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June 1, 2010

Via Electronic Filing

Rosemary Chiavetta, 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 Chiavetta:

On behalf of the Retail Energy Supply Association and Direct Energy Services, LLC enclosed please find the Reply Exceptions 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 Exceptions 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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Dated: June 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 EXCEPTIONS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION
AND
DIRECT ENERGY SERVICES, LLC**

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TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	REPLY EXCEPTIONS	3
A.	Reply Exception: The Recommended Decision properly adopts PECO’s proposal to socialize the cost of generation related uncollectibles among all ratepayers	3
B.	Reply Exception: OTS Has Not Met Its Burden Of Showing Why OTS’s Proposal Should Be Adopted. 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	7
C.	Reply Exception: OTS Has Failed To Show That Exclusive Reliance On A Settlement Reached By PPL Supports Adoption Of The OTS’ Proposal for PECO	9
D.	Reply Exception: OTS’ Attacks On The Credibility of RESA/Direct Energy Fail To Show The OTS’ Proposal Is Superior to PECO’s Proposal.....	14
III.	CONCLUSION.....	15

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Riedel v. County of Allegheny</i> , 633 A.2d 1325 (Pa.Cmwlt. 1993)	7
<i>Se-Ling Hosiery v. Margulies</i> , 70 A.3d 854 (Pa. 1950)	3
Administrative	
<i>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</i>	12
<i>Petition of Direct Energy Service, LLC For Issuance of Emergency Order</i> , Docket No. P-00062205, Final Opinion and Order entered April 20, 2006	12
<i>Petition of Duquesne Light Company for Approval Of a Default Service Plan for the Period January 1, 2008 Through December 31, 2010</i> , Docket No. P-00072247, Order entered June 22, 2007	12
<i>Petition of PECO Energy Company for Approval of its Default Service Program and Rate Mitigation Plan</i> , Docket No. P-2008-2062739	1
<i>Petition of PECO Energy Company for Approval of its Revised Electric Purchase of Receivables Program</i> , Docket No. P-2009-2143607	1, 3
<i>Petition of PPL Electric Utilities Corporation Requesting Approval of a Voluntary Purchase of Receivables Program and Merchant Function Charge</i> , Docket No. P-2009-2129502	2, 11, 12
<i>PPL Electric Utilities Corporation Retail Markets</i> , Docket No. M-2009-2104271	1, 9, 12, 14
Statutes	
66 Pa. C.S. § 2806(a)	7

Regulations

52 Pa. Code § 5.231 14

52 Pa. Code § 69.391 14

52 Pa. Code § 69.401 14

I. INTRODUCTION

A crucial requirement for a viable competitive generation market is a properly structured Purchase of Receivables (“POR”) program through which the electric generation supplier (“EGS”) provides generation service to the consumer and the electric distribution company (“EDC”) purchases the receivables of the EGS and provides one bill to the consumer for all electricity charges. As the Commission has recognized, “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.”¹ In this proceeding, PECO Energy Company (“PECO”) seeks approval of its proposed POR program to be effective January 1, 2011 when its generation rate caps expire. The POR program proposed by PECO is in accordance with the Commission-approved settlement of PECO’s default service program for the provision of electric service after December 31, 2010 and PECO’s subsequent stakeholder meetings with interested parties regarding PECO’s POR Program.² The Retail Energy Supply Association³ and Direct Energy Services, LLC (collectively, “RESA/Direct Energy”) have been active participants in the proceedings preceding this case and were actively involved in the stakeholder process lead by PECO to develop the POR program for which it now seeks approval.

¹ *PPL Electric Utilities Corporation Retail Markets*, Final Order entered at Docket No. M-2009-2104271 on August 11, 2009 at 27.

² *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 P-2008-2062739; See PECO POR Petition, at ¶¶ 8-11

³ 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.

While a partial settlement resolved almost all of the concerns raised by the parties in this proceeding, the issue of how to recover uncollectible accounts expense is one of two that remains unresolved. The Office of Trial Staff (“OTS”) is the only party that opposes PECO’s proposal through which PECO would continue to recover the cost of uncollectible accounts expense associated with generation service in distribution rates as it does today. Instead, OTS advocates that the Commission should require PECO to unbundle non-jurisdictional charges and collect the cost of generation-related uncollectible accounts expense through the default service rate and the discount at which PECO purchases the receivables of the EGS through the POR program. OTS’s approach is based exclusively on the method currently used for the POR program effective for 2010 only in the service territory of PPL Electric Utilities Corporation (“PPL”).⁴

RESA/Direct Energy support PECO’s proposal as a reasonable way to address the recovery of uncollectible expense in a POR program that will also encourage the development of competition in the retail electricity market. On the other hand, OTS has failed to show why its alternative proposal is necessary or how it would function with outdated data or why its potential chilling effects on competition should be ignored.

In her April 22, 2010 Recommended Decision (“RD”), Administrative Law Judge (“ALJ”) Cynthia Williams Fordham correctly approved PECO’s proposal and rejected OTS’s alternative proposal.⁵ OTS filed an exception asking the Commission to reject the ALJ’s decision in this regard. As discussed below, OTS’s exception should be denied and PECO’s approach should be approved as proposed. Further, RESA/Direct Energy respectfully request

⁴ *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, Order entered Nov. 19, 2009.

that the Commission resolve this case as expeditiously as possible since the implementation date for the POR program is only seven months away. PECO and the EGSs need time to work on implementing the program and ensuring that it can be properly tested in advance of its go-live date of January 1, 2011. By acting swiftly to give the parties needed certainty, the Commission will be fulfilling its obligations under the Choice Act to foster the development of a fully functional and robust competitive market in one of the key service territories in the Commonwealth.

II. REPLY EXCEPTIONS

A. **Reply Exception: The Recommended Decision properly adopts PECO's proposal to socialize the cost of generation related uncollectibles among all ratepayers**

Initially, PECO had the burden of coming forward with sufficient evidence to support a prima facie case for its proposal.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 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. Moreover, as the record makes clear, PECO's proposal is the one that is favored by the EGS parties in this proceeding, is not

⁵ *Petition of PECO Energy Company for Approval of its Revised Electric Purchase of Receivables Program*, Docket No. P-2009-2143607, Recommended Decision dated April 22, 2010 at 47.

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

⁷ RESA/Direct Energy Main Brief at 13.

opposed by any party other than OTS, and is the one that is most likely to encourage the development of a competitive market.

OTS failed to provide any evidence that PECO's approach will result in any unfairness or subsidy of any one customer group.⁸ Rather, OTS tries to support its opposition by arguing that PECO's proposal will "shift" the burden of uncollectible accounts expense to jurisdictional ratepayers while "insulating" the "non-jurisdictional entities" and that this alleged result "ignore[s] the fundamental tenets of utility regulation that prohibits the shifting of costs from unregulated parties to regulated parties."⁹ OTS's argument is fundamentally flawed and the evidence in the record shows that PECO's proposal is the most fair and reasonable way based on the circumstances of this case to socialize the cost of uncollectible expenses and should be adopted.

The fundamental issue here is how to most fairly socialize the cost of providing service to customers who do not pay their bills, i.e. the uncollectible accounts expense. Neither the EDC nor the EGS directly pay these costs; rather, they are paid by the ultimate ratepayer as a part of their rates for services. Thus, contrary to OTS's position, there is no "shifting" of uncollectible accounts costs from the EDC to the EGS or, as OTS characterizes them, regulated vs. unregulated "parties" or "jurisdictional ratepayers" vs. "non-jurisdictional entities." Instead, the question for the Commission to decide is how best to recover the cost of non-paying customers among paying customers.

In addressing this question, OTS claims that PECO's proposal "will result in shopping customers paying for uncollectible accounts twice" and that this "double payment will occur because the EGS is insulated from [the risk of non-payment] as [it] receive[s] full reimbursement

⁸ RESA/Direct Energy Main Brief at 11-12.

under the PECO plan.”¹⁰ Again, OTS is unmistakably wrong. Simplistically speaking, there is only one paying customer here who will be forced to pay for the costs of other customers who do not pay their bills. That paying customer receives both distribution and generation services. The distribution service will always be provided by the EDC. The generation service may be provided by the EDC (as default service) or provided by the EGS (as a competitive alternative). When other customers fail to pay their bills, the cost of that is borne by all paying customers regardless of what company is providing generation service.

Under PECO’s proposal, the paying customer will pay for other customers who fail to pay their bills for their generation service (whether provided by PECO or an EGS utilizing POR) through a nonbypassable charge that all PECO customers pay. Because all PECO customers necessarily receive PECO’s distribution service, this proposed mechanism replicates the current approach wherein all paying customers are required to reimburse the utility for the bad debt of non-payers.

Despite OTS’s claim to the contrary, those paying distribution customers who choose to receive generation service from an EGS (“shopping customers”) will not be paying twice for the same uncollectible expense. This is because, if PECO’s proposal is adopted, EGSs will price their competitive offers without factoring in some amount to account for the risk of non-payment.¹¹ While OTS tries to use the testimony of RESA Witness Richard Hudson to imply that even under the PECO proposed POR program EGSs will factor in the cost of non-payment, OTS fails to provide the complete testimony which clearly states that under a POR program like that proposed by PECO, “EGSs will remove any component included in their rates designed to

⁹ OTS Exception at 5.

¹⁰ OTS Exception at 6.

¹¹ RESA St. No. 1-R at 6.

account for” the risk of non-payment.¹² In addition to record evidence directly contrary to OTS’s position is the fact that EGSs are competitive alternative suppliers. This means that they will be competing against each other as well as the entrenched monopoly provider of generation service that has all of the customers. Thus, and contrary to OTS’s suppositions, EGSs have every incentive to price competitive generation service as low as reasonably possible. Accordingly, EGSs will remove the risk of non-payment from its pricing since, in a competitive market, if they do not do so, some other competitor will simply step in and provide the lower price. This is the exact opposite of what OTS claims will be the result if PECO’s proposal is adopted, but competitive market theory – and common sense – compels rejection of OTS’s unsupported theories.

Further, as supported by the record, 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).¹³ Under PECO’s proposal this approach would continue for competitive generation service. It would also have the advantage of permitting customers with higher credit risk to take advantage of the competitive market. These customers otherwise might not receive competitive offers but for the POR program structured as proposed by PECO. Finally, as discussed below, PECO’s proposed approach is reasonably calculated to encourage competitors to come into the market and provide competitive offers which fulfill the purpose of the Choice Act to give all EDC customers the “opportunity to purchase electricity from their choice of electric generation suppliers.”¹⁴ The same is not true of OTS’s proposed alternative and, therefore, it was rightfully rejected by the ALJ.

¹² *Id.*

¹³ RESA St. No. 1-R at 5.

¹⁴ 66 Pa. C.S. § 2806(a).

B. Reply Exception: OTS Has Not Met Its Burden Of Showing Why OTS's Proposal Should Be Adopted. 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

As explained in the preceding section, the record shows that PECO's approach is a reasonable and sound way to fairly socialize the cost of uncollectible accounts expense among all ratepayers which is consistent with the way it is done today. As the party opposing PECO's proposal, OTS has the burden to support its counter proposal and OTS did not satisfy this burden.¹⁵ On the contrary, the undisputed record provides at least three concrete examples of how adoption of OTS's proposal could needlessly complicate PECO's POR program and thwart the goals of the Choice Act by discouraging EGSs from providing competitive generation alternatives to consumers.

First, the foundation of OTS's proposal is to use an uncollectible expense factor last reviewed by the Commission in 1997 (and actually determined in PECO last distribution rate case – in the 1980's!). This is a woefully outdated uncollectible expense factor which has no rational relationship to the current general understanding of uncollectible levels experienced today. Moreover, the use of such an outdated factor is in stark contrast to the uncollectible expense factor used for the PPL 2010 POR program which was from PPL's 2007 rate case. Requiring EGS's to factor into their pricing decision such an irrational (and not current) uncollectible expense factor in today's business realities is unreasonable and unnecessary.¹⁶

Second, implementation of OTS's proposal in strict adherence to how it was adopted in PPL for 2010 only, could result in implementation of a complicated EGS uncollectible tracking mechanism that requires careful monitoring and calculations, administrative processes, costly

¹⁵ *Riedel v. County of Allegheny*, 633 A.2d 1325, 1328 n. 11 (Pa.Cmwlt. 1993).

¹⁶ RESA/Direct Energy Main Brief at 12-13.

EDC systems modifications, and potential litigation.¹⁷ 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.

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%.¹⁸ 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. Even the Commission has commented that:

... 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.¹⁹

OTS's proposal here to adopt a significantly higher and unnecessary discount rate that none of the EGS parties support serves no legitimate public policy goal in terms of how the costs of non-paying customers is socialized among paying customers.²⁰ On the contrary, such action only

¹⁷ *Id.* at 15.

¹⁸ OTS M.B. at 9; RESA/Direct Energy Reply Brief at 5.

¹⁹ *PPL Electric Utilities Corporation Retail Markets*, Docket No. M-2009-2104271 Final Order entered August 11, 2009 at pp. 29-30.

²⁰ While RESA continues to support the concept of full unbundling, it has chosen to support PECO's approach in this case to avoid the overly burdensome and complicated mechanisms adopted in other proceedings to address an entirely theoretically concern

threatens to limit the number of EGSs that may enter the market thus thwarting the ability of robust competition to develop for the benefit of consumers.

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 one. The EGS parties in this case support PECO's proposal and have raised legitimate and undisputed concerns about how to implement OTS's proposal and to deal with the negative fallout that would surely follow.²¹ Thus, OTS's proposal should be rejected and PECO's adopted as the approach most consistent with achieving the goals of the Choice Act.

C. Reply Exception: OTS Has Failed To Show That Exclusive Reliance On A Settlement Reached By PPL Supports Adoption Of The OTS' Proposal for PECO

The OTS repeatedly points to the settlement reached in PPL for its POR program for 2010 only and argues that this is relevant to this proceeding.²² However, the OTS has failed to provide persuasive evidence that its proposal is, or should be, the standard approach for all POR programs in Pennsylvania for several reasons. First, OTS tries to assert that RESA/Direct Energy supported the proposal for PPL and that alone should be enough to justify imposing it

over "cherry picking." Moving forward with PECO's approach at this time, gives PECO the opportunity to gain experience with the implementation of POR. Once PECO and other parties fully understand how EGSs operate in a POR environment, it may be possible to revisit the issue of unbundling in a future POR or base rate proceeding. RESA St. No. 1 at 13; RESA St. No1R, at 4.

²¹ 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 Main Brief at 11 – 14.

²² OTS Exception, at 9-11.

here.²³ In doing so, OTS tries to create the misimpression that RESA/Direct Energy fully supported PPL's proposal to address uncollectible accounts expense in its 2010 POR program. That is unequivocally untrue.

In fact, RESA/Direct Energy 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).²⁴ 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.²⁵

²³ OTS Exception, at 9; OTS Main Brief at 14.

²⁴ *Id.*; RESA St. No. 1 at 5-9.

²⁵ *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 is hard to imagine how RESA could have been more clear that it was accepting the PPL proposal only in order to move forward quickly to get some type of POR program in place in time for the opening of its market in January, 2010.

A second way OTS attempts to support its position that PPL's approach should be implemented here is by claiming that there is no evidentiary support to recommend different standards in two different service territories.²⁶ In its Exceptions, OTS characterizes the 2010 PPL POR program as the "one and only" appropriate way to structure a POR program.²⁷ Despite this, nothing in any of the Commission's orders to date addressing a POR program for PPL indicate that PPL's 2010 program was ever intended to create a statewide standard. In fact, there are, at least, two separate statements from the Commission that underscore the lack of precedent value in PPL's 2010 POR Program. In the PPL Electric Utilities Corporation Retail Markets Order (entered August 11, 2009), the Commission stated:

We understand that each EDC is unique and may require different operating directives, however slight, before it attempts to implement the activities discussed below. We would anticipate that these directives will serve as the starting point in proceedings regarding other companies, not necessarily the end points. Moreover, because each EDC, as they are constantly telling us, is different, we do not believe a *one size fits all* regulation is appropriate at this time.²⁸

Later, in adopting the PPL POR program for 2010 only, the Commission stated that its approval was limited "and it shall have no precedential effect in the context of the Commission's

²⁶ OTS Exception, at 10; OTS Main Brief at 12

²⁷ *Id.*

²⁸ *PPL Electric Utilities Corporation Retail Markets Order*, PUC Docket No. M-2009-2104271 (Order entered August 11, 2009), at 2-3.

collaborative to be held in 2010 to develop a permanent Purchase of Receivables Program.”²⁹

OTS’s failure to acknowledge these statements is fatal to its advocacy on this point.

OTS’s sole reliance on PPL’s 2010 POR program also ignores the fact that prior POR programs that are in place in the service territories of Duquesne Light Company (“Duquesne”)³⁰ and Pike County Light & Power Company (“PCL&P”)³¹ 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.³² A review of these POR programs show that they are more closely aligned with the PECO proposal than with the 2010 PPL POR structure and each of these POR programs addresses how to socialize the cost of uncollectible accounts expense associated with generation service differently.³³

Finally, OTS contends that there is no credible evidence to distinguish the operation of PPL’s POR program from the program proposed in PECO’s service territory.³⁴ This is not the case. There were many significant differences present in the PPL POR proceeding that are not present here (including PPL’s expressed concerns about “cherry picking” and the fact that PECO

²⁹ *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, at 24 (Ordering Paragraph 5).

³⁰ *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.

³¹ *Petition of Direct Energy Service, LLC For Issuance of Emergency Order*, Docket No. P-00062205, Final Opinion and Order entered April 20, 2006.

³² *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.

³³ RESA/Direct Energy Reply Brief at 9.

³⁴ OTS Exception, at 10.

– unlike PPL – has not had a rate case for a decade).³⁵ After full consideration of PPL’s approach in consideration of its specific systems and market and three stakeholder meetings wherein it gathered information from those stakeholders who chose to participate (which included RESA and Direct Energy), PECO chose not to propose PPL’s method here.³⁶ Rather than override PECO’s decision (as OTS is advocating), RESA/Direct Energy suggests that deference should be given as PECO’s approach represents a reasonable way to address the issue of uncollectible accounts expense at this time. While RESA/Direct Energy fully support the idea that all EDCs in Pennsylvania should operate under uniform standards and uniform tariffs, the reality is that each EDC has its own billing systems and unique service territory issues that prevent such uniformity from occurring today.³⁷

OTS’s simplistic view that the model adopted in PPL for 2010 is the one any only way to socialize the cost of non-paying customers among all ratepayers is not helpful nor does it lend support to OTS’s opposition to PECO’s proposal. The bottom line is that PECO has proposed a reasonable way to address the recovery of uncollectible accounts expense. This approach is supported by the EGS parties in this record and not opposed by the other parties and was developed after three stakeholder meetings wherein all parties were invited to participated. As PECO’s proposal presents an uncomplicated and reasonable approach that is likely to foster the development of the competitive retail electricity markets, PECO’s approach should be adopted and OTS’s exceptions denied.

³⁵ RESA/Direct Energy Reply Brief at 6.

³⁶ See PECO POR Petition, at ¶ 11.

³⁷ *PPL Electric Utilities Corporation Retail Markets Order*, Docket No. M-2009-2104271 Order entered August 11, 2009 at 2-3.

D. Reply Exception: OTS' Attacks On The Credibility of RESA/Direct Energy Fail To Show The OTS' Proposal Is Superior to PECO's Proposal

In an effort to discredit RESA/Direct Energy's support for PECO's proposal, OTS contends that RESA's policy position regarding POR (which are posted on RESA's website) must be conclusive as to all of RESA/Direct Energy's settlement positions for every EDC.³⁸ By advocating this position, OTS is implying that RESA/Direct Energy is precluded from reaching a compromise. This is not consistent with the Commission's rules and practices encouraging negotiated settlements.³⁹

Despite this obvious inconsistency, OTS demands "substantial evidence to explain why the recommendations presented by RESA differ in this proceeding" from RESA's policy positions.⁴⁰ To the extent it is even necessary, it should be obvious that RESA/Direct Energy has concluded that the PECO proposal is better for competition, while remaining just and reasonable to customers.

³⁸ OTS Exception, at 11-12.

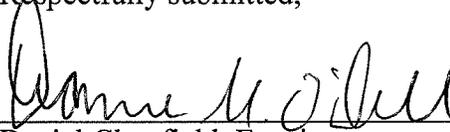
³⁹ See 52 Pa. Code §§ 5.231, 69.391, 69.401.

⁴⁰ OTS Exception, at 12.

III. CONCLUSION

RESA/Direct Energy urges the Commission to swiftly act to deny OTS's exceptions and approve PECO's POR program as proposed so that the stakeholders can move forward to implement the POR program for the benefit of all consumers.

Respectfully submitted,



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Date: June 1, 2010

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