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September 13, 2010

VIA ELECTRONIC FILING
Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

On behalf of the Retail Energy Supply Association ("RESA") enclosed for filing please find the original of its 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

Enclosures

cc: Hon. Susan D. Colwell (w/enc)
Cert. of Service (w/enc)

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy RESA'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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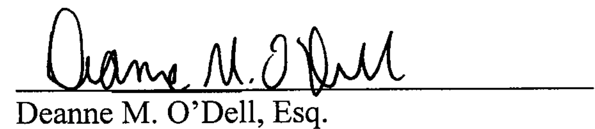

Deanne M. O'Dell, Esq.

Dated: September 13, 2010

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF OF THE RETAIL ENERGY SUPPLY ASSOCIATION

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I. INTRODUCTION

PPL Electric Utilities Corporation ("PPL") and the Office of Trial Staff ("OTS") support PPL's proposal to increase by 37% the generation-related uncollectible accounts expense factor to be paid by residential customers, and they oppose implementing any of the proposals put forth by the Retail Energy Supply Association ("RESA")[1] intended to improve the structure of PPL's Purchase of Receivables ("POR") program designed to simplify the program and make it more effective at promoting the development of the competitive market. As discussed further below, however, neither party has presented any convincing arguments or evidence to support their positions and they should be rejected.

Rather, RESA's proposal to convert the Merchant Function Charge ("MFC") to an nonbypassable charge assessed on all residential customers to collect the generation-related uncollectible accounts expense for residential customers should be adopted. With that, the residential "all-in, all-out" restriction as well as the non-residential uncollectible accounts expense tracker should be eliminated. For small commercial and industrial ("C&I") customers, RESA is willing to accept PPL's proposed uncollectible accounts expense cost recovery mechanism if the program is expanded to the large C&I customers. Adopting RESA's suggested modifications to PPL's POR program will improve the effectiveness of the program to promote the development of the competitive market consistent with the goals of the Electricity Generation

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1 RESA's members include ConEdison *Solutions*; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energy Plus Holdings, 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; Reliant Energy Northeast LLC; 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.

Customer Choice and Competition Act ("Choice Act") and would simplify the POR program, making it more cost-effective to operate. Any incremental costs associated with programming to implement these changes would be paid by the electric generation suppliers ("EGSs") who utilize the POR program. While there has been a reasonable amount of shopping by residential and small commercial customers since the beginning of 2010, the majority of residential customers continue to take PPL's default service. That situation can and must be improved if competition is going to be deemed a success. Revising PPL's POR program to make it consistent with other EDCs' (such as Peco) could well help prompt the continued growth and expansion of the residential retail market, so that these successes will be widespread and permanent. In sum, adoption of RESA's proposals would be a win-win for all stakeholders involved and, most importantly, for all consumers.

II. ARGUMENT

A. <u>PPL Has Not Met Its Burden Of Proving That Its Generation-Related Uncollectible Accounts Expense Percentage Is Just And Reasonable.</u>

In this distribution rate case, PPL is seeking a 37% increase in the amount it recovers from residential customers for the cost of the generation-related uncollectible accounts.[2] As well explained by OTS, PPL has the burden of proving that this requested rate increase is just and reasonable and there is no presumption of reasonableness which attaches to a utility's claim.[3] Presumably because PPL has not presented any evidence to support this burden of proof, it attempts to evade its responsibility by offering the following meritless arguments.

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[2] PPL St No. 7 at 32, PPL St No. 7-R at 31-32.

[3] OTS M.B. at 4-5; 66 Pa. C.S. § 332(a); *See also Pennsylvania Public Utility Commission v. Equitable Gas Co.,* Docket No. R-822133, 1983 Pa. PUC LEXIS 33, *54.

First, PPL states that no party "has presented any evidence of change in circumstances, facts, or law that would justify or otherwise necessitate a departure from PPL Electric's current Commission-approved program."[4] Other parties, however, do not have the burden of proof in this case. While the burden of persuasion may shift to other parties, the ultimate burden of finally and convincingly establishing the justness and reasonableness of every component of a requested rate increase remains with PPL.[5] The evidence in this proceeding does not show that PPL's proposed increase to the residential generation-related uncollectible accounts expense is just and reasonable as proposed and it should be rejected. On the contrary, the record in this proceeding provides ample evidence showing that RESA's proposals would improve the effectiveness of the POR program, could be easily implemented and should be adopted.[6]

Second, PPL strenuously advocates that the "POR program is a voluntary program, meaning that PPL is not required to offer it" and, by necessary implication, PPL cannot be directed to make any changes.[7] While PPL's legal analysis is faulty for the reasons which will be discussed further below in Section C, even if this advocacy is accepted as true, PPL still has the burden of proving that its requested rate increase to recover the generation-related uncollectible accounts expense costs of residential customers is just and reasonable. The fact that part of the requested rate increase is being passed on to shopping customers through the POR program discount does not somehow shield PPL from the requirement to prove that the requested increase is just and reasonable and it has not done so here.

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4 PPL Initial Brief at 83.

5 *See, e.g., Pennsylvania Public Utility Commission, et. al. v. Lemond Water Co.,* Docket Nos. R-00932673, 1993 Pa. PUC LEXIS 197 *14 (November 29, 1993); *Berner v. Pennsylvania Public Utility* commission, 382 Pa. 622, 116 A.2d 738 *1955);

6 RESA M.B. at 18-22.

Finally, PPL argues that its proposal properly places the burden of uncollectible accounts expense on EGSs.[8] This statement, however, is inaccurate and merely a superficial attempt to oversimplify the problem of uncollectible accounts expense. Uncollectible accounts expense occurs when customers do not pay their bills and those customers who do pay their bills are required to pay for this cost. From a public policy perspective, there are only two philosophically pure approaches for allocating these costs – direct cost assignment and full socialization.[9] Here, PPL, OTS and – according to PPL – OSBA support direct cost assignment.[10] However, PPL has not identified the amount of the uncollectible accounts expense generated by shopping customers and, therefore, has not proven that its class-average uncollectible accounts expense is a direct assignment of the true costs.[11] Further, the EDC and the EGSs are not on an equal playing field because the EDC has the right to terminate service for nonpayment and it has the support of a vast call center and collections staff that has been paid for by all distribution ratepayers.[12] Therefore, a direct assignment of costs (even if those true costs were known which they are not) is still problematic given the differences between the EDC and the EGS. Moreover and despite PPL's statement that "EGSs should bear the collection risk for their own customers," all customers benefit from the availability of competitive offers and all customers benefit from the ability of the EDC to use its vast collections and staff to minimize the

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7 PPL Initial Brief at 84.

8 *Id.* at 85-86.

9 RESA St. I-SR at 5.

10 PPL Initial Brief at 86-87 quoting testimony from both OSBA and OTS. OSBA, however, did not brief this issue.

11 RESA M.B. at 10-11.

12 RESA St. No. 1-SR at 5-6.

risk of uncollectible accounts expense which benefits all customers.[13] In consideration of all these factors, a full socialization of this cost – as RESA supports here – for residential customers is a just and reasonable way to handle this cost for the benefit of all consumers.

As further discussed in RESA's main brief, there is no record evidence to support PPL's proposal to increase the amount residential generation service customers will be required to pay for uncollectible accounts expense as the proposed increase fails to reflect the actual uncollectible cost for the group of customers being required to pay it and it fails to properly credit the uncollectible accounts expense for forfeited discounts.[14] As PPL has failed to show that its proposed increase to generation customers for uncollectible accounts expense is just and reasonable, it must be rejected.

B. RESA's Proposal Is Not Inconsistent With Either The Commission's Policy Regarding Unbundling Or The Default Service Settlement.

PPL claims that RESA's proposal to recover the cost of all generation-related uncollectible accounts expense from all PPL's customers, regardless of who provides the customer generation service, "is fundamentally inconsistent with [the] Commission's policy of unbundling generation-related costs from distribution rates."[15] According to PPL, RESA's proposal would be a "rebundling" and, therefore, must be rejected as "inconsistent with the goals of the Competition Act and clear Commission policy."[16] In essence, PPL is trying to claim that its proposal is the true "unbundling" proposal and RESA's is not. This position is flawed for several reasons.

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13 PPL Initial Brief at 86; RESA M.B. at 21-22.

14 RESA M.B. at 9-13.

15 PPL Initial Brief at 84.

First, the concept of unbundling refers to ensuring that the default service rate includes all costs to the EDC to provide default generation service to ensure that the EDC does not give itself a competitive advantage by offering an artificially lower default service rate, which competitors cannot match, by recovering expenses from all customers through distribution rates. Specifically, the Commission's regulations identify the following costs:

> (1) Wholesale energy, capacity, ancillary, applicable RTO or ISO administrative and transmission costs.
>
> . . .
>
> (3) Supply management costs, including supply bidding, contracting, hedging, risk management costs, any scheduling and forecasting services provided exclusively for default service by the EDC, and applicable administrative and general expenses related to these activities.
>
> (4) Administrative costs, including billing, collection, education, regulatory, litigation, tariff filings, working capital, information system and associated administrative and general expenses related to default service.
>
> (5) Applicable taxes, excluding Sales Tax.
>
> (6) Costs for alternative energy portfolio standard compliance.[17]

In this proceeding, PPL has limited its proposed unbundling to just generation-related uncollectible accounts expense and has made no attempt to unbundle any of the other costs associated with providing default service such as credit and collection expense, customer care expenses, billing costs, IT systems expenses, executive management expenses, and other general administrative and operating expenses.[18] Therefore, its claims that it has "fully unbundled" generation related costs from distribution costs are without merit.

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16 *Id.* at 88.

17 52 Pa. Code 69.1801(a).

18 RESA St. No. 1-SR at 11.

Second, PPL is not even proposing to unbundle all generation-related uncollectible accounts expense from distribution-related uncollectible accounts expense as it is proposing to continue to bundle the uncollectible accounts expense cost for large C&I customers.[19] In defending its proposal, PPL states that the bundled uncollectible accounts expense factor for the large C&I customers is so small it is insignificant.[20] Not only does this undercut PPL's attempts to characterize its proposal as the "true" unbundling proposal but it also ignores the fact that the uncollectible accounts expense for any specific large C&I customer can be quite significant.[21]

Third, PPL's proposal to isolate the generation-related uncollectible accounts expense from distribution-related uncollectible accounts expense for the residential and small C&I class is not a proper unbundling because it fails to unbundle other factors that reduce PPL's net uncollectible accounts expense such as forfeited discounts late payment charges or collection agency recoveries.[22] Thus, even if PPL's proposal to require shopping customers to pay the class-wide average uncollectible accounts expense is adopted (which it should not), the amount proposed must be reduced to reflect the revenue PPL receives for (at least) forfeited discounts.

Finally, PPL claims that its proposal is consistent with the settlement in the default service proceeding wherein the parties agreed to establish a POR program.[23] The language from that settlement, as approved by the Commission, states:

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19 PPL St. No. 7-R at 32, RESA M.B. at 22, PPL Initial Brief at 95.

20 PPL Initial Brief at 95.

21 RESA St. No. 1-SR at 19.

22 RESA M.B. at 11-13.

23 PPL Initial Brief at 89-90.

> [D]iscounts to POR payments to supplier to reflect incremental uncollectible expenses not included in distribution rates, which may include the unbundled uncollectible accounts percentage; provided, however, that customers will not be responsible for any reconciliation of the discount against actual results.[24]

While PPL has included the class-wide uncollectible accounts expense percentage in the discount rate, PPL admits that it has included the "full, unbundled generation-related uncollectible accounts percentage" despite the above language limiting the recovery to the "incremental" expense.[25] Presumably, PPL has done this because it has not calculated the incremental uncollectible costs associated with shopping customers.[26] The record in this proceeding provides several basis upon which to conclude that the uncollectible accounts expense cost associated with shopping customers is less than the class-wide average.[27] While RESA accepted this proposal for the 2010 POR program in exchange for having a POR program implemented in time for market opening, RESA objected to the proposed uncollectible accounts expense percentage factor and recommended that it be eliminated but pointed out that:

> there was not sufficient time by which to investigate whether the charge proposed to be imposed on EGSs through the discount rate (and also included in its MFC charged to default service customers) was reflective of the uncollectibles PPL would actually experience in 2010 on purchased EGS generation charges. It was also unclear, for that matter, whether the percentage proposed accurately reflected PPL's likely generation related uncollectible level.[28]

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24 *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period January 1, 2011 Through May 31, 2013,* Docket No. P-2008-2060309, Joint Petition for Settlement dated March 11, 2009 at 17.

25 PPL Initial Brief at 90.

26 RESA Exhibit RJH-2.

27 RESA M.B. at 10-11.

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

In this case, PPL has still not provided any evidence to address these concerns and, because it has not, PPL has failed to prove that its proposed increase to the generation-related uncollectible accounts expense is just and reasonable.

C. The Commission Has The Authority To Ensure That Requested Modifications To A Commission-Approved POR Program Are Just And Reasonable.

1. PPL Is Seeking Commission Approval For A Change To Its Current POR Program And The Commission Has The Legal Authority To Fully Review That Request And Its Impact On The POR Program.

There is no dispute here that PPL is asking the Commission to approve a modification of its current POR program, implemented in January 2010, by seeking a 37% increase in the discount rate at which PPL will purchase the accounts receivables of EGSs serving residential customers participating in the POR program.[29] As PPL is seeking to increase the discount rate for the residential customers, the Commission has the legal obligation to assess the impact of that change in the context of the POR program and to determine whether that change should be approved as consistent with the Public Utility Code and the evidence of record. The record is clear that making this assessment requires a review of the structure of the POR program because PPL's preferred cost recovery mechanism for generation-related uncollectible accounts expense dictates the structure of the POR program including the unstable discount rate, the "all-in, all-out" restrictions for residential customers and the tracking mechanism for the small C&I customers.[30] Thus, by asking the Commission to change the POR program discount rate, the

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2129502, Retail Energy Supply Association And Direct Energy Services, LLC's Joint Statement In Support Of Joint Petition For Settlement dated November 6, 2009 at 4.

29 PPL St. No. 7 at 32-33.

30 RESA M.B. at 13-18.

Commission is required to assess both the impact and necessity of that change before determining whether or not it is just and reasonable. For all the reasons supported by the record, RESA submits that PPL's proposed increase is not reasonable and that the better approach to address the recovery of generation-related uncollectible accounts expense is through a nonbypassable mechanism assessed on all customers consistent with the way the majority of POR programs currently in place in Pennsylvania handle this issue.[31]

2. The Commission Maintains Authority To Approve Or Modify Utility Programs, Even Ones That Are Voluntarily Proposed.

PPL makes the amazing assertion that the Commission has no authority to approve RESA's proposed modifications to PPL's current POR program because "[t]hey are not acceptable to PPL Electric."[32] PPL's position is based upon two classic "red herring" arguments: (1) PPL's current POR program "is a voluntary program, meaning that PPL is <u>not required to offer</u> it."[33]; and (2) PPL "has administered a *de facto* POR program since the Commission's approval of the Company's restructuring settlement in 1998."[34]

The flaw in PPL's first argument is that PPL <u>has already offered</u> its current POR program,[35] so whether the Commission has the authority to require PPL to offer a POR program

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31 *Id.* at 18-22.

32 PPL Initial Brief at 84.

33 *Id.* (emphasis added).

34 *Id.* at 77.

35 "PPL is already operating a POR program. We are not directing it to undertake something completely new. Here we are only calling for modifications." *PPL Electric Utilities Corporation Retail Markets,* Final Order entered at Docket No. M-2009-2104271 on August 11, 2009 at 29 ("*Retail Markets Final Order*"). PPL's argument that parties seeking a modification must show a "change in circumstances, facts, or law that would justify a departure from PPL Electric's current Commission-approved POR program" (PPL Initial Brief at 83) implies a preference for the current POR program.

in the first instance is simply not presented in this case. Tied to the flaw in PPL's first argument, PPL's second argument is that PPL's initial POR program implemented in 1998 was not a Commission-approved program because it was, as PPL describes it, a *de facto* program, so the current POR program – a revision to its 1998 initial POR program[36] – having been "voluntarily" filed by PPL, cannot be changed unless PPL agrees with the changes.

PPL's description of its initial POR program as *de facto* is wrong and does not support its untenable position that the Commission cannot require changes to a Commission-approved program. "De facto" is defined as:

> In fact, indeed, actually. This phrase is used to characterize an officer, a government, <u>a past action, or a state of affairs</u> which must be accepted for all practical purposes, <u>but is illegal or illegitimate</u>. Thus, an office, position or <u>status existing under a claim or color or right</u> such as a de facto corporation. In this sense it is the contrary of *de jure*, which mean rightful, legitimate, just, or constitutional.[37]

The classic example of this status is a *de facto* public utility, which is an entity "providing a utility service to the public without a certificate of public convenience (CPC)."[38] PPL's description of its initial POR program as *de facto* means that PPL's initial program was somehow not authorized by the Commission, which is clearly wrong. Its 1998 program was embodied in a settlement approved by the Commission, in tariff provisions approved by the

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The settlement providing for this program requires the opposite conclusion – the current program was adopted without prejudice to the right of all parties (including PPL) to propose changes. *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period January 1, 2011 Through May 31, 2013,* Docket No. P-2008-2060309, Order entered November 19, 2009 at Ordering Paragraph No. 5 at 24.

36 PPL Initial Brief at 78 ("PPL Electric agreed to file a revised POR plan . . . .").

37 Black's Law Dictionary (1990) at 419.

38 *Warwick Water Works, Inc. v. Pa.P.U.C.*, 609 A.2d 770, 773 (Pa.Cmwlth. 1997).

Commission, and in EDI transactions approved by the Commission and subject to the Commission's continual oversight.[39]

The logical result of PPL's position is that none of the commitments in PPL's restructuring settlement voluntarily agreed to by the parties that impose requirements on PPL may be modified by the Commission, unless PPL agrees to the changes. If this is the law, then it is difficult to understand what Commission-approved utility programs and tariff provisions – many of which are submitted "voluntarily" by the utility in the first instance – may be modified by the Commission when the utility does not agree to the modification. For example, in this case PPL states that it is "willing to implement an annual reporting requirement [regarding administrative costs] on a prospective basis."[40] PPL's position means that even if the Commission imposes this requirement on PPL, PPL could at some point in the future decide voluntarily to stop this reporting (as PPL "does not believe such a reporting requirement is necessary") and there would be nothing the Commission could do about it.

As stated above, the Commission need not address in this case whether it has the authority to require a utility to offer a POR program in the first instance, an issue that appears to be perplexing:

Compare:

Commission has the authority

> *Investigation into the Natural Gas Supply Market: Report on Stakeholders' Working Group (SEARCH); Action Plan for Increasing Effective Competition in Pennsylvania's Retail Natural Gas Supply Services Market*, Docket No. I-00040103F0002, Final Order and Action Plan entered September 11, 2008 at 11 ("However, it is clear that POR programs may be voluntarily implemented by NGDCs, subject to Commission approval.");

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39 PPL St. No. 6 at 6-8; PPL St. No. 6-R at 19-20.

40 PPL Initial Brief at 83, n.22.

Establishment of Interim Guidelines for Purchase of Receivables (POR) Programs, Docket Nos. Docket No. M-2008-2068982 and I-00040103F0002, Order entered December 19, 2008 at 4-5 ("Thus, in our opinion, Section 2205(c)(5) at most only sets forth a parameter that must be considered in the design of POR programs, and does not address, let alone limit, our authority to encourage NGDCs to voluntarily file interim POR program proposals.");

Natural Gas Distribution Companies and the Promotion of Competitive Retail Markets, Docket No. L-2008-2069114, Proposed Rulemaking Order entered March 29, 2009 at 5-6 ("Moreover, we have recently adopted interim guidelines for voluntary POR programs. . . The guidelines were drafted to be consistent with the law and the Commission's policy to promote the use of POR programs to increase supplier participation in the retail natural gas supply market.");

PPL Electric Utilities Corporation Retail Markets, Docket No. M-2009-2104271, Order entered August 11, 2009 at 27-29 ("The Public Utility Code gives us the requisite authority regarding POR plans under our general authority. . . as well as the Competition Act to regulate the terms and conditions of these plans. . . we have the authority and, moreover, the obligation to correct disparities, eliminate cross-subsidies and other anomalies in this, or any other program, operated by an electric utility. . . There is no reason why our determination regarding the Electric Competition Act should not be consistent with our determination with respect to the Natural Gas Competition Act in this regard.")

with

<u>Commission does not have the authority</u>

Petition of PPL Utilities Corporation Requesting Approval of a Voluntary Purchase of Accounts Receivables Program and Merchant Function Charge, Docket No. P-2009-2129502, Order entered November 19, 2009 at 9-10 ("[T]he Code specifically provides that the Commission cannot require EDCs to purchase EGS' accounts receivables.")

and

<u>Commission has the authority</u>

Natural Gas Distribution Companies and the Promotion of Competitive Retail Markets, Docket No. L-2008-2069114, Advance Notice of Final Rulemaking Order entered August 10, 2010 at 29-30 ("We note that some commenters argue that the Commission cannot mandate the implementation of POR programs. These commenters reference 66 Pa. C.S. § 2205(c)(5) of the Code as support for their assertion. . . We acknowledge that in addressing PPL's purchase of receivables program, we addressed similar language applicable to the electric industry and determined that Section 2807(c)(3) operated to prohibit the imposition of mandatory PORs. . . However, upon further analysis and consideration of this legislative language, it appears that Section 2205(c)(5) is directed to the mechanics of customer billing on behalf of suppliers, *i.e.*, the NGDC must be paid

first before it is required to forward payment to the NGS in situations where the NGS has chosen to use the billing services of the NGDC. It does not address POR programs in which the NGDC purchases, at the outset, the NGS accounts receivable and becomes the new creditor for the customer accounts. . . Notwithstanding the above analysis regarding our legal authority to mandate POR programs for NGDCs, we shall continue our current policy and continue, in these regulations, to make these POR programs *voluntary*.") (Emphasis in original).

As these various cases addressing POR-related issues show, in the vast majority of instances, the Commission has properly concluded that it, in fact, does have the legal authority to review and approve a public utility's POR plan because such a plan is necessary and proper to the achievement of a fully competitive energy market which is mandated by the Public Utility Code. RESA suggests that the Commission's discussion of this issue in the November 2009 Order regarding PPL's 2010 POR program – as relied upon by PPL to support its position – may be because the Commission misapprehended the ramifications of the fact that PPL has had a Commission-approved POR program since 1998.[41]

Notably in other Commission orders regarding POR programs, the Commission omitted PPL's existing (by PPL's own admission) POR program from its identification of those EDCs[42] and utilities[43] that had existing POR programs when those orders were entered. In its November 2009 Order, the Commission stated that "[w]e agree with PPL that authority does not exist for the Commission to compel any of our jurisdictional EDCs to create and offer such a POR

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41 *See* note 39 above.

42 *PPL Electric Utilities Corporation Retail Markets,* Docket No. M-2009-2104271, Tentative Order adopted May 14, 2009 at 14, n. 6 ("*Retail Markets Tentative Order*") (referring to the POR programs in place for PECO Energy Company and Duquesne Light Company).

43 *Natural Gas Distribution Companies and the Promotion of Competitive Retail Markets* Docket No. L-2008-2069114, Proposed Rulemaking Order entered Mary 27, 2009 at 5, n.3 (referencing the POR programs in place for Columbia Gas of Pennsylvania, PECO Energy Company and Duquesne Light Company).

Program in the competitive electric generation marketplace."[44] However, PPL was not seeking approval of a new POR program but rather modifications to its POR program which had been in existence since 1998. In essence, PPL's position here really is that the Commission had no authority to address the structural changes to PPL's 1998 "*de facto*" POR program which were incorporated into the 2010 POR program without PPL's agreement. PPL seems to have forgotten, on this issue, that PPL is the regulated entity, not the regulator.

D. <u>PPL And OTS's Opposition To RESA's Proposals Ignore The Purpose of The POR Program And The Potential These Proposals Have To Stimulate Competition Even Further In PPL's Service Territory.</u>

The starting point for analyzing the structure of PPL's POR program is to determine the goals sought be achieved by the POR program and what structure best effectuates those goals. Here, PPL focuses on the purchase of the receivables and claims that the "whole purpose" of a POR program is to enable an EGS to "take advantage of the time value of money and to receive immediate payment."[45] After framing the goal of a POR program this way, PPL argues that "[i]f the discount to reflect the collection risk is removed, there simply would be no point in purchasing the accounts receivable."[46]

The problem with this analysis is that PPL ignores the undisputed fact that the true goal of a POR program, as repeatedly expressed by the Commission, is to help level the playing field between the monopoly provider of service and the new entrant's provision of service by reducing

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44 *Petition of PPL Utilities Corporation Requesting Approval of a Voluntary Purchase of Accounts Receivables Program and Merchant Function Charge*, Docket No. P-2009-2129502, Order entered November 19, 2009 at 16.

45 PPL Initial Brief at 91.

46 *Id.*

barriers to entry.[47] Importantly, because of its historical role as a monopoly provider of generation services to customers, an EDC has a billing system, collection tools, and the support of a vast call center and staff which has been paid for by all ratepayers over the years.[48] EGSs as new entrants generally do not have a similar infrastructure. Further, the EDC has a long-established relationship with the customers and, as the generation rate caps expire, the EDC starts from the position of serving all the customers until the customers choose an EGS.[49] A POR program addresses these inequalities because the historical monopoly provider purchases the accounts receivables of the EGS, issues one bill to the customer and effectively manages the cost of uncollectible accounts expense through service terminations utilizing the EDC's resources that have paid by all ratepayers.[50] Thus, the end result of a properly structured POR program is enabling more competitors to enter the market to provide a greater variety of options to consumers.

Both PPL and OTS claim that because 31.5% of PPL's residential customers are being served by an EGS under the current POR program there is no reason to make any changes.[51] For all the reasons already set forth by RESA, this position is meaningless and the record in this proceeding shows that the current POR program has very real structural problems that impede its ability to stimulate a fully robust competitive market including an unstable discount rate, an "all-in, all-out" restriction for residential customers and an EGS uncollectible accounts expense

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47 RESA St. No. 1 at 4; *See e.g. Retail Markets Tentative Order* at 15 ("The purpose of the POR program is to facilitate the growth of the competitive market.")

48 RESA St. No. 1-SR at 5-6.

49 52 Pa. Code § 54.183(a).

50 RESA St. No. 1-SR at 6.

51 PPL Initial Brief at 82, 89; OTS M.B. at 13-14.

tracking mechanism for small C&I customers.[52] RESA has proposed a simple and easily implemented improvement to the POR program structure – recovering residential generation-related uncollectible accounts expense from all residential customers via a nonbypassable charge – which is reasonably calculated to increase the effectiveness of the program by stimulating competition for the benefit of all consumers.

1. The Record Shows That RESA's Proposals Are Simple And Easily Implemented.

PPL claims that adopting RESA's proposal to convert the MFC to a nonbypassable charge assessed on all customers would be "major, substantial and burdensome."[53] In support of this assertion, PPL makes the general statement that RESA's proposal would "involve significant investments in programming" that would "require the Company to delay, or put at risk of delay certain other programming efforts."[54] Notably, PPL never presented any specific details about what programming would need to occur to implement this proposal. In fact, if PPL's proposal is approved, it will have to undertake some programming to change the uncollectible accounts percentage factor that is recovered from the MFC and through the discount rate. If RESA's proposal is adopted, PPL could – at the same time – simply remove the logic already incorporated into the system to segregate shopping from non-shopping customers for application of the MFC and apply the charge to all customers.[55] Likewise, the removal of the "all-in, all-out restriction" and the uncollectible accounts expense tracker for non-residential customers would further simplify the operation of the POR program creating less work for PPL over the long-

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52 RESA M.B. at 13-18.

53 PPL Initial Brief at 84, n. 23.

54 PPL St. No. 6-R at 11-12.

55 RESA St. No. 1-SR at 10.

term. Finally, PPL already has a cost recovery mechanism in place to recover ongoing administrative costs of the POR program so PPL would have the ability to recover any incremental costs necessitated by adopting RESA's proposals from the EGSs who utilize the POR program.[56] In sum, PPL has not presented any evidence to support its claim that RESA's requested modifications would involve significant investments in programming nor did it present any evidence to refute RESA's position that the changes could be easily implemented and, therefore, they should be adopted.

2. The Record Does Not Support PPL Or OTS's Claims That Consumers Would Benefit From A "Period Of Stability".

Both PPL and OTS also claim that a "period of stability" would be beneficial.[57] There is, however, no record support for this position. As discussed above, the goal of a POR program is to promote competition consistent with the Commission's statutory mandates as set forth in the Choice Act.[58] The better the structure of the POR program, the more likely that goal will be achieved for the benefit of all consumers who will have access to a more diverse variety of competitive offerings. Nothing has been presented in this record to support a "period of stability" or to show why such a period would benefit consumers. On the contrary, the record is clear that PPL's currently structured POR program has structural deficiencies which prevent it from more effectively accomplishing its purpose of stimulating competition for the benefit of consumers. These deficiencies can be addressed with a simple change to the way PPL recovers

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56 *Id.*

57 PPL Initial Brief at 83 ("Before any changes are made, sufficient time should be given to fully implement the current POR program and evaluate its effectiveness."); OTS M.B. at 12 ("The Company, the EGSs and, most of all, consumers would benefit from a period of plan stability.")

58 *See, e.g.,* 66 Pa. C.S. § 2806(a).

the cost of generation-related uncollectible accounts expense for residential customers and the end result would be a win-win for all concerned.

E. The Record Supports Expanding The POR Program To The Large C&I Customers Consistent With RESA's Recommendations.

Currently, EGSs have the option of serving large C&I customers through PPL's *de facto* POR program which has been in place since 1998 and is designed differently from the POR program for residential and small C&I customers.[59] This different design, however, is of little value to EGSs and, therefore, no EGSs currently appear to be using it.[60] Because of the potential benefit to customers in terms of more competitive options if the *de facto* POR program were restructured, RESA supports expanding the POR program consistent with its recommendations in this proceeding. While the PP&L Industrial Customer Alliance ("PPLICA") supports this recommendation, PPL opposes it.[61] PPL raises several points in opposition to RESA's recommendation but none of them are insurmountable nor should any of them be used to deny this customer class the benefit of a functional POR program.

First, PPL claims that any competitive disadvantage to EGSs due to the fact that generation-related uncollectible accounts expense for the large C&I class remains bundled and is therefore not reflected in the default service rate for these customers is "overstated." Implicitly, PPL recognizes that there is a competitive disadvantage resulting from its current *de facto* POR program for large C&I customers. This competitive disadvantage can be eliminated by

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59 RESA M.B. at 22, PPL Initial Brief at 95

60 *Id.* at 23, *Id.* at 96-97.

61 PPLICA Main Brief at 6-8 (PPLICA supports RESA's "second choice" structure for large C&I customers); PPL Initial Brief at 95-97.

unbundling the generation-related uncollectible accounts expense from distribution customers and expanding the structure of the small C&I POR program to this class.[62]

Second, PPL identifies a concern related to PPL's recovery of costs if a large C&I customer declares bankruptcy because such risk is not included in the uncollectible accounts expense factor.[63] PPL does acknowledge, however, that the risk can be addressed through a tariff amendment giving PPL the ability to obtain a deposit for generation service when a large C&I customer is enrolled in the POR program. RESA would not oppose such a change and would commit to working cooperatively with PPL to address this concern.

Third, PPL states that changing the structure of the POR program "would involve significant programming and put efforts to install other functionality intended to encourage a competitive market at risk of not being completed in a timely manner."[64] However, there is no evidence in the record that the programming costs would be material. To implement the POR program for large C&I customers, PPL would only need to revise the "revert" aspect of the current *de facto* POR program for the large C&I customers in the same manner it has already done for the residential and small C&I classes.[65] Further, as acknowledged by PPL and not disputed by RESA, the incremental programming costs to implement these changes would be paid by EGSs through the administrative adder to the discounted purchase price at which PPL would purchase the accounts receivable.[66] Thus, PPL would receive recovery for incremental

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62 RESA M.B. at 23-24.

63 PPL Initial Brief at 96. PPL did not set forth this concern in its testimony and, therefore, it is not a part of the record in this case and should not be considered. 52 Pa. Code § 5.243(e)(2).

64 *Id.* at 97.

65 RESA St. No. 1-SR at 19-20.

66 PPL Initial Brief at 83-84; RESA M.B. at 24.

programming costs and it has not presented any detailed cost or scope estimate to support its claims that implementing this modification would involve significant and risky changes.

Finally, PPL restates its argument that, based on the current shopping levels, the current *de facto* POR program "appears not to have been a significant impediment to the development of the competitive market."[67] The undisputed fact, however, that no EGSs appear to be using the program shows that it is not properly structured to incent competitors to use it and, therefore, RESA's proposed modifications are appropriate and, in fact, necessary to enable this class of customers to receive the benefits of a reasonably structured POR program.

III. CONCLUSION

For all the reasons set forth above, RESA's proposal to convert the MFC to an nonbypassable charge assessed on all residential customers to collect the generation-related uncollectible accounts expense for residential customers should be adopted. With that, the residential "all-in, all-out" restriction as well as the non-residential uncollectible accounts

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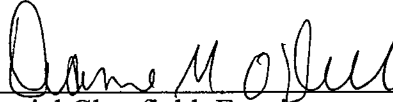
[67] PPL Initial Brief at 97.

expense tracker should be eliminated. For small C&I customers, RESA is willing to accept PPL's proposed uncollectible accounts expense cost recovery mechanism if the program is expanded to the large C&I customers.

Respectfully submitted,



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