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July 8, 2016

Via Electronic Filing
Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Initial Brief of the Retail Energy Supply Association ("RESA") with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Deanne M. O'Dell

DMO/lww
Enclosure

cc: Hon. Susan D. Colwell w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of RESA's Initial Brief upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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Date: July 8, 2016

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

INITIAL BRIEF OF RETAIL ENERGY SUPPLY ASSOCIATION

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I. INTRODUCTION

The issue reserved for litigation in this default service proceeding for PPL Electric Utilities Corporation ("PPL") is whether the record supports imposing restrictions on the ability of customers participating in PPL's customer assistance program ("CAP") to shop for competitive generation supply from an electric generation supplier ("EGS"). Based on recent interpretations by the Commonwealth Court of the Electricity Generation Customer Choice and Competition Act ("Competition Act")[1] and the record developed in this proceeding, the answer is undoubtedly no. As such, the Retail Energy Supply Association[2] urges the Administrative Law Judge ("ALJ") to reject the restrictions on the ability of CAP customers to shop set forth in PPL's rejoinder testimony (the "PPL Rejoinder Proposal") and, instead, direct implementation of PPL's proposals regarding CAP shopping set forth in its direct testimony (the "PPL Initial Proposal.")

The law is clear that the "overarching goal" of the Competition Act is competition and, while the Commission may "bend" competition to further other important aspects of the Competition Act, it can: (1) only do so upon a showing of substantial reasons why there are no reasonable alternatives to the proposed restriction on competition; and, (2) may rely on substantial evidence showing why proposed restrictions on competition should be rejected.[3]

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1 *Coalition for Affordable Util. Servs. and Energy Efficiency in Pennsylvania, et al. v. Pa. Pub. Util. Comm'n*, 120 A.3d 1087, 1106-1107 (Commw. Ct. 2015), appeal denied, 2016 WL 1383864 (Pa. Apr. 5, 2016) ("Commonwealth Court CAP Shopping Decision"); 66 Pa. C.S. §§2801-2812.

2 The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of more than twenty retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

3 Commonwealth Court CAP Shopping Decision at 1107-1108.

This evidence can include a showing that the proposed restrictions may adversely affect available choices for CAP customers.[4]

The record in this proceeding includes a reasonable alternative to restricting the ability of CAP customers to shop that would appropriately address the long-term concern of CAP shopping through a statewide collaborative and address the short-term concern by implementing measures to encourage CAP customers to participate in PPL's customer referral standard offer program ("SOP"). By participating in SOP, CAP customers would be able to avail themselves of a price for electricity 7% off the then-effective Price-to-Compare ("PTC") upon enrollment and not be subject to early termination/cancellation fees. This addresses some of the concerns raised in this proceeding.

Moreover, the record in this proceeding makes clear that the proposed restrictions on CAP shopping set forth in the PPL Rejoinder Proposal would adversely affect available choices for CAP customers. This is because the restrictions would take away the current right of CAP customers to freely shop. Pursuant to PPL's Rejoinder Proposal, CAP customers could only receive competitive supply through a to be created "CAP-SOP." The proposed structure of the CAP-SOP, however, includes program restrictions that would result in no EGSs participating. This is because the CAP-SOP would require the EGS to pay a $28 referral fee for each customer, agree to only provide below market electricity (7% off the then-effective PTC at enrollment) and prohibit the EGS (or any other EGS) from marketing other products to the CAP customer. EGSs are not likely to view such structure as favorable and would not agree to provide service under

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4 Commonwealth Court CAP Shopping Decision at 1107-1108.

these conditions. The practical result would be to remove any opportunity for CAP customers to shop.

For these reasons, and as explained in more detail below, RESA supports rejection of the restrictions on the ability of CAP customers to shop set forth in PPL's rejoinder testimony and, instead, recommends that PPL's proposals regarding CAP shopping set forth in its direct testimony be implemented.

II. STATEMENT OF THE CASE

On January 29, 2016, PPL filed a petition, along with supporting direct testimony, proposing to establish the terms and conditions under which it will procure default service supplies, provide default service to non-shopping customers, satisfy requirements imposed by the Alternative Energy Portfolio Standards Act[5] and recover all associated costs on a full and current basis for the period from June 1, 2017 through May 31, 2021. Notice of appearances and interventions were also filed by the Commission's Bureau of Investigation & Enforcement ("BI&E"), the Office of Consumer Advocate ("OCA") and the Office of Small Business Advocate ("OSBA"). Pursuant to Scheduling Order/Second Prehearing Order dated March 9, 2016, a litigation schedule was established and the following petitions to intervene of the following parties were granted: NextEra Energy Power Marketing, LLC; the Sustainable Energy Fund of Central Eastern Pennsylvania ("SEF"), the PP&L Industrial Customer Alliance ("PPLICA"), Noble Americas Energy Solutions LLC ("NAES"), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), Exelon Generation Company, LLC, and the Retail Energy Supply Association ("RESA").

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5 73 P. S. §§ 1648. 1 - 1648.8 and related provisions of 66 Pa. C. S § § 2813-2814.

Direct, rebuttal, surrebuttal and rejoinder testimony of all parties other than the Company was served on or before June 16, 2016 and was admitted into the record on that date. The following testimony of Matthew White was admitted on behalf of RESA: (1) RESA St. No. 1 which includes Exhibits MW-1 to MW-4; (2) RESA St. No. 1-R which includes Exhibit MW-5; (3) RESA St. No. 1-SR which includes Exhibit MW-6; and (4) RESA St. No. 1-RJ.

At the June 16, 2016 hearing, the parties informed the ALJ that an agreement had been reached on all issues except for the right of customers participating in PPL's low-income customer assistance program ("CAP") to freely shop for competitive supply from an electric generation supplier ("EGS"). As such, this issue has been reserved for litigation.

In its direct testimony, PPL urged that CAP shopping be addressed on a statewide basis but proposed, in the interim, that CAP customers be encouraged to participate in PPL's customer referral standard offer program ("SOP") (the "PPL Initial Proposal"). More specifically, PPL proposed that any customers that inquire about its CAP (or other low-income programs) or are enrolled in PPL's CAP be informed of the availability of the SOP.[6] The PPL Initial Proposal would not place any restrictions on competition.

BI&E supported PPL's initial view that CAP shopping should be addressed on a statewide basis and its proposed interim approach.[7] BI&E later updated its recommendation to reflect that the Commission should initiate a statewide collaborative of all stakeholders on the issue of CAP shopping costs to develop a solution that would be completed as determined by the Commission or within one year from the date of the Commission's Order in this proceeding.

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6 PPL St. No. 1 at 48.

7 BI&E St. No. 1 at 6-8.

However, BI&E continued to support PPL's initial interim plan to encourage CAP customers to participate in the SOP.[8]

OCA opposed PPL's preliminary proposal to approach CAP shopping matters on a statewide basis and offered instead that PPL could: (1) revise SOP rules so that suppliers must serve CAP customers at a rate that is at or below the applicable PTC; (2) establish a CAP specific shopping program pursuant to which approved suppliers could make offers to CAP customers; (3) notify suppliers and customers when a rate is charged that is higher than the PTC and require the supplier to drop the customer or lower its price; or (4) modify its Purchase of Receivables program and pursue collection action for amounts equal to or less than the PTC and return the otherwise unpaid bill amounts to the supplier.[9]

Similarly, CAUSE-PA opposed PPL's preliminary proposal that CAP shopping matters be addressed on a statewide basis and, instead, proposed that PPL establish rules that would restrict the ability of CAP customers to shop. Under CAUSE-PA's proposal, no CAP customers would be able to shop outside the specific CAP shopping program recommended by CAUSE-PA. Through this program, CAUSE-PA proposed that EGSs would be required to offer CAP customers only products that are always at or below PPL's PTC and that do not contain termination and/or cancellation fees.[10] In surrebuttal testimony, CAUSE-PA, for the first time in the proceeding, proposed that a modified SOP for CAP customers could serve as an avenue through which its shopping restrictions could be implemented and would be the only way for

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8 BI&E St. No. 1-SR at 15.

9 OCA St. No. 2 at 21-22; OCA St. No. 2-S at 10.

10 CAUSE-PA St. No. 1 at 33.

PPL's CAP customers to receive generation supply from an EGS.[11] Pursuant to CAUSE-PA's surrebuttal proposal, the modified CAP SOP would require EGSs to re-enroll customers as a new SOP enrollment with 7% off the then applicable PTC if the PTC drops below 7% at any time during the customer's enrollment.[12] In addition, participating EGSs would be required, at the end of the CAP customer's SOP contract term, to re-enroll the customers in a new SOP contract that is 7% off the then-applicable PTC or return the customer to default service.[13] EGSs would not be permitted to market any other competitive product to PPL's CAP customers.

RESA responded and opposed CAUSE-PA's new proposal in rejoinder testimony.[14] RESA noted that CAUSE-PA's proposal would limit CAP customers to electing "just one product available in the market" and, therefore, would completely eliminate the opportunity for CAP customers to shop for any other competitive product.[15] The limitations on that product would require suppliers to offer a discount to a future unknown price and would impose additional risk to suppliers that would agree to serve CAP customers through the CAP SOP. RESA also explained that CAUSE-PA's proposal would require EGSs to pay a referral fee for each CAP customer referred and eliminated the opportunity for EGSs to offer a competitive (non-CAP SOP) product to customers at the end of the SOP contract term (or at any other time).[16] Ultimately, RESA concluded that CAUSE-PA's proposal, if implemented, would result in EGSs not participating in the CAP SOP program.[17]

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11 CAUSE-PA St. No. 1-SR at 19.

12 CAUSE-PA St. No. 1-SR at 19.

13 CAUSE-PA St. No. 1-SR at 19.

14 RESA St. No. 1-RJ.

15 RESA St. No. 1-RJ at 4.

16 RESA St. No. 1-RJ at 3.

17 RESA St. No. 1-RJ at 2-3.

PPL also filed rejoinder testimony in response to CAUSE-PA's new surrebuttal proposal which altered PPL's initial proposal regarding the issue of CAP shopping and recommended restrictions on the ability of CAP customers to shop (the "PPL Rejoinder Proposal").[18] While PPL continued to recommend that the Commission initiate a statewide collaborative and/or initiate a rulemaking to address CAP shopping issues, the PPL Rejoinder Proposal recommended that, in the interim, a CAP-SOP shopping program be established that would provide the only vehicle for CAP customers to shop in PPL's service territory. The PPL Rejoinder Proposal would require EGSs serving in the CAP-SOP to provide a 7% discount off the PTC at the time of enrollment with no opportunity to market other non-CAP-SOP products to its CAP-SOP customers.[19]

In response to the PPL rejoinder testimony, PPL, BI&E, OCA, and CAUSE-PA (collectively, "Proponents of CAP Shopping Restrictions") filed a joint litigation position regarding CAP shopping[20] which supports the PPL Rejoinder Proposal. The Proponents of CAP Shopping Restrictions agreed that the Commission should initiate a statewide collaborative and/or initiate a new rulemaking proceeding to address CAP shopping issues.[21] Until such a statewide approach can be developed, the Proponents of CAP Shopping Restrictions agreed that PPL should implement a CAP Standard Offer Program, effective June 1, 2017, that limits the

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18 PPL St. No. 1-RJ at 7-8

19 PPL St. No. 1-RJ at 7-8.

20 Corrected Joint Litigation Position (dated June 17, 2016). 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 were not parties to and took no position on the Joint Litigation Position. RESA did not support the Joint Litigation Position and reserved its rights to litigate the issue of CAP customer shopping.

21 Corrected Joint Litigation Statement at 2.

ability of CAP customers to shop only through a new CAP-SOP program. As proposed, EGSs that agree to participate in the program would be required to serve customers at 7% off the PTC at the time of enrollment and agree not to impose any termination or cancellation fees for customer termination of a CAP-SOP contract. At the end of a 12-month CAP-SOP contract, CAP customers will be returned to the CAP-SOP pool and will 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 participant. Significantly, the proposal would restrict CAP customer shopping so that CAP customers would only be able to receive supply from an EGS through the proposed CAP-SOP.[22]

Pursuant to Briefing Order entered June 16, 2016, Initial Briefs regarding the CAP Shopping issue are due July 8, 2016, reply briefs as well as the joint petition for partial settlement and statements in support of settlement are due July 19, 2016. The purpose of this Initial Brief is to set forth RESA's position that the Proponents of CAP Shopping Restrictions have not met their burden of proving that there are no reasonable alternatives to restricting competition and, therefore, the PPL Rejoinder Proposal be rejected. In addition, substantial record evidence supports rejection of the PPL Rejoinder Proposal because it would effectively end any ability of CAP customers to shop.

III. QUESTIONS INVOLVED

Question #1: Have the Proponents of CAP Shopping Restrictions met their burden of proving that no reasonable alternative exists so as to necessitate the imposition of restrictions on competition?

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22 Corrected Joint Litigation Statement at 2-3.

Suggested Answer #1: No.

Question #2: Even if the Commission determines that restrictions on the ability of CAP customers to shop are appropriate, does the record support imposing the restrictions set forth in the PPL Rejoinder Proposal which would effectively eliminate all opportunities for CAP customers to shop?

Suggested Answer #2: No.

IV. LEGAL STANDARDS AND BURDEN OF PROOF

A. BURDEN OF PROOF

Section 332(a) of the Public Utility Code provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.[23] It is well-established that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible."[24] The burden of proof is comprised of two distinct burdens: the burden of production and the burden of persuasion. The burden of production tells the adjudicator which party must come forward with evidence to support a particular proposition.[25] The burden of persuasion determines which party must produce sufficient evidence to convince a judge that a fact has been established, and it never leaves the party on whom it is originally cast.[26] In this case, parties proposing rule restrictions on the ability of CAP customers to shop have the burden of proof and ultimately the burden to persuade the Commission that there are no reasonable

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23 66 Pa.C.S. §332(a).

24 *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

25 See *In re Loudenslager's Estate*, 240 A.2d 477, 482 (1968).

26 *Reidel v. County of Allegheny*, 633 A.2d 1325, 1329 n. 11 (Pa.Cmwlth.1993).

alternatives to their proposed restrictions on competition and the Commission may rely on substantial evidence to reject the proposed restriction.[27]

B. STANDARDS APPLICABLE TO DEFAULT SERVICE AND THE ABILITY OF LOW-INCOME CUSTOMERS PARTICIPATING IN A CUSTOMER ASSISTANCE PROGRAM TO SHOP

The Electricity Generation Customer Choice and Competition Act ("Competition Act") addresses the requirements that PPL, as the default service provider, must meet.[28] The Competition Act does not require a specific rate design methodology for non-shopping customers in the post transition period. Instead, it requires that the default service provider acquire electric energy through a "prudent mix"[29] of resources that must be designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to customers over time; and, (iii) to achieve these results through competitive processes which includes auctions, requests for proposals and/or bilateral agreements.[30]

The "overarching goal of the Choice Act is competition through deregulation of the energy supply industry, leading to reduced electricity costs for consumers."[31] To achieve this, the Competition Act requires the Commission to "allow customers to choose among electric generation suppliers in a competitive generation market through direct access."[32] The Competition Act recognizes that greater competition in the electricity generation market benefits

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27 Commonwealth Court CAP Shopping Decision at 1106-1107.

28 *See* 66 Pa. C.S. § 2807(e).

29 66 Pa. C.S. § 2807(e)(3.2); "In interpreting the term 'prudent mix,' the PUC must exercise some balance and discretion under the circumstances of the case in order for the 'mix' in question to be 'prudent'." *Popowsky v. Pennsylvania Pub. Util. Comm'n*, 71 A.3d 1112, 1117 (Pa. Cmwlth. 2013)(Petition for Allowance of Appeal Denied December 31, 2013, Docket No. 641 MAL 2013).

30 66 Pa. C.S. § 2807(e)(3.1).

31 Commonwealth Court CAP Shopping Decision at 1101 (emphasis added); 66 Pa.C.S. § 2802(13).

32 66 Pa.C.S. § 2804(2); See also *Popowsky,* 71 A.3d at 1116.

all classes of customers, including those of low income.[33] In addition, the Competition Act requires the Commission to ensure that universal service plans are appropriately funded, available, and cost-effective.[34]

The Commission has the authority to "bend" competition to further other important aspects of the Competition Act but, can only do so upon a showing of substantial reasons why there are no reasonable alternatives to the proposed restriction on competition.[35] Then, even if restrictions on competition are deemed the only way to address the concern, the Commission may rely on substantial evidence showing why such restrictions should be rejected.[36] This evidence can include a showing that the restrictions would adversely affect available choices for CAP participants.[37]

The Commission has long supported the ability of customers participating in a customer assistance program to shop without restriction. The Commission has also specifically concluded that CAP customers should have the opportunity to participate in various retail market enhancement programs, such as the Standard Offer Program ("SOP").[38]

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33 66 Pa. C.S. § 2802(7); Commonwealth Court CAP Shopping Decision at 1106.

34 66 Pa. C.S. § 2804(9).

35 Commonwealth Court CAP Shopping Decision at 1104, 1106.

36 Commonwealth Court CAP Shopping Decision at 1107-1108.

37 Commonwealth Court CAP Shopping Decision at 1107-1108.

38 *Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan*, Docket No. P-2012-2302074 at 163 (Opinion and Order entered January 24, 2013) ("*PPL DSP II Order*"); *Petition of PECO Energy Company for Approval of its Default Service Program II*, Docket No. P-2012-2283641, Order at Ordering Par. 18 (October 12, 2012) ("*PECO DSP II*"); *PECO DSP II* at Motion of Commissioner Witmer on Issue 22 entered September 27, 2012; *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs*, Docket No. P-2011-2273650, et. seq., Opinion and Order entered August 16, 2012, *reconsideration granted in part*, Opinion and Order entered September 27, 2012, and amended on October 11, 2012 at 24-25 ("*FE DSP II Reconsideration Order*").

V. SUMMARY OF ARGUMENT

A. PROPONENTS FAILED TO MEET BURDEN OF PROVING THAT RESTRICTIONS ON CAP SHOPPING ARE REQUIRED

The law is clear that the "overarching goal" of the Competition Act is competition and, while the Commission may "bend" competition to further other important aspects of the Competition Act, it can only do so upon a showing of substantial reasons why there are no reasonable alternatives to the proposed restriction on competition. The Proponents of CAP Shopping Restrictions have not met their burden of proving that there are no reasonable alternatives to their proposed restrictions on the ability of CAP customers to shop (i.e. the PPL Rejoinder Proposal) for two reasons. First, the concerns regarding the effect of the ability of CAP customers to freely shop (i.e. maximizing their program benefits earlier) are directly related to the structure of PPL's CAP program. Nonetheless, no testimony or record evidence was proposed by the Proponents of CAP Shopping Restrictions to show why changes to the CAP Program are not reasonable. This is so despite the fact that the evidence in the record supports the need for making PPL's CAP benefits more portable as they are for other service territories such as PECO Energy Company and the FirstEnergy Companies.

Second, the record does include a reasonable alternative to restricting the right of CAP customers to freely shop (i.e. the PPL Initial Proposal) which proves that restrictions on the ability of CAP customers to shop would be unlawful. The PPL Initial Proposal would address some of the concerns expressed by CAUSE-PA regarding the price paid by CAP customers as well as exposure to early termination/cancellation fees on an interim basis while supporting a statewide long-term solution to concerns raised about CAP shopping.

Because the Proponents of CAP Shopping Restrictions have failed to prove that there are no reasonable alternatives to their proposed restrictions on the ability of CAP customers to shop,

the PPL Rejoinder Proposal must be rejected. RESA supports implementation of the PPL Initial Proposal.

B. SUBSTANTIAL EVIDENCE SUPPORTS REJECTING THE PPL REJOINDER PROPOSAL'S PROPOSED RESTRICTIONS ON CAP SHOPPING BECAUSE IMPLEMENTING THEM WOULD RESULT IN NO SHOPPING OPTIONS AVAILABLE FOR CAP CUSTOMERS

The law is clear that the "overarching goal" of the Competition Act is competition and if no other reasonable alternatives exist, the Commission may "bend" competition to further other important aspects of the Competition Act but may rely on substantial evidence showing why proposed restrictions on shopping should be rejected.[39] This evidence can include a showing that the proposed restrictions may adversely affect available choices for CAP customers.[40] The substantial evidence in this proceeding shows that the PPL Rejoinder Proposal will adversely affect available choices for CAP customers for the following reasons and, therefore, must be rejected.

First, the PPL Rejoinder Proposal will remove the current ability of CAP customers (approximately 41,074) to freely shop because it would create only one avenue for CAP customers to potentially elect to receive service from an EGS. The result of eliminating this right would impact approximately half of all CAP customers who are shopping (20,738) and take away their ability avail themselves of all the benefits of CAP Shopping (including an EGS price lower than the PTC). In addition, reversing course to eliminate the free ability of CAP customers to currently shop at this point would necessitate changes to existing EDC and EGS protocols to develop new administrative protocols that currently do not exist. Further, because the PPL

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39 Commonwealth Court CAP Shopping Decision at 1107-1108.

40 Commonwealth Court CAP Shopping Decision at 1107-1108.

Rejoinder Proposal is only offered as an interim measure, it will be replaced by unknown future processes necessitating new operational changes at that time as well as customer confusion. In consideration of these facts, wholesale restricting CAP Shopping on an interim basis at this time is not reasonable.

Second, the PPL Rejoinder Proposal will effectively eliminate all shopping opportunities for CAP customers because the only avenue through which they would be able to select an EGS (i.e., the CAP-SOP program) would be designed in a way that no EGSs would participate. The reasons the design of the proposed CAP-SOP program are problematic for EGSs are because it would require EGSs to agree to only ever offer below market priced electricity service, to pay an additional $28 referral fee to PPL each time a customer enrolls or re-enrolls, and prohibit the EGS from ever being able to offer a different competitive product to the CAP customers. If no EGSs participate in the only avenue for CAP customers to shop (which they will not), then there will be no CAP shopping at all.

In sum, implementing the PPL Rejoinder Proposal will remove all ability for CAP customers to shop and will, therefore, adversely impact the available choices for CAP customers. For these reasons, the PPL Rejoinder Proposal must be rejected.

VI. ARGUMENT

A. LEGAL AUTHORITY FOR CAP SHOPPING RESTRICTIONS

The Commonwealth Court reaffirmed that the "central objective" of the Competition Act "was to allow retail customers in the Commonwealth to purchase their electricity directly from an EGS, rather than rely on their local utility as the exclusive source for generation, transmission,

and distribution."[41] Thus, according to the Commonwealth Court, "there can be no question, at this juncture, that the overarching goal of the Choice Act is competition through deregulation of the energy supply industry, leading to reduced electricity costs for consumers."[42] Upon consideration of issues before it related to the ability of CAP customers to freely shop, the Commonwealth Court also concluded that the Commission does have the authority to "bend" competition to further other important aspects of the Competition Act but, can only do so upon a showing of substantial reasons why there are no reasonable alternatives to the proposed restriction on competition.[43] Then, even if restrictions on competition are deemed the only way to address the concern, the Commission may rely on substantial evidence showing why such restrictions should be rejected.[44] This can include a showing that the restrictions would adversely affect available choices for CAP participants.[45]

In other words, parties proposing rule restrictions on the ability of CAP customers to shop have the burden of proof and ultimately the burden to persuade the Commission that there are no reasonable alternatives to their proposed restrictions on competition. The Commission may rely on substantial evidence to reject proposed restrictions including a showing that the restrictions would adversely affect available choices for CAP participants.[46]

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41 Commonwealth Court CAP Shopping Decision at 1100.

42 Commonwealth Court CAP Shopping Decision at 1101 (emphasis added).

43 Commonwealth Court CAP Shopping Decision at 1104, 1106.

44 Commonwealth Court CAP Shopping Decision at 1107-1108.

45 Commonwealth Court CAP Shopping Decision at 1107.

46 Commonwealth Court CAP Shopping Decision at 1107-1108.

B. WHETHER CAP SHOPPING RESTRICTIONS ARE NEEDED

PPL's CAP customers have had the ability to shop without restriction since 2010.[47] Most recently, in 2013, the Commission affirmed the right of PPL's CAP customers to be treated as all other customers regarding their right to access the competitive market.[48] Between September 2013 and October 2015, PPL has analyzed data regarding the shopping of CAP customers.[49] The monthly average of CAP customers was 41,074 and approximately half of these CAP customers (20,738) received competitive supply from an EGS.[50] Of these shopping CAP customers, about half of them are paying a rate at or below the PTC.[51]

Based on its analysis of this data, PPL concluded that "some limits on CAP shopping should be developed."[52] More specifically, PPL recommended that a statewide collaborative be convened by the Commission to develop a long-term resolution of these issues.[53] In the interim, PPL proposed that any customers that inquire about its CAP (or other low-income programs) or are enrolled in PPL's CAP be informed of the availability of the SOP (i.e., the PPL Initial Proposal).[54] Through SOP, these CAP customers could receive a 7% discount off the then-effective PTC and not be subject to any early termination/cancellation fees.[55] The PPL Initial

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47 PPL St. 1 at 44.

48 *Petition of PPL Electric Utilities Corporation For Approval of a Default Service Program and Procurement Plan*, Docket No. P-2012-2302074 at 163 (Opinion and Order entered January 24, 2013).

49 PPL St. No. 3 at 6-11.

50 PPL Exh. MSW-1 at 6-8.

51 PPL St. No. 1-R at 29; PPL Exh. MSW-1 at 9-11.

52 PPL St. No. 1 at 45.

53 PPL St. No. 1 at 47.

54 PPL St. No. 1 at 48.

55 PPL St. No. 1 at 48.