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

IN REPLY PLEASE
REFER TO OUR FILE

July 19, 2016

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

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

Dear Secretary Chiavetta:

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

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

Sincerely,

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

GLL/sea
Enclosure

cc: Certificate of Service
Hon. Susan D. Colwell

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT

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Dated: July 19, 2016

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I. INTRODUCTION

The Bureau of Investigation & Enforcement ("I&E") incorporates, by reference, the Introduction section contained in its Main Brief of July 8, 2016.[1]

II. STATEMENT OF THE CASE

I&E incorporates, by reference, the Statement of the Case section contained in its Main Brief of July 8, 2016.[2] In accordance with the litigation schedule established in this proceeding, along with I&E, PPL Electric Utilities Corporation ("PPL"), the Office of the Consumer Advocate ("OCA"), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), and Retail Energy Supply Association ("RESA") filed Main Briefs on July 8, 2016. Pursuant to the procedural schedule and in accordance with Sections 5.501- 5.502 of the Public Utility Code, I&E submits this Reply Brief.

III. QUESTIONS INVOLVED

I&E incorporates, by reference, the questions and answers outlined in its Main Brief.[3] I&E asserts that the questions it posed and the responses offered are appropriate for this proceeding. However, in the interest of responding to the position of RESA, the only party opposing the *Joint Litigation Position Among Certain Parties Regarding CAP Shopping* ("Joint Position"), I&E will reiterate RESA's questions and answer them as follows:

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[1] I&E Main Brief at 1-4.
[2] I&E Main Brief at 1-4.
[3] I&E Main Brief at 7-8.

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?

Suggested Answer #1: Yes. However, the recommended CAP shopping restrictions were developed as an intermediate mechanism to remediate proven harm resulting from CAP shopping. The Proponents of CAP Shopping Restrictions, PPL,I&E, CAUSE-PA and the OCA ("Joint Litigants") have also recommended that the Commission resolve CAP shopping concerns on a statewide basis, in part to allow for consideration of any alternative that has not been yet been raised.

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: Yes, although the assertion that the restrictions set forth in the PPL Rejoinder Proposal ("Joint Proposal") would effectively eliminate all CAP shopping opportunities is RESA's unsupported opinion.

IV. LEGAL STANDARDS AND BURDEN OF PROOF

As outlined in I&E's Main Brief, as proponents of the Joint Position in the proceeding, the Joint Litigants have the burden of proof to establish that that the terms of the Joint Position are in the public interest and should be adopted.[4] The Joint Litigants bear this burden as proponents of a rule that would allow PPL's

[4] 66 Pa. C.S. § 332(a).

CAP customers to shop through a proposed CAP-Standard Offer Program ("CAP-SOP").[5]

The Joint Litigants' burden of proof is satisfied by "establishing a preponderance of evidence which is substantial and legally credible."[6] To meet this burden, the Joint Litigants must "present evidence more convincing, by even the smallest amount, than that presented by any opposing party."[7]

In this case, the Joint Litigants have provided unrefuted evidence of increased CAP shopping costs and the resultant harm to PPL's ratepayers.[8] After proving the CAP shopping impact, the Joint Litigants proposed a program to remediate increased CAP shopping costs, and provided evidence that the proposal would mitigate increased CAP shopping costs. The party opposing the Joint Position, RESA, has failed to overcome this evidence and failed to present any evidence, let alone substantial evidence, that the Joint Position should be rejected.

V. SUMMARY OF THE ARGUMENT

I&E incorporates the Summary of the Argument section of its Main Brief,[9] and again recommends the approval of the terms outlined in the Joint Position to mitigate the proven harm that PPL's ratepayers are experiencing under its current CAP shopping program ("OnTrack"). Currently, PPL's OnTrack customers are

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

[6] *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

[7] *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

[8] RESA has not disputed or refuted the evidence at any point in this proceeding and its Main Brief is devoid

[9] I&E Main Brief at 9-10.

eligible to shop for electric energy rates without restriction.[10] The evidence in this case has revealed that the results of the current program show that OnTrack shoppers exceeded their CAP credits at a faster pace than they would have if they did not shop above PPL's price to compare ("PTC").[11] PPL has also proven that unrestricted OnTrack shopping has led to increased CAP costs that are paid for by its non-CAP residential customers through its Universal Service Rider ("USR").[12] I&E submits that these results offend the principles of the Choice Act, indicate that the program fails to meet the Commission's universal service goals, and compromise the public interest.

Importantly, RESA has failed to refute PPL's OnTrack shopping data in this case and failed to refute that the data indicates harm to ratepayers. I&E avers that RESA's failure to dispute these facts operates as its tacit admission that they are true. Effectively admitting these facts, RESA now, for the first time in its Main Brief, offers untimely, underdeveloped and ineffective alternatives to the Joint Position and relies upon them to dissuade the Commission from adopting the Joint Position. To the extent that its newfound alternatives are unsuccessful, RESA simply offers the unfounded allegation that no electric generation suppliers (EGSs) will participate in the CAP-SOP outlined in the Joint Position. I&E submits that the evidence presented in this case proves that both RESA's untimely and ineffective alternative proposals and its unsubstantiated allegation are without

[10] PPL St. No. 3 at 5.
[11] PPL St. 1 at 44-45.
[12] PPL St. 1 at 45.

merit. Accordingly, I&E recommends that the Commission approve the CAP shopping program set forth in the Joint Position, which honors the Choice Act, respects Commission regulations, and does not compromise the public interest.

VI. ARGUMENT

A. LEGAL AUTHORITY FOR CAP SHOPPING RESTRICTIONS

In its Main Brief,[13] I&E identified three sources of authority that provide legal support for CAP shopping restrictions exists. These sources are the Electricity Generation Customer Choice and Competition Act ("Choice Act"),[14] legal precedent arising under a recent Commonwealth Court decision,[15] and the Commission's own regulations governing universal service programs. I&E averred that each of the three authorities provides ample support for adopting CAP shopping guidelines, but that the combined weight of the authorities provides clear support for the Commission to approve CAP shopping rules.

RESA acknowledged only one of these authorities, the Commonwealth Court decision in the *Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania et al. v. the Pennsylvania Public Utility Commission.*[16] I&E agrees with RESA that this decision provides authority for the Commission to "bend" competition to further important aspects of the Competition Act after a showing that there are no reasonable alternatives to a proposed restriction. I&E

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[13] I&E Main Brief at 11-15.
[14] 66 Pa. C.S. § 2801-§2815.
[15] *Coal. for Affordable Util. Servs. & Energy Efficiency in Pennsylvania v. Pennsylvania Pub. Util. Comm'n,* 120 A.3d 1087 (Pa.Cmwlth. 2015), *appeal denied,* (Pa. Apr. 5, 2016), and *appeal denied,* (Pa. Apr. 5, 2016).
[16] Id.; RESA Main Brief at 14-15.

avers that the Joint Litigants have met that standard in this case. Additionally, I&E notes that RESA has ignored two additional authorities which provide further support for CAP shopping restrictions in the instant proceeding: the Choice Act and the Commission's regulations.

1. The Choice Act

RESA neglects the fact that the Choice Act did more than just open the retail electric market to competition. The Choice Act also addressed the importance of access to electric service and the need for customer protection in the competitive market. This is clear in that the Choice Act determined that electric service is "essential to the health and well-being of residents, to public safety and to orderly economic development" and that all customers should be able to obtain service on reasonable terms and conditions.[17] The Choice Act also spoke specifically to the needs of low income customers, mandating that "[t]he Commonwealth must, at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service.[18]

Though RESA ignores the plain language of the Choice Act, it is clear that the Choice Act imposes an obligation upon the Commission to ensure that all ratepayers, and especially low income ratepayers, can receive electric service on reasonable terms. To protect low income customers, the Choice Act mandated that the Commission ensure that universal service and energy conservation

[17] 66 Pa. C.S. § 2802(9).
[18] 66 Pa. C.S. § 2802(10).

policies, activities and services are appropriately funded and available in each EDC's territory. I&E submits that the evidence set forth in this proceeding[19] compels further action to protect PPL's ratepayers by implementing the CAP shopping program outlined in the Joint Position.

2. Universal Service Goals Identified in Commission Regulations

RESA has ignored the fact that the Commission's regulations identify universal service goals, and these goals are impeded by PPL's unrestricted OnTrack shopping program. The goals of universal service programs have been identified as (1) protecting consumers' health and safety by helping low-income customers maintain electric service; (2) providing for affordable electric service by making available payment assistance to low-income customers; (3) assisting low-income customers conserve energy and reduce residential utility bills; and (4) establishing universal service and energy conservation programs that are operated in a cost-effective and efficient manner.[20] In this case, PPL's data reveals that allowing these shoppers to purchase electricity at rates above PPL's PTC has resulted in OnTrack customers exceeding their CAP credits quicker, thereby being at a greater risk for service termination.[21] I&E submits that such a result thwarts each of the universal service goals identified above.

Furthermore, RESA fails to acknowledge that unrestricted OnTrack shopping has decreased the cost-efficiency of the program. The decreased cost-

[19] I&E Main Brief at 18-23.
[20] 52 Pa. Code § 54.73.
[21] PPL St. No. 1 at at 45; PPL St. 3 at 12.

efficiency is evident in the increased costs that non-CAP residents have paid through the USR to fund the OnTrack program. As I&E previously indicated, these higher costs are relevant here because in evaluating universal service programs like CAP, the Commission balances the interests of customers who benefit from the universal service programs with the interests of the customers who pay for the programs.[22] In this case, each party considered in the Commission's balance of interests is at a loss under PPL's current CAP shopping program. While RESA, as an EGS, is not a party considered in the balance of these identified interests, it nonetheless seeks to advance its own interests at the expense of ratepayers.

B. WHETHER CAP SHOPPING RESTRICTIONS ARE NEEDED

Importantly, RESA has failed to refute PPL's CAP shopping data and failed to refute that the data indicates harm to ratepayers. I&E avers that RESA's failure to dispute these facts operates as its tacit admission that they are true. Because I&E set forth the pertinent shopping statistics in its Main Brief,[23] I&E will not repeat all of them here, but a few crucial facts bear reiteration. PPL's data revealed that during the 46-month period of January 1, 2012 through October 30, 2015, 9,626 OnTrack shopping customers paid an average price of $0.11048 and used an average of 1,197 kWh monthly.[24] The average PTC for the same period

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[22] *See Final Investigatory Order on Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms (Final Investigatory Order),* Docket No. M-00051923, (December 18, 2006) at 6-7.
[23] I&E Main Brief at 18-23.
[24] PPL St. No. 3 at 9.

was $0.08475, resulting in PPL's determination that OnTrack shopping customers' average monthly energy charges were $31 more per month than they would have been had they not shopped.[25]

Additional data revealed that between January 2012 and February 2016, 34,780 customers were removed from CAP because they exceeded their maximum CAP credits. Of those 34,780 customers, 27,600 (79%) were customers who had shopped with an EGS during a portion of the previous 18 month period.[26] Non-CAP residential ratepayers were also negatively impacted by unrestricted CAP shopping. According to PPL, "the net financial impact of OnTrack shopping is an increase of approximately $2.7 million annually in the energy charges paid for supply provided to OnTrack customers."[27] The $2.7 million increase in energy charges is imposed upon residential customers who pay costs under the USR.

In lieu of contesting these facts, RESA now appears to advance untimely alternatives to the Joint Position. At this point, I&E is left to interpret them as alternative proposals, as RESA did not present or support them during the evidentiary phase of this proceeding. Accordingly, I&E will address them in the CAP Shopping Proposals Section. To be clear, I&E fully supports the Choice Act and the Commission's effort to expand all customers' access to the retail shopping market. However, I&E also recognizes that the tenants of the Choice Act and the Commission's universal service goals must also be honored. Here,

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[25] PPL St. No. 3 at 9.
[26] CAUSE-PA St. No. 1 at 17; Attachment B to CAUSE-PA St. No. 1 at 5-8.
[27] PPL St. No. 3 at 12.

the evidence shows that PPL's OnTrack customers have used their CAP credits more rapidly, thereby increasing their risk of service termination. As a result, non-CAP residential ratepayers have paid greater costs to fund a less efficient OnTrack program. These are results that offend both the Choice Act and the Commission's universal service goals. Accordingly, I&E advances the Joint Position only in the face of undisputed evidence of harm to ratepayers in this case, and requests that the Joint Position be approved without modification.

C. CAP SHOPPING PROPOSALS

I&E incorporates the CAP Shopping Proposal section of its Main Brief[28] in its entirety. In its Main Brief, I&E explained the process that the Joint Litigants used to develop the Joint Position, described all terms of the Joint Position, and provided support for the approval of the Joint Position in this case. I&E again avers that the overwhelming evidence in this case supports adoption of the Joint Position in its entirety, including the CAP-SOP, without modification.

At the time I&E submitted its Main Brief, RESA had raised no alternatives to the Joint Position. Instead, RESA's opined that, despite proven harm, PPL should do nothing and continue to permit unrestricted OnTrack shopping.[29] However, RESA has recently changed its position and now, for the first time, in its Main Brief, appears to suggest alternatives to the Joint Position. I&E submits that

[28] I&E Main Brief at 23-32.
[29] I&E Main Brief at 23-24; RESA St. No. 1-RJ at 4.

these alternatives are untimely, underdeveloped, and inadequate and therefore, must be rejected.

1. RESA's First Alternative: Unidentified Changes to the Structure of PPL's CAP Program

RESA's assertion that the Joint Litigants have not met their burden because they have not offered evidence to show why changes to the CAP Program are not reasonable[30] is groundless. First, RESA cites no authority that compels the Joint Litigants to specifically address changes to the CAP Program before proposing a CAP shopping rule. Using RESA's logic, proponents of any CAP shopping rule would be required to explore the entire universe of conceivable solutions before recommending a viable shopping rule. During that time, CAP shopping harm would continue without interruption. Notwithstanding the impracticality of identifying all conceivable options, RESA's argument fails on other grounds.

Because RESA has not specified the changes that the Joint Litigants should have considered, I&E is left to hypothesize that the CAP changes RESA refers to would involve conferring more CAP credits upon PPL's CAP participants. I&E reaches this conclusion after considering the following passage from RESA's brief:

> 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

[30] RESA Main Brief at 12, 17-18.

> enrollment period (referred to as the "CAP Credit")(citation omitted). 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 (citation omitted). 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)(citation omitted). 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.[31]

Thus, RESA appears to suggest that instead of restricting CAP shopping in PPL's territory, PPL should just give CAP shoppers more CAP credits.

To the extent that RESA intends to argue that the Joint Litigants should have explored increasing PPL's CAP participants' credits, this argument fails for two reasons. First, as I&E explained in its Main Brief, the Commission has issued a policy statement regarding CAP programs, and it prescribes a control features for CAP programs.[32] According to the policy statement, absent limited exceptions, a utility's annual maximum CAP credits for non-heating electric customers should not exceed $560, and it should not exceed $1,400 for heating

[31] RESA Main Brief at 18.
[32] 52 Pa.Code § 69.265(3)(v)(B-C).

electric customers.[33] The policy statement does not contemplate the untold increase in CAP credits that would be necessary to facilitate RESA's proposal. Furthermore, increasing CAP credits for PPL's CAP customers would increase the already increased costs borne by PPL's non-CAP residential ratepayers under the USR that funds the CAP program. As explained in I&E's Main Brief, an increased burden upon ratepayers who fund the CAP program under these circumstances would offend past Commission precedent and trigger concerns under the Choice Act.[34] The apparent alternative offered by RESA does nothing to address the underlying concerns. Instead, the proposal merely relies upon additional money in order to mask the problem.

On the other hand, if RESA intended to make a different proposal than the one deduced by I&E, then that proposal was not made clear. If the alternative had been presented during the evidentiary phase of this proceeding, an opportunity for clarity and further development would have existed. However, if RESA wishes to develop this proposal, the Joint Litigants have proposed a forum for consideration in the form of a collaborative proceeding. As indicated in the Joint Position, the Joint Litigants agreed that the Commission should promptly initiate a statewide

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[33] 52 Pa.Code § 69.265(3)(v)(B-C).

[34] I&E Main Brief at 22-23; *See Final Investigatory Order on Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms (Final Investigatory Order),* Docket No. M-00051923 (December 18, 2006) at 10; *Coal. for Affordable Util. Servs. & Energy Efficiency in Pennsylvania v. Pennsylvania Pub. Util. Comm'n*, 120 A.3d 1087, 1103 (Pa.Cmwlth. 2015), *appeal denied*, (Pa. Apr. 5, 2016), and *appeal denied*, (Pa. Apr. 5, 2016).

collaborative open to all interested stakeholders and/or initiate a new rulemaking proceeding to address CAP shopping issues on a uniform, statewide basis.[35]

2. RESA's Second Alternative Was Considered and Rejected by the Joint Litigants

For the first time in this proceeding, in its Main Brief, RESA now professes that a reasonable alternative to the CAP-SOP exists. Surprisingly, RESA points to a position that only PPL and I&E espoused at the beginning of this proceeding, but later rejected as an inadequate resolution in light of the proven harm to PPL's ratepayers. Specifically, PPL and I&E's initial proposal to remediate CAP shopping harm ("initial proposal") was two-fold: I&E's Direct Testimony concurred with PPL's recommendation that the Commission should address CAP shopping issues on a statewide basis.[36] Until a statewide resolution could be reached, I&E agreed with PPL that its OnTrack shoppers should be encouraged to participate in the Standard Offer Program ("SOP"), which would offer On-Track shoppers a seven percent discount on the then-effective PTC for 12 months.[37] At the time that the initial proposal was contemplated, RESA offered no testimony addressing the proposal, though the litigation schedule provided ample opportunity to submit evidence.

As testimony exchange continued, along with PPL, I&E abandoned the initial proposal in favor of the CAP-SOP. From I&E's perspective, the initial proposal was flawed in that while a statewide resolution could be pending for an

[35] I&E Main Brief, Exhibit A, ¶2.
[36] PPL St. No. 1 at 47; I&E St. No. 1 at 8.
[37] PPL St. No. 1 at 35-36; I&E St. No. 1 at 7-8.

unknown amount of time, the SOP discount would only be effective for 12 months. At the conclusion of the 12 months, OnTrack shoppers would no longer be guaranteed a discount from the PTC in effect at the beginning of the 12 month term. In essence, the OnTrack customers' price protection would end, perpetuating the increased costs and increased CAP credit exhaustion that has been proven to result from unrestricted CAP shopping in PPL's service territory. Moreover, the opportunity for CAP shoppers to shop for electricity above the PTC would still exist under the initial proposal. Under the abandoned initial proposal, CAP shoppers would not have been limited to shopping through the SOP, thereby limiting its effectiveness in curtailing CAP shopping harm. Therefore, I&E concluded that the initial proposal did not adequately protect ratepayers.

With this in mind, I&E became a proponent of the CAP-SOP, along with the other Joint Litigants. Through the CAP-SOP, adequate protection is offered to ratepayers because CAP shoppers will not be able to purchase electricity at rates that exceed the PTC. EGSs participating in the CAP-SOP must agree to serve customers at a 7% discount off the PTC at the time of enrollment and honor that price for a 12-month term, absent customer termination.[38] After the CAP-SOP term concludes, the CAP customer will be returned to the CAP-SOP pool and be re-enrolled in a new CAP-SOP contract, unless the CAP customer requests to be returned to default service or is no longer a CAP customer.[39] Importantly, the

[38]I&E Main Brief, Exhibit A, ¶4(c).
[39]I&E Main Brief, Exhibit A, ¶4(f).

Joint Litigants propose the CAP-SOP only until a uniform, statewide solution to CAP shopping can be developed.[40] The Joint Litigants also agree that the Commission should promptly initiate a statewide collaborative open to all interested stakeholders and/or initiate a new rulemaking proceeding to address CAP shopping issues on a uniform, statewide basis.

As I&E explained earlier in this case, a collaborative proceeding would allow for input from all interested parties including EDCs, EGSs, residential customers, and other parties to arrive at a permanent solution to the CAP shopping issue on a statewide basis.[41] This will also provide an opportunity for *all parties,* not just those parties to this proceeding, to present their positions before the Commission.[42] As the CAP-SOP is offered as an interim solution, I&E will support resolutions revealed as a result of a collaborative review. However, the fact remains that no reasonable alternative has been presented in this proceeding. This fact is true despite this being the third PPL proceeding in three years in which concerns regarding unrestricted CAP shopping program have been identified.[43] Accordingly, I&E avers that ample time and opportunity have been given to explore viable alternatives to the Joint Position, and none have emerged. Therefore, I&E respectfully requests that all of the terms of the Joint Position be approved.

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[40] I&E Main Brief, Exhibit A, ¶4.
[41] I&E St. No. 1-SR at 8.
[42] I&E St. No. 1-SR at 8.
[43] I&E Main Brief at 16-18; *Pa. PUC v. PPL Electric Utilities Corporation*, Docket Nos. R- 2015-2469275, *et al.* (Order entered Nov. 19, 2015); PPL 2014-2016 USECP, M-2013-2367021, Final Order (September 11, 2014) at 17-18.

D. RESA HAS NOT PROVIDED SUBSTANTIAL EVIDENCE TO WARRANT REJECTION OF THE JOINT POSITION

In its Main Brief, RESA admits that if no other reasonable alternatives exist, the Commission may bend competition to further other aspects of the Competition Act.[44] I&E agrees with RESA on this point, and it also agrees with RESA that the Commission may reject proposed shopping restrictions if there is substantial evidence showing why proposed restrictions on shopping should be rejected.[45] In this case, RESA has not made such a showing and the record does not support rejection of the CAP-SOP. Instead, the evidence in this case weighs heavily in favor of the Joint Position.

1. RESA's Unilateral Determination that EGSs Will Not Participate in the CAP-SOP is Unsupported

RESA opines that the structure of the CAP-SOP includes program restrictions that would result in no EGSs participating. According to RESA,

> [the CAP-SOP] 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.[46]

RESA's objection to the CAP-SOP mirrors its objections to previous CAP shopping restrictions proposed earlier in this case.[47] Notably, the only support offered for RESA's conclusion is the testimony of its witness, Matthew White.

CAUSE-PA demonstrated that Mr. White's opinion was unsubstantiated

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[44] RESA Main Brief at 13.
[45] RESA Main Brief at 13.
[46] RESA Main Brief at 14.
[47] RESA St. 1-R at 13; RESA St. 1-RJ at 4.

and meritless by analyzing two key pieces of information.[48] First, Cause-PA analyzed RESA's participation in PPL's service territory and the number of members. The results indicated that "[f]or the period of March – May 2016, the most recent period for which information is available, there were 16 EGSs participating in PPL's SOP – of whom only 6 were RESA members."[49] Accordingly, CAUSE-PA concluded that this participation data demonstrated that RESA's assertion that these new rules could result in EGSs not wanting to serve customers "is no different than what is already occurring."[50]

Furthermore, CAUSE-PA indicated that Mr. White did not even poll or review the CAP-SOP proposal with all RESA members prior to making this assertion.[51] Instead, Mr. White shared his testimony and discussed the proposal with just seven (7) RESA members prior to submission,[52] though RESA's membership consists of twenty-one (21) members in Pennsylvania.[53] Furthermore, according to the CAUSE-PA's review of the PUC's publically available website listing the licensed suppliers, there are currently two-hundred and eleven (211) EGSs licensed in PPL's service territory which serve residential customers.[54] Using this date, CAUSE-PA determined that, "at best, Mr. White was speaking on behalf of a mere 3.3% of all licensed EGSs when he asserted that

[48] CAUSE-PA Main Brief at 29-30.
[49] CAUSE-PA Main Brief at 29.
[50] CAUSE-PA Main Brief at 30.
[51] CAUSE-PA Main Brief at 30.
[52] CAUSE-PA Main Brief at 30.
[53] CAUSE-PA Main Brief at 29; Joint Stipulation of CAUSE-PA and RESA,¶3.
[54] CAUSE-PA Main Brief at 30.

"no" supplier would be willing to serve EGSs under a modified CAP-SOP."[55] I&E submits that, considering this data, Mr. White's opinion cannot be determined as representative of all EGSs who may choose to serve PPL's CAP customers, as it cannot even be determined to be representative of RESA's position. Therefore, I&E agrees with CAUSE-PA that this is not substantial evidence and that it should be afforded little to no weight.

Even assuming, arguendo, that the unlikely worst-case scenario materializes, and no EGSs participate in the CAP-SOP, the Joint Litigants have crafted the Joint Position with added protection. The Joint Litigants have reserved the right to petition the Commission to re-open the CAP-SOP if there is a lack of EGS participation or changes in retail market conditions warrant such action.[56] While the Joint Litigants certainly do not anticipate a lack of EGS participation, this additional layer of protection has been built into the CAP-SOP to address such a possibility.

Alongside this additional protection, I&E avers that concerns of lack of EGS participation should be assuaged by the flexible nature of the CAP-SOP. As I&E pointed out in its Main Brief,[57] the CAP –SOP was designed to allow flexibility to participating EGSs. EGSs are free to participate in PPL's SOP, the CAP-SOP, or both programs and they are only subject to a three-month

[55] CAUSE-PA Main Brief at 30.
[56] Joint Position, Exhibit A, ¶7.
[57] I&E Main Brief at 31.

enrollment.[58] Through use of this short enrollment commitment, EGS may opt in to participate in the CAP-SOP on a quarterly basis, and are free to leave the CAP-SOP on a quarterly basis.[59] Accordingly, EGSs would not undertake an onerous commitment by electing to participate in the CAP-SOP. Accordingly, RESA's conclusion that no EGSs will participate in the CAP-SOP is unsupported and should be rejected.

2. CAP Customers Will Not Be Able to Shop Freely

Although RESA readily admits that the Commission has the authority to impose CAP shopping restrictions, it opposes the CAP-SOP, in part, because "it will remove the current ability of CAP customers (approximately 41,074) to freely shop."[60] I&E submits that any given CAP shopping restriction would, in some way, limit CAP customers' ability to shop for electricity in the retail market. Nonetheless, it is clear and unrefuted that necessary restrictions may be still be permitted. While RESA argues that implementation of PPL's CAP would take away the its CAP customers' ability to avail themselves of the benefits of CAP shopping,[61] that position ignores all of proven detriments that PPL CAP and residential ratepayers have faced as a result of unrestricted CAP shopping.

While I&E fully acknowledges the benefits of customers' access to the retail shopping market, that access must be balanced with the tenets of the Choice Act and the Commission's universal service goals. In this case, a balance of these

[58] Joint Position, Exhibit A, ¶4(g).
[59] Joint Position, Exhibit A, ¶4(g).
[60] RESA Main Brief at 13.
[61] RESA Main Brief at 13.

interests weighs heavily in favor of adoption of the Joint Position. RESA has failed to provide any evidence that an alternative to the Joint Position would remediate PPL's increased CAP shopping costs. RESA has also failed to refute that the Joint Position offers a viable interim solution while the Commission considers CAP shopping issues. The Joint Position by no means prohibits CAP shopping, but it only permits shopping at prices at or below PPL's PTC, as excess pricing is an undeniable risk. RESA's constituency stands to benefit from excess pricing as it bears none of the risk or burdens associated with the exhaustion of maximum CAP credits and the additional financial burden placed on non-CAP residential customers. Accordingly, I&E avers that the Joint Litigants have met their burden and I&E respectfully requests that the Commission adopt the terms of the Joint Position, including the CAP-SOP.

XI. CONCLUSION

For the reasons stated herein, I&E respectfully submits that the Joint Litigants have satisfied their burden of proof to demonstrate that the *Joint Litigation Position Among Certain Parties Regarding CAP Shopping* should be adopted. Therefore, the Bureau of Investigation and Enforcement respectfully requests that Administrative Law Judge Susan A. Colwell recommend, and the Commission subsequently approve, the foregoing *Joint Position*, including all terms and conditions contained therein.

Respectfully submitted,

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Dated: July 19, 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

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Reply Brief** dated July 19, 2016, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

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