



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

IN REPLY PLEASE  
REFER TO OUR FILE

July 8, 2016

Secretary Rosemary Chiavetta  
Pennsylvania Public Utility Commission  
400 North Street, 2<sup>nd</sup> Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Re: Petition of PPL Electric Utilities Corporation for approval of a  
Default Service Program and Procurement Plan for the Period  
June 1, 2017 through May 31, 2021  
Docket No. P-2016-2526627

Dear Secretary Chiavetta:

Enclosed please find the Bureau of Investigation and Enforcement's (I&E) **Main Brief** in the above-captioned proceeding.

Copies are being served on all active parties of record. If you have any questions, please contact me at (717) 787-8754.

Sincerely,

Gina L. Lauffer  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney I.D. #313863

GLL/sea  
Enclosure

cc: Certificate of Service  
Hon. Susan D. Colwell

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Petition of PPL Electric Utilities :  
Corporation for Approval of a Default :  
Service Program and Procurement :           Docket No. P-2016-2526627  
Plan for the Period June 1, 2017 :  
through May 31, 2021 :**

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**MAIN BRIEF  
OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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Dated: July 8, 2016

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## **I. INTRODUCTION**

### **A. The Retail Choice Act**

The Electricity Generation Customer Choice and Competition Act (“Choice Act”) became effective January 1, 1997. Under the Choice Act, which added Chapter 28 to the Public Utility Code, the generation of electricity would no longer be regulated as a public utility.<sup>1</sup> Instead, electric utilities were required to unbundle their rates and services and to provide open access over their transmission and distribution systems to permit competitive suppliers to generate and sell electricity directly to consumers in this Commonwealth.<sup>2</sup> In essence, Chapter 28 opened a retail electric market in which customers could purchase electricity from competing electric generation suppliers (“EGSs”). The Choice Act was prefaced, in part, with a finding that that competitive market forces are more effective than economic regulation in controlling the cost of generating electricity.<sup>3</sup>

The Choice Act did more than just open the retail electric market to competition. The Choice Act also addressed the importance of access to electric service and the need for customer protection in the competitive market. Specifically, the Choice Act concluded that electric service is “essential to the health and well-being of residents, to public safety and to orderly economic development” and that all customers should be able to obtain service on reasonable terms and conditions.<sup>4</sup> The Choice Act also spoke specifically to the needs of low income customers, mandating that “[t]he Commonwealth

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<sup>1</sup> 66 Pa.C.S.A. § 2802(14).

<sup>2</sup> 66 Pa.C.S.A. § 2802(14).

<sup>3</sup> 66 Pa.C.S.A. § 2802(5).

<sup>4</sup> 66 Pa. C.S. § 2802(9).

must, at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service.<sup>5</sup> To ensure the protection of low income customers, the Choice Act mandated that the Commission ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each EDC's territory.<sup>6</sup> The Choice Act defines Universal service and energy conservation as:

Policies, protections and services that help low-income customers to maintain electric service. The term includes **customer assistance programs**, termination of service protection and policies and services that help low-income customers to reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction programs, application of renewable resources and consumer education.<sup>7</sup>

## **B. Universal Service Programs**

To comply with the mandates of the Act, the Commission established regulations which required electric distribution companies ("EDCs") to develop uniform reporting requirements for universal service and energy conservation.<sup>8</sup> As part of the regulations, the Commission indicated that it would determine whether EDCs met the goals of the universal service programs, which it identified as: (1) protecting consumers' health and safety by helping low-income customers maintain electric service; (2) providing for affordable electric service by making available payment assistance to low-income

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<sup>5</sup> 66 Pa. C.S. § 2802(10).

<sup>6</sup> 66 Pa. C.S. §2804(9).

<sup>7</sup> 66 Pa.C.S.A. § 2803 (emphasis added).

<sup>8</sup> 52 Pa. Code § 54.71-§54.78.

customers; (3) assisting low-income customers conserve energy and reduce residential utility bills; and (4) establishing universal service and energy conservation programs are operated in a cost-effective and efficient manner.<sup>9</sup>

A key universal service program, the Customer Assistance Program (“CAP”) is defined as:

An alternative collection method that provides payment assistance to low-income, payment troubled utility customers. CAP participants agree to make regular monthly payments that may be for an amount that is less than the current bill in exchange for continued provision of electric utility services.<sup>10</sup>

Customers may be eligible for participation in a utility’s CAP if their status as a ratepayer or new application is verified, their household income is verified to be at or below 150% of the Federal poverty income (“FPL”) guidelines, and they qualify as a low income, payment troubled customer.<sup>11</sup> Low income, payment troubled status means that CAP customers must meet at least one of the following four criteria: (1) a household whose housing and utility costs exceed 45% of the household's total income; (2) a household who has \$100 or less disposable income after subtracting all household expenses from all household income; (3) a household who has an arrearage as defined by the utility; or a household who has received a termination notice or who has defaulted on one payment arrangement.

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<sup>9</sup> 52 Pa. Code § 54.73.

<sup>10</sup> 52 Pa.Code § 54.72.

<sup>11</sup> 52 Pa.Code § 69.265(4).

Aside from qualification guidelines, the Commission has also established credit limits and control features for CAPs. As an example, absent limited exceptions, the annual maximum CAP credits for non-heating electric customers should not exceed \$560, should not exceed \$1,400 for heating electric customers.<sup>12</sup> Additionally, CAP participants are not permitted to subscribe to non-basic services that would cause an increase in monthly billing and would not contribute to bill reduction, and CAP credits should not be used to pay for non-basic services.<sup>13</sup>

### **C. The Role of the Bureau of Investigation & Enforcement**

Act 129 of 2008<sup>14</sup>, authorized the Commission to establish bureaus, offices and positions to, *inter alia*, take appropriate enforcement actions that are necessary to ensure compliance with the Public Utility Code and Commission regulations and orders.<sup>15</sup> In accordance with Act 129, the Commission established the Bureau of Investigation and Enforcement (“I&E”) to serve as the prosecutory bureau for the purposes of representing the public interest in ratemaking and service matters, and enforcing compliance with the Public Utility Code.<sup>16</sup> The instant proceeding warrants I&E’s participation because its outcome has ratemaking implications and because key components of the Public Utility Code and the Commission’s regulations are at issue.

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<sup>12</sup> 52 Pa.Code § 69.265(3)(v)(B-C).

<sup>13</sup> 52 Pa.Code § 69.265(3)(ii).

<sup>14</sup> 66 Pa.C.S. § 308.2.

<sup>15</sup> 66 Pa.C.S. § 308.2(a)(11).

<sup>16</sup> 66 Pa.C.S. §§ 101 *et seq.*, and Commission regulations, 52 Pa. Code §§ 1.1 *et seq.* See *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).

## II. STATEMENT OF THE CASE

On January 29, 2016, PPL Electric Utilities Corporation (“PPL”) filed with the Pennsylvania Public Utility Commission (“Commission”) a Petition for Approval of a Default Service Program and Procurement Plan for the Period of June 1, 2017 through May 31, 2021 (“Petition” or “DSP IV”). PPL’s DSP IV included a proposal for competitive procurement of Default Service supply and related Alternative Energy Credits during the DSP IV Program Period; an implementation plan; a proposed rate design, including a Time-of-Use (“TOU”) rate option for Default Service during the DSP IV Program Period; a proposal to continue the Company’s current Standard Offer Referral Program; a proposal to allow CAP customers to shop; and a contingency plan for the DSP IV.<sup>17</sup> PPL’s DSP IV was assigned to the Office of Administrative Law Judge (“OALJ”) for the development of an evidentiary record, including a Recommended Decision. The OALJ assigned the proceeding to Administrative Law Judge (“ALJ”) Susan D. Colwell for investigation and scheduling of hearings to consider, inter alia, whether the DSP IV will provide default service that is adequate, reliable, and will result in the least cost to customers over time.<sup>18</sup>

I&E filed its Notice of Appearance on February 18, 2016. On February 29, 2016, Notices of Appearance, Answers, and Formal Complaints were filed by the Office of Consumer Advocate (“OCA”) and the Office of Small Business Advocate (“OSBA”). Intervention petitions were submitted by the following entities: NextEra Energy Power

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<sup>17</sup> Petition at 1.

<sup>18</sup> 66 Pa. C.S. §2807(e).

Marketing, LLC (“NextEra”), the Sustainable Energy Fund of Central Eastern Pennsylvania (“SEF”), Noble Americas Energy Solutions LLC (“Noble Americas”), the PP&L Industrial Customer Alliance (“PPLICA”), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), Exelon Generation Company, LLC (“Exelon”) and Retail Energy Supply Association (“RESA”). A Prehearing Conference was held on March 9, 2016, at which time all interventions were granted. At the Prehearing Conference, a procedural schedule and the procedures applicable to this proceeding were set forth and subsequently memorialized in the Second Prehearing Order. After the Prehearing Conference, I&E, the parties engaged in a substantial amount of discovery and participated in settlement discussions.

In accordance with the procedural schedule outlined in the Second Prehearing Order, the parties exchanged direct, rebuttal, surrebuttal, and rejoinder testimony. I&E introduced the following statements of testimony:

- I&E Statement No. 1, the Direct Testimony of D.C. Patel, who addressed PPL’s CAP shopping data and PPL’s Standard Offer Program;
- I&E Statement No. 1-SR, the Surrebuttal Testimony of D.C. Patel and its corresponding exhibit, I&E Exhibit No. 1-SR.

On June 15, 2016, the parties to this proceeding informed ALJ Colwell that they had reached an agreement in principal on all issues except for CAP shopping. On the same date, I&E entered into a Joint Litigation Position Among Certain Parties Regarding

CAP Shopping (“Joint Position”) with PPL, the OCA, and CAUSE-PA which memorialized these parties’ agreed litigation proposal on the remaining issue of CAP shopping. The Joint Position is attached and herein incorporated as Exhibit A. While the OSBA, NextEra, PPLICA, SEF, Noble Americas and Exelon took no position on the Joint Position, RESA did not support it and reserved its right to litigate the issue of CAP shopping.

On June 16, 2015, an evidentiary hearing was held in Harrisburg. At the Hearing, the parties moved for the admission of their evidence into the record. I&E entered the above-referenced testimony into the record.<sup>19</sup> During the Hearing, PPL accurately reported that the parties reached a partial settlement on all issues other than CAP shopping, which the parties intended to address through briefs, and ALJ Colwell granted her approval to proceed in that manner.<sup>20</sup> Accordingly, and pursuant to the procedural schedule and the Pennsylvania Code,<sup>21</sup> I&E submits this Main Brief.

### **III. QUESTIONS INVOLVED**

1. Does the Commission Have the Authority to Limit CAP Shopping?

Suggested Answer: Yes.

2. Has PPL produced evidence of increased shopping costs incurred through its CAP program, OnTrack, and the resulting harm imposed upon ratepayers?

Suggested Answer: Yes.

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<sup>19</sup> Hearing Tr. at 44-45.

<sup>20</sup> Hearing Tr. at 21.

<sup>21</sup> 52 Pa. Code § 5.501- 5.502.

3. As outlined in the Joint Position, should OnTrack shoppers be limited to shopping through PPL's CAP-Standard Offer Program until the Commission addresses CAP shopping issues on a uniform, statewide basis?

Suggested Answer: Yes.

#### IV. LEGAL STANDARDS AND BURDEN OF PROOF

Pursuant to the Public Utility Code, the proponent of a rule or order bears the burden of proof.<sup>22</sup> In this proceeding, as proponents of the Joint Position, PPL, OCA, CAUSE-PA, and I&E ("Joint Litigants") have the burden of proof to establish that the terms of the Joint Position should be adopted. More specifically, through the Joint Position, the Joint Litigants have proposed a rule restriction that would limit PPL's CAP customers from shopping in the retail electric market other than through a proposed CAP-Standard Offer Program.<sup>23</sup>

In a case such as this one, pending before an administrative tribunal, Courts have held that a "litigant's burden of proof is satisfied by establishing a preponderance of evidence which is substantial and legally credible."<sup>24</sup> In order to meet their burden of proof, the Joint Litigants must "present evidence more convincing, by even the smallest amount, than that presented by any opposing party."<sup>25</sup> I&E submits that the Joint Litigants have provided unrefuted evidence of increased CAP shopping costs and the resultant harm to PPL's ratepayers. After proving the CAP shopping impact, the Joint Litigants

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<sup>22</sup> 66 Pa. C.S. § 332(a).

<sup>23</sup> Joint Position at ¶4. The Joint Litigants have also agreed that this limitation should be imposed until a uniform, statewide solution to CAP shopping issues can be developed and recommended that the Commission should promptly initiate a statewide collaborative and/or rulemaking proceeding to address CAP shopping issues on a statewide basis.

<sup>24</sup> *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

<sup>25</sup> *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

proposed a program to remediate increased CAP shopping costs, and provided evidence that the proposal would mitigate increased CAP shopping costs. The only opposing party, RESA, has failed to overcome this evidence, and failed to set forth any reasonable alternative to the Joint Litigants' proposal.

## **V. SUMMARY OF THE ARGUMENT**

After carefully considering the evidence in this case, I&E recommends the approval of the terms outlined in the Joint Position to mitigate the proven harm that PPL's ratepayers are experiencing under its current CAP shopping program. PPL's OnTrack customers have been eligible to shop for electric energy rates without restriction.<sup>26</sup> The evidence in this case has revealed that the result of unbridled OnTrack shopping is that, on the whole, OnTrack shoppers have been exceeding their CAP credits at a faster pace than they would have if they did not shop beyond PPL's PTC.<sup>27</sup> PPL has also proven that unrestricted OnTrack shopping has led to increased CAP costs that are paid for by its non-CAP residential customers through its Universal Service Rider ("USR").<sup>28</sup> These uncontroverted facts substantiate the need for immediate action, and a recent Commonwealth Court decision has made it clear that the Commission does have authority to approve the terms of the Joint Position.

In the beginning of this case, I&E acknowledged the harmful impact of PPL's current OnTrack shopping program, but, it also recognized the challenges that PPL identified in implementing a program that would limit OnTrack shopping at rates above

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<sup>26</sup> PPL St. No. 3 at 5.

<sup>27</sup> PPL St. 1 at 44-45.

<sup>28</sup> PPL St. 1 at 45.

the PTC.<sup>29</sup> I&E also agreed with PPL that imposing CAP shopping limitations would be an issue of statewide importance.<sup>30</sup> Therefore, I&E concurred in PPL’s recommendation that the Commission should address CAP shopping issues on a statewide basis.<sup>31</sup> Until a statewide resolution could be reached, I&E agreed with PPL that its OnTrack shoppers should be encouraged to participate in Standard Offer Program (“SOP”), which would offer On-Track shoppers a seven percent discount on the then-effective PTC for 12 months.<sup>32</sup>

During the course of the proceeding, CAUSE-PA set forth a shopping proposal that would limit PPL’s OnTrack customers from shopping above the PTC, as did the OCA. At the outset, along with PPL, I&E rejected these proposals as unmanageable and as lacking input from the Commission and other interested parties.<sup>33</sup> During the course of the proceeding, the Joint Litigants worked together to develop a CAP shopping proposal that would be manageable for PPL, would allow for input from the Commission and other parties, and would curtail the immediate harmful impacts resulting from unrestricted CAP shopping in PPL’s territory. The result of the Joint Litigants’ cooperation is the CAP Standard Offer Program and the recommendation for the Commission to move towards a statewide resolution of CAP shopping issues set forth in the Joint Position.

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<sup>29</sup> I&E St. No. 1 at 6-7.

<sup>30</sup> I&E St. No. 1 at 8.

<sup>31</sup> I&E St. No. 1 at 8.

<sup>32</sup> PPL St. No. 1 at 35-36; I&E St. No. 1 at 7-8.

<sup>33</sup> I&E St. No. 1-SR at 7-9.

The only party opposing the Joint Position is RESA, a group consisting of more than twenty EGSs. While RESA's position is that unbridled CAP shopping should continue in PPL's territory, it has not disputed the harmful impact upon PPL's ratepayers, nor proposed any alternative to the solution proposed by the Joint Litigants. Furthermore, the Joint Position has resolved several of the concerns identified in RESA's testimony. Accordingly, I&E recommends that the Commission approve the CAP shopping program set forth in the Joint Position, which honors the Choice Act, respects Commission regulations, and protects the public interest.

## **VI. ARGUMENT**

### **A. Legal Authority for CAP Shopping Restrictions**

I&E submit that several sources of legal support for CAP shopping restrictions exist. Specifically, legal support is found in three key authorities: the Choice Act, legal precedent arising under a recent Commonwealth Court decision, and the Commission's own regulations governing universal service programs. I&E addresses each of these authorities separately and avers that each one provides ample support for implementing CAP shopping restrictions on its own. However, I&E submits that the combined weight of these authorities provides clear support for the Commission to approve CAP shopping rules that would limit the terms of any offer from an EGS that PPL OnTrack customers could accept.

## 1. The Choice Act

The Choice Act acknowledged the necessity of electric service as “essential to the health and well-being of residents, to public safety and to orderly economic development.”<sup>34</sup> Because electric service is a necessity, the Choice Act concluded that all customers should be able to obtain service on “reasonable terms and conditions.”<sup>35</sup> The Choice Act also highlighted the need to protect low income customers, mandating that “[t]he Commonwealth must, **at a minimum**, continue the protections, policies and services that now assist customers who are low-income to afford electric service.”<sup>36</sup> To ensure the protection of low income customers, the Act mandated that the Commission ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each EDC’s territory.<sup>37</sup>

At a minimum, the Choice Act does not bar the Commission from restricting competition to protect ratepayers. Instead, the plain language of the Choice Act imposes an obligation upon the Commission to ensure that ratepayers are receiving electric service on reasonable terms. I&E submits that the CAP shopping data revealed by PPL proves that unrestricted CAP shopping in PPL’s territory has produced results that are unreasonable and have jeopardized access to electric service for some low-income customers, as further explained below. Furthermore, the Choice Act cites the continuation of protections and polices that the Commission had in place as a floor-level

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<sup>34</sup> 66 Pa. C.S. § 2802(9).

<sup>35</sup> 66 Pa. C.S. § 2802(9).

<sup>36</sup> 66 Pa. C.S. § 2802(10).

<sup>37</sup> 66 Pa. C.S. §2804(9)(emphasis added).

of protection, connoting an open invitation to do more. I&E submits that the CAP shopping data produced by PPL in this proceeding compels further action to protect PPL's ratepayers by implementing the CAP shopping program outlined in the Joint Position.

## **2. Universal Service Goals Identified in Commission Regulations**

Aside from the Choice Act, the Commission has already acknowledged the goals of universal service programs, and unrestricted CAP shopping has impeded those goals in this case. The goals of universal service programs have been identified as (1) protecting consumers' health and safety by helping low-income customers maintain electric service; (2) providing for affordable electric service by making available payment assistance to low-income customers; (3) assisting low-income customers conserve energy and reduce residential utility bills; and (4) establishing universal service and energy conservation programs are operated in a cost-effective and efficient manner.<sup>38</sup> In this case, PPL's data reveals that allowing these shoppers to purchase electricity at rates above PPL's PTC has resulted in CAP customers exceeding their CAP credits quicker, thereby being at a greater risk for service termination.<sup>39</sup> I&E submits that such a result thwarts each of the universal service goals identified above.

Furthermore, unrestricted shopping has decreased the cost-efficiency of PPL's OnTrack program by increasing costs that non-CAP residents must pay through the USR to fund the CAP program. The higher costs are relevant because in evaluating universal

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<sup>38</sup> 52 Pa. Code § 54.73.

<sup>39</sup> PPL St. No. 1 at 45; PPL St. 3 at 12.

service programs like CAP, the Commission previously indicated that it balances the interests of customers who benefit from the universal service programs with the interests of the customers who pay for the programs.<sup>40</sup> In this case, PPL's OnTrack customers are more quickly exhausting their CAP credits and non-CAP customers are subject to paying higher costs under the USR.<sup>41</sup> In essence, each party considered in the Commission's balance of interests is at a loss under PPL's current CAP shopping program.

### 3. The Commonwealth Court

The Commonwealth Court recently held that the Choice Act does not demand does not demand absolute and unbridled competition," and noted that the important goal of the Choice Act is reducing electric costs for consumers.<sup>42</sup> Instead, the Commission has the authority to impose CAP shopping rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP. In its decision, the Commonwealth Court explained that

[F]ollowing the reasoning of both the PUC [Commission] and this Court, as set forth in *PP & L Industrial*, we conclude that the PUC has the authority under Section 2804(9) of the Choice Act, in the interest of ensuring that universal service plans are adequately funded and cost-effective, to impose, or in this case approve, CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits. The obligation to provide low-income programs falls on the public utility under the Choice Act, not on the EGSs. Moreover, the Choice Act

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<sup>40</sup> See *Final Investigatory Order on Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms (Final Investigatory Order)*, Docket No. M-00051923, (December 18, 2006) at 6-7.

<sup>41</sup> PPL St. No. 1 at 45; PPL St. No. 3 at 12.

<sup>42</sup> *Coal. for Affordable Util. Servs. & Energy Efficiency in Pennsylvania v. Pennsylvania Pub. Util. Comm'n*, 120 A.3d 1087, 1101 (Pa.Cmwlt. 2015), appeal denied, (Pa. Apr. 5, 2016), and appeal denied, (Pa. Apr. 5, 2016).

expressly requires the PUC to administer these programs in a manner that is cost-effective for both the CAP participants and the non-CAP participants, who share the financial consequences of the CAP participants' EGS choice.<sup>43</sup>

It is important to note that the Commission may impose a restriction on competition as long as it “provides substantial reasons why there is no reasonable alternative so competition needs to bend.”<sup>44</sup> In this case, the substantial reasons why competition must bend are the increased exhaustion of CAP credits as well as the increased CAP shopping costs that have resulted from PPL’s unrestricted OnTrack shopping program. Also, considering the two prior PPL proceedings and collaborative sessions that addressed CAP shopping harm I&E submits that interested parties have had ample time to propose other reasonable alternatives, but none have emerged.

### **B. Whether CAP Shopping Restrictions Are Needed**

In prior proceedings, interested parties expressed concerns about the impact of PPL’s CAP customers shopping for electric prices above the PTC. Now, in this proceeding, PPL has come forward with data that demonstrates that its CAP customers and residential ratepayers are being negatively impacted by the increased electric costs resulting from unrestricted CAP shopping. I&E submits that substantial evidence of CAP shopping harm has been produced in this proceeding and warrants the implementation of CAP shopping restrictions in PPL’s service territory.

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<sup>43</sup> *Coal. for Affordable Util. Servs. & Energy Efficiency in Pennsylvania v. Pennsylvania Pub. Util. Comm'n*, 120 A.3d 1087, 1103 (Pa.Cmwlt. 2015), appeal denied, (Pa. Apr. 5, 2016), and appeal denied, (Pa. Apr. 5, 2016).

<sup>44</sup> *Coal. for Affordable Util. Servs. & Energy Efficiency in Pennsylvania v. Pennsylvania Pub. Util. Comm'n*, 120 A.3d 1087, 1104 (Pa.Cmwlt. 2015), appeal denied, (Pa. Apr. 5, 2016), and appeal denied, (Pa. Apr. 5, 2016).

## 1. Prior Recognition of CAP Shopping Concerns

### PPL's 2013 Universal Service and Energy Conservation Program Proceeding

Concerns regarding the impact of PPL's CAP shopping program have been raised in both in PPL's 2013 Universal Service and Energy Conservation Program ("USECP") proceeding,<sup>45</sup> and PPL's most recent base rate case.<sup>46</sup> In the USECP proceeding, PPL indicated that "the primary impact of high supplier prices for OnTrack customers is to increase the 'burn rate' of CAP credits."<sup>47</sup> In addition, the OCA voiced its concerns and recommended that an on-the-record proceeding be conducted for PPL's CAP shopping program in order to "determine the level of shopping that CAP customers are engaging in, the impact of such shopping decisions on the CAP customer, and the impact of such shopping on the costs of the CAP credit borne by other customers."<sup>48</sup> Finally, CAUSE-PA recommended that the Commission refrain from approving PPL's CAP shopping plan until after the Commonwealth Court ruled upon whether the Commission has the authority to place price restrictions on EGSs.<sup>49</sup> Ultimately, the Commission determined that the CAP shopping issues were beyond the purview of PPL's USECP proceeding, and it directed PPL to address such concerns in a Default Service Program and Procurement Plan Petition.<sup>50</sup>

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<sup>45</sup> PPL 2014-2016 USECP, 2013-2367021.

<sup>46</sup> Pa. PUC v. PPL Electric Utilities Corporation, Docket Nos. R- 2015-2469275, *et al.* (Order entered Nov. 19, 2015).

<sup>47</sup> PPL 2014-2016 USECP, M-2013-2367021, Final Order (September 11, 2014) at 18.

<sup>48</sup> PPL 2014-2016 USECP, M-2013-2367021, Final Order (September 11, 2014) at 17.

<sup>49</sup> PPL 2014-2016 USECP, M-2013-2367021, Final Order (September 11, 2014) at 17.

<sup>50</sup> PPL 2014-2016 USECP, M-2013-2367021, Final Order (September 11, 2014) at 18.

## PPL's 2015 Base Rate Case

In addition to addressing CAP shopping in its 2013 USECP proceeding, PPL and other parties committed to convening a collaborative for all interested stakeholders to address CAP customer shopping in its recent 2015 base rate case. Specifically, paragraph 49 of the Joint Petition for Settlement of All Issues outlined PPL's commitment to address CAP shopping above the PTC and the Joint Petitioners right to address resulting proposals in PPL's next default service proceeding where it stated:

PPL Electric commits to hold a collaborative by May 31, 2016, with all interested stakeholders to discuss and evaluate CAP customer participation in the competitive shopping market as set forth in OCA Statement No. 4 and CAUSE-PA Statement No. 1-R. In advance of the collaborative, PPL Electric shall obtain and provide data to interested stakeholders regarding the number of CAP customers that are shopping, whether the rates paid by shopping CAP customers is above or below the Price to Compare, and the impact that shopping CAP customers have on CAP credits and CAP customers' bills. The Joint Petitioners<sup>51</sup> reserve the right to evaluate further revisions to CAP customer participation in the competitive shopping market and to recommend changes to CAP customer shopping in the Company's next default service procurement plan proceeding. The Joint Petitioners retain the right to review and file testimony concerning any such proposals as permitted by the normal Commission process for review of the default service plan proceeding.<sup>52</sup>

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<sup>51</sup> The Joint Petitioners were PPL, I&E, OCA, CAUSE-PA, OSBA, the Commission for Economic Opportunity, Coalition for Affordable Utility, the Clean Air Council, the Sustainable Energy Fund, The Alliance for Solar Choice ("TASC"), the Keystone Energy Efficiency Alliance Energy Education Fund, the Natural Resources Defense Council, the Environmental Defense Fund and Eric Joseph Epstein.

<sup>52</sup> Joint Petition for Settlement at R-2015-2469275, approved without modification by Order entered November 19, 2015.

At the collaborative meeting, PPL provided stakeholders with its CAP shopping data and statistics.<sup>53</sup> During the collaborative sessions, interested stakeholders considered proposals to address the impact CAP shopping, including a proposal to limit the CAP shopping rate so that it would not exceed the effective PTC.<sup>54</sup>

Accordingly, a considerable amount of concern about PPL's CAP shopping program has been developed over the course of time. This concern is evidenced in interested parties' comments in the USECP proceeding, input in the 2015 base rate case and participation in two days of collaborative sessions held to try to address the negative impact of PPL's current shopping program. Through this process, interested parties had ample opportunity to offer alternative CAP shopping programs or other ideas to address the CAP shopping costs. Yet, in the light of substantial evidence, RESA takes the position that no action should be taken and PPL's OnTrack customers should be permitted to continue to shop for electric prices above the PTC. I&E submits that RESA's position is unsupported and unreasonable in light of the CAP shopping data provided by PPL and the protections offered in the universal service program mandate of the Choice Act.

## **2. Increased Risk of CAP Credit Exhaustion**

In this case, PPL provided data to indicate that a significant number of its CAP shoppers were purchasing their electricity at rates that exceeded the PTC. Specifically, PPL indicated that in the 34-month period from January 2013 through October of 2015,

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<sup>53</sup> PPL St No. 3 at 6-7.

<sup>54</sup> PPL St. No. 1 at 46.

49% of OnTrack customers were shopping in the retail market, and 55% of those shoppers were paying rates above the PTC.<sup>55</sup> PPL's data further revealed that during the 46-month period of January 1, 2012 through October 30, 2015, 9,626 OnTrack shopping customers paid an average price of \$0.11048 and used an average of 1,197 kWh monthly.<sup>56</sup> The average PTC for the same period was \$0.08475, resulting in PPL's determination that OnTrack shopping customers' average monthly energy charges were \$31 more per month than they would have been had they not shopped.<sup>57</sup> Using this data, PPL concluded that OnTrack customers shopping above the PTC would have used up their CAP credits at a faster pace, which increases the risk of early removal from the OnTrack program.<sup>58</sup> Relying upon data provided by PPL, CAUSE-PA further expanded the connection between CAP shopping above the PTC and removal from the OnTrack program. CAUSE-PA reviewed the number of PPL's CAP customers who were removed from CAP for exhausting their maximum CAP credits between January 2012 and February 2016.<sup>59</sup> PPL's data revealed that during that time period, 34,780 customers were removed from CAP because they exceeded their maximum CAP credits. Of those 34,780 customers, 27,600 (79%) were customers who had shopped with an EGS during a portion of the in the previous 18 month period.<sup>60</sup> As CAUSE-PA acknowledged, loss of

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<sup>55</sup> PPL St. No. 3 at 8-9.

<sup>56</sup> PPL St. No. 3 at 9.

<sup>57</sup> PPL St. No. 3 at 9.

<sup>58</sup> PPL St. No. 3 at 10.

<sup>59</sup> CAUSE-PA St. No. 1 at 17; Attachment B to CAUSE-PA St. No. 1 at 5-8.

<sup>60</sup> CAUSE-PA St. No. 1 at 17; Attachment B to CAUSE-PA St. No. 1 at 5-8.

customers' CAP assistance leads to an increased risk of termination, unpaid bills, and hardship for those customers and their households.<sup>61</sup>

I&E submits that the increased risk of OnTrack removal posed by PPL's current CAP shopping program fails to respect the Choice Act's mandate that universal service and energy conservation policies, activities and services be appropriately funded and available in each EDC's territory.<sup>62</sup> While the Choice Act has characterized electric service as "essential to the health and well-being of residents,"<sup>63</sup> the data reported by PPL indicates that on average, over half of all OnTrack shoppers exceeded the PTC, and paid substantially more per month, potentially jeopardizing the shoppers' continued access to electric service. Furthermore, the harm revealed by PPL's OnTrack shopping data is exacerbated by the fact that PPL has the second highest number of confirmed low income customers in Pennsylvania.<sup>64</sup> Data indicates that PPL had 171,171 reported low-income customers and 322,500 estimated low-income customers in 2014.<sup>65</sup> CAUSE-PA also identified the fact that PPL's low-income households have a termination rate that is almost five times higher than that of its residential customers.<sup>66</sup> These facts only further

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<sup>61</sup> CAUSE-PA St. No. 1 at 17.

<sup>62</sup> 66 Pa. C.S. §2804.

<sup>63</sup> 66 Pa. C.S. § 2802(9).

<sup>64</sup> CAUSE-PA St. 1 at 7, CAUSE-PA St. 1 at 7, citing Pa. Public Utility Comm'n, Bureau of Consumer Svcs., *2014 Report on Universal Service Programs & Collections Performance of the Pennsylvania Electric Distribution Companies & Natural Gas Distribution Companies*, , at 7, available at [http://www.puc.state.pa.us/General/publications\\_reports/pdf/EDC\\_NGDC\\_UniServ\\_Rpt2014.pdf](http://www.puc.state.pa.us/General/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2014.pdf)

<sup>65</sup> CAUSE-PA St. 1 at 7, citing Pa. Public Utility Comm'n, Bureau of Consumer Svcs., *2014 Report on Universal Service Programs & Collections Performance of the Pennsylvania Electric Distribution Companies & Natural Gas Distribution Companies*, , at 7, available at [http://www.puc.state.pa.us/General/publications\\_reports/pdf/EDC\\_NGDC\\_UniServ\\_Rpt2014.pdf](http://www.puc.state.pa.us/General/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2014.pdf)

<sup>66</sup> CAUSE-PA St. No. 1 at 9.

compound the harmful impact of unrestricted CAP shopping in PPL's territory and speak to the need for a resolution.

In summary, from a CAP-credit usage standpoint, the results of PPL's current CAP shopping program contravene several universal service goals. These goals include (1) protecting consumers' health and safety by helping low-income customers maintain electric service and (2) assisting low-income customers conserve energy and reduce residential utility bills. PPL's current shopping CAP program does not adequately protect low income consumers health nor does it assist them in reducing their utility bills because low-income participants are being removed from the program due to the more rapid exhaustion of CAP credits. Accordingly, I&E respectfully recommends that the Commission approve the Joint Position to remediate the harmful impact of PPL's current CAP shopping program.

### **3. Increased Costs for Non-CAP Residential Ratepayers**

The OnTrack shopping data that PPL produced in this proceeding does not just expose the harm that OnTrack customers have faced, as it also reveals that unrestricted CAP shopping has negatively impacted non-CAP customers. More specifically, unrestricted CAP shopping has produced increased CAP costs that are borne by non-CAP residential customers through PPL's USR.<sup>67</sup> Taking into account the shopping decisions made by all OnTrack customers, including the experience of those who shopped at or below the PTC, PPL calculated an annual impact of \$2,743,872 (\$3,580,872 above the

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<sup>67</sup> PPL St. No. 1 at 45.

PTC - \$837,000 below the PTC).<sup>68</sup> According to PPL, “the net financial impact of OnTrack shopping is an increase of approximately \$2.7 million annually in the energy charges paid for supply provided to OnTrack customers.”<sup>69</sup> The increased costs are particularly troubling in that, according to CAUSE-PA’s analysis, confirmed low-income customer count of 171,171, of which less than 50,000 customers are enrolled in CAP.<sup>70</sup> This data indicates that 120,000 confirmed low-income customers are paying for the costs of PPL’s CAP program as members of the residential class.<sup>71</sup>

The \$2.7 million increase in energy charges imposed upon residential customers who pay costs under the USR should be considered in the Commission’s assessment of PPL’s CAP shopping program. In the past, the Commission has acknowledged that its evaluation of a utility’s CAP program extended beyond only consideration of the effects upon CAP customers:

Because we will continue to determine appropriate funding and enrollment levels [for CAP programs] on a case-by-case basis, we will give due consideration to the effects of CAP program costs on both non-CAP residential customers – particularly low-income customers who are not eligible for CAP - and nonresidential customers as part of our deliberation.<sup>72</sup>

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<sup>68</sup> PPL St. No. 3 at 12.

<sup>69</sup> PPL St. No. 3 at 12.

<sup>70</sup> CAUSE-PA St. No. 1 at 18; Pa. Public Utility Comm’n, Bureau of Consumer Svcs., *2014 Report on Universal Service Programs & Collections Performance of the Pennsylvania Electric Distribution Companies & Natural Gas Distribution Companies*, , at 7, available at [http://www.puc.state.pa.us/General/publications\\_reports/pdf/EDC\\_NGDC\\_UniServ\\_Rpt2014.pdf](http://www.puc.state.pa.us/General/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2014.pdf)

<sup>71</sup> CAUSE-PA St. No. 1 at 18. Pa. Public Utility Comm’n, Bureau of Consumer Svcs., *2014 Report on Universal Service Programs & Collections Performance of the Pennsylvania Electric Distribution Companies & Natural Gas Distribution Companies*, , at 7, available at [http://www.puc.state.pa.us/General/publications\\_reports/pdf/EDC\\_NGDC\\_UniServ\\_Rpt2014.pdf](http://www.puc.state.pa.us/General/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2014.pdf)

<sup>72</sup> See *Final Investigatory Order on Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms (Final Investigatory Order)*, Docket No. M-00051923 (December 18, 2006) at 10.

Similarly, the Commonwealth Court has recognized the Commission's obligation under the Choice Act to consider the cost-effectiveness of CAP programs. The Court recently held that:

the Choice Act expressly requires the PUC to administer these [CAP] programs in a manner that is cost-effective for both the CAP participants and the non-CAP participants, who share the financial consequences of the CAP participants' EGS choice.<sup>73</sup>

Applying cost-effectiveness standard articulated by both the Commission and the Commonwealth Court to the facts of this case reveals that both PPL's OnTrack customers and its residential ratepayers who fund the OnTrack program are financially disadvantaged under its current shopping program. When PPL's CAP program is causing a negative financial impact on both its participants and its non-CAP ratepayers, it cannot be considered a cost-effective program. In essence, each party considered in the Commission's balance of interests is at a financial loss, and the only beneficiaries of unrestricted CAP shopping are EGSs. Accordingly, I&E respectfully recommends that the Commission approve the Joint Position.

### **C. CAP Shopping Proposals**

While several CAP shopping proposals were made at the outset of this proceeding, only two proposals remain. The first proposal, advanced by RESA, is for PPL to do nothing and continue to permit CAP participants to shop in the retail market without

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<sup>73</sup> *Coal. for Affordable Util. Servs. & Energy Efficiency in Pennsylvania v. Pennsylvania Pub. Util. Comm'n*, 120 A.3d 1087, 1103 (Pa.Cmwlth. 2015), *appeal denied*, (Pa. Apr. 5, 2016), and *appeal denied*, (Pa. Apr. 5, 2016).

restriction.<sup>74</sup> I&E has already addressed the consequences of doing nothing to remediate the CAP shopping harm demonstrated in this case. Therefore, I&E avers that RESA's proposal is insufficient and contrary to the weight of the evidence. The second proposal advanced by the Joint Litigants, the Joint Position, is attached as Exhibit A and further explained below. The terms of the Joint Position represent a carefully considered CAP shopping proposal that is intended to protect PPL's ratepayers until the Commission initiates a statewide collaborative and/or rulemaking proceeding to address CAP shopping issues.<sup>75</sup>

### **1. The Joint Position**

#### Recommendation for a Commission-Based Statewide Resolution

As outlined above, a key component of the Joint Position is that the Joint Litigants agree that the Commission should promptly initiate a statewide collaborative open to all interested stakeholders and/or initiate a new rulemaking proceeding to address CAP shopping issues.<sup>76</sup> The recommendation for Commission consideration of CAP shopping issues on a statewide basis was initially made by PPL when it identified barriers that in implementing CAP shopping rules, such as potential erosion of retail competition for the CAP customers in its service territory.<sup>77</sup> PPL was also concerned that it would be put in

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<sup>74</sup> RESA St. No. 1-RJ at 4.

<sup>75</sup> Joint Position, Exhibit A, ¶4.

<sup>76</sup> Joint Position, Ex. A, ¶1.

<sup>77</sup> PPL Statement No. 1 at 46.

the position of having to monitor and enforce the terms of contracts between EGS and CAP customers, and it questioned its authority over those contracts.<sup>78</sup>

I&E acknowledged PPL's concerns and noted that similar scenarios would likely exist among other regulated utility companies in Pennsylvania.<sup>79</sup> Additionally, I&E opined that resolving this issue on a utility-by-utility basis would be time-consuming and could lead to inconsistent resolutions.<sup>80</sup> For these reasons, I&E agreed that an ultimate resolution to CAP shopping issues should be made by the Commission on a statewide basis. Through its participation in the Joint Position, I&E again advances this recommendation as it will permit the Commission and other interested parties, including EGSs, an opportunity to consider CAP shopping concerns and to develop a uniform method of addressing those concerns.

#### The Terms of the CAP Standard Offer Program

Until a uniform, statewide CAP shopping solution can be developed, the Joint Litigants propose that PPL adopt a CAP Standard Offer Program ("CAP-SOP") effective June 1, 2017. The CAP-SOP respects the concerns addressed in each Joint Litigant's position and was developed to protect both PPL's ratepayers and its CAP shopping customers. Under the proposal, the CAP-SOP will be the only vehicle that PPL's CAP customers may use to shop and receive supply from an EGS, and all other CAP customer shopping requests will be denied.<sup>81</sup> The exception is that the CAP-SOP will respect CAP

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<sup>78</sup> PPL Statement No. 1 at 46-47.

<sup>79</sup> I&E St. No. 1 at 7.

<sup>80</sup> I&E St. No. 1 at 7.

<sup>81</sup> Joint Position, Exhibit A, ¶4(a).

customers' fixed-term contracts that were already in place before its inception. However, once those contracts terminate, CAP customers must either enroll in the CAP-SOP or return to default service.<sup>82</sup>

EGSs participating in the CAP-SOP must agree to serve customers at a 7% discount off the PTC at the time of enrollment and honor that price for a 12-month term, absent customer termination.<sup>83</sup> EGSs must enroll separate from the standard SOP to be a participating supplier in the CAP-SOP.<sup>84</sup> EGSs would be free to voluntarily elect to participate in none, one or the other, or both the traditional SOP and the proposed CAP-SOP.<sup>85</sup> EGS enrollment will be for a three-month period, and will conform to the enrollment process for PPL's standard SOP.<sup>86</sup> As such, EGSs may opt in to participate in the CAP-SOP on a quarterly basis, and are free to leave the CAP-SOP on a quarterly basis.<sup>87</sup>

As with the SOP, CAP customers may terminate the CAP-SOP contract at any time and without any termination or cancellation fees or other penalties.<sup>88</sup> A CAP customer who terminates a CAP-SOP contract or whose CAP-SOP contract reaches the end of its term can re-enroll in the CAP-SOP.<sup>89</sup> After the CAP-SOP term concludes, the CAP customer will be returned to the CAP-SOP pool and be re-enrolled in a new CAP-

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<sup>82</sup> Joint Position, Exhibit A, ¶5(a)-(b).

<sup>83</sup> Joint Position, Exhibit A, ¶4(c).

<sup>84</sup> Joint Position, Exhibit A, ¶4(g).

<sup>85</sup> Joint Position, Exhibit A, ¶4(g).

<sup>86</sup> Joint Position, Exhibit A, ¶4(g).

<sup>87</sup> Joint Position, Exhibit A, ¶4(g).

<sup>88</sup> Joint Position, Exhibit A, ¶4(d).

<sup>89</sup> Joint Position, Exhibit A, ¶4(e).

SOP contract, unless the CAP customer requests to be returned to default service or is no longer a CAP customer.<sup>90</sup>

To facilitate customers' understanding of the CAP-SOP, PPL has committed to revising its CAP recertification scripts/process.<sup>91</sup> The scripts will be revised that all existing CAP shopping customers receiving generation supply on a month-to-month basis after June 1, 2017 will be required at the time of CAP recertification to enroll in the CAP-SOP or return to default service.<sup>92</sup> PPL has also committed to holding a collaborative within 90 days of a final order in this proceeding to provide an opportunity for interested parties to develop CAP-SOP specific scripts to be used in explaining the program to customers.<sup>93</sup> Finally, the Joint Litigants have reserved the right to Petition the Commission to re-open CAP-SOP if there is a lack of EGS participation or changes in retail market conditions warrant such action.<sup>94</sup>

#### The CAP-SOP as an Effective Interim Solution

The CAP-SOP is intended as a vehicle to remediate the increased costs resulting from PPL's currently unrestricted OnTrack shopping program. Additionally, the CAP-SOP is intended to serve as the least restrictive shopping rule necessary in this case. Accordingly, the CAP-SOP, which operates almost identically to PPL's existing SOP, was developed to in an effort to protect PPL's customers, and in an attempt to mitigate the concerns voiced by RESA.

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<sup>90</sup> Joint Position, Exhibit A, ¶4(f).

<sup>91</sup> Joint Position, Exhibit A, ¶5(c).

<sup>92</sup> Joint Position, Exhibit A, ¶5(c).

<sup>93</sup> Joint Position, Exhibit A, ¶6.

<sup>94</sup> Joint Position, Exhibit A, ¶7.

## **2. Protection of PPL's Ratepayers**

The CAP-SOP was structured to prevent PPL's OnTrack customers from shopping above the PTC in effect at the time of their enrollment, while still allowing them to participate in the retail market. The intent of this shopping rule is to prevent the more rapid exhaustion of CAP credits and increased USR costs that PPL's data has proven to result from permitting OnTrack customers to shop for electricity at rates above the PTC. Although OnTrack customers would be limited to shopping solely through the CAP-SOP, these customers can still participate in the retail shopping market through CAP-SOP, and thus, they are not limited solely to default service.

The CAP-SOP is structured very similarly to PPL's current SOP, which has been a well-received program. The success of PPL's SOP is demonstrated by the fact that as of December 31, 2015, approximately 210,150 eligible customers were transferred to the third-party service provider and approximately 186,295, or 88.6%, of those customers enrolled in the SOP.<sup>95</sup> Like participants in PPL's SOP, participants will receive a 7% discount off of PPL's PTC at the time of enrollment, and this discount will remain in place for twelve months. Also, like SOP customers, CAP SOP customers would be free to leave the program at any time, without fees or penalties.

## **3. RESA's Opposition to the CAP-SOP is Unsupported**

RESA identified several concerns regarding implementing CAP shopping restrictions in this proceeding, and the resolution proposed in the CAP-SOP carefully

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<sup>95</sup> PPL St. No. 1 at 37.

considered those concerns. First, RESA argued that reliance upon the PTC as a benchmark for appropriate or reasonable pricing is inappropriate.<sup>96</sup> However, RESA failed to identify what it would consider to be an appropriate pricing benchmark. Instead, RESA has stated that PPL's SOP, which is also premised upon the identical discount from the PTC as CAP-SOP, has been "encouraging customers to take advantage of lower costs in the marketplace."<sup>97</sup> Thus, it appears that RESA agrees that the SOP's reliance upon the PTC benchmark has been appropriate and has produced lower costs, and the same should hold true for the CAP-SOP.

Additionally, RESA previously argued that implementing price restrictions for CAP customers would be both burdensome to EDCs and EGSs. According to RESA:

restrictions on the pricing and structure of a product that EGSs can offer to a select group of customers would be difficult to implement and would require significant changes to existing EDC and EGS protocols to develop new administrative protocols that do not exist.<sup>98</sup>

Along the same lines, RESA also expressed concern that any CAP shopping restrictions would put EDCs in the role of monitoring, tracking, and enforcing compliance, which it deemed inappropriate.<sup>99</sup>

RESA was not alone in its concerns, as the logistics of implementing pricing restrictions were also concerns that PPL shared in this proceeding.<sup>100</sup> However, by structuring the CAP-SOP in an almost identical fashion as its existing SOP, PPL's CAP

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<sup>96</sup> RESA St. No. 1-R at 12.

<sup>97</sup> RESA St. No. 1-R at 4.

<sup>98</sup> RESA St. No. 1-R at 13.

<sup>99</sup> RESA St. No. 1-R at 13.

<sup>100</sup> PPL St. No. 1 at 46-47.

SOP alleviates logistical concerns because the necessary protocols are already used in the operation of the SOP. As the CAP-SOP indicates, EGSs' enrollment will conform to the enrollment process for PPL's standard SOP. Additionally, the terms of the CAP-SOP were developed to provide flexibility to EGSs. Although originally contemplated,<sup>101</sup> the CAP-SOP does not require participating EGSs to reduce their rates during the contract term to consistently offer a 7% discount if the PTC decreases. This concession will eliminate burdening EGSs with consistently monitoring the PTC during the contract term and making changes to their contractual rate. Accordingly, necessary protocols for implementation are already in existence, and tracking and enforcement concerns have been alleviated through the structure of the CAP-SOP.<sup>102</sup>

Furthermore, RESA expressed concerns that implementing a program such as the CAP-SOP would have the effect of eliminating shopping for CAP customers because no EGSs would participate. To be sure, in considering CAP shopping limitations in this proceeding, PPL and I&E initially shared RESA's concerns regarding EGS participation before the CAP-SOP was fully developed.<sup>103</sup> I&E's concerns about EGS participation have been assuaged by the design of the CAP-SOP because the CAP-SOP is structured very similarly to PPL's SOP, and there is no evidence that EGS participation is lacking PPL's SOP. Finally, even if RESA is correct in its unilateral assertion that no EGSs will participate in the CAP-SOP, the Joint Litigants have reserved the right to petition the Commission to re-open the CAP-SOP if there is a lack of EGS participation or changes in

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<sup>101</sup> CAUSE-PA St. 1-SR at 19.

<sup>102</sup> Joint Position, Exhibit A at ¶4(g).

<sup>103</sup> PPL St. No. 1 at 46; I&E St No. 1-SR at 7.

retail market conditions warrant such action.<sup>104</sup> While the Joint Litigants certainly do not anticipate a lack of EGS participation, this additional layer of protection has been built into the CAP-SOP to address such a possibility.

Finally, the CAP –SOP was designed to allow flexibility to participating EGSs. EGSs are free to participate in PPL’s SOP, the CAP-SOP, or both programs.<sup>105</sup> For the CAP-SOP, EGSs will only be enrolled for a three-month period.<sup>106</sup> Through use of this short enrollment commitment, EGS may opt in to participate in the CAP-SOP on a quarterly basis, and are free to leave the CAP-SOP on a quarterly basis.<sup>107</sup> Considering these terms, I&E opines that EGSs would not undertake an onerous commitment by electing to participate in the CAP-SOP.

#### **4. The Overwhelming Evidence Supports Adoption of the CAP-SOP**

The Joint Litigants only needed to present evidence that was more convincing, by just a small amount, than evidence presented by RESA.<sup>108</sup> I&E avers that the Joint Litigants have presented substantial evidence of harm caused by unrestricted CAP shopping in PPL’s service territory, and RESA has not refuted any of this evidence. Furthermore, the Joint Litigants have proposed an interim CAP shopping rule, through CAP-SOP, and illustrated that the CAP-SOP is a viable interim mechanism to remediate increased CAP shopping costs. In turn, RESA has failed to provide any evidence that an alternative to CAP-SOP would remediate PPL’s increased CAP shopping costs, and has failed to refute

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<sup>104</sup> Joint Position, Exhibit A, ¶7.

<sup>105</sup> Joint Position, Exhibit A, ¶4(g).

<sup>106</sup> Joint Position, Exhibit A, ¶4(g).

<sup>107</sup> Joint Position, Exhibit A, ¶4(g).

<sup>108</sup> *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

that the CAP-SOP is a viable interim solution. Accordingly, I&E avers that the Joint Litigants have met their burden and I&E respectfully requests that the Commission adopt the terms of the Joint Position, including the CAP-SOP.

## VII. CONCLUSION

For the reasons outlined in this Main Brief, the Commission's Bureau of Investigation and Enforcement represents that it supports the Joint Position, as being in the public interest. Therefore, the Bureau of Investigation and Enforcement respectfully requests that Administrative Law Judge Susan A. Colwell recommend, and the Commission subsequently approve, the foregoing Joint Litigation Position Among Certain Parties Regarding CAP Shopping, including all terms and conditions contained therein.

Respectfully submitted,



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Dated: July 8, 2016

**PROPOSED FINDINGS OF FACT**

1. On January 29, 2016, PPL Electric Utilities Corporation (“PPL”) filed with the Pennsylvania Public Utility Commission (“Commission”) a Petition for Approval of a Default Service Program and Procurement Plan for the Period of June 1, 2017 through May 31, 2021 (“DSP IV”).
2. PPL’s DSP IV included a proposal for competitive procurement of Default Service supply and related Alternative Energy Credits during the DSP IV Program Period; an implementation plan; a proposed rate design, including a Time-of-Use ("TOU") rate option for Default Service during the DSP IV Program Period; a proposal to continue the Company's current Standard Offer Referral Program; a proposal to allow CAP customers to shop; and a contingency plan for the DSP IV. PPL Petition for Approval of DSP IV at
3. On June 15, 2016, the parties to this proceeding informed ALJ Colwell that they had reached an agreement in principal on all issues except for CAP shopping.
4. On June 15, 2016, I&E entered into a Joint Litigation Position Among Certain Parties Regarding CAP Shopping (“Joint Position”) with PPL, the OCA, and CAUSE-PA which memorialized these parties’ agreed litigation proposal on the remaining issue of CAP shopping.
5. While the OSBA, NextEra, PPLICA, SEF, Noble Americas and Exelon took no position on the Joint Position, RESA did not support it and reserved its right to litigate the issue of CAP shopping. Joint Position at 1.
6. PPL’s OnTrack (CAP) customers have been eligible to shop for electric energy rates without restriction. PPL St. No. 3 at 5.
7. The result of unbridled OnTrack shopping is that, on the whole, OnTrack shoppers have exceeding their CAP credits at a faster pace than they would have if they did not shop beyond PPL’s PTC. PPL St. 1 at 44-45; PPL St. No. 3 at 12.
8. PPL has also proven that unrestricted OnTrack shopping has led to increased CAP costs that are paid for by its non-CAP residential customers under through its Universal Service Rider. PPL St. 1 at 45 PPL St. No. 3 at 12.

9. PPL's Standard Offer Program ("SOP"), offers shoppers a seven percent discount on the then-effective PTC for 12 months. PPL St. No. 1 at 35-36.
10. Concerns regarding the impact of PPL's CAP shopping program have been raised in the past, both in PPL's 2013 Universal Service and Energy Conservation Program ("USECP") proceeding, and in PPL's most recent base rate case. PPL 2014-2016 USECP ,2013-23670211 Pa. PUC v. *PPL Electric Utilities Corporation*, Docket Nos. R- 2015-2469275, *et al.* (Order entered Nov. 19, 2015).
11. PPL held collaborative meetings on December 11, 2015 and on January 15, 2016 at the Commission's Harrisburg offices to discuss CAP shopping concerns and to provide stakeholders with its CAP shopping data and statistics. PPL St No. 3 at 6-7.
12. PPL indicated that in the 34-month period from January 2013 through October of 2015, 49% of OnTrack customers were shopping in the retail market, and 55% of those shoppers were paying rates above the PTC. PPL St. No. 3 at 8-9.
13. PPL's data further revealed that during the 46-month period of January 1, 2012 through October 30, 2015, 9,626 OnTrack shopping customers paid an average price of \$0.11048 and used an average of 1,197 kWh monthly. The average PTC for the same period was \$0.08475, resulting in PPL's determination that OnTrack shopping customers' average monthly energy charges were \$31 more per month than they would have been had they not shopped. PPL St. No. 3 at 9.
14. CAUSE-PA reviewed the number of PPL's CAP customers who were removed from CAP for exhausting their maximum CAP credits between January 2012 and February 2016. PPL's data revealed that during that time period, 34,780 customers were removed from CAP because they exceeded their maximum CAP credits. Of those 34,780 customers, 27,600 (79%) were customers who had shopped with an EGS during a portion of the in the previous 18 month period. Of those 34,780 customers, 27,600 (79%) were customers who had shopped with an EGS during a portion of the in the previous 18 month period CAUSE-PA St. No. 1 at 17; Attachment B to CAUSE-PA St. No. 1 at 5-8.
15. Loss of customers' CAP assistance leads to an increased risk of termination, unpaid bills, and hardship for those customers and their households. CAUSE-PA St. No. 1 at 17.
16. PPL has the second highest number of confirmed low income customers in Pennsylvania and had 171,171 reported low-income customers and 322,500

estimated low-income customers in 2014. CAUSEPA St. 1 at 7, citing Pa. Public Utility Comm'n, Bureau of Consumer Svcs., *2014 Report on Universal Service Programs & Collections Performance of the Pennsylvania Electric Distribution Companies & Natural Gas Distribution Companies*, at 7, available at [http://www.puc.state.pa.us/General/publications\\_reports/pdf/EDC\\_NGDC\\_UniSe rv\\_Rpt2014.pdf](http://www.puc.state.pa.us/General/publications_reports/pdf/EDC_NGDC_UniSe rv_Rpt2014.pdf)

17. Taking into account the shopping decisions made by all OnTrack customers, including the experience of those who shopped at or below the PTC, PPL calculated an annual impact of \$2,743,872 (\$3,580,872 paid above the PTC - \$837,000 paid below the PTC). According to PPL, "the net financial impact of OnTrack shopping is an increase of approximately \$2.7 million annually in the energy charges paid for supply provided to OnTrack customers." PPL St. No. 3 at 12.
18. 120,000 confirmed low-income customers are paying for the costs of PPL's CAP program as members of the residential class. CAUSE-PA St. No. 1 at 18.
19. RESA contents that PPL should continue to permit CAP participants to shop in the retail market without restriction. RESA St. No. 1-RJ at 4.
20. The terms of the Joint Litigants' Position on placing restrictions upon PPL's CAP shopping program, OnTrack, are listed on pages 2-4 of the Joint Positions and include:

The Joining Parties hereby agree and adopt as their litigation position the revised CAP shopping proposal as set forth in PPL Electric Statement No. 1-RJ, the Rejoinder Testimony of PPL Electric Witness James M. Rouland, found on page 6, line 21 through page 9 line 7. To the extent that other proposals presented through the litigation are inconsistent, the Joining Parties further agree to forego other CAP shopping proposals in lieu of the CAP shopping proposal set forth in PPL Electric Statement No. 1-RJ at 6:21 - 9:7. To eliminate doubt, the specific terms of that CAP shopping proposal are restated here. Joint Position at ¶1.

The Joining Parties agree that the Commission should promptly initiate a statewide collaborative open to all interested stakeholders and/or initiate a new rulemaking proceeding to address CAP shopping issues on a uniform, statewide basis. Joint Position at ¶2.

PPL Electric agrees to fully participate in any such collaborative and/or rulemaking proceeding, and to present a specific CAP shopping proposal to

address the impacts of CAP shopping on both CAP and non-CAP customers. Joint Position at ¶3.

The Joining Parties agree that, until a uniform, statewide solution to CAP shopping can be developed, PPL Electric shall implement a CAP Standard Offer Program (“CAP-SOP”), effective June 1, 2017, with the following features designed to help mitigate the impacts that CAP shopping can have on CAP credits, risk of early removal from the OnTrack program, and the CAP costs that are paid for by other Residential customers through the Universal Service Rider: Joint Position at ¶4.

The CAP-SOP is the only vehicle that a CAP customer may use to shop and receive supply from an EGS. Joint Position at ¶4(a).

Any CAP customer shopping request that does not get processed through the CAP-SOP will be denied. Joint Position at ¶4(b).

EGSs participating in the CAP-SOP must agree to serve customers at a 7% discount off the PTC at the time of enrollment. This price shall remain fixed for the 12-month CAP-SOP contract unless terminated earlier by the customer. Joint Position at ¶4(c).

CAP customers may terminate the CAP-SOP contract at any time and without any termination or cancellation fees or other penalties. Joint Position at ¶4(d).

A CAP customer who terminates a CAP-SOP contract or whose CAP-SOP contract reaches the end of its term can re-enroll in the CAP-SOP. Joint Position at ¶4(e).

At the conclusion of a 12-month CAP-SOP contract, the CAP customer will be returned to the CAP-SOP pool and be re-enrolled in a new CAP-SOP contract, unless the CAP customer requests to be returned to default service or is no longer a CAP customer. Joint Position at ¶4(f).

EGSs must enroll separate from the standard SOP to be a participating supplier in the CAP-SOP. EGSs would be free to voluntarily elect to participate in none, one or the other, or both the traditional SOP and the proposed CAP-SOP. Enrollment will be for a three-month period, and shall conform to the enrollment process for the standard SOP. EGS may opt in to participate in the CAP-SOP on a quarterly basis, and are free to leave the CAP-SOP on a quarterly basis. Joint Position at ¶4(g).

For the purpose of transitioning CAP customers who are shopping as of the CAP-SOP June 1, 2017 effective date: Joint Position at ¶5.

All CAP customer shopping fixed-term contracts in effect as of the effective date of the CAP-SOP will remain in place until the contract term expires and/or is terminated. Joint Position at ¶5(a).

Once the existing CAP customer shopping contract expires or is terminated, the CAP customer will have the option to enroll in the CAP-SOP or return to default service, but in any event will only be permitted to shop through the CAP-SOP. Joint Position at ¶(b).

PPL Electric will revise its CAP recertification scripts/process so that all existing CAP shopping customers receiving generation supply on a month-to-month basis after June 1, 2017 will be required at the time of CAP recertification to enroll in the CAP-SOP or return to default service, but in any event will only be permitted to shop through the CAP-SOP. Joint Position at ¶5(c).

Within 90 days of the date of a final order in this proceeding, PPL Electric will hold a collaborative open to all interested parties to develop CAP-SOP specific scripts to be used by the Company's Customer Service Representatives and PPL Solutions. Joint Position at ¶6.

Until a uniform, statewide approach to CAP shopping can be developed, the parties reserve the right to petition the Commission to re-open the CAP-SOP in the event that there is no EGS participation in the program and/or there are changes in retail market conditions that would otherwise justify reopening the CAP-SOP. Joint Position at ¶7.

**PROPOSED CONCLUSIONS OF LAW**

1. As the proponents of a rule, the Joint Litigants have the burden of proof in this proceeding to establish that they are entitled to the relief it is seeking. 66 Pa. C.S. § 332(a).
2. To meet their burden of proof in this proceeding, the Joint Litigants must “present evidence more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).
3. In cases pending before an administrative tribunal, Courts have held that a “litigant's burden of proof is satisfied by establishing a preponderance of evidence which is substantial and legally credible.” *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).
4. The Electricity Generation Customer Choice and Competition Act (“Choice Act”) became effective January 1, 1997. Under the Choice Act, which added Chapter 28 to the Public Utility Code, the generation of electricity is no longer be regulated as a public utility. 66 Pa.C.S.A. § 2802(14).
5. Under the Choice Act, electric utilities were required to unbundle their rates and services and to provide open access over their transmission and distribution systems to permit competitive suppliers to generate and sell electricity directly to consumers in this Commonwealth. 66 Pa.C.S.A. § 2802(14).
6. The Choice Act was prefaced, in part, with a finding that that competitive market forces are more effective than economic regulation in controlling the cost of generating electricity. 66 Pa.C.S.A. § 2802(5).
7. The Choice Act concluded that electric service is “essential to the health and well-being of residents, to public safety and to orderly economic development” and that all customers should be able to obtain service on reasonable terms and conditions. 66 Pa. C.S. § 2802(9).
8. The Choice Act spoke specifically to the needs of low income customers, mandating that “[t]he Commonwealth must, at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service. 66 Pa. C.S. § 2802(10).

9. The Choice Act defines Universal service and energy conservation as:

- i. Policies, protections and services that help low-income customers to maintain electric service. The term includes **customer assistance programs**, termination of service protection and policies and services that help low-income customers to reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction programs, application of renewable resources and consumer education. 66 Pa.C.S.A. § 2803 (emphasis added).

10. The Customer Assistance Program (“CAP”) is defined as:

- i. An alternative collection method that provides payment assistance to low-income, payment troubled utility customers. CAP participants agree to make regular monthly payments that may be for an amount that is less than the current bill in exchange for continued provision of electric utility services. 52 Pa.Code § 54.72.

11. Customers may be eligible for participation in a utility’s CAP if their status as a ratepayer or new application is verified, their household income is verified to be at or below 150% of the Federal poverty income (“FPL”) guidelines, and they qualify as a low income, payment troubled customer. Low income, payment troubled status means that CAP customers must meet at least one of the following four criteria: (1) a household whose housing and utility costs exceed 45% of the household's total income; (2) a household who has \$100 or less disposable income after subtracting all household expenses from all household income; (3) a household who has an arrearage as defined by the utility; or a household who has received a termination notice or who has defaulted on one payment arrangement. 52 Pa.Code § 69.265(4).

12. Under Commission regulations, the goals of universal service programs include (1) protecting consumers' health and safety by helping low-income customers maintain electric service; (2) providing for affordable electric service by making available payment assistance to low-income customers; (3) assisting low-income customers conserve energy and reduce residential utility bills; and (4) establishing

universal service and energy conservation programs are operated in a cost-effective and efficient manner. 52 Pa. Code § 54.73.

13. The Commission has the authority under Section 2804(9) of the Choice Act, in the interest of ensuring that universal service plans are adequately funded and cost-effective, to impose, or in this case approve, CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits. The obligation to provide low-income programs falls on the public utility under the Choice Act, not on the EGSs. Moreover, the Choice Act expressly requires the PUC to administer these programs in a manner that is cost-effective for both the CAP participants and the non-CAP participants, who share the financial consequences of the CAP participants' EGS choice. *Coal. for Affordable Util. Servs. & Energy Efficiency in Pennsylvania v. Pennsylvania Pub. Util. Comm'n*, 120 A.3d 1087, 1103 (Pa.Cmwlth. 2015), appeal denied, (Pa. Apr. 5, 2016), and appeal denied, (Pa. Apr. 5, 2016).
14. The Commission may impose a restriction on competition as long as it “provides substantial reasons why there is no reasonable alternative so competition needs to bend.” *Coal. for Affordable Util. Servs. & Energy Efficiency in Pennsylvania v. Pennsylvania Pub. Util. Comm'n*, 120 A.3d 1087, 1104 (Pa.Cmwlth. 2015), appeal denied, (Pa. Apr. 5, 2016), and appeal denied, (Pa. Apr. 5, 2016).
15. The Commission determines appropriate funding and enrollment levels [for CAP programs] on a case-by-case basis, and it will give due consideration to the effects of CAP program costs on both non-CAP residential customers – particularly low-income customers who are not eligible for CAP - and nonresidential customers as part of its deliberation. *Final Investigatory Order on Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms (Final Investigatory Order)*, Docket No. M-00051923 (December 18, 2006) at 10.