COMMONWEALTH OF PENNSYLVANIA

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July 19, 2016

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

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

Dear Secretary Chiavetta:

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

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

/s/ Christy M. Appleby
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Assistant Consumer Advocate
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Attachment
cc: Honorable Susan D. Colwell, ALJ
Certificate of Service
223889

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY BRIEF
OF THE OFFICE OF CONSUMER ADVOCATE

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I. INTRODUCTION

On July 8, 2016, PPL Electric Utilities Corporation (PPL or Company), the Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA), Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), and the Retail Electric Supply Association (RESA) filed Initial Briefs in this proceeding. The OCA submits this Reply Brief in response to RESA. Many of the arguments raised by RESA were addressed in the OCA's Initial Brief and will not be repeated here. Nothing contained in RESA's Initial Brief changes the OCA's positions as stated in its Initial Brief regarding the Customer Assistance Program (CAP) shopping in PPL's service territory.

As explained in their Initial Briefs, the OCA, PPL, CAUSE-PA, and I&E all support the Joint Litigation Position Among Certain Parties Regarding CAP Shopping (Joint Litigation Position) as a reasonable interim step to address CAP shopping concerns while a statewide solution is developed. See, Joint Litigation Position; PPL St. 1-RJ. As discussed in its Initial Brief, RESA continues to support the "Initial Proposal" presented in PPL's Direct Testimony, which is essentially the status quo. RESA I.B. at 12-14.

In this proceeding, the facts are overwhelming that many of PPL's CAP customers are paying substantially more than if the customers had remained on PPL's default service. These increases impact both CAP customer and non-CAP residential customer bills through the Universal Service Rider. Often, these non-CAP residential customers are also low-income customers. The evidence presented on the harms to CAP shopping customers and non-CAP residential ratepayers is not disputed in this proceeding. In its Initial Brief, RESA does not dispute the results of the analysis of PPL witness Wukitsch in his 46-month analysis of CAP customer shopping but argues that these results are limited to a "single point in time (albeit a

longer point in time)." RESA I.B. at 20; PPL St. 3 at 6-11, Exh. MSW-1. The OCA submits that the analysis presented by Mr. Wukitsch is far beyond a "single point in time" in that it reflects results over a nearly four year period of rather robust CAP customer shopping.

The results of the analysis are telling. On average, approximately 49% of CAP customers were shopping in the period between January 2013 and October 2015,[1] and on average, approximately 55% of the CAP shopping customers paid more than the Price to Compare in the period between January 2013 and October 2015. PPL I.B. at 13; PPL St. 3 at 8, 12; I&E St. 1 at 4-5. Also, from January 2012 through October 2015, the average CAP shopping customer who paid more than the PTC paid an average price of $0.11048 per kWh, compared to the average PTC of $0.08475 per kWh. PPL St. 3 at 9. With average use of 1,197 kWh/month, the average CAP shopping customer's monthly energy charges were $31 higher per month more than if the customer had paid the PTC. PPL St. 3 at 9; OCA St. 1 at 19. For customers who are already payment-troubled, the additional costs that the customer is responsible for deepen the unaffordability of the customer's bill. In addition, the higher charges result in $3.5 million of additional costs for the CAP program with non-CAP residential ratepayers paying an additional $2.74 million annually towards the CAP Shortfall.[2] PPL St. 3 at 7, 12.; OCA St. 1 at 19. From January 2012 through February 2016, 34,780 customers were removed from CAP because they reached their maximum CAP credit, and approximately 79% of the CAP customers removed for reaching the maximum CAP credit were shopping with an EGS during that 18 month CAP program cycle. CAUSE-PA St. 1, Attach. B; CAUSE-PA. I.B. at 20.

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[1] The OCA notes that the record indicates that the percentage of CAP shopping customers increased to 52% in October 2015. PPL I.B. at 13; PPL St. 3 at 5,7.

[2] The $2.74 million refers to the total net generation supply charges for CAP shopping customers (net of the CAP shopping customers who paid above the PTC and those customers who paid at or below the PTC). OCA St. 2 at 19.

The record here is clear, that CAP customer shopping under the status quo is compromising the cost-effectiveness of the CAP, as well as contributing to increased unaffordability. The status quo can no longer be sustained. RESA's answer in this proceeding to the identified harms is to essentially maintain the status quo until a statewide collaborative or rulemaking can be initiated by the Public Utility Commission. RESA adopts the "Initial Proposal" presented in PPL's Direct Testimony which was to encourage CAP customers to enroll in the SOP program and request that the Commission implement a statewide collaborative or rulemaking to address CAP shopping on a statewide basis. As discussed in the Direct Testimonies of CAUSE-PA witness Geller and OCA witness Alexander, PPL's Initial Proposal is an ineffective solution to the clear and identified harms presented by PPL witness Wukitsch's 46-month analysis. CAUSE-PA St. 1; OCA St. 2 at 18-22; see also, PPL St. 3 at 5-13, Exh. MSW-1 through Exh. MSW-2. A Joint Litigation Position that allows CAP shopping to continue through a CAP-SOP was subsequently agreed to by PPL, CAUSE-PA, OCA and I&E.

PPL, CAUSE-PA, I&E, and OCA have presented this interim solution that will allow CAP shopping to continue and mitigate some of the significant identified harms while a more permanent solution is developed. The Joint Litigation Position will provide reasonable interim protections for both CAP customers and non-CAP customers who pay for the program. The OCA submits that RESA's arguments to the contrary should be rejected, and the Joint Litigation Position should be approved as in the public interest.

II. STATEMENT OF THE CASE

The OCA provided a Statement of the Case at page 6 of its Initial Brief.

III. QUESTIONS INVOLVED

The OCA identified the questions involved in this matter at page 7 of its Initial Brief.

IV. LEGAL STANDARDS AND BURDEN OF PROOF

The OCA provided a discussion of the legal standards and burden of proof at pages 7 to 10 of its Initial Brief.

V. SUMMARY OF ARGUMENT

The OCA provided a Summary of Argument at pages 10 to 11 of its Initial Brief.

VI. ARGUMENT

A. LEGAL AUTHORITY FOR CAP SHOPPING RESTRICTIONS

In its Initial Brief, RESA argues that the Commonwealth Court's Order in the PECO CAP Shopping proceeding does not support an action by the Commission to limit CAP customer shopping as proposed in the Joint Litigation Position. RESA I.B. at 14-15, citing CAUSE-PA, *et al.* v. Pa. PUC, 120 A.3d 1087, 1100 (Pa. Cmwlth. Ct. July 14, 2015), *cert denied* 2016 Pa. LEXIS 723 (Pa. April 5, 2016)(PECO CAP Shopping) Such a reading of the Court's Order is misplaced. The Court clearly held that the Commission has the authority to impose CAP rules that would limit EGS offers. Id. at 1103-1104. The Commonwealth Court concluded:

> [t]he PUC has the authority under Section 2804(9) of the Choice Act, in the interest of ensuring that universal service plans are adequately funded and cost effective, to impose, or in this case approve, CAP rules that would limit the terms of any offer from an EGS that a customer can accept and remain eligible for CAP benefits. The obligation to provide low-income programs falls on the public utility under the Choice Act, not the EGSs. Moreover, the Choice Act expressly requires the PUC to administer these programs in a manner that is cost-effective for the CAP participants and non-CAP participants, who share the financial consequences of the CAP participant's EGS choice.
>
> Our conclusion finds support in the Choice Act's legislative declaration of policy, which both encourages deregulation to allow consumers the opportunity to purchase directly their supply from EGSs and emphasizes the need to continue to maintain programs that assist low-income customers to afford service. 66 Pa.

> C.S. § 2802(7), (9), (10), (14), (17). So long as it "provides substantial reasons why there is no reasonable alternative so competition needs to bend" to ensure adequately-funded cost-effective, and affordable programs to assist customers who are low-income to afford electric service, *PP&L Indus.*, 780 A. 2d at 782, the PUC may impose CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits- e.g. EGS rate ceiling, prohibition against early termination/cancellation fees."

PECO CAP Shopping at 1103-1104.

The Commonwealth Court clearly found that the Commission had a dual responsibility under the Customer Choice Act regarding *both* universal service and retail choice. In this case, the overwhelming substantial evidence demonstrates that there has been a significant harm to both CAP shopping customers and non-CAP residential ratepayers who pay the costs of the program that require a change be made to PPL's current CAP shopping program. Continuing the status quo is not a reasonable alternative to the identified harms. Under the Public Utility Code, the Commission has the clear legal authority, and duty, to maintain affordable, cost-effective universal service programs, and the Joint Litigation Position will aid in this endeavor. 66 Pa. C.S. § 2804(9). One of the key standards is the requirement that universal service and energy conservation policies, activities and services be appropriately funded and available in each electric distribution service territory and that the programs be operated in a cost-effective manner. Id. The statute explicitly states in relevant part:

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

66 Pa. C.S. § 2804(9). Specifically, the Commonwealth Court stated that "the absence of authority to regulate EGS rates alone does not compel the conclusion that the PUC lacks authority to adopt rules attendant to universal service programs that may have the effect of

limiting competition and choice with respect to low-income customers." PECO CAP Shopping at 1101.

The OCA submits that the PECO CAP Shopping case established that the Commission has the authority, and the duty, in a situation such as the one presented here to implement CAP Shopping Plan rules. The record clearly demonstrates that without additional protections for CAP customer shopping, cost-effectiveness and affordability are being compromised. The Joint Litigation Position is a reasonable interim solution to address the harms raised by the evidence presented in this case. The Joint Litigation Position provides CAP customers with access to the retail choice market, protects affordability for CAP customers, mitigates the cost impact to non-CAP residential customers who pay the costs of the program, and presents a pathway to a statewide collaborative or rulemaking to identify and address a long-term solution to the complex problems presented by CAP customer shopping.

B. WHETHER CAP SHOPPING RESTRICTIONS ARE NEEDED

1. Overview

The OCA submits that the evidence presented in this case demonstrates that there is a clear need to change PPL's existing CAP Shopping program and to develop a specific shopping program for CAP customers to address their unique challenges. The fundamental misconception by RESA in this proceeding is that CAP shopping customers should be treated like all other shopping customers. CAP customers are not like all other shopping customers. As discussed in CAUSE-PA witness Geller's testimony and in the Initial Brief of CAUSE-PA, CAP customers are economically vulnerable, low-income customers with limited funds for the necessities of life, including electricity. CAUSE-PA St. 1 at 7-10, App. C, 40; CAUSE-PA I.B. at 13-16.

Customers are enrolled in the CAP program because they cannot otherwise afford electricity and require a discounted rate, paid for by all other non-CAP residential ratepayers, in order to maintain essential electric service. Pursuant to the requirements of the Customer Choice Act, PPL must maintain an affordable CAP program for low-income customers in a cost-effective manner. 66 Pa. C.S. § 2802(7), (9), (10), (14), (17).

RESA's proposal in this case is essentially to maintain the status quo until a statewide collaborative or ruling can determine a resolution to CAP customer shopping. The status quo, however, allows the identified harms to continue unabated to the detriment of CAP customers and the CAP program. On the other hand, the Joint Litigation Position creates a specific CAP-SOP option that allows CAP customers to continue to participate in the retail choice environment and mitigates some of the harms identified by the current CAP Shopping Plan to both CAP shopping customers and non-CAP residential ratepayers who pay the costs of the program.

2. RESA's reliance on the status quo CAP Shopping Plan is not reasonable given the facts in this proceeding.

RESA raises the question of "whether the Proponents of CAP Shopping Restrictions have met their burden of proving such restrictions are necessary" and proposes that a CAP program re-design will address the problems identified. RESA I.B. at 17-20. The OCA submits the answer is resoundingly in the affirmative -- the proponents of the Joint Litigation Position have met their burden of proving that CAP shopping limitations are necessary and will provide an interim solution to a complex problem. An unspecified CAP program re-design at some unspecified time in the future cannot resolve the current problems presented by ineffective CAP shopping decisions for both CAP customers and non-CAP residential ratepayers who pay the costs of the program.

PPL and CAUSE-PA both identified significant harms to both CAP customers and non-CAP residential ratepayers who pay the costs of the program. The underlying commonality in the testimony of PPL witnesses Rouland and Wukitsch; CAUSE-PA witness Geller; OCA witness Alexander; and I&E witness Patel is the need for change to the PPL CAP Shopping program to address the financial impact of the current program on CAP customers and residential customers. See, PPL St. 1 at 46-48; I&E St. 1 at 6-8; CAUSE-PA St. 1 at 34-35; OCA St. 2 at 22. The fact is that non-CAP residential ratepayers have paid a net annual increase of $2.74 million in CAP program costs as a direct result of ineffective CAP shopping decisions in the period from January 2012 through October 2015.

PPL has clearly established harms to both CAP shopping customers and non-CAP residential ratepayers over the 46-month period analyzed due to CAP customer shopping without any limitations. As discussed in the Initial Briefs of PPL, I&E, OCA, and CAUSE-PA, PPL's existing CAP program has had a negative financial impact on both the affordability of CAP customer bills and on non-CAP residential ratepayers who pay the costs of the program. See, PPL I.B. at 12-24; I&E M.B. at 16-23; OCA I.B. at 15-24; CAUSE-PA I.B. at 13-33.

RESA's proposed solution of maintaining the status quo and possibly re-designing CAP in some unspecified manner at some unspecified future time is without merit. The facts presented in this case demonstrate the overwhelming need to act now. PPL witness Wukitsch's testimony examines CAP customer shopping over three different periods, the 24 month period between September 2013-October 2015, the 36-month period from January 2013-October 2015, and finally, the 46-month period from January 2012 through October 2013. PPL St. 3 at 5-13, Exh. MSW-1 through Exh. MSW-2. The 46-month data demonstrates that from January 2012 through October 2015, the average CAP shopping customer who paid more than the PTC paid an

average price of $0.11048 per kWh, compared to the average PTC of $0.08475 per kWh. PPL St. 3 at 9. For average CAP shopping customer usage of 1,197 kWh/month, the average CAP shopping customer's monthly energy charges were **$31 higher per month** than if the customer had paid the PTC, contributing to the unaffordability of electric service and the increase in CAP program costs. PPL St. 3 at 9; OCA St. 1 at 19. From January 2012 through February 2016, 34,780 customers were removed from CAP because they reached their maximum CAP credit, and approximately 79% of those CAP customers were shopping with an EGS during that 18 month CAP program cycle. CAUSE-PA St. 1, Attach. B; CAUSE-PA. I.B. at 20.[3]

RESA argues that the data is flawed because the data only represents a "single point in time" and compares the data to the CAP shopping information compiled for the DSP II proceeding. RESA I.B. at 20, citing Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan, Docket No. P-2012-2302074, Order at 163 (January 24, 2013) (PPL DSP II Order). In the DSP II Order proceeding, the Company did, in fact, examine a single month to find that at that time, 73% of CAP customers paid more than the Price to Compare. Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan, Docket No. P-2012-2302074, Recommended Decision at 131 (January 24, 2013) (PPL DSP II R.D.). In this case, PPL witness Wukitsch conducted a 46-month analysis of the CAP customer shopping market and its impacts on CAP customers and non-CAP residential ratepayers who pay the costs of the program. PPL St. 3 at 5-13, Exh. MSW-1 through Exh. MSW-2. The OCA submits that the analysis presented by Mr. Wukitsch is far beyond the scope completed in the PPL DSP II proceeding and cannot remotely be considered a "single point in time."

[3] When CAP customers exceed the maximum CAP credit, CAP customers are removed the CAP program and must pay the full residential rate with no CAP discount for the remainder of the 18-month recertification period.

RESA also argues that "the point of time used for comparison is most certainly not reflective of the conditions experienced by shopping CAP customers over their entire shopping experience." RESA I.B. at 20. This does not comport with the facts presented in this case. The OCA submits that the analysis in this case encompasses a 46-month period and considered cost savings in months when the savings were realized. The analysis is based on the actual prices paid by the customers and shows that over this term, there was a net increased cost of $2.74 million. In other words, the months of higher prices far outweighed any months of lower prices over the analysis period.

RESA argues that Mr. Wukitsch's analysis is incomplete because CAP customers may have received some benefit or incentive for switching, such as a "lower price, a gift card, or energy audit." RESA I.B. at 20. This is mere speculation on RESA's part, and indeed, this does not overcome the higher charges to non-CAP residential customers as any such benefit would be provided to the individual CAP customer outside of the program. Further, the receipt of a gift card is only a temporary benefit, the "single point in time" that RESA suggests should not be considered. The receipt of a gift card also does not address the long-term impacts of CAP customer shopping on both CAP shopping customers and non-CAP residential ratepayers over many years.

Moreover, the OCA notes that to the extent that a CAP customer has received an energy audit from the EGS, the benefit is limited and unnecessary. CAP customers already receive this benefit, and weatherization services to make the improvements presented by the energy audit, through PPL's Low Income Usage Reduction Program (LIURP) at no cost to the CAP customer.

The OCA submits that the speculative benefits of an energy audit or gift card at the beginning of the shopping experience do not adequately address the harms identified in this case.[4]

Even with this data presented, RESA argues that the parties have not identified why a CAP program re-design could not address the problems presented by the CAP shopping data. RESA I.B. at 17-18. RESA argues that 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. Id. RESA, however, offers no redesign. More to the point, if CAP customers continue to pay more when shopping for electricity, there are only two groups of customers that bear the consequences, the CAP shopping customer and the non-CAP residential customer.

RESA argues 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. RESA I.B. at 19.[5] Indeed, CAP customers in PPL's service territory have a portable benefit and are shopping at a 52% rate as of October 2015. PPL I.B. at 13; PPL St. 3 at 5,7. While PPL does not have a fixed credit option design as in PECO [6] and the FirstEnergy Companies, there has been no evidence presented in this proceeding that the CAP benefits are not otherwise "portable" for shopping and non-shopping CAP customers. The issue

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[4] The New York Public Service Commission recently issued an Order that concluded that "[t]he record contains no evidence of an ERVA product or service [value-added options] that would preserve the value of financial assistance programs." Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-Residential Retail Energy Markets in New York State, Case No. 12-M-0476, Order at 9, 17 (July 15, 2016) (NY REV Order). The NY PSC issued a moratorium in the case on further CAP customer shopping. Id. at 17.

[5] It is not clear what RESA means by portability of CAP customer benefits for PPL's program. The OCA notes that RESA raised a similar issue regarding statewide portability of CAP benefits for both shopping and non-shopping customers in the DSP II proceeding, and ALJ Colwell determined that RESA had not met its burden in that proceeding. DSP II R.D. at 133. The DSP Order did not adopt a portability requirement. PPL DSP II Order at 163.

[6] The re-design of the CAP program was related to affordability, not CAP customer shopping. The Commission's direction was to improve affordability but to do so in a way that accommodates retail choice. See, 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, Order at 8, 55 (April 4, 2013).

is not the portability of CAP benefits as CAP customers have been able to shop without any limitations for the entire period analyzed. [7]

RESA also posits that the CAP credit that is based upon PPL's default service rates is the problem, and that the CAP credit could align instead with the price of the competitive supplier. RESA I.B. at 19. The CAP program costs are a zero-sum equation. If the CAP rates are aligned to the EGS price instead of the default service price, someone will still have to pay the difference between the "asked to pay" amount and the EGS price. The calculation is no different, and the data shows that the EGS costs will still be higher than the Price to Compare. The impact of higher EGS costs either shifts to CAP shopping customers, who are economically vulnerable, or to non-CAP residential ratepayers who pay the costs of the program. More to the point, the default service price is the price of supply procured under Commission-approved plans and is determined to be just and reasonable. There is no basis for using any other metric for affordability.

The overwhelming evidence presented demonstrates that the current CAP shopping structure harms both CAP customers and non-CAP residential ratepayers who pay the costs of the program. The OCA submits that the Joint Litigation Position is a reasonable interim solution. The Joint Litigation Position will allow CAP customers to continue to access the retail choice market and will work to develop a longer term resolution to the issue through a statewide collaborative or rulemaking.

3. PPL's Initial Proposal does not address the concerns and harms identified by CAP customer shopping.

RESA argues that PPL's Initial Proposal to establish a statewide collaborative and "encourage" CAP customers to enroll in the residential SOP would address some of the concerns

[7] The OCA notes that such a determination regarding any CAP re-design would not be made in this proceeding but should be made in the Company's Universal Service and Energy Conservation Plan filing.

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 the concerns raised by CAP customer shopping. RESA I.B. at 21. The OCA submits that the Initial Proposal does not address the fundamental problems raised by CAUSE-PA witness Geller and OCA witness Alexander or address the harms identified by PPL witnesses Rouland and Wukitsch. PPL St. 1 at 46-48; PPL St. 3 at 5-13; CAUSE-PA St. 1 at 34-35; OCA St. 2 at 22; see also, I&E St. 1 at 6-8.

OCA witness Alexander testified that the status quo represented by the Initial Proposal is not reasonable, as follows:

> Mr. White's opposition to any effort to prevent CAP customers from paying unaffordable electric bills or that would ameliorate the costs of the CAP imposed on other residential ratepayers is unsound public policy. Nor does his approach reflect the obligation of PPL to design a "cost-effective" CAP program to "help low income customers to maintain electric service." At the current time, EGSs have a right to serve such a customer without regard to any impact their prices might have on the customer's ability to pay the bill because the risk of nonpayment is shifted to PPL and its other ratepayers, as well as the risk that a CAP customer is eliminated from the program or that a CAP customer's family suffers a termination of service for nonpayment. However, both PPL and CAUSE have documented a serious problem that deserves a more immediate response by PPL and reforms to address this issue should be resolved prior to June 1, 2017.

OCA St. 2-SR at 13.

The OCA submits that the Initial Proposal does not address the concerns identified. CAP customers have had the opportunity to participate in the SOP throughout the period analyzed by PPL witness Wukitsch and the opportunity to choose other, higher-priced products. The PPL analysis demonstrates that this has not successfully managed the costs of the program.

C. CAP SHOPPING PROPOSALS

1. The Joint Litigation Position will provide CAP shopping customers with a reasonable interim solution to allow CAP customers access to the retail choice market, but will mitigate the harms caused by ineffective shopping decisions.

The OCA submits that the Joint Litigation Position represents a reasonable interim solution to allow CAP customers access to the retail choice environment. See, OCA M.B. at 24-28. RESA identifies a number of concerns with the proposal. RESA raises issues concerning the need to develop new EGS protocols in response; the removal of the CAP customer's ability to shop "freely" and receive "value-added" benefits of customer shopping; and the potential for customer confusion and lack of EGS participation in the program. RESA I.B. at 30. These concerns amount to mere speculation and provide no reason to reject the Joint Litigation Position.

a. RESA's identified implementation issues do not present an obstacle to the CAP-SOP.

RESA argues that the Joint Litigation Position would require the EGS to implement marketing practices which currently do not exist because the EGSs would "need to know on a real-time basis" whether the customer is enrolled in CAP. RESA I.B. at 24-25. The OCA submits that this issue is not accurate. Other utilities such as Duquesne and PECO have previously had CAP customer shopping restrictions in place, and there is no reason that a more limited CAP-SOP, which provides for CAP shopping options, could not move forward. PPL has also made this proposal and testified that it can be implemented. See, PPL St. 1-RJ.

RESA also argues that the Joint Litigation Proposal would impede a CAP customer's ability to shop "freely." As the Commonwealth Court held, unbridled competition must at times yield "to ensure adequately-funded cost-effective, and affordable programs to assist customers

who are low-income to afford electric service." PECO CAP Shopping at 1103. The Joint Litigation Position specifically provides, however, that all existing contracts will be permitted to continue until their expiration, so the only limitation is that EGSs could not re-enroll a CAP customer at a new price outside of the SOP. The Joint Litigation Position provided that:

> (a) All CAP customer shopping fixed-term contracts in effect as of the effective date of the CAP-SOP will remain in place until the contract term expires.
>
> (b) Once the existing CAP customer shopping contract expires or is terminated, the CAP customer will have the option to enroll in the CAP-SOP or return to default service, but in any event will only be permitted to shop through the CAP-SOP.
>
> (c) PPL Electric will revise its CAP recertification scripts/process so that all existing CAP shopping customers receiving generation supply on a month-to-month basis after June 1, 2017 will be required at the time of CAP recertification to enroll in the CAP-SOP or return to default service, but in any event will only be permitted to shop through the CAP-SOP.

Joint Litigation Position at 4; see also, PPL St. 1-RJ at 8. Under the Joint Litigation Position, the EGS has the ability to enroll the customer through the CAP-SOP.

b. The purported "value-added" benefits of CAP shopping do not outweigh the harms of CAP customer shopping without limitations.

RESA argues that customers "who shop are also able to avail themselves of the other benefits of shopping (such as price certainty, other value-added products and service that may be a part of the commodity offering, and the ability to elect other offers that satisfy personal needs." RESA I.B. at 24. The OCA discusses this issue above regarding the proposed "value-added" benefits. The OCA submits that RESA's assertions about the "other benefits of shopping" do not address the total cost of PPL's CAP program and how CAP Shopping has increased the costs. RESA uses as an example "price certainty." RESA I.B. at 24. However, the issue of other "value-added" services is a challenging issue to determine particularly in the context of CAP

programs addressing affordability for payment-troubled customers. The New York Public Service Commission recently concluded:

> [i]n order to protect low-income assistance program participants, in light of evidence that ESCOs [EGSs] are unable to or unwilling to serve these customers by way of offering a guaranteed savings product, and because energy related value added products designed to reduce the customer bill have not been developed, we are directing a moratorium on ESCO enrollments of new APP [CAP] customers and on renewals of existing customers, effective 60 days after the effective date of this Order, which shall remain in effect until lifted by the Commission. For existing APPs with an existing contract term, the ESCO contract renewal shall be prohibited at the expiration of the existing agreement.

Proceeding on Motion of the Commission to Assess Certain Aspects of the Residential and Small Non-Residential Retail Energy Markets in New York State, Case No. 12-M-0476, Order at 17 (July 15, 2016) (NY REV Order). (footnotes omitted and parentheticals added).

c. The CAP-SOP will not eliminate all shopping opportunities for CAP customers.

RESA argues that if implemented, the Joint Litigation Position will "effectively eliminate all shopping opportunities for CAP customers" and prevent CAP customers from the opportunity "to freely shop." RESA I.B. at 26-30. RESA further argues that no EGSs will participate in the CAP-SOP, if adopted. RESA I.B. at 26-27. The OCA submits that RESA has provided no evidence whatsoever that all EGSs will decline to participate in a CAP-SOP or that CAP customers will not participate in the CAP-SOP.

The CAP-SOP offers the same 7% off the Price to Compare at the time of enrollment, has the same 12-month contract, and has the same restriction on cancellation or termination fees as the regular SOP. Joint Litigation Position at 2-3. Like the SOP, a CAP customer who terminates a CAP-SOP contract or reaches the end of the 12-month CAP-SOP contract will also be allowed to re-enroll. Joint Litigation Position at 3. There is absolutely no basis to speculate that EGSs will not participate in the CAP-SOP when they do participate in the SOP. While RESA is correct

that the CAP-SOP will be the only option available for CAP customers while they are enrolled in the CAP program, the OCA submits that this is a reasonable accommodation to address the harms presented to both CAP shopping customers and non-CAP residential customers who pay the costs of the program during this interim period.

RESA also argues that the SOP is a "below market price" and the "$28 referral fee" will inhibit EGS participation. RESA I.B. at 26-30. These arguments are simply speculation. As to the $28 referral fee, the whole point of the SOP was to reduce acquisition costs for EGSs in obtaining customers – CAP customers included.[8] The reduced acquisition costs benefit the EGSs whether the customer acquired is a CAP customer or a non-CAP customer.

Moreover, RESA's speculation in its Initial Brief about EGS participation in the SOP conflicts with Mr. White's responses to interrogatories that were entered into the record. The OCA specifically asked RESA about the issue of how the SOP impacts the costs of the EGS participants, and RESA was unable to provide answers. When asked, RESA was unable to identify why EGSs participate in the program and under what conditions EGSs find it financially advantageous to participate in the SOP program. Tr. 44, Joint Stipulation, RESA Response to OCA-I-4. It is not reasonable for RESA now to state unequivocally that EGSs would not participate in the CAP-SOP when they responded under oath that they had no information on what conditions any EGS would find acceptable to participate in an SOP.

The argument that the SOP is a "below market price" is also fundamentally flawed. The retail choice markets provide an extensive number of offers, many which have discounts off of the PTC. There simply is no basis to assert that a price below the PTC is somehow "below market price."

[8] Interestingly, RESA is touting the $50 and $100 gift cards used to obtain customers as a benefit but there is no need for those higher acquisition costs under the SOP.

The Joint Litigation Position is meant to be an interim solution until the Commission can develop a more permanent statewide solution through a collaborative or rulemaking on CAP customer shopping. Further, the Joint Litigation Position establishes a fail-safe in the event that EGSs elect to not participate in the CAP-SOP market. The Joint Litigation Position provides that:

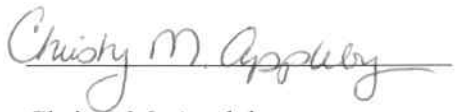
> Until a uniform, statewide approach to CAP shopping can be developed, the parties reserve the right to petition the Commission to re-open the CAP-SOP in the event that there is no EGS participation in the program and/or there are changes in retail market conditions that would otherwise justify reopening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

Joint Litigation Position at 4. The OCA submits that this "fail-safe" provides the parties with an opportunity to mitigate the harms caused by CAP customer shopping with no limitations.

VII. CONCLUSION

For the reasons set forth in this Reply Brief, and those contained in the Office of Consumer Advocate's Initial Brief, the Office of Consumer Advocate respectfully requests that the Joint Litigation Position Among Certain Parties Regarding CAP Shopping be approved.

Respectfully Submitted,



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DATE: July 19, 2016
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CERTIFICATE OF SERVICE

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

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

Dated this 19th day of July 2016.

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