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July 8, 2016

Via Electronic Filing
Rosemary Chiavetta, Secretary
PA Public Utility Commission
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 for electronic filing please find the Initial Brief of the Retail Energy Supply Association ("RESA") with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Deanne M. O'Dell

DMO/lww
Enclosure

cc: Hon. Susan D. Colwell w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of RESA's Initial Brief upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Date: July 8, 2016

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

INITIAL BRIEF OF RETAIL ENERGY SUPPLY ASSOCIATION

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I. INTRODUCTION

The issue reserved for litigation in this default service proceeding for PPL Electric Utilities Corporation ("PPL") is whether the record supports imposing restrictions on the ability of customers participating in PPL's customer assistance program ("CAP") to shop for competitive generation supply from an electric generation supplier ("EGS"). Based on recent interpretations by the Commonwealth Court of the Electricity Generation Customer Choice and Competition Act ("Competition Act")[1] and the record developed in this proceeding, the answer is undoubtedly no. As such, the Retail Energy Supply Association[2] urges the Administrative Law Judge ("ALJ") to reject the restrictions on the ability of CAP customers to shop set forth in PPL's rejoinder testimony (the "PPL Rejoinder Proposal") and, instead, direct implementation of PPL's proposals regarding CAP shopping set forth in its direct testimony (the "PPL Initial Proposal.")

The law is clear that the "overarching goal" of the Competition Act is competition and, while the Commission may "bend" competition to further other important aspects of the Competition Act, it can: (1) only do so upon a showing of substantial reasons why there are no reasonable alternatives to the proposed restriction on competition; and, (2) may rely on substantial evidence showing why proposed restrictions on competition should be rejected.[3]

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1 *Coalition for Affordable Util. Servs. and Energy Efficiency in Pennsylvania, et al. v. Pa. Pub. Util. Comm'n*, 120 A.3d 1087, 1106-1107 (Commw. Ct. 2015), appeal denied, 2016 WL 1383864 (Pa. Apr. 5, 2016) ("Commonwealth Court CAP Shopping Decision"); 66 Pa. C.S. §§2801-2812.

2 The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

3 Commonwealth Court CAP Shopping Decision at 1107-1108.

This evidence can include a showing that the proposed restrictions may adversely affect available choices for CAP customers.[4]

The record in this proceeding includes a reasonable alternative to restricting the ability of CAP customers to shop that would appropriately address the long-term concern of CAP shopping through a statewide collaborative and address the short-term concern by implementing measures to encourage CAP customers to participate in PPL's customer referral standard offer program ("SOP"). By participating in SOP, CAP customers would be able to avail themselves of a price for electricity 7% off the then-effective Price-to-Compare ("PTC") upon enrollment and not be subject to early termination/cancellation fees. This addresses some of the concerns raised in this proceeding.

Moreover, the record in this proceeding makes clear that the proposed restrictions on CAP shopping set forth in the PPL Rejoinder Proposal would adversely affect available choices for CAP customers. This is because the restrictions would take away the current right of CAP customers to freely shop. Pursuant to PPL's Rejoinder Proposal, CAP customers could only receive competitive supply through a to be created "CAP-SOP." The proposed structure of the CAP-SOP, however, includes program restrictions that would result in no EGSs participating. This is because the CAP-SOP would require the EGS to pay a $28 referral fee for each customer, agree to only provide below market electricity (7% off the then-effective PTC at enrollment) and prohibit the EGS (or any other EGS) from marketing other products to the CAP customer. EGSs are not likely to view such structure as favorable and would not agree to provide service under

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4 Commonwealth Court CAP Shopping Decision at 1107-1108.

these conditions. The practical result would be to remove any opportunity for CAP customers to shop.

For these reasons, and as explained in more detail below, RESA supports rejection of the restrictions on the ability of CAP customers to shop set forth in PPL's rejoinder testimony and, instead, recommends that PPL's proposals regarding CAP shopping set forth in its direct testimony be implemented.

II. STATEMENT OF THE CASE

On January 29, 2016, PPL filed a petition, along with supporting direct testimony, proposing to establish the terms and conditions under which it will procure default service supplies, provide default service to non-shopping customers, satisfy requirements imposed by the Alternative Energy Portfolio Standards Act[5] and recover all associated costs on a full and current basis for the period from June 1, 2017 through May 31, 2021. Notice of appearances and interventions were also filed by the Commission's Bureau of Investigation & Enforcement ("BI&E"), the Office of Consumer Advocate ("OCA") and the Office of Small Business Advocate ("OSBA"). Pursuant to Scheduling Order/Second Prehearing Order dated March 9, 2016, a litigation schedule was established and the following petitions to intervene of the following parties were granted: NextEra Energy Power Marketing, LLC; the Sustainable Energy Fund of Central Eastern Pennsylvania ("SEF"), the PP&L Industrial Customer Alliance ("PPLICA"), Noble Americas Energy Solutions LLC ("NAES"), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), Exelon Generation Company, LLC, and the Retail Energy Supply Association ("RESA").

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5 73 P. S. §§ 1648. 1 - 1648.8 and related provisions of 66 Pa. C. S § § 2813-2814.

Direct, rebuttal, surrebuttal and rejoinder testimony of all parties other than the Company was served on or before June 16, 2016 and was admitted into the record on that date. The following testimony of Matthew White was admitted on behalf of RESA: (1) RESA St. No. 1 which includes Exhibits MW-1 to MW-4; (2) RESA St. No. 1-R which includes Exhibit MW-5; (3) RESA St. No. 1-SR which includes Exhibit MW-6; and (4) RESA St. No. 1-RJ.

At the June 16, 2016 hearing, the parties informed the ALJ that an agreement had been reached on all issues except for the right of customers participating in PPL's low-income customer assistance program ("CAP") to freely shop for competitive supply from an electric generation supplier ("EGS"). As such, this issue has been reserved for litigation.

In its direct testimony, PPL urged that CAP shopping be addressed on a statewide basis but proposed, in the interim, that CAP customers be encouraged to participate in PPL's customer referral standard offer program ("SOP") (the "PPL Initial Proposal"). More specifically, PPL proposed that any customers that inquire about its CAP (or other low-income programs) or are enrolled in PPL's CAP be informed of the availability of the SOP.[6] The PPL Initial Proposal would not place any restrictions on competition.

BI&E supported PPL's initial view that CAP shopping should be addressed on a statewide basis and its proposed interim approach.[7] BI&E later updated its recommendation to reflect that the Commission should initiate a statewide collaborative of all stakeholders on the issue of CAP shopping costs to develop a solution that would be completed as determined by the Commission or within one year from the date of the Commission's Order in this proceeding.

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6 PPL St. No. 1 at 48.

7 BI&E St. No. 1 at 6-8.

However, BI&E continued to support PPL's initial interim plan to encourage CAP customers to participate in the SOP.[8]

OCA opposed PPL's preliminary proposal to approach CAP shopping matters on a statewide basis and offered instead that PPL could: (1) revise SOP rules so that suppliers must serve CAP customers at a rate that is at or below the applicable PTC; (2) establish a CAP specific shopping program pursuant to which approved suppliers could make offers to CAP customers; (3) notify suppliers and customers when a rate is charged that is higher than the PTC and require the supplier to drop the customer or lower its price; or (4) modify its Purchase of Receivables program and pursue collection action for amounts equal to or less than the PTC and return the otherwise unpaid bill amounts to the supplier.[9]

Similarly, CAUSE-PA opposed PPL's preliminary proposal that CAP shopping matters be addressed on a statewide basis and, instead, proposed that PPL establish rules that would restrict the ability of CAP customers to shop. Under CAUSE-PA's proposal, no CAP customers would be able to shop outside the specific CAP shopping program recommended by CAUSE-PA. Through this program, CAUSE-PA proposed that EGSs would be required to offer CAP customers only products that are always at or below PPL's PTC and that do not contain termination and/or cancellation fees.[10] In surrebuttal testimony, CAUSE-PA, for the first time in the proceeding, proposed that a modified SOP for CAP customers could serve as an avenue through which its shopping restrictions could be implemented and would be the only way for

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8 BI&E St. No. 1-SR at 15.

9 OCA St. No. 2 at 21-22; OCA St. No. 2-S at 10.

10 CAUSE-PA St. No. 1 at 33.

PPL's CAP customers to receive generation supply from an EGS.[11] Pursuant to CAUSE-PA's surrebuttal proposal, the modified CAP SOP would require EGSs to re-enroll customers as a new SOP enrollment with 7% off the then applicable PTC if the PTC drops below 7% at any time during the customer's enrollment.[12] In addition, participating EGSs would be required, at the end of the CAP customer's SOP contract term, to re-enroll the customers in a new SOP contract that is 7% off the then-applicable PTC or return the customer to default service.[13] EGSs would not be permitted to market any other competitive product to PPL's CAP customers.

RESA responded and opposed CAUSE-PA's new proposal in rejoinder testimony.[14] RESA noted that CAUSE-PA's proposal would limit CAP customers to electing "just one product available in the market" and, therefore, would completely eliminate the opportunity for CAP customers to shop for any other competitive product.[15] The limitations on that product would require suppliers to offer a discount to a future unknown price and would impose additional risk to suppliers that would agree to serve CAP customers through the CAP SOP. RESA also explained that CAUSE-PA's proposal would require EGSs to pay a referral fee for each CAP customer referred and eliminated the opportunity for EGSs to offer a competitive (non-CAP SOP) product to customers at the end of the SOP contract term (or at any other time).[16] Ultimately, RESA concluded that CAUSE-PA's proposal, if implemented, would result in EGSs not participating in the CAP SOP program.[17]

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11 CAUSE-PA St. No. 1-SR at 19.

12 CAUSE-PA St. No. 1-SR at 19.

13 CAUSE-PA St. No. 1-SR at 19.

14 RESA St. No. 1-RJ.

15 RESA St. No. 1-RJ at 4.

16 RESA St. No. 1-RJ at 3.

17 RESA St. No. 1-RJ at 2-3.

PPL also filed rejoinder testimony in response to CAUSE-PA's new surrebuttal proposal which altered PPL's initial proposal regarding the issue of CAP shopping and recommended restrictions on the ability of CAP customers to shop (the "PPL Rejoinder Proposal").[18] While PPL continued to recommend that the Commission initiate a statewide collaborative and/or initiate a rulemaking to address CAP shopping issues, the PPL Rejoinder Proposal recommended that, in the interim, a CAP-SOP shopping program be established that would provide the only vehicle for CAP customers to shop in PPL's service territory. The PPL Rejoinder Proposal would require EGSs serving in the CAP-SOP to provide a 7% discount off the PTC at the time of enrollment with no opportunity to market other non-CAP-SOP products to its CAP-SOP customers.[19]

In response to the PPL rejoinder testimony, PPL, BI&E, OCA, and CAUSE-PA (collectively, "Proponents of CAP Shopping Restrictions") filed a joint litigation position regarding CAP shopping[20] which supports the PPL Rejoinder Proposal. The Proponents of CAP Shopping Restrictions agreed that the Commission should initiate a statewide collaborative and/or initiate a new rulemaking proceeding to address CAP shopping issues.[21] Until such a statewide approach can be developed, the Proponents of CAP Shopping Restrictions agreed that PPL should implement a CAP Standard Offer Program, effective June 1, 2017, that limits the

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18 PPL St. No. 1-RJ at 7-8

19 PPL St. No. 1-RJ at 7-8.

20 Corrected Joint Litigation Position (dated June 17, 2016). The Office of Small Business Advocate ("OSBA"), NextEra Energy Power Marketing, LLC, PP&L Industrial Customer Alliance ("PPLICA"), Sustainable Energy Fund of Central Eastern Pennsylvania ("SEF"), Noble Americas Energy Solutions, LLC and Exelon Generation Company were not parties to and took no position on the Joint Litigation Position. RESA did not support the Joint Litigation Position and reserved its rights to litigate the issue of CAP customer shopping.

21 Corrected Joint Litigation Statement at 2.

ability of CAP customers to shop only through a new CAP-SOP program. As proposed, EGSs that agree to participate in the program would be required to serve customers at 7% off the PTC at the time of enrollment and agree not to impose any termination or cancellation fees for customer termination of a CAP-SOP contract. At the end of a 12-month CAP-SOP contract, CAP customers will be returned to the CAP-SOP pool and will 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 participant. Significantly, the proposal would restrict CAP customer shopping so that CAP customers would only be able to receive supply from an EGS through the proposed CAP-SOP.[22]

Pursuant to Briefing Order entered June 16, 2016, Initial Briefs regarding the CAP Shopping issue are due July 8, 2016, reply briefs as well as the joint petition for partial settlement and statements in support of settlement are due July 19, 2016. The purpose of this Initial Brief is to set forth RESA's position that the Proponents of CAP Shopping Restrictions have not met their burden of proving that there are no reasonable alternatives to restricting competition and, therefore, the PPL Rejoinder Proposal be rejected. In addition, substantial record evidence supports rejection of the PPL Rejoinder Proposal because it would effectively end any ability of CAP customers to shop.

III. QUESTIONS INVOLVED

Question #1: Have the Proponents of CAP Shopping Restrictions met their burden of proving that no reasonable alternative exists so as to necessitate the imposition of restrictions on competition?

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22 Corrected Joint Litigation Statement at 2-3.

Suggested Answer #1: No.

Question #2: Even if the Commission determines that restrictions on the ability of CAP customers to shop are appropriate, does the record support imposing the restrictions set forth in the PPL Rejoinder Proposal which would effectively eliminate all opportunities for CAP customers to shop?

Suggested Answer #2: No.

IV. LEGAL STANDARDS AND BURDEN OF PROOF

A. BURDEN OF PROOF

Section 332(a) of the Public Utility Code provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.[23] It is well-established that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible."[24] The burden of proof is comprised of two distinct burdens: the burden of production and the burden of persuasion. The burden of production tells the adjudicator which party must come forward with evidence to support a particular proposition.[25] The burden of persuasion determines which party must produce sufficient evidence to convince a judge that a fact has been established, and it never leaves the party on whom it is originally cast.[26] In this case, parties proposing rule restrictions on the ability of CAP customers to shop have the burden of proof and ultimately the burden to persuade the Commission that there are no reasonable

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23 66 Pa.C.S. §332(a).

24 *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

25 See *In re Loudenslager's Estate*, 240 A.2d 477, 482 (1968).

26 *Reidel v. County of Allegheny*, 633 A.2d 1325, 1329 n. 11 (Pa.Cmwlth.1993).

alternatives to their proposed restrictions on competition and the Commission may rely on substantial evidence to reject the proposed restriction.[27]

B. STANDARDS APPLICABLE TO DEFAULT SERVICE AND THE ABILITY OF LOW-INCOME CUSTOMERS PARTICIPATING IN A CUSTOMER ASSISTANCE PROGRAM TO SHOP

The Electricity Generation Customer Choice and Competition Act ("Competition Act") addresses the requirements that PPL, as the default service provider, must meet.[28] The Competition Act does not require a specific rate design methodology for non-shopping customers in the post transition period. Instead, it requires that the default service provider acquire electric energy through a "prudent mix"[29] of resources that must be designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to customers over time; and, (iii) to achieve these results through competitive processes which includes auctions, requests for proposals and/or bilateral agreements.[30]

The "overarching goal of the Choice Act is competition through deregulation of the energy supply industry, leading to reduced electricity costs for consumers."[31] To achieve this, the Competition Act requires the Commission to "allow customers to choose among electric generation suppliers in a competitive generation market through direct access."[32] The Competition Act recognizes that greater competition in the electricity generation market benefits

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27 Commonwealth Court CAP Shopping Decision at 1106-1107.

28 *See* 66 Pa. C.S. § 2807(e).

29 66 Pa. C.S. § 2807(e)(3.2); "In interpreting the term 'prudent mix,' the PUC must exercise some balance and discretion under the circumstances of the case in order for the 'mix' in question to be 'prudent'." *Popowsky v. Pennsylvania Pub. Util. Comm'n*, 71 A.3d 1112, 1117 (Pa. Cmwlth. 2013)(Petition for Allowance of Appeal Denied December 31, 2013, Docket No. 641 MAL 2013).

30 66 Pa. C.S. § 2807(e)(3.1).

31 Commonwealth Court CAP Shopping Decision at 1101 (emphasis added); 66 Pa.C.S. § 2802(13).

32 66 Pa.C.S. § 2804(2); See also *Popowsky,* 71 A.3d at 1116.

all classes of customers, including those of low income.[33] In addition, the Competition Act requires the Commission to ensure that universal service plans are appropriately funded, available, and cost-effective.[34]

The Commission has the authority to "bend" competition to further other important aspects of the Competition Act but, can only do so upon a showing of substantial reasons why there are no reasonable alternatives to the proposed restriction on competition.[35] Then, even if restrictions on competition are deemed the only way to address the concern, the Commission may rely on substantial evidence showing why such restrictions should be rejected.[36] This evidence can include a showing that the restrictions would adversely affect available choices for CAP participants.[37]

The Commission has long supported the ability of customers participating in a customer assistance program to shop without restriction. The Commission has also specifically concluded that CAP customers should have the opportunity to participate in various retail market enhancement programs, such as the Standard Offer Program ("SOP").[38]

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33 66 Pa. C.S. § 2802(7); Commonwealth Court CAP Shopping Decision at 1106.

34 66 Pa. C.S. § 2804(9).

35 Commonwealth Court CAP Shopping Decision at 1104, 1106.

36 Commonwealth Court CAP Shopping Decision at 1107-1108.

37 Commonwealth Court CAP Shopping Decision at 1107-1108.

38 *Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan*, Docket No. P-2012-2302074 at 163 (Opinion and Order entered January 24, 2013) ("*PPL DSP II Order*"); *Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P-2012-2283641, Order at Ordering Par. 18 (October 12, 2012) ("*PECO DSP II*"); *PECO DSP II* at Motion of Commissioner Witmer on Issue 22 entered September 27, 2012; *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs*, Docket No. P-2011-2273650, et. seq., Opinion and Order entered August 16, 2012, *reconsideration granted in part*, Opinion and Order entered September 27, 2012, and amended on October 11, 2012 at 24-25 ("*FE DSP II Reconsideration Order*").

V. SUMMARY OF ARGUMENT

A. PROPONENTS FAILED TO MEET BURDEN OF PROVING THAT RESTRICTIONS ON CAP SHOPPING ARE REQUIRED

The law is clear that the "overarching goal" of the Competition Act is competition and, while the Commission may "bend" competition to further other important aspects of the Competition Act, it can only do so upon a showing of substantial reasons why there are no reasonable alternatives to the proposed restriction on competition. The Proponents of CAP Shopping Restrictions have not met their burden of proving that there are no reasonable alternatives to their proposed restrictions on the ability of CAP customers to shop (i.e. the PPL Rejoinder Proposal) for two reasons. First, the concerns regarding the effect of the ability of CAP customers to freely shop (i.e. maximizing their program benefits earlier) are directly related to the structure of PPL's CAP program. Nonetheless, no testimony or record evidence was proposed by the Proponents of CAP Shopping Restrictions to show why changes to the CAP Program are not reasonable. This is so despite the fact that the evidence in the record supports the need for making PPL's CAP benefits more portable as they are for other service territories such as PECO Energy Company and the FirstEnergy Companies.

Second, the record does include a reasonable alternative to restricting the right of CAP customers to freely shop (i.e. the PPL Initial Proposal) which proves that restrictions on the ability of CAP customers to shop would be unlawful. The PPL Initial Proposal would address some of the concerns expressed by CAUSE-PA regarding the price paid by CAP customers as well as exposure to early termination/cancellation fees on an interim basis while supporting a statewide long-term solution to concerns raised about CAP shopping.

Because the Proponents of CAP Shopping Restrictions have failed to prove that there are no reasonable alternatives to their proposed restrictions on the ability of CAP customers to shop,

the PPL Rejoinder Proposal must be rejected. RESA supports implementation of the PPL Initial Proposal.

B. SUBSTANTIAL EVIDENCE SUPPORTS REJECTING THE PPL REJOINDER PROPOSAL'S PROPOSED RESTRICTIONS ON CAP SHOPPING BECAUSE IMPLEMENTING THEM WOULD RESULT IN NO SHOPPING OPTIONS AVAILABLE FOR CAP CUSTOMERS

The law is clear that the "overarching goal" of the Competition Act is competition and if no other reasonable alternatives exist, the Commission may "bend" competition to further other important aspects of the Competition Act but may rely on substantial evidence showing why proposed restrictions on shopping should be rejected.[39] This evidence can include a showing that the proposed restrictions may adversely affect available choices for CAP customers.[40] The substantial evidence in this proceeding shows that the PPL Rejoinder Proposal will adversely affect available choices for CAP customers for the following reasons and, therefore, must be rejected.

First, the PPL Rejoinder Proposal will remove the current ability of CAP customers (approximately 41,074) to freely shop because it would create only one avenue for CAP customers to potentially elect to receive service from an EGS. The result of eliminating this right would impact approximately half of all CAP customers who are shopping (20,738) and take away their ability avail themselves of all the benefits of CAP Shopping (including an EGS price lower than the PTC). In addition, reversing course to eliminate the free ability of CAP customers to currently shop at this point would necessitate changes to existing EDC and EGS protocols to develop new administrative protocols that currently do not exist. Further, because the PPL

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39 Commonwealth Court CAP Shopping Decision at 1107-1108.

40 Commonwealth Court CAP Shopping Decision at 1107-1108.

Rejoinder Proposal is only offered as an interim measure, it will be replaced by unknown future processes necessitating new operational changes at that time as well as customer confusion. In consideration of these facts, wholesale restricting CAP Shopping on an interim basis at this time is not reasonable.

Second, the PPL Rejoinder Proposal will effectively eliminate all shopping opportunities for CAP customers because the only avenue through which they would be able to select an EGS (i.e., the CAP-SOP program) would be designed in a way that no EGSs would participate. The reasons the design of the proposed CAP-SOP program are problematic for EGSs are because it would require EGSs to agree to only ever offer below market priced electricity service, to pay an additional $28 referral fee to PPL each time a customer enrolls or re-enrolls, and prohibit the EGS from ever being able to offer a different competitive product to the CAP customers. If no EGSs participate in the only avenue for CAP customers to shop (which they will not), then there will be no CAP shopping at all.

In sum, implementing the PPL Rejoinder Proposal will remove all ability for CAP customers to shop and will, therefore, adversely impact the available choices for CAP customers. For these reasons, the PPL Rejoinder Proposal must be rejected.

VI. ARGUMENT

A. LEGAL AUTHORITY FOR CAP SHOPPING RESTRICTIONS

The Commonwealth Court reaffirmed that the "central objective" of the Competition Act "was to allow retail customers in the Commonwealth to purchase their electricity directly from an EGS, rather than rely on their local utility as the exclusive source for generation, transmission,

and distribution."[41] Thus, according to the Commonwealth Court, "there can be no question, at this juncture, that the overarching goal of the Choice Act is competition through deregulation of the energy supply industry, leading to reduced electricity costs for consumers."[42] Upon consideration of issues before it related to the ability of CAP customers to freely shop, the Commonwealth Court also concluded that the Commission does have the authority to "bend" competition to further other important aspects of the Competition Act but, can only do so upon a showing of substantial reasons why there are no reasonable alternatives to the proposed restriction on competition.[43] Then, even if restrictions on competition are deemed the only way to address the concern, the Commission may rely on substantial evidence showing why such restrictions should be rejected.[44] This can include a showing that the restrictions would adversely affect available choices for CAP participants.[45]

In other words, parties proposing rule restrictions on the ability of CAP customers to shop have the burden of proof and ultimately the burden to persuade the Commission that there are no reasonable alternatives to their proposed restrictions on competition. The Commission may rely on substantial evidence to reject proposed restrictions including a showing that the restrictions would adversely affect available choices for CAP participants.[46]

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41 Commonwealth Court CAP Shopping Decision at 1100.

42 Commonwealth Court CAP Shopping Decision at 1101 (emphasis added).

43 Commonwealth Court CAP Shopping Decision at 1104, 1106.

44 Commonwealth Court CAP Shopping Decision at 1107-1108.

45 Commonwealth Court CAP Shopping Decision at 1107.

46 Commonwealth Court CAP Shopping Decision at 1107-1108.

B. WHETHER CAP SHOPPING RESTRICTIONS ARE NEEDED

PPL's CAP customers have had the ability to shop without restriction since 2010.[47] Most recently, in 2013, the Commission affirmed the right of PPL's CAP customers to be treated as all other customers regarding their right to access the competitive market.[48] Between September 2013 and October 2015, PPL has analyzed data regarding the shopping of CAP customers.[49] The monthly average of CAP customers was 41,074 and approximately half of these CAP customers (20,738) received competitive supply from an EGS.[50] Of these shopping CAP customers, about half of them are paying a rate at or below the PTC.[51]

Based on its analysis of this data, PPL concluded that "some limits on CAP shopping should be developed."[52] More specifically, PPL recommended that a statewide collaborative be convened by the Commission to develop a long-term resolution of these issues.[53] In the interim, PPL proposed that any customers that inquire about its CAP (or other low-income programs) or are enrolled in PPL's CAP be informed of the availability of the SOP (i.e., the PPL Initial Proposal).[54] Through SOP, these CAP customers could receive a 7% discount off the then-effective PTC and not be subject to any early termination/cancellation fees.[55] The PPL Initial

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47 PPL St. 1 at 44.

48 *Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan*, Docket No. P-2012-2302074 at 163 (Opinion and Order entered January 24, 2013).

49 PPL St. No. 3 at 6-11.

50 PPL Exh. MSW-1 at 6-8.

51 PPL St. No. 1-R at 29; PPL Exh. MSW-1 at 9-11.

52 PPL St. No. 1 at 45.

53 PPL St. No. 1 at 47.

54 PPL St. No. 1 at 48.

55 PPL St. No. 1 at 48.

Proposal would allow CAP customers to continue to avail themselves of the competitive market without restrictions.

Both OCA and CAUSE-PA, relying on this same data, recommended placing restrictions on the ability of CAP customers to shop. Pursuant to their proposals, CAP customers would no longer be able to freely shop but would be limited to just one avenue to receive service from an EGS. The restrictions proposed for this one product would effectively end all shopping opportunities for PPL's CAP customers.[56] Ultimately, these parties reached a compromise of the various proposals and they now all support the PPL Rejoinder Proposal which would restrict CAP Shopping.

Before assessing the proposed restrictions on CAP Shopping, however, the threshold question is whether the Proponents of CAP Shopping Restrictions have met their burden of proving that such restrictions are necessary. While the Commonwealth Court did conclude that the Commission does have the authority to impose certain CAP rules which would limit a participating customer's ability to choose an EGS and remain eligible for CAP benefits, the Commonwealth Court made equally clear that doing so could only be done where there are "substantial reasons why there is no reasonable alternative so competition needs to bend."[57]

That showing has not been made here. Even though the problems identified by CAUSE-PA are a direct result of the structure of PPL's CAP program, the record is devoid of any discussion about how PPL's existing CAP program could be modified to insure that PPL's CAP customers would continue to have access to the benefits of CAP even if they elect to shop. Moreover, PPL's Initial Proposal – which would not restrict the right of CAP customers to shop

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56 RESA St. No. 1-SR at 4.

57 Commonwealth Court CAP Shopping Decision at 1103, 1106.

but would mitigate some of the concerns identified by CAUSE-PA – does present a reasonable alternative restricting competition. For these reasons, the Proponents of CAP Shopping Restrictions have not satisfied their legal burden and the proposed restrictions on CAP Shopping (as set forth in the PPL Rejoinder Proposal) must be rejected.

1. PPL CAP Program Structure

The issues of concern regarding the impact of CAP Shopping raised in this proceeding are the direct result of the structure of PPL's CAP program. Under PPL's CAP program, a CAP customer is limited to incurring a specific amount of charges based on usage and price per kWh during the CAP customer's 18-month enrollment period (referred to as the "CAP Credit").[58] During the 18-month period, the amount remaining for this CAP Credit is reduced each month on a dollar for dollar basis for any total monthly bill amount that is in excess of the customer's CAP bill.[59] If the CAP Customer exceeds the CAP Credit within the 18-month period, then that CAP Customer is required to pay the charges in full with the situation reassessed at the end of his or her 18-month period (when the customer may again be placed in the CAP Program).[60] Thus, if the CAP customer receives alternative generation supply service for a price higher than the PTC, then those additional charges will be applied to reduce the CAP Credit.

Rather than addressing how this CAP program structure could be changed so that CAP customers could continue to receive the benefit of the CAP program even if receiving supply from an EGS, CAUSE-PA focused on how to restrict the ability of CAP customers to shop so that their incurred charges from an EGS would not max out their CAP Credit. This logic,

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58 PPL St. No. 3 at 3-4.

59 PPL St. No. 3 at 4.

60 PPL St. No. 3 at 4, 10.

however, is insufficient to meet the burden of showing that there are no reasonable alternatives to restricting competition to justify restrictions on shopping.

The Commission has already made clear that CAP benefits should be made portable so that CAP customers may continue to enjoy the benefits of the competitive market.[61] In fact, PECO's CAP program has undergone a substantial redesign recently which will ensure that CAP customer benefits are portable.[62] Similarly, the Commission has acknowledged that the CAP benefits to customers in the service territories of the FirstEnergy Companies are portable.[63]

In contrast, here the record is completely devoid of any analysis regarding changes that could be implemented to the structure of PPL's CAP program as an alternatives to restricting shopping for CAP Customers. The Proponents of CAP Shopping Restrictions never analyzed potential structural changes to PPL's CAP Program to address the concerns they identified regarding the CAP Credit. This is true even though Mr. Geller explained that CAUSE-PA's concerns are driven by the structure of the PPL CAP program which "is currently structured to interact with default service rates" and the CAP Credits are designed "based on PPL's default service rates."[64] Adjusting the CAP customer's CAP Credit to align with the price of a competitive supplier seems like an easy way to address the concerns raised by CAUSE-PA. There may be other reasonable alternatives within the PPL CAP Program that would not require restricting CAP Shopping but none have been offered in the record. Since the Commonwealth

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61 *FE DSP II Reconsideration Order* at 22-24; *PECO DSP II* at Ordering Par. 18; *PECO DSP II* at Motion of Commissioner Witmer on Issue 22 entered September 27, 2012.

62 *PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4*, Docket No. M-2012-2290911, OCA Statement in Support at 4 (filed March 20, 2015), CAUSE-PA Statement in Support at 5 (filed April 22, 2015).

63 *FE DSP II Reconsideration Order* at Joint Statement of Chairman Powelson and Commissioner Witmer entered September 27, 2012.

64 CAUSE-PA St. No. 1-SR at 8 (emphasis added).

Court squarely places the burden on the Proponents of CAP Shopping Restrictions to prove that no other reasonable alternatives are available and they have failed to do that in this case, there is no legal support for restricting the ability of CAP customers to freely shop.

Also of note is the fact that while PPL has provided more data than has been available in prior proceedings, this information still suffers from the problems identified by the Commission in the PPL DSP II proceeding in that it is focused on a single point in time (albeit a longer point in time).[65] This data does not take into account a specific contract term with an EGS to show whether the CAP customer paid a higher price for the entire term of their contract with EGSs or the CAP customer – when he or she first chose the EGS – obtained some benefit or incentive for switching (such as a lower price, a gift card, or energy audit). In fact, PPL testified that it "has no way of knowing of or tracking such incentives."[66] Thus, the point of time used for the comparison is most certainly not reflective of the conditions experienced by shopping CAP customers over their entire shopping experience.

Moreover, customers have always retained the ability to make new choices in response to changes in the market price. The same is true for the CAP customers who were shopping at the time of the comparison. The fact that CAP customers who were shopping did not respond to the price change by the point of time used for the comparison does not mean that nothing was done. Following that point in time, (a) could have received a lower price from their existing EGS, (b) could have switched to default service or to another EGS, (c) could have decided that other benefits or incentives being received by them outweighed the price being paid.

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65 *PPL DSP II Order* at 163.

66 PPL St. No. 3 at 10.

Simply put, the point of time comparison does not justify restricting the ability of CAP customers to freely shop. At best, the point of time comparison shows the need for making CAP benefits more portable so that they CAP customers can enjoy the benefits of the competitive market, and so that they can make choices regarding electric supply in the same ways that non-CAP customers can make choices regarding their electric supply.[67]

2. The PPL Initial Proposal Presents A Reasonable Alternative To Restricting CAP Shopping

Although CAUSE-PA and OCA (the initial proponents of restricting shopping) did not address the structure of PPL's CAP program as an alternative to their proposed restrictions on shopping, PPL did present a reasonable alternative to restricting the right of CAP customers to freely shop (i.e., the PPL Initial Proposal).

The PPL Initial Proposal was first offered in direct testimony by PPL to "both appropriately address the long-term concern of CAP shopping through a state-wide collaborative, as well as address the short-term concern by proposing an interim solution to mitigate the impacts of CAP shopping until a state-wide resolution can be established."[68] To do this, PPL recommended that CAP shopping be addressed on a statewide basis but proposed, in the interim, that CAP customers be encouraged to participate in SOP.[69] More specifically, PPL proposed that any customers inquiring about its CAP (or other low-income programs) or enrolled in PPL's CAP be informed of the availability of the SOP.[70] According to PPL, this interim proposal would have encouraged CAP customers to obtain competitive retail supply at a rate lower than

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67 *FE DSP II Reconsideration Order* at 22-24; *PECO DSP II,* at Motion of Commissioner Witmer on Issue 22 entered September 27, 2012.

68 PPL St. No. 1-R at 27.

69 PPL St. No. 1 at 48.

70 PPL St. No. 1 at 48.

the then-effective PTC and avoid early contract cancellation/termination fees for canceling EGS service (because they are not permitted through SOP).[71] Importantly, this proposal does not restrict the right of CAP customers to freely shop and is substantial evidence of a reasonable alternative to the restrictions on shopping proposed by the PPL Rejoinder Proposal.

Also noteworthy is that the PPL Initial Proposal does address some of the concerns expressed by CAUSE-PA. First, the SOP is a guaranteed 7% off the then-effective PTC which would provide CAP customers immediate price benefits. Moreover, while CAP customers participating in SOP could pay more for the PTC if the PTC drops more than 7% from one PTC period to the next, "this historically has not been a common occurrence."[72] The SOP price historically has largely remained at or below the PTC and the PTC has only decreased by more than 7% from the prior PTC on only four occasions.[73] CAUSE-PA acknowledged that this fact mitigates concerns about the price that would be charged to PPL's CAP customers since customers in SOP would likely receive a price lower than the PTC through the term of the SOP contract (though it would not be guaranteed).[74] Therefore, taking steps to encourage CAP customers to participate in the current SOP program is a reasonable way to mitigate some of the concerns expressed by CAUSE-PA.

Second, CAUSE-PA expressed concerns about imposing early termination/cancellation fees on CAP customers who shop.[75] CAP customers participating in the current SOP would not have this issue because there are no cancellation fees or penalties for a customer that wants to

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71 PPL St. No. 1 at 48.

72 PPL St. No. 3-R at 5.

73 PPL St. No. 3-R at 7.

74 CAUSE-PA St. No. 1-SR at 18.

75 CAUSE-PA St. No. 1 at 33-34, 37-38; CAUSE-PA St No. 1-SR at 18, 20-21.

terminate participation in the SOP.[76] Thus, the PPL Initial Proposal addresses this concern as well.

In sum, the record evidence provides substantial evidence of an alternative to restricting competition and, therefore, the PPL Rejoinder Proposal which would restrict competition must be rejected.

C. CAP SHOPPING PROPOSALS

There are two proposals under consideration to address CAP Shopping concerns but only one (the PPL Rejoinder Proposal) would impose restrictions on the ability of CAP customers to shop. As discussed in the preceding section, the availability of a reasonable alternative to restricting competition (i.e. the PPL Initial Proposal) makes the imposition of restrictions on shopping unlawful. Beyond this, however, the Commission has the authority to reject proposals to restrict shopping where such restrictions may adversely affect available choices for CAP customers.[77] The restrictions on shopping set forth in the PPL Rejoinder Proposal would immediately shut down the ability of CAP customers to shop and not offer them any real shopping opportunity in the future thus resulting in the elimination of all shopping opportunities for CAP customers. For these reasons, the PPL Rejoinder Proposal must be rejected.

1. The PPL Rejoinder Proposal Will Immediately Eliminate The Current Ability Of CAP Customers To Freely Shop

PPL's CAP customers have had the ability to shop without restriction since 2010 and there are approximately 41,074 CAP customers with about half of them shopping.[78] The PPL Initial Proposal will not in any way take away the right of these CAP customers to freely shop

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76 PPL St. No. 3-R at 7-8.

77 Commonwealth Court CAP Shopping Decision at 1107.

78 PPL St. No. 1 at 44; PPL Exh. MSW-1 at 6-8.

and is a reasonable alternative to imposing restrictions on competition because it focuses on encouraging CAP customers to enroll in the SOP. In contrast, the PPL Rejoinder Proposal would take away the right of these CAP customers to freely shop because any CAP customer who wants to shop would be required to do so through the proposed "CAP-SOP."[79] In other words, if the PPL Rejoinder Proposal were approved, approximately 41,074 customers would lose their ability to freely shop for competitive supply. This is unwarranted and unreasonable and should be rejected for the following reasons.

First, approximately half of the shopping CAP customers are benefitting from EGS prices that are at or below the PTC.[80] CAP customers who shop are also able to avail themselves of the other benefits of shopping (such price certainty, other value-added products and services that may be a part of the commodity offering, and the ability to elect other offers that satisfy personal needs). Given the Commonwealth Court's clear pronouncement that competition is the "overarching goal" of the Competition Act, that PPL's CAP customers have had the benefits of unrestricted shopping since 2010 and are availing themselves of lower priced products (even though a comparison of EGS price to PTC is inappropriate in a competitive marketplace[81]), there is no reason to take away their current shopping rights in this proceeding as the PPL Rejoinder Proposal would do.

Second, making this change to restrict the current right of CAP customers to freely shop will necessitate changes to existing EDC and EGS protocols to develop new administrative

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79 PPL St. No. 1-RJ at 7.

80 PPL St. No. 3 at 8.

81 RESA St. No. 1-R at 12.

protocols that currently do not exist.[82] EGS current marketing practices would be impacted as EGSs would need to know on a real-time basis whether or not a particular customer is enrolled in CAP and ascertaining this information could be viewed by the customer as intrusive, puzzling and annoying or offensive.[83] Existing customers of EGSs (currently about 20,738) who are also in CAP and those EGS customers who become enrolled in CAP during an existing contract would require EGSs to determine develop processes to handle these customers who no longer have the right to freely shop. These processes would need to be internalized in a cost-effective and efficient manner and could be both time consuming and costly.[84]

Third, both proposals would operate only for an interim period as PPL has made clear that it continues to support a statewide collaborative to address CAP Shopping issues on a uniform, statewide basis.[85] In addition, the PPL Rejoinder Proposal specifically reserves the right of parties to re-open the CAP-SOP in the event there is no EGS participation and/or there are changes in retail market conditions.[86] Given the interim nature of both proposals adopting the approach that would take away the current right of CAP customers to freely shop is too extreme and would create unnecessary operational burdens and costs.

Fourth, fully developing a program that could significantly differ from a CAP shopping proposal adopted by the rest of the Commonwealth (or is subsequently revised or altered) would likely result in customer confusion resulting from changing requirements (i.e. they can shop, they cannot shop, they can shop but only under certain restrictions, etc.). PPL acknowledges this

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82 RESA St. No. 1-R at 13.

83 RESA St. No. 1-R at 13.

84 RESA St. No. 1-R at 13.

85 PPL St. No. 1-RJ at 9.

86 PPL St. No. 1-RJ at 9.

fact.[87] It would also lead to difficult operational issues for EGSs who would once again have to change marketing and operational processes with the changing rules.[88] This concern is particularly exacerbated when the proposal would take away an existing right of the customer to freely shop and then the Commission directs, or the program is subsequently re-examined and changed, to reinstate the right. This opens the door to customer confusion. Practically, an interim measure should be narrowly tailored (as the PPL Initial Proposal is) to minimize negative impacts to customers and operations and to be flexible enough to adjust (i.e. become more restrictive) if the Commission ultimately determines to move in that direction. Wholesale restricting CAP Shopping on an interim basis at this time is not reasonable.

In sum, CAP customers have been able to freely shop since 2010. Approximately half of CAP customers are exercising this right to shop and half of those shopping CAP customers are receiving an EGS price at or below the PTC. In consideration of this, taking away this right for an interim approach that may be revised or discontinued at a later date (i.e. the PPL Rejoinder Proposal) rather than implementing a different interim proposal (i.e. the PPL Initial Proposal) which would not impact the current shopping rights of CAP customers but would mitigate some of the concerns expressed by CAUSE-PA is not logical.

2. The PPL Rejoinder Proposal Will Effectively Eliminate All Shopping Opportunities for CAP Customers

As explained in the above Section, the PPL Rejoinder Proposal will take away the current right of CAP customers to freely shop. There is no dispute about that issue. In addition, because of the structure of the PPL Rejoinder Proposal, it will also effectively eliminate all shopping

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87 PPL St. No. 1-R at 25-26.

88 RESA St. No. 1-R at 13.

opportunities for CAP customers. While the PPL Rejoinder Proposal would utilize the existing SOP platform it would make specific revisions to that platform that would only be applicable to CAP customers which would result in no EGSs participating in the CAP SOP program.

Importantly, the CAP SOP would require EGSs to pay the $28 referral fee but would prohibit EGSs from marketing any other product to the CAP customer at any time (because CAP customers would be restricted from freely shopping).[89] This is very different from the current SOP in which EGSs are free to market competitive products outside the SOP and as the SOP contract term ends. The SOP was intended to incent customer who had never shopped before to enter the competitive market with an initial guarantee of savings.[90] By removing the opportunity for EGSs to market other competitive products to CAP customers, the result will be to require EGSs to guarantee the CAP Shopping customers a steady supply of below market electricity with no incentive (because they cannot) for the CAP customer to elect a non-SOP offer from the competitive market. Requiring EGSs to serve customers at a below market price in this manner will likely discourage suppliers from participating in the CAP SOP.[91]

The requirement for EGSs to pay the $28 referral fee further exacerbates this issue. This is because – in addition to being required to offer below market pricing to these customers – EGSs will also have to pay a $28 fee for each of these customers (and additional $28/customer referred fees for customers who had already been in the program and are re-enrolling). 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 no EGS would be willing to serve customers

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89 PPL St. No. 1-RJ at 7 paragraphs (a), (b), and (f).

90 *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, Final Order entered March 2, 2012 at 14.

91 RESA St. No. 1 at 13; RESA St. No. 1-RJ at 3.

under these conditions.[92] Thus, the result of adopting the PPL Rejoinder Proposal would be to eliminate all shopping opportunities for PPL's CAP customers.[93]

PPL disagrees with this conclusion and claims that the CAP-SOP model would "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."[94] While the proposal to permit the EGSs serving CAP customers in the CAP-SOP to maintain a 12-month fixed price product regardless of any changes during the contract term is an improvement from CAUSE-PA's proposal, it still fails to address the concerns about the $28 referral fee and the inability of EGSs to ever offer CAP customers any other type of competitive product. Ultimately, just addressing the specific product to be offered in the CAP SOP is not enough to make the PPL Rejoinder Proposal attractive to EGSs such that they would be willing to serve these customers.

Without EGS participation in the CAP SOP and by only permitting CAP customers to shop through the CAP SOP, the result would be that CAP customers would not have any shopping opportunities pursuant to the PPL Rejoinder Proposal. CAUSE-PA "accept[s] the possibility that some suppliers may be initially reluctant to serve CAP customers if the rules change."[95] But, this does not trouble CAUSE-PA because customers would still be able to receive default service and only the EDCs and Commission are charged with the ability and responsibility to limit the terms of EGS offers that can be accepted by CAP customers.[96] This, however, ignores the clear direction from the Commonwealth Court that the Competition Act's

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92 RESA St. No. 1-R at 13; RESA St. No. 1-RJ at 2-3.

93 RESA St. No. 1-RJ at 2-3.

94 PPL St. No. 1-RJ at 9.

95 CAUSE-PA St. No. 1-SR at 16.

96 CAUSE-PA St. No. 1-SR at 8.

"overarching goal" is competition and restrictions on shopping can only be implemented if there are no reasonable alternatives and the restrictions are not found to adversely affect available choices for CAP customers[97] Therefore, adopting a program that would eliminate the right of customers to shop when there are other alternatives such as adopting the PPL Initial Proposal (and/or, as discussed above in Section VI.B, looking at other alternatives within the structure of the CAP program to restricting shopping at all) is not consistent with the law notwithstanding the availability of default service.

Moreover, such a result would be extremely unfortunate because it would deny shopping CAP customers any opportunity to shop for any product including participation in the traditional SOP and leave CAP customers with only the default service rate. The end result would be to reverse the Commission's decision in the PPL DSP II proceeding that PPL's CAP customers should be treated as all other customers regarding shopping.[98] Moreover, this result is completely unnecessary given that the PPL Initial Proposal would mitigate some of the concerns expressed by CAUSE-PA regarding the price paid by CAP customers for electricity as discussed above in Section B.2.

In sum, the substantial evidence in this record is clear that the PPL Rejoinder Proposal will eliminate the ability of CAP customers to freely shop by taking away their current right to freely shop and only offering an avenue to receive competitive supply through a CAP SOP in which no EGSs are likely to participate. Because the substantial evidence shows that the PPL

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97 Commonwealth Court CAP Shopping Decision at 1101.

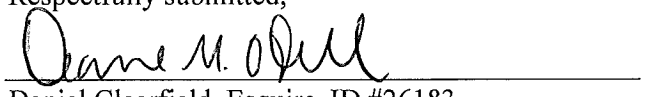
98 Note this would reverse the Commission's decision in the PPL DSP II proceeding that PPL's CAP customers should be treated as all other customers regarding shopping. *PPL DSP II Order* at 163.

Rejoinder Proposal will adversely affect available competitive choices for CAP customers, it must be rejected.

VII. CONCLUSION

The General Assembly has determined that the unrestricted ability of all customers to freely shop is an important right. And, while there may be reasons to restrict this right for particular customers (such as those participating in a CAP program), imposing such restrictions can only be done based on substantial evidence showing that there are no reasonable alternatives. In this proceeding, one reasonable alternative was developed on the record (as set forth in PPL's direct testimony) and other reasonable alternatives (i.e. changes to the CAP program structure) were not even mentioned. Because of this, the threshold burden of proving that restrictions on shopping are needed has not been met and the proposed restrictions on shopping must be rejected. Even if this threshold were deemed to be met (which it has not been), the law further permits proposed restrictions on shopping to be rejected if substantial evidence supports a showing that they will adversely affect available choices for CAP customers. The record in this proceeding is clear that if the proposed restrictions on CAP Shopping as set forth in PPL's rejoinder testimony are adopted, there will be no shopping opportunities available for CAP customers. This further supports rejection of the proposed CAP shopping restrictions.

Respectfully submitted,



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VIII. APPENDIX A – PROPOSED FINDINGS OF FACT

1. Under PPL Electric Utilities Corporation's ("PPL" or "the Company") customer assistance program ("CAP"), a CAP customer is limited to incurring a specific amount of charges based on usage and price per kWh during the CAP customer's 18-month enrollment period (referred to as the "CAP Credit"). PPL St. No. 3 at 3-4. During the 18-month period, the amount remaining for this CAP Credit is reduced each month on a dollar for dollar basis for any total monthly bill amount that is in excess of the customer's CAP bill. PPL St. No. 3 at 4. If the CAP customer exceeds the CAP Credit within the 18-month period, then that CAP customer is required to pay the charges in full with the situation reassessed at the end of his or her 18-month period (when the customer may again be placed in the CAP Program). PPL St. No. 3 at 4, 10.

2. PPL's CAP customers have had the ability to shop without restriction since 2010. PPL St. 1 at 44.

3. In 2013, the Commission affirmed the right of PPL's CAP Customers to be treated as all other customers regarding their right to access the competitive market to include participation in retail market enhancement programs such as the customer referral standard offer program ("SOP"). Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan, Docket No. P-2012-2302074 at 163 (Opinion and Order entered January 24, 2013).

4. Between September 2013 and October 2015, PPL has analyzed data regarding the shopping of CAP customers. PPL St. No. 3 at 6-11. The monthly average of CAP customers was 41,074 and approximately half of these CAP customers (20,738) received competitive supply from an EGS. PPL Exh. MSW-1 at 6-8. Of these shopping CAP customers, about half of them are paying a rate at or below the PTC. PPL St. No. 1-R at 29; PPL Exh. MSW-1 at 9-11. PPL's data does not take into account whether a customer obtained some benefit or incentive for switching (such as a gift card, energy audit or lower price). PPL St. No. 3 at 10.

5. CAUSE-PA's concerns regarding CAP shopping are driven by the structure of the PPL CAP Program which "is currently structured to interact with default service rates" and the CAP Credits are designed "based on PPL's default service rates." CAUSE-PA St. No. 1-SR at 8.

6. In its direct testimony, PPL recommended that CAP shopping be addressed on a statewide basis but proposed, in the interim, that CAP customers be encouraged to participate in SOP (the "PPL Initial Proposal"). The PPL Initial Proposal would not place any restrictions on competition. PPL St. No. 1 at 48.

7. PPL's current SOP requires participating EGSs to offer a 7% discount off the then-effective PTC for one year with no early termination/cancellation fees. PPL St. No. 1 at 48. The current SOP permits EGSs to market competitive products outside the SOP and as the SOP contract term ends. PPL St. No. 1 at 44. Participating EGSs pay a $28 referral fee for each CAP customer referred through the program. PPL St. No. 1 at 38.

8. The SOP price historically has largely remained at or below the PTC and the PTC has only decreased by more than 7% from the prior PTC on only four occasions. PPL St. No.

3-R at 7. CAUSE-PA acknowledged that this fact mitigates concerns about the price that would be charged to PPL's CAP customers since customers in SOP would likely receive a price lower than the PTC through the term of the SOP contract (though it would not be guaranteed). CAUSE-PA St. No. 1-SR at 18.

9. Through SOP as currently structured, CAP customers could receive a 7% discount off the then-effective PTC and not be subject to any early termination/cancellation fees. PPL St. No. 1 at 48.

10. Other parties to the proceeding recommended proposals that would restrict CAP customer shopping to varying degrees. No party recommended revisions to the structure of PPL's current CAP program to address concerns raised in this proceeding.

11. In rejoinder testimony, PPL proposed restrictions on CAP shopping. While still recommending that the Commission initiate a statewide collaborative and/or initiate a rulemaking to address CAP shopping issues, PPL proposed restrictions on CAP shopping for the interim. Pursuant to these restrictions, the only ability for CAP customers to shop would be through a newly proposed CAP-SOP program. The CAP-SOP program would require EGSs serving in the CAP-SOP to provide a 7% discount off the PTC at the time of enrollment with no opportunity to market other non-CAP-SOP products to its CAP-SOP customers. PPL St. No. 1-RJ at 7-8. EGSs participating in this program would also be required to pay a $28 referral fee for each customer served through the CAP-SOP. RESA St. No. 1-RJ at 3.

12. PPL, BI&E, OCA and CAUSE-PA (the "Proponents of CAP Shopping Restrictions") support the PPL Rejoinder Proposal and filed a joint litigation position regarding CAP shopping which reflects their support.

13. PPL has acknowledged that developing a program that could significantly differ from a CAP shopping proposal adopted by the rest of the Commonwealth would likely result in customer confusion resulting from changing requirements. PPL St. No. 1-R at 25-26.

14. The result of adopting the PPL Rejoinder Proposal would be to eliminate all shopping opportunities for PPL's CAP customers. RESA St. 1-RJ at 2-3.

15. Implementing the CAP-SOP as set forth in the PPL Rejoinder Proposal would result in EGSs not participating in the program. It would require EGSs to pay the SOP referral fee of $28 per referred customer to serve CAP customers but the EGSs would only be permitted to offer service through the CAP-SOP and would not have an opportunity to offer a competitive (non-CAP SOP product) to customers at the end of the SOP contract term (or at any time). RESA St. 1-RJ at 3.

16. By limiting CAP customer to just one product in the market with the parameters set forth in the PPL Rejoinder Proposal, no EGS would be willing to serve these CAP customers. Since this would be the only potential avenue for CAP customers to shop under the PPL Rejoinder Proposal, the practical effect would be to eliminate all shopping for CAP customers. RESA St. 1-RJ at 4.

IX. APPENDIX B – PROPOSED CONCLUSIONS OF LAW

1. The Electricity Generation Customer Choice and Competition Act ("Competition Act") addresses the requirements that PPL, as the default service provider, must meet. 66 Pa. C.S. § 2807(e).

2. The Competition Act requires the Commission to "allow customers to choose among electric generation suppliers in a competitive generation market through direct access." 66 Pa.C.S. § 2804(2).

3. The Competition Act recognizes that greater competition in the electricity generation market benefits all classes of customers, including those of low income. 66 Pa. C.S. § 2802(7); *Coalition for Affordable Util. Servs. and Energy Efficiency in Pennsylvania, et al. v. Pa. Pub. Util. Comm'n*, 120 A.3d 1087, 1106 (Commw. Ct. 2015), appeal denied, 2016 WL 1383864 (Pa. Apr. 5, 2016).

4. The "overarching goal of the Choice Act is competition through deregulation of the energy supply industry, leading to reduced electricity costs for consumers." *Coalition for Affordable Util. Servs. and Energy Efficiency in Pennsylvania, et al. v. Pa. Pub. Util. Comm'n*, 120 A.3d 1087, 1101 (Commw. Ct. 2015), appeal denied, 2016 WL 1383864 (Pa. Apr. 5, 2016). (emphasis added); 66 Pa.C.S. § 2802(13).

5. The Competition Act requires the Commission to ensure that universal service plans are appropriately funded, available, and cost-effective. 66 Pa. C.S. § 2804(9).

6. The Commission has the authority to "bend" competition to further other important aspects of the Competition Act but, can only do so upon a showing of substantial reasons why there are no reasonable alternatives to the proposed restriction on competition. *Coalition for Affordable Util. Servs. and Energy Efficiency in Pennsylvania, et al. v. Pa. Pub. Util. Comm'n*, 120 A.3d 1087, 1104, 1106 (Commw. Ct. 2015), appeal denied, 2016 WL 1383864 (Pa. Apr. 5, 2016).

7. The Commission may rely on substantial evidence showing why restrictions on competition should be rejected and this evidence can include a showing that the restrictions would adversely affect available choices for CAP participants. *Coalition for Affordable Util. Servs. and Energy Efficiency in Pennsylvania, et al. v. Pa. Pub. Util. Comm'n*, 120 A.3d 1087, 1107-1108 (Commw. Ct. 2015), appeal denied, 2016 WL 1383864 (Pa. Apr. 5, 2016).

8. The party seeking a rule or order from the Commission has the burden of proof in that proceeding. 66 Pa.C.S. §332(a).

9. The Proponents of CAP Shopping Restrictions bear the burden of proof in this proceeding.

10. The Proponents of CAP Shopping Restrictions have failed to prove that substantial reasons exist as to why there are no reasonable alternatives to the proposed restriction on competition

11. The substantial evidence in this proceeding make clear that the proposed restrictions on the ability of CAP customers to shop must be rejected because these restrictions would adversely affect available choices for CAP participants.

X. APPENDIX C – PROPOSED ORDERING PARAGRAPHS

1. The Commission will address CAP shopping issues on a statewide basis.

2. PPL is directed to revise its processes to more directly inform its CAP customers about its customer referral standard offer program and to encourage their participation.

3. The proposal to restrict the ability of CAP customers to shop as set forth in PPL's rejoinder testimony is denied.