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October 30, 2009

BY HAND

James J. McNulty
Secretary
PA Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
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:

Enclosed for filing please find the Main Brief of PPL Electric Utilities Corporation in the above-referenced proceeding. Copies are also being provided as indicated on the certificate of service.

Respectfully Submitted,

Anthony D. Kanagy

ADK/skr
Enclosures
cc: Honorable Louis G. Cocheres
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of § 1.54 (relating to service by a participant).

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Date: October 30, 2009

Anthony D. Kanagy

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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**

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TABLE OF CONTENTS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Court Decisions

Pennsylvania Administrative Agency Decisions

Pennsylvania Statutes

I. INTRODUCTION

On September 10, 2009, PPL Electric Utilities Corporation ("PPL Electric" or the "Company") filed its Petition Requesting Approval of a Voluntary Purchase of Accounts Receivables Program ("POR Program") and Merchant Function Charge ("MFC"). Pursuant to a Secretarial Letter issued on September 25, 2009, the Commission directed that this proceeding be assigned to Administrative Law Judge Louis G. Cocheres (the "ALJ") for hearing and certification of the record to the Commission for final decision.

Pursuant to the September 25 Secretarial Letter, an evidentiary hearing was held before the ALJ on October 22, 2009. On October 30, 2009, parties to the proceeding filed a Joint Petition for Settlement ("Settlement") which resolved all but two issues in the proceeding. These two issues relate to termination of service for residential customers and the definition of "basic supply service."

In this Main Brief, the Company addresses the two issues reserved for litigation. PPL Electric also describes its POR filing, explains why the Company proposed the terms and conditions therein and summarizes how the Settlement meets the guidelines considered by the Company when it created its POR Program.

The Company notes that it fully supports the Settlement entered into by the Parties and intends to file a Statement in Support of the Settlement on Friday, November 6, 2009, with the Company's Reply Brief.

II. BACKGROUND

PPL Electric provides electric distribution, transmission and provider of last resort services to approximately 1.4 million customers in a certificated service territory that spans approximately 10,000 square miles in all or portions of 29 counties in eastern and central

Pennsylvania. PPL Electric is a "public utility" and an electric distribution company ("EDC") as those terms are defined under the Public Utility Code, 66 Pa.C.S. §§ 102 and 2803.

Under the settlement of PPL Electric's restructuring proceeding, the Company voluntarily agreed to provide a POR program for electric generation suppliers ("EGSs") offering retail supply in PPL Electric's service area and using consolidated EDC billing. *Application of Pennsylvania Power & Light Company for Approval of Its Restructuring Plan Under Section 2806 of the Public Utility Code*, Docket No. R-00973954.

PPL Electric's current POR program is set forth in its Supplier Coordination Tariff. Tariff-Electric Pa. P.U.C. No. 1S. Under that program, PPL Electric pays an EGS the entire amount for undisputed EGS charges, regardless of whether or not the customer has paid the Company, for up to a three-month period. Currently, PPL Electric cannot terminate service to a customer for failure to pay the EGS portion of its bill. Tariff-Electric Pa. P.U.C. No. 1S, Page No. 73. However, if the customer does not pay, PPL Electric can convert the customer to dual billing after a three-month period. The EGS, after having received three months of payments at a zero discount, becomes responsible for billing its own charges, and may terminate EGS service if the customer fails to pay its bills. At this point, the EGS may return the customer to PPL Electric's default service. The current program provides a substantial benefit to EGSs because it guarantees that they will receive payment for supply for up to three months even if customers do not pay EGS charges appearing on PPL Electric's bill. Although the program also limits PPL Electric's exposure to unpaid EGS charges to the three-month period, it does not permit PPL Electric to terminate customers for failure to pay EGS charges.

On August 28, 2008, the Company filed a Petition for Approval of a Default Service Program and Procurement Plan for the Period January 1, 2011 through May 31, 2014 ("POLR II Plan"). The Company subsequently amended its POLR II Plan to end on May 31, 2013.

On March 11, 2009, the Company filed a settlement of the POLR II proceeding ("POLR II Settlement"). The POLR II Settlement resolved all but two issues in the POLR II proceeding, which were related to default service for the National Railroad Passenger Corporation ("Amtrak") and a controversy over certain provisions of the Supply Master Agreements.

During the POLR II proceeding, certain parties proposed that PPL Electric adopt a POR program to be effective on January 1, 2010. Other parties responded, objecting to the timing and design elements of the proposal. In order to reach a compromise on this issue, under the POLR II Settlement, PPL Electric agreed to file a voluntary POR plan as part of its next distribution rate case. In the absence of a rate case filing with an effective date of January 1, 2011, PPL Electric agreed to file, by July 1, 2010, a stand-alone POR plan to become effective on January 1, 2011. All parties reserved the right to challenge the design aspects of the proposed POR, in order to preserve their arguments presented in the POLR II proceeding. On June 30, 2009, the Commission approved the POLR II Settlement.

On May 15, 2009, the Commission issued a Tentative Order identifying specific actions PPL Electric could take to reduce potential barriers to competition in the Company's service territory. *PPL Electric Utilities Corporation Retail Markets*, Docket No. M-2009-2104271. One of the actions identified by the Commission was the filing of a POR program by September 10, 2009, to become effective on January 1, 2010.

In the Tentative Order, the Commission noted that it recently had issued proposed regulations for voluntary POR programs in the natural gas industry. *Natural Gas Distribution*

Companies and the Promotion of Competitive Retail Markets, Docket No. L-2008-2069114, Proposed Rulemaking Order entered on March 27, 2009 ("Natural Gas Rulemaking Order"), 52 Pa. Code § 62.224. The Tentative Order also provided that parties could file comments in response to that Order within 30 days of publication in the Pennsylvania Bulletin

On July 6, 2009, PPL Electric filed comments in response to the Tentative Order. In its comments, PPL Electric, *inter alia*, noted that the Company currently provides a *de facto* POR program and further noted that some of the details of the Tentative Order appeared to conflict with the POR provisions agreed to by the parties to PPL Electric's POLR II Settlement.

On August 11, 2009, the Commission issued its Retail Markets Order which addressed the comments filed in response to the Tentative Order. *See PPL Electric Utilities Corporation Retail Markets*, Docket No. M-2009-2104271, Tentative Order entered May 15, 2009, Opinion and Order entered August 11, 2009. In the Retail Markets Order, the Commission concluded that one action PPL Electric should take to encourage the development of competition in its service area was the filing of a POR program within 30 days after entry of the Order.

Pursuant to the Commission's Retail Markets Order, on September 10, 2009, the Company filed a voluntary POR program for 2010. As an integral part of its POR program, the Company also proposed to unbundle its default service generation-related uncollectible accounts expense from distribution rates and collect it through separate MFC charges to be included in the Price to Compare ("PTC") for residential and small C&I customers. On September 17, 2009, the Company filed a pro forma tariff supplement necessary for implementing the POR program and MFC.

On September 25, 2009, the Commission issued a Secretarial Letter assigning the proceeding to the Office of Administrative law Judge for hearing and certification of the record

to the Commission for final decision. In the Secretarial Letter, the Commission stated that a prehearing conference for the proceeding would be held before the ALJ on October 7, 2009. The Commission also established that hearings would be held on October 22 and 23, 2009 (if necessary), and that parties' briefs and reply briefs would be due on or before noon October 30, 2009, and November 6, 2009, respectively.

The OTS filed a Notice of Appearance in this proceeding, and the OCA and OSBA filed Notices of Intervention. In addition, PPLICA, Dominion, FES, Constellation, RESA and Direct filed Petitions to Intervene.

On October 6, 2009, the Company filed its Direct Testimony in this proceeding.

On October 7, 2009, a Prehearing Conference was held before the ALJ. At the Prehearing Conference, the ALJ granted the Petitions to Intervene that had been filed by the Parties and established a schedule for testimony to be filed. Pursuant to that schedule, OCA, RESA and Dominion filed their direct testimony on October 16, 2009.

An evidentiary hearing was held on October 22, 2009, at which time the prefiled written testimony and exhibits were admitted into the record, and various witnesses presented oral rebuttal testimony and were cross-examined.

Pursuant to the schedule set forth by the Commission in its September 25, 2009 Secretarial Letter, PPL Electric hereby files its Main Brief in this proceeding.

III. SUMMARY OF ARGUMENT

In this Main Brief, PPL Electric generally describes its voluntary POR Program and MFC filing and the principles and the guidelines that the Company considered when designing its POR Program. Critical principles underlying PPL Electric's POR design are that: (1) PPL Electric should not be required to purchase an EGS receivable unless PPL Electric is afforded the opportunity to collect that receivable, and, if necessary, terminate the customer for failure to pay the full amount of the receivable purchased; (2) that a properly designed POR program should be accompanied by an unbundling of generation-related uncollectible costs which also are reflected as a discount to the purchase of receivables from EGSs. As explained above, the Parties in this proceeding have agreed to a Settlement of all but two issues in this proceeding. PPL Electric fully supports the Settlement entered into by the Parties because it meets these and other principles and guidelines of PPL Electric's proposal. PPL Electric will file a Statement in Support of the Settlement on November 6, 2009.

The Settlement reserves two issues for litigation. The first issue reserved for litigation concerns termination of service for failure to pay EGS charges, including related notice issues. In this proceeding the Company has requested that the Commission allow the Company to terminate electric service for non-payment of EGS charges, including any charges that may exceed default service rates. The OCA, however, has contended that the Company should not be permitted to terminate service to customers for failure to pay charges above default service rates. In deciding this issue, it is important to note that the Company has voluntarily filed a POR Program. Under no circumstance should the Company be required to buy an EGS' accounts receivables, but be denied the right to collect the entire amount purchased. As explained in Section IV(A)(4) of this Brief, it is not reasonable or legal to require PPL Electric to purchase a receivable it cannot collect. The Commission does not have the authority to require EDCs to

purchase EGS' accounts receivables. Therefore, any POR Program must be voluntarily filed by an EDC. PPL Electric cannot accept a POR Program that does not give the Company the authority to terminate service for the full amount paid to the EGS. Therefore, in order to resolve the termination issue in the proceeding, it is the Company's position that the Commission should either: (1) allow PPL Electric to terminate electric service to customers for failure to pay EGS charges, even if those EGS charges may be higher than the default service rate; or (2) adopt the OCA's alternative proposal that would require, as a condition of participating in the POR Program, EGSs to certify that their charges to customers are lower than the Company's default service rates.

The second issue reserved for litigation in this proceeding concerns the definition of basic electric supply services. In particular, Parties dispute whether charges for renewable energy credit ("REC") programs in excess of RECs required for Alternative Energy Act compliance should be included within the definition of basic supply service. PPL Electric does not believe that voluntary REC programs should be included within the definition of "basic supply service." PPL Electric also does not believe that it should be forced to purchase accounts receivables for REC-based programs. As noted above, the Company filed a voluntary POR Program and is not willing to purchase accounts receivables for anything other than actual generation supply. In addition, in the Tentative Retail Markets Order, the Commission has indicated that a REC program is not a basic supply service. For these reasons, the Company should not be required to purchase accounts receivables for REC-based programs.

IV. ARGUMENT

A. PURCHASE OF RECEIVABLES ("POR") PROGRAM

1. General Design Issues

In this proceeding, the Company voluntarily proposed to offer a POR Program under which the Company would purchase EGSs' accounts receivables for residential and small C&I customers. Under its POR Program, the Company requested Commission authority to terminate service to customers for non-payment of EGS charges purchased by the Company, including those charges that may exceed default service rates. As explained in Section (IV)(A)(4) of this Brief, the Company must be permitted to terminate service to customers for the entire amount of the receivables it purchases. The Company also proposed to purchase EGS accounts receivables at a discount from standard EGS supply charges. The discount rate is composed of two components: (1) an uncollectible accounts expense percentage factor, and (2) a POR administrative factor. (PPL Electric St. 1, p. 6). The Company proposed separate discount rates for the residential and small C&I classes to reflect the fact that the Company's uncollectible accounts expense percentage factors are different for the residential and small C&I classes. In addition, the Company proposed to unbundle its generation-related uncollectible accounts expense from distribution rates and recover it through MFC charges that will be included in the PTC. In its Petition and in testimony, the Company proposed to reduce its distribution rates by the amount of the bundled generation supply-related uncollectible accounts expense included in the Company's most recent distribution rate case. (PPL Electric Ex. 4, 17; PPL Electric St. 1, p. 15).

The Commission has encouraged utilities to offer POR Programs for marketers and to unbundle generation-related uncollectible accounts expense from its base rates. *See Retail Markets Order*, p. 27; 52 Pa. Code § 69.1814. With these directives in mind, the Company

proposed to implement a POR Program and to go the additional step of unbundling generation-related uncollectible accounts from distribution rates. The Company believes that it is important to unbundle generation-related uncollectible accounts expense from base rates for several reasons. First, it will give EGSs the opportunity to include uncollectible costs in their competitive supply offers to customers, thereby placing EGSs on a level playing field with respect to uncollectible accounts expense. Second, it will avoid a situation where EGS customers pay twice for generation-related uncollectible accounts expense, once in base rates and a second time in EGS supply charges.

PPL Electric's POR Program and MFC were carefully designed as linked, integral parts of the Company's efforts to promote competition in its service territory. As described above, the discount rate proposed by the Company for its POR Program is comprised of an uncollectible accounts expense percentage factor, and a POR administrative factor. (PPL Electric St. 1, p. 6). For both the residential and small C&I classes, the uncollectible accounts expense percentage factor equals the MFC for each respective class. This program design allows EGSs to include the same amount for uncollectible costs expense in their competitive supply offers to customers that is included in the discount under the POR Program for uncollectible accounts expense. The only other discount proposed by the Company was a very small percentage (0.05%) for both the residential and small C&I POR Programs to account for the Company's administrative costs for operating the POR Program.

The Company believes that this is a fair, reasonable approach for designing a POR Program because it: (1) provides a fixed, known percentage for EGSs to calculate uncollectible costs, thereby limiting EGS risk for uncollectible costs; (2) unbundles generation-related

uncollectible accounts expense from base rates; and (3) ensures a level playing field for EGSs with respect to generation-related uncollectible accounts expense.

The Company notes that its POR/MFC proposal is consistent with Commission policy regarding unbundling of uncollectible accounts expense and POR programs. The Commission has approved unbundling of supply-related costs from base rates for several other utilities in the Commonwealth including Columbia Gas of Pennsylvania, UGI Penn Natural Gas, Inc. and UGI Central Penn Gas Inc. *Pa.PUC v. Columbia Gas of Pennsylvania*, Docket No. R-2008-2011621, Order entered October 28, 2008; *Pa.PUC v. UGI Penn Natural Gas, Inc.*, Docket No. R-2008-2079660, Order entered August 27, 2009; *Pa.PUC v. UGI Central Penn Gas, Inc.*, Docket No. R-2008-2079675, Order entered August 27, 2009. In addition, in its SEARCH Order entered on September 11, 2008 at Docket No. I-00040103F0002, the Commission indicated that recovery of gas supply-related uncollectible accounts expense through base rates was a potential barrier to competition. *Investigation into the Natural Gas Supply Market: Report on Stakeholders' Working Group (SEARCH); Action Plan for Increasing Effective Competition in Pennsylvania's Retail Natural Gas Supply Services Market*, Docket No. I-00040103F0002, Order entered September 11, 2008, pp. 11-12. The Company's MFC is consistent with Commission Policy because it reflects generation-related uncollectible accounts expense in default service rates. In addition, with regard to the Company's POR Program, the Commission has stated in its Default Service Policy Statement that the public interest would be served by consideration of a purchase of EGS receivables program. 52 Pa. Code § 69.1814.

The Company's POR Program also contained several important design elements which are discussed in more detail below. First, the POR Program as proposed required EGSs to sell all of their accounts receivables within a particular class (i.e., the residential or small C&I

classes) to the Company if the EGS chose to participate in the POR Program. The Company designed the POR Program this way to eliminate the incentive for EGSs to only sell high-risk accounts receivables to the Company. As an alternative, the Company proposed to allow EGSs to selectively sell accounts receivables to the Company within a particular class, but only if the Commission adopted tariff provisions which would allow the Company to increase an individual EGS' discount rate if the EGS was engaging in unusual business behavior that increases the Company's uncollectible accounts expense. This provision protects the Company in case an EGS only sells the high-risk accounts to the Company.

The Settlement that has been agreed to by the Parties is consistent with the principles that the Company considered in designing its POR Program. The Settlement adopts the combined POR/MFC design proposed by the Company. In addition, the Settlement requires participating EGSs to sell all residential accounts receivables to the Company but gives participating EGSs flexibility to select which small C&I customer accounts to sell to the Company, while at the same time adopting a discount adjustment mechanism that protects the Company from EGSs engaging in unusual business behavior that increases the Company's uncollectible accounts expense.

2. Discount Rate Issues

In its filing, the Company proposed to purchase EGSs' residential accounts receivables at a discount rate of 1.37%. This discount rate reflects an uncollectible accounts percentage of 1.32% and a POR administrative factor of 0.05%. In addition, the Company proposed to purchase EGSs' small C&I accounts receivables at a discount rate of 0.17%. This reflects an uncollectible accounts expense percentage of 0.12% and a POR administrative factor of 0.05%. (PPL Electric St. 1, pp. 6-7).

As explained by the Company's witness Mr. Kleha, the uncollectible accounts expense percentage factors were developed from data filed in the Company's most recent distribution rate case at Docket No. R-00072155. In that proceeding, the Company's 2007 Future Test Year ("FTY") claimed provision for uncollectible accounts expense of $19 million was based on the average of its actual bad debt write-offs for the most recent five calendar years (2002-2006). (PPL Electric St. 1, p. 7). The direct assignment of this uncollectible accounts expense to the respective rate classes, divided by the 2007 FTY total billed revenue, yields an uncollectible accounts expense percentage of 1.32% for the residential class and 0.12% for the small C&I class. (PPL Electric St. 1, p. 7).

As explained below in Section IV(A)(3), the residential and small C&I uncollectible accounts percentages are equal to the MFC percentages for the residential and small C&I classes, respectively. With the uncollectible accounts expense percentage factor discount equal to the MFC, EGSs are able to include the same uncollectible cost percentage in their supply offerings that is reflected in the POR Program. This levels the playing field for EGSs as to generation-related uncollectible accounts expense because it ensures that they will be able to include the uncollectible accounts expense percentage under the POR Program in their competitive supply offers to customers.

Under the POR program the Company proposes to recover its POR administrative costs as a percentage of EGSs' supply charges to shopping customers. (PPL Electric St. 1, p. 8). Because of the low level of shopping that currently exists in the Company's service territory, the Company is unable to predict shopping levels. The Company also is unable to predict with certainty its POR administration costs and other factors necessary for calculating a POR administrative factor. Therefore, the Company proposed a minimal POR administrative factor of

0.05% to recover some of its costs for administering the POR Program. (PPL Electric St. 1, p. 8).

The Settlement adopts the discount rates proposed by the Company, including the POR administrative factor. As explained above, the uncollectible accounts expense percentage discount rates are based on PPL Electric's actual historical experience, and the Company believes that it is in the public interest to approve these discount rates.

3. Merchant Function Charge

As explained above, the Commission has encouraged utilities to unbundle generation-related costs from distribution rates. Retail Markets Order, p. 29. In addition, EGSs have argued that utilities should unbundle generation-related uncollectible accounts expense from distribution rates. (Tr. 196-198; RESA Ex. RJH-2, p. 18). In response to both the Commission's guidance on the issue of unbundling of uncollectible accounts expense and EGSs' preference for unbundling of uncollectible accounts expense, PPL Electric proposed to unbundle generation-related uncollectible accounts expense from distribution rates and recover them through the MFC.

Under the Company's proposal, PPL Electric will continue to recover its non-generation uncollectible accounts expense through distribution rates. Default service generation-related uncollectible accounts expense will be removed from distribution rates and recovered through separate MFC charges for the residential and small C&I classes. (PPL Electric St. 1, p. 15).

As explained above, the MFC percentage charges filed by the Company are based on the uncollectible accounts expense percentages that were filed in the Company's most recent distribution base rate proceeding at Docket No. R-00072155 and reflect the Company's average uncollectible accounts expense for the 5-year period of 2002-2006. (PPL Electric St. 5).

Unbundling of generation-related uncollectible costs is in the public interest for several reasons. First, it will place EGSs on a level playing field with the Company with regard to uncollectible accounts expense and will give EGSs the opportunity to include uncollectible costs in their competitive supply offers to customers. Second, it will avoid situations where a shopping customer would pay twice for generation-related uncollectible accounts expense, once in base rates and a second time in EGS charges.

In addition, in its Petition and in testimony, the Company proposed to reduce distribution rates by the amount that was reflected in the Company's rate case for generation-related uncollectible accounts expense. (PPL Electric Ex. 4, p. 17; PPL Electric St. 1, p. 15). This reflects the appropriate credit to distribution rates. In the Petition, the Company also explained that it would reflect the changes in its distribution rates in the compliance tariff supplement that will be filed by the Company upon approval of this Petition.

The Settlement adopts the Company's proposal to unbundle generation-related uncollectible accounts expense costs from base rates and recover it through the MFC. The Settlement also adopts the MFC percentages proposed by the Company, and the Company's proposal to reduce base rates by the amount of generation-related uncollectible accounts expense that was reflected in the Company's last rate case.

4. Customer Termination Issues

a. The Company's Proposal To Allow Termination Of Electric Service For Failure To Pay EGS Charges Is Reasonable And Fair.

One of the two issues reserved for litigation in this proceeding concerns the termination of service of residential customers who fail to pay PPL Electric for purchased EGS receivables. PPL Electric's voluntary POR proposal in this proceeding provides that the Company will have the right to terminate service for non-payment of all EGS generation charges purchased by the

Company.[1] (PPL Electric St. 1, p. 13) The Company further proposed that it have the right to require full payment of all unpaid purchased receivables as a condition of reconnection. (PPL Electric St. 1, p. 13) Terminations and reconnections associated with unpaid purchased receivables would be in accordance with the provisions of Chapter 14 of the Pennsylvania Public Utility Code and Chapter 56 of the Commission's regulations. (PPL Electric St. 1, p. 13)

As a fundamental principle, the Company cannot accept a POR Program that does not give it the right to terminate service for non-payment of any portion of purchased receivables. The Company filed its voluntary POR Program with the Commission in order to promote competition in its service territory. It would not be reasonable, fair or legal to require the Company to buy an EGS' accounts receivables, but deny the Company the right to collect from customers the entire amount purchased from the EGS.

The Company notes that it voluntarily filed its POR Program with the Commission in response to the Retail Markets Order, and the Company does not believe that the Commission has the authority to require it to purchase EGS' receivables in the first instance. In *PECO Energy Co. v. Pa.PUC*, 568 Pa. 39, 791 A.2d 1155 (2002), the Supreme Court of Pennsylvania stated as follows:

> The power of the Commission is statutory, arising either from words contained in the enabling statutes or by a strong and necessary implication from those words, *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977), and the legislative grant of power in any particular case must be clear. *Delaware River Port Authority v. Pennsylvania Public Utility Commission*, 393 Pa. 639, 145 A.2d 172 (1958).

[1] EGSs have argued that PPL Electric should be required to purchase, and terminate service for failure to pay, certain other charges that PPL Electric does not consider to be generation charges. PPL Electric opposes this proposal, as explained later in this Brief.

No provision of the Public Utility Code either expressly or by "strong and necessary implication" provides the Commission with the authority to require EDCs to purchase accounts receivables from EGSs. To the contrary, the Public Utility Code specifically provides that the Commission **cannot** require EDCs to purchase EGS' accounts receivables. Section 2807(c)(3) of the Code provides as follows:

> The electric distribution company shall not be required to forward payment to entities providing services to customers, and on whose behalf the electric distribution company is billing those customers, before the electric distribution company has received payment for those services from customers.

Under a POR Program an EDC is required to forward payment to an EGS for service provided by the EGS to customers before the EDC "has received payment", even if the customer does not pay the EDC. This necessarily violates Section 2807(c)(3) of the Code and, therefore, any POR Program adopted by an EDC must be voluntarily adopted by that EDC. Nevertheless, PPL Electric has offered to pay EGSs before it receives payment provided that the terms of its POR Program and MFC are accepted.

As explained above, PPL Electric does not believe that it is reasonable or fair to implement a POR Program that does not give the Company the authority to terminate service for the full amount paid to the EGS.[2] Therefore, PPL Electric cannot be required to accept a decision in this case that would prevent it from terminating service to customers for failure to pay EGS charges purchased by PPL Electric or prevent it from requiring full payment of purchased EGS charges before reconnecting electric service to a customer, subject to Chapter 14 of the Public Utility Code and Chapter 56 of the Commission's regulations.

[2] In addition, depending upon the circumstances, requiring PPL Electric to purchase an EGS' receivables without the ability to terminate electric service to a customer for failure to pay those receivables could result in a taking in violation of the United States Constitution.

The EGSs support PPL Electric's position that terminations for the full amount of unpaid purchased receivables should be permitted. The only party that objects to this proposal is OCA.

For the above reasons, PPL Electric proposed to purchase all EGS receivables that are billed on a consolidated EDC bill, at a discount equal to the MFC (plus the administrative factor percentage of 0.05%), and have the right to terminate, or refuse to reconnect, for failure to pay such receivables. OCA opposes termination or reconnection payment for a receivable that is in excess of the default service charge. PPL Electric cannot develop systems, particularly by January 2010, to implement such a proposal. Furthermore, PPL Electric should not be required to purchase receivables subject to such limitation. However, if the Commission concludes, as a matter of policy, that residential service terminations should be limited to the default service price, the Commission should: (1) adopt OCA's alternative position to require marketers participating in EDC consolidated billing and the POR Program to certify that their charges comply with the definition of basic supply charges and that their charges are equal to or lower than the purchase price; and (2) authorize PPL Electric to rely on such certification and terminate service/deny reconnection absent payment of all purchased EGS charges, subject to Chapter 14 of the Public Utility Code and Chapter 56 of the Commission regulations.

b. The OCA's Proposal To Allow Termination Of Electric Service For EGS Charges Up To The Default Service Price Is Unreasonable And Impossible For PPL Electric To Implement By January 1, 2010.

OCA's primary position is that PPL Electric's right to termination for non-payment of a purchased receivable should be limited to an amount no greater than what the customer would have been billed if the customer had received default service during the non-payment period (OCA St. 1, p. 13). Associated with this proposal is OCA's position that a customer whose service was terminated for non-payment should be reconnected upon payment of the lesser of:

(1) unpaid distribution charges and unpaid EGS charges, or (2) unpaid distribution charges and the amount the customer would have been billed if the customer had received default service (OCA St. 1, p. 13). OCA offers no recommendation under its proposal as to how PPL Electric would be compensated for unpaid receivables that exceeded default service charges.

i. There Is No Legal Prohibition Against Termination for Non-Payment of Purchased EGS Generation Charge Receivables

The initial legal issue presented by OCA's proposal is whether the Commission may permit termination for non-payment of an EGS generation charge (basic supply service) account receivable that is purchased by PPL Electric. No party to this proceeding has identified any statutory prohibition against termination for non-payment of purchased receivables. Section 1406 of the Public Utility Code, 66 Pa. C.S. § 1406, authorizes termination for "nonpayment of an undisputed delinquent account." EGS charges purchased by PPL Electric pursuant to a POR program become utility accounts, and therefore may be terminated for non-payment pursuant to this provision. It would appear that all other parties to this proceeding concur with that interpretation, as even the OCA has offered alternative proposals that would permit termination for non-payment of at least some amount of a purchased EGS receivable. The Commission also appears to have agreed that there is no statutory prohibition against termination for non-payment of a purchased receivable. In at least two instances, Duquesne Light Company and Pike County Light & Power Company, the Commission has approved termination for non-payment of some or all of purchased EGS receivables (Tr. 135-36). However, in those cases, by rule or circumstance, all accounts purchased are at or below the POLR price. In addition, the Commission, in proposed POR regulations for National Gas Distribution Companies ("NGDC"), would allow NGDCs to terminate service for failure to pay Natural Gas Supplier supply charges (PPL Electric St. 1, p. 14, Proposed 52 Pa. Code § 62.224(6)).

Therefore, the issue remaining is whether, as a matter of law or policy, the Commission will not allow termination to the extent the amount of the unpaid receivable exceeds what the customer would have owed if the customer had instead received default service.

OCA's core contention is that a customer's service should not be terminated based upon charges that "have not been found by the Commission to be just and reasonable." (OCA St. 1, p. 10). However, OCA's witness could provide no support for her conclusion that default service charges are found to be "just and reasonable." (Tr. 129). Moreover, the Company notes that the United States Supreme Court has held that prices in freely-negotiated wholesale energy contracts meet the "just and reasonable" standard of the Federal Power Act. *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County, Washington,* 128 S. Ct. 2733, 2737 (2008).

OCA's argument also fails to consider that EGS customers voluntarily choose to take service from an EGS and accept the rate. The OCA also fails to consider that under the proposed POR Program, existing and future EGS customers will receive notice that they will be subject to termination for failure to pay purchased EGS receivables. (Tr. 101-02). Moreover, under a Commission-approved POR program, the purchased receivable becomes the utility's account. As such, termination rules for non-payment of this basic utility service should be no different from the termination rules permitted for any other basic utility service.

ii. OCA's Primary Proposal Regarding Termination of Service Cannot be Implemented by January 1, 2010 and Otherwise May be Unfair to PPL Electric

As described previously, OCA's primary proposal regarding termination of service for failure to pay EGS charges is to allow termination only up to the amount the customer would have been billed if the customer had taken default service during the non-payment period. Such a proposal would require PPL Electric to establish billing and payment procedures that could at

all times track for each customer the amount billed for the EGS' charges and the amount that would otherwise have been billed if the customer has taken default service. The Company also would have to confirm the application of payments to charges eligible and not eligible for termination under OCA's proposal. (PPL St. 1, p. 14).

As PPL Electric explained, it is not possible to modify its billing and collection accounting systems to implement OCA's proposal in time to have a functioning POR program when rate caps are removed on January 1, 2010 (PPL St. 1, p. 14; PPL St. 2, pp. 9-13; Tr. 100). Therefore, as a practical matter, OCA's primary proposal is unworkable at this time and must be rejected.

Under redirect following cross-examination, OCA witness Alexander suggested that the Company did not provide evidence that it could not track and limit terminations for non-payment to the lesser of the EGS charges or default service charges during the period of non-payment. (Tr. 146-47). Such contention totally ignores the substantial direct testimony of the Company's witness Mr. Krall, who testified at great length about the needed programming changes necessary to implement a POR program by January 1, 2010, and based upon OCA's statements in its Answer to PPL Electric's Petition, explained the impossibility of making additional programing changes to incorporate OCA's proposal. (PPL Electric St. No. 2, pp. 11-13).

In his testimony, Mr. Krall described the substantial work that would have to be done to implement the POR Program as proposed by PPL Electric in this proceeding. (PPL Electric St. No. 2, pp. 7-10). The programming changes included, but are not limited to, the following:

- Reprogramming the customer information and billing system to recognize two different POR Programs – the existing POR Program for large C&I customers and the proposed POR Program
- Modifying EDI transactions
- Managing and tracking individual customer account balance

- Revising the programming that tracks aged balances
- Adding programming to track separately, for each participant, the billings, remittances and balances by age.

In his testimony, Mr. Krall further explained that the Company anticipated that it would take approximately 1,500 manhours to implement the POR Program as proposed and that there are limits on assigning additional programmers because this would become less efficient and counterproductive. (PPL Electric St. 2, pp. 9-10). In addition, Mr. Krall explained that the Company would not be able to implement the OCA's proposal to limit collectable amounts to default service generation charges by January 1, 2010. (PPL Electric St. 2, pp. 12-13).

Although Ms. Alexander did not respond in her direct testimony, at the hearing Ms. Alexander attempted to dispute Mr. Krall's assertions that it was not possible for the Company to implement the OCA proposal by January 1, 2010. (Tr. 118-19). Ms. Alexander referenced Duquesne Light Company's adoption of a similar limitation upon termination for unpaid receivables. Ms. Alexander argued that the mathematical calculations are "simple," but conceded that she was not opining as to the "simplicity" of needed programming (Tr. 142). Contrary to Ms. Alexander's testimony, Duquesne Light Company's agreement, in a settlement, to adopt OCA's proposed limitation upon termination does not support her claim that needed reprogramming could be completed by January 1, 2010. The Duquesne Light settlement provided an extended period of time to develop the POR program. (Tr. 157) Further support for Mr. Krall's unrebutted testimony that such proposal could not be implemented in time to have a functioning POR program by January 1, 2010 was provided by testimony of Dominion Retail's witness, Mr. Crist at the hearing:

> Q. Now, Ms. Alexander described a concept where the utility would compute the difference between the EGS charge and the default rate so that it restrict its termination activities to

customers who haven't paid the default rate. Is this practical?

A. No, it is not. I've heard testimony of the company expert witness Mr. Krall. I myself have expertise in billing systems having to do with energy companies. The type of calculational methodology, while it might appear to be simple arithmetic, involves a lot of calculation through a lot of customers on a real-time basis and would not be simple to implement.

Q. Are you aware of these systems being implemented in other utility service territories?

A. Yes. Specifically, we've talked about Duquesne Light Company today. I'm very aware of that because my client, Dominion Retail, is the largest electric generation supplier operating on the Duquesne Light system, and in that particular case the changes took well over six months to implement and were of a significant cost, well over a million dollars.

(Tr. 157).

By the time the Commission acts in this proceeding, PPL Electric will have only about a month to finish design and implementation of a POR Program. OCA's primary proposal to prohibit termination for non-payment of EGS receivables purchased that are above the POLR rate cannot be implemented in a timely manner and must be rejected.

There is a second flaw in OCA's primary proposal. At no point in Ms. Alexander's testimony does she explain how the Company would be compensated for an arrearage on a purchased EGS receivable that was above the otherwise applicable default charges. Ms. Alexander references a process used in New York State whereby an EGS is charged back for non-payment of purchased receivables above the POLR rate, but she does not propose such process, or any other alternative, to fully compensate the Company for non-payment (OCA St. 1, p. 12). Even if the Commission were to reject PPL Electric's position that it must be entitled to terminate for all receivables purchased, full compensation would be required if such a limitation

were to be implemented in the future. (PPL Electric St. 1, p. 14). These are not ripe: OCA's primary proposal can not be implemented at this time, for reasons explained above.

c. The Company Can Accept OCA's Alternative Proposal For 2010.

OCA also offered an alternative proposal. Under that proposal, EGSs would be required to certify that their charges are at or below the default service price as a condition of participating in the POR. This alternative proposal would be in effect for the one-year term of PPL Electric's Competitive Bridge Plan ("CSP"), which establishes default service rates for the one-year period beginning January 1, 2010 (OCA St. 1, p. 14).

If the Commission is not able to determine in the accelerated timeframe of this proceeding the question whether termination should be permitted for unpaid receivables that exceed the default service rate, the Commission could adopt, as a matter of policy, OCA's alternative proposal that only EGS' residential receivables certified to be at or below the default service rate may be included in the POR for 2010. This would permit the Commission to postpone a final decision on this issue until after the collaborative proceeding on POR established in the settlement of PPL Electric's POLR II proceeding.[3] If the Commission were to adopt this alternative, it could postpone a decision on this issue because all purchased residential receivables subject to termination will be at or below the default service rate.[4]

5. All-in/All-out Requirements

In its Petition, the Company proposed to require EGSs that choose to participate in the POR program for a particular class of customer to sell all of their accounts receivables to PPL Electric for the respective class. In other words, the Company proposed that if an EGS chose to

[3] PPL St. 2, p. 10.

[4] If this alternative were adopted, and a customer was improperly terminated because an EGS incorrectly certified a purchased receivable as being below the PTC, the EGS, and not PPL Electric, would be subject to any fines or other sanctions resulting from the improper certification and termination.

sell any of its accounts receivables to PPL Electric, it was required to sell all of its accounts receivables for that class to the Company. (PPL Electric St. 1, p. 10).

The Company proposed its all-in/all-out criteria to eliminate the financial incentive for EGSs to sell only accounts receivables from low-income customers, customers with low credit scores, or other indicia of poor payment. (PPL Electric St. No. 1, p. 10). The Company further proposed that if the Commission did not accept this all-in/all-out proposal that the Commission adopt the Company's alternative tariff proposal which would allow the Company to increase an individual EGS discount rate if the EGS was engaging in unusual business behavior that increased the class' uncollectible accounts expense percentages.

In this proceeding, no party objected to the Company's all-in/all-out proposal for residential customers. However, the EGSs were opposed to the all-in/all-out requirement for small C&I customers and requested additional flexibility to dual-bill certain small C&I customers and not include those customers in a POR Program.

The Settlement addresses the parties' positions in this proceeding by maintaining the all-in/all-out provision for residential customers and allowing EGSs to choose which small C&I customers accounts to sell to the Company, while also adopting an individual discount adjustment mechanism which protects the Company from EGSs engaging in unusual business behavior that increases the Company's uncollectible costs.

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

The Company's alternative to the all-in/all-out requirements is discussed in Section IV(A)(5) above.

7. Basic Generation Supply Service Issues

In this proceeding, PPL Electric proposed to limit its purchase of EGS receivables to receivables that are associated with basic supply service. (PPL Electric St. 1, p. 9). The

Company interprets "basic supply service" to mean actual generation supply and not attribute-based products such as voluntary REC programs.

As a basic matter, the Company does not believe that it should be required to purchase receivables for special products, such as green programs, offered by EGSs. Under its POR program, the Company is assuming the risk of purchasing EGS' receivables and does not want to add to that risk by including receivables for anything other than basic supply service.

The Company's interpretation of "basic supply service" was guided by the Commission's Tentative Retail Markets Order, where the Commission stated as follows:

> Finally, an EGS can bill only for basic supply service via POR. However, there are no limitations on the provision of other billing options if the EGS is participating in the POR program. EGSs have unique programs, such as green power for example, which require billing needs the utility cannot supply. Thus, EGSs may still need to separately bill for complex supply pricing options or environmental/renewable products.

Tentative Retail Markets Order, p. 15. It is clear from reading this provision that the Commission does not consider green programs to be "basic supply service."

It also is important to note that PPL Electric has a Green Power Option that has been approved by the Commission. The Company does not consider the Green Power Option to be basic supply service, and in fact, does not include amounts paid by customers under the Green Power Option as charges for which the customer can be terminated. (PPL Electric Exhibit No. 6).[5]

In this proceeding, RESA has argued that the definition of "basic supply service" should include "REC-based or other attribute–based renewable products." (RESA St. 1, p. 20). RESA's position clearly is contrary to the Commission's position in the Tentative Retail Markets

[5] PPL Electric Exhibit No. 6 was filed as a response to an on-the-record data request from RESA. In the ALJ's Order certifying the Record in this proceeding, the ALJ stated that objections to this Exhibit were due with Main Briefs.

Order. In addition, as noted above, the Company should not be required to purchase EGS receivable for REC-based green programs. The Company is not willing to assume this risk for EGSs. If EGSs want to offer REC-based programs, they should separately bill customers for this service.

8. Credit Check Requirements

In this proceeding, the Company proposed that EGSs that participate in the POR Program would be required to accept all applicable customers without performing credit checks or requiring additional deposits over those required by the Company.

In response to this proposal, Dominion responded in testimony that it was willing to agree not to reject residential customers for credit-related reasons, but should be allowed to conduct credit checks for business purposes. (Dominion St. 1, p. 16). In addition, both Dominion and RESA argued that they should be permitted to perform credit checks on larger customers and deny service to them for credit-related reasons, especially because EGSs can be exposed to mark-to-market risk in the event a customer is terminated for non-payment. The Settlement adopts the marketers' proposals with regard to performing credit checks.

9. 12-Month Stay Provision

In its POR tariff, the Company included a provision requiring EGSs to stay in the POR program for a 12-month period. In testimony, RESA argued that the Company should clarify this provision to make it end on December 31, 2010, which is the date that the POR Program ends and also should clarify that an EGS can offer customers product terms that are shorter in duration than the POR Program. (RESA St. 1, p. 24). At the hearing, the Company agreed to these clarifications requested by RESA (Tr. 51-52), and the Settlement adopts these clarifications.

10. Program Availability for Large Commercial and Industrial Customers

In this proceeding, the EGSs argued that their proposed POR Programs should apply to large C&I customers. The Company disagreed, stating that it had an existing POR Program in place for large C&I customers and did not intend to change that Program in this proceeding. As the Company explained, it should not be required to modify its POR Program for large C&I customers in this proceeding. (Tr. 53). In addition, the Commission's proposed natural gas regulations do not require NGDCs to offer POR Programs to large customers, and PPL Electric should not be required to change its existing program for large C&I customers.

The Settlement adopts the Company's proposal to continue its existing POR program for Large C&I customers.

11. POR Program Contingencies

In this proceeding, RESA and Dominion argued that the Commission should adopt certain contingencies in the event that the Company could not implement a POR Program to become effective on January 1, 2010. In addition, RESA and Dominion argued that the Commission should continue the current POR Program in 2011 if another POR Program was not adopted by the Commission. (RESA St. No. 1, pp. 27-28; Dominion St. No. 1, p. 22).

The Company opposed these proposals for several reasons. First the Company noted that it had an existing POR Program that would continue in 2010 in the event the Commission did not adopt a POR Program in this proceeding. In addition, the Company noted that it was required to file a POR Program to become effective January 1, 2011, under the terms of the Settlement of the Company's recent default service proceeding and there was no reason to believe that the Commission would not adopt a POR Program for 2011.

The Settlement adopts the Company's position on these issues. The Company believes that this is reasonable in light of its current POR filing for 2010 and obligation to file a POR Program to become effective on January 1, 2011.

B. SUBSEQUENT RECOVERY OF UNCOLLECTED RECEIVABLES AND UNRECOVERED ADMINISTRATIVE COSTS

In this proceeding, the Company requested Commission authority to recover in a subsequent base rate proceeding the difference between administrative and uncollectible accounts expense actually incurred under the POR Program with administrative and uncollectible accounts expense actually recovered. The Company requested this rate treatment due to the uncertainty in developing its POR administrating factor and the uncertainties associated with recovering generation-related uncollectible accounts expense under a new POR Program. (PPL Electric St. No. 1, p. 8). In this proceeding, the OCA opposed the Company's proposal. (OCA St. No. 1, p. 18).

The Settlement filed by the parties in this proceeding adopts the OCA's position on this issue.

C. CUSTOMER NOTIFICATION ISSUES

In this proceeding, the Company proposed to inform all customers that their service could be terminated for failure to pay EGS supply charges through an article in Connect, the Company's newsletter included with each bill. In addition, the Company stated that it would amend its enrollment letter issued at the time that a customer selects an EGS to inform the customer that his/her service could be terminated for failure to pay EGS charges. (PPL Electric Ex. 4, p. 16).

In this proceeding, the OCA argued that the Company also should send a separate bill insert to customers informing them that their service could be terminated for failure to pay EGS

supply charges. (OCA St. No. 1, p. 15). At the hearing, the Company's witness, Mr. Krall, explained why the Company could not provide a separate bill insert to customers prior to January 1, 2010. (Tr. 103). However, Mr. Krall further explained that the Company would send a separate letter to all customers that are currently shopping to inform them that their service could be terminated for failure to pay EGS supply charges. (Tr. 102).

The Company's proposal to notify customers that their service can be terminated for failure to pay EGS supply charges through the Company's newsletter, through the enrollment letter and by individual letter to all existing shopping customers is reasonable and should be approved. The Commission should not accept the OCA's proposal because the Company cannot provide a separate bill insert to customers prior to January 1, 2010.

V. CONCLUSION

WHEREFORE, for the foregoing reasons, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission:

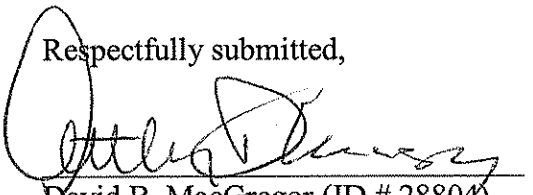
(1) approve the Joint Petition for Settlement filed by the parties in this proceeding without modification;

(2) approve a POR Program that allows the Company to terminate service to customers for non-payment of all EGS generation charges purchased by the Company or adopt OCA's alternative proposal that requires, as a condition of participating in the POR Program, EGSs to certify that their charges to customers are lower than the Company's default service rates;

(3) define basic supply service to include generation supply and to exclude voluntary REC-based products;

(4) approve the Company's proposal to notify customers that the Company can terminate electric service for failure to pay EGS supply charges through the Company's newsletter, the shopping enrollment letter and individual notice to existing shopping customers.

Respectfully submitted,



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