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September 17, 2020

VIA ELECTRONIC FILING

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

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

Dear Secretary Chiavetta:

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

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

Very truly yours,

Todd S. Stewart
Counsel for EGS Parties

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

CERTIFICATE OF SERVICE

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

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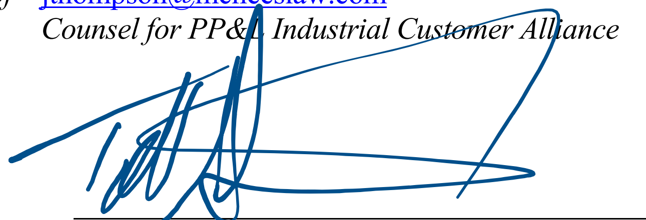

DATED: September 17, 2020

Todd S. Stewart

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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

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I. INTRODUCTION

PPL's proposed default service plan included some significant changes to its current provision of default service. Among these changes, PPL proposed an illegal alternative default service rate that included renewables, it proposed to eliminate the legal ability of certain customer groups to shop for generation supply in direct violation of the *Electricity Generation Customer Choice and Competition Act*, 66 Pa.C.S.§§ 2801, et seq. ("*Competition Act*"), and it proposed modifications to its Standard Offer Program ("SOP") that would "fix" something that is probably not in need of fixing in a manner that would undoubtedly make the program worse, not better. The EGS Parties opposed these proposals and others.

Much of this case, however, has been resolved by a settlement, which the EGS Parties have agreed is in the public interest, and which they support, primarily on the strength of PPL's agreement to withdraw its proposed renewables default service rate. Two of the issues of interest to the EGS Parties have not been resolved, namely the proposed changes to the Standard Offer Program ("SOP") and the proposed elimination of the ability for customers who participate in customer assistance programs ("CAP") to shop for competitive supply and are the subject of the EGS Parties' Main and Reply Briefs.

The EGS Parties addressed these very topics in their main brief, while PPL, the OCA and Cause PA predictably supported the PPL proposals. There was no argument made nor fact revealed in those briefs however that defeats or even weakens the EGS Parties positions. Nonetheless, this reply will address those topics once more.

II. SUMMARY OF THE REPLY ARGUMENT

The *Competition Act* was premised on the notion that most customers eventually would shop for electricity and that the new concept of "default service" would be a transitional service at best. (EGS Parties' St. No. 1-R, 7:18-8:17). That vision has been thwarted by the constant use of the default service rate as a benchmark against which all supplier rates are judged,[1] despite the obvious lack of comparability of a non-reconciled, competitive energy rate through which an EGS must recover all of its costs of doing business to an incremental energy cost rate that recovers virtually none of the costs of providing the service, that is reconciled semi-annually, and which does not include a profit. The lack of any allowance for profit alone virtually guarantees that the two rates would never be comparable, and the lack of cost recovery simply makes a bad comparison worse. (EGS Parties' St. 1-SR, 3:21-4:19).

What should be an obvious distinction between the Price to Compare,[2] and competitive supplier rates, has not stopped PPL from proposing two substantial diversions from Commission policy in this proceeding – based almost entirely on the notion that customers are harmed if they pay a supplier price that is higher than the Price to Compare. Mr. Kallaher spent significant time addressing this issue in his testimony of record in this case, and it should be clear, as a consequence, that the very foundation of PPL's (and the OCA and CAUSE PA) arguments are fatally flawed. Moreover, even if one were to completely disregard the ineptness of judging competitive rates against the Price to Compare, both of PPL's proposals fail, as being contrary to Commission policy, the *Competition Act,* and the Commission's Regulations.

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[1] EGS Parties St. No. 1-SR, 2:2-18

[2] There is an argument to be made that simply calling the default service rate the "Price to Compare" creates and unrealistic expectation that damages the competitive market.

PPL proposed two significant changes to its SOP program. First it desires to return SOP customers to default service, potentially against their will, at the end of their SOP contract. This would treat SOP customers differently than any other customer group at the end of their contracts. (EGS Parties St. No. 1, 13:5-14:14). All other shopping customers receive two notices from their supplier prior to the end of a fixed duration contract that advise customers of their options going forward. This process, for all other customers, does not require affirmative customer choice to ***not*** continue with the existing supplier. Indeed, there was no amendment made in the recent Commission changes to its regulations at 52 Pa. Code Chapter 54 to differentiate in the end of contract treatment of SOP customers as opposed to any other customers. This is consistent with the Commission's Order that established the SOP program. In short, PPL's proposal is contrary to the regulations, contrary to good policy and is based upon a flawed premise and must be rejected.

Also, PPL has proposed to eliminate the ability of CAP customers to shop for electricity and remain in the CAP program. This is contrary to the Commission's recent policy guidance[3] and the requirement of the *Competition Act* that all customers "shall have the opportunity to purchase electricity from their choice of electric generation suppliers."[4] PPL's proposal is based on the notion that sporadic supplier participation has made administering the program difficult, but rather than address the reasons why supplier participation was sporadic,[5] PPL took the drastic step of proposing to cut these customers out of the market. This proposal must also be rejected.

III. REPLY ARGUMENT

A. PPL's Proposed Modifications to Its Standard Offer Program are Contrary to Commission Policy and Regulations and Must be Rejected.

[3] EGS Parties' St. No. 1, 7:13-8:12; EGS Parties' St. No.1, 9:12-18.
[4] 66 Pa.C.S. § 2806(a).
[5] EGS Parties' St. No. 1, 11:2-9.

The Commission's intention with regard to Standard Offer Programs ("SOP") was to provide customers with a low-risk opportunity to shop for energy and save money.[6] As those one year SOP contracts conclude, however, it also is clear that the Commission intended that SOP customers be treated the same as every other customer who shops; the same two notices and the same options to switch or stay with your current supplier. The Commission's Order is unambiguous:

> At the conclusion of the standard offer period, *absent affirmative customer action to enter into a new contract with the EGS, the customer's enrollment with a different EGS or the customer's return to default service, the customer will remain with the EGS on a month-to-month basis, and shall not be subject to any termination penalty or fee.* However, this should not deter an EGS from offering longer, fixed-term prices.[7]

Undeterred by a Commission Order that makes clear the intention for customers at the end of their contracts, PPL decided that too many of its customers were continuing to take service with their SOP provider after the initial contract expired, and that because some of those contracts were at rates higher than the default rate, that it would forcibly place SOP customers onto default service at the end of their contracts, absent affirmative consent.[8] Moreover, PPL intends to "educate" customers about their options at or near the end of the contract, which is another way of saying, PPL would attempt to convince them to return to default service. (EGS Parties' St. No. 1, 20:5-21:12).

As discussed in the EGS Parties Main Brief ("EGS MB") the factual premise at the heart of PPL's proposed actions is incorrect. Mr. Kallaher made it very clear that nearly 80% of SOP

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[6] *Investigation of Pennsylvania's Retail Electricity Market: Intermediate Work Plan*, Docket No. I-2011-2237952, Final Order at 21 (Final Order entered March 1, 2012) (hereinafter "*Final Work Plan Order")*(emphasis added).
[7] *Id.* at 32.
[8] PPL Main Brief ("PPL MB") at 10.

customers do make an affirmative choice about their supply within sixteen months of enrolling in the program.[9] This means that a mere 20% of SOP customer remain with their SOP supplier on a month to month contract beyond four months after the initial contract has ended. Another fact PPL ignores is that more than 60% of residential SOP customers switch to another offer, or back to default service *before* their SOP contract ends. (EGS Parties' St. No. 1, 15:7-16:10). It seems odd that PPL will consider that customers who remain on default service to have made a choice to remain but will not consider a customer who remains with an SOP supplier past the expiration of

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[9] Mr. Kallaher's testimony is direct and unwavering on this point:

> First, Ms. LaWall-Schmidt's data show that within four months after the expiration of SOP customers' initial term on the program, 42 percent of SOP customers had made some other affirmative choice and were no longer being served by their SOP supplier. Considering that about 38 percent of residential customers in the PPL service territory are being served by EGS's at any given time, PPL's own evidence is proof that even SOP customers who stay to the end of their term are more engaged than the general population in actively choosing among their options for electric service. More importantly, data produced by PPL in discovery data show that SOP customers are far more engaged and active in shopping for electricity than the typical PPL residential customer. In fact, "PPL Electric analysis shows that during the January 2017 through December 2018 period, 62% of Residential customers and 55% of Small C&I customers left the SOP prior to conclusion of the 12-month contract term."[9] My interpretation of PPL's analysis shows that 62 percent of residential customers left the SOP before the end of the 12-month contract term, and then 42 percent of the remaining 38 percent (or about 16 percent of the original group) also left their SOP supplier by the end of the fourth month after the expiration of the 12-month contract term, bringing the total percentage of SOP customers who had made an affirmative choice within 16 months of having enrolled in the program to 78 percent. Thus, contrary to Ms. LaWall-Schmidt's characterization of the SOP customers as remaining passively with their SOP supplier, the "vast majority" of SOP customers follow up their active choice to enter the program with another active choice of a different supplier within 16 months of enrolling in the program. This is strong evidence that the program is extremely successful at doing just what it is intended to do: give customers an on-ramp to the competitive market in a way that makes them more engaged than they would otherwise be. (EGS Parties' St. No. 1, 15:7-16:10).

the contract to have made a similar choice. Nonetheless, in Mr. Kallaher's estimation, the SOP program is working as intended by the Commission. (EGS Parties' St. No. 1, 18:1-5).

The other thing Mr. Kallaher addressed at length, is the incorrectness of using the default service rate or PTC as the benchmark against which to judge the reasonableness of EGS rates. Default service is priced at the incremental cost of energy. The rate recovers virtually none of the costs of providing the service, while EGS prices must recover ALL their costs of doing business. The Default service rate is reconciled while EGS rates are not, and all customer start on default service, providing it with a huge competitive advantage which makes it even more difficult for EGSs to gain customers. (EGS Parties' St. No. 1-R, 7:18-8:17). And yet, utilities, the advocates and the Commission continually judge the fairness of EGS rates against the PTC. The ineptness of that comparison dramatically undermines any basis for PPL's efforts to move more customers back to default service. In short, there is no good reason to consider moving customers to default service against their will.

What this means for PPL's proposals regarding SOP are that 1) the Commission's implementation order for SOP provides direct guidance on what the Commission expects in an SOP program; and, 2) PPL is proposing to wildly diverge from that guidance based on flawed logic or inconvenient facts. PPL's concerns about customers being able to adapt to the responsibility of shopping are wrong; the facts show that customers will "get it" if given the chance as the majority have proven they are more than capable on their own to make affirmative choices after the end of the SOP initial term. Returning customers to default service forcibly or seeking to intimidate customers into returning interferes with the contractual relationships to which customers and suppliers have agreed, and PPL's suggestion that it can merely notice customers that they will be returned to default service and that the contract does not matter is not correct. SOP is not CAP

and the Commonwealth Court's holding in the RESA case makes clear that neither utilities nor the Commission can abrogate contracts unless there is a compelling reason to do so, which is not present here.[10] Accordingly, PPL's proposals to force customers to default service at the end of their SOP contracts and to "educate" customers at the end of their SOP contracts, must be rejected as being contrary to law and bad policy.

B. PPL's Proposal to Eliminate its CAP Shopping Program is Contrary to Commission Policy and Law and must be rejected.

As recently as June of last year the Commission released a draft policy statement offering guidance on allowing customers who participate in electric utility customer assistance programs ("CAP") to shop for electricity.[11] That policy statement declares that the Commission expects that each EDC will have a program that allows customers in CAP programs to be able to shop. PPL claims that its CAP program, which to this point is a standard offer program, has suffered from low supplier participation which has made it difficult to administer. While it may be true that supplier participation has been low, rather than try to reform its program into something that might make suppliers want to participate, as did FirstEnergy (EGS Parties St. No. 1, 10:18-11:11), PPL simply chose to throw in the towel and proposed to revoke the statutory right of CAP customers to shop.[12]

The main issue that seems to drive PPL, and the advocates is the situation where a customer with a pre-existing contract with a supplier becomes a CAP customer. Becoming a CAP customer cannot automatically serve to terminate an existing contract with a finite term between a supplier

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[10] *RESA v. Pa. P.U.C.*, 185 A.3d 1206, 1223 (Pa. Cmwlth. 2018).

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

[12] 66 Pa.C.S. § 2806(a).

and a customer. As discussed in the EGS MB, such an action would invoke the constitutional prohibition on government impairing the obligation of contracts. Moreover, it would make every contract immediately terminable when a customer would become a CAP customer, which would destroy the market. (EGS MB at 11). The basic problem is that in order to fix a concern that affects a relatively small subset of the public, the Advocates and PPL seek to make all suppliers – those who serve CAP customers and those who do not – subject to CAP program rules, which violates the Commonwealth Courts holding in the recent case on those very same programs.[13] The FirstEnergy CAP shopping program has provisions that require month-to-month contracts to expire within 120 days because customers are able to terminate those contracts anyway. But ongoing contracts with a finite term are allowed to continue to the end of the initial term to provide customers and suppliers with the benefit of their bargain. Rather than seek such a compromise, which is what the Commission mandated for PPL's currently effective DSP, PPL just gave up.[14] As Mr. Kallaher testified, this result is not appropriate. The CAP program should be reformulated via an industry process, led by the Commission, as Mr. Kallaher proposed.

C. PPL's Refusal to Provide EGSs with Telephone Numbers and Email Addresses for Enrolled Customers is Discriminatory and Contrary to Commission Regulations.

PPL takes issue with Mr. Kallaher's recommendation that PPL be required to provide telephone numbers and email addresses for customers that they enroll. PPL's witness claims that the regulations allow PPL to withhold this information from suppliers to protect customer's privacy. That rationale is only half true and cannot overcome the statutory requirement that PPL

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[13] *RESA v. Pa. P.U.C.*, 185 A.3d 1206, 1223 (Pa. Cmwlth. 2018).

[14] *Petition of PPL Electric Utilities Corp. for Approval of Default Service Program fand Procurement Plan for the Period June 1, 2017 Through May 31, 2021*; Docket No. P-2016-2526627 (Final Order entered February 9, 2018, ordering paragraphs 1-3, pp. 27-28).

provide EGS the same benefit of its distribution system as it provides itself.[15] The statute is clear that utilities cannot grant a preference to distribution service over service provided by EGSs.[16] It cannot be more clear that collecting such basic information from customers and using it for whatever purpose the utility deems necessary and then withholding it from suppliers, even when the customer has not asked that it be restricted, is a violation of the law and cannot be continued. Accordingly, PPL's argument to the contrary should be disregarded and the Order in this proceeding should require PPL to release such information to suppliers when enrolling customers unless those customers have opted out of releasing their telephone number.

IV. CONCLUSION

The record of this case could not be more definitive – PPL's proposed changes to its SOP and intention to void the statutory right of CAP customers to shop are contrary to Commission policy, contrary to the law, and based upon a read of the facts that is deceptive at best. The vast majority of SOP customers do make an affirmative choice regarding their electricity supply within a reasonable amount of time, either before or after the contract expires, with most making the choice before the SOP contract expires. The *Competition Act* does provide a clear right for all customers to choose their electric generation supplier, yet based on vague allegations of "administrative difficulty" PPL has proposed to revoke this right for the current 8000 CAP customers who do shop and to prevent any CAP customers to shop in the future. Likewise, PPL intentionally misreads the Commission's regulations on what information it must restrict from suppliers who have enrolled customers, and ignores the clear statutory requirement that it provide

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[15] The Commission's regulations at 52 Pa. Code § 54.8(a) allows customers to restrict, via an opt-out process, the release of their telephone number, but do not authorize a utility to withhold a telephone number from a supplier absent such opt-out. 52 Pa. Code § 54.8(b).
[16] 66 Pa.C.S. § 2804(6).

equal access to the distribution system to EGSs as it provides itself. Surely customer information that allows for better communication is a critical part of the distribution system and must be shared. In short, PPL's positions lack any merit, as described herein, and in the EGS Parties' Main Brief, and must be rejected.

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