COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

September 16, 2016

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

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

Dear Secretary Chiavetta:

Enclosed please find a signed original of the Bureau of Investigation and Enforcement's (I&E) **Reply Exceptions** in the above-captioned proceeding.

Copies are being served on all active parties of record. If you have any questions, please contact me at (717) 787-8754.

Sincerely,

Gina L. Lauffer
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. #313863

GLL/snc
Enclosure

cc: Certificate of Service
Chief ALJ Charles E. Rainey, Jr.

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 BUREAU OF INVESTIGATION & ENFORCEMENT

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Dated: September 16, 2016

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I. INTRODUCTION

The Bureau of Investigation & Enforcement ("I&E") incorporates, by reference, both the Introduction and Statement of the Case sections contained in its Main Brief of July 8, 2016.[1] In those sections, I&E explained that the parties in this proceeding had attained a settlement on all issues aside from one ("Partial Settlement"). The parties to this case include PPL, I&E, the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), NextEra Energy Power Marketing, LLC ("NextEra"), the Sustainable Energy Fund of Central Eastern Pennsylvania ("SEF"), Noble Americas Energy Solutions LLC ("Noble Americas"), the PP&L Industrial Customer Alliance ("PPLICA"), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), Exelon Generation Company, LLC ("Exelon") and Retail Energy Supply Association ("RESA"). The sole issue reserved for litigation in this proceeding was whether and how the Commission should restrict the types of offers that Customer Assistance Program ("CAP") customers could accept from electric generation suppliers ("EGSs") in PPL Electric Utilities Corporation's ("PPL") service territory.

Notably, On June 15, 2016, I&E entered into a Joint Litigation Position Among Certain Parties Regarding CAP Shopping ("Joint Position") with PPL, OCA, and CAUSE-PA (collectively, the "Joint Litigants") which memorialized these parties' agreed

[1] I&E Main Brief at 1-6.

litigation proposal on the remaining issue of CAP shopping. The Joint Position, which was admitted into the record at the evidentiary hearing in this matter on June 16, 2016, was also attached and incorporated into I&E's Main Brief as "Exhibit A" and reiterated, in pertinent part, in the Initial Decision ("ID").[2] As part of the Joint Position, the Joint Litigants recommended that until a uniform, statewide CAP shopping solution can be developed, PPL should adopt a CAP Standard Offer Program ("CAP-SOP") effective June 1, 2017. The Joint Litigants recommended the CAP-SOP to mitigate the proven harm that PPL's ratepayers are experiencing under its current CAP shopping program, OnTrack. Currently, PPL's OnTrack customers are eligible to shop for electric energy rates without restriction.[3] Under the Joint Litigants' proposal, the CAP-SOP would be the only vehicle that PPL's CAP customers could use to shop and receive supply from an EGS, and all other CAP customer shopping requests will be denied.[4] While OSBA, NextEra, PPLICA, SEF, Noble Americas, and Exelon took no position on the Joint Position, RESA is its sole opponent. At the evidentiary hearing, all interested parties agreed to brief CAP shopping issues.[5]

In accordance with the established procedural schedule, on July 8, 2016, PPL, I&E, OCA, CAUSE-PA and RESA filed Main Briefs, and these same parties filed Reply Briefs on July 19, 2016. On August 17, 2016, Administrative Law Judge Susan A. Colwell (the "ALJ") issued an ID which (1) approved the Partial Settlement with a modification to require PPL to propose a Time of Use program within ninety days of the

[2] ID at 57-59.
[3] PPL St. No. 3 at 5.
[4] I&E Main Brief, Exhibit A, ¶4(a). I&E notes that an exception would exist to honor existing contracts until the term has concluded.
[5] Tr. at 21.

Commission's final order in this proceeding and (2) approved the CAP-SOP with one modification. While I&E did not submit Exceptions to the ID, RESA and PPL filed Exceptions on September 6, 2016. Pursuant to the Secretarial Letter issued on August 17, 2016, I&E now files these timely Reply Exceptions in response to the Exceptions raised by RESA and PPL.

II. REPLY EXCEPTIONS

Although RESA continually argues that the "overarching goal" of the Electricity Generation Customer Choice and Competition Act ("Choice Act") is competition, the Choice Act did more than just open the retail electric market to competition. The Choice Act also addressed the importance of access to electric service and the need for customer protection in the competitive market. Specifically, the Choice Act concluded that electric service is "essential to the health and well-being of residents, to public safety and to orderly economic development" and that all customers should be able to obtain service on reasonable terms and conditions.[6] The Choice Act also spoke specifically to the needs of low income customers, mandating that "[t]he Commonwealth must, at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service."[7] To ensure the protection of low income customers, the Choice Act mandated that the Commission ensure that universal service and energy conservation policies, activities and services are appropriately funded and available in each EDC's territory.[8]

[6] 66 Pa. C.S. § 2802(9).
[7] 66 Pa. C.S. § 2802(10).
[8] 66 Pa. C.S. §2804(9).

To comply with the low-income mandates of the Choice Act, the Commission established regulations which required electric distribution companies ("EDCs") to develop uniform reporting requirements for universal service and energy conservation.[9] As part of the regulations, the Commission indicated that it would determine whether EDCs met the goals of the universal service programs, which it identified as: (1) protecting consumers' health and safety by helping low-income customers maintain electric service; (2) providing for affordable electric service by making available payment assistance to low-income customers; (3) assisting low-income customers conserve energy and reduce residential utility bills; and (4) establishing universal service and energy conservation programs are operated in a cost-effective and efficient manner.[10]

In this case, the Joint Litigants have proven that, as currently structured, without any shopping restrictions, PPL's CAP shopping program is not operating under the mandates of the Choice Act or meeting the Universal Service program goals adopted by the Commission. The Joint Litigants have also met their burden of offering substantial evidence to support the CAP-SOP as a viable interim solution to these issues, and RESA has not overcome this evidence. Accordingly, I&E respectfully requests that the Commission deny RESA's Exceptions for the reasons set forth below.

1. Reply to RESA Exception No. 1: The ALJ Properly Determined that the Proponents of the CAP-SOP Program Met Their Burden

The Commission has the authority to impose CAP shopping rules that limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP

[9] 52 Pa. Code § 54.71-§54.78.
[10] 52 Pa. Code § 54.73.

benefits as long as it "provides substantial reasons why there is no reasonable alternative so competition needs to bend."[11] RESA acknowledges the Commission's authority to impose restrictions, but argues that it raised reasonable alternatives to restrictions, which were not considered by the ALJ. Although RESA argues that the mere existence of these alternatives makes imposing restrictions on CAP shopping unlawful, a review of the record in this case reveals that RESA's proposals were untimely, underdeveloped, inadequate and therefore, unreasonable alternatives to the CAP-SOP.

A. The ID Conducted a Proper Analysis that Considered All Record Evidence

RESA's argument that the ALJ failed to analyze alternatives to restricting the right to shop is meritless and should be rejected. Instead, a review of the ID reveals that the ALJ considered all proposals that were actually ripe for consideration. This is evident in the fact that the record contains each Joint Litigant's original CAP shopping proposal, and that each proposal was withdrawn by its proponent in favor of the CAP-SOP.[12] Accordingly, the ALJ correctly noted that the Joint Litigants developed the CAP-SOP only after addressing alternative options in several rounds of testimony.[13] Therefore, while I&E agrees with the ALJ that the Joint Litigants abandoned CAP shopping proposals were not briefed for consideration, I&E also avers that those proposals were withdrawn in favor of the CAP-SOP and therefore no longer ripe for consideration. It is also noteworthy that during the hearing for this case, the Joint Litigants indicated their

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[11] *CAUSE-PA v. Pennsylvania Public Utility Commission*,120 A.3d 1087, 1104 (Pa.Cmwlth. 2015), *appeal denied*, (Pa. Apr. 5, 2016), and *appeal denied*, (Pa. Apr. 5, 2016).

[12] ID at 47.

[13] ID at 47.

intention to abandon their former CAP shopping proposals in favor of the Joint Position, and to brief only the CAP-SOP proposal outlined in the Joint Position.[14] RESA was present at the hearing and assented to this course of action.[15]

For the entire evidentiary phase of this proceeding, RESA failed to offer any solution to the proven CAP shopping losses occurring in PPL's service territory. Instead, RESA's opined that, despite proven harm, PPL should do nothing and continue to permit unrestricted OnTrack shopping.[16] RESA espoused this opinion again at the evidentiary hearing in this case.[17] However, RESA changed its position, in its Main Brief, and for the first time, suggested alternatives to the Joint Position. I&E averred that RESA's alternatives were untimely, underdeveloped, and inadequate and therefore, should be rejected. Although I&E continues to opine that RESA's "alternatives" were either properly rejected in the ID or lacking any record evidence, I&E addresses them below only for illustrative purposes.

Status Quo

RESA's only position in the evidentiary phase of this case was that, despite proven harm, PPL should do nothing and continue to permit unrestricted OnTrack shopping.[18] RESA again asserts this argument in its Exceptions, but adds that "[n]othing in the record shows any compelling necessity for action that this time."[19] The ALJ properly rejected RESA's position, determining that:

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[14] Tr. at 37-38.
[15] Tr. at 38.
[16] I&E Main Brief at 23-24; RESA St. No. 1-RJ at 4.
[17] Tr. at 36.
[18] I&E Main Brief at 23-24; RESA St. No. 1-RJ at 4.
[19] RESA Exceptions at 6.

> [i]t 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.[20]

To be sure, the ALJ's conclusion was well-supported by the evidence in this case, which proved that unrestricted CAP shopping resulted in harm to PPL's ratepayers. The evidence in this case has revealed that the result of unbridled OnTrack shopping is that, on the whole, OnTrack shoppers have been exceeding their CAP credits at a faster pace than they would have if they did not shop beyond PPL's PTC.[21] Specifically, PPL indicated that in the 34-month period from January 2013 through October of 2015, 49% of OnTrack customers were shopping in the retail market, and 55% of those shoppers were paying rates above the PTC.[22] PPL's data further revealed that during the 46-month period of January 1, 2012 through October 30, 2015, 9,626 OnTrack shopping customers paid an average price of $0.11048 and used an average of 1,197 kWh monthly.[23] The average PTC for the same period was $0.08475, resulting in PPL's determination that OnTrack shopping customers' average monthly energy charges were $31 more per month than they would have been had they not shopped.[24]

PPL has also proven that unrestricted OnTrack shopping has led to increased CAP costs that are paid for by its non-CAP residential customers through its Universal Service

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[20] ID at 61.
[21] PPL St. 1 at 44-45.
[22] PPL St. No. 3 at 8-9.
[23] PPL St. No. 3 at 9.
[24] PPL St. No. 3 at 9.

Rider ("USR").[25] PPL's evidence revealed that, "the net financial impact of OnTrack shopping is an increase of approximately $2.7 million annually in the energy charges paid for supply provided to OnTrack customers."[26] The $2.7 million increase in energy charges imposed upon residential customers who pay costs under the USR reduces the cost-effectiveness of PPL's CAP program, a result that I&E previously explained is relevant to the Commission's assessment of the program and which offends the Choice Act.[27]

Taking into account these facts, and the many other supporting statistical facts found in the record, as cited in the ID,[28] the proven impact of unrestricted CAP shopping in PPL's service territory does compel the need for action. Accordingly, RESA's contention to that there is nothing in the record to support the need for action is contrary to the weight of evidence in this case. For these reasons, RESA's suggestion to take no action to remediate proven CAP shopping harm is not a reasonable alternative to the CAP-SOP.

Statewide Collaborative

RESA argues that another alternative to the CAP-SOP is for PPL to "take action following a statewide collaborative."[29] In defense of this option, RESA correctly notes that the ALJ and the Joint Litigants support the commencement of statewide collaborative open to all interested stakeholders and/or initiate a new rulemaking proceeding to address CAP shopping issues. However, recognizing the harmful impact of unrestricted CAP

[25] PPL St. 1 at 45.
[26] PPL St. No. 3 at 12.
[27] I&E Main Brief at 22-23.
[28] ID at 49-52.
[29] RESA Exceptions at 6.

shopping in this proceeding, I&E, along with the other Joint Litigants, also recommended adoption of the CAP-SOP as an interim measure.

Notably, this alternative that RESA now supports is identical to the one that PPL and I&E initially adopted in this case.[30] Yet, as I&E explained in its Reply Brief, the proposal to delay any action pending statewide review was flawed, in light of the evidence in this case.[31] Specifically, the approach failed to adequately protect PPL's ratepayers because while a statewide resolution could be pending for an unknown amount of time, the opportunity for CAP shoppers to shop for electricity above the PTC would still exist. In effect, CAP shopping harm would continue for an underdetermined amount of time, and this is not a result that is consistent with either the Choice Act or with the Commission's Universal Service goals. Therefore, I&E concluded, and PPL appears to have agreed, that their initial proposal did not adequately protect ratepayers, and RESA's very recent adoption of the abandoned proposal does not change that fact. Accordingly, delaying action for an undefined period of time is not a reasonable alternative to the CAP-SOP.

CAP Credit Increases

Another one of RESA's newfound alternatives to the CAP-SOP is for PPL to increase the maximum CAP credits for its CAP customers and to make other unidentified changes to CAP rules.[32] As RESA has not suggested any changes to the CAP program

[30] PPL St. No. 1 at 47; I&E St. No. 1 at 8.
[31] I&E Reply Brief at 14-16.
[32] RESA Main Brief at 19; RESA Exceptions at 6-7.

other than an increase in maximum CAP credits, that is the only option available for consideration. As I&E previously explained, this alternative fails for two reasons.

First, as I&E explained in its Main Brief, the Commission has issued a policy statement regarding CAP programs, and it prescribes a control features for CAP programs.[33] The control features are intended to limit program costs, and they include maximum CAP credit guidelines.[34] The policy statement does not contemplate the untold increase in CAP credits that would be necessary to facilitate RESA's proposal.

Furthermore, increasing CAP credits for PPL's CAP customers would increase the already increased costs borne by PPL's non-CAP residential ratepayers under the USR that funds the CAP program. Increasing the burden upon ratepayers who fund the CAP program under these circumstances would offend past Commission precedent and trigger concerns under the Choice Act.[35] This apparent alternative offered by RESA does nothing to address the underlying concerns. Instead, the proposal merely relies upon additional money in order to mask the problem and it is not a reasonable alternative to the CAP-SOP.

Encouraging CAP Customers to Enroll in the Standard Offer Program

Finally, RESA attempts to reincarnate PPL's initial proposal to educate customers about its low-income programs and its existing standard offer program ("SOP"). As the ALJ indicated, this was one of the proposals that was considered and ultimately

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[33] 52 Pa.Code § 69.265(3)(v)(B)-(C).

[34] 52 Pa.Code § 69.265(3).

[35] I&E Main Brief at 22-23; *See Final Investigatory Order on Customer Assistance Programs: Funding Levels and Cost Recovery Mechanisms (Final Investigatory Order),* Docket No. M-00051923 (December 18, 2006) at 10; *Coal. for Affordable Util. Servs. & Energy Efficiency in Pennsylvania v. Pennsylvania Pub. Util. Comm'n,* 120 A.3d 1087, 1103 (Pa.Cmwlth. 2015), *appeal denied,* (Pa. Apr. 5, 2016), and *appeal denied,* (Pa. Apr. 5, 2016).

determined to be an inferior solution to CAP shopping harm. This proposal fails for the same reasons as RESA's proposals to do nothing or to wait for the outcome of a statewide collaborative process. Specifically, the proposal would still permit CAP customers to shop at rates above the PTC, and the proven results of such unrestricted CAP shopping are that PPL's CAP program is less-cost-effective and both CAP and non-CAP ratepayers are not adequately protected. Although I&E opines that educating customers is essential and that such efforts must continue, on its own, encouraging participation in PPL's SOP cannot effectively remediate CAP shopping losses and it is not a reasonable alternative to the CAP-SOP.

The Search for Solutions

Although RESA argues that "[t]he presentation of a restriction upon the shopping rights of non-CAP customers does not-in and of itself-show that there is no "alternative" course of conduct that would protect and preserve the right to shop," its argument is of no moment here because interested parties have been examining PPL's excessive CAP shopping costs since before this proceeding even began. As I&E pointed out in its Main Brief, concerns regarding the impact of PPL's CAP shopping program have been raised in both in PPL's 2013 Universal Service and Energy Conservation Program ("USECP") proceeding,[36] and PPL's most recent base rate case.[37]

The ALJ provided further detail on the concerns raised in those proceedings:

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[36] PPL 2014-2016 USECP ,2013-2367021.

[37] *Pa. PUC v. PPL Electric Utilities Corporation*, Docket Nos. R- 2015-2469275, *et al.* (Order entered Nov. 19, 2015).

> [i]n 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.[38]

In short, well before this case and during the pendency of this case, interested parties have been attempting to address CAP shopping concerns in PPL's service territory. Here, as supported in the record, the Joint Litigants contemplated all proposals that were presented and did not merely present a restriction without considering alternatives. Specifically, the record reveals that each of the Joint Litigants began this case with a different position on CAP shopping, and that it was not until later in the proceeding that they adopted the CAP-SOP. Furthermore, I&E rejects the notion that proponents of any CAP shopping rule would be required to explore the entire universe of conceivable solutions before recommending a viable shopping rule. RESA cites no authority that compels such a search, notwithstanding the impracticality of identifying all conceivable options, and the fact that shopping harm would continue without interruption during a limitless search.[39]

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[38] ID at 50.

[39] I&E Reply Brief at 11.

B. The Unrefuted CAP Shopping Data Met the "Substantial Evidence" Burden

The Joint Litigants' burden of proof is satisfied by "establishing a preponderance of evidence which is substantial and legally credible."[40] To meet this burden, the Joint Litigants must "present evidence more convincing, by even the smallest amount, than that presented by any opposing party."[41] In this case, the Joint Litigants have provided unrefuted evidence of increased CAP shopping costs and the resultant harm to PPL's ratepayers. After proving the CAP shopping impact, the Joint Litigants proposed a program to remediate increased CAP shopping costs, and they provided evidence that the proposal would mitigate increased CAP shopping costs.

RESA has failed to overcome this evidence and failed to present any credible evidence, let alone substantial evidence, that the Joint Position should be rejected. Although RESA alleges that the data that the ALJ relied upon failed to show that "freedom to shop jeopardizes the protections, policies, and services that now assist customers who are low-income to afford electric service," this allegation is easily disproven. A review of the record indicates that RESA has not credibly refuted the fact that, among other things, increased annual CAP costs resulted from unrestricted CAP shopping in PPL's service territory, and measurable harm resulted:

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[40] *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).
[41] *Se-Ling Hosiery v. Margulies,* 70 A.2d 854 (Pa. 1950).

> [n]one 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.[42]

Accordingly, RESA's argument that unrestricted CAP shopping has not jeopardized protections, policies, and services that assist low-income customers is not consistent with the evidence offered in this proceeding, the requirements of the Choice Act, and the Commission's Universal Service goals. Therefore, it must be rejected.

Finally, RESA's new argument that consideration of possible revisions to PPL's CAP program is a condition precedent to proposing a CAP shopping rule[43] is unsupported and without merit. To the extent that RESA has identified any revisions, other than its unworkable proposal to increase maximum CAP credits, RESA has not offered them during the course of this proceeding. Accordingly, in her ID, the ALJ correctly determined that the Joint Litigants submitted substantial evidence to support CAP shopping restrictions and RESA has failed to rebut that evidence.[44]

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[42] ID at 52-53, quoting CAUSE-PA Main Brief at 18.
[43] RESA Exceptions at 9-10.
[44] ID at 56.

2. Reply to RESA Exception No. 2: The ID Correctly Recommended the Adoption of the CAP-SOP

While RESA argues that the Commission can reject shopping restrictions in light of substantial evidence showing why those particular restrictions should be rejected, RESA has failed to make such a showing in this case. In its Exceptions, RESA makes this same argument with respect to both the CAP-SOP, as recommended by the Joint Litigants, and the CAP-SOP as modified by the ALJ in her ID. Therefore, since RESA does not differentiate, I&E will address the argument here in the context of the CAP-SOP without modification.

The fatal flaw in RESA's argument is that it has produced no credible evidence, let along substantial evidence, that the CAP-SOP should be rejected. Instead, the only evidence that RESA relies upon to refute adoption of the CAP-SOP is the testimony of its witness, Matthew White. According to Mr. White, the structure of the CAP-SOP includes program restrictions that would result in no EGSs participating.[45]

However, CAUSE-PA demonstrated that Mr. White's opinion was unsubstantiated and meritless by analyzing two key pieces of information.[46] First, CAUSE-PA analyzed RESA's participation in PPL's service territory and the number of members. The results indicated that "[f]or the period of March – May 2016, the most recent period for which information is available, there were 16 EGSs participating in PPL's SOP – of whom only 6 were RESA members."[47] Accordingly, CAUSE-PA concluded that this participation

[45] RESA Main Brief at 14.
[46] CAUSE-PA Main Brief at 29-30.
[47] CAUSE-PA Main Brief at 29.

data demonstrated that RESA's assertion that these new rules could result in EGSs not wanting to serve customers "is no different than what is already occurring."[48]

Furthermore, CAUSE-PA indicated that Mr. White did not even poll or review the CAP-SOP proposal with all RESA members prior to making this assertion.[49] Instead, Mr. White shared his testimony and discussed the proposal with just seven (7) RESA members prior to submission,[50] though RESA's membership consists of twenty-one (21) members in Pennsylvania.[51] Additionally, according to the CAUSE-PA's review of the PUC's publically available website listing the licensed suppliers, there are currently two-hundred and eleven (211) EGSs licensed in PPL's service territory which serve residential customers.[52] Using this date, CAUSE-PA determined that, "at best, Mr. White was speaking on behalf of a mere 3.3% of all licensed EGSs when he asserted that "no" supplier would be willing to serve EGSs under a modified CAP-SOP."[53] I&E submits that, considering this data, Mr. White's opinion cannot be determined as representative of all EGSs who may choose to serve PPL's CAP customers, as it cannot even be determined to be representative of RESA's position.

Considering all of the facts, I&E agreed with CAUSE-PA that Mr. White's testimony did not constitute substantial evidence and that it should be afforded little to no weight.[54] In her ID, the ALJ properly determined that RESA failed to submit evidence to support rejection of the CAP-SOP. Although the ALJ did impose a modification to the

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[48] CAUSE-PA Main Brief at 30.
[49] CAUSE-PA Main Brief at 30.
[50] CAUSE-PA Main Brief at 30.
[51] CAUSE-PA Main Brief at 29; Joint Stipulation of CAUSE-PA and RESA,¶3.
[52] CAUSE-PA Main Brief at 30.
[53] CAUSE-PA Main Brief at 30.
[54] I&E Reply Brief at 19.

CAP-SOP, as discussed below, the modification appears to have been one that she personally developed in considering the case, and not one borne out of evidence presented by RESA.[55] Regardless of the modification, the record reveals that the ALJ appropriately rejected RESA's argument that the CAP-SOP should be rejected.

3. Reply to PPL Exception No. 2: The ALJ's Modification to the CAP Shopping Program

At the outset, I&E notes that it did not except to the ALJ's modification of the CAP-SOP. However, in the context of PPL's Exception No. 2, I&E was, for the first time, provided with information about the potential financial impact of the modification. Accordingly, I&E offers the following comments regarding the modification.

The modified term of the CAP-SOP, appears as Paragraph 4(f) of the Joint Position.[56] The modification would "allow EGSs who are separately participating in the CAP-SOP to have the 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."[57] The ALJ's rationale for imposing the changes to the above term is that EGSs will be less disincentivized to enter the CAP-SOP if they are not required to provide an eternal discount and that the Choice Act did not intend to prevent EGSs from charging rates that are equal to the PTC.[58]

In response, PPL indicated that the modification, which had not been contemplated by the Joint Litigants, nor supported by RESA, was imposed without any

[55] ID at 62-63.
[56] ID at 62.
[57] ID at 62.
[58] ID at 62-63.

party having the opportunity to consideration and evaluate its impact.[59] Among other things, and especially concerning in the context of this proceeding, PPL indicated that complying with the modified term would increase program costs for the development and administration of the CAP-SOP.[60] PPL also points out that the amount of these additional costs is unknown because they were not contemplated or developed in the record.[61] In I&E's view, the fact that additional programming costs resulting from the ALJ's modification will exist and have not been quantified is concerning because, as PPL rightly recognizes, these increased costs will be borne by PPL's non-CAP residential ratepayers.[62]

As previously outlined in this case, and in the ID, cost-efficiency of CAP programs is a key factor that must be considered in the analysis of such programs. In recognition of the unknown impact of additional CAP programming costs that could arise through PPL's implementation of procedures to comply with the ALJ's modification, I&E supports PPL's request for the Commission to approve the Joint Position, including the CAP-SOP, as proposed by the Joint Litigants and without modification.

[59] PPL Exception at 11-12.
[60] PPL Exceptions at 13-14.
[61] PPL Exceptions at 14.
[62] PPL Exceptions at 14.

III. CONCLUSION

For the reasons stated herein, the Bureau of Investigation & Enforcement respectfully requests that the Commission (1) deny the Exceptions of the Retail Energy Supply Association; (2) grant Exception Number 2 filed by PPL Electric Utilities Corporation, and (3) otherwise adopt the Recommended Decision of the Administrative Law Judge without modification.

Respectfully submitted,

Gina L. Lauffer
Prosecutor
PA Attorney I.D. #313863

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

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Reply Exceptions** dated September 16, 2016, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

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