PULP
PENNSYLVANIA
UTILITY LAW PROJECT

September 3, 2020

**Via E-File**

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

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

***CAUSE-PA Main Brief***

Dear Judge Barnes,

Attached, please find **Main Brief of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)**.

Copies will be circulated in accordance with the attached Certificate of Service, which was separately filed with the Commission this afternoon.

Respectfully submitted,
**PENNSYLVANIA UTILITY LAW PROJECT**
*Counsel for CAUSE-PA*

Elizabeth R. Marx, Esq.
emarxpulp@palegalaid.net

CC: Per Certificate of Service
Secretary Rosemary Chiavetta

**BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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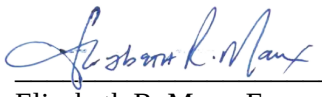
| Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program for the Period of June 1, 2021 through May 31, 2025 | : : : | Docket No. P-2020-3019356 |

## CERTIFICATE OF SERVICE

I hereby certify I have on this day served copies of the **Main Brief of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)** in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party) and consistent with the Commission's March 20, 2020 Emergency Order.

| VIA EMAIL ONLY | |
|---|---|
| Honorable Elizabeth Barnes<br>Administrative Law Judge<br>Pennsylvania Public Utility Commission<br>Commonwealth Keystone Building<br>400 North Street, 2nd Floor<br>Harrisburg, PA 17120<br>ebarnes@pa.gov | Kimberly A. Klock, Esq.<br>Michael J. Shafer, Esq.<br>PPL Services Corporation<br>Two North Ninth Street<br>Allentown, PA 18101<br>kklock@pplweb.com<br>mjshafer@pplweb.com |
| Michael W. Hassell, Esq.<br>Lindsay Berkstresser, Esq.<br>Post & Schell, PC<br>17 North Second Street, 12th Floor<br>Harrisburg, PA 17101-1601<br>mhassell@postschell.com<br>lberkstresser@postschell.com | Aron J. Beatty, Esq.<br>David Evrard, Esq.<br>Office of Consumer Advocate<br>555 Walnut Street<br>5th floor, Forum Place<br>Harrisburg, PA 17101-1923<br>abeatty@paoca.org<br>devrard@paoca.org |
| Steven C. Gray, Esq.<br>Small Business Advocate<br>Office of Small Business Advocate<br>300 North Second Street, Suite 202<br>Harrisburg, Pennsylvania 1710<br>sgray@pa.gov | Gina L. Miller, Esquire<br>Bureau of Investigation & Enforcement<br>Pennsylvania Public Utility Commission<br>PO Box 3265<br>Harrisburg PA 17105-3265<br>ginmiller@pa.gov |
| Pamela Polacek, Esq.<br>Adeolu A Bakare, Esq.<br>McNees Wallace & Nurick LLC<br>100 Pine Street<br>P.O. Box 1166<br>Harrisburg, Pennsylvania 17108<br>ppolachek@mcneeslaw.com<br>abakare@mwn.com | Deanne M. O'Dell, Esq.<br>Lauren Burge, Esq.<br>Eckert Seamans Cherin & Mellott, LLC<br>213 Market Street, 8th Fl.<br>Harrisburg, PA 17101<br>dodell@eckertseamans.com<br>lburge@eckertseamans.com |

| | |
|---|---|
| Charles E. Thomas, III, Esq.<br>Thomas, Niesen & Thomas, LLC<br>212 Locust Street, Suite 600<br>Harrisburg, PA 17101<br>Cet3@tntlawfirm.com | Todd S. Stewart, Esq.<br>Hawke, McKeon & Sniscak, LLP<br>100 N. 10th Street<br>Harrisburg, PA 17101<br>tsstewart@hmslegal.com |
| Kenneth L. Mickens, Esq.<br>The Sustainable Energy Fund of Central Eastern Pennsylvania<br>316 Yorkshire Drive<br>Harrisburg, PA 17111<br>kmickens11@verizon.net | Gregory Peterson, Esq.<br>Phillips Lytle LLP<br>201 West Third Street, Suite 205<br>Jamestown, NY 14701<br>gpeterson@phillipslytle.com |
| John F. Lushis, Jr., Esq.<br>Norris McLaughlin, PA<br>515 West Hamilton Street, Suite 502<br>Allentown, PA 18010<br>jlushis@norris-law.com | Derrick Price Williamson, Esq.<br>Barry A. Naum, Esq.<br>Spilman, Thomas & Battle PLLC<br>1100 Bent Creek Blvd., Suite 101<br>Mechanicsburg, PA 17050<br>dwilliamson@spilman.com<br>bnaum@spilmanlaw.com |
| Kevin C. Blake, Esq.<br>Phillips Lytle, LLP<br>125 Main Street<br>Buffalo, NY 14203<br>kblake@phillipslytle.com | Thomas F. Puchner, Esq.<br>Phillips Lytle LLP<br>Omni Plaza<br>30 South Pearl Street<br>Albany, NY, 12207-1537<br>tpuchner@phillipslytle.com |
| James Laskey, Esq.<br>Norris McLaughlin, PA<br>400 Crossing Blvd., 8th Floor<br>Bridgewater, NJ 08807<br>jlaskey@norris-law.com | Consultants:<br><br>Robert Knecht, rdk@indecon.com<br>Barbara Alexander, barbalex@ctel.net<br>Steven L. Estomin, sestomin@exeterassociates.com<br>Serhan Ogur, sogur@exeterassociates.com |



Elizabeth R. Marx, Esq.
Pennsylvania Utility Law Project
*Counsel for CAUSE-PA*
118 Locust Street, Harrisburg, PA 17101
717-710-3825 / emarxpulp@palegalaid.net

DATE: September 3, 2020

**BEORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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# MAIN BRIEF OF THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY IN PENNSYLVANIA

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**PENNSYLVANIA UTILITY LAW PROJECT**
*Counsel for CAUSE-PA*

Elizabeth R. Marx, Esq., PA ID: 309014
John W. Sweet, Esq. PA ID: 320182
Ria M. Pereira, Esq., PA ID: 316771
118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088
pulp@palegalaid.net

September 3, 2020

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases**



**Statutes**



**Regulations**



**Pennsylvania Public Utility Commission - Orders and Secretarial Letters**

## I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its counsel at the Pennsylvania Utility Law Project, files this Main Brief in support of its positions, and the recommendations advanced by CAUSE-PA's expert witness Harry S. Geller, regarding the terms and conditions governing the ability of Customer Assistance Program (CAP) participants to shop for competitive electric supply in the PPL Electric Utilities Corporation (PPL) service territory, as well as the terms and conditions of PPL's Standard Offer Program (SOP).[1]

Specifically, and for the reasons explained below, CAUSE-PA urges the Honorable Administrative Law Judge (ALJ) Elizabeth H. Barnes and the Pennsylvania Public Utility Commission to: (1) approve PPL's CAP shopping proposal, with the modifications proposed by witness Geller to allow low income shopping customers to enroll in CAP and return to default service immediately upon entry into the program - without financial penalty from suppliers; and (2) approve PPL's proposal to conduct affirmative outreach to SOP participants throughout the program and to return inactive, unwitting SOP participants to default service at the conclusion of the 12-month SOP term. To ensure appropriate monitoring and evaluation of these program reforms, PPL should be required to track and review appropriate data and engage with stakeholders in structured ways throughout the duration of its Default Service Plan (DSP).

[1] A number of issues in this proceeding have been settled, and will be the subject of a Joint Petition for Partial Settlement that will be filed concurrently with the due date for the Reply Brief in this proceeding (on or before September 17, 2020). The Joint Partial Settlement resolves a number of issues raised by CAUSE-PA in this proceeding – including PPL's proposed Time of Use and Renewable Rate proposals.

## A. BACKGROUND

The Electricity Generation Customer Choice and Competition Act ("Choice Act") created a competitive market for electric generation in Pennsylvania. In doing so, the General Assembly was clear that the purpose of introducing competition into the electric market was to control the cost of electric generation for all customer classes: "Competitive market forces are more effective than economic regulation *in controlling the cost* of generating electricity."[2] While the Choice Act restricted the ability of the Commission to regulate supplier pricing for residential consumers generally, it explicitly preserved the Commission's authority to regulate suppliers and supplier pricing in certain critical contexts to ensure an appropriate balance would be struck between the coexisting goals of the Choice Act.

In relevant part,[3] the Choice Act declared that "electric service is essential to the health and well-being of residents" and "should be available to all customers on reasonable terms and conditions."[4] In furtherance of this declaration, the Choice Act imposed an explicit mandate on the Commission to, "at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service" in the competitive environment.[5] These explicit policies recognized that competition must yield to the Commission's duty and obligation to ensure that electric service remains accessible to all customers on reasonable terms – and that service to economically vulnerable citizens, in particular, is not diminished. In furtherance of these

[2] 66 Pa. C.S. § 2802(5), (7) (emphasis added).

[3] To be clear, although discussion in this brief is regarding the Commission's authority to regulate suppliers in certain contexts (specifically with regard to CAP shopping and PPL's SOP), CAUSE-PA in no way suggests that these are the only contexts in which a supplier may be regulated by the Commission.

[4] 66 Pa. C.S. § 2802(9).

[5] 66 Pa. C.S. §§ 2802(10), (17); 2804(9).

important objectives, the Choice Act declared that "[t]he public purpose is to be promoted by continuing universal service and energy conservation policies," and charged the Commission with the statutory *obligation* to ensure that universal service and energy conservation programs "are appropriately funded and available in each electric distribution territory" and "are operated in a cost-effective manner."[6]

In PPL service territory, CAP customers have been eligible to shop for competitive electric supply since 2010. (PPL St. 3 at 5:9-10). In 2016, in the context of PPL's last DSP proceeding, PPL conducted a comprehensive review of CAP shopping, and discovered that CAP shopping customers paid, on average $31 per month higher than the price to compare. (PPL St. 3 at 6:7-19). In total, the annual net financial impact of unrestricted CAP shopping at the time amounted to $2,743,872.[7] In response to that data, the Commission approved PPL to implement a CAP Standard Offer Program, or CAP-SOP, to curb the excessive financial harm created by unrestricted CAP shopping. (PPL St. 3 at 7:3-6).[8] The program was implemented on June 1, 2017, and remains in effect today. (PPL St. 3 at 7-9).

The record in this proceeding clearly and unequivocally shows a pattern of excessive residential supplier pricing. Since January 2015, residential shopping customers were charged

[6] 66 Pa. C.S. §§ 2802(10), (17); 2804(9); see also, CAUSE-PA et al. v. Pa. PUC, 120 A.3d 1087, 1103 (Pa. Commw. Ct. 2015) ("The obligation to provide low-income programs falls on the public utility under the Choice Act, not on the EGSs. Moreover, the Choice Act expressly requires the PUC to administer these programs in a manner that is cost-effective for both the CAP participants and the non-CAP participants, who share the financial consequences of the CAP participants' EGS choice.").

[7] Electric Distribution Company Default Service Plans – Customer Assistance Program (CAP) Shopping, Motion of Commissioner David W. Sweet, Docket M-2018-3006578 (Dec. 20, 2018).

[8] CAP customers may only shop through the CAP-SOP, which provides a 7% discount off the price to compare at the time the CAP customer enters the CAP-SOP – and thereafter remains fixed for 12 months. (PPL St. 3 at 7:12-14). If a CAP enrollee is shopping outside of the CAP-SOP at the time they enter CAP, they may continue to shop with the competitive supplier for 120 days if they are on a variable rate contract or until their fixed contract otherwise expires. Petition of PPL Electric Utilities Corp. for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 through May 31, 2021, Final Order, Docket No. P-2016-2526627 (Feb. 9, 2018).

**$295,828,735** more than the price to compare; confirmed low income shopping customers were charged **$57,645,147** more than the price to compare; and CAP shopping customers were charged **$22,694,177** more than the price to compare. (CAUSE-PA St. 1 at 8-13 & Exh. 1-3). Evidence in the record suggests that vulnerable populations, including low income communities and communities of color, may face disproportionately high supplier costs – which in turn suggests that higher priced offers may be targeted to PPL's most vulnerable populations. (CAUSE-PA St. 1 at 14:1-17:3).

Notwithstanding efforts in PPL's last DSP to mitigate financial harms associated with CAP shopping, persistent and excessive charges in the residential competitive market have continued to cause substantial financial harm to economically vulnerable customers enrolled in CAP and the residential ratepayers who finance that program. These harms have similarly exposed unwitting SOP customers to excessive and avoidable pricing at the conclusion of the SOP term. While these harms will be discussed below at length, it is important for context to highlight some of the most egregious examples of financial harm with respect to both CAP shopping and the SOP:

- Since 2013, CAP shopping customers have been charged an estimated **$30,331,232** in excess of the applicable default service price. (CAUSE-PA St. 1, at 13 T.4).

- In 2019, <u>after</u> PPL's CAP-SOP was fully implemented, PPL's CAP shopping customers were charged an average of $284.25 – or ***$23.69 per month*** – in excess of the default service price. (CAUSE-PA St. 1 at 13 T.5, 37:3-6).

    - For the average CAP customer, with annual income of $14,291, this amounts to approximately 2% of annual household income. (CAUSE-PA St. 1 at 32).

- Approximately 72% of SOP participants do not make an affirmative decision at the expiration of their SOP contract, and instead unwittingly roll over onto a new contract.

    - 89% of SOP participants who unwittingly rolled onto a new contract at the conclusion of the SOP were charged 10% or more in excess of the default service price in the four months following the end of the SOP, while just 6% paid at or below the default service price. (CAUSE-PA St. 1 at 24: 11-13).

As discussed at length, reforms to PPL's SOP and CAP shopping programs are critically necessary to ensure that PPL's default service programs are appropriately balanced to achieve the co-existing goals within the Choice Act and to fulfill the statutory mandates contained therein. CAUSE-PA urges the Commission to adopt the proposals described in detail below to impose further reasonable program reforms to protect PPL's economically vulnerable CAP consumers, SOP participants, and residential ratepayers from persistent financial harm.

## B. PROCEDURAL HISTORY

On March 11, 2015, the Commonwealth Court of Pennsylvania definitively concluded that the Choice Act imposes a statutory obligation on the Commission to ensure that universal service programs are appropriately funded, cost effective, and accessible to those in need.[9] In furtherance of this obligation, the Court held that the Commission may approve rules that restrict access to the competitive market "so long as it provides substantial reasons why there is no reasonable alternative" that would "ensure adequately funded, cost-effective, and affordable programs to assist consumers who are low income to afford electric service."[10]

On May 2, 2018, the Commonwealth Court of Pennsylvania further defined and applied this standard in the context of PPL's last Default Service Plan proceeding.[11] In applying the standard, and based on substantial record evidence of harm caused by unrestricted CAP shopping, the Court affirmed the Commission's decision to approve PPL's CAP-SOP.[12]

On December 20, 2018, on the motion of Commissioner David W. Sweet, the Commission launched a statewide policy proceeding to adopt uniform guidelines for CAP shopping.[13]

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[9] CAUSE-PA et al. v. Pa. PUC, 120 A.3d 1087, 1103-04 (Pa. Commw. Ct. 2015).

> [W]e conclude that the PUC has the authority under Section 2804(9) of the Choice Act, in the interest of ensuring that universal service plans are adequately funded and cost-effective, to impose, or in this case approve, CAP rules that would limit the terms of any other offer from an EGS that a customer could accept and remain eligible for CAP benefits. The obligation to provide low-income programs falls on the public utility under the Choice Act, not the EGSs. Moreover, the Choice Act expressly requires the PUC to administer these programs in a manner that is cost-effective for both [CAP and non-CAP participants].

[10] Id.

[11] Retail Energy Supply Ass'n v. Pa. PUC, 185 A.3d 1206, 1227-28 (Pa. Commw. Ct. 2018).

> [W]hat CAUSE-PA requires, in order for a rule restriction to survive our review, is that there be substantial evidence in the record showing a substantial reason why a restriction on competition is necessary, that is to say, there are no reasonable alternatives to restricting competition. A restriction on competition is necessary when, one, there is a harm associated with competition and, two, there is no reasonable alternative to the rule that restricts competition.

Id. (quoting CAUSE-PA et al., 120 A.3d 1087, 1103-04).

[12] Id.

[13] Electric Distribution Company Default Service Plans – Customer Assistance Program (CAP) Shopping, Motion of Commissioner David W. Sweet, Docket M-2018-3006578 (Dec. 20, 2018).

On February 28, 2019, the Commission issued a Proposed Policy Statement Order, establishing proposed guidelines for CAP shopping.[14] No final order has been issued in this proceeding.

On January 23, 2020, at a separate docket, Commission staff issued a Secretarial Letter which – in relevant part – "remind[ed] the EDCs and all interested parties to assess how Customer Assistance Program (CAP) customers can participate in the competitive market in future DSP proceedings."[15] The Secretarial Letter did not impose any specific requirements for CAP shopping, but asked EDCs and interested stakeholders to "consider the issues and concerns raised by the Commission [in the pending CAP policy statement proceeding and other recent DSP proceedings] to develop their CAP shopping proposals."[16]

On March 25, 2020, PPL Electric Utilities Corporation (PPL) filed a Petition for Approval of its Default Service Programs for the period commencing June 1, 2021 through May 31, 2025, along with its Direct Testimony in support of its Default Service Plan (DSP). PPL filed its DSP in accordance with its responsibilities as a Default Service Provider pursuant the Choice Act, the Pennsylvania Public Utility Commission (Commission) default service regulations,[17] and the Commission's Policy Statement on Default Service.[18]

PPL's Petition was published in the Pennsylvania Bulletin on April 18, 2020, and an Initial Prehearing Conference was held on May 15, 2020 before the Honorable Administrative Law Judge

[14] Electric Distribution Company Default Service Plans – Customer Assistance Program Shopping, Proposed Policy Statement Order, Docket M-2018-3006578 (Feb. 28, 2019).

[15] Investigation into Default Service and PJM Interconnection, LLC Settlement Reforms, Secretarial Letter, Docket No. M-2019-3007101 (Jan. 23, 2020).

[16] Id.

[17] 52 Pa. Code §§ 54.181-54.189

[18] 52 Pa. Code §§ 69.1801-69.1817.

(ALJ) Elizabeth H. Barnes. ALJ Barnes issued a Prehearing Conference Order on that same date, which set forth a procedural schedule and granted all pending Petitions to Intervene.[19] On June 1, 2020, ALJ Barnes issued a Protective Order in this proceeding.

The parties exchanged extensive discovery and written testimony through the course of the proceeding, and a hearing was held before ALJ Barnes on August 13, 2020, at which the parties' testimony, exhibits, and other evidence was admitted into the record by stipulation and verification. No party conducted cross-examination of any witnesses at the hearing. CAUSE-PA submitted the Direct, Rebuttal, and Surrebuttal Testimony of Harry Geller (premarked CAUSE-PA Statements 1, 1R and 1-SR), along with three exhibits (CAUSE-PA Exhibits 1, 2, and 3). These exhibits provide five years of monthly data comparing the price that residential, confirmed low income (non-CAP) customers, and CAP customers paid for competitive electric supply, respectively, compared to the price these customers would have paid if they remained on default service. Also admitted at the hearing were the Joint Stipulations of the EGS Parties and CAUSE-PA; Inspire Energy Holdings, LLC and CAUSE-PA; and Starion Energy PA, Inc. and CAUSE-PA, which each included interrogatory responses of the various supplier parties to the record.

[19] Petitions to Intervene were filed by CAUSE-PA; Inspire Energy Holdings, LLC (Inspire); Calpine Retail Holdings, LLC (Calpine); Retail Energy Supply Association (RESA); StateWise Energy, Pennsylvania, LLC; SFE Energy Pennsylvania, Inc.; Interstate Gas Supply, Inc., Shipley Choice, LLC, NRG Energy, Inc., Vistra Energy Corp., Engie Resources, LLC and Direct Energy, LLC (collectively, EGS Parties); Industrial Energy Consumers of Pennsylvania (IECPA); Sustainable Energy Fund (SEF); and PP&L Industrial Customer Alliance. RESA later withdrew from the proceeding, and a late-filed Petition to Intervene was later granted for Starion Energy, PA.

## II. QUESTIONS PRESENTED

### A. CUSTOMER ASSISTANCE PROGRAM SHOPPING

1. Does the Commission have the legal authority to approve program eligibility rules for PPL's Customer Assistance Program (CAP) that would restrict the price and terms of service a CAP customer may pay for electricity from an electric generation supplier or otherwise interrupt a contract between a supplier and a CAP customer?

   **Suggested answer: Yes.**

2. Does the record contain substantial, unrefuted evidence that additional CAP shopping restrictions are needed within the PPL service territory to ensure adequately-funded, cost-effective, and affordable universal service programs to assist customers who are low-income to afford electric service?

   **Suggested answer: Yes.**

3. Should the Commission adopt the CAP shopping rules proposed in PPL's DSP, as modified by the recommendations of Mr. Geller, to preserve affordability and accessibility of CAP for low income consumers and other residential ratepayers?

   **Suggested answer: Yes.**

### B. STANDARD OFFER PROGRAM

1. Does the Commission have the legal authority to approve PPL's proposal to conduct targeted outreach to SOP participants near the end of the SOP term and to return SOP participants to default service if they do not take affirmative action at the end of the contract?

   **Suggested Answer: Yes.**

2. Does the record contain substantial, unrefuted evidence that the vast majority of SOP customers that unwittingly rolls onto a new contract at the end of the SOP pay substantially more for electric generation supply?

   **Suggested Answer: Yes.**

3. Should the Commission approve PPL's proposal to return SOP participants to default service at the conclusion of the SOP if they do not make an affirmative choice to select a new supplier to ensure that residential consumers are receiving a benefit from the SOP.

   **Suggested Answer: Yes**

## III. LEGAL STANDARD AND APPLICABLE BURDEN OF PROOF

The proponent of a rule or order has the burden of proof, as well as the burden of persuasion.[20] When the rule in question seeks to bend competition in order to yield to other objectives in the Choice Act, the proponent of the rule must show – by a preponderance of the evidence – that (1) there is a harm associated with unbridled competition; and (2) the proposed rule to restrict competition is necessary to stop that harm.[21] To meet this standard, a party must present evidence more convincing, by even the smallest amount, than that presented by any opposing party.[22]

[20] 66 Pa. C.S. § 332(a); see also Samuel J. Lansberry, Inc. v. Pa. PUC, 578 A.2d 600 (Pa. Commw. Ct. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); see also Retail Energy Supply Ass'n, 185 A.3d at 1227.

[21] See Retail Energy Supply Ass'n, 185 A.3d at 1227.

[22] Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

## IV. SUMMARY OF ARGUMENT

Substantial, unrefuted data of record in this proceeding has laid bare the fact that residential shopping customers, as a whole, pay substantially more for competitive electric supply compared to the default service price. From January 2015 through May 2020, PPL's residential shopping customers as a whole were charged approximately $295,828,735 more than the default service price. (CAUSE-PA St. 1 at 7-8 & Exh. 1).[23] Confirmed low income residential shopping customers, who are known to PPL to have an income that is at or below 150% of the federal poverty level (FPL), were charged approximately $57,645,147 in excess of the default service during this same five-year period. (CAUSE-PA St. 1 at 10-11 & Exh. 2). On a per customer basis in 2019, confirmed low income shopping customers were charged roughly $269.22 more than the default service price. (CAUSE-PA St. 1 at 11, T.3). Evidence in the record further suggests that vulnerable populations, including low income communities and communities of color, may be targeted for higher priced offers.

As a subset of PPL's confirmed low income customers, CAP participants have experienced similarly excessive shopping charges – *even after PPL adopted the CAP-SOP to prevent excessive supplier pricing*. (CAUSE-PA St. 1 at 13, T.5; PPL St. 3 at 8:12 to 13:15). Since January 2015, CAP shopping customers have been charged $22,694,177 in excess of the default service price. Over more than 7 years – from January 2013 through January 2020 – excessive CAP shopping charges have topped more than $3.3 million. (Id.) On a per customer basis in 2019, CAP shopping customers were charged an average of $284.25 annually ($23.69/mo) in excess of the default service prices. (Id.). Again, these excessive CAP shopping charges were incurred after PPL implemented its CAP-SOP – a program designed to stem excessive CAP charges.

[23] All of the shopping data is on net, and accounts for any savings achieved by consumers as well as additional costs.

Even in the early months of the pandemic, and as residential consumers have struggled profoundly to afford their utility bills through this unprecedented health and economic crisis, suppliers have continued to charge consumers millions of dollars in excess of the price to compare. (Id.) In just three months, from March through May 2020, residential shopping customers in PPL's service territory were charged $14,317,551 in excess of the default service price; confirmed low income shopping customers were charged $2,989,743 in excess of the default service price; and CAP customers were charged $504,873 in excess of the default service price. (CAUSE-PA St. 1, Exh. 1). During this same time, and further underscoring the financial difficulty faced by residential consumers through the pandemic, residential arrears for regulated natural gas and electric utilities have increased by 39% for all residential customers and 23% for low income residential customers.[24]

The accuracy of this extensive data is an unrefuted part of the record. Rather than deny the clear patterns of overcharging uncovered in this proceeding, suppliers responded generally that it is unfair to measure the cost of competitive supply against the default service price to compare – and have sought to instead advance a number of proposals to inflate the cost of default service and otherwise create instability and uncertainty in the default service price. (See CAUSE-PA St. 1-R; CAUSE-PA St. 1-SR; see also EGS Parties St. 1 at 7-8; EGS Parties St. 1R; EGS Parties I-SR).

While the Commission currently lacks authority to regulate EGS prices for residential consumers as a whole,[25] it has the explicit authority – and in fact the statutory obligation – to

[24] See Public Utility Service Termination Moratorium Proclamation of Disaster Emergency – COVID-19, Comments of the Energy Association of Pennsylvania, Docket No. M-2020-3019244, at 4 (filed August 18, 2020).

**[25] Based on the evidence uncovered in this proceeding showing widespread, excessive residential pricing across the residential retail electric market, CAUSE-PA urges ALJ Barnes to recommend that the Commission launch a statewide investigation into the general residential retail market to identify ways to curtail the impact of excessive supplier pricing statewide. We specifically urge the Commission to review the evidence in this and the other ongoing DSPs to determine whether suppliers are targeting low income and**

oversee Commission-approved programming and to preserve the cost-effectiveness and accessibility of universal service programming.[26] In furtherance of this obligation, the Commonwealth Court has definitively concluded that the Commission has the authority – pursuant to its obligations under the Choice Act – to enact program rules that may restrict competition when necessary to prevent an identified harm which contradicts the coexistent policies and objectives of the Choice Act and other applicable laws and policies.[27]

As highlighted above, and described in detail below, the record in this case indisputably shows ongoing and persistent financial harm to CAP and SOP participants, as well as the residential consumers who subsidize CAP through rates. Based on this evidence, CAUSE-PA asserts that it is critical for the Commission to approve the proposals of PPL – as modified by CAUSE-PA – to end costly and harmful CAP shopping while preserving the ability of low-income shopping customers to enroll in CAP, and to return inactive SOP participants to default service at the conclusion of the SOP term, consistent with the discussion below. Such an outcome is necessary to prevent ongoing and substantial financial harm to participants in each of these Commission-approved, EDC administered, and ratepayer supported retail shopping programs.

**minority communities with higher priced supply products, as the evidence seems to suggests. (See CAUSE-PA St. 1 at 14:1-17:3).**

[26] 66 Pa. C.S. §§ 2802 (9), (10), (17), 2804(9).

[27] See Retail Energy Supply Ass'n, 185 A.3d at 1227-28.

## V. ARGUMENT

### A. CUSTOMER ASSISTANCE PROGRAM SHOPPING

For the reasons more fully explained below, CAUSE-PA urges the Commission to approve PPL's proposal to prohibit CAP shopping, as modified by the recommendations of CAUSE-PA to ensure that vulnerable low-income consumers will be able to access and enroll in CAP without facing insurmountable fees or the additional accrual of arrears as a result of excessive supplier pricing.

#### 1. The Commission has the legal authority to the adopt CAP shopping restrictions proposed by PPL, as further modified by CAUSE-PA.

As a regulated public utility serving more than 100,000 customers, PPL is required to offer an integrated package of universal service programs designed to help low-income, payment troubled ratepayers maintain and afford essential utility services. These programs are required by the Choice Act, Commission regulations, and formal Commission policy.[28] The universal service provisions of the Choice Act tie the affordability of electric service to a customer's ability to pay for that service. The Choice Act defines "universal service and energy conservation" as the "*[p]olicies, protections and services that help low-income customers to maintain electric service*."[29] The term includes customer assistance programs (CAPs), usage reduction programs, grant assistance programs, service termination protections, credit and collections provisions, and consumer education.

CAPs are regulated universal service programs that provide a discounted bill and arrearage forgiveness to low-income ratepayers whose household incomes are at or below 150% of the

[28] See 66 Pa. C.S. §§ 2802(10), (17); 2804(9); 52 Pa. Code §§ 54.71-.78; 52 Pa. Code §§ 69.261-.267.

[29] 66 Pa. C.S. § 2803 (emphasis added).

federal poverty level (FPL).[30] CAPs are guided by the "Policy Statement on Customer Assistance Programs."[31] These policies, among other controls, establish the maximum energy burden parameters for CAP customers,[32] in recognition of the fact that low income households most often lack adequate resources to pay the unabated cost of energy services. (CAUSE-PA St. 1 at 31:3 to 33:10). By providing a more affordable rate and therefore reducing the costs associated with collection and termination, CAPs serve as "an alternative collection method."

The Commonwealth Court of Pennsylvania has definitely held that CAP rules which restrict the ability of CAP participants to shop for competitive electric supply are permissible and soundly within the Commission's authority to approve.[33] The Court explained that a CAP rule may be approved provided such a restriction is (1) necessary to prevent an identified harm, and (2) there is no reasonable alternative to the proposed restriction that is capable of preventing the identified harm:

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[30] 52 Pa. Code § 54.72; 52 Pa. Code § 69.262.

"CAP – Customer Assistance Program – An alternative collection method that provides payment assistance to low-income, payment troubled utility customers. CAP participants agree to make regular monthly payments that may be for an amount that is less than the current bill in exchange for continued provision of electric utility services." 52 Pa. Code § 54.72.

[31] 52 Pa. Code §§ 69.261-69.267.

[32] See 52 Pa. Code § 69.265 (2)(i).

Notably, the Commission recently adopted revised energy burden standards to address chronic unaffordability within CAP, and set the maximum combined energy burden standard (electric and gas) at 6% for households at 0-50% FPL and 10% for households at 51-150% FPL. 2019 Amendments to Policy Statement on Customer Assistance Program, 52 Pa. Code § 69.261-69.267, Final Policy Statement and Order, Docket No. M-2019-3012599 (order entered Nov. 5, 2019).

PPL's current energy burden standards substantially exceed the energy burden standards in the Commission's CAP Policy Statement. See CAUSE-PA St. 1 at 37. Thus, the well documented harm caused by excessive CAP shopping prices, as addressed throughout this brief, will be further exacerbated if there is a continued inability to effectively prevent and control supplier prices in excess of the default when PPL conforms its program to the Commission's reduced energy burden standards. As explained below, the documented harms attributable to CAP shopping in 2018 and 2019, on a per customer average basis, added between 1.7 and 2% to the average CAP energy burden (applying average CAP household income for 2018).

[33] Retail Energy Supply Ass'n, 185 A.3d at 1227-28 (quoting CAUSE-PA et al., 120 A.3d 1087, 1103-04).

> [I]n order for a rule restriction to survive our review, … there [must] be substantial evidence in the record showing a substantial reason why a restriction on competition is necessary, that is to say, there are no reasonable alternatives to restricting competition. **A restriction on competition is necessary when, one, there is a harm associated with competition and, two, there is no reasonable alternative to the rule that restricts competition**.[34]

As explained below, the first part of this standard is met because there is substantial and identified financial harm associated with CAP shopping that remains unabated by PPL's existing CAP shopping restrictions. In turn, the second part of this standard is met because the proposal of PPL to prohibit CAP shopping, as modified by Mr. Geller's proposal to permit low income shopping customers to enroll in CAP without additional financial obstacles, is the only reasonable alternative on the record that will effectively prevent ongoing harm to low income CAP customers. As such, PPL's proposal to prohibit CAP shopping, as modified by CAUSE-PA's recommendation to ensure continued access to CAP, must be approved.

**2. The record in this proceeding contains substantial, unrebutted evidence that additional CAP shopping restrictions are necessary to prevent ongoing and substantial harm to CAP customers and other residential ratepayers.**

PPL's CAP-SOP and associated CAP shopping rules have proven insufficient to address ongoing financial harm to low income CAP customers and other residential ratepayers. Additional CAP shopping reforms must be adopted to protect economically vulnerable households and other residential ratepayers from significant and substantial financial harm, and to ensure that universal service programs remain adequately funded, cost-effective, and available to all those in need.

*(a) PPL's low-income CAP customers are uniquely situated, economically vulnerable, and require specific and distinct protection within the retail electric market as compared to other electric customers.*

[34] Id.

No party has contested the testimony submitted by CAUSE-PA concerning the economic vulnerability of PPL's confirmed low-income customers – and, specifically, CAP customers. (CAUSE-PA St. 1 at 30:9-33:10). Mr. Geller discussed the seriousness of energy unaffordability for low income customers at length in his direct testimony, and explained that low income consumers struggle profoundly to afford energy service even with the assistance of CAP:

> Energy insecurity – or the inability to afford basic energy services – threatens stable and continued housing, employment, and education; has substantial and long-term impacts on mental and physical health; creates serious risks to the household and the larger community; and negatively impact the greater economy.
> …
> Even with financial assistance, low income households are often still unable to afford the cost of energy: According to a 2018 survey conducted by the National Energy Assistance Directors' Association, 72% of LIHEAP recipients reported that they forego other necessities to afford energy, and 26% reported keeping their home at unsafe or unhealthy temperatures.
> …
> Ultimately, any increase in rates necessarily results in increased unaffordability, and is likely to result in a corresponding increase in uncollectible expenses and, in turn, involuntary payment-related terminations.
> …
> The average CAP household is desperately poor, and … routinely runs out of money even with the assistance of CAP. In 2018, the average household income [of] CAP participants was just $14,291. For context, this level of income was just of 50% of the federal poverty level (FPL) for a family of four in that year. Notably, according to PPL's most recent third party evaluation of its universal service programs, 54% of PPL's CAP customers had a gross annual income that was at or below $20,000. This evaluation also found that, before enrolling in CAP, 64% of participants had to skip or delay paying for food, 29% had to skip or delay paying for medicine, and 39% had to skip or delay paying their mortgage or rent. After enrolling in OnTrack those payment hardships were reduced to 24%, 5%, and 20%, respectively, but were not eliminated – highlighting the profound energy affordability challenges for low income consumers.

(CAUSE-PA St. 1 at 31-33).

PPL's confirmed low-income customers are economically vulnerable and unable to pay for essential services, including electricity, without substantial financial assistance. It is for this reason that CAP programs were created to assist low-income customers maintain and afford essential utility service, and it is precisely why the benefits of CAP must not be eroded by continuing to

allow CAP customers to pay more than the default service price.[35] It is also why low income CAP customers, who are often in an active crisis and significantly behind on their bill at the time they seek to enter CAP, must be able to access CAP assistance without undue delay – and without the risk of incurring additional fees associated with the early cancellation or termination of a contract for competitive electric supply. This is a principle firmly ensconced in the Choice Act: universal service programs must remain accessible to those in need.

> *(b) When CAP customers are charged a price for electricity which exceeds the default service price, the increased cost – which provides no benefit to the universal service program or its participants - is shouldered entirely by CAP customers and residential ratepayers who pay for the program.*

CAP shopping is a zero-sum game. Any charges in excess of the applicable default service price are either borne by residential ratepayers that subsidize CAP, by CAP customers enrolled in the program, or both.

To fully understand the harm caused by CAP shopping, it is critical to first understand the mechanics of PPL's CAP, and how the bill discount is calculated and applied. PPL's CAP – also known as OnTrack – provides three primary benefits: (1) a reduced monthly bill, (2) frozen arrearages and waived late payment fees, and (3) arrearage forgiveness over an 18-month period. (CAUSE-PA St. 1 at 34: 16-19). PPL's CAP customers may have one of three different payment plans: a percentage of bill, a minimum payment plan, or a custom payment option – though the majority are enrolled in the percent of bill option. (CAUSE-PA St. 1 at 35).[36] Once a CAP

[35] As explained further below, in subpart IV.A.2.b, when a CAP customer pays a price for electricity supply that exceeds the price to compare, they will more quickly reach their 18-month CAP credit maximum – at which point they will be charged full tariff rates for the duration of the 18-month program period. In turn, the cost of CAP to other ratepayers will also increase, as CAP participants will require more monthly subsidy to offset the high supplier prices. In short, CAP shopping that allows for participants to pay a cost which exceeds the price to compare – *even for a short period of time* – is a zero-sum game, wherein CAP customers and residential ratepayers both lose.

[36] As Mr. Geller explained in his direct testimony:

customers' payment plan is established, the customer must pay this amount each month over the next 18-month period – subject to an 18-month maximum CAP credit (the difference between the CAP rate and the full tariff residential rate) limit which varies by income tier and account type:

| Federal Poverty Level | Account Type | Maximum 18 Mo. Credit |
|---|---|---|
| 0-50% | Electric Heat | $4,027 |
| 51-100% | Electric Heat | $3,661 |
| 101-150% FPL | Electric Heat | $3,328 |
| | | |
| 0-50% | Non-Electric Heat | $1,585 |
| 51-100% | Non-Electric Heat | $1,441 |
| 101-150% | Non-Electric Heat | $1,310 |

Each month, a CAP customers' maximum applicable CAP credits are reduced on a dollar-for-dollar basis. For example, if a heating customer's full tariff bill (without CAP) is $300, but their CAP bill amount is $100, the CAP customer will be responsible for paying $100 and the remaining $200 (known as the "CAP shortfall") will be deducted from the customers'

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The percent of bill payment option works as follows:

1. PPL identifies the customer's average monthly bill for the previous 12-month period. This amount is determined by looking at the customer's actual, average monthly usage, and their actual, average rate that the customer paid over that period of time. This amount is then multiplied by 12 to get a fixed, average annual (12 month) bill amount.

2. Once the average annual bill amount is determined, it is multiplied by the Bill Factor applicable to the household based on the household income as measured by the federal poverty guidelines.[36] PPL has three (3) possible Bill Factors:

| Household Income as measured by percentage of federal poverty guidelines | Percent of average, annual bill the household is responsible for paying (Bill Factor) |
|---|---|
| 0% - 50% | 50% |
| 51% - 100% | 70% |
| 101% - 150% | 80% |

That is, households are expected to pay 50%, 70% or 80% of their average annual bill, depending on their household income.

Once the average annual bill is multiplied by the Bill Factor, the newly calculated annual Bill Factor Amount is divided by 12 to get a monthly amount. This is the monthly amount ("CAP Bill") that the CAP customer will be expected to pay over the next 18 months.

(CAUSE-PA St. 1 at 34-35 (citing PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan: 2017-2019 Plan for CAP, LIURP, Operation HELP, CARES (Nov. 6, 2017), http://www.puc.state.pa.us/pcdocs/1543006.pdf)).

maximum CAP credit limit. As Mr. Geller explains, "If a customer exhausts all of his or her maximum CAP credits before the 18-month period, they no longer receive a CAP bill that is based on an ability to pay, but instead must pay their full monthly budget bill, regardless of the fact that – by definition – a full rate tariff bill is unaffordable for the CAP participant." (CAUSE-PA St. 1 at 36: 8-11).

The CAP credit amount – sometimes referred to as the CAP shortfall – is paid for by all residential, non-CAP customers through PPL's Universal Service Rider, which is built into PPL's residential rates. (CAUSE-PA St. 1 at 36: 14-16).

Mr. Geller explained how shopping at a rate that exceeds the default service price creates dual harm: to CAP customers and to other residential ratepayers:

> When a PPL CAP customer exceeds their maximum CAP credits prior to their 18-month recertification period, they will receive a full undiscounted bill for the remaining months within the 18-month program. This, by definition, is unaffordable for low income consumers, and causes CAP customers to greatly exceed the target energy burden. As explained previously, low income CAP customers simply cannot afford to bear this expense, which ultimately passes on added costs to other ratepayers through increased collections and uncollectible expenses.
>
> In addition to potential increased collections and uncollectible expenses, residential consumers also pay increased program costs as a result of excessive shopping prices. If a CAP customer is paying more for electricity, they will require more CAP credits to cover the shortfall between their full rate and the rate deemed affordable pursuant to the terms of PPL's CAP. This artificially inflates the cost of CAP, and those additional costs fall on other residential ratepayers.

(CAUSE-PA St. 1 at 37:9-19).

In short, when a CAP customer pays a rate that exceeds the price for default service, the cost of CAP is increased – dollar for dollar. That increase is shouldered by other residential ratepayers - without any benefit to the participant, the program, or to those subsidizing customers- through increased costs to the CAP program up to the CAP customers' applicable maximum CAP

credit limits. Once that maximum CAP credit limit is reached, the burden of increased costs associated with CAP shopping is shouldered by CAP customers through increased (and categorically unaffordable) rates.

*(c) Notwithstanding PPL's existing CAP shopping restrictions, CAP customers and other residential ratepayers continue to experience substantial and well-documented financial harm as a result of CAP shopping.*

PPL currently permits CAP customers to shop with participating suppliers through its CAP-SOP, which provides a 7% discount off the price to compare at the time the CAP customer enrolls in the program. (PPL St. 3 at 7-8). The CAP-SOP was adopted in PPL's last DSP proceeding, and was designed to prevent substantial financial harm to CAP customers and other residential ratepayers cause by unrestricted CAP shopping which was uncovered in that proceeding.[37] In that proceeding, evidence showed that between January 2012 and October 2015, CAP customers were charged approximately $228,656 each month – or more than $2.7 million each year – in excess of the default service price.[38]

PPL's existing CAP-SOP includes an established transition period for low income customers who are shopping at the time they enroll in CAP, and permits a supplier to retain that customer for a period of time after entry into CAP.[39] For those who enroll in CAP with an existing fixed term contract, the supplier may retain the CAP customer for the duration of the fixed term contract before they are required to return the customer to default service.[40] For those who enroll in CAP with an existing variable rate contract, the supplier may retain the CAP customer for up to

[37] See Retail Energy Supply Ass'n, 185 A.3d at 1227-28.
[38] Id. at 1228.
[39] 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, Final Order, Docket P-2016-2526627 (order entered February 9, 2018).
[40] Id. at 25-26.

120 days before returning the customer to default service.[41] While suppliers were charged the obligation to timely return CAP customer to default service at the end of the 120 day period (for variable rate contracts) or the end of the fixed rate contract term, the Commission did not at the time establish an explicit monitoring or enforcement duty on PPL, on suppliers, or on its own initiative to ensure suppliers would follow this critically important mandate.[42]

Unfortunately, PPL's CAP-SOP – implemented June 1, 2017 – has failed to stop excessive supplier pricing and the associated financial harms to low income CAP customers and other residential ratepayers who finance the program. (PPL St. 3 at 7, 10-14). In 2019, the average monthly charges incurred by CAP shopping customers in excess of the default service price was $242,340, roughly $20,000 *more* than the average monthly cost of unrestricted CAP shopping documented in PPL's last DSP which led to the creation of PPL's CAP-SOP. (PPL St. 3 at 12). In January 2020, there were nearly 8,000 CAP customers shopping for competitive electric supply outside of the CAP-SOP, 62% of whom were shopping at rates above the default service price at a net monthly incremental cost of $221,473. (PPL St. 3 at 10-12, T.1-T.4).

**CAP Shopping: Total Charges Over Default**

| | Net Charges Over Default, CAUSE-PA Analysis | Net Charges Over Default, PPL Analysis |
|---|---|---|
| 2013 | | $2,524,475.41 |
| 2014 | | $5,815,184.07 |
| 2015 | $2,302,877 | $2,318,254.20 |
| 2016 | $7,394,171 | $7,454,373.60 |
| 2017 | $4,817,427 | $4,807,805.41 |
| 2018 | $4,326,841 | $4,281,581.10 |
| 2019 | $2,909,290 | $2,908,085.49 |
| 2020 | $943,571 (Jan-May) | $221,472.88 (Jan. Only) |
| **Total** | **$22,694,177** | **$30,331,232.16** |

(CAUSE-PA St. 1, at 13, T.4, Exh. 3).

[41] Id. at 26.
[42] See id.

Even as we collectively attempt to protect utility customers who face an unprecedented level of debt as a result of the COVID-19 pandemic, and the resulting economic crisis, CAP shopping customers continue to be charged substantially more than the default service price by their EGS. From March 2020 to May 2020, CAP shopping customers were charged an average of $60.21 *per customer* in excess of the default service price. (CAUSE-PA St. 1 at Exh. 3). Altogether, in the first three months of the pandemic, CAP shopping customers were charged approximately $504,873 in excess of the default service price. (Id.)

On a per customer basis, the amount that CAP shopping customers pay in excess of the default service price is substantial. This per-CAP customer metric has not improved since the adoption of PPL's CAP-SOP, and consistently outpaces the average amount that confirmed low income shopping customers pay per customer in excess of the price to compare.

**CAP Shopping: Per-Customer Annual Charges Over Default**

| Year | Avg. Annual $ Over Default – CAP Shopping Customers | Avg. Annual $ Over Default – Confirmed Low Income |
|---|---|---|
| 2015 | $104.77 | $35.16 |
| 2016 | $284.41 | $207.83 |
| 2017 | $198.93 | $146.67 |
| 2018 | $242.56 | $233.82 |
| 2019 | $284.25 | $269.22 |
| 2020 (Jan-May) | $119.51 | $106.29 |

(CAUSE-PA St. 1 at 13, T.5). For further context, the average CAP customer's total household income is $14,291. (CAUSE-PA St. 1 at 32). In 2019, CAP shopping customers were charged an average of $284.25 more than the default service price. (CAUSE-PA St. 1 at 13, T.5). ***This equates to 2% of household income for the average CAP household.*** The maximum CAP energy burden recently adopted by the Commission is between 2-4% of household income for electric nonheating

and between 6-10% for electric heating customers.[43] In short, supplier costs are measurably exacerbating energy unaffordability for CAP customers.

As noted above, this persistent overcharging can and does lead to two primary types of harm, both of which are well documented in this proceeding.

First, CAP participants who pay more than the default service price will exceed their maximum CAP credits more quickly. Over the 18-month period, from December 2018 through May 2020, CAP shopping customers paid an average, net amount of $428.17 in excess of PPL's applicable default service rate. (CAUSE-PA St. 1 at Exh. 3). This represents between 27.1 and 32.7% of the 18-month maximum CAP credit allotment for non-heating CAP customers, and between 10.6-12.8% of the maximum CAP credit allotment for heating CAP customers. (See CAUSE-PA St. 1 at 37).[44] This substantial erosion of CAP customer benefits creates significant harm by subjecting CAP participants to unaffordable rates, and does absolutely nothing to improve the affordability of service for CAP participants.

Second, when CAP customers are charged a price which exceeds the default service price, the cost of the CAP increases – dollar for dollar – up to the applicable maximum CAP credit. (CAUSE-PA St. 1 at 37). This cost is then passed on to non-CAP residential ratepayers who pay for the program. Importantly, excessive supplier pricing can also cause increased collections and uncollectible expenses, which in turn can inflate the cost of CAP – making it especially important to ensure that low income customers shopping for electric are enrolled in CAP as soon as they are

[43] 52 Pa. Code § 69.265 (2)(i).
[44] Note that Mr. Geller's analysis in testimony compared the 12-month average excess price to the 18-month maximum CAP credit. Using the monthly data from CAUSE-PA Exhibit 3, this analysis can be easily extrapolated to compare the 18-month average excess charge to the 18-month maximum CAP credit limits provided in Table 7 of Mr. Geller's testimony.

identified – rather than requiring the CAP customer to complete their high-cost contract before enrolling in CAP.

The persistent, dual harms documented throughout this proceeding cannot be ignored. Additional, robust CAP shopping reforms are critical to stem the ongoing harm and protect vulnerable low-income consumers from harm.

**3. The only proposal on the record capable of ameliorating the identified harm is PPL's proposal to end CAP shopping, as modified by CAUSE-PA's proposal to ensure CAP remains accessible to those in need.**

In response to the overwhelming data outlined above documenting persistent, unabated, and substantial financial harm, and notwithstanding PPL's current CAP-SOP and associated CAP shopping program rules, PPL is proposing to now end its CAP-SOP and require all CAP customers to remain on default service while enrolled in the program. (PPL St. 3 at 7). Pursuant to PPL's proposal, a residential shopping customer who is seeking to enroll in CAP will be required to return to default service before enrolling in the program. (Id.)

CAUSE-PA supports PPL's proposal to end its CAP-SOP and prohibit CAP shopping, but opposes PPL's proposal to bar shopping customers from enrolling in CAP until after the customer has cancelled their supplier contract. As Mr. Geller explained in direct testimony, such a rule would be tantamount to imposing a CAP enrollment fee, and would frustrate the clear requirement in the Choice Act that the Commission ensure universal service programs are accessible to those in need:

> Without added protection from termination and cancellation fees, economically vulnerable customers who have already evidenced an inability to pay [by seeking to enroll in CAP] will, in essence, be charged an upfront fee (in the form of an early termination or cancellation fee) to access critical rate assistance through CAP. Such an outcome is contrary to the statutory obligation for the Commission to ensure that universal service programs – including CAP – are accessible to those in need.

(CAUSE-PA St. 1 at 30: 2-5).

Chapter 14 of the Public Utility Code recognizes that low income, CAP eligible customers cannot afford to pay an upfront fee as a condition to accessing service, and explicitly prohibits public utilities from charging a security deposit to CAP-eligible customers: "[N]o public utility may require a customer or applicant that is confirmed to be eligible for a customer assistance program to provide a cash deposit."[45] Implementing a CAP rule that would require CAP-eligible customers to pay an early termination or cancellation fee as a condition to entry into CAP – or to otherwise face a lengthy wait period to avoid such a fee – would effectively impose a price of admission into the program, and should not be approved.

A low-income customer could conceivably avoid the imposition of a cancellation or termination fee by waiting for the end of their contract period to enroll in the program. But requiring a low-income shopping customer to wait to enroll in CAP until the end of their contract term will likely serve to exacerbate the level of arrears accrued by the customer as a result of unaffordable rates. (CAUSE-PA St. 1 at 32, 37). In the meantime, these households are likely to accrue additional arrears that will later be deferred for forgiveness through CAP, thereby further increasing the cost of CAP that will be passed on to non-CAP residential ratepayers. (Id.) Of course, through this waiting period, it is likely that many low-income shopping customers will face the loss of utility service as they wait for their high-cost contract periods to end in order to become eligible for CAP. As already discussed, the loss of electricity to a home creates a number of additional harms to low income consumers and the community as a whole – including evictions, increased homelessness, family separation, and profound impacts to the health and safety of the family and the broader community. (CAUSE-PA St. 1 at 31:13 to 31:11).

[45] 66 Pa. C.S. § 1404(a.1).

To remediate this serious flaw in PPL's proposed CAP shopping plan, which would inherently conflict with the Commission's statutory duty to ensure that universal services remain both cost-effective and available to those in need,[46] CAUSE-PA witness Mr. Geller proposed that PPL adopt a CAP rule that - as part of the CAP application process - would allow shopping customers to enroll in CAP but would require those CAP applicants to consent to return to default service concurrently upon entry into the program. (CAUSE-PA St. 1 at 29:9-30:7). In turn, Mr. Geller argued that PPL should prohibit the imposition of any financial barriers to CAP enrollment by adopting a CAP rule that prohibits suppliers from charging any termination or cancellation fees to customers who switch to default service to enroll in CAP. (Id.) Concurrently with the customer's enrollment in the program, PPL would automatically return the CAP customer to default service. CAUSE-PA asserts, consistent with Mr. Geller's recommendations, that PPL should be required to work with its Universal Service Advisory Committee to develop changes to PPL's CAP application and subsequent customer communications to ensure that CAP customers are fully apprised of the options available to them. (Id. at 29).

As discussed at length in the previous section, there is an undeniable and substantial financial harm occurring to residential ratepayers and CAP customers as a result of CAP shopping – even with the restrictions on CAP shopping currently in place. Despite the creation and implementation of a special program, and a carefully designed transition plan, the harms associated with CAP shopping have continued to persist with little to no abatement.

While there are a number of reasons driving persistent overcharging, one critical issue contributing to this persistent harm is the failure of suppliers to comply with the current CAP shopping rules – coupled with the inability of PPL to monitor or enforce compliance. As PPL

[46] 66 Pa. C.S. § 2804(9).

witness Melinda Stumpf explained in direct testimony, PPL is aware that suppliers are not following the existing CAP shopping rules, which require suppliers to return CAP customers to default service within 120 days (for variable rate contracts) or upon expiration of a fixed rate contract. (PPL St. 3 at 14:3-10). But as Ms. Stumpf explains, PPL lacks the proper tools to enforce existing CAP shopping rules:

> PPL Electric has received several complaints from customers who were not dropped from their pre-program supply contract at the end of the term. This resulted in customers paying prices above the PTC for several months after the supply contract expired. This is technically in violation of CAP SOP, but PPL Electric does not have any visibility into pre-program contracts, or an effective way of enforcing the supplier's obligations under CAP SOP. There is a concern that there are many CAP customers who are continuing to shop after their pre-program contract expired simply because they are unaware of the contract expiration date.

(PPL St. 3 at 14:3-10).

The record shows that even Inspire Energy – the only supplier currently participating in PPL's CAP-SOP, which presumably has a greater understanding of the CAP shopping rules than most suppliers – had not timely returned CAP shopping customers to default service consistent with CAP shopping rules for a period of at least 6 months.[47]

[47] Inspire Energy witness Aaron Jacobs-Smith admitted in his surrebuttal testimony that Inspire does not regularly monitor its customer base for CAP enrollments and timely return customers to default service at the conclusion of a contract term after the customer enrolls in CAP. (See Inspire St. 1-SR at 4:10). Through discovery, Mr. Jacobs-Smith further admitted that Inspire had retained CAP customers in non-CAP-SOP contracts since November, 2019 – though he confirmed that Inspire eventually dropped all CAP customers upon direct email notification from PPL. Joint Stipulation of CAUSE-PA and Inspire Energy, Appendix A (CAUSE-PA to Inspire II-2). Mr. Jacobs-Smith blamed Inspire's non-compliance with the CAP shopping rules on PPL – claiming that PPL was at fault for not providing a monthly email list of CAP enrollees to suppliers in those months. Joint Stipulation of CAUSE-PA and Inspire Energy, Appendix A (CAUSE-PA to Inspire I-6, II-2).

PPL does have a duty to provide monthly information to suppliers via email about new CAP enrollees. 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, Final Order, Docket P-2016-2526627 (order entered February 9, 2018). However, PPL's failure to adhere to that responsibility does not excuse suppliers' obligation to comply with CAP shopping rules. There is no evidence that Inspire – or any other supplier – made any effort to inquire as to why they were not receiving a monthly email report from PPL from November 2019 through April 2020, or to access other available sources of information to identify new CAP enrollees.

As PPL witness Melinda Stumpf explained, PPL provides information about CAP enrollees through a number of sources, all of which are readily accessible to suppliers:

To effectively remediate the harms of CAP shopping, the Commission must impose strong and enforceable rules that PPL can effectively monitor and enforce. At this point, having invested substantial time and ratepayer dollars into solutions that have failed to produce meaningful strides to stem the well-documented harm caused by CAP shopping in PPL service territory, the only reasonable and enforceable way to prevent ongoing harm – without creating new barriers to CAP enrollment for vulnerable low-income consumers – is to prohibit CAP shopping and require new CAP applicants to consent to return to default service upon entry into the program.

Importantly, proposals advanced by the other parties in this proceeding fall short of preventing the persistent harm documented through the course of this proceeding.

First, the proposal of the Office of Consumer Advocate (OCA) falls short of fully addressing the root cause of the harm to CAP customers. Barbara Alexander, expert witness for the Office of Consumer Advocate (OCA), agrees with PPL that the CAP-SOP "should be terminated," and agrees with CAUSE-PA that low-income shopping customers should not be summarily excluded from CAP. (OCA St. 1 at 4). But her subsequent recommendations to remediate the harms caused by CAP shopping nevertheless fall short of addressing the serious and substantial harm created when CAP customers are allowed to continue existing high-cost contracts

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> PPL Electric makes suppliers' customer lists available through the supplier portal. The supplier customer list is updated every business day and informs the supplier if a particular customer is enrolled in OnTrack. In addition, suppliers can use the eligible customer list ("ECL") at any time to determine if a customer is enrolled in OnTrack.

(PPL St. 3-R at 7:7-12). In short, if the suppliers were not receiving notice from PPL, they can and should have contacted PPL and/or used the other resources available to them in order to comply with their obligations with regard to CAP shopping.

Regardless of whose failure it was in this instance – the suppliers' or PPL's – CAP customers and residential customers who subsidize CAP should not incur substantial excessive costs as a result of inaction. **Ultimately, what all of this evidence shows, is that the current CAP shopping paradigm is unworkable, unenforceable, and incapable of successfully stemming the real and substantial cost of uncontrolled CAP shopping on CAP customers and other residential ratepayers.**

upon entry into CAP. Rather than requiring applicants to consent to switch to default service upon entry into the program and prohibiting application of early termination or cancellation fees, as Mr. Geller recommends, Ms. Alexander instead proposes that PPL conduct outreach to low income shopping customers who are on a variable rate contract upon entry into CAP to inform them that they can return to default service without penalty. (OCA St. 1 at 4-5, 21). This solution does not address low income shopping customers with a long-term, fixed rate contract upon entry into CAP – nor does it address the supplier compliance issue addressed above.

Ms. Alexander further recommends that PPL eliminate suppliers from CAP-SOP if the supplier has not complied with the program. While CAUSE-PA agrees with this recommendation in the event PPL is required to continue its CAP-SOP, this solution similarly falls short of addressing the fact that much of the identified harm is caused by suppliers' failure to comply with the CAP shopping rules for customers shopping outside of the CAP-SOP, at the time they enroll in the program. Again, competitive suppliers have consistently failed to timely return CAP customers to default service in accordance with PPL's current CAP shopping rules, and PPL lacks the appropriate tools with which to monitor or enforce future compliance. (See PPL St. 3 at 14:3-10).

The various supplier parties also fail to propose reasonable and enforceable solutions capable of resolving the persistent financial harms caused by CAP shopping. The EGS Parties' witness, Christopher Kallaher, argues for a series of collaborative meetings – with a move toward the eventual adoption of a program that would "mirror the program that First Energy put into place," wherein CAP customers may shop at a price which is at or below the Price to Compare. (EGS Parties St. 1 at 10:21-22). Mr. Kallaher's recommendation for a lengthy stakeholder collaborative process would do nothing to meaningfully advance the issue, and would only further

delay critical policy changes necessary to stem clear and proven harm to economically vulnerable consumers. As Mr. Geller explained in response to this proposal, the issue of CAP shopping has already been subject to "years' long litigation" and multiple stakeholder processes, through which suppliers have had ample opportunity to put forth an affirmative proposal for CAP shopping. (CAUSE-PA St. 1-R at 13:5-11).[48]

> [N]otwithstanding ample opportunities for engagement, the supplier community has repeatedly failed to present an alternative program model for CAP shopping that would adequately protect against increased costs to CAP and other residential ratepayers. There is no reason to believe that engaging in yet another stakeholder collaborative process that will further delay critical relief to vulnerable CAP customers and other residential consumers who will continue to experience substantial harm each and every day that PPL continues to permit CAP shopping.

(CAUSE-PA St. 1-R at 14:2-4).[49]

Moreover, with regard to Mr. Kallaher's suggestion that PPL move to a program like the program adopted in the First Energy service territory, there is no evidence on the record that the same compliance issues arising with the CAP SOP are not similarly plaguing First Energy's

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[48] As far back as May 1, 2012, when PPL Electric filed its Petition for approval of a default service program and procurement plan (DSP II) for the period of June 1, 2013 through May 31, 2015, the issue of harm caused by CAP customer shopping had already become an issue. As ALJ Colwell noted in her RD:

> CAUSE-PA and OCA caused the Company to take a second look at its position, and at the time of briefing, PPL Electric expressed concern that OnTrack customers' shopping choices may be increasing costs to non-CAP residential customers who pay the cost of the program, or that those choices may be making it harder for the OnTrack customers to remain on the program.

Petition of PPL Electric Utilities Corp. for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2013 through May 31, 2015, Recommended Decision, Docket No. P-2012-2302074, at 133-134 (Nov. 9, 2012).

[49] Since PPL's implementation of the CAP-SOP, suppliers have had the explicit right to file a petition to make changes to the CAP-SOP if unhappy with the program structure, yet have taken no initiative to develop or advance an affirmative proposal – or to even reach out to PPL informally to discuss possible alternatives. See EGS Parties / CAUSE-PA Joint Stipulation, Appendix A (CAUSE-PA to EGS Parties I-1 (indicating that the EGS parties have had absolutely no communication with PPL regarding perceived issues with PPL's CAP SOP); see also Petition of PPL Electric Utilities Corp. for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 through May 31, 2020, Joint Litigation Position Among Certain Parties Regarding CAP Shopping, Docket No. P-2016-2526627, at 4 para. 7. ("Until a uniform, statewide approach to CAP shopping can be developed, the parties reserve the right to petition the Commission to re-open the CAP-SOP in the event that there is no EGS participation in the program and/or there are changes in the retail market conditions that would otherwise justify reopening the CAP-SOP.")

program. Indeed, the First Energy CAP shopping plan includes the same transition period for hold-over contracts that PPL has adopted for its CAP SOP.[50] Thus, it is likely that the same compliance issues identified by Ms. Stumpf – discussed above – are also present in the First Energy service territory. (See PPL St. 3 at 14:3-10).

Finally, Inspire Energy Holdings, LLC witness Aaron Jacobs-Smith proposes that PPL retain its CAP-SOP and address persistent excessive shopping prices through increased education to consumers. (Inspire St. 1 at 4:8-16). As Mr. Geller points out in his rebuttal testimony, this proposal does not take seriously the fact that – year after year – the costs of CAP shopping (on net) far surpass the available savings. Education alone was deemed insufficient to remediate the harm identified in PPL's last DSP[51] – and remains insufficient now to address persistent and pervasive financial harm to CAP customers and other residential ratepayers.

Ultimately, PPL's proposal to end CAP shopping, as modified by CAUSE-PA's proposal to permit shopping customers to enroll in CAP and consent to switch to default service concurrent to their admission into CAP, is the only reasonable and enforceable proposal on the record in this proceeding that will serve to ameliorate the demonstrated and persistent harm to CAP customers and other residential ratepayers – without creating additional barriers to enrollment which will create additional costs on low income customers and other residential ratepayers and conflict with the statutory requirement to make CAP cost effective and available. As such, CAUSE-PA submits that these proposals must be approved.

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[50] See Petitions of Metropolitan Edison Co. & Pennsylvania Electric Co. for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023, Final Order, Docket Nos. P-2017-2637855, -2637857 (Feb. 28, 2020).

[51] See Retail Energy Supply Ass'n, 185 A.3d at 1229 (upholding the Commission's decision that, absent regulatory pricing protections, education was insufficient to remediate established harm, and explicitly distinguishing a prior decision upholding the PUC's conclusion that education programs were – at that time and based on that record – a reasonable alternative to price regulation.).

## B. STANDARD OFFER PROGRAM PROPOSAL

### 1. The Commission has the legal authority to approve PPL's proposal to conduct targeted education to SOP participants and to return inactive SOP participants to default service at the end of the SOP term.

The Commission has the authority to establish program rules governing the treatment of SOP participants at the conclusion of the SOP term.

In 2012, the Commission set forth general guidelines for a Standard Offer Program. These guidelines generally provided that customers should remain with the SOP supplier if they do not make an affirmative shopping decision at the conclusion of the SOP term.[52] However, these guidelines were never intended to be applied irrespective of the facts and circumstances at issue in a specific EDC Default Service Plan proceeding.[53] To the contrary, the Commission was clear that SOP proposals would be subject to review in the context of the EDCs next Default Service Plan proceeding.[54] Most critical to this discussion, however, is the fact that the Commission has previously exercised authority to establish a program rule governing the treatment of an SOP participant at the conclusion of the SOP period. This means, consequently, that the Commission has clearly established its authority to determine how an SOP participant should be treated at the conclusion of the SOP period.

Starion Energy, PA, through its expert witness Pete Muzsi, claims that PPL's proposal to return SOP participants to default service at the conclusion of the SOP period constitutes "slamming" (switching a consumer to a supplier without their permission) – and is therefore legally impermissible. (Starion St. 1 at 6:19-7:10). But PPL is not in any way proposing to switch an SOP participant to default service without permission. Quite the opposite, PPL is proposing that

[52] Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan, Final Order, Docket No. I-2011-2337952, 32 (March 1, 2012).
[53] Id. at 31.
[54] Id. at 32.

the Commission approve a program rule – agreed to by the SOP participant upon enrollment in the SOP – that would automatically return inactive SOP participants to default service at the end of the contract period. There is no evidence that PPL is proposing this rule surreptitiously, or that PPL has any financial or other incentive for an SOP participant to return to default service. (CAUSE-PA St. 1-R at 7:14-17). Rather, by proposing to conduct targeted outreach and reminders – and only seeking to return the customer to default service after the customer has failed to make an affirmative choice on their own – PPL's proposal "simply ensures that consumers who elect a higher priced product do so intentionally and knowingly – rather than accidentally or mistakenly." (CAUSE-PA St. 1-R at 6: 1-2; see also PPL St. 4 at 14:18-20).

The Commission's regulations provide further support for the conclusion that the Commission may authorize an SOP program rule that requires consumers to be returned to default service at the conclusion of the program period. Section 57.172 provides that a customer is not required to contact their supplier to initiate a switch "when a Commission-approved program requires the EDC to initiate a change in EGS service."[55] If the Commission was unable to set program rules to that would initiate a customer switch, this rule would have no meaning.

Notably, the Commonwealth Court has - on two separate occasions - referenced the Commission-approved SOP as an example of how the Commission has exercised authority to approve or implement program rules that restrict competition – most recently concluding that it would be inconsistent to find that the PUC has authority to regulate EGS pricing through the SOP, but not through the CAP-SOP.[56] Indeed, as Mr. Geller concluded in his rebuttal testimony: "if the Commission has the authority to approve the SOP – which restricts supplier terms and pricing – it would be incongruous to conclude that the Commission lacks authority to institute other market-

[55] 52 Pa. Code § 57.172.
[56] Retail Energy Supply Ass'n, 185 A.3d at 1221 (citing CAUSE-PA et al., 120 A.3d at 1090, 1093, 1103).

related program terms, including those terms which govern the treatment of SOP participants who do not affirmatively elect a new contract at the conclusion of the program." (CAUSE-PA St. 1-R at 5).

As a Commission-created and EDC administered program, CAUSE-PA asserts that it is soundly within the Commission's authority to establish program SOP rules that will protect consumers who participate in the program, and which will not subject unwitting SOP participants to an unreasonable risk of substantial financial harm.

**2. The record contains substantial, unrebutted evidence that the majority of inactive SOP participants who unwittingly roll onto a new contract at the end of the SOP term pay substantially more for default service.**

Currently, PPL's SOP provides consumers with a 12-month fixed contract that provides a 7% discount off the default service price at the time the customer enters the program. (PPL St. 4 at 2:18-3:6). At the conclusion of the initial 12-month SOP period, an SOP participant who takes no affirmative action to select a new supplier, renew their contract with the existing supplier, or return to default service will continue with their SOP supplier – but will roll over onto a new product selected by that supplier. (Id.)

Following complaints from SOP participants who experienced high bills in the months immediately following their participation in the SOP, PPL closely examined customer shopping decisions following expiration of the SOP contract term. PPL concluded that the vast majority of residential SOP customers – roughly 72% - did not make any affirmative decision at the expiration of their contract, and unwittingly rolled onto a new contract. (PPL St. 4 at 8-13; CAUSE-PA St. 1 at 24).

In assessing the rates that these unwitting SOP participants paid in the months following expiration of the SOP term, PPL found that 93% of residential customers who took no affirmative action to select a new supplier or return to default service paid more than the PTC in the first

month. (Id.) Within 4 months, that number rose to 94%, *with 89% paying 10% or more over the applicable default service price*. (Id.) In fact, well over 6,000 residential SOP participants – representing the vast majority of SOP participants who unwittingly rolled onto a new contract without making an affirmative choice – were charged between 25-50% above the default service price in the first and second months following the end of the SOP term – and over 5,000 paid between 25-50% more than the default service price in the third and fourth months following the end of the SOP term. (Id.; CAUSE-PA St. 1-R at 16). Just 6% of SOP participants were paying at or below the default service price in the four months following the end of the SOP term. (Id.)

The record in this case is undeniable: SOP participants are – in large number – rolling over onto contracts that greatly exceed the default service price, undermining any benefit derived through the program and exposing unwitting SOP participants to excessive costs. The Commission cannot and should not continue to approve and endorse programming which has such an effect.

### 3. PPL's proposal to engage in targeted SOP outreach and to return inactive SOP participants to default service is the only reasonable alternative on the record in this proceeding to ameliorate identified harm to SOP participants.

To ensure that inactive SOP participants are not, without knowledgeable consent, unwittingly rolled onto a high cost contract at the conclusion of the SOP, PPL is proposing to improve customer outreach in the months leading up to the end of the SOP term to help inform SOP participants that the SOP term will soon expire and to better ensure that SOP participants understand the options available to them at the end of the contract. (PPL St. 4 at 6:9-18). For SOP participants who are still inactive at the end of the SOP term, PPL proposes to return those customers to default service – rather than allow those customers to unwittingly roll onto a new contract with the SOP supplier. (Id.) PPL's proposal is the only proposal on the record that will squarely address the identified harm, and therefore should be approved.

Attempts by the EGS Parties to justify the imposition of excessive rates should bear no weight with the Commission. In direct testimony, Christopher Kallaher – expert witness for the EGS Parties – attempts to justify imposition of substantially inflated charges at the expiration of the SOP term, arguing that the program is working "exactly as intended" and suggesting that suppliers are justified in charging excessive rates to recoup the acquisition costs paid to acquire the customer. (EGS Parties' St. 1 at 16:12, 13:1; CAUSE-PA St. 1-R at 10:17-22). According to Mr. Kallaher, changes to the SOP to eliminate the opportunity for suppliers to charge excessive prices at the end of the SOP term would deter supplier participation. (EGS Parties' St. 1 at 16:12, 13:1). In response to Mr. Kallaher's assertions, Mr. Geller explained:

> It is bad public policy to approve a program structure that relies on the lack of informed, voluntary, affirmative action to result in a customer being obligated to pay a higher rate for a period of time in order to allow the supplier to recoup its costs for participating in the market. This action artificially props up the market over the short term, but leads to mistrust and skepticism of the market over the

> longer term. It appears to me that it is exactly the opposite of a healthy marketplace which is intended to thrive on the voluntary participation of an informed, active consumer.

(CAUSE-PA St. 1-R at 16:22-17:5). In short, once burned by several months of excessive supplier pricing, it is likely that SOP participants will be less willing to engage in the market in the future.

In turn, the EGS Parties' suggestion that PPL's proposal to educate consumers about their choices at the end of the SOP term are somehow "insulting" to consumers should likewise be ignored. (EGS Parties' St. 1 at 9-10). PPL's proposal would perform outreach and education to SOP participants 90 days in advance of the end of the SOP term to teach them how to effectively engage in the competitive market. (PPL St. 4 at 6:10-11). As Mr. Geller explained in his rebuttal testimony: "This seems like a proposal that all suppliers would favor because it promotes competition amongst competitors – helping to disrupt passive shopping decisions and replace them with active shopping decisions." Instead, the EGS Parties characterize this education effort as "insulting"– arguing that the fact 62% of SOP participants do make an affirmative shopping decision before or shortly thereafter the conclusion of the SOP term. (CAUSE-PA St. 1-R at 17:9-11). As Mr. Geller points out:

> PPL's outreach proposal is not intended for those who leave the program early – or for those who already actively engage with the market at the end of the contract period. It is designed to educate consumers about how to effectively engage in the competitive market and targeted for those who do not make an active choice, and who may benefit by additional education and outreach. Since Mr. Kallaher places such a high premium on the number of active market participants that he believes the SOP has fostered, it is hard to reconcile why he would object to an effort to increase the number of knowledgeable and informed consumers who are about to be required to make a choice.

(CAUSE-PA St. 1-R at 17).

Finally, similar arguments advanced by Starion witness Pete Muzsi that education is unnecessary should likewise be rejected. Mr. Muzsi hangs his hat on the Commission's 2014

revisions to customer notifications following the Polar Vortex in 2014. (Starion St. 1 at 7:11-8:11). But the harm identified throughout this proceeding and detailed throughout this brief has all occurred *after* those regulatory amendments to required customer notices were firmly in place. (See CAUSE-PA St. 1-R at 6:6-15).

The SOP reforms proposed by PPL – including its proposal to improve education efforts and to return inactive SOP participants to default service at the conclusion of the SOP term - are necessary to ensure that Commission-approved retail market enhancement programs are truly enhancing the market – as opposed to undermining consumer confidence therein. As such, these reforms should be approved.

## VI. CONCLUSION

As thoroughly discussed above, the record in this proceeding contains substantial, unrebutted evidence that PPL's residential shopping customers pay substantially more for competitive electric service than the default service price. From January 2015 to May 2020, PPL's residential shopping customers were charged a net **$295,828,735** more than the default service.

This pattern of excessive charges is pervasive across the residential customer class, including the low-income customer class, and poses a distinct threat to the accessibility, funding, and accessibility of PPL's Customer Assistance Program. As the record shows, since 2013, *CAP customers and the residential ratepayers who subsidize CAP have paid **$30,331,232.16** more than they otherwise would have paid if CAP shopping were appropriately restricted.* This $30.3 million did nothing to improve CAP – it merely raised rates and inflated the cost of CAP, dollar for dollar, for PPL's economically vulnerable CAP consumers and other residential ratepayers. Notwithstanding the adoption of restrictions to CAP shopping in June 2017, excessive charges within CAP have continued to persist. In 2019, on a per customer basis, CAP shopping customers paid an average of $284.25 more than the default service price – substantially eroding CAP benefits and exacerbating already high levels of unaffordability.

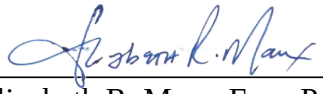
The Commission has both the duty and the explicit obligation under the Choice Act to impose reasonable price restrictions to ensure that universal service programming remains appropriately funded, cost-effective, and available to those in need. CAUSE-PA urges the Commission to approve PPL's proposal to end its CAP-SOP – as further modified by the proposals of CAUSE-PA to require CAP applicants to return to default service upon entry into the program and to prohibit suppliers from imposing fees or charges for early termination or cancellation of the contract. There are no other reasonable and enforceable proposal on the record that will remediate

the identified harm. As such, the Commission must now put a stop to this ongoing and unmitigated harm by adopting PPL and CAUSE-PA's reasonable and critically necessary proposals.

In turn, this undeniable pattern of excessive residential pricing has caused substantial financial harm to SOP participants who unwittingly roll onto a high cost contract at the conclusion of the SOP term. *A vast majority of inactive SOP participants who roll over onto a new contract at the conclusion of the SOP are charged 10% or more than the default service price – most (89%) for at least four months after the conclusion of the SOP term.* Given the SOP is administered by PPL, and subject to the approval of the Commission, it is critical that the Commission take decisive steps to mitigate predatory pricing at the conclusion of the SOP for customers who are not actively engaged in the program. As such, CAUSE-PA urges the Commission to adopt PPL's reasonable and critically necessary proposal to return inactive SOP customers to default service at the conclusion of the SOP term.

Respectfully submitted,

**PENNSYLVANIA UTILITY LAW PROJECT**
*Counsel for CAUSE-PA*



Elizabeth R. Marx, Esq., PA ID: 309014
John W. Sweet, Esq., PA ID: 320182
Ria M. Pereira, Esq., PA ID: 316771
118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088
pulp@palegalaid.net

Date: September 3, 2020

## APPENDIX A - PROPOSED FINDINGS OF FACT

1. Since 2015, PPL's residential shopping customers have paid $295,828,735 more, on net, than the default service price to compare. (CAUSE-PA St. 1 at 8, Exh. 1).

2. In the first three months of the COVID-19 pandemic, from March through May 2020, residential shopping customers in PPL's service territory were charged $14,317,551 in excess of the default service price; confirmed low income shopping customers were charged $2,989,743 in excess of the default service price; and CAP customers were charged $504,873 in excess of the default service price. (CAUSE-PA St. 1, Exh. 1).

3. Since 2015, PPL's confirmed low income customers paid roughly $57,645,147 more than the default service price for electricity. (CAUSE-PA St. 1 at 10-11 & Exh. 2).

4. On an average, per customer basis in 2019, PPL's confirmed low income customers paid approximately $269.22 in excess of the default service price. (CAUSE-PA St. 1 at 11, T.3).

5. Since 2015, PPL's CAP customers have paid roughly $22,694,177 more than the default service price for electricity.

6. On an average, per customer basis in 2019, PPL's CAP customers paid approximately $284.25 annually in excess of the default service price. (CAUSE-PA St. 1 at 13, T.5).

7. Evidence in the record suggests that vulnerable populations, including low income communities and communities of color, experience disproportionately high supplier costs – which in turn suggests that higher priced offers may be targeted to PPL's most uniquely vulnerable populations. (CAUSE-PA St. 1 at 14:1-17:3).

8. CAP customers have continued to substantially overpay for competitive electric supply after adoption and implementation of PPL's CAP SOP. (PPL St. 3 at 7, 10-14).

9. In 2018, PPL had 189,826 confirmed low income customers and 258,786 estimated low income customers in its service territory.

10. The average CAP customer income in 2018 was $14,291. (CAUSE-PA St. 1 at 32:14-15).

11. Energy insecurity threatens stable and continued housing, employment, and education; has substantial and long-term impacts on mental and physical health; creates serious risks to the household and the larger community; and negatively impacts the greater economy. (CAUSE-PA St. 1 at 31:5-33:10).

12. Even with assistance, low income households are often still unable to afford the cost of energy, and often forego other critical necessities – or keep their home at unsafe temperatures – as a result of energy unaffordability. (CAUSE-PA St. 1 at 31:12-32:4).

13. CAP shopping that exceeds the price for default service will have one or more of the following results: (1) CAP customers will be charged higher rates, and/or will prematurely exceed their maximum allotted CAP credits; (2) residential ratepayers will pay more for

the cost of CAP; or (3) both CAP customers and other residential ratepayers will pay increased costs. (CAUSE-PA St. 1 at 34:15-38:12)

14. The average amount that CAP customers overpaid for electric supply in 2019 was $284.25 – which represents between 17-27.7% of PPL's 18-month maximum non-heating CAP credits and between 7-8.5% of PPL's 18-month maximum heating CAP credits. (See CAUSE-PA St. 1 at 37:1-14).

15. In PPL service territory, CAP customers have been eligible to shop for competitive electric supply since 2010. (PPL St. 3 at 5:9-10).

16. In 2016, in the context of PPL's last DSP proceeding, PPL conducted a comprehensive review of CAP shopping, and discovered that CAP shopping customers paid, on average $31 per month higher than the price to compare. (PPL St. 3 at 6:7-19).

17. Attempts to institute reasonable restrictions on CAP shopping have failed, resulting in substantial cost increases for CAP customers and other residential ratepayers. (CAUSE-PA St. 1 at 28:12-16).

18. PPL has received numerous complaints from customers who were not properly dropped from their pre-program supply contract at the end of the contract term or within 120 days, as required by the Commission-approved CAP shopping rules. (PPL St. 3 at 14:3-10)

19. Evidence on the record shows that suppliers are not returning CAP customers to default service at the end of a fixed or variable rate contract term consistent with the Commission-approved shopping rules. PPL St. 3 at 14:3-10; Inspire St. 1-SR at 4:10; Joint Stipulation of CAUSE-PA and Inspire Energy, Appendix A - CAUSE-PA to Inspire II-I & II-2.

20. The adverse impact on energy burdens caused by CAP shopping on low income consumers, and the potential for unnecessary increased costs to other residential consumers that do nothing to address unaffordability, together violate core universal service protections required by the Choice Act. (CAUSE-PA St. 1 at 38: 1-12).

21. The vast majority of SOP customers – roughly 72% - did not make any affirmative decision at the expiration of their SOP contract, and instead rolled onto a new contract. (CAUSE-PA St. 1 at 4-13; PPL St. 4 at 8-13).

22. 93% of SOP participants that rolled onto a new contract after failing to make an affirmative shopping decision at the conclusion of the SOP term paid more than the default service price in the first month – and 94% paid more than the default service price within 4 months. (CAUSE-PA St. 1 at 4-13; PPL St. 4 at 8-13).

23. 89% of SOP participants that rolled onto a new contract after failing to make an affirmative shopping decision at the conclusion of the SOP term paid 10% or more over the applicable default service price, while just 6% of this group paid at or below the default service price. (CAUSE-PA St. 1 at 4-13; PPL St. 4 at 8-13).

**APPENDIX B - PROPOSED CONCLUSIONS OF LAW**

1. The Electricity Generation Customer Choice and Competition Act ("Choice Act") was introduced in Pennsylvania with the explicit goal of "controlling the cost of generating electricity." 66 Pa. C.S. § 2802(5), (7).

2. While the Choice Act restricted the ability of the Commission to regulate supplier pricing for residential consumers generally, it preserved the Commission's authority to regulate suppliers and supplier pricing in certain critical contexts to ensure an appropriate balance would be struck between the coexisting goals of the Choice Act. CAUSE-PA et al. v. Pa. PUC, 120 A.3d 1087, 1103 (Pa. Commw. Ct. 2015); Retail Energy Supply Ass'n v. Pa. PUC, 185 A.3d 1206, 1227-28 (Pa. Commw. Ct. 2018).

3. The Choice Act declared that "electric service is essential to the health and well-being of residents" and "should be available to all customers on reasonable terms and conditions." 66 Pa. C.S. § 2802(9).

4. The Choice Act imposed an explicit mandate on the Commission to, "at a minimum, continue the protections, policies and services that now assist customers who are low-income to afford electric service" in the competitive environment. 66 Pa. C.S. § 2802(10).

5. The Choice Act defines "universal service and energy conservation" as policies, protections and services that help low-income customers to maintain electric service. 66 Pa. C.S. § 2803.

6. The term "universal service and energy conservation" includes customer assistance programs or CAPs. 66 Pa. C.S. § 2803.

7. Universal Service Programs are subject to the administrative oversight of the Commission which will ensure that the programs are operated in a cost-effective manner and are accessible to those in need. 66 Pa. C.S. § 2804 (9).

8. The universal service provisions of the Choice Act tie the affordability of electric service to a customer's ability to pay for that service:

9. The Commission has the statutory duty and obligation to ensure that utilities appropriately fund and make available the programs and services necessary to achieve affordability of electric service in each electric distribution territory. 66 Pa. C.S. § 2804(9); see also, CAUSE-PA et al. v. Pa. PUC, 120 A.3d 1087, 1103 (Pa. Commw. Ct. 2015) (citing 66 Pa. C.S. § 2802 (7), (9), (10), (14), (17); Retail Energy Supply Ass'n v. Pa. PUC, 185 A.3d 1206, 1227-28 (Pa. Commw. Ct. 2018).

10. The obligation to provide low-income programs falls on the public utility under the Choice Act, not the EGSs. CAUSE-PA et al. v. Pa. PUC, 120 A.3d 1087, 1103 (Pa. Commw. Ct. 2015)

11. The Choice Act both encourages deregulation of electric markets to allow consumers the opportunity to purchase directly their supply from electric generation suppliers and

emphasizes the need to continue to maintain programs that assist low-income customers to afford electric service. CAUSE-PA et al. v. Pa. PUC, 120 A.3d 1087, 1103-04 (Pa. Commw. Ct. 2015).

12. The Choice Act "does not demand absolute and unbridled competition," but rather, "under certain circumstances, unbridled competition may have to give way to other important concerns" such as ensuring that universal service plans are adequately funded and cost effective. CAUSE-PA et al. v. Pa. PUC, 120 A.3d 1087, 1103 (Pa. Commw. Ct. 2015).

13. The Choice Act expressly requires the Commission to administer universal service programs, including CAP, in a manner that is cost effective for the CAP participants and the non-CAP participants, who share the financial consequences of the CAP participant's EGS choice. CAUSE-PA et al. v. Pa. PUC, 120 A.3d 1087, 1103 (Pa. Commw. Ct. 2015).

14. Because of the dual purposes of the Choice Act, at times, competition needs to bend to ensure that adequately-funded, cost-effective, and affordable programs exist and are maintained to assist customers who are low-income to afford electric service. CAUSE-PA et al. v. Pa. PUC, 120 A.3d 1087, 1103-1104 (Pa. Commw. Ct. 2015).

15. As a regulated public utility serving more than 100,000 customers, PPL is required to offer an integrated package of universal service programs designed to help low-income, payment troubled ratepayers maintain and afford essential utility services. These programs are required by the Choice Act, Commission regulations, and formal Commission policy. 66 Pa. C.S. §§ 2802(10), (17); 2804(9); 52 Pa. Code §§ 54.71-.78; 52 Pa. Code §§ 69.261-.267.

16. CAPs are regulated universal service programs that provide a discounted bill and arrearage forgiveness to low-income ratepayers whose household incomes are at or below 150% of the federal poverty level (FPL). 52 Pa. Code §§ 69.261-69.267.

17. CAPs are guided by the "Policy Statement on Customer Assistance Programs." These policies, among other controls, establish the maximum energy burden parameters for CAP customers, in recognition of the fact that low income households most often lack adequate resources to pay the unabated cost of energy services. 52 Pa. Code § 69.265 (2)(i).

18. The Commission has the legal authority to impose CAP rules that would limit the terms that a CAP customer could accept and remain eligible for CAP benefits, this includes the right to impose cost controls to reduce customer harm, prohibit against early termination/cancellation fees, and other rules necessary to ensure CAP programs are adequately run, cost-effective, and programs remain affordable. CAUSE-PA et al. v. Pa. PUC, 120 A.3d 1087, 1103-1104 (Pa. Commw. Ct. 2015); Retail Energy Supply Ass'n v. Pa. PUC, 185 A.3d 1206, 1227-28 (Pa. Commw. Ct. 2018).

19. The Commonwealth Court has held: "A restriction on competition is necessary when, one, there is a harm associated with competition and, two, there is no reasonable alternative to the rule that restricts competition." Retail Energy Supply Ass'n v. Pa. PUC, 185 A.3d 1206, 1227-28 (Pa. Commw. Ct. 2018).

20. The proponent of a rule or order has the burden of proof, as well as the burden of

persuasion. 66 Pa. C.S. § 332(a); see also Samuel J. Lansberry, Inc. v. Pa. PUC, 578 A.2d 600 (Pa. Commw. Ct. 1990), alloc. den., 602 A.2d 863 (Pa. 1992); see also Retail Energy Supply Ass'n, 185 A.3d at 1227.

21. When the rule in question seeks to bend competition in order to yield to other objectives in the Choice Act, the proponent of the rule must show – by a preponderance of the evidence – that (1) there is a harm associated with unbridled competition; and (2) the proposed rule to restrict competition is necessary to stop that harm. Retail Energy Supply Ass'n v. Pa. PUC, 185 A.3d 1206, 1227-28 (Pa. Commw. Ct. 2018).

22. To meet the applicable burden to support a proposed rule or order, a party must present evidence more convincing, by even the smallest amount, than that presented by any opposing party. Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

23. It is not reasonable to approve discounts and reduced rates for low income customer classes, paid for by other residential customers, and at the same time approve a DSP plan which allows CAP customers to be charged higher rates that result in unaffordable or higher bills. Doing so contributes to higher collection costs for all customers, and has adverse health, safety, and financial impacts on individual low income households.

24. Chapter 14 of the Public Utility Code recognizes that low income, CAP eligible customers cannot afford to pay an upfront fee as a condition to accessing service, and explicitly prohibits public utilities from charging a security deposit to CAP-eligible customers: "[N]o public utility may require a customer or applicant that is confirmed to be eligible for a customer assistance program to provide a cash deposit." 66 Pa. C.S. § 1404(a.1).

25. Implementing a CAP rule that would require CAP-eligible customers to pay an early termination or cancellation fee as a condition to entry into CAP – or to otherwise face a lengthy wait period to avoid such a fee – would effectively impose a price of admission into the program, and would contradict the requirement in the Choice Act that universal service programs remain accessible to those in need. 66 Pa. C.S. § 2804(9).

26. PPL and CAUSE-PA have demonstrated, by a preponderance of the evidence, substantial reasons why PPL's current CAP shopping rules are inadequate to protect against ongoing financial harm to CAP customers and other residential ratepayers.

27. PPL and CAUSE-PA have demonstrated by a preponderance of the evidence that, pursuant to the facts presented in this case, additional CAP shopping restrictions must be imposed.

28. The proposals regarding the CAP-SOP put forward by PPL and as modified by CAUSE-PA are required to be adopted because no reasonable alternative exists on the record that would allow CAP customers' rates to remain affordable and that would not continue to jeopardize the overall accessibility and cost-effectiveness of the CAP program for CAP customers and the ratepayers who pay for CAP.

**APPENDIX C – PROPOSED ORDERING PARAGRAPHS**

1. PPL's proposal to end its CAP-SOP is approved, subject to the following:

    (a) PPL shall revise the rules governing its Customer Assistance Program as follows:

        i. PPL shall permit low income shopping customers to apply for CAP.

        ii. PPL shall require, as a condition to CAP enrollment, that shopping customers return to default service upon entry into the program.

        iii. PPL shall revise its CAP application to allow shopping customers to indicate their consent to concurrently return to default service at the time of their application acceptance.

        iv. PPL shall prohibit the imposition of any early termination fees, penalties, or charges associated with a shopping customer's application for enrollment into CAP.

    (b) PPL shall work with its Universal Service Advisory Committee to revise its CAP application and to design customer communications to ensure that CAP customers.

    (c) PPL shall file proposed revisions to its Universal Service and Energy Conservation Plan in compliance with this Order within 60 days of the Commission's issuance of a final order in this proceeding.

2. PPL's proposal to return inactive SOP participants to default service at the conclusion of the SOP term is approved.

3. PPL's proposal to perform targeted education and outreach to SOP customers leading up to the end of the SOP term is approved.