BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities	:	
Corporation for Approval of a Default	:	
Service Program and Procurement	:	P-2016-2526627
Plan for the Period June 1, 2017	:	
Through May 31, 2021	:	

INITIAL DECISION

Before
Susan D. Colwell
Administrative Law Judge

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I. INTRODUCTION

This Initial Decision approves the default service plan of a major electric distribution company as amended by the Joint Petition for Partial Settlement filed in this matter and modified by this Decision, and decides the single outstanding issue regarding the proper handling of shopping by customer assistance program customers. As this Petition was filed on January 29, 2016, the statutory deadline for Commission action is October 29, 2016.

II. HISTORY OF THE PROCEEDING

On January 29, 2016, PPL Electric Utilities Corporation (PPL Electric or Petitioner or Company) filed its Petition for approval of its default service program and procurement plan for the period June 1, 2017 through May 31, 2021 (Petition), along with the direct testimony of its witnesses.

Notice of the Petition was published in the *Pennsylvania Bulletin* on Saturday, February 13, 2016, 46 Pa.B. 836, which set February 29, 2016, as the deadline for the filing of protests, petitions to intervene and answers. The publication also stated that the prehearing conference in the case was set for Wednesday, March 9, 2016 and that the case had been assigned to me.

On February 18, 2016, the Commission's Bureau of Investigation & Enforcement (I&E)[1] filed a notice of appearance. On February 29, 2016, the Office of Consumer Advocate (OCA) and the Office of Small Business Advocate (OSBA) each filed its Notice of Intervention and Answer.

Timely petitions to intervene were filed as follows: on February 26, 2016, by NextEra Energy Power Marketing, LLC; on February 29, 2016, the Sustainable Energy Fund of Central Eastern Pennsylvania (SEF), the PP&L Industrial Customer Alliance (PPLICA), and

[1] Please note that a listing of acronyms is attached to this ID as Appendix A.

Noble Americas Energy Solutions LLC (NAES). Additional petitions to intervene were filed on March 3, 2016, by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), and by Exelon Generation Company, LLC, and on March 4, 2016 by the Retail Energy Supply Association (RESA). There were no objections to any of the petitions to intervene, and all will be granted in the ordering paragraphs below.

All parties filed prehearing memoranda.

The prehearing conference was held as scheduled with the following in attendance: for PPL Electric, Paul E. Russell, Esq., Michael W. Hassell, Esq., Christopher T. Wright, Esq., and Kimberly A. Klock, Esq.; on behalf of the OCA, Brandon Pierce, Esq.; on behalf of the OSBA, Steven C. Gray, Esq.; on behalf of I&E, Gina L. Lauffer, Esq.; on behalf of the SEF, Kenneth L. Mickens, Esq.; on behalf of CAUSE-PA, Elizabeth Marx; on behalf of PPLICA, Alessandra Hylander, Esq.; on behalf of RESA, Sarah Stoner, Esq.; on behalf of NextEra, Todd S. Stewart, Esq.; on behalf of NAES, Charles E. Thomas, III, Esq.; and on behalf of Ex Gen, H. Rachel Smith, Esq.

The litigation schedule was agreed upon as were the modifications to the discovery rules in the Scheduling Order issued on March 9, 2016.

On March 18, 2016, the Company filed a Motion for Protective Order, representing that the proposed language had been circulated and no party expressed opposition to any of the wording. Accordingly, the Motion was granted and the Order issued on March 18, 2016. An Amended Protective Order correcting wording was issued on March 30, 2016.

Direct testimony of all parties other than the Company was served on or before April 20, 2016. Rebuttal testimony was served on or before May 23, 2016, and surrebuttal testimony was served on or before June 3, 2016.

The evidentiary hearing was held on June 16, 2016. The parties had reached a full settlement of all but one issue, and they had all waived cross-examination of all witnesses. The following submittals were admitted into the record:

> For PPL Electric: the direct, rebuttal, surrebuttal and rejoinder testimony of James M. Rouland, PPL Electric Statements 1, 1-R, 1-SR, and 1-RJ and Exhibits JMR-1 through JMR-3; the direct and rebuttal testimony of A. Joseph Cavicchi, PPL Electric Statements 2 and 2-R and Exhibits JR-1 through JR-6; the direct and rebuttal testimony of Michael S. Wikitsch, PPL Electric Statements 3 and 3-R; and PPL Electric Exhibit 1, the Petition itself.
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> For CAUSE –PA: the direct, rebuttal and surrebuttal testimony of Harry S. Geller, Esq., CAUSE-PA Statements 1 with attachments A, B and C, 1-R and 1-SR.
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> For I&E: the direct and surrebuttal testimony of D.C. Patel, I&E Statements 1 and 1-SR.
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> For OCA: the direct, rebuttal and surrebuttal testimony of Richard S. Hahn, OCA Statements 1, 1-R and 1-SR; and the direct and surrebuttal testimony of Barbara Alexander, OCA Statements 2 and 3-SR.
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> For OSBA, the rebuttal testimony of Robert D. Knecht, OSBA Statement 1, with Exhibits IEc-1 and IEc-R2.
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> For RESA, the direct, rebuttal and rejoinder testimony of Matthew White, RESA Statements 1, 1-R and 1-RJ, and Exhibits MW-1 through MW-6.
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> Exelon, NextEra, NAES, PPLICA and SEF did not submit testimony.

The parties resolved all but one issue, and therefore, initial briefs were filed and served by the Company, OCA, I&E, RESA, and CAUSE-PA on July 8, 2016. NAES, NextEra, and PPLICA filed letters indicating that they were not filing initial briefs.

On July 19, 2016, the parties filed their Joint Petition for Partial Settlement. The Company, OCA, I&E, RESA, and CAUSE-PA filed reply briefs regarding the one outstanding

issue. Statements in Support of the Partial Settlement were filed by PPL Electric, PPLICA, OSBA, I&E, OCA and RESA.

Letters indicating that the parties did not oppose the Settlement were filed on July 19, 2016, by NAES, and CAUSE-PA. SEF filed a letter also indicating that it did not oppose the Settlement but did not agree that the DSP could be approved without a time-of-use plan. ExGen filed a letter indicating that it takes no position on the Settlement and would not be filing a reply brief. NextEra, SEF, NAES, PPLICA and OSBA filed letters indicating that they would not be filing reply briefs.

The record closed on July 19, 2016. The matter is ripe for disposition.

III. FINDINGS OF FACT

A. PARTIES

1. PPL Electric Utilities Corporation is an electric distribution company providing service to approximately 1.4 million customers in its certificated service territory over about 10,000 square miles in 29 counties of the Commonwealth. Petition ¶4.

2. OCA is a statutorily created public advocate empowered to represent the interests of consumers before the Public Utility Commission, pursuant to Act 161 of the General Assembly, as amended, 71 P.S. §§ 309-1 *et seq.*

3. OSBA is authorized to represent the interests of small business customers of utility services before the Commission, pursuant to the provisions of the Small Business Advocate Act, Act 181 of 1988, 73 P.S. §§ 399.41-399.50.

4. The Commission's Bureau of Investigation and Enforcement (I&E) is charged with representing the public interest in cases before the Commission concerning rates.

5. SEF is a Pennsylvania corporation established at the conclusion of PPL Electric's restructuring proceeding pursuant to the terms of the joint settlement filed in that proceeding. Its mission is to promote and invest in energy efficiency, renewable energy and energy conservation in order to provide opportunities and benefits for PPL Electric's ratepayers. Petition to Intervene of SEF.

6. RESA is a trade association of power marketers, independent power producers, and a broad range of companies within the Mid-Atlantic marketplace. RESA Prehearing Memo at 1.

7. PPLICA is a an organization of industrial and commercial users which included the following at the time of filing: Air Products and Chemicals, Inc.; Armstrong World Industries, Inc.; General Dynamics-OTS Scranton; Hercules Cement Company; Linde LLC; SAPA Extrusions, Inc.; The Hershey Company; TIMET North America; and Wegmans Food Markets, Inc. PPLICA Petition to Intervene.

8. Exelon Generation Company, LLC, is an indirect, wholly-owned subsidiary of Exelon Corporation, a North American energy company with several merchant subsidiaries in addition to ExGen, as well as regulated utility subsidiaries in Pennsylvania (PECO), Illinois, and Maryland. ExGen has been granted market-based rate authority by the Federal Energy Regulatory Commission and is a buyer and seller of wholesale electricity and capacity. ExGen Petition to intervene.

9. NextEra Energy Power Marketing, LLC, is a unit of NextEra Energy Resources, LLC, which owns and operates over 16,000 megawatts of electric generating capacity in 23 states, of which more than 90 percent comes from clean and/or renewable resources. It owns and operates nearly 130 MW of wind generation and approximately 800 MW of natural gas generation in the Commonwealth of Pennsylvania. Petition to Intervene of NextEra.

10. CAUSE-PA is an unincorporated association of low-income individuals that advocates on behalf of its members to enable consumers of limited economic means to

connect to and maintain affordable water, electric, heating and telecommunication services. Petition to Intervene of CAUSE-PA.

11. Noble Americas Energy Solutions is a California LLC authorized to provide EGS services in Pennsylvania to large commercial, industrial and governmental customers, and to residential small commercial customers throughout the Commonwealth of Pennsylvania. Petition to Intervene of NAES.

B. TERMS OF THE SETTLEMENT

The Partial Settlement terms start on Paragraph 20 of the Joint Petition, and the numbering is retained here for ease of reference. Consequently, there are no Findings of Fact Nos. 12 through 19.

SETTLEMENT

> 20. The following terms of this Partial Settlement reflect a carefully balanced compromise of the interests of all of the Signatory Parties in this proceeding. The Signatory Parties unanimously agree that the Partial Settlement is in the public interest.
>
> 21. The Signatory Parties agree to the following:
>
> **A. GENERAL**
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> 22. Subject to the terms and conditions of the Partial Settlement, and a decision on the issue reserved for litigation, the Signatory Parties agree that the proposals set forth in PPL Electric's Petition requesting approval of its DSP IV Program, including the Default Service SMA, RFP Product Procurement Schedule, and Tariff provisions for the GSC-1, GSC-2, and TSC are acceptable and should be adopted by the Commission.
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> 23. The Signatory Parties agree that PPL Electric's DSP IV Program, as modified by the terms and conditions of the Partial Settlement, includes and/or addresses all of the elements prescribed by Section 2807 of the Public Utility

Code, the Commission's regulations, and the Commission's policies for a Default Service plan.

A. DEFAULT SERVICE PROGRAM AND PROCUREMENT PLAN

24. The Signatory Parties agree that the DSP IV Program shall be in effect for a period of four years, from June 1, 2017 through May 31, 2021.

(a) PPL Electric agrees to hold a stakeholder collaborative in November 2017, open to all parties to this proceeding, to discuss any aspect of the products or programs approved in the DSP IV Program, as well as other retail market enhancement issues as they relate to PPL Electric's provision of default service.

(b) In the event any party believes market conditions have changed, the parties may present such information supporting their position during the collaborative.

(c) Within 60 days from the date of the collaborative, PPL Electric will submit a report at this Docket summarizing the collaborative.

(d) Nothing herein restricts any party's rights under law to make any filing regarding (a) or (b) above, nor does anything herein restrict any position any party may take in any such proceeding or in any other proceeding. The Signatory Parties acknowledge that nothing contained herein is intended to expand or limit the Commission's subject matter jurisdiction, including, but not limited to, matters that are within the jurisdiction of the Federal Energy Regulatory Commission and/or PJM Interconnection LLC.

(e) Nothing contained herein is intended to limit the use of information presented during the collaborative for other appropriate purposes, including as set forth in paragraph (d).

25. For the Residential and Small C&I Customer Classes, the Signatory Parties agree that PPL Electric will procure layered 6-month and 12-month products twice per year, in April and October, with the first procurement occurring in April 2017 for Default Service beginning June 1, 2017. The Signatory Parties agree that the product portfolio and procurement schedule for the Residential Customer Class will be modified so that, exclusive

of the long-term 50 MW block product for the Residential Customer Class, the procurements will be approximately 20% 6-month contracts and 80% 12-month contracts to decrease the total amount of default service supply being procured at one time. Attached to the settlement as Appendix A is a Residential Customer Class product portfolio and procurement schedule that reflects this settlement term.

26. PPL Electric agrees to modify the phrase "load weighted spot market energy price" in Article 9.1(b) of the DSP IV SMA to be "load weighted, real-time spot market energy price."

B. TIME OF USE

[Please note that this section is included here as a direct quote from the Partial Settlement. Consistent with the discussion following the Findings of Fact and Partial Settlement terms, the TOU portion of the Partial Settlement is not approved.]

> 27. PPL Electric's proposal in this proceeding to continue the Time of Use ("TOU") rate option adopted in the *Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan*, Docket No. P-2014-2417907 (Jan. 15, 2015) ("DSP III") for the DSP IV Program period is withdrawn.
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> 28. PPL Electric's TOU program has been remanded to the Commission by the appellate courts for further proceedings at Docket No. P-2013-2389572 ("TOU Remand Proceeding"). *See The Dauphin County Industrial Development Authority v. Pennsylvania Public Utility Commission*, 123 A.3d 1124 (Pa. Cmwlth. 2015). The parties to this proceeding reserve the right to fully participate in the Commission's TOU Remand Proceeding, and nothing herein restricts any position any party may take in any such proceeding or in any other proceeding.
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> 29. The Signatory Parties agree that the Company will comply with the Commission's direction/order in the TOU Remand Proceeding for purposes of the entire or remaining duration of the DSP IV Program period (depending on when the TOU program is approved).

30. In the event a new TOU program has not been approved by the Commission in the TOU Remand Proceeding before the May 31, 2017 expiration of the current TOU program, PPL Electric agrees to promptly notify both customers and suppliers participating in the TOU program that the TOU rate option will expire on May 31, 2017.[2]

C. STANDARD OFFER PROGRAM

31. PPL Electric agrees to revise its Standard Offer Program ("SOP") scripts within 90 days of Commission approval of the settlement to provide more explicit disclosures. Attached as Appendix B are revised SOP scripts that reflect this settlement term.

32. Within 90 days of Commission approval of the settlement, PPL Electric agrees to conduct, using the Company's contracted independent survey company, a one-time survey of a random selection of customers participating in SOP regarding:[3] (a) customers' understanding of the SOP; (b) customers' understanding that the Price to Compare ("PTC") could change and could impact the level of savings realized by the customers during their enrollment in SOP; (c) whether customers are aware of the difference between the fixed SOP prices and the PTC during their enrollment in SOP; and (d) whether customers are aware of their right to terminate an SOP contract at any time without penalty. The purpose of the survey will be to assess the functioning of the SOP and the information will be used to inform future SOP processes and procedures. Nothing contained herein is intended to limit the use of survey information for other appropriate purposes.

(a) PPL Electric agrees to make the survey questions available to the statutory advocates and any interested party in advance of the survey, and will consider other parties' comments and input on the survey questions without any obligation to adopt or accept.

[2] SEF's non-opposition to the Partial Settlement should not be interpreted as SEF having waived any arguments regarding whether a TOU program should be in place after May 31, 2017. [footnote in Partial Settlement]

[3] PPLICA and Noble do not join in and take no position on this provision of the Partial Settlement. [footnote in Partial Settlement.]

(b) PPL Electric further agrees to provide the statutory advocates and any interested party with the results of the SOP survey.

(c) The Signatory Parties agree that the costs of the survey shall not exceed $30,000. The Signatory Parties also agree that any costs incurred by PPL Electric to conduct the SOP survey will be recovered through PPL Electric's Competitive Enhancement Rider.

33. Subject to any applicable intervening Commission order or regulation, if PPL Electric files to continue the SOP in its next Default Service proceeding, the Signatory Parties reserve their right to challenge whether the SOP should continue or be terminated.

34. The Signatory Parties agree that PPL Electric will modify the SOP Binding Agreement to make it clear that, for all customers that enroll or re-enroll in SOP, EGSs participating in the SOP must send an EDI 814 rate code change transaction by no later than 3 business days after the rescission period for enrollment or re-enrollment.

35. PPL Electric agrees that all customers that request enrollment in the SOP, both new and re-enrollments, will be placed into the SOP "pool" and randomly assigned to EGSs that are voluntarily participating in the SOP at that time. Provided, however, that customers seeking to enroll in the SOP, both new and re-enrollments, will continue to be permitted to request service from a specific SOP supplier.

36. PPL Electric agrees that it will implement any processes and protocols developed by the Seamless Moves and Instant Connect Electronic Data Exchange Working Group where and if applicable, including, to the extent feasible, the SOP.

D. NON-MARKET BASED TRANSMISSION SERVICE CHARGES

37. PPL Electric agrees to monitor its own filings with the Federal Energy Regulatory Commission ("FERC") and to provide notice to EGSs and default service suppliers of any such filings that modify the definition or application of Non-Market Based ("NMB") Transmission Service charges. This includes but

is not limited to any information filings implementing annual rate changes under a formula rate and any major transmission related filings that could have a significant impact on the pricing NMB charges.

(a) All such notices will be provided via an e-mail correspondence issued through the PPL Electric Supplier Portal, and will also be posted on the Company's Default Service webpage.

(b) PPL Electric agrees to provide such notices of such filings as soon as practical, and in advance if possible. PPL Electric will make a best effort to comply with this settlement term, but the Signatory Parties agree that PPL Electric will not in any way be liable for inadvertently failing to provide notice or inadvertently proving inaccurate notice of any FERC filings or proceedings that ultimately impact the definition or application of NMB.

E. SUPPLIER COORDINATION TARIFF

38. PPL Electric agrees to update its Supplier Coordination Tariff to reflect the current Purchase of Receivables ("POR") discount rate and to ensure that the Supplier Coordination Tariff is updated with any future Commission-approved changes.

II. THE SETTLEMENT IS IN THE PUBLIC INTEREST

39. Commission policy promotes settlements. *See* 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and, at the same time, conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. *See id*. § 69.401. In order to accept a settlement, the Commission must first determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered Oct. 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water and Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991). As will be detailed in the Signatory Parties' Statements in Support, the instant Partial Settlement is in the public interest because, with the conditions imposed herein, PPL Electric's DSP IV will provide substantial affirmative public benefits.

40. Approval of the Partial Settlement will lessen the time and expenses that the Signatory Parties and the Commission must expend on the proceedings.

41. The Partial Settlement resolves all issues in this proceed with the exception of one discrete issue concerning shopping by customers enrolled in PPL Electric's CAP.

42. The Signatory Parties will further supplement the reasons that the Partial Settlement is in the public interest in their Statements in Support.

-- End Direct Quote from Joint Petition --

C. ALJ'S ADDITIONAL FINDINGS OF FACT

43. Under the proposed DSP IV program and the Settlement, PPL Electric will acquire the Residential and Small Commercial and Industrial (Small C&I) Customer Classes' default service supply through a series of fixed-price, load-following, full requirements supply contracts. PPL Electric Stmt. 1 at 15-16.

44. For the Large Commercial and Industrial (Large C&I) Customer Class, PPL Electric will enter into annual contracts with suppliers for the provision of the default service spot market full requirements supply contracts. PPL Electric Stmt. 1 at 18, 29.

45. PPL Electric will acquire a fixed percentage of the Company's Residential and Small C&I default service load on a semiannual basis through short and medium-term 6 and 12 month contracts. PPL Electric Stmts. 1 at 15-16, 2 at 13-14.

46. The product portfolio and procurement schedule for the Residential Customer Class will be modified so that, exclusive of the long-term 50 MW block product for the Residential Customer Class, the procurements will be approximately 20% 6-month fixed-price products. Partial Settlement ¶ 25.

47. The Large C&I Customer Class will continue to be served by 12-month, full-requirements, load-following, spot market contracts procured once a year. PPL Electric Stmts. 1 at 18, 29 and 2 at 12, 15.

48. The Company has 50 MW of energy and capacity associated with a long-term product for the period June 1, 2015 through May 31, 2021 and has a series of long-term Solar and Tier I AEC contracts in effect that conclude on May 31, 2020 and May 31, 2021, respectively. PPL Electric Stmt. 1 at 22.

49. The procurements as described in the DSP IV are a prudent mix of products.

50. PPL Electric's default service, load-following, full requirements products obligate a wholesale electricity seller to provide a fixed-percentage, or tranche, of the Company's hourly load during every hour of a product's term. PPL Electric Stmt. 2 at 4.

51. Sellers are responsible for managing the acquisition of energy, capacity, transmission (other than non-market-based transmission services), ancillary services, AECs, and any other related products to meet default service customers' hourly loads. PPL Electric Stmt. 2 at 4.

52. PPL Electric obtains Residential and Small C&I default service supplies through competitive solicitations in the form of an auction, which results in least-cost procurement. PPL Electric Stmt. 2 at 27-28.

53. Wholesale competition for spot market-priced product will result in least-cost default service for Large C&I customers. PPL Electric Stmt. 2 at 25-28.

54. PPL Electric will procure AECs to meet its obligation under the Alternative Portfolio Standards (AEPS) Act as a component of its load-following, fixed-price and spot market default service supply contracts. PPL Electric Stmt. 1 at 20.

55. PPL Electric will continue to acquire long-term solar Tier 1 AECs associated with its 10-year, 50 MW block product from its DSP I Program. PPL Electric Stmt. 1 at 20.

56. Attachment A to the DSP IV filing is the pro forma RFP.

57. Attachment B to the DSP IV filing is the pro forma SMA.

58. The Partial Settlement modifies the proposed RFP and SMA. Partial Settlement at ¶ 22.

59. PPL Electric has retained NERA Economic Consulting as the independent third-party manager to administer procurements and to analyze the results of the solicitations for each customer class, as well as to select the supplier(s) to provide services at least cost and to submit all necessary reports to the Commission. PPL Electric Stmt. 1 at 32.

60. The contingency plan approved in the DSP III is retained in DSP IV, with the exception of the Time of Use program. PPL Electric Stmt. 1 at 34.

61. The costs incurred by PPL Electric to provide default service to the Residential and Small C&I classes will be recovered through the Generation Supply Charge–1 (GSC-1), separately computed for each customer class. PPL Electric Stmt. 1 at 16-17; Exhibit 1, Attachment C.

62. Costs incurred by PPL Electric to provide default service to the Large C&I class will be recovered through the Generation Supply Charge-2 (GSC-2). These include PJM spot market energy, PJM capacity charges, the suppliers' charge for all other services based upon winning bids in the annual solicitation, and costs to acquire supply and administer the program. PPL Electric Stmt. 1 at 18; Exhibit 1, Attachment C.

63. The DSP IV is designed to be consistent with the legal and technical requirements pertaining to the generation, sale and transmission of electricity of the PJM Interconnect, LLC (PJM). PPL Electric Stmt. 1 at 33.

64. The DSP IV aligns with the PJM planning period, which begins on June 1. PPL Electric Stmt. 1 at 33.

65. The Standard Offer Program (SOP) enrolls customers with an electric generation supplier (EGS) which is provided at a 7% discount off the PTC price in effect at the time of the enrollment for a period of one year and does not permit EGS termination or cancellation fees. PPL Electric Stmt. 1 at 35-36, 48.

66. The SOP was approved in the DSP III proceeding and DSP IV continues the program except: (a) PPL Electric will invoice EGSs monthly rather than quarterly; (b) the SOP Binding Agreement will be modified so that, for every customer the EGS must send a form no later than 3 business days after the rescission period for enrollment or re-enrollment; (c) all customers requesting enrollment will be placed in a pool and randomly assigned to EGSs which are participating and (d) customers who request a specific EGS will be accommodated if that EGS is participating. PPL Electric Stmt. 1 at 35-36, 39; Partial Settlement ¶ ¶34, 35.

67. Appendix B to the Partial Settlement contains revised SOP scripts to further clarify the descriptions of the program and the 7% discount. Partial Settlement Appendix B.

68. PPL Electric will conduct a one-time survey of a random selection of customers participating in the SOP, using an independent survey company, to assess the functioning of the SOP and the information may be used to form future SOP procedures, disclosures, and scripts. Partial Settlement ¶ 32.

69. The definition and treatment of non-market based charges under the DSP IV program is the same as was approved under the DSP III program. PPL Electric Stmt. 1-R at 45.

70. PPL Electric will notify the parties if the definition or application of NMB Transmission Service charges changes. Partial Settlement ¶ 37.

71. Supplement No. 6 to Electric Generation Supplier Tariff – Electric Pa. P.U.C. No. 1S at Docket No. R-2015-2469275 updates the POR discount as approved in the 2015 rate case.

72. OnTrack is the Company's Commission-approved customer assistance program (CAP). PPL Electric Stmt. 3 at 3.

73. Through OnTrack, PPL Electric provides reduced payment amounts based on household income, offers arrearage forgiveness, and refers customer to other assistance programs. Local community-based organizations (CBOs) administer the program. PPL Electric Stmt. 3 at 3.

74. OnTrack is available to Residential customers. To participate in OnTrack, the customer must be payment-troubled and have a household income at or below 150% of the federal poverty level. PPL Electric Stmt. 3 at 4.

75. Customers are removed from the OnTrack program if they miss two consecutive payments or when they exceed their allocation of CAP credits. PPL Electric Stmt. 3 at 4.

76. CAP credits are the difference between the fixed OnTrack payment and the total customer electric bill. PPL Electric Stmt. 3 at 4.

77. The higher the total bill, the faster the OnTrack customer will reach the maximum CAP credit and be removed from the OnTrack program. PPL Electric Stmt. 3 at 4.

78. Maximum CAP credits are set in the Company's base rate cases and universal service proceedings. PPL Electric Stmt. 3 at 4.

79. The Company's current maximum 18-month CAP credit is $185 per month for electric heat customers, or $3,328 over 18 months, and $73 per month for non-electric heat customers or $1,310 over 18 months. PPL Electric Stmt. 3 at 4.

80. OnTrack customers have been able to shop for electric generation suppliers (EGSs) since shopping was permitted. PPL Electric Stmt. 3 at 5.

81. The percentage of OnTrack customers who shop grew from 44% in September 2013 to 52% in October 2015. PPL Electric Stmt. 3 at 5.

82. The Commission directed PPL Electric to address CAP shopping in its 2014-2016 Universal Service and Energy Conservation Plan (USP Plan) at Docket No. M-2013-2367021. PPL Electric Stmt. 3 at 6.

83. In the Final Order of the Company's 2015 base rate case, the Company was directed to obtain data regarding the number of CAP customers shopping, whether the rates paid by shopping CAP customers are above or below the Price To Compare (PTC), and the impact that shopping CAP customers has on CAP credits. PPL Electric Stmt. 3 at 6.

84. As part of the approved settlement in the Company's 2015 base rate case, Docket No. R-2015-2474714, the Company agreed to hold a collaborative with all interested stakeholders to evaluate CAP customer participation in shopping and to present recommendations in this DSP case. PPL Electric Stmt. 3 at 6.

85. The Company held two stakeholder collaborative meetings, on December 11, 2015, and January 15, 2016. PPL Electric Stmt. 3 at 6.

86. The Company's records show the following to be the average monthly percentage of total OnTrack customers who shopped during 2013, 2014 and 2015:

2013	46%
2014	51%
2015	52%.

PPL Electric Stmt. 3 at 7.

87. The Company's records show the following average monthly percentage of OnTrack shopping customers who selected an EGS with a price above the PTC:

2013	67%
2014	50%
2015	46%

PPL Electric Stmt. 3 at 7-8.

88. Over the 34-month period from January 2013 through October 2015, an average of 49% of OnTrack members were shopping, and 55% of OnTrack shoppers were paying above the PTC. PPL Electric Stmt. 3 at 8.

89. From January 1, 2012 through October 30, 2015, an average of 9,626 OnTrack shopping customers paid an average monthly charge of $132, and the charge would have been $101 using the PTC. PPL Electric Stmt. 3 at 9.

90. The total average monthly difference for all OnTrack shopping customers above the PTC was $298,406 or $3,580,872 annually. PPL Electric Stmt. 3 at 9.

91. The total average monthly difference for all OnTrack shopping customers paying at or below the PTC was $69,750 or a savings of $837,000 annually. PPL Electric Stmt. 3 at 11.

92. The net monthly energy charges for all OnTrack shopping customers were $228,656 more than the PTC. Annually, the cost is $2,743,872. PPL Electric Stmt. 3 at 12.

93. From January 2012 through October 2015, an average of 2.0% of customers (both shopping and non-shopping) were removed from the OnTrack program for exceeding their CAP credits. PPL Electric Stmt. 3 at 12.

94. CAP shopping has resulted in OnTrack customers exceeding their CAP credits at a faster pace than they would have if they did not shop. PPL Electric Stmt. 3 at 9, 13; PPL Electric Exhibit MSW-2 at 3.

95. The accelerated use of CAP credits places low-income customers in danger of early removal from the OnTrack program. PPL Electric Stmt. 3 at 13.

96. Between January 2012 and February 2015, 34,780 customers were removed from CAP because they had reached their CAP credit maximum and of this number, 27,600 or 79% were shopping with an EGS during some portion of the prior 18 months. CAUSE-PA MB at 20, citing CAUSE-PA Stmt. 1, Attachment B.

97. Paying more than the PTC for any period of time means that a CAP household is receiving no additional CAP benefit and non-CAP ratepayers who finance CAP are paying additional costs. CAUSE-PA MB at 20.

98. The EGS is paid through the purchase of receivables program without facing any consequences associated with the loss of CAP subsidy such as increased uncollectible expenses and termination. CAUSE-PA MB at 20.

99. Costs associated with the payment of higher EGS rates are not related to the cost of providing an affordable CAP. CAUSE-PA MB at 21.

100. PPL Electric has a confirmed 171,171 low-income customer count, and less than 50,000 are enrolled in CAP, meaning that low-income customers are being charged for increased CAP costs. CAUSE-PA MB at 21.

101. CAP customers who pay more than the PTC may be asked to pay a higher amount when the customer recertifies for CAP. CAUSE-PA MB at 21.

102. EGSs participate in the SOP voluntarily on a quarterly basis and may leave at will, also on a quarterly basis. PPL Electric Stmts. 1-R at 34 and 1-RJ at 10.

103. In the PPL Electric service territory, shopping is at 49% in the residential rate class, 85% in the commercial class, and 98.5% in the industrial class. PPL Stmt. 2 at 9.

104. As of December 2015, there were 35 EGSs offering service to PPL Electric residential customers. PPL Stmt. 2 at 9, fn. 9.

105. The Company, OCA, I&E and CAUSE-PA recommend requiring OnTrack customers who wish to shop to use the SOP so that the customer has a 7% discount off the PTC for 12 months.

106. The Company, OCA, I&E and CAUSE-PA adopted a litigation position on CAP that supersedes each of their original positions, and they call it the "CAP-SOP" shopping proposal. PPL Electric Stmt. in Support at 19;

107. CAP-SOP has two parts: (1) the Commission should initiate a statewide collaborative open to all interested stakeholders and/or a rulemaking addressing CAP shopping; and, (2) OnTrack customers who wish to shop will be required to do so through the existing SOP program, which guarantees rates 7% below the PTC at the time of initiation for a period of 12 months. The following limitations would apply:

(a) Effective June 1, 2017, the CAP-SOP is the only vehicle that a CAP customer may use to shop and receive supply from an EGS.

(b) Any CAP customer shopping request that does not get processed through the CAP-SOP will be denied.

(c) EGSs participating in the CAP-SOP must agree to serve customers at a 7% discount off the PTC at the time of enrollment. This price shall remain fixed for the 12-month CAP-SOP contract unless terminated earlier by the customer.

(d) CAP customers may terminate the CAP-SOP contract at any time and without any termination or cancellation fees or other penalties.

(e) A CAP customer who terminates a CAP-SOP contract or whose CAP-SOP contract reaches the end of its term can re-enroll in the CAP-SOP.

(f) At the conclusion of a 12-month CAP-SOP contract, the CAP customer may: (i) be returned to the CAP-SOP pool and be re-enrolled in a new CAP-SOP contract, (ii) be returned to default service, or (iii) remain with the EGS which has agreed to the EGS participation requirement that it will not raise rates higher than the PTC was on the reaffirmation date.

(g) EGSs must enroll separate from the standard SOP to be a participating supplier in the CAP-SOP. EGSs would be free to voluntarily elect to participate in none, one or the other, or both the traditional SOP and the proposed CAP-SOP. Enrollment will be for a three-month period, and shall conform to the enrollment process for the standard SOP. EGS may opt in to participate in the CAP-SOP on a quarterly basis, and are free to leave the CAP-SOP on a quarterly basis.

PPL Electric Stmt. 1-RJ; PPL Electric Stmt. in Support at 19-20.

108. Transitioning CAP customers who are shopping as of the effective date of June 1, 2017 would be handled as follows:

(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 and/or is terminated.

(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.
PPL Electric Stmt. 1-RJ at 8-9; PPL Electric Stmt. in Support at 21.

109. The proposed CAP-SOP includes the provision that the parties may continue 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. PPL Electric Stmt. 1-RJ at 9; PPL Electric Stmt. in Support at 21.

110. EGSs participating in the CAP-SOP cannot charge an early termination or cancellation fee to participants but are free to leave the program at the end of any quarter. PPL Electric Stmt. in Support at 22.

111. PPL Electric's data does not take into account whether a customer obtained some benefit or incentive for switching, such as gift cards, energy audits, or lower prices. PPL Electric Stmt. 3 at 10.

112. The proposed DSP IV contains no TOU plan. Partial Settlement at ¶¶ 27-30.

IV. DISCUSSION

A. LEGAL STANDARDS

1. Burden of Proof

Section 332(a) of the Code, 66 Pa.C.S. §332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is well-established that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible." *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990).

The burden of proof is comprised of two distinct burdens: the burden of production and the burden of persuasion. The burden of production tells the adjudicator which party must come forward with evidence to support a particular proposition. See *In re Loudenslager's Estate*, 430 Pa. 33, 240 A.2d 477, 482 (1968). The burden of persuasion determines which party must produce sufficient evidence to convince a judge that a fact has been established, and it never leaves the party on whom it is originally cast. *Reidel v. County of Allegheny*, 633 A.2d 1325, 1329 n. 11 (Pa.Cmwlth. 1993).

A party that offers a proposal not included in the original filing bears the burden of proof for that proposal. *See Brockway Glass Co. v. Pa. Pub. Util. Comm'n,* 437 A.2d 1067 (Pa.Cmwlth. 1981); *Pa. Pub. Util. Comm'n v. Duquesne Light Company,* Docket Nos. R-2013-2372129, et al. (Opinion and Order entered April 23, 2014).

Therefore, the Company has the burden of proving that its proposed default service provider program is just and reasonable, and any party contesting it has the burden of persuading the Commission that the filing is not just and reasonable.

2. Standards for Default Service

The requirements of a default service plan appear in Section 2807(e) of the Public Utility Code,[4] 66 Pa.C.S. § 2807(e). The requirements include that the default service provider follow a Commission-approved competitive procurement plan, that the competitive procurement plan include auctions, requests for proposal, and/or bilateral agreements, that the plan include a prudent mix of spot market purchases, short-term contracts, and long-term purchase contracts designed to ensure adequate and reliable service at the least cost to customers over time, and shall offer a time-of-use program for customers who have smart meter technology. 66 Pa.C.S. §§ 2707(e), 2708.

> The Competition Act also mandates that customers have direct access to a competitive retail generation market. 66 Pa.C.S. § 2801(3). This mandate is based on the legislative finding that "competitive market forces are more effective than economic regulation in controlling the cost of generating electricity." 66 Pa. C.S. § 2801(5). *See, Green Mountain Energy Company v. Pa. PUC*, 812 A.2d 740, 742 (Pa. Cmwlth. 2002). Thus, a fundamental policy underlying the Competition Act is that competition is more effective than economic regulation in controlling the costs of generating electricity.

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-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670, at 7-8 (Opinion and Order entered August 16, 2012)(*FirstEnergy Order).*

Also applicable are the Commission's default service regulations, 52 Pa.Code §§ 54.181-54.189, and policy statement, 52 Pa.Code §§ 69.1802-69.1816. The Commission has directed that EDCs consider the incorporation of certain market enhancement programs into their DSPs in order to foster a more robust retail competitive market. *Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans,*

[4] *Electricity Generation Customer Choice and Competition Act,* Act 138 of 1996, as amended by Act 129 of 2008, codified at 66 Pa.C.S. § 2801 *et seq.*

Docket No. I-2011-2237952 (Order entered December 16, 2011), and *Intermediate Work Plan* (Final Order entered March 2, 2012) (*IWP Order*).

Finally, a default service provider shall file its service program with the Commission no later than 12 months prior to the conclusion of the currently effective program. 52 Pa.Code § 54.185(a). The Company's current plan expires on May 31, 2017, and the filing date for the DSP III was January 29, 2016, more than 12 months prior to the expiration. This requirement has been met.

B. OVERVIEW OF THE DSP IV

The proposed DSP consists of a proposal for competitive procurement of default service supply and related AECs during the DSP IV Program Period; an implementation plan; a proposed rate design,; a proposal to continue the Company's current SOP; a proposal to allow CAP customers to continue to shop for competitive electric generation supply; and a contingency plan for the DSP IV Program. PPL Electric Stmt. 1 at 11-12. Note that a proposed TOU rate option for default service during the DSP IV Program period was withdrawn by the Company and agreed to or not opposed by the parties in the Settlement. The TOU program requirement is addressed later in this ID.

Commission regulations state that the first default service program shall be for a period of 2 to 3 years, with exceptions, and subsequent program terms shall be determined by the Commission. 52 Pa.Code § 54.185(d).

The Company proposes that this Program be in effect for four years. The Company avers that this longer term is justified because the shorter terms of the last two programs have allowed the Company to implement refinements to the procurement process and procedure as shopping has developed in PPL Electric's service territory. The goal was to create a simpler procurement plan that is both market-reflective and less volatile for customers. The result is that the Company avers that it has reached a state where the Plan should not need to be modified more often than every four years.

In addition, extending the term relieves all of the parties from the need to litigate DSP programs every other year.

OSBA agrees to this longer Plan period:

> In general, the Company concludes that the default service procurement process has matured during the past four proceedings, and that there is no need for modest tinkering every two years. The Company further concludes that the cost of a default service proceeding, estimated at $750,000 for external costs plus unspecified internal costs, is not justified by the minimal benefits of regular review. Mr. Rouland also indicates that if PPL Electric were to cease to be the default service provider within the four year term, the proposed plan is structured in such a way as to allow PPL Electric to shift its obligations to a third party.

OSBA Stmt. 1 at 2; OSBA Stmt. in Support at 4.

The Company notes that, should the role of default service provider be eliminated prior to May 31, 2021, the Company can request to modify the term of the final contracts to reduce or eliminate overlap beyond May 2021. In addition, the SMA enables the Company to transfer its obligations to procure or provide default service supply to a third party. MSA Section 16.3(b). PPL Electric Stmt. 1 at 13-14.

RESA, which did not support the proposed four-year term, states that the inclusion of a mid-term stakeholder review process will provide an opportunity to discuss retail market enhancement issues and to assess current market conditions, which results in a reasonable outcome for this issue. RESA Stmt. in Support at 3. OCA concurs in this reasoning and this result, stating that the four-year plan term will help ensure a stable, adequate and reliable default service over the term of the default service program. In addition, OCA states that a four-year plan will help to reduce costs and to ensure that default service is at the least cost to customers over time. OCA Stmt. in Support at 5.

I&E agrees with this, noting the savings to ratepayers of not preparing and litigating another DSP program is note-worthy, while the mid-term collaborative presents an

opportunity for further enhancements, which makes this provision in the public interest. I&E Stmt. in Support at 5-6. PPLICA agrees with this assessment. PPLICA Stmt. in Support at 4.

In short, I agree with OSBA witness Knecht that the longer term is in the public interest:

> I conclude that there is little or no need to conduct default service proceedings every two years, and to saddle default service customers with the non-insignificant costs of those proceedings with little or no obvious benefit. I recommend that the Commission accept the Company's proposal for a four-year term.

OSBA Stmt. 1 at 6; OSBA Stmt. in Support at 5.

1. PROCUREMENT AND RATE DESIGN

The DSP IV continues the same basic procurement approach approved in the DSP III. PPL Electric Stmt. 1 at 14.

The Residential Customer Class is comprised of customers served under PPL Electric Rate Schedules RS and RTS. The Company will acquire 100% of the fixed-price supply, exclusive of supply previously committed under a block contract, through a series of load-following, full-requirements contracts obtained through semiannual solicitations beginning in April 2017 and continuing through October 2020, through 12 and 6-month contracts using a laddered or staggered approach so that all of the products are not procured at the same time. The Settlement provides that, apart from the long-term 50 MW block product for the Residential Customer Class, the procurements will be approximately 20% 6-month contracts and 80% 12-month contracts to decrease the total amount of default service supply being procured at one time. Partial Settlement ¶ 25, and Appendix A to the Partial Settlement.

The Partial Settlement addresses the concerns of OCA Witness Hahn, who opposed the original proposal to procure 70-75% of the residential default service supply in each solicitation. OCA Stmt. 1 at 6-7.

> The Partial Settlement addresses this concern and provides for greater diversification of the default service supply portfolio to reduce unnecessary residential customer price volatility due to price spikes at a particular moment in time.

OCA Stmt. in Support at 6.

The Small C&I Class is comprised of customers served under rate schedules GS-1, GS-3, LP-4, GH-2, BL, SA, SM, SHS, SLE, SE, TS and standby service for qualifying facilities. They will be served through a series of load-following, full-requirements contracts which are fixed-price and will be obtained through semiannual solicitations. The procurement schedule will use 1- and 6-month contracts using a laddered or staggered approach so that all of the products are not procured at the same time. This is unchanged from the DSP III. PPL Electric Stmt. 1 at 15-16. The Parties agree that this plan is acceptable and should be adopted by the Commission. Partial Settlement ¶ 22.

OSBA supports this provision:

> The OSBA has long been a proponent of fixed-price, full requirements contracts for service to Small C&I customers, particularly at PPL where the risk of significant changes in shopping rates has proven to be relatively high. The mix of 6-month and 12-month supplies should provide the Small C&I customers with a C-Factor that is reasonably stable and predictable. It is also a reasonable balance between being reflective of market conditions and providing rate stability.
>
> Furthermore, the Company's proposal includes a laddering of the 12-month contracts so that half of the 12-month load turns over every six months. This laddering will reduce the magnitude of potential price shifts at the end of the 12-month contracts. In addition, the Company proposes to conduct its procurements close to the start of service (approximately two months before service commences), which reduces the time-based risks faced by suppliers.

OSBA Stmt. in Support at 3.

Finally, OSBA notes that the proposal is "essentially identical" to the DSP III program, which is functioning well. OSBA Stmt. in Support at 3.

Costs incurred by the Company for providing default service to residential and Small C&I classes will be recovered through the Generation Supply Charge-1 (GSC-1), separately calculated for the residential and Small C&I classes. PPL Electric Stmt. 1 at 16.

The Large C&I customer class includes customers served under rate schedules GS-3, LP-4, LP-5, LP-6, LPEP, and standby service for qualifying facilities. For these schedules, the Company proposes to continue to obtain default service supply on a real-time hourly basis through the PJM spot market. This is done through a single annual solicitation to obtain competitive offers from suppliers. This is unchanged from DSP III. PPL Electric Stmt. 1 at 18.

Costs incurred to provide service to the Large C&I class will be recovered through the Generation Supply Charge-2 (GSC-2). Customers will continue to pay an energy charge per kWh based on the real-time hourly spot-market price and actual use, a capacity charge per kW based on the PJM Reliability Pricing Model (RPM) price for capacity and the customer's peak load contribution, and an energy charge per kWh to recover all supplier charges and the Company's costs of administration. The GSC-2 will be revised and reconciled annually.

This Plan is designed to comply with the statutory requirement that the Company procure its default service supply at the least cost to customers over time. 66 Pa.C.S. § 2807(e)(3.4). In addition, it is substantially the same as the DSP III, which was previously approved and is working well. As such, it is in the public interest.

2. AEPS PROCUREMENT

> The Alternative Energy Portfolio Standards Act ("AEPS Act"), 73 P.S. §§ 1648.1-1648.8, and the Commission's implementing regulations further require EDCs to obtain AECs in an amount equal to certain percentages of electric energy sold to retail customers in this Commonwealth. *See* 52 Pa.Code § 54.182. The Company proposes to procure certain AECs to meet its obligation under the AEPS Act as a component of its load-

following fixed-price and spot market default service supply contracts. Under this proposal, each Default Service wholesale supplier will provide its proportional share of AECs to fulfill PPL Electric's AEPS obligation, in accordance with the terms of the Default Service SMA. (PPL Electric Statement No. 1, p. 20)

In addition, with respect to the Company's long-term 50 MW block contract use for Residential Default Service supply, the company previously has entered into contracts to procure Tier I Solar AECs. PPL Electric also has acquired additional Tier 1 non-solar AECs to cover the period from June 1, 2015 through May 31, 2021, associated with its 10-year long-term product obligation in its Commission-approved DSP III Program. Notably, PPL Electric has proposed to continue the long-term AEC products, which will remain in place throughout the DSP IV Program period. (PPL Electric Statement No. 1, p. 20)
PPL Electric Stmt. in Support at 9.

No party has objected to this procurement plan, which complies with the requirements of the Act. Accordingly, it is in the public interest.

3. PRUDENT MIX OF SUPPLIES

The percentage of load-split between 6-month and 12-month contracts is 45% and 55%, respectively, which is intended to enable market-reflective rates while continuing to moderate price volatility. The Company has 50 MW of energy and capacity associated with a long-term product for the period June 1, 2015 through May 31, 2021, as well as a series of long-term Solar and Tier I AEC contracts in effect, concluding on May 31, 2020 and May 31, 2021 respectively.

This satisfies the statutory requirement that the DSP use a prudent mix of supplies, is not opposed, and is in the public interest.

4. REQUEST FOR PROPOSALS

The DSP IV will be implemented by the Company's holding a series of solicitations pursuant to a series of RFPs to obtain the products from competitive wholesale generation suppliers. Changes from the DSP III include modification of the bidder qualifications and proposal process to adopt an electronic signature and submission process for most documents; alignment of the credit and financial requirements under the RFP with the requirements in the Default Service SMA; and a proposal to shift the auction window from 12:00 pm to 2:00 pm to 10:00 am to 12:00 pm. Partial Settlement ¶ 26.

The RFP Rules are updated for this Program by modifying terms to match the SMA, updating auction dates, updating the number and size of tranches to be procured, and updating to accommodate the electronic platform for bidding. These proposals are not opposed, further the default service process and are in the public interest.

5. STANDARD OFFER PROGRAM

The Company's Standard Offer Program (SOP) was implemented as part of its DSP II plan, beginning on August 1, 2013, and currently in place. The program is marketed to Residential and Small C&I default service customers who call the Company's Customer Contact Center but is available to all Residential and Small C&I customers, both shopping and non-shopping. Customers who call the Center are referred to the SOP by the customer service representative or via the website and are transferred to a third-party administrator, currently PPL Solutions, which gives more details to the customer and, if the customer is interested, is enrolled. A list of referred customers is sent by PPL Solutions to participating EGSs. The EGSs have already been vetted and will pay a fee of $28 per referred customer to cover administrative costs.

Participating EGSs agree to give customers at least 7% discount below the PPL Electric Price to Compare (PTC) effective at the time of enrollment.

As of December 31, 2015, approximately 210,150 eligible customers were transferred to the third-party service provider and approximately 186,295 or 88.6% of those customers enrolled in the SOP. Since the web self-service option became available on June 1, 2015, approximately 1,657 customers have elected SOP.

Under the existing SOP, the Company bills the EGSs for the $28 per customer fee on a quarterly basis. In the present Petition, PPL Electric proposes to bill monthly. There is no fee for those customers who participate in SOP through the web portal.

Under the Settlement, PPL Electric agrees to revise its SOP scripts within 90 days of the Commission's final order to provide more explicit disclosures. Appendix B to the Settlement contains these revisions. Partial Settlement ¶ 31. The OCA promoted the use of more explicit disclosures in the Call Center scripts and for its third party agent, PPL Solutions. OCA Stmt. 2 at 4-17. OCA agrees that the new scripts address many of its concerns by providing more detailed information regarding the SOP, including the statement that the SOP price will not change during the 12 monthly bills but that the PTC could be higher or lower than the SOP during this period when it changes. Partial Settlement ¶ 31, Appendix B; OCA Stmt. in Support at 6-7. RESA supports this provision because it encourages customers to contact the SOP supplier to request a new rate and supports better customer education about the competitive market options. This, RESA states, appropriately addresses the concerns RESA identified regarding PPL's original proposal. RESA Stmt. in Support at 4.

The Company also agrees to conduct an independent survey of a random selection of SOP customers seeking: (a) customers' understanding of the SOP; (b) customers' understanding that the PTC could change and could impact the level of savings realized by customers; (c) whether customers are aware of the difference between the fixed SOP prices and PTC during their enrollment; and (d) whether customers are aware of their right to terminate an SOP contract at any time without penalty. The questions and results will be made available to interested parties. Settlement ¶ 32. This was also proposed by OCA as information which will be very valuable for the evaluation of the program and to aid in the determination of whether it should be continued in future DSP plans. OCA Stmt. in Support at 7.

Although PPLICA takes no position on the survey, it notes that the cost limit of $30,000 will not materially impact rates and accordingly, does not oppose it. PPLICA Stmt. in Support at 4.

I&E does not oppose it because the goal of assessing the functioning of the SOP to inform future processes and procedures is in the public interest and the cost will not overburden ratepayers who fund the Competitive Enhancement Rider. I&E Stmt. in Support at 8.

The Company avers that the paragraph in which it agrees to modify the SOP Binding Agreement will make clear that EGSs must send an EDI 814 rate code change transaction no later than 3 business days after the rescission period for enrollment or re-enrollment. This will improve the transaction and provide better customer service. Settlement ¶ 34; PPL Electric Stmt. in Support at 17-18.

The parties agree that the right to challenge whether to continue the SOP in the Company's next DSP filing is reserved. Settlement ¶ 33.

RESA raised concerns that there could be a practice of customers terminating an SOP contract and later re-enrolling and being served by the same EGS. RESA Stmt. 1 at 12-14. The Company's practice was to assign a customer who re-enrolls to the same SOP supplier if that supplier is still participating in SOP. The parties addressed this concern by agreeing that all customers requesting enrollment in SOP, new and re-enrollments, will be placed into the SOP pool and randomly assigned to participating EGSs. Settlement ¶ 35; RESA Stmt. in Support at 3.

The Company states that this provision is in the public interest because it reduces the possibility that a SOP supplier is forced to re-enroll the customer at a lower rate than the prior SOP contract. However, the parties also agree that customers may request specific EGSs. Settlement ¶ 35.

In Settlement Paragraph 36, PPL Electric specifically agrees to implement any processes and protocols developed by the Seamless Moves and Instant Connect Electronic Data Exchange Working Group where they are applicable to SOP. The Company explains that this is in response to the RESA concerns that the EGSs are unable to enroll customers through the SOP if the customers are categorized in the Company's "pending active status." RESA Stmt. 1 at 10-11. Customers are placed in this category for a number of reasons, including if they have a pending and unresolved PUC complaint, an unpaid bill, or are moving but the new account has not yet been activated. These customers are not eligible to shop, but when referred to SOP, the EGSs must maintain the SOP rate and continually seek to enroll them. PPL Electric Stmt. 1-R at 19; PPL Electric Stmt. in Support at 20. Settlement Paragraph 36 provides assurance that any directive from the Commission will be implemented to address the problem.

RESA states that this is a reasonable outcome for this issue as it provides interested stakeholders an opportunity to help guide procedures that may resolve RESA's concerns regarding customers in pending active status. RESA Stmt. in Support at 4.

The changes in the SOP address the concerns of the parties and provide a good introduction to the competitive market and as such, are in the public interest.

6. NON-MARKET BASED TRANSMISSION SERVICE CHARGES

The Company states that the definition and treatment of Non-Market Based transmission service charges (NMBs) was fully litigated in the DSP III case, and no changes are proposed in the DSP IV. PPL Electric Stmt. 1-R at 45; PPL Electric Stmt. in Support at 22. Although no party proposed changes or modifications to NMB charges, RESA did propose that the Company implement a program to monitor proceedings for potential changes to NMB charges. RESA Stmt. 1 at 8-9; PPL Electric Stmt. in Support at 22.

The Settlement provides that PPL Electric will monitor its own filings for changes in the definition or application of NMB charges and will notify EGSs and default service suppliers of the filings in e-mail through the PPL Electric Supplier Portal. This will not cause

additional costs to the Company, PPL Electric Stmt. in Support at 23, and it is a practical and reasonable outcome which provides more transparency to EGSs about these unpredictable charges. RESA Stmt. in Support at 5.

I&E expresses support for this outcome because these matters were essential to RESA and PPL Electric's agreement to partially resolve this proceeding. I&E Stmt. in Support at 9. The reasons of the parties are adopted to support a finding that Partial Settlement ¶ 38 is in the public interest.

7. SUPPLIER COORDINATION

The Company explains:

> PPL Electric's POR discount rate was updated as the result of the Company's 2015 base rate case, which was approved by the Commission in a Final Order entered on November 19, 2015, at Docket No. R-2015-2469275. (PPL Electric Statement No. 1-R, p. 47) However, as noted by RESA, PPL Electric inadvertently failed to reflect this updated Purchase of Receivables ("POR") discount rate in its Supplier Coordination Tariff after the conclusion of the 2015 base rate case. (RESA Statement No. 1, p. 15; PPL Electric Statement No. 1-R, p. 47)
>
> The Signatory Parties agreed that PPL Electric will update its Supplier Coordination Tariff to reflect the current POR discount rate and to ensure that the Supplier Coordination Tariff is updated with any future Commission-approved changes. (Partial Settlement ¶ 38) On June 15, 2016, PPL Electric filed Supplement No. 6 to Electric Generation Supplier Tariff – Electric Pa. P.U.C. No. 1S at Docket No. R-2015-2469275, which updated the POR discount as approved in the 2015 rate case. A copy of this tariff filing was served on all parties to this proceeding. By Secretarial letter dated July 1, 2016, the Commission accepted Supplement No. 6 as filed.
> PPL Electric Stmt. in Support at 23.

RESA avers that the Company's agreement to update its Supplier Coordination Tariff to reflect the current POR discount rate and to ensure that the Supplier Coordination Tariff

is updated with any future Commission-approved changes. "This is a good result from a policy perspective, as EGSs that provide or seek to provide service in PPL's service territory will have an accurate understanding of its rates and processes. (RESA St. No. 1 at 15)," RESA Stmt. in Support at 5.

I&E agrees that the public interest is served by this update which corrects an existing inaccuracy as it enables EGSs to make an informed decision regarding initiation of service in PPL Electric's service territory. I&E Stmt. in Support at 10.

C. CAP SHOPPING

Introduction

The parties were unable to come to a complete resolution of all issues and have submitted the issue of CAP Shopping for decision.

The parties shape the questions before the Commission differently, but the issues are:

(1) whether restrictions on CAP shopping are permitted under applicable law?

(2) whether the facts presented in this proceeding justify the imposition of restrictions on CAP shopping?

(3) whether restrictions should be EDC-specific or statewide?

(4) whether the CAP-SOP program should be adopted in this proceeding?

Before the hearing, the Company, OCA, I&E, and CAUSE-PA agreed upon a "Litigation Position," which was submitted as such and included in the testimony of PPL witness James M. Rouland, Statement 1-SJ. The position is as follows:

1. The Commission should promptly initiate a statewide collaborative open to all interested stakeholders and/or initiate a new rulemaking proceeding to address CAP shopping issues on a uniform, statewide basis.

2. The Commission should approve the interim CAP-SOP proposal by the Company, OCA, I&E, and CAUSE-PA which requires all CAP customers who wish to shop to do so through the SOP. EGSs participating in the CAP-SOP must agree to serve customers at a 7% discount off the PTC at the time of enrollment for a fixed period of 12 months unless terminated earlier by the customer. CAP customers may cancel at any time without any termination or cancellation fees or penalties. Even after cancelling, a CAP customer may re-enroll in the CAP-SOP. At the end of the 12-month period, the CAP customer will be returned to the CAP-SOP pool and can be re-enrolled if desired. EGSs must enroll separate from the standard SOP to be a participating supplier in the CAP-SOP. EGSs will enroll for a 3-month period.

After approval, the Commission will hold a collaborative open to all interested parties within 90 days of the date of a final order to develop CAP-SOP specific scripts to be used by the Company's customer service representatives and PPL Solutions. PPL Electric Stmt. 1-RJ at 7-8; PPL Electric MB at 20.

CAP customers already shopping as of the June 1, 2017 effective date of the new plan will be subject to these rules:

(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 and/or is terminated.

(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.
(PPL Electric Statement 1-RJ, pp. 8-9); PPL Electric MB at 21.

The Company states that this is an interim measure until a uniform, statewide approach to CAP shopping can be developed. Until that time, the Company states that the parties should be free 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. PPL Electric Statement 1-RJ, pp. 9; PPL Electric MB at 23. This, the Company avers, addresses the EGSs' concerns regarding maintaining a set contract price.

1. Limited restrictions on CAP shopping are permitted under applicable law

The Electricity Generation Customer Choice and Competition Act (Choice Act) includes in its statement of policy a number of numbered statements, including:

> (9) Electric service is essential to the health and well-being of residents, to public safety and to orderly economic development, and electric service should be available to all customers on reasonable terms and conditions.
>
> (10) The Commonwealth must, at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service.
>
> * * *
>
> (17) There are certain public purpose costs, including programs for low-income assistance, energy conservation and others, which have been implemented and supported by public utilities' bundles rates. The public purpose is to be promoted by continuing universal service and energy conservation policies, protections and services, and full recovery of such costs is to be permitted through a nonbypassable rate mechanism.

66 Pa.C.S. §§ 2802(9), (10), (17).

The Act definitions include:

> "**Universal service and energy conservation.**" Policies, protections and services that help low-income customers to maintain electric service. The term includes customer assistance programs, termination of service protection and policies and services that help low-income customers to reduce or manage

> energy consumption in a cost-effective manner, such as the low-income usage reduction programs, application of renewable resources and consumer education.

66 Pa.C.S. § 2803.

The Act continues by listing standards for Commission approval of the restructured electric utilities, including the requirement for continuing universal service programs:

> **§ 2804. Standards for restructuring of electric industry**
>
> The following interdependent standards shall govern the commission's assessment and approval of each public utility's restructuring plan, oversight of the transition process and regulation of the restructured electric utility industry:
>
> * * *
>
> (9) The commission shall ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each electric distribution territory. Policies, activities and services under this paragraph shall be funded in each electric distribution territory by nonbypassable, competitively-neutral cost-recovery mechanisms that fully recover the costs of universal service and energy conservation services. The commission shall encourage the use of community-based organizations that have the necessary technical and administrative experience to be the direct providers of services or programs which reduce energy consumption or otherwise assist low-income customers to afford electric service. 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.A. § 2804(9).

The Commission has recognized that the Act requires the continuation of universal service policies in its regulations:

> **§ 54.71. Statement of purpose and policy.**
>
> Section 2804(9) of the code (relating to standards for restructing [sic] of the electric industry) mandates that the Commission ensure universal service and energy conservation policies, activities and

services for residential electric customers are appropriately funded and available in each EDC territory. This subchapter requires covered EDCs to establish uniform reporting requirements for universal service and energy conservation policies, programs and protections and to report this information to the Commission.

52 Pa.Code § 54.71.

§ 54.72. Definitions.

CAP—Customer Assistance Program—An alternative collection method that provides payment assistance to low-income, payment troubled utility customers. CAP participants agree to make regular monthly payments that may be for an amount that is less than the current bill in exchange for continued provision of electric utility services.

* * *

Low-income customer—A residential utility customer whose household income is at or below 150% of the Federal poverty guidelines.

* * *

Payment troubled—A household that has failed to maintain one or more payment arrangements in a 1-year period.

* * *

Universal service and energy conservation—Policies, protections and services that help low-income customers to maintain electric service. The term includes customer assistance programs, termination of service protection and policies and services that help low-income customers to reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction programs, application of renewable resources and consumer education.

52 Pa.Code § 54.72 (in pertinent part).[5]

Accordingly, the EDCs, including PPL Electric, must maintain viable and fully-funded CAP and other universal service programs for the assistance of low-income customers. The funding, although monitored through the reports and litigated program filings, see 52 Pa.Code §§ 54.75 and 54.76, is provided by the other ratepayers in the class. The Commission must ensure that every rate is just and reasonable, 66 Pa.C.S. § 1301, and non-discriminatory, 66

[5] Definitions are identical or nearly identical to those in Commission regulations, 52 Pa.Code §§ 69.261-69.267.

Pa.C.S. § 1304. In other words, the charge that pays for universal service and CAP must be reasonable.

The commitment of the Commission and the Pennsylvania Legislature to providing additional safeguards and programs for the assistance and protection of low-income Pennsylvanians has been unwavering. The Public Utility Code mandates these programs and requires the Commission to oversee them. The Commission recognizes the importance of the mandate and wrote its regulations to provide clear direction in the development and implementation of the programs which are meant to act as a safety net to catch the most vulnerable customers. After years of Commission vigilance in the enforcement of protections and programs for the well-being of low-income families, it is simply inconsistent to find that the unfettered vibrancy of the competitive market supersedes the value of ensuring the success of the customer assistance programs that are vital to assist those families in meeting their energy bills.

The Commonwealth Court has provided guidance on a similar program from PECO in *Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, et al. v. Pa. Pub. Util. Comm'n*, 120 A.3d 1087 (Pa.Cmwlth. 2015), 2014 Pa. Commw. LEXIS 314 *appeal denied*, 2016 WL 1383864 (Pa. Apr. 5, 2016) (*CAUSE-PA)*, where Direct Energy, an EGS, argued that the Commission's lack of authority to regulate EGS rates prohibited the Commission from regulation of EGS rates for CAP customers as well. The Court said:

> There can be no question, at this juncture, that the overarching goal of the Choice Act is competition through deregulation of the energy supply industry, leading to reduced electricity costs for consumers. But the scheme does not demand absolute and unbridled competition.

CAUSE-PA at 1101.

The Court described a situation where PPL Electric required certain industrial customers to accept interruptible service or to pay an additional charge if the customer continued to use power during a time when the Company chose to interrupt service in emergencies. The industrial users who had contracted with EGSs objected to the application of the policy, claiming that it had deprived those customers of the benefit of their contracts with an EGS under the

Choice Act. The Court affirmed the Commission's finding that interruptible service was needed to preserve system reliability:

> Even though de-regulation would not be fostered if a customer was, in effect, penalized by buying firm power on the open market, the PUC found that allowing PP&L, as the distributor, to have control over the interruptibility of its supply purchased from an EGS was needed because, "to allow interruptible service customer to avoid an obligation to curtail load during emergencies would, at this juncture of Electric Competition, defy our efforts to promote system reliability consideration." In effect, what the PUC found was that all power on the grid . . ., no matter where bought and no matter firm or not, was always subject to interruption for system reliability.
>
> * * *
>
> Like the PUC, however, we recognized a perceived inconsistency between the Choice Act and the disposition of the matter. Nonetheless, we held that under certain circumstances, unbridled competition may have to give way to other important concerns: While it cannot, under the mantra of system reliability, re-regulate the industry by favoring the distribution company, thereby thwarting the goals of the [Choice] Act, the PUC can, *as long it provides substantial reasons why there is no reasonable alternative so competition needs to bend to ensure overall system reliability*, order customers by whatever scheme to curtail usage during abnormal peaks.
> *PP&L Industrial Customer Alliance v. Pennsylvania Public Utility Commission*, 780 A.2d 773 (Pa.Cmwlth. 2001) (enbanc) at 781-782.

CAUSE-PA at 1102.

The *CAUSE-PA* Court points out that the SOP program itself is another exercise of PUC authority to "bend" competition under the Choice Act:

> In essence, they [PUC and Direct Energy] argue that the rate cap that is part of the Standard Offer Program is lawful because the Standard Offer Program is a market enhancement program – *i.e.*, it encourages customers that may already choose their EGS in the competitive marketplace to do so. By contrast, a price ceiling in the PECO CAP Shopping Plan is a barrier to shopping in a program where shopping is not currently permitted. We find this line of reasoning unpersuasive. The distinctions between the two

> programs that the PUC and Direct Energy emphasize are not material to the legal question of whether the PUC has statutory authority to implement, or approve, an EGS price ceiling under any circumstance. If, as the PUC and Direct Energy argue, the PUC lacks the authority to place a cap on the rate an EGS may charge a retail customer, it seems to us that such lack of authority would extend to the CAP as well as to the Standard Offer Program.
>
> Following the reasoning of both the PUC and this Court, as set forth in *PP&L Industrial*, we conclude that the 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 could accept and remain eligible for CAP benefits. The obligation to provide low-income programs falls on the public utility under the Choice Act, not on the EGSs. Moreover, the Choice Act expressly requires the PUC to administer these programs in a manner that is cost-effective for both the CAP participants and the non-CAP participants, who share the financial consequences of the CAP participants' 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 electric supply from EGSs and emphasizes the need to continue and maintain programs that assist low-income customers to afford electric 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 of 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.*, an EGS rate ceiling, a prohibition against early termination/cancellation fees, etc.**

CAUSE-PA at 1103-1104.

The Court went even further by directing that the Commission approve the PECO CAP Shopping Plan that would prohibit CAP participants from entering into a contract with an EGS that includes early cancellation/termination fees and by ruling that the Commission's

decision to reject the prohibition because of concern for the impact it would have on competition and choice was not supported by substantial evidence.

Accordingly, the issue of whether or not the Commission has the authority to approve restrictions on CAP shopping has been settled. The discussion moves to whether there exist substantial reasons why there is no reasonable alternative, and the nature of the restrictions.

I note here that RESA acknowledges the *CAUSE-PA* case but emphasizes the wording, "*as long it provides substantial reasons why there is no reasonable alternative so competition needs to bend.*" From this, RESA argues that the Joining Parties have a duty to bear the burden of proving that no reasonable alternative to its Joint Litigation Position exists. RESA MB at 17. RESA continues by arguing that the as-filed PPL Electric proposal does present a reasonable alternative and therefor, the Joint Litigation Position must be rejected. RESA MB at 17-18.

PPL Electric points out that the *CAUSE-PA* Court affirmed the Commission's rejection of PECO's proposed price ceiling because insufficient evidence of necessity was presented, and not because of failure to demonstrate that no reasonable alternative exists. PPL Electric RB at 6.

In fact, all of the Joining Parties addressed the issue first in their own testimony and after several rounds of testimony, came to the Joint Litigation Position. There are additional plans on the record here. Although the sponsoring parties withdrew their own original positions to adopt the Joint Litigation Position, those original plans were all considered and determined by the four parties to be inferior to the Joint Litigation Position. As they have not been briefed, they are not under consideration here, but the evidence supports a finding that they were considered and rejected in favor of the Joint Litigation Position.

It is not feasible to require that the Joint Parties present an exhaustive list of all possible alternatives and discuss each one critically. They have shown that they weighed alternatives and are actively promoting the Joint Litigation Position as the best plan. It is legally

sufficient to show that alternatives have been evaluated and rejected in favor of the plan ultimately promoted, and to counter the alternatives raised by the party or parties opposing the choice. RESA did not present a reasonable alternative to be considered until briefing, and even then, relied upon the record and original plan proposed by the Company. Therefore, only two plans are presented here.

2. The facts presented in this proceeding justify the imposition of restrictions on CAP shopping

The burden of proving that there are substantial reasons why there is no reasonable alternative to the restrictions that the party proponents support, and the nature of the restrictions, is on those promoting the restrictions. 66 Pa.C.S. § 332(a). This must be shown by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n,* 578 A.2d 600 (Pa.Cmwlth. 1990), *alloc, denied,* 602 A.2d 863 (Pa. 1992). A preponderance of evidence is that which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies,* 364 Pa. 45, 70 A.2d 854, 1950 Pa. LEXIS 316 (1950).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa.Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n,* 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa.C.S. § 704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n,* 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. Of Review,* 166 A.2d 96 (Pa.Super. 1960); *Murphy v. Dep't. of Public Welfare, White Haven Center,* 480 A.2d 382 (Pa.Cmwlth. 1984). *See* CAUSE-PA MB at 8;

OnTrack is the Company's customer assistance program (CAP) which provides reduced payment amounts based on household income, and offers arrearage forgiveness as well as referrals to other assistance programs (like weatherization programs). OnTrack is available to residential customers who are payment-troubled and have a household income at or below 150% of the federal poverty level. Customers are allotted CAP credits, which currently are set at a maximum of $185 per month for electric heat customers or $3,328 over 18 months, or $73 per

month for non-electric heat customers, or $1,319 over 18 months. The maximum amount permitted is set in the Company's base rate cases and universal service proceedings. PPL Electric Stmt. 3 at 3-4.

Evidence presented by CAUSE-PA is that low-income customers in PPL Electric's service territory had energy burdens of 15% for non-heating electric and 23% for heating electric service and a termination rate that is nearly 5 times higher compared to residential customers, and are less likely to have service reinstated. CAUSE-PA MB at 14, quoting PPL Electric Utilities Universal Service Programs, Final Evaluation report at 72, October 2014.

Presently, there is no restriction on OnTrack customers' ability to shop, and as of October 2015, approximately 52% of OnTrack customers were shopping. PPL Electric Stmt. 3 at 6.

> Concerns regarding the impact of PPL's CAP shopping program have been raised in both PPL's 2013 Universal Service and Energy Conservation Program ("USECP") proceeding, [6] and PPL's most recent base rate case.[7] In the USECP proceeding, PPL indicated that "the primary impact of high supplier prices for OnTrack customers is to increase the 'burn rate' of CAP credits." In addition, the OCA voiced its concerns and recommended that an on-the-record proceeding be conducted for PPL's CAP shopping program in order to "determine the level of shopping that CAP customers are engaging in, the impact of such shopping decisions on the CAP customer, and the impact of such shopping on the costs of the CAP credit borne by other customers. Finally, CAUSE-PA recommended that the Commission refrain from approving PPL's CAP shopping plan until after the Commonwealth Court ruled upon whether the Commission has the authority to place price restrictions on EGSs. Ultimately, the Commission determined that the CAP shopping issues were beyond the purview of PPL's USECP proceeding, and it directed PPL to address such concerns in a Default Service Program and Procurement Plan Petition.

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6 Docket No. M-2013-2367021 (footnote 45 in the I&E MB).

7 *Pa. Pub. Util. Comm'n, et al. v. PPL Electric Utilities Corporation*, Docket No. R-1025-2469275 (Opinion and Order entered November 19, 2015). (footnote 46 in the I&E MB)

I&E MB at 16 (some footnotes omitted)

In response to concern that a substantial number of OnTrack customers are shopping with EGSs who are charging rates higher than the Price to Compare (PTC), the Commission directed the Company to address CAP shopping in its 2014-2016 Universal Service and Energy Conservation Plan, Docket No. M-2013-2367021. Additionally, in the approved settlement of the Company's 2015 base rate case, the Company was directed to obtain data regarding CAP shopping and to hold a collaborative with the interested stakeholders with the idea of presenting recommendations in the present DSP case. This was done, and data was presented in this case. Two collaboratives were held but did not result in an agreed-upon solution.

Shopping data is as follows:

Calendar year	**shopping OnTrack customers**	**percentage paying rates higher than the PTC**
2013	46%	67%
2014	51%	50%
2015	52%	46%

PPL Electric Stmt. 3 at 7-8.

These numbers are fairly representative of all residential customers, as shopping in the PPL Electric service territory is approximately 49%. This is indicative of a robust competitive market and there were 35 EGSs offering service to PPL Electric residential customers as of December 2015. PPL Electric Stmt. 2 at 9. However, CAP shopping can have repercussions for low-income customers, as shown by the following facts:

- From January 1, 2012 through October 30, 2015, an average of 9,626 OnTrack shopping customers paid an average monthly charge of $132, and the charge would have been $101 using the PTC. FOF 89.

- The total average monthly difference for all OnTrack shopping customers above the PTC was $298,406, or $3,580,872 annually. FOF 90.

- The total average monthly difference for all OnTrack shopping customers paying at or below the PTC was $69,750, or a savings of $837,000 annually. FOF 91.

- The net monthly energy charges for all OnTrack shopping customers was $228,656 more than the PTC, for an annual cost of $2,743,872. FOF 92.

- From January 2012 through October 2015, an average of 2.0% of customers (both shopping and non-shopping) were removed from the OnTrack program for exceeding their CAP credits. FOF 93.

PPL Electric Stmt. 3 at 9-12.

- Between January 2012 and February 2015, 34,780 customers were removed from CAP because they had reached their CAP credit maximum and of this number, 27,600 or 79% were shopping with an EGS during some portion of the prior 18 months.

CAUSE-PA MB at 20, citing CAUSE-PA Stmt. 1, Attachment B.

- Paying more than the PTC for any period of time means that a CAP household is receiving no additional CAP benefit and non-CAP ratepayers who finance CAP are paying additional costs.

- The EGS is paid through the purchase of receivables program without facing any consequences associated with the loss of CAP subsidy such as increased uncollectible expenses and termination.

CAUSE-PA MB at 20.

- Costs associated with the payment of higher EGS rates are not related to the cost of providing an affordable CAP

- PPL Electric has a confirmed 171,171 low-income customer count, and less than 50,000 are enrolled in CAP, meaning that low-income customers are being charged for increased CAP costs.

- CAP customers who pay more than the PTC may be asked to pay a higher amount when the customer recertifies for CAP.

CAUSE-PA MB at 21.

CAUSE-PA sums up the situation by pointing out that the affected customers were eligible for the CAP because of their inability to consistently make payments at non-discounted rates:

> Providing a discount paid for by other ratepayers, but permitting CAP customers to select an EGS who charges rates higher than that PTC erodes the efficacy of the discount because it needlessly cannibalizes the maximum CAP credit provided to the households. The consequence is severe because removing CAP bill discount assistance before the end through the 18-month CAP period prior to recertification leads to increased risk of termination, unpaid bills, and untold hardship.

CAUSE-PA MB at 20.

Accordingly, there is a significant amount of money being paid to EGSs while residential class ratepayers are subsidizing the CAP program. CAUSE-PA puts this into perspective:

> None of the $2.74 million annual additional CAP costs are used to promote universal service goals under the Choice Act to assist low-income customers better meet their home energy needs. In fact, in addition to these increased costs – CAP customers are experiencing additional economic hardship when they expend their CAP credits before the end of the program year. Since program costs are intended to assist low-income customers to afford and maintain essential utility service, they should not be increased by more than $2.74 million more per year simply to pay an EGS charging rates higher than the default price. This is especially so when the higher EGS payments result in tangible harm to low-income CAP customers and other residential rate payers, including the more than 120,000 confirmed low income customers who are not enrolled in CAP. **It is simply unreasonable to approve discounts and reduced rates for low income customer classes, paid for by other residential customers, and at the same time approve a DSP plan that allows CAP customers to be charged higher rates that are proven to result in unaffordable or higher bills**. Doing so contributes to higher collection costs for all

> customers, and has adverse health, safety, and financial impacts on individual low income households.

CAUSE-PA MB at 18 (emphasis added).

With the data and expert interpretation of it in hand, it is obvious that the class of OnTrack shoppers who pay more than the PTC exceed their CAP credits at a faster pace than they would have if they had not shopped. At the same time, it is just as clear that a nearly equal number of OnTrack shoppers are paying charges which are less than or equal to the PTC and may be saving a significant amount of money because of their choice of EGS.

The data is compelling, and it is sufficient to establish a prima facie case in favor of shopping restrictions for CAP customers and to shift the burden of persuasion to RESA.

The "burden of proof" is composed of two distinct burdens: the burden of production and the burden of persuasion. *Hurley v. Hurley*, 754 A.2d 1283 (Pa.Super. 2000).

The burden of production, also called the burden of producing evidence or the burden of coming forward with evidence, determines which party must come forward with evidence to support a particular proposition. This burden may shift between the parties during the course of a trial. If the party (initially, this will usually be the complainant, applicant, or petitioner, as the case may be) with the burden of production fails to introduce sufficient evidence the opposing party is entitled to receive a favorable ruling. That is, the opposing party would be entitled to a compulsory nonsuit, a directed verdict, or a judgment notwithstanding the verdict. Once the party with the initial burden of production introduces sufficient evidence to make out a prima facie case, the burden of production shifts to the opposing party. If the opposing party introduces evidence sufficient to balance the evidence introduced by the party having the initial burden of production, the burden then shifts back to the party who had the initial burden to introduce more evidence favorable to his position. The burden of production goes to the legal sufficiency of a party's case.

Having passed the test of legal sufficiency, the party with the burden of proof must then bear the burden of persuasion to be entitled to a verdict in his favor. "[T]he burden of persuasion never leaves the party on whom it is originally cast, but the burden of production may

shift during the course of the proceedings." *Riedel v. County of Allegheny*, 591, 633 A.2d 1325, 1328 n. 11 (Pa.Cmwlth. 1993). The burden of persuasion, usually placed on the complainant, applicant, or petitioner[8], determines which party must produce sufficient evidence to meet the applicable standard of proof. *Hurley v. Hurley*, 754 A.2d 1283 (Pa.Super. 2000). It is entirely possible for a party to successfully bear the burden of production but not be entitled to a verdict in his favor because the party did not bear the burden of persuasion. Unlike the burden of production, the burden of persuasion includes determinations of credibility and acceptance or rejection of inferences. Even unrebutted evidence may be disbelieved. *Suber v. Pa. Comm'n on Crime and Delinquency*, 885 A.2d 678 (Pa.Cmwlth. 2005), app. denied, 586 Pa. 776, 895 A.2d 1264 (2006).

In order to bear the burden of proof and be entitled to a decision in its favor, RESA must bear both the burden of production and the burden of persuasion.

RESA criticizes the evidence as incomplete:

> This data does not take into account a specific contract term with an EGS to show whether the CAP customer paid a higher price for the entire term of their contract with EGSs or the CAP customer – when he or she first chose the EGS – obtained some benefit or incentive for switching (such as a lower price, a gift card, or energy audit). In fact, PPL testified that it "has no way of knowing or tracking such incentives." Thus, the point of time used for the comparison is most certainly not reflective of the conditions experienced by shopping CAP customers over their entire shopping experience.

RESA MB at 20 (footnote omitted).

While this is true, it is also not complete. RESA's pointing out that the CAP customers may have enjoyed some other benefit is not persuasive where the actual knowledge of these theoretical benefits is within the records of RESA's own members and not within the records of any other party, including the Company. Pointing out what might have happened is not sufficient to counter the weight of the real data presented by the Company, the veracity of which has not been challenged.

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[8] See, 66 Pa.C.S.A. §§ 332(a), 315.

In addition, the energy audit is not a benefit for CAP customers:

> 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.

OCA RB at 10-11.

RESA also protests that the Company's data is reflective of a point in time and not of the conditions experienced by shopping CAP customers over their entire shopping experience. RESA MB at 20. However,

> 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.

OCA RB at 10.

RESA has not carried its burden of persuasion.

An OnTrack customer who pays more than the PTC will use CAP credits at a faster rate and may lose the benefit of reduced rates earlier than necessary. This results in a higher bill and may imperil the customer's ability to pay the electric bill while increasing the risk of service termination. In addition, the collective result of many customers paying higher prices results in the Company's total approved CAP amount being reached, thereby maximizing the amount of subsidization that is ultimately paid by the residential rate class customers.

The Act acknowledges that the Commonwealth must continue the protections, policies and service that now assist customers who are low-income to afford electric service, and this Commission interprets this to include the provision of customer assistance programs. CAP programs are subsidized by the residential rate class customers, and those customers pay higher bills in order to make the CAP programs meaningful for low-income customers. Therefore, it should go without saying that those CAP programs must be administered in a financially responsible fashion and not used to pay higher prices than necessary to third-party EGSs who do not subsidize the CAP.

The Parties have submitted substantial evidence to support the imposition of restrictions on CAP participants who want to shop, and RESA has not successfully rebutted that evidence.

3. Ideally, restrictions should be statewide to level the playing field

The Joining Parties (PPL Electric, I&E, OCA and CAUSE-PA) adopted a Joint Litigation Position which is the Revised Shopping Proposal appearing in PPL Electric Statement 1-RJ, page 6, lines 21 through page 9, line 7. The position starts by stating that the Joining Parties agree that the Commission should promptly initiate a statewide collaborative open to all interested stakeholders and/or initiate a new rulemaking proceeding to address CAP shopping issues on a uniform, statewide basis, and assuring the Commission that PPL Electric agrees to full participation. Joint Litigation Position, ¶¶2-3.

PPL Electric voiced concerns that it should not be required to monitor and enforce the terms of contracts between EGSs and CAP customer. PPL Stmt. 1 at 46-47.

> Additionally, I&E opined that resolving this issue on a utility-by-utility basis would be time-consuming and could lead to inconsistent resolutions. For these reasons, I&E agreed that an ultimate resolution to CAP shopping issues should be made by the Commission on a statewide basis. Through its participation in the Joint Position, I&E again advances this recommendation as it will permit the Commission and other interested parties, including

> EGSs, an opportunity to consider CAP shopping concerns and to develop a uniform method of addressing those concerns.

I&E MB at 25.

RESA warns that the Joint Litigation Position will immediately eliminate the current ability of 41,074 CAP customers to freely shop because the terms are too onerous to justify participation by the EGSs. RESA has not submitted evidence to support this claim. CAUSE-PA points to its own testimony, which states that similar data in the FirstEnergy Companies' default service case shows that the problem is not specific to PPL Electric's service territory. CAUSE-PA RB at 13, citing CAUSE-PA Stmt. 1 at 27.

The facts of this case support a finding that some limitation on CAP shopping is justified, and it stands to reason that EGSs operating in multiple EDC service territories will be affected. A statewide initiative to determine the scope of the problem and the best uniform way to address it makes sense, and it is recommended here.

4. As an interim measure, the CAP-SOP program should be adopted in this proceeding with one modification

The Joint Litigation Position recommends the following measure be implemented pending the results of a statewide collaborative on CAP shopping:

> 4. The Joining Parties agree that, until a uniform, statewide solution to CAP shopping can be developed, PPL Electric shall implement a CAP Standard Offer Program ("CAP-SOP"), effective June 1, 2017, with the following features designed to help mitigate the impacts that CAP shopping can have on CAP credits, risk of early removal from the OnTrack program, and the CAP costs that are paid for by other Residential customers through the Universal Service Rider:
>
> (a) The CAP-SOP is the only vehicle that a CAP customer may use to shop and receive supply from an EGS.
>
> (b) Any CAP customer shopping request that does not get processed through the CAP-SOP will be denied.

(c) EGSs participating in the CAP-SOP must agree to serve customers at a 7% discount off the PTC at the time of enrollment. This price shall remain fixed for the 12-month CAP-SOP contract unless terminated earlier by the customer.

(d) CAP-SOP customers may terminate the CAP-SOP contract at any time and without any termination or cancellation fees or other penalties.

(e) A CAP customer who terminates a CAP-SOP contract or whose CAP-SOP contract reaches the end of its term can re-enroll in the CAP-SOP.

(f) At the conclusion of a 12-month CAP-SOP contract, the CAP customer will be returned to the CAP-SOP pool and be re-enrolled in a new CAP-SOP contract, unless the CAP customer requests to be returned to default service or is no longer a CAP customer.

(g) EGSs must enroll separate from the standard SOP to be a participating supplier in the CAP-SOP. EGSs would be free to voluntarily elect to participate in none, one or the other, or both the traditional SOP and the proposed CAP-SOP. Enrollment will be for a three-month period, and shall conform to the enrollment process for the standard SOP. EGS may opt in to participate in the CAP-SOP on a quarterly basis, and are free to leave the CAP-SOP on a quarterly basis.

5. For the purpose of transitioning CAP customers who are shopping as of the CAP-SOP June 1, 2017 effective date:

(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 and/or is terminated.

(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 script/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.

> 6. Within 90 days of the date of a final order in this proceeding, PPL Electric will hold a collaborative open to all interested parties to develop CAP-SOP specific scripts to be used by the Company's Customer Service Representatives and PPL Solutions.
>
> 7. 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.

RESA opposes this plan and promotes the original PPL Electric proposal to *encourage* OnTrack customers who inquire about shopping to do so through the SOP program. The SOP guarantees a 7% discount for 12 months off the PTC effective at the time of enrollment and prevents the assessment of early contract cancellation or termination fees, which are not permitted under the SOP. This, RESA avers, is substantial evidence of a reasonable alternative to the restrictions on shopping proposed by the Joint Litigation Position and it addresses a number of the CAUSE-PA concerns:

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

RESA MB at 22 (footnotes omitted).

RESA warns that the Joint Litigation Position will immediately eliminate the current ability of 41,074 CAP customers to freely shop and provides the following reasons:

> 1. Approximately half of the shopping customers are paying prices at or below the PTC;
>
> 2. CAP customers who shop can avail themselves of the other benefits of shopping, such as certainly and other services;
>
> 3. Restricting CAP shopping will require EDCs and EGSs to develop new protocols to accommodate the new rules;
>
> 4. The proposals would be temporary as the statewide initiative would supersede the Joint Litigation Position plan;
>
> 5. Customer confusion would ensue as different rules for CAP shopping would be in effect from one EDC's territory to the other; and
>
> 6. The proposal will effectively eliminate all shopping opportunities for CAP customers.

RESA MB at 25-26.

RESA points out:

> The SOP was intended to incent customer [sic] who had never shopped before to enter the competitive market with an initial guarantee of savings. By removing the opportunity for EGSs to market other competitive products to CAP customers, the result will be to require EGSs to guarantee the CAP Shopping customers a steady supply of below market electricity with no incentive (because they cannot) for the CAP customer to elect a non-SOP offer from the competitive market. Requiring EGSs to serve customers at or below market price in this manner will likely discourage suppliers from participating in the CAP SOP.

RESA MB at 27.

RESA continues by pointing out that the $28 referral fee paid by EGSs to the EDC per customer further exacerbates its issue as it will also have to pay it for the customer who is already signed up with the EGS and wants to re-enroll. The result, RESA predicts, is the

withdrawal of all EGSs from the CAP customer market, thus denying CAP customers even the right to participate in the present SOP. RESA MB at 28-29.

Therefore, RESA's recommendation is to impose no restrictions on CAP shopping and to encourage CAP customers to use the SOP if they do shop. This "cross your fingers and hope they will listen" approach is simply insufficient. It fails to protect the CAP shoppers from the negative effects of paying more than the PTC and reduces the ability of the individual customers to stay on CAP as long as possible. It reduces the overall ability of the CAP program to offer participation to as many customers as possible within the permitted expenditure as well as maximizes the burden on other residential ratepayers who fund CAP, some of whom are themselves low-income customers. And, "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." OCA RB at 13.

However, RESA does raise legitimate concerns which should not go unaddressed. For example, while an introductory rate of 7% below the PTC at the time of enrollment with an EGS is an incentive to enter the competitive market that EGSs see as a legitimate introduction worth the cost and the $28 enrollment fee, keeping the rate year after year while paying additional enrollment fees each year is a burden on the EGSs that they may not see as worthwhile. The requirement that CAP shoppers only shop using the SOP may have the unintended effect of preventing those low-income shoppers who are market-savvy from negotiating even more favorable rates.

At the same time, the importance of the protections provided to all CAP customers clearly outweigh the importance of the EGSs' ability to make a profit serving those customers, at the expense of the other ratepayers. While noting that RESA has not advocated an legitimate middle ground which recognizes that the continuation of electric service to low-income Pennsylvanians as vital to their health and welfare, surely it can see that a customer who cannot pay the electric bill and has service terminated will not be a paying customer to the EGS

anymore. The overall interest, both the human interest and the economic interest, is in favor of assisting the low-income customer to retain electric service in the most reasonable way possible.

As the decision-maker who had no part in the negotiations among the parties, I was not privy to the suggestions that did not make the cut here, or to the reasons why. That is why I am loathe to inject my own ideas without the knowledge of what is involved in implementing ideas which may seem like obvious compromises. In particular, I am sensitive to those ideas which require PPL Electric to monitor EGSs, and look instead to those which will result in PPL Electric monitoring its own CAP customers. *See* CAUSE-PA MB at 31. This, along with all other ideas and concerns, will be appropriate for discussion in the statewide initiative that is recommended here. I am also cognizant of the fact that the Commission may reject the statewide initiative and decide to address the issue of CAP shopping as one that is EDC-specific, and therefore, I will order the CAP Shopping proposal to take effect with the rest of the DSP IV.

However, to be fair, there is made here a single modification to the approved Joint Litigation Proposal, and that is to allow the EGSs who are separately participating in the CAP-SOP to have flexibility to charge rates up to and equal to the PTC to CAP customers after the first 12 months of the 7% discount if their written contracts so provide. This will serve two purposes.

First, it is an equalizing measure to provide incentive to EGSs to participate in the CAP-SOP, and it eliminates the need to re-enroll the low-income customers who are happy with their service provider, as well as the $28 enrollment fee for continuing customers. The PTC which will be used for comparison is that which is in effect at the end of each 12-month period that the customer remains with the EGS. If the customer leaves that EGS but wishes to shop, the customer must use CAP-SOP to ensure that the new EGS has agreed to the CAP-SOP terms.

Second, it recognizes that the Choice Act was not meant to prevent EGSs from charging rates that are equal to the PTC to any class of customer, including CAP customers. While the SOP is acceptable as a program which introduces customers to shopping, requiring

that the participating EGSs continue to offer a 7% discount to CAP customers is unnecessary so long as the rates charged, after the introductory period of 12 months has ended, do not exceed the PTC.[9] This modification should mitigate RESA's dire prediction that the CAP-SOP will eliminate competition for CAP customers.

The terms of the modified program, adopted as an interim program pending the outcome of the statewide initiative, is as follows (changes from the Joint Litigation Position underlined as additions, stricken as deletions and the "reaffirmation date" being the day 12 months after the date that EGS service procured through the CAP-SOP began):

> a) Effective June 1, 2017, the CAP-SOP is the only vehicle that a CAP customer may use to shop and receive supply from an EGS.
>
> (b) Any CAP customer shopping request that does not get processed through the CAP-SOP will be denied.
>
> (c) EGSs participating in the CAP-SOP must agree to serve customers at a 7% discount off the PTC at the time of enrollment. This price shall remain fixed for the 12-month CAP-SOP contract unless terminated earlier by the customer.
>
> (d) CAP customers may terminate the CAP-SOP contract at any time and without any termination or cancellation fees or other penalties.
>
> (e) A CAP customer who terminates a CAP-SOP contract or whose CAP-SOP contract reaches the end of its term can re-enroll in the CAP-SOP.
>
> (f) At the conclusion of a 12-month CAP-SOP contract, the CAP customer may: (i) ~~will~~ be returned to the CAP-SOP pool and be re-enrolled in a new CAP-SOP contract, (ii) ~~unless the CAP customer requests to~~ be returned to default service, (iii) remain with the EGS which has agreed to the EGS participation requirement that it will not raise rates higher than the PTC was on the reaffirmation date. ~~or is no longer a CAP customer~~.

[9] If the Commission were to enforce a 7% discounted rate after the SOP 12-month period ends, the next step would be to require CAP customers to shop in order to provide the most financially responsible circumstances. There is no statutory support for requiring shopping.

(g) EGSs must enroll separate from the standard SOP to be a participating supplier in the CAP-SOP. EGSs would be free to voluntarily elect to participate in none, one or the other, or both the traditional SOP and the proposed CAP-SOP. Enrollment will be for a three-month period, and shall conform to the enrollment process for the standard SOP. EGS may opt in to participate in the CAP-SOP on a quarterly basis, and are free to leave the CAP-SOP on a quarterly basis.

PPL Electric Stmt. 1-RJ; PPL Electric Stmt. in Support at 19-20.

Transitioning CAP customers who are shopping as of the effective date of June 1, 2017 would be handled as follows:

(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 and/or is terminated.

(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.

The Joint Litigation Proposal is approved as modified. Please note that while this Initial Decision can encourage Commission action in the form of a state-wide initiative, it cannot direct it. Accordingly, there is no corresponding ordering paragraph for this initiative.

D. TIME OF USE PROGRAM

The present TOU program was approved as a pilot program and became effective December 10, 2014. All but one of the parties to the case before the Commission, the OCA, OSBA, and CAUSE-PA, settled the case involving PPL Electric's time-of-use program. The one remaining party, the Dauphin County Industrial Development Authority (DCIDA) appealed the

Commission's approval of the settlement to the Commonwealth Court. The DCIDA has a solar farm which it uses to generate power for use in its emergency management systems and sells the excess back to PPL Electric. In a decision issued on September 9, 2015, the Court explained the history as follows:

> The Commission approved PPL's initial Time-Of-Use program in 2010. In 2011, at PPL's request, the Commission froze the Time-of-Use rates, meaning that no customer could switch from a fixed rate to a Time-of-Use rate. The Commission invited PPL to revise its Time-of-Use program. On May 1, 2012, PPL petitioned the Commission for approval of a Default Service Plan, which included, *inter alia*, a new Time-of-Use program. The Commission approved the majority of the Default Service Plan, but it rejected the proposed Time-of-Use program included therein. The Commission encouraged PPL to meet with interested stakeholders to discuss and resolve the development and implementation of a new Time-of-Use plan. On August 23, 2012, after discussions with interested parties, PPL petitioned the Commission for approval of a revised Time-of-Use program (pilot program).
>
> Under the pilot program, PPL will no longer provide its customer-generators the option of buying and selling electricity at the Time-of-Use rate. PPL's customer-generators must use a fixed rate for the purchase and sale of electricity. To obtain a time-of-Use rate, the customer-generator must choose electrical service from an Electric Generation Supplier and negotiate that rate structure. However, Electric Generation Suppliers are not required to offer Time-of-Use rates.
>
> * * *
>
> The Commission rejected the Development Authority's contention that PPL was impermissibly shifting its statutory duty to offer Time-of-Use rates to consumer-generators to an unrelated third party, *i.e.*, an unknown Electric Generation Supplier.

The Dauphin County Industrial Development Authority v. Pa. Pub. Util. Comm'n, No. 1814 C.D. 2014 (filed September 9, 2015) *(DCIDA)* at 7-8.

The Company's history with TOU programs is a tortured one. After submitting one program which resulted in a serious revenue shortfall and subsequent freezing of the rates, another which was found to provide insufficient incentive for reducing usage during off-peak times and having the last TOU program stricken by the Commonwealth Court because it shifted

the default service provider's duty to EGSs, the Company is, quite understandably, reluctant to propose another program without Commission guidance. In the present case, the original filing proposed to continue the TOU program approved in DSP III but the Company has withdrawn the proposal in light of the *DCIDA* decision. The Company and the other parties anticipate a Commission directive in the *DCIDA Remand,* which could supersede any plan set forth here. The parties reserve the right to participate in the litigation which should follow. Settlement ¶ 27-29. The Company states:

> At this time, the outcome of the TOU program is entirely unknown and will need to wait until the Commission has undertaken further proceedings on remand as directed by the Commonwealth Court. Indeed, it is entirely unknown whether the Commission will direct the company to implement the TOU contingency plan, implement a modified contingency plan, or to file an entirely new TOU proposal. (PPL Electric Statement 1-RJ, pp. 3-4).
>
> Based on these new developments entirely beyond the Company's control, the Signatory Parties agreed that the Company's proposal to continue the TOU program as approved in DSP III is withdrawn. (Partial Settlement ¶ 27) The Signatory Parties also agreed that the Company will comply with the Commission's direction/order in the TOU remand proceeding for purposes of the entire or remaining duration of the DSP IV Program period (depending on when a TOU program is approved). (Partial Settlement ¶ 29)

PPL Electric Stmt. in Support at 17.

The situation has become increasingly difficult. In *DCIDA*, the Court was not sympathetic to the Commission's argument that its mandate to ensure that rates are just and reasonable and that contracting TOU programs to EGSs satisfies the statutory requirement that the EDC offer a TOU program.

> Utility rates are a function of many factors, such as the costs associated with environmental compliance, the cost to build a power plant and the cost to provide a return to the utility's shareholders. The cost of purchasing electricity from a customer-generator that has invested in the production of green energy is only one of many factors that goes into a tariff. The policy decision expressed in the Alternative Energy Act to encourage the

> production of renewable energy sources is not conditioned on its producing the lowest possible tariff.
>
> In short, the Commission's tariff argument is a red herring. If green energy production increases rates, service customers may be encouraged to choose a Time-of-Use rate, which encourages conservation, another policy goal of the legislature. If the mandate that default service providers purchase excess electricity places excessive pressure on tariffs, then it is for the legislature to address that problem.

DCIDA at 1136-1137.

The Court found that the Company is required by law to offer a TOU program and remanded the case to the Commission for proceedings consistent with their decision.

It is understood by the Commission that EDCs do not generate their own electricity and must purchase it either on the spot market or through contracts with EGSs. That is the basic purpose of the Choice Act – customers may purchase electricity through the EDC or directly from an EGS. The EDC will handle distribution and billing for either approach, but the power always, always comes from another entity. There is no way that PPL Electric can offer a TOU plan without having the electricity used by TOU customers provided by other entities because *all* of the power it distributes comes from other entities.

That is why the statutory provision which requires a TOU program to be offered by the distribution company is problematic. Discounts for curbing usage during peak hours should be offered by the entity that provides the electricity, not by the distribution companies. Distribution costs may vary slightly because of the volume of the electricity being transmitted and distributed, but the variations are not significant enough to make up the costs of providing a meaningful discount during off-peak hours, as required by a TOU plan.

Relieving the pressure on the grid during peak demand hours does have value, but the greatest value is to the generators – which is why they are the obvious entities to provide discounted rates during off-peak hours.

The Commission and PPL Electric have tried to develop an appropriate TOU plan which both rewards peak hour conservation and does not create an unreasonable drain on the customer class that has to pay for the reduced rates to TOU customers when the plan is provided by the EDC.[10] During the course of three different proceedings, proposed TOU plans have been litigated, tried, and failed. What the Court calls "the Commission changing its interpretation of the statute" was, in fact, a series of programs which attempted to meet the requirements of the AEPS Act while not creating an unacceptable financial drain on the remainder of the ratepayers in each rate schedule. The Commission's original black-and-white print reading of the statute softened as experience showed the Company, the ALJ and the Commission that development and implementation of a TOU plan consistent with the clear wording of the statute was not workable. There is little left for the Company to try, and the standard has once again hardened to the clear wording of the statute. It is time to recognize that the solution might well be legislative.

Recognizing the frustration of the Company in trying to meet the statutory requirement but falling short, and the fact that *DCIDA* is on remand, the parties either agree with or do not oppose the provision that withdrew the TOU program from the DSP IV. I&E Stmt. in Support at 7; PPL Electric Stmt. in Support at 17.

However, *DCICA* is specific to DSP III, which expires on May 31, 2017, and unfortunately, at this time, the statute still requires that the EDC present a TOU program as part of its DSP plan[11]. The TOU plan under DSP III is on remand from the Commonwealth Court, but that plan expires when the present DSP IV takes effect. The DSP IV will take effect on June 1, 2017, and is *required* to include a TOU program. 66 Pa.C.S. § 2807(f)(5). Omitting the TOU program from a DSP case will not pass judicial muster. Accordingly, there is no choice but to direct PPL Electric to develop a proposed TOU plan and file it within three months of the final Commission order in this matter, with the understanding that the Commission may subsume this initiative into the remand proceedings from *DCIDA* in favor of a state-wide collaborative or directive regarding TOU plans in general.

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[10] The Act provides that the default service provider shall have the right to recover on a full and current basis all reasonable costs, using a reconcilable automatic adjustment clause, 66 Pa.C.S. § 2807(e)(3.9), thus enforcing the Commission's duty to make the rates reasonable.

[11] In fact, there is already insufficient time to fully litigate a new program and implement it before the expiration date of May 31, 2017.

The Settlement states that, should there be no approved TOU program in place when the DSP III expires on May 31, 2017, the Company will notify customers and suppliers. Settlement ¶ 30. It is doubtful that a new TOU program can be successfully litigated and approved by that date, and execution of this paragraph may be necessary.

Accordingly, the Partial Settlement's lack of a TOU plan is not approved, and the Company will be directed to develop and submit a TOU plan for approval.

E. CONCLUSION

Pursuant to Commission Regulations at 52 Pa. Code § 5.231, it is the Commission's policy to promote settlements. Settlements eliminate the time, effort and expense of litigating a matter to its ultimate conclusion, which may entail review of the Commission's decision by the appellate courts of Pennsylvania. Such savings benefit not only the individual parties, but also the Commission and all ratepayers of a utility, who otherwise may have to bear the financial burden such litigation necessarily entails. The Commission must, however, review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004); *Pa. PUC v. C. S. Water and Sewer Assoc.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. Philadelphia Electric Co.*, 60 Pa. P.U.C. 1 (1985).

All parties agree with or do not oppose the Partial Settlement. They agree that the Partial Settlement is in the public interest because:

- Uncertainties regarding further expenses associated with possible appeals from the Final Order of the Commission are avoided. PPLICA Stmt. in Support at 3.

- The Partial Settlement results in terms and provisions that present a just and reasonable resolution of PPL Electric's proposed DSP IV. PPLICA Stmt. in Support at 4.

- The Partial Settlement reflects compromises on all sides, presented without prejudice to any position any party may have advance in this proceeding or in future proceedings. PPLICA Stmt. in Support at 4.

- The Partial Settlement provides for a longer term for the DSP IV, which reduces costs associated with the litigation for all parties and for PPL Electric ratepayers. PPLICA Stmt. in Support at 4; I&E Stmt. in Support at 5-6; OCA Stmt. in Support at 9

- The Partial Settlement provides for a survey to better understand customer perceptions of the Standard Offer Program. OCA Stmt. in Support at 9

- The mid-term collaborative is in the public interest as it give parties an opportunity to discuss enhancements or successes of the DSP IV without the cost of litigation. I&E Stmt. in Support at 6; RESA Stmt. in Support at 3

- The Partial Settlement requires PPL Electric to provide notice to customers and their suppliers of any filings at FERC which will impact NITS charges. PPLICA Stmt. in Support at 4.

- The modifications and product portfolio and procurement schedule for the Residential Customer Class are in the public interest. I&E Stmt. in Support at 6.

- The Partial Settlement maintains the proper balance of interests of all parties. I&E Stmt. in Support at 10.

- The Partial Settlement amicably and expeditiously resolves a number of important and contentious issues which narrowed the issue reserved for litigation. RESA Stmt. in Support at 5.

For these reasons, and those included in the Discussion, above, the Partial Settlement is approved, with the exception of the resolution of the TOU program.

IV. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter. 66 Pa.C.S. §§ 701; 2806-2808.

2. Section 332(a) of the Code, 66 Pa.C.S. §332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. It is well-established that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible." *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa.Cmwlth. 1990).

3. The burden of proof is comprised of two distinct burdens: the burden of production and the burden of persuasion. The burden of production tells the adjudicator which party must come forward with evidence to support a particular proposition. See *In re Loudenslager's Estate*, 430 Pa. 33, 240 A.2d 477, 482 (1968). The burden of persuasion determines which party must produce sufficient evidence to convince a judge that a fact has been established, and it never leaves the party on whom it is originally cast. *Reidel v. County of Allegheny*, 633 A.2d 1325, 1329 n. 11 (Pa.Cmwlth. 1993).

4. The Company has the burden of proving that its proposed default service provider program is just and reasonable, and any party contesting it has the burden of persuading the Commission that the filing is not just and reasonable.

5. The requirements of a default service plan appear in Section 2807(e) of the Public Utility Code,[12] 66 Pa.C.S. § 2807(e). The requirements include that the default service provider follow a Commission-approved competitive procurement plan, that the competitive procurement plan include auctions, requests for proposal, and/or bilateral agreements, that the plan include a prudent mix of spot market purchases, short-term contracts, and long-term

[12] *Electricity Generation Customer Choice and Competition Act*, Act 138 of 1996, as amended by Act 129 of 2008, codified at 66 Pa.C.S. § 2801 *et seq.*

purchase contracts designed to ensure adequate and reliable service at the least cost to customers over time, and shall offer a time-of-use program for customers who have smart meter technology. 66 Pa.C.S. §§ 2707(e), 2708.

6. The Competition Act mandates that customers have direct access to a competitive retail generation market. 66 Pa.C.S. § 2801(3).

7. Also applicable are the Commission's default service regulations, 52 Pa.Code §§ 54.181-54.189, and policy statement, 52 Pa.Code §§ 69.1802-69.1816.

8. The Commission has directed that EDCs consider the incorporation of certain market enhancement programs into their DSPs in order to foster a more robust retail competitive market. *Investigation of Pennsylvania's Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans,* Docket No. I-2011-2237952 (Order entered December 16, 2011), and *Intermediate Work Plan* (Final Order entered March 2, 2012)(*IWP Order*).

9. The Petition was filed in compliance with the requirement that a default service provider shall file its service program with the Commission no later than 12 months prior to the conclusion of the currently effective program. 52 Pa.Code § 54.185(a).

10. The Settlement provides a default service plan which includes a prudent mix of auctions, RFPs, and/or bilateral agreements. 66 Pa.C.S. § 2807(e)(3.1), (3.2).

11. The Settlement provides a default service plan which is designed to provide adequate and reliable service to customers at the least cost over time. 66 Pa.C.S. § 2807(e)(3.4).

12. The Settlement does not provide a Time of Use default service option to customers with smart meters. 66 Pa.C.S. § 3807(f)(5).

13. The Settlement provides a competitive bid solicitation process monitored by an independent evaluator. 52 Pa.Code § 69.1807(8).

14. The Settlement provides a contingency plan to ensure the reliable provision of default service if a wholesale generation supplier fails to meet its contractual obligations. 52 Pa.Code § 54.185(e)(5).

15. The Settlement is consistent with the legal and technical requirements pertaining to the generation, sale and transmission of electricity of PJM. 52 Pa.Code § 54.185(e)(4).

16. The Settlement's Standard Offer Program is consistent with the requirements of the Commission.

17. The proposal that PPL Electric assume cost responsibility for NMB Charges on behalf of all load on its system and recover these costs from all distribution customers through a non-bypassable surcharge is inconsistent with the rules of PJM Interconnection, LLC.

18. The Commission has consistently rejected the proposal that an EDC assume cost responsibility for all NMB Charges. *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-2011-2273650, P-2011-2273668, P-2011-2273669, and P-2011-2273670, at 7-8 (Opinion and Order entered August 16, 2012).

19. The Joint Petition for Partial Settlement is in the public interest.

VI. ORDER

THEREFORE,

IT IS ORDERED,

1. That the Joint Petition for Partial Settlement is approved as modified.

2. That the 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, filed on January 29, 2016 at Docket No. P-2016-2526627, including the Default Service Supply Master Agreement, Request for Proposals Process and Rules, Program Product Procurement Schedule, and Tariff provisions for the Generation Supply Charge-1, the Generation Supply Charge-2 and the Transmission Service Charge, is approved as modified by the Joint Petition for Partial Settlement with the exception of the proposed disposition of the Time Of Use Program.

3. That PPL Electric Utilities Corporation's request for a waiver of the quarterly Price to Compare requirement and proposal to continue to offer semi-annual Price to Compare changes is approved.

4. That PPL Electric Utilities Corporation's request for a waiver from the requirement to issue a final Price to Compare 45 days prior to the effective date of the Price to Compare, and proposal to continue the issuance of the Price to Compare 30 days in advance of the effective date is approved.

5. That PPL Electric Utilities Corporation shall file a proposed Time of Use Program at this docket within ninety days of the date of the Commission's final order.

6. That the Customer Assistance Program Standard Offer Program proposed by PPL Electric Utilities Corporation, the Bureau of Investigation and Enforcement, the Office

of Consumer Advocate, and the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania is approved as modified:

a) Effective June 1, 2017, the CAP-SOP is the only vehicle that a CAP customer may use to shop and receive supply from an EGS.

(b) Any CAP customer shopping request that does not get processed through the CAP-SOP will be denied.

(c) EGSs participating in the CAP-SOP must agree to serve customers at a 7% discount off the PTC at the time of enrollment. This price shall remain fixed for the 12-month CAP-SOP contract unless terminated earlier by the customer.

(d) CAP customers may terminate the CAP-SOP contract at any time and without any termination or cancellation fees or other penalties.

(e) A CAP customer who terminates a CAP-SOP contract or whose CAP-SOP contract reaches the end of its term can re-enroll in the CAP-SOP.

(f) At the conclusion of a 12-month CAP-SOP contract, the CAP customer may: (i) be returned to the CAP-SOP pool and be re-enrolled in a new CAP-SOP contract, (ii) be returned to default service, or (iii) remain with the EGS which has agreed to the EGS participation requirement that it will not raise rates higher than the PTC was on the reaffirmation date.

(g) 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 and/or is terminated.

(h) 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.

(i) 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.

(j) EGSs must enroll separate from the standard SOP to be a participating supplier in the CAP-SOP. EGSs are free to voluntarily elect to participate in none, one or the other, or both the traditional SOP and the proposed CAP-SOP. Enrollment will be for a three-month period, and shall conform to the enrollment process for the standard SOP. EGS may opt in to participate in the CAP-SOP on a quarterly basis, and are free to leave the CAP-SOP on a quarterly basis.

Dated: August 10, 2016

/s/

Susan D. Colwell
Administrative Law Judge

APPENDIX A

ACRONYMS

AEC	alternative energy credit
AEPS	Alternative Energy Portfolio Standards Act
C&I	commercial and industrial
CAP	Customer Assistance Program
CAUSE-PA	Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania
CBO	Community Based Organizations
CER	Competitive Enhancement Rider
DCIDA	Dauphin County Industrial Development Authority
DSP	Default Service Provider
EDC	electric distribution company
EE&C	Energy Efficiency & Conservation Plan
EGS	electric generation supplier
ExGen	Exelon Generation Company, LLC
FERC	Federal Energy Regulatory Commission
GATS	PPL Electric's Generation Attribute Tracking System for AECs
GSC	Generation Supply Charge
I&E	The Commission's Bureau of Investigation and Enforcement
LIURP	Low Income Usage Reduction Program
LSE	Load serving entity
MB	main brief
NAES	Noble Americas Energy Solutions LLC
NMB	Non-Market Based Transmission service charges
OCA	Office of Consumer Advocate
OSBA	Office of Small Business Advocate
OnTrack	PPL Electric's customer assistance program
NERA	NERA Economic Consulting (administrator of the procurement process)
POR	Purchase of receivables

PPLICA	PP&L Industrial Customer Alliance
PTC	Price to Compare
RB	reply or response brief
RESA	Retail Energy Supply Association
RFP	request for proposal
RTO	regional transmission organization
SEF	Sustainable Energy Fund
SMA	Supply Master Agreement
SOP	Standard Offer Program
TOU	Time Of Use
TSC	Transmission Service Charge
USP/USECP	Universal Service and Energy Conservation Plan