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November 4, 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 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

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 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: November 4, 2010

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

EXCEPTIONS OF THE RETAIL ENERGY SUPPLY ASSOCIATION

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Dated: November 4, 2010

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I. INTRODUCTION

Many watched with optimistic anticipation as the generation rate caps expired in the service territory of PPL Electric Utilities Corporation ("PPL") on December 31, 2010 to see whether the 1.4 million customers in the territory would be able to take full advantage of real competitive alternatives for generation services. A great deal of effort and work by the Commission and all interested stakeholders preceded the rate cap expiration date, with the goal of creating a favorable marketplace consistent with the Electricity Generation Choice and Generation Act ("Choice Act").[1]

However, as of July 3, 2010, only a third of PPL's residential and small business customers had selected an alternative competitive supplier, while approximately 65% of them continue to receive default service from PPL.[2] What this number shows is that there is still more work to be done in developing a fully sustainable and workable competitive market for PPL's service territory.

This proceeding presents a real opportunity for the Commission to do this by improving the effectiveness of PPL's Purchase of Receivables ("POR") program that will begin on January 1, 2011. An improved POR program consistent with the recommendations made by the Retail Energy Supply Association ("RESA")[3] in this proceeding would help prompt the continued

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1 66 Pa. C.S. § 2801 *et seq.*

2 PPL St. No. 6-R at 5.

3 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.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; NextEra Energy Services; PPL EnergyPlus; Reliant Energy Northeast LLC; Noble Americas 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.

growth and expansion of competition in the residential retail market so that the early competitive gains will be more widespread and permanent. This would be a win-win-win for all stakeholders involved and, most importantly, for all consumers.

To achieve this goal, the Commission should reverse the October 15, 2010 Recommended Decision ("RD") of Administrative Law Judge ("ALJ") Susan D. Colwell which adopted all of PPL's proposals related to its POR program despite the fact that these proposals will do nothing to improve PPL's initial and unique POR program for 2010 and, in turn, do nothing to either sustain or stimulate further retail competition for mass market customers in PPL's service territory.

II. SUMMARY OF RESA'S POSITION

In this distribution rate case, PPL seeks approval to increase its generation related uncollectible accounts expense factor for residential customers from 1.32% to 1.805%.[4] This factor is paid by default generation service customers through a bypassable Merchant Function Charge ("MFC") and by shopping customers through the discounted rate at which PPL purchases the EGS' accounts receivable in the POR program.[5] If implemented, PPL's proposal would result in a 37% increase to the overall discount rate at which it purchases an EGS's residential accounts receivable effective January 1, 2011.[6] PPL proposes to continue all other POR program

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4 *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 at 4; PPL St. No. 7-R at 32; RESA St. No. 1-SR at 8.

5 RD at 78-79.

6 PPL St. No. 7-R at 32, RESA St. No. 1-SR at 8.

features as currently structured for only 2010 (as PPL emphasized when the Commission was considering the 2010 program) and offers no other proposals to improve it.

The ALJ erred in determining that PPL had met its burden of proof to justify its proposed increase and recovery mechanism. As the record clearly shows, PPL's proposal to increase the amount of uncollectible accounts expense shopping customers are required to pay is not based on actual uncollectible data associated with those customers – even though such data is available to PPL. Further, PPL's proposed generation-related uncollectible accounts expense factor fails to give customers credit for other revenue, such as late payments, that reduces PPL's uncollectible accounts expense. Because PPL did not sustain its burden of proof and the record clearly shows that PPL's proposed recovery mechanism only continues the unique, complicated and less effective current POR program for a number of reasons that can and should be rectified for 2011, the ALJ erred by not rejecting PPL's proposal and replacing it with RESA's recommendations.

PPL's proposed recovery of generation-related uncollectible accounts expense results in a less attractive POR program from a competitive market standpoint. This is because recovering this expense through the discount rate at which PPL purchases an EGS's account receivable means that an EGS is paid less than the full value of the customer's account. The less an EGS is paid for the value of its customer's account, the less likely an EGS will desire to serve customers utilizing the POR program. Further, tying the discount rate to the uncollectible accounts expense factor leads to uncertainty about the discount rate – in this case, for example, PPL is proposing to increase the 2010 discount rate in 2011 by 37% – which impacts an EGS' decision on whether or not to enter a market.

Beyond this, PPL's proposed recovery mechanism for uncollectible accounts expense creates unnecessarily restrictive program features that complicate the POR program and make it

more difficult to operate. These include the "all-in, all-out" restriction for residential customers and application of a higher discount rate when an individual EGS's uncollectible accounts expense exceeds a threshold for small commercial customers (i.e. referred to as a "tracking mechanism"). Both of these features are intended to "protect" PPL from the theoretical concern that without them EGSs would send all "poor paying" customers to the POR program while choosing to serve other customers separately. If this were to occur, then PPL could experience a higher cost for uncollectible accounts expense than it is recovering from customers. This concern, however, goes away if all PPL customers, through a nonbypassable charge, pay for the costs of generation-related uncollectible accounts expense consistent with the way customers of almost every other EDC in Pennsylvania do. PPL would fully recover its expense and EGSs would not have any reason to consider (or reconsider) participation in PPL's market or to selectively choose which customers to serve through POR and which customers to serve directly.

For large commercial customers, PPL continues to operate its self-described *de facto* POR construct unchanged since 1998 in which the generation-related uncollectible accounts expense for these customers remain embedded in distribution rates. If a large commercial EGS customer is in arrears for 90 days or three billing cycles, then the EGS is required to bill its own charges. These program features make PPL's POR program for large commercial customers unattractive to EGSs and, there is no evidence that EGSs are using it.

While RESA would prefer a POR program for all customer classes that handles the recovery of uncollectible accounts expense through a nonbypassable surcharge on all customers in that class – as do the majority of all current EDC POR programs in Pennsylvania today – RESA's compromise position in this case is to accept continuation of the current uncollectible accounts expense cost recovery mechanism for the small commercial customers (as proposed by

PPL) along with expansion of this POR program structure to the large commercial customers without application of the tracking mechanism. Expanding the POR program to large commercial customers would be a significant improvement and will provide these customers with the benefit of having an additional competitive option that could be structured in a variety of ways that are not currently possible. For residential customers, RESA recommends that the uncollectible accounts expense be recovered through a nonbypassable surcharge assessed on all residential customers and, with that change, the "all-in, all-out" restriction would become unnecessary and should be removed.

RESA's recommended changes to the POR program for 2011 are a reasonable way to address the fact that PPL did not sustain its burden of proof to justify its proposals, especially when PPL had the data to do so.. PPL's failure to use the available data raises the presumption that the data in fact would not support PPL's proposal, and RESA's evidence confirms that presumption. By utilizing RESA's approach to recover uncollectible accounts expense from all customers, just as this expense has been recovered in the past and consistent with the way most of the EDCs in Pennsylvania recover it today in their POR programs, the Commission will be taking important steps to continue to foster the development of retail competition in PPL's service territory.

III. EXCEPTIONS

A. Exception No. 1: The ALJ erred in concluding that the "newness" of the POR program provided substantial evidence to justify PPL's failure to rely on actual costs in calculating the uncollectible accounts expense factor (FOF # 54, RD at 82).

PPL seeks approval to increase its generation related uncollectible accounts expense factor for residential customers from 1.32% to 1.805%.[7] The record is clear that PPL's calculation of the generation-related uncollectible accounts expense factor is not based on actual data. Rather, it is calculated using the average historical bad debt write-offs for the most recent five calendar years and includes an allowance factoring in an expectation of more generation-related uncollectibles due to the projected increase in the default service generation rates resulting from the expiration of PPL's rate caps.[8] PPL uses the same formula to calculate all generation-related uncollectible accounts expense attributable to residential customers regardless of whether they are default service customers (i.e. "non-shopping customers") or EGS customers (i.e. "shopping customers"). The only difference between the shopping and non-shopping customers is how the customer pays the uncollectible accounts expense factor. Non-shopping customers pay it directly through the bypassable MFC and shopping customers pay it indirectly through the discount at which PPL purchases their EGSs' accounts receivables.[9] While

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7 *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 at 4; PPL St. No. 7-R at 32; RESA St. No. 1-SR at 8.

8 RESA Main Brief ("M.B.") dated September 2, 2010 at 10 citing Tr. at 372-373.

9 PPL St. No. 6 at 8-9. To be more precise, the theory is that an EGS's pricing will take into consideration the fact that it will not receive 100% of the value of the customer's account from PPL when PPL purchases the account receivable because of application of the discount rate. Thus, through the price charged to customers by the EGS, the shopping

recognizing that PPL has the burden of proof regarding its proposed increase to the generation-related uncollectible accounts expense factor paid by all residential customers, the ALJ erred in concluding that this burden was satisfied because the "newness" of the POR program somehow "prevented" PPL from calculating the actual uncollectible accounts expense costs associated with shopping customers.[10] As the record does not support this conclusion, it must be rejected.

1. The ALJ's decision fails to consider the fact that the actual cost of uncollectible accounts expense is available and that PPL chose not to calculate it to support its rate increase request.

There is nothing that prevented PPL from calculating the actual cost of uncollectible accounts expense generated by shopping customers though the current POR program for residential and small business customers which has been in effect since January 1, 2010. In fact, PPL acknowledged on the record that it is capable of gathering actual data related to the uncollectible accounts expense of shopping customers and that developing such a report is "not a major undertaking."[11] PPL, however, stated that it chose to "delay producing reports on individual uncollectibles" essentially because it was focused on correcting deficiencies associated with the 2010 POR program, implementing new functionalities and complying with the Commission's directives regarding retail market enhancements.[12] Notwithstanding these other commitments, the fact is that PPL is seeking to increase the amount all residential customers will be required to pay for the costs of uncollectible accounts – but not any other

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customer is paying for the generation-related uncollectible accounts expense calculated by PPL.

10 RD at 82.

11 PPL St. No. 6-R at 16.

12 PPL St. No. 6-R at 16.

features of its 2010 POR program – and, therefore, PPL has the burden of proof regarding the requested increase.[13] The fact that PPL admitted that it could have gathered the data necessary to support its case but chose not to do so should have resulted in the denial of PPL's proposed rate increase, especially in view of the ALJ's conclusion that there should be no cross-subsidy of this expense between shopping and non-shopping customers.

2. The ALJ failed to recognize that PPL's proposal does not ensure that those customers creating uncollectible accounts expense are paying their fair share of the cost.

In accepting PPL's proposal to increase the amount residential customers are required to pay for generation-related uncollectible accounts expense, the ALJ seems to have believed it resolved her concern that "the rates charged to customers" should be limited "to costs incurred by serving similarly situated customers" and that "costs caused by shopping customers should be borne by shopping customers, and costs incurred by non-shopping customers should be borne by non-shopping customers."[14] In short, the ALJ concluded that there should be no cross-subsidy of this expense between shopping and non-shopping customers. Adoption of PPL's proposal, however, does not lead to this result but, instead, leads inexorably to the result the ALJ is trying to avoid.

Without actual data, there is no way to know whether the costs of uncollectible accounts expense created by shopping customers equals the cost of uncollectible accounts expense created by non-shopping customers (even though all are being required to pay the same amount). In fact, the allowance built in to the uncollectible accounts expense factor for an expectation of more

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13 66 Pa. C.S. § 315(a).

14 RD at 81.

generation-related uncollectibles due to the projected increase in the default service generation rates resulting from the expiration of PPL's rate caps fails to take into consideration the loss of generation-related revenue from customers who leave PPL's system and receive generation services from EGSs. It also fails to account for the fact that customers receiving generation services from EGSs are generally paying something less than the default service rate which means that, to the extent these customers are generating any uncollectible accounts expense, the level of this uncollectible accounts expense for these EGS customers is less.[15]

In sum, the ALJ's apparent belief that using PPL's questionably calculated estimated uncollectible accounts expense factor provides some type of guarantee that the shopping customers are only paying their costs of this expense is not supported by the record and, indeed, is contradicted by the record. PPL did not produce any evidence to support that the amount of uncollectible accounts expense allocated to shopping customers accurately reflects the cost caused by these customers. Rather the record is clear that instead of using actual available data, PPL estimated the amount it projected would be uncollectible using assumptions that failed to take into consideration the specific characteristics of this group of customers.

3. The ALJ failed to consider that PPL's increased uncollectible accounts expense factor requires customers to overpay because it does not credit them for other revenue PPL receives which reduces its net uncollectible expense.

The ALJ seems to have completely dismissed the record evidence showing that all generation customers (whether shopping or non-shopping) are overpaying for generation-related uncollectible accounts expense because PPL fails to properly credit those customers for other revenue PPL receives which reduces its net uncollectible expense. Failure to credit customers

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15 RESA M.B. at 10.

for this revenue means that, despite the ALJ's expressed intent to prevent it from occurring, all customers are overpaying the cost of uncollectible accounts expense.[16]

Revenue that PPL receives which reduces its net uncollectible expense includes late payment charges.[17] Because of the receipt of this revenue, PPL's uncollectible accounts expense is lower, but PPL does not use this lower figure to calculate what customers will be required to pay for the uncollectible accounts expense factor. In the future test year, PPL attributes $14 million in late payment revenue.[18] Based on PPL's Cost of Service Study, residential customers are responsible for 69% of the late payment charges. Accordingly, 69% of the *pro forma* amount in the future test year ($14,048,000 as claimed by PPL), which is $9,686,096, should be applied as an offset to the uncollectible accounts expense ultimately used by PPL to calculate the POR discount rate for residential customers.[19] Netting forfeited discounts results in a revised uncollectible cost discount rate of 1.31% for residential customers[20] After adding in the 0.05% administrative cost, the revised discount rate for residential customers would be 1.36%.[21] A similar reduction would need to be made to the uncollectible accounts expense percentage factor that PPL proposed to recover through the discounted purchase price for small C&I accounts

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16 These customers would also include small C&I customers but not large commercial customers because the generation-related uncollectible accounts expense for large commercial customers remains embedded in their distribution rates. PPL St. No. 7-R at 32.

17 RESA Exhibit RJH-3, PPL Response to RESA I-4.

18 PPL Filing Requirements II-D-1a at 1.

19 Exhibit RJH-4.

20 Note that this unbundling requires that PPL reduce the amount of late payment charge revenue it credits to *pro forma* distribution revenues for the purposes of determining revenue requirement.

21 RESA St. No. 1-SR at 12.

receivable.[22] Without this adjustment, all generation customers are overpaying for uncollectible accounts expense. PPL has failed to meet its burden of proof to justify increasing the uncollectible accounts expense factor in consideration of this unrebutted evidence. The ALJ erred in failing to reject PPL's proposed rate increase on the basis of this other revenue.

B. Exception No. 2: The ALJ erred in relying on the Commission's approval of a settlement regarding PPL's 2010 POR program as substantial evidence to support continuing the same program structure for 2011 (FOF #54, RD at 82).

As explained in Exception No. 1, the fact that part of PPL's requested increase to the uncollectible accounts expense factor 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. PPL has not met this burden here. Despite this, the ALJ stated that the Commission "has already approved the program" and used this to support her conclusion that PPL had sustained its burden of proof.[23] Even assuming *arguendo* that using the Commission's approval of PPL's current cost recovery mechanism for 2010 only is relevant to PPL's proposal to increase the generation-related uncollectible accounts expense factor to be paid by all residential customers,[24] the ALJ's statement is still incorrect.

PPL's current 2010 POR program was approved on November 19, 2009 when the Commission adopted a partial settlement addressing most of the program elements and the

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22 RESA M.B. at 11-13.

23 RD at 82.

24 As explained above, regardless of the recovery mechanism (either directly through the MFC or in the POR program discount rate), PPL failed to meet its burden of proving that its proposed increase to the generation-related uncollectible accounts expense factor was just an reasonable and it should be rejected.

resolution of two outstanding issues that were litigated.[25] In approving the POR program for 2010, the Commission made clear – as PPL emphasized[26] – that the POR program structure it approved was expressly and clearly limited to calendar year 2010 only:

> 5. That this Opinion and Order is dispositive of PPL Electric Utilities Corporation's Purchase of Receivables Program and Merchant Function Charge **for 2010 only**, and **it shall have no precedential effect** in the context of the Commission's collaborative to be held in 2010 to develop a permanent Purchase of Receivables Program.[27]

This qualification was consistent with the parties' request. Specifically, the Joint Petition for Settlement states:

> 32. This Settlement covers the terms of the POR program and unbundling **solely for 2010**, and **all parties reserve their full rights as to all issues commencing January 1, 2011**.[28]

While RESA agreed to accept PPL's proposed program structure (with a few modifications) for 2010, it made clear that its acceptance represented a "compromise" in exchange for having a POR program implemented in time for PPL's January 2010 market opening:

> Because a functioning POR program is so crucial for the facilitation of competition, the Retail Energy Supply Association ("RESA") and Direct

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

26 In its Statement in Support of the settlement, PPL made clear "**it is to be emphasized that the Settlement covers the terms of the POR program and unbundling solely for 2010, and that all parties reserve their full rights as to all issues commencing January 1, 2011**...This provision recognizes that, in PPL Electric's POLR II Settlement, the parties agreed to a process for the development of a POR program for 2011." *Id.*, PPL Electric Utilities Corporation Statement In Support of The Joint Petition For Settlement, dated November 6, 2009 at 5.

27 *Petition of PPL Utilities Corporation Requesting Approval of a Voluntary Purchase of Accounts Receivables Program and Merchant Function Charge*, Docket No. M-2009-2129502, Opinion and Order entered November 19, 2009 at 24.

28 *Id.* at Joint Petition for Settlement at 6, ¶32 (emphasis added).

> 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.[29]

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

Despite the clear intent of the parties to limit the applicability of the 2010 POR program, the fact that such a limitation was a key point in reaching the compromise and the Commission specifically included the limitation in its order approving the settlement, the ALJ relies on the approval of the program as "substantial evidence" to support PPL's proposals here. Such a result clearly contravenes the expressed intent of the parties and the Commission and, in fact, does not address the key issue here – whether PPL has proved its proposal to increase the generation-related uncollectible accounts expense factor for residential customers is just and reasonable.

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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 Main Brief of The Retail Energy Supply Association and Direct Energy Services, LLC dated October 30, 2009 at 2 (citations omitted, emphasis original).

For these reasons, the ALJ's reliance on the 2010 POR program to justify adoption of PPL's proposed increase must be rejected.

C. Exception No. 3: The ALJ erred in effectively assigning a burden of proof to RESA and concluding that RESA did not sustain this burden of proving that the uncollectible accounts expense factor associated with generation service should be assessed as a nonbypassable charge to all PPL's distribution customers (COL #17, RD at 83-87).

Because PPL did not sustain its burden of proving that its proposal should be adopted, RESA offered an alternative way to address the recovery of generation-related uncollectible accounts expense. RESA's alternative is fully supported by the record. Specifically, RESA proposed that uncollectible accounts expense be recovered through a nonbypassable charge assessed on all distribution customers to recover the costs of all generation-related uncollectible accounts expense.[30] In rejecting RESA's recommendation, the ALJ relied upon the false premise that RESA's proposal would somehow require shopping customers to pay the uncollectible accounts expense for non-shopping customers – a cross-subsidy[31] But as discussed above in Exception No. 1, the method of collecting generation-related uncollectible accounts expense makes no difference from the customer's perspective. In light of PPL's failure to justify its proposal, RESA's alternate approach should have been adopted.

Even if, however, the Commission finds that PPL somehow met its burden of persuasion (or going forward with the evidence) and that RESA was required to carry its burden of persuasion that its alternative approach should be adopted, the ALJ simply erred in effectively assigning the burden of proof on this issue to RESA – despite her discussion of these concepts. While the ALJ acknowledged that the burden of persuasion shifts during a proceeding, she did

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30 RESA St. No. 1 at 11.

31 RD at 83-84.

not explicitly acknowledge that the burden of proof does not.[32] Instead, the ALJ relied upon a complaint case[33] not involving a utility's proposed rate increase standard to justify effectively and improperly transfer the burden of proof on this issue to RESA.

The Commission stated the correct rule in a PGW rate case:

> The Commission has continued to affirm that the utilities have the burden of proof in base rate proceedings. In *Pennsylvania Public Utility Commission v. Breezewood Telephone Company*, 74 Pa. PUC 431, 442 (1991), 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.
>
> 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 of going forward may shift, the burden of establishing the justness and reasonableness of every component of a requested rate increase remains on the utility. The opposing parties have no such burden. OTS M.B. at 6, OCA M.B. at 8. As stated by the Pennsylvania Supreme Court in *Berner v. Pennsylvania Public Utility Commission*, 382 Pa. 622, 631, 116 A.2d 738, 744 (1955) :
>
> > [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 . . . .
>
> 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

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32 RD at 76; While the burden of persuasion may shift back and forth during a proceeding, the burden of proof always ultimately remains on the party with that burden; in this case, PPL, as to the justness and reasonableness of their rates. *Milkie v. Pennsylvania Public Utility Commission*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *Palmerton Telephone Company v. Global NAPs South, Inc.*, Docket C-2009-2093336, 2010 Pa. PUC LEXIS 245 (Order entered March 16, 2010).

33 *Patterson v. Bell Telephone Company of Pennsylvania*, 72 Pa. PUC 196, 1990 Pa. PUC LEXIS 19 (1990.

> affirmatively establish the reasonableness of its claim. It is not the burden of another party to disprove the reasonableness of a utility's claims.
>
> *Pennsylvania Public Utility Commission v. Equitable Gas Co.*, 57 Pa. PUC 423, 444 (fn. 37) (1983)[34]

The record in this proceeding fully supports RESA's recommendations as the lawful way to handle the costs of generation-related uncollectible accounts expense, consistent with the ALJ's "no cross-subsidy" rationale. The record showed that RESA's recommendation will encourage more competitors to come into the market to fulfill the goals of the Choice Act. RESA's recommendation is also a reasonable way to mitigate the overall cost of uncollectible accounts expense because it eliminates the need for duplicative collection responsibilities, treats all customers the same, and leverages the well-established and powerful system of the EDC to minimize the cost of uncollectible accounts expense for the benefit of all consumers.[35]

Further, RESA's proposal is consistent with the way POR programs are currently structured for the majority of EDCs in Pennsylvania.[36] Most recently, the Commission

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34 *Pennsylvania Public Utility Commission v. Philadelphia Gas Works*, Docket Nos. R-00061931; R-00061931C0001 et al, 2007 Pa. PUC LEXIS 46 (Order entered July 24, 2007)

35 RESA M.B. at 21-22.

36 *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; *Petition of Pennsylvania Power Company for Approval of its Default Service Programs*, Docket No. P-2010-2157862, Joint Petition for Settlement adopted on October 21, 2010, final order pending; *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. The Commission recently approved continuation of DLC's POR program in its current form including use of the same uncollectible accounts factor in the discount rate. *See Petition of Duquesne Light Company for Approval of Default Service Plan for the Period January 1, 2011 Through May 31, 2013*, Docket No. P-2010-2135500, Opinion and Order entered June 21, 2010, Attachment at 8; *Petition of Direct*

specifically approved "includ[ing] the entirety of [generation-related] uncollectible accounts expense within [PECO's] distribution service base rates" just as RESA proposes here.[37] In reaching this decision, the Commission rejected the position that the Commission was legally or otherwise required to order PECO to implement a proposal similar to the one PPL is proposing here. The Commission also rejected arguments that PECO's recovery mechanism was not in the public interest and that PPL's proposal should be the "standard" for all EDC POR programs.[38] This is fully consistent with – and indeed expressly follows – the PUC's order approving PPL's 2010 POR program.

Finally, recovering the cost of generation-related uncollectible accounts expense from all customers through a bypassable charge will result in a more efficient POR program that can be simplified from an operational perspective and will be more attractive to EGSs. With more EGSs taking advantage of a better POR program structure, competition in the PPL market will be stimulated for the benefit of all consumers. Even if the Commission finds that PPL somehow met its burden of proof and that RESA was required to prove that its alternative approach should be adopted, the record in this proceeding fully supports RESA's recommendations as the lawful and superior way to handle the costs of generation-related uncollectible accounts expense. The ALJ's decision to reject RESA's recommendation should be reversed.

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

37 *Petition of PECO Energy Company for Approval of its Revised Electric Purchase of Receivables Program*, Docket No. P-2009-2143607, Opinion and Order entered June 18, 2010 at 48.

38 *Id.* at 38-39, 46.

D. Exception No. 4: The ALJ erred in concluding that PPL's "all-in/all-out" restriction for residential customers should be continued based on the Commission's actions regarding POR programs for the natural gas industry (RD at 87-89).

Because of the way PPL proposes to recover the costs of uncollectible accounts expense through the POR program discount, its proposed POR program includes an "all-in, all-out" restriction for residential customers whereby an EGS is required to place all of its residential accounts in the POR program or none at all.[39] Under this restriction, EGSs are prevented from serving some residential customers through the POR program while serving other residential customers outside the POR program through dual billing.[40] As the record shows, the presence of this restriction impedes the development of a fully competitive retail market because it constrains the flexibility of EGSs to serve more residential customers.[41] Further, PPL requires this restriction only because of the way it proposes to recover the generation-related uncollectible accounts expense.

In rejecting removal of this restriction, the ALJ relied on the Commission's Advance Notice of Final Rulemaking Order regarding POR programs for natural gas distribution companies.[42] More specifically, the ALJ stated that the Commission "declared its intent to require an NGS to use consolidated billing – for all customers – in order to qualify for

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39 PPL St. No. 7 at 34.

40 RESA St. No. 1 at 13. No similar restriction is present for small commercial customers.

41 RESA St. No. 1 at 14.

42 RD at 88 citing *Natural Gas Distribution Companies and Promotion of Competitive Retail Markets*, Docket No. L-2008-2069114, Advance Notice of Final Rulemaking Order entered August 10, 2010.

participation in a POR program" and determined that PPL's proposal to utilize its restriction "is consistent with the Commission's regulations in the gas industry."[43] The ALJ's reasoning is flawed for several reasons.

First, there are no regulations addressing this issue for the electric industry and none of POR programs currently in existence today in the electric industry have a similar "all-in, all-out" restriction. Rather, the POR programs currently in effect for PECO Energy Company, Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and Duquesne Light Company only require an EGS using EDC-consolidated billing to utilize POR.[44] Even Allegheny Power, which had resisted implementing a POR program, recently filed a tariff supplement proposing to implement a POR program without including the restriction imposed by PPL.[45] If the EGS chooses to send the customer its own bills (i.e. dual billing) for some or all of its accounts, then those accounts are not required to be a part of the POR program. This is the same parameter in operation for the small commercial customers in PPL's service territory and is consistent with RESA's recommendations for residential customers.

Second, the proposed regulations for the gas industry cited by the ALJ have not been finalized by the Commission, as comments to the Commission's Advance Notice of rulemaking are still pending. Moreover, even these proposed regulations permit two exceptions to the general "all-in, all-out" rule which are not present in the PPL proposal.

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43 *Id.*

44 *See* footnote 36.

45 Supplement No. 6 to Electric-Pa. P.U.C. No 1S, Original Page No. 35, Section 12.4.2. filed at Docket Number Docket No. R-2010-2207938. A copy of the filing with the proposed tariff is available at https://www.01.alleghenypower.com/Pennsylvania/EGS%20Tariff%202010-11-01.pdf.

In sum, the ALJ's reliance on proposed regulations addressing POR programs for the gas industry without any consideration of the way other EDCs handle this issue was misplaced and should be rejected. If the choice is between what most EDCs do or what gas utilities may be required to do, the more apt choice is clear – what most of the EDCs do. Moreover, as the record in this proceeding shows, there is no need for this restriction and imposing it just deprives customers of the opportunity to be served by a greater variety of EGSs offering a greater variety of products.

E. Exception No. 5: The ALJ erred in rejecting RESA's proposal to eliminate the small C&I uncollectible tracker based on the erroneous belief that such monitoring could have no impact on EGSs (RD at 89-90).

For small commercial customers, the POR program includes a tracking mechanism whereby PPL monitors the uncollectible account expense associated with small commercial customers and reserves the ability to charge an EGS-specific discount rate if the EGS's individual, realized uncollectible account expense exceeds a pre-set threshold level.[46] In rejecting RESA's opposition to this mechanism, the ALJ stated:

> It is difficult to see how the gathering of information regarding the effectiveness and use of the POR program can be anything but positive, and RESA's proposal to direct PPL Electric to cease its monitoring is denied.[47]

In reaching this conclusion, the ALJ failed to recognize the consequences of the mechanism is that EGSs that PPL believes may be engaging in "bad behavior" would be financially penalized because PPL would pay them less (i.e. a higher discount rate) for purchasing their receivables.

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46 RESA M.B. at 17 citing RESA St. No. 1 at 17 and PPL St. No. 6-R at 16.

47 RD at 90.

Importantly, the record is clear about two key facts of this mechanism. First, it is only necessitated because of the way PPL proposes to recover the costs of uncollectible accounts expense through the POR discount rate. Second, there are several likely scenarios where PPL's proposal would impose a higher discount rate on an individual in circumstances where the EGS's behavior would not increase the uncollectible expense or risk for PPL.[48] Contrary to the ALJ's description, the "tracking mechanism" is more than just a way to "gather information." On the contrary, it is an unnecessary tool by which PPL may decide to start paying an EGS less to purchase its receivables. Since the record does not support continuation of this mechanism, the ALJ erred by not requiring PPL to remove it as a program feature from its POR program for 2011.

F. Exception No. 6: The ALJ erred in not requiring PPL to expand its POR program to large C&I customers based on the belief that large C&I customers "are not unhappy" with PPL's current POR program (RD at 93).

Currently, PPL operates a self-described *de facto* POR program implemented and unchanged since 1998 for large commercial and industrial ("C&I") customers. This POR program is not structured in the same manner as the POR program for residential and small C&I customers. First, PPL purchases the EGS's accounts receivable at no discount. PPL offers a 0% discount rate because the large C&I POR program does not handle the recovery of generation-related uncollectible accounts expense for large C&I customers the same way it does for residential and small C&I customers. Instead of isolating the generation-related uncollectible accounts expense for large C&I customers as PPL does for residential and small C&I customers, it continues to be recovered through distribution rates.[49] Second, if the large C&I POR customer

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48 RESA M.B. at 17-18.

49 PPL St. No. 7-R at 32.

is in arrears for 90 days or three billing cycles, whichever is shorter, the EGS is then required to bill its own charges. At that point, the EGS may either terminate its generation service to the customer (by returning the customer to default service because the EGS has no ability to physically disconnect service) or begin issuing its own bills to the customer.[50]

According to PPL's testimony, no EGSs are using this POR program for large C&I customers but are instead separately billing their charges directly to the customer.[51] This is because an EGS has no ability to terminate service to the customer and, after 90 days of arrears, the EGS is forced to either absorb the full uncollectible accounts expense or return the customer to default service.[52] Further, the failure to remove generation related uncollectible accounts expense from distribution rates for this class of customers creates a competitive advantage for PPL's provisioning of default service to large C&I customers. This is because EGSs must price offers that reflect the cost of generation-related uncollectible accounts expense whereas PPL's default service does not include this cost in its rate (unlike PPL's proposal to include the MFC in the default service rate of residential and small C&I customers).[53] For these reasons, RESA supported expanding the POR program consistent with its recommendations in this proceeding.

While RESA would prefer a POR program for all classes that handles the recovery of uncollectible accounts expense through a nonbypassable surcharge on all customers, upon consideration of all the testimony presented in this proceeding and in consideration of the current early stage of retail market development in PPL's service territory, RESA is willing to accept

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50 PPL St. No. 6 at 8; PPL St. No. 6-R at 19.

51 PPL St. No. 6-R at 19.

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

53 RESA St. No. 1 at 19; RESA St. No. 1-SR at 19.

continuation of the current uncollectible expense cost recovery mechanism for the small C&I customers (as proposed by PPL) along with expansion of this POR program structure to the large C&I customers.[54] However, it should be noted that implementation of PPL's proposal for the small C&I class contemplates application of a higher discount rate when an individual EGS's uncollectible accounts expense exceeds a threshold which would be particularly problematic if implemented for the large C&I class. This is because the large C&I class is comprised of fewer, but larger customers. Accordingly, it is more likely that a single EGS may only be serving a handful of large customers. If a single large C&I customer goes bankrupt or otherwise becomes delinquent, it is more likely that the threshold uncollectible account expense level set by the tracking mechanism would be met triggering a higher discount rate for the individual EGS even though the class average uncollectible cost is not increased.[55] Further, if the POR program is expanded to the large C&I class, the incremental costs of implementation and ongoing administration of the large C&I POR program would be paid by EGSs that take advantage of the option through an appropriate administrative adder to the discount rate not to exceed .05% consistent with the administrative adder contained in PPL's proposed discount rate for the small C&I POR customers. Expanding the POR program to large C&I customers, even under RESA's second choice structure, would be a significant improvement over the current POR construct unchanged since 1998 and will provide these customers with the benefit of having an additional competitive option that could be structured in a variety of ways that are not currently possible.

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54 RESA St. No. 1-SR at 22.

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

In rejecting RESA's recommendation, the ALJ states that "the large industrials are not unhappy with PPL Electric's present method of billing them."[56] While this is certainly not a ringing endorsement of PPL's current program, the record makes clear that the large industrials also would not be "unhappy" with the adoption of RESA's compromise recommendation to expand the POR program proposed by PPL for the small commercial customers to the large commercial customers. So, at best the large industrials' feelings are a wash. Accordingly, viewing the level of "happiness" of the large commercial customers as the same in either scenario, the ALJ erred in failing to recognize the additional competitive benefits that would result from expanding the POR program to the large commercial customers. The expressed public policy of the Commonwealth of Pennsylvania is in favor of retail competition and this should be the deciding factor in this situation when, as here, there is supporting evidence. It is also significant that the POR program for PECO and the one proposed for Allegheny Power are open to customers of all classes consistent with RESA's recommendation here. As the ALJ failed to consider the record evidence supporting expansion of the POR program and the positive impact such an expansion would have for the benefit of large commercial customers, her decision to deny the proposal should be reversed.

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56 RD at 93.

IV. CONCLUSION

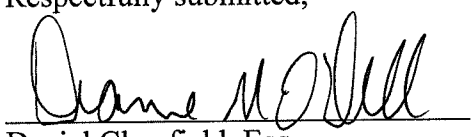
For the reasons set forth above, RESA requests that the Commission reverse the RD regarding issues related to PPL's Purchase of Receivables Program to be effective on January 1, 2011. More specifically, the Commission should:

1. Find that PPL did not sustain its burden of proving that its proposed rate increase to the generation-related uncollectible accounts expense is just and reasonable and reject it;

2. Upon rejecting PPL's proposed increase to the generation related uncollectible accounts expense factor, the Commission should require PPL to recover the costs of generation-related uncollectible accounts expense from all customers through a nonbypassable surcharge, remove the "all-in, all-out" restriction for the residential class, remove the tracking mechanism for the small commercial class and expand the POR program as so structured to large commercial customers.

3. As an alternative to number 2, RESA would accept its preferred cost recovery mechanism for the residential class with the elimination of the "all-in, all-out" restriction, PPL's proposed cost recovery mechanism for small commercial customers with the elimination of the tracking mechanism and expansion of the POR program as structured for the small commercial customers to large commercial customers.

Respectfully submitted,



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