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July 19, 2016

Via Electronic Filing
Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Reply Brief of the Retail Energy Supply Association ("RESA") with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Deanne M. O'Dell

Deanne M. O'Dell

DMO/jls
Enclosure

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

CERTIFICATE OF SERVICE

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

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Date: July 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

REPLY BRIEF OF RETAIL ENERGY SUPPLY ASSOCIATION

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I. INTRODUCTION

PPL Electric Utilities Corporation ("PPL") proposes to implement a default service plan for the period starting June 1, 2017. Simultaneously with the filing of these Reply Briefs, a Joint Petition for Approval of Partial Settlement ("Partial Settlement") is being filed. For the reasons set forth in its Statement in Support, the Retail Energy Supply Association ("RESA")[1] supports adoption of the Partial Settlement. Regarding the issue reserved for litigation, RESA recommends rejection of the proposal to restrict the ability of customers in PPL's low-income customer assistance program ("CAP") as set forth in the rejoinder testimony of PPL (the "PPL Rejoinder Proposal") and supported by the following parties: PPL, Bureau of Investigation & Enforcement ("I&E"), Office of Small Consumer Advocate ("OCA") and Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA") (collectively, "Proponents of CAP Shopping Restrictions").

In its Initial Brief, RESA anticipated and fully addressed many of the arguments in opposition to its recommended outcome and incorporates those arguments herein but offers this additional response to a few of the issues raised in the Initial Briefs of the other parties. Generally, all the parties agree that the Commission has the legal authority to impose restrictions on the ability of CAP customers to shop. The parties disagree, however, at what point the Commission "must" impose restrictions and, assuming this threshold burden is met, they disagree about what restrictions "must" be imposed. According to the Proponents of CAP

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

Shopping Restrictions, they have met their threshold burden by proving harm to customers and, having met that burden, the restrictions set forth in PPL Rejoinder Proposal must be adopted as the only solution. However, as discussed further below, the Proponents of CAP Shopping Restrictions have failed to meet their initial burden to support their claim that restrictions on the ability of CAP customers to be shop must be implemented. This is because they have not shown that no reasonable alternatives to proposed restrictions on competition are available (which includes showing why PPL's Initial Proposal regarding CAP shopping is not reasonable).

Even if one were to conclude otherwise, the Proponents of CAP Shopping Restrictions have failed to meet their burden of showing why the PPL Rejoinder Proposal must be adopted. This is because substantial record evidence supports a finding that the PPL Rejoinder Proposal would adversely affect available choices for CAP participants by immediately prohibiting them from freely shopping and making available only one program ("CAP-SOP") that is designed in such a way that no electric generation suppliers ("EGSs") are likely to participate. Without their participation in the proposed CAP-SOP, CAP customers will be left with no shopping options upon implementation of the PPL Rejoinder Proposal. By adversely affecting the shopping choices available to CAP customers through their proposal, the Proponents of CAP Shopping Restrictions have failed to meet their burden.

II. REPLY TO INITIAL BRIEFS

A. PROPONENTS HAVE NOT MET BURDEN OF PROVING NO REASONABLE ALTERNATIVES TO PROPOSED RESTRICTIONS ON COMPETITION

Based on its analysis of issues very similar to those raised in this proceeding – including a direct request for guidance on how the Electricity Generation Customer Choice and

Competition Act ("Competition Act")[2] is to be interpreted regarding potentially conflicting objectives (i.e. right to shop and maintaining affordability of electricity) – the Commonwealth Court clearly set forth the legal analysis that is to be applied.[3] That legal analysis recognizes that, while the "overarching goal" of the Competition Act is competition, the Commission does have the authority to "bend" competition to further other important aspects of the Competition Act.[4] Such "bending" of competition, however, may only occur upon a showing of substantial reasons why there are no reasonable alternatives to the proposed restriction on competition.[5]

Notwithstanding this direction, CAUSE-PA and OCA create their own legal threshold that they argue should be applied here. Importantly, both of these parties generally fail to acknowledge (and consider) the appropriate "weight" that is to be given to the right of shopping. Even though the Commonwealth Court acknowledged the significant importance of the right to shop (referring to it as an "overarching goal" and the "central objective" of the Competition Act)[6] and the need to balance this with other "important" (not overarching and not central) concerns,[7] CAUSE-PA essentially argues that affordability must give way to competition.[8] Similarly, OCA argues that any conditions on the right of CAP customers to shop may be imposed "provided those conditions are designed to meet the statutory standards of maintaining

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2 66 Pa. C.S. §§ 2801-2812.

3 *Coalition for Affordable Util. Servs. and Energy Efficiency in Pennsylvania, et al. v. Pa. Pub. Util. Comm'n*, 120 A.3d 1087, 1104, 1106 (Commw. Ct. 2015), appeal denied, 2016 WL 1383864 (Pa. Apr. 5, 2016) ("*Commonwealth Court CAP Shopping Decision*").

4 *Commonwealth Court CAP Shopping Decision* at 1101, 1104, 1106, 1107-1108; RESA Initial Brief at 14-15.

5 *Commonwealth Court CAP Shopping Decision* at 1104, 1106.

6 *Commonwealth Court CAP Shopping Decision* at 1100-1101.

7 *Commonwealth Court CAP Shopping Decision* at 1103, 1106.

8 CAUSE-PA Initial Brief at 22-23, 26-27

affordability and cost effectiveness."[9] Outright ignoring or not acknowledging the required analysis on the impact of competition as required by the Commonwealth Court is legally flawed and must be rejected.

The intent of the Commonwealth Court is clearly expressed throughout its decision and makes clear that "bending" competition is something that can be done only upon a substantial showing that doing so is the only reasonable alternative.[10] By recasting this requirement to one where the primary focus is on affordability (and not maintaining the right to shop or at least not overly restricting it), CAUSE-PA and OCA can jump right to discussing the harm to customers they believe is supported by the record and fail to discuss how they have met their burden of showing that no other reasonable alternatives exist to restricting competition. As discussed further below, however, the focus on the issue of harm alone does not satisfy this clearly stated initial legal burden. Even if it did, however, the substantial evidence shows that there is a reasonable alternative to imposing the PPL Rejoinder Proposal. For these reasons, the Proponents of CAP Shopping Restrictions have failed to meet their legal burden and the proposed restrictions on shopping as detailed in the PPL Rejoinder Proposal must be rejected.

1. Reliance On CAP Shopping Data Alone Not Sufficient To Sustain Initial Burden

The primary focal point for the Proponents of CAP Shopping Restrictions to justify their support for the PPL Rejoinder Proposal is the data submitted by PPL for the time period between September 2013 and October 2015.[11] This data, however, does not satisfy the legal burden of the Proponents of CAP Shopping Restrictions.

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9 OCA Initial Brief at 14.

10 *Commonwealth Court CAP Shopping Decision* at 30.

11 I&E Initial Brief at 18-23; OCA Initial Brief at 17; CAUSE-PA Initial Brief at 16-20.

First, as explained more fully in RESA's Initial Brief, the data focuses on a single point in time and is not reflective of the conditions experienced by CAP customers over their entire shopping experience.[12] Importantly, it does not take into account a specific contract term with an EGS or whether the CAP customer obtained any other benefit or incentive for switching. As such the data related to this point in time does not justify removing the ability of all CAP customers to freely shop.

Second, and setting aside the fact that the data focuses only on a single point in time, it still does not support the claim that all CAP customers have been harmed by shopping. On the contrary, these numbers show that approximately half of all shopping CAP customers are receiving a financial benefit in terms of paying a rate at or below the PTC.[13] If the shopping restrictions as set forth in the PPL Rejoinder Proposal are adopted, CAP customers will no longer have the ability to freely assess all competitive opportunities and make decisions (as approximately half of them have already) that would benefit them in terms of lower priced service. As PPL aptly stated in testimony, removing the ability of these customers to shop would "punish[] those CAP customers that are making prudent decisions when choosing to shop and paying a rate at or below the PTC."[14]

Third, even if this data were viewed as supporting restrictions on shopping (which it does not), the initial legal burden is not simply to prove harm to customers and then implement restrictions on shopping. Rather, the initial burden includes showing why there are no

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12 RESA Initial Brief at 20.

13 PPL Exh. MSW-1 at 9-11. In 2014, PPL added information to CAP Customer bills providing the PTC as well as a comparison between the actual bill and the CAP required payment. PPL MSW-1 at 21.

14 PPL St. No. 1-R at 29-30.

reasonable alternatives to restricting competition.[15] The Proponents of CAP Shopping Restrictions have not met this burden. As set forth more fully RESA's Initial Brief, the problems identified by the Proponents of CAP Shopping Restrictions are a direct result of the structure of PPL's CAP program but the record is devoid of any discussion about how PPL's existing CAP program could be modified.[16] Moreover, even though the Proponents of CAP Shopping Restrictions did not address the structure of PPL's CAP program, the PPL Initial Proposal does present a reasonable alternative to the PPL Rejoinder Proposal.[17]

2. The PPL Initial Proposal Is Substantial Evidence Of A Reasonable Alternative

As discussed in RESA's Initial Brief, PPL's Initial Proposal (which relies on encouraging CAP customers to participate in the "SOP") is substantial evidence of a reasonable alternative to completely restricting the ability of CAP customers to shop.[18] To the extent they address it at all, the Proponents of CAP Shopping Restrictions offer superficial attempts to explain why the PPL Initial Proposal does not present a reasonable alternative to the PPL Rejoinder Proposal. PPL, for example, appears to disavow this initial proposal (which RESA supported and continues to support) by pointing out that it was withdrawn.[19] Some of the Proponents of CAP Shopping Restrictions argue that since their negotiations resulted in the PPL Rejoinder Proposal, this must be "the only reasonable alternative."[20] Finally, some of the Proponents of CAP Shopping Restrictions attempt to re-direct focus from their burden by claiming RESA did not offer any of

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15 *Commonwealth Court CAP Shopping Decision* at 1104, 1106.

16 RESA Initial Brief at 18-21.

17 RESA Initial Brief at 21-23.

18 RESA Initial Brief at 21-23.

19 PPL Initial Brief at 17.

20 See, e.g., PPL Initial Brief at 18-19.

its own restrictions on CAP shopping and attempting to cast aspersions on the reasons for this.[21] These arguments, however, are neither persuasive nor sufficient to demonstrate that the Proponents of CAP Shopping Restrictions have satisfied their legal burden.

First, PPL's withdrawal of its initial proposal does not remove from the record all the evidence in support of the reasonableness of the proposal. All of the Proponents of CAP Shopping Restrictions identify the harm as resulting from CAP customers who pay more than the price to compare for service (including both the price of supply and the imposition of early termination/contract cancellation fees).[22] These concerns, however, could be mitigated (on an interim basis) by the PPL Initial Proposal which relies on encouraging CAP customers to participate in PPL's SOP. This is a reasonable alternative to fully restricting the right of CAP customers to shop (as the PPL Rejoinder Proposal would do) because: (1) it would mitigate some of the concerns about prices paid by CAP customers to include no imposition of early termination and cancellation fees as acknowledged by CAUSE-PA;[23] and, (2) like the PPL Rejoinder Proposal it would only be an interim solution pending a more long-term solution.[24] The only changes to existing structures PPL would have implemented through the PPL Initial Proposal would have been to encourage CAP customers to participate in SOP.[25] Withdrawing

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21 I&E Initial Brief at 11, 18, 23; OCA Initial Brief at 24; CAUSE-PA Initial Brief at 2.

22 See, e.g., CAUSE-PA Initial Brief at 8.

23 RESA Initial Brief at 21-22. Moreover, although CAUSE-PA takes the position that the only restrictions that must be imposed are ones to restrict CAP customers from shopping at rates above the price to compare (CAUSE-PA Initial Brief at 27), it should also be noted that the PPL Rejoinder Proposal likewise does not fully address pricing concerns because through the CAP-SOP, EGSs would be permitted to offer the initial price for the full 12-month term of the customer's contract. PPL St. 1-RJ at 7. Thus, there is the potential that a CAP customer taking service through the proposed CAP-SOP could pay more than the default service rate if PPL's price to compare adjusts during the 12-month contract term.

24 PPL, I&E, and OCA all stress that the PPL Rejoinder Proposal would only be an interim solution. PPL Initial Brief at 24; I&E Initial Brief at 30; OCA Initial Brief at 5.

25 PPL St. No. 1 at 48.

the proposal to encourage CAP customers to participate in the existing SOP does not diminish or undermine the validity of the relying on the SOP as a reasonable alternative to restricting the ability of CAP customers to freely shop.

Second, the fact that the Proponents of CAP Shopping Restrictions have brokered a deal that satisfies all of them is not persuasive evidence that there are no other reasonable alternatives. This is particularly highlighted by the fact that none of the parties involved in the negotiation of the PPL Rejoinder Proposal involve EGSs and, therefore, those parties cannot adequately represent how the proposal may or may not impact EGSs. Even though the final negotiated proposal did not develop until the rejoinder phase of this proceeding, pieces of it were a part of the record and RESA – again as the only EGS actively participating in this proceeding – set forth the testimony of its expert witness regarding the expected impact resulting from the various elements proposed. Importantly, RESA Witness Matt White is employed by a Pennsylvania licensed EGS (Interstate Gas Supply, Inc.) that participates in the various standard offer customer referral programs of the electric distribution companies, including PPL, and was authorized to present testimony on behalf of RESA which is a trade organization of twenty-one members in Pennsylvania.[26] Through his own experience working for an EGS as well as in his role as representing the views and positions of RESA members, Mr. White presented evidence about the flaws with the proposals on the record (with the exception of the PPL Initial Proposal which was supported by RESA) and explained why the various elements of these proposals result in removing all shopping for CAP customers.[27] Efforts to discredit this testimony or to

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26 RESA St. No. 1 at 1-2; Joint Stipulation at ¶¶ 4-5.

27 Mr. White presented no opposition to the PPL Initial Proposal in his direct testimony. In rebuttal and rejoinder testimony, however, Mr. White analyzed the proposals offered by CAUSE-PA and OCA in opposition to the PPL Initial Proposal and explained why the various elements of those proposals were problematic. RESA St. No. 1-R at 11-13; RESA St. No. 1-RJ at 1-4. The PPL Rejoinder Proposal was set

somehow claim that parties with no experience working for EGSs somehow "know better" than EGSs lack any merit.

Finally, some parties argue that RESA had some type of burden to propose its own restrictions on shopping and chastise RESA for choosing not to do so for "self-serving"[28] reasons supported by the claim that "the only beneficiaries of unrestricted CAP shopping are EGSs."[29] As what should be an obvious point, RESA did not propose restrictions on competition and, therefore, has no obligation to offer specific restrictions or revise restrictions offered by other parties. Notwithstanding this, RESA did not oppose PPL's Initial Proposal so it is not accurate to create the impression that RESA was unwilling to consider any type of reasonable restrictions (even if they were deemed necessary, which RESA does not concede). As a final point, the right to unrestricted shopping belongs to CAP customers the Commonwealth Court has clearly stated that the burden is on the Proponents of CAP Shopping Restrictions to justify restrictions on that right. The unsubstantiated allegations by the parties about how that right may or may not impact EGSs adds nothing relevant to the discussion.[30]

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forth in PPL's rejoinder testimony and, therefore, no additional rounds of testimony were available to RESA to respond. However, the elements of the PPL Rejoinder Testimony were based on the proposal in CAUSE-PA's surrebuttal testimony to which Mr. White responded in rejoinder testimony.

28 CAUSE-PA Initial Brief at 2.

29 I&E Initial Brief at 23; OCA Initial Brief at 24.

30 As an aside, however, the claim that EGSs may face no impact from increasing uncollectible accounts expense because of the availability of the Purchases of Receivables ("POR") Program is blatantly inaccurate. EGS customers who commit to pay EGS bills and are terminated from service mean that the EGS can no longer serve that customer and, therefore, lose the opportunity to be paid. The EGS may also be required to deal with informal and/or formal complaints from such customers which increase costs to EGSs. In addition, the recently approved FirstEnergy default service plan includes a requirement that EGSs will be required to pay a "clawback" charge to the extent their amount of uncollectible accounts expense exceeds certain limits. *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of their Default Service* Programs, Docket Nos. P-2015-2511333 *et seq.*, Order entered May 19, 2016 adopting Recommended Decision dated April 15, 2016 (POR clawback charge is discussed on pages 16-17 of the Recommended Decision). Similarly, for small commercial and industrial customers, PPL has a tariff provision that enables it to increase an individual EGSs total uncollectible accounts expense percentage if

For all these reasons, the speculative and completely unsupported efforts by some of the Proponents of CAP Shopping Restrictions to assign "negative" motives to RESA for its position in this case or to claim they better understand what EGSs require to operate must be dismissed.

B. PROPONENTS OF CAP SHOPPING HAVE FAILED TO MEET THEIR BURDEN OF SHOWING WHY THE PPL REJOINDER PROPOSAL MUST BE ADOPTED

Even if the Proponents of CAP Shopping Restrictions are deemed to have met their initial burden (which they did not for the reasons discussed in the previous section), the legal analysis required by the Commonwealth Court does not end there. Rather, in assessing the proposed restrictions on CAP shopping, the Commission may rely on substantial evidence showing why such restrictions should be rejected and this can include a showing that the restrictions would adversely affect available choices for CAP participants.[31] As explained more fully in RESA's Initial Brief, substantial evidence supports rejecting the PPL Rejoinder Proposal because: (1) it would immediately eliminate the current ability of CAP customers to freely shop; (2) it would do so only for an interim period of time until a long-term solution is adopted; and, (3) the proposed restrictions (i.e. the CAP-SOP program) would ultimately result in no opportunities for CAP customers to shop.[32] While there is no debate about the first two points, the last point is disputed by the parties.

None of the Proponents of CAP Shopping Restrictions appear to be troubled by the fact that the PPL Rejoinder Proposal would immediately restrict CAP customers from shopping. In

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PPL determines that the individual EGS is engaging in unusual business behavior that results in an increase to the total uncollectible accounts expense percentage for the small C&I customer class. See PPL Tariff Electric Pa. P.U.C. No. 1s at Section 12.9.2.6 available at: https://www.pplelectric.com/~/media/pplelectric/shared%20content/master-pages/gen-supplier-coord-tariff/12-payment-billing.pdf.

31 *Commonwealth Court CAP Shopping Decision* at 1107-1108.

32 RESA Initial Brief at 23-30.

support of this position, PPL, I&E and OCA all rely on the fact that the proposal would only be an "interim" approach pending a final longer term solution adopted by the Commission.[33] Rather than supporting their position that the restrictions should be adopted, however, this actually counsels the opposite. As discussed above in Section II.A, the Commonwealth Court has made clear that the "overarching goal" of the Competition Act is competition and placing any restrictions on the right to freely shop can only be done where there is substantial evidence showing no other reasonable alternatives exist.[34] Thus, completely removing the unrestricted right of CAP customers to shop for an admittedly interim period of time is – on its face – too extreme of a solution. For this reason alone, the PPL Rejoinder Proposal should be rejected.

Setting this aside, there is serious disagreement among the parties about whether the "CAP-SOP" as set forth in the PPL Rejoinder Proposal will actually present CAP customers with a viable shopping option in the future (which would be their one and only option if it actually available). This issue is important. By limiting the shopping opportunities available to CAP customers to the CAP-SOP and creating a structure that will not result in any EGSs offering service,[35] the PPL Rejoinder Proposal will adversely affect available choices for CAP participants (by removing them) and must be rejected. The evidence is dismissed by the Proponents of CAP Shopping Restrictions in a number of ways, none of which present compelling reasons.

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33 PPL Initial Brief at 24; I&E Initial Brief at 31; OCA Initial Brief at 5.

34 *Commonwealth Court CAP Shopping Decision* at 1104, 1106.

35 For all the reasons set for in RESA's Initial Brief at 26-30 (to include the supporting cites to the record set forth therein).

Some parties, like PPL and I&E, claim that EGS participation in the proposed CAP-SOP program is likely because EGSs participate in the current SOP.[36] The proposed structure of the CAP-SOP, however, is not the same as the current SOP structure and would place more restrictions on what the EGS can offer that CAP customer than in the existing program or in the competitive market.[37] These restrictions include limiting all offers to CAP customers to the confines of the CAP-SOP, requiring EGSs to pay a $28 referral fee for each CAP customer referred, and prohibiting EGSs from offering a competitive (non-CAP-SOP product) to CAP customers.[38] These features are significant changes compared to the existing SOP which is: (1) not the only avenue for EGSs to provide competitive shopping options; and, (2) permits EGSs to market non-SOP products to customers who enroll through SOP. Because of these important differences, efforts to claim that the current SOP is successful so the proposed CAP-SOP will be successful are without merit.

CAUSE-PA attempts to discredit the testimony presented by RESA Witness White which shows why the CAP-SOP proposal is doomed to fail as "without merit," based only on his "unsubstantiated *opinion,*" inconsistent, and/or unreliable.[39] According to CAUSE-PA's view, RESA members "participate at low levels" in the current SOP and, given the number of RESA members licensed in Pennsylvania compared to all EGSs licensed in PA, Mr. White is only "speaking on behalf of a mere 3.3% of all Pennsylvania licensed EGSs."[40] This view, however,

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36 PPL Initial Brief at 23; I&E Initial Brief at 28-30.

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

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

39 CAUSE-PA Initial Brief at 29-30, 32 (emphasis original).

40 CAUSE-PA Initial Brief at 29-30. As an aside the number of EGSs licensed in Pennsylvania includes brokers and marketers who do not take title to electricity. As such, these brokers and marketers would not participate in SOP.

does not negate the validity of Mr. White's experience as someone who works for an EGS and is authorized to present testimony on behalf of RESA members which consistent of many EGSs operating in Pennsylvania and around the country.[41] As an industry expert with actual experience working for an EGS and representing a group of EGSs, Mr. White's testimony constitutes substantial evidence supporting why the CAP-SOP will not succeed because EGSs will not elect to participate.

In response to Mr. White's testimony regarding the lost opportunity to offer CAP customers products beyond the CAP-SOP product, CAUSE-PA cites to a discovery response from Mr. White and claims that it shows the only reason EGSs participate in SOP is when it is financially advantageous or disadvantageous to do so based on the price to compare.[42] By characterizing the discovery response this way, CAUSE-PA is attempting to support the position that the removal of the price restrictions EGSs would have to offer during the 12-month CAP-SOP term fully addresses RESA's concerns and, according to CAUSE-PA, the restriction on offering any other product to CAP customers should not matter to EGSs. The discovery response, however, does not support this conclusion. This question does not, as CAUSE-PA suggests, ask whether the renewal opportunity serves as "a motivating factor in SOP participation"[43] but rather focuses on whether the renewal opportunity presents "the potential [for the EGS] to earn back the acquisition cost and profit."[44] As Mr. White rightly responded, he is not in a position to know the pricing and profit reasons why a particular EGS may elect to

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41 *See, supra* at 8; Joint Stipulation at ¶¶ 4-5.

42 CAUSE-PA Initial Brief at 32.

43 CAUSE-PA Initial Brief at 32.

44 Joint Stipulation, RESA Discovery Response to OCA-I-4.

participate in SOP let alone whether the renewal opportunity increases or decreases potential profit. Rather, as Mr. White explained in response to OCA-I-3, participation in SOP alone does not present a profit making opportunity.[45] As these questions focus on the impact of the renewal opportunity on potential profits, the responses do not negate Mr. White's testimony that restrictions on the ability of EGSs to offer CAP customers unrestricted products (coupled with the requirement to pay the $28 fee) will result in EGSs not electing to participate in the CAP-SOP.

Finally, even assuming that RESA is correct and the CAP-SOP program is not implemented because no EGSs are willing to participate, CAUSE-PA argues that this should not matter.[46] This flippant disregard for the legal right of all customers (including CAP customers) to have unrestricted access to the competitive market (or, at the least, only "reasonable" restrictions) is deeply rooted in the mindset that CAP customers should be prevented from making choices about their electricity supply – because they could make "bad" economic decisions. However, as explained by Chairman Powelson and Commissioner Witmer in a prior FirstEnergy default service proceeding, "CAP customers make hundreds of choices each week about how to spend their money, whether it be on where to buy food, clothing, gasoline, telecommunications services or any other necessity. These customers are equally equipped to make informed choices regarding their electric supplier."[47] Likewise, all shopping customers,

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45 Joint Stipulation, RESA Response to OCA-I-3.

46 CAUSE-PA Initial Brief at 30-31.

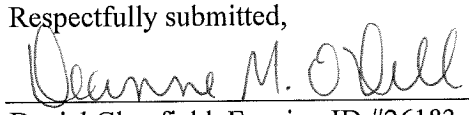
47 *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs*, Docket No. P-2011-2273650, et. seq., Opinion and Order entered August 16, 2012, reconsideration granted in part, Opinion and Order entered September 27, 2012, Joint Statement by Chairman Powelson and Commissioner Witmer entered September 27, 2012, at 1-2.

including CAP customers, retain the ability to make new choices in response to changes in the market price and, if they are dissatisfied about the service they are receiving from an EGS, they can choose another supplier. Implementing the PPL Rejoinder Proposal would remove any right of CAP customers to shop and CAUSE-PA's willingness to so easily give away this right must be rejected.

III. CONCLUSION

For the reasons set forth in this brief as well as RESA's Initial Brief and as supported by the record in this proceeding, RESA recommends that the proposal to restrict the ability of CAP customers to shop through implementation of the PPL Rejoinder Proposal be denied. The Proponents of CAP Shopping Restrictions have failed to meet their initial legal burden of showing that no reasonable alternatives exist. Even if, however, one were to conclude otherwise, the Proponents of CAP Shopping Restrictions have also failed to support implementation of the PPL Rejoinder Proposal because it would adversely impact the ability of CAP customers to shop.

Respectfully submitted,



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