



September 30, 2020

Via E-File

The Honorable Mark A. Hoyer
Deputy Chief Administrative Law Judge
Pennsylvania Public Utility Commission
Piatt Place
301 5th Avenue – Suite 220
Pittsburgh, PA 15222
mhoyer@pa.gov

Re: Petition of Duquesne Light Company for Approval of a Default Service Program for the Period of June 1, 2021 through May 31, 2025, Docket No. P-2020-3019522

Main Brief of CAUSE-PA

Dear Judge Hoyer,

Please find the Main Brief of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), for consideration in the above referenced matter.

Copies will be circulated in accordance with the attached Certificate of Service.

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

A handwritten signature in blue ink that reads "Elizabeth R. Marx".

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CC: Certificate of Service
Secretary Rosemary Chiavetta

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Duquesne Light Company for :
Approval of a Default Service Program for the : Docket No. P-2020-3019522
Period of June 1, 2021 through May 31, 2025 :

CERTIFICATE OF SERVICE

I hereby certify I have on this day served copies of the **Main Brief of 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.

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Duquesne Light Company for :
Approval of a Default Service Program for the : Docket No. P-2020-3019522
Period of June 1, 2021 through May 31, 2025 :

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

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September 30, 2020

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I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA)¹, through its counsel at the Pennsylvania Utility Law Project, files this Main Brief in support of the consensus agreement contained in the Joint Stipulation of Duquesne Light Company (Duquesne), CAUSE-PA, and the Office of Consumer Advocate (OCA) (collectively, Stipulating Parties). For the reasons explained below, CAUSE-PA urges the Honorable Deputy Chief Administrative Law Judge (ALJ) Mark A. Hoyer and the Pennsylvania Public Utility Commission (Commission) to approve the terms of the Joint Stipulation without modification.

CAUSE-PA's Main Brief is focused on addressing whether economically vulnerable customers enrolled in Duquesne's Customer Assistance Program (CAP) should continue to be protected from excessive prices in the competitive market.² Specifically, and after the exchange of substantial record evidence, the Stipulating Parties reached a consensus agreement that it is in the public interest to maintain the status quo, and continue Duquesne's current prohibition on CAP shopping pending further resolution of CAP shopping issues in the PPL Electric Default Service Plan proceeding.³ Not only is the Stipulating Parties' consensus agreement judicially efficient – saving the Commission, Duquesne, and the other parties substantial and potentially duplicative

¹ CAUSE-PA is an unincorporated association of low and moderate income individuals that advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating and telecommunication services. CAUSE-PA membership is open to low and moderate income individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping economically vulnerable households to maintain affordable access to utility services and achieve economic independence and family well-being.

² While CAUSE-PA is focused on the issue of CAP shopping for the purposes of its Main Brief, it nevertheless reserves the right to respond to any of the litigated issues in its Reply Brief.

³ Petition of PPL Electric Utilities Corp. for Approval of a Default Service Program for the Period of June 1, 2021 through May 31, 2025, Docket No. P-2020-3019356.

litigation costs – it is the only reasonable option on the record capable of preventing substantial financial harm to CAP customers and other residential ratepayers.

The Commission has the authority – and in fact the obligation – to ensure that universal service programs are cost-effective, appropriately funded, and accessible to those in need.⁴ The record in this case reveals that residential and low income shopping customers are consistently charged substantially higher prices for electric supply in the competitive market. (See CAUSE-PA St. 1 at 7-20 & Exhibits 1, 2). Even with carefully crafted protections, there is overwhelming evidence that CAP shopping customers nevertheless continue to face these same high charges – driving up the cost of CAP and dramatically undercutting affordability for those in need of assistance. (CAUSE-PA St. 1 at 45-46). If CAP shopping were permitted in Duquesne’s service territory, the cost of CAP to other residential ratepayers will increase - as will the cost to economically vulnerable customers who are enrolled in CAP. Such a result is antithetical to the Commission’s obligations under the Choice Act, and would place economically vulnerable consumers at risk of harm. It is absolutely critical – *especially now, as we collectively deal with an emerging utility debt crisis triggered by the pandemic* – to protect CAP affordability and contain unnecessary CAP costs.

The provisions in the Joint Stipulation will maintain the status quo, and protect CAP customers and other ratepayers from certain financial harm while issues of law and policy are further settled. This consensus agreement of Duquesne, CAUSE-PA, and OCA is squarely in the public interest, and is appropriately responsive to the substantial evidence unearthed through the course of this proceeding. As such, we urge Deputy Chief ALJ Hoyer and the Commission to approve the terms of the Joint Stipulation without modification.

⁴ 66 Pa. C.S. §§ 2802(9), (10), (17); 2803; 2804(9).

A. 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.⁵ In furtherance of this obligation, the Court held that the Commission may 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.”⁶

On May 2, 2018, the Commonwealth Court of Pennsylvania further defined and applied this standard for review and approval of CAP shopping restrictions.⁷ In applying this standard, the Court affirmed the Commission’s decision to approve a special CAP-SOP program in the PPL Electric (PPL) service territory that restricted the ability of CAP customers to shop outside of a

⁵ 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].

⁶ Id.

⁷ 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).

special program designed to limit identified harm to CAP customers and other residential ratepayers who pay for CAP.⁸

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.⁹

On February 28, 2019, the Commission issued a Proposed Policy Statement Order, setting forth proposed guidelines for CAP shopping.¹⁰ Comments and reply comments were submitted by a number of interested stakeholders, including CAUSE-PA; however, no final order has been issued in that 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.”¹¹ 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.”¹²

On March 25, 2020, PPL Electric Utilities Corporation (PPL) filed a Petition for Approval of its Default Service Programs, which – in relevant part for the purpose of this proceeding –

⁸ Id.

⁹ Electric Distribution Company Default Service Plans – Customer Assistance Program (CAP) Shopping, Motion of Commissioner David W. Sweet, Docket M-2018-3006578 (Dec. 20, 2018).

¹⁰ Electric Distribution Company Default Service Plans – Customer Assistance Program Shopping, Proposed Policy Statement Order, Docket M-2018-3006578 (Feb. 28, 2019).

¹¹ Investigation into Default Service and PJM Interconnection, LLC Settlement Reforms, Secretarial Letter, Docket No. M-2019-3007101 (Jan. 23, 2020).

¹² Id.

proposed to end CAP shopping in its service territory after a carefully crafted CAP shopping program failed to prevent millions of dollars of financial harm to CAP customers and other residential ratepayers. (CAUSE-PA St. 1 at 46:7 to 48:6.)

On April 20, 2020, Duquesne Light Company (Duquesne or DLC) 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). Duquesne 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,¹³ and the Commission's Policy Statement on Default Service.¹⁴

On April 30, 2020, CAUSE-PA filed a Petition to Intervene in Duquesne's DSP, seeking to ensure that economically vulnerable low income consumers in Duquesne's service territory are appropriately protected from unaffordable rates and able to maintain access to default service at the least cost over time.

Notice of Duquesne's DSP was published in the Pennsylvania Bulletin on May 9, 2020,¹⁵ and an Initial Prehearing Conference was held on June 12, 2020, before Deputy Chief Administrative Law Judge (ALJ) Mark A. Hoyer. Deputy Chief ALJ Hoyer issued a Prehearing Conference Order on June 23, 2020, which – in relevant part – set forth a procedural schedule, modified discovery rules, and granted CAUSE-PA's Petition to Intervene.¹⁶

¹³ 52 Pa. Code §§ 54.181-54.189

¹⁴ 52 Pa. Code §§ 69.1801-69.1817.

¹⁵ 50 Pa.B. 2508.

¹⁶ Petitions to Intervene were also approved for Calpine Retail Holdings, LLC (Calpine); StateWise Energy, Pennsylvania, LLC and SFE Energy Pennsylvania, Inc. (collectively, StateWise); Interstate Gas Supply, Inc., Shipley Choice, LLC, NRG Energy, Inc., Vistra Energy Corp., Engie Resources, LLC, WGL Energy; and Direct Energy, LLC (collectively, EGS Parties); MAREC Action (MAREC); ChargePoint, Inc.; and the Natural Resources

The parties exchanged extensive discovery and written testimony through the course of the proceeding, and a hearing was held before Deputy Chief ALJ Hoyer on September 9, 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 four exhibits (CAUSE-PA Exhibits 1-4) and multiple appendices. Specifically, CAUSE-PA Exhibits 1 and 2 contained over three years (January 2017 through May 2020) of monthly electric pricing data, comparing the price that residential and confirmed low income (non-CAP) customers paid for competitive electric supply, respectively, to the price these customers would have paid if they remained on default service. Also admitted at the hearing was the Joint Stipulation of CAUSE-PA and Duquesne Light, which contained updated pricing data for June and July 2020. (Joint Stip. of CAUSE-PA/Duquesne, Appx A).

On September 30, 2020, Duquesne, CAUSE-PA, and OCA filed a Joint Stipulation regarding CAP shopping and the Standard Offer Program. (Joint Stipulation). On the same day, Duquesne, NRDC, CAUSE-PA, and OCA filed a separate Joint Stipulation regarding Duquesne's Electric Vehicle Time of Use (EV-TOU) rate.

B. 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

Defense Council (NRDC). Solar United Neighbors of Pennsylvania (SUN-PA) also filed a Petition to Intervene, though its request for intervention was denied, as it was unrepresented by legal counsel in the proceeding.

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.”¹⁷ 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 – including the provision of appropriately funded universal service programs – to ensure an appropriate balance would be struck between the coexisting goals of the Choice Act.

In relevant part,¹⁸ 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.”¹⁹ 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.²⁰ 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 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

¹⁷ 66 Pa. C.S. § 2802(5), (7) (emphasis added).

¹⁸ 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), CAUSE-PA in no way suggests that these are the only contexts in which a supplier may be regulated by the Commission.

¹⁹ 66 Pa. C.S. § 2802(9).

²⁰ 66 Pa. C.S. §§ 2802(10), (17); 2804(9).

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.”²¹

Energy insecurity is a pervasive issue facing an estimated 95,000 low income customers in Duquesne’s service territory, who simply do not have enough income to meet basic living expenses. (CAUSE-PA St. 1 at 34-35, 58). Without adequate resources, low income households regularly keep their homes at unsafe temperatures or otherwise forego other critical necessities, like food and medicine, just to keep the lights and heat on in their homes. (CAUSE-PA St. 1 at 35).²² This trade-off can and does have deep and lasting negative health and economic impacts on low income families and the greater community. (*Id.* at 58).

The Choice Act defines the term “universal service and energy conservation” as applying to all low-income customers, and is explicitly inclusive of CAPs.²³ Duquesne’s CAP is the only universal service program specifically designed to address chronic unaffordability and the accumulation of debt to ensure low income customers can “maintain electric service” consistent with the universal service requirements in the Choice Act.²⁴

²¹ 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.”).

²² In 2018, 72% of LIHEAP recipients reported that they forego other necessities to afford energy, and 26% reported keeping their home at unsafe or unhealthy temperatures. (CAUSE-PA St. 1 at 35)

²³ 66 Pa. C.S. § 2803.

Universal service and energy conservation.” **Policies, protections and services that help low-income customers to maintain electric service. The term includes customer assistance programs**, termination of service protection and policies and services that help low-income customers to reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction programs, application of renewable resources and consumer education.

Id. (emphasis added).

²⁴ 66 Pa. C.S. §§ 2802(9), (10), (17); 2803; 2804(9); 66 Pa. C.S. § 1403. Section 1403 of the Public Utility Code defines CAP as:

In Duquesne's service territory, CAP customers are currently protected from excessive prices in the competitive market, and must return to default service to participate in CAP. (CAUSE-PA St. 1 at 28:1-2). The Stipulating Parties believe this status quo must continue.

The record in this proceeding reveals a clear and consistent pattern of excessive supplier pricing for residential and confirmed low income customers:

- From January 1, 2017 to May 30, 2020, residential shopping customers were charged **\$102,869,316.96** (net) more than the applicable price to compare (PTC) (CAUSE-PA St. 1 at 8, T.1).
 - On an average per-customer basis, residential shopping customers were charged **\$131.86** more than the PTC in 2017; **\$182.83** more than the PTC in 2018; **\$238.55** more than the PTC in 2019; and **\$95.87** more than the PTC from January to May, 2020. (Id. at 9, T.2).
- During the same 41-month period, confirmed low income (non-CAP) customers – with income at or below 150% of the federal poverty level (FPL) – were charged **\$881,988** (net) more than the applicable price to compare. (Id. at 15).
 - In just the first three months of the COVID-19 pandemic (March to May, 2020), confirmed low income (non-CAP) shopping customers were charged an average of **\$54.41** more than the applicable PTC.

(See CAUSE-PA St. 1 at 7-20 & Exhibits 1, 2).

It is likely that CAP customers will routinely exceed the PTC if permitted to shop for electric service in the competitive market. Exposing CAP customers to competitive market pricing that exceeds the applicable PTC for any length of time will result in financial harm to economically vulnerable CAP participants and other residential ratepayers. (CAUSE-PA St. 1 at 44:8-12). This is not an imagined or theoretical harm: Data from PPL's service territory reveals that, notwithstanding implementation of carefully crafted CAP shopping restrictions, CAP customers

A plan or program sponsored by a public utility for the purpose of providing universal service and energy conservation . . . , in which customers make monthly payments based on household income and household size **and under which customers must comply with certain responsibilities and restrictions in order to remain eligible for the program.**

66 Pa. C.S. § 1403.

and other residential ratepayers continue to face increased costs. (CAUSE-PA St. 1 at 46-48). Specifically, even after PPL's CAP shopping restrictions were implemented in June 2017, the financial harms associated with CAP shopping continued to persist - costing CAP customers and other residential ratepayers an estimated \$4,281,581 in 2018 and \$2,908,085 in 2019. (*Id.*) Since 2013, PPL's CAP shopping customers have been charged an estimated **\$30,331,232** in excess of the applicable default service price. (CAUSE-PA St. 1 at 47).²⁵

Given Duquesne's CAP shopping proposal was withdrawn pursuant to the terms of the Joint Stipulation, the only two options for consideration with regard to CAP shopping are: (1) the Stipulating Parties' consensus agreement to maintain the status quo, which prohibits CAP shopping pending resolution of the CAP shopping issue in PPL's DSP; or (2) the EGS Parties' proposals to permit CAP shopping, allow CAP shopping customers to roll over onto a new supplier contract without returning the customer to default service, and to allow CAP customers to participate in Duquesne's SOP. As explained, the EGS Parties' proposals would evade enforcement, and would do nothing to mitigate certain financial harm to CAP customers and other residential ratepayers.

The only prudent and reasonable option on the record at this time that is capable of preventing harm to low income consumers is to maintain Duquesne's current prohibition on CAP shopping pending resolution of the CAP shopping issues that are subject to ongoing litigation in the PPL DSP proceeding. As such, we urge Deputy Chief ALJ Hoyer and the Commission to approve the terms of the Joint Stipulation without modification.

²⁵ See Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2021 through May 31, 2025, Direct Testimony of Melinda Stumpf, Docket No. 2020-3019356, at 12 (filed March 25, 2020).

II. QUESTIONS PRESENTED

1. Does the Commission have the legal authority to maintain Duquesne's current CAP shopping rules, which prevent CAP customers from shopping while enrolled in the program?

Suggested answer: Yes.

2. Does the record contain substantial, un rebutted evidence that Duquesne's current CAP shopping rules are necessary to ensure adequately-funded and cost-effective universal service programs remain available to assist customers who are low-income to afford electric service?

Suggested answer: Yes.

3. Should the Commission approve the Stipulating Parties' proposal to maintain the status quo and postpone further litigation of the CAP shopping issue until after a final, unappealable order is issued in the ongoing PPL DSP proceeding?

Suggested answer: Yes.

III. LEGAL STANDARD / BURDEN OF PROOF

The proponent of a rule or order has the burden of proof, as well as the burden of persuasion.²⁶ To satisfy these burdens, a litigant must produce "a preponderance of evidence which is substantial and legally credible" – and which is of a greater weight than the evidence presented by the other parties.²⁷

The Stipulating Parties reached a consensus agreement, based on substantial evidence produced throughout the proceeding, that it is in the public interest to maintain the status quo with regard to CAP shopping - and for Duquesne to withdraw its CAP shopping proposal. Thus, as the sole proponent of a change to Duquesne's current CAP shopping restrictions, the EGS Parties bear the burden of proof and the burden of persuasion in this proceeding.

²⁶ 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.

²⁷ Samuel J. Lansberry, Inc. v. Pa. PUC, 578 A.2d 600, 602 (Pa. Commw. Ct. 1990); Commonwealth of Pa. v. Williams, 732 A.2d 1167 (Pa. 1999); Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

IV. SUMMARY OF ARGUMENT

Substantial, unrebutted 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 2017 through May 2020, Duquesne's residential shopping customers were charged approximately \$102,869,317 more than the default service price.** (CAUSE-PA St. 1 at 8 & Exhibit 1).²⁸ While default service prices have generally remained flat or trended down since 2017, the average retail residential shopping rates have steadily increased – growing increasingly higher and more divergent from the price for default service. (CAUSE-PA St. 1 at 9-10, 13, Charts 1, 2, & 3).

While CAP customers are not currently able to shop in Duquesne's service territory, non-CAP confirmed low income shopping customers are able to shop and have experienced similarly high rates for competitive electric supply. From January 2017 through May 2020, confirmed low income non-CAP customers were charged \$881,988 more than the applicable PTC. (CAUSE-PA St. 1 at Exhibit 2). **On a per customer basis in 2019, non-CAP confirmed low income shopping customers were charged an average of \$201.21 (\$16.77 each month) more than the default service price.** (CAUSE-PA St. 1 at 16, T.5).

Even in the early months of the pandemic, and as many residential consumers struggled profoundly to afford their utility bills through this unprecedented health and economic crisis, suppliers continued charging residential and confirmed low income shopping customers millions of dollars in excess of the price to compare. (CAUSE-PA St. 1 at 8 & Exhibit 1). In just three months, from March through May 2020, residential shopping customers in Duquesne's service territory were charged \$8,208,121 in excess of the default service price, and non-CAP confirmed

²⁸ All of the shopping data is on net, and accounts for any savings achieved by consumers as well as additional costs.

low income shopping customers were charged \$102,144 in excess of the default service price. (CAUSE-PA St. 1, Exhibits 1 & 2). **On a per customer basis from March through May 2020, straight through the pandemic, non-CAP confirmed low income shopping customers were charged \$54.41 more than the PTC.** (CAUSE-PA St. 1, Exhibit 2). 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.²⁹ And in Duquesne’s service territory in particular, the number of residential customers eligible for termination between May 2019 and May 2020 increased by a shocking 62.1%. (CAUSE-PA St. 1-R at 4 n.1).

The accuracy of this extensive data is an un rebutted and unchallenged part of the record. Rather than deny the clear patterns of overcharging and excessive supplier pricing uncovered in this proceeding, the EGS Parties responded generally that the PTC is an unfair benchmark with which to compare competitive offers for electricity – and argued that the price shopping customers pay for competitive electric supply is irrelevant and beyond the scope of the proceeding. (CAUSE-PA St. 1-SR at 9-10; EGS Parties St. 1R at 4:10-13). The EGS Parties – without support – argued that any consideration of competitive market prices would “violate both the Commission’s enabling statutes and its precedent.” (EGS Parties St. 1R at 1:18-2:12, 4:9 to 5:11). This is not true.

While the Commission may currently lack authority to regulate EGS prices for residential consumers as a whole,³⁰ it has the explicit authority – and in fact the statutory obligation – to

²⁹ 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).

³⁰ Based on the evidence uncovered in this proceeding showing widespread, excessive pricing across the residential retail electric market, **CAUSE-PA urges Deputy Chief ALJ Hoyer to recommend that the Commission launch a statewide investigation into the general residential retail market to identify ways to further curtail the detrimental financial impact of excessive supplier pricing statewide, and to investigate whether and to what extent suppliers are targeting consumers with high priced contracts based on race and income level.** (CAUSE-PA St. 1 at 17-20 (highlighting research from Massachusetts, Illinois, New York, and Maryland which

oversee Commission-approved programming and to preserve and protect the cost-effectiveness and accessibility of universal service programming, including CAP.³¹ 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 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.³²

When CAP customers are exposed to retail shopping in excess of the PTC, *even for a short period of time*, economically vulnerable CAP customers and other residential consumers who subsidize CAP through rates are exposed to excessive pricing that unnecessarily drive up the cost of CAP as a whole. (CAUSE-PA St. 1 at 40-42; CAUSE-PA St. 1-SR at 6-7). This is because CAP shopping is a zero-sum game: Every penny charged in excess of the PTC is paid for by CAP customers, other residential ratepayers, or both. Such a result disrupts the ability of CAP to produce an affordable bill, consistent with the Commission’s established energy burden standards, and undermines the cost-effectiveness of the program for other residential ratepayers. (CAUSE-PA St. 1 at 6-7, 40).

The only option currently on the record capable of preventing certain and substantial financial harm to CAP customers and residential ratepayers is the consensus agreement of the Stipulating Parties to maintain the status quo (which prohibits CAP shopping) pending resolution of CAP shopping issues in the ongoing litigation of PPL’s current CAP shopping program rules.

document similar pricing practices in residential markets and demonstrate that low income communities and communities of color may be specifically targeted for higher cost contracts.)

³¹ 66 Pa. C.S. §§ 2802 (9), (10), (17), 2804(9).

³² See Retail Energy Supply Ass’n, 185 A.3d at 1227-28.

V. ARGUMENT

CAUSE-PA urges the Commission to approve the Joint Stipulation, and maintain the status quo with regard to CAP customer shopping while the issue is further resolved through parallel litigation in the ongoing PPL DSP proceeding. Maintenance of the status quo will protect Duquesne's low-income CAP consumers and other residential ratepayers who subsidize CAP from excessive shopping prices and will promote judicial efficiency by avoiding substantial and duplicative litigation costs to address the same central issues across multiple cases.

A. **THE COMMISSION HAS THE LEGAL AUTHORITY TO PROHIBIT CAP SHOPPING.**

As a regulated public utility serving more than 100,000 customers, Duquesne 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.³³ 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."³⁴ The term includes customer assistance programs (CAPs), usage reduction programs, grant assistance programs, service termination protections, credit and collections provisions, and consumer education.³⁵

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

³³ See 66 Pa. C.S. §§ 2802(10), (17); 2804(9); 52 Pa. Code §§ 54.71-.78; 52 Pa. Code §§ 69.261-.267.

³⁴ 66 Pa. C.S. § 2803 (emphasis added).

³⁵ Id.; see also 66 Pa. C.S. § 1403.

federal poverty level (FPL).³⁶ CAPs are guided by the Commission’s Policy Statement on Customer Assistance Programs³⁷ which, among other program controls, establishes energy affordability standards (known as energy burdens³⁸) for CAP customers. (CAUSE-PA St. 1 at 34:13 to 35:16).³⁹ By providing a more affordable rate and therefore reducing the costs associated with collection and termination, CAPs serve as “an alternative collection method” designed to “help low-income customers to maintain electric service.”⁴⁰

The Commonwealth Court has 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.⁴¹ The Court explained that a CAP rule may be approved if (1) the rule is 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.⁴²

Part one of this standard is met because there is substantial and identified financial harm associated with CAP shopping. Part two is also met because the consensus agreement of the Stipulating Parties to maintain the status quo is the only reasonable alternative on the record that

³⁶ 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.

³⁷ 52 Pa. Code §§ 69.261-69.267.

³⁸ An energy burden is the percent of household income that a household pays for energy (electric and natural gas).

³⁹ See 52 Pa. Code § 69.265 (2)(i); see also 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).

⁴⁰ 52 Pa. Code § 54.72; 66 Pa. C.S. § 2803; 66 Pa. C.S. § 1403.

⁴¹ Retail Energy Supply Ass’n, 185 A.3d at 1227-28 (quoting CAUSE-PA et al., 120 A.3d 1087, 1103-04).

⁴² Id. (emphasis added).

will effectively prevent ongoing harm to low income CAP customers. As such, the Joint Stipulation must be approved.

B. THE CONSENSUS AGREEMENT OF THE STIPULATING PARTIES TO MAINTAIN THE STATUS QUO IS SUPPORTED BY SUBSTANTIAL, UNREBUTTED EVIDENCE.

- i. Duquesne's CAP customers are uniquely situated, economically vulnerable, and require specific and distinct protection within the retail electric market to ensure their continued ability to access affordable utility service.*

No party has contested the testimony submitted by CAUSE-PA concerning the economic vulnerability of Duquesne's confirmed low-income customers – and, specifically, CAP customers. (CAUSE-PA St. 1 at 33-36). Mr. Geller discussed the seriousness of energy unaffordability for Duquesne's 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 in relatively good economic periods, low-income families struggle to make ends meet each month, and are often unable to afford basic energy services. These households are often forced to choose between critical necessities each month, including housing, food, water, heat, and medicine.

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. Indeed, as recent research and data has continually and repeatedly showed, many vulnerable low-income and minority families simply cannot afford the cost of energy services.

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 50% of the federal poverty level (FPL) for a family of four in that year.

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

Duquesne's 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 to maintain and afford essential utility service, and it is precisely why the benefits of CAP must not be eroded by permitting CAP customers to shop for electric service in the competitive market.

- ii. *When CAP customers are charged a price for electricity which exceeds the default service price, the increased cost 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 borne by residential ratepayers that subsidize CAP, CAP customers, or both.

To fully understand the harm caused by CAP shopping, it is critical to first understand the mechanics of Duquesne's CAP, and how the benefits are calculated and applied. Generally, all CAPs provide three primary benefits: (1) a reduced monthly bill, targeted to reach a predetermined level of affordability based on household income; (2) frozen arrearages and waiver of late payment fees; and (3) arrearage forgiveness with each monthly CAP payment over a period of years. (CAUSE-PA St. 1 at 36:15-18).⁴³ In exchange for these benefits, Chapter 14 of the Public Utility Code provides that CAP customers "must comply with certain responsibilities and restrictions in order to remain eligible for the program."⁴⁴

⁴³ See 66 Pa. C.S. § 1403; 52 Pa. Code §§ 69.261-.267 (Policy Statement on Customer Assistance Programs); 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).

⁴⁴ 66 Pa. C.S. § 1403.

The manner in which CAP bills are calculated varies by utility. Duquesne’s CAP is currently in transition from a percentage of budget bill program to a percentage of income payment program (PIPP). (CAUSE-PA St. 1 at 37:12-13).⁴⁵ Mr. Geller explains:

Duquesne’s current percentage of budget bill discount program charges CAP customers a fixed percentage of their budget bill each month, subject to an annual maximum CAP credit limit of \$1,500 for non-electric heating customers and \$1,800 for electric heating customers.

Percentage of Budget Bill Program:

	Non-Electric Heat Residential Service	Residential Electric Heat
0-50% FPL	15%	25%
51-100% FPL	40%	60%
101-150% FPL	80%	80%

Duquesne’s PIPP, once implemented, will provide a more precise level of affordability by charging participants a fixed percentage of their overall gross household income. If the household’s calculated payment is lower than the applicable percentage of income, the household will be charged the average bill rate. Importantly, an average bill is not a budget bill, and is not subject to reconciliation.

Percentage of Income Program:

	Non-Electric Heat Residential Service	Residential Electric Heat
0-50% FPL	3%	7%
51-100% FPL	4%	8%
101-150% FPL	5%	9%

As with the percentage of bill program design, the PIPP design will also be subject to maximum tiered annual CAP credit limits:

	Non-Electric Heat Residential Service	Residential Electric Heat
0-50% FPL	\$1,600	\$2,350
51-100% FPL	\$1,400	\$1,800
101-150% FPL	\$900	\$1,300

(CAUSE-PA St. 1 at 38-39).

⁴⁵ See also Duquesne Light Co. Universal Service and Energy Conservation Plan for 2017-2019 Submitted in Compliance with 52 Pa. Code §§ 54.74, Order on Reconsideration, Docket No. M-2016-2534323 (April 19, 2018).

Each month, and regardless of the CAP design, a CAP customers' maximum CAP credits are reduced by the amount of assistance received on a dollar-for-dollar basis. (Id.) For example, if a heating customer's full tariff bill (without CAP) is \$300, and their CAP bill amount is \$100, the CAP customer is asked to pay \$100 and the remaining \$200 is deducted from the customers' remaining maximum CAP credit limit. If a customer exhausts all of their maximum CAP credits before the end of the program year, they no longer receive a CAP bill that is based on an ability to pay, and instead must pay their full monthly budget bill for the remainder of the program year - regardless of the fact that full rate tariff bills are categorically unaffordable for the CAP participant. (See CAUSE-PA St. 1 at 40-41).

The CAP credit amount, or CAP shortfall, is paid for by all residential, non-CAP customers through Duquesne's Universal Service Rider, which is built into Duquesne's residential rates. (CAUSE-PA St. 1 at 39:12-15). In 2018, residential customers paid approximately \$51.70 per year - or \$4.31 per month - to support CAP. (Id.)

The exact impact of CAP shopping varies by program design. However, as Mr. Geller explained, "in any instance, CAP shopping can either impact the rates paid by CAP customers, residential ratepayers, or both." (CAUSE-PA St. 1 at 40:2-8).

Any increase over the default service price - even for a short time ... - would disrupt the ability of CAP to produce an affordable bill, consistent with the Commission's established energy burden standards, and would undermine the cost-effectiveness of the program for other residential ratepayers.

Under Duquesne's PIPP design, both CAP customers and other residential ratepayers will be directly impacted by CAP shopping - though in different ways. Because the PIPP provides a bill based on the customers' applicable income, a CAP shopping customer who pays more than the default service price would not experience an increase on their monthly bill. However, they would more quickly reach their maximum annual CAP credit limit. Once a CAP customer reaches their maximum CAP credits, they are charged their full tariff rate until the end of the program year when CAP credits reset. Because a PIPP provides participants a consistent and predictable monthly rate, many CAP shopping customers will not

even realize they were paying excessive rates until they reach their maximum CAP credits for the year and begin receiving full tariff rate bills that are categorically unaffordable for the CAP participant.

In turn, residential ratepayers would also pay significantly higher rates if a CAP customer shops for competitive electric service at a rate higher than the default service rate (again, even for a short period of time). This is because, until the CAP customer reaches the maximum level of CAP credits, any charge above the PTC will require a greater subsidy in order to maintain the customer at the consistent applicable percent of income for the participating household.

(CAUSE-PA St. 1 at 40-41).

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.

iii. Duquesne’s CAP customers and other residential ratepayers are likely to experience substantial financial harm if CAP shopping were implemented in its service territory.

There is no debate: Duquesne’s residential and low income shopping customers pay substantially more for electricity than non-shopping, default service customers. Notably, the same is true in both PECO and PPL service territories, where substantially similar evidence of excessive retail electric pricing was presented through the course of PECO and PPL’s ongoing DSP proceedings.⁴⁶ In light of these persistent and pervasive shopping trends, it is likely that

⁴⁶ See Petition of PPL Electric Utilities Corp. for Approval of a Default Service Program for the Period of June 1, 2021 through May 31, 2025, Docket No. P-2020-3019356; see also Petition of PECO Energy Co. for Approval of its Default Service Program for the Period from June 1, 2021 through May 31, 2025, Docket No. P-2020-3019290.

Duquesne’s CAP customers and other residential ratepayers will experience substantial financial harm if CAP customers are permitted to shop.

First, the following provides an overview of the financial harm that would result from CAP shopping:

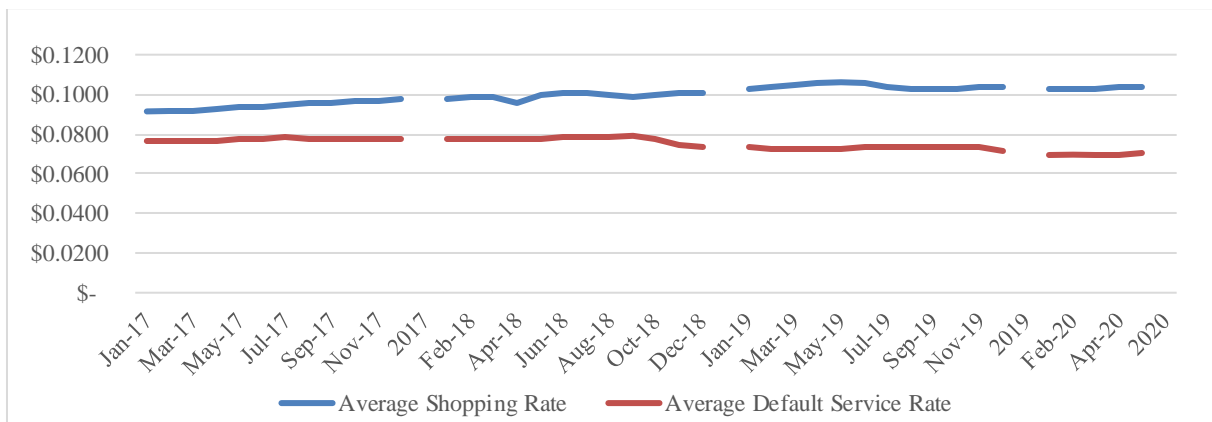
- Overall, on a net and average basis from January 2017 through May 2020, Duquesne’s residential shopping customers were charged nearly \$102.9 million more than the applicable PTC. (CAUSE-PA St. 1 at 7:17-18).

Residential Shopping – Charges Over PTC

2017	\$21,332,822.53
2018	\$29,600,035.18
2019	\$37,437,453.82
2020 (Jan-May)	\$14,498,972.43
Total	\$102,869,316.96

- The lowest monthly average price that residential shopping customers paid for electricity since January 2017 was \$0.0914/kWh – also in January 2017. Since then, residential shopping rates have steadily increased – even as default service prices remained relatively steady or declined. (CAUSE-PA St. 1 at 9, Chart 1 & Exhibit 1)

Average Residential Shopping Rates v. Average Default Service Rates

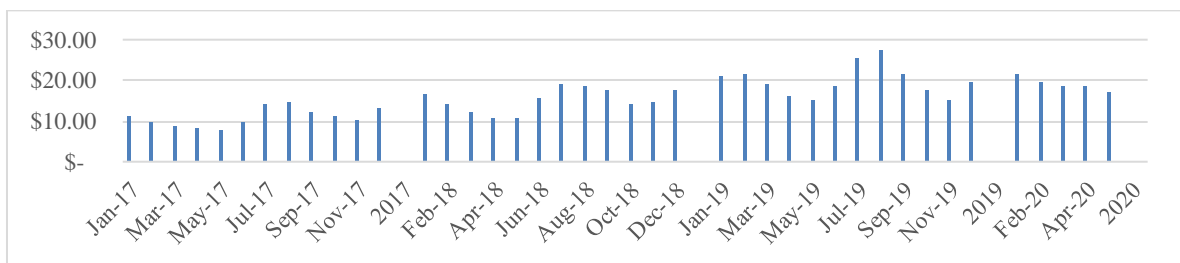


- From January 2017 to May 2020, residential shopping customers were charged, on average, between \$7 and \$27 *each month* over the applicable default service price. (CAUSE-PA St. 1 at 9:5-6).
- The average, per-customer amount residential shopping customers are charged in excess of the PTC has grown year over year from \$131.86 in 2017 to \$238.55 in 2019. 2020 is on track to

meet or exceed 2019 – averaging \$19.17 each month in excessive supplier charges. (CAUSE-PA St. 1 at 9: 12-13, T.2)

Residential Shopping: Average Per Customer Over Default Service Charges

Year	Annual Average Per Customer Over Default	Monthly Average Per Customer Over Default
2017	\$131.86	\$10.98
2018	\$182.83	\$15.24
2019	\$238.55	\$19.87
2020 (Jan.-May)	\$95.87	\$19.17



- From March through May 2020, as our economy faced devastating losses in the first three months of the pandemic, residential shopping customers in Duquesne service territory were charged roughly \$8,208,121.09 more than they otherwise would have been charged for default service. (CAUSE-PA St. 1-R at 4).
 - At the end of May, 2020, tens of thousands of Duquesne’s residential customers (54,114) faced imminent termination of service for non-payment – up 61% from May 2019. This fact was undoubtedly exacerbated by high residential shopping prices. (CAUSE-PA St. 1-R at 4, n.1).
- Because CAP customers are not currently able to shop, there is a relatively small pool of confirmed low income customers who are currently shopping (between 1,220 and 2,991) compared to the total number of confirmed low income customers (between 45,065 and 49,346). (CAUSE-PA St. 1 at 14:6-13.) Nevertheless, confirmed low income shopping trends are generally consistent with residential shopping trends. (Id.)
- Overall, on a net and average basis from January 2017 through May 2020, Duquesne’s confirmed low income shopping customers were charged nearly \$900,000 in excess of the applicable PTC. (CAUSE-PA St. 1 at 15, T.4).

Confirmed Low Income (Non-CAP) Shopping: Total Charges Over Default

2017	(\$4,686)
2018	\$216,850
2019	\$498,717

2020 (Jan-May)	\$171,107
Total	\$881,988

- While confirmed low income non-CAP customers experienced modest average per-customer savings in 2017 (\$0.73/month), the average charges in excess of the PTC for this group has grown exponentially since then. (Id.)

Confirmed Low Income (Non-CAP) Shopping: Average Over Default

Year	Annual Average Per Customer Over Default	Annual Monthly Per Customer Over Default
2017	(\$8.76)	(\$0.73)
2018	\$89.73	\$7.48
2019	\$201.21	\$16.77
2020 (Jan-May)	\$91.55	\$18.31

- In 2019, the average LIHEAP grant intended to supplement the ability of low-income customers to afford electricity was approximately \$278. For low income shopping customers, this LIHEAP assistance was and is eroded by excess supply costs. (CAUSE-PA St. 1 at 16:2-4). As Mr. Geller points out, the average LIHEAP grant was “just \$76.79 more than the price that low income shopping customers were charged in excess of the default service price in 2019.” (Id.)
- Preliminary analysis of geographic shopping data from Duquesne – coupled with evidence from other states – “indicates ... that there may be racial equity issues in the competitive electric market.” (Id. at 16:15-20:13).

The suppliers do not deny these facts. (See EGS Parties St. 1R & 1SR). They instead challenge the relevance of this data to determining whether and to what extent CAP customers should be allowed to shop for energy, and argue that the price to compare is an unfair measure with which to compare competitive prices. (Id.) The relevance of supplier pricing trends is plain: If residential customers and confirmed low income customers routinely and with little to no exception pay substantially more than the PTC, then CAP customers – if permitted to shop – will likewise routinely pay more than the PTC. When shopping consumers pay more than the PTC for electricity, it drives up the cost of the program and will erode the affordability achieved for low income consumers in direct contravention of the Commission’s universal service obligations under the Choice Act.

The record in this proceeding also reveals that carefully crafted CAP shopping restrictions in PPL and First Energy service territories aimed at curtailing excessive CAP shopping prices which exceed the PTC have proven insufficient to stop the harm, primarily due to holdover contracts for customers that were already shopping at the time they enter CAP and/or suppliers' failure to timely return CAP customers to default service or otherwise transition the customer to a CAP compliant contract. (CAUSE-PA St. 1 at 46:7-48:16).

To explain, in June 2017, PPL implemented a number of CAP shopping restrictions designed to stop the substantial and demonstrated financial harm to CAP customers and other residential ratepayers presented in its last DSP proceeding. (*Id.*)⁴⁷ PPL's CAP shopping restrictions required CAP customers who wished to shop to do so through a special CAP Standard Offer Program (CAP-SOP), which restricted supplier pricing to 7% off the applicable PTC at the time the CAP customer entered the CAP-SOP.⁴⁸ Importantly, the PPL CAP shopping restrictions permitted shopping customers to enter CAP, but required suppliers to return CAP customers to default service within 120 days for month-to-month contracts, or at the end of the contract period for fixed duration contracts.⁴⁹

PPL's CAP shopping restrictions have failed to stop excessive supplier pricing, and the associated financial harms to low income CAP customers and other residential ratepayers who finance the program. (CAUSE-PA St. 1 at 47). Given the lack of participation by suppliers in PPL's CAP-SOP, it is clear that persistent overcharging of PPL's CAP customers is primarily

⁴⁷ See also Petition of PPL Electric Utilities Corp. for Approval of a Default Service Program for the Period of June 1, 2021 through May 31, 2025, CAUSE-PA Main Brief, Docket No. P-2020-3019356 (filed Sept. 3, 2020).

⁴⁸ 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).

⁴⁹ Id. at 25-26.

attributable to holdover contracts for CAP customers who were shopping at the time they entered CAP, as well as lax adherence of suppliers to the CAP transition rules. (CAUSE-PA St. 1 at 47.). In 2019, despite the complete lack of participation by suppliers in PPL’s CAP-SOP, CAP shopping customers were nevertheless charged nearly \$3 million (net) more than the applicable PTC. (CAUSE-PA St. 1 at 47:4-6).

CAP Shopping in PPL Electric Service Territory – Net Costs and Savings

	Incremental Costs Above PTC	Incremental Savings Below PTC	Net Incremental Cost/(Savings)
2013	\$3,102,101.99	(\$577,626.58)	\$2,524,475.41
2014	\$7,075,886.90	(\$1,260,702.83)	\$5,815,184.07
2015	\$4,143,051.93	(\$1,824,797.73)	\$2,318,254.20
2016	\$7,754,048.98	(\$299,675.37)	\$7,454,373.60
2017	\$5,733,675.86	(\$925,870.45)	\$4,807,805.41
2018	\$4,801,337.09	(\$519,755.99)	\$4,281,581.10
2019	\$3,163,412.20	(\$255,326.71)	\$2,908,085.49
2020 (January)	\$265,270.32	(\$43,797.44)	\$221,472.88

(CAUSE-PA St. 1, 47:10).

The First Energy Companies have also recently implemented CAP shopping rules, similar to the rules originally proposed by Duquesne that were ultimately withdrawn in the Joint Stipulation. (CAUSE-PA St. 1 at 48:7-8.)⁵⁰ As Mr. Geller explained through testimony, that program is in its infancy – and there is not yet any available data with which to measure the effectiveness of those program rules. (Id.) Nevertheless, and critical to this analysis, the process for addressing holdover contracts and the obligation on suppliers to return CAP customers at the end of the contract period for First Energy’s CAP shopping rules is identical to PPL’s rules for

⁵⁰ See Petition of Metropolitan Edison Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023, Opinion and Order, at Docket Nos. P-2017-2637855 et al. (entered Nov. 2, 2018); see also 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).

holdover contracts.⁵¹ Like PPL, there is no clear oversight of suppliers' adherence to these rules, and FirstEnergy does not have insight into the terms of the holdover contracts to assess whether suppliers are complying with the CAP shopping requirements.⁵² Thus, it is very likely that the same financial harms to CAP customers have continued to persist in First Energy's service territory notwithstanding First Energy's newly implemented CAP shopping rules.

All of this persistent overcharging can and will lead to two primary types of harm if CAP shopping were permitted in Duquesne's service territory: (1) CAP customers will more quickly reach their maximum CAP threshold; and (2) the cost residential ratepayers pay to subsidize CAP will increase. While we will not reiterate here the lengthy discussion of *how* CAP shopping causes harm to CAP customers and other residential ratepayers who subsidize CAP, it is nevertheless important to put the above data into context to more precisely quantify the likely harm to CAP customers and other residential ratepayers if CAP shopping were permitted.

First, if CAP shopping were permitted in Duquesne service territory, CAP shopping customers would exceed their maximum CAP credits more quickly. Under Duquesne's current percentage of budget bill, Duquesne's CAP customers are subject to a maximum CAP credit limit of \$1,500 (\$125/month) for non-electric heating customers and \$1,800 (\$150/month) for electric heating customers. (CAUSE-PA St. 1 at 38:9-10). If a low income customer in Duquesne's service territory was shopping prior to enrolling in CAP at the average shopping rate for confirmed low income shopping customers in 2019 (*\$201.21 in excess of the PTC*), it would cost them nearly two months' worth of CAP credits to cover the supplier charges that exceed the applicable PTC. (See

⁵¹ 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).

⁵² Id.

CAUSE-PA St. 1 at 16, T.5 & 38). In other words, the cost of CAP shopping – applying average low income shopping rates from last year – represents 13% of the current maximum CAP credit allotment for non-heating CAP customers, and 11% of the maximum CAP credit allotment for heating CAP customers. (See CAUSE-PA St. 1 at 37). 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.

Under Duquesne’s new CAP design, the level of harm to CAP customers may improve for those at the lowest end of the poverty scale (0-50% FPL), it will increase for those at the higher end of the poverty scale. This is because Duquesne is moving to a tiered maximum CAP credit limit, which will vary based on the type of service the CAP customer receives (heat/non-heat) and the level of household income. As the table below shows, CAP customers at 101-150% of the FPL will utilize 22.4% of their maximum available CAP credits if they shop at average 2019 low income shopping rates.

Maximum CAP Credit Limits, Percentage of Income Program

	Non-Electric Heat	% of Max if Shopping @ Avg. 2019 Rates	Residential Electric Heat	% of Max if Shopping @ Avg. 2019 Rates
0-50% FPL	\$1,600	12.6%	\$2,350	8.6%
51-100% FPL	\$1,400	14.4%	\$1,800	11.2%
101-150% FPL	\$900	22.4%	\$1,300	15.5%

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 40-41). This cost is then passed on to non-CAP residential ratepayers who pay for the program. So, again applying 2019 average shopping rates for low income customers, if Duquesne’s CAP customers were to shop for one month upon entry into CAP before being returned to default service, the CAP customer would incur an additional \$16.77 charge for the

month, the totality of which residential ratepayers would be required to pay. (CAUSE-PA St. 1-SR at 6:18). For one customer, \$16.77 may seem like an insignificant price to pay, but as Mr. Geller points out, this number is quickly compounded:

In my Direct Testimony, I explained that Duquesne's confirmed low income shopping customers (exclusive of CAP customers) paid an average \$201.21 more per year than they would have paid if they remained on default service. This comes out to \$16.77 per month. Over 120 days, the average confirmed low income shopping customer will have been charged \$67.08 in excess of the default service price. As of December 31, 2018, Duquesne had 36,075 customers enrolled in its CAP. **Even if just 10% of Duquesne's CAP customers (3,607) enter CAP with an existing contract, the cost of CAP would increase by roughly one quarter of a million dollars (\$241,958) over that 120-day period.**

(CAUSE-PA St. 1-SR at 6:14-7:6 (emphasis added)). When CAP customers shop for competitive electric supply at a price that exceeds the PTC – even for a single month – residential ratepayers shoulder that cost through increased programmatic costs.

In addition to these two explicit, well-documented harms, excessive supplier pricing can also cause increased collections and uncollectible expenses, which in turn can inflate the cost of CAP through increased arrearage forgiveness expenses and/or can increase the cost of uncollectible expenses for all residential ratepayers if the utility is ultimately unable to collect.

The persistent harms documented throughout this proceeding cannot be ignored. As detailed in the next section, it is critical for the Commission to approve the Joint Stipulation – without modification – to protect CAP customers and other residential ratepayers from excessive competitive market pricing while these CAP shopping issues are resolved in a parallel PPL DSP proceeding.

C. THE CONSENSUS AGREEMENT OF THE STIPULATING PARTIES TO MAINTAIN THE STATUS QUO IS THE ONLY OPTION ON THE RECORD CAPABLE OF PREVENTING THE HARM CAUSED BY CAP SHOPPING.

i. Consensus Agreement of the Stipulating Parties: Maintain Status Quo

Over the short term, the Stipulating Parties agreed that it is in the public interest to maintain the status quo, which currently prohibits CAP customers from shopping while receiving ratepayer-funded bill assistance through the program. (Joint Stip. of Duquesne, CAUSE-PA, and OCA). This will protect both CAP customers and other residential ratepayers from likely financial harm while allowing a number of critical issues regarding CAP shopping to be determined in the ongoing PPL DSP proceeding.⁵³ In short, the Joint Stipulation acts as a stay – preventing substantial harm during the pendency of ongoing litigation.

It is squarely in the public interest to maintain the status quo in this proceeding, pending further guidance from the Commission and the courts on the issue of CAP shopping. In PPL's DSP, substantial and undisputed evidence was put forward showing ongoing financial harm to CAP customers and other residential ratepayers - *even after implementing strong CAP shopping restrictions*. (CAUSE-PA St. 1 at 46:19 to 47:10). The Stipulating Parties' resolution in this case protects against the strong likelihood that Duquesne's CAP customers would experience that same harm if CAP shopping were approved, yet it does not foreclose the possibility that Duquesne may nevertheless be required to implement CAP shopping in the future depending on the outcome of the legal questions at bar in the PPL proceeding.

⁵³ See generally Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2021 through May 31, 2025, Docket No. 2020-3019356 (filed March 25, 2020).

Likewise, the Stipulating Parties' consensus agreement also furthers the Commission's interest in judicial efficiency, and will preserve the current rights of all parties while litigation on the same matter is resolved in another proceeding. Rather than continue to engage in litigation on staggered, parallel tracks, the Joint Stipulation will help to sharpen the issue of CAP shopping – more squarely resolving a number of legal questions to help inform Duquesne's next CAP shopping proposal - should that become necessary.

It is worth noting that Duquesne's initial CAP shopping proposal – *which was withdrawn pursuant to the Joint Stipulation* – was made in furtherance of a settlement obligation and out of a desire to comply with the Commission's proposed policy statement, rather than in response to relevant data and information. As Mr. Geller explained through testimony, neither justification forms an adequate or appropriate basis for implementing CAP shopping. (CAUSE-PA St. 1 at 42:8 to 44:4). With regard to the prior settlement language, Mr. Geller pointed out that Duquesne was only under the obligation to propose a CAP shopping program if other CAP shopping programs were “successfully implemented.” (CAUSE-PA St. 1 at 42:8-12; Duquesne St. 5 at 12.). Given PPL has now proposed to end CAP shopping based on persistent and unmitigable financial harm, it cannot be said that PPL's program was “successfully implemented.” (See id.) With respect to Duquesne's adherence to the Commission's *proposed* policy statement, Mr. Geller explained:

Duquesne's reliance on the Commission's proposed CAP shopping policy statement is likewise misplaced. A proposed policy statement has no legal effect and in and of itself provides no justification for Duquesne's proposal to make critical changes to its CAP that may substantially impact both the affordability of CAP for CAP participants and other residential ratepayers who pay for CAP. In fact, since the proposed policy statement has not been acted on by the Commission, it is not yet official policy guidance of the Commission – which itself is nonbinding. A proposed policy statement is a proposal, which is pending review before the Commission's duly appointed Commissioners. While Commission Staff requested that EDCs “consider” the Commission's Proposed CAP Shopping Policy Statement in the context of its DSP filing, the Commission did not order or mandate Duquesne to do so, nor did it suggest that Duquesne should implement a CAP shopping

program in a vacuum without consideration of other critical factors - *including an assessment of applicable shopping data and potential harms.*

As with every proposal, Duquesne should have conducted an analysis of all available information and data to determine whether exposing CAP customers to competitive shopping is just and reasonable and consistent with Duquesne's statutory obligations to offer accessible, appropriately funded, and cost effective universal service programs.

(CAUSE-PA St. 1 at 43:9 to 44:4). Indeed, Commission policy is never intended to be “implemented in a vacuum” – without consideration of relevant facts and data. (CAUSE-PA St. 1-SR at 3:19-22). Especially when that policy is not final, was established without the benefit of reviewing substantial evidence produced in the case at hand, and is pending Commission review.

Ultimately, based on evidence exchanged throughout the proceeding, Duquesne's own experts recognized that shopping customers pay substantially more than other default service customers, and expressed doubt regarding Duquesne's ability to implement CAP shopping without causing financial harm to CAP customers and residential ratepayers. (Duquesne St. 5-SR at 4:12-18; Duquesne St. 3-R at 47:4-14, 50:16, 51:4).

For these reasons, CAUSE-PA asserts that the Stipulating Parties' resolution is the only reasonable option on the record capable of preventing certain and substantial harm to CAP customers and other ratepayers, and urges Deputy Chief ALJ Hoyer and the Commission to approve the Joint Stipulation and maintain the status quo with regard to CAP shopping pending resolution of CAP shopping issues pending litigation in PPL's DSP proceeding.

ii. Proposal of EGS Parties: Permit CAP Shopping, Reduce Oversight

The EGS Parties' expert, Christopher Kallaher, generally objects to the use of the PTC as a benchmark for measuring the reasonableness of electric prices – calling broadly for the end of default service in Pennsylvania. (EGS Parties St. 1 at 8-9.). Mr. Kallaher's contempt for default service formed the explicit framework for all of the EGS Parties' recommendations in this

proceeding. (EGS Parties St. 1 at 9:14-23). With regard to CAP shopping, Mr. Kallaher argued that Duquesne should modify its now-withdrawn CAP shopping proposal to “allow for more meaningful participation by EGSs,” and recommended that Duquesne allow CAP shopping customers to roll over onto a new contract, rather than returning CAP customers to default service at the end of a contract term. (EGS Parties St. 1 at 18:2-8). Mr. Kallaher also argued that CAP customers should be permitted to participate in Duquesne’s Standard Offer Program, which provides participants a 7% discount off the PTC at the time they enter the program and allows participants to roll onto a new contract *at any price* at the conclusion of the 12-month SOP term. (EGS Parties St. 1 at 18:9-13; CAUSE-PA St. 1 at 28:12 to 29:6).

Given Duquesne’s CAP shopping proposal was withdrawn, the EGS Parties’ CAP shopping proposals must stand on their own. That is, the EGS Parties bear the burden of proof to show that there is more evidence in support of its proposal to uproot the status quo and implement CAP shopping than there is to approve the consensus agreement to maintain the status quo. The EGS Parties have failed to meet these dual burdens.

As Mr. Geller explained in response to the EGS Parties’ CAP shopping proposals:

Duquesne’s current CAP shopping policy, which prohibits CAP customers from shopping in the competitive market, has proven to be the only effective and verifiable way to protect CAP customers and the other residential customers who subsidize the program from significant financial harm as well as protecting low income consumers from other negative health and safety impacts associated with utility unaffordability.

(CAUSE-PA St. 1-R at 11:17-22). The mountain of evidence in support of this conclusion is discussed above.

The EGS Parties’ proposal to permit CAP shopping customers to roll onto a new contract with the same supplier should be rejected, as it would dramatically undermine the ability of Duquesne to monitor compliance with CAP shopping rules and would further obscure the

Commission's ability to take enforcement action against non-compliant suppliers. (CAUSE-PA St. 1-R at 12). As explained above, experience from PPL's service territory serves as a cautionary tale: without clear enforcement, substantial financial harm will be incurred by CAP customers and other residential ratepayers who subsidize CAP.

The EGS Parties' proposal to permit CAP customers to enroll in Duquesne's SOP should likewise be swiftly rejected. This proposal was either a thinly veiled attempt to create a gaping loophole in Duquesne's CAP shopping proposal, or is evidence that the EGS Parties' witness lacks even a basic working knowledge of Duquesne's SOP. Mr. Geller again explained:

By definition, an SOP contract is not compliant with the CAP shopping rules. Under the SOP, a supplier must offer a price that is 7% off the default service price *at the time the customer enters the program* – but there is no guarantee that the SOP price will remain below the default service price for the duration of the 12-month program. If the default service price changes, the discount that an SOP customer receives may or may not remain at or below the price for default service. If the SOP price were to ever go above the applicable default service price, the SOP contract would violate Duquesne's proposed rules for CAP shopping. While a CAP customer could cancel the SOP contract, it is unlikely they would know to do so at the time the pricing was switched.

(CAUSE-PA St. 1-R at 12). As above, Duquesne lacks the ability to monitor SOP contracts to determine whether the SOP offer – or the subsequent roll-over contract – is and remains compliant with CAP shopping restrictions originally proposed by Duquesne, and would thwart the ability of the Commission to enforce CAP shopping rules. (Id.)

Notably, participation in SOP is not necessarily the biggest threat – it is what happens at the end of the 12-month SOP term that becomes a problem. In the SOP, suppliers can roll the participant onto any price contract, and Duquesne would lack any ability to monitor that price for CAP participants. Again, PPL presents a cautionary tale: In the context of PPL's DSP, substantial evidence was presented on the record demonstrating that the vast majority of SOP participants that did not affirmatively choose a supplier at the end of the SOP term – and rolled off onto a new

contract – paid over 10% more than the PTC for at least four months thereafter. (CAUSE-PA St. 1 at 29:17-8). This kind of pricing practice is predatory, and has no place in CAP.

The EGS Parties’ CAP shopping proposals do nothing to address identified and likely harm associated with CAP shopping, and would in fact make it *more* likely that CAP shopping customers will pay higher prices, not less. Ultimately, the EGS Parties have fallen woefully short of meeting their burden of proof and persuasion in this case. Rather than set forth reasonable proposals for how CAP customers could engage in the competitive market without being exposed to excessive competitive market prices, the EGS Parties have proposed ways for suppliers to evade oversight and dodge accountability with respect to the rates charged to economically vulnerable consumers enrolled in CAP. This evidences a complete disregard for the acute risk of physical and financial harm that energy unaffordability poses for economically vulnerable consumers. As such, the EGS Parties’ vague and indefensible proposals must be rejected.

iii. Other Alternatives

By the terms of the Joint Stipulation, Duquesne’s proposals regarding CAP shopping were officially withdrawn. As a practical effect, the interdependent proposals of the Stipulating Parties which sought to improve Duquesne’s original proposal were also withdrawn. Thus, CAUSE-PA asserts that the only two options for CAP shopping on the record at this time are (1) to maintain the status quo, consistent with the consensus agreement of the Stipulating Parties, and (2) the proposals of the EGS Parties, which fails to mitigate identified harm and is unsupported by substantial evidence. If necessary, CAUSE-PA intends to respond in its Reply Brief to any additional proposals that may be advanced through the other parties’ Main Briefs that were not otherwise addressed above - though we believe that any such alternatives would be outside of the record of this case, and should be denied on those grounds alone.

VI. CONCLUSION

Pursuant to the Commission's obligation under the Choice Act to protect the cost-effectiveness and accessibility of CAP, and in the interest of judicial efficiency, CAUSE-PA urges the Commission to approve the Joint Stipulation and maintain the status quo for CAP customer shopping, pending resolution of the CAP shopping issues at bar in the ongoing litigation of PPL's default service plan. This is the only option on the record capable of addressing substantial harm to economically vulnerable CAP customers and other ratepayers, and should be approved.

Respectfully submitted,

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APPENDIX A - PROPOSED FINDINGS OF FACT

- 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. (CAUSE-PA St. 1 at 31-33).
- In 2018, the average household income of CAP participants was just \$14,291. (CAUSE-PA St. 1 at 33).
- As of December 31, 2018, Duquesne had a CAP enrollment of 36,075. (CAUSE-PA St. 1 at 33:16-18).
- 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. (CAUSE-PA St. 1 at 32).
- Even with assistance, low income households are often still unable to afford the cost of energy, and regularly forego other necessities or keep their home at unsafe or unhealthy temperatures to afford energy costs. (CAUSE-PA St. 1 at 32).
- Duquesne’s CAP is currently in transition from a percentage of budget bill program to a percentage of income payment program. (CAUSE-PA St. 1 at 38-39).
- Under Duquesne’s current percentage of budget bill program, participants are subject to a maximum CAP credit limit of \$1,500 for non-electric heating and \$1,800 for electric heating. (CAUSE-PA St. 1 at 38).
- Under Duquesne’s pending percentage of income payment program, once implemented, participants will be subject to a tiered maximum CAP credit limit, ranging between \$900 to \$2,300, depending on income and service type (heating/non-heating). (CAUSE-PA St. 1 at 39).
- Each month, a CAP customers’ maximum CAP credits are reduced by the amount of assistance received on a dollar-for-dollar basis. Once the maximum is reached, the customer must pay full tariff rates for the remainder of the program year. (CAUSE-PA St. 1 at 40-41).
- The CAP credit, sometimes called the CAP shortfall – is paid for by all residential, non-CAP customers. In 2018, Duquesne’s residential ratepayers paid \$51.70 – or approximately \$4.31/month – to support CAP. (CAUSE-PA St. 1 at 39).
- Any increase over the default service price – even for a short time - will disrupt the ability of CAP to produce an affordable bill, consistent with the Commission’s

established energy burden standards, and will increase the cost of CAP for other residential ratepayers. (CAUSE-PA St. 1 at 40-41).

- Overall, on a net and average basis from January 2017 through May 2020, Duquesne's residential shopping customers were charged nearly \$102.9 million more than the applicable PTC. (CAUSE-PA St. 1 at 7:17-18).
- The lowest monthly average price that residential shopping customers paid for electricity since January 2017 was \$0.0914/kWh – also in January 2017. (CAUSE-PA St. 1 at 7:20-21). Since then, residential shopping rates have steadily increased – even as default service prices remained relatively steady. (CAUSE-PA St. 1 at 9, Chart 1 & Exhibit 1).
- From January 2017 to May 2020, residential shopping customers were charged, on average, between \$7 and \$27 *each month* over the applicable default service price. (CAUSE-PA St. 1 at 9:5-6).
- The average, per-customer amount residential shopping customers are charged in excess of the PTC has grown year over year from \$131.86 in 2017 to \$238.55 in 2019. 2020 is on track to meet or exceed 2019 – averaging \$19.17 each month in excessive supplier charges. (CAUSE-PA St. 1 at 9: 12-13, T.2).
- In the first three months of the pandemic, from March through May 2020, residential shopping customers in Duquesne service territory were charged \$8,208,121.09 more than the applicable price to compare. (CAUSE-PA St. 1-R at 4).
- At the end of May, 2020, 54,114 residential customers in Duquesne's service territory were faced with imminent termination of service for non-payment – up 61% from May 2019. (CAUSE-PA St. 1-R at 4, n.1).
- Duquesne's CAP customers are not currently permitted to shop for electricity from competitive suppliers. (CAUSE-PA St. 1 at 10).
- Because CAP customers are not currently able to shop, there is a relatively small pool of confirmed low income customers who are currently shopping (between 1,220 and 2,991) compared to the total number of confirmed low income customers (between 45,065 and 49,346). (CAUSE-PA St. 1 at 14:6-13.) Nevertheless, confirmed low income shopping trends are generally consistent with residential shopping trends. (*Id.*)
- Overall, on a net and average basis from January 2017 through May 2020, Duquesne's confirmed low income shopping customers were charged nearly \$900,000 in excess of the applicable PTC. (CAUSE-PA St. 1 at 15, T.4).
- While confirmed low income non-CAP customers experienced modest average per-customer savings in 2017 (\$0.73/month), the average charges in excess of the PTC for this group has grown exponentially since then – reaching an average of \$201.21 in 2019. (*Id.*)

- In 2019, the average LIHEAP grant for electric customers was approximately \$278. (CAUSE-PA St. 1 at 16:2-4). As Mr. Geller points out, this was “just \$76.79 more than the price that low income shopping customers were charged in excess of the default service price in 2019.” (Id.)
- Preliminary analysis of geographic shopping data from Duquesne – coupled with evidence from other states – “indicates ... that there may be racial equity issues in the competitive electric market.” (Id. at 16:15-20:13).
- If CAP customers were permitted to shop for electricity in the competitive market in 2019, and contracted for service at the average rate charged to confirmed low income (non-CAP) shopping customers in that year (\$201.21 over PTC), their applicable energy burden would have increased by nearly 1.5%. (CAUSE-PA St. 1 at 15, 36, 38-39).
- CAP shopping restrictions in PPL and First Energy service territories have proven insufficient to stop substantial harm to low income CAP customers, primarily due to holdover contracts for customers that were already shopping at the time they enter CAP and/or suppliers’ failure to timely return CAP customers to default service or otherwise transition the customer to a CAP compliant contract. (CAUSE-PA St. 1 at 46:7-48:16).
- In 2019, despite the implementation of strong CAP shopping rules, CAP shopping customers in PPL’s service territory were nevertheless charged nearly \$3 million more than the applicable PTC. (CAUSE-PA St. 1 at 47:4-6). In fact, 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 which led to the creation of PPL’s CAP-SOP. (Id.)
- Even if just 10% of Duquesne’s CAP customers (3,607) were to enter CAP with an existing contract at the average low income shopping price in 2019, and remain with their supplier for a 120 day transition period, the cost of CAP would increase by roughly one quarter of a million dollars (\$241,958) over a 120-day period. (CAUSE-PA St. 1-SR at 6:14-7:6 (emphasis added)).

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 directly 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, Duquesne 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); 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. The average price that residential and confirmed low income shopping customers pay for electricity is relevant to determining whether, how, and to what extent CAP customers should be permitted to shop for electricity in the competitive market.
24. 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.
25. 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).
26. 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).
27. The Stipulating Parties have demonstrated, by a preponderance of the evidence, substantial reasons why the terms in the Joint Stipulation should be approved.
28. The Stipulating Parties have demonstrated, by a preponderance of the evidence, that it is just, reasonable, and a prudent use of resources to maintain the status quo while issues pending in PPL’s DSP are fully litigated and resolved.
29. The proposal of the Stipulating Parties must be adopted because no reasonable alternative exists on the record that would not jeopardize the overall accessibility and cost-effectiveness of CAP for CAP customers and the ratepayers who subsidize the program.

APPENDIX C – PROPOSED ORDERING PARAGRAPH

1. The terms contained in the Joint Stipulation of Duquesne Light Company, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, and the Office of Consumer Advocate are approved without modification.