**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held November 8, 2017

Commissioners Present:

 Gladys M. Brown, Chairman

 Andrew G. Place, Vice Chairman

 David W. Sweet, Statement

John F. Coleman, Jr.

Petition of PPL Electric Utilities Corporation P-2016-2526627

for Approval of a Default Service Program and

Procurement Plan for the Period June 1, 2017

Through May 31, 2021

**TENTATIVE ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration is a recommendation from the Office of Competitive Market Oversight (OCMO) concerning operational issues concerning the implementation of PPL Electric Utilities’ Consumer Assistance Program Standard Offer Program (PPL CAP-SOP).[[1]](#footnote-1) Specifically, given that the Commission’s prior Orders in this proceeding did not adequately address how customers who are receiving service from an electric generation supplier (EGS) after June 1, 2017, and subsequently enroll in CAP are to be transferred to default service or PPL CAP‑SOP, we propose to clarify those prior Orders. Through this Tentative Order, we seek public comment regarding proposals for actions PPL and EGSs are to take regarding customers who are either currently participating in PPL’s CAP[[2]](#footnote-2) or enroll into CAP in the future.

# History of the Proceeding

On January 29, 2016, PPL filed with the Commission a Petition for Approval of a Default Service Program and Procurement Plan (DSP IV or DSP IV Plan) for the period June 1, 2017 through May 31, 2021 (DSP Petition). The DSP Petition was filed pursuant to 66 Pa. C.S. § 2807*.* On July 19, 2016, PPL and various parties filed a Joint Petition for Approval of Partial Settlement (Settlement or Partial Settlement). Several of the Parties to the proceeding filed briefs and reply briefs regarding a single litigated issue – the Customer Assistance Program (CAP) customer shopping issue.

On August 17, 2016, Administrative Law Judge (ALJ) Susan D. Colwell issued her Initial Decision wherein she adopted the PPL CAP-SOP proposed by PPL, the 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), as modified by ALJ Colwell. Exceptions to the Initial Decision were filed by PPL, the Retail Energy Supply Association (RESA) and PP&L Industrial Customer Alliance (PPLICA) on September 6, 2016. Replies to Exceptions were received on September 16, 2016, from PPL, the OCA, I&E and CAUSE-PA. In an Opinion and Order issued on October 27, 2016[[3]](#footnote-3) (*October 2016 Order*), the Commission approved the Settlement and adopted the PPL CAP-SOP jointly proposed by the Joining Parties to become effective June 1, 2017.

On November 14, 2016, RESA filed a Petition for Reconsideration (Petition), seeking reconsideration of the approval of the PPL CAP-SOP in the *October 2016 Order*. By Order entered November 16, 2016, the Commission granted the Petition, pending further review of, and consideration on, the merits. On November 28, 2016, PPL, I&E, the OCA and CAUSE-PA filed Answers to the Petition. In an Opinion and Order issued on January 26, 2017[[4]](#footnote-4) (*January 2017 Order*), the Commission denied RESA’s Petition.

On February 27, 2017, RESA filed with the Commonwealth Court a Petition for Review of the *October 2016 Order* and *January 2017 Order*, with respect to the approval of the PPL CAP-SOP. *RESA v. Pa. PUC*, 230 C.D. 2017. However, RESA has not sought a stay of the implementation of the PPL CAP-SOP. This case is still pending before the Commonwealth Court.

On March 10, 2017, PPL filed a petition to push back the implementation date of the PPL CAP-SOP (Petition to Amend) to September 2017 – citing various operational and information-technology challenges. On March 30, 2017, letters in response to the Petition to Amend were filed by the OCA and CAUSE-PA. However, on May 8, 2017, PPL filed a petition to withdraw its petition to push back the implementation date – and instead go with the original June 1 implementation date. On May 12, 2017, RESA filed a letter in opposition to the petition to withdraw and on May 16, 2017, CAUSE-PA filed a letter in support of the petition to withdraw. On May 16, 2017, PPL filed a letter in response to RESA’s letter, followed by a May 17, 2017, RESA response to PPL’s May 16th Letter.

In a *June 2017 Order*,[[5]](#footnote-5) the Commission granted the Petition to Withdraw. The Commission directed OCMO to facilitate meetings between PPL and the affected Electric Generation Suppliers (EGSs), including RESA, to examine and resolve any operational issues integral to the implementation of the CAP-SOP and, thereafter, to provide a status report to the Commission that addresses the discussions and dispositions of those operational issues.

CAUSE-PA and the OCA filed Petitions on July 5, 2017, and July 7, 2017, respectively. In its Petition, CAUSE-PA requested that the Commission clarify its *June 2017 Order* to allow all parties to participate in the meetings, as the process and procedures discussed are likely to have a significant impact on the proper implementation of the Commission’s underlying Order. OCA made a similar request in their petition. On July 11, 2017, letters in response to the instant Petitions were filed by PPL and RESA. In an Opinion and Order issued on July 12, 2017 (*July 2017 Order*), the Commission granted the Petitions, pending further review of, and consideration on, the merits. Furthermore, the directives within the *June 2017 Order* that OCMO was to hold a meeting within thirty days and provide a status report within ninety days were suspended.

With an Order adopted on August 3, 2017,[[6]](#footnote-6) the Commission agreed to allow all parties to participate in the meetings. In addition, the Commission directed the following:

1. That, within thirty days OCMO would facilitate meetings with PPL, the affected EGSs, including RESA, CAUSE-PA, the OCA and any other interested party to this proceeding to examine and resolve any operational issues that are integral to the implementation of the CAP-SOP; and,
2. That, within ninety days of the entry date of this Opinion and Order, OCMO would provide a status report of the discussions and the disposition of the implementation issues in this matter to the Commission.

*August Order* at 11-12.

**August 28, 2017 Meeting**

 Per the Commission’s *August Order* directives, OCMO convened an in-person meeting on August 28, 2017. Approximately two-dozen individuals participated; including representatives for consumer advocates, suppliers, PPL, and Commission staff from various bureaus. During the discussion, it soon became apparent that the primary point of contention was the treatment of supplier customers on month-to-month contracts – specifically – when do these customers need to be returned to PPL to either go onto default service or obtain a supplier via the PPL CAP-SOP?

Some participants pointed to ordering paragraph (14)(i) of the Commission’s *October 2016 Order* to support their contention that month-to-month customers remain with their supplier until the customer is re-certified by PPL for the PPL CAP:

(i) PPL Electric will revise its CAP recertification scripts/process so that all existing CAP shopping customers receiving generation supply on a month-to-month basis after June 1, 2017 will be required at the time of CAP recertification to enroll in the CAP-SOP or return to default service, but in any event will only be permitted to shop through the CAP-SOP.

However, other participants disagreed with this contention – pointing to ordering paragraphs (14)(g) and (h) of the same order:

(g) All CAP customer shopping fixed-term contracts in effect as of the effective date of the CAP-SOP will remain in place until the contract term expires and/or is terminated.

(h) Once the existing CAP customer shopping contract expires or is terminated, the CAP customer will have the option to enroll in the CAP-SOP or return to default service, but in any event will only be permitted to shop through the CAP-SOP.

Some parties contend that a month-to-month contract expires at the end of the billing period; meaning that the customers on month-to-month supplier contracts should have already been returned to PPL default service or CAP‑SOP. Further, as a practical matter, some parties noted that currently, there is no way for suppliers to know when customer recertification occurs – so there is no way for the ordering paragraph (14)(i) interpretation noted above to even be accomplished. Some parties noted that recertification occurs every 18 months, asserting that it could not have been the Commission’s intention to allow a customer in CAP to go this long without being enrolled into the PPL CAP-SOP or returned to default service. Some parties asserted that ordering paragraph (14)(i) was simply a “catch-all” intended to catch any customer who was, for whatever reason, not previously dropped by their supplier. Some also argued that there was no such thing as a month-to-month contract; that all contracts are for a fixed duration and that the duration of a month-to-month contract is one month. However, other participants pointed out that this interpretation does not provide enough time to for suppliers to provide customers with the two contract expiration notices required by the Commission at 52 Pa. Code § 54.10.[[7]](#footnote-7)

PPL noted that while it may be possible to set up some sort of mechanism to provide recertification dates to suppliers – this would not be easy and would have a cost – and that PPL would need a specific directive from the Commission before they would proceed spending the resources to create such a mechanism. Some parties questioned whether it is reasonable to require PPL to go to the bother and expense to set up such a mechanism to address a temporary, transitional problem. It was also noted that returning customers on month-to-month supplier contracts immediately would obviate the need for any such mechanism. Regardless of the above, on October 18, 2017, PPL notified OCMO that it had revised its supplier web-portal to make recertification dates available to suppliers – and indicated that they would inform suppliers of this modification on October 24, 2017.

There was also discussion as to what extent these issues are truly transitional in nature or not as customers will always be moving in and out of CAP and in and out of shopping. Going forward, what is the expectation upon PPL as to handling new CAP customers who are with a competitive supplier? PPL stated that it does not want to interfere with existing contracts and risk exposing the customer to early termination fees. PPL noted that it currently lets the customer’s fixed duration contract run its course before the customer is required to be dropped by the supplier to default service or the PPL CAP-SOP. However, the question about how customers who are on a month-to-month supplier contract and are subsequently enrolled in CAP are to be treated remains. And regardless, PPL noted that it has no way of knowing just what type of supplier contract a customer is on; fixed duration or month-to-month; and customers are often uncertain about their contract type.

To aid suppliers in identifying CAP customers, PPL indicated that effective September 13, 2017, they would identify which customers were enrolled in CAP on their supplier portal customer lists. PPL also indicated that the customer lists would be updated daily, giving suppliers a near real‑time method of identifying which of their customers were enrolled in CAP so that the supplier could comply with the Commission approved directives in the PPL CAP‑SOP settlement.

**Discussion**

Given the fundamental disagreements between the stakeholders noted above, and acknowledging that some of the post-transition issues have not been fully addressed in previous orders, the Commission is adopting this Tentative Order to solicit comment on the following proposed additions to the PPL CAP‑SOP. The Commission is proposing to clarify its October 27, 2016 Opinion and Order at this Docket regarding *when* a shopping customer who subsequently becomes CAP-eligible must be transferred to either PPL’s default service or to the CAP-SOP.[[8]](#footnote-8) Specifically, regarding customers that are taking supply service from an EGS through a fixed‑duration contract and subsequently is enrolled in PPL’s CAP, we propose the following:

The Commission affirms the position that customers who are on a fixed‑duration contract with a supplier and subsequently enrolls in the On-Track program at any time after June 1, 2017, remain with that supplier until the expiration date of the fixed‑duration contract or the contract is terminated. Once the newly enrolled CAP customer supplier contract expires or is terminated, the CAP customer will have the option to enroll in the CAP‑SOP or return to default service, but in any event, will only be able to shop through the CAP‑SOP.

This ensures that we are not directing the abrogation of contracts and possibly exposing these customers to early termination fees.

Regarding customers that are taking supply service from an EGS through a month‑to‑month contract and subsequently is enrolled in PPL’s CAP, we propose the following:

A shopping customer who subsequently becomes CAP-eligible must be dropped by the supplier to PPL default service within 120 days after the customer is enrolled in CAP.[[9]](#footnote-9) The CAP customer will then have the option to enroll in the CAP‑SOP or return to default service, but in any event, will only be able to shop through the CAP‑SOP.

This proposal gives suppliers the time needed to provide appropriate notices to the customer as required by 52 Pa. Code § 54.10. We believe that the immediate dropping of these customers is inappropriate because it makes it impossible for suppliers to comply with the notice regulations – and from the customer’s perspective - it is too abrupt. We acknowledge that PPL reports to have modified its web-portal to provide customer recertification dates to suppliers. While this has removed one of the objections to using the recertification date as the trigger to return a customer, we think that our proposal to set a 120-day return deadline is simpler to administer and comply with. However, given this recent development and new information, we invite stakeholders to comment on this proposal.

We acknowledge that some post-transition issues need to be addressed, given that customers will be continually moving in - and - out of On-Track and shopping. Suppliers need to know which potential customers are in the On-Track program – and when any of their current customers enter On-Track. PPL may need to know what type of supply contract a customer is on at the time they enter On-Track.

We understand that PPL may have already revised their web portal to provide suppliers with information as to a customer’s On-Track status. We ask that PPL confirm this – and that other parties comment on the sufficiency of this information. Is an additional mechanism needed to alert suppliers when one of their customers is accepted into the On-Track program? We expect suppliers to use this information to ensure that the customer’s supply contract is appropriately concluded.  We also ask parties to comment on whether suppliers should also be obligated to respond to any information request from PPL as to what type of contract the customer is on; month‑to‑month or fixed duration – and if the contract is for a fixed duration, should the supplier provide PPL with the expiration date of the contract? Are their customer confidentiality concerns that need to be addressed when establishing these procedures?

We invite parties to comment on any other implementation issues that may have been overlooked – while keeping in mind that it is not our intention to re-consider matters that have already been determined previously in this proceeding. We ask that any party raising any additional issues to also include their desired outcome for addressing the issue.

**Conclusion**

It appears that the Commission’s prior Orders in this proceeding did not adequately address how customers who are receiving service from an electric generation supplier (EGS) after June 1, 2017, and subsequently enroll in CAP are to be transferred to default service or PPL CAP‑SOP. The Commission is proposing to clarify its October 27, 2016 Opinion and Order at this Docket. This is an admittedly complex and challenging subject. It also concerns the most vulnerable of consumers – those needing assistance with their energy bills. We thank the stakeholders for their interest in this proceeding and for participating in the August 28, 2017 meeting. Upon careful review and consideration of the comments submitted in response to this Tentative Order, we intend to issue a Final Order with guidance to PPL and suppliers; **THEREFORE,**

**IT IS ORDERED:**

1. That this Tentative Order be served on all jurisdictional Electric Distribution Companies, all licensed Electric Generation Suppliers, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate and the parties at this Docket No. P-2016-2526627.

 2. That interested parties shall have 30 days from the entry date of this Tentative Order to file written comments referencing Docket No. P-2016-2526627 with the Pennsylvania Public Utility Commission, Attention: Secretary, P.O. Box 3265, Harrisburg, PA 17105-3265. Comments may also be filed electronically through the Commission’s e-File System.

 3. That a copy of this Order be posted on the Commission’s website at the Office of Competitive Market Oversight’s web page at <http://www.puc.pa.gov/utility_industry/electricity/electric_competitive_market_oversight.aspx>.

4. That the Office of Competitive Market Oversight shall electronically serve a copy of this Tentative Order on all persons on the contact list for the Committee Handling Activities for Retail Growth in Electricity.

 5. That the contact person for technical issues related to this Tentative Order is Daniel Mumford, 717-783-1957 or dmumford@pa.gov. The contact person for legal issues related to this Tentative Order is Kriss Brown, 717-787-4518 or kribrown@pa.gov.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: November 8, 2017

ORDER ENTERED: November 8, 2017

1. The PPL CAP-SOP, as of June 1, 2017, is the only vehicle that a CAP participating customer may use to shop and receive supply from an electric generation supplier (EGS), wherein EGSs participating in the CAP-SOP must agree to serve customers for 12 months at a 7% discount off the price-to-compare (PTC) at the time of enrollment, with no early termination fees. [↑](#footnote-ref-1)
2. PPL’s CAP program is also referred to as the On-Track program.

 [↑](#footnote-ref-2)
3. *See 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 (Order Entered October 27, 2016). [↑](#footnote-ref-3)
4. *See 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 (Order Entered January 26, 2017). [↑](#footnote-ref-4)
5. *See 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 (Order Entered June 23, 2017). [↑](#footnote-ref-5)
6. *See 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 (Order Entered August 3, 2017). [↑](#footnote-ref-6)
7. 52 Pa. Code § 54.10 requires suppliers to provide two notices; one 45-60 days before expiration; the other at least 30 days before expiration.
<http://www.pacode.com/secure/data/052/chapter54/s54.10.html>. [↑](#footnote-ref-7)
8. The Commission, however, is not proposing to otherwise clarify, amend or change the terms and conditions of the CAP-SOP adopted in the Opinions and Orders entered on October 27, 2016 and January 26, 2017, which are presently the subject of an appeal at Docket No 230 C.D. 2017. This clarification conforms with the Rules of Appellate Procedure, Rule 1701(b)(1), which permits the Commission to “[t]ake such action as may be necessary to preserve the status quo, . . ., and take other action permitted or required by these rules or otherwise ancillary to the appeal or petition for review proceeding.” RESA agreed in its April 25, 2017 letter, filed at this Docket and available at <http://www.puc.state.pa.us/pcdocs/1518238.pdf>, that RAP 1701 permits the Commission to take further action in this matter to address CAP‑SOP operational and implementation issues. [↑](#footnote-ref-8)
9. For customers who are receiving supply service from an EGS through a month‑to‑month contract and are subsequently enrolled in PPL’s CAP after June 1, 2017 and before this proposal becomes final, the supplier must drop that customer to PPL default within 120 days after a Final Order adopting this proposal is published in the *Pennsylvania Bulletin*. [↑](#footnote-ref-9)