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

IN REPLY PLEASE
REFER TO OUR FILE

September 13, 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) **Reply Brief** in the above-captioned proceeding.

Copies are being served on all active parties of record.

Sincerely,

Richard A. Kanaskie
Senior Prosecutor
Office of Trial Staff
PA Attorney I.D. #80409

Enclosure
RAK/edc

cc: Parties of record

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF OF THE OFFICE OF TRIAL STAFF

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Dated: September 13, 2010

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I. INTRODUCTION

The Statement of the Case and Procedural History has been presented in detail in the Office of Trial Staff ("OTS") Main Brief and need not be repeated. Instead, OTS offers a summary of the status of this proceeding to this point.

On March 31, 2010, the PPL Electric Utilities Corporation ("PPL" or "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.

A *Joint Petition for Partial Settlement of Rate Investigation* ("Settlement Agreement" or "Joint Petition") was submitted that served to resolve many of the disputed issues in this proceeding. As a result of the significant reduction of issues covered by the Settlement Agreement the scheduled evidentiary hearings were limited to August 11, 2010. At this time, testimony was presented into the record and the issues reserved for litigation were argued. In addition, the oral testimony of a formal complainant was received telephonically at the evidentiary hearing.

In accordance with the procedural schedule established in this proceeding, Main Briefs were submitted by interested parties on September 2, 2010. OTS hereby submits this Reply Brief in continued support of the comprehensive Settlement Agreement presented in this proceeding. The record evidence in support of the Joint Petition is substantial and clearly provides that adoption of the Settlement Agreement in its entirety is in the public interest. In addition, OTS will

respond to the arguments presented by the Retail Energy Supply Association ("RESA") in its Main Brief.

II. PURCHASE OF RECEIVABLES

The Retail Energy Supply Association has attacked PPL Electric Utilities Corporation's purchase of receivables ("POR") program and urges the Commission to order the Company to make changes in the program.[1] Through this program, PPL buys the sales on account (accounts receivable) of electric generation suppliers ("EGSs") operating on its system. PPL's POR plan, in its current form, was approved last year and has only been in operation since January 1, 2010.[2] In this proceeding, PPL seeks to maintain the program as approved by the Commission with the sole exception being an update to discount rates. This is reasonable and OTS urges the Commission to approve PPL's proposal.[3] The changes which RESA seeks to impose should be rejected.

RESA has not demonstrated that the PPL POR plan is not working. To the contrary, the evidence establishes that PPL has a robust retail market for electric power and that it may have, in fact, the most competition of any electric distribution company ("EDC") in the Commonwealth.[4] Thus, RESA's argument that PPL should look to other EDC POR plans for guidance[5] rings hollow.

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1 RESA Main Brief, pp. 18-22.
2 *See,* OTS Main Brief, pp. 9-14.
3 *Id.*
4 PPL Statement No. 6-R, pp. 5-6.
5 RESA Main Brief, pp. 18-22.

Moreover, RESA argues that the "majority of POR programs adopted in Pennsylvania are more closely in line" with its program.[6] RESA, in effect, arguing for the adoption of statewide POR standards. This is contrary to the statements of the Commission in adopting its PPL Retail Markets Order which formed the basis of the Company's current program.[7] In response to comments received to its earlier, Tentative Order,[8] the PUC stated:

> Other parties, such as EAP [Energy Association of Pennsylvania], question the applicability of these directives to other electric distribution companies (EDCs). EAP Comments, pp. 5-6. In response, we would note that we hope these directives can form a template used by the other EDCs in the Commonwealth, but are not mandating such use through this proceeding. 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.[9]

Just as the Commission cautioned that it would not impose PPL's program on other EDCs, it should not now impose the programs of other utilities on PPL and its customers.

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6 *Id.*, p. 19.

7 *PPL Electric Utilities Corporation Retail Markets*, Docket No M-2009-2104271, Opinion and Order entered August 11, 2009, pp. 2-3 ("Retail Markets Order").

8 *PPL Electric Utilities Corporation Retail Markets*, Docket No M-2009-2104271, Tentative Order entered May 15, 2009.

9 *Retail Markets Order*, pp. 2-3; emphasis in original.

Furthermore, Pennsylvania law requires that the adoption of statewide standards be accomplished through a formal rulemaking proceeding.[10] In the *Rushton* case, Commonwealth Court struck down statewide standards adopted by the Department of Environmental Resources ("DER") because they met the "binding norm" test and were, therefore, regulations.[11] The court stated that DER had failed to promulgate the standard conditions in accordance with the Commonwealth Documents Law, specifically 45 P.S. §§ 1201 and 1202, which required notice and comment before adoption of a rule. Thus, the PUC is unable to lawfully adopt RESA's proposed changes to PPL's POR program. If the Commission is to adopt statewide standards it should be done through a rulemaking proceeding.

Should the Commission consider alterations beyond updating the POR discount rates, it should specifically reject certain changes proposed by RESA. RESA proposes to eliminate the uncollectible accounts expense percentage factor from the discount rate.[12] RESA would have PPL recover the costs associated with all generation-related uncollectible accounts expense through the non-bypassable assessment of the Merchant Function Charge on **all** distribution customers.[13]

OTS witness Christine Wilson, CPA, in recommending against RESA's proposed change, points out that uncollectible expense is not an unusual cost or

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10 *Department of Environmental Resources v. Rushton Mining Co.,* 591 A.2d 1168 (Pa. Cmwlth.,1991) ("Rushton").

11 *Id.*

12 RESA Main Brief, pp. 14-15; RESA Statement No 1, p. 2.

13 *Id.*

one which is unique to utilities.[14] Uncollectible expense is a consequence when a customer does not pay its bill stemming from in the business' recognized revenues billed to the customer.[15] Ms. Wilson points out that:

> It is an expense that is at risk for businesses that provide their product prior to receiving payment for those purchases; therefore, it is an inherent expense the business absorbs.[16]

There is no question that PPL is a regulated public utility, required to provide essential service to the public, but EGSs are not classified as public utilities and thus are not subject to regulation by the Commission. The Pennsylvania Supreme Court has stressed this difference between these entities in limiting the PUC's jurisdiction over EGSs:

> [I]t is clear that the General Assembly did not intend for EGSs to be characterized as public utilities for most purposes. *See, e.g., Bethlehem Steel Corp. v. Public Utility Comm'n, 552 Pa. 134, 713 A.2d 1110, 1112 (Pa. 1998)*; *Independent Oil and Gas Assoc. v. Public Utility Comm'n, 789 A.2d 851, 855 (Pa. Commw. 2002).*[17]

Therefore, EGSs are able to set the price for the electricity they sell without PUC oversight and can profit from the sale of that electric generation.[18]

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14 OTS Statement No. 2-R, pp. 9-11.
15 *Id.*, pp. 9-10.
16 *Id.*
17 *Delmarva Power & Light v. Commonwealth of Pennsylvania and Pennsylvania Public Utility Commission,* 870 A.2d 901, 910 (Pa. 2005).
18 OTS Statement No. 2-R, p. 10.

So any revenue earn from the sale of the generation include accounting for the usual costs and risks assumed in the industry that a business operates. Ms. Wilson states that:

> A collection risk from sales is a typical cost of conducting business. The EGSs take on collection risks when they sell electricity to a wholesaler, retailer, or the end user. **When an EGS enters the retail market and participates in a public utility's POR program, their collection risk should remain part of their profit-oriented business.**[19]

EGSs participating in a POR program have the advantage of knowing in advance what the collection risk is based on the EDC's historic experience with its customer base. That risk is commonly known as the utility's uncollectible or bad debt expense ratio.[20] This collection risk should remain with the entity that is recognizing the commodity sales revenue – the EGS – in that it is associated with the business being conducted – the retail sale of electric generation. Ms. Wilson concludes:

> In other words, the collection risk associated with residential and small commercial customers electing to purchase electricity from an EGS, rather than the public utility, should remain with the EGS. Therefore, the bad debt rate should remain a component of a POR discount to appropriately move the business risk to the business carrying on the sales. The POR discount would not be zero as long as an uncollectible expense exists.[21]

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19 *Id.*, emphasis supplied.
20 *Id.*
21 *Id.*, pp. 10-11.

By updating the discount rates, PPL is tracking, as close as possible, its actual experience with regard to collections and the risk associated with the sale of electricity. This is exactly what the Commission, at the request of RESA urged it to do a year ago:

> RESA does urge us to clarify as to how the discount rate associated with the POR plan should be determined. RESA Comments, pp. 19-20. It recommends that the discount rate reflect only actual incremental costs incurred by PPL.
>
> Thus, 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. Therefore, the request for clarification of RESA is granted and the discount rate [should] reflect only actual incremental costs incurred by PPL.[22]

RESA's proposal to eliminate the current tracking mechanism to monitor individual EGS uncollectible percentages for small commercial and industrial customers should also be rejected.[23] Ms. Wilson succinctly explains:

> This ties in to my previous discussion above, that the collection risk associated with residential and small commercial customers electing to purchase electricity from an EGS, rather than the public utility, should remain with the chosen EGS. That being the case, it makes sense for PPL to continue to monitor individual EGS uncollectible percentages for small commercial and industrial customers.[24]

For those reasons, the adjustment is ill-conceived and should not be made.

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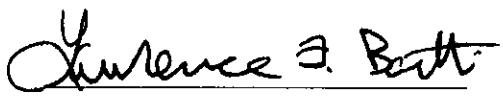
22 *Retail Markets Order,* pp. 26, 29.
23 RESA Main Brief, pp. 17-18, RESA Statement No. 1, pp. 3, 16, 18.
24 OTS Statement No. 2-R, p. 11.

III. CONCLUSION

For the reasons set forth in its Main Brief, 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, for the reasons set forth above and in its Main Brief, 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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CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Reply 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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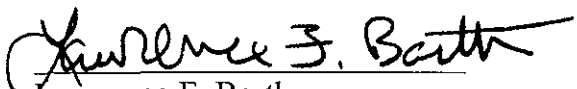

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