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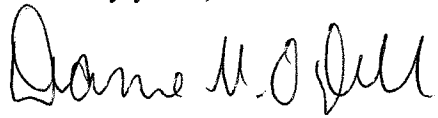
James McNulty, Secretary  
PA Public Utility Commission  
PO Box 3265  
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Re: Petition of PECO Energy Company for Approval of its Revised Electric Purchase of  
Receivables Program, Docket No. P-2009-2143607

Dear Secretary McNulty:

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

Sincerely yours,



Deanne M. O'Dell, Esq.

DMO/lww  
Enclosure

cc: Cert. of Service w/enc.

## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of RESA's Main Brief upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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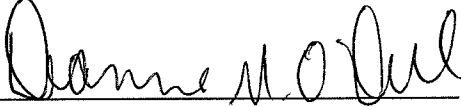
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Dated: March 22, 2010

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PECO Energy Company for :  
Approval of its Electric Purchase of : Docket No. P-2009-2143607  
Receivables Program :

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**MAIN BRIEF OF  
THE RETAIL ENERGY SUPPLY ASSOCIATION  
AND  
DIRECT ENERGY SERVICES, LLC**

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## I. INTRODUCTION

### A. Summary And Statement Of Position

In advance of the expiration of its generation rate caps and in accordance with a settlement reached in its recent default service proceeding, PECO Energy Company (“PECO”) filed a petition to implement a Purchase of Receivables (“POR”) program.<sup>1</sup> This is an important step toward ensuring that consumers (particularly residential and mass market consumers) are able to fully avail themselves of the benefit of a competitive retail electricity market. Significant work preceded the filing of PECO’s petition including three stakeholder meetings during which the best way to structure a properly functioning POR program was extensively discussed. Both the Retail Energy Supply Association<sup>2</sup> and Direct Energy Services, LLC (“RESA/Direct Energy”) were active participants in this collaborative effort and each strongly supports PECO’s petition as initially filed. Subsequent to the filing of the petition, however, other parties raised concerns with the filing and, therefore, all parties engaged in settlement discussions intended to address these concerns. Ultimately, the parties reached a settlement regarding all but two issues which were reserved for litigation. For all the reasons explained in its Statement in Support of Settlement, RESA/Direct Energy support the settlement as a reasonable compromise of concerns raised by the parties.

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<sup>1</sup> See *Petition of PECO Energy Company for Approval of its Default Service Program and Rate Mitigation Plan*, Docket No. P-2008-2062739 (Order entered June 2, 2009) (“Default Service Settlement”).

<sup>2</sup> RESA’s members include ConEd Solutions; Constellation NewEnergy, Inc.; 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; PPL EnergyPlus; 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.

The two issues reserved for litigation are: (1) whether PECO should be required to unbundle its generation-related uncollectible accounts expense from its distribution rates for collection from default service customers and also purchase EGS receivables at a discount corresponding to PECO's uncollectible expense, implementation costs and any administrative costs; and, (2) whether PECO can terminate electric service to customers after January 1, 2011, based upon costs for electric generation supplier ("EGS") service incurred by such customers prior to January 1, 2011.<sup>3</sup>

On the first issue, RESA supports PECO's proposal and urges rejection of the Office of Trial Staff's ("OTS") position. PECO has proposed a reasonable and practical way to recover uncollectible expense associated with all generation supply through distribution rates. Most importantly, PECO's proposal will create a fair, easily implemented and level playing field for the treatment of uncollectibles related to generation supply which will serve to enhance the development of a competitive retail market in PECO's service territory. Further, this proposal socializes the costs of non-paying customers among all customers as is done today. Finally, PECO's proposal enables it to offer an attractive discount rate for the receivables it purchases which enhances the viability of the POR program and, ultimately, benefits consumers by encouraging EGSs to choose to offer service to the mass-market via the POR program.

The only party in this case to refuse to accept PECO's proposal is the OTS. OTS recommends an approach similar to that adopted, through a negotiated settlement, for PPL Electric Utilities ("PPL").<sup>4</sup> Under the OTS approach, the uncollectible expense from PECO's last distribution rate case would be used to approximate the amount of future, projected

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<sup>3</sup> Joint Petition for Partial Settlement at ¶ G(1)(a).

generation-related uncollectible expense. This amount, expressed as a percentage factor, would then be applied as an adder to default service rates through the PTC. This same percentage factor would also be applied as the uncollectible expense component of the discount rate charged to EGSs. RESA/Direct Energy do not support this approach for several reasons. First, the uncollectible expense factor that would be used (from PECO's last base rate case), would be based on PECO's 1997 experience with uncollectible expense. This experience (while presumed accurate in 1997) is highly unlikely to reflect the current uncollectible levels, or future projected uncollectible levels for competitive generation service after rate caps expire. In fact, PECO's 1997 data is inconsistent with the percentages established for the Duquesne Light and PPL proceedings (and perhaps other POR proceeding in Pennsylvania).

Second, RESA/Direct Energy prefer PECO's proposal which continues to socialize the cost of generation-related uncollectible across all customers, both shopping and default service customers. This approach creates a level playing field between EGS service and default service and will enable EGSs to serve all customers, including those with marginal credit strength will nonetheless have the chance to enjoy the lower prices and/or innovative products that the competitive market offers. Additionally, by continuing to socialize generation related uncollectible expense, PECO's approach avoids the need for implementing complicated mechanisms, such as those adopted in other POR programs, to address the theoretical concerns surrounding the propensity for EGSs to selectively enroll only good paying customers onto POR.

On the second issue, if OCA's position is adopted, then PECO will be forced to incur significant implementation costs to implement the proposal which will be added to the .2%

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<sup>4</sup> See, *Petition of PPL Electric Utilities Corporation Requesting Approval of a Voluntary Purchase of Receivables Program and Merchant Function Charge, Opinion and Order*, at Docket No. P-2009-2129502 on November 19, 2009.

discount rate that PECO already plans to assess to receivables purchased through the POR program to recover administrative costs. The imposition of additional costs will require EGSs participating in POR to bear more costs which may impact the level of EGSs willing to participate in the market. RESA/Direct Energy request that the Commission keep this in mind when considering the merits of OCA's proposal.

**B. Procedural History**

On November 20, 2009, PECO filed its Petition in support its request that the Commission approve its proposed POR program to be effective January 1, 2011. The POR program is being proposed in accordance with the Commission-approved settlement of PECO's default service program for the provision of electric service after December 31, 2010.

RESA/Direct Energy was a party in that proceeding, a signatory of the settlement agreement and a participant in PECO's subsequent stakeholder meetings with interested parties regarding POR.

PECO's proposed POR program contains important program elements that must be included in a properly structured POR program so that it effectively assists in the development of a robust competitive retail market. Specifically, PECO's proposed program: (a) is available to all customers; with no minimum stay provisions; (b) permits PECO to terminate for non-payment of EGS charges (same basis of EDC charges); (c) eliminate 90 day revert to separate billing; (d) permits EGSs to simultaneously use dual billing for other non POR customers; (e) permits receivables associated with basic electricity supply services eligible for POR including renewable energy or alternative energy credits procured by an EGS and associated with the delivered energy; (f) maintains the current POR payments schedule and format (20 days for commercial customers and 25 days for residential customers); (g) proposes a "zero discount" steady state POR program with an initial recovery rate of 0.2% of POR payment to EGSs, then discount is zero; and, (h) proposes recovery of uncollectible accounts expense associated with generation service in distribution base rates, or in an unbundled nonbypassable, non-reconcilable default service support rider that would be presented at the time of PECO's next base rate case.

Upon the agreement of the parties, the testimony was stipulated into the record in lieu of an in-person hearing. The following parties intervened and served prepared written testimony:

The Office of Small Business Advocate (“OSBA”), the Office of Consumer Advocate (“OCA”), the Office of Trial Staff (“OTS”), the Philadelphia Area Industrial Energy Users Group (“PAIEUG”), RESA/Direct Energy, Constellation New Energy, Inc. (“Constellation”), and Dominion Retail, Inc., (“Dominion Retail”).

Main briefs are due March 22, 2010, Reply Briefs are due April 1, 2010. This main brief is filed on behalf of RESA/Direct Energy.

## II. ARGUMENT

### A. Legal Standards

#### 1. Burden of Proof

Section 332(a) of the Public Utility Code (“Code”) provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.<sup>5</sup> It is axiomatic that “[a] litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible.”<sup>6</sup> Preponderance of the evidence means evidence which is more convincing, by even the smallest amount, than that presented by the other party.<sup>7</sup> Additionally, any finding of fact necessary to support the Commission’s adjudication must be based upon substantial evidence.<sup>8</sup> More information is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.<sup>9</sup>

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<sup>5</sup> 66 Pa. C.S.A. § 332(a).

<sup>6</sup> *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Commw. 1990).

<sup>7</sup> *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

<sup>8</sup> *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Commw. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Commw. 1993).

<sup>9</sup> *Norfolk and Western Ry. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960);

2. Standards applicable to POR programs

The Electric Generation Competition and Customer Choice Act<sup>10</sup> (“Competition Act”) sets forth the obligations of PECO, as an electric distribution companies (“EDC”), to provide electric service as a result of the implementation of competition in the retail electric market in Pennsylvania.<sup>11</sup>

The Competition Act mandates that customers have direct access to a competitive retail generation market.<sup>12</sup> This is based on the legislative finding that “competitive market forces are more effective than economic regulation in controlling the costs of generating electricity.”<sup>13</sup> Thus, a fundamental policy underlying the Public Utility Code is that competition is more effective than economic regulation in controlling the costs of generating electricity.<sup>14</sup> Another fundamental policy of the Public Utility Code is that electric service is an essential service and should be available to all customers “on reasonable terms and conditions.”<sup>15</sup>

Through a 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.

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*Murphy v. Commonwealth, Dep’t. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Commw. 1984).

<sup>10</sup> 66 Pa. C.S.A. §§ 2801 to 2812, *as amended by Act 129*.

<sup>11</sup> *See* 66 Pa. C.S.A. § 2807(e).

<sup>12</sup> 66 Pa. C.S.A. § 2802(3).

<sup>13</sup> 66 Pa. C.S.A. § 2802(5). *See Green Mountain Energy Company, et al. v. Pa. PUC*, 812 A.2d 740, 742 (Pa. Commw. 2002).

<sup>14</sup> 66 Pa. C.S.A. § 2802(5).

<sup>15</sup> 66 Pa. C.S.A. § 2802(9).

Concerning POR programs, the Commission has found that:<sup>16</sup>

[Based] on several years' experience during the transition period, it is the Commission's judgment that a viable POR program is an essential element to the creation of a competitive market for generation in Pennsylvania, as envisioned by the Competition Act. 66 Pa. C.S. § 2802(2). Moreover, we are convinced that establishment of a properly structured POR program by the end of the transition period is necessary to faithfully carry out the provisions of Chapter 28. 66 Pa. C.S. § 510(a). And that absent a viable POR program in place to coincide with the expiration of rate caps and substantial increase in default service rates, consumers in [an EDC's] service territory will not likely have the competitive market and customer choice that the legislation intended when the rate caps expire [for that EDC].

The Commission has also stated that:<sup>17</sup>

... any discount in the purchase of receives should, as much as possible, reflect only the Company's actual expenses. This should not be a mechanism for the Company to make money. A properly functioning POR program can reduce costs for shopping customers and, therefore, be an incentive for the Company to minimize its own cost of electricity for DSP customers. This appears to have been the experience of other states, most notably New York and Ohio. We anticipate that our experience will be no different.

**B. PECO's Proposal On Recovery of Uncollectible Accounts Expense for Generation Service Should Be Adopted By The Commission**

PECO and OTS have competing proposals concerning how PECO should recover the uncollectible accounts expense associated with generation supply after expiration of PECO's generation rate caps expire.

PECO proposes to continue to collect all of its uncollectible expense (including uncollectible expense associated with generation service whether provided by PECO or by an

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<sup>16</sup> *PPL Electric Utilities Corporation Retail Markets*, Final Order entered at Docket No. M-2009-2104271 on August 11, 2009 at 27.

<sup>17</sup> *Id.* at pp. 29-30.

EGS) in its distribution rates.<sup>18</sup> The amount of uncollectible expense will be adjusted as appropriate in future distribution rate cases based upon historic ratios of uncollectible expense to billed charges.<sup>19</sup> Because of this, PECO is not proposing to recover any uncollectible expense that may be related to shopping customers through the discount at which PECO purchases the receivables of the EGS through the POR program. PECO proposes to recover only implementation costs through the discount.<sup>20</sup> PECO correctly believes that its proposal will “provide significant support to retail competition in its territory.”<sup>21</sup>

OTS witness Sears recommends that PECO’s proposed approach be rejected. Rather, Ms. Sears opines that PECO should recover the costs of uncollectible expense associated with generation service through its default service rates while the costs of uncollectibles associated with shopping customers should be recovered through the discount rate at which PECO purchases the receivables of the EGSs participating in the POR program.<sup>22</sup> In terms of percentage, Ms. Sears relies on a discovery response from PECO regarding the impact on the discount rate of including the generation related uncollectible accounts expense.<sup>23</sup>

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<sup>18</sup> PECO St. 1 at 15-16.

<sup>19</sup> PECO St. 1-R at 13-14.

<sup>20</sup> Petition at ¶ 19; PECO St. 1 at 14-15; PECO St. 1-R at 13.

<sup>21</sup> PECO St. 1-SR at 15.

<sup>22</sup> OTS St. No. 1 at 10.

<sup>23</sup> OTS Exhibit No. 1-S.

Customer Class	Implementation Component of Discount Rate	Uncollectible Accounts Rate Component of Discount Rate	Total Discount Rate if uncollectible expense is recovered through discount
Residential	0.2%	2.07%	2.27%
Small C&I	0.2%	0.14%	0.34%
Large C&I	0.2%	0.46%	0.55%

She recommends that the same percentage, expressed as a dollar amount, be included in the default service price to compare (“PTC”).<sup>24</sup>

Ms. Sears claims that this approach is preferable because it “avoids double recovery of uncollectible expense from shopping customers, once in their generation rates, and again in their default service distribution rates.”<sup>25</sup> Moreover, she opines that “shopping customers should not be required to subsidize the electric service of default customers who remain with the Company, just as default customers should not be required to subsidize those customers who shop.”<sup>26</sup> Ms. Sears’ position is in error.

While, as a long-term policy objective, RESA/Direct Energy supports the full unbundling of generation related uncollectible accounts expense, and all other default service costs, from base rates, RESA/Direct prefer PECO’s proposal for several reasons. First, RESA/Direct believe that unbundling should occur in a comprehensive manner. OTS’s approach does not actually fully unbundle generation-related costs from distribution rates. Contrary to Ms. Sears’ testimony, the OTS’s approach only partially “unbundles” from distribution rates the costs

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<sup>24</sup> OTS St. No. 1 at 10.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

associated with billing and collecting, including uncollectibles, for EGS customers.<sup>27</sup> It does not include all the customer care costs, billing costs, the costs of taking credit risk, etc.<sup>28</sup> Partial unbundling is not better than no unbundling because it creates the illusion of a level playing field – but leaves the pitch considerably tilted in favor of default service. Because PECO has offered a reasonable and practical solution to address recovery of uncollectible accounts expense, absent real and comprehensive unbundling, RESA/Direct Energy supports PECO’s proposal as discussed further below.

1. OTS has not proven that PECO’s proposal will result in unreasonable or unfair subsidies

OTS claims that its approach must be implemented because “shopping customers should not be required to subsidize the electric service of default customers who remain with the Company, just as default customers should not be required to subsidize those customers who shop.”<sup>29</sup> OTS’s proposal, however, would not eliminate the cross subsidization of costs between customer groups. The OTS’s arguments ignore the fact that the treatment of uncollectible costs inevitably leads to some customers (those who do pay their bills) “subsidizing” service for other customers (those who do not pay their bills). OTS’s approach merely rearranges how this subsidization of costs is implemented and could create a less efficient means of recovering uncollectible accounts expense. OTS’s approach would result in default service customers paying for a socialized level of uncollectible costs through the unbundling adder applied to default service rates, while shopping customers would pay for the socialized level of uncollectible costs through the discount rate applied to purchased EGS receivables.

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<sup>27</sup> RESA St. 1-R at 6.

<sup>28</sup> *Id.*

<sup>29</sup> OTS St. No. 1 at 10.

Furthermore, the record does not support OTS's assumptions regarding any actual level of uncollectible expense that EGSs will incur.<sup>30</sup>

First, OTS proposes to calculate the level of uncollectible expense for generation customers based on the level embedded in PECO's current distribution rate even though PECO's uncollectible expense factor was last set in 1997.<sup>31</sup> Given that this rate was set well over a decade ago, that level of uncollectible expenses almost certainly does not accurately reflect current levels, particularly for individual rate classes.<sup>32</sup> Charging EGSs based on 1997 data is not reasonable. PECO's current embedded level of bad debt expense uses a lower uncollectible percentage for the smaller commercial and industrial customers than for the larger C&I customers.<sup>33</sup> This data (while presumed accurate in 1997), no longer reflects the current general understanding of the relative uncollectible levels experienced today for competitive generation service—in particular that larger commercial and industrial customers tend to have significantly lower uncollectible accounts expense than smaller customer groups.<sup>34</sup> In fact, PECO's 1997 data is inconsistent with the percentages established for the Duquesne Light.<sup>35</sup> They are also inconsistent with the percentages in the PPL POR proceeding and every other known POR proceeding.<sup>36</sup> Second, under PECO's proposed POR plan, EGSs will face reduced risk (and cost) of non-payment because they can participate in a POR program with a zero discount rate

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<sup>30</sup> RESA St. 1-R at 5.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*, at 4.

<sup>35</sup> Dominion St. 1-R at 8.

<sup>36</sup> RESA St. 1-R at 4.

for uncollectible costs.<sup>37</sup> Because POR significantly reduces an EGS's risk of non-payment, EGSs will remove any component included in their rates designed to account for this risk.<sup>38</sup> Therefore, the concern that shopping customers would somehow disproportionately subsidize uncollectible costs of default service customers, is misplaced.

Finally, OTS ignores the fact that costs related to shopping customers are currently included in PECO's distribution rates,<sup>39</sup> and PECO's approach is consistent with the way in which bad debt expense is handled today from a ratemaking perspective – as a socialized cost paid for by all customers (or customers in the same class).<sup>40</sup> This is a reasonable approach because shopping benefits are always available to both shopping and non-shopping customers.<sup>41</sup> By continuing to recover the same billing and collection expenses from every customer as PECO already does in base rates, regardless of the customer's energy supplier, PECO's proposal would treat all customers the same.<sup>42</sup> Thus, PECO's proposal facilitates the development of a competitive market,<sup>43</sup> and will eliminate the need for duplicative collection responsibilities.<sup>44</sup>

While OTS has not shown that its proposal is workable or necessary to address the concern identified by OTS, the record is clear that if an EGS is forced to bear an uncollectible expense cost (via the discount rate proposed by OTS) it may choose not to offer service to that

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<sup>37</sup> *Id.*, at 6.

<sup>38</sup> *Id.*

<sup>39</sup> Dominion St. 1-SR at 2.

<sup>40</sup> RESA St. 1-R at 5.

<sup>41</sup> Dominion St. 1-SR at 2.

<sup>42</sup> Dominion St. 1 at 2-3.

<sup>43</sup> PECO St. 1-R at 15; RESA St. 1-R at 5.

<sup>44</sup> Dominion St. 1-SR at 2-3.

customer.<sup>45</sup> Failure of EGSs to provide service would deprive consumers of the opportunity to shop which would not be in the public interest.

2. Adoption of OTS proposal will create other unnecessary problems that would need to be addressed

Adopting OTS's approach in lieu of PECO's would create a bundle of other complex problems. First, PECO's approach avoids concerns that have been raised by other parties in other proceedings over the possibility that EGSs could selectively enroll customers onto POR in order to "game" the system.<sup>46</sup> If OTS's proposal is adopted, the discount rate will attempt to recover an estimate of the class average bad debt expense.<sup>47</sup> Likewise, PECO would recover an estimate of class average, generation related bad debt expense through a surcharge applied to default service rates.<sup>48</sup>

In other POR proceedings parties have raised the concern that such an approach would provide an incentive for an EGS to "cherry pick" customers by enrolling high credit risk customers in the POR program, while billing good credit customers through dual billing.<sup>49</sup> The "good paying" customers billed through dual billing would fully avoid the surcharge applied to default service rates, thus reducing the amount of overall generation related bad debt expense collected by PECO.<sup>50</sup> However, PECO would be assuming all of the credit risk associated with the supposedly higher credit risk customers that would presumably be enrolled on POR.<sup>51</sup> Such

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<sup>45</sup> RESA St. 1-R at 5.

<sup>46</sup> *Id.*, at 2.

<sup>47</sup> *Id.*, at 2-3.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> *Id.*

a scenario, could theoretically put at risk PECO's ability to recover its uncollectible accounts expense.<sup>52</sup>

While RESA/Direct Energy does not believe such an outcome is likely because EGSs consider many factors beyond payment propensity in determining whether to enroll a customer onto the POR/consolidated billing platform, or the non-POR/dual-billing platform, RESA/Direct Energy has agreed to complicated mechanisms to address this perceived issue.<sup>53</sup> More specifically, in the recent PPL POR case, a mechanism exists whereby PPL can charge a higher discount rate to EGSs in certain circumstances.<sup>54</sup> This mechanism is problematic because it could trigger a higher discount rate in many circumstances in which the EGS is not actually "cherry picking" customers with the intent to game the POR system.<sup>55</sup> This complicated EGS uncollectible tracking mechanism requires careful monitoring and calculations, administrative processes, costly EDC systems modifications, and potential litigation to determine whether an EGS should be subjected to a higher discount rate.<sup>56</sup> Many EGSs may well simply not participate in the POR program, rather than deal with this issue.<sup>57</sup> In turn, if a customer has marginal credit risk, EGSs may decline to offer competitive service to such customers.

PECO's proposed POR plan and cost recovery mechanism fully avoids these concerns because generation related bad debt expense would continue to be treated in a socialized manner,

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<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.* In PPL, an EGS could be subjected to a higher individual discount rate if the EGSs actual uncollectible rate, expressed as a percentage of billed revenues, exceeds a certain threshold level. *Id.*

<sup>55</sup> *Id.*, at 3-4.

<sup>56</sup> *Id.*, at 4.

<sup>57</sup> *Id.*

just as it is today.<sup>58</sup> There would be no incentive for an EGS to selectively enroll a customer into POR to avoid the uncollectible component of the discount rate.<sup>59</sup> On the other hand, PECO's proposal would make it possible to offer competitively priced and innovative service offerings to marginally creditworthy customers. While RESA/Direct Energy supports the full unbundling of generation related uncollectible accounts expense, and all other default service costs, from base rates, OTS's proposal here does not accomplish goal.<sup>60</sup> However, at this early stage in the development of the retail market in PECO, RESA/Direct Energy supports adoption of the PECO approach (which was also adopted in the recent Met-Ed/Penelec default service proceeding)<sup>61</sup> in which generation related uncollectibles are recovered via a non-bypassable charge, either in distribution rates or as a separate mechanism.<sup>62</sup> This will allow POR to be implemented in a simple manner at this early stage in the development of the retail market. This will allow PECO to gain experience with a POR program and issues concerning unbundling can be addressed at a later time with the benefit of more accurate information on generation-related uncollectible levels.

**C. Termination of Customers With Pre-2011 Arrearages**

The second issue reserved for litigation is “whether PECO may terminate electric service to customers after January 1, 2011, based upon costs for EGS service incurred by such customers

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<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*, at 2.

<sup>61</sup> *See Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of their Default Service Programs* Opinion and Order at Docket Nos. P-2009-2093053 and P-2009-2093054 entered November 6, 2009.

<sup>62</sup> RESA St. No. 1-R at 2.

prior to January 1, 2011.”<sup>63</sup> According to PECO, failing to permit PECO to terminate service to customers whose accounts receivable were purchased by PECO pursuant to PECO’s pre-2011 Purchase of Receivables Program (in which PECO purchased the receivables of participating EGSs for 90 days and turned the customer back over to the EGS at the end of that 90 day period if the customer was in arrears) will require costly billing system changes.<sup>64</sup> Under the settlement, any such costs will be considered “implementation costs” and added to the .2% implementation cost discount that will be imposed on the accounts receivable purchased by PECO pursuant to the agreed upon POR program.<sup>65</sup> The imposition of additional costs will mean that EGSs participating in POR will be forced to bear even more administrative costs. PECO has indicated that the systems modifications needed to be able to differentiate customers whose arrearages developed prior to 2011, from those whose arrearages accumulated after 2011, could be as much as \$500,000.<sup>66</sup> The Commission should keep this substantial burden in mind when considering the merits of the substantive argument.

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<sup>63</sup> Joint Petition for Partial Settlement, ¶ G(1)(a).

<sup>64</sup> PECO St. No. 1-R at 6.

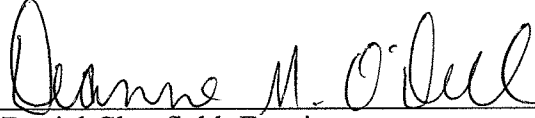
<sup>65</sup> Joint Petition for Partial Settlement at 10, ¶ H(2).

<sup>66</sup> PECO St. No. 1-R at 6.

### III. CONCLUSION

RESA/Direct Energy respectfully request that the Administrative Law Judge issue a Recommended Decision consistent with the recommendations set forth in this Brief.

Respectfully submitted,



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Date: March 22, 2010

Attorneys for the Retail Energy Supply Association

**Proposed Findings of Fact**

1. PECO is a regulated public utility that provides natural gas service in the Commonwealth of Pennsylvania.
2. On September 10, 2008, PECO filed its proposed program for procurement of default service supply for January 1, 2011, through May 31, 2013. By Commission order entered June 2, 2009 at Docket No. P-2008-2062739 the Commission approved a full settlement of that proceeding.
3. Part of the Default Service Settlement expressly provided that PECO would file a revised Purchase of Receivables (“POR”) Program.
4. On June 1, 2009, July 23, 2009 and November 16, 2009, PECO conducted stakeholder meetings as required by the Default Service Settlement.
5. On November 20, 2009, PECO filed the subject Petition for Approval of a revised POR Program.
6. The following parties intervened and served prepared written testimony: The Office of Small Business Advocate (“OSBA”), the Office of Consumer Advocate (“OCA”), the Office of Trial Staff (“OTS”), the Philadelphia Area Industrial Energy Users Group (“PAIEUG”), the Retail Energy Supply Association (“RESA”),<sup>67</sup> Direct Energy Services, LLC, (“Direct Energy”), Constellation New Energy, Inc, (“Constellation”), and Dominion Retail, Inc., (“Dominion Retail”).

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<sup>67</sup> RESA’s members include ConEd Solutions; Constellation NewEnergy, Inc.; 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; PPL EnergyPlus; 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.

7. A settlement in principle of all but two issues was achieved prior to the commencement of the hearing. The two issues reserved for litigation are: (1) Whether PECO should be required to unbundle its generation-related uncollectible accounts expense from its distribution rates for collection from default service customers and also purchase EGS receivables at a discount corresponding to PECO's uncollectible expense, implementation costs and any administrative costs; and (2) Whether PECO can terminate electric service to customers after January 1, 2011, based upon costs for EGS service incurred by such customers prior to January 1, 2011.

8. In the Petition, PECO proposed that the purchase of receivables by PECO will be without discount after an initial temporary POR discount of 0.2% to recover the implementation costs of the revised POR Program.

9. In response, OTS proposed that the purchase of receivables by PECO use a POR discount rate reflecting an uncollectible accounts expense percentage factor and a POR administrative factor.

**Proposed Conclusions of Law**

1. The Commission has jurisdiction over the parties and subject matter in this proceeding.
2. Pursuant to 66 Pa. C.S. § 332(a), the burden of proof in this proceeding is upon PECO (as the petitioner).
3. PECO's Petition, as modified by the Joint Petition for Settlement is reasonable and in the public interest and therefore should be approved by the Commission.
4. PECO sustained its burden of establishing that the purchase of receivables program set forth in the Petition is reasonable and in the public interest and therefore should be approved by the Commission.
5. OTS did not sustain its burden to show that its proposal regarding the partial unbundling of generation-related uncollectible accounts expense is necessary or appropriate and, therefore, this proposal is rejected.
6. OCA did not sustain its burden of showing that its proposal to restrict PECO's ability to terminate service for to customers after January 1, 2011, based upon costs for EGS service incurred by such customers prior to January 1, 2011 is necessary or appropriate and, therefore, this proposal is rejected.

**Proposed Ordering Paragraphs**

IT IS ORDERED:

1. That the PECO's Petition is granted as modified by the Joint Petition for Partial Settlement.
2. PECO's position on both the issues reserved for litigation is adopted.
3. That PECO shall timely implement all proposals, programs and filings required in the Settlement, consistent with that agreement and with this Recommended Decision.
4. That PECO shall file a tariff supplement not later than 60 days after the Commission's Order which supplement shall incorporate all of the changes needed to implement the Commission approved electric POR Program.
5. That upon acceptance and approval by the Commission of the tariff supplement filed by PECO consistent with the Commission's Order, this proceeding shall be marked closed.