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November 6, 2009

**VIA HAND DELIVERY**

Secretary James J. McNulty  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor  
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 is an original Reply Brief, on behalf of FirstEnergy Solutions in the above  
subject matter. Copies have been served in accordance with the attached Certificate of Service.

If you have any questions, please feel free to contact me.

Very truly yours,

STEVENS & LEE



Judith D. Cassel

JDC:kdd  
Enclosure

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Williamsport • Wilkes-Barre • Princeton • Cherry Hill • New York • Wilmington

A PROFESSIONAL CORPORATION

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLY BRIEF  
OF THE INTERVENOR,  
FIRSTENERGY SOLUTIONS CORP.**

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DATED: November 6, 2009

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**I. INTRODUCTION AND STATEMENT OF THE CASE**

FES is a subsidiary of FirstEnergy Corp., a diversified energy services holding company headquartered in Akron, Ohio. FES provides wholesale and retail energy and related products to customers located primarily in the Mid-Atlantic and Midwest regions of the United States. FES is a licensed electric generation supplier (“EGS”) in the Commonwealth of Pennsylvania, pursuant to 66 Pa. C.S. § 2809, having been authorized at Docket No. A-110078 to serve retail customers throughout Pennsylvania, including the service territory of PPL Electric Utilities, Inc. (“PPL”).

This matter involves PPL’s proposed implementation of a purchase of receivables program (“POR”) and a merchant function charge (“MFC”). PPL proposes to implement the POR Program effective January 1, -2010. PPL’s POR program proposes to unbundle generation-related uncollectible account expense from base rates and to purchase EGS’s receivables at a discount, for the residential and small commercial and industrial (“Small C&I”) customer classes.

The OCA has offered an alternative proposal that would interfere with an EGS’s ability to market products to residential customers under the PPL POR proposed program. The OCA proposes to restrict the amount of EGS charges that an EDC would be able to collect from the residential customer upon termination for non-payment. For the reasons set forth below, FES opposes the OCA’s proposal, and urges the Commission to reject it.

FES hereby incorporates the background, statement of the case, and procedural history as set forth in its October 30, 2009, Main Brief. FES files this Reply Brief to respond to the positions, arguments, omissions, and mischaracterizations stated by the OCA in its Main Brief.

## II. SUMMARY OF ARGUMENT

FES supports the approval of the PPL POR Program, with the inclusion of the adjustments reflected in the filed Joint Petition for Settlement. FES's Reply Brief is being submitted in order to correct the erroneous conclusions made in the OCA's Main Brief.

The OCA's Main Brief erroneously concludes that statutes that are intended to regulate utilities apply to an EGS simply because the EGS participates in the EDC's POR program.

The OCA's Main Brief erroneously concludes that a free marketplace can not generate fair and reasonable rates.

The OCA's Main Brief erroneously concludes that its options are simple to implement.

Finally, The OCA's Main Brief erroneously concludes that the Commission approved customer complaint process would be inadequate to handle an unfair termination claim.

The proponent of a rule or order has the burden of proof. 66 Pa.C.S. § 332(a). The OCA has simply not carried its burden in this proceeding. As demonstrated in the OCA's Main Brief and herein, the PUC's charge to deregulate the electric supply market is not served by the OCA's proposal.

## III. ARGUMENT

- a. **The OCA's Main Brief erroneously concludes that statutes that are intended to regulate utilities apply to an EGS simply because the EGS participates in the EDC's POR program.**

The OCA's Main Brief cites several sections in both the Public Utility Code and the Commission's regulations which are proffered to prove that termination of basic service can only occur if a customer does not pay the EDC charges.<sup>1</sup> This is incorrect. The sections cited refer to regulation of a "public utility." The regulation over a termination by a monopoly for monopolistic charges is a different scenario from a free market where the price is determined by competition and the customers have choices as to which supplier they will choose. Regulation is essential in the first and unnecessary in the latter.

The OCA's Main Brief unnecessarily and inappropriately links the Pa.C.S. §2807(d) instructions to EDCs not to allow competition to come at the expense of consumer protection or customer service, to the POR program and the termination of non-paying customers for charges incurred for electric service supplied by an EGS.<sup>2</sup>

First, the section 2807 instructions are directed toward an EDC's "quality [of customer service] under retail competition."<sup>3</sup> The provision cited, specifically does not mention the POR program or even that charging rates above the default rate constitutes inadequate customer service.

Secondly, and more importantly, the focus of this section is aimed at providing "adequate and accurate customer information to enable customers to make informed choices regarding the purchase of all electricity services offered by that provider."<sup>4</sup> The educational programs are necessary for consumers to make appropriate choices as to their electric choice service. It is FES's contention that the

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<sup>1</sup> OCA's Main Brief, p. 9

<sup>2</sup> Id. p. 4 citing 66 Pa C.S. §§ 2807(d), 2802(9), and p. 9 citing 66 Pa C.S. 1301, 1406 and 52 Pa. Code Chapter 56.

<sup>3</sup> 66 Pa. C.S. § 2807(d).

<sup>4</sup> Id. at 2. emphasis added.

marketplace works when consumers are educated, and once educated, held accountable for any educated decisions made.

Additionally it is interesting to note, under section 2807 renewable energy products are discussed as a means for EDCs to meet the Alternative Energy Portfolio Standards.<sup>5</sup> It would be a dichotomy of goals for the Commission to mandate electric generation by renewable energy and then exacerbate this initiative by frustrating the sale of these products to the residential customer class by disallowing termination for EGS charges for these types of “green” products.

**b. The OCA’s Main Brief erroneously concludes that a free marketplace can not generate fair and reasonable rates.**

The OCA states that termination should only occur if Commission-approved rates are unpaid because these rates are the only ones that are found to be just and reasonable.<sup>6</sup> However, the General Assembly found that “Competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.”<sup>7</sup> Therefore, the legislature has in fact, determined that competitive market forces are just and reasonable.

**c. The OCA’s Main Brief erroneously concludes that both of its proposal options to calculate termination charges based on the equivalent default charges are simple to implement.**

Ms. Alexander, witness for OCA, states that the calculation that is needed to determine, “during this period in which the customer accrued the arrears, the

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<sup>5</sup> Id. at (e) (3.5).

<sup>6</sup> OCA’s Main Brief, p. 9.

<sup>7</sup> 66 Pa C.S. § 2802 (5).

distinction between the EGS charges and the utility default service charges,” is a “simple mathematical calculation.”<sup>8</sup>

In response to Ms. Alexander’s rebuttal testimony, Dominion Retail’s witness, Mr. Crist, testified that such a system which “might appear to be simple arithmetic, involves a lot of calculation through a lot of customers on a real-time basis and would not be simple to implement.”<sup>9</sup> Even Ms. Alexander admitted that she had performed no study or discovery or presented any evidence on what would be required in terms of money or man hours to implement the OCA’s proposed program.<sup>10</sup>

The OCA’s second option would be to have all EGSs “simply ... certify, to PPL that the price being charged to the customer in the POR program during the year 2010 is at or below this known default service price.”<sup>11</sup> Notwithstanding that OCA is advocating regulating the price of an unregulated entity, this option is not simple.

The OCA acknowledges in foot-note 7 of its Main Brief that there will be reconciliation changes of the default price based on the variation in sales. In addition to this complication to the calculation, some products offered by the EGS will have varying prices that would, in the aggregate, be below the default price, but above it at the time of termination. The calculations for such an offering would not be “simple.”

**d. The OCA’s Main Brief erroneously concludes that the Commission approved customer complaint process would be inadequate to handle an unfair termination.**

The OCA’s Main Brief incorrectly claims that the Commission’s “formal and informal complaint process does not adequately address the potential that customers

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<sup>8</sup> OCA’s Main Brief, citing Tr. at 118-19, Ms. Alexander’s Rebuttal Testimony.

<sup>9</sup> Tr. at 157.

<sup>10</sup> Tr. at 143

<sup>11</sup> OCA’s Main Brief p. 19-20.

will be terminated, and will be without essential electric service, based on unregulated charges.”<sup>12</sup> Pursuant to 66 Pa. C.S. § 1410, pending the outcome of a complaint filed with the Commission, the customer shall be obligated to pay that portion of the bill which is not in dispute and subsequent bills which are not in dispute. The Commission’s approved customer complaint process allows for a customer to dispute a bill without having to pay the associated charges. This relief from payment, and the corresponding termination associated with nonpayment, lasts until the dispute is resolved.

The Commission provides additional protection for those whose issue is solely an ability to pay.<sup>13</sup> Upon appeal from the mediation decision of the Bureau of Consumer Services, there shall be an automatic stay of payment arrangement ordered in that decision, other than current bills not at issue.<sup>14</sup> As an added protection for those residential customers with incomes less than 250% of the Federal Poverty Level, the Commission prohibits termination of service between November 30<sup>th</sup> and April 1<sup>st</sup>. The Commission’s approved Consumer Complaint process is proper and appropriate to handle any EGS customer who files a complaint due to termination for nonpayment of EGS charges.

#### **IV. CONCLUSION**

The OCA’s Main Brief incorrectly concludes that statute and code sections that were developed to regulate monopolistic utilities should regulate unregulated entities simply because they use a POR program. OCA’s attempt to bring unregulated entities under the

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<sup>12</sup> OCA’s Main Brief p. 25.

<sup>13</sup> 52 Pa. Code § 56.174

<sup>14</sup> Id. at (3)

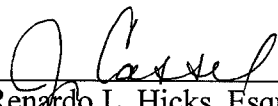
regulation of the PUC under the guise of consumer protection goes against everything that the Commission is trying to accomplish with the restructuring of the electric utility industry. The conclusion that somehow a free market place can not generate fair and reasonable rates, not only contradicts the General Assembly's conclusion, but it is unsupported by any evidence in the record.

Even if the OCA's proposal was palatable to marketplace principles, which it is not, both of the OCA's options to achieve its proposal are virtually impossible to implement.

Finally, it is not necessary to implement the OCA's proposal because in addition to market forces keeping the prices competitive and fair, the Commission already has appropriate protections in place for the electric choice customer.

Respectfully Submitted

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Date: November 6, 2009

## CERTIFICATE OF SERVICE

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

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