PULP
PENNSYLVANIA
UTILITY LAW PROJECT

September 15, 2016

VIA E-FILING
Secretary Rosemary Chiavetta
PA Public Utility Commission
400 North Street
Harrisburg, Pennsylvania 17120

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

Dear Secretary Chiavetta,

Please find the enclosed **Reply Exceptions of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)**, filed today in the above captioned docket.

Copies are being served pursuant to the attached Certificate of Service.

Respectfully,

Elizabeth R. Marx
Counsel for CAUSE-PA

Enclosures

CC: Office of Special Assistants – ra-OSA@pa.gov

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

I hereby certify that on this day, September 15, 2016, I have served copies of **Reply Exceptions of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)** via email and first-class mail upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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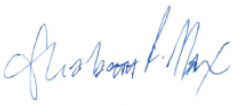

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Dated: September 15, 2016

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

REPLY EXCEPTIONS

OF THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY IN PENNSYLVANIA ("CAUSE-PA")

PENNSYLVANIA UTILITY LAW PROJECT

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September 15, 2016

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I. INTRODUCTION AND SUMMARY OF REPLY EXCEPTIONS

Before the Pennsylvania Public Utility Commission ("Commission") is the Petition of PPL Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 through May 31, 2021("Petition").

After extensive testimony and record evidence was gathered and briefed by the parties in this proceeding, an Initial Decision ("ID") was issued by Administrative Law Judge Susan D. Colwell on August 10, 2016. In relevant part, the ID approved the Customer Assistance Program Standard Offer Program ("CAP-SOP") jointly proposed by PPL Electric Utilities Corporation ("PPL"), the Bureau of Investigation and Enforcement ("I&E"), the Office of Consumer Advocate ("OCA"), and the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania ("CAUSE-PA") (collectively, "Joining Parties"), with modification. As the ALJ recognized, the CAP-SOP proposed by the Joining Parties would continue to allow customers enrolled in the Customer Assistance Program to shop for competitive supply in PPL's service territory, but would set reasonable limitations on the offers a CAP customer could accept while remaining enrolled in the program. The ID made one modification to the CAP-SOP proposal, which would allow customers to remain with an EGS after the 12 month SOP contract, if that EGS has agreed that it will not raise rates higher than the PPL's Price to Compare ("PTC") on the reaffirmation date.[1] The ID also upheld the Joint Petition for Partial Settlement,[2] which addressed other issues in the DSP proceeding, with the modification that PPL would be required to file a proposed Time of Use Program within ninety days of the date of the Commission's final order.

[1] ID at 62-63.
[2] CAUSE-PA, although not a party to the Partial Settlement, filed a letter indicating that it did not object.

The Retail Energy Supply Association (RESA) filed exceptions to the RD, essentially restating, in different language, the same arguments it made in briefing that were rejected by the ALJ. Rather than alleging actual error, RESA instead relies on misleading rhetoric, mistaken statements of the facts, and mischaracterizations of the law to oppose any and all rule restrictions proposed in this proceeding regarding PPL CAP shopping customers who wish to remain enrolled in CAP. The PPL Industrial Customer Alliance (PPLICA) and PPL also filed exceptions to the ID. PPLICA's exception requested a clarification regarding Non-Market Based Transmission Service Charges. PPL's exceptions centered on the ALJ's requirement that it file a Time of Use plan, and the ALJ's modification to the proposed CAP-SOP.[3] For the purposes of these Reply Exceptions, CAUSE-PA responds only to the Exceptions raised by RESA.

In sum, CAUSE-PA asserts here that the Commission should reject RESA's Exceptions, and adopt the proposal of the Joining Parties and approved in the ID to implement a standard offer program designed specifically for CAP customers (CAP-SOP). As the ALJ concluded in her ID, the CAP-SOP is a reasonable proposal to ensure that CAP costs are reasonably controlled and that low-income customers and residential ratepayers are protected from the certain and substantial harm that is currently occurring and will continue to occur for so long as the status quo remains intact.

CAUSE-PA's positions with regard to each of RESA's Exceptions are as follows:

- **Reply to RESA Exception 1:** The ALJ correctly concluded that limitations on CAP shopping are appropriate.

[3] Briefly summarized, PPL's objects to the modifications because the CAP-SOP is the result of multiple rounds of testimony, discovery, and consideration and rejection of alternate available options; no party had proposed the recommended modification during the proceeding and therefore had no opportunity to evaluate or submit testimony regarding it; the settlement already addresses the ID's concern regarding the $28 referral fee; RESA's predictions regarding the effect of the CAP-SOP on CAP shopping are misplaced and not supported by the record; and the modification would be difficult, time consuming, and costly to implement.

- **Reply to RESA Exception 2:** The ALJ properly concluded that the CAP rule changes proposed by the Joining Parties are necessary to prevent significant harm in the interim, until a statewide collaborative is ordered and conducted and a solution emerges.

II. REPLY TO EXCEPTIONS

A. Reply to RESA Exception 1: The ALJ correctly concluded that limitations on CAP shopping are appropriate.

In arguing against the proposed CAP-SOP, RESA improperly frames the issue before the Commission as whether to approve restrictions on what it claims is the "unfettered" statutory right of PPL electric customers to shop for competitive electric service, and asserts that proponents of such a restriction must prove the absence of *any* alternatives to the one proposed – including alternatives not presented for the record. As explained at length in Reply Briefs in response to the very same arguments raised by RESA in its Main Brief – RESA's framing of the issue distorts the standard the Commission must apply in this case.[4] The question before the Commission, as recognized by the ALJ, is more narrow and defined, and asks whether reasonable shopping restrictions are appropriate as part of PPL's CAP program to ensure its CAP program is adequately-funded, cost-effective, and appropriately designed to assist low-income customers in affording electric service.[5]

While RESA is correct when it says that the Choice Act "bestowed upon all customers the right to freely shop," it did not do so without limitations. As the Commonwealth Court clearly concluded, Choice Act also bestows the right to access Universal Service Programs, and

[4] See CAUSE-PA Reply Br. at 2-5, 7-8; PPL Reply Br. at 5-9; I&E Reply Br. at 2; 5-7.
[5] Coalition for Affordable Util. Servs. & Energy Efficiency in PA (CAUSE-PA) et al. v. Pa. PUC, 120 A.3d 1087, 1103-04 (Pa. Commw. Ct. 2015).

the obligation of the utility and the Commission to ensure that Universal Service programs are available, adequately funded, and appropriately designed to produce bill affordability for low income consumers. As a regulated public utility serving more than 100,000 customers, PPL is required to offer an integrated package of universal service programs designed to help low-income, payment troubled ratepayers maintain and afford essential utility services.[6] These programs are statutorily required by the Choice Act[7] and by the Commission's regulations.[8] The universal service provisions of the Choice Act, among other things, tie the affordability of electric service to a customer's ability to pay for that service. The Choice Act defines "universal service and energy conservation" as the policies, practices and services that help low income customers maintain utility service.[9] The term includes customer assistance programs, usage reduction programs, service termination protections, and consumer education.

Contrary to RESA's assertions, CAP customer shopping determinations impact both CAP and non-CAP customers, and are thus distinctly different from the shopping determinations of other customers. Therefore, the need for and the appropriateness of restrictions pursuant to the Choice Act must be evaluated and considered in the context of the statutory, regulatory, and legal requirements and goals for Univeral Services and, in particular, CAP.

1. *The ALJ properly interpreted the Electric Choice Competition Act and applicable case law to determine that restrictions on CAP Shopping are permissible*

The ALJ correctly identifies the legal standards applicable in this case. She begins by addressing the Choice Act's requirement that universal service policies, activities and services,

[6] See 66 Pa. C.S. §§ 2802(10), (17); 2804(9); 52 Pa. Code § 54.71 et seq.
[7] See 66 Pa. C.S. §§ 2802(10), (17); 2804(9).
[8] 52 Pa. Code § 54.71 et seq.
[9] 66 Pa. C.S. § 2803.

including CAP, must be "appropriately funded and available in each service territory."[10] As noted by the ALJ:

> [T]he 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 . . . is provided by the other ratepayers in the class [and] the charge that pays for universal service and CAP must be reasonable.[11]

RESA asserts that the issue in this case is solely the right of all customers to shop as provided by the Choice Act. However, that same Choice Act's Universal Service Requirements cannot be ignored when considering the ability of CAP customers to shop while enrolled in CAP. Indeed, the ALJ recognized this in the ID, stating

> 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.[12]

The Commonwealth Court, too, has acknowledged this tension, addressing this issue in the context of similar CAP Shopping protections proposed by PECO for its CAP customers. The Court noted:

> 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.[13]

RESA twists the legal analysis required by the *CAUSE-PA* court to evaluate restrictions to shopping, arguing that the Commonwealth Court gives clear direction to preserve and protect the

[10] 66 Pa. C.S. § 2804 (9); see also ID at 42.
[11] ID at 43-44 (internal citations omitted).
[12] ID at 44.
[13] CAUSE-PA et al., 120 A.3d at 1101.

statutory right of a CAP customer to freely choose an EGS.[14] To the contrary, the Court specifically stated that "under certain circumstances, unbridled competition may have to give way to other important concerns,"[15] and concluded:

> [T]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 can accept and remain eligible for CAP benefits. The obligation to provide low-income programs falls on the public utility under the Choice Act, not the EGSs. Moreover, the Choice Act expressly requires the PUC to administer these programs in a manner that is cost effective for the CAP participants and the non-CAP participants, who share the financial consequences of the CAP participant's EGS choice.[16]

In reaching its conclusion, the Commonwealth Court looked to the Choice Act's declaration of policy "which both encourages deregulation to allow consumers the opportunity to purchase directly their supply from EGSs and emphasizes the need to continue to maintain programs that assist low-income customers to afford electric service,"[17] and concluded that the Commission must adhere to the following legal standard:

> So long as it "provides substantial reasons why there is no reasonable alternative so competition needs to bend" to ensure adequately-funded, cost-effective, and affordable programs to assist customers who are low-income to afford electric service . . . the PUC may impose CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits – e.g. EGS rate ceiling, prohibition against early termination/cancellation fees, etc.[18]

As discussed further below, the ALJ properly applied this standard to find that the facts presented to show CAP and non-CAP customer harm justified the imposition of restrictions on CAP

[14] RESA Exceptions at 9.
[15] CAUSE-PA et al., 120 A.3d at 1103.
[16] Id. at 1103-04.
[17] Id.
[18] Id.

Shopping and showed no reasonable alternative to avoid continued harm from unrestricted CAP Shopping.

2. *The ALJ properly determined that RESA did not meet its burden to show a reasonable alternative to the Joining Parties' CAP-SOP proposal.*

In its exceptions, RESA rehashes its argument from briefing, asserting that "[t]he availability of a single 'reasonable alternative' makes the imposition of restrictions on shopping unlawful."[19] The ALJ, in her ID, appropriately rejected this argument, stating that "[i]t is not feasible to require that the Joint Parties present an exhaustive list of all possible alternatives and discuss each one critically."[20] Rather, the ALJ explained that the burden of proof in this case required a showing "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."[21] The ALJ determined that 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."[22]

Once the Joining Parties proposed restrictions and made a showing, by a preponderance of the evidence, that reasonable alternatives were considered and rejected, the ALJ correctly explained that the burden shifted to RESA. 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.[23] But as noted by the ALJ, "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" –

[19] RESA Exceptions at 5.
[20] ID at 47.
[21] ID at 48.
[22] ID at 53.
[23] ID at 54.

which was previously withdrawn by PPL.[24] RESA improperly attempts to raise additional "reasonable alternatives" in its exceptions, just as it attempted to do in briefing.[25] These proposals were inappropriately raised at this stage of the proceeding, as they are not supported by any evidence in the record and were not subject to rebuttal by the many expert witnesses who testified in this proceeding, and in any event are insufficient to ameliorate the harm to CAP customers rendering them ineffective as alternatives to the CAP-SOP proposal.

RESA specifically suggests the following alternatives: maintain the status quo; wait to take action until a statewide collaborative; revise the rules for CAP Credits; make revisions to CAP rules to educate customers on CAP or inquiring about CAP about the SOP and encouraging them to enroll.[26]

RESA's first two alternatives are not really alternatives at all – they maintain the status quo, either indefinitely or for an undefined period of time until a statewide collaborative may be held and changes are perhaps made as a result of that collaborative. As discussed at length in CAUSE-PA's Main Brief and Reply Brief and the ALJ's ID, unrestricted CAP shopping is causing clear and immediate harm, both to CAP customers and to the non-CAP residential ratepayers who pay for the CAP program.[27] Both of these "alternatives" suggested by RESA allow that harm to continue, and delay any remediation of that harm.[28] As such, they are not reasonable alternatives to the restrictions proposed by the Joining Parties.

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[24] As noted by CAUSE-PA in its Reply Brief, "PPL's initial proposal was abandoned by PPL in favor of the CAP-SOP proposal set forth by the Joint Parties and no other parties to the proceeding – including RESA and other competitive electric suppliers in the case – endorsed or adopted the proposal as their own. RESA was itself either opposed to or silent with regard to PPL's proposals to address CAP shopping in every round of testimony." CAUSE-PA Reply Brief at 17, citing RESA St. 1 at 11-14; RESA St. 1-R at 12-13; RESA St. 1-SR at 7-12; RESA St. 1-RJ at 1-4.

[25] RESA Main Brief at 19; RESA Exceptions at 6-7.

[26] RESA Exceptions at 6-7.

[27] CAUSE-PA Main Brief at 13-22; CAUSE-PA Reply Brief at 15-17; ID at 49-53.

[28] Id. at 17.

RESA's third alternative, making changes to the CAP structure to address the harms, is unsupported by any evidence on the record. RESA first raised this proposed alternative in its main brief, and the reasons why it is insufficient to ameliorate the substantial and certain harm evidenced in this proceeding were addressed at length in CAUSE-PA's Reply Brief.[29] CAUSE-PA incorporates those arguments here by reference. As explained there, "regardless of the CAP structure, harm from unrestricted CAP shopping is certain to occur to ratepayers, low income CAP customers, or both."[30]

Finally, RESA again attempts to resurrect PPL's initial proposal to "encourage" CAP customers to participate in the already existing SOP; totally ignoring the fact that PPL itself had withdrawn that very proposal. The ALJ considered this alternative, and properly framed it as a "cross your fingers and hope they will listen" proposal.[31] The ALJ found this proposal to be insufficient to protect CAP customers from the substantial and certain harm to CAP customers and residential ratepayers alike, and concluded that it reduced the ability of vulnerable low income customers to stay on CAP.[32]

RESA further asserts in its exception that requiring it to provide a "middle ground" proposal (in other words, requiring RESA to meet its burden, which properly shifted to RESA after the Joint Parties provided substantial evidence in support of the CAP-SOP) ignored what RESA frames as "the clear direction of the Commonwealth Court to preserve and protect the statutory right of a CAP customer to freely choose an EGS."[33] RESA misconstrues the Commonwealth Court's directive, which in no way changed the evidentiary standards applicable

[29] CAUSE-PA Reply Brief at 9-13.
[30] CAUSE-PA Reply Brief at 13.
[31] ID at 61.
[32] ID at 61.
[33] RESA Exceptions at 9.

in proceedings before the Commission. In fact, the Commonwealth Court made clear that while "the overarching goal of the Choice Act is competition . . . the scheme does not demand absolute and unbridled competition."[34] The Court held explicitly that the Commission "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."[35] Indeed, the Court's focus was on the Commission's legal authority to impose reasonable restrictions on CAP Shopping, which it determined existed. It did not, as RESA asserts, determine that there is an absolute "statutory right" of CAP customers to shop without restrictions, nor did it insert a new burden of proof in proceedings which seek to balance the varied goals of the Choice Act.[36] As such, the ALJ applied the appropriate legal standard in finding no reasonable alternative to the CAP-SOP proposed by the Joining Parties.

3. *The ALJ properly found that the CAP shopping data presented in this proceeding justifies changes to the CAP program that restrict customers' ability to shop and remain on CAP*

In its exceptions, RESA reiterates its critiques of the data presented in this case to show the clear harm of unrestricted CAP shopping to CAP customers and non-CAP ratepayers. This time, RESA admits that "[p]ast shopping data may suggest the need to revise the CAP program on an ongoing forward basis," but asserts that the data presented does not offer any insight into what revisions should be made, or the existence or viability of any alternative.[37] RESA ignores

[34] CAUSE-PA et al., 120 A.3d at 1106-07.
[35] Id.
[36] See PPL Reply Brief at
[37] RESA Exceptions at 9-10.

the expert testimony presented by the Joining Parties that does exactly that. Indeed, it is this very testimony and the expert statements as to what revisions should be made that the ALJ relies on to find that the Joining Parties established a "prima facie case in favor of shopping restrictions for CAP customers."[38]

In briefing, RESA suggested that the data presented by the Joining Parties was incomplete, particularly because it did not reflect any incentives a customer may have received (such as a gift card or an energy audit).[39] The ALJ properly points out in the ID that these theoretical benefits (which are within the records of RESA's own members and not any other party) do not counter the weight of the actual data presented by the Company.[40] Indeed, RESA had every opportunity in this proceeding to quantify its bald assertion that these theoretical benefits offset the substantial evidence of harm that *was* presented for the record. But it did not do so.

As RESA notes, the ALJ did explain that the data presented on the record showed both that CAP shoppers who pay more than the PTC exceed their CAP credits more quickly than if they did not shop, and that there are CAP shoppers who are paying less than the PTC and may be saving a significant amount of money.[41] RESA attempts to seize on this language to point out that the record data *could* lead to a different conclusion – continuing to allow CAP shopping, or changing the existing CAP rules in some way to minimize financial impact.[42] However, this analysis ignores the ALJ's findings of fact – based on unrefuted record data – which concludes that the **net impact** (taking into account both sets of customers – those paying above the PTC

[38] ID at 53.
[39] RESA Main Brief at 20.
[40] ID at 54.
[41] ID at 53.
[42] RESA Exceptions at 10.

and those paying below the PTC) to the CAP program was $2,743,872 annually.[43] As such, the ALJ properly found that substantial evidence supported the conclusion that shopping restrictions for CAP customers are necessary.[44]

B. Reply to RESA Exception 2: The ALJ properly concluded that the CAP rule changes proposed by the Joining Parties are necessary to prevent significant harm in the interim, until a statewide collaborative is ordered and conducted and a solution emerges.

The Joint Litigation Position of PPL, CAUSE-PA, I&E, and OCA sets forth a suggestion that the Commission initiate a statewide collaborative or rulemaking proceeding to address CAP Shopping issues.[45] However, because of the clear and continuing harm as a result of CAP shopping, the Joint Litigation Position further sets out a Standard Offer Program specifically for CAP customers (CAP-SOP). The details of this proposed CAP-SOP are set out at length in CAUSE-PA's Main Brief and in PPL's Rejoinder Testimony by Witness James M. Rouland.[46] Notably, the Joint Litigation Position allows any party to petition the Commission to reopen the CAP-SOP if there is no EGS participation and/or there are changes in retail market conditions that justify reopening the CAP-SOP. This provision was approved by the ALJ in the ID.

In its second exception to the Initial Decision, RESA raises the same arguments it raised in briefing – that the CAP-SOP would affect available choices for CAP participants, as EGSs would be "unwilling to provide service through the CAP-SOP."[47] For the reasons set forth in CAUSE-PA's Main Brief and Reply Brief, and incorporated herein, these arguments are without

[43] See Finding of Fact #92, ID at 22.
[44] ID at 53.
[45] See CAUSE-PA Main Brief, Appendix C.
[46] CAUSE-PA Main Brief at 23-25; PPL Statement 1-RJ at 6:21 – 9:7.
[47] RESA Exceptions at 11.

merit and should be rejected.[48] To summarize the rationale briefly, RESA's assertion that EGSs will be unwilling to serve CAP customers is not supported by the record and should carry no weight.[49] In addition, supplier participation in the proposed CAP-SOP should not be dispositive, given the clear harm currently taking place in PPL's service territory. As the ALJ noted in the ID, "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 other ratepayers."[50]

RESA expresses concern throughout its exceptions that the CAP-SOP restricts some customers' unfettered right to access the competitive market, and suggests alternatives that would not limit this "right to shop". However, as noted above and in the ID, RESA's recommended alternatives all fail to protect CAP shoppers from the negative effects of paying more than the PTC, and reduce the ability of individual customers to stay on CAP.[51] And, contrary to RESA's arguments, the CAP-SOP does not restrict the right of a PPL electric customer to shop – rather, it is a limitation which addresses the effect of CAP customer shopping on the cost and efficiency of CAP, as well as the ability of payment troubled low-income customers to remain in CAP. CAP customers continue to retain the ability to shop. However, to obtain or retain the benefits of CAP, including a more affordable bill, a CAP customer is limited to shopping through the CAP-SOP.

The Commonwealth Court has sanctioned just this sort of reasonable restriction to remedy acute harm. The CAP-SOP is a reasonable and necessary resolution to a significant and

[48] CAUSE-PA Main Brief at 29-31; CAUSE-PA Reply Brief at 18-21.
[49] CAUSE-PA Main Brief at 29-31.
[50] ID at 61; see also CAUSE-PA et al., 120 A.3d at 1103 ("under certain circumstances, unbridled competition may have to give way to other important concerns . . . .").
[51] ID at 61.

severe problem. As such, the Commission should reject RESA's second exception and uphold the ID. To hold otherwise would be to abandon the Commission obligation under the Choice Act to ensure that universal service programs are available and appropriately funded in each utility distribution territory.[52]

III. CONCLUSION

For the reasons set forth above, CAUSE-PA urges the Commission to reject RESA's Exceptions.

Respectfully Submitted,

PENNSYLVANIA UTILITY LAW PROJECT

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[52] 66 Pa. C.S. § 2804 (9).