COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

September 2, 2010

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission v.
PPL Electric Utilities Corporation

Docket No. R-2010-2161694

Dear Secretary Chiavetta:

Enclosed please find an original and nine (9) copies of the Office of Trial Staff's (OTS) **Main Brief** in the above-captioned proceeding.

Copies are being served on all active parties of record.

Sincerely,

Lawrence F. Barth
Prosecutor
Office of Trial Staff
PA Attorney I.D. #52446

Enclosure
LFB/edc

cc: Parties of record

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission, *et al.*	:	
	:	Docket No. R-2010-2161694
v.	:	
PPL Electric Utilities Corporation	:	

MAIN BRIEF OF THE OFFICE OF TRIAL STAFF

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Dated: September 2, 2010

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I. INTRODUCTION

A. Statement of the Case and Procedural History

On March 31, 2010, the PPL Electric Utilities Corporation ("PPL" or "Company") Company filed Supplement No. 83 to Tariff Electric - Pa. P.U.C. No. 201 ("Supplement No. 83"). Supplement No. 83 contained proposed changes in rates, rules and regulations designed to produce approximately an additional $114.7 million in additional annual base rate revenue. The Company's requested increase is based on the level of operations reflected in the future test year ending December 31, 2010. The requested revenue equated to an increase of 16.5% over existing base rates.

By order entered May 20, 2010, the Commission suspended the base rate filing and instituted an investigation to determine the lawfulness, justness and reasonableness of the proposed rates, rules and regulations contained in the Company's filing. The order indicated that the filing would be suspended by operation of law until January 1, 2011, unless permitted by subsequent Commission Order to become effective at an earlier date. The filing was assigned to the Office of Administrative Law Judge ("OALJ") for the purpose of conducting evidentiary hearings and the preparation and issuance of a recommended decision. The OALJ subsequently assigned Administrative Law Judge ("ALJ") Susan D. Colwell as the presiding officer.

Consistent with its duty to represent the public interest in matters before the Commission that have an impact on rates, OTS filed its notice of appearance

indicating its participation in this proceeding. The Office of Consumer Advocate ("OCA") and the Office of Small Business Advocate ("OSBA") filed formal complaints against the proposed increase. In addition to the formal complaints of the public advocates, the PPL Industrial Customer Alliance ("PPLICA"), Eric Epstein, Whitehall Township and eleven individual customers filed complaints.

In addition to the OTS notice of appearance and the formal complaints listed above, petitions to intervene were filed by Richards Energy Group ("REG"), Sustainable Energy Fund ("SEF"), Commission on Economic Opportunity ("CEO"), Citizens for Pennsylvania's Future ("PennFuture"), International Brotherhood of Electrical Workers, Local 1600 ("IBEW"), Dominion Retail, Inc. ("Dominion"), Retail Energy Supply Association ("RESA") and Washington Gas Energy Services, Inc. ("WGES").

A Prehearing Conference was held on May 26, 2010, at which time a procedural schedule was developed. The procedural schedule included filing dates for testimony, main briefs and reply briefs as well as dates for evidentiary hearings. The prehearing conference also resulted in the modification of the Commission's discovery rules.

On May 27, 2010, ALJ Colwell issued a Second Prehearing Order memorializing the agreements and determinations made at the prehearing conference. The determinations from the prehearing conference included granting the petitions to intervene of CEO, REG, IBEW, SEF, Dominion, RESA and

PennFuture. In an Initial Decision dated August 5, 2010, ALJ Colwell denied the petition to Intervene of WGES.

Five public input hearings were held throughout the Company's service territory. The public input hearings included Scranton and Wilkes Barre on June 14, 2010, Bethlehem and Allentown on June 21, 2010 and Harrisburg on June 23, 2010.

Evidentiary hearings were scheduled to begin in Harrisburg on August 9, 2010. Prior to the commencement of the evidentiary hearings, PPL and a number of parties requested that the first two scheduled days of hearings be cancelled so discussions among the parties might continue in an effort to achieve a settlement of the contested issues. This request was granted by the ALJ and negotiations and settlement discussions continued. These talks culminated in the resolution of most of the disputed issues as memorialized in a *Joint Petition for Partial Settlement of Rate Investigation* ("Settlement Agreement") which was subsequently filed. It is discussed below.

As a result, the scheduled evidentiary hearings were limited to August 11, 2010, wherein testimony was presented into the record and issues reserved for litigation were argued. In addition, the oral testimony of a formal complainant was received telephonically at the evidentiary hearing.

In anticipation of litigation, OTS had preliminarily identified and served the testimony of its expert witnesses. The OTS testimony submitted in this proceeding

and admitted into the record[1] at the August 11 hearing includes the Direct Testimony of Robert Plonski and accompanying exhibit (OTS Statement No. 1 and Exhibit No. 1), Surrebuttal Testimony of Robert Plonski and accompanying exhibit (OTS Statement No. 1-SR and Exhibit No.1-SR), Direct Testimony of Christine Wilson, CPA, and accompanying exhibit (OTS Statement No. 2 and Exhibit No. 2), Rebuttal Testimony of Christine Wilson, CPA (OTS Statement No. 2-R), Surrebuttal Testimony of Christine Wilson, CPA, and accompanying exhibit (OTS Statement No. 2-SR and Exhibit No. 2-SR), and Direct Testimony of Michael J. Gruber and accompanying exhibit (OTS Statement No. 3 and Exhibit No. 3).

B. Evidentiary Standard and Burden of Proof

The Company has the burden of proving the reasonableness of each and every element of its claim. Section 1301 of the Public Utility Code, states that "[e]very rate made, demanded, or received by any public utility...shall be just and reasonable, and in conformity with regulations or orders of the commission..."[2] The Public Utility Code ("Code") also provides that the burden of establishing the justness and reasonableness of rates is clearly on the public utility.[3] The purpose of this proceeding is to assure that just and reasonable rates are established for the customers of PPL. The standard to be met by the Company is set forth at Section 315(a) of the Public Utility Code, and is summarized as follows:

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1 Tr. 472-74.
2 66 Pa. C.S.A. § 1301.
3 *See*, 66 Pa. C.S.A. § 315(a).

> [R]easonableness of rates. In any proceeding upon the motion of the Commission, involving any proposed or existing rate of any public utility, or in any proceeding upon complaint involving any proposed increase in rates, the burden of proof to show that the rate involved is just and reasonable shall be upon the public utility.[4]

The relevant statutory provision of Section 315(a) of the Public Utility Code clearly shows a legislative intent that the utility carry the burden of proving the justness and reasonableness of proposed and existing rates. The Commonwealth Court in reviewing Section 315(a) interpreted the utility's burden of proof in rate proceedings as follows:

> Section 315(a) of the Public Utility Code, 66 Pa. C.S. §315(a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the public utility. It is well-established that the evidence adduced by a utility to meet this burden must be substantial.[5]

The legislative intent regarding the extent of a utility's burden of proof is further supported by the pronouncements of the Pennsylvania Supreme Court in *Burleson v. Pennsylvania Public Utility Commission*, which clearly defined the dimensions of this obligation.

While the *Burleson* case involved a billing dispute, obliging the customer complainant to carry the burden of proof, the same rationale applies to a utility's obligation in a proceeding arising out of its general rate filing. Submission of the

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4 66 Pa. C.S. § 315(a).

5 *Lower Frederick Twp. v. Pennsylvania Public Utility Commission*, 48 Pa. Cmwlth. 222, 226-227, 409 A.2d 505, 507 (1980). See also, *Brockway Glass v. Pennsylvania Public Utility Commission*, 63 Pa. Cmwlth. 238, 437 A.2d 1067 (1981).

proposed tariff and supporting data may establish a *prima facie* case. However, data composing a prima facie case do not meet the utility's burden of proving the elements of its proposed tariff with substantial evidence. As noted by the Supreme Court in *Burleson* "there is clear distinction between the weight of evidence required to support a prima facie case and the weight necessary to meet a complainant's burden of proof."[6] The court in *Burleson* further opined that:

> ...the elements of that cause of action are proven with substantial evidence that enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.[7]

Substantial evidence has been defined as "...that quantum of evidence which a reasonable mind might accept as adequate to support a conclusion."[8]

The Commission has continued to affirm the utilities' burden of proof in base rate proceedings. In *Pennsylvania Public Utility Commission v. Breezewood Telephone Company* the Commission made the following ruling:

> [t]hus, where a party has raised a question concerning an element at issue, the affirmative burden of proving justness and reasonableness of its claim is upon BTC.[9]

The Commission and the Courts have clearly held that the burden of proof does not shift to the party challenging a requested rate increase. While the burden

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6 *Burleson v. Pennsylvania Public Utility Commission*, 501 Pa. 433, 461 A.2d 1234 (1983).

7 Id. at 437.

8 *Dutchland Tours, Inc. v. Pennsylvania Public Utility Commission*, 19 Pa. Cmwlth. 1, 337 A.2d 922 (1975), as quoted in *Norfolk & Western Railway Co. v. Pennsylvania Public Utility Commission.*, 489 Pa. P.U.C. 109, 128 (1980).

9 *Pennsylvania Public Utility Commission v. Breezewood Telephone Company*, 74 Pa. P.U.C. 431 (1991).

of going forward may shift, the burden of finally and convincingly establishing the justness and reasonableness of every component of a requested rate increase remains on the utility. The opposing parties have no such burden. As stated by the Pennsylvania Supreme Court in *Berner v. Pa. P.U.C*:

> [t]he appellants did not have the burden of proving that the plant additions were improper, unnecessary or too costly; on the contrary, that burden is, by statute, on the utility to demonstrate the reasonable necessity and cost of the installations...[10]

On this subject, the Commission has ruled as follows:

> [t]here is no presumption of reasonableness which attached to a utility's claim, at least none which survives the raising of credible issues regarding a utility's claims. A utility's burden is to affirmatively establish the reasonableness of its claim. It is not the burden of another party to disprove the reasonableness of a utility's claims.[11]

In the instant proceeding, it is incumbent upon the Company to affirmatively prove the reasonableness of every element of its claim. A review of the record will demonstrate that in a number of instances identified herein the Company has failed to prove the reasonableness of its claims. As such, an applicant's claims should be rejected based upon its failure to sustain its burden of proof. Failing to satisfy this burden, an applicant's proposed rates, rules and regulations are not in the public interest, as they would result in rates that are neither just, nor reasonable.

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10 *Berner v. Pennsylvania Public Utility Commission* 382 Pa. 622, 631, 116 A.2d 738, 744 (1955)

11 *Pennsylvania Public Utility Commission v. Equitable Gas Co.*, 57 PA P.U.C. 423, 444 (fn. 37) (1983).

II. SUMMARY OF ARGUMENT

Most of the matters at issue in this proceeding have been resolved through the *Joint Petition for Partial Settlement*. The Office of Trial Staff submits that the unopposed Settlement Agreement resolves these matters in a just and reasonable manner which is in the public interest. It should be approved by the Commission.

One of the issues reserved for litigation by non-signatories to the Settlement Agreement is the Company's Purchase of Receivables program. PPL has been operating a program whereby it assists the EGSs on its system by purchasing accounts receivable from them since it restructured in 1998. Last year, at the request of the Commission, PPL made specific changes to this program. It began operating under these changes in January of this year. In this case PPL seeks to maintain the program as approved by the Commission with the only change being an update to the discount rate offered on the purchase of receivables. This is consistent with traditional ratemaking practice and should be approved.

III. ARGUMENT

A. Joint Petition for Partial Settlement

PPL filed the Settlement Agreement on August 26, 2010. In addition to PPL, OTS, OCA and Richards Electric have are signatories to the agreement. All remaining active parties have indicated that they do not oppose the Settlement Agreement. A few issues were reserved for litigation. Among the more notable features of the stipulation, the Settlement Agreement reduces the requested rate

increase to $77.5 million and establishes the customer service charge for residential customers (Rate Schedule RS) at $8.75 per month as opposed to the requested customer charge of $15.38. These modifications to the requested rates are in the public interest and should be adopted by the Commission. OTS has detailed these issues and set forth the basis for its support of the Settlement Agreement in its Statement in Support filed August 26, 2010. That Statement in Support is incorporated by reference herein and will not be repeated here.

B. Purchase of Receivables

PPL operates a purchase of receivables (POR) program wherein it buys the sales on account (accounts receivable) of electric generation suppliers (EGSs) operating on its system.[12] PPL has operated a POR program since its original restructuring settlement in 1998.[13] PPL agreed to revised its POR plan as part of a settlement of its Default Service Plan in 2009.[14] The plan was intended to cover the period of January 1, 2011 through May 31, 2014.[15] However, in anticipation of the Company's generation rate cap expiring at the end of 2009, the Commission issued a Tentative Order wherein it asked PPL to adopt certain standards in its POR program effective January 1, 2010 when the caps lifted.[16]

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12 OTS Statement No. 2-R, pp. 7-8; PPL Statement No. 6, pp. 6-15; PPL Statement No. 7, pp. 30-35.

13 PPL Statement No. 6, p. 6.

14 *Petition of PPL Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period January 1, 2011 Through May 31, 2014,* Docket No. P-2008-2060309, Opinion and Order entered June 30, 2009, p. 12.

15 *Id.*

16 PPL Electric Utilities Corporation Retail Markets, Docket No M-2009-2104271, Tentative Order entered May 15, 2009, pp. 14-15 (Tentative Order).

The Commission recognized the importance of POR plans stating that, in its judgment, the use of POR programs can reduce barriers to market entry which could "translate into reduced costs to consumers."[17] In short, by allowing an electric distribution company (EDC) like PPL to assume the customer debt of an EGS, competition become easier for the EGS because it does not have to expend the effort, resources and expense associated with trying to collect payment on those accounts. Thus, it followed, that when the Commission acted to adopt the modifications to PPL's POR plan in the Tentative Order, it observed:

> [B]ased 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 PPL's service territory will not likely have the competitive market and customer choice that the legislation intended when the rate caps expire on December 31, 2009.[18]

In response to the Commission's Order, PPL filed for approval of a POR plan (at Docket No. P-2009-2129502) which it argued complied with the modifications directed by the PUC. The Commission subsequently approved a settlement among

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17 *Id.*

18 *PPL Electric Utilities Corporation Retail Markets*, Docket No M-2009-2104271, Opinion and Order entered August 11, 2009, p. 27.

PPL and industry stakeholders which put in place the Company's current POR program.[19] It should be noted that many of the parties in the proceeding *sub judice* are signatories to that settlement.

PPL witness Krall described how that POR plan worked, in part, in his testimony here:

> Under the POR program that became effective on January 1, 2010, the Company purchases EGS receivables for customers in its Residential and Small Commercial & Industrial ("Small C&I") Rate Classes at a discount from standard supply charges. The discounts are different for Residential and Small C&I customers. Each of the discount rates is composed of two components: (1) an uncollectible accounts expense percentage factor, and (2) a POR development, implementation, and administration percentage factor. In parallel, the Company instituted a Merchant Function Charge ("MFC") which "unbundles" from its distribution base rates the uncollectible accounts expense associated with generation supply. Under this construct, the Company continues to recover uncollectible accounts expense associated with non-generation supply-related delivery service from Residential and Small C&I customers through distribution rates. Uncollectible accounts expense associated with generation supply for Residential and Small C&I default service customers is separated from the Company's distribution rates and is recovered through the MFC which, in turn, is included in the Generation Supply Charge. The MFC also is included in the Price To Compare ("PTC") that is reported by PPL Electric. Residential and Small C&I customers who sign-up with an EGS for generation supply do not pay the MFC. Large Commercial & Industrial ("Large

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

C&I") customers continue to operate under the original POR construct.[20]

PPL seeks to maintain the current POR program with the sole exception being the updating of the discount rates described immediately above.[21] OTS believes this is reasonable and it supports these changes to the discount rates.[22]

As detailed above, PPL's POR program has been operating since the Company was restructured more than 10 years ago. Last year, the Commission initiated a number of changes in that program which PPL, with the active participation of its customers and EGSs, implemented. That plan should be afforded an opportunity to operate without major changes imposed by PPL, the EGSs operating on its system or its customers. The plan has only been operating with those changes for a period of less than a year since the cap on generation expired. The Company, the EGSs and, most of all, consumers would benefit from a period of plan stability.

The only change which would make sense, and the only change which PPL has requested is updating of the discount rates so that these rates accurately reflect current conditions. This is consistent with traditional ratemaking principles and should be approved by the Commission.

RESA would have the Commission impose new conditions on PPL and its customers, apparently in the form of state-wide standards.[23] These changes

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20 PPL Statement No. 6, pp. 8-9.
21 PPL Statement No. 7, pp. 32-35.
22 OTS Statement No. 2-R, pp. 7-11.

may provide benefits for the EGSs, but are unnecessary in terms of fostering competition. Moreover, the Commission lacks the requisite authority to mandate such changes in a POR program. As the PUC has acknowledged, it does not have jurisdiction to impose a POR plan on a utility:

> Specifically, PPL contends that it voluntarily filed its POR Program with the Commission in response to the Retail Markets Order, and does not believe that the Commission has the authority to require it to purchase an EGS' receivables. We agree. In *PECO Energy Co. v. Pa. PUC*, 568 Pa. 39, 791 A.2d 1155 (2002), the Supreme Court of Pennsylvania stated as follows:
>
> > The power of the Commission is statutory, arising either from words contained in the enabling statutes or by a strong and necessary implication from those words, and the legislative grant of power in any particular case must be clear.
>
> No provision of the Code either expressly or by "strong and necessary implication" provides the Commission with the authority to require EDCs to purchase accounts receivable from EGSs. On the contrary, the Code specifically provides that the Commission cannot require EDCs to purchase EGS' accounts receivables. [24]

Had the Commission jurisdiction to make the changes sought by RESA, there is no need to tamper with the existing program beyond updating the discounts as requested by PPL. In fact, competition has been thriving on the PPL

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23 *See,* RESA Statement No. 1, generally and RESA Statement No. 1-SR, pp. 2-4.
24 PPL Nov. 19 Order at 9-10.

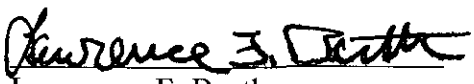
system since the current plan was put into operating at the beginning of the year.[25] As of July 3, 2010, 31.5% of residential customers and 39.5% of small commercial and industrial customers were either receiving service from an EGS or were signed up to begin receiving such service.[26] The most recent data show that 24 EGSs are actively supplying residential customers service and 30 EGSs are supplying small commercial and industrial customers.[27] These figures show that, in terms of competition, the system is decidedly not broken. RESA proposals amount to fixes in search of a problem and should be rejected by the Commission.

25 PPL Statement No. 6-R, pp. 5-6.
26 *Id.*
27 *Id.*

IV. CONCLUSION

For the reasons set forth above, the Office of Trial Staff respectfully submits that the *Joint Petition for Partial Settlement of Rate Investigation* is in the public interest and should be approved. Furthermore, PPL Electric Utilities Corporations has demonstrated that its proposed Purchase of Receivables plan as adjusted for an update to the discount rate is just and reasonable and in the public interest and should also be approved.

Respectfully submitted,



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Dated September 2, 2010

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	
	:	
v.	:	Docket No. R-2010-2161694
	:	
PPL Electric Utilities Corporation	:	

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Main Brief** dated September 2, 2010, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below:

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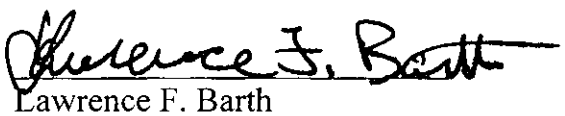

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