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

IN REPLY PLEASE
REFER TO OUR FILE

November 28, 2016

Secretary Rosemary Chiavetta
Pennsylvania Public Utility Commission
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 Bureau of Investigation and Enforcement's (I&E) **Answer to Retail Energy Supply Association's Petition for Reconsideration** 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. Miller
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney I.D. #313863

GLM/sea
Enclosure

cc: Honorable Charles E. Rainey, Jr., Chief Administrative Law Judge
Certificate of Service

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 **Answer to Retail Energy Supply Association's Petition for Reconsideration** dated November 28, 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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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**

ANSWER OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT
IN OPPOSITION TO THE RETAIL ENERGY SUPPLY ASSOCIATION'S
PETITION FOR RECONSIDERATION OF THE
COMMISSION'S OCTOBER 27, 2016 ORDER

TO THE HONORABLE COMMISSION:

Pursuant to 52 Pa. Code § 5.572(e), the Bureau of Investigation and Enforcement ("I&E") of the Pennsylvania Public Utility Commission ("Commission") hereby submits its Answer in opposition to the Petition for Reconsideration ("Petition") of the Commission's May 10, 2016 Final Order ("Final Order") in the above-captioned proceeding filed by Retail Energy Supply Association ("RESA") on November 14, 2016. In its Final Order, the Commission both approved a Partial Settlement and resolved the sole contested issue of whether there should be limitations on customer assistance program customers' ("CAP") ability to shop for electric supply from electric generation suppliers ("EGSs") in PPL Electric Utilities Corporation's ("PPL") service territory and, if so, what limitations should be applied to CAP shopping. Ultimately, the Commission approved a shopping restriction, the CAP standard offer program ("CAP-SOP"), which was recommended by PPL, I&E, the Office of the Consumer Advocate ("OCA"), and the

Coalition for Affordable Utility Service in Pennsylvania ("CAUSE-PA") (collectively "Joint Petitioners").[1]

While RESA opposed adoption of the CAP-SOP, the Commission rejected its arguments and cited the proven economic harm resulting from unrestricted CAP shopping in PPL's service territory.[2] Furthermore, the Commission determined that the Joint Petitioners presented substantial evidence in support of the proposed CAP-SOP, as well as evidence regarding why other alternatives would not be reasonable.[3] Finally, the Commission also rejected RESA's argument that EGSs would not participate in the CAP-SOP as speculative and unsupported in the record.[4] Now, in support of the Final Order and in response to RESA's Petition, I&E avers the following:

INTRODUCTION

At the outset, the averments alleged in RESA's Petition do not meet the requisite standard to warrant reconsideration of the Commission's Order. In this case, RESA's arguments that purport to justify relief have already been expressly rejected by the Commission, and therefore they do not merit reconsideration. Reconsideration is not "a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them."[5] On the contrary, reconsideration requires that a petition identify "new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the

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1 Final Order at 69-70.
2 *Id.* at 55.
3 *Id.*
4 *Id.* at 66.
5 *Duick v. Pa. Gas and Water Co.*, 56 Pa. PUC 553, 559 (1982) (quoting *Pa. Railroad Co. v. Pa. Pub. Serv. Comm'n*, 179 A. 850, 854 (Pa. Super. 1935)).

Commission."[6] Here, RESA merely alleges that: (1) the Commission did not engage in the required legal analysis of reasonable alternatives to proposed CAP shopping restrictions in this case; and (2) the Commission overlooked or failed to give proper weight to the evidence in the record as to why the CAP-SOP restrictions would eliminate EGS products for CAP participants.[7] I&E submits that each of the alleged grounds is without merit, as the record reveals that the Commission both considered and explicitly addressed each issue; therefore, reconsideration is not warranted.

Additionally, to the extent that RESA is requesting a rehearing under 703(g) of the Public Utility Code,[8] RESA fails to meet that requisite standard as well. To be entitled to such relief, a petitioner must allege newly-discovered evidence not discoverable through the exercise of due diligence prior to the close of the record.[9] For this reason, the purpose of a rehearing is to take testimony or evidence not offered at the original hearing because it was not available.[10]

Here, RESA does not any allege newly discovered facts. Instead, RESA argues only that because the CAP-SOP was presented for the first time in PPL's rejoinder testimony, the record is devoid of a full and fair vetting of the CAP-SOP and alternatives to the CAP-SOP.[11] On this basis, RESA avers that the issue of CAP shopping should be remanded to the Administrative Law Judge ("ALJ") for rehearing,[12] but it fails to equate

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6 *Id. at* 559 (1982).
7 RESA Petition at 3-4.
8 Although RESA titles it's Petition as a "Petition for Reconsideration," ¶¶28-31 of its Petition operate as a a request for "remand."
9 *Duick* at 558.
10 *Powell v. Sonntag*, 48 A.2d 62, 66 (Pa. Super. 1946).
11 RESA Petition at 4-5.
12 Id. at ¶18, ¶28.

its allegation to the existence of newly discovered evidence that could not have been presented at the hearing. On the contrary, simple examination of the record reveals that several CAP shopping proposals other than the CAP-SOP were presented, developed, and addressed by several parties through rounds of testimony.[13] Despite this fact, RESA failed to offer any proposal until after the close of the evidentiary hearing. Furthermore, although all parties had the opportunity to conduct cross-examination during the evidentiary hearing on June 16, 2016, RESA voluntarily waived its opportunity.[14] Additionally, to the extent that RESA argues that PPL adopted its final recommendation for the first time in rejoinder testimony, RESA made no objection when PPL moved to have its rejoinder testimony admitted into the record.[15]

Furthermore, the fact that the Joint Petitioners' briefs did not include a comprehensive analysis of withdrawn CAP shopping proposals was the result of an agreement of all parties, including RESA. Specifically, all parties assented to briefing the CAP shopping issue with the understanding that the Joint Petitioners would brief only the CAP-SOP because they withdrew all of their other proposals.[16] While RESA now argues that the record regarding CAP-SOP alternatives was not fully developed, it declined several opportunities to supplement the record. RESA's failure to develop the record to its own satisfaction cannot be blamed on a lack of available evidence at the hearing, but it can instead be attributed to its own inaction during the proceeding. RESA is not entitled

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13 PPL St. No. 1 at 46-47; I&E St. No. 1 at 7-8; OCA St. No. 2 at 21-22; CAUSE-PA St. No. 1 at 33-38; RESA St. No. 1-R at 11-13; OCA St. No. 2—SR at 13-14; I&E St. No. 1-SR at 4-15; CAUSE-PA St. No. 1-SR at 18-21; PPL St. No. 1-RJ at 4-10; RESA St. No. 1-RJ at 1-4; PPL Main Brief at 17.

14 TR at 29.

15 TR at 33 (whereby PPL's testimony, including the rejoinder testimony at issue, was admitted into the record without any objection).

16 Id. at 37-38.

to retry this case simply because it is unhappy with the outcome. Because RESA has not alleged facts that support a rehearing in this matter, its request should be denied.

I. BACKGROUND

1. Admitted.

2. Admitted in part, denied in part. It is admitted that the averments in this paragraph correctly describe only PPL's initial position regarding CAP shopping. By way of further response, it is denied that PPL's initial position constituted its ultimate recommendation in this case, which evolved during the discovery and litigation process.[17] PPL's rejoinder testimony recommended adoption of the CAP-SOP and it was admitted into the record without any objection.

3. Admitted. By way of further response, the parties served testimony in accordance with the litigation schedule that was agreed upon in this proceeding. Additionally, all testimony was admitted into the record without objection.

4. Admitted. By way of further response, all parties voluntarily waived cross-examination of all witnesses in the proceeding.

5. Admitted. By way of further response, all interested parties agreed to brief the issue of CAP shopping with the understanding that the Joint Petitioners did not intend to brief their withdrawn CAP shopping proposals and would instead only address the CAP-SOP. At the hearing, RESA assented to the Joint Petitioners' briefing plan.[18]

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17 PPL Response Brief at 17.

18 TR. at 37-38.

6. Admitted in part, denied in part. It is admitted that RESA does not support the Joint Litigation Position. To the extent that the remaining averments of this paragraph are consistent with the Joint Litigation Position, they are admitted. To the extent that they are inconsistent, they are denied.

7. Admitted.

8. Admitted.

9. Admitted.

10. The averments contained in this paragraph constitute a prayer for relief to which no response is required. To the extent that a response is deemed to be required, the averments are admitted in part and denied in part. It is admitted that RESA is requesting the relief described in this paragraph, but it is denied that RESA is entitled to such relief. It is further denied that by approving the CAP-SOP the Commission has or is electing to "shut down shopping for existing and future PPL CAP customers," because the CAP-SOP provides an avenue for CAP shopping.[19] Additionally, the CAP-SOP is intended only as an interim program and it can be re-opened if there is a lack of EGS participation or if warranted by changes in the retail market.[20] It is further denied that the issue of CAP shopping should be remanded to the ALJ. RESA has failed to allege the existence of any newly discovered evidence that was not available at the hearing, and therefore fails the standard for rehearing. Instead, the record reveals that a multitude of CAP shopping proposals other than the CAP-SOP were offered through several rounds of

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19 Final Order at 54-55.

20 I&E Main Brief at 30-31.

testimony and by several parties during the course of this proceeding.[21] Yet, for the entire evidentiary phase of this proceeding, RESA failed to offer any CAP shopping proposals or to express support for any other party's proposals. Instead, RESA simply indicated that it opposed any CAP shopping restriction.[22] Surprisingly, RESA offered proposals for the first time in its Main Brief,[23] and its proposals were untimely, underdeveloped, and ineffective in light of PPL's CAP shopping statistics. Finally, it is denied that RESA is entitled to a rehearing to address "operational implementation details" of the CAP-SOP, which it could have addressed at the evidentiary hearing already held in this matter, but instead now raises for the first time in its Petition.

II. STANDARDS FOR RECONSIDERATION

11. Admitted.

12. Admitted in part, denied in part. It is admitted that the Commonwealth Court provided authority for the Commission to "bend" competition to further important aspects of the Electricity Generation Customer Choice and Competition Act ("Competition Act") after a showing that there are no reasonable alternatives to a proposed restriction.[24] It is further admitted that the proponents of the restriction bear the burden of proof and persuasion, but it is noted that the burdens can shift between parties, which occurred in this case.[25] The remaining averments of this paragraph constitute

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21 ID at 47; See the testimony identified in footnote 8.

22 RESA St No. 1-R at 12; RESA St. No. 1-RJ at 4; TR at 36.

23 I&E Reply Brief at 14; PPL Response Brief at 18; CAUSE-PA Reply Brief at 5.

24 *Coal. for Affordable Util. Servs. & Energy Efficiency in Pennsylvania v. Pennsylvania Pub. Util. Comm'n,* 120 A.3d 1087 (Pa.Cmwlth. 2015), *appeal denied,* (Pa. Apr. 5, 2016), and *appeal denied,* (Pa. Apr. 5, 2016).

25 Initial Decision ("ID") at 54-55.

RESA's characterizations of the law or conclusions of law to which no response is required.

III. BASIS FOR RECONSIDERATION

13. Denied. Reconsideration is not warranted here because RESA has failed to meet the *Duick* standard that it described in Paragraph 11. Specifically, RESA has not raised new or novel arguments, arguments that have been overlooked by the Commission, pled newly discovered evidence, alleged errors of law, or alleged a change in circumstances. Instead, the crux of RESA's Petition is that the Commission did not conduct an analysis of alternatives to the CAP-SOP and that the Commission failed to give proper weight to the testimony of its witness's regarding EGS participation in the CAP-SOP. RESA's arguments fail because it is well-settled that the Commission is not required to consider, expressly and at length, each and every argument that parties raise.[26] Yet, although it was not obligated to do so, and despite the fact that RESA failed to raise or adopt any CAP shopping proposals until after the evidentiary phase of this proceeding, the Commission did expressly address alternatives to the CAP-SOP, as indicated below:

> In consideration of RESA's position that there are several reasonable alternatives available in lieu of the proposed CAP-SOP option, we are in agreement with the ALJ that it is not feasible to require the Joint Parties to identify all possible alternatives. Rather, we find that several alternatives were, in fact, considered by the Parties, but that they ultimately determined that the Joint Litigation Position was the most reasonable such alternative. We conclude that none of the alternatives suggested by RESA are acceptable alternatives.[27]

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26 *Wheeling & Lake Erie Railway Company,* 778 A.2d 785,794, quoting *University of Pennsylvania v. Pennsylvania Public Utility Commission,* 86 Pa.Cmwlth. 410, 485 A.2d 1217 (1984).

27 Final Order at 55.

Here, the Final Order indicates that the Commission considered RESA's testimony regarding an alleged lack of EGS participation in the CAP-SOP, but found that the testimony consisted of unsupported assertions.[28] As recognized in the Final Order, I&E indicated that the underlying basis for the conclusion of RESA's witness was fundamentally flawed:

> In its Replies to Exceptions, I&E states that RESA's allegation that EGSs would not participate in the CAP-SOP is unsubstantiated and meritless. I&E refers to analysis performed by CAUSE-PA, that during the period of March to May of 2016, there were sixteen EGSs participating in PPL's SOP, only six of which were members of RESA. I&E R. Exc. at 15, citing CAUSE-PA M.B. at 29. Furthermore, I&E points out that the RESA witness did not even poll or review the CAP-SOP proposal with all RESA members prior to making this assertion, instead discussing the proposal with just seven RESA members prior to submission, even though RESA's membership consists of twenty-one members in Pennsylvania. I&E also points out that, according to CAUSE-PA's review of the Commission's publicly available website, there are currently 211 EGSs licensed in PPL's service territory which serve Residential customers. I&E R. Exc. at 16, citing CAUSE-M.B. at 30. As such, I&E maintains that CAUSE-PA determined that the RESA witness was speaking on behalf of 3.3 percent of all licensed EGSs when he asserted that no EGSs would be willing to serve CAP customers under a modified CAP-SOP. *Id.* I&E opines that considering this data, RESA's witness' 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.[29]

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28 Final Order at 66.

29 Id. at 61.

Accordingly, while the Commission considered the scope of RESA's testimony in conjunction with its actual underlying basis, it correctly determined that the testimony was unsupported.

14. Admitted in part, denied in part. It is admitted that this averment correctly quotes the Final Order. It is denied that the record does not contain alternative proposals, as a multitude of proposals made by several parties are contained in the testimony that was admitted into the record in this proceeding.[30] By way of further response, at the evidentiary hearing, all parties agreed that alternatives to the CAP-SOP were withdrawn in favor of the CAP-SOP and would not be briefed, but that agreement did not remove those alternatives from the record. Furthermore, there is no authority that compels the Commission to conduct a sweeping analysis of withdrawn proposals, although the Final Order reveals that the Commission did consider alternatives.[31] Finally, it is denied that the Joint Litigation Position advocated "over-reaching" shopping restrictions, especially in light of the unrefuted harmful impact of unrestricted CAP shopping in PPL's service territory.

15. Admitted in part, denied in part. It is admitted that this averment correctly describes the evolution of PPL's CAP shopping recommendations, and though it was not required to do so, PPL has explained the rationale for the evolution.[32] By way of further response, PPL's rejoinder testimony adopted an almost-identical proposal offered by

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30 See footnote 8 ; PPL Initial Brief at 17.
31 Final Order at 55.
32 PPL Response Brief at 17.

CAUSE-PA, which RESA responded to in its rejoinder testimony.[33] Additionally, PPL's rejoinder testimony was entered into the record at the evidentiary hearing on June 16, 2016. At the hearing, RESA voluntarily waived its opportunity to present cross-examination and it made no objection to the admission of the testimony.

16. Denied. To the extent that RESA may have supported PPL's initial proposal, it did not articulate any support for it until after the evidentiary phase of this proceeding, nor did it offer any "alternatives" to other proposals advanced during the evidentiary phase of this proceeding. Despite this fact, the record does contain both alternate CAP shopping proposals that were offered by interested parties during this case and responsive testimony regarding those proposals.[34] To the extent that the Joint Petitioners had a burden to show that no reasonable alternatives to the CAP-SOP existed, the ALJ and the Commission correctly determined that the burden was satisfied. RESA cites no authority to compel the Joint Petitioners to explore the viability of every conceivable option in the universe of alternatives, and the ALJ correctly noted that such an onerous requirement would not be feasible.[35] Additionally, during the process of evaluating countless alternatives, proven CAP shopping harm would continue in PPL's service territory, thwarting the Competition Act's mandates that low-income customers receive electric service on reasonable terms and that universal service programs be appropriately funded and available in each electric distribution company's territory.[36]

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33 CAUSE-PA St. No. 1-SR at 18-21; RESA St. No. 1-RJ at 1-4.
34 See footnote 8; PPL Main Brief at 17.
35 RD at 47.
36 66 Pa. C.S. 2802(9).

For this reason, the CAP-SOP is an *interim solution,* and it contemplates further involvement of interested parties to address CAP shopping issues.[37]

17. Denied. I&E hereby incorporates its responses to Paragraph 15 and 16.

18. Denied. RESA mischaracterizes the rationale underlying the Commonwealth Court's decision in the PECO case, as PPL previously explained:

> [D]espite RESA's assertion to the contrary, the Court did not reject the PECO CAP shopping proposal because PECO failed to introduce evidence to demonstrate that there are no reasonable alternatives to PECO's CAP shopping proposal. 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." The Court explained that it could not and would not re-weigh the evidence. Clearly, the Court affirmed the Commission's rejection of PECO's proposed CAP shopping price ceiling because the Commission's decision was not supported by substantial evidence.[38]

The element missing in the PECO case, substantial evidence that would justify imposing a price ceiling, existed in this case. The Commission cited the substantial evidence in its Final Order:

> [i]n this case, the Parties presented substantial evidence in support of the proposed CAP-SOP, as well as evidence regarding why other alternatives would not be reasonable. The data provided by PPL in this proceeding demonstrated the economic harm experienced as the result of unrestricted CAP customer shopping decisions. The identified economic harm affects the ability of CAP customers to remain on CAP, as higher costs result in a quicker erosion of the CAP customers' limited allocation of CAP credits and also affects

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37 I&E Main Brief at 24; Joint Position at ¶4.

38 PPL Response Brief at 6-7 (citations omitted).

> non-CAP customers by increasing the subsidy they incur to support the universal service objectives within the Competition Act. We find that this unrefuted evidence is sufficient to permit the Commission to impose CAP rules that may partially restrict or limit the ability of these customers to shop for electricity.[39]

Aside from identifying the substantial evidence supporting the CAP-SOP, the Commission also explicitly rejected RESA's argument that that PPL's initial proposal would sufficiently protect CAP shoppers from economic harm.[40] Accordingly, RESA's reliance upon the PECO case fails to provide a viable basis for reconsideration.

19. Denied. The Commission considered RESA's evidence and correctly determined that it was unsupported in the record. As explained in I&E's response to Paragraph 13, RESA's allegation that EGSs would not participate in the CAP-SOP is unsubstantiated. Although RESA claims that the testimony of its witness provides substantial evidence of why EGSs will not participate in the CAP-SOP, the underlying basis of that testimony does not support RESA's assertion. Instead, while RESA's witness purported to offer an opinion on behalf of all EGSs, the record revealed that he was speaking on behalf of only 7 EGSs, a mere 3.3% of the 211 EGSs licensed in Pennsylvania at that time, when he asserted that "no" supplier would be willing to serve EGSs under a modified CAP-SOP."[41] Therefore, the Commission did give "proper weight" to such evidence. Finally, it is denied that the Commission erred in determining that the extensive EGS participation in the current SOP program rendered RESA's concerns speculative, and RESA produces no evidence to overcome that determination.

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39 Final Order at 55.

40 Id. at 55.

41 I&E Reply Brief at 18-19; CAUSE-PA Main Brief at 30; Joint Stipulation of CAUSE-PA and RESA.

20. Admitted in part, denied in part. The description of Mr. White's employment is admitted. It is denied that Mr. White's testimony provided substantial evidence in this proceeding. I&E hereby incorporates in response to Paragraph 13. By way of further response, I&E avers that it is not the issue of whether Mr. White is an expert but the underlying basis of his opinion and the scope of his opinion that fail to render his testimony "substantial evidence."

21. Admitted in part, denied in part. It is admitted only that the statements attributed to Mr. White are consistent with his testimony that RESA entered into the record in this proceeding. The remaining averments of this paragraph are comprised of RESA's opinion and require no response. To the extent that a response is deemed necessary, the averments are denied.

22. Admitted in part, denied in part. It is admitted that in the PECO case referenced above, the Commonwealth Court identified testimony from an industry expert as substantial evidence. It is denied that such determination, the underlying basis of which is not part of the record here, converts Mr. White's testimony into substantial evidence in this case. As previously explained, the underlying basis and scope of Mr. White's opinion that no EGS would participate in the CAP-SOP is unsupported and cannot be considered substantial evidence. Therefore, the independent determination regarding a different witness in another proceeding under distinguishable circumstances is not determinative here.

23. Admitted in part, denied in part. It is admitted that PPL's witness initially identified many of the same issues as Mr. White. By way of further response, I&E's

witness evaluated many of those issues as well, but with an important distinction. Both PPL and I&E's positions evolved during the discovery phase, in consideration of other parties' testimony, and upon the receipt of evidence further detailing the implications of PPL's increased CAP shopping costs.[42] As both PPL and I&E indicated, the CAP-SOP was designed with EGS concerns in mind, and it includes features intended to the concerns.[43] Finally, it is denied that the fact that no EGSs signed on to the Joint Litigation Petition is noteworthy or implied evidence of an impending lack of participation in the CAP-SOP, just as it would be disingenuous to say that the fact that no EGS opposed it is noteworthy or evidence of impending participation.

24. Denied. PPL produced evidence that the processes and protocols for the CAP-SOP would be the same or very similar to its existing SOP,[44] and that its existing SOP is successful,[45] and RESA testified regarding differences between the SOP and that CAP-SOP. Accordingly, the Commission could not and did not arrive at any guaranteed participation level, but instead found that RESA's testimony was unsupported. Additionally, the Commission noted that the CAP-SOP contained a provision to provide parties with the ability to petition the Commission to re-open the CAP-SOP in the event that there is no EGS participation,[46] providing an avenue to address RESA's concern if it materialized.

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42 PPL Initial Brief at 16-18; I&E Main Brief at 30-31.
43 PPL St 1-RJ at 5-6;I&E Main Brief at 28-31.
44 PPL St. No. 1-RJ at 8;
45 PPL St. No. 1 at 37.
46 Final Order at 66.

25. Denied. As explained in I&E's responses to Paragraphs 13-24, RESA's arguments that purport to justify reconsideration have already been expressly rejected by the Commission, and therefore do not merit reconsideration.

IV. RELIEF REQUESTED

A. RESA's Request for Reconsideration is Unsupported and Inappropriate

26. Admitted in part, denied in part. It is admitted only that PPL's CAP customers have had the ability to shop without restriction since 2010, that about 20,738 of those customers are shopping, and that around half of those customers shopped at or below the price to compare. By way of further response, the substantial and unrefuted evidence in this proceeding proved that during the 46-month period of January 1, 2012 through October 30, 2015, 9,626 CAP shopping customers paid an average price of $0.11048 and used an average of 1,197 kWh monthly.[47] 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.[48] Evidence also proved that between January 2012 and February 2016, 34,780 customers were removed from CAP because they exceeded their maximum CAP credits. Of those 34,780 customers, 27,600 (79%) were customers who had shopped with an EGS during a portion of the previous 18 month period.[49] Non-CAP residential ratepayers were also negatively impacted by unrestricted CAP shopping. According to PPL, "the net financial impact of OnTrack shopping is an increase of

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47 PPL St. No. 3 at 9.
48 Id.
49 CAUSE-PA St. No. 1 at 17; Attachment B to CAUSE-PA St. No. 1 at 5-8.

approximately $2.7 million annually in the energy charges paid for supply provided to OnTrack customers."[50] The $2.7 million increase in energy charges is imposed upon residential customers who pay costs under PPL's universal service rider. These are results that offend both the Competition Act and the Commission's universal service goals.

It is denied that adoption of the CAP-SOP, an interim measure, will force CAP customers to return to default service, and no evidence of this assertion has been presented in this case. It is also denied that the Competition Act elevates a CAP customer's ability to choose an EGS over affordable access to electric service. Instead, the Competition Act imposes an obligation upon the Commission to ensure that low-income customers have access to electric service on reasonable terms and conditions and that universal service programs are adequately funded.[51] Evidence in this case proves that the Competition Act's mandates have been jeopardized under PPL's unrestricted CAP shopping scheme, and the law supports the imposition of restrictions under such circumstances.[52] Additionally, it is denied that RESA's improper characterization of customers' perspectives regarding the CAP-SOP is accurate or appropriate. RESA, a group of EGSs, is not qualified to testify on behalf of PPL's CAP customers and its unsubstantiated opinion here has no basis in the record. Finally, it is denied that implementation of the CAP-SOP, an interim program in one EGS's service territory,

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50 PPL St. No. 3 at 12.

51 66 Pa. C.S. 2802(9).

52 *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).

would be counterproductive to the retail market, and RESA failed to provide, and still does not now provide, evidence to support its frivolous claim. Accordingly, while RESA offers unqualified conjecture, it fails to offer any overlooked considerations, newly discovered facts or any other viable grounds for reconsideration.

27. Admitted in part, denied in part. It is admitted only that RESA correctly describes the terms of PPL's initial proposal, but RESA's characterizations of the initial proposal are denied. The remaining averments of this paragraph, which consist of RESA's unsubstantiated opinions, are denied. RESA's opinion here is not based on record evidence and its request that the Commission "not shut down shopping for CAP customers" is frivolous in light of the fact that the CAP-SOP provides a shopping option for CAP customers.[53] Accordingly, as this is nothing more than an attempt to reargue the same issue, reconsideration is not warranted.

B. RESA's Request to Relitigate CAP Shopping Alternatives is Unsupported and Should be Denied

28. Admitted in part, denied is part. It is admitted that RESA's requests remand of the CAP shopping issue to the ALJ if the Commission does not reconsider its decision, but it is denied that such action is warranted because RESA fails to meet the standard for a rehearing. The purpose of a rehearing is to take testimony or evidence not offered at the original hearing because it was not available.[54] The petition must aver that the alleged evidence was obtained after the hearing and that, even by the exercise of

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53 Final Order at 54-55.

54 *Powell v. Sonntag*, 48 A.2d 62, 66 (Pa. Super. 1946).

ordinary diligence, it could not have been presented at the hearing.[55] RESA fails to identify any new evidence to support its request, let alone evidence that could not have been presented at the hearing. Instead, the record reveals that the Commission already evaluated and expressly rejected alternative CAP shopping proposals.[56] Accordingly, RESA's request for remand is without merit should be denied.

29. Denied. I&E hereby incorporates its responses to Paragraphs 13 and 19.

30. Admitted in part, denied in part. It is admitted that RESA has, for the first time, in a Petition for Reconsideration, raised questions about operational details of the CAP-SOP. It is denied that the questions posed warrant a rehearing, as the questions do not operate as facts that were unavailable to be presented during the hearing. On the contrary, the types of questions that RESA now raises are exactly the type of questions that were ripe for cross-examination during the evidentiary hearing in this case, which RESA waived. To the extent that RESA now raises operational questions, the CAP-SOP will not become effective until June 1, 2017, providing additional time for PPL to respond to such questions. Additionally, the CAP-SOP already provides for a stakeholder collaborative regarding customer scripts,[57] and there is nothing that prevents additional concerns from being raised and addressed either during the planned collaborative or through another collaborative open to interested parties. It is also denied that by approving the CAP-SOP, an interim program in one EGS territory that the Commission is shutting down the existing shopping market. RESA's assertion is

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55 *Schach v. Hazle Brook Coal Co.*, 198 A. 464 (Pa. Super. 1938).
56 Final Order at 55.
57 I&E Main Brief at 27.

contrary to evidence in the record, as the Commission correctly noted that CAP-SOP does provide a shopping option.[58] Finally, nothing alleged in this averment constitutes newly developed evidence that could not have been presented at the hearing, and therefore, a rehearing is not warranted.

31. Admitted in part, denied in part. It is admitted that the CAP-SOP was first circulated in rejoinder testimony. It is also admitted that I&E opines that any legitimate operational issues can be worked out among the stakeholders without the need for a second record proceeding. The remaining averments in this paragraph are denied. I&E hereby incorporates its response to Paragraph 30. By way of further response, RESA's mischaracterization of the CAP-SOP and its unsupported allegations of negative consequences that will result from implementation of the CAP-SOP are frivolous and have no basis in fact or in evidence. Accordingly, RESA fails to allege any facts that entitle it to a rehearing and its request should be denied.

32. The averments contained in this paragraph constitute a prayer for relief to which no response is required. To the extent that a response is deemed to be required, the averments are admitted only to the extent that they describe RESA's request for relief. It is denied that RESA is entitled to any relief, as explained in I&E's foregoing responses to RESA's Petition.

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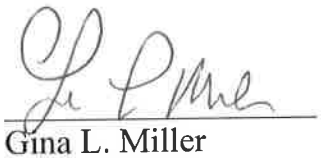
58 Final Order at 54-55.

WHEREFORE, for the reasons set forth above, the Bureau of Investigation and Enforcement respectfully requests that the Petition for Reconsideration of the Retail Energy Supply Association, which provides no evidence that was not previously available and which raises the same arguments that have been definitively decided, be denied.

Respectfully submitted,



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