**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held October 27, 2016

Commissioners Present:

Gladys M. Brown, Chairman, Statement

Andrew G. Place, Vice Chairman, concurring in part and dissenting in part

John F. Coleman, Jr.

Robert F. Powelson, Statement, dissenting in part

David W. Sweet, Statement

Petition of PPL Electric Utilities Corporation P-2016-2526627

for Approval of a Default Service Program and

Procurement Plan for the Period June 1, 2017

Through May 31, 2021

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of PPL Electric Utilities Corporation (PPL, PPL Electric or the Company), the Retail Energy Supply Association (RESA) and PP&L Industrial Customer Alliance (PPLICA) filed on September 6, 2016, to the Initial Decision (I.D.) of Administrative Law Judge (ALJ) Susan D. Colwell, which was issued on August 17, 2016, in the above-captioned proceeding. Replies to Exceptions were filed by PPL, the Commission’s Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA) and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) on September 16, 2016.

1. **Background**

PPL is a jurisdictional electric distribution company (EDC) furnishing electric distribution, transmission and default supply services to approximately 1.4 million customers in its certificated service territory, which includes all or portions of twenty-nine counties in eastern and central Pennsylvania. PPL is a default service provider (DSP) as defined in Sections 102 and 2803 of the Public Utility Code (Code), 66 Pa. C.S. §§ 102, 2803.

1. **History of the Proceeding**

On January 29, 2016, PPL filed with the Commission a Petition for Approval of a Default Service Program and Procurement Plan (DSP IV or DSP IV Plan) for the period June 1, 2017 through May 31, 2021 (Petition). The Petition was filed pursuant to 66 Pa. C.S. §§ 2801, *et seq.*, and past Commission decisions governing PPL’s default service program. The applicable statute requires that the Commission issue its decision on this matter no later than nine months after the filing date, or on or before October 31, 2016.

PPL stated that this DSP Plan, DSP IV, consists of a proposal for competitive procurement of Default Service Supply and related Alternative Energy Credits (AECs) during the DSP IV Plan period, an implementation plan, a proposed rate design, including a Time-of-Use (TOU) rate option for Default Service during the DSP IV Plan period, a proposal to continue the Company’s Standard Offer Referral Program (SOP), a proposal to allow Customer Assistance Program (CAP) customers to shop and a contingency plan for the DSP IV Plan. Petition at 1.

On February 18, 2016, I&E filed a notice of appearance. On February 29, 2016, the OCA and the Office of Small Business Advocate (OSBA) filed Notices of Interventions and Answers. Petitions to Intervene were filed as follows: by NextEra Energy Power Marketing, LLC (NextEra) on February 26, 2016, by the Sustainable Energy Fund of Central Eastern Pennsylvania (SEF), by PPLICA and by Noble Americas Energy Solutions LLC (NAES) on February 29, 2016, by CAUSE-PA and Exelon Generation Company, LLC (Exelon) on March 3, 2016, and by RESA on March 4, 2016.

On March 18, 2016, PPL filed a Motion for Protective Order which was granted by an Order issued on March 18, 2016. An Amended Protective Order correcting wording was issued on March 30, 2016.

An evidentiary hearing was held on June 16, 2016. Testimony was served and admitted into the record by PPL, CAUSE-PA, I&E, the OCA, the OSBA and RESA. Exelon, NextEra, NAES, PPLICA and SEF did not submit testimony. The Parties reached a partial settlement of all but one issue, and they all waived cross-examination of all witnesses. Main Briefs (M.B.) were filed by PPL, the OCA, I&E, RESA, and CAUSE-PA on July 8, 2016.

On July 19, 2016, PPL, I&E, the OCA, the OSBA, PPLICA and RESA (collectively, the Settling Parties) filed a Joint Petition for Approval of Partial Settlement (Settlement or Partial Settlement). PPL, the OCA, I&E, RESA and CAUSE-PA filed Reply Briefs (R.B.) on July 19, 2016, with regard to the one litigated issue. Statements in Support of the Partial Settlement were submitted by PPL, PPLICA, the OSBA, I&E, the OCA and RESA. Letters indicating that the Parties did not oppose the Partial Settlement were filed by NAES and CAUSE-PA on July 19, 2016. Also, on July 19, 2016, the SEF filed a letter indicating that it did not oppose the Partial Settlement but did not agree that the DSP could be approved without a TOU plan. Exelon filed a letter indicating that it took no position on the Partial Settlement. The record closed on July 19, 2016.

On August 17, 2016, the ALJ issued her Initial Decision wherein she recommended approval of the Partial Settlement, as modified by the Initial Decision, approval of PPL’s Petition as modified by the Partial Settlement, granted PPL’s two requests for waivers of certain Commission Regulations, directed PPL to file a proposed TOU Program within ninety days of the entry date of this Opinion and Order and recommended adoption of the Customer Assistance Program Standard Offer Program (CAP-SOP) proposed by PPL, I&E, the OCA and CAUSE-PA, as modified by the Initial Decision.

As previously noted, Exceptions were filed by PPL, RESA and PPLICA on September 6, 2016. Replies to Exceptions were received on September 16, 2016, from PPL, the OCA, I&E and CAUSE-PA.

**III. Legal Standards**

### A. Burden of Proof

In this proceeding, the Company seeks approval of its plan to procure default service supply and, as such, has the burden of proving that its proposed DSP complies with the legal requirements. The proponent of a rule or order in any Commission proceeding bears the burden of proof, 66 Pa. C.S. § 332(a), and therefore, the Company has the burden of proving its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the Company’s evidence must be more convincing, by even the smallest amount, than the evidence presented by the other parties. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

Additionally, this Commission’s decision must be supported by substantial evidence in the record. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk & Western Ry. Co. v. Pa. PUC,* 49 Pa. 109, 413 A.2d 1037 (1980).

Upon the presentation by a utility of evidence sufficient to initially satisfy the burden of proof, the burden of going forward with the evidence to rebut the evidence of the utility shifts to the other parties. If the evidence presented by the other parties is of co-equal value or “weight,” the burden of proof has not been satisfied. The Company now has to provide some additional evidence to rebut that of the other parties. [*Burleson v. Pa. PUC,* 443 A.2d 1373 (Pa. Cmwlth. 1982), *aff’d,* 501 Pa. 433, 461 A.2d 1234 (1983).](http://www.lexis.com/research/buttonTFLink?_m=0d7e78528297490763e78babd487bc42&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2006%20Pa.%20PUC%20LEXIS%20102%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=16&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b66%20Pa.%20Commw.%20282%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=9&_startdoc=1&wchp=dGLzVzz-zSkAz&_md5=44d0f4cf51bc1159652e85695542a09d)

While the burden of going forward with the evidence may shiftback and forth during a proceeding, the burden of proof never shifts. The burden of proof always remains on the party seeking affirmative relief from the Commission. *Milkie v. Pa. PUC,* 768 A.2d 1217 (Pa. Cmwlth. 2001). However, a party that offers a proposal in addition to what is sought by the original filing bears the burden of proof for such a proposal. *Pa. PUC, et al., v. Metropolitan Edison Co.,* Docket No. R-00061366C0001 (Order entered January 11, 2007); *Joint Default Service Plan for Citizens’ Electric Co. of Lewisburg, PA and Wellsboro Electric Company for the Period of June 1, 2010 through May 31, 2013,* Docket Nos. P-2009-2110798 and P-2009-2110780 (Order entered February 26, 2010).

**B. Standards Applicable to Default Service**

The Electricity Generation Customer Choice and Competition Act (Competition Act or Choice Act)[[1]](#footnote-1) requires that default service providers acquire electric energy through a “prudent mix” of resources that are designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to customers over time; and (iii) to achieve these results through competitive processes that include auctions, requests for proposals and/or bilateral agreements. 66 Pa. C.S. §§ 2807(e)(3.1) and 2807(e)(3.4).

The Competition Act also mandates that customers have direct access to a competitive retail generation market. 66 Pa. C.S. § 2802(3). This mandate is based on the legislative finding that “[c]ompetitive market forces are more effective than economic regulation in controlling the cost of generating electricity.” 66 Pa. C.S. § 2802(5). *See, Green Mountain Energy Company v. Pa. PUC,* 812 A.2d 740, 742 (Pa. Cmwlth. 2002). Thus, a fundamental policy underlying the Competition Act is that competition is more effective than economic regulation in controlling the costs of generating electricity. 66 Pa. C.S. § 2802(5).

In addition to the foregoing statutory guidelines, the Commission has enacted default service Regulations, 52 Pa. Code §§ 54.181 to 54.189, and a policy statement, 52 Pa. Code §§ 69.1801 to 69.1817, addressing DSPs. The Regulations first became effective in 2007, and were amended in 2011 to incorporate the Act 129 amendments to the Competition Act. *Implementation of Act 129 of October 15, 2008; Default Service and Retail Electric Markets*, Docket No. L 2009‑2095604 (Final Rulemaking Order entered October 4, 2011) (*Act 129 Final Rulemaking Order*). The Commission has directed that EDCs consider the incorporation of certain market enhancement programs into their DSPs in order to foster a more robust retail competitive market. *Investigation of Pennsylvania’s Retail Electricity Market: Recommendations Regarding Upcoming Default Service Plans,* Docket No. I-2011-2237952 (Order entered December 16, 2011), and *Intermediate Work Plan* (Final Order entered March 2, 2012) (*IWP Order*).

**IV. The Partial Settlement**

**A. Terms and Conditions of the Partial Settlement**

The Settling Parties have agreed to the Partial Settlement which resolves all issues among the Settling Parties with the exception of one issue reserved for litigation, the CAP customer shopping issue. The Settling Parties assert that the Partial Settlement is not contested by any party. Partial Settlement at 1.

The Settling Parties further note that prior to the June 16, 2016 evidentiary hearing, PPL, I&E, the OCA and CAUSE-PA entered into a Joint Litigation Position that supported a single revised CAP shopping proposal as set forth in PPL’s rejoinder testimony designated as PPL Statement No. 1-RJ. Partial Settlement at 5.

The Partial Settlement consists of the Joint Petition containing the terms and conditions of the Settlement, Appendix A, which is the DSP IV Product Structure and Procurement Schedule for the Residential customer class and Appendix B, which includes the various SOP scripts used by vendors. Statements in Support of the Settlement were submitted by each of the Settling Parties.

The essential terms and conditions of the Partial Settlement are set forth in Section III. Settlement ¶¶ 20-38 at 6-12. The Settling Parties agreed to the following terms and conditions, with the original paragraph numbers maintained, as follows:

## GENERAL

### 22. Subject to the terms and conditions of the Partial Settlement, and a decision on the issue reserved for litigation, the Signatory Parties agree that the proposals set forth in PPL Electric’s Petition requesting approval of its DSP IV Program, including the Default Service SMA, RFP Product Procurement Schedule, and Tariff provisions for the GSC-1, GSC-2, and TSC are acceptable and should be adopted by the Commission.

### 23. The Signatory Parties agree that PPL Electric’s DSP IV Program, as modified by the terms and conditions of the Partial Settlement, includes and/or addresses all of the elements prescribed by Section 2807 of the Public Utility Code, the Commission’s regulations, and the Commission’s policies for a Default Service plan.

## DEFAULT SERVICE PROGRAM AND PROCUREMENT PLAN

### 24. The Signatory Parties agree that the DSP IV Program shall be in effect for a period of four years, from June 1, 2017 through May 31, 2021.

### 

1. PPL Electric agrees to hold a stakeholder collaborative in November 2017, open to all parties to this proceeding, to discuss any aspect of the products or programs approved in the DSP IV Program, as well as other retail market enhancement issues as they relate to PPL Electric’s provision of default service.
2. In the event any party believes market conditions have changed, the parties may present such information supporting their position during the collaborative.
3. Within 60 days from the date of the collaborative, PPL Electric will submit a report at this Docket summarizing the collaborative.

1. Nothing herein restricts any party’s rights under law to make any filing regarding (a) or (b) above, nor does anything herein restrict any position any party may take in any such proceeding or in any other proceeding. The Signatory Parties acknowledge that nothing contained herein is intended to expand or limit the Commission’s subject matter jurisdiction, including, but not limited to, matters that are within the jurisdiction of the Federal Energy Regulatory Commission and/or PJM Interconnection LLC.
2. Nothing contained herein is intended to limit the use of information presented during the collaborative for other appropriate purposes, including as set forth in paragraph (d).

25. For the Residential and Small C&I Customer Classes, the Signatory Parties agree that PPL Electric will procure layered 6-month and 12-month products twice per year, in April and October, with the first procurement occurring in April 2017 for Default Service beginning June 1, 2017. The Signatory Parties agree that the product portfolio and procurement schedule for the Residential Customer Class will be modified so that, exclusive of the long-term 50 MW block product for the Residential Customer Class, the procurements will be approximately 20% 6-month contracts and 80% 12-month contracts to decrease the total amount of default service supply being procured at one time. Attached to the settlement as Appendix A is a Residential Customer Class product portfolio and procurement schedule that reflects this settlement term.

26. PPL Electric agrees to modify the phrase “load weighted spot market energy price” in Article 9.1(b) of the DSP IV SMA to be “load weighted, real-time spot market energy price.”

## TIME OF USE

27. PPL Electric’s proposal in this proceeding to continue the Time of Use (“TOU”) rate option adopted in the *Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan*, Docket No. P-2014-2417907 (Jan. 15, 2015) (“DSP III”) for the DSP IV Program period is withdrawn.

28. PPL Electric’s TOU program has been remanded to the Commission by the appellate courts for further proceedings at Docket No. P-2013-2389572 (“TOU Remand Proceeding”). *See The Dauphin County Industrial Development Authority v. Pennsylvania Public Utility Commission*, 123 A.3d 1124 (Pa. Cmwlth. 2015). The parties to this proceeding reserve the right to fully participate in the Commission’s TOU Remand Proceeding, and nothing herein restricts any position any party may take in any such proceeding or in any other proceeding.

29. The Signatory Parties agree that the Company will comply with the Commission’s direction/order in the TOU Remand Proceeding for purposes of the entire or remaining duration of the DSP IV Program period (depending on when the TOU program is approved).

30. In the event a new TOU program has not been approved by the Commission in the TOU Remand Proceeding before the May 31, 2017 expiration of the current TOU program, PPL Electric agrees to promptly notify both customers and suppliers participating in the TOU program that the TOU rate option will expire on May 31, 2017.[[2]](#footnote-2)

## STANDARD OFFER PROGRAM

31. PPL Electric agrees to revise its Standard Offer Program (“SOP”) scripts within 90 days of Commission approval of the settlement to provide more explicit disclosures. Attached as Appendix B are revised SOP scripts that reflect this settlement term.

32. Within 90 days of Commission approval of the settlement, PPL Electric agrees to conduct, using the Company’s contracted independent survey company, a one-time survey of a random selection of customers participating in SOP regarding:[[3]](#footnote-3) (a) customers’ understanding of the SOP; (b) customers’ understanding that the Price to Compare (“PTC”) could change and could impact the level of savings realized by the customers during their enrollment in SOP; (c) whether customers are aware of the difference between the fixed SOP prices and the PTC during their enrollment in SOP; and (d) whether customers are aware of their right to terminate an SOP contract at any time without penalty. The purpose of the survey will be to assess the functioning of the SOP and the information will be used to inform future SOP processes and procedures. Nothing contained herein is intended to limit the use of survey information for other appropriate purposes.

1. PPL Electric agrees to make the survey questions available to the statutory advocates and any interested party in advance of the survey, and will consider other parties’ comments and input on the survey questions without any obligation to adopt or accept.
2. PPL Electric further agrees to provide the statutory advocates and any interested party with the results of the SOP survey.

1. The Signatory Parties agree that the costs of the survey shall not exceed $30,000. The Signatory Parties also agree that any costs incurred by PPL Electric to conduct the SOP survey will be recovered through PPL Electric’s Competitive Enhancement Rider.

33. Subject to any applicable intervening Commission order or regulation, if PPL Electric files to continue the SOP in its next Default Service proceeding, the Signatory Parties reserve their right to challenge whether the SOP should continue or be terminated.

34. The Signatory Parties agree that PPL Electric will modify the SOP Binding Agreement to make it clear that, for all customers that enroll or re-enroll in SOP, EGSs participating in the SOP must send an EDI 814 rate code change transaction by no later than 3 business days after the rescission period for enrollment or re-enrollment.

35. PPL Electric agrees that all customers that request enrollment in the SOP, both new and re-enrollments, will be placed into the SOP “pool” and randomly assigned to EGSs that are voluntarily participating in the SOP at that time. Provided, however, that customers seeking to enroll in the SOP, both new and re-enrollments, will continue to be permitted to request service from a specific SOP supplier.

36. PPL Electric agrees that it will implement any processes and protocols developed by the Seamless Moves and Instant Connect Electronic Data Exchange Working Group where and if applicable, including, to the extent feasible, the SOP.

## NON-MARKET BASED TRANSMISSION SERVICE CHARGES

### 37. PPL Electric agrees to monitor its own filings with the Federal Energy Regulatory Commission (“FERC”) and to provide notice to EGSs and default service suppliers of any such filings that modify the definition or application of Non-Market Based (“NMB”) Transmission Service charges. This includes but is not limited to any information filings implementing annual rate changes under a formula rate and any major transmission related filings that could have a significant impact on the pricing NMB charges.

1. All such notices will be provided via an e-mail correspondence issued through the PPL Electric Supplier Portal, and will also be posted on the Company’s Default Service webpage.

1. PPL Electric agrees to provide such notices of such filings as soon as practical, and in advance if possible. PPL Electric will make a best effort to comply with this settlement term, but the Signatory Parties agree that PPL Electric will not in any way be liable for inadvertently failing to provide notice or inadvertently proving inaccurate notice of any FERC filings or proceedings that ultimately impact the definition or application of NMB.

## SUPPLIER COORDINATION TARIFF

38. PPL Electric agrees to update its Supplier Coordination Tariff to reflect the current Purchase of Receivables (“POR”) discount rate and to ensure that the Supplier Coordination Tariff is updated with any future Commission-approved changes.

Settlement at 6-12.

In addition to the specific terms to which the Settling Parties have agreed, the Settlement contains certain general terms. The Settling Parties state that the Partial Settlement is in the public interest and will provide substantial affirmative public benefits. Settlement ¶ 39 at 12. The Settlement is conditioned upon Commission approval of the terms and conditions without modification. The Settlement establishes the procedure by which any of the Settling Parties may withdraw from the Settlement and proceed to litigate this case, if the Commission should act to modify the Settlement. Settlement ¶ 43 at 13. In addition, the Settlement states that the Settlement does not constitute an admission against, or prejudice to any position which any of the Settling Parties may adopt during subsequent litigation of this case, in the event the Settlement is rejected by the Commission, or in any other proceeding. Settlement ¶ 45 at 13.

The Settling Parties respectfully request that the ALJs and the Commission approve the proposed Partial Settlement, without modification and approve the proposals set forth in PPL’s DSP IV Program. Settlement at 14.

**B. Legal Standards Relative to Settlements**

This Commission has a policy of encouraging settlements. *See* 52 Pa. Code § 5.231(a); *also* 52 Pa. Code §§ 69.401, *et seq*., relating to settlement guidelines for major rate cases, and our Statement of Policy relating to the Alternative Dispute Resolution Process (Mediation), 52 Pa. Code § 69.391, *et seq*. Settlementslessen the time and expense that Parties must expend litigating a case and, at the same time, conserve administrative resources. This Commission has stated that results achieved through settlement are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.

This Commission’s evaluation of whether to approve a settlement is not based on a “burden of proof” standard, as is utilized for contested matters. *Pa. PUC, et al. v. City of Lancaster - Bureau of Water*, Docket Nos. R-2010-2179103, *et al.* (Order entered July 14, 2011) at 11. The Commission must review proposed settlements to determine whether the terms are in the public interest. *Pa. PUC v. York Water Co*., Docket No. R-00049165 (Order entered October 4, 2004); *Pa. PUC v. C.S. Water and Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991); *Pa. PUC v. PPL Electric Utilities Corporation*, Docket No. M-2009-2058182 (Order entered November 23, 2009); *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered January 7, 2004); *Warner v. GTE North, Inc*., Docket No. C-00902815 (Order entered April 1, 1996); 52 Pa. Code § 69.1201.

**C. ALJ’s Recommendation**

In her Initial Decision, the ALJ made 104 Findings of Fact and reached nineteen Conclusions of Law. I.D. at 7-25, 71-73. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order.

In her Initial Decision, the ALJ recommended approval of the Partial Settlement with the exception of the provision concerning PPL’s TOU program. I.D. at 70. Specifically, the ALJ found that the longer four-year term of the DSP IV Plan as proposed by the Company was in the public interest and should be approved. I.D. at 28‑30. With regard to procurement and rate design, the ALJ found that PPL’s plan is designed to comply with the statutory requirements that the Company procure its default service supply at the least cost to customers over time, is substantially the same as the DSP III plan which is working well and, as such, is in the public interest. I.D. at 30-32. Additionally, the ALJ found that the remainder of PPL’s DSP IV Plan as modified by the Partial Settlement, except the TOU provision, is in the public interest. I.D. at 32-39.

With regard to the TOU provision of the Partial Settlement, the ALJ noted that a proposed TOU rate option for default service during the DSP IV Program period was withdrawn by the Company and agreed to or not opposed by the Parties to the Partial Settlement. Partial Settlement ¶¶ 27-30. The ALJ explained that the present TOU program was approved as a pilot program and became effective December 10, 2014. The ALJ noted that all but one of the Parties to the case before the Commission, the OCA, the OSBA, and CAUSE-PA, settled the case involving PPL’s TOU program, but that the one remaining party, the Dauphin County Industrial Development Authority (DCIDA) appealed the Commission’s approval of the settlement to the Commonwealth Court. DCIDA had contended that PPL was impermissibly shifting its statutory duty to offer TOU rates to consumer-generators to an unrelated third party, an electric generation supplier (EGS). I.D. at 64-65.

The ALJ stated that in a decision issued on September 9, 2015, the Court rejected the Commission’s Order and remanded the TOU issue to the Commission.

*See The Dauphin County Industrial Development Authority v. Pa. PUC*. 123 A.3d 1124 (Pa. Cmwlth. 2015)(*DCIDA*). According to the ALJ, after submitting one TOU program which resulted in a serious revenue shortfall and subsequent freezing of the rates, another which was found to provide insufficient incentive for reducing usage during off-peak times and having the last TOU program stricken by the Commonwealth Court because it shifted the default service provider’s duty to EGSs, the Company is, quite understandably, reluctant to propose another program without Commission guidance. The ALJ explained that in the present case, the original filing proposed to continue the TOU program was approved in DSP III, but the Company has withdrawn the proposal in light of the *DCIDA* decision. The ALJ noted that the Company and the other parties anticipate a Commission directive in the *DCIDA* Remand, which could supersede any plan set forth here. I.D. at 65-66.

Next, the ALJ explained that recognizing the frustration of the Company in trying to meet the statutory requirement but falling short, and the fact that *DCIDA* is on remand, the Parties either agreed with or did not oppose the Settlement provision that withdrew the TOU program from the DSP IV Plan. *See* I&E St. in Support at 7; PPL St. in Support at 17. However, according to the ALJ, *DCIDA* is specific to DSP III, which expires on May 31, 2017, and unfortunately, at this time the statute still requires that the EDC present a TOU program as part of its DSP plan. The ALJ stated that the TOU plan under DSP III is on remand from the Commonwealth Court, but that plan expires when the present DSP IV Plan takes effect and DSP IV will take effect on June 1, 2017, and is required to include a TOU program. *See* 66 Pa. C.S. § 2807(f)(5). According to the ALJ, omitting the TOU program from a DSP case will not pass judicial muster. Accordingly, the ALJ concluded that there is no choice but to direct PPL to develop a proposed TOU plan and file it within three months of the final Commission Order in this matter, with the understanding that the Commission may subsume this initiative into the remand proceedings from *DCIDA* in favor of a state-wide collaborative or directive regarding TOU plans in general. I.D. at 68.

Finally, the ALJ explained that the Partial Settlement states that, should there be no approved TOU program in place when the DSP III expires on May 31, 2017, the Company will notify customers and suppliers. *See* Settlement ¶ 30. The ALJ opined that it is doubtful that a new TOU program can be successfully litigated and approved by that date, and that execution of this paragraph may be necessary. Accordingly, the ALJ recommended that the Partial Settlement’s lack of a TOU plan is not approved, and recommended that the Company be directed to develop and submit a TOU plan for approval. I.D. at 69.

**D. Exceptions and Replies**

Initially, we note that any issue or Exception that we do not specifically address should be deemed to have been duly considered and rejected without further discussion. It is well settled that the Commission is not required to consider, expressly or at length, each contention or argument raised by the parties. *Consolidated Rail Corporation v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); *see also, generally*, *Univ. of Pa. v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

### 1. PPL Exception No. 1 - Time of Use Program

In its Exceptions, PPL disagrees with the ALJ’s recommended modifications to the TOU Settlement provision. PPL asserts that the Company’s TOU plan should be addressed and resolved in the TOU remand proceeding. As such, PPL requests that the Commission adopt the Partial Settlement without modification. PPL explains that subsequent to its filing of this DSP IV Plan, the Company’s TOU rate option within DSP III was rejected by the appellate courts and remanded to the Commission. Based on this new development late in the DSP IV proceeding, PPL states that it agreed within the Partial Settlement to wait for the Commission’s direction in the TOU remand proceeding and file a TOU plan consistent with the Commission’s guidance. PPL Exc. at 2-3.

PPL notes that it acknowledges that Section 2807(f)(5) of the Code requires default service providers to submit one or more TOU and real-time pricing plans and that it conceptually agrees with the ALJ that a new TOU plan must be filed and approved by the Commission, and that this filing be made as soon as reasonably possible. However, PPL avers that given the history of the Company’s TOU program and the fact that the most current version has been determined to be unlawful and remanded to the Commission for further proceedings, it is more efficient for the Company to wait for the Commission’s input and guidance on a lawful and appropriate TOU program under Section 2807(f)(5). PPL avers that given the long and frustrating history of the Company’s TOU program, the Commission should recognize that PPL’s TOU program is stuck between the proverbial “rock and a hard place.” PPL opines that both the Commission and the Company have spent significant time and effort in trying to develop and implement a lawful and successful TOU program. PPL notes that to date, the Commission has not acted on the remand and, as a result, the outcome of the TOU program is unknown and should wait for further guidance by the Commission. PPL Exc. at 4-7.

PPL asserts that under these unique circumstances, it would be reasonable and prudent for the Company to wait for the Commission’s order on remand before filing a new TOU plan. Given the Courts rejection of the use of EGSs as encouraged by the Commission, it is entirely unknown whether the Commission on remand will direct the Company to implement the TOU contingency plan, implement a modified contingency plan, file an entirely new TOU proposal or direct some other action. PPL opines that if it were to develop and file a separate TOU plan as recommended by the ALJ before the Commission acts on the Court’s remand, such a filing could be inconsistent with TOU recommendations offered by the Commission on remand. PPL Exc. at 7.

Replies to Exceptions on this issue were not submitted by any other Party.

**2. Disposition**

Based upon our review and consideration of the record evidence, we are convinced by the arguments of PPL that it is reasonable and appropriate for the Company to defer the development of the TOU plan pending the outcome of the remanded TOU proceeding presently before the Commission. By approving the Partial Settlement, we are not determining that PPL shall not file a TOU plan, but rather that PPL file a TOU plan, consistent with the Commission’s direction in the remand proceeding, and that such plan will apply to the entire or remaining duration of the DSP IV Program period. As such, we shall reject the recommendation of the ALJ that PPL be required to submit another TOU proposal within ninety days of the entry date of this Opinion and Order. We are in agreement with the position of PPL that based upon the Commonwealth Court remand of the prior Commission approved TOU program due to the Court’s finding that it was unlawful, the most efficient use of resources would be to concentrate the development of an effective and lawful TOU program option within the remanded proceeding currently pending before the Commission. It is important to note that none of the Parties in this proceeding opposed this aspect of the Partial Settlement.

Accordingly, we shall grant the Exceptions of PPL on this issue and modify the recommendation of the ALJ by approving the portion of the Partial Settlement related to the TOU rate option.

**3. PPLICA Exception - Non-Market Based Transmission Service Charges**

In its Exceptions, PPLICA states that it supports the Partial Settlement but files a limited Exception seeking clarification of certain language set forth in the ALJ’s Initial Decision. Specifically, PPLICA requests that the Commission clarify the record regarding the publication of changes to NMB transmission service charges. PPLICA notes that one of the issues resolved by the Partial Settlement included PPL’s agreement to monitor its filings with the Federal Energy Regulatory Commission (FERC) and to provide notice to EGSs and default service suppliers of any filings that affect the definition or application of NMB charges. *See* Partial Settlement ¶ 37. PPLICA points out that the Settling Parties agreed that appropriate forms of notice include e-mail correspondence issued through the PPL Electric Supplier Portal and posts to PPL’s Default Service webpage. *See* Partial Settlement ¶ 37(a). PPLICA Exc. at 1.

PPLICA states that the ALJ indicated in her discussion of this issue that she adopted the reasoning of the Parties to support a finding that Partial Settlement Paragraph No. 38 is in the public interest. *See* R.D. at 38. PPLICA also notes that the ALJ mentioned that notice to EGSs would occur via e-mails through the PPL Electric Supplier Portal. *See* R.D. at 37. PPLICA requests that for purposes of clarification that the Commission clarify that the applicable provision is set forth in Paragraph No. 37, not Paragraph No. 38, of the Partial Settlement, and requires PPL to publicize the requisite notices through its Electric Supplier Portal as well on its Default Service webpage. PPLICA submits that this limited clarification will benefit the Commission and all Parties by avoiding uncertainty and confirming that the ALJ did not intend to modify Paragraph No. 37 of the Partial Settlement. Also, absent clarification, PPLICA submits that the ALJ’s language addressing publications of notices regarding NMB Charges may be interpreted as a modification eliminating the obligation to post the notice to PPL’s Default Service webpage. PPLICA Exc. at 1-2.

Replies to Exceptions on this issue were not submitted by any other Party. However, in its Replies to Exceptions, PPL included a footnote stating that this cross-reference in the Initial Decision was nothing more than an inadvertent typographical error and was not intended to modify this part of the Settlement. In fact, PPL points out that the Initial Decision recommended that Paragraph No. 37 of the Settlement be adopted without modification. For these reasons, PPL submits that PPLICA’s Exceptions are unnecessary and, therefore, will not be further addressed. PPL R. Exc. at 1 n.1.

**4. Disposition**

Based upon our review of the record we find that PPLICA’s requested modification has merit. As such, we shall grant the Exception of PPLICA on this issue and modify the ALJ’s Initial Decision to clarify that Paragraph No. 37 of the Partial Settlement is approved without modification and also that PPL shall post notices on its Default Service webpage.

**E. Disposition of the Partial Settlement**

Upon our review of the Partial Settlement, we find it is reasonable and in the public interest and, therefore, we shall approve it without modification. We agree with the ALJ that PPL’s proposed generation supply procurement plan, as set forth in its DSP IV program and modified by the terms of the Partial Settlement, encompasses a prudent mix of supply methods, which is anticipated to result in adequate, reasonable and reliable service to customers, as well as service that is provided at the least cost over time. We also agree with the deferral of the TOU rate option pending Commission resolution of the TOU Remand proceeding. In addition, we agree that AECs are provided for in a competitive fashion, and a contingency plan is properly established. We also find reasonable the provisions regarding the timing of the PTC and procurements, the reconciliation of the GSC-1, GSC-2, and TSC, the terms of the SMA, the terms of the SOP, and net metering.

The Partial Settlement resolves the majority of the issues impacting Residential consumers, Small C&I customers, Large C&I customers, and the public interest at large. The benefits of the Partial Settlement are numerous and will result in significant savings of time and expenses for all Parties involved by avoiding the necessity of further administrative proceedings, as well as possible appellate court proceedings. For the reasons stated herein and in the Settling Parties’ Statements in Support, we agree with the ALJ’s conclusion that the Partial Settlement is in the public interest, noting our disagreement with the ALJ’s directive with regard to the TOU rate option. Accordingly, we shall approve the Partial Settlement, without modification, and adopt the ALJ’s recommendation as modified by this Opinion and Order.

**V. Contested Issue – CAP Shopping**

As noted above, the Partial Settlement resolved all issues among the Settling Parties except for the CAP customer shopping proposal. The litigated issue involves whether there should be limitations on CAP customers’ ability to shop for electric supply from EGSs and, if so, what limitations should be applied to CAP shopping. This issue was reserved for litigation and will now be discussed in detail.

**A. Positions of the Parties**

PPL stated that the Commission expressly directed that the issue of CAP shopping should be addressed in this DSP IV proceeding. PPL explained that in its 2014-2016 Universal Service and Energy Conservation Plan, the Commission directed the Company to address CAP shopping in its next DSP plan. *See PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2014-2016 Submitted in Compliance with 52 Pa. Code § 54.74,* Docket No. M-2013-2367021 (Order entered September 11, 2014) at 18. Further, PPL noted that in its 2015 base rate case, the Commission directed the Company to obtain and provide data regarding CAP shopping, and reserved the right of interested parties to “evaluate further revisions to the CAP customer participation in the competitive shopping market and to recommend changes to CAP customer shopping in the Company’s next default service procurement plan proceeding.” *Pa. PUC v. PPL Electric Utilities Corporation,* Docket No. R-2015-2469275 (Order entered November 19, 2015) at 13. PPL M.B. at 9-10.

Next, PPL stated that any question concerning the Commission’s authority to impose restrictions on CAP customers’ ability to shop for competitive electric generation supply has been fully resolved by the Commonwealth Court of Pennsylvania. PPL referred to *Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania v. Pa. PUC,* 120 A.3d 1087(Pa. Cmwlth. 2015) (CAUSE-PA*)*,wherein the Court found that, although the overarching goal of the Competition Act is competition through deregulation of the energy supply industry, this does not mean there must be absolute and unbridled competition. PPL M.B. at 10, citing CAUSE-PA at 1101. PPL stated that the Court also found that the Competition Act imposes an obligation on the public utility to provide low-income programs and expressly requires the Commission 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. PPL M. B. at 10-11, citing CAUSE-PA at 1103.

PPL further stated that the Court concluded “that the [Commission] 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 offer from an EGS that a customer could accept and remain eligible for CAP benefits.” PPL M.B. at 11, citing CAUSE-PAat 1103. PPL provided that specifically, the Court held that “[s]o long as it provides substantial reasons why there is no reasonable alternative so competition needs to bend to ensure adequately-funded, cost-effective, and affordable programs to assist customers who are of low income to afford electric service, the [Commission] may impose CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits – *e*.*g*., an EGS rate ceiling, a prohibition against early termination/cancellation fees, etc.” PPL M.B. at 11-12, citing *CAUSE PA* at 1104.

PPL explained that “OnTrack” is the Company’s Commission approved CAP program which is available to qualifying Residential customers. Through OnTrack, PPL stated that it provides reduced payment amounts based on household income, offers arrearage forgiveness and refers customers to other assistance programs. PPL stated that OnTrack customers pay a fixed amount each month based on household income and ability to pay but are removed from OnTrack if they miss two consecutive payments or when they exceed their allocation of CAP credits. PPL explained that the CAP credits are the difference between the fixed OnTrack payment and the total OnTrack customer electric bill. According to PPL, the maximum CAP credits are set in the Company’s base rate cases and universal service proceedings and the current maximum eighteen-month CAP credit is $185 per month for electric heat customers ($3,328 over 18 months) and $73 per month for non-electric heat customers ($1,310 over 18 months). According to PPL, the higher the total bill, the faster the OnTrack customer will reach the maximum CAP credit and be removed from OnTrack. PPL M.B. at 12-13.

Next, PPL stated that the Company’s costs associated with its universal service programs, including OnTrack, are recovered through the Commission-approved Universal Service Rider (USR), which is a reconcilable rider applied and recovered from all Residential customers. PPL explained that the difference between the fixed OnTrack monthly payment and the CAP customer’s monthly energy charges, including EGS charges, are recovered through the USR. According to PPL, an increase in the average monthly energy charges incurred by CAP customers will result in an increase in the costs recovered from and paid by all Residential customers through the USR. PPL M.B. at 13.

PPL stated that within its service territory, OnTrack customers have always had the ability to receive default service or shop for electric supply from EGSs. PPL noted that the percentage of OnTrack customers that have selected an EGS has risen from 44% in September 2013 to 52% in October 2015, and that over a thirty-four-month period (January 2013 through October 2015), an average of 49% of OnTrack customers were shopping. Further, PPL stated that over that same period, an average of 55% of OnTrack shoppers were paying an EGS price above the PTC, and 45% of OnTrack shoppers were paying an EGS price at or below the PTC. PPL explained that it then conducted an analysis, by month, of OnTrack shoppers that paid EGS prices above the PTC from January 1, 2012, through October 30, 2015, a forty-six month period. PPL determined that the OnTrack shopping customers’ average monthly energy charges were $31 higher each month than they would have been had they not shopped. PPL calculated that the total average monthly difference for all OnTrack shopping customers above the PTC was $298,406, which equates to $3,580,872 over twelve months. PPL explained that although these shopping customers’ OnTrack payment amounts did not change, the increase in costs means that they would have used up their CAP credits at a faster pace, which increases the risk of early removal from the OnTrack program. Additionally, PPL asserted that to the extent that these customers did not use up their CAP credits to pay higher energy charges, the higher average monthly energy charges increased the costs recovered from all Residential customers through the USR. PPL M.B. at 14-15.

Next, PPL conducted a similar analysis of OnTrack shoppers that paid EGS prices at or below the PTC during the same period and found that these OnTrack shopping customers’ average monthly energy charges were only $9 lower each month than they would have been had they not shopped. As such, PPL determined that the total average monthly difference for all OnTrack customers at or below the PTC was $69,750, which equates to $837,000 over twelve months. Therefore, PPL determined that the estimated average monthly net impact of all OnTrack shopping customers over the same period was $228,656 more than the PTC, which equates to the net effect for all OnTrack shopping customers of $2,743,872 over twelve months. According to PPL, the net financial impact of OnTrack shopping is an increase of approximately $2.7 million annually in the energy charges paid for supply provided to OnTrack customers, which increase is paid by other Residential customers through the USR. PPL M.B. at 15.

PPL next noted that it, the OCA and CAUSE-PA all initially proposed separate and different CAP shopping proposals to mitigate the adverse impacts of CAP shopping that have been identified. However, PPL explained that as a result of multiple rounds of testimony and discovery, the Company, I&E, the OCA and CAUSE-PA jointly withdrew their separate proposals and jointly supported the CAP-SOP shopping proposal set forth in PPL’s rejoinder testimony, PPL St. 1-RJ. PPL asserted that given the undisputed and significant adverse impacts that CAP shopping in its service territory currently has and will continue to have on both CAP customers and other Residential customers that pay for CAP costs, the Company believes that it is reasonable and prudent to take steps to mitigate these impacts. PPL M.B. at 17.

PPL stated that the first part of the CAP shopping proposal, also referred to as the Joint Litigation Position, is that the Commission should promptly initiate a statewide collaborative open to all interested stakeholders and/or initiate a new rulemaking proceeding to address CAP shopping issues on a uniform, statewide basis. Given the importance of the issues related to CAP shopping and their statewide impact, PPL stated that it strongly believes that a uniform, state-wide approach is the most prudent long-term approach in this complex situation. Next, PPL explained that the second part of the CAP shopping proposal is the implementation of an interim CAP-SOP that is based on the Company’s existing, traditional SOP. PPL explained that the CAP-SOP will continue to permit CAP customers to shop while, at the same time, mitigating the impacts that CAP shopping has and likely will continue to have, unless and until a uniform, statewide approach to CAP shopping be developed. If approved, PPL provided that the interim CAP-SOP would permit CAP customers to shop subject to the following limitations:

a) Effective June 1, 2017, the CAP-SOP is the only vehicle that a CAP customer may use to shop and receive supply from an EGS.

(b) Any CAP customer shopping request that does not get processed through the CAP-SOP will be denied.

(c) EGSs participating in the CAP-SOP must agree to serve customers at a 7% discount off the PTC at the time of enrollment. This price shall remain fixed for the 12-month CAP-SOP contract unless terminated earlier by the customer.

(d) CAP customers may terminate the CAP-SOP contract at any time and without any termination or cancellation fees or other penalties.

(e) A CAP customer who terminates a CAP-SOP contract or whose CAP-SOP contract reaches the end of its term can re-enroll in the CAP-SOP.

(f) At the conclusion of a 12-month CAP-SOP contract, the CAP customer will be returned to the CAP-SOP pool and be re-enrolled in a new CAP-SOP contract, unless the CAP customer requests to be returned to default service or is no longer a CAP customer.

(g) EGSs must enroll separate from the standard SOP to be a participating supplier in the CAP-SOP. EGSs would be free to voluntarily elect to participate in none, one or the other, or both the traditional SOP and the proposed CAP-SOP. Enrollment will be for a three-month period, and shall conform to the enrollment process for the standard SOP. EGSs may opt in to participate in the CAP-SOP on a quarterly basis, and are free to leave the CAP-SOP on a quarterly basis.

PPL M.B. at 19-20.

PPL stated that if the Commission approves the CAP-SOP proposal, it would hold a collaborative open to all interested parties within ninety days of the date of a final order in this proceeding to develop CAP-SOP specific scripts to be used by the Company’s customer service representatives and PPL Solutions. PPL stated that this is an interim measure until a uniform, statewide approach to CAP shopping can be developed. Until that time, PPL stated that the Parties should be free to petition the Commission to re-open the CAP-SOP in the event that there is no EGS participation in the program and/or there are changes in retail market conditions that would otherwise justify reopening the CAP-SOP. PPL St. 1-RJ at 9; PPL M.B. at 23. According to PPL, this addresses the EGSs’ concerns regarding maintaining a set contract price. PPL M.B. at 20-23.

In their Main Briefs, the OCA, I&E and CAUSE-PA all supported the position identified in the Joint Litigation Position which was described in detail within the PPL Main Brief.

RESA is the only party in this proceeding to oppose the restrictions on the ability of CAP customers to shop set forth in PPL’s rejoinder testimony and in the Joint Litigation Position. Instead, RESA urged the Commission to direct implementation of PPL’s CAP shopping proposals as set forth in the Company’s direct testimony, the PPL Initial Proposal. RESA asserted that the law is clear that the “overarching goal” of the Competition Act is competition and, while the Commission may “bend” competition to further other important aspects of the Competition Act, it can: (1) only do so upon a showing of substantial reasons why there are no reasonable alternatives to the proposed restriction on competition; and (2) may rely on substantial evidence showing why proposed restrictions on competition should be rejected. *See* CAUSE-PAat 1107-1108. RESA asserted that this evidence can include a showing that the proposed restrictions may adversely affect available choices for CAP customers. *Id.* Next, RESA asserted that the record in this proceeding includes a reasonable alternative to restricting the ability of CAP customers to shop that would appropriately address the long-term concern of CAP shopping through a statewide collaborative and address the short-term concern by implementing measures to encourage CAP customers to participate in PPL’s customer referral SOP. RESA claimed that by participating in SOP, CAP customers would be able to avail themselves of a price for electricity seven percent off the then-effective PTC upon enrollment and not be subject to early termination/cancellation fees. RESA opined that this addresses some of the concerns raised in this proceeding. RESA M.B. at 1-2.

Next, RESA asserted that the restrictions inherent in the Joint Litigation Position would take away the current right of CAP customers to freely shop as they could only receive competitive supply through a to-be-created “CAP-SOP.” RESA opined that the proposed structure of the CAP-SOP includes program restrictions that would result in no EGSs participating because it would require the EGS to pay a $28 referral fee for each customer, agree to only provide below market electricity (7% off the then-effective PTC at enrollment) and prohibit the EGS (or any other EGS) from marketing other products to the CAP customer. According to RESA, EGSs are not likely to view such structure as favorable and would not agree to provide service under these conditions. RESA maintained that the practical result would be to remove any opportunity for CAP customers to shop. RESA M.B. at 2-3.

**B. ALJ’s Recommendation**

First, the ALJ stated that the Parties shaped the questions before the Commission differently, but explained that the issues are as follows:

(1) whether restrictions on CAP shopping are permitted under applicable law?

(2) whether the facts presented in this proceeding justify the imposition of restrictions on CAP shopping?

(3) whether restrictions should be EDC-specific or statewide?

(4) whether the CAP-SOP program should be adopted in this proceeding?

I.D. at 39.

The ALJ explained that before the evidentiary hearing, PPL, the OCA, I&E, and CAUSE-PA (the Joining Parties) agreed upon a Joint Litigation Position, which was submitted as such and included within the testimony of PPL witness James M. Rouland, Statement 1-SJ. The ALJ stated that the negotiated Joint Litigation Position was provided as follows:

1. The Commission should promptly initiate a statewide collaborative open to all interested stakeholders and/or initiate a new rulemaking proceeding to address CAP shopping issues on a uniform, statewide basis.

2. The Commission should approve the interim CAP-SOP proposal by the Company, OCA, I&E, and CAUSE-PA which requires all CAP customers who wish to shop to do so through the SOP. EGSs participating in the CAP-SOP must agree to serve customers at a 7% discount off the PTC at the time of enrollment for a fixed period of 12 months unless terminated earlier by the customer. CAP customers may cancel at any time without any termination or cancellation fees or penalties. Even after cancelling, a CAP customer may re-enroll in the CAP-SOP. At the end of the 12-month period, the CAP customer will be returned to the CAP-SOP pool and can be re-enrolled if desired. EGSs must enroll separate from the standard SOP to be a participating supplier in the CAP-SOP. EGSs will enroll for a 3-month period.

After approval, the Commission will hold a collaborative open to all interested parties within 90 days of the date of a final order to develop CAP-SOP specific scripts to be used by the Company’s customer service representatives and PPL Solutions. PPL St. 1-RJ at 7-8; PPL M.B. at 20.

CAP customers already shopping as of the June 1, 2017 effective date of the new plan will be subject to these rules:

(a) All CAP customer shopping fixed-term contracts in effect as of the effective date of the CAP-SOP will remain in place until the contract term expires and/or is terminated.

(b) Once the existing CAP customer shopping contract expires or is terminated, the CAP customer will have the option to enroll in the CAP-SOP or return to default service, but in any event will only be permitted to shop through the CAP-SOP.

(c) PPL Electric will revise its CAP recertification scripts/process so that all existing CAP shopping customers receiving generation supply on a month-to-month basis after June 1, 2017 will be required at the time of CAP recertification to enroll in the CAP-SOP or return to default service, but in any event will only be permitted to shop through the CAP-SOP.

PPL St. 1-RJ at 8-9; PPL M.B. at 21; I.D. at 39-40.

In her Initial Decision, the ALJ discussed the recent, applicable court decisions and concluded that the issue of whether or not the Commission has the authority to approve restrictions on CAP shopping has been settled. The ALJ found that after years of Commission vigilance in the enforcement of protections and programs for the well-being of low-income families, it is simply inconsistent to find that the unfettered vibrancy of the competitive market supersedes the value of ensuring the success of the customer assistance programs that are vital to assist those families in meeting their energy bills. As such, the ALJ asserted that the next issue is whether there exist substantial reasons why there is no reasonable alternative, and the nature of the restrictions. I.D. at 41-47.

On this issue, the ALJ noted that RESA acknowledged the CAUSE-PAcase but emphasized the wording, “as long it provides substantial reasons why there is no reasonable alternative so competition needs to bend.” The ALJ explained that RESA argued that the Joining Parties have a duty to bear the burden of proving that no reasonable alternative to its Joint Litigation Position exists. *See* RESA M.B. at 17. The ALJ further noted that RESA argued that the as-filed PPL proposal does present a reasonable alternative and, therefore, the Joint Litigation Position must be rejected. S*ee* RESA M.B. at 17-18, I.D. at 47.

On this issue, the ALJ stated that in fact, all of the Joining Parties addressed the issue first in their own testimony and, after several rounds of testimony, came to the Joint Litigation Position. According to the ALJ, there are additional plans on the record in this proceeding and although the Joining Parties withdrew their own original positions to adopt the Joint Litigation Position, those original plans were all considered and determined by the four Parties to be inferior to the Joint Litigation Position. The ALJ stated that as they have not been briefed, they are not under consideration here, but that the evidence supports a finding that they were considered and rejected in favor of the Joint Litigation Position. The ALJ found that it is not feasible to require that the Joining Parties present an exhaustive list of all possible alternatives and discuss each one critically. According to the ALJ, they have shown that they weighed alternatives and are actively promoting the Joint Litigation Position as the best plan. The ALJ concluded that it is legally sufficient to show that alternatives have been evaluated and rejected in favor of the plan ultimately promoted, and to counter the alternatives raised by the party or parties opposing the choice. The ALJ further concluded that RESA did not present a reasonable alternative to be considered until briefing, and even then, relied upon the record and original plan as proposed by the Company. As such, the ALJ concluded that only two plans are presented on the record. I.D. at 47-48.

Next, the ALJ stated that based upon the data provided and the expert interpretation of it on the record of this proceeding, it is obvious that the class of OnTrack shoppers who pay more than the PTC exceed their CAP credits at a faster pace than they would have if they had not shopped. At the same time, the ALJ noted that it is just as clear that a nearly equal number of OnTrack shoppers are paying charges which are less than or equal to the PTC and may be saving a significant amount of money because of their choice of EGS. The ALJ found that the data was compelling, and is sufficient to establish a *prima facie* case in favor of shopping restrictions for CAP customers and to shift the burden of persuasion to RESA. I.D. at 53.

On this point, the ALJ found that RESA’s pointing out that the CAP customers may have enjoyed some other benefit is not persuasive where the actual knowledge of these theoretical benefits is within the records of RESA’s own members and not within the records of any other Party, including the Company. According to the ALJ, pointing out what might have happened is not sufficient to counter the weight of the real data presented by the Company, the veracity of which has not been challenged by any Party. As such, the ALJ concluded that RESA did not carry its burden of persuasion. I.D. at 55.

The ALJ found that an OnTrack customer who pays more than the PTC will use CAP credits at a faster rate and may lose the benefit of reduced rates earlier than necessary. The ALJ explained that this results in a higher bill and may imperil the customer’s ability to pay the electric bill while increasing the risk of service termination. In addition, the ALJ found that the collective result of many customers paying higher prices results in the Company’s total approved CAP amount being reached, thereby maximizing the amount of subsidization that is ultimately paid by the other Residential rate class customers. Next, the ALJ stated that the Competition Act acknowledged that the Commonwealth must continue the protections, policies and service that now assist customers who are low-income to afford electric service, and this Commission interprets this to include the provision of CAP programs. According to the ALJ, CAP programs are subsidized by the Residential rate class customers, and those customers pay higher bills in order to make the CAP programs meaningful for low-income customers. Therefore, the ALJ concluded that those CAP programs must be administered in a financially responsible fashion and not used to pay higher prices than necessary to third-party EGSs who do not subsidize CAP. Therefore, the ALJ concluded that the Parties have submitted substantial evidence to support the imposition of restrictions on CAP participants who want to shop, and RESA has not successfully rebutted that evidence. I.D. at 55-56.

Next, the ALJ addressed the inclusion within the Joint Litigation Position that the Commission should initiate a statewide collaborative and/or a new rulemaking to address CAP shopping issues. The ALJ stated that, ideally, restrictions imposed on CAP shopping should be statewide to level the playing field. The ALJ concluded that the facts of this case support a finding that some limitation on CAP shopping is justified, and that it stands to reason that EGSs operating in multiple service territories will be affected. Therefore, the ALJ found that a statewide initiative to determine the scope of the problem and the best uniform way to address it makes sense and she recommended that the Commission pursue that approach. I.D. at 56-57.

Next, the ALJ addressed the RESA recommendation that no restrictions be imposed on CAP shopping but to encourage CAP customers to use the SOP if they do shop. The ALJ stated that this “cross your fingers and hope they will listen” approach is simply insufficient, fails to protect the CAP shoppers from the negative effects of paying more than the PTC and reduces the ability of the individual customers to stay on CAP as long as possible. The ALJ stated that it also reduces the overall ability of the CAP program to offer participation to as many customers as possible within the permitted expenditure as well as maximizes the burden on other residential ratepayers who fund CAP, some of whom are themselves low-income customers. I.D. at 61.

However, the ALJ asserted that RESA does raise legitimate concerns which should not go unaddressed. For example, she noted that while an introductory rate of seven percent below the PTC at the time of enrollment with an EGS is an incentive to enter the competitive market that EGSs see as a legitimate introduction worth the cost and the $28 enrollment fee, keeping the rate year after year while paying additional enrollment fees each year is a burden on the EGSs that they may not see as worthwhile. According to the ALJ, the requirement that CAP shoppers only shop using the SOP may have the unintended effect of preventing those low-income shoppers who are market-savvy from negotiating even more favorable rates. The ALJ opined that at the same time, the importance of the protections provided to all CAP customers clearly outweigh the importance of the EGSs’ ability to make a profit serving those customers, at the expense of the other ratepayers. The ALJ further opined that while RESA has not advocated a legitimate middle ground which recognizes that the continuation of electric service to low-income Pennsylvanians as vital to their health and welfare, surely it can see that a customer who cannot pay the electric bill and has service terminated will not be a paying customer to the EGS anymore. According to the ALJ, the overall interest, both the human and economic interest, is in favor of assisting the low-income customer to retain electric service in the most reasonable way possible. I.D. at 61-62.

The ALJ explained that she was not privy to the suggestions that did not make the cut here, or to the reasons why. The ALJ stated that she loathes to inject her own ideas without the knowledge of what is involved in implementing ideas which may seem like obvious compromises. However, she stated that, in particular, she is sensitive to those ideas which require PPL to monitor EGSs, and looks instead to those which will result in PPL monitoring its own CAP customers. *See* CAUSE-PA M.B. at 31. The ALJ suggested that this, along with all other ideas and concerns, will be appropriate for discussion in the statewide initiative that she has recommended. However, she stated that she is also cognizant of the fact that the Commission may reject the statewide initiative and decide to address the issue of CAP shopping as one that is EDC-specific, and, therefore, she recommended that the CAP Shopping proposal take effect with the rest of the DSP IV Plan. I.D. at 62.

However, to be fair, the ALJ recommended adoption of a single modification to the approved Joint Litigation Position, and that is to allow the EGSs who are separately participating in the CAP-SOP to have flexibility to charge rates up to and equal to the PTC to CAP customers after the first twelve months of the seven percent discount if their written contracts so provide. According to the ALJ, this will serve two purposes. First, the ALJ asserted that this is an equalizing measure to provide incentive to EGSs to participate in the CAP-SOP, and it eliminates the need to re-enroll the low-income customers who are happy with their service provider, as well as the $28 enrollment fee for continuing customers. Second, the ALJ asserted that this proposal recognizes that the Competition Act was not meant to prevent EGSs from charging rates that are equal to the PTC to any class of customer, including CAP customers. The ALJ opined that while the SOP is acceptable as a program which introduces customers to shopping, requiring that the participating EGSs continue to offer a seven percent discount to CAP customers is unnecessary so long as the rates charged, after the introductory period of twelve months has ended, do not exceed the PTC. The ALJ opined that this modification should mitigate RESA’s dire prediction that the CAP-SOP will eliminate competition for CAP customers. I.D. at 62-63.

Therefore, the ALJ provided that the terms of the modified program, adopted as an interim program pending the outcome of the statewide initiative, is as follows (changes from the Joint Litigation Position are underlined as additions, stricken as deletions and the “reaffirmation date” being the day twelve months after the date that EGS service procured through the CAP-SOP began):

a) Effective June 1, 2017, the CAP-SOP is the only vehicle that a CAP customer may use to shop and receive supply from an EGS.

(b) Any CAP customer shopping request that does not get processed through the CAP-SOP will be denied.

(c) EGSs participating in the CAP-SOP must agree to serve customers at a 7% discount off the PTC at the time of enrollment. This price shall remain fixed for the 12-month CAP-SOP contract unless terminated earlier by the customer.

(d) CAP customers may terminate the CAP-SOP contract at any time and without any termination or cancellation fees or other penalties.

(e) A CAP customer who terminates a CAP-SOP contract or whose CAP-SOP contract reaches the end of its term can re-enroll in the CAP-SOP.

(f) At the conclusion of a 12-month CAP-SOP contract, the CAP customer may: (i) ~~will~~ be returned to the CAP-SOP pool and be re-enrolled in a new CAP-SOP contract, (ii) ~~unless the CAP customer requests to~~ be returned to default service, (iii) remain with the EGS which has agreed to the EGS participation requirement that it will not raise rates higher than the PTC was on the reaffirmation date. ~~or is no longer a CAP customer.~~

(g) EGSs must enroll separate from the standard SOP to be a participating supplier in the CAP-SOP. EGSs would be free to voluntarily elect to participate in none, one or the other, or both the traditional SOP and the proposed CAP-SOP. Enrollment will be for a three-month period, and shall conform to the enrollment process for the standard SOP. EGS may opt in to participate in the CAP-SOP on a quarterly basis, and are free to leave the CAP-SOP on a quarterly basis.

PPL St. 1-RJ; PPL St. in Support at 19-20. I.D. at 63-64.

The ALJ explained that transitioning CAP customers who are shopping as of the effective date of June 1, 2017, would be handled as follows:

(a) All CAP customer shopping fixed-term contracts in effect as of the effective date of the CAP-SOP will remain in place until the contract term expires and/or is terminated.

(b) Once the existing CAP customer shopping contract expires or is terminated, the CAP customer will have the option to enroll in the CAP-SOP or return to default service, but in any event will only be permitted to shop through the CAP-SOP.

(c) PPL Electric will revise its CAP recertification scripts/process so that all existing CAP shopping customers receiving generation supply on a month-to-month basis after June 1, 2017 will be required at the time of CAP recertification to enroll in the CAP-SOP or return to default service, but in any event will only be permitted to shop through the CAP-SOP.

I.D. at 64.

Finally, the ALJ concluded that the Joint Litigation Position be approved, as modified. Additionally, the ALJ noted that while this Initial Decision can encourage Commission action in the form of a statewide initiative, it cannot direct it. I.D. at 64.

**C. Exceptions and Replies**

**1. RESA Exception No. 1 – The ALJ Erroneously Concluded that the Proponents of CAP Shopping Restrictions Met Their Burden of Proof**

In its Exceptions, RESA states that the Commonwealth Court set forth the legal analysis that is to be applied when interpreting the Competition Act and how it is to be interpreted when there are potentially conflicting objectives, such as between the right to shop and maintaining affordability of electricity. RESA Exc. at 4, citing CAUSE-PAat 1104, 1106*.* According to RESA, that legal analysis recognizes that, while the overarching goal of the Competition Act is competition, the Commission does have the authority to bend competition to further other important aspects of the Competition Act. RESA Exc. at 4, citing CAUSE-PA at 1101, 1104, 1106, 1107-1108. However, RESA points out that such bending of competition may only occur upon a showing of substantial reasons why there are no reasonable alternatives to the proposed restriction on competition. RESA Exc. at 4-5, citing CAUSE-PAat 1104, 1106. RESA asserts that satisfying this burden, as the proponents of CAP shopping restrictions are required to do, is of particular importance here because there currently are no restrictions on the ability of PPL’s CAP customers to shop. RESA claims that any restrictions imposed will impact the existing right of PPL’s CAP customers (approximately 41,074) to shop freely, and the actual decisions made by those CAP customers who are shopping (20,738). RESA opines that the ALJ erred by concluding that this legal threshold has been met. According to RESA, the ALJ failed to properly analyze the alternatives to restricting the right to shop presented in the record of this proceeding; and erroneously relied on the CAP shopping data presented in this case as sufficient to support a finding that restrictions on CAP shopping are necessary. RESA Exc. at 4-5.

Next, RESA asserts that the record in this proceeding includes reasonable alternatives to restricting the ability of CAP customers to freely shop. RESA avers that the availability of a single reasonable alternative makes the imposition of restrictions on shopping unlawful. RESA maintains that the existence and viability of several reasonable alternatives were improperly ignored by the ALJ and the proponents of CAP shopping restrictions. The first reasonable alternative, according to RESA, is to do nothing as the maintenance of the status quo is a reasonable alternative. According to RESA, nothing in the record shows any compelling necessity for action at this time, especially considering the record support for a statewide collaborative. RESA Exc. at 5‑6.

RESA next asserts that the second alternative is to take action following a statewide collaborative (or a new rulemaking proceeding) open to all interested stakeholders to address CAP shopping issues on a uniform, statewide basis, as supported by the ALJ and the proponents of CAP shopping restrictions. RESA states that assuming that a collaborative takes place, that process could identify one or more reasonable alternatives to the restrictions being proposed at this time. RESA opines that it is reasonable to wait until the end of the collaborative, rather than to create shopping restrictions that may be changed or removed in the future. RESA further opines that there is no justification to unduly restrict the shopping rights of PPL’s CAP customers in advance of that collaborative. RESA Exc. at 6.

Next, RESA provides that a third reasonable alternative is revision of the structure of PPL’s CAP program to minimize negative financial impacts. RESA asserts that revisions to the rules for CAP credits could increase the ability of individual shopping customers to stay on CAP as long as possible and can be done without any restriction on the CAP customers’ rights to shop. According to RESA, the ability of CAP customers to shop freely is directly related to the structure of PPL’s CAP program. RESA explains that PPL’s CAP program is currently structured to interact with default service rates and the CAP credits are designed based on PPL’s default service rates. According to RESA, adjusting the CAP customer’s CAP credit to align with the price of a competitive supplier would be a reasonable alternative to restricting the right to shop. Also, RESA opines that there may be other reasonable alternatives within the PPL CAP program that would not require restricting CAP shopping but none have been offered in the record. RESA Exc. at 6-7.

Next, RESA offers that a fourth reasonable alternative is revision of the structure of PPL’s CAP so that CAP customers are placed on equal footing with non-CAP customers. RESA avers that PPL’s direct testimony proposed to educate and encourage any customers inquiring about its CAP, or other low-income program or customers actually enrolled in PPL’s CAP, be informed of the availability of the SOP. RESA states that this was PPL’s initial proposal on this issue. According to RESA, the availability of SOP would stimulate CAP customer participation in shopping and make available a product with a level of guaranteed savings with no early cancellation/termi-nation fees. RESA claims that despite acknowledging that the PPL initial proposal was presented for consideration, the ALJ does not determine that this proposal is a reasonable alternative to the PPL Rejoinder proposal. RESA opines that the conclusions reached by the ALJ were driven by the perceived need to protect CAP customers from the negative effects of paying more than the PTC. RESA further opines that those conclusions appear to have been reached without regard to any alternatives to preserving the right to shop, which was the focus of the directive from the Commonwealth Court. RESA Exc. at 7-8.

RESA asserts that rather than engaging in this analysis, the ALJ improperly shifted the threshold legal burden to it to propose alternate restrictions on CAP shopping even though RESA did not propose any restrictions on the right to shop. Therefore, RESA claims that it does not have an obligation to provide substantial reasons showing that there are no reasonable alternatives to restricting the right of CAP customers to shop. RESA further claims that it does not have an obligation to offer specific restrictions or revise shopping restrictions offered by other parties. RESA maintains that as the parties seeking to change the CAP rules, the proponents of CAP shopping restrictions bear the threshold legal burden of proving that there is no alternative course of conduct to preserve and protect the unfettered right to shop for an EGS. According to RESA, the willingness of PPL and others to agree to a proposal that restricts the statutory rights of CAP customers is not sufficient to show the lack of reasonable alternatives. RESA Exc. at 8.

RESA asserts that the ALJ wrongly concluded that it is “legally sufficient to show that alternatives have been evaluated and rejected in favor of the plan ultimately promoted, and to counter the alternatives raised by the party or parties opposing the choice.” Under that logic, RESA avers that the proponents of CAP shopping restrictions can satisfy that burden by actively presenting any cost-effective proposal that restricts the right to shop. RESA claims that the presentation of a restriction upon the shopping rights of non-CAP customers does not in and of itself show that there is no alternative course of conduct that would protect and preserve the right to shop. RESA opines that by improperly shifting the burden to RESA the ALJ has simply ignored not only the reasonable alternatives presented in this case, but also the clear direction of the Commonwealth Court to preserve and protect the statutory right of a CAP customer to freely choose an EGS. RESA Exc. at 9.

Next, RESA states that the data presented by PPL in this proceeding shows how customers have shopped in the past under PPL’s CAP rules and opines that this past shopping data may suggest the need to revise the CAP program on an ongoing forward basis. However, RESA contends that this data does not establish what revisions should be made, nor does it offer any insight into the existence or viability of any alternatives to restricting the right to shop. According to RESA, since the data does not relate to the existence or viability of any alternatives, it does not help the proponents of the CAP shopping restrictions to overcome their legal burden. RESA opines that the ALJ erred in concluding that the shopping data presented by PPL justifies the creation of a CAP rule that would restrict a participating customer’s ability to choose an EGS. RESA notes that while the ALJ agreed that the data does not present a complete picture, she concluded that the data showed two things: that certain CAP customers may be saving a significant amount of money because of their choice of an EGS and that other CAP customers may exceed their CAP credits at a faster pace because of their choice of an EGS. However, RESA posits that such data merely shows that, under PPL’s CAP rules, some CAP customers made better decisions than other CAP customers. RESA further avers that the data does not lead to the conclusion that CAP customers should no longer be able to avail themselves of the right to shop in the competitive marketplace for the EGS of their choice. RESA Exc. at 9-10.

**2. Replies to RESA Exception No. 1**

Replies to the RESA Exceptions on this issue were filed by each of the Joining Parties: PPL, the OCA, I&E and CAUSE-PA. The arguments presented within their respective Replies filed by the Joining Parties are similar in nature and as such, we will summarize in detail the Replies of PPL in the following discussion, and note the applicable portions of the OCA, I&E, and CAUSE-PA Replies collectively.

First, PPL states that the ALJ applied the correct legal standard regarding limits on CAP shopping. For example, PPL notes that the ALJ found that Section 2804(9) of the Competition Act, 66 Pa. C.S. § 2804(9), and the Commonwealth Court’s holding in CAUSE-PA*,* provide the Commission with authority, in the interest of ensuring that universal service plans are adequately funded and cost-effective, to impose CAP rules that limit a participating customer’s ability to choose an EGS and remain eligible for CAP benefits. PPL notes that RESA also relies on the Commonwealth Court decision in CAUSE-PAregarding the Commission’s authority to impose limits on CAP shopping, but argues the Commission can only do so where the proponents of restricting the right to shop have met their legal burden to provide: (1) that there are no reasonable alternatives to the proposed restrictions on competition; and (2) that the restrictions do not adversely affect available choices for CAP customers. PPL asserts that RESA’s interpretation of the Commission’s authority to impose limits on CAP shopping misapplies the Commonwealth Court’s decision in CAUSE-PA*.* PPL R. Exc. at 4; *see* also, CAUSE-PA R. Exc. at 5-6.

PPL next states that in CAUSE-PA, the Commonwealth Court reviewed the Commission’s determination to reject a CAP shopping program proposed by PECO Energy Company (PECO). PPL provides that three CAP shopping proposals were at issue in the PECO proceeding: (1) a price ceiling; (2) a customer education initiative; and (3) a prohibition on cancellation/termination fees. *See* CAUSE-PAat 1091. PPL explains that the Commission rejected the PECO price ceiling proposal for three reasons: (1) the Commission lacked authority to impose a ceiling on EGS rates; (2) the proposed ceiling was not in the best interest of CAP participants because it would limit the diversity of shopping programs, likely translate to higher prices for CAP customers and potentially lead to customer confusion with frequent price changes; and (3) PECO’s proposed customer education program would ensure CAP customers understand and properly manage their energy bills. *Id.* at 1092. However, PPL explains that on appeal, the Commonwealth Court concluded the Commission has authority to impose limits on CAP shopping, stating:

[W]e conclude that the [Commission] 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 offer from an EGS that a customer could accept and remain eligible for CAP benefits… Moreover, the Choice Act expressly requires the [Commission] 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.

*Id.* at 1103. PPL claims that the Court concluded that not only does the Commission have authority to impose limits on CAP shopping, the Commission is expressly required by the Choice Act to ensure CAP is administered in a manner that is cost-effective for both CAP and non-CAP customers. PPL R. Exc. at 4-6. (*See* also, CAUSE-PA R. Exc. at  7-8).

Next, PPL states that after concluding that the Commission has authority to impose limits on CAP shopping, the Court went on the explain that the Commission’s CAP shopping decision must be supported by substantial evidence:

So long as it “provides substantial reasons why there is no reasonable alternative so competition needs to bend” to ensure adequately-funded, cost-effective and affordable programs to assist customers who are of low-income to afford electric service…, the [Commission] may impose CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits – *e.g.*, an EGS rate ceiling, a prohibition against early termination/cancellation fees, etc.

\* \* \*

As we held above, however, the General Assembly has reserved within the [Commission] the authority to “bend” competition to further other important aspects of the Code, including the Choice Act, where it provides substantial reasons why the restriction on competition is necessary (i.e., there are no reasonable alternatives).

*Id.* at 1104, 1107. PPL submits that the above-quoted language, which RESA heavily relied on, is nothing more than a simple restatement of the requirement that the Commission’s CAP shopping determination, whether it rejects or approves limits on CAP shopping, must be supported by substantial evidence of record. PPL R. Exc. at 6; *see* also, CAUSE-PA R. Exc. at 8-9.

PPL notes that RESA, however, interprets the Court’s statement regarding “no substantial alternatives” to impose a burden on the Parties proposing limits on CAP shopping to demonstrate substantial reasons why there are no reasonable alternatives to the Parties’ CAP shopping proposal. PPL posits that RESA’s interpretation of the Court’s holding in CAUSE-PAwould impose two burdens of proof on parties proposing limits on CAP shopping: (1) the standard burden of proof to support their CAP shopping proposal; and (2) a new burden to disprove there are any possible alternatives to the CAP shopping proposal. PPL avers that RESA’s interpretation of the Court’s holding in *CAUSE-PA* should be rejected for several reasons. PPL R. Exc. at 6-7; *see* also, CAUSE-PA R. Exc. at 9-10.

First, PPL states that the Court did not reject the PECO CAP price ceiling proposal because PECO failed to introduce evidence to demonstrate there were “no reasonable alternatives” to a price ceiling. Rather, PPL explains the Court affirmed the Commission’s rejection of PECO’s price ceiling because the “[Commission] was not persuaded that Petitioner’s evidence provided substantial reason to justify limiting competition by imposing a price ceiling on EGSs as part of the PECO CAP shopping plan.” PPL R. Exc. at 7, citing CAUSE-PAat 1107. As such, PPL claims the Court clearly affirmed the Commission’s rejection of PECO’s proposed CAP shopping price ceiling because it was not supported by substantial evidence, not because PECO failed to demonstrate there were no reasonable alternatives to CAP shopping limits as contended by RESA. PPL R. Exc. at 7.

Second, PPL states that the Court’s decision concerning the OCA’s proposed termination/elimination of CAP shopping fees demonstrates the Court did not establish a new standard requiring “no reasonable alternatives” as asserted by RESA. Rather, PPL explains, the Court reversed the Commission’s rejection of the OCA’s proposal to eliminate CAP shopping termination/cancellation fees on the basis that the Commission’s decision was not supported by substantial evidence. PPL R. Exc. at 7-8.

Third, PPL states that the Court’s acceptance of PECO’s proposed CAP shopping customer education initiative was based on the evidence of record, not the failure to disprove any alternatives as claimed by RESA. PPL explains that the CAP shopping customer education initiative was actually proposed by and supported by a party to the proceeding, PECO. According to PPL, the Court’s holding regarding the CAP shopping customer education initiative was based on an alternative actually proposed in the proceeding, supported by record evidence, and not refuted by the weight of the evidence. PPL claims that the Court’s finding was not, as suggested by RESA, based on a finding that the petitioners failed to disprove all possible alternatives to limits on CAP shopping. PPL R. Exc. at 8.

Finally, PPL posits that RESA’s argument that Parties proposing limits on CAP shopping must demonstrate there are no possible alternatives to the CAP shopping proposal is not a workable or reasonable interpretation. PPL maintains that under RESA’s interpretation, parties proposing limits on CAP shopping would be required to disprove any and all possible alternatives to the CAP shopping proposal, regardless of whether any such alternatives were even proposed during the proceeding. According to PPL, this would mean parties proposing limits on CAP shopping would not only have to introduce evidence to refute CAP shopping alternatives actually proposed, they also would have to self-identify any and all possible alternatives that were not proposed and then introduce evidence why the un-proposed alternatives are not reasonable. PPL opines that RESA’s proposed evidentiary burden is unreasonable and should be rejected. PPL R. Exc. at 8-10; *see* also, OCA R. Exc. at 3-5.

PPL next addresses RESA’s CAP shopping proposals claiming they are not reasonable alternatives to address the impacts of CAP shopping. PPL reiterates that RESA’s argument is premised upon its incorrect legal standard and should be rejected for that reason alone. Moreover, PPL asserts that RESA’s alternative proposals are not reasonable alternatives because they lack evidentiary support and fail to address the unrefuted adverse impacts CAP shopping has on both CAP customers and other Residential customers that pay for CAP costs. Also, PPL states that contrary to RESA’s assertion, the ALJ did in fact acknowledge that other alternatives were proposed, evaluated and considered by the Parties, but these other alternatives were not presented and briefed by the parties for the Commission’s consideration. PPL posits that even if RESA’s alternative proposals were properly presented and briefed for the Commission’s consideration, RESA’s CAP shopping proposals are not reasonable alternatives to address the impacts of CAP shopping. PPL R. Exc. at 10-11. (*See* also, OCA R. Exc. at 6‑7 and I&E R. Exc. at 4-5 and 11-12).

PPL states that RESA’s first proposal to do nothing is not a reasonable or appropriate alternative to address the impacts of CAP shopping. PPL asserts that the record clearly demonstrates there is a real and present need to address the existing and future adverse impacts of unrestricted CAP shopping. PPL claims that RESA’s ‘do nothing” alternative would allow these adverse impacts of CAP shopping to continue without limit, thereby continuing the harm to CAP customers and to customers who pay CAP costs. PPL R. Exc. at 11. (*See* also, OCA R. Exc. at 7-10, I&E R. Exc. at 6-8 and CAUSE-PA R. Exc. at 10).

PPL next states that RESA’s second proposal to wait and address these impacts in a statewide collaborative/proceeding is not a reasonable or appropriate alternative to address the impacts of CAP shopping. As noted by the ALJ, PPL points out that the Commission may reject the statewide initiative and decide to address the CAP shopping issue on an EDC by EDC basis. Furthermore, PPL avers that even if the Commission initiates a statewide initiative, it is entirely unknown when the statewide initiative would begin and when appropriate limits on CAP shopping would be implemented. As such, PPL opines that this alternative fails to address the actual and substantial adverse impacts that CAP shopping has today and will continue to have within PPL’s service territory. PPL R. Exc. at 11. (*See* also, I&E R. Exc. at 8-9 and CAUSE-PA R. Exc. at 10).

PPL next claims that RESA’s third proposal to adjust the CAP customer’s CAP credits “to align with the price of a competitive supplier” is unsupported by the record evidence and is not reasonable or appropriate. PPL states that RESA’s proposal was offered for the very first time in its Main Brief and there is no record evidence to support this proposal and the Parties did not have any notice or opportunity to respond to the proposal. PPL explains that under this proposal, the Company would be required to continually adjust the maximum CAP credits to align with the ever changing and different prices offered by EGSs, which would be extremely time consuming and would increase the costs incurred by the Company to implement CAP shopping. Also, PPL maintains that RESA’s proposal does nothing to mitigate the substantial increase in the CAP costs paid by other Residential customers. Rather than mitigating the costs paid by non-CAP Residential customers, PPL opines that RESA’s proposal will almost certainly increase these costs. PPL R. Exc. at 12. (*See* also, OCA R. Exc. at 10-11, I&E R. Exc. at 9-10 and CAUSE-PA R. Exc. at 11).

With regard to RESA’s fourth proposal to adopt PPL’s initial CAP shopping proposal, PPL states that RESA completely disregards that, as a result of multiple rounds of testimony and discovery in this case, PPL formally withdrew this proposal. PPL explains that the withdrawn initial CAP shopping proposal was inadequate to address the unrefuted significant and adverse current impacts of unrestricted CAP shopping. PPL explains that the fundamental flaw with the withdrawn CAP shopping proposal was there was no assurance that simply encouraging CAP customers to enroll in the traditional SOP will mitigate the real and present adverse impacts that CAP shopping can have on CAP credits, risk of early removal from the OnTrack program, and the CAP costs that are paid for by other Residential customers. For all these reasons, PPL asserts that RESA’s CAP shopping proposals are not reasonable alternatives to address the adverse impacts of CAP shopping. PPL R. Exc. at 12‑13; *see* also, I&E R. Exc. at 10-11 and CAUSE-PA R. Exc. at 11.

Next, PPL states that the substantial adverse impacts of unrestricted CAP shopping are unrefuted. PPL explains that as the Court recognized in CAUSE-PA, it is incumbent upon a party proposing limits on CAP shopping to provide evidence showing a “substantial reason to justify limiting competition.” PPL R. Exc. at 13-14, citingCAUSE-PA at 1107. Therefore, PPL asserts that before a CAP shopping proposal can be adopted, there must first be evidence demonstrating that limits on CAP shopping are needed. PPL avers that by advocating the wrong legal standard, RESA asks the Commission to completely ignore the unrefuted evidence of record that clearly demonstrates appropriate limits on CAP customers’ ability to shop and remain eligible for CAP are needed to mitigate the adverse impacts of CAP shopping. PPL R. Exc. at 13-14; *see* also, I&E R. Exc. at 13-14 and CAUSE-PA R. Exc. at 11-12.

PPL states that in its Main Brief it explained the substantial evidence it introduced in this proceeding regarding the CAP shopping statistics and data in PPL’s territory. PPL notes that the CAP shopping data and statistics demonstrate that unrestricted CAP shopping in PPL’s territory has resulted and will likely continue to result in: (1) CAP customers exceeding their CAP credits at a faster pace than they would have if they did not shop, which puts these low-income customers at risk of early removal from CAP; and (2) a substantial increase (estimated at approximately $2.7 million annually) in the CAP costs paid for by other Residential customers. PPL notes that, importantly, while I&E, the OCA and CAUSE-PA likewise explained why restrictions on a CAP customer’s ability to shop are needed, no Parties offered any testimony or evidence to refute the CAP shopping data and statistics provided in this proceeding. PPL R. Exc. at 14.

PPL reiterates that the ALJ analyzed in detail the unrefuted evidence introduced by the Parties demonstrating that unrestricted CAP shopping in PPL’s territory has significant and adverse impacts on both CAP customers and other Residential customers that pay for CAP costs. Based on this data, PPL states that the ALJ concluded the data is compelling and sufficient to support a finding that restrictions on CAP shopping are needed. Therefore, PPL posits that despite RESA’s assertion to the contrary, the ALJ properly relied on the evidence of record to determine if there is a need to impose restrictions or limits on CAP shopping. PPL asserts that RESA seeks to completely ignore the unrefuted record evidence demonstrating that limitations on CAP shopping are needed in PPL’s service territory and, instead, focuses exclusively on whether there are any alternative proposals. PPL asserts that not only is RESA’s position based on an incorrect legal and evidentiary standard, it is fundamentally flawed because it fails to account for and address the underlying problem that was identified in the CAP shopping data RESA seeks to discount. PPL maintains that the flaw in RESA’s reasoning is amply demonstrated by the fact that RESA’s alternative proposals completely fail to address the existing substantial and adverse impacts that CAP shopping has today and will continue to have within PPL’s service territory, including the substantial increase in the CAP costs paid by other Residential customers. PPL R. Exc. at 15-16; *see* also, CAUSE-PA R. Exc. at 12-14.

**3. Disposition**

Based upon our review of the evidence of record, the Exceptions of RESA and Replies thereto, as well as the applicable legal decisions and regulatory requirements, we are persuaded by the position of the Joint Parties that their proposed CAP-SOP is a reasonable and appropriate recommendation to address the unique circumstances in this case which have resulted from the unrestricted ability of PPL’s CAP customers to engage in the competitive electric marketplace. We find that the Joint Parties have met their burden of proof that the CAP-SOP proposal has merit and that the Commission should adopt this proposal on an interim basis. We do not come to this conclusion lightly, as this Commission has been steadfast in its support of the competitive electric generation market in Pennsylvania. However, based upon the substantial and unrefuted evidence presented by PPL in this proceeding, it is incumbent upon the Commission to address this matter in a reasonable and prudent fashion to balance the competing objectives within the Competition Act. It is vitally important that the existing CAP programs be administered in a financially responsible fashion consistent with our obligations under the Competition Act to foster competitive electric markets.

We conclude that our decision to approve the CAP-SOP is consistent with the Commonwealth Court’s decision in CAUSE-PA. In that case, the Court held that we have the authority under Section 2804(9) of the Competition Act, for the purpose of ensuring that universal service plans are adequately funded and cost-effective, to approve CAP rules that would limit the terms of an offer from an EGS which a customer could accept and remain eligible for CAP benefits. CAUSE-PA at 1103. The Court stated as follows:

So long as it “provides substantial reasons why there is no reasonable alternative so competition needs to bend to ensure adequately-funded, cost-effective, and affordable programs to assist customers who are of low income to afford electric service, the [Commission] may impose CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits – *e*.*g*., an EGS rate ceiling, a prohibition against early termination/cancellation fees, etc.

*Id*. at 1104. In this case, the Parties presented substantial evidence in support of the proposed CAP-SOP, as well as evidence regarding why other alternatives would not be reasonable. The data provided by PPL in this proceeding demonstrated the economic harm experienced as the result of unrestricted CAP customer shopping decisions. The identified economic harm affects the ability of CAP customers to remain on CAP, as higher costs result in a quicker erosion of the CAP customers’ limited allocation of CAP credits and also affects non-CAP customers by increasing the subsidy they incur to support the universal service objectives within the Competition Act. We find that this unrefuted evidence is sufficient to permit the Commission to impose CAP rules that may partially restrict or limit the ability of these customers to shop for electricity. In essence, we agree with the ALJ that mitigation is required to balance the interests between shopping and non-shopping customers. The CAP-SOP proposal of the Joint Parties, however, does not eliminate the ability of these customers to participate in the competitive marketplace. To the contrary, these customers will retain the ability to shop by participation in a form of the SOP[[4]](#footnote-4), which provides a 7% discount off the PTC price in effect at the time of enrollment, which has been determined to be very successful in Pennsylvania since its inception.

Next, in consideration of RESA’s position that there are several reasonable alternatives available in lieu of the proposed CAP-SOP option, we are in agreement with the ALJ that it is not feasible to require the Joint Parties to identify all possible alternatives. Rather, we find that several alternatives were, in fact, considered by the Parties, but that they ultimately determined that the Joint Litigation Position was the most reasonable such alternative. We conclude that none of the alternatives suggested by RESA are acceptable alternatives. We further agree with the ALJ that RESA’s recommendation to impose no restrictions on CAP shopping and to only encourage CAP customers to use the SOP if they do shop is simply insufficient. We conclude that this recommendation fails to protect CAP shoppers from the negative effects of paying more than the PTC and maximizes the burden on other Residential customers who fund the CAP program and, as such, is not a viable alternative.

In consideration of the recommendation within the Joint Litigation Position that the Commission should initiate a statewide collaborative open to all interested stakeholders and/or initiate a new rulemaking proceeding to address CAP shopping issues on a uniform, statewide basis, we note that this recommendation was supported by RESA and each of the Parties to this proceeding. Furthermore, we note that the ALJ stated that the facts of this case supported a finding that some limitation on CAP shopping is justified, and it stands to reason that EGSs operating in multiple EDC service territories will be affected. The ALJ found that a statewide initiative to determine the scope of the problem and the best uniform way to address it makes sense. However, the ALJ concluded that while she can encourage Commission action in the form of a statewide initiative, she could not direct the Commission to do so.

While the Commission appreciates the unanimous agreement of the Parties to this proceeding that the initiation of a statewide initiative to address CAP customer shopping issues should be implemented, we are not inclined at this point to direct such in the context of this DSP proceeding. Instead, we shall take this recommendation under advisement, noting that the Commission has the authority to open a separate docket to initiate a statewide proceeding to explore CAP customer shopping issues if we decide to undertake this endeavor in the future. As such, we shall refer this matter to the Commission’s Office of Competitive Market Oversight for review and analysis before making a broad based decision in this proceeding that a statewide collaborative is necessary. Therefore, we shall adopt the Joint Litigation Position, as clarified consistent with the discussion herein.

Accordingly, we shall deny the Exceptions of RESA on this issue and adopt the ALJ’s recommendation, as modified consistent with the discussion above.

**4. RESA Exception No. 2 – The ALJ Erred in Recommending that the CAP-SOP Proposal be Adopted, Either as Proposed or as Modified by the ALJ**

In its Exception No. 2, RESA states that the CAP shopping proposal supported by the proponents of CAP shopping restrictions would result in a CAP-SOP proposal doomed to fail because the restrictions would result in EGSs being unwilling to provide service through the CAP-SOP. RESA opines that if EGSs do not provide service through the CAP-SOP, then CAP customers will not have any opportunities at all to receive supply from an EGS. RESA notes that the ALJ appears to recognize the importance of EGSs participating in the CAP-SOP and, therefore, did recommend a modification intended to address some of the concerns raised by RESA regarding the proposed restrictions. However, RESA maintains that the ALJ’s modification of the PPL Rejoinder Proposal does not save the proposal as the end result with the ALJ’s modification will be the same as without it, that being EGSs will not be likely to participate in the CAP-SOP. RESA Exc. at 11-12.

RESA asserts that the CAP-SOP proposal, with or without the modification, would create a single and exclusive method for a CAP customer to obtain electric supply from an EGS. RESA opines that the proposal completely removes the unrestricted right of CAP customers to shop for the EGS of their choice as they would be restricted to either default service or to a uniform product to be delivered by a randomly-selected EGS. Furthermore, RESA states that the EGSs would also be restricted in their ability to offer tailored competitive products to these customers. Next, RESA avers that to serve these customers, EGSs would have to agree to initially price the product at seven percent off the then-effective PTC and pay a $28 referral fee to PPL to serve that customer. According to RESA, while the ALJ’s modification is an effort to ameliorate some issues, it really does not resolve anything. RESA claims that by modifying the proposed CAP-SOP to allow CAP customers to remain with the EGS following the end of their twelve-month contract term, the ALJ would essentially convert the CAP shopping restrictions from an interim solution into a longer term solution. RESA requests that the CAP-SOP proposal be rejected. RESA Exc. at 12-13.

**5. Replies to RESA Exception No. 2**

In its Replies to Exceptions, PPL states that RESA’s opposition to the jointly proposed CAP-SOP is speculative, contrary to the record and was properly rejected by the ALJ. PPL claims that RESA’s contention that no EGSs would be willing to serve customers under the CAP-SOP is not supported by the record. PPL further claims that RESA’s allegation regarding lack of EGS participation in the CAP-SOP is inconsistent with the fact that the existing traditional SOP has been highly successful. PPL points out that RESA concedes that the existing traditional SOP, which the CAP-SOP will be based on, “has seen healthy customer and EGS participation and has largely been successful in encouraging customers to take advantage of lower cost options in the market place.” *See* RESA St. 1-R at 4. PPL opines that it is not clear RESA’s own members agree EGSs would not participate in the CAP-SOP. PPL R. Exc. at 16-17.

Next, PPL asserts that the CAP-SOP would not eliminate CAP shopping as CAP customers would still have the ability to elect to shop through the CAP-SOP or remain on default service. PPL explains that the only difference from the unrestricted CAP shopping that exists today is these low-income customers would only be able to receive an EGS rate that is lower than the PTC in effect at the time the CAP customers’ contract with an EGS. PPL emphasizes that the CAP-SOP, if adopted, will not prohibit CAP shopping, it only imposes rules that will prevent CAP customers from paying a price above the PTC at the expense of other residential customers. PPL maintains that RESA’s argument completely disregards the unrefuted evidence that the current ability of CAP customers to freely shop has resulted in CAP customers exceeding their CAP credits at a faster pace and in a substantial increase in the CAP costs paid for by other Residential customers. PPL R. Exc. at 17-18.

Next, PPL states, in response to RESA’s concern over the $28 referral fee, that although EGSs participating in the CAP-SOP would be required to pay that amount for each CAP customer that is referred to them, this argument does not support a finding that EGSs would not be willing to participate in the CAP-SOP. PPL asserts that RESA’s argument overlooks that EGSs currently participating in the Company’s traditional SOP are required to pay the very same $28 referral fee, and that the existing SOP has been highly successful both from a customer and EGS participation perspective. PPL further asserts RESA overlooks the fact that because EGS participation in the CAP-SOP is completely voluntary, EGSs are free to elect to not participate and, thereby, avoid the $28 referral fee altogether. PPL R. Exc. at 18.

Next, PPL asserts that RESA’s argument also implies that EGSs would only be willing to offer service to CAP customers if they are free to charge any rate they desire, including rates greater than the PTC. PPL notes that shopping does not directly affect a CAP customer’s monthly payment amount, which is a fixed monthly amount based upon the ability to pay. As such, PPL explains that CAP shopping customers have no reason to avoid higher costs because their monthly payment amount is fixed and the higher costs they incur results in higher costs paid by non-CAP customers and may result in their removal from CAP if a customer exceeds its allowed CAP credits. Furthermore, PPL states that the seven percent discount under the CAP-SOP is the very same discount required for all EGSs that participate in the Company’s traditional SOP, which has been highly successful. Therefore, PPL opines that any speculation that EGSs would be unwilling to participate in the CAP-SOP due to the required seven percent discount off the PTC is inconsistent with the undisputed fact that the existing SOP has been highly successful. PPL R. Exc. at 19.

Next, PPL notes that RESA argued that EGSs would be unwilling to participate in the CAP-SOP because they are unable to offer CAP customers non-commodity, “value-added” products and services through the CAP-SOP. However, PPL asserts that RESA failed to introduce any evidence of these “value-added” products and services and failed to demonstrate that the value of these “value-added” products and service outweigh the clear and unrefuted harm that unrestricted CAP shopping has caused to both CAP and non-CAP customers in PPL’s service territory. Furthermore, PPL points out that even with the current ability to participate in any available non-commodity products and services, the record demonstrates that CAP shopping has had significant adverse impacts. PPL R. Exc. at 19-20.

Lastly, PPL notes that RESA dismisses the ALJ’s proposed modification to the CAP-SOP, which was designed to address RESA’s concerns regarding the speculated lack of participation in the CAP-SOP. PPL asserts that the fact that RESA takes exception to the ALJ’s proposed modification to the CAP-SOP is further support that the Commission should reject that recommended modification of the CAP-SOP as explained further in the Company’s Exceptions, discussed below. PPL R. Exc. at 20.

In its Replies to Exceptions, the OCA states its disagreement with RESA’s allegation that the $28 referral fee will inhibit EGS participation, claiming this argument is speculative. The OCA points out that the whole point of the initial SOP was to reduce acquisition costs for EGSs in obtaining customers, including CAP customers. According to the OCA, the reduced acquisition costs will benefit the EGSs whether the customer acquired is a CAP or non-CAP customer. OCA R. Exc. at 13.

The OCA also states that RESA has provided no evidence whatsoever that all EGSs will decline to participate in a CAP-SOP or that CAP customers will not participate in the CAP-SOP. The OCA asserts that the CAP-SOP offers the same seven percent off the PTC at the time of enrollment, has the same twelve-month contract and has the same restriction on cancellation or termination fees as the regular SOP. The OCA also points out that like the SOP, a CAP customer who terminates a CAP-SOP contract or reaches the end of the twelve-month CAP-SOP contract will also be allowed to re-enroll. As such, the OCA avers that there is absolutely no basis to speculate that EGSs will not participate in the CAP-SOP when they presently participate in the SOP. The OCA submits that while RESA is correct that the CAP-SOP will be the only option available for CAP customers while they are enrolled in the CAP program, this is a reasonable accommodation to address the harms presented to both CAP shopping customers and non-CAP residential customers who pay the costs of the program during this period. The OCA asserts that the Joint Litigation Position is meant to be an interim solution until the Commission can develop a more permanent statewide solution through a collaborative or rulemaking on CAP customer shopping. Also, the OCA points out that the Joint Litigation Position establishes a fail-safe in the event that EGSs elect not to participate in the CAP-SOP market, whereby the Parties reserve the right to petition the Commission to re-open the CAP-SOP if there is no EGS participation in the program. The OCA submits that this fail-safe provides the Parties with an opportunity to mitigate the harms caused by CAP customer shopping with no limitations. OCA R. Exc. at 13-14.

In its Replies to Exceptions, I&E states that RESA’s allegation that EGSs would not participate in the CAP-SOP is unsubstantiated and meritless. I&E refers to analysis performed by CAUSE-PA, that during the period of March to May of 2016, there were sixteen EGSs participating in PPL’s SOP, only six of which were members of RESA. I&E R. Exc. at 15, citing CAUSE-PA M.B. at 29. Furthermore, I&E points out that the RESA witness did not even poll or review the CAP-SOP proposal with all RESA members prior to making this assertion, instead discussing the proposal with just seven RESA members prior to submission, even though RESA’s membership consists of twenty-one members in Pennsylvania. I&E also points out that, according to CAUSE-PA’s review of the Commission’s publicly available website, there are currently 211 EGSs licensed in PPL’s service territory which serve Residential customers. I&E R. Exc. at 16, citing CAUSE-M.B. at 30. As such, I&E maintains that CAUSE-PA determined that the RESA witness was speaking on behalf of 3.3 percent of all licensed EGSs when he asserted that no EGSs would be willing to serve CAP customers under a modified CAP-SOP. *Id.*  I&E opines that considering this data, RESA’s witness’ opinion cannot be determined as representative of all EGSs who may choose to serve PPL’s CAP customers, as it cannot even be determined to be representative of RESA’s position. I&E states that although the ALJ did impose a modification to the CAP-SOP, the modification appears to have been one that she personally developed in considering the case, and not one borne out of evidence presented by RESA. I&E R. Exc. at 15-17.

In its Replies to Exceptions, CAUSE-PA states that RESA’s arguments are without merit and should be rejected as they are not supported by the record. Additionally, CAUSE-PA opines that supplier participation in the proposed CAP-SOP should not be dispositive, given the clear harm currently taking place in PPL’s service territory. CAUSE-PA asserts that as stated by the ALJ, “the importance of the protections provided to all CAP customers clearly outweigh the importance of the EGSs’ ability to make a profit serving those customers, at the expense of other ratepayers.” CAUSE-PA R. Exc. at 14-15.

Next, CAUSE-PA maintains that RESA’s recommended alternatives all fail to protect CAP shoppers from the negative effects of paying more than the PTC, and reduce the ability of individual customers to stay on CAP. CAUSE-PA further claims that the CAP-SOP does not restrict the right of a PPL electric customer to shop, rather it is a limitation which addresses the effect of CAP customer shopping on the cost and efficiency of CAP, as well as the ability of payment troubled low-income customers to remain in CAP. CAUSE-PA reiterates that CAP customers will continue to retain the ability to shop, however to retain the benefits of CAP, including a more affordable bill, a CAP customer is limited to shopping through the CAP-SOP. According to CAUSE-PA, the Commonwealth Court has sanctioned this sort of reasonable restriction to remedy acute harm. CAUSE-PA opines that the CAP-SOP proposal is a reasonable and necessary resolution to a significant and severe problem and should be adopted. CAUSE-PA asserts that to hold otherwise would be to abandon the Commission obligation under the Competition Act to ensure that universal service programs are available and appropriately funded in each utility distribution territory. CAUSE-PA R. Exc. at 15-16.

**6. PPL Exception No. 2 – CAP Shopping**

In its Exceptions, PPL states that the CAP-SOP proposal is the result of testimony and discovery in this proceeding and that the Company, the OCA and CAUSE-PA each proposed separate and distinctly different measures to address the undisputed impacts of CAP shopping in PPL’s service territory. PPL notes that both the OCA and CAUSE-PA originally contended that CAP customer shopping be limited at all times to prices at or below the PTC, in order to ensure that CAP shopping would never cost more than default service. However, PPL states that the Parties identified several concerns and issues with the development and implementation of each of the initially proposed CAP shopping proposals. PPL asserts that the Parties involved determined that the three separate CAP shopping alternatives initially proposed were not reasonable or appropriate alternatives to address the impacts of CAP shopping. As a result, PPL explains that the Parties entered into a Joint Litigation Position that: (1) withdrew the three separate CAP shopping proposals; and (2) supported a single revised CAP shopping proposal, the CAP-SOP. Importantly, PPL states that the Joint Litigation Position requires CAP customers to reenroll in the CAP-SOP annually. PPL Exc. at 11-12.

Next, PPL avers that no party proposed the ALJ’s recommended modification to the CAP-SOP during this proceeding. PPL explains that although RESA opposed the CAP-SOP, it did not propose or otherwise support the ALJ’s recommended modification to the CAP-SOP. As such, the ALJ states that the Parties have not had the opportunity to evaluate this modification, nor have they had the opportunity to submit any evidence regarding this new proposal. PPL Exc. at 12.

PPL further avers that the Settlement already addresses the ALJ’s concern regarding continued payment of the $28 referral. Specifically, PPL claims that the Settlement provides that all customers requesting enrollment in the traditional SOP, both new and re-enrollments, will be placed into the SOP “pool” and randomly assigned to EGSs voluntarily participating in the SOP at that time. *See* Partial Settlement ¶ 35. PPL explains that this provision reduces the possibility that EGSs will be required to continue to pay the $28 referral fee for the same SOP customer because the customer will be randomly assigned to a participating EGS rather than assigned to the same participating EGS. PPL asserts that this provision of the Partial Settlement was fully supported by RESA. PPL Exc. at 12.

Next, PPL asserts that RESA’s prediction that the CAP-SOP will eliminate CAP shopping because no EGSs would be willing to serve customers under the CAP-SOP is misplaced and unsupported by the record. According to PPL, RESA’s allegation is inconsistent with the fact that the existing traditional SOP has been highly successful and it is not clear that RESA’s own members agree EGSs would not participate in the CAP-SOP. PPL opines that RESA’s assertions should be rejected. PPL Exc. at 13.

PPL states that the ALJ’s recommended modification would be difficult and burdensome to implement, and deviates from the universally agreed upon standardization of the SOP. PPL states that this is so because the ALJ’s proposed modification would require non-standard contracts that could be different for EGSs participating in the CAP-SOP. PPL explains that under the ALJ’s modification, EGSs participating in the CAP-SOP must decide whether to include a provision in their contracts to extend the CAP-SOP for a further term at a rate up to the then-current PTC. PPL avers that at the end of the twelve-month CAP-SOP contract, one EGS contract may provide that it will offer CAP customers rates up to the PTC, while other EGSs’ contracts may not. PPL opines that this is contrary to the standardization of contracts critical to a successful SOP. PPL Exc. at 13.

PPL also asserts that it would be difficult, time consuming, costly and require changes to the Company’s system to track which EGS contracts are offering CAP customers’ rates up to the PTC and which are not. PPL claims there could be an indeterminate number of different EGS contract terms after the initial twelve-month CAP-SOP period, which would be very difficult and time consuming for the Company to track. Additionally, PPL states that the ALJ’s modification will require a significant re-work of the call scripts and will significantly extend the time a customer is on the phone reviewing the options with a PPL customer service representative. PPL claims that these changes will increase program costs for the development and administration of the CAP-SOP and that these costs would add to the CAP costs borne by non-CAP Residential customers. Also, PPL states that it is not clear what would be the consequences if an EGS offers a CAP customer a rate in excess of the PTC in effect at the time the twelve-month CAP-SOP ends and who is responsible for taking enforcement action. According to PPL, all of these details must be addressed before the proposed modification to the CAP-SOP can be implemented. PPL opines that because no party proposed the recommended modification to the CAP-SOP during this proceeding, these details have not been considered or developed and it is entirely unknown how they would be addressed if the ALJ’s recommended modification to the CAP-SOP is adopted. Based on these concerns, PPL requests that the CAP-SOP jointly proposed and supported by the Company, I&E, the OCA and CAUSE-PA be adopted without modification. In the event the Commission adopts the modification, PPL urges the Commission to clarify that the Company is not required to track, monitor or enforce any of the terms, conditions or rates of EGSs’ contracts offered to CAP customers at the end of the initial twelve-month CAP-SOP contract. PPL Exc. at 13-15.

7**. Replies to PPL Exception No. 2**

In reply, I&E states that the fact that additional programming costs resulting from the ALJ’s modification will exist and have not been quantified is concerning because these increased costs will be borne by PPL’s non-CAP Residential ratepayers. I&E asserts that cost-efficiency of CAP programs is a key factor that must be considered in the analysis of such programs. In recognition of the unknown impact of additional CAP programming costs that could arise through PPL’s implementation of procedures to comply with the ALJ’s modification, I&E states that it supports PPL’s request to approve the Joint Litigation Position, including the CAP-SOP, as proposed by the Parties and without modification. I&E R. Exc. at 17-18.

**8. Disposition**

Based upon our review and analysis of the evidence of record, as well as the Exceptions and Replies thereto, we shall reject the position espoused by RESA that EGSs will not participate in the proposed CAP-SOP shopping proposal. In consideration of RESA’s argument on this issue that the CAP-SOP proposal will result in a lack of EGS participation, we conclude that as the current SOP program has extensive EGS participation this argument is speculative. We find that RESA’s position amounts to unsupported assertions and has no basis whatsoever in the record. Additionally, the proposed CAP-SOP includes a provision that the Parties will have the ability to petition the Commission to re-open the CAP-SOP in the event that there is no EGS participation in the program and/or there are changes in retail market conditions that would otherwise justify reopening the CAP-SOP.

Accordingly, we shall deny the Exceptions of RESA on this issue.

With respect to the ALJ’s recommended modification to the CAP-SOP shopping proposal, we are convinced by the arguments of PPL and I&E that this proposal is unsupported by the record evidence and should not be implemented at this time. We further note that RESA did not recommend this modification and states in its Exceptions that it does not support the CAP-SOP, even if the ALJ’s modification is accepted. As such, none of the Parties in this proceeding support this modification.

Accordingly, we shall deny the Exceptions of RESA on this issue and grant the Exception of PPL to reject the modification proposed by the ALJ. As such, we shall modify the ALJ’s recommendation, consistent with the discussion herein.

**VI. Conclusion**

Based on the foregoing, we shall deny the Exceptions of the Retail Energy Supply Association, grant the Exceptions of PPL Electric Utilities Corporation and grant the Exceptions of the PP&L Industrial Customer Alliance. We shall also adopt the ALJ’s Initial Decision, as clarified and modified by this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions filed by PPL Electric Utilities Corporation on September 6, 2016, to the Initial Decision of Administrative Law Judge Susan D. Colwell are granted consistent with this Opinion and Order.

2. That the Exceptions filed by the Retail Energy Supply Association on September 6, 2016, to the Initial Decision of Administrative Law Judge Susan D. Colwell are denied consistent with this Opinion and Order.

3. That the Exceptions filed by the PP&L Industrial Customer Alliance on September 6, 2016, to the Initial Decision of Administrative Law Judge Susan D. Colwell are granted consistent with this Opinion and Order.

4. That the Initial Decision of Administrative Law Judge Susan D. Colwell, issued on August 17, 2016, is adopted, as clarified and modified, consistent with this Opinion and Order.

5. That the Joint Petition for Approval of Partial Settlement filed in this proceeding is approved without modification.

6. That the 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, filed on January 29, 2016, at Docket No. P-2016-2526627, including the Default Service Supply Master Agreement, Request for Proposals Process and Rules, Program Product Procurement Schedule, and Tariff provisions for the Generation Supply Charge-1, the Generation Supply Charge-2 and the Transmission Service Charge, is approved as modified by the Joint Petition for Approval of Partial Settlement filed in this proceeding.

7. That PPL Electric Utilities Corporation’s DSP IV program as approved herein contains all of the elements of a default service plan required by the Public Utility Code, the Commission’s Default Service Regulations (52 Pa. Code §§ 54.181 – 54.189), and the Commission’s Policy Statement on Default Service (52 Pa. Code §§ 69.1801-69.1817), including procurement, implementation, contingency plans, a rate design plan, and copies of the agreements and forms to be used in procurement of default service supply.

8. That PPL Electric Utilities Corporation’s DSP IV program as approved herein is in compliance with 66 Pa. C.S. § 2807(e)(3.7) in that: (1) it includes prudent steps necessary to negotiate favorable generation supply contracts; (2) it includes prudent steps necessary to obtain least cost generation supply contracts; and (3) neither the default service provider nor its affiliated interests have withheld from the market any generation supply in a manner that violates Federal law.

9. That the *pro forma* Default Service Supply Master Agreement included as Attachment B to the 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, is approved as an affiliated interest agreement pursuant to 66 Pa. C.S. § 2102.

10. That the Third-Party Standard Offer Referral Program Services Contract extension between PPL Electric Utilities Corporation and PPL Solutions is approved as an affiliated interest agreement pursuant to 66 Pa. C.S. § 2102.

11. That the *pro forma* tariff provisions included as Attachment C to the 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, and modified by the Joint Petition for Approval of Partial Settlement filed in this proceeding, shall become effective as of June 1, 2017.

12. That PPL Electric Utilities Corporation’s request for a waiver of the quarterly Price to Compare requirement and proposal to continue to offer semi-annual Price to Compare changes is approved.

13. That PPL Electric Utilities Corporation’s request for a waiver from the requirement to issue a final Price to Compare forty-five days prior to the effective date of the Price to Compare, and proposal to continue the issuance of the Price to Compare thirty days in advance of the effective date is approved.

14. That the Customer Assistance Program - Standard Offer Program proposed by PPL Electric Utilities Corporation, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania is approved:

a) Effective June 1, 2017, the CAP-SOP is the only vehicle that a CAP customer may use to shop and receive supply from an EGS.

(b) Any CAP customer shopping request that does not get processed through the CAP-SOP will be denied.

(c) EGSs participating in the CAP-SOP must agree to serve customers at a 7% discount off the PTC at the time of enrollment. This price shall remain fixed for the 12-month CAP-SOP contract unless terminated earlier by the customer.

(d) CAP customers may terminate the CAP-SOP contract at any time and without any termination or cancellation fees or other penalties.

(e) A CAP customer who terminates a CAP-SOP contract or whose CAP-SOP contract reaches the end of its term can re-enroll in the CAP-SOP.

(f) At the conclusion of a 12-month CAP-SOP contract, the CAP customer will be returned to the CAP-SOP pool and be re-enrolled in a new CAP-SOP contract, unless the CAP customer requests to be returned to default service or is no longer a CAP customer.

(g) All CAP customer shopping fixed-term contracts in effect as of the effective date of the CAP-SOP will remain in place until the contract term expires and/or is terminated.

(h) Once the existing CAP customer shopping contract expires or is terminated, the CAP customer will have the option to enroll in the CAP-SOP or return to default service, but in any event will only be permitted to shop through the CAP-SOP.

(i) PPL Electric will revise its CAP recertification scripts/process so that all existing CAP shopping customers receiving generation supply on a month-to-month basis after June 1, 2017 will be required at the time of CAP recertification to enroll in the CAP-SOP or return to default service, but in any event will only be permitted to shop through the CAP-SOP.

(j) EGSs must enroll separate from the standard SOP to be a participating supplier in the CAP-SOP. EGSs are free to voluntarily elect to participate in none, one or the other, or both the traditional SOP and the proposed CAP-SOP. Enrollment will be for a three-month period, and shall conform to the enrollment process for the standard SOP. EGS may opt in to participate in the CAP-SOP on a quarterly basis, and are free to leave the CAP-SOP on a quarterly basis.

15. That the Parties request within the Joint Litigation Position that the Commission initiate a statewide collaborative open to all interested stakeholders and/or initiate a new rulemaking proceeding to address CAP shopping issues is referred to the Commission’s Office of Competitive Market Oversight for review, analysis and subsequent recommendation.

16. That any directive, requirement, disposition, or the like contained in the body of this Opinion and Order, which is not the subject of an individual Ordering Paragraph, shall have the full force and effect as if fully contained in this part.

17. That the proceeding at Docket No. P-2016-2526627 be marked closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: October 27, 2016

ORDER ENTERED: October 27, 2016

1. Act 138 of 1996, as amended by Act 129 of 2008 (Act 129), codified at 66 Pa. C.S. §§ 2801, *et seq*. [↑](#footnote-ref-1)
2. SEF’s non-opposition to the Partial Settlement should not be interpreted as SEF having waived any arguments regarding whether a TOU program should be in place after May 31, 2017. [↑](#footnote-ref-2)
3. PPLICA and Noble do not join in and take no position on this provision of the Partial Settlement. [↑](#footnote-ref-3)
4. As part of PPL’s DSP II Program, the Commission approved a Standard Offer Referral Program pursuant to the Commission’s Investigation of Pennsylvania’s Retail Electricity Market: Intermediate Work Plan, Docket No. I-2011-2237952, 2012 Pa. PUC LEXIS 324 (Order entered March 2, 2012). [↑](#footnote-ref-4)