges. OCA has offered no evidence about PPL's service territory to explain why such a case might exist there in the future. While OCA cites to Duquesne and Central Hudson as examples of places where it claims its proposed restrictions exist,[67] OCA does not offer any evidence that the proposals were implemented because the problems OCA identified were expected to occur and needed to be proactively addressed. Further, OCA fails to acknowledge the very significant differences between the Duquesne model and that proposed here.

For example, Duquesne's POR program permits EGSs to charge rates that are higher than the default service rates and EGSs are fully reimbursed for these amounts.[68] Here, OCA is

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67 The proposal offered here is not the same as that currently in place in Duquesne's service territory because PPL – with OCA's support – is recommending that all EGSs be required to place all their residential customers in POR. Likewise, the Central Hudson example is unique and not directly on point. None of the other EDCs in New York follow the Central Hudson example.

68 Tr. at 151.

proposing that EGSs not be reimbursed for charges that exceed the default service rate (or alternatively certify that they will not offer such prices).[69] Duquesne, unlike PPL, was also operationally capable of differentiating between amounts up to and above Duquesne's default rate which made OCA's proposal possible from a technical standpoint.[70] Here PPL has stated that OCA's proposal is not technically possible.[71] Finally, Duquesne's POR was not all-in/all-out (as will be the case here)[72] and, therefore, EGSs capable of dual-billing (in Duquesne) were able to put some of their customers on dual-billing outside of POR while having other customers in POR.

Just as important, the OCA does not offer any evidence or data showing that the restrictions in these territories have been utilized and/or are effective at solving the problem OCA posits will exist.[73] In fact, Dominion Witness Crist stated that there have been no customers in Duquesne's service territory (which OCA holds out at the model to be used here) "that have been protected from disconnection procedures because they were in arrears of the amount in excess of the default rate."[74] Moreover, OCA concedes that there are other POR programs in place operating without this type of restriction to include the POR program in the PCL&P service territory in Pennsylvania and the other utility service territories in New York.[75]

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69 OCA St. No. 1 at 11.

70 It took Duquesne more than six months to implement the programming changes needed to accommodate OCA. Tr. at 143.

71 PPL St. No. 2 at 12.

72 Ex. RJH-1, PPL Response to RESA I-3.

73 OCA witness Alexander testified, "I am presuming that the Duquesne Light process is in effect, and I do not know the numbers of those affected or not." Tr. at 133.

74 Tr. at 158. RESA Witness Hudson also testified that he was unaware of any instances of increased service terminations due to implementation of a POR program. Tr. at 184.

75 Tr. at 136-137. *See, e.g.,* http://www.oru.com/documents/energysuppliers/thirdpartymasteragreement.pdf (Billing Services Agreement for Rockland Electric Company) and

In sum, OCA is attempting to offer a "solution" in search of a problem – a problem that it has not shown will occur – by suggesting a proposal that it has not shown has been effective in the two places OCA posits it has been implemented.

b. OCA's Alternate Proposal That EGSs Should Certify That Their Prices Are No Higher Than The Default Rate Should Be Rejected By The Commission

As an alternative to its demand that terminations be restricted to non-payment of amounts up to the default rate, OCA suggests that EGSs certify that their charges are at or below the default service rate as a condition of participating in PPL's POR program for 2010.[76] OCA's certification proposal, however, suffers the same flaws that are discussed above and, in fact, these flaws are only exacerbated under this alternate proposal.

While OCA's primary position leads to the regulation of EGS pricing because EGSs may not be willing to undertake the risk of collections for amounts exceeding the default service rate, OCA's alternate proposal is an even more overt regulation of EGS contract prices – regulation which was never intended nor permitted by the Choice Act. OCA is recommending that EGSs certify that their contract price per kilowatt hour is equal to or below the default service rate per kilowatt hour.[77] Because of the all-in, all-out provision that does not allow EGSs to simultaneously dual bill customers outside of POR (as the parties agree to implement in the settlement), the only product an EGS can offer any of its customers would have to be price

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http://www.nyseg.com/MediaLibrary/2/5/Content%20Management/NYSEG/SuppliersPartners/PDFs%20and%20Docs/Billing%20Services%20Agr%20-%20NYSEG_v10.pdf (Billing Services Agreement for New York State Electric & Gas Corporation)

76 OCA St. 1 at 14.

77 OCA St. 1 at 14.

constrained.[78] Even OCA conceded that this restriction would not be "very helpful" to consumers wanting to purchase other premium products.[79] As OCA's certification proposal effectively regulates the price of EGS service in contravention with the law, it must be rejected.

Further, requiring EGSs to "certify" that their price will not exceed the default price will virtually assure that a whole variety of innovative products will not be offered. Such products include green energy (the prices for which, all appear to acknowledge, could well reasonably exceed the generic default service rate), variable rate products, multi-year products or "shared savings" rates.[80] Indeed, given the changing level of PPL's default service rate during the year,[81] EGSs would not be able to offer even single year, fixed price products without the concern that its below default rate price in January would end up being above the default rate in June! Plainly, OCA's "certification" alternative is no better than its primary demand and must be rejected if there is to be robust residential competition in PPL's service territory in 2010.

5. All-in / All-out Requirements

See Joint Petition for Settlement.

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

See Joint Petition for Settlement.

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78 The effect of the agreed -to all-in, all-out program cannot be overstated. In addition to the fact that these potentially "higher" priced EGS offerings would not be permitted for EGS customers who are in POR, they would not be permitted for any EGS customer because an EGS cannot place some customers in POR while serving other customers through dual-billing. Thus, the only choice for an EGS is POR or no-POR and the only EGSs who could possibly consider the option of no POR are those with their own billing systems already in place.

79 Tr. at 132.

80 Tr. at 189.

81 Tr. at 187. ("There will be quarterly reconciliation in adjustments which will lead to changes on a quarterly basis.")

7. Basic Generation Supply Service Issues

RESA recommends that the PPL 2010 POR program be available for value-added products based on the underlying attributes of the energy.[82] This would include physical renewable and REC-based or other attribute-based products.

As the PPL market opens, it is very likely that EGSs will want to offer "green energy" products such as energy from specific alternative energy sources (*e.g.*, wind, solar, etc.). Because one cannot control where specific electrons will flow on the electric grid, the most common type of "green" energy product is one where an EGS supplies conventional electricity bundled with "renewable energy credits" (or "RECs"). These RECs are ultimately derived from electricity produced by renewable or alternative energy resources. It should also be noted that RECs are a Commission-approved mechanism for demonstrating compliance with Pennsylvania Alternative Energy Portfolio Standard requirements.

In light of the Company's testimony, it is not clear that RESA and PPL have a disagreement about whether REC, or other attribute-based products could be billed through the POR program. Mr. Krall explained the basic dividing line the Company envisioned between "acceptable" and "unacceptable" green products that could be billed through POR as follows:

> A. I think when we start to talk about attribute-type products, we end up in kind of a gray area. Our concern in my testimony for basic supply service is that it be a generation product. I accept that there are what you might call attribute products that come from specific types of generation that may have a higher price, but it's fundamentally a generation service. If it's a payment to the Environmental Defense Fund that's collected on a cent per kilowatt-hour basis for like our green program, which is really a kind of donation to a window that is promised somewhere else, it's not the generation supply that the customer receives. You could refer to them both as attribute products, but we don't think that that

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82 RESA St. 1 at 20-21.

> second type is really something the customer should be subject to termination over.[83]

It is also unclear whether OCA and RESA have a disagreement on this issue. OCA witness Alexander testified as follows:

> . . . the collection activities on the bill, all of that ought to be limited to the basic commodity charge, the basic generation service. So I'm right there with that.
>
> Now, there are renewable resource providers and they charge 100 percent wind or whatever, and obviously, whatever that charge is would also be a basic generation service charge. I gather there are some complexities with the way some EGS suppliers try to add a particular dollar amount on top of the utility's default service charge for, you know, for some donation to a green product, and I can see that there may be some need for further thinking about that detail. I must confess, I was not aware of that method of billing. But the bottom line is, we are talking about basic commodity charges. We are not talking about termination fees, we're not talking about smart thermostat installations, we're not talking about refrigerator repairs, you know, we're not talking about anything other than what the Commission has already said needs to appear on the bill, which is the basic generation supply charge.[84]

To be clear, RESA's proposal is that POR should be available to bill a customer for an attribute-type product when the customer is receiving generation service from that EGS.[85] Therefore, in all instances, the product would be connected to the sale of generation. Failure to permit such products to be included in the POR program will result in EGSs not providing in Pennsylvania. This denies Pennsylvania consumers of green products that have proven popular elsewhere. Moreover, such a restriction would create an unlevel playing field between the EDC

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83 Tr. at 107.

84 Tr. at 123-124.

85 RESA St. 1 at 20-21.

and EGSs because PPL (and other PA EDCs) are currently providing attribute-type green products[86] which are billed with default and distribution service.[87]

8. Credit Check Requirements

See Joint Petition for Settlement.

9. 12-Month Stay Provision

See Joint Petition for Settlement.

10. Program Availability for Large Commercial and Industrial Customers

See Joint Petition for Settlement.

11. POR Program Contingencies

See Joint Petition for Settlement.

B. Subsequent Recovery of Uncollected Receivables and Unrecovered Administrative Costs

See Joint Petition for Settlement.

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86 PPL Electric Pa. P.U.C. No. 201, Original Page No. 19L.5. Other EDCs with voluntary alternative energy programs include PECO Energy Company, UGI Utilities, Inc., and West Penn Power Company d/b/a Allegheny Energy. *See*, *Pa. P.U.C. v. PECO Energy Co.*, Docket No. R-00016938, Order entered January 24, 2002; *Pa. P.U.C. v. UGI Utilities, Inc.*, Docket No. P-00072334, Order entered October 25, 2007, and Allegheny Supplement No. 135, Electric Pa. P.U.C. No. 37 and Allegheny Supplement No. 180, Electric Pa. P.U.C. No. 39 filed on November 19, 2007.

87 Tr. 106-107. PPL states that it does not terminate a customer for nonpayment of its "Green Power" option. PPL Ex. No. 6. However, its tariff permits termination of electric service for "[n]onpayment of an undisputed delinquent account associated with service provided by the Company" and bills not paid within five (5) days of the due date are delinquent. Rule 9.D (Electric Pa. P.U.C. No. 201, Fifth Revised Page No. 13A). There is no legal or policy reason why this attribute product – which PPL is providing along with default service – should not be part of the charges included with POR and subjected to the same termination and reconnection standards.

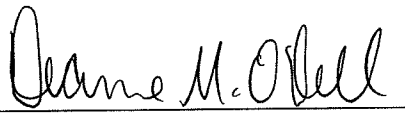
C. Customer Notification Issues

See Joint Petition for Settlement.

V. CONCLUSION

For all the reasons set forth above the Office of Consumer Advocate's proposed modification regarding terminations and reconnections for nonpayment of generation charges should be rejected. Further, RESA/Direct Energy's clarification regarding the definition of basic services should be accepted.

Respectfully submitted,



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