Hawke McKeon & Sniscak LLP
ATTORNEYS AT LAW

Todd S. Stewart
Office: 717 236-1300 x242
Direct: 717 703-0806
tsstewart@hmslegal.com

100 North Tenth Street, Harrisburg, PA 17101 Phone: 717.236.1300 Fax: 717.236.4841 www.hmslegal.com

September 3, 2020

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

RE: Petition of PPL Electric Utilities Corporation for Approval of Its Default Service Plan for the Period From June 1, 2021 through May 31, 2025, Docket No. P-2020-3019356; **MAIN BRIEF**

Dear Secretary Chiavetta:

Enclosed for electronic filing with the Commission is the Main Brief of Interstate Gas Supply, Inc., Shipley Choice LLC, NRG Energy, Inc., Vistra Energy Corp., ENGIE Resources LLC., WGL Energy Services, Inc., and Direct Energy Services, LLC in the above-captioned matter. Copies of this Brief have been served in accordance with the attached Certificate of Service.

Thank you for your attention to this matter. If you have any questions related to this filing, please do not hesitate to contact me.

Very truly yours,

Todd S. Stewart
Counsel for EGS Parties

TSS/jld
Enclosures
cc: Administrative Law Judge Elizabeth Barnes (via electronic mail)
Per Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party)

VIA ELECTRONIC MAIL ONLY

Honorable Elizabeth Barnes
Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120
ebarnes@pa.gov

Michael W. Hassell, Esquire
Lindsay A. Berkstresser, Esquire
Jessica R. Rogers, Esquire
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
mhassell@postschell.com
lberkstresser@postschell.com
jrogers@postschell.com
Counsel for PPL Electric Utilities Corporation

Kimberly A. Klock, Esquire
Michael J. Shafer, Esquire
PPL Services Corporation
Two North Ninth Street
Allentown, PA 18101
kklock@pplweb.com
mjshafer@pplweb.com
Counsel for PPL Electric Utilities Corporation

David B. MacGregor
Post & Schell, P.C.
Four Penn Center
1600 John F. Kennedy Boulevard
Philadelphia, PA 19103-2808
dmacgregor@postschell.com
Counsel for PPL Electric Utilities Corporation

Gina L. Miller
Commonwealth of Pennsylvania
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
400 North Street
Harrisburg, PA 17120
ginmiller@pa.gov

Aron J. Beatty
David T. Evrard
Office of Consumer Advocate
555 Walnut Street, 5th Floor
Harrisburg, PA 17101-1923
ABeatty@paoca.org
DEvrard@paoca.org

Steven C. Gray
Assistant Small Business Advocate
Office of Small Business Advocate
555 Walnut Street, 1st Floor
Harrisburg, PA 17101
sgray@pa.gov

Kenneth L. Mickens, Esquire
316 Yorkshire Drive
Harrisburg, PA 17111
Kmickens11@verizon.net
Counsel for The Sustainable Energy Fund

John F. Lushis, Jr., Esquire
Norris McLaughlin, P.A.
515 W. Hamilton Street, Suite 502
Allentown, PA 18101
jlushis@norris-law.com
Counsel for Calpine Retail Holdings, LLC

Elizabeth R. Marx, Esquire
John Sweet, Esquire
Ria Pereira, Esquire
Pennsylvania Utility Law Project6
118 Locust Street
Harrisburg, PA 17101
pulp@palegalaid.net
Counsel for CAUSE-PA

Gregory L. Peterson, Esquire
Phillips Lytle LLP
201 West Third Street, Suite 205
Jamestown, NY 14701-4907
gpeterson@phillipslytle.com
Counsel for StateWise Energy Pennsylvania LLC and SFE Energy Pennsylvania, Inc.

Kevin C. Blake, Esquire
Phillips Lytle LLP
125 Main Street
Buffalo, NY 14203
kblake@phillipslytle.com
Counsel for StateWise Energy Pennsylvania LLC and SFE Energy Pennsylvania, Inc.

Thomas F. Puchner, Esquire
Phillips Lytle LLP
Omni Plaza
30 South Pearl Street
Albany, NY 12207-1537
tpuchner@phillipslytle.com
Counsel for StateWise Energy Pennsylvania LLC and SFE Energy Pennsylvania, Inc.

Derrick Price Williamson, Esquire
Barry A. Naum, Esquire
Spilman Thomas & Battle, PLLC
1100 Bent Creek Boulevard, Suite 101
Mechanicsburg, PA 17050
dwilliamson@spilmanlaw.com
bnaum@spilmanlaw.com
Counsel for Industrial Energy Consumers of Pennsylvania

James Laskey
Norris McLaughlin, P.A.
400 Crossing Blvd., 8th Floor
Bridgewater, NJ 08807
jlaskey@norris-law.com
Counsel for Calpine Retail Holdings, LLC

Deanne M. O'Dell, Esquire
Kristine E. Marsilio, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
PO Box 1248
Harrisburg, PA 17101
dodell@eckertseamans.com
kmarsilio@eckertseamans.com
Counsel for Retail Energy Supply Association

Deanne M. O'Dell, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
PO Box 1248
Harrisburg, PA 17101
dodell@eckertseamans.com
Counsel for Inspire Energy Holdings, LLC

Lauren M. Burge, Esquire
Eckert Seamans Cherin & Mellott, LLC
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
lburge@eckertseamans.com
Counsel for Inspire Energy Holdings, LLC

Pamela C. Polacek, Esquire
Adeolu B. Bakare, Esquire
Jo-Anne S. Thompson, Esquire
McNees Wallace & Nurick LLC
100 Pine Street
PO Box 1166
Harrisburg, PA 17108-1166
ppolacek@mcneeslaw.com
abakare@mcneeslaw.com
jthompson@mcneeslaw.com
Counsel for PP&L Industrial Customer Alliance

DATED: September 3, 2020

Todd S. Stewart

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of PPL Electric Utilities Corporation for Approval of Its Default Service Plan for the Period From June 1, 2021 through May 31, 2025	: : : :	Docket No. P-2020-3019356

MAIN BRIEF
OF INTERSTATE GAS SUPPLY, INC., SHIPLEY CHOICE LLC, NRG ENERGY, INC., VISTRA ENERGY CORP., ENGIE RESOURCES LLC, WGL ENERGY SERVICES, INC., AND DIRECT ENERGY SERVICES, LLC

Todd S. Stewart
PA Attorney I.D. # 75556
Hawke McKeon & Sniscak, LLP
100 North Tenth Street
Harrisburg, PA 17101
Email: tsstewart@hmslegal.com
Telephone: 717.236.1300
Facsimile: 717.236.4841

Counsel for EGS Parties

DATED: September 3, 2020

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Regulations

I. INTRODUCTION AND STATEMENT OF THE CASE

PPL's Default Service Plan embodies many components, a number of which were addressed in the Testimony of the EGS Parties' witness, Christopher Kallaher. Mr. Kallaher's testimony addressed the following: PPL's failure to address recent FERC Orders regarding the minimum price offer rule ("MOPR"); PPL's proposal to eliminate completely the ability of customers on its Customer Assistance Program ("CAP") to shop for competitive energy supply; PPL's proposed radical changes to its Standard Offer Program ("SOP") including automatically returning SOP customers to default service at the end of their contract and sending "educational" materials to SOP customers near the end of the contracts denigrating the options available to those customers; and PPL's ill-conceived program to introduce a competitive renewables-based default service product. Of these proposals, all but two have been resolved and or withdrawn as part of the partial settlement in this matter. The remaining issues to be litigated, and therefore addressed in this brief, are the intertwined issues of PPL's proposed changes to the SOP program and the proposal to eliminate CAP shopping for competitive energy supply.

PPL's current CAP shopping program is a standard offer-like program, specific to CAP customers, under which participating suppliers guarantee 7% off the price to compare at the time of enrollment. (EGS Parties' St. No. 1, 8:15-9:4). PPL's CAP Shopping proposal is aggressive and direct – the approximately 8000 customers in the CAP SOP program would be returned to default service and going forward, CAP customers would be prohibited from participating in the program while in CAP. (*Id*.) The EGS Parties disagree with this approach, believing that CAP customers should have the ability to shop. (EGS Parties' St. No.1, 9:12-18). More importantly, however, the Commission has recently addressed this issue and has issued guidance to EDCs in

preparing their default service plans.[1] The Commission's policy is to strongly encourage developing programs to allow CAP customers to shop within specific parameters in keeping with the requirements of the Electricity Generation Customer Choice and Competition Act that "all customers" have the right to choose a competitive supplier.[2] Mr. Kallaher cites to the First-Energy CAP Shopping approach, which is a less formal program, and which is focused on allowing suppliers to provide CAP compliant products when such are feasible and allowing CAP customers to take advantage of the savings those offers provide with no risk. (EGS Parties St. No. 1, 10:18-11:11).

Other parties have offered various positions on CAP shopping, notably the Office of Consumer Advocate ("OCA") and CAUSE-PA. These two organizations, with their primary focus on low-income customers, support PPL's desire to eliminate CAP shopping based upon what Mr. Kallaher believes to be an incorrect view of the market; one where all supplier offers are compared to the default service rate to determine the fairness of the offer. In short, Mr. Kallaher testified that there are obvious modifications to CAP shopping that could be made to allow CAP customers to participate in the competitive market and those should be explored before PPL is authorized to give-up on CAP shopping and prohibit certain customers from being able to shop. (EGS Parties' St. No. 1, 11:2-9).

Similarly, PPL's plans for its SOP program are troubling as well. PPL is proposing that it "educate" customers about their options prior to the expiration of their 12-month SOP contracts, despite the obvious fact that the customer's EGS is required to send them the two notices currently

[1] See *Electric Distribution Company Default Service Plans – Customer Assistance Program Shopping*, Proposed Policy Statement Order, Docket M-2018-3006578, 49 Pa. Bul. 3083, June 15, 2019. See also, *Investigation into Default Service and PJM Interconnection, LLC, Settlement Reforms*; Docket No. M-2019-3007101, Issued January 23, 2020.
[2] 66 Pa.C.S. § 2806(a).

required by 52 Pa. Code § 54.5(g), and §§ 54.10(1)&(2). While the content of this "education" was not shared through witness testimony, it seems evident that the clear intention would be to have customers to either do nothing (see PPL's second proposal below) and to thus be returned by PPL to PPL's default service, or to affirmatively chose to return to default service. (EGS Parties' St. No. 1, 20:5-21:12). The second part of PPL's proposal was to require that all SOP customers be returned to default service at the end of their contract, absent affirmative consent to remain with their chosen supplier. Such an approach is diametrically opposite to the present end of contract approach for any other customers participating in the competitive market. (EGS Parties St. No. 1, 13:5-14:14). Mr. Kallaher's testimony was quite clear that the vast majority of SOP customers do already make a choice regarding their supplier, post-SOP. Many make that choice before the SOP contract expires, and a lesser amount make that choice after it expires, but that nearly 80% do make a choice. (EGS Parties' St. No. 1, 21:9-15). This analysis thoroughly refutes the arguments made by PPL, and others, that SOP customers don't pay attention to what is going on at the end of their contracts and that they end up taking serviced at a rate higher than the PTC, thus necessitating PPL's heavy-handed intervention into an established market. (EGS Parties St. No. 1, 14:7-15:5). The Commission's own order that set the parameters for these programs makes it clear that customers are to remain on their EGS contracts, subject to the same rules that apply to other customers at the end of their contracts.[3]

Not surprisingly, the OCA and CAUSE-PA support PPL's proposal, suggesting that there are many post-SOP customers on contracts at rates higher than the PTC and that this somehow

[3] See *Electric Distribution Company Default Service Plans – Customer Assistance Program Shopping*, Proposed Policy Statement Order, Docket M-2018-3006578, 49 Pa. Bul. 3083, June 15, 2019. See also, *Investigation into Default Service and PJM Interconnection, LLC, Settlement Reforms*; Docket No. M-2019-3007101, Issued January 23, 2020.

means the market is not functioning. (EGS Parties' St. No. 1-R, 11:15-12:15). Mr. Kallaher again disposes of these arguments by pointing out that comparing fully loaded competitive rates charged by suppliers to a subsidized, marginal cost of energy-based Price To Compare is a false comparison, and in any event, the PUC is not in the business of regulating EGS rates. As one of the requirements of a functioning market, the Commission has determined that it is reasonable to expect customers to review and respond to one of the two notices they receive near the end of their contracts. (EGS Parties' St. No. 1-R, 3:11-9:2). The SOP has been successful, and the data clearly shows that most customers in the program do make affirmative choices. (EGS Parties' St. No. 1, 20:5-21:15).

The EGS Parties oppose PPL's proposal to eliminate CAP shopping and oppose PPL's proposal to force customers into default service at the end of their SOP contract and the proposal to "educate" customers at the end of those same contracts, all of which go against the Public Utility Code and long standing Commission policy

II. SUMMARY OF THE ARGUMENT

PPL has proposed to eliminate the ability for "On-Track" customers, i.e., those in PPL's CAP program, to shop. The basis for this move is the alleged administrative difficulty in managing the program with variable and sometimes minimal supplier participation. The Public Utility Code is explicit that all customers must have the ability to choose a competitive supplier[4], and yet PPL almost cavalierly seeks to toss aside that statutory mandate without having ever engaged suppliers to see if the program might be changeable to make it more attractive to their participation. (EGS Parties' St. No. 1, 10:18-11:9). Not only has PPL ignored the Code, it also brushes off the Commission's recent policy guidance which also makes clear the Commission's preference that

[4] 66 Pa.C.S. § 2806(a).

CAP customers be able to participate in the competitive market – with restrictions.[5] The EGS Parties' witness refuted PPL's administrative difficulty argument and calls out PPL's lack of engagement in seeking a solution. He also addresses the OCA and CAUSE-PA arguments that seek to compare competitive offers that exceed the price to compare as being unfair, without recognizing the inherent mismatch between the two. Nonetheless, in this case, the EGS Parties would agree to provide CAP offers at or below the price to compare in keeping with Commission policy. The Commission's policy is that CAP customers be able to shop and the law requires that all customers have access to competitive market offers. It is clear that PPL's proposal must fail.

PPL also has proposed that it forcibly return SOP customers on default service at the end of their SOP contracts absent affirmative consent to stay with that supplier, despite the Commission Order that expressly states that customers should remain with their supplier – unless they make an affirmative choice to do otherwise.[6] PPL's cannot justify its position as it is completely opposite the law. The evidence on this record is clear that most customers presently make an affirmative choice to either take another offer from the same supplier, switch to a different supplier or return to default service within a few months of the end of their SOP contracts. A fair number make that choice before the contract even ends, some make it shortly after the contract ends, and some make that choice several months later, but the important part is that they exercised an affirmative choice to do something. (EGS Parties' St. No. 1, 15:7-16:10). One could also say, since there is no evidence to the contrary, that customers may affirmatively choose to stay with

[5] *Electric Distribution Company Default Service Plans – Customer Assistance Program Shopping*, Proposed Policy Statement Order, Docket M-2018-3006578, 49 Pa. Bul. 3083, June 15, 2019.

[6] *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, Final Order at 32 (Final Order entered March 1, 2012) (hereinafter "*Final Work Plan Order")*.

their SOP supplier. Nonetheless, PPL would intrude on this Commission approved process that appears to be working, because its data shows that some customers are remaining on SOP contracts and paying rates higher than the PTC.

First, the PTC comparison is flawed, as discussed herein. Second, PPL's reasoning also is flawed. If the customer initially chose to participate in the SOP and then ignored or did not act in response to two separate notices, how can we assume that the failure to act was not a choice. For years utilities would routinely make the assertion that customers not leaving default service was a choice. But now PPL refuses to accept that proposition. Nonetheless, there is no good reason to treat SOP customers any differently that other shopping customers, the effort required to change suppliers is minimal, as demonstrated by Mr. Kallaher. (EGS Parties St. No. 1, 18:1-19:13). If the competitive market is going to function, customers must assume some responsibility for their choice of service, and the record shows that most do when they participate in the competitive market.

Likewise, PPL's thinly veiled "education" proposal is merely another effort to convince customers to return to default service at the end of their SOP contract and, depending on the content, could step over the line on the Commission's prohibition of a utility favoring its own service over that of a supplier in communications to customers.[7] (EGS Parties' St. No. 1, 20:5-21:15). Customers already receive two notices prior to the expiration of their contracts and so it is unclear why PPL feels the need for additional "education." It would seem more likely that PPL's intention is to convince customers to return to default service which would be an unreasonable intrusion in the contractual relationship between the supplier and customer.

[7] 52 Pa. Code § 54.122(2).

III. ARGUMENT

A. Burden of Proof.

It is well-established that a public utility seeking to establish a rate has the burden of proof to establish the justness and reasonableness of each element of its request and that this burden does not shift. 66 Pa.C.S. § 315(a); *Lower Frederick Twp. Water Co. v. Pennsylvania Pub. Util. Comm'n.*, 409 A.2d 505 (Pa. Cmwlth. 1980); *Berner v. Pa. PUC,* 116 A.2d 738 (Pa. 1955). However, if a party elects to raise an issue or challenge a practice that was not included in the general rate filing, then the burden of proof rests with that party. *Pa. Pub. Util. Comm'n. v. Columbia Water Company*, Dkt. No. R-2008-2045157 (Final Order Entered June 10, 2009).

B. The Price to Compare is not an Appropriate Benchmark for measuring Prices in a Competitive Market

Two of the three issues that could not be resolved in this matter are based in large part on an unwarranted and illegal comparison of the prices charged by competitors in the market, to the subsidized, marginal energy cost only default service rate. Mr. Kallaher, witness for the EGS Parties, made it clear that such a comparison is fraught with inaccuracy; because suppliers have no choice but to collect their actual costs of doing business in their price to customers. Accordingly, it is wholly unfair and simply "dead wrong" to compare their offers to default service, where virtually none of the costs of doing business are recovered in the PTC and where no profit can be recovered. (EGS Parties St. No. 1-R, 6:21-9:2; EGS Parties' St. 1-SR, 3:21-4:19). The products are not the same, the cost structures are not the same, the market power as between the utility and the suppliers is vastly lopsided in favor of the utilities, and yet the advocates insist on using what can only ever be an unfavorable and unfair comparison, as means of pillorying suppliers while praising the utilities. (EGS Parties' St. No. 1-R, 3:1-4:9). It is not that many suppliers don't offer rates that are at or below the price to compare, sometimes they can and sometimes they cannot,

but the notion of offers of grand savings over the PTC by all suppliers all the time is a fantasy that cannot be realized, if at all, until utility default service rates are appropriately determined. At present, shopping customers pay for many of the costs of default service through distribution rates – and they are in essence paying for those costs twice. Is there outrage from the advocates? No, they are happy that default service rates are made lower.

Mr. Kallaher makes a strong case that there was never intended to be a "savings" comparison as between default service rates and the prices charged by EGSs. (EGS Parties' St. 1-R, 4:11-5:13). The savings that were discussed as a basis for introducing the competitive model were a comparison of the costs of continuing the vertically integrated monopoly utilities that prevailed versus switching to retail competition. Mr. Kallaher points out that those savings have been notably achieved. (EGS Parties' St. 1-SR, 3:21-4:19). Not only is such a comparison a non-starter from a historical perspective, the Commission clearly does not have the authority to regulate EGS prices.[8] There is very simply no sound basis on which to make that comparison, to suggest to customers that it is a fair basis on which to determine if EGS offers are "fair" or will "save them money," nor to determine regulatory policy. Accordingly, the Commission should resist the temptation to make what appears to be an easy comparison, but which is in fact an incorrect comparison between the prices charged by EGSs and default service rates, in any context and for any purpose at issue in this proceeding.

[8] 66 Pa.C.S. §§ 2802(14) and 2806(a) ; *Coalition for Affordable Utility Services and Energy Efficiency v. Pa. P.U.C.*, 120 A.3d 1087 (2015)("*Cause Pa*")(The Commonwealth Court found that "the PUC lacks the authority to regulate EGS rates under Chapter 13. This means that the PUC may not review EGSs rates to determine whether the rates are "just and reasonable." 66 Pa.C.S. § 1301. It also means that the PUC lacks the authority to compel EGSs to file tariffs. *Id.* § 1302. Moreover, the power of the PUC under Section 1304 of the Code to ensure that rates are not unlawfully discriminatory does not extend to the rates charged by EGSs". *Id.* § 1304", *Id.* at 120 A.3d 1101).

C. The Proposed Elimination of CAP Shopping is Contrary to the Law and Commission Policy.

The Commission recently issued a Policy Statement on the subject of shopping by Customers who participate in Customer Assistance Programs ("CAP").[9] The analytical basis for the Commission's guidelines was that data showed that for PPL and First-Energy's then-operative CAP shopping programs, a substantial number of customers who were allowed to shop without restriction were paying rates that were higher than the default service rate or Price to Compare ("PTC"). While Mr. Kallaher has refuted the notion of the PTC as the appropriate benchmark for the reasonableness of supplier rates, he nonetheless cites to this policy statement for the proposition that the Commission still wants CAP customers to be able to engage the competitive market, albeit with some guiderails. (EGS Parties' St. No.1, 9:12-18; EGS Parties St. 1-R, 10:4-11:4). This is in keeping with the statutory requirement that "all customers . . . shall have the opportunity to purchase electricity from their choice of electric generation suppliers."[10] The Policy Statement is clear that the Commission intends CAP customers to realize the benefits of Competition: "With this Order the Commission issues, for comment, a proposed Policy Statement on Electric Customer Assistance Program Participant Shopping that sets guidelines for EDCs that limit harm to CAP participants while still providing CAP participants the benefits of the retail electric market."[11] The Commission also made it clear that any deviation from the Policy Statement required justification due to operational constraints. PPL did not testify to such constraints other than suggesting that

[9] *Electric Distribution Company Default Service Plans – Customer Assistance Program Shopping*, Proposed Policy Statement Order, Docket No. M-2018-3006578, 49 Pa. Bul. 3083, June 15, 2019.
[10] 66 Pa.C.S. § 2806(a).
[11] *Electric Distribution Company Default Service Plans – Customer Assistance Program Shopping*, Proposed Policy Statement Order, Docket M-2018-3006578, 49 Pa. Bul. 3083, June 15, 2019.

there was low participation by suppliers, which Mr. Kallaher attributes to poor program design. (EGS Parties' St. No. 1, 10:18-11:11). Mr. Kallaher points to the First-Energy program as a better model. He also made some specific recommendations to address supplier participation:

> [A]llow EGSs to retain their CAP SOP customers at the end of the initial 12-month term so long as they agree to serve those customers at or below the current PTC rate. The other would be to consider a modest reduction in the discount given to CAP customers on the SOP. The SOP serves as a permanent discount versus the default service rate for CAP customers, which EGSs support. Whether the level of the discount – currently seven percent – has the unintended consequence of reducing the overall level of participation and thus the total reduction in supply charges paid by CAP customers is something EGS and other stakeholders should work with PPL to discover. (EGS Parties' St. No. 1, 11:2-9).

Nonetheless, it is clear that the Commission is intent that there be a functioning program for CAP customers to be able to shop if they choose to do so, and that if an EDC determines to deviate from that intention, they better have a good reason. PPL has not demonstrated a good reason.

PPL's rational for eliminating the CAP SOP is that it is difficult to administer because of a lack of consistent supplier participation. PPL made this claim without presenting any hard evidence on *why* suppliers are not participating or *why* that makes the program difficult to administer. Moreover, the bald allegation does not satisfy the Commission's draft CAP Shopping Policy statement.

Rather than propose a program where more suppliers might want to participate, perhaps one where rates cannot exceed the PTC, either on the initial contract or renewals, as opposed to the constant 7% discount required by PPL's present program, as the Commission strongly suggests, PPL focuses its attention on customers who become CAP customers in the middle of a contract with an EGS and the alleged detriment those customers suffer if their contract price is

above the PTC.[12] If a customer presently has a contract with a supplier, it would be a violation of the Pennsylvania and the United States Constitutions[13] if the Commission were to order that those contracts to be abrogated in the future based upon the customer's entry into the CAP program. States are not permitted to impair the obligation of contracts in existence at the time of the state action.[14] Clearly imposing a condition on suppliers participating in the market that a lawful contract that they entered into with a customer, is terminated upon that customer entering a CAP program, impairs the obligation of the contract and is unconstitutional.

Moreover, the recent Commonwealth Court decision on PPL's last DSP case is similarly unavailing. In that case the Commonwealth Court did hold that the Commission could impose limits on the rates charged by suppliers that participate in the CAP program, but said nothing about impairing the terms of existing contracts for suppliers NOT participating in CAP.[15] In fact, the court noted as a justification for allowing the price ceiling that the program is "voluntary" – something that would cease to be if PPL's and others' objectives in this case were considered.[16] Clearly an EGS that is not participating in CAP cannot be bound by CAP rules, as doing so would make participation in the program, and its rules, involuntary. There simply is no legal rationale that would allow the Commission to authorize termination of a supplier's otherwise valid contract with its customer based upon that customer's change in status. Doing so would put every contract that every supplier and customer execute at risk of early termination.

Mr. Kallaher's testimony made the case for a path forward on PPL's CAP program:

---

[12] PPL St. No. 3, 9:6-14
[13] UNITED STATES CONSTITUTION, Art. I, Sect. 10; PENNSYLVANIA CONSTITUTION, ART. I, Sect. 17.
[14] *Beaver County Building & Loan Association v. Winowich* et ux., 323 Pa. 483, 187 A. 481, 488-489 (1936)
[15] *RESA v. Pa. P.U.C.*, 185 A.3d 1206, 1221 (Pa. Cmwlth. 2018).
[16] *Id*., at 1223.

> Regarding the question of the continuation of the CAP SOP, I recognize that the program has suffered from lack of EGS participation. I also concede that there is some tension between the Commission's policy position that low-income customers should not pay more than the default service rate and the view, which I hold, that customers should be allowed to choose for themselves and that the value of competition cannot be judged by comparisons between EGS prices and the default service rate. My point is that rather than give up on the program, I would like to see the various stakeholders with an interest in both protecting low-income customers and preserving the competitive market make an attempt to find a solution that does both. (EGS Parties' St. No. 1-SR, 17:16-18:2).

However, rather than explore, at least with EGSs, the possibility of modifying its CAP program to make it more likely that EGSs might participate, PPL chose to simply prohibit CAP customers from shopping and remaining in the CAP program. As discussed above, such a tactic would effectively deprive all CAP customers of the right to choose a competitive supplier. The Commission should not approve PPL's approach to solve the issue of supplier participation and should instead require PPL to engage in a Commission sponsored effort to establish a program, perhaps similar to that employed by First-Energy, that will allow customers to shop and allow willing suppliers to make them offers that would eliminate the possibility of any "harm" that could be caused by a CAP customer paying a rate higher than the default service rate.

D. PPL's Proposed Changes to its Standard Offer Program are Contrary to the Commission's Standards.[17]

PPL has proposed two unprecedented changes to its currently successful SOP program: 1) to forcibly return all SOP customers to default service at the end of the initial term of their contract, absent affirmative consent; and, 2) that it be permitted to "educate" customers at or near the end of the term of the SOP contracts – ostensibly to encourage customers to return to default service. The basis of these changes is PPL's incorrect contention that customers agree to the favorable terms of the SOP and then lapse into a state of forgetfulness, do nothing, and end up on a supplier

[17] *Final Work Plan Order,* at 31-32

rate that is higher than the default service rate. (EGS Parties St. No. 1, 14:7-15:5). Mr. Kallaher's unrefuted testimony shows that PPL's alleged basis is not accurate. In fact, almost 80% of customers who participate in the SOP make an affirmative choice within 16 months of signing up for the rate, with a large percentage of those customers actually switching to a different offer – before their SOP contract is over. (EGS Parties' St. No. 1-R, 11:15-12:15; 20:5-21:5). Putting aside for purposes of this argument that comparisons of default service rates to competitive supplier rates is inappropriate, the entire alleged premise for PPL's proposal is wrong. Customers are exercising affirmative choice and are learning how to function in a competitive environment. This result is what the Commission had intended when if first required EDCs to implement SOP programs and it could not be clearer:

> At the conclusion of the standard offer period, *absent affirmative customer action to enter into a new contract with the EGS, the customer's enrollment with a different EGS or the customer's return to default service, the customer will remain with the EGS on a month-to-month basis, and shall not be subject to any termination penalty or fee.* However, this should not deter an EGS from offering longer, fixed-term prices.[18]

The Commission clearly considered the need for notices at the end of the SOP period and decided that the standard notices that are provided to all other customers, along with the standard end of contract procedure that have been mandated for all other customers, would be sufficient for SOP customers. The point of SOP then and now is to introduce customers to shopping who otherwise may not take advantage of the opportunity because they have not been educated or informed about Choice, while providing a no-risk means of allowing customers to save money, via the 7% initial discount, but to otherwise treat them as any other shopping customer. There simply is no policy argument to be made for the differential treatment proposed by PPL here. With

[18] *Final Work Plan Order*, at 32 (emphasis added).

regard to the need for "education," if PPL would focus its efforts on properly educating all of its customers on how to shop and otherwise,[19] as was the original intention of the program, the concerns that it claims drove its proposal in this case would be vastly lessened. (EGS Parties' St. No. 1, 20:4-21:15).

Mr. Kallaher also made it clear that there is no good reason treat SOP customers differently than any other customers at the end of their contract. Nor is there any reason to authorize PPL to potentially interfere with a customer's decision at the end of their SOP contract through "education" when there is ample evidence that the vast majority of customers make an affirmative choice at the end of the SOP contract. (EGS Parties' St. No. 1, 20:5-21:12). PPL was not clear on the form this "education" would take, but almost certainly would entail PPL seeking to convince the customer either directly or through confusion, to return to default service.

IV. CONCLUSION

PPL has proposed to dramatically alter its SOP and to eliminate the ability of CAP customers to make their own selection of supplier, any selection of supplier for that matter, in ways that are contrary to Commission guidance and sound policy. The Commission's Order establishing SOP programs made it clear that SOP customers were to be treated the same as any other customer at the end of the initial contract. PPL's premise for proposing this change was that customers were not paying attention at the end of the SOP contracts and needed the guiding hand of the utility to protect them from competition. That so-called evidence was handily refuted by the EGS Parties' witness who pointed out that almost 80% of SOP customers are in fact making affirmative choices

[19] PPL should also focus on educating its own call center employees, since they appear to be unable to follow and ensure compliance with the SOP scripts that are already in place to properly educate customers at the start of their participation in the program. (OCA Statement 2-SUPP, pp. 6-9).

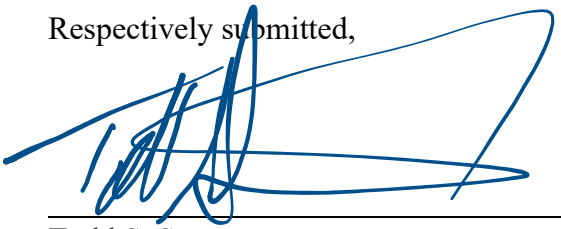
on a supplier within 16 months of enrolling in the SOP. There simply is no crisis of customers languishing endlessly on high variable rate contracts at the end of the SOP initial term. There is likewise no need to treat SOP customers differently, no need to force them to return to the monopoly default service and no need to "educate" them beyond the already required notices that suppliers provide to them and every other customer. PPL's SOP proposal must be rejected.

PPL's proposed changes to eliminate CAP shopping are premised on PPL's determination that the program is difficult to administer because supplier participation is inconsistent. Rather than look at ways to improve that participation, however, PPL simply gave up. Mr. Kallaher made a number of proposals for addressing the supplier participation issue and other improvements. PPL should not be permitted to prohibit CAP customers from shopping, eliminating a statutory right, without making a more substantial effort to address what it claims is the impetus of its proposal.

Finally, an undercurrent that runs throughout this proceeding is the near constant comparison of EGS prices to default service rates. This comparison is inept and without factual basis. The EGS Parties have made a strong argument that such comparison is simply wrong, both from a apples-to-apples basis, and from a historical one. The Commission and other policy makers should avoid this comparison and should instead focus on making default service rates more representative of the actual costs of providing the service.

PPL's proposal to eliminate CAP shopping and its proposed changes to the SOP should be rejected and PPL ordered to engage in a commission sponsored forum to reformulate its CAP program.

Respectively submitted,



Todd S. Stewart
PA Attorney I.D. # 75556
Hawke McKeon & Sniscak, LLP
100 North Tenth Street
Harrisburg, PA 17101
Email: tsstewart@hmslegal.com
Telephone: 717.236.1300
Facsimile: 717.236.4841

Counsel for EGS Parties

DATED: September 3, 2020

APPENDIX A

Proposed Findings of Fact

1. In witness Kallaher's opinion, PPL's Default Service Plan fails to comply with the ending Minimum Offer Price Rule ("MOPR") requirements.[20] (EGS Parties' St. No. 1, 4:8-21).

2. Mr. Kallaher believes there are potentially serious ramifications for PPL's Default Service filing depending on the outcome of that FERC process:

> It has definite procedural implications and possible substantive ones. With respect to procedure, the Commission should direct PPL to supplement its filing to describe with specificity the manner in which its default service program meets PJM's requirements for being the "result of a non-discriminatory and competitive bidding process." The DSP should not be approved without such a finding by the Commission, which must be supported by evidence in the record. To be fair, the filing does include information regarding the competitiveness of the default service procurements proposed therein. However, neither the Commission nor other parties to the case should have to make the positive case for the DSP's compliance with PJM's requirements; PPL should make that case itself in a supplemental filing. On a substantive basis, I have serious concerns regarding whether the DSP as proposed can meet the requirement that it "establish market based compensation for a retail default generation supply product that retail customers can avoid paying for by obtaining supply from a competitive retail supplier of their choice." (EGS Parties' St. No. 1, 6:33-7:11).

3. PPL's DSP would prohibit CAP customers from shopping for energy, thus eliminating their ability to avoid the default service rate. While CAP customers are a relatively small percentage of the load, Mr. Kallaher is concerned that excluding this customer segment could lead to the conclusion that PPL's plan does not allow retail customers to avoid paying for the default service rates by shopping. (EGS Parties' St. No. 1, 7:13-8:12).

4. PPL has proposed that customers who participate in its "On-Track" program, which is referred to as a Customer Assistance Program or CAP, who presently participate in its

[20] *PJM Interconnection, L.L.C.*, 169 FERC ¶ 61,239 (2019).

current CAP shopping program, which is a standard offer program ("SOP") have their contracts summarily terminated, be returned to default service and that CAP customers thereafter not be allowed to shop and remain a CAP customer. (EGS Parties' St. No. 1, 8:15-9:4).

5. Mr. Kallaher notes that PPL's CAP proposal is contrary to the recently issued guidance from the Commission on CAP Shopping which "strongly encourage utilities to allow CAP customers to engage in the competitive market, within specific parameters." He also contends that PPL has diverged from that policy by not allowing customers to shop -- within parameters, i.e., at rates at or below the price to compare – PPL is prohibiting CAP customers from shopping and receiving service at a discounted rate. (EGS Parties' St. No.1, 9:12-18).

6. PPL has overlooked what Mr. Kallaher testifies are improvements it could have made to make CAP shopping more robust, that is, to get more suppliers to participate. He suggests that PPL could have and should engage the market participants through the Commission's CHARGE process to identify ways to improve the program and also suggests a few improvements of his own:

> One would be to allow EGSs to retain their CAP SOP customers at the end of the initial 12-month term so long as they agree to serve those customers at or below the current PTC rate. The other would be to consider a modest reduction in the discount given to CAP customers on the SOP. The SOP serves as a permanent discount versus the default service rate for CAP customers, which EGSs support. Whether the level of the discount – currently seven percent – has the unintended consequence of reducing the overall level of participation and thus the total reduction in supply charges paid by CAP customers is something EGS and other stakeholders should work with PPL to discover. (EGS Parties' St. No. 1, 11:2-9)

7. Mr. Kallaher described PPL's proposed changes to its SOP program as:

> (1) educate customers of their options prior to the conclusion of the 12-month SOP contract; (2) automatically transfer SOP customers to 20 default service upon the expiration of their SOP contract unless the customer affirmatively elects to remain a shopping customer; (3) replace specific SOP scripting used by PPL Electric CSRs with guidelines to navigate customers through the SOP process, while giving the Company flexibility to modify the precise words if customer confusion becomes apparent; (4) update third-party scripting to reflect changes made to the SOP; and (5) change the EGS enrollment term from quarterly to semi-annually, coinciding with the PPL Electric's PTC. (EGS Parties' St. No. 1, 11:18-12:2)

8. The Commission's initial guidance for Standard Offer Customer Referral Programs, as they were known, was the 2012 Final Work Plan Order. *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, DocketI-2011-2237952, Final Order at 32 (Final Order entered March 1, 2012). In that proceeding the Commission ordered each electric distribution company to implement an SOP program (*Id*. at p.104) and made it clear how it expected such programs to be provided:

> Once a customer enrolls in the Standard Offer Customer Referral Program, the enrollment will be forwarded to the EGS for Electronic Data Interchange (EDI) processing. At the time of the first contact between the EGS and the customer, the customer will be reminded of the terms and conditions of the standard offer, including the date by which the customer must take action to exercise his or her options at the end of the term. There will be no termination penalty or fee imposed at any time during the effective period of the standard offer. All existing customer notification requirements apply, including notices and the timing of those notices relating to proposed changes in the terms and conditions of the EGS-customer relationship. At the conclusion of the standard offer period, absent affirmative customer action to enter into a new contract with the EGS, the customer's enrollment with a competitive EGS or the customer's return to default service, it is expected that the customer would remain with the EGS on a month-to-month basis without the imposition of early termination fees. We emphasize that all requirements for notices relating to price and term changes would apply. To the extent that an EDC chooses to deviate from these guidelines, we expect the differences to be justified by operational constraints, and supported by evidence produced during the default service plan proceedings. Id. at p. 21. (EGS St. No. 1, 12:5-33).

9. PPL's SOP proposal violates the Commission guidelines, and is

> [B]latantly unreasonable. First and foremost, among its flaws is that it would treat customers who participate in SOP differently at the end of their contracts form any other customer classification. All other shopping customers remain with their supplier until (1) the customer affirmatively switches away (either to another EGS or back to default service); (2) the customer returned to default service according to the terms of their contract with the EGS at the contract's expiration; or (3) the EGS ceases operation and transfers its customers either to another EGS or back to default service. PPL thus proposes to create a new class of shopping customers that would be returned to default service in the absence of either an affirmative choice to do so by the customer (either by the customer switching away from the EGS or as a result of contractual terms) or an act of default by the EGS. The creation of such a class of customers would be inconsistent with the policy justifications for the standard offer program and the fundamental characteristics of the competitive market, which emphasize the primacy of positive action by a customer in choosing among the many options available for electric service in the market today. (EGS Parties St. No. 1, 13:5-14:14).

10. Mr. Kallaher does not believe PPL's "reasons" for changing its SOP program withstand any scrutiny:

> In her testimony, PPL's witness Michelle LaWall-Schmidt gives reasons for the proposed changes. (PPL St. No. 4) These reasons do not withstand closer scrutiny. The first reason appears to be that customers who participate in the SOP become complacent or passive and experience higher rates as a result: "Analysis of customer actions after the conclusion of the SOP contract has shown that most customers do not take any action upon expiration of their SOP contract and therefore are placed on a new contract at a new rate with their existing supplier. This result is problematic because the customer's new rate is oftentimes higher than the then effective PTC and higher than the customer's previous rate."[21] Ms. LaWall-Schmidt then presents data purporting to show that 28 percent of SOP customers took some affirmative action at the end of their initial contract term but that "the vast majority of customers were rolled over into a new contract with their existing SOP supplier outside of the SOP."[22] (EGS Parties St. No. 1, 14:7-15:5).

[21] PPL St. No. 4 - LaWall-Schmidt, p. 8, lines 3-8.
[22] PPL St. No. 4 - LaWall-Schmidt, p. 9, lines 3-4.

11. Mr. Kallaher detailed his disagreement with Ms. LaWall-Schmidt as follows:

> First, Ms. LaWall-Schmidt's data show that within four months after the expiration of SOP customers' initial term on the program, 42 percent of SOP customers had made some other affirmative choice and were no longer being served by their SOP supplier. Considering that about 38 percent of residential customers in the PPL service territory are being served by EGS's at any given time, PPL's own evidence is proof that even SOP customers who stay to the end of their term are more engaged than the general population in actively choosing among their options for electric service. More importantly, data produced by PPL in discovery data show that SOP customers are far more engaged and active in shopping for electricity than the typical PPL residential customer. In fact, "PPL Electric analysis shows that during the January 2017 through December 2018 period, 62% of Residential customers and 55% of Small C&I customers left the SOP prior to conclusion of the 12-month contract term."[23] My interpretation of PPL's analysis shows that 62 percent of residential customers left the SOP before the end of the 12-month contract term, and then 42 percent of the remaining 38 percent (or about 16 percent of the original group) also left their SOP supplier by the end of the fourth month after the expiration of the 12-month contract term, bringing the total percentage of SOP customers who had made an affirmative choice within 16 months of having enrolled in the program to 78 percent. Thus, contrary to Ms. LaWall-Schmidt's characterization of the SOP customers as remaining passively with their SOP supplier, the "vast majority" of SOP customers follow up their active choice to enter the program with another active choice of a different supplier within 16 months of enrolling in the program. This is strong evidence that the program is extremely successful at doing just what it is intended to do: give customers an on-ramp to the competitive market in a way that makes them more engaged than they would otherwise be. (EGS Parties' St. No. 1, 15:7-16:10).

12. Mr. Kallaher strongly disagrees with PPL's accusation that suppliers increase the price at the end of an SOP contract to catch the customer unaware:

> Yes. As discussed above, based on the percentages who shop outside the program, SOP customers are acutely aware of their options in the market and where the service they receive from their SOP supplier stands in relation to those options. In fact, suppliers provide two separate notices to customers regarding those very options, the same notices that other shopping customers receive. This is one reason that I am not particularly troubled by evidence that some portion of the minority of customers who

[23] Exhibits EGS-1 and EGS-1a.

> make no affirmative choice at the end of the initial 12-month term see some level of price increase. Overall, the SOP customer group is highly active, and those who choose not to switch away from their original supplier have already enjoyed a full 12 months of discounted service versus the default service rate. That group may have many reasons for remaining with their original supplier, most or all of which should be of no concern to PPL or the Commission. Some customers may be satisfied with the overall level of service from their supplier. Others may have found no other offers sufficiently compelling to warrant switching away from their current supplier. The decisions those customers make to not make another active choice are no less rational than the decisions of the majority of default service customers who do not switch to an EGS despite clear opportunities for saving.[24] If anything, SOP customers -- who have already made an affirmative choice by enrolling in the program -- appear to be acting with a far greater level of intention than the non-shopping population, as shown by the rate at which they leave the program before the end of the 12-month term. PPL's reasoning is not an "operational concern" that impacts PPL or its customers in some unexpected way, rather, it is clear that the Commission intended that customers would be required to make a choice at the end of the initial term.[25] (EGS Parties" St. No. 1, 15:16-17:13).

13. PPL's SOP program is working as intended and Mr. Kallaher is concerned that making the changes proposed by PPL will undermine or even destroy it. The program has robust supplier participation which is encouraging because suppliers must balance a number of variables in order to determine if the program is a benefit. These factors are:

> (1) the $28 fee paid for each customer acquired through the program (which is low compared to other channels but still a cost); (2) the cost of the guarantee of savings against the price to compare for the initial six months of the contract; (3) the impact of customers leaving the program before the end of the term; (4) the cost to serve customers in the program (such as customer service and other operational costs); and (5) the value of the ongoing customer relationship after the end of the 12-month term.

[24] Analysis by the Retail Energy Supply Association shows about $28 million in foregone savings in April 2020 alone as a result of customers remaining on PPL's default service rather than switching to a lower priced EGS.
[25] *Final Work Plan Order*, p. 21.

These factors appear to result in favorable conditions for suppliers at present but altering them will likely shift the balance in the wrong direction. Particularly the proposal that customers return to default service at the end of the contract, will undoubtedly eliminate any long-term customer relationship and thus the benefit of the SOP. (EGS Parties' St. No. 1, 18:1-5).

14. Mr. Kallaher is very concerned with the long-term ramifications of imposing a different paradigm for SOP customers than for any other customer group at the end of a contract – switching them when they have not made a choice to switch. He contends that "Even where SOP customers do not choose a specific EGS, they do make an affirmative choice to enroll in the program and thereby be switched to a non-utility supplier. Returning customers without consent to default service at the end of the 12-month term violates the principle of the primacy of customer choice in circumstances where there is no countervailing benefit that justifies that violation" (EGS Parties St. No. 1, 18:1-19:13).

15. Mr. Kallaher also "strongly opposes" PPL's stated intention of "educating" customers at or near the end of their SOP contacts, and suspects that there may be additional motives beyond the perceived need to "educate" customers:

> appears to be driven by the same false narrative that underpins the proposal to send SOP customers back to default service, namely that SOP customers are somehow disengaged or passive and thus unable to make appropriate decisions for themselves without PPL stepping in to "help." As shown above, according to PPL's own data, SOP customers make affirmative choices in the market at a much higher rate than PPL's overall residential customer population. There is absolutely no demonstrated need for a campaign designed to "educate" a customer population nearly 80 percent of which makes some affirmative shopping decision within 16 months of enrolling in the program. Moreover, the "outreach campaign" PPL proposes is excessive. . ."PPL Electric will undergo an outreach campaign including calls, letters, emails and/or text messages (according to customer preference) to discuss the options available to the customer. The materials

> will help the customer become a proficient shopper after the SOP contract expires. This will include a reference to the PaPowerSwitch.com website, and a discussion of key shopping terms. The goal is to teach customers how to properly evaluate offers so they can become confident shoppers.[26] While we do not oppose education, we have serious concerns about PPL's intentions when it purports to be "educating" customers who have already made the affirmative choice to shop. If PPL is concerned about customers being informed of how to shop, perhaps they should target their efforts to those who have not yet made that choice. The Commission already requires suppliers to send two notices with very specific wording regarding a customer's options at the end of their fixed term contracts[27] . . . the Commission should be very specific as to what PPL or any EDC can say in such communication to ensure that PPL's "education" does nothing to erode the value of that contract to the EGS that paid the price to be a party to it. (EGS Parties' St. No. 1, 20:5-21:12).

16. The EGS Parties do not support the use of the utility Price to Compare as a means of measuring the "fairness" of EGS rate offerings. Such a comparison is inappropriate for a number of reasons. First and foremost, the default service rate does not recover the non-energy costs that suppliers much recover in their rates in order to remain viable, rather the default service rate is an incremental energy cost rate, that is reconciled (EGSs are not permitted to reconcile rates) and utility provider of the rate recovers all of its non-energy costs through distribution rates, that EGS customers also pay, creating an inherent subsidy for default service. (EGS Parties' St. No. 1-R, 7:18-8:17).

17. Mr. Kallaher believes that Mr. Geller and Ms. Alexander's common view that low-income customers should not be permitted to engage the competitive market for electricity is not consistent with other markets for which financially disadvantaged customers receive assistance:

> [T]he idea that taking advantage of competitive options is anathema to the appropriate treatment of low-income customers is a view seen with respect

[26] PPL St. No. 4 - LaWall-Schmidt at p. 14, lines 11-17.
[27] 52 Pa. Code §§ 54.5 & 54.10.

> to very few, if any, goods and services, even essential ones. For example, Supplemental Nutrition Assistance Program (SNAP) funds can be used to buy "food for human consumption" and while there are some limitations on how those funds can be spent, the program generally allows recipients to make their own choices about what to buy and where to buy it. There is certainly no requirement that they shop at only the lowest cost grocery store or buy only the lowest cost version of a particular item. Indeed, food is only one example of goods or services for which low-income customers can receive some kind of assistance where there is no regulated equivalent of utility default service. Low-income customers who use oil to heat their homes can receive LIHEAP funds even though there is no default supplier of heating oil to which their own supplier might be compared. In the market for essential items like food and heating oil we trust low-income customers to make their own choices from among roughly the same ones that are available to non-low-income customers. If, unlike with respect to these other markets, it is indeed the case that shopping for electricity is viewed as mistreatment of low-income customers *per se*, then there is something very wrong with this market. As discussed above, there is some evidence to suggest that some EGSs may engage systematically in practices that put low-income customers at a disadvantage compared to non-low-income customers. If this is the case, those practices should be identified, and strong action should be taken against EGSs engaging in such conduct. Once these practices are identified and eliminated, any remaining perceived disadvantage of EGS service versus default service with respect to low-income customers is the fault not of flawed marketers but of flawed market design. I encourage the PUC to identify and remedy these flaws with great vigor as well.

18. Mr. Kallaher disagrees with the comparison of EGS rates to the price to compare as the basis for policy decisions such as allowing the monopoly utility to provide competitive products:

> EGSs view the continual comparison of EGS prices to default service as a reflection of the critical flaw in the design of the Pennsylvania market (as well as the retail markets in other states with a "hybrid" market design), namely the establishment of a regulated competitor sold through the monopoly wires company. The PPL witnesses seem to be of two minds on this point. On the one hand, Mr. Rouland denies that the price-to-compare is a competitive rate at all, which would seem to indicate that EGSs are not "in competition" with default service. On the other hand, Mr. Rouland sees one of the justification for PPL's renewable product as the need to provide some kind of check on EGS prices in the renewable space, a function he sees default service playing in the broader commodity market already. That

> certainly sounds like the function of competitive offerings in a normal competitive market; each competitor can be judged against others on the basis of price and other features. In fact, Mr. Rouland implies that this role for default service might be appropriate with respect to any kind of value-added service that an EGS might offer. If an EGS offered a "free nights" or "free weekends" product, perhaps PPL would claim the right to offer a similar product as a benchmark against which the EGS offerings would be judged.

19. Mr. Kallaher strongly disagrees with Ms. Alexander's assertion that purpose of electricity competition was to save customers money vis a vis default service. Mr. Kallaher's view is that:

> Ms. Alexander states that electric restructuring was meant to allow customers to save money, and she implies that EGS prices above the PTC frustrate this legislative purpose. I have heard this argument made elsewhere, and it has some superficial appeal. But to the extent this argument ties the goal of restructuring – in any state – to a comparison of retailer prices to default service rates, it is dead wrong. The goal of restructuring was to save customers money versus what they would have paid if the vertically integrated monopoly utility system had continued in place. That goal has been accomplished, without question. Default service in its current form didn't even exist at the time the industry was restructured. As noted, it was intended only to be a backstop for those who didn't shop immediately (and, having been around at the time, the general belief was that everyone would eventually shop) or who found themselves without service from their EGS. There are major markets, like Texas and the United Kingdom, that don't even have default service. The argument that the goal of restructuring was to dismantle the vertically-integrated utilities, create a new wholesale market structure through the establishment of an Independent System Operator ("ISO"), and create a new retail market structure that includes all of the systems needed for EGSs to transact business as they do, all so that customers would never pay more than the backstop service provided by the regulated utility is just wrong, and Ms. Alexander has been around long enough that she should know better than to make it. The outsized role that default service plays in the market today is a bug, not a feature, of the original market design, and we implore the Commission to treat it as such by minimizing, as much as possible, the damage it continues to do to the competitive market in Pennsylvania. (EGS Parties' St. 1-SR, 3:21-4:19).

APPENDIX B

Proposed Conclusions of Law

1. PPL's proposed elimination of its program for On-Track customers that allows them to take advantage of offers from suppliers at a 7% discount off the price to compare, known as CAP SOP, without replacing it with a new or different program to allow low income customers to make their own choice of supplier while remaining in the CAP program violates the Commission's draft CAP Shopping Policy Statement[28] and deprives low-income customers of their statutory right to choose a supplier[29] and is therefore contrary to law.

2. PPL's proposal to automatically transfer Standard Offer Program ("SOP") customers to default service at the end of the initial term of their contract, absent affirmative consent, is contrary to the Commission's Oder requiring such programs[30], is unsupported in the record and is therefore rejected.

3. The Commission's Regulations at 52 Pa. Code § 54.04 and §54.10 establish a notice procedure for customers nearing the end of their contract term. On this record there is no basis to deviate from the Regulations and PPL's proposed education program is rejected as contrary to the intent of the regulations.

---

[28] *Electric Distribution Company Default Service Plans – Customer Assistance Program Shopping*, Proposed Policy Statement Order, Docket No. M-2018-3006578, 49 Pa. Bul. 3083, June 15, 2019.
[29] 66 Pa.C.S. § 2806(a).
[30] *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket I-2011-2237952, (Final Order entered March 1, 2012, at p. 32)

APPENDIX C

Proposed Ordering Paragraphs

1. PPL's proposed CAP Shopping elimination is rejected, and PPL is ordered to engage in a Commission sponsored forum to revise and reform its CAP shopping program with the input of all stakeholders.

2. PPL's proposal to return SOP customers to default service at the end of the initial term of their contracts is not approved.

3. PPL's proposal to "educate" SOP customers at or near the end of their SOP contracts is likewise not approved.