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

IN REPLY PLEASE
REFER TO OUR FILE

November 15, 2010

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

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

Docket No. R-2010-2161694

Dear Secretary Chiavetta:

Enclosed for filing, please find an original and nine (9) copies of the **Reply Exceptions** of the Office of Trial Staff (OTS) in the above-captioned proceeding.

As evidenced by the enclosed Certificate of Service, copies are being served on all active parties of record.

Sincerely,

Lawrence F. Barth

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

Enclosure
LFB/edc

cc: Parties of record
Hon. Susan D. Colwell
Chairman Cawley
Vice Chairman Christy
Commissioner Gardner
Commissioner Powelson
Chief Counsel Pankiw, Law Bureau
Director Davis, OSA

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY EXCEPTIONS OF THE OFFICE OF TRIAL STAFF

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Dated: November 15, 2010

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I. INTRODUCTION

The Office of Trial Staff ("OTS") opposes the exceptions of the Retail Energy Supply Association ("RESA") which are entirely directed at the purchase of receivables ("POR") program of the PPL Electric Utilities Corporation ("PPL" or "Company"). As discussed below, this program was significantly altered last year at the direction of the Pennsylvania Public Utility Commission ("Commission") in an effort to knock down barriers to retail competition on the PPL system. PPL has implemented that plan and now seeks to continue it as ordered by the Commission while only updating the discount levels to reflect more recent data. OTS supports the POR program as implemented by PPL and believes the evidence shows that it has been successful since the generation cap expired at the end of 2009. As set forth in the Main Brief and Reply Brief of the Office of Trial Staff, the Commission should allow the Company to obtain more than just a few months experience before directing PPL to make changes in this program.

OTS addresses some, but not all, of RESA's exceptions below. The identification of specific arguments should not be construed as OTS support for the remaining RESA exceptions. OTS opposes all of RESA's exceptions. OTS believes the Recommended Decision should be adopted by the Commission, particularly with respect to the Administrative Law Judge's endorsement of the Joint Petition for Partial Settlement and the POR program.

II. ARGUMENT

PPL operates a purchase of receivables program wherein it buys the sales on account ("accounts receivable") of electric generation suppliers ("EGSs") operating on its system.[1] PPL has operated a POR program since its original restructuring settlement in 1998.[2] PPL agreed to revise its POR plan as part of a settlement of its Default Service Plan in 2009.[3] The plan was intended to cover the period of January 1, 2011 through May 31, 2014.[4] However, in anticipation of the Company's generation rate cap expiring at the end of 2009, the Commission issued a Tentative Order wherein it asked PPL to adopt certain standards in its POR program effective January 1, 2010 when the caps lifted.[5]

The Commission recognized the importance of POR plans stating that, in its judgment, the use of POR programs can reduce barriers to market entry which could "translate into reduced costs to consumers."[6] In short, by allowing an electric distribution company ("EDC") like PPL to assume the customer debt of an EGS, competition become easier for the EGS because it does not have to expend the effort, resources and expense associated with trying to collect payment on those accounts. Thus, it followed that when the Commission acted to adopt the modifications to PPL's POR plan in the Tentative Order, it observed:

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1 OTS Statement No. 2-R, pp. 7-8; PPL Statement No. 6, pp. 6-15; PPL Statement No. 7, pp. 30-35.
2 PPL Statement No. 6, p. 6.
3 *Petition of PPL Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period January 1, 2011 Through May 31, 2014,* Docket No. P-2008-2060309, Opinion and Order entered June 30, 2009, p. 12.
4 *Id.*
5 *PPL Electric Utilities Corporation Retail Markets*, Docket No M-2009-2104271, Tentative Order entered May 15, 2009, pp. 14-15 (Tentative Order).
6 *Id.*

> [b]ased on several years' experience during the transition period, it is the Commission's judgment that a viable POR program is an essential element to the creation of a competitive market for generation in Pennsylvania, as envisioned by the Competition Act. 66 Pa. C.S. § 2802(2). Moreover, we are convinced that establishment of a properly structured POR program *by the end of the transition* period is necessary to faithfully carry out the provisions of Chapter 28. 66 Pa. C.S. § 510(a). And that absent a viable POR program in place to coincide with the expiration of rate caps and substantial increase in default service rates, consumers in PPL's service territory will not likely have the competitive market and customer choice that the legislation intended when the rate caps expire on December 31, 2009.[7]

In response to the Commission's Order, PPL filed for approval of a POR plan (at Docket No. P-2009-2129502) which it argued complied with the modifications directed by the PUC. The Commission subsequently approved a settlement among PPL and industry stakeholders which put in place the Company's current POR program.[8] It should be noted that many of the parties in the proceeding *sub judice* are signatories to that settlement. One of those signatories – RESA – is now seeking to alter the POR program put in place by the Commission through the PPL Nov. 19 Order.[9]

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

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

9 RESA Exceptions, pp. 6-24.

A. REPLY TO RESA EXCEPTION A (RESA EXCEPTIONS, pp. 6-11)

RESA excepts to the Administrative Law Judge's finding that PPL has presented substantial evidence that the POR program should be continued under the terms approved by the Commission in its PPL Nov. 19 Order. RESA Exceptions, pp. 6-11; RD, pp. 70-102. OTS submits that the ALJ correctly held that the Company met its burden of proof regarding the reasonableness of its POR program and that this exception should be rejected.

PPL witness Krall described how the existing POR plan worked, in part, in his testimony:

> [u]nder the POR program that became effective on January 1, 2010, the Company purchases EGS receivables for customers in its Residential and Small Commercial & Industrial ("Small C&I") Rate Classes at a discount from standard supply charges. The discounts are different for Residential and Small C&I customers. Each of the discount rates is composed of two components: (1) an uncollectible accounts expense percentage factor, and (2) a POR development, implementation, and administration percentage factor. In parallel, the Company instituted a Merchant Function Charge ("MFC") which "unbundles" from its distribution base rates the uncollectible accounts expense associated with generation supply. Under this construct, the Company continues to recover uncollectible accounts expense associated with non-generation supply-related delivery service from Residential and Small C&I customers through distribution rates. Uncollectible accounts expense associated with generation supply for Residential and Small C&I default service customers is separated from the Company's distribution rates and is recovered through the MFC which, in turn, is

> included in the Generation Supply Charge. The MFC also is included in the Price To Compare ("PTC") that is reported by PPL Electric. Residential and Small C&I customers who sign-up with an EGS for generation supply do not pay the MFC. Large Commercial & Industrial ("Large C&I") customers continue to operate under the original POR construct.[10]

PPL seeks to maintain the current POR program with the sole exception being the updating of the discount rates described immediately above.[11] OTS believes this is reasonable and it supports these changes to the discount rates.[12]

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

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

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10 PPL Statement No. 6, pp. 8-9.
11 PPL Statement No. 7, pp. 32-35.
12 OTS Statement No. 2-R, pp. 7-11.

Moreover, there can be little doubt that PPL has met its burden of proof with regard to this issue. The courts have been clear as to what constitutes "substantial evidence" necessary to meet a party's burden of proof:

> [s]ubstantial evidence is that relevant evidence which a reasonable mind might accept as adequate to support a conclusion. That conflicting evidence was presented does not necessarily mean there is no competent evidence to support the findings of the Board.[13]

RESA has not demonstrated that the PPL POR plan is not working. To the contrary, the evidence establishes that PPL has a robust retail market for electric power and that it may have, in fact, the most competition of any electric distribution company in the Commonwealth.[14] Thus, the Administrative Law Judge ("ALJ") was correct in determining that the Company met its burden with regard to establishing that current POR program, without any major alterations, should be continued.

B. REPLY TO RESA EXCEPTION C (RESA EXCEPTIONS, pp. 14-17)

RESA excepts to the ALJ having "effectively" assigned a burden of proof to RESA and concluding that it had not met that burden with respect to proving that the uncollectible accounts expense factor associated with generation service should be assessed as a nonbypassable charge to all of PPL's distribution customers. As with its first exception, addressed above, RESA attempts to elevate a question of whether there was sufficient evidence on which the Commission

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13 *Hercules, Inc. v. Unemployment Compensation Bd. of Review,* 604 A.2d 1159, 1163, (Pa. Cmwlth. Ct. 1992) ("Hercules").

14 PPL Statement No. 6-R, pp. 5-6.

could conclude that PPL had met its burden of proof. The burden of proof remains with the utility seeking the change in its rates:

The relevant statutory provisions of the Public Utility Code[15] clearly show a legislative intent that the utility or proponent of a rule or order carry the burden of proving the justness and reasonableness of rates impacted by the filing. The Commonwealth Court in reviewing Section 315(a) interpreted the utility's burden of proof in rate proceedings as follows:

> [s]ection 315(a) of the Public Utility Code, 66 Pa. C.S. §315(a), places the burden of proving the justness and reasonableness of a proposed rate hike squarely on the public utility. It is well-established that the evidence adduced by a utility to meet this burden must be substantial.[16]

However, once the utility has met that burden, those opposing it may offer into evidence testimony to contest the basis for the relief sought by the utility. Having done this, the party challenging the utility is not assured of success in that there is still a question remaining of the weight of the evidence. Here, the ALJ found that PPL had met its burden and that RESA had not been able to overcome that conclusion. The mere fact that conflicting evidence was presented does not necessarily mean there is not competent evidence to support the findings of the ALJ.[17] The exception should be rejected.

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15 See, e.g. 66 Pa. C.S.A § 315, 66 Pa. C.S.A. § 332.

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

17 *See, Hercules.*

C. REPLY TO RESA EXCEPTION D (RESA EXCEPTIONS, pp. 18-20)

RESA complains that the ALJ concluded that PPL's "all-in/all-out" requirement should be maintained for EGSs operating on its system. RESA bases its opposition to this standard on the Commission's action with respect to the natural gas industry. This exception should be rejected.

Under the "all-in/all-out" requirement, EGSs are given the choice as to whether it will participate in the POR program with respect to all of its residential customers. It can enroll all of its customer accounts or none of its customer accounts. In short, the EGS may transfer the risk of doing business for all of its accounts or it may continue to bear that risk and conduct its own collection activities.[18]

This was done so as to prevent an EGS from "cherry picking" its accounts and making PPL responsible for only the high risk, residential customers. This was done because the residential class includes low-income customers who impose a higher uncollectible accounts expense than do other customers.[19] This expense is also a factor of the limitations of the ability of the utility to terminate service under Chapter 56, the moratorium on winter shutoffs and the Company's ability to pursue collections under Chapter 56.[20]

If an EGS had the ability to keep its good, low-risk residential customers, and only shift the high-risk customers to the POR program, PPL's actual

18 PPL Statement 7, p. 30.
19 PPL Statement 6-R, pp. 12-13.
20 *Id.*

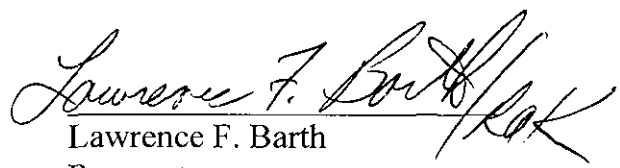
uncollectible accounts expense could possibly higher than average for all residential customers and significantly higher due to the moratorium on winter shut-offs of residential customers under Chapter 56. Moreover, RESA has not shown that the "all-in/all-out" requirement has been an impediment to competition. In fact, the record shows there is no need to tamper with the existing program beyond updating the discounts as requested by PPL. Competition has been thriving on the PPL system since the current plan was put into operating at the beginning of the year.[21] As of July 3, 2010, 31.5% of residential customers and 39.5% of small commercial and industrial customers were either receiving service from an EGS or were signed up to begin receiving such service.[22] The most recent data show that 24 EGSs are actively supplying residential customers service and 30 EGSs are supplying small commercial and industrial customers.[23] These figures show that, in terms of competition, the system is decidedly not broken. RESA proposals amount to fixes in search of a problem and should be rejected by the Commission.

21 PPL Statement No. 6-R, pp. 5-6.
22 *Id.*
23 *Id.*

III. CONCLUSION

For the reasons set forth above, PPL Electric Utilities Corporations has demonstrated that its proposed Purchase of Receivables plan as adjusted for an update to the discount rate is just and reasonable and in the public interest and should also be approved. The Office of Trial Staff submits that the Exceptions of the Retail Energy Supply Association are not well made and should be rejected. Furthermore The Office of Trial Staff respectfully submits that the *Joint Petition for Partial Settlement of Rate Investigation* is in the public interest and should be approved.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Reply Exceptions** dated November 15, 2010, either personally, by first class mail, electronic mail, express mail and/or by fax upon the persons listed below:

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