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

REPLY BRIEF OF

THE RETAIL ENERGY SUPPLY ASSOCIATION

AND

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Date: November 6, 2009

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Regulations

Administrative

I. INTRODUCTION

The Retail Energy Supply Association,[1] Direct Energy Services, LLC (collectively, "RESA/Direct Energy"), the other electric generation supplier ("EGS") parties in this proceeding, and the Commission all share the same goal – to bring real competition to consumers in the retail energy market. The reason is simple. Competition means more choices and lower prices for consumers. As consumers are exposed to the real (and higher) cost of energy for the first time in a decade with the removal of generation rate caps, a greater number of competitive suppliers participating in the market will provide more options for consumers. The key to realizing this goal is to ensure that competitors have a fair market opportunity to provide service in light of the fact that the energy market has been dominated for decades by the incumbent supplier, i.e. electric distribution companies ("EDCs"), in this case, PPL Electric Utilities Corporation ("PPL").

The Commission rolled up its sleeves long ago to design and implement numerous rules and requirements intended to open the market. This case addresses a Purchase of Receivables ("POR") program which is one of the key elements necessary to enable competitive suppliers to reach the mass market (i.e. residential and small commercial and industrial customers "small C&I"). As the Commission already has concluded "establishment of a properly structured POR program *by the end of the* transition period is necessary to faithfully carry out the provisions of

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[1] 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.

Chapter 28."[2] Through a properly structured POR program, the EDC purchases the accounts receivable of the competitive supplier, adds the supplier's charges (which have now become the EDC's charges) to the customer's distribution bill, and sends the customer one bill with all their electricity charges. This enables competitors to efficiently and reasonably reach mass market customers and, therefore, is a critical component to establishing robust retail competition.

While the settlement reached in this proceeding will permit PPL to implement a POR program for small C&I customers for 2010, the POR program for residential customers remains unresolved. Resolution of the two remaining issues could have a material effect on whether the Commission's directive will be achieved. The most primary issue is the proposal of the Office of Consumer Advocate ("OCA") to regulate EGS prices through the POR program by placing restrictions on the ability of PPL to terminate service to the accounts of POR customers. The ability to terminate service to nonpaying customers is a critical element of a properly structured POR program because, without it, nonpaying customers will be able to continue to receive free service at the expense of all paying customers. All utilities today have the right to terminate service to nonpaying customers upon compliance with the Commission's regulations. All parties in this case (except for OCA) propose to continue that practice for residential customers even after implementation of a POR program. Accordingly, if an EGS customer does not pay his/her bill, PPL (which has purchased the account receivable and thus owns it) can proceed to terminate that customer's service pursuant to the Commission's regulations, just as PPL has always been able to do and just as PPL will always be able to do for its non-POR customers. This is a fundamentally fair result and only OCA opposes it.

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2 *PPL Electric Utilities Corporation Retail Markets,* Final Order entered at Docket No. M-2009-2104271 on August 11, 2009 at 27.

Instead, OCA asks the Commission to impose restrictions on PPL's ability to terminate service to POR customers which will result in a lack of competitive offerings and EGS price regulation. There has been no showing that the tiny percentage of consumers who do not pay their bills need additional protections from competitive suppliers or that competitive supplier charges may exceed PPL's default rates. On the contrary, the overwhelming evidence in the record shows that the OCA's proposed service termination restriction is unnecessary and will have a chilling effect on competition. This would be a result which will harm the majority of residential consumers who do pay their bills but will be deprived of competitive options.

PPL has stated that it cannot operationally implement OCA's proposal and have the POR program functioning on January 1, 2010. Without a POR program, the chances that competitors will make offer to the residential markets upon expiration of PPL's rate caps could be significantly reduced. Even if OCA's primary or alternate proposal could be implemented, the implementation of either one will destroy the chances of developing a fully functioning competitive market. This is because competitors will not choose to enter the market where a restriction exists that dictates what product they can offer and at price caps that they could inadvertently violate. In the end, consumers will be the losers and the goals of the Commonwealth will not be realized. Therefore, OCA's proposal to restrict PPL's ability to terminate service for customers who do not pay their EGS generation charges should be rejected.

The second issue before the Commission is what EGS services can be placed in the POR program. All parties agree that only basic commodity service should be subject to POR program. No party is suggesting that an EGS selling a consumer an appliance or some other non-energy product should be permitted to sell that account receivable to PPL through POR. The point of disagreement generally concerns the extent to which "green" products should be

included in POR. RESA/Direct Energy request the Commission to clarify that green products which an EGS may bundle and sell in conjunction with a commodity product should be included in POR.

RESA/Direct Energy also address issues raised by PPL in its Main Brief regarding the Commission's authority to order POR and PPL's advocacy in support of positions regarding settled issues. The core point of this Reply Brief, however, is very simple: to achieve its stated goals of developing a robust competitive retail market for residential customers the Commission must reaffirm that PPL is required to implement a workable POR program and reject OCA's attempt to needlessly place restrictions on PPL's ability to terminate service for nonpayment.

II. OCA HAS FAILED TO ESTABLISH THAT EITHER ITS PRIMARY OR ALTERNATE PROPOSAL IS NECESSARY, LEGALLY REQUIRED OR LEGALLY PERMISSIBLE

OCA has the burden of proving through substantial evidence that its proposal to regulate EGS prices by capping service terminations and reconnections at the default service rate should be adopted.[3] To support its burden of proof, OCA argues: (1) a utility can only legally terminate (and reconnect) service based on rates determined by the Commission as "just and reasonable;" (2) the Commission should adopt OCA's position because POR programs in Duquesne's service territory and New York contain OCA's proposal; and, (3) OCA's alternative certification proposal can be easily implemented and does not stymie the development of the competitive market. None of this, however, satisfies OCA's burden of proof, and is based on incorrect legal analyses and unsupported factual assertions.

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[3] To satisfy this burden, OCA must provide "substantial evidence," not just argument and a mere trace of evidence or a suspicion of the existence of a fact sought to be established. 66 Pa. C.S. § 332(a) *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).

A. OCA Presents No Factual Evidence Showing A Need For Its Proposals Or How It Will Provide The Consumer Protections OCA Advocates, Rather Evidence Shows Adopting OCA's Proposals Will Have A Chilling Effect On the Competitive Retail Market

The Commission has already concluded that a properly structured POR program for PPL's service territory on January 1, 2010 is necessary to permit the development of retail competition in PPL's service territory.[4] Therefore, the goal of this proceeding is to develop the operational details of the program to ensure that it can be implemented as directed. OCA offers an operational restriction that neither PPL nor the EGSs in this proceeding support, and one that PPL has made clear it cannot implement.[5] The threshold issue is whether OCA has proven that the restriction is necessary or required legally. The answer is no.

Based on the substantial evidence in the record shows that OCA's proposals are not necessary and, if adopted, will have a chilling effect on the development of retail competition in PPL's service territory.[6] If PPL is ordered to implement service termination restrictions, the result will be that there will be no POR program on January 1, 2010 and competition in the residential market will not develop. If OCA's alternative "certification" proposal were ordered, EGSs would, as a practical matter, be prohibited from offering the full array of competitive products they would otherwise offer and residential consumers will be denied the benefits of a robust competitive retail market with different products and services (which is the end-state envisioned by the Choice Act). OCA has offered nothing to justify such a result. In fact, this result would be contrary to the law and the policy of the Commonwealth. OCA's proposal should be rejected.

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

5 RESA/Direct Energy M.B. at 12-13.

6 RESA/Direct Energy M.B. at 12-13; FES M.B. at 5-6 Dominion M.B. at 12,

B. OCA's Legal Analysis Regarding Service Termination Restrictions And The Preeminence Of The Default Service Rate Is Legally And Factually Flawed

In the absence of providing any factual support for the necessity of its proposal, OCA basically argues that its proposal is required by law.[7] However, OCA's legal analysis is wrong for many reasons. First, there is simply no legal requirement that the Commission must find a charge to be "just and reasonable" before permitting service termination for nonpayment of those charges. Second, no generation charges (either EDC or EGS) are regulated under Section 1301 of the Public Utility Code and, therefore, does not provide a legal justification to permit service terminations for only default generation charges and not EGS generation charges. Finally, even if the Commission were to rule that utility service termination is only permitted for "just and reasonable" rates, EGS charges necessarily must fall within this standard because they are the product of the same market based regulatory regime that produces default service rates.

1. There Is No Legal Requirement That Utilities May Terminate Service Only For Nonpayment of Commission Deemed Just And Reasonable Rates

OCA relies on Sections 1301, 1406, and 2807(d) of the Public Utility Code and 52 Pa. Code § 56.83(3) to justify its proposal that service termination (and reconnection) must be based exclusively on nonpayment of charges that do not exceed the default service rate being charged at the time of the termination.[8] None of these provisions, however, support the proposition offered by OCA.

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7 OCA M.B. at 8-12 ("OCA submits that a POR program that has at its heart the termination of essential electric utility service based on unregulated charges ***without*** adequate protections for consumers cannot be squared with the requirement of the Public Utility Code.") (emphasis original).

8 OCA M.B. at 8-10.

While Section 1301 requires rates of public utilities to be just and reasonable,[9] it does not mandate any specific requirements for termination or reconnection of service or restrict service terminations and reconnections to nonpayment of just and reasonable rates. In fact, there are many utility rates in effect that have not been formally declared by the Commission to be "just and reasonable" pursuant to Section 1301 and, notwithstanding this, public utilities are permitted to terminate service to customers for nonpayment of these rates.[10]

Section 1406 governs termination of utility service, but it does not mandate the specific charges that, if not paid, may subject the customer to service termination or what specific charges must be paid to effect reconnection.[11] Indeed, as PPL will be purchasing the receivables of the participating EGS, the charges that will be the cause for termination of a customer's service (if he or she fails to pay) will in fact be those of the utility.[12]

Finally, Section 2807(d) provides that "[c]ustomer services shall, at a minimum, be maintained at the same level of quality under retail competition" but does not require that service terminations or reconnections be based on a specific rate.[13] In sum, none of the statutory

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9 66 Pa. C.S. § 1301.

10 RESA/Direct Energy M.B. at 19-20. Examples are projected Purchase Gas Cost Rates and rates placed into effect subject to subsequent hearing and review under Section 1308 of the Code, 66 Pa. C.S. § 1308.

11 66 Pa. C.S. § 1406. In fact, one of the goals of Chapter 14 is to "achieve greater equity by eliminating opportunities for customers capable of paying to avoid the timely payment of public utility bills." 66 Pa.C.S. § 1402(2) (emphasis added). This counsels against adopting OCA's proposal which would permit a small minority of unscrupulous customers to willfully agree to a higher contract price with an EGS while only ever paying the EDC (which has purchased the account) an amount equal to the default service rate to avoid termination. Such behavior would have a negative, long-term impact on all customers who would eventually be required to pay for this behavior either through higher generation rates (whether from an EDC or EGS) or through higher distribution/transmission rates.

12 PPL M.B. at 18 ("EGS charges purchased by PPL Electric pursuant to a POR program become utility accounts.")

13 66 Pa. C.S. § 2807(d) (emphasis added).

provisions relied upon by OCA require or even support Commission adoption of OCA's restrictions.

Likewise, the Commission's regulations do not mandate or support the adoption of OCA's restriction. OCA claims that "[t]he Commission's regulations . . . have long recognized the essential nature of electric service and have limited the use of termination" citing 52 Pa. Code § 56.83(3).[14] This regulation states:

> Unless expressly and specifically authorized by the Commission, service may not be terminated nor will a termination notice be sent for any of the following reasons:
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> . . .
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> (3) Nonpayment, in whole or in part: for leased or purchased merchandise, appliances or special services including but not limited to merchandise and appliance installation fees, rental and repair costs; of meter testing fees; of special construction charges; and of other nonrecurring charges that are not essential to delivery or metering of service, except as provided in this chapter.[15]

While OCA is correct in that the Commission regulates a public utility's use of service terminations, nothing in the language of this regulation requires the Commission to adopt OCA's proposal and, in fact, these examples are inapposite. There is no likelihood under a POR program that a POR customer will be faced with termination of his/her utility service for nonpayment of a charge for some non-energy service related item, such as an appliance, as specifically contemplated by Section 56.83(3).[16] Indeed, Section 56.83(3) actually authorizes by negative inference service termination for unpaid purchased EGS generation charges when it states that termination is not permitted for service "not essential to delivery…of service." The generation charges at issue are in fact the service being delivered. Therefore, unpaid generation

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14 OCA M.B. at 9.

15 52 Pa. Code § 56.83(3).

16 RESA/Direct Energy M.B. at 20-21.

charges are plainly included as charges that may subject a customer to service termination and there is nothing in the regulation that limits service terminations only to nonpayment of charges for generation service provided by the EDC.

Moreover, and as discussed above, the customer receivable for EGS service becomes the utility's receivable through the POR program. At that point, the customer will receive all the same consumer protections afforded to the EDC's other customers.[17] In other words, placing a customer's receivable in POR does not deprive that customer of any Chapter 56 consumer protections because the EDC is required to treat the POR customer just as it does its own customers. Therefore, customers in a POR program will not lose any regulatory protections because of a POR program. OCA's attempt to create a solution to a problem that will not exist should be rejected.

OCA's final offer of legal support for its position is an order from twelve years ago in which the Commission set forth its then-"current views regarding how certain issues should be addressed in the restructuring process."[18] In the *1997 Consumer Guidelines Order*, the Commission made clear that it was offering its views as guidance "to assist the parties in preparation, litigation and resolution of the Restructuring Filings of each utility" and that its guidance was not intended to be the "final say" on all issues.[19] Regarding service termination for nonpayment of EGS supply charges, the Commission expressed its view at that time, during the capped rate period, that EDCs should not be permitted to terminate service to any EGS customer

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17 RESA/Direct Energy M.B. at 23. This is consistent with 66 Pa. C. S. § Section 2807(d) that "[c]ustomer services shall, at a minimum, be maintained at the same level of quality under retail competition."

18 OCA M.B. at 10-11. *Final Order Re Guidelines for Maintaining Customer Services at the Same Level of Quality Pursuant to 66 Pa. C.S. § 2807(D), and Assuring Conformance with 52 Pa. Code Chapter 56 Pursuant to 66 Pa. C.S. § 2809(E) and (F),* Docket No. M-00960890F.001, Order entered July 10, 1997 at 2-3 ("*1997 Consumer Guidelines Order.*")

for which the EDC purchased the receivable.[20] More recently, the Commission reversed this determination and correctly concluded that EGSs would be "placed at a disadvantage vis-à-vis the EDC so long as the EDC does not, or cannot, terminate service to a nonpaying EGS customer on the same basis as it terminates service to its own nonpaying default service customers."[21] For this reason, the Commission has been clear that EDCs should be granted the ability to terminate service to POR customers for unpaid purchased EGS receivables. OCA's reliance on outdated guidelines which the Commission has clearly and correctly changed recently is incorrect, at best.

In sum, OCA cites three statutory sections, one regulation and the *1997 Consumer Guidelines Order* of the Commission to claim that the Commission is legally required to adopt its restrictions. A complete review of all this authority, however, makes clear that none of them mandates or suggests adoption of OCA's proposal to restrict the ability of utilities to terminate (and reconnect) service to POR customers based only on nonpayment of an amount equal to the customer's default service rates. As OCA's proposed restrictions have no legal or factual support, they should be rejected.

2. While No Generation Charges Are Regulated Under Section 1301 Of The Public Utility Code, Generation Charges Lawfully Deriving From Competitive Markets Are Just And Reasonable

Despite the lack of any legal or regulatory requirement, OCA insists that electric utility service can be terminated only when the customer fails to pay charges that "the Commission has

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19 *Id.* at 2-3.

20 *Id.* at 44.

21 *PPL Electric Utilities Corporation Retail Markets*, Docket No. M-2009-2104271, Opinion and Order entered August 11, 2009 at 27-28 The Commission has also made the same determination for NGS charges purchased pursuant to an NGDC POR program. *See Establishment of Interim Guidelines for Purchase of Receivables (POR) Programs,* Docket No. M-2008-2068982 and I-00040103F0002, Order entered December 19, 2008 at 405.

found to be just and reasonable."[22] According to OCA, the only generation charges that meet this criteria are an EDC's default service charges because they are "required" to be just and reasonable pursuant to Section 1301 of the Public Utility Code.[23] However, the default service rate is not declared by the Commission to be "just and reasonable" pursuant to Section 1301 because the Commission does not have the legal authority to do so.[24] But, even if the Commission concludes that the requirements of Section 1301 of the Code continue to apply to default service rates, it is plain that EGS charges must also be deemed just and reasonable because they derive from the same market based regulatory regime that produces an EDCs default service rates.

There is no question that the Commission approves an EDC's procurement plan and that this plan is the process by which an EDC's default service rates are set.[25] The Commission has determined that its review of the "just and reasonableness" of default service rates is conducted through its approval of the competitive procurement process.[26] The point of disagreement is whether EGSs meet or are required to meet a similar just and reasonable standard when pricing their generation charges. OCA claims that the just and reasonable standard of Section 1301

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22 OCA M.B. at 11.

23 OCA M.B. at 22-24.

24 OCA M.B. at 15-19.

25 RESA/Direct Energy M.B. at 16-19 and OCA M.B. at 23-24.

26 This is confirmed by a consumer complaint case the OCA relies on to support its contrary position. OCA M.B. at 23. In that case, consumers challenged the default service rates of Pike County Light & Power Company ("PCL&P"). Ultimately, the Commission concluded that PCL&P's default service rates were properly addressed by the Commission in PCL&P's default service case – in which PCL&P's default service procurement plan was reviewed and approved – and would not be addressed in the consumer complaint case. *County of Pike v. Pike County Light & Power Company*, Docket No. C-20065942, et. al., Opinion and Order entered March 10, 2008 ("In the Company's Petition for Expedited Approval of its Default Service implementation Plan at Docket No. P-00072245 . . . the Commission directed that spot market purchases for default service shall be employed by Pike for the seventeen months commencing January 1, 2008. . .

governs the EDC (as the public utility) but not EGSs and, therefore, only the EDC's default service rate can be just and reasonable for purposes of terminating service. There are two major flaws with OCA's position.

First, the "just and reasonable" standard of Section 1301 has never been interpreted by the Commission or the courts to mean that there is one and only one rate of a public utility that satisfies the standard. On the contrary, the Commission's determination of what constitutes "just and reasonable" pursuant to Section 1301 has always been understood to encompass a zone of reasonableness regarding the actual final rate.[27] In fact, the very default service rate that the OCA assumes to be "just and reasonable" is an average derived from a set of discrete competitive wholesale supplier bids approved by the Commission. As RESA/Direct Energy have pointed out, it is the results of a competitive procurement process that, if anything, is approved as just and reasonable, not a single default service rate.[28] Thus, it is clear that competitive market prices define the zone of reasonableness under the post-restructuring regulatory regime.

Accordingly, **since the rates issue has previously been decided**, we shall not address that portion of the instant Complaints.") (emphasis added).

27 *See, e.g., Public Advocate v. Phila. Gas Comm'n*, 544 Pa. 129, 141 (Pa. 1996) *quoting In re Permian Basin Area Rate Cases*, 390 U.S. 747, 770, (1968) ("**Any rate selected which falls with the broad zone of reasonableness cannot properly be attacked** as unconstitutional for being confiscatory. This Court has followed the above guidelines set by the United States Supreme Court when examining utility rate disputes pursuant to Public Utility Code requirements. *See Pennsylvania Electric Co. v. Pennsylvania Public Utility Commission*, 502 A.2d 130 (Pa. 1985); *Barasch v. Pennsylvania Public Utility Commission*, 493 A.2d 653 (Pa. 1985)."). *See also*, *See Blumenthal v. FERC*, 552 F.3d 875, 883 (D.C.Cir. 2009), citing *Mobil Oil Corp. v. Fed. Power Comm'n*, 417 U.S. 283, 316, 94 S. Ct. 2328, 41 L. Ed. 2d 72 (1974); see also *In re Permian Basin*, 390 U.S. at 796-98 (explaining that there is not one reasonable rate but rather a "zone of reasonableness"); *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 602, 64 S. Ct. 281, 88 L. Ed. 333 (1944) (noting that "the Commission was not bound to the use of any single formula or combination of formulae in determining rates"); *Maine Public Utilities Commission v. FERC.*, 520 F.3d 464, 471, 380 U.S. App. D.C. 257 (D.C. Cir. 2008) ("The Supreme Court has disavowed the notion that rates must depend on historical costs and has held that rates may be determined by a variety of formulae.").

Accordingly, EGS prices which are derived from the same competitive market that produces the default service rates, must also fall within the zone of reasonableness. As discussed in the Main Brief of RESA/Direct Energy, 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.[29] The Commission has already determined that such a variance between an EGS generation charge and an EDC generation charge is permissible and, in fact, may be desirable for some customers.[30] Therefore, an EGS's generation charge that exceeds the EDC's default service rate does not mean that the EGS charges automatically fall outside the "zone of reasonableness" that could have been established by the Commission pursuant to Section 1301. Only if EGSs were shown to regularly charge rates that are clearly inconsistent with competitive market forces would there even be a concern that EGS charges would somehow fall outside this "zone of reasonableness." Of course no such showing has been attempted, let alone made here. If such a concern arose, the Commission has an array of procedures, including license revocation and individual consumer complaint adjudication, to address the issue.[31] Thus, even pursuant to traditional just and reasonable standards, there is no reason to restrict service termination and reconnection procedures to the default service rate.

Legal precedent concerning the market based rate regulatory regime of the Federal Energy Regulatory Commission ("FERC") provides a clear analogy to, and guidance for, the

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28 RESA/Direct Energy M.B. at 17-19.

29 RESA/Direct Energy M.B. at 12.

30 *Petition of Pike County Light & Power Company For Expedited Approval of its Default Service Implementation Plan*, Docket No. P-00072245, Opinion and Order entered August 16, 2007 at 36. ("While it is true that, at some point, the monthly spot market based POLR price could fall below the [EGS] aggregation price, that is a characteristic of a competitive market based approach **and does not mean that the [EGS] aggregation price is unreasonable.** Some customers may very well choose to accept the higher priced [EGS] aggregation price in some months in exchange for the stability inherent in that fixed price.")

legal issue at hand in the instant proceeding. EGS retail rates in the Commonwealth are the product of wholesale generation contracts and prices determined by FERC to be just and reasonable. It s well known that FERC's jurisdiction derives from a "just and reasonable" standard in the Federal Power Act and cognate statutes. Since wholesale electric regulatory restructuring, market participants no longer seek approval of tariffed generation rates; rather, they file for market based rate approval with FERC.[32] Importantly, each wholesale generation charge is not analyzed by FERC to ensure that the specific amount is just and reasonable. Rather, FERC exercises is regulatory authority to ensure a fair and competitive wholesale electric market process, and FERC must presume that the electricity rate set in a freely negotiated wholesale-energy contract meets the "just and reasonable" requirement of the Federal Power Act ("FPA").[33] This is settled law – "when there is a competitive market the FERC may rely upon market-based prices in lieu of cost-of-service regulation to assure a 'just and reasonable' result."[34] Thus, FERC presumes generation charges resulting from a competitive market are just and reasonable.

Applying this concept here makes clear that all market-based generation charges (whether by EDC or EGS) meet the post-restructuring "just and reasonable" standard because they are all derived from competitive markets. For the EDCs, the standard is met when the Commission approves their competitive procurement plans in accordance with Section 2807(e)

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31 RESA/Direct Energy M.B. at 21-23.

32 16 U.S.C. § 824d(d).

33 16 U.S.C. § 824d(a). *See, e.g., United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956); *Federal Power Comm'n v. Sierra Pac. Power Co.*, 350 U.S. 348 (1956).

34 *Morgan Stanley Capital Group Inc., v. Public Utility District No. 1 of Snohomish County, Washington,* 128 S. Ct. 2733, 2737 (2008); *Elizabethtown Gas Co. v. FERC*, 10 F.3d 866, 870 (D.C. Cir. 1993). *See also Tejas Power Corp. v. FERC,* 908 F.2d 998, 1004 (D.C. Cir. 1990); *LEPA*, 141 F.3d at 365. *See also* RESA/Direct Energy M.B. at 18-19, 23-24 and PPL M.B. at 19.

of the Code. For EGSs, the standard is met because: (1) their generation service supply is derived from the same wholesale energy market used by the EDC;[35] (2) their prices are constrained by competitive alternatives, including the presence of the default service rates;[36] and, (3) EGSs must undergo regulatory approval processes (both at the Commission and through PJM) before being permitted to make any offers.[37] While the scope of the "regulatory review" of EDCs and EGSs may be different, the goal is the same – to ensure that the generation charges offered by each are market-based.

Because the traditional concept of just and reasonable has always included a "zone of reasonableness" rather than a single rate and because there are constraints in place for both EDCs and EGSs to ensure that their generation charges are the result of competitive market forces (to meet the post-restructuring concept of just and reasonable), there is no reason for the Commission to adopt OCA's proposal which favors the EDC's generation charges over the EGS's generation charges for purposes of service termination and reconnection.

C. OCA's Primary And Alternate Proposals Will Result In An Unlawful Regulation Of EGS Charges And Deny EGSs Equal Access To The EDC's Collections System

Neither OCA's primary or alternate proposal should be adopted because either one will have the same unlawful effects: (1) the regulation of EGS charges; and, (2) the denial of EGS's equal access to the billing and collections system of the EDC.

Both of OCA's proposals require the EGSs to assume the risk of any unpaid amounts over the EDC default service rates. The evidence in the record make clear that an EGS has little

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35 RESA/Direct Energy M.B. at 23-24.

36 Even OCA made the point that all the current competitive offers in Duquesne's service territory are less than the default service rates. Tr. at 165.

37 RESA/Direct Energy M.B. at 21-23

or no likelihood of recovering these charges when the customer continues to receive service from the EDC, and this will necessarily have to be factored into the EGS's pricing decision.[38] Further, the all-in/all-out restrictions (as set forth in the Settlement and supported by OCA) require EGSs to put all their residential customers into POR if the EGS wants to use the consolidated billing option offered by PPL. This is an additional restriction on an EGS's participation in POR. When coupled with the OCA's primary or alternative proposal regarding service termination, it effectively results in prohibiting an EGS from offering value added products with prices that may exceed PPL's default service rate. An EGS will have to choose between offering each of its customers one consolidated bill, which would reduce the EGS's probability of collection (if the EGS price is higher than the default service rate), or requiring each of its customers to receive two bills through dual billing. But this choice is really illusory because many EGSs do not have the capability of offering dual billing.[39] Moreover, residential and small business customers have a strong preference to receive just one electric bill.[40] The end result of all of these restrictions is that EGSs will be constrained to offer products priced at the default service rate if they wish to participate in the PPL market. Consequently, many innovative products and services will be barred. Indeed, an EGS may not be able to take the risk that its charge for even its fixed rate product will stay at or below the default service rate, in light of the fact that PPL's shopping credit will vary throughout 2010 as a result of the default rate reconciliation process.

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38 RESA/Direct Energy M.B. at 12-15, 26-27.

39 Under the settlement, EGSs are not permitted to have some customers on POR through EDC-consolidated billing and some customers not in POR through dual billing. Petition For Settlement, Para. 19. If an EGS chooses consolidated billing, then all of its customers must be put in POR.

40 According to OCA Witness Alexander, "I have never seen an EGS do a significant amount of work in any state except through the EDC consolidated bill." She further conceded that the reason for this was probably the convenience of a single bill. Tr. at 140.

Imposing these restrictions, therefore, not only amount to rate regulation – the very result that the Choice Act was intended to prohibit – but could stop EGS market entry in its tracks.

A second unlawful result of adopting either OCA's primary or alternate proposal is that it will deny EGSs equal access to the collections system of the EDC which, as the Commission has already determined, is a requirement of the Choice Act.[41] It is important to remember that both EDCs and EGSs are offering generation service to customers.[42] When a customer fails to pay for the EDC's generation service, the EDC is permitted to terminate that customer's service consistent with the Commission's regulations – a very powerful inducement to the customer to pay the amount he or she owes. Without a POR program, the EGS does not have the same ability to terminate service to a customer who has failed to pay its generation charges.[43] This is one of the primary reasons why a POR program is important. While OCA might argue that it is not overtly preventing a POR program because EDCs can terminate EGS charges and the customer would then switch to default service, the restrictions offered by OCA will block an EGSs ability to have equal access to the EDC's collections systems in contravention to the Choice Act and the Commission's interpretation of the law. Since the practical effect of OCA's restrictions will regulate the generation charges of EGSs and deny EGSs equal access to the

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41 66 Pa. C.S. § 2804(6); *PPL Electric Utilities Corporation Retail Markets*, Docket No. M-2009-2104271, Opinion and Order entered August 11, 2009 at 27-28 ("the EGS is placed at a disadvantage vis-à-vis the EDC so long as the EDC does not, or cannot, terminate service to a non-paying EGS customer on the same basis as it terminates service to its own non-paying default service customer.")

42 Dominion M.B. at 9-10.

43 OCA tries to claim that without its restriction, residential customers will be treated differently than large commercial and industrial customers because the large commercial and industrial customer could not be terminated from electric service upon a failure to pay EGS charges. OCA M.B. at 27. This analogy is irrelevant and meaningless. The Commission has determined that a POR program is necessary to bolster competition in the mass market, therefore, comparisons to large commercial and industrial customers is irrelevant. Moreover, large commercial and industrial customers do not receive any of the Commission's Chapter 56 consumer protections with which OCA is concerned and can have their default service terminated without any notice.

EDC's billing and collection system is contradictory to the Choice Act, the restrictions should be denied.

D. OCA's Alternative Certification Proposal Cannot Be Easily Implemented And Will Stymie The Development Of The Competitive Market

OCA claims that its alternate proposal "effectively addresses all parties' concerns for this one-year POR program."[44] This is not accurate and, as RESA/Direct Energy explained in their Main Brief, the alternate proposal will result in an even greater impediment to competition and an even more blatant regulation of EGS contract prices.[45] OCA claims that EGSs "simply" have to confirm that their price is "at or below" the "known" default service price and, according to OCA, if EGSs do not (or, more accurately, cannot) confirm this, then "the EGS would not be able to participate in the POR program for 2010."[46] The critical detail OCA is missing in its characterization of its certification proposal is that the EGS will not be able to participate in the POR program and it will be barred from making any other (non-POR) competitive offers. This is because any EGS that wants to use EDC-consolidated billing for any residential customer (and thus provide its customer with one bill) must also participate in the POR program using consolidated billing for all of its residential customers. Once that EGS enrolls any residential customer in the POR program, it must enroll all its customers in POR and cannot simultaneously offer other customers non-POR products through dual-billing. Thus, if OCA's certification proposal is adopted, the EGS will be barred from making any competitive offers to any residential customers that might be priced higher than the default service.

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44 OCA M.B. at 18-22.

45 RESA/Direct Energy M.B. at 26-27.

46 OCA M.B. at 19-20.

OCA's claim that, for service termination and reconnection purposes, the comparison between EGS prices and the default rate can be "easily" calculated is also misleading.[47] First, the final 2010 default rate is not yet known.[48] Expecting EGSs to make business decisions about entering into this market knowing that the prices they can offer will be limited to a specified amount but not knowing what that amount will be before market entry is not reasonable and, most assuredly, will forestall some EGSs from choosing to enter this market on January 1, 2010. Second, the record is clear that the default service rate will be quarterly reconciled throughout 2010.[49] This on-going uncertainty presents the same problems as the uncertainty regarding the initial default rate if EGSs are going to be required to certify that their pricing is the same or below the default service rate – particularly if the EGS wants to offer a fixed price service for the entire year. There is simply no way for the EGS, under a certification proposal with a quarterly reconciliation of the default service rate, to know that its fixed-price offer will comply with the requirement that it always be at or below the default service rate. The OCA simply declares that the "reconciliation" portion of the rate would not be considered when determining whether the EGS "exceeded" default service,[50] but, in so far as RESA/Direct Energy are aware, there is no legal or Commission authority for the proposition that a "rate" does not include the portion which is collecting (or refunding) prior over or under-collections. In sum, OCA's attempt to paint the picture that its alternate proposal is somehow more simple or feasible should be rejected as adopting it will most likely result in no competitive offers for residential customers in PPL's service territory for 2010.

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47 OCA M.B. at 19.

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

49 RESA/Direct Energy M.B. at 12.

50 OCA M.B. at 19.

While PPL has stated that it "can accept" OCA's alternate proposal, it acknowledges that the reason for this acceptance is operational and the fact that the alternate proposal places no risk of uncollectibles on PPL (rather it is placed on the EGSs).[51] Another approach to OCA's alternate proposal that would also avoid any operational problems would be to prohibit PPL from terminating service to any POR customers. While this would satisfy OCA's concerns about termination, it would put all the risk of uncollectibles on PPL instead of the EGSs and PPL would oppose this approach.[52] RESA/Direct Energy submit that neither of these alternatives is necessary or appropriate because OCA has failed to meet its burden of proving (through evidence or legal analysis) that terminations/reconnections need to be restricted for POR customers. Therefore, OCA's proposals should be rejected and PPL should be given the authority to terminate service to nonpaying POR customers in the same manner as it does for its own customers and based on the nonpayment of EGS charges.

E. OCA's Position That Its Proposal Is Consistent With POR Programs In Duquesne Light's Service Territory And New York Ignores The Significant Factual Differences Among These Programs

One of OCA's key selling points for its proposal is that there are POR programs in place in the service territory of Duquesne and New York which "provide the essential consumer protections that OCA recommends as the primary approach for PPL's POR."[53] According to OCA, "using these existing and approved models for the POR would be efficient and would reduce controversy."[54] This simplistic view, however, is neither useful nor accurate.

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51 PPL M.B. at 23, n. 4.

52 PPL M.B. at 16 ("PPL Electric does not believe that 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.")

53 OCA M.B. at 12.

54 *Id.*

1. The Duquesne's POR Program Does Not Prohibit EGSs From Offering Prices Higher Than The Default Service Rate Nor Does It Require EGSs To Absorb The Risk Of Collections For Charges Greater Than The Default Service Rate

The Commission must not overlook (as OCA does) the fact that the POR program established for PPL based on the Settlement contains some very important and significant differences from the Duquesne POR program (which was also based on a settlement). Inserting the one piece of the Duquesne POR program that OCA likes (i.e. the termination/reconnection standards) into the PPL program will not be "efficient" or feasible as OCA alleges.[55] On the contrary, PPL has repeatedly made clear that "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."[56] Additionally, there are also key operational differences between Duquesne's POR program and that set forth in the Settlement for PPL which mean that inserting OCA's proposal into the PPL program will not result in a simple replication of Duquesne's program for PPL.[57] Moreover, the Duquesne POR program was the result of a global settlement wherein the interactions of all the program components could be considered and addressed. Forcibly inserting a program component that nobody, except OCA, supports here will destroy the potential that could have been realized through a properly structured POR program.

The Commission should also not overlook the fact that OCA chooses to focus exclusively on Duquesne's POR program while downplaying the fact that there is another POR program in place in Pennsylvania for the service territory of PCL&P which does not contain the

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55 OCA does concede that "concerns" were "raised about the potential for additional time and cost needed to implement a program modeled after Duquesne and New York." OCA M.B. at 3.

56 PPL M.B. at 20.

57 RESA/Direct Energy M.B. at 24-25.

termination/reconnection restrictions advanced by OCA.[58] The PCL&P POR program has been in place since the Commission ordered it in 2006.[59] While PCL&P may be characterized by some as a "teeny-weeny little utility," PCL&P's default service rates have demanded plenty of attention from the Commission and the electric industry. PCL&P's default service rate is a variable, spot market product that adjusts quarterly and the majority of the customers are served by an EGS through a fixed-price, fixed-term option. Thus, and contrary to PPL's assertion,[60] in months where the default service rate is lower than the EGS fixed price, customers in PCL&P's service territory may have their service terminated for the failure to pay the higher EGS charges. This POR program was implemented at the direction of the Commission and not through a settlement as in Duquesne's service territory. There has been no evidence of problems or concerns regarding the ability of PCL&P to terminate service to customers based on the full charge of the EGS. OCA's choice to downplay the existence of this POR program, which does not contain the restrictions offered by OCA, does not negate the fact that it was ordered at the direction of the Commission and has been operating problem free for the past three years. The Commission should take this into consideration while contemplating OCA's advocacy regarding the Duquesne POR program.

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58 OCA Witness Alexander testified about PCL&P as follows: "That teeny-weeny little utility does sit out there with that example, yes, but that is a very peculiar and unique case." Tr. at 136.

59 The Commission's Order adopting PCL&P's Default Service Plan for January 1, 2008 through May 31, 2009 comprehensively addressed the situation in PCL&P's service territory. *See, Petition of Pike County Light & Power Company For Expedited Approval of its Default Service Implementation Plan*, Docket No. P-00072245, Opinion and Order entered August 16, 2007. PCL&P's currently effective default service plan was approved by the Commission in March 2009. *See Re: Petition of Pike County Light & Power Company For Expedited Approval of its Default Service Implementation Plan*, Docket No. P-2008-2044561, Opinion and Order entered on March 23, 2009.

60 PPL erroneously states that "all accounts purchased are at or below the POLR price." PPL M.B. at 18.

2. OCA's Reliance On The POR Program Of One EDC In New York Ignores The Fact That It Is The Exception For POR Programs In New York

Similar to the way OCA downplays the existence of the POR program for the PCL&P service territory, OCA disregards the existence (and details) of the POR programs in place for the six other EDCs in New York. On cross-examination, OCA Witness Alexander admitted that these exist but explained that her research was limited to finding the one POR program which would support her position here.[61] Having found it in the Central Hudson Gas & Electric Corp. ("Central Hudson") POR program, OCA uses that program to support its exaggerated claim that Central Hudson's POR program is "the New York POR model."[62] However, the Central Hudson example is unique and none of the other EDCs in New York follow it.[63] While there are statutory and practical differences between New York and Pennsylvania,[64] the success of the New York competitive market and the role of properly structured POR programs in that success is undeniable. For these reasons, one New York POR program, which ostensibly supports OCA's position, is not "the New York POR model" nor is it even representative of how POR programs are structured in all of the other New York EDC service territories. Therefore, the Commission should exercise caution in giving weight to OCA's characterization of retail competition in New York.

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61 Tr. at 138.

62 OCA M.B. at 14.

63 RESA/Direct Energy M.B. at 24-25.

64 As just one example, EDCs in New York have an independent legal obligation to provide billing services to EGS, i.e. issue EDC consolidated bills, whether or not they purchase the receivables.

III. "BASIC SUPPLY SERVICE" INCLUDED IN POR SHOULD BE CLARIFIED TO INCLUDE REC-BASED OR OTHER ATTRIBUTE-BASED RENEWABLE PRODUCTS WHEN BUNDLED WITH EGS GENERATION SUPPLY SERVICE

PPL proposes to limit its purchase of EGS receivables to those associated with "basic supply service" and to require EGSs to certify that the receivables being purchased by PPL for the POR program are associated with basic supply service. PPL states in its Main Brief that both "green programs" and "REC-based programs" do not fall within this meaning.[65] PPL does not provide any specifics as to what types of programs would be included or not included. There does not seem to be any disagreement among PPL, the OCA and the EGSs that generation services marketed as "green" because the energy comes from green sources should be included in the POR program and are included within PPL's term "basic supply service." At the other end of the spectrum, PPL does not support including in the POR a pure REC product such as PPL's Green Power Option. With products such as the Green Power Option, customers purchase a block of RECs to support the development of alternative energy resources. However, the customer is not actually purchasing the green power but is, instead, purchasing only green "credits" that are separate and distinct from generation energy and capacity. RESA/Direct Energy are not proposing to include this type of pure REC product in the POR program because it is separate from the underlying physical generation supply.

The confusion seems to be over the phrase "REC-based or other attribute-based renewable products."[66] To be clear, RESA/Direct Energy propose that the POR program be available for value-added products based on the underlying attributes of the energy.[67] In other

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65 PPL M.B. at 25-26.

66 *See* PPL M.B. at 25 ("In this proceeding, RESA has argued that the definition of 'basic supply service' should include 'REC-based or other attribute-based renewable products.' ").

67 RESA/Direct Energy M.B. at 28-30.

words, the REC-based or other attribute-based renewable product must be bundled with the underlying energy so that it is not just a pure REC product such as PPL's Green Power Option.

The witnesses for both PPL and OCA supported this position on the record. PPL's Witness Krall supported this solution in his cross-examination testimony:

> 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 that is 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 the customer receives.[68]

OCA's Witness Alexander also supported this position in her testimony: "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. [With respect to a charge] for some donation to a green product, . . . I can see that there may be some need for further thinking about that detail."[69]

Thus, PPL's argument in its Main Brief that it "should not be required to purchase EGS receivable for REC-based green programs"[70] is not inconsistent with RESA/Direct Energy's position. The OCA's argument in its Main Brief is also consistent with RESA/Direct Energy's position: "[Pure REC products such as PPL's Green Power Option] are not the same as products unrelated to energy delivery such as insider wire maintenance contracts, appliance purchases and the like. These attribute-based products, however, are not related to specific generation being provided for the customer."[71] The parties agreement on RESA/Direct Energy's position is

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68 Tr. at 107: 9-17.

69 Tr. at 123: 16-24.

70 PPL M.B. at 26.

71 OCA M.B. at 28 n.10.

consistent with obligations imposed on EDCs and EGSs by the AEPS Act, which requires EGSs to include energy from green resources in its energy supply to their customers in PPL's service territory in 2010.

No other party has expressed a concern about this issue. PPL's reliance on the statement in the Commission's Tentative Order (which states "EGSs have unique programs, such as green power for example, which require unique billing needs the utility cannot supply")[72] is misplaced because PPL has misconstrued the Commission's statement. The "REC-based or other attribute-based renewable products" bundled with physical energy – which RESA/Direct Energy, PPL and the OCA agree should be included in POR – are clearly not the type of "unique programs" requiring "complex supply pricing options" the Commission was describing in the Tentative Order. Rather, the Commission was referring to products or programs such as PPL's Green Power Option. Therefore, the Commission should make clear that EGS offerings of generation supply services bundled with value-added green products based on the underlying attributes of the energy source can be included in the POR program.

IV. PPL'S SUPERFLUOUS ADVOCACY ABOUT ISSUES EITHER SETTLED OR OUTSIDE THE ISSUES OF THIS PROCEEDING SHOULD BE IGNORED

A. The Commission Has Already Correctly Determined That It Has The Legal Authority To Direct An EDC To Implement A POR Program

In its Main Brief, PPL states that it "does not believe that the Commission has the authority to require it to purchase EGSs' receivables" in the first instance and proceeds to offer its explanation in support of this position.[73] Not only has this issue already been decided by the

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72 *PPL Electric Utility Corporation Retail Markets*, Docket No. M-2009-2104271, Opinion and Order entered May 15, 2009 at 15.

73 PPL M.B. at 15-16.

Commission in a final order that has not been appealed, it is incorrect. As the Commission has already concluded:

> With regard to those who contend that section 2807(c)(3) of the Public Utility Code (66 Pa. C.S. § 2807(c)(3)) prohibits POR programs, we have spoken to this argument in the past. Section 2807(c)(3) prohibits "advance" payments to an EGS. As we explained, with reference to section 2205(c)(5) (66 Pa. C.S. § 2205(c)(5)) which places the same directive on us with regard to natural gas utilities:
>
> > The plain language of this section demonstrates that it is solely directed to the mechanics of customer billing on behalf of suppliers, i.e., the NGDC must be paid first before it is required to forward payment to the NGS in situations where the NGS has chosen to use the billing services of the NGDC. It does not address POR programs in which the NGDC purchases, at the outset, the NGS accounts receivables and becomes the new creditor for the customer accounts. Thus, in our opinion, Section 2205(c)(5) at most only sets forth a parameter that must be considered in the design of POR programs, and does not address, let alone limit, our authority to encourage NGDCs to voluntarily file interim POR program proposals.
>
> *Establishment of Interim Guidelines for Purchase of Receivables (POR) Programs,* Docket No. M-2008-2068982 and I-00040103F0002, Order entered December 19, 2008 at 4-5. We see no difference in the administration of a POR plan for natural gas with that of one for electricity. While the energy products are different, the process of payment and collection of bills is materially the same. There is no reason why our determination regarding the Electric Competition Act should not be consistent with our determination with respect to the Natural Gas Competition Act in this regard.[74]

The Commission's determination in this regard was not appealed, is the law of this case and is correct as a matter of law.[75] PPL's advocacy on this point must be ignored as irrelevant.

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74 *PPL Electric Utility Corporation Retail Markets*, Docket No. M-2009-2104271, Opinion and Order entered August 11, 2009 at 28.

75 *See, e.g., Commonwealth v. Williams,* 2009 Pa. LEXIS 2096 (Pa. Oct. 2, 2009) ("The 'law of the case' doctrine embodies the concept that a 'court involved in the later phases of a litigated matter

B. RESA/Direct Energy's Willingness To Settle Issues Is Solely Based On The Desire To Ensure That A Workable POR Program Can Be Implemented On January 1, 2010

In its Main Brief, PPL addresses all of the program elements that have been settled and sets forth its positions about why the settlement of each of these elements is appropriate. No other party addressed the settled issues in their Main Briefs. PPL's advocacy must be disregarded as it should have been more appropriately placed in PPL's Statement in Support of Settlement. Nonetheless, RESA/Direct Energy wish to be very clear that the entire purpose for agreeing to the Settlement was to ensure that a reasonably structured POR program could be implemented on January 1, 2010. Since this was the overriding concern, certain concessions and compromises were made.

As RESA/Direct Energy explain further in its Statement of Support, there was not sufficient time by which to investigate whether the charge proposed to be imposed on EGSs through the discount rate (and also included in its MFC charged to default service customers) was reflective of the uncollectibles PPL would actually experience in 2010 on purchased EGS generation charges. It was also unclear, for that matter, whether the percentage proposed accurately reflected PPL's likely generation related uncollectible level. Further, RESA/Direct Energy were concerned that PPL's unbundling proposal would end up imposing unreasonable charges on EGSs. RESA/Direct Energy submit that the better approach is to unbundle uncollectible accounts expense associated with all generation service (both default and EGS) and to have PPL recover it from all customers through a socialized, non-bypassable charge just as

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should not reopen questions decided by another judge of that same court or by a higher court in the earlier phases of the matter.' *In re: De Facto Condemnation and Taking of Lands of WBF Associates L.P.*, 903 A.2d 1192, 1207 (Pa. 2006), *citing Commonwealth v. Starr*, 541 Pa. 564, 664 A.2d 1326, 1331 (Pa. 1995)."

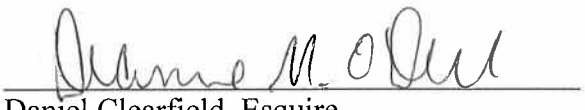
PPL does today. Therefore, it does not agree with PPL's assertions to the contrary in its Main Brief.

Another issue with which RESA/Direct Energy does not agree with PPL's reasoning is regarding the all-in/all-out approach in the settlement. Specifically, RESA/Direct Energy does not agree that such an approach is necessary. In fact, RESA/Direct Energy showed that there are many reasons for an EGS to place a customer on dual billing that have nothing to do with trying to "game" the system and that an all-in/all-out approach was not necessary to resolve the issues that PPL believes will be present with a POR program. Despite this disagreement at to whether an all-in/all-out approach is necessary, the parties agreed to implement one for the residential customers and not for the small C&I customers (though an adjusted discount factor was agreed upon for this class). Again, RESA/Direct Energy agreed to this compromise in the settlement simply to enable the POR program to move forward. RESA/Direct Energy continue to maintain that these restrictions are not necessary and does not advocate that this approach be utilized in the future.

V. CONCLUSION

For all the reasons set forth above, OCA's proposed restrictions on the ability of PPL to terminate service to customers based on the nonpayment of charges equal to the default service rate should be rejected. Further, the Commission should clarify that EGS offerings of generation supply services bundled with value-added green products based on the underlying attributes of the energy source can be included in the POR program.

Respectfully submitted,



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Date: November 6, 2009

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