**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held February 8, 2018

Commissioners Present:

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| --- | --- | --- |
| Gladys M. Brown, Chairman | | |
| Andrew G. Place, Vice Chairman | | |
| Norman J. Kennard |  |
| David W. Sweet, Statement |  |
| John F. Coleman, Jr. |  |

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

**FINAL ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration is a recommendation from the Office of Competitive Market Oversight (OCMO) concerning operational issues concerning the implementation of PPL Electric Utilities’ Customer Assistance Program Standard Offer Program (PPL CAP-SOP).[[1]](#footnote-1) On November 8, 2017, the Commission adopted a Tentative Order (*Tentative Order*) in this proceeding seeking comment on various implementation issues including how to handle customers who are receiving service from an electric generation supplier (EGS) after June 1, 2017, and subsequently enroll in CAP. Through this Final Order, we provide directions as to the actions PPL and EGSs are to take regarding customers who are either currently participating in PPL’s CAP[[2]](#footnote-2) or enroll into CAP in the future.

# 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 (DSP Petition). The DSP Petition was filed pursuant to 66 Pa. C.S. § 2807*.* On July 19, 2016, PPL and various parties filed a Joint Petition for Approval of Partial Settlement (Settlement or Partial Settlement). Several of the Parties to the proceeding filed briefs and reply briefs regarding a single litigated issue – the Customer Assistance Program (CAP) customer shopping issue.

On August 17, 2016, Administrative Law Judge (ALJ) Susan D. Colwell issued her Initial Decision wherein she adopted the PPL CAP-SOP proposed by PPL, the 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), as modified by ALJ Colwell. Exceptions to the Initial Decision were filed by PPL, the Retail Energy Supply Association (RESA) and PP&L Industrial Customer Alliance (PPLICA) on September 6, 2016. Replies to Exceptions were received on September 16, 2016, from PPL, the OCA, I&E and CAUSE-PA. In an Opinion and Order issued on October 27, 2016[[3]](#footnote-3) (*October 2016 Order*), the Commission approved the Settlement and adopted the PPL CAP-SOP jointly proposed by the Joining Parties to become effective June 1, 2017.

On November 14, 2016, RESA filed a Petition for Reconsideration (*Petition*), seeking reconsideration of the approval of the PPL CAP-SOP in the *October 2016 Order*. By Order entered November 16, 2016, the Commission granted the *Petition*, pending further review of, and consideration on, the merits. On November 28, 2016, PPL, I&E, the OCA and CAUSE-PA filed Answers to the *Petition*. In an Opinion and Order issued on January 26, 2017[[4]](#footnote-4) (*January 2017 Order*), the Commission denied RESA’s *Petition*.

On February 27, 2017, RESA filed with the Commonwealth Court a Petition for Review of the *October 2016 Order* and *January 2017 Order*, with respect to the approval of the PPL CAP-SOP. *RESA v. Pa. PUC*, 230 C.D. 2017. However, RESA has not sought a stay of the implementation of the PPL CAP-SOP. Briefs have been filed and oral argument was held before the Commonwealth Court on December 6, 2017, and the parties await a court decision.

On March 10, 2017, PPL filed a petition to push back the implementation date of the PPL CAP-SOP (*Petition to Amend*) to September 2017 – citing various operational and information-technology challenges. On March 30, 2017, letters in response to the *Petition to Amend* were filed by the OCA and CAUSE-PA. However, on May 8, 2017, PPL filed a petition to withdraw its petition to push back the implementation date – and instead go with the original June 1 implementation date. On May 12, 2017, RESA filed a letter in opposition to the petition to withdraw and on May 16, 2017, CAUSE-PA filed a letter in support of the petition to withdraw. On May 16, 2017, PPL filed a letter in response to RESA’s letter, followed by a May 17, 2017, RESA response to PPL’s May 16th Letter.

In a *June 2017 Order*,[[5]](#footnote-5) the Commission granted the Petition to Withdraw. The Commission directed OCMO to facilitate meetings between PPL and the affected Electric Generation Suppliers (EGSs), including RESA, to examine and resolve any operational issues integral to the implementation of the CAP-SOP and, thereafter, to provide a status report to the Commission that addresses the discussions and dispositions of those operational issues.

CAUSE-PA and the OCA filed Petitions on July 5, 2017, and July 7, 2017, respectively. In its Petition, CAUSE-PA requested that the Commission clarify its *June 2017 Order* to allow all parties to participate in the meetings, as the process and procedures discussed are likely to have a significant impact on the proper implementation of the Commission’s underlying Order. OCA made a similar request in their petition. On July 11, 2017, letters in response to the instant Petitions were filed by PPL and RESA. In an Opinion and Order issued on July 12, 2017 (*July 2017 Order*), the Commission granted the Petitions, pending further review of, and consideration on, the merits. Furthermore, the directives within the *June 2017 Order* that OCMO was to hold a meeting within thirty days and provide a status report within ninety days were suspended.

With an Order adopted on August 3, 2017,[[6]](#footnote-6) (*August Order*) the Commission agreed to allow all parties to participate in the meetings. In addition, the Commission directed the following:

1. That, within thirty days OCMO would facilitate meetings with PPL, the affected EGSs, including RESA, CAUSE-PA, the OCA and any other interested party to this proceeding to examine and resolve any operational issues that are integral to the implementation of the CAP-SOP; and,
2. That, within ninety days of the entry date of this Opinion and Order, OCMO would provide a status report of the discussions and the disposition of the implementation issues in this matter to the Commission.

*August Order* at 11-12.

**August 28, 2017 Meeting**

Per the Commission’s *August Order* directives, OCMO convened an in-person meeting on August 28, 2017. Approximately two-dozen individuals participated; including consumer advocates, suppliers, PPL, and Commission staff from various bureaus. During the discussion, it soon became apparent that the primary point of contention was the treatment of supplier customers on month-to-month contracts – specifically – when do these customers need to be returned to PPL to either go onto default service or obtain a supplier via the PPL CAP-SOP?

Some participants pointed to ordering paragraph (14)(i) of the Commission’s *October 2016 Order* to support their contention that month-to-month customers remain with their supplier until the customer is re-certified by PPL for the PPL CAP:

(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.

However, other participants disagreed with this contention – pointing to ordering paragraphs (14)(g) and (h) of the same order:

(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.

Some parties contended that a month-to-month contract expires at the end of the billing period; meaning that the customers on month-to-month supplier contracts should have already been returned to PPL default service or CAP‑SOP. Further, as a practical matter, some parties noted that, at that time, there was no way for suppliers to know when customer recertification occurs – so there was no possibility for the ordering paragraph (14)(i) interpretation noted above to even be accomplished. Some parties noted that recertification occurs every 18 months, asserting that it could not have been the Commission’s intention to allow a customer in CAP to go this long without being enrolled into the PPL CAP-SOP or returned to default service. Some parties asserted that ordering paragraph (14)(i) was simply a “catch-all” intended to catch any customer who was, for whatever reason, not previously dropped by their supplier. Some also argued that there was no such thing as a month-to-month contract; that all contracts are for a fixed duration and that the duration of a month-to-month contract is one month. However, other participants pointed out that this interpretation does not provide enough time to for suppliers to provide customers with the two contract expiration notices required by the Commission at 52 Pa. Code § 54.10.[[7]](#footnote-7)

There was also discussion as to what extent these issues are truly transitional in nature or not as customers will always be moving in and out of CAP and in and out of shopping. Going forward, what is the expectation upon PPL as to handling new CAP customers who are with a competitive supplier? PPL stated that it does not want to interfere with existing contracts and risk exposing the customer to early termination fees. PPL noted that it currently lets the customer’s fixed duration contract run its course before the customer is required to be dropped by the supplier to default service or the PPL CAP-SOP. However, the question about how customers who are on a month-to-month supplier contract and are subsequently enrolled in CAP are to be treated remains. And regardless, PPL noted that it has no way of knowing just what type of supplier contract a customer is on; fixed duration or month-to-month; and customers are often uncertain about their contract type.

To aid suppliers in identifying CAP customers, on October 18, 2017, PPL notified OCMO that it had revised its supplier web-portal to make recertification dates available to suppliers. Also, effective September 13, 2017, PPL would identify which customers were enrolled in CAP on their supplier portal customer lists. PPL also indicated that the customer lists would be updated daily, giving suppliers a near real‑time method of identifying which of their customers were enrolled in CAP so that the supplier could comply with the Commission approved directives in the PPL CAP‑SOP settlement.

Given the fundamental disagreements between the stakeholders noted above, and acknowledging that some of the post-transition issues had not been fully addressed in previous orders, the Commission, on November 8, 2017 adopted a Tentative Order (*Tentative Order*) to solicit comment on proposed clarifications and proposals regarding *when* a shopping customer who subsequently becomes CAP-eligible must be transferred to either PPL’s default service or to the CAP-SOP.[[8]](#footnote-8) Specifically, regarding customers that are taking supply service from an EGS through a fixed‑duration contract and subsequently is enrolled in PPL’s CAP, we proposed the following:

The Commission affirms the position that customers who are on a fixed‑duration contract with a supplier and subsequently enrolls in the On-Track program at any time after June 1, 2017, remain with that supplier until the expiration date of the fixed‑duration contract or the contract is terminated. Once the newly enrolled CAP customer supplier 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 able to shop through the CAP‑SOP.

This proposal was intended to ensure that we are not directing the abrogation of contracts and possibly exposing these customers to early termination fees.

Regarding customers that are taking supply service from an EGS through a month‑to‑month contract and subsequently is enrolled in PPL’s CAP, we proposed the following as to give suppliers the time needed to provide appropriate notices to the customer:

A shopping customer who subsequently becomes CAP-eligible must be dropped by the supplier to PPL default service within 120 days after the customer is enrolled in CAP.[[9]](#footnote-9) The CAP customer will then have the option to enroll in the CAP‑SOP or return to default service, but in any event, will only be able to shop through the CAP‑SOP.

Further, we acknowledged that some post-transition issues needed to be addressed, given that customers will be continually moving in - and - out of On-Track and shopping. Suppliers need to know which potential customers are in the On-Track program – and when any of their current customers enter On-Track. PPL may need to know what type of supply contract a customer is on at the time they enter On-Track. We asked parties to comment on the sufficiency of the web-portal mechanisms developed by PPL to provide CAP customer information and asked parties to comment on whether suppliers should also be obligated to respond to any information request from PPL as to what type of contract the customer is on; month‑to‑month or fixed duration – and if the contract is for a fixed duration, should the supplier provide PPL with the expiration date of the contract. Finally, we invited parties to comment on any other implementation issues that may have been overlooked.

**Comments**

Five parties filed comments on December 8, 2017: the Retail Energy Supply Association (RESA); WGL Energy Services Inc. (WGL); the Office of Consumer Advocate (OCA); the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA); and PPL Electric Utilities Corporation (PPL).[[10]](#footnote-10)

RESA prefaces it comments by noting that it continues to strongly disagree with the Commission's decision to implement the CAP-SOP and that their comments offered in response to the *Tentative Order* should not be viewed as a waiver or reversal of RESA's position in this regard. RESA at 1. Also, in RESA's view, requiring EGS customers who decide they want to receive CAP benefits to take affirmative action (either during initial enrollment or recertification) to cancel existing month-to-month contracts or to not renew an existing contract upon contract expiration is the most appropriate way to proceed. However, RESA recognizes the apparent desire to place the burden on EGSs to cancel these contracts if the customer fails to take affirmative steps to do so and, to that end, offers their comments. RESA at 3-4.

RESA notes that to facilitate the cancelling of EGS contracts, PPL was initially providing a list to EGSs of their customers enrolled in CAP. PPL then subsequently modified its web portal to provide information to EGSs regarding their customer's enrollment in CAP which is to include providing the customer recertification dates to suppliers. Based on some random sampling, RESA reports that its members have been unable to confirm the timeliness and accuracy of the data provided. Initially, the recertification date coincided with the date PPL refreshed the list but now some of the dates (but not all) appear to be repopulating more accurately. Because PPL has implemented updates to its web portal, it has discontinued sending EGSs customer lists which identify the new CAP participants. However, even to the extent the portal process is refined so that it is timely and usable, RESA believes that requiring PPL to affirmatively send lists to the EGSs would better ensure prompt EGS action. RESA at 4-5.

Regarding fixed-duration contracts, RESA requests that the Commission give EGSs flexibility to manage the notice of contract cancellation process to allow EGSs to send one notice to the customer rather than requiring them to send the two renewal notices mandated by 52 Pa. Code § 54.10. EGSs have had to make individual company decisions based on their specific operations to determine how to best comply with: (1) the *CAP-SOP Final Order,* (2) the Commission's contract renewal requirements; and, (3) specific contract language regarding contract cancellation. Depending on the size and internal operational processes of the specific EGS, it may not have been able to "personalize" the Commission required customer renewal notices leaving it with no choice but to send a third cancellation notice to the customer who is enrolled in CAP. Other companies may have been able to issue an "options" notice stating that as the customer is enrolled in CAP he/she cannot renew the existing contract. Still other companies may have elected to issue a cancellation notice immediately (and consistent with the terms of the existing contract) without sending the initial and options notices set forth in the Commission's regulations. Accordingly, the Commission should give EGSs flexibility to manage the notice of contract cancellation process based on their individual company's processes and abilities. RESA at 5 – 7.

RESA notes that while PPL has modified its web portal to provide information to EGSs regarding their customer's enrollment in CAP including the customer recertification dates, knowing the recertification date does not inform the EGS about whether the customer has elected to recertify on that date. RESA at 7.

Concerning month-to-month contracts, RESA notes that these contracts generally include provisions that allow either party to cancel at any time. Because this ability to cancel a month-to-month contract is a key term in these types of contracts, EGSs are likely not relying on the notice process of § 54.10 because they are not "renewing or changing" month-to-month contract terms when the EGS exercises its right. Regardless, RESA agrees with the *Tentative Order* that this "120-day return deadline is simpler to administer and comply with" for two reasons. First, it provides the customer some time to affirmatively exercise his/her rights under the contract to cancel it if the customer wishes to accept CAP benefits in lieu of shopping. Second, it gives EGSs ample opportunity to provide any customer notices required by the specific contract with the customer and comply with the Commission's directive to drop these customers. RESA at 8 – 9.

Concerning existing month-to-month contracts, in the *Tentative Order*, the Commission proposes that any EGS customers on a month-to-month contract who enrolled in PPL's CAP after June 1, 2017 be dropped within 120 days after a final order is published in the Pennsylvania Bulletin. Given the directive of the *CAP-SOP Final Order* that customers would be responsible for cancelling month-to-month EGS contracts after June 1, 2017 and that PPL was going to revise its CAP recertification scripts/process to facilitate this, there may be some CAP participants who are still receiving EGS service through "legacy" contracts (meaning the EGS customer had enrolled in CAP prior to June 1, 2017 and was being served on a month-to-month contract on June 1, 2017). To provide clear guidance to the industry, the Commission should clarify that its 120-day window to drop any EGS customers on a month-to-month contract who are enrolled in CAP on the date of publication of the final order applies without regard for whether the CAP enrollment occurred pre or post-June 1, 2017. RESA at 9 – 10.

Concerning whether EGSs should be obligated to respond to any information request from PPL as to what type of contract the customer is on and, if a fixed-duration contract, provide PPL the expiration date of the contract - RESA opines that EGSs generally view this information as competitively sensitive and would not support a requirement that it be disclosed to PPL. RESA believes that the processes that the Commission is developing place the burden on the EGSs to cancel contracts and as such there is no useful purpose served by requiring EGSs to provide information about their customer contracts to PPL. RESA at 10.

Regarding when customers on month-to-month contracts need to be returned to PPL, WGL believes that the Commission's *October 2016 Order* is very clear on this point - paragraph (14)(i) clearly indicates that such customers may remain with their supplier until the customer is re-certified by PPL for the PPL CAP. However, this mandate is impossible to implement unless EGSs know when a customer is due for CAP recertification. WGL believes that a termination of the contract would be considered a change in terms that would trigger the need to issue the two notices required by regulation. To the extent that CAP recertification is used as a trigger to drop a customer, the obligation to drop a customer should only occur after a customer recertifies - and the supplier will need adequate time after the recertification to provide the required notices. Therefore, WGL agrees with the Commission's proposal to allow 120 days for an EGS to return a month-to-month customer to PPL default service after that customer enrolls in CAP, or, for existing CAP customers on month-to-month contracts, 120 days after the Order is final. WGL at 2.

WGL notes that PPL's current process requires EGSs to log into the PPL web portal on a recurring basis to check on customers' CAP status and recertification timing – and that they believe this process is not workable. It requires dozens of suppliers to task individual employees to log into the PPL web-portal, and cross-check the EGS's customer lists against PPLs' list, to determine if an existing customer has enrolled in CAP. As the entities who have the obligation under the PPL CAP-SOP to take the initiative to "drop" their own customers, suppliers will spend many hours checking and re-checking PPL's portal to make sure no change in CAP status is missed. Much of this time and effort will come to nothing. WGL thinks that a much more reasonable and workable process would involve placing the obligation on PPL to proactively notify EGSs when an existing EGS customer enrolls in CAP. This could be accomplished with a once a week email from PPL to each EGS, identifying which existing customers of the EGS has enrolled in CAP during the preceding week. PPL has all of the information needed to automatically generate EGS-specific reports about customer enrollments in CAP. As the only party with the direct access to that information, WGL believes that PPL is in the best position to assume the obligation of identifying the appropriate customers who must be "dropped" and notifying the EGSs accordingly. WGL at 3.

Further, in addition to notifying EGSs when their enrolled customers enter CAP, WGL opines that basic fairness justifies requiring PPL to notify the EGSs when their customers who were "dropped" upon entry to CAP subsequently leave CAP. PPL's CAP-SOP gives EGSs no choice but to "drop" their customers who happen to enroll in CAP — even if the customer is completely satisfied with their EGS service offering. As a result of the CAP-SOP rules, EGSs who have invested time and money in acquiring a customer and procuring electricity to serve them is then forced to relinquish that customer, in some cases before fully recouping the costs of customer acquisition. WGL therefore proposes that PPL should pro­actively notify that EGS when the customer exits CAP. This will give the affected EGS the first opportunity to re-engage with the customer to seek re‑enrollment. The customer would not be forced to re-enroll with the EGS; but at least the EGS who was forced to "drop" the customer would have the opportunity to make the first contact with the customer to discuss re-enrollment options with the customer. WGL at 4.

Finally, WGL states that there is absolutely no basis or need to require suppliers to inform PPL about that the suppliers' contractual arrangements with customers. Suppliers are the entities that have the obligation to "drop" customers who enroll in PPL's CAP. Because PPL has no involvement in initiating the "drop" process, there is no need for PPL to know the length or end-date of a customer's EGS contract. WGL at 5.

The OCA is concerned that the Commission’s proposal concerning the treatment of month-to-month customer contracts relies upon notices for expiration of fixed term contracts, not month-to-month contracts, which could delay a CAP customer’s transition to default service or the CAP-SOP. OCA thinks that customers on a month-to-month contract, without a cancellation fee, should be able to be moved into CAP within thirty days. OCA at 3.

The OCA submits that there are two groups of customers taking EGS service on “month-to-month” contracts; the first group is customers who were previously on a fixed price contract and have been defaulted to a month-to-month contract. The second group is those customers who signed up for a variable rate contract. Regarding the first group of customers (shopping customers who have defaulted to a month-to-month contract from a fixed price contract), the only notice requirement is for EGS’ to provide a thirty-day advanced notice of a price change per 52 Pa. Code § 54.10(2)(ii). While this is an advanced notice of price change, this notice appears to be intended to allow the customer to exit the service with the EGS or change to another product if the new price is unacceptable. OCA at 3 – 4.

The second group of customers on “month-to-month” contracts are customers being served under variable rates. These customers are not subject to the notice requirements of 54.10(2) as they are not on fixed term contracts. 52 Pa. Code § 54.10(2). EGSs are not required to provide advance price notices to customers who are on variable rate contracts and the decision to end the contract rests with the customer. Since there are no notice provisions for these customers in the Commission’s regulations, the OCA submits that the proposed 120 day waiting period to be returned to default service or select CAP-SOP is not necessary. CAP customers on variable rate contracts can, and should, be transitioned to default service or to the CAP-SOP as soon as the customer terminates the variable rate agreement. OCA at 3 – 5.

Concerning customers with fixed-duration contracts, the OCA submits that allowing a customer seeking to enroll in CAP to continue until expiration could negatively impact the customer and costs paid by non-CAP customers. Contracts can have a significant duration with some suppliers offering 24-month and 36-month duration contracts. If new CAP participants were permitted to enroll in the CAP program with an existing contract of significant duration, the goals of the CAP-SOP will not be fully realized. The OCA submits that the customer seeking to enroll in CAP should be required to end the contract to enter the CAP and the customer should be informed of the possibility of cancellation fees and provided assistance in evaluating that possibility. OCA at 5.

CAUSE-PA prefaces it comments by noting that it will limit its comments to the stated rationale for the order: to address implementation issues for shopping customers who, post June 1, 2017, seek to enroll in CAP. On this narrow issue which the Commission’s proposal seeks to address, CAUSE-PA asserts that no further guidance is necessary beyond the Commission’s October 27, 2016 and January 26, 2017 Orders, which are still on appeal before the Commonwealth Court. Given the pendency of the appeal, CAUSE-PA opines that the Commission lacks jurisdiction to make any changes to those orders at this time. CAUSE-PA at 1. CAUSE-PA notes that oral arguments were held on December 6, 2017 and as such, jurisdiction over the CAP-SOP terms remains with the Commonwealth Court until a decision is reached. CAUSE-PA at 2.

CAUSE-PA does not believe the approach proposed by the Commission is necessary or prudent because the Commission’s previous orders, and existing regulations, provide sufficient guidance for the issues identified. The restriction, that 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, is clear and applies to both new and existing CAP customers. CAUSE-PA insists that this restriction must be “upheld – without erosion – to prevent certain and substantial harm from occurring.” CAUSE-PA at 2.

CAUSE-PA opposes the imposition of new requirements over those that already exist in the CAP-SOP program approved by the Commission in its October 2016 Order. While EGSs may need to be directed to complywith the terms of the order, no additional clarification is needed. CAUSE-PA submits that the Commission’s proposals directly contradicts the approved CAP-SOP, which is currently on appeal before the Commonwealth Court, and would undermine the CAP-SOP. CAUSE-PA at 5.

Instead, CAUSE-PA urges the Commission to direct that PPL follow the October 2016 Order that provides that customers who are being served by an EGS and who are seeking to enroll in CAP with three choices: (1) return to PPL provided default service; (2) enroll in CAP-SOP; or, (3) decline CAP enrollment and remain with their supplier. CAUSE-PA believes that there are no other reasonable alternatives. CAUSE-PA at 5.

CAUSE-PA opines that there is no real debate here - an examination of subsections (g) (h) and (i) shows that these provisions were only prospective in nature, and were designed to ease the implementation of CAP-SOP for existing CAP customers who – as of June 1, 2017 - were currently shopping. CAUSE-PA at 7. CAUSE-PA notes that ALJ Colwell’s Initial Decision recognized that subsections (g) (h) and (i) were only intended to apply to those CAP customers who were enrolled in the program and shopping for competitive supply at the time of implementation – not prospective or future CAP enrollees after implementation was complete. These “transitional provisions” were only intended to apply for existing CAP customers at the time of implementation and that they were not intended to apply in perpetuity to all new CAP enrollees. CAUSE-PA at 7-9. CAUSE-PA believes that the controlling language for when a new CAP enrollee must elect to return to default service or enter the CAP-SOP is contained in subsection (a), which prohibits any CAP enrollees who were not shopping at the time of transition and/or who seek to enroll in CAP after June 1, 2017 from shopping outside of the CAP‑SOP for any length of time after June 1, 2017. CAUSE-PA at 8.

CAUSE-PA submits that the Commission’s rationales for its proposals in the *Tentative Order* fail to consider the likely harm in allowing new CAP applicants to remain with their supplier - harm to a household’s financial and physical safety as well as to other residential ratepayers. While some CAP customers may face a cancellation or termination fee, those fees are not collectible through utility bills and cannot result in the customer’s termination. Nor are cancellation or termination fees recoverable through the purchase of receivables program, nor are they recoverable from ratepayers through uncollectible expenses. On the other hand, shopping outside the CAP-SOP for any length of time effects the costs paid by other ratepayers who pay for CAP and can and does routinely result in the early expiration of a customer’s maximum CAP credits. CAUSE-PA at 10.

CAUSE-PA questions the Commission’s assertion that a transition period is necessary to allow suppliers to comply with notice requirements in section 54.10 because these requirements are designed to ensure that a shopping customer is informed about a change in the terms and conditions of an ongoingrelationship with a supplier that are initiated by a supplier. Nothing in section 54.10 requires suppliers to provide notice to a customer when the customer is taking proactive action to switch away from the supplier. CAUSE-PA opines that no such notice is needed because the notice requirements only require suppliers to notify a consumer when a contract period is set to expire - leading to the imposition of new terms or pricing - or when the supplierseeks to change the terms of the contract to ensure that the consumer is aware of their options. CAUSE-PA at 10 – 11.

Further, CAUSE-PA thinks that the Commission’s concern that an immediate supplier switch is “too abrupt” from the customer’s perspective is misplaced. CAP customers are actively seeking immediate relief from unaffordable rates, often have arrears, and are frequently facing termination of service. They require immediate financial assistance to help stabilize their finances. Requiring CAP customers to choose between returning to default service or enrolling in the CAP-SOP as a condition of receiving immediate rate relief is not “too abrupt” – rather, it cannot come fast enough in the opinion of CAUSE-PA. CAUSE-PA at 11 – 12.

CAUSE-PA submits that, to facilitate compliance with the CAP shopping rule, new CAP applicants should be required to: (1) affirmatively acknowledge that they may only shop for electric through the CAP-SOP; (2) elect whether to return to default service or enroll in the CAP-SOP; (3) provide express authorization for PPL to make the elected switch on their behalf, and (4) acknowledge that they may face a termination or cancellation fee if they opt to cancel their EGS-contract. PPL’s CAP-SOP is “a Commission-approved program” that was designed to mitigate the ramifications of unrestricted shopping by PPL’s CAP customers. Accordingly, it is appropriate pursuant to the language in section 57.172(a) for a customer enrolling in CAP to provide their express or written authorization – as part of the CAP application process – for PPL to switch their service to a new EGS through the CAP-SOP. CAUSE-PA at 13 – 15.

PPL agrees with the *Tentative Order's* proposal to clarify the requirement that customers with fixed-duration contracts who subsequently enroll in CAP must either return to default service or enroll in the CAP-SOP upon the expiration of their contracts. This proposal simply clarifies that the CAP-SOP rule approved in the *October 2016 Order,* which addresses fixed-duration contracts for existingCAP customers, should apply to customers who enroll in CAP after June 1, 2017. PPL submits that there is no reason to treat future CAP customers differently and that it was not the intent of the Commission to carve-out future CAP customers from the requirements of CAP-SOP. PPL at 2 – 3.

However, PPL requests that the Commission clarify its proposal further by including the requirement that the EGS has the duty to return customers to default service at the conclusion of the fixed-duration contracts. PPL submits that without the EGSs returning customers to default service at the conclusion of their contracts, the goal of having customers returned to default service or enrolled into CAP-SOP will not be achieved. PPL notes that it does not know the end-dates of its customers' shopping contracts or terms, and thus cannot return CAP customers to default service at the expiration of these contracts. The EGSs, however, know which customers are enrolled in CAP, the end dates of the CAP customers' contracts, and have the ability to return these customers to default service. Accordingly, PPL asks that language be included directing that “the supplier will return” the CAP customer to default service. PPL at 3 – 4.

Regarding customers who receive supply service from an EGS through a month-to-month contract and subsequently enroll in CAP, PPL submits that the *Tentative Order's* proposal to have them returned to default service within 120 days is a reasonable and balanced approach and should be adopted. The proposal to provide EGSs 120 days to return these customers to default service resolves this concern by providing EGSs with the time necessary to fully comply with the Commission's notice regulations. In PPL’s opinion, this proposal also protects the interests of CAP customers and the other residential customers who pay for CAP. If CAP customers are permitted to stay on a month-to-month contract until their recertification date, CAP customers could potentially continue on a month-to-month contracts for up to 18 months. PPL at 4 – 5.

Concerning CAP customer data availability, PPL reports that it has revised its supplier web-portal referred to as "My Customer List" with a "Yes" or "No" indicator to show which accounts are CAP customers. If the account is a "Yes," then there is also a recertification date. The "My Customer List" is updated daily to capture when existing customers enroll into CAP. The purpose of the revised "My Customer List" is to allow EGSs to identify those customers that are enrolled in CAP and providing their CAP recertification date. PPL further notes that the web-portal information is downloadable and that will allow EGSs to sort through and filter their lists of customers to quickly and easily identify changes to their lists of accounts. PPL at 5.

Finally, PPL requests the opportunity to respond to any additional issues or proposals raised by other parties to further change the CAP-SOP program prior to a final order in this matter. PPL at 6.

**Discussion**

We thank the stakeholders for their participation in this process and the thoughtful comments they provided. As we stated in the *Tentative Order*, this is an admittedly complex and challenging subject involving consumers needing assistance with paying their electric bills. We acknowledge the need to protect these consumers and the interests of all residential consumers who support assistance programs via the rates they pay. At the same time, we do not want to deny these consumers the benefits of the competitive market – nor do we want to impose unreasonable or burdensome procedures upon the suppliers and PPL. This requires a careful consideration and balancing of the interests of all the stakeholders involved. We found the advice of the stakeholders as presented in their comments helpful in working toward these objectives. After review of the comments submitted, the previous Orders in this proceeding, and the applicable regulations and laws, we are prepared to offer the following directions.

First, concerning those customers on fixed-duration contracts who subsequently enter PPL’s CAP program, we agree with PPL in that there is no reason to treat future CAP customers differently than those that were on CAP on or before June 1, 2017. These customers should return to default service or enroll in the CAP-SOP upon the expiration of their contracts. This serves to protect the integrity of supplier-customer contracts and protects customers from possible early‑termination/cancellation fees.

While CAUSE-PA may be correct in that early termination fees are not collectible through utility bills; cannot result in the customer’s termination; are not recoverable through the purchase of receivables program; and are not recoverable from ratepayers through rates – the customer still may be held responsible for the payment of the fees and could still face collection actions through other means. We find it unreasonable to adopt a course of action that would expose consumers to such a liability and deliberately expose them to collection enforcement due to actions beyond their control or force them to make a choice between avoiding early termination fees or obtaining the benefits of the consumer assistance program. We find that this resolution provides the most reasonable approach.

Accordingly, we think our proposal concerning fixed-duration contracts as presented in the *Tentative Order* is reasonable and appropriately balances the interests of the CAP participant, the other residential ratepayers, PPL’s administration of this program and EGSs. However, we agree with PPL that it should be clarified further by explicitly stating that the supplier is the entity responsible for returning the customer to default service. Our revised direction on this matter is as follows, with the modified language in **bold**:

The Commission affirms the position that customers who are on a fixed‑duration contract with a supplier and subsequently enrolls in the On‑Track program at any time after June 1, 2017, remain with that supplier until the expiration date of the fixed‑duration contract or the contract is terminated, whichever occurs first. Once the newly enrolled CAP customer supplier contract expires or is terminated, the **supplier will return the** CAP customer **to default service. The CAP customer** will have the option to enroll in the CAP‑SOP or **remain on** default service, but in any event, will only be able to shop through the CAP‑SOP.

Second, concerning those customers on month-to-month contracts, we agree with PPL that having them returned to default service within 120 days after the customer is enrolled in CAP is a reasonable and balanced approach. 120 days provides EGSs with ample time to send notices to the customer regarding the termination of the month‑to‑month contract and their return to default service. We also concur with PPL’s opinion that this proposal is more reasonable than waiting till the customer’s CAP recertification date in that it protects the interests of CAP customers and the other residential customers who pay for CAP. We find it significant that CAP customers could potentially continue on a month-to-month contract for up to 18 months before CAP recertification can occur.

We acknowledge the comments of parties including OCA and CAUSE-PA that the notice requirements at 52 Pa. Code § 54.10 apply to “fixed term contracts” and thus are not relevant to customers on “month-to-month” contracts. However, even if we accept this argument, these customers are still supposed to receive notice – notices that are to be described in the customer’s disclosure (*see* 52 Pa. Code § 54.5(c)(7)); and time must be provided to send these notices. Regardless, we do not accept the argument that § 54.10 is not applicable – noting that this rule also applies anytime there is a change in contract terms. We agree with WGL that the ending of a month-to-month contract is more accurately described as a change in contract terms than an expiration. Admittedly, this situation does not fit neatly into either classification. It is not entirely accurate to describe it as a supplier-initiated drop because the supplier is being forced to drop the customer not as a result of the supplier’s deliberate business decision – but as a result of PPL’s approved customer assistance program. Nor is this accurately described as a customer-initiated drop; the customer is being forced to leave the supplier, again as a result of PPL’s approved customer assistance program.

Accordingly, we agree with WGL that what is occurring in this situation is a change in contract terms not an expiration or termination of the contract per the supplier or the customer’s decision – but is instead being changed as a result of PPL’s approved customer assistance program tariff. A such, we find that the two notices required by 52 Pa. Code § 54.10 are appropriate and required in this scenario. For these same reasons, we must reject RESA’s request that only one notice be required in this situation.

In response to the concerns expressed by OCA and CAUSE-PA that 120 days is too long, we note again that the customer’s choice of supplier ultimately rests with the customer. Even if we establish a 120-day return period, there is nothing to prevent a customer from dropping the supplier at any time. Again, it is the customer that can weigh their options – and if they desire to drop back to default service and/or enter the PPL CAP-SOP sooner, they can do that at any time. Furthermore, we note that we are giving suppliers up to 120 days after the customer is enrolled in CAP to provide the two required notices and drop the customer to default service. We find that this 120 day limit establishes a reasonable standard that EGSs can be held accountable for. If an EGS fails to meet this standard, they may face penalties under Chapter 33 of the Public Utility Code.

We agree with RESA’s request that we clarify that the 120-day window to drop any EGS customers on a month-to-month contract who are enrolled in CAP on the date of publication of the final order applies without regard for whether the CAP enrollment occurred pre-or post-June 1, 2017. Accordingly, we provide the following direction concerning customers on month-to-month supplier contracts:

Customers who are receiving supply service from an EGS through a month‑to‑month contract and subsequently becomes CAP-eligible must be dropped by the supplier to PPL default service within 120 days after the customer is enrolled in CAP. The CAP customer will then have the option to enroll in the CAP‑SOP or return to default service, but in any event, will only be able to shop through the CAP‑SOP.

Customers who are receiving supply service from an EGS through a month‑to‑month contract and are subsequently enrolled in PPL’s CAP either before or after June 1, 2017 and before this Final Order is published in the *Pennsylvania Bulletin*, the supplier must drop that customer to PPL default within 120 days after this Final Order is published in the *Pennsylvania Bulletin*.

Concerning the data made available by the suppliers, we agree with RESA and WGL that there is no need for suppliers to inform PPL of the type of contracts their customers are on. The obligation to drop CAP customers to default service has been placed upon the suppliers – meaning that PPL has no need for this information. We also agree that sharing this type of information raises customer privacy and confidentiality concerns. There is no compelling need for PPL to have this information that would cause us to intrude on customer confidentiality expectations.

Concerning the data made available by PPL to suppliers concerning the CAP‑status of their customers, we acknowledge the changes PPL has made to its web‑portal to make this information accessible to suppliers. However, we do share WGL’s and RESA’s concerns with the reasonableness and effectiveness of requiring all the suppliers to continually check PPL’s web-portal and to constantly cross-check customer lists to determine which of their customers has recently enrolled in CAP. We agree with WGL that this will be a time-consuming and labor-intensive process just to identify a limited number of customers who enroll in CAP. We are also concerned that such a procedure could result in these customer’s being overlooked or not identified timely. We conclude that a more reasonable approach is for PPL to proactively notify EGSs when an existing EGS customer enrolls in CAP. PPL is the only entity that has direct access to all of the needed information, and as such, is in a position to generate EGS-specific reports about customer enrollments in CAP. This should be accomplished by email from PPL to each EGS on at least a once a month basis, identifying which existing customers of the EGS have enrolled in CAP during the preceding month and indicating the date the customer was enrolled. EGSs would then be obligated to act upon this information per the directions provided in this Final Order.

However, we reject WGL’s request that PPL notify suppliers of when a customer is dropped from CAP and thus eligible to choose freely in the competitive market. We assume in this situation that PPL will update the customer’s status on the Eligible Customer List (ECL) – assuming the customer has not opted-out of the ECL of course, as well as the web portal. Other than updating the ECL information, which is available to all EGSs, we decline to require separate specific notice to individual EGSs.

**Conclusion**

Upon careful review and consideration of the comments submitted in response to the *Tentative Order*, we provide the following directions to PPL and suppliers concerning the PPL CAP-SOP program:

The Commission affirms the position that customers who are on a fixed‑duration contract with a supplier and subsequently enrolls in the On-Track program at any time after June 1, 2017, remain with that supplier until the expiration date of the fixed‑duration contract or the contract is terminated, whichever comes first. Once the newly enrolled CAP customer supplier contract expires or is terminated, the supplier will return the CAP customer to default service. The CAP customer will have the option to enroll in the CAP‑SOP or remain on default service, but in any event, will only be able to shop through the CAP‑SOP.

Customers who are receiving supply service from an EGS through a month‑to‑month contract and subsequently becomes CAP-eligible must be dropped by the supplier to PPL default service within 120 days after the customer is enrolled in CAP. The CAP customer will then have the option to enroll in the CAP‑SOP or return to default service, but in any event, will only be able to shop through the CAP‑SOP.

Customers who are receiving supply service from an EGS through a month‑to‑month contract and are subsequently enrolled in PPL’s CAP either before or after June 1, 2017 and before this Final Order is published in the *Pennsylvania Bulletin*, the supplier must drop that customer to PPL default within 120 days after this Final Order is published in the *Pennsylvania Bulletin*.

PPL Electric Utilities is directed to send an e-mail to each electric generation supplier at least a once a month identifying which existing customers of the electric generation supplier have enrolled in On-Track during the preceding month and indicating the date the customer was enrolled.  Electric generation suppliers are to act upon this information per the directions provided in this Final Order.

These directions become effective upon publication of this Final Order in the *Pennsylvania Bulletin*; **THEREFORE,**

**IT IS ORDERED:**

1. That customers who are on a fixed duration contract with a supplier and subsequently enrolls in the On-Track program at any time after June 1, 2017, remain with that supplier until the expiration date of the fixed duration contract or the contract is terminated, whichever comes first. Once the newly enrolled On-Track customer’s supplier contract expires or is terminated, the supplier will return the On-Track customer to default service. The On-Track customer will have the option to enroll in the CAP‑SOP or remain on default service, but in any event, will only be able to shop through the CAP‑SOP.

2. That customers who are receiving supply service from an electric generation supplier through a month‑to‑month contract and subsequently become On‑Track‑eligible must be dropped by the electric generation supplier to default service within 120 days after the customer is enrolled in On-Track. The On-Track customer will then have the option to enroll in the CAP‑SOP or return to default service, but in any event, will only be able to shop through the CAP‑SOP.

3. That customers who are receiving supply service from an electric generation supplier through a month‑to‑month contract and are subsequently enrolled in PPL’s On‑Track program either before or after June 1, 2017 and before this Final Order is published in the *Pennsylvania Bulletin*, the electric generation supplier must drop that customer to default service within 120 days after this Final Order is published in the *Pennsylvania Bulletin.*

4. That PPL Electric Utilities is directed to send an e-mail to each electric generation supplier at least once a month identifying which existing customers of the electric generation supplier have enrolled in On-Track during the preceding month and indicating the date the customer was enrolled. Electric generation suppliers are to act upon this information per the directions provided in this Final Order.

5. That this Final Order be served on all jurisdictional Electric Distribution Companies, all licensed Electric Generation Suppliers, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate and the parties at this Docket No. P-2016-2526627.

6. That a copy of this Order be shall be published in the *Pennsylvania Bulletin* and posted on the Commission’s website at the Office of Competitive Market Oversight’s web page at <http://www.puc.pa.gov/utility_industry/electricity/electric_competitive_market_oversight.aspx>.

7. That the Office of Competitive Market Oversight shall electronically serve a copy of this Final Order on all persons on the contact list for the Committee Handling Activities for Retail Growth in Electricity.

8. That the contact person for technical issues related to this Final Order is Daniel Mumford, 717-783-1957 or dmumford@pa.gov. The contact person for legal issues related to this Final Order is Kriss Brown, 717-787-4518 or kribrown@pa.gov.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: February 8, 2018

ORDER ENTERED: February 9, 2018

1. The PPL CAP-SOP, as of June 1, 2017, is the only vehicle that a CAP participating customer may use to shop and receive supply from an electric generation supplier (EGS), wherein EGSs participating in the CAP-SOP must agree to serve customers for 12 months at a 7% discount off the price-to-compare (PTC) at the time of enrollment, with no early termination fees. [↑](#footnote-ref-1)
2. PPL’s CAP program is also referred to as the On-Track program. [↑](#footnote-ref-2)
3. *See Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 Through May 31, 2021,* Docket No. P-2016-2526627 (Order Entered October 27, 2016). [↑](#footnote-ref-3)
4. *See Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 Through May 31, 2021,* Docket No. P-2016-2526627 (Order Entered January 26, 2017). [↑](#footnote-ref-4)
5. *See Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 Through May 31, 2021,* Docket No. P-2016-2526627 (Order Entered June 23, 2017). [↑](#footnote-ref-5)
6. *See Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 Through May 31, 2021,* Docket No. P-2016-2526627 (Order Entered August 3, 2017). [↑](#footnote-ref-6)
7. 52 Pa. Code § 54.10 requires suppliers to provide two notices; one 45-60 days before expiration; the other at least 30 days before expiration.   
   <http://www.pacode.com/secure/data/052/chapter54/s54.10.html>. [↑](#footnote-ref-7)
8. The Commission, however, did not propose to otherwise clarify, amend or change the terms and conditions of the CAP-SOP adopted in the Opinions and Orders entered on October 27, 2016 and January 26, 2017, which are presently the subject of an appeal at Docket No 230 C.D. 2017. The clarifications conforms with the Rules of Appellate Procedure, Rule 1701(b)(1), which permits the Commission to “[t]ake such action as may be necessary to preserve the status quo, . . ., and take other action permitted or required by these rules or otherwise ancillary to the appeal or petition for review proceeding.” RESA agreed in its April 25, 2017 letter, filed at this Docket and available at <http://www.puc.state.pa.us/pcdocs/1518238.pdf>, that RAP 1701 permits the Commission to take further action in this matter to address CAP‑SOP operational and implementation issues.   
    [↑](#footnote-ref-8)
9. For customers who are receiving supply service from an EGS through a month‑to‑month contract and are subsequently enrolled in PPL’s CAP after June 1, 2017 and before this proposal becomes final, the supplier must drop that customer to PPL default within 120 days after a Final Order adopting this proposal is published in the *Pennsylvania Bulletin*. [↑](#footnote-ref-9)
10. In addition, the PPL Industrial Customer Alliance (PPLICA) filed a notice on December 8, 2017 informing the Commission that it would not be submitting comments in this proceeding. [↑](#footnote-ref-10)