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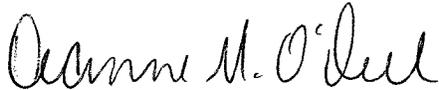
April 1, 2010

Via Electronic FilingSecretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265Re: Petition of PECO Energy Company for Approval of its Revised Electric Purchase of
Receivables Program, Docket No. P-2009-2143607

Dear Secretary:

On behalf of the Retail Energy Supply Association ("RESA") and Direct Energy Services, LLC enclosed please find its original Reply 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 and Direct Energy's Reply 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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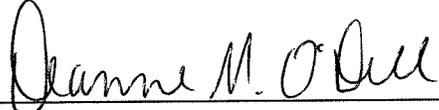
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Dated: April 1, 2010

**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 :

**REPLY BRIEF OF
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TABLE OF CONTENTS

I. Introduction.....1

II. Peco’s Proposal To Socialize The Cost Of Generation Related Uncollectibles Among All Ratepayers Should Be Adopted2

 A. OTS Has Not Met Its Burden Of Showing Why PECO’s Proposal Should Not Be Adopted2

 B. Adoption of OTS’s Proposal May Adversely Impact The Development Of The Competitive Retail Electricity Market While The Record Is Clear That PECO’s Proposal Is More Attractive.....3

 C. OTS Has Failed To Show That Exclusive Reliance On A Settlement Reached In PPL Supports Adoption Of Its Proposal.....6

III. Conclusion10

TABLE OF AUTHORITIES

Page(s)

Cases

Riedel v. County of Allegheny,
633 A.2d 1325 (Pa.Cmwlt. 1993) 3

Se-Ling Hosiery v. Margulies,
70 A.3d 854 (Pa. 1950) 2

Administrative

Petition of Direct Energy Service, LLC For Issuance of Emergency Order,
Docket No. P-00062205, Final Opinion and Order entered April 20, 2006 9

*Petition of Duquesne Light Company for Approval Of a Default Service Plan for the
Period January 1, 2008 Through December 31, 2010*, Docket No. P-00072247,
Order entered June 22, 2007 9

*Petition of PPL Electric Utilities Corporation for Approval of a Default Service
Program and Procurement Plan for the Period of January 1, 2011 through
May 31, 2010*, Docket No. P-2008-2060309 8

*Petition of PPL Electric Utilities Corporation Requesting Approval of a Voluntary
Purchase of Receivables Program and Merchant Function Charge*,
Docket No. P-2009-2129502 7, 8

PPL Electric Utilities Corporation Retail Markets, Docket No. M-2009-2104271,
Opinion and Order entered August 11, 2009 1

Statutes

66 Pa. C.S.A. §§ 2801 to 2812, *as amended by Act 129* 1

66 Pa. C.S.A. § 2802(3) 1

I. INTRODUCTION

Pursuant to the Electric Generation Competition and Customer Choice Act¹ (“Competition Act”), the Commission is statutorily charged with ensuring that customers have competitive choice for retail generation services.² As consumers are exposed to the real (and higher) cost of energy for the first time in a decade with the removal of generation rate caps, a greater number of competitive suppliers participating in the market will provide more and more innovative products and options for consumers at the lowest possible prices. The Commission has already concluded that a properly structured Purchase of Receivables (“POR”) program is necessary to permit the development of retail competition.³ A properly designed POR program enables competitive suppliers to reach the mass market (i.e. residential and small commercial and industrial “small C&I” customers). The Retail Energy Supply Association⁴ and Direct Energy Services, LLC (collectively, “RESA/Direct Energy”) fully support the design of an appropriate POR program as a way to advance true competition – which means more choices and lower prices for consumers. Likewise, all other parties in this case should support this goal.

The Office of Trial Staff (“OTS”) is the only party that opposes PECO’s proposal to continue to recover the cost of uncollectible accounts expense associated with generation service in distribution rates as it does today. The evidence in this proceeding makes clear that adopting

¹ 66 Pa. C.S.A. §§ 2801 to 2812, *as amended by* Act 129.

² 66 Pa. C.S.A. § 2802(3).

³ *PPL Electric Utilities Corporation Retail Markets*, Docket No. M-2009-2104271, Opinion and Order entered August 11, 2009 at 27. (emphasis original).

⁴ 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.

OTS's approach at this time and based on the structure proposed by OTS is not likely to achieve the goals of the Competition Act because it will radically alter the structure of the POR program and require EGSs to reconsider whether entry into the market under the new structure is feasible. OTS's exclusive reliance on the POR program in PPL's service territory as support for its position is faulty and unpersuasive for numerous reasons. PECO has proposed a reasonable way to address the recovery of uncollectible expense in a POR program, an approach which the record shows, encourage the development of competition in the retail electricity market. Moreover, OTS has not provided any evidence that PECO's approach will result in any unfairness or subsidy of any one customer group; indeed just the opposite is true. Therefore, PECO's proposal should be adopted.

II. PECO'S PROPOSAL TO SOCIALIZE THE COST OF GENERATION RELATED UNCOLLECTIBLES AMONG ALL RATEPAYERS SHOULD BE ADOPTED

A. OTS Has Not Met Its Burden Of Showing Why PECO's Proposal Should Not Be Adopted

As an initial matter, OTS is incorrect that it has no burden of persuasion in this case.⁵ This is not a rate case and PECO is not asking permission from the Commission to increase distribution rates. Rather, PECO has submitted a petition on which it has the ultimate burden of proof. Initially, PECO has the burden of coming forward with sufficient evidence to support a prima facie case.⁶ PECO has done so here. The record shows that PECO's proposal is consistent with the way in which bad debt expense is handled today from a ratemaking perspective, allows PECO to treat all customers the same from a billing and expense collection

⁵ OTS M.B. at 4-8.

⁶ *Se-Ling Hosiery v. Margulies*, 70 A.3d 854 (Pa. 1950).

perspective and facilitates the development of a competitive market by creating an attractive POR program for potential market participants.⁷ For all these reasons, PECO has met its initial burden of producing evidence to support its proposal.

As the party opposing PECO's proposal, the burden then shifted to OTS to support its counter proposal.⁸ OTS has failed to meet this burden. As already discussed in the Main Brief of RESA/Direct Energy, OTS failed to provide any evidence that PECO's approach will result in any unfairness or subsidy of any one customer group; in fact, the opposite is true.⁹ Moreover, as discussed below, OTS has not provided evidence to show that its proposal (as an alternative to PECO's proposal) will foster the development of the competitive market as required by the Competition Act. Finally, OTS has failed to provide persuasive evidence that its preferred approach is or should be the standard approach for all POR programs in Pennsylvania. Since PECO has provided sufficient evidence to support its proposal and OTS has failed to successfully rebut this evidence, PECO's proposal should be adopted.

B. Adoption of OTS's Proposal May Adversely Impact The Development Of The Competitive Retail Electricity Market While The Record Is Clear That PECO's Proposal Is More Attractive

OTS claims that both its proposal and PECO's proposal would "achieve the same result" in terms of addressing generation-related uncollectible accounts expense.¹⁰ RESA/Direct Energy agrees that, as a matter of general policy, full unbundling can achieve the same competitively neutral result as implementing a POR program with a zero discount rate for uncollectible costs. Both methods, if properly implemented, can place EGSs on equal footing in terms of bad debt

⁷ RESA/Direct Energy M.B. at 13.

⁸ *Riedel v. County of Allegheny*, 633 A.2d 1325, 1328 n. 11 (Pa.Cmwlth. 1993).

⁹ RESA/Direct Energy M.B. at 11-12.

expense as compared to the EDC. Assuming for the sake of argument that OTS' proposal results in a properly structured discount rate (which record evidence shows is unlikely), and would "achieve the same result" in terms of placing EGSs on equal footing as the utility, the next question becomes which proposal is more likely to foster the goals of the Competition Act. As the record makes clear, PECO's proposal is the one that is favored by the EGS parties in this proceeding and is the one that is most likely to encourage the development of a competitive market.

On the other hand, the record provides at least three concrete examples of how adoption of OTS's proposal could needlessly complicate PECO's POR program and throw into doubt whether EGSs would find the newly designed program desirable enough to promote market entry. First, the foundation of OTS's proposal (to use an uncollectible expense factor developed in 1997) would force EGS's to factor into their decision a woefully outdated uncollectible expense factor which has no rational relationship to the current general understanding of uncollectible levels experienced today.¹¹ Requiring businesses to try to factor in such an outdated factor in today's business realities is unreasonable and unnecessary.

Second, implementation of OTS's proposal in strict adherence to how it was adopted in PPL, could result in implementation of a complicated EGS uncollectible tracking mechanism that requires careful monitoring and calculations, administrative processes, costly EDC systems modifications, and potential litigation.¹² All of this would add additional burdens, costs and uncertainty into this process, again impacting how EGSs may view the desirability of entering into this market.

¹⁰ PECO M.B. at 6.

¹¹ RESA/Direct Energy M.B. at 12-13.

¹² *Id.* at 15.

Finally, if adopted as proposed by OTS, there is no dispute that PECO would be required to discount the EGS receivables purchased at significantly higher discounted rates than proposed. For residential customers, the discount would increase by 1135% from the currently proposed .2% to 2.27%. For small C&I customers, the discount would increase by 170% from .2% to .34%. For large C&I customers, the discount would increase by 275% from .2% to .55%.¹³ There is no dispute that the greater the discount at which PECO purchases an EGS's receivables the less attractive market entry looks to a potential EGS. Here, OTS is proposing significant and unnecessary increases that none of the EGS parties support. Furthermore, these higher discount rates would serve no legitimate public policy goal. The cost of uncollectible account expense would ultimately be socialized under either proposal. Under the OTS' approach the cost of uncollectibles would be reflected in the discount rate charged to EGSs and the EGSs would either pass this cost onto all of their customers in their rates or choose not to participate in the POR program. If EGSs choose not to participate in the POR program, then customers will remain on default service and uncollectible costs will be socialized through default service rates because uncollectible costs would be unbundled through an adder applied to default service.

None of these three complications are implicated by PECO's proposal while the undisputed record evidence is clear that all of them will be present if OTS's proposal is adopted. Thus, a straightforward analysis of the two proposals makes clear that PECO's proposal is the more attractive approach. The EGS parties in this case support PECO's proposal and have raised legitimate and undisputed concerns about how adoption of OTS's proposal could negatively

¹³ OTS M.B. at 9. As an example, for residential customers PECO proposes to temporarily discount the receivables by .2% while OTS supports a 2.27% discount rate. Dividing 2.27% by .20% equals 11.35 and multiplying that by 100 results in an 1135% difference between the discount rate proposed by PECO and that supported by OTS.

impact the development of the competitive market.¹⁴ Thus, OTS's proposal should be rejected and PECO's adopted as the approach most consistent with achieving the goals of the Competition Act.

C. OTS Has Failed To Show That Exclusive Reliance On A Settlement Reached In PPL Supports Adoption Of Its Proposal

In defense of its proposal, OTS repeatedly points to the settlement reached in PPL for its 2010 POR program and argues that this is relevant based on three theories. First, OTS tries to assert that RESA supported the proposal for PPL and that alone should be enough to justify imposing it here.¹⁵ Second, OTS claims that “[t]here is simply no evidentiary support to recommend different standards in two different service territories.”¹⁶ Finally, OTS makes the blanket statement that “one need look no further than PPL’s results” to presumably justify implementation of OTS’s proposal for PECO.¹⁷ None of these theories, however, is supported in fact nor are any of them particularly persuasive.

At the outset, there were many significant differences present in the PPL POR proceeding that are not present here. PPL proposed the mechanism that OTS advocates here. After full consideration of the concept, PECO has not chosen to propose it. While RESA/Direct Energy fully support the idea that all EDCs in Pennsylvania should operate under uniform standards and uniform tariffs, the fact is that each EDC has its own billing systems and unique service territory

¹⁴ In addition to impacting the development of the competitive market, the record does not support OTS’s underlying reasons why its proposal should be adopted but rather “merely rearranges how this subsidization of costs is implemented and could create a less efficient means of recovering uncollectible accounts expense.” RESA/Direct Energy M.B. at 11 – 14.

¹⁵ OTS M.B. at 14.

¹⁶ *Id.* at 12

¹⁷ *Id.*

issues that prevent such uniformity from occurring today. Therefore, deference should be given to PECO in its decision to recommend the proposal it has done so here particularly in light of the fact that the proposal achieves the goal of appropriately structuring a POR program that will encourage EGSs to participate in the market.

Further, the impression OTS tries to create that RESA/Direct Energy fully supported PPL's proposal to address uncollectible accounts expense in its 2010 POR program is not correct. In fact, RESA specifically opposed PPL's proposed (and ultimately adopted) recovery of uncollectible accounts expense and advocated that PPL should recover all of its uncollectible accounts expense through distribution rates (as PECO has proposed here with RESA/Direct Energy's support).¹⁸ While RESA/Direct Energy continued to maintain that PPL's proposed approach was not preferable, it made clear that it was willing to accept the settlement to ensure that a POR program would be established in time for market opening in January 2010 (less than two months after the date main briefs were filed). Specifically, RESA/Direct Energy stated:

Because a functioning POR program is so crucial for the facilitation of competition, the Retail Energy Supply Association ("RESA") and Direct Energy Services, LLC ("Direct Energy") (collectively "RESA/Direct Energy") reached a settlement with all parties in this proceeding to implement a compromise program for 2010 only which permits PPL to move forward with implementing a POR program this coming January. The settlement addresses almost all of the program's elements including how EGSs will be able to enroll small commercial and industrial ("C&I") customers into PPL's POR program for 2010. Although RESA/Direct Energy do not support all aspects of the settlement as the appropriate long-term policy for POR programs (and reserve their rights to challenge those aspects in the future), implementation of a workable POR program on January 1, 2010 was the ultimate goal.¹⁹

¹⁸ *Id.* RESA St. No. 1 at 5-9.

¹⁹ *Petition of PPL Electric Utilities Corporation Requesting Approval of a Voluntary Purchase of Receivables Program and Merchant Function Charge*, Docket No. P-2009-2129502, Main Brief of The Retail Energy Supply Association and Direct Energy Services, LLC dated October 30, 2009 at 2 (citations omitted, emphasis original).

It must not be overlooked that PPL's POR proceeding was on an extremely expedited schedule. The Commission established due dates for the proceeding by notice dated September 25, 2009, entered its final decision on November 19, 2009 and, just a little over a month later, PPL's POR Program became operable on January 1, 2010. Additionally, the finally approved PPL POR program (idolized by OTS) is limited to 2010.²⁰ For these reasons, as explained in the quote above, RESA/Direct Energy chose to lend limited support to this aspect of the settlement even though it had reservations and made clear that its approval of the settlement was fact specific and did not waive its rights to challenge the various program aspects. OTS's failure to acknowledge these facts undermines its advocacy on this point.

Likewise, OTS's attempt to paint the 2010 PPL POR program as the "one any only" appropriate way to structure a POR program ignores other very important key facts. More specifically, the settlement approved for PPL's most recent default service case sets forth the minimum program elements that are to be included in the POR program that will become effective January 1, 2011.²¹ These elements include a "non-recourse" POR program and "discounts to POR payments to suppliers to reflect incremental uncollectible expenses not included in distribution rates."²² Because of this, the parties to the PPL default service proceeding will need to work out how to reconcile what was approved for the 2010 POR program with what was approved for the 2011 and beyond POR program. There is no certainty at this point that the 2010 POR Program will continue in its present form.

²⁰ *Petition of PPL Electric Utilities Corporation Requesting Approval of a Voluntary Purchase of Receivables Program and Merchant Function Charge*, Docket No. P-2009-2129502, Opinion and Order entered November 19, 2009.

²¹ *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period of January 1, 2011 through May 31, 2010*, Docket No. P-2008-2060309, Joint Petition for Settlement dated March 11, 2009 at 17.

²² *Id.*

Further, OTS's sole reliance on PPL's 2010 POR program ignores the POR programs that are in place in the service territories of Duquesne Light Company ("Duquesne")²³ and Pike County Light & Power Company ("PCL&P")²⁴ in Pennsylvania. Further, guidelines for implementation of a POR program for the service territories of Metropolitan Edison Company and Pennsylvania Electric Company (collectively "Met-Ed/Penelec") have been approved by the Commission.²⁵

Each of these POR programs addresses how to socialize the cost of uncollectible accounts expense associated with generation service differently. The PCL&P POR program has been in place since the Commission ordered it in 2006. All generation-related uncollectible expense is recovered through distribution rates and EGSs' receivables are purchased at 0% discount. For Duquesne, a negotiated uncollectible rate for EGS customers was derived and all distribution customers (which include both default service and EGS customers) pay for the costs of default service related uncollectibles that may exceed the level of the negotiated discount rate. For Met-Ed and Penelec, generation related uncollectibles will be recovered via a non-bypassable charge, either in distribution rates or as a separate mechanism (which is essentially the same proposal put forth by PECO). As this sampling of current and future POR program structure shows, the approach that has been more often adopted for the long term is more closely aligned with the PECO proposal rather than the 2010 PPL POR structure. OTS's simplistic view

²³ *Petition of Duquesne Light Company for Approval Of a Default Service Plan for the Period January 1, 2008 Through December 31, 2010*, Docket No. P-00072247, Order entered June 22, 2007.

²⁴ *Petition of Direct Energy Service, LLC For Issuance of Emergency Order*, Docket No. P-00062205, Final Opinion and Order entered April 20, 2006.

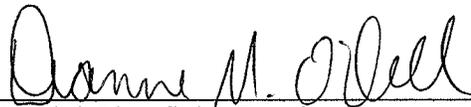
²⁵ *Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of their Default Service Programs* Opinion and Order at Docket Nos. P-2009-2093053 and P-2009-2093054 entered November 6, 2009.

that the model adopted in PPL for 2010 is the one any only way to do it is simply not helpful nor does it support OTS's position in this case that PECO's proposal should be rejected. The bottom line is that PECO has proposed a reasonable approach to address recovery of uncollectible accounts expense. This approach is supported by the EGS parties in this record and not opposed by the other parties. As it presents an uncomplicated and reasonable approach likely to foster the development of the competitive retail electricity market, PECO's proposal should be adopted.

III. CONCLUSION

RESA/Direct Energy respectfully request that the Administrative Law Judge issue a Recommended Decision adopting PECO's proposal as consistent with the goal of the Competition Act and the policy of this Commission to implement programs that will foster the development of a competitive market.

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