

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities :  
Corporation for Approval of a Default : Docket No. P-2016-2526627  
Service Program and Procurement Plan :  
for the Period June 1, 2017 through May :  
31, 2021 :

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

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**PENNSYLVANIA UTILITY LAW PROJECT**  
*Counsel for CAUSE-PA*

Patrick M. Cicero, Esq., PA ID: 89039  
Elizabeth R. Marx, Esq., PA ID: 309014  
Joline Price, Esq., PA ID: 315405  
118 Locust Street  
Harrisburg, PA 17101  
Tel.: 717-236-9486  
Fax: 717-233-4088  
[pulp@palegalaid.net](mailto:pulp@palegalaid.net)

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## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
A.	BACKGROUND .....	1
B.	PROCEDURAL HISTORY.....	3
II.	STATEMENT OF THE CASE.....	5
III.	QUESTIONS INVOLVED.....	6
A.	Does the Commission have the legal authority to impose CAP shopping restrictions to ensure adequately-funded, cost-effective, and affordable programs to assist customers who are low-income to afford electric service where, as here, there is no reasonable alternative available to avoid continued harm to CAP and non-CAP customers that has resulted from unrestricted CAP shopping? .....	6
	Suggested answer: Yes. ....	6
B.	Have the Joint Parties shown that CAP shopping restrictions are needed within the PPL service territory to ensure adequately-funded, cost-effective, and affordable programs to assist customers who are low-income to afford electric service?.....	6
	Suggested answer: Yes. ....	6
C.	Should the Commission adopt the CAP shopping rules jointly proposed by PPL, CAUSE-PA, the OCA, and I&E? .....	6
	Suggested answer: Yes. ....	6
IV.	LEGAL STANDARDS AND BURDEN OF PROOF .....	7
V.	SUMMARY OF ARGUMENT .....	9
VI.	ARGUMENT .....	11
A.	LEGAL AUTHORITY FOR CAP SHOPPING RESTRICTIONS.....	11
B.	WHETHER CAP SHOPPING RESTRICTIONS ARE NEEDED .....	13
1.	PPL’s low-income CAP customers are uniquely situated, economically vulnerable, and require specific and distinct protection within the retail electric market as compared to other electric customers. ....	13

2.	PPL’s current policy of allowing CAP customers to shop without limitation on the price or terms of service has worsened the affordability crisis for its CAP customers.....	16
C.	CAP SHOPPING PROPOSALS .....	22
1.	The Joint Litigation Position of the parties appropriately balances the ability of CAP customers to enter the competitive market while continuing to ensure that adequately-funded, cost-effective, and affordable programs remain available to assist customers who are low-income to afford electric service. ....	22
2.	RESA’s concerns about the Joint Parties position are speculative, unfounded, and unsupported by substantial evidence, and its position that the status quo is acceptable ignores mandates of the Choice Act.....	26
VII.	CONCLUSION.....	33
	APPENDIX A - Proposed Findings of Fact .....	A-1
	APPENDIX B - Proposed Conclusions of Law.....	B-1
	APPENDIX C – Joint Litigation Position of Certain Parties .....	C-1

## **TABLE OF AUTHORITIES**

### **Cases**

<u>Coalition for Affordable Util. Servs. &amp; Energy Efficiency in Pa, et al. v. Pa. Pub. Util. Comm’n</u> , 1020 A.3d 1087, 1103-1104 (2015), <u>appeal denied</u> , 2016 WL 1383864 (Pa. Apr. 5, 2016) .....	10, 12, 13, 27, 32, 34, 35
<u>Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n</u> , 578 A.2d 600 (Pa. Commw. 1990), <u>alloc.</u> <u>den.</u> , 602 A.2d 863 (Pa. 1992). .....	8
<u>Se-Ling Hosiery v. Margulies</u> , 70 A.2d 854 (Pa. 1950). .....	8

### **Statutes**

66 Pa. C.S. § 2802.....	1, 2, 7, 8, 10, 12, 23
66 Pa. C.S. § 2803.....	7, 10, 11, 27
66 Pa. C.S. § 2804.....	7, 8, 10, 11, 23, 27, 28

### **Regulations**

52 Pa. Code § 54.72 .....	7
52 Pa. Code § 59.72 .....	7
52 Pa. Code § 69.262. ....	7
52 Pa. Code § 69.265 .....	21
52 Pa. Code §§ 54.181-54.189.....	3
52 Pa. Code §§ 69.1801-69.1817.....	3
52 Pa. Code §§ 69.261-69.267.....	8
52 Pa. Code 54.71 <u>et seq.</u> .....	7
52 Pa. Code. § 54.73. ....	24

### **Other Authorities**

Joint State Government Comm’n, <u>Homelessness in Pennsylvania: Causes, Impacts, and</u> <u>Solutions</u> , at 112, 157, 160 (April 2016) .....	14
Nat’l Energy Ass’t Directors’ Ass’n, <u>2011 National Energy Assistance Survey</u> (Nov. 2011) ....	16
Nat’l Low Income Energy Consortium, <u>Paid but Unaffordable: The Consequences of Energy</u> <u>Poverty in Missouri – and Elsewhere</u> , at 2-5 (2004) .....	14
Pa. Public Utility Comm’n, Bureau of Consumer Svcs., <u>2014 Report on Universal Service</u> <u>Programs &amp; Collections Performance of the Pennsylvania Electric Distribution Companies &amp;</u> <u>Natural Gas Distribution Companies</u> , at 15 (2014) .....	15

PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2014-2016 submitted in Compliance with 52 Pa Code § 54.74, Docket M-2013-2367021, at 2 (Sept. 11, 2014). ..... 12, 22

PPL Electric Utilities Universal Service Programs, Final Evaluation Report, at 72, T. VI-12 (Oct. 2014) ..... 15

PUC Licensed Electric Suppliers,  
[http://www.puc.state.pa.us/consumer\\_info/electricity/suppliers\\_list.aspx](http://www.puc.state.pa.us/consumer_info/electricity/suppliers_list.aspx) ..... 31

## **I. INTRODUCTION**

### **A. BACKGROUND**

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), through its counsel at the Pennsylvania Utility Law Project, files this brief in support of its positions and the positions advanced by its witness Harry S. Geller through his written testimony and accompanying exhibits, as well as in the Joint Litigation position filed by CAUSE-PA, PPL Electric Utilities Corporation (“PPL”), the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement (“I&E”), and the Office of Consumer Advocate (“OCA”), (collectively “Joint Parties”).<sup>1</sup>

Pursuant to the Electricity Generation Customer Choice and Competition Act (“Choice Act”), an essential statutory obligation of the Public Utility Commission (“Commission”) is to “continue the protections, policies and services that now assist customers who are low-income to afford electric service” in the competitive environment.<sup>2</sup> This declaration of policy recognizes that direct access by low-income retail customers to the competitive generation market is conditioned upon ensuring that the affordability of electric service to economically vulnerable citizens is not diminished.

The record in this proceeding indicates that PPL’s failure to exercise control over the terms in which CAP customers participate within the competitive market has resulted in harm to CAP and non-CAP customers alike. Specifically, PPL’s current process – which permits PPL CAP customers to pay higher prices than PPL’s default rate (price to compare or PTC) – has resulted in a net impact of \$2,743,872 per year over a 46-month period from January 2012 through October

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<sup>1</sup> The Joint Litigation position of the Joint Parties is attached hereto as Appendix C.

<sup>2</sup> 66 Pa. C.S. § 2802(10).

2015.<sup>3</sup> That is, as a result of CAP customer shopping in the manner presently occurring in the PPL service territory, residential ratepayers are charged over \$2.7 million more each year for the CAP program than they would have paid if CAP customers were prevented from shopping for and selecting an electric supplier offering a price higher than the price to compare.<sup>4</sup> This enormous cost is unacceptable, completely preventable, and inconsistent with the Commission's obligation to balance the coexisting goals contained within Choice Act to promote competition without sacrificing the affordability of electric service to low-income customers and the ratepayers who assist low-income customers through CAP.<sup>5</sup>

Throughout this proceeding, the Joint Parties looked for ways to ensure that both of these goals - to promote competition and protect low income customers and ratepayers - were respected, and sought to develop a modification to PPL's CAP shopping program that would protect low-income customers enrolled in PPL's CAP program and the ratepayers who finance the program while continuing to afford CAP customers meaningful access to the competitive market. In contrast, the Retail Energy Supply Association (RESA) has steadfastly maintained its position that PPL not be permitted to impose any control over CAP customer participation in the competitive market. In furtherance of its self-serving position, RESA has sought to preserve access of PPL's CAP customers to the retail electric market while ignoring the coextensive obligation to ensure continued affordability of service to PPL's CAP customers. For the reasons outlined more fully below, RESA's position is unacceptable, and the Commission should adopt the Joint Litigation

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<sup>3</sup> Net impact, as the term is used here, means all of the savings incurred by CAP customers shopping at rates *at or below* the price to compare, subtracted from the additional costs incurred by CAP customers shopping at rates *higher* than the price to compare. This shows the net harm to the CAP program as a whole, **but does not monetize the particularized harm to individual CAP customers who pay more**. This latter harm, while not monetized, presents a significant and substantial risk of harm to low income households, and creates a ripple effect on other ratepayers in terms of increased termination costs and uncollectible expenses.

<sup>4</sup> See PPL Statement 3, Wukitsch, Attachment, Slide 5 (PowerPoint presentation from PPL's Second CAP Shopping Collaborative).

<sup>5</sup> 66 Pa. C.S. § 2802(10).

position submitted by the parties and contained in the record as set forth in the Rejoinder Testimony of PPL Electric Witness James M. Rouland<sup>6</sup> and attached hereto as Appendix C

## **B. PROCEDURAL HISTORY**

On January 29, 2016, PPL filed a Petition for Approval of its Default Service Programs for the period commencing June 1, 2017 through May 31, 2021 (“DSP Proceeding”), along with its Direct Testimony. PPL filed the docketed DSP Proceeding in accordance with its responsibilities as a Default Service Provider pursuant the Choice Act, the Pennsylvania Public Utility Commission (“Commission”) default service regulations<sup>7</sup>, and the Commission’s Policy Statement on Default Service.<sup>8</sup> Specifically, PPL sought to establish the terms and conditions under which it will procure default service supply, provide default service to non-shopping customers.

Direct testimony of all parties other than PPL<sup>9</sup> was served on or before April 20, 2016. Rebuttal testimony was served on or before May 23, 2016, and surrebuttal testimony was served on or before June 3, 2016. Written rejoinder testimony was filed by PPL and RESA on June 15, 2016.

A hearing was held on June 16, 2016 at which all of the parties’ testimony, exhibits, and various attachments were entered into the record by stipulation and verification.<sup>10</sup> No party

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<sup>6</sup> PPL Statement I-RJ, Rouland, at 6:21 – 9:7.

<sup>7</sup> 52 Pa. Code §§ 54.181-54.189

<sup>8</sup> 52 Pa. Code §§ 69.1801-69.1817.

<sup>9</sup> The following entities were parties to this proceeding: PPL, I&E, OCA, CAUSE-PA, RESA, the Office of Small Business Advocate (OSBA), NextEra Energy Power Marketing, LLC (NextEra), the Sustainable Energy Fund of Central Eastern Pennsylvania (SEF), the PP&L Industrial Customer Alliance (PPLICA), Noble Americas Energy Solutions LLC (NAES), and Exelon Generation Company, LLC (ExGen).

<sup>10</sup> The default service program and procurement issues that were the genesis of this proceeding, as well as various other competitive market issues, have been settled by various parties and will be the subject of a Joint Petition for Partial Settlement that will be filed on or before July 19, 2016. CAUSE-PA is not a party to the Partial Settlement of those issues, but also does not object to the settlement of those issues on the terms that will be submitted by the parties.

conducted cross-examination of any witnesses at the hearing. Specific to CAUSE-PA, the following pieces of evidence were entered into the records at the June 16, 2016 hearing:

(1) CAUSE-PA Statement No. 1, the prepared Direct Testimony of Harry Geller, consisting of 38 pages of testimony and Appendices A – C.

(2) CAUSE-PA Statement No. 1R, the Rebuttal Testimony of Harry Geller, consisting of 9 pages of testimony and no appendices.

(3) CAUSE-PA Statement No. 1-SR, the Surrebuttal Testimony of Harry Geller, consisting of 21 pages of testimony and one attachment.

(4) CAUSE-PA HIGHLY CONFIDENTIAL Cross Examination Exhibit 1, consisting of a cover page, 6 pages, and a verification.

(5) Joint Stipulation of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania and the Retail Energy Supply Association.

## **II. STATEMENT OF THE CASE**

Any plan which continues to allow PPL's CAP customers to receive generation supply service from an electric generation supplier (EGS) must tie the affordability of electric service to a customer's ability to pay for that service through policies, practices, and services that help low income customers maintain utility service. Thus, the first principal for any CAP program must be – regardless of whether a CAP customer remains on default service or receives generation service from an EGS – that CAP bills remain affordable. This is a core component to the obligation of PPL and the Commission to balance the coexisting goals contained within the Choice Act to promote competition without sacrificing the affordability of electric service to low-income customers and the ratepayers who assist low-income customers through CAP.

Throughout this proceeding, CAUSE-PA and the other Joint Parties have pursued various ways to ensure that these statutory goals were respected, eventually coalescing around the Joint Litigation Position. The proposals set forth in this Position would ensure CAP customers continues access to the competitive electric market in a manner that simultaneously ensures that they receive service at affordable levels and are not subject to undue risk – while shielding other residential ratepayers from undue and excessive expense.

### **III. QUESTIONS INVOLVED**

- A. Does the Commission have the legal authority to impose CAP shopping restrictions to ensure adequately-funded, cost-effective, and affordable programs to assist customers who are low-income to afford electric service where, as here, there is no reasonable alternative available to avoid continued harm to CAP and non-CAP customers that has resulted from unrestricted CAP shopping?**

**Suggested answer: Yes.**

- B. Have the Joint Parties shown that CAP shopping restrictions are needed within the PPL service territory to ensure adequately-funded, cost-effective, and affordable programs to assist customers who are low-income to afford electric service?**

**Suggested answer: Yes.**

- C. Should the Commission adopt the CAP shopping rules jointly proposed by PPL, CAUSE-PA, the OCA, and I&E?**

**Suggested answer: Yes.**

#### **IV. LEGAL STANDARDS AND BURDEN OF PROOF**

As a regulated public utility serving more than 100,000 customers, PPL is required to offer an integrated package of universal service programs designed to help low-income, payment troubled ratepayers maintain and afford essential utility services. These programs are statutorily required by the Choice Act<sup>11</sup> and by the Commission’s regulations.<sup>12</sup> The universal service provisions of the Choice Act, among other things, tie the affordability of electric service to a customer’s ability to pay for that service. The Choice Act defines “universal service and energy conservation” as the policies, practices and services that help low income customers maintain utility service.<sup>13</sup> The term includes customer assistance programs, usage reduction programs, service termination protections, and consumer education.

CAP is a general term used to describe utility payment assistance and debt-forgiveness programs for payment-troubled households.<sup>14</sup> CAPs are regulated programs which provide a discounted bill for payment troubled, low-income ratepayers whose household incomes are at or below 150% of the federal poverty income guidelines.<sup>15</sup> Each CAP bill is divided into two parts: (1) the amount that the CAP customer must pay each month, and (2) the monthly CAP credit amount applied to their bill. CAP’s payment assistance feature is intended to control a customer’s energy burden through affordable monthly bills based on a household’s size and gross income. These lower rates are applied to ongoing usage as long as the household remains current and timely in paying its monthly customer assistance payments. CAP programs are currently guided by the

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<sup>11</sup> See 66 Pa. C.S. §§ 2802(10), (17); 2804(9).

<sup>12</sup> 52 Pa. Code § 54.71 *et seq.*

<sup>13</sup> 66 Pa. C.S. § 2803.

<sup>14</sup> 52 Pa. Code § 54.72 – CAP – Customer Assistance Program – An alternative collection method that provides payment assistance to low-income, payment troubled utility customers. CAP participants agree to make regular monthly payments that may be for an amount that is less than the current bill in exchange for continued provision of electric utility services.

<sup>15</sup> 52 Pa. Code § 59.72; 52 Pa. Code § 69.262.

“Policy Statement on Customer Assistance Programs.”<sup>16</sup> These policies, among other controls, establish the maximum energy burden parameters for CAP customers.

PPL’s current CAP shopping design is structured to enable a CAP customer to shop at any EGS rate or subject to any EGS contract condition. However, in light of the overwhelming evidence that PPL’s current design is causing significant, preventable harm to its CAP customers and other ratepayers who pay for CAP, PPL and the other Joint Parties have proposed to control CAP costs through a modification of the means by which its CAP customers shop for generation supply service and retain their CAP benefits. As such, the Joint Parties maintain the burden of proof in this proceeding to establish that they are entitled to the relief sought, and must establish its case by a preponderance of the evidence.<sup>17</sup> To meet this burden of proof, the Joint Parties must present evidence more convincing, by even the smallest amount, than that presented by any opposing party.<sup>18</sup>

PPL’s CAP shopping plan must also fully comply with the applicable provisions of the Public Utility Code, Commission regulations, orders and policy statements. Specifically, the Choice Act declares that the Commonwealth must, at a minimum, continue the low income policies, practices, and services that were in existence as of the effective date of the law.<sup>19</sup> The Choice Act further requires the Commission to ensure that universal service and energy conservation services are appropriately funded and available in each utility distribution territory.<sup>20</sup>

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<sup>16</sup> 52 Pa. Code §§ 69.261-69.267.

<sup>17</sup> Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n., 578 A.2d 600 (Pa. Commw. 1990), alloc. den., 602 A.2d 863 (Pa. 1992).

<sup>18</sup> Se-Ling Hosiery v. Margulies, 70 A.2d 854 (Pa. 1950).

<sup>19</sup> 66 Pa. C.S. § 2802(10).

<sup>20</sup> 66 Pa. C.S. § 2804(9).

## V. SUMMARY OF ARGUMENT

The evidence of record in this proceeding demonstrates that when low-income CAP customers elect to shop for competitive electric supply they routinely pay rates that are above the price to compare, which adversely affects the continued affordability of CAP bills and the ability of CAP customers to maintain CAP benefits, as well as increases the cost of the program as a whole for other ratepayers.<sup>21</sup>

The Choice Act requires that EDCs be made whole for CAP costs, regardless of the specific CAP structure approved. So, when CAP customers pay more than the price to compare, the increased cost must be paid by someone, and will inevitably take the form of unaffordable payments by CAP customers, inflated costs to other ratepayers, or some combination of the two.

As a result, when it comes to addressing the issue of maintaining affordable rates for the low-income customers enrolled in CAP (who have already evidenced an inability to pay at undiscounted rates) and maintaining an efficient and cost effective program, the Choice Act specifically requires the creation of a structure whereby CAP customers' rates and the CAP program as a whole remains affordable. This is accomplished by customers paying no more than the price to compare. This is the only plausible outcome that would ensure that financial harm is not continually bestowed on CAP customers, ratepayers, or both.

RESA's position, that restrictions may not be imposed on CAP customers even if unrestricted shopping compromises CAP customer energy burdens and their ability to afford service and/or the affordability of the CAP program as a whole, is inconsistent with the Choice Act "which both encourages deregulation to allow consumers the opportunity to purchase directly their supply from EGSs **and** emphasizes the need to continue to maintain programs that assist low-

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<sup>21</sup> See CAUSE-PA Statement 1 at 20-23.

income customers to afford electric service.”<sup>22</sup> The universal service provisions of the Choice Act tie the affordability of electric service to a customer’s ability to pay for that service.<sup>23</sup>

The Commission has the responsibility to ensure that the means to achieve the affordability of electric service – universal service programming - is appropriately funded and available in each electric distribution territory. This requires the enactment, establishment, and maintenance of policies, practices and services that allow low-income customers to maintain their electric service.<sup>24</sup> The existence of a competitive market for generation supply does not change this requirement. The Choice Act contains within it the coexisting goals and obligations to promote competition as well as to protect low-income customers within the competitive framework to ensure rate affordability. The Joint Litigation position of the Joint Parties ameliorates the harm caused by PPL’s current CAP shopping program and accommodates coextensive concerns of the Choice Act; it should be adopted by the Commission without modification.

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<sup>22</sup> Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. et al. v. Pa. Pub. Util. Comm’n, 1020 A.3d 1087, 1103-1104 (2015), appeal denied, 2016 WL 1383864 (Pa. Apr. 5, 2016) (hereinafter CAUSE-PA et al.) (citing 66 Pa. C.S. § 2802 (7), (9), (10), (14), (17)) (emphasis added).

<sup>23</sup> 66 Pa. C.S. § 2804 (9).

<sup>24</sup> 66 Pa. C.S. § 2803.

## **VI. ARGUMENT**

### **A. LEGAL AUTHORITY FOR CAP SHOPPING RESTRICTIONS**

The Commission has the necessary authority to impose reasonable CAP shopping restrictions, such as those proposed in the Joint Litigation Position. The universal service provisions of the Choice Act tie the affordability of electric service to a customer's ability to pay for that service.<sup>25</sup> The Commission has the responsibility to ensure that the means to achieve the affordability of electric service is appropriately funded and available in each electric distribution territory; this requires the enactment, establishment, and maintenance of policies, practices and services that allow low-income customers to maintain their electric service.<sup>26</sup> The existence of a competitive market for generation supply does not change this requirement; in fact, the creation of the competitive market was the genesis of the statutory obligation.

As such, any plan which allows PPL's CAP customers to receive service from an EGS must continue to tie the affordability of electric service to a customer's ability to pay for that service through policies, practices, and services that help low income customers maintain utility service. The Commission recognized this very principal in its recent Final Order approving PPL's Universal Service and Energy Conservation Plan for 2014-2016:

The Electricity Generation Customer Choice and Competition Act (Electric Competition Act), 66 Pa. C.S. §§ 2801-2812, became effective on January 1, 1997. The primary purpose of this legislation was to introduce competition into the retail electric generation market. The Act established standards and procedures for the restructuring of the electric utility industry. While opening up the electric generation market to competition, the Act also include several provisions relating to universal service to ensure that electric service remains available to all customers in the Commonwealth.

The universal service provisions of the Competition Act, among other things, tie the affordability of electric service to a customer's ability to maintain utility service. The Competition Act defines "universal service and energy conservation" as the

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<sup>25</sup> 66 Pa. C.S. § 2804(9).

<sup>26</sup> 66 Pa. C.S. § 2803.

policies, practices and services that help low-income customers maintain utility service. The term includes customer assistance programs, usage reduction programs, service termination protections and consumer education. 66 Pa.C.S. § 2803. Section 2802(10) of the Act commits the Commission to continuing, at a minimum, the policies, practices and services that were in existence as of the effective date of the law. 66 Pa.C.S. § 2802(10). Finally, the Act requires the Commission to ensure that universal service and energy conservation services are appropriately funded and available in each electric distribution territory. 66 Pa.C.S. § 2804(9).<sup>27</sup>

The Commonwealth Court has recently clarified that the Commission has to balance these goals, and stated that it is essential to recognize that the Choice Act “both encourages deregulation to allow consumers the opportunity to purchase directly their supply from EGSs **and** emphasizes the need to continue to maintain programs that assist low-income customers to afford electric service.”<sup>28</sup> The Choice Act “does not demand absolute and unbridled competition.”<sup>29</sup> Instead, “under certain circumstances, unbridled competition may have to give way to other important concerns,”<sup>30</sup> and under circumstances like those that exist here, the Commission has both the responsibility to address and ameliorate the harm to CAP and non-CAP customers and the authority to limit CAP customers to paying no more than the price to compare and eliminate early termination or cancellation fees. The Commonwealth Court concluded that:

[T]he PUC has the authority under Section 2804(9) of the Choice Act, in the interest of ensuring that universal service plans are adequately funded and cost effective, to impose, or in this case approve, CAP rules that would limit the terms of any offer from an EGS that a customer can accept and remain eligible for CAP benefits. The obligation to provide low-income programs falls on the public utility under the Choice Act, not the EGSs. Moreover, the Choice Act expressly requires the PUC to administer these programs in a manner that is cost effective for the CAP participants and the non-CAP participants, who share the financial consequences of the CAP participant’s EGS choice.<sup>31</sup>

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<sup>27</sup> See PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2014-2016 submitted in Compliance with 52 Pa Code § 54.74, Pa. PUC Docket M-2013-2367021, at 2 (Sept. 11, 2014).

<sup>28</sup> CAUSE-PA et al., 1020 A.3d at 1103-1104 (citing 66 Pa. C.S. § 2802 (7), (9), (10), (14), (17)) (emphasis added).

<sup>29</sup> Id. at 1101.

<sup>30</sup> Id. at 1103.

<sup>31</sup> Id. at 1103-04.

In reaching its conclusion, the Commonwealth Court looked to the Choice Act's declaration of policy "which both encourages deregulation to allow consumers the opportunity to purchase directly their supply from EGSs and emphasizes the need to continue to maintain programs that assist low-income customers to afford electric service,"<sup>32</sup> and concluded that the Commission must adhere to the following legal standard:

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 low-income to afford electric service . . . the PUC 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. EGS rate ceiling, prohibition against early termination/cancellation fees, etc.<sup>33</sup>

## **B. WHETHER CAP SHOPPING RESTRICTIONS ARE NEEDED**

In short, CAP shopping restrictions are necessary to protect economically vulnerable households from significant and substantial economic hardship, and to ensure that unnecessary and excessive costs are not borne by other residential ratepayers.

### **1. PPL's low-income CAP customers are uniquely situated, economically vulnerable, and require specific and distinct protection within the retail electric market as compared to other electric customers.**

No party has contested the testimony submitted by CAUSE-PA concerning the economic vulnerability of PPL's confirmed low-income customers.<sup>34</sup> Households with incomes at or below 150% of the federal poverty guideline lack sufficient income to pay for all of their essential needs. Before all of the bills are paid, low-income families routinely run out of money. As outlined in detail in Mr. Geller's testimony, without CAP assistance, low-income customers simply cannot meet their monthly expenses. The National Low Income Energy Consortium (NLIEC) conducted

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<sup>32</sup> Id.

<sup>33</sup> Id.

<sup>34</sup> See CAUSE-PA Statement 1 at 7-10.

a survey designed to capture a nationally representative picture of the issues facing low income households.<sup>35</sup> The study found that “households with incomes below 50% of the federal poverty level pay a staggering 38% or more of their annual income simply for their home energy bills.”<sup>36</sup> The overwhelming energy burden on low income households makes it difficult for these customers to pay for other basic necessities. Of the households surveyed in the NLIEC study, 46% went without food and 45% failed to take medication as prescribed by doctors in order to pay their home energy bills.<sup>37</sup> Similarly, as recently reported by Pennsylvania’s Joint State Government Commission, utility assistance ranked in the top three types of assistance noted by survey respondents (24.1 percent) that would have prevented homelessness.<sup>38</sup>

PPL’s mean energy burdens overwhelm the resources available to low-income households, rendering bills unaffordable. As reported in PPL’s most recent Universal Service Evaluation, PPL customers with incomes at or below 150% of the federal poverty income level had energy burdens of 15% for non-heating electric service and 23% for heating electric service.<sup>39</sup> These high energy burdens and lack of budgetary margin are reflected in the high termination rates of PPL’s confirmed low-income customers as compared to all residential customers. PPL’s low-income households have a termination rate that is nearly 5 times higher as compared to residential customers. PPL’s low-income electric customers are also far more likely to be disconnected than non-low income residential customers – and are significantly less likely to have their service

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<sup>35</sup> Nat’l Low Income Energy Consortium, Paid but Unaffordable: The Consequences of Energy Poverty in Missouri – and Elsewhere, at 2-5 (2004), available at [http://www.neuac.org/2004\\_MO%20Overview.pdf](http://www.neuac.org/2004_MO%20Overview.pdf).

<sup>36</sup> Id.

<sup>37</sup> Id.

<sup>38</sup> Joint State Government Comm’n, Homelessness in Pennsylvania: Causes, Impacts, and Solutions, at 112, 157, 160 (April 2016), available at [http://jsg.legis.state.pa.us/publications.cfm?JSPU\\_PUBLN\\_ID=447](http://jsg.legis.state.pa.us/publications.cfm?JSPU_PUBLN_ID=447) (“When asked if there were any services that may have prevented them from becoming homeless, the women responded overwhelmingly that assistance with past-due rent and utilities, security deposit, and first and last months’ rent would have been most beneficial.”).

<sup>39</sup> PPL Electric Utilities Universal Service Programs, Final Evaluation Report, at 72, T. VI-12 (Oct. 2014), available at [http://www.puc.state.pa.us/consumer\\_info/electricity/energy\\_assistance\\_programs.aspx](http://www.puc.state.pa.us/consumer_info/electricity/energy_assistance_programs.aspx).

reconnected. In fact, PPL has the second lowest confirmed low-income customer reconnection rate of all of the major electric distribution companies in Pennsylvania.<sup>40</sup> Table 2 illustrates this data:

**Table 2: PPL Termination and Reconnection Rates<sup>41</sup>**

2014 Termination Rate for all PPL residential customers	2014 Termination Rate for PPL's confirmed low-income customers	2014 Reconnection Rate for all PPL residential customers	2014 Reconnection Rate for PPL's confirmed low-income customers
4.6%	22.8%	75.3%	67.6%

Even with CAP discounts, poor households struggle to pay their bills. The average CAP household is desperately poor, and these extremely low income households routinely run out of money even with assistance of CAP. In 2014, the household income of the average Pennsylvania household enrolled in CAP was \$13,134, which - with an average universal service household size of 3 - is approximately 66% of the federal poverty level.<sup>42</sup> Many cannot afford to pay for utility service because of the cost of competing essential needs like rent, food, water, medicine, clothing, childcare, and transportation.<sup>43</sup> In fact, PPL's recent evaluation of its CAP program makes this very point, finding that "the average [CAP] customer spends 78% of income on [shelter, utilities,

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<sup>40</sup> Pa. Public Utility Comm'n, Bureau of Consumer Svcs., 2014 Report on Universal Service Programs & Collections Performance of the Pennsylvania Electric Distribution Companies & Natural Gas Distribution Companies, at 15 (2014), available at [http://www.puc.state.pa.us/General/publications\\_reports/pdf/EDC\\_NGDC\\_UniServ\\_Rpt2014.pdf](http://www.puc.state.pa.us/General/publications_reports/pdf/EDC_NGDC_UniServ_Rpt2014.pdf).

<sup>41</sup> Id. at 11-12; 15.

<sup>42</sup> See id. at 35.

<sup>43</sup> See e.g., Nat'l Energy Ass't Directors' Ass'n, 2011 National Energy Assistance Survey (Nov. 2011), available at <http://www.appriseinc.org/reports/Final%20NEADA%202011%20Report.pdf> (to pay their energy bills, 24% of LIHEAP recipients went without food, 37% went without medical or dental care, 34% did not fill or took less than the full dose of a prescribed medicine).

water/sewage, food/nonfood, and basic phone service], while 14% of income is spent on all other expenses.”<sup>44</sup>

PPL’s confirmed low-income customers are economically vulnerable and unable to pay for essential services including electricity without substantial and meaningful assistance. It is for this reason that CAP programs were created to assist low-income customers maintain and afford essential utility service, and it is precisely why the benefits of CAP cannot be eroded by continuing to allow CAP customers to pay more than the utility’s price to compare.

**2. PPL’s current policy of allowing CAP customers to shop without limitation on the price or terms of service has worsened the affordability crisis for its CAP customers.**

*a. CAP customers and other ratepayers are harmed due to a net increase of more than \$2.7 million per year as a result of EGS/CAP customer contracts above the price to compare.*

In its direct testimony and in response to discovery, PPL provided data and information which unequivocally demonstrates that a significant number of its CAP customers who shop are paying more than the default service price to compare. First, PPL’s testimony makes it clear that the majority of CAP customers are shopping and that the number of CAP customers shopping continues to increase.<sup>45</sup> For calendar year 2015, an average of 52% of PPL’s CAP customers shopped each month, and of those customers who shopped, an average of 46% paid more than the price to compare.<sup>46</sup> In fact, every month from January 2012 through February 2016, at least 42% of CAP customers paid more than the price to compare, and in six of those months, between 88-99% of CAP customers who shopped paid more than the price to compare.<sup>47</sup> In most months throughout this more than four-year period of time, between 45%-70% of CAP customers paid

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<sup>44</sup> See CAUSE-PA Statement 1, Appendix C at 40 (PPL OnTrack Payment Assistance Program Evaluation, March 2013).

<sup>45</sup> See PPL Statement 3 at 7, T1 and 8, T2.

<sup>46</sup> See *id.*

<sup>47</sup> See Attach. B, page 4 of 8, to CAUSE-PA Statement No. 1.

more than the price to compare.<sup>48</sup> More crucially, it is the depth of harm that is striking: those customers who paid more than the price to compare *paid significantly more*, as compared to the savings achieved by customers who paid less than the price to compare. The effect of this data overall is summed up by the attachment to PPL Statement No. 3, the Direct Testimony of Michael Wukitsch, Slide No. 5 from PPL’s Second CAP Shopping Collaborative:

## Estimate the net impact



Look at shopper non-savers versus savers, as compared to the PTC  
 Time Period Used: January 2012 – October 2015 (46 months or 3.8 years)

Those Paying Above PTC	Those Paying At/Below PTC
7. Difference (each month) = <b>\$31</b>	7. Difference (each month) = <b>\$9</b>
8. The difference, above = <b>\$298,406</b>	8. The difference, below = <b>\$69,750</b>
9. The impact, 12 mos. = <b>\$3,580,872</b>	9. The impact, 12 mos. = <b>\$837,000</b>
10. The impact, 18 mos. = <b>\$5,371,308</b>	10. The impact, 18 mos. = <b>\$1,255,500</b>

**1. Net (each month) = \$22**  
**2. Net effect, monthly = \$228,656**  
**3. The impact, over 12 months = \$2,743,872**  
**4. The impact, over 18 months = \$4,115,808**

This slide demonstrates, that the **net impact<sup>49</sup> of CAP customer shopping over the 46-month period from January 2012 through October 2015 is \$2,743,872 per year.** That is, as a

<sup>48</sup> See *id.*

<sup>49</sup> As noted above, see *supra* note 3, net impact – as the term is used here - means all of the savings incurred by CAP customers shopping at rates *at or below* the price to compare, subtracted from all of the costs incurred by CAP customers shopping at rates *higher* than the price to compare. This shows the net harm to the CAP program as a whole, but does not address the particularized harm to individual CAP customers who pay more. In this proceeding, I am concerned about both.

result of PPL's current practice of allowing CAP customers to select any EGS offer regardless of cost, residential ratepayers are paying \$2,743,872 more per year for the CAP program than they would have paid had all CAP customers simply paid the price to compare. This is unacceptable and not in accord with the purpose of CAP or the dual obligations of the Choice Act.

None of the \$2.74 million annual additional CAP costs are used to promote universal service goals under the Choice Act to assist low-income customers better meet their home energy needs. In fact, in addition to these increased costs – CAP customers are experiencing additional economic hardship when they expend their CAP credits before the end of the program year. Since program costs are intended to assist low-income customers to afford and maintain essential utility service, they should not be increased by more than \$2.74 million more per year simply to pay an EGS charging rates higher than the default price. This is especially so when the higher EGS payments result in tangible harm to low-income CAP customers and other residential rate payers, including the more than 120,000 confirmed low income customers who are not enrolled in CAP. It is simply unreasonable to approve discounts and reduced rates for low income customer classes, paid for by other residential customers, and at the same time approve a DSP plan that allows CAP customers to be charged higher rates that are proven to result in unaffordable or higher bills. Doing so contributes to higher collection costs for all customers, and has adverse health, safety, and financial impacts on individual low income households.

*b. Paying prices higher than the price to compare causes PPL CAP customers to lose CAP benefits more quickly than they otherwise would and needlessly increases costs for non-CAP ratepayers.*

Currently, PPL has no limits on a CAP customer's ability to shop and receive generation supply from an EGS. CAP customers are allowed to enter into any contract with any licensed EGS and pay any price for service, regardless of whether that price is higher or lower than PPL's price to compare and/or whether it compromises continued affordability of service or the cost of

the CAP program. The record of this proceeding has demonstrated that, on the whole, PPL's current unrestricted CAP shopping plan has been a financial disaster for those CAP customers who have chosen an EGS, as well as for the non-CAP residential ratepayers who pay for CAP.

As outlined in CAUSE-PA's Direct Testimony, under its current CAP structure, CAP customers pay a fixed amount each month based on their CAP Bill calculation.<sup>50</sup> This amount remains the same regardless of the amount of the undiscounted bill or the rate charged to the CAP customer. The difference between a CAP customers' CAP Bill and the total bill that the customer would have been charged based on usage and price per kWh is called the customer's CAP Credit/CAP shortfall amount. Each PPL CAP customer is permitted only a certain dollar amount of CAP credits over an 18-month period – this is known as the maximum CAP credit.<sup>51</sup> When bills are higher in a given month, the CAP customer exhausts more of his or her allotted maximum CAP credits.

PPL has determined that its CAP heating customers will receive a maximum of \$3,328 in CAP credits for every 18-month period they are enrolled in CAP and that non-heating customers will receive a maximum of \$1,310 in CAP credits for the 18 month period.<sup>52</sup> When a customer reaches those limits, she or he no longer receives a CAP discount on their bill until the end of the 18-month period. As such, customers who pay a per kWh rate that is higher than the applicable default service price to compare reach their maximum CAP credits sooner than those CAP customers who pay the default service price or a price lower than the default service price.

As evidenced in response to discovery, this is not just a theoretical outcome. Reaching CAP maximum credits has had significant consequences for CAP customers: Between January

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<sup>50</sup> CAUSE-PA Statement 1 at 13

<sup>51</sup> CAUSE-PA Statement 1 at 13: 5-8.

<sup>52</sup> CAUSE-PA Statement 1 at 13:7-10 & Attach. B (PPL response to interrogatories of CAUSE-PA, set I-1a).

2012 and February 2016, 34,780 customers were removed from CAP because they reached their CAP credit maximums and, of this amount, 27,600 – 79% -- were customers shopping with an EGS during some portion of the prior 18 months.<sup>53</sup> To be clear, these are very poor customers who initially became eligible for statutorily mandated CAP assistance as a result of an inability to consistently make payments at non-discounted rates. Providing a discount paid for by other ratepayers, but permitting CAP customers to select an EGS who charges rates higher than that PTC erodes the efficacy of the discount because it needlessly cannibalizes the maximum CAP credit provided to the households. The consequence is severe because removing CAP bill discount assistance before the end through the 18-month CAP period prior to recertification leads to increased risk of termination, unpaid bills, and untold hardship.<sup>54</sup>

In the context of PPL's DSP, this is a preventable harm. The use of maximum CAP credits is one of the various cost-control features of CAP outlined in the CAP Policy Statement,<sup>55</sup> and - like other cost control features - was meant to contain CAP costs for other ratepayers. But by paying more than the PTC for any period of time, CAP households are receiving no additional CAP benefit and non-CAP ratepayers who finance CAP are paying *additional* costs that they might otherwise not have had to pay. Thus, the outcome of permitting CAP customers to pay more than the price to compare is not only that CAP credits are exhausted earlier, but the purpose of the maximum CAP credit cost control feature is negated since non-CAP ratepayers actually pay more. The sole winner in this scenario is the EGS, which is paid through the purchase of receivables program without having to face the negative consequences associated with the loss of CAP subsidy, such as increased uncollectible expenses and termination. Everyone else loses.

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<sup>53</sup> CAUSE-PA Statement 1, Attach. B (PPL Response to CAUSE-PA I-10).

<sup>54</sup> I&E Statement 1 at 3:18-4:8; CAUSE-PA Statement 1 at 17:17-19.

<sup>55</sup> 52 Pa. Code § 69.265(3)(v).

The second direct and immediate impact of PPL's current CAP shopping program concerns the costs of the CAP program as a whole, which is needlessly inflated by unrestricted CAP shopping. Because CAP credits/CAP shortfall are paid for by other residential ratepayers, when CAP customers shop for generation supply at a price higher than the price to compare, the costs of the CAP shortfall increase.

This is problematic for several reasons. First, CAP costs are imposed on ratepayers by the Choice Act in order to promote the universal service program goals of affordability for a utility's poorest, most payment troubled households. The costs associated with the payment of higher unregulated EGS rates for service is not related to the cost of providing an affordable CAP, and universal service program costs are not intended to rise simply to pay the increased costs associated with paying significantly higher EGS' rates for service. Second, many of the ratepayers who pay the Universal Service Rider costs to support the CAP program are themselves very poor. Recall that PPL has a confirmed low-income customer count of 171,171, of which less than 50,000 customers are enrolled in CAP. This means that there are, at a minimum, 120,000 confirmed low-income customers paying for the costs of the CAP program along with the rest of the residential customer class. These customers, like all low-income customers, already struggle to afford service, and any unnecessary increase in costs, especially those not related to affordability, only exacerbates this problem.

Finally, as stated in testimony, while not immediately affecting a the CAP customer's CAP bill amount, if a CAP customer receives generation supply at a rate higher than the price to compare, that CAP customer's asked to pay amount may be affected at recertification.<sup>56</sup> PPL's approved Universal Service Plan contains a framework that would allow this to occur, when and

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<sup>56</sup> CAUSE-PA Statement 1 at 18:17-20:9.

if authorized through this proceeding.<sup>57</sup> Thus, if the status quo concerning CAP customer shopping remains, not only will CAP customers continue to face the direct and immediate threat of exhausting their maximum CAP credits more quickly, these households will also have their CAP payments adjusted for their prospective 18-month CAP period based on their previous shopping decisions. Of course, the negative effects to other ratepayers because of an increase in the CAP credit/CAP shortfall costs would also continue. This long term negative financial impact is, however, completely avoidable by creating reasonable programmatic rules, which are discussed at length below.

### C. CAP SHOPPING PROPOSALS

- 1. The Joint Litigation Position of the parties appropriately balances the ability of CAP customers to enter the competitive market while continuing to ensure that adequately-funded, cost-effective, and affordable programs remain available to assist customers who are low-income to afford electric service.**

PPL's current policy of allowing CAP customers to shop for EGS supplied service without restrictions needlessly compromises affordability and program costs in the name of choice. This is unacceptable as a matter of policy and must be changed. When the Pennsylvania General Assembly enacted the Choice Act in 1996 it was concerned, among other things, about choice **and** affordability not choice **or** affordability. Indeed, the ability of low-income households to continue to afford electricity in a competitive environment was a core concern of the Act's drafters.<sup>58</sup> As a means of addressing these concerns, the General Assembly specifically tasked the Commission with the responsibility of ensuring that the programs intended to facilitate the affordability of electric service are appropriately funded and available in each

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<sup>57</sup> See PPL Electric Utilities Corporation Universal Service and Energy Conservation Plan for 2014-2016 submitted in Compliance with 52 Pa Code § 54.74, Pa. PUC Docket M-2013-2367021, at OnTrack 16 (Sept. 11, 2014), available at <http://www.puc.state.pa.us/pdocs/1318186.pdf>.

<sup>58</sup> See 66 Pa. C.S. §§ 2802(10), (17), and 2804(9).

electric distribution territory.<sup>59</sup> The universal service provisions of the Choice Act tie the affordability of electric service to a customer's ability to pay for that service,<sup>60</sup> and the statutory goals of universal service programs are to be achieved through the enactment, establishment and maintenance of policies, practices and services that help low-income customers maintain their electric service.<sup>61</sup> In this proceeding, the position of the Joint Parties is the only position advanced which meets all of these concerns.

It was clear at the outset of this proceeding, that PPL, CAUSE-PA, the OCA, and I&E all had concerns about PPL's current CAP shopping policy that has resulted in harm to CAP and non-CAP customers and compromises affordability in the name of choice. Each of these parties presented various pieces of testimony and took different positions about the best way of preserving access to the competitive market for CAP customers and the continued affordability of the program for CAP and non-CAP customers. Reading the direct to rejoinder testimony of each of these parties, a clear evolution of the positions can be seen which ultimately coalesced in a joint litigation position framed around a set of general principles. Ultimately, the Joint Parties stipulated that PPL's CAP shopping program should be modified to meet the following criteria, as outlined in PPL's Rejoinder by PPL Electric Witness James M. Rouland, found on page 6 line 21 through page 9 line 7:<sup>62</sup>

- The Joining Parties agree 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.
- PPL Electric agrees to fully participate in any such collaborative and/or rulemaking proceeding, and to present a specific CAP shopping proposal to address the impacts of CAP shopping on both CAP and non-CAP customers.

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<sup>59</sup> 66 Pa. C.S. § 2804(9).

<sup>60</sup> 52 Pa. Code. § 54.73.

<sup>61</sup> Id.

<sup>62</sup> The Joint Litigation Position of the parties is attached hereto as Appendix C.

- The Joining Parties agree that, until a uniform, statewide solution to CAP shopping can be developed, PPL Electric shall implement a CAP Standard Offer Program (“CAP-SOP”), effective June 1, 2017, with the following features designed to help mitigate the 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 through the Universal Service Rider:
  - The CAP-SOP is the only vehicle that a CAP customer may use to shop and receive supply from an EGS.
  - Any CAP customer shopping request that does not get processed through the CAP-SOP will be denied.
  - 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.
  - CAP customers may terminate the CAP-SOP contract at any time and without any termination or cancellation fees or other penalties.
  - 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.
  - 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.
  - 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.
- For the purpose of transitioning CAP customers who are shopping as of the CAP-SOP June 1, 2017 effective date:
  - 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.
  - 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.
  - 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.

- Within 90 days of the date of a final order in this proceeding, PPL Electric will hold a collaborative open to all interested parties to develop CAP-SOP specific scripts to be used by the Company's Customer Service Representatives and PPL Solutions.
- Until a uniform, statewide approach to CAP shopping can be developed, the parties reserve the right 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.

By instituting the safeguards, outlined above, suppliers would not be forced to serve customers under terms to which they do not agree or find to be economically unviable. EGSs could opt to participate or not participate, depending on the EGS's own assessment of its needs and goals - including whether it would make economic sense for them to participate. CAP customers, as well as the ratepayers who pay for the CAP subsidy, would be protected by choosing either to remain on default service or by selecting a supplier who voluntarily chooses to serve CAP customers under these rules. Furthermore, CAP customers who pay less than the price to compare would benefit by extending the life of their CAP credits, and other ratepayers would benefit through reduced CAP costs and associated expenses. Participating suppliers would be competing with other participating suppliers who would all be operating under the same set of rules for CAP customers.

Throughout this proceeding, CAUSE-PA's paramount concern was to create a structure whereby CAP customers who choose to shop for competitive electric generation supply could do so without compromising affordability of their monthly CAP bills or the program as a whole. The attributes of the Joint Litigation position of PPL, CAUSE-PA, OCA, and I&E achieve this goal without disruption to the competitive market.

Based on the evidence in the record of this proceeding, it is apparent that unrestricted CAP shopping produces devastating results. Furthermore, the record "provides substantial reasons why there is no reasonable alternative" to the need to eliminate the current and

continuing harm to CAP and non-CAP ratepayers and, thus, “‘competition needs to bend’ to ensure adequately-funded, cost-effective, and affordable programs to assist customers who are low-income to afford electric service.”<sup>63</sup> RESA’s arguments to the contrary are without merit.

**2. RESA’s concerns about the Joint Parties position are speculative, unfounded, and unsupported by substantial evidence, and its position that the status quo is acceptable ignores mandates of the Choice Act.**

For its part, RESA’s position is that “CAP customers should have the opportunity to shop like all other PPL customers (as they do now) and should not lose the benefits they can obtain from participating in the competitive market.”<sup>64</sup> Put another way, RESA believes that CAP customers must be able to shop without restriction, even though the demonstrated result is to compromise their ability to afford service or the affordability of the CAP program as a whole. This position is inconsistent with the Choice Act, “which both encourages deregulation to allow consumers the opportunity to purchase directly their supply from EGSs **and** emphasizes the need to continue to maintain programs that assist low-income customers to afford electric service.”<sup>65</sup> The universal service provisions of the Choice Act tie the affordability of electric service to a customer’s ability to pay for that service.<sup>66</sup> The Commission has the responsibility to ensure that the means to achieve the affordability of electric service is appropriately funded and available in each electric distribution territory. This requires the enactment, establishment, and maintenance of policies, practices and services that allow low-income customers to maintain their electric service.<sup>67</sup> The existence of a competitive market for generation supply does not change this requirement. The Choice Act contains within it the coexisting goals and obligations to promote

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<sup>63</sup> *Id.*

<sup>64</sup> RESA Statement 1-RJ at 4:8-11.

<sup>65</sup> CAUSE-PA et al., 1020 A.3d at 1103-1104 (citing 66 Pa. C.S. § 2802 (7), (9), (10), (14), (17)) (emphasis added).

<sup>66</sup> 66 Pa. C.S. § 2804(9).

<sup>67</sup> 66 Pa. C.S. § 2803.

competition as well as to protect low-income customers within the competitive framework to ensure rate affordability. The Joint Parties' proposal accommodates both goals. RESA's, however, seeks to ignore one set of objectives to achieve the other, which is not reasonable or acceptable and should be rejected.

Furthermore, contrary to RESA's assertion, CAP customers are not like other customers. CAP customers have evidenced an inability to pay for service at undiscounted rates as a consequence of their poverty. They are specifically intended to be protected by the Choice Act. To ensure that these households continue to have safe and stable electric service, the CAP program provides a discount that is paid for by other ratepayers. It has been amply demonstrated in CAUSE-PA's testimony that once PPL's CAP customers elect to shop, the decision to do so at rates above the price to compare adversely affects the continued affordability of bills for CAP customers, the continued ability of those CAP customers to maintain CAP benefits, and increases the cost of the program as a whole for other ratepayers.<sup>68</sup> This is the inevitable outcome of any CAP customer shopping at prices at or above the price to compare because the Choice Act requires that the EDC be made whole for CAP costs, regardless of the specific CAP structure approved.<sup>69</sup> As noted above, the effect of CAP customers paying more than the price to compare must be paid by someone. It will either require unaffordable payments by CAP customers, will cost other ratepayers more money, or – most likely – will result in both greater costs for both CAP and non-CAP customers. There is simply no way around it: Unless CAP customers are restricted from shopping at rates above the price to compare, the resultant increase in costs will cause harm to CAP and non-CAP customers alike.

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<sup>68</sup> See e.g. CAUSE-PA Statement 1, Attach. B, page 4 of 8 (showing that those customers who paid more than the price to compare *paid significantly more*, as compared to the savings achieved by customers who paid less than the price to compare.)

<sup>69</sup> 66 Pa. C.S. § 2804(9).

Second, RESA asserts that restricting CAP customers' choices in the competitive market would somehow be depriving these customers of certain unnamed, undisclosed "benefits" of the competitive market,<sup>70</sup> that using the PTC is an inappropriate mechanism for comparison, and that customers choose "value-added" products.<sup>71</sup> These assertions should be given no credence, as RESA provides no support to show any purported benefit and makes no attempt to identify or quantify which products may provide added value to CAP customers and/or would not economically burden these households. In the absence of specificity as to how CAP customers and the ratepayers who finance CAP will benefit from the "value" added by these products, and in the absence of a clear showing that the "value" outweighs the harm associated with paying rates higher than the PTC, any argument to this end should be rejected. RESA offers speculation, but nothing more; its unsupported assertions should carry no weight.

Third, RESA's assertion that EGSs would have to know that a CAP customer is enrolled in CAP before making such a compliant offer<sup>72</sup> is not accurate, and would not be a concern under the Joint Parties' proposal. The use of a modified CAP-SOP as the only vehicle that a CAP customer could use to select EGS supply would alleviate the RESA's concerns that suppliers do not know whether a customer is or is not enrolled in CAP. Any CAP shopping request that does not get processed through the modified SOP would be denied. Further, even in the event that the modified CAP-SOP is not adopted exactly as proposed, RESA's concerns are not insurmountable. EGSs ask questions all the time about personal information, including asking to see or have access to billing information. An EGS viewing a PPL CAP customers' bill would readily note the CAP status and could make a CAP-compliant offer.<sup>73</sup> Similarly, a supplier could ask the customer

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<sup>70</sup> RESA Statement 1-R at 12:22-24.

<sup>71</sup> RESA Statement 1-R at 12:18-13:1.

<sup>72</sup> RESA Statement 1-R at 13:5-9.

<sup>73</sup> See CAUSE-PA Statement 1-SR, Attach. A (OnTrack bill sample).

whether they are enrolled in CAP and direct them to look at their bill to be sure. While customers may initially hesitate at the question, it is unlikely that a CAP customer would find the question unacceptably intrusive if the supplier explained that the reason they are asking and note that they have offers which will guarantee that they would pay no more than PPL's price to compare.

Fourth, RESA asserts at various points that if any CAP shopping restrictions are put into place, it "could result in EGSs electing not to serve CAP customers"<sup>74</sup> or that "no EGSs would be willing to serve customers"<sup>75</sup> based on the CAP-SOP proposal originally outlined in CAUSE-PA's surrebuttal testimony. These assertions are without merit and should carry no weight. Even today, under PPL's current DSP and SOP, some suppliers choose not to enter PPL service territory or participate in the SOP. By way of example, in the Joint Stipulation of CAUSE-PA and RESA, RESA admits that its membership consists of twenty-one (21) members in Pennsylvania, and acknowledges that its current membership list can be found at [www.resausa.org](http://www.resausa.org).<sup>76</sup> When one compares the list of current RESA members who are licensed EGSs in Pennsylvania with the list of suppliers participating in PPL's SOP over various periods, it demonstrates that RESA members participate at low levels. For instance, for the period of March – May 2016, the most recent period for which information is available, there were 16 EGSs participating in PPL's SOP – of whom only 6 were RESA members.<sup>77</sup> Thus, RESA's

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<sup>74</sup> RESA Statement 1-R at 13:14-15.

<sup>75</sup> RESA Statement 1-RJ at 4:6-7.

<sup>76</sup> Joint Stipulation of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania and the Retail Energy Supply Association ("Joint Stipulation") ¶ 3. A review of RESA's website lists the following EGSs as Pennsylvania members serving electricity customers: AEP Energy, APG&E, Champion Energy Services, LLC, ConEdison Solutions, Constellation New Energy, Inc., Crius Energy, Direct Energy Services, LLC, Dynegy, IGS Energy, Just Energy, MC2 Energy Services, Mint Energy, LLC, Next Era Energy Services, Noble Americans Energy Solutions, LLC, Nordic Energy Services, LLC., NRG Energy, Inc., Spark Energy, Starion Energy, Talen Energy, and TransCanada Power Marketing, Ltd.

<sup>77</sup> Compare CAUSE-PA **HIGHLY CONFIDENTIAL** Cross Examination Exhibit 1 at 6 with list of RESA members in fn. 76. This exhibit was entered into the record at the hearing and is **HIGHLY CONFIDENTIAL**. The contents of it – specifically the names of the EGSs participating in PPL's SOP over each period from August 2013 through March 2016 – will not be listed here, thus avoiding the need for a confidential brief.

assertion that these new rules could result in EGSs not wanting to serve customers is no different than what is already occurring. For their own individual business reasons, certain EGSs who are RESA members elect not to participate in the SOP, while other members are electing to do so.

Furthermore, as to RESA witness White's assertion that "no EGS would be willing to serve customers" under a modified SOP, it is clear that this assertion is his unsubstantiated *opinion*, rather than an established fact. RESA conceded that Mr. White did not even poll or review the CAP-SOP proposal with all RESA members prior to making this assertion, but rather shared his testimony and discussed the proposal with just seven (7) RESA members prior to submission.<sup>78</sup> A review of the PUC's publically available website listing the licensed suppliers shows that there are currently two-hundred and eleven (211) EGSs licensed in PPL's service territory which serve residential customers.<sup>79</sup> Thus, at best, Mr. White was speaking on behalf of a mere 3.3% of all licensed EGSs when he asserted that "no" supplier would be willing to serve EGSs under a modified CAP-SOP. This is not substantial evidence and should be afforded little to no weight.

That said, even if one were to accept the possibility that some suppliers may be initially reluctant, or unwilling, to serve CAP customers under the rules that were proposed by the Joint Parties, this alone should not be dispositive. Suppliers should not be permitted to negate or prevent implementation of reasonable CAP protections, such as those proposed by the Joint Parties, by simply noting that they may not participate. As the Commonwealth Court's decision in the PECO CAP shopping appeal recognized that

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<sup>78</sup> Joint Stipulation ¶ 4

<sup>79</sup> See PUC Licensed Electric Suppliers, [http://www.puc.state.pa.us/consumer\\_info/electricity/suppliers\\_list.aspx](http://www.puc.state.pa.us/consumer_info/electricity/suppliers_list.aspx) (last visited: June 15, 2016).

“under certain circumstances, unbridled competition may have to give way to other important concerns,”<sup>80</sup> and specifically found that under circumstances like those that exist here, the Commission has the authority and responsibility to limit CAP customers to paying no more than the PTC and eliminate early termination or cancellation fees “[s]o long as [PUC] ‘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 low-income to afford electric service.”<sup>81</sup>

Fifth, despite RESA’s assertion in testimony<sup>82</sup>, no party suggested that PPL be responsible for monitoring EGS compliance with CAP rules. Instead, PPL would be responsible to monitor its CAP customers who choose to shop to ensure that enrollment with a supplier only happens through a CAP-SOP. This is consistent with PPL’s responsibilities in administering its universal service programs. While EGSs may have no legal responsibility under the Choice Act to promote affordability or to reduce the level of harm for low-income customers and may be able to charge customers any price irrespective of the consequences,<sup>83</sup> PPL and the Commission do have responsibilities to low-income utility consumers. Based on the information presented in this case, PPL and the Commission have both the ability and responsibility to limit the terms of EGS offers that can be accepted by CAP customers because of the significant and un-mitigatable harm which occurs in the absence of CAP shopping restrictions.

Finally, RESA asserts that the Joint Parties’ position would unfairly impose a \$28 SOP enrollment fee on suppliers agreeing to serve CAP customers with more restrictive terms, and

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<sup>80</sup> CAUSE-PA et al., 120 A.3d at 1103.

<sup>81</sup> CAUSE-PA et al., 120 A.3d at 1103-04 (internal citation to authority omitted).

<sup>82</sup> RESA Statement 1-R at 13:19-22.

<sup>83</sup> Given the current POR program, the consequences of excessive EGS pricing rarely affect the EGS. They are paid by PPL and then allow PPL and its ratepayers to contend with termination, CAP default, and the other social effects of unaffordable utility bills.

that this would deprive EGSs to earn back their money by “offering a competitive (non-CAP SOP product) to customers at the end of the SOP contract term.”<sup>84</sup> It is important to note that the Joint Parties’ proposal takes no position on the enrollment fee question, and this is certainly something that could be discussed in the proposed statewide collaborative if it were a barrier to participation. More to the point, however, RESA has taken inconsistent and therefore unreliable positions concerning whether EGSs view the post-SOP contract terms to be a motivating factor in SOP participation. In response to discovery submitted by the OCA and admitted into evidence in this proceeding via the Joint Stipulation between CAUSE-PA and RESA, RESA responded as follows:

**REQUEST: OCA-I-4:** Does Mr. White agree that the EGS includes the potential for customer renewal at the end of the 12-monthly fixed price SOP contract in its decision to participate in the SOP and the potential to earn back the acquisition cost and profit? If not, explain the basis for your response?

**RESPONSE:** No. The reasons to enter into the SOP varies widely depending on the EGS entering in the program so Mr. White cannot speculate on the reasons each EGS participates in a SOP.<sup>85</sup>

Thus, RESA’s assertion in its testimony that this new CAP-SOP condition would deprive EGSs of their ability to charge higher prices post-SOP contract term should be taken with a grain of salt as it is inconsistent with its response to a direct question concerning EGS motivations. As RESA itself asserts, “[t]he reasons to enter into the SOP varies widely depending on the EGS entering in the program”<sup>86</sup> and thus, just as they currently do, depending on the PTC at any given time EGSs may find that it is financially advantageous or disadvantageous to participate.

The record in this proceeding amply demonstrates that substantial evidence – above and beyond the Joint Parties’ burden of proving its case by a preponderance of the evidence – has

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<sup>84</sup> RESA Statement 1-RJ at 3: 18-19.

<sup>85</sup> Joint Stipulation, RESA Response to OCA-I-4.

<sup>86</sup> Joint Stipulation, RESA Response to OCA-I-4.

been presented in this proceeding that the current system has not worked and is harming CAP and non-CAP customers. Indeed, the record shows that there is no reasonable alternative other than to cease this continuing harm by implementing the Joint Parties proposal, which is designed to ensure that adequately-funded, cost-effective, and affordable CAP shopping programs remain available to help customers who are low-income afford electric service. As such, “unbridled competition . . . ha[s] to give way to other important concerns.”<sup>87</sup> Whether or not any individual supplier chooses to serve or not serve CAP customers, will be that supplier’s business decision to do so.

## **VII. CONCLUSION**

Low-income customers make up a significant portion of PPL’s residential customer base, and their unique needs must be taken into consideration to ensure that they are adequately protected from higher prices. The record in this proceeding contains substantial evidence that PPL’s CAP customers and its residential ratepayers who pay for CAP are being significantly harmed as a result of non-existent protections for the price and contract terms charged to CAP customers. PPL, CAUSE-PA, the OCA, and I&E all support the initiation of reasonable restrictions contained in the Joint Litigation position attached hereto as Appendix C. The only party opposed to these restrictions is RESA who has taken the position that nothing should be done despite the overwhelming evidence of harm to the tune of at least \$2.7 million per year. RESA’s insistence that the status quo should remain is unreasonable, unacceptable, and unsupported by evidence in the record.

Low-income households simply have no budget elasticity and, thus, face extreme hardship and significant financial harm when faced with the prospect of paying more for electricity, even

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<sup>87</sup> CAUSE-PA et al., 120 A.3d at 1103.

for a short period of time, as this additional cost is often the difference between remaining current on their bills or falling behind. This is an unacceptable risk for PPL’s CAP customers who have run out of options for keeping current on their bills.

Therefore, in light of the “substantial reasons why there is no reasonable alternative so competition needs to bend”<sup>88</sup> that have been produced in this proceeding, the Commission should impose CAP rules enunciated in the Joint Litigation position of the parties “that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits”<sup>89</sup> because such rules are necessary to “ensure adequately-funded, cost-effective, and affordable programs to assist customers who are low-income to afford electric service.”<sup>90</sup>

Respectfully submitted,

**PENNSYLVANIA UTILITY LAW PROJECT**  
*Counsel for the Coalition for Affordable Utility  
Services and Energy Efficiency in Pennsylvania  
(CAUSE-PA)*



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Patrick M. Cicero, Esq., PA ID: 89039  
Elizabeth R. Marx, Esq., PA ID: 309014  
Joline Price, Esq., PA ID: 315405  
118 Locust Street  
Harrisburg, PA 17101  
Tel.: 717-236-9486  
Fax: 717-233-4088  
[pulp@palegalaid.net](mailto:pulp@palegalaid.net)

July 8, 2016

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<sup>88</sup> CAUSE-PA et al., 120 A.3d at 1103-04.

<sup>89</sup> *Id.*

<sup>90</sup> *Id.*

## **APPENDIX A - PROPOSED FINDINGS OF FACT**

1. Fourteen percent of PPL's customers are confirmed to have household income at or below 150% of the federal poverty level, and more than twenty-six percent of PPL's customers are estimated to have household income at or below this level. (CAUSE-PA Statement No. 1 at 7, table 1.)
2. PPL has the second highest total number of confirmed low-income customers in the state and the second highest percentage of confirmed low-income customers. (CAUSE-PA Statement No. 1 at 7: 9-10.)
3. Households below 150% of the federal poverty guidelines lack sufficient income to pay for all of their essential needs, including utility bills. (CAUSE-PA Statement No. 1 at 8:10-12.)
4. PPL customers with incomes at or below 150% of the federal poverty income level had energy burdens of 15% for non-heating electric service and 23% for heating electric service. (CAUSE-PA Statement No. 1 at 9:3-4.)
5. Low-income customers experience a higher level of disconnection than the customer population with higher incomes; within PPL's service territory low-income households have a termination rate that is nearly 5 times higher as compared to residential customers. (CAUSE-PA Statement No. 1 at 9, table 2.)
6. The average PPL CAP household spends 78% of its income on shelter, utilities, water/sewage, food/nonfood, and basic phone service, while 14% of its income is spent on all other expenses. (CAUSE-PA Statement No. 1 at 10:7-10.)
7. As a regulated public utility serving more than 100,000 customers, PPL is required to offer an integrated package of universal service programs – including a CAP – designed to help low-income, payment troubled ratepayers maintain and afford essential utility services. (CAUSE-PA Statement No. 1 at 10:12-10.)
8. Generally, CAPs provide a discounted bill for payment troubled, low-income ratepayers whose household incomes are at or below 150% of the federal poverty income guidelines. (CAUSE-PA Statement No. 1 at 11:13-14.)
9. The difference between a CAP customer's CAP Bill and the total bill that the customer would have been charged based on usage and price per kWh is called the customer's CAP Credit/CAP shortfall amount. (CAUSE-PA Statement No. 1 at 13:5-7.)

10. Each PPL CAP customer is permitted only a certain dollar amount of CAP credits over an 18-month period – this is known as the maximum CAP credit. PPL has set the maximum CAP credit at \$3,328 over 18 months for electric heat customers, and \$1,310 over 18 months for non-electric (i.e. baseload) customers. (CAUSE-PA Statement No. 1 at 13:7-10.)
11. These CAP credits are reduced each month on a dollar for dollar basis for any total monthly bill amount that is in excess of the customer's CAP Bill. (CAUSE-PA Statement No. 1 at 13:10-12.)
12. If a customer exhausts all of his or her maximum CAP credits before the 18-month recertification period is up, they would no longer receive a CAP bill that is based on an ability to pay, but instead must pay their full monthly budget bill, regardless of its affordability. (CAUSE-PA Statement No. 1 at 13:15-18.)
13. In aggregate, the CAP Credit/CAP Shortfall amount for all CAP customers is paid for by all residential non-CAP customers through PPL's Universal Service Rider (USR), which is built into PPL's rates. (CAUSE-PA Statement No. 1 at 14:3-5.)
14. Currently, PPL has no limits on a CAP customer's ability to shop and receive generation supply from an EGS. CAP customers are allowed to enter into any contract with any licensed EGS and pay any price for service regardless of whether that price is higher or lower than PPL's price to compare and/or whether it compromises continued affordability of service. (CAUSE-PA Statement No. 1 at 15:2-5.)
15. While the mere act of choosing a supplier does not affect a CAP customer's rate or their ability to remain on CAP, the rate that a supplier charges the customer – higher or lower – directly impacts the customer's payment amount through the exhaustion of CAP credits (CAUSE-PA Statement No. 1 at 16:17-19.)
16. CAP customers who pay a per kWh rate that is higher than the applicable default service price to compare will reach their maximum CAP credits sooner than those CAP customers who pay the default service price or a price lower than the default service price. (CAUSE-PA Statement No. 1 at 17:7-10.)
17. Between January 2012 and February 2016, 34,780 customers were removed from CAP because they reached their CAP credit maximums and, of this amount 27,600 – 79% -- were customers shopping with an EGS during some portion of the in the prior 18 months. (CAUSE-PA Statement No. 1 at 17:13-16.)
18. Because CAP credits/CAP shortfall are paid for by other residential ratepayers, when CAP customers shop for generation supply at a price higher than the price to compare, the costs of the CAP shortfall increase. (CAUSE-PA Statement No. 1 at 17:21-18:2.)
19. For calendar year 2015, an average of 52% of PPL's customers shopped each month, and of those customers who were shopping, an average of 46% paid more than the price to compare. (CAUSE-PA Statement No. 1 at 20:16-18.)

20. Those CAP customers who shopped and paid more than the price to compare *paid significantly more* than the price to compare, as compared to the savings achieved by CAP customers who paid less than the price to compare. (CAUSE-PA Statement No. 1 at 21:20-22:1.)
21. As a result of CAP customer shopping in the manner presently occurring in the PPL service territory, residential ratepayers are paying \$2,743,872 more per year for the CAP program than they would have paid had all CAP customers simply paid the price to compare. (CAUSE-PA Statement No. 1 at 22:10-23:3.)
22. None of the more than \$2.74 million paid in excess of the price to compare promoted universal service goals under the Choice Act to assist low-income customers better meet their home energy needs. (CAUSE-PA Statement No. 1 at 23:4-5.)
23. Unrestricted CAP shopping has produced tangible harm to CAP customers and the other ratepayers who pay for CAP. (CAUSE-PA Statement No. 1 at 22:10-23:3.)
24. No reasonable alternative exists than to impose restriction on the type of offer a CAP customer can accept and remain eligible for CAP. This is necessary to allow CAP customers' rates to remain affordable and not continue to jeopardize the overall adequacy, cost-effectiveness, or affordability of the CAP program for CAP customers and the ratepayers who pay for CAP. (CAUSE-PA Statement No. 1 at 22:10-23:3.)

## APPENDIX B - PROPOSED CONCLUSIONS OF LAW

1. The Electricity Generation Customer Choice and Competition Act (“Choice Act”) requires the Commonwealth “continue the protections, policies and services that now assist customers who are low-income to afford electric service” in the competitive environment. 66 Pa. C.S. § 2802 (10.)
2. The Choice Act defines “universal service and energy conservation” as policies, protections and services that help low-income customers to maintain electric service. 66 Pa. C.S. § 2803.
3. The term “universal service and energy conservation” includes customer assistance programs or CAPs. 66 Pa. C.S. § 2803.
4. Universal Service Programs are subject to the administrative oversight of the Commission which will ensure that the programs are operated in a cost-effective manner. 66 Pa. C.S. § 2804 (9).
5. The universal service provisions of the Choice Act tie the affordability of electric service to a customer’s ability to pay for that service: The Commission has the responsibility to ensure that utilities appropriately fund and make available the programs and services necessary to achieve affordability of electric service in each electric distribution territory. 66 Pa. C.S. § 2804(9); see also, *Coalition for Affordable Util. Servs. and Energy Efficiency in Pennsylvania, et al. v. Pa. Pub. Util. Comm’n*, 1020 A.3d 1087, 1103 (2015), *appeal denied*, 2016 WL 1383864 (Pa. Apr. 5, 2016) (citing 66 Pa. C.S. § 2892 (7), (9), (10), (14), (17))
6. The obligation to provide low-income programs falls on the public utility under the Choice Act, not the EGSs. *CAUSE-PA et al.*, 1020 A.3d at 1103.
7. Choice Act both encourages deregulation to allow consumers the opportunity to purchase directly their supply from electric generation suppliers and emphasizes the need to continue to maintain programs that assist low-income customers to afford electric service. *CAUSE-PA et al.* at 1103-04.
8. The Choice Act “does not demand absolute and unbridled competition,” but rather, “under certain circumstances, unbridled competition may have to give way to other important concerns” such as ensuring that universal service plans are adequately funded and cost effective. *CAUSE-PA et al.* at 1101, 1103
9. The Choice Act expressly requires the Commission to administer these programs in a manner that is cost effective for the CAP participants and the non-CAP participants, who share the financial consequences of the CAP participant’s EGS choice. *CAUSE-PA et al.* at 1103-04.

10. Because of the dual purposes of the Choice Act, at times, competition needs to bend to ensure that adequately-funded, cost-effective, and affordable programs exist and are maintained to assist customers who are low-income to afford electric service. *CAUSE-PA et al.* at 1104.
11. The Commission has the legal authority to impose CAP rules that would limit the terms that a CAP customer could accept and remain eligible for CAP benefits, this includes the right to impose cost controls to reduce customer harm, prohibit against early termination/cancellation fees, and other rules necessary to ensure CAP programs are adequately run, cost-effective, and programs remain affordable.
12. It is not reasonable to approve discounts and reduced rates for low income customer classes, paid for by other residential customers, and at the same time approve a DSP plan which allows CAP customers to be charged higher rates that result in unaffordable or higher bills. Doing so contributes to higher collection costs for all customers, and has adverse health, safety, and financial impacts on individual low income households.
13. CAUSE-PA, PPL, the OCA, and I&E have demonstrated by a preponderance of the evidence substantial reasons why PPL's current practice of allowing CAP customers to shop for EGS-supplied generation service has caused significant and un-mitigatable harm to PPL's CAP customers and the residential ratepayers who pay for CAP.
14. CAUSE-PA, PPL, the OCA, and I&E have demonstrated by a preponderance of the evidence that, under the facts presented in this case, unbridled competition must bend and special CAP rules must be imposed because no reasonable alternative exists that would allow CAP customers' rates to remain affordable and that would not continue to jeopardize the overall adequacy, cost-effectiveness, or affordability of the CAP program for CAP customers and the ratepayers who pay for CAP.
15. The harm to CAP customers and other residential ratepayers that has resulted from unbridled competition is likely not unique to PPL's service territory. Given this, the Commission should promptly initiate a statewide collaborative open to all interested stakeholders and initiate a CAP rulemaking proceeding to address CAP shopping issues on a uniform, statewide basis.
16. Because the facts of this case necessitate more immediate action than can be taken through a statewide proceeding so as to ensure that harm does not continue and that adequately-funded, cost-effective, and affordable programs exist and are maintained to assist customers who are low-income to afford electric service, it is necessary to impose transitional rules as part of this proceeding that would create a CAP-SOP that limits the terms that a CAP customer could accept and remain eligible for CAP.
17. The CAP rules outlined in the Joint Litigation Position of CAUSE-PA, PPL, the OCA, and I&E are reasonably designed to ensure access to the competitive market for CAP customers while preserving adequately-funded, cost-effective, and affordable programs to assist customers who are low-income to afford electric service.

18. By no later than June 1, 2017, PPL shall develop a standard offer program that is available only to CAP customers (CAP-SOP) with the following characteristics:
- Effective June 1, 2017, the CAP-SOP is the only means that a CAP customer may use to shop and receive generation supply from an EGS.
  - Any CAP customer shopping request that does not get processed through the CAP-SOP will be denied by PPL.
  - EGSs participating in the CAP-SOP must agree to serve customers at a 7% discount off of PPL's Price to Compare (PTC) at the time of enrollment. The EGS contract price shall remain fixed for 12-months from the date of enrollment unless terminated earlier by the customer.
  - CAP customers may terminate the CAP-SOP contract at any time and without any termination or cancellation fees or other penalties.
  - 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.
  - 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.
  - EGSs wishing to participate in the CAP-SOP, enroll separately from the standard SOP to be a participating supplier in the CAP-SOP.
  - EGSs can elect to participate in none, one, or both the traditional SOP and the 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.
  - In the event that no EGSs elect to participate in a given quarter, CAP customers inquiring about shopping will continue to be served by PPL through the provision of default service.
  - For the purpose of transitioning CAP customers who are currently being served by an EGS as of the June 1, 2017 effective date of the CAP-SOP, PPL will employ the following process:
    1. 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.
    2. 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.

3. 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.

**APPENDIX C – JOINT LITIGATION POSITION OF CERTAIN PARTIES**

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of PPL Electric Utilities :  
Corporation for Approval of a Default : Docket No. P-2016-2526627  
Service Program and Procurement Plan for :  
the Period June 1, 2017 through May 31, :  
2021 :

**JOINT LITIGATION POSITION AMONG  
CERTAIN PARTIES REGARDING CAP SHOPPING**  
(Corrected)

TO THE HONORABLE ADMINISTRATIVE LAW  
JUDGE SUSAN D. COLWELL:

**I. INTRODUCTION**

PPL Electric Utilities Corporation (“PPL Electric”), the Pennsylvania Public Utility Commission’s (“Commission”) 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”), parties to the above-captioned proceeding (collectively “Joint Parties”),<sup>1</sup> hereby file this “Joint Litigation Position Among Certain Parties Regarding CAP Shopping” (“Joining Position”), and respectfully request that Administrative Law Judge Susan D. Colwell (“ALJ”) and the Commission adopt the proposal contained herein with respect to a revised, temporary mechanism for Customer Assistance Program (“CAP”) customers to shop on PPL Electric’s system, pending a future, state-wide proceeding to examine issues related to CAP customer shopping. The terms of the Joint Position are set forth below.

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<sup>1</sup> The Office of Small Business Advocate (“OSBA”), NextEra Energy Power Marketing, LLC, PP&L Industrial Customer Alliance (“PPLICA”), Sustainable Energy Fund of Central Eastern Pennsylvania (“SEF”), Noble Americas Energy Solutions, LLC and Exelon Generation Company are not parties to and take no position on this Joint Position. Retail Energy Supply Association (“RESA”) does not support this Joint Litigation Position and reserves its rights to litigate the issue of CAP customer shopping.

## **II. JOINT LITIGATION POSITION**

1. The Joining Parties hereby agree and adopt as their litigation position the revised CAP shopping proposal as set forth in PPL Electric Statement No. 1-RJ, the Rejoinder Testimony of PPL Electric Witness James M. Rouland, found on page 6, line 21 through page 9 line 7. To the extent that other proposals presented through the litigation are inconsistent, the Joining Parties further agree to forego other CAP shopping proposals in lieu of the CAP shopping proposal set forth in PPL Electric Statement No. 1-RJ at 6:21 - 9:7. To eliminate doubt, the specific terms of that CAP shopping proposal are restated here.

2. The Joining Parties agree 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.

3. PPL Electric agrees to fully participate in any such collaborative and/or rulemaking proceeding, and to present a specific CAP shopping proposal to address the impacts of CAP shopping on both CAP and non-CAP customers.

4. The Joining Parties agree that, until a uniform, statewide solution to CAP shopping can be developed, PPL Electric shall implement a CAP Standard Offer Program (“CAP-SOP”), effective June 1, 2017, with the following features designed to help mitigate the 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 through the Universal Service Rider:

- (a) 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. 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.

5. For the purpose of transitioning CAP customers who are shopping as of the CAP-SOP June 1, 2017 effective date:

(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.

6. Within 90 days of the date of a final order in this proceeding, PPL Electric will hold a collaborative open to all interested parties to develop CAP-SOP specific scripts to be used by the Company's Customer Service Representatives and PPL Solutions.

7. Until a uniform, statewide approach to CAP shopping can be developed, the parties reserve the right 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.

### **III. CONCLUSION**

WHEREFORE, PPL Electric, I&E, OCA, and CAUSE-PA, by their respective counsel, request that the ALJ and the Commission adopt this Joint Litigation Position Among Certain Parties Regarding CAP Shopping.