

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560 (in PA only)

FAX (717) 783-7152
consumer@paoca.org

IRWINA. POPOWSKY
Consumer Advocate

November 6, 2009

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

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

Dear Secretary McNulty:

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

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

Respectfully Submitted,

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

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

Enclosures

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

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF OF THE
OFFICE OF CONSUMER ADVOCATE

Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
E-Mail: TMcCloskey@paoca.org
James A. Mullins
Assistant Consumer Advocate
PA Attorney I.D. # 77066
E-Mail: JMullins@paoca.org
Candis A. Tunilo
Assistant Consumer Advocate
PA Attorney I.D. # 89891
E-Mail: CTunilo@paoca.org

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Dated: November 6, 2009

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I. INTRODUCTION

On October 30, 2009, the Office of Consumer Advocate (OCA) filed its Main Brief in this proceeding. In its Main Brief, the OCA set forth its position that any Purchase of Receivables Program that was to be implemented in PPL Electric Utility Corporation's (PPL) service territory for 2010 needed to include necessary consumer protections to comply with the Pennsylvania Public Utility Code and sound public policy. The primary consumer protection that was lacking for residential customers in PPL's proposed program was a means of ensuring that customers are not terminated from their regulated distribution service based on unregulated generation charges that are higher than what the customer would pay to PPL as the default service provider. The Commission, itself, when it first considered the need for maintaining consumer protections in the retail choice environment pursuant to Section 2807(d), recognized that termination of essential utility service based on unregulated charges was problematic.

Of note, when the Commission first considered Section 2807(d) in the move to a retail choice environment, the Commission addressed termination in the context of POR programs as follows:

5. Where an EDC purchases accounts receivables from a supplier, the EDC shall not use the Chapter 56 termination process for nonpayment of these supply charges. Instead the EDC must treat the delinquent supply charges in the same manner as suppliers. Only when the customer is receiving supply from the provider of last resort may the EDC utilize the Chapter 56 termination process for nonpayment of these supply charges.

See, Final Order Re: Guidelines for Maintaining Customer Services at the Same Level of Quality Pursuant to 66 Pa. C.S. §2807(D), and Assuring Conformance with 52 Pa. Code Chapter 56 Pursuant to 66 Pa. C.S. §2809(E) and (F), Docket No. M-00960890 F. 0011, slip op. at 39 (Order entered July 10, 1997).

This essential consumer protection is in place today in PPL's current purchase of receivables program for all customers, and will continue for PPL's large industrial customers in 2010. It is important to remember that currently, PPL has a form of purchase of receivables program where PPL already includes the charges of unregulated electric generation suppliers (EGSs) on the PPL consolidated bill. PPL will collect these charges, and even if PPL is not being paid, PPL will continue to pay the EGS in full for the first 90 days. At the end of the 90 days, if the customer is still in arrears, PPL will either revert the customer to dual billing, or if the EGS prefers, PPL will return the customer to default service. It is only after the customer is returned to default service and fails to pay the default service obligation that PPL will terminate the customer for non-payment. See PPL Electric St. 2 at 4. This method has been in place since 1999, and in the OCA's view, complies with the requirements of the Public Utility Code, including Chapter 28, the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. Ch. 28.

As part of PPL's recent default service proceeding (Docket No. P-2008-2060309), the OCA, PPL, and many of the EGSs in this proceeding, reached an agreement to work on the design of an alternative voluntary Purchase of Receivables (POR) Program that would address concerns raised by the EGSs with PPL's current program design, yet maintain essential consumer protections. The EGSs preferred a different approach to POR, and the parties agreed to work together to address the necessary consumer protections and other program design parameters so that a revised POR could be put in place by January 1, 2011, when PPL's full post-transition default service began. This agreement is significant because, as PPL points out in its Main Brief, Chapter 28 makes clear that an EDC may not be required to enter into a program, such as a POR, that would force the EDC to make payments to an EGS before the EDC receives

payment from the customer. See PPL M.B. at 16; 66 Pa.C.S. § 2807(c)(3). The Commission, however, issued an Order on August 11, 2009. PPL Electric Utilities Corporation Retail Markets, Docket No. M-2009-2104271 (Order entered August 11, 2009) (Retail Markets Order), that directed PPL to change its current POR by 2010 rather than 2011 as agreed to by all parties, including the EGSs, in the recent default service settlement.

Given the Commission's directive, the OCA sought to develop proposals that would allow for a POR to be implemented in 2010, but preserve the necessary consumer protections for 2010. Of the two proposals put forth by the OCA, the Company in its Main Brief states that it is fully capable of implementing, and would not object to, the OCA's alternative proposal that would condition participation in the POR on an EGS certifying *for this one-year period only* that the price it intends to charge to customers is at or below the default service rate being charged by PPL. This is a short term solution that the OCA acknowledges would not be applicable after 2010 due to the changes in PPL's default service mechanism beginning in 2011. What is unique about PPL's 2010 default service is that PPL will have an underlying fixed generation rate that will not change for 2010.¹ Many of PPL's purchases were made before the recent downturn in market prices. This underlying default service rate provides a reasonable benchmark for 2010 and is the price that customers will use to compare offers for 2010. If an EGS, for example, were to offer a product that provides a percentage discount off of the PPL 2010 rate, that offer would readily qualify for the POR program—including the right to terminate customers for non-payment—under this alternative.

While the Company indicates that it would accept and implement this OCA alternative, and is willing to go forward with a voluntary POR that includes these conditions, the

¹ There will be quarterly e-factor reconciliations based on projected sales, but these do not change the underlying fixed rate. PPL will not be making any additional purchases during 2010 to meet its load requirements in 2010. Tr. at 66-67.

EGSs have vehemently opposed the OCA's proposal. The EGSs, although never committing in this proceeding to making any offers to residential customers even if there is a POR to their liking, speculate at length that such an approach for 2010 would impede the market or amount to price caps or regulation of EGSs. The OCA proposal would do no such thing. It is correct that if an EGS does not plan to offer customers a price that is at or below PPL's default service rate, the EGS cannot place customers into the POR for 2010. That is not "regulation" of EGSs or "price caps." The EGS is free to offer any product at any price to residential customers. There is no regulation of the rates or products that will be offered. It is only if the EGS wishes to obtain the remedy of the termination of PPL's regulated distribution service for non-payment of the unregulated generation charges that the EGS must certify that its price is at or below the PPL default service rate. If the prices for its offerings are at or below the default service rate, the EGS can utilize the purchase of receivables program in 2010. If the EGS wants to charge more than PPL in 2010, though, the EGS would not be able to use the POR program.

The OCA submits that its proposal for a simple, easy to implement POR program for 2010 that ensures adequate consumer protections for this one-year period should be adopted. Electric generation service is still an essential service necessary to the health and safety of the public that remains under the regulation of the Commission through the provision of default service. The requirements of the Public Utility Code, including Section 1301, and the consumer protections that accompany these requirements, must still be honored and adhered to in a retail choice environment. See 66 Pa.C.S. §§ 1301, 2807(d). Fundamental to those requirements is that the regulatory power of terminating essential utility service cannot be used to collect unregulated charges that are in excess of charges that have been found to be just and reasonable. Both of the OCA's proposals in this proceeding avoid this potential for the 2010 Competitive

Bridge Program (CBP) year. PPL has stated that it would accept the OCA's alternative position and would implement the OCA proposal that requires an EGS to certify that its price is lower than the default service rate as a condition for participation in the 2010 POR program. The parties can then work collaboratively, as contemplated by the PPL default service proceeding settlement, to develop a solution for 2011 and beyond.

II. BACKGROUND

No Reply Needed.

III. SUMMARY OF ARGUMENT

No Reply Needed.

IV. REPLY ARGUMENT

A. Purchase Of Receivables (POR) Program.

1. General Design Issues.

No Reply Needed

2. Discount Rate Issues.

No Reply Needed

3. Merchant Function Charge.

No Reply Needed.

4. Customer Termination Issues.

a. Introduction.

Throughout this proceeding, the OCA has asserted that a POR program must have certain consumer protections required by the Public Utility Code and the Commission's regulations. See generally OCA St. 1 at 9-14; OCA M.B. at 8-29. The Public Utility Code and its accompanying regulations are clear that termination of an essential service, such as electric

distribution service, should only occur if a customer does not pay Commission-approved rates that have been found to be just and reasonable. See 66 Pa.C.S. §§ 1301, 1406; 52 Pa. Code Chapter 56. As discussed at length later in this Reply Brief, nothing in the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2801 *et seq.*, superseded or otherwise repealed Section 1301. In order to guard these essential consumer protections, the OCA has extensively commented on the need to prevent the termination (or denial of reconnection) of regulated utility distribution service based on unregulated generation charges that have not been found by the Commission to be just and reasonable.

In order to maintain the essential consumer protections required by the Public Utility Code and the Commission's regulations, the OCA has advocated two possible approaches to addressing this issue for the one-year period (2010) of the Competitive Bridge Program, and both approaches are discussed at length in the OCA's Main Brief. See OCA M.B. at 8-29. First, the OCA proposed implementing a POR program based on the model that has been used by Duquesne Light Company since January 2008. This POR was implemented after a settlement among Duquesne and the EGSs and contains the essential consumer protections sought by the OCA in this proceeding. Specifically, under the Duquesne model, Duquesne will not terminate a customer based solely on failure to pay the portion of EGS charges that exceed the default service rate, and Duquesne will reconnect any terminated customer when that customer pays the lesser of the EGS charges or the amount that would have been required under default service. Id. at 12-16. Alternatively, the OCA has proposed a simpler, easier method for this one-year period, and PPL has stated in its Brief that it can quickly implement this alternative for little or no additional cost. Under this alternative approach, EGSs would certify that their generation supply prices are at or below PPL's default service price as a condition of participating in the POR

program in 2010. Id. at 18-20. As noted, PPL has accepted the OCA's alternate approach in its Main Brief as capable of easy implementation. See PPL M.B. at 23. With either approach, the necessary consumer protections can be preserved while allowing a POR program to be put in place for the one-year period. Thereafter, the parties to PPL's recent default service settlement can work toward a POR program for 2011 and beyond in accordance with the terms of the default service settlement.

In their Main Briefs, however, the intervening EGSs object to the OCA's proposals as well as the fundamental principle that consumer protections are necessary for the POR. Specifically, the EGSs assert that maintaining these consumer protections would impede the development of a competitive market and essentially work as a cap on EGS rates. See RESA M.B. at 12-15; Dominion M.B. at 12; FES M.B. at 5. The EGSs also claim that under the OCA's proposal that the EGS certify that its price is at or below the 2010 default service rate, that it will be too difficult to make this certification because the PPL rate may fluctuate quarterly in 2010. See RESA M.B. at 12, 13. The EGSs also claim that under the OCA's proposals, they will have to unreasonably assume the risk of any unpaid amounts in the event of customer default, leaving EGSs with no realistic means of collection of these unpaid amounts. Id. at 12. Finally, the EGSs assert that these fundamental consumer protections of essential regulated distribution service are no longer required by the Public Utility Code as PPL's default service rates are not found to be just and reasonable.

As discussed in the OCA's Main Brief, and below, the EGSs' arguments are based on misunderstandings of PPL's 2010 Competitive Bridge Program or are simply incorrect. The Public Utility Code, including Chapter 28, requires these essential consumer protections. The OCA has put forward two viable methods of achieving these protections for the one-year

period that this program will be in place. The OCA submits that one of the OCA's methods should be adopted in this proceeding for the one-year period of the Competitive Bridge Program.

b. The OCA's Proposal To Establish A Condition Of Participation In The POR Based On The Price Offering Of The EGS Can Be Easily Implemented By PPL And Withstands All Criticisms Leveled By The EGSs In This Proceeding.

i. Introduction.

To provide a simple method of providing the necessary consumer protection, the OCA offered a proposal that would establish a condition of participation in the POR program. That condition would be that the price offered by the EGS be at or below the default service rate. With a price that is at or below the rate that the Commission has found to be just and reasonable, the OCA's concerns regarding termination and reconnection of service are addressed. The OCA offered this proposal due to the unique circumstances of PPL's 2010 Competitive Bridge Program. Under the Competitive Bridge Program, PPL has purchased all of its supply for 2010 and its underlying generation rate will not change. PPL has stated in its Brief that it can readily implement this proposal.

The EGSs level a number of criticisms at the OCA's proposal. The EGSs argue that the PPL default service rate may fluctuate during the year making it hard to certify their rates, that the proposal would serve as a price cap or regulation of their offers, and that the proposal would impede the development of the competitive market or change their status as competitive businesses. As discussed below, the EGS arguments are without merit and should be rejected.

ii. The EGSs Fail To Recognize That PPL's Underlying Default Service Price For Generation Supply Will Not Fluctuate in 2010.

The EGSs assert that the OCA's alternative is too difficult to implement because PPL's 2010 default service price will fluctuate, making it difficult to certify that the EGS prices are at or below the default service rate. See e.g. RESA M.B. at 13. These assertions are unsupported by the record and misunderstand the unique nature of PPL's 2010 default service program. At the hearing in this matter, Company witness Kleha explained that "the underlying rate for generation supply service provided to the company by suppliers will not change." Tr. at 67. (Emphasis added). It is the unchanging underlying default service rate that EGSs must certify their prices to be at or below. As Mr. Kleha explained, the e-factor quarterly reconciliation will only reflect changes in sales projections since there will be no further purchases of supply for 2010. Tr. at 66-67.

PPL's CBP provides a unique opportunity – the default rate for the CBP period will be fixed for the entire period (2010), and that fixed rate will soon be known. Tr. at 66. Consequently, it will be relatively simple for EGSs to determine whether or not they can certify that their prices are at or below PPL's default service rate for 2010, and their argument that it will be too difficult to certify because of the changing rate must be rejected.

iii. The OCA's Proposals Will Not Cap Or Regulate EGS Prices For Generation Supply.

The EGSs argue that the OCA's proposal to require them to certify that their prices are at or below PPL's 2010 default service rate as a condition of participating in the POR will effectively act as a cap or regulation on EGS prices. See RESA M.B. at 12-15; Dominion M.B. at 12; FES M.B. at 5. These arguments miss the mark. Under the OCA's proposal, EGSs may offer whatever products and charge whatever prices they wish.² EGSs can also charge rates

² In its Main Brief, RESA's statement that the record shows that EGSs are "poised" to make offers to residential customers for a number of different products, such as green products, multi-year contracts, and variable rate products, is incorrect. See RESA M.B. at 12, citing to Tr. at 156, 189. Dominion witness Crist offers his opinion

higher than the default service price if they wish, but those offers would not be included in the one-year POR Program.

The EGSs argue that even if the EGS remains free to make offers at prices above the default service rate, this would be impractical since PPL has stated that it will not offer consolidated billing in 2010 for such offers. See e.g. Dominion M.B. at FN 3. The EGSs argue that PPL's position would require dual billing if they wanted to make a higher priced offer in 2010. See e.g. RESA M.B. at FN 28. While the EGSs' criticism here goes more to PPL's implementation approach than to the OCA's proposal, as PPL witness Krall testified, this is not such an onerous requirement for 2010 in the event that an EGS chooses to make such an offer. As Company witness Krall testified, if the EGS does not have the capability to perform its own billing for 2010, there are many companies in the marketplace offering third-party billing services. Tr. at 106. Mr. Krall testified that an EGS does not have to build its own billing system but can contract for this service for the 2010 period if that is what is required by their offer. Tr. at 106.

Dominion goes so far as to assert that Section 2804(6) promises EGSs access to EDC billing systems through a POR as Dominion has proposed. See Dominion M.B. at 9. Such a reading of Section 2804(6) cannot be supported. Section 2804(6) specifically states:

Consistent with the provisions of section 2806, the commission shall require that a public utility that owns or operates jurisdictional transmission and distribution facilities shall provide transmission and distribution service to all retail electric customers in their service territory and to electric cooperative corporations and electric generation suppliers, affiliated or nonaffiliated, on rates, terms of access and conditions that are comparable to the utility's own use of its system.

that the likelihood of payment problems by customers ordering premium products is low at Tr. 156. RESA witness Hudson stated that such premium products could be limited by the OCA's proposal at Tr. 189. There is no testimony from any EGS witness, however, that these offers actually are being contemplated for 2010.

66 Pa.C.S. § 2804(6). By its plain language, Section 2804(6) guarantees EGSs access to electric distribution company (EDC) transmission and distribution service, which is the right to have access to and use of the transmission and distribution system to deliver the EGS electricity to the EGS customer. Nothing in Section 2804(6) can be interpreted to provide a “right” to an EGS to have a POR program with access to the EDC’s billing system as the EGSs have proposed. Indeed, Section 2807(c)(3) is very clear that an EDC does not have to remit any payment to an EGS for EGS charges contained on the EDC consolidated bill until the EDC receives payment for those charges. 66 Pa.C.S. § 2807(c)(3).

Consequently, the EGSs’ assertions that the OCA’s proposal will hamper development of a competitive market or regulate their prices are unfounded. The OCA’s proposal is a simple, uncomplicated alternative for maintaining the essential consumer protections mandated by the Public Utility Code and the Commission’s regulations while supporting the development of competition in the Commonwealth for this one-year period.

iv. The OCA’s Proposal Will Not Change An EGS’s Status As A Competitive Business.

The EGSs’ assertions that implementing either of the OCA’s proposals will require the EGSs to assume the risk of any unpaid amounts over PPL’s default service rate with no realistic means of collection go directly to the heart of the EGSs’ position with regard to POR programs. See e.g. RESA M.B. at 12-13; Dominion M.B. at 9. Essentially, EGSs want to remain unregulated businesses while also having the opportunity to benefit from the regulatory collection mechanisms that include the termination of regulated distribution service for non-payment of unregulated generation charges.

During cross examination, Dominion witness Crist agreed that EGSs are competitive businesses, that competitive businesses have the risk that they will not be paid for

goods or services provided, and that since bad debt is a normal business expense, competitive businesses actually include the expense in prices they charge to all customers. Tr. at 165-66. In fact, under PPL's proposal, PPL has unbundled its uncollectible expenses from its distribution rates and is including that expense in the default service rate through the Merchant Function Charge. See e.g. PPL Electric St. 1 at 6. In instances where goods or services are provided by the competitive business before payment is due and the customer fails to pay, Mr. Crist agreed that these businesses, which include EGSs, do have collection options available. Tr. at 166-67. Mr. Crist admitted, however, that these collection options do not include preventing the customer from obtaining the goods or services elsewhere. Tr. at 167. (Emphasis added).

That is, however, exactly what the EGSs seek for the Commission to allow in this proceeding – for EGSs to permit PPL, a regulated utility, to terminate (or refuse to reconnect) its regulated distribution service for failure to pay the charges of a competitive business. Essentially, EGSs will be permitted to prevent customers from obtaining essential electric supply service from other businesses offering the service until all charges due are paid, a collection tool that other competitive businesses do not have.

The EGSs' arguments in opposition to the OCA's proposal are without merit. The promotion of competition and the maintenance of essential consumer protections are not mutually exclusive concepts, as is clearly evidenced by the Duquesne and New York State POR models, as well as the alternative proposed by the OCA here.

- c. The Assertions That OCA's Proposal To Implement the Duquesne And New York State Model Is Not Necessary Or Workable Are Without Merit.
 - i. Introduction.

As earlier stated, in order to maintain the essential consumer protections required by the Public Utility Code and the Commission's regulations, the OCA advocates two possible approaches to addressing this issue for the one-year period (2010) of the Competitive Bridge Program. See OCA M.B. at 8-29. In addition to the alternative discussed above, the OCA has proposed implementing a POR program based on the model in existence today in Duquesne Light Company's service territory and in New York State—the POR program that the Commission references as an example in the Retail Markets Order. See Retail Markets Order at 29-30.

These models provide the essential consumer protections that the OCA recommends for PPL's POR. Under this approach, all EGS offers would be included in the POR program. PPL's ability to terminate service would be limited to the extent that the customer's payments would not cover the amount the customer would have been billed if the customer were on PPL's default service. In other words, as long as the customer pays an amount that is equal to or greater than the applicable PPL default service rates, the customer will not be terminated. As to reconnection, PPL would reconnect the customer if the customer pays the lesser of the charges of the alternative supplier or what would have been billed under PPL's default service. See OCA M.B. at 12-14. As OCA witness Alexander states in her Direct Testimony, using the existing and approved models for the POR of Duquesne and New York State would be efficient and would reduce controversy. See OCA St. 1 at 4.

In their Main Briefs, PPL and the EGSs outline their opposition to implementing the existing Duquesne POR model. See e.g. PPL M.B. at 19-23; RESA M.B. at 10-11; Dominion M.B. at 10-12. The Company asserts that it cannot implement the billing system changes necessary to employ the Duquesne model by January 1, 2010, and therefore, the OCA's

proposal must be rejected.³ See PPL M.B. at 20. The EGSs assert that the Company has provided sufficient evidence that it cannot implement the required billing and collection system changes in time and that there is no evidence that the OCA's proposal to maintain essential consumer protections required by the Public Utility Code and accompanying regulations is necessary. See RESA M.B. at 10-11; Dominion M.B. at 10-11; FES M.B. at 6.

The assertions by the Company and the EGSs regarding the OCA's proposal are without merit. As discussed below, all of the arguments must be rejected.

ii. The Duquesne POR Model Provides An Appropriate POR Program That Could Be Implemented.

PPL has argued that it cannot implement the billing system requirements necessary to employ the Duquesne POR model's termination and reconnection provisions before January 1, 2010. PPL references Company witness Krall's direct testimony of the program changes necessary to implement the revised POR Program. See PPL M.B. at 20-21. According to PPL, it anticipates approximately 1,500 manhours to implement this in the short time between the Commission's approval of a revised POR Program and the revised POR Program start date of January 1, 2010. Id. at 21. Further, PPL referenced testimony from Dominion witness Crist in support of its contention that the program changes necessary to implement the Duquesne POR model are too onerous to complete by January 1, 2010. Id. at 21-22.

As explained in the OCA's Main Brief, it is the OCA's view that there is no need to continuously shadow customers' bills in order to implement the Duquesne POR model for this one-year period of 2010, and therefore, there is no need to implement the complex continuous shadow system advanced by Company witness Krall. See OCA M.B. at 16-18. The only time a calculation needs to be made regarding default service charges and EGS charges is at the time

³ As noted above, PPL has stated that it will implement the OCA's alternate proposal finding that it can be easily implemented with little or no additional cost.

the customer would be subject to a termination notice. Further, there is no need for PPL to change any of its existing termination/reconnection literature (*e.g.*, 10-Day Shut Off Notice).⁴ The only detail that PPL must incorporate in order to implement the Duquesne POR model for 2010 is to determine which amount is lower, the EGS charges or the default service charges for the same service period, and include that amount on correspondence to the customer regarding avoidance of termination or commencement of reconnection.⁵ Even if PPL could not implement into its billing system by January 1, 2010, the components necessary to complete the above-described calculation upon termination eligibility, there are alternatives that PPL can utilize until the necessary components are installed (*i.e.* manual billing for affected customers or the OCA's alternate proposal).

While the Company and EGSs point to the supposed lack of evidence presented by the OCA of the billing system capabilities necessary as proof that the OCA has failed in meeting its burden of proof,⁶ they fail to note the fact that the expedited nature of this proceeding did not permit the kind of investigation into the Company's billing capabilities that will be possible prior to the implementation of the POR in 2011. However, such a billing system does exist in Duquesne's service territory, so this is not a new concept in this Commonwealth. The OCA relies on the experience of EDCs in this Commonwealth and that of POR program models cited favorably by the Commission, such as the program in New York State, in putting forth its

⁴ It is important to highlight the fact that PPL cannot terminate residential customers with incomes less than 250% of the Federal Poverty Level from essential electric service between the time the revised POR Program begins on January 1, 2010, and April 1, 2010. 66 Pa.C.S. § 1406(e).

⁵ As explained in the OCA's Main Brief at page 28, PPL witness Krall referred to an attribute-type product, such as PPL's own "Green Power Option" program, where an additional charge is collected to support development of renewable resources generally, but no specific renewable generation is delivered on behalf of the customer. Mr. Krall explained that PPL's "Green Power Option" is deemed separate from Basic Utility Supply Service and PPL does not include the additional amounts paid by customers under this program as charges for which the customer can be terminated. See PPL Electric Exh. 6. This is the exact type of calculation that the OCA is referencing.

⁶ See *e.g.* RESA M.B. 11. The OCA does not agree with RESA's burden of proof analysis. As the Petitioner in this matter, it is the Company that has the burden of proving each of its claims. See 66 Pa.C.S. § 332(a).

proposal to maintain essential consumer protections while continuing to promote competition. Therefore, the Company's and EGSs' arguments must be rejected.

iii. There Is No Record Evidence To Support FES's Allegations Of Increased Likelihood of Gaming.

In its Main Brief, FES asserts that implementation of the Duquesne Model will encourage customers to “game” the system. FES M.B. at 5, 6. This argument is a red herring and has no basis in fact or the record. There is absolutely no evidence in the record supporting the existence of gaming by customers facing termination in the Duquesne program or in the Pennsylvania competitive electricity market. FES did not submit testimony on the issue. In fact, Dominion witness Crist testified that he is not aware of any customers in Duquesne's service territory that have only paid the amount up to the default service charges, leaving an amount between that and the EGSs' higher charge for collections, in order to avoid termination. Tr. at 158. Therefore, FES's assertion that customer gaming must be avoided, and therefore, essential consumer protections should be cast aside, must be rejected.

iv. RESA's Suggestion That There Are No Consumer Protections In The New York POR Programs Is Incorrect And Unsupported By The Evidence It Tries To Rely Upon.

In its Main Brief, RESA claims that there are “dozens of POR programs across the country” that do not have the essential consumer protections contained in the Duquesne and New York State POR programs. See RESA M.B. at 5. This is simply conjecture, since there is no evidence in the record, and no references provided in RESA's Brief, regarding these purported “dozens of POR programs across the country.” While there is a POR program in Pennsylvania in the Pike County Power & Light service territory, the OCA submits that is a very unique circumstance that involves a Commission-approved aggregation program. When the Commission-approved aggregation program was set up and the POR put in place, the

requirement to win the aggregation customers was that the rate charged to those customers be *below* the default service rate that Pike was charging. Petition of Direct Energy Services, LLC for Emergency Order Approving a Retail Aggregation Bidding Program for Customer of Pike County Light & Power Company, Docket No. P-00062205 (Order entered April 20, 2006). In other words, the condition for the implementation of the POR in Pike was exactly the same as the OCA's alternative proposal here that to participate in the POR, the EGS price be at or below the default service rate.⁷ Furthermore, RESA witness Hudson stated that he does not necessarily advocate that Pike County's POR should be used as a model for PPL. Tr. at 205.

Although RESA claims that OCA concedes that utilities in New York operate without the essential consumer protections advocated in this proceeding (and many other proceedings involving POR programs), that is not accurate. See RESA M.B. at 25.

First and foremost, the OCA witness did not concede that New York utilities operate without the essential consumer protections that the OCA advocates herein. As described by OCA witness Alexander, the New York POR program does not result in termination of essential utility service based solely on amounts that exceed the regulated supply service offering of the utility. See OCA St. 1 at 11. If termination does occur, just as in the Duquesne program, customers are reconnected when the customer pays an amount equal to the regulated supply service charge. Id. This Commission has cited favorably the New York State POR program. See Retail Markets Order at 30.

OCA witness Alexander described in her Direct Testimony the basis for the New

⁷ Similarly, in Commission-approved "opt out" aggregation programs in the PECO service territory, the programs were conditioned on the requirement that the opt-out aggregation price had to be lower than the corresponding PECO default service rate. Petition for Approval of PECO Energy Company's Market Share Threshold Bidding /Assignment Process and Petition for Approval of "The Better Choice" Plan to meet PECO Energy Company's Market Share Threshold Requirements, Docket Nos. P-00021984, P-00021992 at 12 (Order entered February 6, 2003).

York State POR program:

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

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

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

See OCA St. 1 at 11-12. The following is the exchange between counsel for RESA and OCA witness Alexander regarding whether utilities in New York operate without essential consumer protections:

Q. Are there other examples of POR in New York beyond Central Hudson [referencing OCA Exh. BA-2]?

A. Well, one presumes they all comply with the standards that have been established by the New York Public Service Commission that led to the provision in the Central Hudson POR I quoted. There are statutes and regulations that reflect this policy in New York.

Tr. at 137. This is by no means a “concession” that New York utilities operate POR programs without the essential consumer protections contained in HEFPA. In fact, it is just the opposite.

In its Main Brief, RESA tries to refute the OCA’s position by providing web links to Billing Service Agreements from New York utilities that purportedly do not contain HEFPA’s essential consumer protections. See RESA M.B. at FN 75. RESA first cites to the Third Party

Supplier Customer Account Services Master Service Agreement of Rockland Electric Company, a *New Jersey electric utility*. *Id.* Obviously, New York State’s HEFPA does not apply to New Jersey utilities.⁸

Next, RESA cites the Billing Services Agreement (Utility With POR) of New York State Electric & Gas Corporation (NYSEG). *See* RESA M.B. at FN 75. This Agreement does, in fact, contain the essential consumer protections mandated by HEFPA. At pages 5-6, the Agreement states:

A. NYSEG agrees that it shall throughout the term of this Agreement:

...
(5) Act in compliance with the New York State Home Energy Fair Practices Act (“HEFPA”) and the Commission’s regulations promulgating HEFPA, including with respect to the accounts receivable purchased under this Agreement, as the same may be revised, modified, amended, clarified, supplemented or superseded from time to time.

Furthermore, a similar provision on page 7 of the Agreement (at ¶ 6(5)) requires the marketer to also comply with HEFPA “including with respect to accounts receivable.” Contrary to RESA’s representations, therefore, the record evidence supports the OCA’s position that New York utilities do in fact provide customers with the types of protections that the OCA seeks in this case.

- d. The Protections Afforded By The Pennsylvania Public Utility Code Continue to Apply To PPL.
 - i. The Arguments That PPL’s Rates Have Not Been Found To Be Just And Reasonable Are Incorrect.

⁸ If RESA actually meant to cite to the New York utility Orange and Rockland Utilities, Inc., that Billing Services Agreement is at <http://www.oru.com/documents/energysuppliers/consolidatedbillingagreement.pdf>, and it does contain provisions requiring compliance with HEFPA similar to those in Central Hudson’s Billing Services Agreement. *See* Orange and Rockland BSA at 10, ¶ 2.4(D).

In their Main Briefs, the Company, Dominion and RESA argue that PPL’s default service rates have not been found to be “just and reasonable” by the Commission. See PPL M.B. at 19; Dominion M.B. at 7; and RESA M.B. at 16. These arguments have been made despite the clear and unambiguous language of Section 1301 of the Public Utility Code. This Section states:

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

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

The enactment of the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. Ch. 28 (Act), did not repeal the “just and reasonable” rate standard of Section 1301 of the Public Utility Code as the Company and the EGSs try to suggest. The Act declared that competitive forces rather than traditional cost-based regulation would be used to bring about just and reasonable rates for electric generation. It is still within the purview of this Commission to determine whether, in fact, the rates for default service meet the just and reasonable standard. In the 2008 Pike County Complaint proceeding, the Commission considered the issue of Pike’s generation rates (i.e., default service rates) after Pike conducted its first default service procurement. In considering the legal standards that applied to the generation rates charged by Pike, the Commission concluded:

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

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

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

The actions of the Commission in ensuring that the default service rates charged by PPL are just and reasonable, in contrast to the ability of EGSs to charge whatever they wish, were clearly set forth on the record. Specifically, in 2006, PPL filed a Petition with the Commission requesting approval of a Competitive Bridge Plan (CBP) to establish the terms and conditions under which the Company will supply default service during 2010, as a transition to a fully competitive statewide market beginning January 1, 2011. The proceeding was ultimately settled, and the settlement was approved by the Commission. In his testimony, PPL witness Kleha explained that the resulting CBP process required PPL to undertake a series of solicitations from 2007 to 2009 in order to produce a blended rate to function as the Company's 2010 default service rate. Tr. at 58. For each of these solicitations, Mr. Kleha testified that:

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

Tr. at 61-62 (Emphasis added).

As PPL witness Kleha also explained, the Company must now file with the Commission a tariff in November or December 2009 with its 2010 rates, and the Commission will have to approve this tariff before the rates can actually go into effect and be charged to

customers.⁹ See Tr. at 66. However, both Dominion and RESA argue that the Commission merely approved of the process, not the resulting rates of the solicitations. See, Dominion M.B. at 7-8 and RESA M.B. at 16. The OCA submits that the Commission must, in fact, approve of the Company's 2010 default service rates prior to implementation. As Mr. Kleha testified:

The rates that will be approved for generation supply will be included in the company's generation supply charge or GSC.

Tr. at 66.

In contrast, as RESA witness Hudson acknowledged, the Commission does not review the prices that an EGS offers or charges; it does not approve the specific procurement methodology used by the EGS; and it does not review whether EGSs purchasing or prices are intended to provide the least cost to customers over time. Tr. at 208-209. The EGSs' argument that the Commission does not approve PPL's rates as just and reasonable is unsupported in the law.

Dominion and RESA also argue that PPL's default service rates are on the same footing as EGS rates. RESA argue that EGS generation charges are derived from the same market process as the CBP rates, and therefore, EGS charges are no less "just and reasonable". RESA M.B. at 19. Dominion similarly argues that the rates that PPL will charge in 2010 and beyond are market based rates subject to the same market forces as EGS rates. Dominion M.B. at 8. These analogies are misplaced. Although PPL will obtain supply from wholesale markets, as discussed earlier, PPL's procurement methodology is specifically determined by the Commission to meet the obligations required by the Public Utility Code. The wholesale market

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

place consists of many different products with different terms and different procurement methodologies. Additionally, the fact that the EGSs and PPL look to the same market place for supply says nothing about the prices that an EGS might charge. EGSs certainly include additional charges in their offers beyond the wholesale market prices at the moment they make the offer to the customer. Otherwise, there would be no profit in the business at all.

Dominion and RESA also argue that OCA witness Alexander “conceded” that PPL’s default service rates are not found to be just and reasonable because she agreed that those rates are not regulated on a “cost of service” basis. Dominion M.B. at 7; RESA M.B. at 16. OCA witness Alexander did not “concede” that PPL’s default service rates are not determined by the Commission to be just and reasonable as RESA argues. RESA M.B. at 16. The point that Ms. Alexander made was that PPL’s rates are not regulated under “cost of service,” that is, they are not subject to rate base/rate of return regulation anymore.¹⁰ Tr. at 128-129. Ms. Alexander went into great detail to explain the form of regulation that now applies to the default service rates. Ms. Alexander testified:

They made that determination by virtue of their total supervision and litigation of the type of contract that is being used. The contract documents themselves, the master supplier agreements, were all approved by the Commission. The products that are being bought were approved by the Commission, the time frame over which they are being bought, the supervision or the process by which these RFPs are being conducted, as described by the PPL witness; and the submission to the Commission of the final version of this with some short period of time during which, theoretically, the Commission could have called a halt to that process. The result of all of this is a tariff that is filed and approved by the Commission with a specific price.

¹⁰ RESA similarly argues that Section 2806(a) states that the generation of electricity is no longer to be regulated as a public utility service or function, thus the rates are not found to be just and reasonable. RESA M.B. at 15-16. This section also is referring to the fact that the generation of electricity is no longer subject to rate base/rate of return regulation, not to the determination of the rates as just and reasonable. Section 2806(a) also makes clear that the generation of electricity is a regulated function “as otherwise provided for in this chapter....” Other provisions of Chapter 28 specify the standards for default service that a default service provider must meet.

Tr. at 128-129. Ms. Alexander stated that, although the process for determining whether PPL's default service rates are just and reasonable may differ--as compared to the process undertaken in a base rate proceeding—the eventual determination, i.e., that these rates will or will not be found to be just and reasonable by the Commission, remains. Tr. at 129.

Dominion's argument that "the regulatory concept of 'just and reasonable' that continues to govern base rates, under 66 Pa. C.S. § 1301, *et seq.*, that preceded Chapter 28, are no longer relevant to the rates for the sales of electric generation supply" is similarly misplaced. As noted above, the Commission has already addressed this argument and found that Section 1301 continues to apply to generation rates. See County of Pike v. Pike County Light & Power Company, Docket No.C-200065942, *et al.*, *slip op.* at 7 (Order entered March 10, 2008).

- ii. Section 1307(f) Of The Public Utility Code Does Not Provide For Termination For Failure To Pay Rates Which Have Not Been Found To Be "Just And Reasonable."

In its Main Brief, RESA argues that "utilities frequently charge customers rates that have not been finally determined to be just and reasonable but, nonetheless, they serve as the basis for termination if those charges are not paid." RESA M.B. at 19. As an example, RESA argues that purchased gas costs charged by natural gas distribution companies are set for a prospective year on the basis of authorized fuel procurement plans and projections of costs, but the final determination of whether those charges are indeed just and reasonable and in accordance with law comes only after the charges are in place for the year. *Id.* at 19-20. RESA, therefore, argues that "customers who do not pay these charges while they are in place (and reflected in the NGDC's tariff) are subject to termination and must pay (or agree to pay) the full amount of such unpaid charges, including the utility's projected purchased gas costs, in order to be reconnected." RESA M.B. at 20. As set forth below, this argument misconstrues Section 1307.

Section 1307, which provides for a sliding scale of rates, begins with a General Rule in subsection (a). In pertinent part, that General Rule clarifies that the rates must be just and reasonable. Section 1307(a) provides:

Any public utility ... may establish a sliding scale of rates or such other method for the automatic adjustment of rates of the public utility as shall provide a just and reasonable return on the rate base of such public utility, to be determined upon such equitable or reasonable basis as shall provide such fair return.

66 Pa.C.S. § 1307(a).

Section 1307(f) then establishes the process for implementing this adjustment mechanism for natural gas costs. In the Section 1307(f) process, the natural gas distribution company projects rates which it expects to charge, and these projections are analyzed prior to implementation. The projected rates are subject to a Commission hearing prior to implementation and are then placed into effect as the approved rates of the utility for that projected period. In other words, the NGDC cannot charge any other rates during this period. There is then a reconciliation and review of the actual rates compared to the projected rates, but any adjustments to the rates are made prospectively. In other words, the process that has been put in place by the General Assembly and the Commission does not go back in time and adjust the rates that have been charged to individual customers. Rather, the Commission makes a prospective adjustment and sets the rates for the next period that it finds to be just and reasonable. This process establishes the just and reasonable rates for the specific period in which the rates are charged, which thus supports the application of the regulatory termination provision for failure to pay these charges. RESA's suggestion that customers are terminated for rates that are not just and reasonable does not square with Section 1307(f).

5. All-In/All-Out Requirements.

No Reply Needed.

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

No Reply Needed.

7. Basic Generation Supply Service Issues.

No Reply Needed.

8. Credit Check Requirements.

No Reply Needed.

9. 12-Month Stay Provision.

No Reply Needed.

10. Program Availability for Large Commercial and Industrial Customers.

No Reply Needed.

11. POR Program Contingencies.

No Reply Needed.

B. Subsequent Recovery Of Uncollected Receivables And Unrecovered Administrative Costs.

No Reply Needed.

C. Customer Notification Issues Related to Termination.

No Reply Needed.

V. CONCLUSION

Given that PPL has endorsed the viability of implementing the OCA's alternate proposal, the OCA submits that its alternate proposal should be accepted and implemented as PPL's 2010 CBP POR Program.

Respectfully Submitted,

Candis A. Tunilo

Tanya J. McCloskey
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50044
E-Mail: TMcCloskey@paoca.org
Candis A. Tunilo
Assistant Consumer Advocate
PA Attorney I.D. # 89891
E-Mail: CTunilo@paoca.org
James A. Mullins
Assistant Consumer Advocate
PA Attorney I.D. # 77066
E-Mail: JMullins@paoca.org

Counsel for:
Irwin A. Popowsky
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Dated: November 6, 2009

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CERTIFICATE OF SERVICE

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

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

Dated this 6th day of November 2009.

SERVICE BY E-MAIL and INTEROFFICE MAIL

Allison C. Kaster, Esquire
Carrie B. Wright, Esquire
Office of Trial Staff
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

SERVICE BY E-MAIL and FIRST CLASS MAIL

Paul E. Russell
Associate General Counsel
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
Counsel for: *PPL Electric Utilities Corporation*

David MacGregor, Esquire
Post & Schell, P.C.
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103-2808
Counsel for: *PPL Electric Utilities Corporation*

Anthony D. Kanagy, Esquire
Michael Gang, Esquire
Post & Schell, P.C.
17 North Second Street
12th Floor
Harrisburg, PA 17101-1601
Counsel for: *PPL Electric Utilities Corporation*

Todd S. Stewart, Esquire
Hawke McKeon & Sniscak, LLP
P. O. Box 1778
100 North Tenth Street
Harrisburg, PA, 17105
Counsel for: *Dominion Retail, Inc*

Mark Hayden
FirstEnergy Solutions Corporation
76 South Main Street
Akron, OH 44308
Counsel for: *FirstEnergy Solutions Corp.*

Daniel C. Clearfield, Esquire
Deanne O'Dell, Esquire
Kevin J. Moody, Esquire
Carl Shultz, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17108-0865
Counsel for: *Retail Energy Supply Association and Direct Energy Services*

Steven C. Gray
Assistant Small Business Advocate
Office of Small Business Advocate
Commerce Building, Suite 1102
300 North Second Street
Harrisburg, PA 17101
Counsel for: *Office of Small Business Advocate*

Pamela C. Polacek, Esquire
Shelby Linton-Keddie, Esquire
Carl J. Zwick, Esquire
McNees Wallace & Nurick, LLC
100 Pine Street
P. O. Box 1166
Harrisburg, PA 17108-1166
Counsel for: *PP&L Industrial Customer Alliance*

Renardo L. Hicks, Esquire
Stevens & Lee
17 North Second Street
16th Floor
Harrisburg, PA 17101
Counsel for: *FirstEnergy Solutions Corp.*

Christopher A. Lewis, Esquire
Christopher R. Sharp, Esquire
Melanie J. Tambolas, Esquire
Blank Rome, LLP
One Logan Square
Philadelphia, PA 19103
Counsel for: *Constellation Energy Commodities Group*

Divesh Gupta
Constellation NewEnergy
111 Market Place
Suite 500
Baltimore, MD 21202

Counsel for: *Constellation Energy
Commodities Group and Constellation
NewEnergy*

David Fein
Constellation NewEnergy Group
55 West Washington Boulevard
Suite 300
Chicago, IL 60661

Counsel for: *Constellation Energy
Commodities Group and Constellation
NewEnergy*

Candis A. Tunilo

Candis A. Tunilo

Assistant Consumer Advocate

PA Attorney I.D. # 89891

E-Mail: CTunilo@paoca.org

James A. Mullins

Assistant Consumer Advocate

PA Attorney I.D. # 77066

E-Mail: JMullins@paoca.org

Tanya J. McCloskey

Senior Assistant Consumer Advocate

PA Attorney I.D. # 50044

E-Mail: TMcCloskey@paoca.org

Counsel for

Office of Consumer Advocate

555 Walnut Street

5th Floor, Forum Place

Harrisburg, PA 17101-1923

Phone: (717) 783-5048

Fax: (717) 783-7152

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