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 COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY IN PENNSYLVANIA

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I. INTRODUCTION

A. BACKGROUND

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), through its counsel at the Pennsylvania Utility Law Project, files this Reply Brief in response to the Main Brief of the Retail Energy Supply Association (RESA). As explained throughout, RESA's argument is not rooted in law or fact. Rather, it is premised on factually disproven and legally unsound generalizations about how the competitive energy market will react to the introduction of reasonable CAP restrictions designed to protect economically vulnerable customers from proven harm and ensure that the costs of the CAP program are not unnecessarily increased.

For the reasons contained herein – as well as the arguments contained in the Main Briefs of CAUSE-PA, PPL Electric Utilities, Inc. (PPL or the Company), the Office of Consumer Advocate (OCA), and the Bureau of Investigation and Enforcement (I&E) (herein Joint Parties) – the positions advanced by RESA in its Main Brief should be rejected, and the proposal of the Joint Parties to implement a standard offer program designed specifically for CAP customers (CAP-SOP)[1] should be adopted to ensure that CAP costs are reasonably controlled and that low income customers and residential ratepayers are protected from the certain and substantial harm that is currently occurring and that will continue to occur for so long as the status quo remains intact.

[1] Details of the CAP-SOP are set out at length in CAUSE-PA's Main Brief at pages 23-25 and in in PPL's Rejoinder Testimony by Witness James M. Rouland, found on page 6 line 21 through page 9 line 7.

B. PROCEDURAL HISTORY

CAUSE-PA incorporates by reference the procedural history set forth in its Main Brief. Main Briefs were filed on July 8, 2016 to address the sole issue reserved for litigation in this proceeding: Whether the CAP Shopping proposal set forth by the Joint Parties is reasonable in light of the significant and certain harm to CAP customers and the residential ratepayers which finance the CAP program. Main Briefs were filed by each of the Joint Petitioners and RESA.

II. STATEMENT OF THE CASE

CAUSE-PA incorporates by reference its Statement of the Case set forth in its Main Brief.

III. LEGAL STANDARDS AND BURDEN OF PROOF

Throughout its brief, RESA distorts the legal standard that the Commission must use to determine whether restrictions on CAP shopping are necessary. Specifically, RESA concludes that the Joint Parties "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."[2] It further asserts that even if the proponent of a proposal meets the burdens of production and persuasion, the Choice Act allows the Commission to "rely on substantial evidence to *reject* the proposed restriction."[3] RESA's assertions regarding the applicable legal standard distort the law and twist the standard into one which is expedient for its purposes, but is not in accord with applicable precedent.

[2] RESA MB at 10 (emphasis added). Although CAUSE-PA in no way concedes the correctness of RESA's fallacious legal standard, as explained in detail below, the Joint Parties nevertheless met the standard posited by RESA by putting forth a substantial amount of undisputed evidence that every other proposal – including those retracted by the parties that proposed them – would continue to impose certain and substantial harm to low income CAP customers, residential ratepayers, or both.

[3] RESA MB at 10.

First, in reaching its decision that the Commission has the legal authority to approve rules that would limit competition to protect competing interests and priorities (here, the interest in protecting ratepayers from unnecessary costs and preserving universal access to utility service), the Commonwealth Court focused on the Commission's authority to act on a petition, and set forth standards applicable to that authority as well as the standard for review on appeal. The Court did not change the burden of proof or impose a new substantive legal standard. The Commonwealth Court stated:

> So long as it "provides substantial reasons why there is no reasonable alternative so competition needs to bend" to ensure adequately-funded, cost-effective, and affordable programs to assist customers who are low-income to afford electric service . . . the PUC may impose CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits – e.g. EGS rate ceiling, prohibition against early termination/cancellation fees, etc.[4]

This is the standard that the Commission must use in assessing the evidence that is presented in this case, and it is the standard that the Commonwealth Court will use in assessing the Commission's ruling on any appellate review. It is not a new substantive legal standard for the parties presenting evidence to the Commission. That standard remains as it always was: Any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence,[5] meaning evidence that a reasonable mind might accept as adequate to support a conclusion.[6] Thus, the Joint Parties must come forward with substantial evidence from which the Commission can determine whether CAP restrictions are necessary, [7] which they have.

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[4] Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. (CAUSE-PA) et al. v. Pa. PUC, 120 A.3d 1087, 1103-04 (Pa. Commw. Ct. 2015) (quoting PP&L Indus. Customer Alliance v. Pa. PUC, 780 A.2d 773 (Pa. Commw. Ct. 2001)).

[5] Met-Ed Indus. Users Group v. Pa. PUC, 960 A.2d 189, 193, n.2 (Pa. Commw. Ct. 2008) (citing 2 Pa. C.S. § 704).

[6] Borough of E. McKeesport v. Special/Temporary Civil Service Comm'n, 942 A.2d 274, 281 (Pa. Commw. Ct. 2008).

[7] CAUSE-PA et al., 120 A.3d at 1106-07 ("As the proponents of the rule restrictions in this case, [Joint Parties] ha[ve]the burden of proof and ultimately the burden to persuade the PUC to enact the proposed restrictions on competition.").

Further, RESA's claim that "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" is incorrect.[8] This is a distortion of the appellate standard. While it is true that the Commonwealth Court in CAUSE-PA et al. affirmed the Commission's decision to not impose price restrictions, it did so based on its finding that the proponents of the restrictions did not meet the burden of proof to persuade the Commission that restrictions were necessary:

> Simply put, the PUC was not persuaded that Petitioners' evidence provided a substantial reason to justify limiting competition by imposing a price ceiling on EGSs as part of the PECO CAP Shopping Plan. . . . Similarly, Petitioners failed to convince the PUC that customer education programs are inadequate (i.e., not a reasonable alternative to price regulation) to the task of ensuring that CAP participants, and by extension non-CAP participants, benefit from the opportunity to shop for their EGS.[9]

In essence, the Court found – without reweighing the evidence or substituting its judgment for that of the PUC[10] – that the parties in the case before it did not fulfill their burden of persuasion to convince the Commission that CAP restrictions were necessary such that competition had to bend. The Court did not find, as RESA asserts, that the parties met their burden of proof, and that the Commission could nonetheless reject the proposal based on substantial evidence.[11] RESA's attempts to recast the legal standard are improper and should be disregarded.

Indeed, the applicable standard is, as always, that for the Commission to accept the Joint Parties CAP-SOP proposal, the Joint Parties must produce substantial evidence that is "more convincing, by even the smallest amount, than that presented by an opposing party"[12] that competition needs to bend to ensure adequately-funded, cost-effective, and affordable programs to assist customers who are of low-income to afford electric service. In this proceeding, as

[8] RESA MB at 11
[9] Id.
[10] Id.
[11] RESA MB at 11.
[12] Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

explained at length below, the record is clear that the harm to ratepayers is certain, and that no alternatives to the Joint Parties' proposal reasonably exist to remedy that harm. As such, the Joint Parties' proposal should be approved.

IV. SUMMARY OF ARGUMENT

RESA rests its entire case on its assertion that PPL's initial proposal – one that was "formally withdrawn" by PPL and is unsupported by any of the Joint Parties[13] – is a reasonable alternative to the Joint Parties' CAP-SOP.[14] It claims that the Commission is therefore compelled, to approve PPL's withdrawn proposal because it is a less restrictive alternative, despite the fact that it would not curtail the certain and substantial harm to ratepayers.[15]

In so arguing, RESA misrepresents the facts about the proven and substantial harm to ratepayers and CAP customers, asserting that half of CAP customers who shop pay at or below the price to compare[16] – while failing to mention that, even when the savings are factored into the overall impact of unrestricted CAP shopping, ratepayers still pay over $2.7 million more per year in program costs.[17] This is because those who pay less pay only slightly less than the price to compare, while those who pay more pay large amounts more than the price to compare.

After failing to be forthcoming about the extent of harm on the record, RESA attempts to slip in extra-record speculation on other possible alternatives to the CAP-SOP, arguing for the first time that the CAP-SOP should be rejected because the Joint Parties did not explain why the CAP structure could not be modified.[18] RESA made the bold claim – without support of the record – that "[a]djusting the CAP customer's CAP credit to align with the price of a competitive supplier

[13] PPL St. 1-RJ at 6-10; PPL MB at 19.
[14] RESA MB at 21-23.
[15] Id.
[16] RESA MB at 17-21.
[17] CAUSE-PA St. 1 at 30-31; CAUSE-PA MB at 1-2; 16-18.
[18] RESA MB at 17-21.

seems like an easy way to address the concerns raised by CAUSE-PA."[19] In actuality, the record is replete with explanation and data for why this alternative – though never proposed by RESA or other parties – would not work to address the harm. Because CAP costs are subject to full recovery, adjusting the CAP customer's CAP credits to meet the supplier's price would necessarily harm ratepayers who would shoulder the increased costs of the program.[20] Indeed, allowing CAP customers to pay more than the price to compare is a zero sum game, and augmenting the delivery of CAP benefits would not ameliorate this fact.

After making an eyebrow-raising assertion that the data in this case showing 46 months of harm failed for being a "single point in time,"[21] RESA argued that PPL's initial proposal should be adopted instead of the Joint Parties' CAP-SOP proposal.[22] But PPL's initial proposal is no longer being proffered by PPL, as it was formally withdrawn by PPL when it joined the Joint Parties' litigation position. Even so, PPL's initial proposal was grossly inadequate to address the certain and substantial harm to ratepayers, unduly delaying relief in pursuit of a statewide solution that is unlikely to materialize given the varied structure of CAP programs and, thus, the intricacies involved in crafting a solution in a given service territory.

Finally, RESA attempts to characterize the Joint Parties' CAP-SOP proposal as one which would completely foreclose CAP customers from accessing the competitive market, and makes the speculative and unsupported claim that "no" suppliers would participate.[23] But RESA bases its sweeping conclusion on its discussions with just 3% of the suppliers currently operating in the PPL service territory, and its witness admits on the record that he cannot speculate why a

[19] RESA MB at 19.
[20] 66 Pa. C.S. § 2802 (17); 2804 (8), (9).
[21] RESA MB at 20; PPL St. 3 at 7-8 & T1; see also CAUSE-PA MB at 16-18.
[22] RESA MB at 21-23.
[23] RESA MB at 24-30.

supplier might participate or not.[24] The fact is, the CAP-SOP incorporates safeguards against lack of EGS participation, providing for a collaborative within 90 days to establish language for call scripts and other program details, and expressly allowing parties to petition the Commission if EGSs do not participate.[25] Indeed, the reasonable solution to immediately stem the certain and substantial harm is to adopt the CAP-SOP, which is on the record in this proceeding and can be adopted without delay.

V. ARGUMENT

A. LEGAL AUTHORITY FOR CAP SHOPPING RESTRICTIONS

In its Main Brief, RESA conflates the legal authority of the Commission to impose CAP shopping restrictions with the appellate standard of review, claiming "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."[26] As explained above, the Commonwealth Court was not augmenting the Commission's standard of review. Rather, the Court was explaining the affirmative appellate standard of review, finding that it must *uphold* a Commission decision to bend competition so long as the Commission relied on "substantial reasons for why the restriction on competition is necessary."[27]

With regard to the Commission's legal authority, the Court explained: "[T]he overarching goal of the Choice Act is competition through deregulation of the energy supply industry, leading to reduced electricity costs for consumers. **But the scheme does not demand absolute and unbridled competition**."[28] The Commonwealth Court then explicitly held that the Commission

[24] Joint Stipulation of CAUSE-PA and RESA, RESA Answer to OCA-I-4.
[25] Joint Litigation Position at 4, ¶ 6 & 7.
[26] RESA MB at 15.
[27] CAUSE-PA et al., 1020 A.3d at 1106-07.
[28] Id. at 1101, 1103.

"has the authority under Section 2804(9) of the Choice Act, in the interest of ensuring that universal service plans are adequately funded and cost-effective, to impose, or in this case approve, CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits."[29] Indeed, the Choice Act – as clarified by the Commonwealth Court – vested the Commission with unambiguous legal authority to impose reasonable restrictions on CAP Shopping.

B. WHETHER CAP SHOPPING RESTRICTIONS ARE NEEDED

1. RESA omits critical aspects of the harm to ratepayers in its Main Brief; namely, the estimated $10.5 million in increased CAP costs incurred by residential ratepayers over a 46 month period.

From the very outset of its assessment of need, RESA's Main Brief sets forth half-truths and incomplete facts. In asserting that there is no need for CAP shopping restrictions, RESA correctly notes that – of the 41,074 monthly average CAP customers, approximately half are shopping; and approximately half of CAP customers who shop pay at or below PPL's default service rate (price to compare or PTC).[30] What RESA fails to also explain – or even note – is that over a 46 month period from January 2012 through October 2015, CAP customers who shopped and paid at or below the price to compare saved just approximately $9/month, while CAP customers who shopped and paid more than the price to compare paid an additional $31/month.[31] In other words, on average, CAP customers who shop pay an additional net cost of $22/mo. The additional net cost to the CAP program is, thus, approximately $228,656 each month, and is financed exclusively by ratepayers.[32] Over a 12 month period, the program is charged an

[29] Id.
[30] RESA MB at 16.
[31] PPL St. 3 at 7-8 & T1; see also CAUSE-PA MB at 16-18.
[32] PPL St. 3 at 7-8 & T1; see also CAUSE-PA MB at 16-18. Note that the additional cost to the CAP customer as a result of this overpayment is not quantified in dollars, though record evidence shows that many CAP customers are significantly harmed when they exhaust their maximum CAP credits more quickly, and thus pay rates above and beyond the affordability guidelines set by the Commission. Mr. Geller explained in Direct Testimony, "If a

additional $2,743,872 in net costs.[33] **Extrapolating this data out for the full period between January 2012 and October 2015 (46 months), unrestricted CAP shopping has caused ratepayers to pay an estimated net cost of $10.5 million.[34]** RESA's critical omission here is misleading, and its assertion that the savings gained through unrestricted CAP shopping may outweigh the harm is patently false and must be rejected.

2. Modifying the method for delivery of CAP benefits would not mitigate the harm to ratepayers, low income CAP customers, or both caused by CAP shopping because utilities are entitled to full recovery for Universal Service program expenditures regardless of the CAP design.

RESA asserts that, while "problems" were identified with unrestricted CAP shopping, the proposal of the Joint Parties is not necessary and should be rejected because "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."[35] RESA's attorneys suggest in the Main Brief (for the very first time and without the support of or citation to any record evidence) that "[a]djusting 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."[36] This assertion is incorrect. RESA fails to recognize or appreciate that paying for CAP is a closed equation. The costs have to be paid either by the CAP customer, the

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customer exhausts all of his or her maximum CAP credits before the 18-month period, they no longer receive a CAP bill that is based on an ability to pay, but instead must pay their full monthly budget bill, regardless of its affordability." (CAUSE-PA St. 1 at 13 & Exhibit B (Interrog. of CAUSE-PA, Set I-1a); see also CAUSE-PA MB at 2, n.2 & 16-18).

From January 2012 through February 2016, **34,780 CAP customers were removed from CAP for exceeding their maximum CAP credit and paid full tariff rates (which are, by definition, unaffordable) for the remainder of the 18-month CAP cycle.** 79% of those who exceeded their maximum CAP credits were shopping with an EGS for a portion of the 18-month CAP cycle. As Mr. Geller explained, "Cutting off CAP assistance mid-way through their 18-month CAP period prior to recertification leads to increased risk of termination, unpaid bills, and untold hardship for these households. (CAUSE-PA St. 1 at 16-17).

[33] PPL St. 3 at 7-8 & T1; see also CAUSE-PA MB at 16-18.

[34] Id.

[35] RESA MB at 17.

[36] RESA MB at 19.

other rate payers who pay for CAP, or both. There is no way to avoid increased costs as a result of increased prices. Mr. Geller discussed this in his direct testimony when he explained that CAP customers pay a fixed amount each month based on the determination of their CAP bill, and that that "the difference between a CAP customer's CAP Bill and the total bill that the customer would have been charged based on usage and price per kWh is called the customer's CAP Credit/CAP shortfall amount," which is paid for "by all residential non-CAP customers through PPL's Universal Service Rider (USR), which is built into PPL's rates."[37]

This was explained in CAUSE-PA's Main Brief,

> [T]he inevitable outcome of any CAP customer shopping at prices at or above the price to compare [is higher CAP costs for CAP customers and/or ratepayers] because the Choice Act requires that the EDC be made whole for CAP costs, regardless of the specific CAP structure approved.[38] As noted above, the effect of CAP customers paying more than the price to compare must be paid by someone. It will either require unaffordable payments by CAP customers, will cost other ratepayers more money, or – most likely – will result in both greater costs for both CAP and non-CAP customers. There is simply no way around it: Unless CAP customers are restricted from shopping at rates above the price to compare, the resultant increase in costs will cause harm to CAP and non-CAP customers alike.[39]

The CAP guidelines contained in Title 52, Chapter 69 of the Public Utility Code explain why the harm created by CAP shopping to ratepayers, CAP customers, or both cannot be mitigated through adoption of changes to the CAP structure. Section 69.265(2) sets forth the alternative CAP structures approved by the Commission, including a percentage of income plan, a percentage of bill plan, a rate discount, or a monthly minimum payment.[40] But regardless of how a participant's CAP payment is calculated, the premise of CAP is to provide bill affordability to ensure universal

[37] CAUSE-PA Statement No. 1 at 13-14.
[38] 66 Pa. C.S. § 2804 (9).
[39] CAUSE-PA MB at 27
[40] 66 Pa. C.S. § 69.625(2). An alternative payment formula may be approved, also, but it must first be "reviewed by the Bureau of Consumer Services and approved by the Commission." Id.

access to essential utility services.[41] This necessarily requires utilities to provide a discount off the rates paid by other ratepayers. And, the fact remains that utilities are entitled to full recovery of the costs of providing universal service programming to its low income customers, which is recoverable through a nonbypassable rate mechanism.[42]

Thus, the reason that no party proposed an "adjustment" to the CAP structure, and it is nowhere in the record, is because such a proposal would not only fail to address the concerns put forward by each of the Joint Parties (that CAP customers and ratepayers are being harmed), but such an "adjustment" would fix nothing and would only exacerbate the extent of the harm to non-CAP ratepayers. This is a zero sum game and RESA's arguments to the contrary are specious.

For its part, RESA offers insubstantial support for its assertion that changes to the CAP program design could mitigate the harms, wrongly explaining: "PECO's CAP program has undergone a substantial redesign recently which will ensure that CAP customer benefits are portable" and "the Commission has acknowledged that the CAP benefits to customers in the service territories of the First Energy Companies are portable."[43] First, CAP portability is not at issue in this proceeding. PPL CAP customers can shop for EGS-supplied service and no party in this proceeding has suggested otherwise. What is clear, however, is that - as the Commonwealth Court recognized - there is a tension "between the PUC's obligation under Section 2804(2) of the Choice Act to 'allow customers to choose among [EGSs] in a competitive generation market through direct access' and its obligation under Section 2804(9) of the Choice Act to ensure that universal service plans are 'appropriately funded' and administered by the PUC to 'ensure that the

[41] 66 Pa. C.S. § 2802 (9), (10); 2803 (defining universal service and energy efficiency
[42] 66 Pa. C.S. § 2802 (17); 2804 (8), (9).
[43] RESA MB at 19. Note that RESA does not cite here to the Commission's decision regarding PECO's CAP redesign, but instead points only to OCA and CAUSE-PA's Statement in Support of the Joint Settlement in that case. RESA MB at 19 (citing PECO Energy Company Universal Service and Energy Conservation Plan for 2013-2015 Submitted in Compliance with 50 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)).

programs are operated in a cost-effective manner.'"[44] The underlying PPL CAP design is not at issue in this proceeding and it does not need to be addressed in order to correct the current and continuing harm as a result of PPLs current CAP shopping policy.

Second, RESA's assertion that if PPL were only more like PECO and First Energy, the harms would be resolved is misplaced. As noted above, PPL's CAP - like First Energy's - is portable, and both allow CAP shopping. Additionally, RESA's assertion that PECO and First Energy CAP programs are models to mitigate the harm associated with CAP customers paying more than the price to compare is similarly misplaced. To begin, PECO CAP customer *currently cannot shop for EGS-supplied service*,[45] and the potential harm to CAP customers as a result of unrestricted shopping under PECO's redesigned CAP is, as here, currently the subject of litigation in PECO's Default Service Plan Proceeding.[46] Additionally, the PECO CAP redesign to which RESA cites was for the express purpose of ensuring that PECO's CAP produced a level of affordability in line with Commission standards.[47] Likewise, the harm to CAP customers as a result of unrestricted shopping in First Energy Companies was well documented in its Default Service Proceedings, and will be the subject of ongoing monitoring and data collection moving forward.[48] CAUSE-PA witness Harry Geller explained in Direct Testimony:

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[44] CAUSE-PA et al., 120 A.3d at 1101.
[45] CAUSE-PA Statement No. 1 at 27:10-15.
[46] Petition of PECO Energy Company for Approval of a Default Service Program for the Period of June 1, 2017 through May 31, 2019, Docket No. P-2016-2534980.
[47] Continued coordination with the competitive market was a consideration of the parties in redesigning the CAP structure, but the genesis of PECO's CAP redesign was to produce a level of affordability consistent with the Commission's CAP guidelines. See PECO Energy Company Universal Service & Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Recommended Decision, Docket No. M-2012-2290911, at 1-2; 18 (June 11, 2015) (explaining the genesis of the proceeding was to address an evaluation of PECO's CAP which "found that under [its current program structure], 30% of CAP Rate participants did not achieve a home energy burden that was within the Commission's affordability guidelines.") ; see also PECO Energy Company Universal Service & Energy Conservation Plan for 2013-2015 Submitted in Compliance with 52 Pa. Code §§ 54.74 and 62.4, Order, Docket No. M-2012-2290911 (July 8, 2015).
[48] Consolidated Pets. of Met Ed, Penelec, Penn Power, and West Penn Power for Approval of a Default Service Program for the Period June 1, 2017, through May 31, 2019, RD, Docket Nos. P-2015-2511333, -2511351, -2511355, -2511356, at 18-19 (April 15, 2016); Consolidated Pets. of Met Ed, Penelec, Penn Power, and West Penn

> PPL correctly asserts that the problem associated with CAP customer shopping is an issue that impacts other CAP customers throughout Pennsylvania and is not an issue limited to PPL's service territory. I fully agree that this is an issue in other areas of Pennsylvania. **Similar data was recently presented in the Default Service Proceeding filed by the four EDCs operating subsidiaries of the First Energy Company. There, data showed similar harm to that which is occurring in PPL's service territory.**[49]

The fact is, regardless of the CAP structure, harm from unrestricted CAP shopping is certain to occur to ratepayers, low income CAP customers, or both. Thus, unless and until utilities, suppliers, or both are required or willing to take responsibility for the increased CAP shortfall created by CAP customers paying EGS rates greater than the PTC, the evidence in this proceeding demonstrates that unrestricted CAP shopping for PPL's customers will necessarily cause harm in the form of increased costs to low income CAP customers, ratepayers, or both.[50] Consequently, there are substantial reasons why the restriction on competition is necessary to protect CAP customers and the ratepayers who pay for CAP.

3. The scope of harm to CAP customers and other ratepayers occurred over multiple, lengthy periods of time and was pervasive.

Arguing against the necessity of a CAP-SOP, and against the Joint Parties proposal, RESA incorrectly asserts that the data about the harm in this proceeding "is focused on a single point in time (albeit a longer point in time [than in PPL's last DSP case])."[51] RESA's argument is essentially that the data fails as a "single point in time" because it "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 the 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

Power for Approval of a Default Service Program for the Period June 1, 2017, through May 31, 2019, Order, Docket Nos. P-2015-2511333, -2511351, -2511355, -2511356 (May 19, 2016).

[49] CAUSE-PA Statement No. 1 at 27:4-9

[50] See CAUSE-PA MB at 27.

[51] RESA MB at 20.

energy audit)."[52] Therefore, RESA concludes that "the point of time comparison does not justify restricting the ability of CAP customers to freely shop."[53] This argument is meritless.

First, in its DSP II - which RESA cites to support its "single point in time" theory – the record showed the harm of CAP shopping through only a single month of data.[54] While compelling, showing that 73% of CAP shopping customers were paying more than PPL's default service price in that month, the Commission found that a single month of data was "not, in and of itself, conclusive that these customers were paying more for service for the full term of their contracts, or that they will not have any savings from their shopping experience.[55] In contrast, data in this case not only corroborates the findings of harm shown in DSP II, but now spans a ***46 month period of time (nearly 4 years) and reveals $10.5 million in net harm over that time, factoring in both the savings earned and the costs incurred by all CAP shopping customers over the same period.*** This length of time and depth of data paints an indisputably clear picture of harm and, by any measure, is not a single point in time. Rather, it is a long term pattern demonstrated over a period of years which has resulted in deep and quantifiable harm. If aggregate, net harm over a 46 month period is a "single point in time," then the terms "single" and "point" have been rendered meaningless in the English language.

Second, RESA's assertion that PPL's data is inadequate because it does not reflect individual customer contracts is factually incorrect. In fact, PPL's calculation of the cost to ratepayers compiled the gains and losses of all CAP shopping customers over a period of time, thereby quantifying the consumer's individual experience in each individual contract, and

[52] RESA MB at 10.
[53] RESA MB at 21.
[54] Petition of PPL Electric Utilities Corp. for Approval of a Default Service Program and Procurement Plan (DSP II), Final Order, Docket No. P-2012-2302074, at 163 (Jan. 24, 2013).
[55] Id.; see also Petition of PPL Electric Utilities Corp. for Approval of a Default Service Program and Procurement Plan (DSP II), Docket No. P-2012-2302074, Recommended Decision at 130-131 (Nov. 9, 2012).

aggregating that impact over the population as a whole. Moreover, its assertion that the data does not reflect other incentives and products – such as "a lower price, a gift card, or an energy audit" misses the point. **Lower prices are factored into the net harm to ratepayers**. The data also accurately demonstrates the harm to ratepayers who finance CAP whenever a CAP participant pays more than the PTC. This harm does not change when CAP customers receive other products, such as energy audits and gift cards.

4. PPL's initial proposal is not a reasonable alternative to the CAP-SOP because it was shown to cause continued harm to ratepayers and CAP customers and was withdrawn by PPL in favor of the CAP-SOP.

RESA concludes its assessment of need for CAP shopping restrictions by erroneously arguing that PPL's initial proposal – which was formally withdrawn by PPL in favor of the CAP-SOP proposal[56] – was a "reasonable alternative restricting competition."[57] PPL's initial proposal was to establish a state-wide collaborative to address CAP shopping over the long-term. In the interim, CAP customers would be "encouraged" to participate in SOP in an attempt to mitigate the harm to CAP customers and other ratepayers in the short term.[58]

As Mr. Geller explained in direct testimony, PPL's initial proposal was "limited and inadequate" and did not appropriately address the harm to CAP customers or ratepayers.[59] First, PPL's initial proposal merely *encouraged* customers to shop through the SOP, it was not a requirement. But PPL already encourages all residential customers to enroll in the SOP, yet significant harm persists. This is what distinguishes PPL's initial proposal from the CAP-SOP modifications put forward by the Joint Parties. Under the CAP-SOP, CAP customers would be

[56] PPL St. 1-RJ at 6-10; PPL MB at 19.
[57] RESA MB at 18.
[58] PPL St. 1 at 48; PPL St. 1-R at 27.
[59] CAUSE-PA St. 1 at 29-30.

allowed to enroll with a supplier *only if* they enrolled through the CAP-SOP, thereby protecting ratepayers from the certain harm that results when CAP customers pay more for electric supply.

Furthermore, PPL's mere encouragement to enroll in the SOP would not guarantee savings (though savings often occur when customers enter through the SOP opposed to other market entry points), and would not shield CAP customers who, at the end of the contract term, roll into variable rate contracts and/or contracts with cancellation or termination fees or other costly terms. Mr. Geller explained, quantifying the harm of relying on an unmodified SOP on CAP customers and residential ratepayers:

> [At the end of the 12-month fixed rate contract] SOP customers would be subjected at that time to the same conditions and potential harm that any and all CAP customers who enter the market outside of the SOP experience, including high variable and fixed rates and cancellation fees for contracts to which they subsequently agree to enter or into which they are placed by default. In my judgement, PPL's suggestion to refer CAP customers to the SOP continues to place those customers at significant risk and is an inadequate remedy to address the harm to CAP customers and other rate payers.[60]

The second component of PPL's initial proposal, to institute a statewide collaborative to identify a statewide solution, is similarly insufficient to remedy the immediate and sustained harm caused by unrestricted CAP shopping. While pursuit of a statewide solution through a collaborative process is a component of the Joint Parties' CAP-SOP proposal, the Joint Parties each recognized that in addition to a potential future collaborative, an immediate resolution of the current and continuing harm was required. Further, although a statewide collaborative, is now universally supported by all parties, it is supported only after the CAP-SOP protections are put into place. This was essential to CAUSE-PA's support for the endeavor. A statewide collaborative solution, without a more concrete immediate approach to stem current harm, would only serve to further delay the resolution of the clear and immediate harm – which the record

[60] CAUSE-PA St. 1 at 30-31 (internal citations omitted).

reveals is costing ratepayers over $2.7 million every year.[61] As Mr. Geller explained, "In light of the facts within the PPL territory, there should be no further delay in remediating the harm to PPL's CAP customers and the ratepayers who pay for the CAP program."[62]

In addition to being inadequate to address the harm to ratepayers and CAP customers in PPL's service territory, it is important to also note that PPL's initial proposal was abandoned by PPL in favor of the CAP-SOP proposal set forth by the Joint Parties and no other parties to the proceeding – including RESA and other competitive electric suppliers in the case[63] – endorsed or adopted the proposal as their own. RESA was itself either opposed to or silent with regard to PPL's proposals to address CAP shopping in every round of testimony.[64]

As explained by PPL in its Main Brief, "as a result of multiple rounds of testimony and discovery in this proceeding, PPL Electric, I&E, OCA, and CAUSE-PA entered into a Joint Litigation Position that **formally withdrew** the three separate original CAP shopping proposals and supported a single revised CAP shopping proposal set forth in PPL Electric's rejoinder testimony."[65] Despite RESA's late attempt through its Brief to resurrect the now withdrawn PPL proposal, that proposal is insufficient to ameliorate the harm and is not a viable alternative to the proposal set forth and adopted by the Joint Parties.

C. CAP SHOPPING PROPOSALS

Turning to RESA's arguments against the CAP-SOP, RESA's core assertions that CAP-SOP would "immediately eliminate the current ability of CAP customers to freely shop" and that

[61] CAUSE-PA St. 1 at 30-31; CAUSE-PA MB at 1-2; 16-18.
[62] CAUSE-PA St. 1 at 30-31; CAUSE-PA MB at 1-2; 16-18.
[63] In addition to RESA and the Joint Parties, other parties in this proceeding include NextEra Energy Power Marketing, LLC; the Sustainable Energy Fund of Central Eastern Pennsylvania (SEF); the PPL Industrial Customer Alliance (PPLICA); Noble Americas Energy Solutions, LLC; and Exelon Generation Company, LLC. See PPL MB at 2.
[64] RESA St. 1 at 11-14; RESA St. 1-R at 12-13; RESA St. 1-SR at 7-12; RESA St. 1-RJ at 1-4.
[65] PPL MB at 2 (emphasis added).

it will "effectively eliminate all shopping opportunities for CAP customers" are both incorrect. Each argument is addressed in turn below.

1. The CAP-SOP is administratively streamlined, and is the only proposal that will immediately and effectively stem the significant financial harm currently caused to ratepayers and CAP customers by wholly unrestricted CAP shopping.

RESA claims that PPL's initial proposal would "not in any way take away the right of [shopping] CAP customers to freely shop and is a reasonable alternative to imposing restrictions on competition because it focuses on encouraging CAP customers to enroll in the SOP."[66] It argues that if the CAP-SOP is approved, CAP customers would "lose their ability to freely shop for competitive supply."[67] RESA argues that "there is no reason to take away their current shopping rights in this proceeding" and that such a change "will necessitate changes to existing EDC and EGS protocols to develop new administrative protocols that currently do not exist" and will require EGSs to "know on a real-time basis whether or not a particular customer is enrolled in CAP."[68]

First, as explained throughout this brief and the Main Brief of each of the Joint Parties, the demonstrated harm that has been shown in this proceeding clearly requires that PPL take action to avoid further and certain harm to its ratepayers. RESA can point to no evidence that continuing or even simply encouraging referrals to PPL's current SOP – without any restriction – would reduce the demonstrated harm. RESA's continued advocacy for maintaining the status quo and its position, even if face of an evidentiary record showing a pattern of harm continuing over an extended period of time, that there be absolutely no restrictions to CAP shopping is inappropriate and should be rejected.

[66] RESA MB at 24.
[67] Id.
[68] Id.

Further, RESA's assertions with regard to the burden imposed by the CAP-SOP are unfounded. The CAP-SOP was adopted by the Joint Parties specifically because of it would require minimal administrative changes and/or creation of new protocols. As Mr. Rouland explained, "the processes and protocols for the CAP-SOP would be the same or very similar to the traditional SOP" and 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."[69] He went on to explain that – while minimizing the burden on EGSs, the CAP-SOP "will clearly help mitigate the undisputed impacts that CAP shopping can have on CAP credits, risk of early removal from [CAP], and the CAP costs that are paid for by other Residential customers through the Universal Service Rider."[70] Contrary to RESA's assertion, EGSs would not need to expend any effort to identify whether a customer is enrolled in CAP, as PPL would reject switching requests from these customers outright – instead deferring those customers to the CAP-SOP.[71]

Finally, RESA argues that the CAP-SOP is unreasonable because it is an interim solution, which may be replaced by a statewide solution at a future date. But, while the immediate and continuing harm associated with unrestricted CAP shopping is certain across service territories because universal service costs are subject to full recovery (thereby imposing additional costs on ratepayers, CAP customers, or both), the resolution that may emerge from a collaborative is only speculative, and the remedy required for each EDC may significantly differ depending on the structure of the EDC's CAP benefits.[72] Thus, a statewide solution in the near term – in time to appropriately address the immediate and continuing harm to ratepayers and CAP customers – is unlikely, and in any event is not certain to materialize. As Mr. Geller explained, "While the

[69] PPL St. 1-RJ at 8, 9.
[70] Id.
[71] See id. at 7-8).
[72] See CAUSE-PA St. 1 at 28.

Commission can and should undoubtedly consider a broader remedy, applicable to the entire state, the search for this remedy has proven to be illusive and past efforts have never resulted in any such determination."[73] However, as the record shows, the harm will nonetheless continue to accrue at a rate of over $2.7 million per year in additional costs to ratepayers.

Indeed, RESA's arguments against the CAP-SOP as unreasonably restricting access to the market and imposing unreasonable burdens on EGSs are unfounded, and should be ignored. To the contrary, participation in the CAP-SOP is the only solution supported on the record that will stem the ongoing harm to PPL's ratepayers and CAP customers alike.

2. The CAP-SOP will not eliminate CAP customers' opportunities to engage in the market because it is designed to ensure that suppliers can readily engage with CAP customers through an existing and established program model.

RESA's final argument against the CAP-SOP is that it will "effectively eliminate all shopping opportunities for CAP customers" because no EGSs will participate in the CAP-SOP. RESA argues that the inability to market other products to CAP customers enrolled in CAP-SOP, coupled with the $28 referral fee, would drive all EGSs away from participating the in the CAP-SOP. But RESA's conclusions here are mere speculation based on his discussions with just seven (7) of RESA's 21 members operating in Pennsylvania.[74] Indeed, RESA's conclusion that absolutely no EGSs will participate in the CAP-SOP under the proposed terms and conditions is based on the opinions of just 3% of the 211 suppliers offering competitive service in the PPL service territory.[75] Even RESA's witness Mr. White admitted that such speculation was impossible, responding to interrogatories by explaining: "[t]he reasons to enter into the SOP varies

[73] CAUSE-PA St. 1 at 28.
[74] Joint Stipulation of CAUSE-PA and RESA at 1.
[75] See PUC Licensed Electric Suppliers, http://www.puc.state.pa.us/consumer_info/electricity/suppliers_list.aspx (last visited: June 15, 2016).

widely depending on the EGS entering in the program so [I] cannot speculate on the reasons each EGS participates in a SOP."[76]

Even if a significant portion of EGSs did refuse to participate in the CAP-SOP – which is at best a speculative response to the CAP-SOP proposal – the CAP-SOP nonetheless contains a provision which would allow modifications to the program if EGS participation was insufficient.[77] Indeed, the goal of imposing reasonable restrictions for CAP shopping is to stem the certain and acute harm that it is currently imposing on ratepayers and CAP customers alike. As explained at length above, the Commonwealth Court has sanctioned this sort of reasonable restriction to remedy this sort of acute harm. As such, it is imperative that the Commission approve the CAP-SOP as a reasonable and necessary resolution to a significant and severe problem. To hold otherwise would be to abandon the Commission obligation under the Choice Act to ensure that universal service programs are available and appropriately funded in each utility distribution territory.[78]

VI. CONCLUSION

For the reasons explained above, CAUSE-PA asserts that RESA has failed to submit any argument which would allow the Commission to set aside the Joint Parties' CAP-SOP proposal as a reasonable restriction on CAP shopping designed to effectively stem the harm to low income CAP customers and the ratepayers who finance the CAP program. Indeed, the Joint Parties have met their burden of proof to produce evidence by a preponderance of the evidence that its proposal is reasonable to remedy significant and substantial harm to CAP customers and the residential ratepayers which finance CAP. As such, CAUSE-PA urges the Commission to adopt the CAP-SOP proposal in full, without modification.

[76] Joint Stipulation of CAUSE-PA and RESA, RESA Answer to OCA-I-4.
[77] PPL St. 1-RJ at 9.
[78] 66 Pa. C.S. § 2804(9).

Respectfully submitted,

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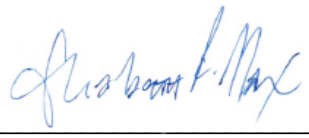

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