



October 26, 2020

Via E-File

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

**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**

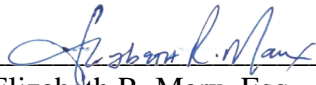
Exceptions of CAUSE-PA

Dear Secretary Chiavetta,

Attached for filing in the above noted docket, please find the **Exceptions of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)**.

An electronic copy will follow to all parties consistent with the Certificate of Service.

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



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

CC: Per Certificate of Service
Office of Special Assistants (OSA), ra-OSA@pa.gov

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

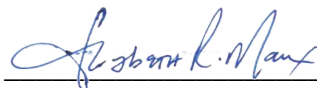
Petition of PPL Electric Utilities Corporation for :
 Approval of a Default Service Program for the : Docket No. P-2020-3019356
 Period of June 1, 2021 through May 31, 2025 :

CERTIFICATE OF SERVICE

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

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



Elizabeth R. Marx, PA ID 309014
Pennsylvania Utility Law Project
Counsel for CAUSE-PA
118 Locust Street, Harrisburg, PA 17101
717-710-3825 / emarxpulp@palegalaid.net

DATE: October 26, 2020

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

**EXCEPTIONS OF THE COALITION FOR
AFFORDABLE UTILITY SERVICES AND ENERGY
EFFICIENCY IN PENNSYLVANIA**

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

October 26, 2020

I. INTRODUCTION

By Secretarial Letter dated October 13, 2020, the Office of Administrative Law Judge issued the Recommended Decision (RD) of Administrative Law Judge Elizabeth H. Barnes in the Petition of PPL Electric Utilities Corporation (PPL) for Approval of Its Default Service Plan for the Period of June 1, 2021 through May 31, 2025. The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its counsel at the Pennsylvania Utility Law Project, files a single Exception to ALJ Barnes' RD to ensure that all low income consumers in PPL's service territory – including those who are actively shopping with a competitive supplier at the time they seek assistance – are able to access and enroll in PPL's Customer Assistance Program (CAP) without delay or additional costs.

In relevant part, and based on overwhelming record evidence of ongoing financial harm to CAP customers and other residential ratepayers, ALJ Barnes' RD appropriately approved PPL's proposal to end its special Standard Offer Program (SOP) for customers enrolled in CAP, known as the CAP-SOP, and to require all CAP customers "to receive default service at the PTC." (RD at 36, 42). To be clear, CAUSE-PA unequivocally supports this decision. Nevertheless, CAUSE-PA takes exception with the RD because it was silent on the issue and proposal raised by CAUSE-PA regarding whether shopping customers should be permitted to apply for CAP and return to default service concurrent with their enrollment in the program – without the imposition of fees or charges by their supplier for early termination or cancellation.

It is of critical importance for the protection of all residential customers – and in furtherance of the Commission's statutory universal service obligations – that all low income customers be permitted to enroll in PPL's CAP without burdensome barriers or delay. (See CAUSE-PA MB at 25-27; CAUSE-PA RB at 7-14; CAUSE-PA St. 1 at 30, 32, 37). Thus, CAUSE-PA files the following single Exception urging the Commission to approve CAUSE-PA's proposal for the

adoption of additional CAP rules that will allow low income shopping customers to apply for CAP and return to default service concurrent with their acceptance into the program – without the imposition of supplier fees or penalties. As discussed below, adoption of these additional CAP rules will prevent additional costs and related harms to CAP customers and other residential ratepayers; is in furtherance of the Commission’s statutory and regulatory universal service obligations; is consistent with all applicable laws and policy; and is in the public interest. As such, CAUSE-PA’s Exception seeking adoption of these additional CAP rules should be approved.

II. EXCEPTION

A. EXCEPTION 1: The Commission should amend the RD to permit low income shopping customers to apply for CAP and return to default service concurrently upon enrollment – without financial penalty.

ALJ Barnes’ RD erred in failing to consider and approve CAUSE-PA’s proposal for adoption of additional CAP rules that would permit low income shopping customers to apply for CAP and concurrently return to default service upon enrollment in the program – without the imposition of fees or other penalties imposed by suppliers. (See CAUSE-PA MB at 27; CAUSE-PA RB at 7-14; CAUSE-PA St. 1 at 29:9-30:7). These additional proposed CAP rules are critically necessary to ensure that PPL’s economically vulnerable customers are able to access assistance through CAP without undue financial barriers or delay and to minimize the continued accrual of uncollectible expenses that low income customers are likely to accrue if forced to remain with a high cost supplier for a period of time prior to being permitted to enroll in CAP. Since initial CAP entrants are entitled to arrearage forgiveness upon entry into CAP, these additional costs are also borne by other ratepayers who subsidize the cost of the program. Notably, CAUSE-PA’s proposed CAP rules are consistent with and in furtherance of the Commission’s statutory universal service obligations, and are not otherwise prohibited by law. (CAUSE-PA RB at 9-14).

- i. Low income customers face enormous affordability challenges, which are exacerbated by persistently high costs in the competitive market. As such, low income shopping customers must be able to access and enroll in CAP without delay or added costs or fees.*

As the record in this case clearly shows, low income consumers struggle profoundly to afford energy service, and most often require substantial financial assistance to remain connected to service. (CAUSE-PA MB at 17). As CAUSE-PA expert Harry Geller explained at length, even with assistance through CAP, many low income customers still face tremendous financial obstacles to maintain stable utility service to their home. (CAUSE-PA MB at 17-18; CAUSE-PA St. 1 at 31:12-32:4). The inability of low income customers to remain connected to service threatens stable housing, employment, and education; poses substantial health risks to the consumer’s household members, and creates additional economic and health risks to the larger community. (CAUSE-PA MB at 17; CAUSE-PA St. 1 at 31-33). Of course, as the Commission has recognized, these risks to individuals and the community are particularly acute in light of the ongoing pandemic.¹

The record in this proceeding is replete with overwhelming, un rebutted evidence that all residential shopping customers – *including low income CAP and non-CAP shopping customers* – are consistently charged substantially higher rates than default service customers. Excessive charges in the competitive market add to existing levels of unaffordability, creating an even greater need for low income shopping customers to obtain critical rate assistance through CAP.

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

¹ See Public Utility Service Termination Moratorium Proclamation of Disaster Emergency – COVID-19, Emergency Order, Docket No. M-2020-3019244 (March 13, 2020) (“Irreparable injury to the public is likely to occur with disruption of service, creating a clear and present danger to life.”); see also Public Utility Service Termination Moratorium Proclamation of Disaster Emergency – COVID-19, Order, Docket No. M-2020-3019244 (Oct. 13, 2020).

T.4). Even after PPL implemented its CAP-SOP, which substantially restricted CAP shopping, excessive overcharging of CAP customers continued: In 2019, 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 an average CAP participant, whose average annual gross income is just \$14,291, this excessive charge amounts to approximately 2% of annual household income. (CAUSE-PA St. 1 at 32).

But as the record in this case clearly shows, excessive competitive market charges are not limited to CAP customers - making it especially critical that low income shopping customers, who also bear the burden of charges above default rates, not be categorically excluded from CAP. From January 2015 through May 2020, PPL's residential shopping customers as a whole were charged approximately \$295.8 million more than the default service price and confirmed low income residential shopping customers were charged approximately \$57.6 million more than the default service price. (CAUSE-PA MB at 21-24; CAUSE-PA St. 1 at 7-11 & Exh. 1 & 2).² **On a per customer basis in 2019 alone, confirmed low income shopping customers were charged roughly \$269.22 more than the default service price.** (CAUSE-PA MB at 23; 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. (CAUSE-PA MB at 4, 11)³ Even through the pandemic, as residential consumers (especially low income

² All of the shopping data is on net, and accounts for any savings achieved by consumers as well as additional costs.

³ Based on the evidence in this proceeding showing widespread, excessive residential pricing across the residential retail electric market, CAUSE-PA urges the Commission to launch a statewide investigation into the general residential retail market to identify ways to curtail the impact of persistently excessive supplier pricing statewide, and to specifically examine whether suppliers are targeting low income and minority communities with higher priced supply products as the evidence in this proceeding seems to suggest. (See CAUSE-PA St. 1 at 14:1-17:3).

customers) have accrued unprecedented levels of arrears, suppliers have continued to charge consumers millions of dollars in excess of the price to compare.⁴

Without imposition of the additional CAP rules proposed by CAUSE-PA in this proceeding, low income shopping customers are likely to face substantial barriers to enrollment in CAP that will further exacerbate already profound levels of unaffordability – causing them to accrue additional unaffordable arrears that will increase their risk of termination and the subsequent harms to the health and safety of the household and their community.

ii. The additional CAP rules proposed by CAUSE-PA are necessary for the Commission to fulfill its statutory universal service obligations to ensure that programs are available to those in need.

The Commission has the explicit authority – and in fact the statutory obligation – to oversee universal service programming and to ensure that such programs are “appropriately funded *and available*” to ensure that low income consumers can “maintain electric service” to their home.⁵ In furtherance of this obligation, the Commission has the authority to enact program rules that may restrict competition when necessary to prevent an identified harm which contradicts the coexistent

⁴ 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. 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).

⁵ 66 Pa. C.S. §§ 2802 (9), (10), (17), 2803, 2804(9); see Retail Energy Supply Ass’n v. Pa. PUC, 185 A.3d 1206, 1227-28 (Pa. Commw. Ct. 2018). The term “universal service and energy conservation” is defined as the “[p]olicies, protections, and services *that help low-income customers to maintain electric service*” - and explicitly includes electric utility CAPs. 66 Pa. C.S. § 2803.

policies and objectives of the Choice Act and other applicable laws and policies. (CAUSE-PA MB at 14-16; CAUSE-PA RB at 9-12).⁶

In short, without adoption of the CAP rules proposed by CAUSE-PA, CAP – as a result of the unaffordable financial barrier to entry due to the possible imposition of additional fees or charges – will be categorically *unavailable* and *inaccessible* to low income shopping customers to help remediate excessive and unaffordable energy costs in order to maintain electric service to their home – contrary to the Commission’s clear statutory obligation to ensure that CAP is available to low income customers to help them maintain electric service to their home. As such, it is critical that the Commission adopt CAP rules that will preserve the ability of low-income shopping customers to enroll in CAP without delay – and without the risk of incurring substantial fees or other penalties for returning to default service.

iii. Failure to impose the additional CAP rules proposed by CAUSE-PA will result in additional harm to CAP customers and other residential ratepayers.

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. (CAUSE-PA St. 1 at 37:9-19). In recognition of this fact, and the substantial evidence that CAP shopping was causing persistent financial harm to CAP customers and other residential ratepayers, ALJ Barnes appropriately approved PPL’s proposal to end its CAP-SOP – which allowed CAP customers to shop while enrolled in CAP. (RD at 36-37). In relevant part, ALJ Barnes notes: “CAP SOP has been ineffective in protecting against the

⁶ See Retail Energy Supply Ass’n v. Pa. PUC, 185 A.3d 1206, 1227-28 (Pa. Commw. Ct. 2018).

adverse impacts on both CAP customers and other Residential customers that pay for CAP costs.” (RD at 37; PPL MB at 28; OCA MB at 6-10; CAUSE-PA MB at 25-32).

ALJ Barnes made the correct decision to approve PPL’s proposal to end its CAP-SOP, and require CAP customers to receive default service to prevent clear and demonstrated harm to CAP customers and other residential ratepayers. (RD at 36). But in approving these proposals, ALJ Barnes did not also recognize that, without adoption of the additional CAP rules proposed by CAUSE-PA, additional harm would be incurred by CAP customers and other residential ratepayers alike.

As CAUSE-PA expert Harry Geller explained in direct testimony, requiring a low income shopping customer to drop their supplier before they are eligible for CAP is 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 MB at 25; CAUSE-PA St. 1 at 30: 2-5). Indeed, 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 shopping 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, low income shopping customers would likely 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, as a result of this waiting period, it is likely that many low-income shopping customers would 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).

To remediate these likely harms to both CAP customers and other residential ratepayers, CAUSE-PA proposed that PPL adopt additional CAP rules that would allow shopping customers to enroll in CAP but - as part of the CAP application process - would require those shopping applicants to consent to return to default service concurrently upon entry into the program. (CAUSE-PA St. 1 at 29:9-30:7; CAUSE-PA MB at 27-28). In turn, CAUSE-PA urged the adoption of a CAP rule that would prohibit suppliers from charging any termination or cancellation fees to customers who switch to default service to enroll in CAP. (Id.) As described above, these rules are necessary to prevent substantial harm to low income customers and other residential ratepayers, and should be approved to ensure that all low income customers are able to access assistance through CAP to help maintain affordable electric service to their home.

iv. Contrary to assertions of the competitive suppliers in this proceeding, the proposed CAP rules are consistent with the federal and state Constitution.

As explained more thoroughly in CAUSE-PA's Reply Brief, the EGS Parties' Constitutional arguments are without merit and must be rejected. (CAUSE-PA RB at 12-14). For

a constitutional question to be implicated under the Contracts Clause, there must first be a “substantial impairment of a contractual relationship.”⁷ When evaluating the extent of a claimed contractual impairment, the courts will “consider whether the industry the complaining party has entered has been regulated in the past.”⁸ A significant factor in this analysis is whether the parties are “operating in a heavily regulated industry” – where changes in regulation that affect a contractual relationship are foreseeable.⁹ The sale of electricity is a heavily regulated industry, and changes to regulation are plainly foreseeable. This is especially the case here, where the issue of CAP shopping – and the imposition of rules that may restrict CAP customer shopping – has been litigated in multiple proceedings for nearly a decade. (CAUSE-PA St. 1-R at 13 n.3).¹⁰

If a regulation is found to substantially impair a contractual relationship (which is not the case here, given the highly regulated environment and the clearly foreseeable nature of CAP shopping rules), it will still pass constitutional muster if the state has “a significant and legitimate public purpose behind the regulation, such as the remedying of a broad and general social or economic problem.”¹¹ The proposed CAP shopping rules in this case serve a significant and

⁷ Energy Reserves Group v. Kan. Power & Light Co., 459 US 400, 411 (1983). The standard applied in challenges raised under Article I, Section 17 of the Pennsylvania Constitution is the same applied under Article I, Section 10 of the federal Constitution. See S. Union Twp. v. Pa. DEP, 839 A.2d 1179 (Pa. Commw. Ct. 2003).

⁸ Energy Reserves Group, 459 US at 411-412.

⁹ Id., at 413-414; see also Am. Exp. Travel Related Servs., Inc. v. Sidamon-Eristoff, 669 F.3d 359, 369 (3d Cir. 2012) (“When a party enters an industry that is regulated in a particular manner, it is entering subject to further legislation in the area, and changes in the regulation that may affect its contractual relationships are foreseeable.”).

¹⁰ As Mr. Geller explained in rebuttal testimony:

Indeed, 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.

CAUSE-PA St. 1 at 13, citing 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).

¹¹ Energy Reserves Group, 459 US at 412 (citing Allied Structural Steel Co. v. Spannaus, 438 U.S. 234 (1978)).

legitimate public purpose, enshrined in the Choice Act,¹² and are clearly designed to remedy a profound economic problem. Thus, even if the proposed CAP rules were found to substantially impair a supplier contract, the Commission nevertheless would fall squarely within its authority to implement regulations that serve a significant public purpose; namely, to remedy substantial, persistent, and well-documented financial harm to low income consumers and other residential ratepayers.

Finally, even if the constitutional provisions governing the impairment of contracts were to apply in this case, which is clearly not the case, the Commission could still avoid the issue entirely by adopting a transition plan and applying the CAP rules only to new contracts entered into after a final order is issued in this proceeding. It is well settled that constitutional protections against the impairment of contracts applies to contracts in existence at the time a law is passed – not on future contracts.

¹² 66 Pa. C.S. § 2802(9), (10), (17) (Declaration of policy). **The Choice Act declared explicitly – as a matter of policy – that “electric service should be available to all customers on reasonable terms and conditions” and that “[t]he Commonwealth must, at a minimum, continue the protections, policies and services that now assist customers who are low income to afford electric service.”** 66 Pa. C.S. § 2802(9)-(10) (emphasis added).

III. CONCLUSION

CAUSE-PA urges the Commission to amend ALJ Barnes' RD consistent with its above Exception. The record in this proceeding reveals a staggering level of excessive charges in the competitive market, which appear to most profoundly impact low income shopping customers. As such, it is absolutely critical that low income shopping customers retain their ability to access rate assistance through CAP without delay – and without the imposition of additional supplier fees or penalties. Adoption of the CAP rules proposed by CAUSE-PA would achieve that result, and would help alleviate the likely harms explained above to both low income customers and other residential ratepayers.

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

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