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September 16, 2016

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
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 the Reply to Exceptions of PPL Electric Utilities Corporation in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,

Christopher T. Wright

CTW/skr
Enclosure

cc: Honorable Susan D. Colwell
Certificate of Service
Office of Special Assistants (*via e-mail*)

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Date: September 16, 2016

Christopher T. Wright

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

PPL ELECTRIC UTILITIES CORPORATION REPLY TO EXCEPTIONS

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Dated: September 16, 2016

Counsel for PPL Electric Utilities Corporation

I. INTRODUCTION

PPL Electric Utilities Corporation ("PPL Electric" or the "Company") herein submits this Reply to the Exceptions of Retail Energy Supply Association ("RESA").[1] In its Exceptions, RESA argues that the Initial Decision ("ID") of Administrative Law Judge Susan D. Colwell ("ALJ") erred in recommending the Customer Assistance Program Standard Offer Referral Program ("CAP-SOP") jointly supported by PPL Electric, the Commission's Bureau of Investigation and Enforcement ("I&E"), the Office of Consumer Advocate ("OCA"), and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA") be adopted with one modification.[2]

In Exception No. 1, RESA argues the ID applied the wrong legal standard in determining whether the Commission should impose limitations on CAP customers' ability to shop for electric supply from electric generation suppliers ("EGSs"). According to RESA, the Commission can only impose limits on CAP shopping if the proponents demonstrate that there are no other alternatives to restrictions on shopping, and only if such restrictions do not affect the shopping choices available to CAP customers. (RESA Exceptions, p. 2) Exception No. 1 is

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[1] PP&L Industrial Customer Alliance ("PPLICA") also filed Exceptions, seeking a clarification or correction to a cross-reference in the Initial Decision. In Paragraph 37 of the Joint Petition for Partial Settlement ("Settlement), PPL Electric agreed to provide notice of the Company's filings with the Federal Energy Regulatory Commission that modify the definition or application of Non-Market Based ("NMB") Transmission Service charges. In its discussion of this settlement provision, the Initial Decision cross-referenced Paragraph 38 of the Settlement rather than Paragraph 37. Clearly, this cross-reference in the Initial Decision was nothing more than an inadvertent typographical error and was not intended to modify this part of the Settlement. Indeed, the Initial Decision recommended that Paragraph 37 of the Settlement be adopted without modification. For these reasons, PPL Electric submits that PPLICA's Exceptions are unnecessary and, therefore, will not be further addressed herein.

[2] As explained in detail in the Company's Exceptions, the recommended modification to the CAP-SOP should be rejected as it would be difficult to implement, would be confusing to customers, and would appear to require PPL Electric to monitor, track, and potentially enforce multiple EGS contracts offered to CAP customers with varying terms and conditions.

nothing more than a restatement of the very same arguments RESA advanced in its briefs, which were fully considered, addressed, and rejected by the ID. As explained in the ID, as well as in the Company's Initial and Response Briefs, the law is clear that the Commission has legal authority to impose restrictions on CAP shopping when necessary to ensure that CAP is administered in a manner that is cost-effective for both the CAP participants and the non-CAP participants, provided the Commission's CAP shopping decision is supported by substantial evidence of record.

In Exception No. 2, RESA argues the ID erred in approving the CAP-SOP (with one modification opposed by PPL Electric) because, according to RESA, EGSs would be unwilling to participate in the CAP-SOP. RESA's contention that EGSs would be unwilling to participate in the CAP-SOP is speculative, contrary to the record, without merit, and was properly rejected by the ID. RESA also fails to address the evidence and arguments presented by the Company, I&E, OCA, and CAUSE-PA, which were credited by the ID.

For these reasons, as more fully explained below and in PPL Electric's Initial and Response Briefs, which are incorporated herein, the Commission should deny RESA's Exceptions and adopt the Settlement and the jointly proposed CAP-SOP without modification, as further explained in PPL Electric's Exceptions.

II. REPLY TO RESA'S EXCEPTIONS

A. REPLY to EXCEPTION No. 1 - The ID Applied the Correct Legal Standard and Properly Concluded There Are Substantial Reasons to Impose Appropriate CAP Shopping Restrictions

In Exception No. 1, RESA first argues the ID applied the incorrect legal standard in determining whether limits on CAP shopping should be imposed. RESA claims that the correct standard is that the proponents of CAP shopping limitations must show that there are no

reasonable alternatives to limits on CAP shopping. (RESA Exceptions, pp. 2, 4-5) Based on this incorrect interpretation of the legal standard, RESA next argues that the ID failed to analyze the alternatives to restrictions on CAP chopping. (RESA Exceptions, pp. 5-9) Finally, RESA argues the ID erred in relying on the unrefuted CAP shopping data presented in this case to determine that limits on CAP shopping are needed. (RESA Exceptions, pp. 9-10) For the reasons explained below, RESA's Exception No. 1 is without merit and must be rejected.

1. The ID Applied the Correct Legal Standard Regarding Limits on CAP Shopping

The ID found that Section 2804(9) of the Electricity Generation Customer Choice and Competition Act ("Choice Act"), 66 Pa.C.S. § 2804(9), and the Commonwealth Court's holding in *Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. v. Pa. PUC*, 120 A.3d 1087 (Pa. Cmwlth. 2015), *appeal denied by*, 2016 Pa. LEXIS 723 and 2016 Pa. LEXIS 724 (Pa., Apr. 5, 2016) ("*Coalition*"), provide the Commission with authority, in the interest of ensuring that universal service plans are adequately funded and cost-effective, to impose CAP rules that limit a participating customer's ability to choose an EGS and remain eligible for CAP benefits. (*See* ID, pp. 42-46) RESA also relies on the Commonwealth Court decision in *Coalition* regarding the Commission's authority to impose limits on CAP shopping. However, RESA argues the Commission "can only do so where the proponents of restricting the right to shop have met their legal burden to provide: (1) that there are no reasonable alternatives to the proposed restrictions on competition; and (2) that the restrictions do not adversely affect available choices for CAP customers." (RESA Exceptions, p. 2.) RESA's interpretation of the Commission's authority to impose limits on CAP shopping misapplies the Commonwealth Court's decision in *Coalition.*

In *Coalition*, supra, the Commonwealth Court reviewed the Commission's determination to reject a CAP shopping program proposed by PECO Energy Company ("PECO"). Three CAP

shopping proposals were at issue in the PECO proceeding: (i) a price ceiling; (ii) a customer education initiative; and (iii) a prohibition on cancellation/termination fees. *Id.* at 1091. The Commission rejected the PECO price ceiling proposal for three reasons: (i) the Commission lacked authority to impose a ceiling on EGS rates; (ii) the proposed ceiling was not in the best interest of CAP participants because it would limit the diversity of shopping programs, likely translate to higher prices for CAP customers, and potentially lead to customer confusion with frequent price changes; and (iii) PECO's proposed customer education program would ensure CAP customers understand and properly manage their energy bills. *Id.* at 1092. The Commission also rejected the OCA's proposal to prohibit cancellation/termination fees for two reasons: (i) the Commission lacked legal authority; and (ii) imposing such limitation could lead to higher shopping prices for CAP participants and/or fewer EGSs willing to provide service to CAP participants. *Id.* at 1092-93.[3]

On appeal, the Commonwealth Court concluded the Commission clearly has authority to impose limits on CAP shopping, stating:

> [W]e conclude 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.... Moreover, the Choice Act expressly requires the [Commission] 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.

[3] On reconsideration, the Commission reiterated its position that it lacked authority for a price ceiling and to prohibit termination/cancellation fees. The Commission also rejected the argument that EGS rates above the default service rate could have impacts on both CAP and non-CAP customers, finding that there was no evidence introduced in that proceeding to support such a finding. *Id.* at 1093-94.

Id. at 1103 (emphasis added). Thus, the Court concluded that not only does the Commission have authority to impose limits on CAP shopping, the Commission is expressly required by the Choice Act to ensure CAP is administered in a manner that is cost-effective for both CAP and non-CAP customers.

After concluding that the Commission has authority to impose limits on CAP shopping, the Commonwealth Court went on to explain that the Commission's CAP shopping decision must be supported by substantial evidence:

> 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 ... , the [Commission] 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."
>
> * * *
>
> As we held above, however, the General Assembly has reserved within the [Commission] the authority to "bend" competition to further other important aspects of the Code, including the Choice Act, where it provides substantial reasons why the restriction on competition is necessary (*i.e.*, there are no reasonable alternatives).

Id. at 1104, 1107 (internal citation omitted). PPL Electric submits that the above-quoted language, which RESA heavily relies on, is nothing more than a simple restatement of the requirement that the Commission's CAP shopping determination, whether it rejects or approves limits on CAP shopping, must be supported by substantial evidence of record.[4]

RESA, however, interprets the Court's statement regarding "no substantial alternatives" to impose a burden on the parties proposing limits on CAP shopping to demonstrate substantial

[4] It is well settled that any adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Group v. Pa. PUC*, 960 A.2d 189, 193, n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704).

reasons why there are no reasonable alternatives to the parties CAP shopping proposal. (RESA Exceptions, p. 2, 5) RESA's interpretation of the Court's holding in *Coalition* would impose two burdens of proof on parties proposing limits on CAP shopping: (i) the standard burden of proof to support their CAP shopping proposal; and (ii) a new burden to disprove there are any possible alternatives to the CAP shopping proposal. RESA's interpretation of the Court's holding in *Coalition* should be rejected for several reasons.

First, the Court did not reject the PECO CAP price ceiling proposal because PECO failed to introduce evidence to demonstrate there were "no reasonable alternatives" to a price ceiling. Rather, the Court affirmed the Commission's rejection of PECO's price ceiling because the "[Commission] was not persuaded that Petitioner's evidence provided substantial reason to justify limiting competition by imposing a price ceiling on EGSs as part of the PECO CAP Shopping Plan." *Id.* at 1107 (emphasis added). The Court explained it could not and would not re-weigh the evidence. *Id.* Accordingly, the Court clearly affirmed the Commission's rejection of PECO's proposed CAP shopping price ceiling because it was not supported by substantial evidence, not because PECO failed to demonstrate there were no reasonable alternatives to CAP shopping limits as contended by RESA.

Second, the Court's decision concerning the OCA's proposed termination/elimination of CAP shopping fees demonstrates the Court did not establish a new standard requiring "no reasonable alternatives" as asserted by RESA. Rather, the Court reversed the Commission's rejection of the OCA's proposal to eliminate CAP shopping termination/cancellation fees on the basis that the Commission's decision was not supported by substantial evidence. Specifically, the Court found that the Commission's rejection of the OCA proposal out of concern for the impact such a rule would have on competition and choice (*i.e.*, that elimination of the

termination/cancellation fees would result in fewer EGSs willing to provide service to CAP participants) was not supported by substantial evidence. *Id.* at p. 1108. Clearly, the Court's disposition was based on whether the Commission's decision was supported by substantial evidence; not on whether the OCA demonstrated there were no reasonable alternatives to eliminating termination/cancellation fees for CAP shopping as argued by RESA.

Third, the Court's acceptance of PECO's proposed CAP shopping customer education initiative was based on the evidence of record; not the failure to disprove any alternatives as claimed by RESA. To be clear, the CAP shopping customer education initiative was actually proposed by and supported by a party to the proceeding, PECO. *Id.* The Court found the petitioners, OCA and CAUSE-PA, failed to introduce evidence to refute PECO's proposed CAP shopping customer education initiative (*i.e.*, failed to introduce evidence demonstrating it would not address the CAP shopping issue). Stated otherwise, the Court's holding regarding the CAP shopping customer education initiative was based on an alternative actually proposed in the proceeding, supported by record evidence, and not refuted by the weight of the evidence. The Court's finding regarding the CAP shopping customer education initiative was not, as suggested by RESA, based on a finding that the petitioners failed to disprove all possible alternatives to limits on CAP shopping.

Finally, RESA's argument that parties proposing limits on CAP shopping must demonstrate there are no possible alternatives to the CAP shopping proposal is not a workable or reasonable interpretation. Under RESA's interpretation of the Court's holding in *Coalition*, parties proposing limits on CAP shopping would be required to disprove any and all possible alternatives to the CAP shopping proposal, regardless of whether any such alternatives were even proposed during the proceeding. This would mean parties proposing limits on CAP shopping

would not only have to introduce evidence to refute CAP shopping alternatives actually proposed, they also would have to self-identify any and all possible alternatives that were not proposed and then introduce evidence why the un-proposed alternatives are not reasonable. RESA's proposed evidentiary standard for CAP shopping is analogous to the insuperable difficulty inherent in proving a negative. *See, e.g., Tincher v. Omega Flex*, 104 A.3d 328, 409, 628 Pa. 296, 431 (2014) ("proving a negative is generally not desirable as a jurisprudential matter because of fairness concerns related to anticipating and rebutting allegations"); *Fazio v. Pittsburgh Rys. Co.*, 321 Pa. 7, 182 A. 696, 698 (1936) ("[i]t is a well-recognized principle of evidence that he who has the positive of any proposition is the party called upon to offer proof of it. It is seldom, if ever, the duty of a litigant to prove a negative until his opponent has come forward to prove the opposing positive").[5] RESA's proposed evidentiary burden is unreasonable and inconsistent with appellate case law.

For these reasons, RESA's legal standard should be rejected. As found by the ID, the law is clear that the Commission has legal authority to impose restrictions on CAP shopping when necessary to ensure CAP is administered "in a manner that is cost-effective for both the CAP participants and the non-CAP participants," *Coalition*, 120 A.3d at 1103, provided the Commission's CAP shopping decision is supported by substantial evidence of record. Additionally, as the Commonwealth Court held in *Coalition*, to the extent that any alternatives to

[5] In the rare circumstances a party is required to affirmatively prove a negative, a statute or regulation expressly states this burden and defines what the party must prove. *See, e.g., Commonwealth v. 1997 Chevrolet*, 106 A.3d 836 (Pa. Cmwlth. 2014) (noting that the Pennsylvania Forfeiture Act places the burden on a property owner to prove a negative, i.e. a lack of knowledge that is reasonable under the circumstances); *DOT v. Agric. Lands Condemnation Bd.*, 5 A.3d 821, 826 (Pa. Cmwlth. 2010) (noting that the Pennsylvania Agricultural Land Preservation Policy requires an applicant-condemnor to prove a negative, i.e. that no reasonable and prudent alternative to condemning lands within an agricultural security area exists under 71 P.S. § 106(b)).

CAP shopping limitations are proposed, the Commission must consider the weight of the evidence to determine whether the record demonstrates such alternative proposals are reasonable or should be rejected. This, however, does not mean that, as suggested by RESA, parties are required to disprove any and all un-proposed alternatives to CAP shopping programs before the Commission may approve a CAP shopping program actually proposed and supported by the evidentiary record. Accordingly, the Commission should deny RESA's Exception No. 1.

2. RESA's CAP Shopping Proposals Are Not Reasonable Alternatives to Address the Impacts of CAP Shopping

RESA next argues that the ID ignored the existence and viability of other alternatives to restrictions on CAP chopping. (RESA Exceptions, pp. 5-9) RESA's argument, however, is premised upon its incorrect legal standard that parties are required to disprove any and all alternatives to restrictions on CAP shopping before the Commission may impose limits on CAP shopping. As explained above, this is not the correct legal and evidentiary standard and, therefore, RESA's argument should be rejected for this reason alone. Moreover, RESA's alternative proposals are not reasonable alternatives because they lack evidentiary support and, moreover, fail to address the unrefuted adverse impacts CAP shopping has on both CAP customers and other Residential customers that pay for CAP costs.

As a preliminary matter, RESA's argument that the ID ignored other alternatives to restrictions on CAP chopping is without merit. Indeed, the ID clearly notes:

> There are additional plans on the record here. Although the sponsoring parties withdrew their own original positions and 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.

(ID, p. 47) Thus, contrary to RESA's assertion, the ID did in fact acknowledge that other alternatives were proposed, evaluated, and considered by the parties, but these other alternatives were not presented and briefed by the parties for the Commission's consideration. Notwithstanding the foregoing, even if RESA's alternative proposals were properly presented and briefed for the Commission's consideration, RESA's CAP shopping proposals are not reasonable alternatives to address the impacts of CAP shopping.

RESA's first proposal to do nothing is not a reasonable or appropriate alternative to address the impacts of CAP shopping. As summarized in Section II.A.3 below, the record clearly demonstrates there is a real and present need to address the existing and future adverse impacts of unrestricted CAP shopping. RESA's "do nothing" alternative, however, would allow these adverse impacts of CAP shopping to continue without limit, thereby continuing the harm to CAP customers and to customers who pay CAP costs. For these reasons, RESA's proposal to adopt no limits on CAP shopping is not a reasonable or appropriate CAP shopping alternative.

RESA's second proposal to wait and address these impacts in a statewide collaborative/proceeding is not a reasonable or appropriate alternative to address the impacts of CAP shopping. As noted by the ID, the Commission may reject the statewide initiative and decide to address the CAP shopping issue on an EDC by EDC basis. (ID, p. 62) Further, even if the Commission initiates a statewide collaborative, it is entirely unknown when the statewide initiative would be initiated and, moreover, when appropriate limits on CAP shopping would be implemented. Consequently, this alternative fails to address the actual and substantial adverse impacts that CAP shopping has today and will continue to have within PPL Electric's service territory. For these reasons, RESA's proposal to "do nothing and wait" for a future statewide collaborative/proceeding is not a reasonable or appropriate CAP shopping alternative.

RESA's third proposal to adjust the CAP customer's CAP credits "to align with the price of a competitive supplier" is unsupported by the record evidence and is not a reasonable or appropriate alternative to address the impacts of CAP shopping. RESA's proposal was offered for the very first time in its Initial Brief. As a result, there is no record evidence to support this proposal[6] and the parties did not have any notice or opportunity to respond to the proposal.[7] Under RESA's proposal, the Company would be required to continually adjust the maximum CAP credits to align with the ever changing and different prices offered by EGSs, which would be extremely time consuming and would increase the costs incurred by the Company to implement CAP shopping. Moreover, RESA's proposal does nothing to mitigate the substantial increase (estimated at approximately $2.7 million annually) in the CAP costs paid by other Residential customers as explained in Section II.A.3 below. Rather than mitigating the costs paid by non-CAP Residential customers, RESA's proposal will almost certainly increase these costs.[8]

RESA's fourth proposal is to adopt the Company's initial CAP shopping proposal.[9] However, RESA completely disregards that, as a result of multiple rounds of testimony and

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[6] The Commission cannot approve RESA's proposal to increase the maximum CAP credits without record evidence to support it. *See Met-Ed Indus. Users Group v. Pa. PUC*, 960 A.2d 189, 193, n.2 (Pa. Cmwlth. 2008) (any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence).

[7] Approving RESA's proposal to increase the maximum CAP credits would clearly result in a denial of due process. *See Schneider v. Pa. PUC*, 479 A.2d 10 (Pa. Cmwlth. 1984) (Commission is required to provide due process to the parties, which requires that the parties are afforded notice and an opportunity to be heard).

[8] *See* PPL Response Br., pp. 20-21.

[9] PPL Electric's initial CAP shopping proposal included the following: (i) a recommendation that the Commission promptly initiate a statewide collaborative open to all interested stakeholders and/or initiate a new rulemaking proceeding to evaluate CAP shopping issues on a uniform, statewide basis; and (ii) as an interim measure until a statewide CAP shopping proposal has been properly developed with input from all interested stakeholders, a proposal to encourage

discovery in this case, PPL Electric formally withdrew this proposal.[10] As explained in detail in PPL Electric's Response Brief, the withdrawn initial CAP shopping proposal is inadequate to address the unrefuted significant and adverse current impacts of unrestricted CAP shopping.[11] The fundamental flaw with the withdrawn initial CAP shopping proposal is there is no assurance that simply encouraging CAP customers to enroll in the traditional SOP will mitigate the real and present adverse 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.

For these reasons, RESA's CAP shopping proposals are not reasonable alternatives to address the adverse impacts of CAP shopping. Accordingly, the Commission should deny RESA's Exception No. 1.

3. The Substantial Adverse Impacts of Unrestricted Cap Shopping Are Unrefuted

RESA argues that the ID erred in relying on the unrefuted CAP shopping data presented in this case to determine that limits on CAP shopping are needed. Specifically, RESA contends that the CAP shopping data does not relate to the existence or viability of any alternatives to CAP shopping restrictions and, therefore, does not satisfy the parties' burden to demonstrate there are no reasonable alternatives. (RESA Exceptions, pp. 9-10) RESA's argument, however, is premised upon its incorrect legal standard that parties are required to disprove any and all alternatives to restrictions on CAP shopping before the Commission may impose limits on CAP shopping. As explained above, this is not the correct legal and evidentiary standard.

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all CAP customers to participate in the traditional SOP that is open to all Residential customers. *See* PPL Electric St. No. 1, pp. 47-48.

[10] *See* PPL Response Br., p. 16.

[11] *See* PPL Response Br., pp. 16-19.

As the Court recognized in *Coalition*, it is incumbent upon a party proposing limits on CAP shopping to provide evidence showing a "substantial reason to justify limiting competition." *Id.* at 1107. Therefore, before a CAP shopping proposal can be adopted, there must first be evidence demonstrating that limits on CAP shopping are needed. By advocating the wrong legal standard, RESA asks the Commission to completely ignore the unrefuted evidence of record that clearly demonstrates appropriate limits on CAP customers' ability to shop and remain eligible for CAP are needed to mitigate the adverse impacts of CAP shopping. RESA's desire to ignore this data should be rejected.

In its Initial Brief, PPL Electric explained the substantial evidence it introduced in this proceeding regarding the CAP shopping statistics and data in PPL Electric's service territory.[12] As explained therein, the CAP shopping data and statistics demonstrate that unrestricted CAP shopping in PPL Electric's service territory has resulted and will likely continue to result in: (i) CAP customers exceeding their CAP credits at a faster pace than they would have if they did not shop, which puts these low-income customers at risk of early removal from CAP; and (ii) a substantial increase (estimated at approximately $2.7 million annually) in the CAP costs paid for by other Residential customers.[13] I&E, OCA, and CAUSE-PA likewise explained substantial and important reasons why restrictions on CAP customers' ability to shop within the Company's service territory are needed.[14] Importantly, no parties offered any testimony or evidence to refute the CAP shopping data and statistics provided in this proceeding.

In its Exceptions, RESA concedes the "[CAP] shopping data may suggest the need to revise the CAP program on a going forward basis," but argues that the "data does not establish

[12] *See* PPL Electric Initial Brief, pp. 13-16.

[13] *See* PPL Electric Statement No. 3, pp. 9-13.

[14] *See* I&E Main Brief, Section VI.B; OCA Initial Brief, Section VI.B; and CAUSE-PA Initial Brief, Section VI.B.

what revision(s) should be made." (RESA Exceptions, p. 9) RESA's argument, however, appears to miss the point and puts the proverbial "cart before the horse."

The issue before this Commission is whether to adopt restrictions or limits on CAP customers' ability to shop. However, before the Commission can make a determination on what, if any, restrictions or limits on CAP shopping should be adopted, the Commission must first determine if there is a need to impose restrictions or limits on CAP shopping. Indeed, if the record evidence demonstrates there are no issues or problems with unrestricted CAP shopping, there would be no need for the Commission to adopt restrictions or limits on CAP shopping. Conversely, if the record evidence demonstrates unrestricted CAP shopping has significant and adverse impacts on CAP customers and/or other Residential customers that pay for CAP costs, only then would the Commission be required to determine the appropriate restrictions or limits on CAP shopping to address these adverse impacts.

This is precisely what the ID did in this case. The ID analyzed in detail the unrefuted evidence introduced by the parties demonstrating that unrestricted CAP shopping in PPL Electric's service territory currently has significant and adverse impacts on both CAP customers and other Residential customers that pay for CAP costs.[15] (ID, pp. 48-53) Based on this substantial evidence of record, the ID concluded the data is compelling and sufficient to support a finding that restrictions on CAP shopping are needed. (ID, pp. 53, 56) Therefore, despite

[15] RESA did not dispute any of the detailed evidence introduced in this proceeding regarding CAP shopping within PPL Electric's service territory. Rather, RESA attempted to criticize the undisputed CAP shopping data and statistics because, according to RESA, they are "focused on a single point in time" and do not take into account that the CAP customer may have "obtained some benefit or incentive for switching (such as a lower price, a gift card, or energy audit)." *See* RESA Initial Brief, p. 20. PPL Electric responded to the various flaws in RESA's criticisms. *See* PPL Electric Response Br., pp. 10-14. The ID fully considered and rejected RESA's attempts to criticize the undisputed CAP shopping data. (ID, pp. 54-55) Notably, RESA has not taken exception to the ID's rejection of RESA's criticism of the CAP shopping data.

RESA's assertion to the contrary, the ID properly relied on the evidence of record to determine if there is a need to impose restrictions or limits on CAP shopping.

RESA seeks to completely ignore the unrefuted record evidence demonstrating that limitations on CAP shopping are needed in PPL Electric's service territory and, instead, focuses exclusively on whether there any alternative proposals. RESA's position is based upon its incorrect legal and evidentiary standard that parties are required to disprove any and all alternatives to restrictions on CAP shopping before the Commission may impose limits on CAP shopping. Again, this is not the correct legal and evidentiary standard as explained above.

Not only is RESA's position based on an incorrect legal and evidentiary standard, it is fundamentally flawed because it fails to account for and address the underlying problem that was identified in the CAP shopping data RESA seeks to discount. Indeed, as explained in Section II.A.2 above, the flaw in RESA's reasoning is amply demonstrated by the fact that RESA's alternative proposals completely fail to address the existing substantial and adverse impacts that CAP shopping has today and will continue to have within PPL Electric's service territory, including the substantial increase (estimated at approximately $2.7 million annually) in the CAP costs paid by other Residential customers.

Based on the foregoing, the evidence of record demonstrates the substantial adverse impacts of unrestricted CAP shopping. The ID properly relied on this unrefuted evidence of record to determine that restrictions or limits on CAP shopping are needed. Accordingly, the Commission should deny RESA's Exception No. 1.

B. REPLY TO EXCEPTION NO. 2 - RESA's Opposition to the CAP-SOP Is Speculative, Contrary to the Weight of the Evidence, and Was Properly Rejected by the ID

In Exception No. 2, RESA argues that the ID erred in approving the CAP-SOP (with one modification opposed by PPL Electric) because, according to RESA, EGSs would be unwilling

to participate in the CAP-SOP (even with the proposed modification). (RESA Exception, pp. 11-13) In support, RESA argues that EGSs would be unwilling to participate in the CAP-SOP because: (i) all offers to CAP customers would be confined to the CAP-SOP; (ii) EGSs would be required to pay a $28 referral fee for each CAP customer referred; (iii) EGSs would be limited to making offers to CAP customers that are 7% off the then-effective Price to Compare ("PTC"); and (iv) EGSs would be prohibited from marketing non-commodity products and services to CAP customers. (RESA Exceptions, p. 11) RESA's opposition to the jointly proposed CAP-SOP is speculative, contrary to the record, and was properly rejected by the ID.

As a preliminary matter, it should be noted that RESA's contention that no EGSs would be willing to serve customers under the CAP-SOP is not supported by the record. RESA's allegation regarding lack of EGS participation in the CAP-SOP is inconsistent with the fact that the existing traditional SOP has been highly successful. [16] Indeed, RESA concedes that the existing traditional SOP, which the CAP-SOP will be based on, "has seen healthy customer and EGS participation and has largely been successful in encouraging customers to take advantage of lower cost options in the market place."[17] Further, it is not clear RESA's own members agree EGSs would not participate in the CAP-SOP.[18] RESA's speculative assertion therefore should be rejected.

In support of its contention that EGSs would be unwilling to participate in the CAP-SOP, RESA first argues the CAP-SOP would eliminate the ability of CAP customers to freely shop. (RESA Exceptions, p. 12) As found by the ID, RESA failed to submit any evidence to support this claim. (ID, p. 57) Further, the CAP-SOP would not eliminate CAP shopping. Indeed, CAP

[16] *See* PPL Electric Statement No. 1-R, pp. 11, 13; PPL Electric Statement No. 1-RJ, p. 10.
[17] *See* RESA Statement No. 1-R, p. 4.
[18] *See* PPL Response Br., pp. 25-26.

customers would have the ability to elect to shop through the CAP-SOP or remain on default service. The only difference from the unrestricted CAP shopping that exists today is these low-income customers would only be able to receive an EGS rate that is lower than the PTC in effect at the time the CAP customers contract with an EGS. Stated otherwise, the CAP-SOP, if adopted, will not prohibit CAP shopping; it only imposes rules that will prevent CAP customers from paying a price above the PTC at the expense of other Residential customers. In addition, RESA's argument completely disregards the unrefuted evidence that the current ability of CAP customers to freely shop has resulted in: (i) CAP customers exceeding their CAP credits at a faster pace than they would have if they did not shop, which puts these low-income customers at risk of early removal from CAP; and (ii) a substantial increase (estimated at approximately $2.7 million annually) in the CAP costs paid for by other Residential customers.

RESA next argues that EGSs would be unwilling to participate in the CAP-SOP because of the $28 referral fee. (RESA Exceptions, p. 12) Although EGSs participating in the CAP-SOP would be required to pay a $28 referral fee for each CAP customers that is referred to the participating EGS, this argument does not support a finding that EGSs would not be willing to participate in the CAP-SOP. Indeed, RESA's argument overlooks that EGSs currently participating in the Company's traditional SOP are required to pay the very same $28 referral fee, and that the existing traditional SOP has been highly successful both from a customer and EGS participation perspective. RESA also overlooks that, because EGS participation in the CAP-SOP is completely voluntary, EGSs are free to elect to not participate and, thereby, avoid the $28 referral fee altogether.

RESA next argues EGSs will be unwilling to participate in the CAP-SOP because they are required to offer a price to CAP customers that is 7% off the then-effective PTC. (RESA

Exceptions, p. 12) RESA's argument implies EGSs would only be willing to offer service to CAP customers if they are free to charge any rate they desire, including rates greater than the PTC.[19] However, the unrefuted evidence of record clearly demonstrates that unrestricted CAP shopping in PPL Electric's service territory, including the ability of EGS to freely offer a variety of rates to CAP customers, has had significant adverse impacts both to CAP customers and to non-CAP customers who pay for CAP costs. Further, the Commission should note that the 7% discount under the CAP-SOP is the very same discount required for all EGSs that participate in the Company's traditional SOP, which has been highly successful both from a customer and EGS participation perspective as explained above. Thus, any speculation that EGSs would be unwilling to participate in the CAP-SOP due to the required 7% discount off the PTC is inconsistent with the undisputed fact that the exiting traditional SOP has been highly successful.

RESA next argues that EGSs would be unwilling to participate in the CAP-SOP because they are unable to offer CAP customers non-commodity, "value-added" products and services through the CAP-SOP. (RESA Exceptions, p. 11) According to RESA, CAP customers currently have the ability to avail themselves of other "value-added" products and services offered by EGSs, but would not have this ability under the CAP-SOP. (*See* RESA Initial Brief, pp. 24, 27) However, as noted by the ID, RESA failed to introduce any evidence of these "value-added" products and services and, more importantly, failed to demonstrate that the value of these "value-added" products and services outweigh the clear and unrefuted harm that unrestricted CAP shopping has caused to both CAP and non-CAP customers in PPL Electric's

[19] Shopping does not directly affect a CAP customer's monthly payment amount, which is a fixed monthly amount based upon ability to pay. *See* PPL Electric St. No. 1, p. 44. Thus, CAP shopping customers have no reason to avoid higher costs because their monthly payment amount is fixed. Higher costs incurred by CAP shopping customers results in higher costs paid by non-CAP customers or removal from CAP if a customer exceeds it allowed CAP credits.

service territory. (ID, p. 54) Furthermore, even with the current ability to participate in any available non-commodity products and services, the record clearly demonstrates that CAP shopping has had significant adverse impacts.

Finally, PPL Electric notes that RESA summarily dismisses the ID's proposed modification to the CAP-SOP, which was designed to specifically address RESA's concerns regarding the speculated lack of EGS participation in the CAP-SOP.[20] (RESA Exceptions, p. 12) The fact that RESA takes exception to the ID's proposed modification to the CAP-SOP is further support that the Commission should reject the recommended modification of the CAP-SOP as explained in the Company's Exceptions.

Based on the foregoing, RESA's contention that EGSs would be unwilling to participate in the CAP-SOP is speculative, contrary to the record, without merit, and was properly rejected by the ID. Further, given the unrefuted evidence that unrestricted CAP shopping in PPL Electric's service territory currently has and will continue to have significant and adverse impacts on both CAP customers and other Residential customers that pay for CAP costs, RESA's position and continued support for unrestricted CAP shopping is unreasonable and should not be adopted. Accordingly, the Commission should deny RESA's Exception No. 2.

[20] Specifically, the ID recommended the CAP-SOP be modified to "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." (ID, p. 62) According to the ID, this modification would serve two purposes: (1) it would allow EGSs to avoid paying the $28 CAP-SOP referral fee for CAP customers who continue to shop under the CAP-SOP; and (2) it would mitigate RESA's concern that the CAP-SOP will eliminate shopping for CAP customers. (ID, pp. 62-63).

III. CONCLUSION

WHEREFORE, for all the foregoing reasons, as well as those more fully explained in its Initial and Response Briefs, PPL Electric Utilities Corporation respectfully requests that the Pennsylvania Public Utility Commission deny the Exceptions of the Retail Energy Supply Association, grant PPL Electric Utilities Corporation's Exception to the Initial Decision of Administrative Law Judge Susan D. Colwell, and adopt the Settlement and the jointly proposed CAP-SOP without modification.

Respectfully submitted,

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