BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE PETITION OF THE RETAIL ENERGY SUPPLY ASSOCIATION (RESA) TO IMPLEMENT A PURCHASE OF RECEIVABLES PROGRAM IN DELAWARE (Filed January 21, 2016)	))))))	PSC DOCKET NO. 16-0112

MOTION OF THE DELAWARE PUBLIC SERVICE COMMISSION STAFF REQUESTING THAT THE COMMISSION DENY THE PETITION OF THE RETAIL ENERGY SUPPLY ASSOCIATION

The Public Service Commission Staff hereby respectfully moves the Public Service Commission ("Commission") for entry of the attached proposed Order denying the Petition of the Retail Energy Supply Association ("RESA"), which asks the Commission to order Delmarva Power and Light Company ("DPL") to implement a Purchase of Receivables ("POR") program. In support of this Motion, Staff asserts the following:

1. <u>RESA's Petition is entirely duplicative of the process already underway in Docket No. 15-1693.</u> On January 19, 2016, the Commission approved Order No. 8845 opening Docket No. 15-1693, in response to a petition of the Electricity Affordability Committee ("EAC"), which was established by the Delaware General Assembly to examine the structural aspects of energy supplier choice in Delaware and investigate ways to improve consumer choice.

2. After convening two public workshops in October 2015, the EAC developed eight recommendations designed to enhance consumer choice. The first of these eight recommendations concerned the adoption of a POR "approach for third-party suppliers whereby [DPL] purchases the receivables at a discounted price that includes the administrative cost of the program and whereby [DPL] assumes supplier bill collection responsibility." Order No. 8845. This is identical, as RESA acknowledges in its Petition, to the issue RESA now asks be considered in a separate docket. The EAC, in its petition, asked the Commission to open a docket to consider implementation of its eight recommendations, including first and foremost, a POR program.
3. In response to the EAC petition, the Commission adopted Order No. 8845, which opened a docket to consider the eight EAC recommendations, including POR. Order No. 8845 appointed a Hearing Examiner and directed that Hearing Examiner to schedule, properly notice, and conduct public comment sessions and evidentiary hearings; to develop a complete factual record regarding whether the eight EAC recommendations, including POR, are appropriate for implementation in Delaware; and to file his findings and recommendations with the Commission. Furthermore, the Docket No. 15-1693 proceedings have already begun, with the Commission Staff publishing notice, as required by Order No. 8845 in the News Journal and the Delaware State News on February 5, 2016.
4. RESA now asks the Commission to establish a separate docket to only consider POR, when the Commission has already established a process in Docket No. 15-1693 to consider it along with the seven other recommendations. The Commission should

decline to establish a separate docket for POR that will unnecessarily and inefficiently duplicate efforts already underway in Docket No. 15-1693 and require Staff, DPL, and multiple other interested parties to participate in two dockets.

5. Furthermore, POR is one of many factors impacting the complex issue of consumer choice in Delaware, as the EAC has recognized in making its eight recommendations. It is not only more efficient for the Commission, Staff, and other parties to consider all eight recommendations in one docket, but it would be inappropriate to single out POR for separate and expedited treatment, as RESA has requested. POR itself is a complex issue that should be considered within the context of all factors impacting consumer choice, and Docket No. 15-1693 is the appropriate venue to do so.

6. <u>RESA will have ample opportunity to present its position on POR and receive due consideration during the evidentiary hearings and public comment opportunities in Docket No. 15-1693</u>. Interested parties may request leave to intervene in Docket No. 15-1693 until March 20, 2016, and interested persons may file comments in Docket No. 15-1693 until March 30, 2016. RESA may participate and present its views in the context of Docket No. 15-1693. A separate docket for POR, as RESA has requested, is unnecessary.

7. <u>The Commission has broad authority to consolidate – or decline to consider separately – similar issues in the interest of administrative efficiency</u>. *See, e.g.*, *National Labor Relations Board v. Nichols*, 862 F.2d 952, 963 (1988) (administrative agency's "consolidation was proper because the two cases involve the same parties and factually related events, and both parties had a full and fair opportunity to litigate the issues"); *Daniels v. Police Board of the City of Chicago*, 789 N.E.2d 424, 433

(2003) (administrative bodies "have the discretion to consolidate cases"); *Bostick v. Sadler*, 247 Cal. App. 2d. 179, 183 (1966) ("action of administrative agency in consolidating or refusing to consolidate proceedings has long been held to be a problem for resolution in the discretion of the agency"); *Bayron v. New York State Dep't of Motor Vehicles*, 284 N.Y.S.2d 187, 188 (1967) (administrative agencies possess the same "discretion lodged in the courts to order a joint trial or consolidation of actions to expedite justice"). As noted above, the issue raised by RESA in its Petition are identical to those that will receive due consideration in Docket No. 15-1693. RESA will have sufficient opportunity to present its position in that proceeding. Granting RESA's Petition to consider POR in a separate docket would be entirely duplicative and an inefficient use of the valuable resources of the Commission, its Staff, and the multiple other parties involved. It is entirely within the Commission's broad discretion as an administrative agency to – in effect – consolidate RESA's Petition with Docket No. 15-1693 by denying RESA's Petition and directing RESA to participate in Docket No. 15-1693. Granting RESA's Petition here could lead to the absurd result of interested parties in Docket No. 15-1693 seeking separate consideration of each of the eight EAC recommendations – when all eight recommendations regarding improvements to consumer choice in Delaware, including POR, are most efficiently considered together in Docket No. 15-1693.

8. <u>RESA has provided no specific justification in its Petition for expedited and separate consideration of the POR issue outside of Docket No. 15-1693</u>. RESA has raised several substantive issues in its Petition. Implementation of POR involves complex issues among many stakeholders, and all of these issues deserve full and careful

consideration, alongside the other recommendations impacting consumer choice in Docket No. 15-1693. However, nowhere in its Petition does RESA provide the Commission a specific rationale for separate and expedited consideration of POR, outside of the consideration that will occur in Docket No. 15-1693. As such, it is unnecessary to parse out the POR issues from Docket No. 15-1693. POR is most appropriately considered along with the other recommendations impacting consumer choice in Docket No. 15-1693.

WHEREFORE, for the reasons stated above, the Delaware Public Service Commission Staff respectfully request this Commission deny RESA's Petition; adopt the attached proposed Order; and close this docket.

Respectfully submitted by,

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Dated: February 17, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on February 17, 2016, I caused a copy of the accompanying MOTION OF THE DELAWARE PUBLIC SERVICE COMMISSION STAFF REQUESTING THAT THE COMMISSION DENY THE PETITION OF THE RETAIL ENERGY SUPPLY ASSOCIATION and PROPOSED ORDER to be filed with the Delaware Public Service Commission's Delafile electronic filing system and to be served via electronic mail on the following persons.

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