

COMMONWEALTH OF PENNSYLVANIA



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July 8, 2016

Rosemary Chiavetta, Secretary
PA Public Utility Commission
Commonwealth Keystone Bldg.
400 North Street
Harrisburg, PA 17120

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:

Attached for electronic filing please find the Office of Consumer Advocate's Initial Brief in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Christy M. Appleby
Christy M. Appleby
Assistant Consumer Advocate
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Attachment

cc: Honorable Susan D. Colwell, ALJ
Certificate of Service

223515

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities Corporation :
For Approval of a Default Service Program : Docket Nos. P-2016-2526627
And Procurement Plan for the Period :
June 1, 2017 through May 31, 2021

INITIAL BRIEF
OF THE OFFICE OF CONSUMER ADVOCATE

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DATED: July 8, 2016

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I. INTRODUCTION

On January 29, 2016, PPL Electric Utilities Corporation (PPL) filed a Petition with the Pennsylvania Public Utility Commission (Commission) requesting approval of its Default Service Program and Procurement Plan (DSP IV) for the period of June 1, 2017 through May 31, 2021. The Petition was assigned to the Office of Administrative Law Judge and was further assigned to Administrative Law Judge (ALJ) Susan D. Colwell for investigation and scheduling of hearings. On February 29, 2016, the Office of Consumer Advocate (OCA) filed its Answer, Notice of Intervention and Public Statement in this proceeding. On February 18, 2016, the Commission's Bureau of Investigation & Enforcement (I&E) filed a Notice of Appearance. On February 29, 2016, the Office of Small Business Advocate (OSBA) filed its Notice of Intervention and Answer. Petitions to Intervene were also filed by the following: NextEra Energy Power Marketing, LLC (NextEra); the Sustainable Energy Fund of Central Eastern Pennsylvania (SEF); the PP&L Industrial Customer Alliance (PPLICA); Noble Americas Energy Solutions LLC (NAES); Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA); Exelon Generation Company, LLC; and the Retail Energy Supply Association (RESA).

The OCA submitted the Direct Testimony of Richard Hahn¹ and Barbara Alexander² on April 20, 2016. I&E, RESA, and CAUSE-PA also submitted Direct Testimony. On May 23,

¹ Mr. Hahn is a principal consultant with DayMark Energy Advisors (formerly La Capra Associates) in Boston, Massachusetts. Mr. Hahn has a Bachelor of Science in Electrical Engineering, a Master of Science in Electrical Engineering, both from Northeastern University (1973 and 1974, respectively). He also has a Master in Business Administration from Boston College (1982). Mr. Hahn is a registered professional engineer in Massachusetts. He has worked in the electric utility industry for over 35 years and has diverse experience with both regulated and unregulated companies. Mr. Hahn's qualifications are detailed in OCA St. 1 at 1-2, Exh. RSH-1.

² Ms. Alexander is a Consumer Affairs Consultant who works on consumer protection and customer service issues associated with utility regulation. Ms. Alexander is an attorney and a graduate of the University of Michigan (1968) and the University of Maine Law School (1976). Prior to opening her consulting practice in 1996, she spent nearly ten years as the Director of the Consumer Assistance Division of the Maine Public Utilities Commission. Her

2016, the OCA submitted the Rebuttal Testimony of Mr. Hahn, and PPL, RESA, the OSBA, and CAUSE-PA also submitted Rebuttal Testimony. The OCA submitted the Surrebuttal Testimony of Mr. Hahn and Ms. Alexander on June 3, 2016, and PPL, I&E, RESA, and CAUSE-PA also submitted Surrebuttal Testimony. On June 15, 2016, PPL witness Rouland and RESA witness White submitted Rejoinder Testimony.

Through the course of the proceedings, the parties were able to reach Settlement on multiple issues, including the term length, product mix, and Standard Offer Product (SOP) issues. The parties were not able to reach agreement, however, with regard to issues surrounding shopping options for PPL customers receiving assistance through the Company's Customer Assistance Program, referred to as CAP or "OnTrack" – PPL's name for the program.

PPL's CAP Shopping Plan establishes the rules to allow customers in CAP to participate in the retail electric choice market. In general, PPL's CAP provides bill payment assistance to eligible low-income customers who are payment-troubled. The CAP is designed to provide an affordable bill to the CAP customer to better enable the customer to make the monthly bill payment. See 52 Pa. Code § 69.265(2)(i)(A). The difference between the full residential customer bill and the discounted bill provided to CAP customers is collected from all non-CAP residential ratepayers through the Universal Service Charge.³ PPL St. 3 at 4-5. PPL has identified financial harms to CAP and to non-CAP residential ratepayers under its current CAP Shopping Plan and has proposed to modify its current CAP Shopping Plan to address those harms.

current consulting practice is directed to consumer protection, customer service and low-income issues associated with both regulated and retail competition markets. Ms. Alexander's qualifications are detailed in OCA St. 2 at 1-3, Exh. BA-1.

³ This difference is often referred to as the "CAP Shortfall" or "CAP credit."

In this proceeding, PPL analyzed the period January 2012 through October 31, 2015 to ascertain the impact of CAP Shopping with no program rules on both CAP customers and non-CAP residential ratepayers who pay the costs of the program. What PPL found in its analysis is that CAP customers and non-CAP residential customers who pay the costs of the program were financially harmed by PPL's current CAP Shopping Plan. During the 46 month time period analyzed by PPL, PPL witness Wukitsch found that, on average, approximately 49% of CAP customers shopped, and on average, approximately 55% of the CAP shopping customers paid more than the Price to Compare (PTC). PPL St. 3 at 8, 12; I&E St. 1 at 4-5. In six of those months, 88-99% of CAP shopping customers paid more than the PTC. CAUSE-PA St. 1 at 21. For January 2012 through October 2015, the number of customers in each month where the price paid was over the PTC was 9,626 CAP shopping customers. The average CAP shopping customers who paid more than the PTC paid an average price of \$0.11048 per kWh, compared to the average PTC of \$0.08475 per kWh, and used an average of 1,197 kWh monthly. PPL St. 3 at 9. The average CAP shopping customer's monthly energy charges were \$31 higher per month than if the customer had paid the PTC. PPL St. 3 at 9; OCA St. 1 at 19. When this information is extrapolated to 12 months, the cost of CAP shopping customers paying higher charges is \$3.5 million per year. PPL St. 3 at 7; OCA St. 1 at 19.⁴ Non-CAP residential ratepayers paid an additional \$2.74 million annually towards the CAP Shortfall due to CAP customer shopping. PPL St. 3 at 12; OCA St. 1 at 19.⁵

⁴ The \$3.5 million refers to the total generation supply charges that shopping OnTrack customers paid above the PTC. OCA St. 2 at 19.

⁵ The \$2.74 million refers to the total net generation supply charges that shopping OnTrack customers paid (net of the OnTrack customers who paid above the PTC and those customers who paid at or below the PTC.) OCA St. 2 at 19.

In order to address the identified harms created by PPL's current CAP Shopping program, PPL, I&E, CAUSE-PA and OCA proposed adjustments to PPL's current CAP Shopping program. PPL St. 1 at 46-48; I&E St. 1 at 6-8; CAUSE-PA St. 1 at 34-35; OCA St. 2 at 22. At the hearings, PPL, I&E, OCA, and CAUSE-PA jointly entered into the record the Joint Litigation Position Among Certain Parties Regarding CAP Shopping (Joint Litigation Position) as a reasonable interim step to address CAP shopping concerns while a statewide solution is developed. See, Joint Litigation Position.⁶ The OCA supported the position identified in the Joint Litigation Position. As discussed in the Joint Litigation Position, PPL will implement a voluntary CAP Standard Offer Program (CAP-SOP), effective June 1, 2017, with the following features:

- (a) The CAP-SOP is the only vehicle that a CAP customer may use to shop and receive supply from an EGS.
- (b) Any customer shopping request that does not get processed through the CAP-SOP will be denied.
- (c) 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.
- (d) CAP customers may terminate the CAP-SOP contract at any time and without any termination or cancellation fees or other penalties.
- (e) 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.
- (f) 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.

⁶ The OCA notes that the Joint Litigation Position was not marked as evidence for the purposes of the evidentiary record. Tr. at 38-39. The ALJ admitted the Joint Litigation Position to the record for the purposes of clarity of the record regarding the litigation positions of PPL, OCA, I&E, and CAUSE-PA in this proceeding. Tr. at 35-39.

(g) EGSs must enroll separate from the standard SOP to be a participating supplier in the CAP-SOP.

Joint Litigation Position at 2-3; see also, PPL St. 1-RJ at 7-8. The proposed CAP-SOP is designed to mitigate the impacts of CAP Shopping on CAP customers, CAP credits paid for by other non-CAP residential customers, and the risk of early removal from PPL's CAP program pending a statewide resolution of CAP customer shopping issue.

The Joint Litigation Position requested that the Commission open a statewide investigation in order to address the issues involved with CAP customer shopping. In the interim, the proposed CAP-SOP will allow CAP customers to continue to participate in the retail electric generation market and will help to maintain the essential benefits and protections of CAP. While the CAP-SOP will mitigate the issues involved with CAP shopping, the OCA submits that it is not a complete resolution and a further statewide initiative is necessary to address the complex issues created by CAP customer shopping.

The Commission has the authority to ensure affordability for CAP customers participating in the retail market. Under the Public Utility Code, in particular the Electricity Generation Customer Choice and Competition Act (Customer Choice Act), the Commission has the clear authority, as well as a duty, to maintain affordable, cost-effective universal service programs and may exercise that authority to implement shopping rules for the universal service programs. 66 Pa. C.S. §§ 2802(9), (10), (14), (17), 2803, 2804(8)-(9), and 501 (a), (c). The Commonwealth Court recently affirmed this authority in a PECO Energy Company (PECO) CAP Shopping appeal. CAUSE-PA, et al. v. Pa. PUC, 120 A.3d 1087 (Pa. Cmwlth. Ct. July 14, 2015), *cert denied* 2016 Pa. LEXIS 723 (Pa. April 5, 2016)(PECO CAP Shopping). In PECO CAP Shopping, the Commonwealth Court stated that the Customer Choice Act “does not demand absolute and unbridled competition.” PECO CAP Shopping at 1101. The

Commonwealth Court stated that “under certain circumstances, unbridled competition may have to give way to other important concerns.” PECO CAP Shopping at 1103. The Commonwealth Court has established that the Commission has the authority to require EGSs voluntarily participating in the CAP Shopping Plan to adhere to the conditions of the CAP Shopping program so long as those conditions are designed to meet the statutory standards of maintaining affordability, cost effectiveness and justness and reasonableness of the rates of the non-CAP customers who pay the costs of the programs.

In the instant case, those circumstances, and the resultant harms, have been identified. The OCA submits that the proposed CAP-SOP will provide an interim solution to a complex problem until the Commission can address the larger statewide issues involved with CAP shopping. The OCA submits that the proposed Joint Litigation Position should be approved.

II. STATEMENT OF THE CASE

On January 29, 2016, PPL filed a Petition requesting approval of its DSP IV for the period of June 1, 2017 through May 31, 2021. The filing addressed numerous issues including default service, the product mix, rate design, and the Standard Offer Program (SOP), among other issues. The parties to this case raised issues regarding these matters in Direct, Rebuttal and Surrebuttal Testimonies. The parties to the case included PPL, I&E, OCA, OSBA, NextEra, SEF, PPLICA, NAES, CAUSE-PA, and RESA. After extensive negotiations, a Settlement was reached on all issues but CAP Shopping. A Joint Litigation Position was reached by PPL, OCA, CAUSE-PA, and I&E. RESA opposed the restrictions on CAP customer shopping in this proceeding. The CAP Shopping issue is now before the ALJ.

III. QUESTIONS INVOLVED

1. Does the Customer Choice Act permit the Commission to approve CAP program rules for CAP customer shopping?

Suggested Answer: Yes.

2. Should the Commission establish a statewide collaborative to address the issue of CAP customer shopping?

Suggested Answer: Yes

3. Does PPL's current CAP shopping program harm both CAP customers and non-CAP customers?

Suggested Answer: Yes

4. Should the interim CAP-SOP be implemented to mitigate the impacts of CAP customer shopping?

Suggested Answer: Yes

IV. LEGAL STANDARDS AND BURDEN OF PROOF

A. Burden of Proof.

The Public Utility Code provides in relevant part:

(a) Burden of proof.—Except as may be otherwise provided in section 315 (relating to burden of proof) or other provisions of this part of other relevant statute, the proponent of a rule or order has the burden of proof.

66 Pa. C.S. § 332 (a). As the petitioner for a Commission Order in this matter, PPL has the burden of proof.⁷ In addition to satisfying the burden of proof, a petitioner must provide

⁷ In *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45 (1950), the Pennsylvania Supreme Court held that the term “burden of proof” means a duty to establish a fact by a preponderance of the evidence.

substantial evidence in the record as support for its case before the Commission.⁸ The Pennsylvania Supreme Court has also provided that even where a party has established a prima facie case, the litigant must establish that:

The elements of that cause of action are proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary.

Burleson v. Pa. P.U.C., 501 Pa. 433, 436 (1983) (Burleson).

“The term ‘burden of proof’ is comprised of two distinct burdens, the burden of production and the burden of persuasion.” Hurley v. Hurley, 754 A.2d 1283, 1285 (Pa. Super. 2000). The burden of production dictates which party has the duty to introduce enough evidence to support a cause of action. Id. at 1286. The burden of persuasion determines which party has the duty to convince the finder-of-fact that a fact has been established. Id. “The burden of persuasion never leaves the party on whom it is originally cast.” Id. See also, Pa. PUC v. Equitable Gas Co., 57 Pa. PUC 423, 471 (1983).

“It is well-established that the evidence adduced by a utility to meet this burden must be substantial.” Lower Frederick Twp. v. Pa. PUC, 409 Pa. PUC 505, 507 (1980). The Supreme Court of Pennsylvania has stated that even where a party establishes a prima facie case by producing enough evidence to support a cause of action, the party does not satisfy its burden of persuasion unless the elements of that cause of action are proven with substantial evidence. Burleson at 436. Thus, a utility has an affirmative burden to produce enough evidence to establish the justness and reasonableness of every component of its request, and in order to

⁸ 2 Pa. C.S. § 704. The term “substantial evidence” has been defined by the Pennsylvania Supreme Court, Superior Court, and Commonwealth Court as such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & Western Ry. Co. v. Pa. PUC, 489 Pa. 109 (1980); Erie Resistor Corp. Unemployment Comp. Bd. of Review, 194 Pa. Super. Ct. 278 (1961); and Murphy v. Comm. Dept. of Public Welfare, White Haven Center, 85 Commw. 23 (1984).

persuade the finder-of-fact, there must be substantial evidence that each component of its request is in fact just and reasonable. See e.g., Sharon Steel Corpo. V. Pa PUC, 468 A.2d 860, 862 (1978); Johnstown v. Pa. PUC, 133 A.2d 246, 250 (Pa. Super. 1957).

In conclusion, the OCA submits that PPL must affirmatively demonstrate the reasonableness of its claims and demonstrate that any resulting rates are just, reasonable, and in the public interest. As discussed in more detail below, the OCA submits that the Company has met its burden of proof to demonstrate the harms caused by the current CAP shopping program and to demonstrate a need to change the program in order to provide affordable, cost-effective low-income programs in accordance with the requirements of the Customer Choice Act at just and reasonable rates.

B. Legal Standards Applicable to CAP Shopping.

The Public Utility Code provides the Commission with full authority over public utilities and every other person or corporation subject to the Public Utility Code to carry out the provisions of the Public Utility Code. 66 Pa. C.S. §501(a) and (c). CAP customer programs are governed by the requirements of the Customer Choice Act and the Commission’s CAP Policy Statement. 66 Pa. C.S. §§ 2802(9), (10), (14), (17), 2803, 2804(8)-(9); 52 Pa. Code § 69.261, *et seq.* Under the Public Utility Code, the Commission has the clear legal authority, as well as a duty, to maintain affordable, cost-effective universal service programs and may exercise that authority to implement CAP shopping rules for the universal service programs. 66 Pa. C.S. §§ 2802(9), (10), (14), (17), 2803, 2804(8)-(9), and 501 (a), (c); CAUSE-PA, et al. v. Pa. PUC, 120 A.3d 1087 (Pa. Cmwlt. Ct. July 14, 2015), *cert denied* 2016 Pa. LEXIS 723 (Pa. April 5, 2016)(PECO CAP Shopping). The Customer Choice Act “does not demand absolute and unbridled competition.” PECO CAP Shopping at 1101. “Under certain circumstances,

unbridled competition may have to give way to other important concerns.” PECO CAP Shopping at 1103. The OCA addresses the application of the legal standards applicable to CAP customer shopping in Section VI(A) below.

V. SUMMARY OF ARGUMENT

The OCA submits that PPL’s current CAP Shopping Plan needs to be modified in order to meet the requirements of the Customer Choice Act. The Customer Choice Act requires that CAP programs be designed to provide affordable rates for low-income customers in a cost-effective manner. PPL identified in its Direct Testimony that the existing PPL CAP Shopping Plan has impacted the overall affordability and cost-effectiveness of PPL’s CAP program. Over a three year period, PPL identified significant harms that were experienced by both CAP customers and non-CAP residential customers who pay the costs of the CAP program as a result of PPL’s CAP Shopping program.

PPL, I&E, OCA and CAUSE-PA have proposed a Joint Litigation Position to address the concerns with PPL’s current CAP Shopping Plan. In the Joint Litigation Position, PPL, I&E, OCA and CAUSE-PA have recommended that the Commission institute a statewide collaborative and/or rulemaking in order to resolve on a consistent statewide basis the issues related to CAP customer shopping. In the interim for the PPL DSP IV Plan, the Joint Litigation Position provides for a CAP Standard Offer Program (CAP-SOP Program) that will be designed similar to the existing residential Standard Offer Program. The CAP-SOP would be the only vehicle by which CAP customers could shop, and EGSs could voluntarily elect to serve customers and to participate in either or both the SOP and the CAP-SOP.

The Joint Litigation Position provides reasonable interim protections for both CAP customers and non-CAP customers who pay for the program. The OCA submits that the Joint Litigation Position is reasonable and will provide an interim solution to a complex problem until the Commission can address the CAP Shopping issue on a statewide basis. The OCA submits that the Joint Litigation Position, therefore, is in the public interest and should be approved.

VI. ARGUMENT

A. Legal Authority for CAP Shopping Restrictions.

The Commission may impose program rules for CAP customer shopping. Under the Public Utility Code, the Commission has the clear legal authority, as well as a duty, to maintain affordable, cost-effective universal service programs and may exercise that authority to implement shopping for the universal service programs. Universal service programs are defined in the Customer Choice Act as follows:

“Universal service and energy conservation.” 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 program, application of renewable resources and consumer education.

66 Pa. C.S. § 2803. The Customer Choice Act specifically requires that universal service and energy conservation are to be maintained and supported as part of the restructuring of the electric industry. Specifically, Section 2802(10) provides:

The Commonwealth must, at a minimum, continue the policies, protections and services that now assist customers who are low-income to afford electric service.

66 Pa. C.S. §2802(10). Section 2802(17) also requires the following:

There are certain public purpose costs, including programs for low-income assistance, energy conservation and others, which have been implemented and

supported by public utilities' bundled rates. The public purpose is to be promoted by continuing universal service and energy conservation policies, protections and services, and full recovery of such costs is to be permitted through a nonbypassable rate mechanism.

66 Pa. C.S. § 2802(17). These purposes are specifically recognized along with the essential nature of electric service and the need for electric service to be available on reasonable terms and conditions to all customers. The Act provides:

Electric service is essential to the health and wellbeing of residents, to public safety and to orderly economic development, and electric service should be available to all customers on reasonable terms and conditions.

66 Pa. C.S. § 2802(9).

In order to meet its universal service obligations, PPL operates a Customer Assistance Program (CAP) called OnTrack that provides bill payment assistance to qualified low-income residential customers with incomes at or below 150% of the Federal Poverty Level (FPL). PPL St. 3 at 4. A customer enrolled in PPL's CAP program is not required to pay his or her total bill for energy service, as a discount is applied to the CAP customer's bill so that the customer only pays the affordable portion of the electric bill.

The Customer Choice Act restructured the electric industry, and in so doing, the General Assembly established standards for the "oversight of the transition process and regulation of the restructured electric utility industry" to promote the purposes declared by the Act. 66 Pa. C.S. § 2804. Key among these standards is the requirement that universal service and energy conservation policies, activities and services be appropriately funded and available in each electric distribution service territory and that the programs be operated in a cost-effective manner. 66 Pa. C.S. § 2804(9). The statute explicitly states in relevant part:

Programs under this paragraph shall be subject to the administrative oversight of the Commission which will ensure that the programs are operated in a cost-effective manner.

66 Pa. C.S. § 2804(9).

The Commonwealth Court affirmed the Commission's authority over CAP shopping program rules in its recent determination in the PECO CAP Shopping case. CAUSE-PA, et al. v. Pa. PUC, 120 A.3d 1087 (Pa. Cmwlth. Ct. July 14, 2015), *cert denied* 2016 Pa. LEXIS 723 (Pa. April 5, 2016)(PECO CAP Shopping). In the PECO CAP Shopping case, PECO sought to implement a CAP shopping program in which EGSs who voluntarily participated would charge a price that was at or below the PTC. PECO CAP Shopping at 1090. The Commission had denied PECO's proposed CAP shopping plan because the Commission concluded that it lacked the authority to regulate EGS rates. PECO CAP Shopping at 1092. While the Commonwealth Court did not reverse the Commission's determination regarding the price protections under PECO's CAP Shopping Plan, the Commonwealth Court did affirm the Commission's authority to implement CAP Shopping rules, including a price protection rule if the Commission found it necessary based on the evidence of record. PECO CAP Shopping at 1103-1104.

The Commonwealth Court specifically recognized the Commission's duty under the Act regarding both universal service and retail choice. The Commonwealth Court addressed these obligations as follows:

What is particularly noteworthy about the legal arguments of the PUC and Direct Energy is their focus on the PUC's lack of authority to regulate rates EGSs charge customers. We are persuaded, however, by Petitioners' contention that the absence of authority to regulate EGS rates alone does not compel the conclusion that the PUC lacks authority to adopt rules attendant to universal service programs that may have the effect of limiting competition and choice with respect to low-income customers.

PECO CAP Shopping at 1101. The Commonwealth Court concluded that:

[t]he 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 can accept and remain eligible for CAP benefits. The obligation to provide low-income programs falls on the public utility under the Choice Act, not the EGSs. Moreover, the Choice Act expressly requires the PUC to administer these programs in a manner that is cost effective for the CAP participants and the non-CAP participants, who share the financial consequences of the CAP participant's EGS choice.

Our conclusion finds support in the Choice Act's legislative declaration of policy, which both encourages deregulation to allow consumers the opportunity to purchase directly their supply from EGSs and emphasizes the need to continue to maintain programs that assist low-income customers to afford electric service. 66 Pa. C.S. § 2802(7), (9), (10), (14), (17). So long as it "provides substantial reasons why there is no reasonable alternative so competition needs to bend" to ensure adequately-funded cost-effective, and affordable programs to assist customers who are low-income to afford electric service...the PUC may impose CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits – e.g. EGS rate ceiling, prohibition against early termination/cancellation fees."

PECO CAP Shopping at 1103-1104.

The PECO CAP Shopping case established that the Commission has the authority to require EGSs voluntarily participating in the CAP Shopping Plan to adhere to the conditions of the CAP Shopping program, provided those conditions are designed to meet the statutory standards of maintaining affordability and cost effectiveness for both CAP participants and non-CAP customers who pay the costs of the programs. As the Commonwealth Court stated in the PECO CAP Shopping case, nothing in the Customer Choice Act precludes the Commission from implementing program rules to protect low-income customers in a retail choice program that is voluntary program for EGSs as well as customers. PECO CAP Shopping at 1103-1104.

The Commission is empowered and required by the Public Utility Code to take the steps necessary to maintain affordable service for low-income CAP customers in the retail choice environment. As the evidence of record in this case demonstrates, allowing CAP customers to be charged an EGS price without any limitation and with cancellation fees would compromise both affordability of service for CAP customers and the effectiveness of the program. It has also

been clearly shown that without some limitations on the CAP shopping program, the costs of the CAP program to other customers will increase. The Commission not only has the authority, but also the obligation, to provide the necessary protections for low-income customers in accord with the Customer Choice Act and to ensure that the rates paid by non-CAP residential customers to support the program are just and reasonable.

B. Whether CAP Shopping restrictions are needed.

1. Introduction.

The OCA submits that the evidence presented in this case demonstrates that there is a clear need to change PPL's existing CAP Shopping program and to develop a specific shopping program for CAP customers to address their unique challenges. Under PPL's current program, CAP customers may shop with electric generation suppliers without any limitations on price and EGSs may charge cancellation fees. PPL's existing CAP program has had a negative financial impact on both the affordability of CAP customer bills and on non-CAP residential ratepayers who pay the costs of the program. The conflict presented by the Company's current CAP Shopping program is between affordability, cost-effectiveness, and access for CAP customers to the retail choice market. See, 66 Pa. C.S. § 2801, *et seq.* As discussed in Section A above, under the Customer Choice Act, affordability and cost-effectiveness of the CAP program must be maintained. 66 Pa. C.S. § 2802(10), 2804(9).

Chairman Gladys M. Brown described this challenge and the need to preserve both CAP customer affordability and cost-effectiveness in her dissent in the case involving PECO's CAP Shopping Plan. See, Petition of PECO Energy Company for Approval of its Default Service Plan, Docket No. P-2012-2283641, Statement of Commissioner Gladys M. Brown (January 9, 2014). Chairman Brown stated:

I am supportive of availing CAP customers the opportunity to enroll with an electric generation supplier (EGS). As well, I believe affordability is of paramount concern for CAP customers...A potential result, under PECO's current CAP structure, of not placing a ceiling on the prices that EGSs can charge CAP customers is that the overall cost of PECO's CAP program will rise. Those increased costs will be borne by the residential class as a whole.

Id.

The Customer Choice Act recognized the need to protect essential electric service for CAP customers in the retail competitive environment, and in order to preserve that affordability, changes to PPL's CAP Shopping Plan must be implemented. See, 66 Pa. C.S. §§ 2802(9),(10), 2804(9). As discussed below, the analysis presented by PPL witness Wukitsch demonstrated that over the last three years the current CAP Shopping Plan has not provided a benefit that outweighs the financial harm for either CAP customers or non-CAP residential ratepayers. The OCA submits that affordability and cost-effectiveness cannot be provided when year over year, the harms of the current CAP Shopping Plan outweigh the benefits provided.

2. Both CAP customers and non-CAP residential ratepayers have been harmed by the existing CAP shopping design in PPL's service territory.

The OCA submits that the evidence presented in this case demonstrates that both CAP customers and non-CAP customers have been harmed by the current design of PPL's CAP Shopping program. PPL and CAUSE-PA both identified significant harms to both CAP customers and non-CAP residential customers who pay the costs of the program. The underlying commonality in the testimony of PPL witnesses Rouland and Wukitsch; CAUSE-PA witness Geller; OCA witness Alexander; and I&E witness Patel is the need for change to the PPL CAP Shopping program to address the financial impact of the current program on CAP customers and residential customers. See, PPL St. 1 at 46-48; I&E St. 1 at 6-8; CAUSE-PA St. 1 at 34-35; OCA St. 2 at 22.

PPL's program design provides for three different options: (1) a percent of bill, (2) minimum payment plan, and (3) a custom payment option. CAUSE-PA St. 1 at 12, citing PPL Electric Universal Service and Energy Conservation Plan for 2014-2016 Submitted in Compliance with 52 Pa. Code § 54.74, Docket No. M-2013-2367021 at 3 (September 11, 2014)(PPL USECP). The vast majority of PPL's CAP customers are enrolled in the percentage of bill plan. Id.

PPL currently allows CAP customers to shop for an alternative Electric Generation Supplier (EGS) without any limitation on price, and EGSs may also charge cancellation or termination fees. As of November 30, 2015, PPL's CAP program had approximately 49,104 low-income residential customers. PPL St. 3 at Exh. MSW-1, 3. Of these 49,104 CAP customers, approximately 25,123 CAP customers were shopping, or approximately 52% of the total population of CAP customers. PPL St. 3 at Exh. MSW-1, 7-8.

In this proceeding, PPL analyzed the period January 2012 through October 31, 2015 to determine the impact of CAP Shopping with no program rules on both CAP customers and non-CAP residential ratepayers who pay the costs of the program. During that nearly three year time period, PPL found that, on average, approximately 49% of CAP customers shopped. PPL St. 3 at 8. Over that nearly three year period, approximately 55% of CAP shopping customers paid more than the PTC. PPL St. 3 at 12; I&E St. 1 at 4-5. In six of those months, 88-99% of CAP shopping customers paid more than the Price to Compare. CAUSE-PA St. 1 at 21. During this period, an average of 9,626 OnTrack shopping customers paid an average price of \$0.11048 per kWh, compared to the average PTC of \$0.08475 per kWh, and used an average of 1,197 kWh monthly month period. PPL St. 3 at 9. The average CAP shopping customer's monthly energy charges were \$31 higher per month than if the customer had paid the PTC. Over 12 months,

these CAP customers paid higher charges of \$3.5 million per year. PPL St. 3 at 9; OCA St. 2 at 19. CAP customers paid a total average monthly increase of \$3.5 million in OnTrack customer bills when this information is extrapolated to 12 months. PPL St. 3 at 7; OCA St. 2 at 19. Non-CAP residential ratepayers paid an additional \$2.74 million annually towards the CAP Shortfall due to CAP customer shopping. PPL St. 3 at 12; OCA St. 2 at 19.⁹

PPL's CAP program is designed to provide affordable electric service to low-income customers below 150% of the Federal Poverty Level (FPL). PPL's program design provides for three different options to achieve the greatest level of affordability: (1) a percent of bill, (2) a minimum payment plan, and (3) a custom payment option. CAUSE-PA St. 1 at 12, citing PPL Electric Universal Service and Energy Conservation Plan for 2014-2016 Submitted in Compliance with 52 Pa. Code § 54.74, Docket No. M-2013-2367021 at 3 (September 11, 2014)(PPL USECP). The majority of CAP customers are enrolled in the percent of bill option.

Mr. Geller explained the percent of bill option:

1. The customer's average monthly bill for the previous 12 month period. This amount is determined by looking at the customer's actual, average monthly usage, and their actual, average rate that the customer paid over that period of time. This amount is then multiplied by 12 to get a fixed, average annual (12 month) bill amount.
2. Once the average bill amount is determined, it is multiplied by the Bill Factor applicable to the household based on the household income as measured by the federal poverty guidelines...
That is, households are expected to pay 50%, 70%, or 80% of their average annual bill depending on their household income.
3. Once the average annual bill is multiplied by the Bill Factor, the newly calculated annual Bill Factor amount is divided by 12 to get a monthly amount. This is the monthly amount ("CAP Bill") that the CAP will be expected to pay over the next 18 months.

⁹ The \$2.74 million refers to the total net generation supply charges that shopping OnTrack customers paid (net of the OnTrack customers who paid above the PTC and those customers who paid at or below the PTC.) OCA St. 2 at 19.

Once the customer's CAP Bill is established, this is the amount that the customer pays every month over the next 18-months, subject to a maximum CAP credit over that same 18-month period.

CAUSE-PA St. 1 at 12 (footnotes omitted).

There are two ways that CAP customers' bills may be impacted by shopping decisions that results in a higher cost. The first is that CAP customers are removed from CAP for the duration of the 18 month program if they exceed the maximum CAP credits. As PPL witness Wukitsch testified:

The CAP credits are the difference between the fixed OnTrack payment and the total OnTrack customer electric bill. Consequently, **the higher the total bill, the faster the OnTrack customer will reach the maximum CAP credit and be removed from the OnTrack program.** The maximum CAP credits are set in the Company's base rate cases and universal service proceedings. The Company's current maximum 18-month CAP credit is \$185 per month for electric heat customers (\$3,328 over 18 months) and \$73 per month for non-electric heat customers (\$1,310 over 18 months), as established by the Commission-approved settlement in the 2015 base rate case at Docket No. R-2015- 2469275.

PPL St. 3 at 4 (emphasis added). If the EGS rate is higher than the PTC, the CAP customer will use the dollars reserved for the maximum CAP credit more quickly.¹⁰ If a customer reaches the maximum CAP credit, the customer is no longer provided a bill discount until the next recertification period.

The second way that an ineffective shopping decision may impact the customer's future CAP bill is in the next 18 month recertification. When the CAP customer recertifies, the CAP customer's future bill is based on the CAP customer's previous 12 months' "actual, average monthly usage, and their actual, average rate that the customer paid over that period of time." CAUSE-PA St. 1 at 12. Any shopping decisions the CAP customer made at a higher rate during that prior 12 month period will carry forward into the CAP customer's next 18 month period.

¹⁰ An EGS price higher than the PTC will mean that "the CAP credits are reduced each month on a dollar for dollar basis for any total monthly bill that is in excess of the customer's CAP Bill." CAUSE-PA St. 1 at 13.

While this provides an additional level of credit for the CAP customer, that higher credit is paid for by the non-CAP residential customers. PPL witness Wukitsch's analysis demonstrated that non-CAP residential customers paid an additional annual \$2.74 million due to PPL's current CAP Shopping program. PPL St. 3 at 12; see also, OCA St. 2 at 19.

3. Affordability for CAP customers has been harmed by PPL's current CAP Shopping Plan.

The evidence presented demonstrated that CAP customers' bills increased due to PPL's current CAP Shopping Plan. PPL witness Wukitsch analyzed the impact of CAP Shopping on both CAP customers and non-CAP residential ratepayers who pay the costs of the program for the period January 2012 through October 31, 2015.¹¹ Over that 46 month period, approximately 55% of CAP shopping customers paid more than the PTC with some CAP shopping customers paying, on average, 2.5 cents/kWh more than the PTC. PPL St. 3 at 12; I&E St. 1 at 4-5. The CAP shopping customer's monthly energy charges were \$31 higher per month than if they had paid a price at the PTC. PPL St. 3 at 9.

CAUSE-PA witness Geller expanded upon Mr. Wukitsch's findings and testified:

The numbers are worse than this when disaggregated over the four year period from January 2012 through February 2016 ...

This information revealed some alarming statistics. Every month from January 2012 through February 2016, at least 42% of CAP customers paid more than the price to compare, and in 6 of those months, 88-99% of CAP customers shopping paid more than the Price to Compare. In most months over this more than four-year period of time, between 45%-70% of CAP customers paid more than the price to compare...

CAUSE-PA St. 1 at 21. Mr. Geller continued:

The data also shows that those customers who paid more than the price to compare *paid significantly more* than the price to compare, as compared to the savings achieved by customers who paid less than the price to compare. In the

¹¹ Mr. Wukitsch noted that the 2013-2014 percentages were through December 31st and the 2015 data was through October 31, 2015.

month in which CAP customers who shopped paid the highest percentage more than the price to compare they paid, on average, 101% more per kWh whereas the greatest savings month (i.e., the month in which CAP customers who shopped saved the most) they paid only 14% less than the price to compare.

CAUSE-PA St. 1 at 21-22 (emphasis in original).

OCA witness Alexander testified that the SOP program had provided some benefit to CAP Shopping customers, noting that “most of the 7,607 CAP customers who enrolled with an EGS through SOP actually did save 7% or more during their SOP contracts in 2014 and most of 2015.” OCA St. 2 at 19. As a result, she concluded that “the impact of the EGS enrollments not associated with the SOP and who charged higher prices compared to the PTC in Mr. Wukitsch’s analysis is probably even more significant because the SOP customers typically did see savings during the period of his analysis.”¹² Id.

RESA witness White stated in his Rejoinder Testimony that “CAP customers should have the opportunity to shop like all other PPL customers (as they do now) and should not lose the benefits that they can obtain from participating in the competitive market.” RESA St. 1-RJ at 4. The key issue, however, that Mr. White has overlooked is that CAP customers, by definition, are payment-troubled and are enrolled in the CAP program because they have limited financial resources and may have significant arrearages. The CAP program is the last resort program to help CAP customers to maintain essential electric service. Mr. Geller testified:

[p]ut simply, PPL’s confirmed low-income customers are economically vulnerable and unable to pay for essential services including electricity without substantial and meaningful assistance. It is precisely for this reason that CAP programs were created to assist low-income customers maintain and afford essential utility service.

¹² While CAP customers did experience savings within the period for Mr. Wukitsch’s analysis, the analysis did not include the impact to those customers enrolled in mid to late 2015 who experienced higher EGS prices under their SOP contracts compared to the December 2015 PTC drop. OCA St. 1 at 19-20. The OCA submits that this analysis demonstrates why the proposed Joint Stipulation should only be considered an interim solution.

Even CAP is not a panacea to fixing the difficulty of unaffordable bills. The average CAP household is desperately poor, and those extremely low income households routinely run out of money even with assistance of CAP. Many cannot afford to pay for utility service because of the cost of competing essential needs like rent, food, water, medicine, clothing, childcare, and transportation.

CAUSE-PA St. 1 at 9-10. As CAUSE-PA witness Geller testified, “PPL’s low-income households have a termination rate that is nearly 5 times higher as compared to residential customers.” CAUSE-PA St. 1 at 9. In 2014, the termination rate for all of PPL’s residential customers was 4.6% and the termination rate for confirmed low-income customers was 22.8%. Id. at 9.

The analyses by PPL witness Wukitsch and CAUSE-PA witness Geller demonstrated that CAP shopping customers and non-CAP residential customers will continue to face the negative impacts of CAP customers’ ineffective shopping decisions. The OCA submits that the results of their analyses mandate that changes be implemented to address the harms from CAP customer shopping.

4. PPL’s non-CAP residential customers paid \$2.7 million annually due to CAP customers’ ineffective shopping decisions.

All non-CAP residential customers must pay the costs of the universal service program through the Company’s universal service rider (USR). PPL St. 3 at 4; CAUSE-PA St. 1 at 14. The amount that is paid by non-CAP residential customers is referred to as the CAP Shortfall. The CAP Shortfall is the difference between the amount of the CAP customer bill and the full residential customer rate. As discussed above, the amount of the CAP Shortfall will increase when the CAP customer uses more of the maximum CAP credit and when the CAP shopping customer’s next 18 month recertification period is calculated. Those increased costs will flow through to other ratepayers.

PPL witness Wukitsch testified that “[t]he OnTrack data and statistics summarized above also suggest that CAP shopping can result, and has resulted, in increased CAP costs that are paid for by all Residential customers through the USR.” PPL St. 3 at 13. According to PPL witness Wukitsch’s calculations, non-CAP residential ratepayers paid an additional net annual \$2,743,872 from January 2012 through October 2015 towards the CAP Shortfall due to CAP customer shopping. PPL St. 3 at 12; OCA St. 1 at 19.¹³

CAUSE-PA also raised the impact on non-CAP residential customers who pay the costs of the CAP program. As Mr. Geller explained, many of those customers supporting CAP programs are themselves low-income. CAUSE-PA St. 1 at 18. CAUSE-PA witness Geller testified:

This is concerning for several reasons. First, CAP costs are imposed on ratepayers by the Choice Act in order to promote the universal service program goals of affordability for a utility’s poorest, most payment troubled households. The costs associated with the payment of higher unregulated EGS rates for service is not related to the cost of providing an affordable CAP, and universal service program costs are not intended to rise simply to pay the increased costs associated with paying significantly higher EGS’ [sic] rates for service. Second, many of the ratepayers who pay the USR costs to support the CAP program are themselves very poor. Recall that PPL has a confirmed low-income customer count of 171,171, of which less than 50,000 customers are enrolled in CAP. This means that there are, at a minimum, 120,000 confirmed low-income customers paying for the costs of the CAP program along with the rest of the residential customer class. These customers, like all low-income customers, already struggle to afford service, and any unnecessary increase in costs, especially those not related to affordability, only exacerbates this problem.

CAUSE-PA St. 1 at 17-18. The OCA submits that the balance must be maintained between providing benefits to CAP customers, managing the cost-effectiveness of the program, and allocating costs to all other non-CAP residential ratepayers.

¹³ The \$2.74 million refers to the total net generation supply charges that shopping OnTrack customers paid (net of the OnTrack customers who paid above the PTC and those customers who paid at or below the PTC.) OCA St. 2 at 19.

In this case, the only entity that has been protected from the financial impact of ineffective shopping decisions is the EGSs. As OCA witness Alexander testified:

Mr. White's opposition to any effort to prevent CAP customers from paying unaffordable electric bills or that would ameliorate the costs of the CAP imposed on other residential ratepayers is unsound public policy. Nor does his approach reflect the obligation of PPL to design a "cost-effective" CAP program to "help low income customers to maintain electric service." At the current time, EGSs have a right to serve such customer without regard to any impact their prices might have on the customer's ability to pay because the risk of nonpayment is shifted to PPL and its other ratepayers, as well as the risk that a CAP customer is eliminated from the program or that a CAP customer's family suffers a termination of service for nonpayment.

OCA St. 2-SR at 12-13. The OCA submits that changes to the CAP Shopping Plan are needed to provide an affordable cost-effective program.

5. Conclusion.

The record evidence is clear that PPL's current CAP Shopping program has harmed both CAP customers and non-CAP residential customers consistently over the 46 month duration that PPL witness Wukitsch examined. The OCA submits that the objectives of cost-effectiveness and affordability have not been achieved by the current CAP Shopping program, so the necessary protections must be put in place.

C. CAP SHOPPING PROPOSALS

In this proceeding, PPL, CAUSE-PA, OCA, and I&E offered alternative CAP Shopping proposals.¹⁴ See, PPL St. 1 at 46-48; I&E St. 1 at 6-8; CAUSE-PA St. 1 at 34-35; OCA St. 2 at 22. In Surrebuttal Testimony, CAUSE-PA witness Harry Geller amended his CAP shopping proposal to provide that: (1) CAP customers would be allowed to enroll with a supplier only if they enrolled through a CAP-SOP; (2) that if the PTC decreased by more than 7% of the PTC,

¹⁴ The OCA notes that it primarily adopted the proposal presented by CAUSE-PA in this proceeding. OCA witness Alexander provided some additional recommendations to elaborate on the foundation presented by CAUSE-PA.

the participating EGS would either re-enroll the customer at a new 7% discount or return the customer to default service; and (3) at the end of the 12 month term, the EGS could either re-enroll the customer at a new 7% discount off the effective PTC or return the customer to default service. CAUSE-PA St. 1-S at 20. In Rejoinder Testimony, Company witness James Rouland proposed a modification to Mr. Geller's proposal. PPL St. 1-RJ at 4-10. PPL, CAUSE-PA, the OCA, and I&E have adopted Mr. Rouland's modified CAP-SOP as their joint litigation position. See, Joint Litigation Position at 1-4; PPL St. 1-RJ at 4-10.

The Joint Litigation proposal provided that the parties recommend that the Commission initiate a statewide collaborative that is open to all interested stakeholders and/or a new rulemaking proceeding to address CAP shopping issues on a uniform basis. Until such time as a uniform solution can be developed, the parties recommended that PPL implement a voluntary CAP Standard Offer Program (CAP-SOP), effective June 1, 2017, with the following features:

- (a) The CAP-SOP is the only vehicle that a CAP customer may use to shop and receive supply from an EGS.
- (b) Any customer shopping request that does not get processed through the CAP-SOP will be denied.
- (c) 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.
- (d) CAP customers may terminate the CAP-SOP contract at any time and without any termination or cancellation fees or other penalties.
- (e) 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.
- (f) 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.

- (g) EGSs must enroll separate from the standard SOP to be a participating supplier in the CAP-SOP.

Joint Litigation Position at 3; PPL St. 1-RJ at 7-8. The proposed CAP-SOP is designed to mitigate the impacts of CAP Shopping on CAP credits, mitigate the risk of early removal from the OnTrack program, and address the CAP costs that are paid for by all other non-CAP residential customers through the Universal Service Rider pending a statewide resolution to the issue of CAP customer shopping.

The Joint Litigation Position recognized that there may be existing EGS/CAP customer contracts at the time of the implementation of the CAP-SOP program. The Joint Litigation position provided that:

- (a) 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.
- (b) 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.
- (c) 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 Litigation Position at 4; see also, PPL St. 1-RJ at 8.

In his Rejoinder Testimony, Company witness Rouland testified regarding the benefits of this new CAP-SOP program design:

In my opinion, not only would these modifications to Mr. Geller's CAP-SOP proposal help mitigate the EGSs concerns about being required to continually lower the contract prices of existing CAP-SOP customers in conjunction with a decreasing PTC, it also will clearly help mitigate the undisputed 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.

Importantly, even if the Commission adopts the CAP-SOP proposal I described above, it should only be an interim measure. I continue to believe that the Commission should initiate a statewide collaborative open to all interested stakeholders and/or new rulemaking to evaluate CAP shopping issues on a uniform, statewide basis. Given the importance of the issues related to CAP shopping and their undeniable statewide impact, PPL Electric strongly believes that a uniform, state-wide approach is the most prudent long-term approach in this complex situation.

PPL St. 1-RJ at 9 (emphasis in original).

Also in his Rejoinder Testimony, Mr. Rouland raised a crucial point that the harms identified in PPL witness Wukitsch's testimony and in CAUSE-PA witness Geller's testimony have not been refuted. The data regarding the financial impacts of the current CAP Shopping Plan are unchallenged and undisputed.

RESA witness White opposed CAUSE-PA witness Geller's proposal to require CAP customers to shop only through the CAP-SOP option. RESA St. 1-RJ at 2. Mr. White was concerned with the referral fee in the SOP and the fact that at the end of the contract, the EGS could not retain the customer at a price higher than the current PTC. *Id.* at 3.

Mr. White's arguments are not persuasive. The Joint Litigation proposal provides for the program to be completely voluntary for EGS participants. EGSs are free to elect to participate in both the traditional SOP program and the proposed CAP-SOP program. EGSs may opt in or out of both programs on a quarterly basis and must continue to serve the customers that they enroll for the full 12-month term. Joint Litigation Position at 3; PPL St. 1-RJ at 7-8. The parties have also reserved the right to petition the Commission to re-open the CAP-SOP in the event that there is no EGS participation in the program. Joint Litigation Position at 4; PPL St. 1-RJ at 9.

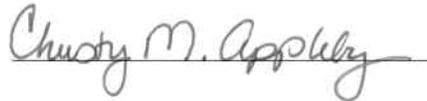
RESA witness White also argued that restricting CAP shopping to a CAP-SOP “would effectively eliminate a CAP customer’s ability to shop for competitive electric supply.” RESA St. 1-RJ at 4. To the contrary, the CAP-SOP provides a means for CAP customers to participate in the competitive market through an EGS that will provide an initial discount. The CAP-SOP also provides protections to ensure that customers can end contracts, without penalty, if the customer so chooses.

The OCA submits that the CAP-SOP proposal contained in the Joint Litigation Proposal represents a reasonable compromise to the proposals presented by all parties. As such, the CAP-SOP should be adopted as a reasonable interim measure until the issue is addressed on a statewide basis.

VII. CONCLUSION

For the reasons set forth above, the Office of Consumer Advocate respectfully requests that the Joint Litigation Position Among Certain Parties Regarding CAP Shopping be approved.

Respectfully Submitted,



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DATE: July 8, 2016
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APPENDIX A- Proposed Findings of Fact

1. PPL has three different CAP options: (1) a percent of bill option; (2) a minimum bill option; and (3) a custom payment option. CAUSE-PA St. 1 at 12.
2. For a customer who is enrolled in the percent of bill option, the CAP payment amount is set based on the customer's average monthly bill for the previous 12 month period.
3. The CAP payment amount is determined by looking at the customer's actual, average monthly usage, and their actual, average rate that the customer paid over that period of time. CAUSE-PA St. 1 at 12.
4. As of November 30, 2015, PPL's CAP program had approximately 49,104 low-income residential customers. PPL St. 3 at Exh. MSW-1, 3.
5. In 2015, the total cost of the CAP program was approximately \$74.6 million. PPL St. 3 at Exh. MSW-1, 3.
6. PPL currently allows CAP customers to shop for an alternative Electric Generation Supplier (EGS) without any limitation on price, and EGSs may also charge cancellation or termination fees. PPL St. 3 at 3.
7. As of October 31, 2015, PECO's CAP program had approximately 25,123 CAP shopping customers, or approximately 52% of the total population of CAP customers. PPL St. 3 at Exh. MSW-1, 7-8.
8. If the CAP customer made an ineffective shopping decision at any time during the prior 12 month period, the calculation of the CAP customer's next 18 month payment will reflect the ineffective shopping decision. CAUSE-PA St. 1 at 12.
9. PPL analyzed the impact of CAP Shopping on both CAP customers and non-CAP residential ratepayers for the period January 2012 through October 31, 2015 and found, on average, approximately 55% of CAP customers paid more than the PTC, and for six of those months, 88-99% of CAP customers shopping paid more than the PTC. See, PPL St. 3 at 9, 12; I&E St. 1 at 4-5; CAUSE-PA St. 1 at 21.
10. During this period, on average, 9,626 OnTrack shopping customers paid an average price of \$0.11048 per kWh, compared to the average PTC of \$0.08475 per kWh, and used an average of 1,197 kWh monthly. PPL St. 3 at 9.
11. The average CAP shopping customer's monthly energy charges were \$31 higher per month. PPL St. 3 at 9.
12. Of those customers enrolled in CAP, approximately 49% of CAP customers shopped during the January 2012 through October 2015 time period. PPL St. 3 at 8.

13. PPL CAP heating customers receive a maximum CAP credit of \$3,328 for every 18 month period they are enrolled in CAP. CAUSE-PA St. 1 at 17.
14. PPL non-heating CAP customers receive a maximum CAP credit of \$1,310 for every 18 month period they are enrolled in CAP. CAUSE-PA St. 1 at 17.
15. If a CAP customer exceeds the maximum CAP credit within the 18 month period, the CAP customer will be removed from CAP and charged the full residential customer rate for the duration of the 18 month period. PPL St. 3 at 10.
16. Between January 2012 and February 2016, 34,780 customers were removed from CAP because the CAP customer reached the maximum CAP credit. CAUSE-PA St. 1 at 17.
17. Approximately 79% of the CAP customers who reached their maximum CAP credit shopped with an EGS during some portion of the prior 18 months. CAUSE-PA St. 1 at 17.
18. In most months from January 2012 through February 2016, between 45%-70% of CAP customers paid more than the Price to Compare. CAUSE-PA St. 1 at 21.
19. In February 2014, CAP shopping customers paid, on average, 101% more per kWh. CAUSE-PA St. 1 at 22, Attachment B.
20. In February 2014, 57% of CAP shopping customers paid more than the Price to Compare. CAUSE-PA St. 1 at Attachment B.
21. In September 2013, 60% of CAP shopping customers paid more than the Price to Compare. CAUSE-PA St. 1 at Attachment B.
22. OnTrack customers that selected suppliers with prices higher than PPL Electric's PTC had average monthly energy charges that were \$31 higher (each month) than they would have been had they not shopped. PPL St. 3 at 10; PGW St. 3 at Exh. MSW-2.
23. The net impact of CAP customer shopping over the 46 month period from January 2012 through October 2015 is \$2,743,872 per year. PPL St. 3 at 12; CAUSE-PA St. 1 at 22.

APPENDIX B- Proposed Conclusions of Law

1. PPL has met its burden of proof and has demonstrated that CAP customers and non-CAP residential ratepayers have been financially harmed by the current CAP Shopping Plan.
2. Under the Public Utility Code, the Commission has the legal authority, as well as a duty, to maintain affordable, cost-effective universal service programs and may exercise that authority to implement CAP shopping rules for the universal service programs. 66 Pa. C.S. §§ 2802(9), (10), (14), (17), 2803, 2804(8)-(9); CAUSE-PA, et al. v. Pa. PUC, 120 A.3d 1087 (Pa. Cmwlth. Ct. July 14, 2015), *cert denied* 2016 Pa. LEXIS 723 (Pa. April 5, 2016)(PECO CAP Shopping).
3. The Proposed SOP-CAP, identified in the Joint Litigation Position, provides an affordable and cost-effective approach to PPL's universal service program as required the Customer Choice Act. 66 Pa. C.S. § 2801, *et seq.*

CERTIFICATE OF SERVICE

Petition of PPL Electric Utilities Corporation :
For Approval of a Default Service Program : Docket Nos. P-2016-2526627
And Procurement Plan for the Period :
June 1, 2017 through May 31, 2021

I hereby certify that I have this day served a true copy of the foregoing document, the Office of Consumer Advocate's Initial Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 8th day of July 2016.

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