**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held January 26, 2017

Commissioners Present:

Gladys M. Brown, Chairman

Andrew G. Place, Vice Chairman, Statement, dissenting

John F. Coleman, Jr.

Robert F. Powelson, Statement, dissenting

David W. Sweet, Statement

Petition of PPL Electric Utilities Corporation P-2016-2526627

for Approval of a Default Service Program and

Procurement Plan for the Period June 1, 2017

Through May 31, 2021

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the Petition for Reconsideration (Petition), filed by the Retail Energy Supply Association (RESA), on November 14, 2016, seeking reconsideration of our Opinion and Order entered October 27, 2016 (*October 2016 Order)*, relative to the above-captioned proceeding.[[1]](#footnote-1) Answers to the Petition were filed by PPL Electric Utilities Corporation (PPL), the Commission’s Bureau of Investigation and Enforcement (I&E), the Office of Consumer Advocate (OCA) and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) on November 28, 2016. For the reasons stated below, we shall deny the Petition.

# History of the Proceeding

On January 29, 2016, PPL filed with the Commission a Petition for Approval of a Default Service Program and Procurement Plan (DSP IV or DSP IV Plan) for the period June 1, 2017 through May 31, 2021 (DSP Petition). The DSP Petition was filed pursuant to 66 Pa. C.S. §§ 2801, *et seq.*, and past Commission decisions governing PPL’s default service program.

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

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

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

Exceptions to the Initial Decision were filed by PPL, RESA and PPLICA on September 6, 2016. Replies to Exceptions were received on September 16, 2016, from PPL, the OCA, I&E and CAUSE-PA. In our *October 2016 Order*, we denied the Exceptions of the RESA, granted the Exceptions of PPL and granted the Exceptions of PPLICA. We also adopted the ALJ’s Initial Decision, as clarified and modified by the *October 2016 Order.* As previously stated, RESA filed the instant Petition seeking reconsideration of our *October 2016 Order* on November 14, 2016. By Order entered November 16, 2016, we granted the Petition, pending further review of, and consideration on, the merits. On November 28, 2016, PPL, I&E, the OCA and CAUSE-PA filed Answers to the Petition.

**Discussion**

Before addressing the Petition, we note that any issue not specifically discussed shall be deemed to have been duly considered and denied without further discussion. The Commission is not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pennsylvania Public Utility Commission,* 625 A.2d 741 (Pa. Cmwlth. 1993).

***October 2016 Order***

In our *October2016 Order*, we adopted the Partial Settlement submitted by the Parties in this proceeding covering all issues except for the one litigated issue related to the shopping ramifications of PPL’s Customer Assistance Program (CAP) customers. The litigated issue involved whether there should be limitations on CAP customers’ ability to shop for electric supply from EGSs and, if so, what limitations should be applied to CAP shopping. Additionally, we adopted the Initial Decision of the ALJ, as clarified and modified within our *October 2016 Order.* With regard to the litigated CAP shopping issue, we approved the CAP-SOP proposed by PPL, I&E, the OCA and CAUSE-PA as included within their Joint Litigation Position.[[2]](#footnote-2) In doing so, we denied the Exceptions filed by RESA, who objected to the establishment of the CAP-SOP. Finally, we referred the Parties request within the Joint Litigation Position that the Commission initiate a statewide collaborative to address CAP shopping issues to the Commission’s Office of Competitive Market Oversight for review, analysis and recommendation.

**RESA’s Petition**

In its Petition, RESA seeks reconsideration of our determination in the *October 2016 Order* to limit the competitive generation supply choices available to the residential customers enrolled in PPL’s CAP via our adoption of the CAP-SOP Joint Litigation Position. RESA avers that while it appreciates and acknowledges the concerns raised in this proceeding regarding the preservation of scarce universal service funds and the desire of the Commission to adopt measures to balance the interests between shopping and non-shopping customers, neither the appropriate nor lawful balance has been struck here. RESA asserts that if implemented, the *October 2016 Order* will have the unprecedented result of forcing PPL’s CAP customers who have affirmatively selected an EGS based on the factors that are important to them to be returned to PPL’s default service without their consent. In addition, RESA maintains that the only EGS product potentially available for these nearly 50,000 PPL CAP customers would be completely dependent on EGSs electing to offer service through the brand new CAP‑SOP. Petition at 1-3, 17.

According to RESA, reconsideration of the *October 2016 Order* is warranted for two reasons. First, RESA states that the Commission erred as a matter of law by not engaging in the legal analysis of reasonable alternatives to the restrictions proposed in this proceeding. While the Commission found that several alternatives were considered by the Parties, RESA claims that because those alternatives were not made part of the record in this proceeding, the Commission did not identify what those alternatives were or engage in the necessary legal analysis of whether they could be implemented to avoid the over-reaching shopping restrictions advocated by the Joint Litigation Position. RESA next points out that PPL did not enter the new CAP-SOP proposal in the record until its rejoinder testimony, as it initially proposed that CAP shopping be addressed on a statewide basis but proposed, in the interim, that CAP customers be encouraged to participate in SOP. RESA explained that PPL supported this initial proposal through rebuttal testimony and only in rejoinder testimony did PPL offer the brand new CAP-SOP which was ultimately approved in the *October 2016 Order*. Petition at 10‑11.

RESA asserts that it supported and continues to support PPL’s initial proposal and the fact that the CAP-SOP proposal became the Joining Parties’ Joint Litigation Position very late in the proceeding denied the Commission the opportunity to fully assess the specific restrictions being proposed and potential reasonable alternatives. According to RESA, the proponents of shopping restrictions had the burden of showing no reasonable alternatives to their proposed restrictions exist, but at best, may have shown that some form of restrictions may be appropriate, which RESA avers it would dispute. However, RESA maintains that the proponents clearly did not show that there were no reasonable alternatives to the specific restrictions set forth in the Joint Litigation Position. RESA opines that the record in this proceeding does not support a finding that the specific restrictions set forth in the CAP-SOP are the only ones that can be implemented. As such, RESA believes that reconsideration is appropriate. Petition at 11-12.

Second, RESA avers that the Commission overlooked and/or failed to give proper weight to the evidence in the record showing why the proposed CAP-SOP restrictions would eliminate EGS provided products for CAP participants. RESA maintains that its position that the brand new CAP-SOP will lack EGS participation is fully supported by substantial evidence in this proceeding. RESA states that it submitted expert testimony regarding the various proposals of the Parties to restrict shopping and explaining why the restrictions ultimately forming the Joint Litigation Position would result in no EGSs participating in the CAP-SOP. RESA claims that its witness explained the various pitfalls of the CAP-SOP that would interfere with EGSs’ abilities to offer this one and only product option that would be available to CAP customers. According to RESA, its witness’ assessment led him to conclude that EGSs would not elect to participate in the CAP-SOP program, leaving CAP customers with only PPL’s default service and that this testimony constitutes substantial evidence. Petition at 13-15.

For relief, RESA requested one of two alternatives. First, RESA states that the Commission must not limit CAP customers to only default service or the CAP-SOP. RESA states that PPL’s CAP customers have had the ability to shop without restriction since 2010 and about 20,738 were shopping during the time of the proceeding. RESA notes that approximately half of the shopping CAP customers are benefitting from EGS prices that are at or below the PPL price-to-compare (PTC). RESA asserts that these customers will lose any ability to shop if the *October 2016 Order* is implemented. RESA opines that even assuming that EGSs are willing to participate in the CAP-SOP, forcing shopping customers to select between default service and a highly regulated CAP-SOP is not the same as giving customers a meaningful opportunity to choose an EGS, a right to which they are entitled under the Competition Act. RESA equates this net result as the equivalent of government slamming, as a shopping customer is being forced by the government to take service from PPL or some other randomly assigned EGS without any regard for the customer’s desires. According to RESA, this would be a negative shopping experience that would be counterproductive to maintaining and growing the residential retail market. Petition at 17-18.

RESA states that PPL’s initial proposal did not seek to restrict shopping by CAP customers but rather to make them more informed and better educated consumers. RESA maintains that if such efforts would not ultimately prove to be sufficient to address concerns about CAP customers paying prices that are higher than the PTC at any given time, the Commission could take further steps. RESA opines that moving to a situation where CAP customers essentially cannot shop and CAP customers who have shopped will either be forced onto a CAP-SOP or returned to default service is an overreaction by a regulatory agency that has consistently expressed its commitment to competitive retail energy markets. RESA urges the Commission to not shut down shopping for CAP customers. Petition at 18.

Next, RESA offers a second alternative if the Commission elects to maintain its directive within the *October 2016 Order*. In that case, RESA urges the Commission to remand the issue of CAP shopping to the ALJ so that a full record may be developed on other reasonable alternatives that may exist to the restrictions proposed through the CAP-SOP. RESA claims that the record is devoid of a full vetting of the CAP-SOP proposal and the only substantial evidence on the record supports a finding that it is not likely to be successful. RESA asserts that if the Commission elects to shut down the existing shopping market and prohibit future CAP customers from availing themselves of the competitive market, significant operational details need to be worked out. RESA states that while some may argue that these operational issues should be worked out among the stakeholders without need for a record proceeding, the fact remains that the details of the CAP-SOP proposal were not put on the record until rejoinder, thus, circumventing the ability of parties to have an on-the-record discussion about these very significant matters, the outcome of which may very well have convinced all parties that such restrictions simply were not feasible or were even unfair to CAP customers. RESA claims that EGS coordination and cooperation is of critical importance to transition customers from their existing shopping contracts, to deny future CAP customers any other products beyond the CAP-SOP and to coordinate with PPL on how these requirements will be implemented. According to RESA, there is no precedent in Pennsylvania for this, as the Commission has not closed down an existing market before, nor is there a CAP-SOP in place in any other service territory. RESA opines that failure to carefully manage these issues will result in a negative view of shopping for customers and will have long-lasting negative consequences regarding the efforts of the Commission to develop a fully functional competitive retail market. Petition at 18-20.

**Answers to the Petition**

Each of the four Joining Parties, PPL, I&E, the OCA and CAUSE-PA, who developed the Joint Litigation Position proposing the CAP-SOP filed Answers in response to RESA’s Petition. The arguments presented within the respective Answers filed by these Parties expressed similar responses to the claims made by RESA within its Petition and, as such, we will summarize in detail the Answer of PPL in the following discussion, and note the applicable portions of the OCA, I&E, and CAUSE-PA Answers collectively within the discussion of this Opinion and Order, where applicable.

In its Answer, PPL first states that RESA has not offered any basis to support reconsideration of the Commission’s authority to impose limits on CAP shopping. Furthermore, PPL claims that RESA’s Petition fails to satisfy the applicable standards for granting reconsideration or rehearing and, therefore, should be denied. PPL cites to RESA’s contention that the Commission failed to place upon the proponents of shopping restrictions the burden to show that no reasonable alternatives to the Joint Litigation Position exist. However, PPL points out that RESA presented this contention in briefs and Exceptions, and it was properly rejected by the Commission. As such, PPL submits that this contention fails to satisfy the standards for reconsideration set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (1982)(*Duick)*, and should be rejected. PPL Answer at 1, 7-8; *see also*, I&E Answer at 2-3, 8-9, OCA Answer at 2-5 and CAUSE-PA Answer at 8-9.

According to PPL, RESA’s interpretation of the Commission’s authority to impose limits on CAP shopping misapplies the Commonwealth Court’s decision in *Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania v. Pa. PUC,* 120 A.3d 1087(Pa. Cmwlth. 2015) (*Coalition*). PPL explains that in *Coalition*, the Commonwealth Court reviewed the Commission’s determination to reject a CAP shopping program proposed by PECO and concluded the Commission clearly has authority to impose limits on CAP shopping, stating:

[W]e conclude that the [Commission] has the authority under Section 2804(9) of the [Electricity Generation Customer Choice and Competition Act “] Choice Act [”], in the interest of ensuring that universal service plans are adequately funded and cost-effective, to impose, or in this case approve, CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits… Moreover, the Choice Act expressly requires the [Commission] to administer these programs in a manner that is cost-effective for both the CAP participants and the non-CAP participants, who share the financial consequences of the CAP participants’ EGS choice.

PPL Answer at 8 (quoting *Coalition* at 1103). As such, PPL states that the Court concluded that not only does the Commission have authority to impose limits on CAP shopping, the Commission is expressly required by the Choice Act to ensure CAP is administered in a manner that is cost-effective for both CAP and non-CAP customers. PPL Answer at 8-9; *see also*, OCA Answer at 6-7.

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

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

\* \* \*

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

PPL Answer at 9 (quoting *Coalition* at 1104, 1107). PPL submits that the above-quoted language, which RESA heavily relied on, is nothing more than a simple restatement of the requirement that the Commission’s CAP shopping determination, whether it rejects or approves limits on CAP shopping, must be supported by substantial evidence of record. PPL Answer at 9; *see also*, OCA Answer at 7-8.

PPL notes, however, that RESA interprets the Court’s statement regarding “no substantial alternatives” to impose a burden on the parties proposing limits on CAP shopping to demonstrate substantial reasons why there are no reasonable alternatives to the parties’ CAP shopping proposal. According to PPL, RESA’s interpretation of the Court’s holding in *Coalition* was properly rejected by the Commission. PPL claims that in its DSP IV proceeding, the evidence of record is clear and unrefuted that unrestricted shopping by OnTrack customers was extremely detrimental both to OnTrack customers and to the non-CAP customers who paid the cost of CAP credits. According to PPL, the Commission correctly exercised its authority to impose greater restrictions to address these serious problems. As such, PPL avers that RESA’s request for reconsideration should be denied because it is based on an incorrect legal interpretation of the Court’s holding in *Coalition* that the proponents of CAP shopping limitations must show that there are no reasonable alternatives to limits on CAP shopping. According to PPL, the Commission fully considered and properly rejected RESA’s interpretation of *Coalition.* Also, PPL submits that other than merely repeating its incorrect legal and evidentiary standard, RESA failed to offer any reasons to support reconsideration of the Commission’s determination regarding the legal standard to impose limits on CAP shopping. PPL Answer at 9-13; *see also*, OCA Answer at 8-9.

Next, PPL asserts that RESA’s argument that the record evidence is devoid of any other alternatives is without merit, contrary to the record and fails to meet the threshold for reconsideration. PPL claims that RESA’s argument is fundamentally flawed because it is based on an incorrect legal standard, as it is based on the proposition that the Commission has authority to impose limits on CAP shopping only where the proponents of restricting the right to shop have met their legal burden to prove that: (1) there are no reasonable alternatives to the proposed restrictions on competition; and (2) the restrictions do not adversely affect available choices for CAP customers. As this is not the correct legal and evidentiary standard, PPL avers that RESA’s request for reconsideration should be denied. However, even assuming that RESA’s legal interpretation is correct, PPL avers that RESA’s argument that the record evidence is devoid of any other alternatives is without merit and contrary to the record. PPL states that various CAP shopping alternatives were presented in the direct testimonies of the OCA and CAUSE-PA in response to the initial proposal the Company offered. In fact, PPL notes that RESA concedes in its Petition that different CAP shopping alternatives were presented by the OCA and CAUSE-PA. PPL Answer at 14 (citing Petition at 14 n.34). As each of these alternatives were thoroughly evaluated and analyzed through the Parties’ respective rebuttal, surrebuttal and rejoinder testimonies, PPL opines that RESA’s assertion that alternatives were not offered for the record is incorrect, and forms no basis for reconsideration. PPL Answer at 13-14; *see also*, I&E Answer at 10-11 and CAUSE-PA Answer at 10.

PPL states that in an effort to meet the *Duick* standards for reconsideration, RESA argues that the “Commission may have overlooked the procedural manner in which the restrictions of the CAP-SOP were put on the record.” PPL Answer at 14. However, PPL posits that RESA’s argument that because the CAP-SOP was set forth in PPL’s rejoinder testimony, the Parties did not introduce evidence that there were no other reasonable alternatives completely disregards that CAP shopping alternatives were offered and considered as early as the Parties’ direct testimonies, and RESA had ample opportunities to respond to and develop alternatives through multiple rounds of testimony and discovery. According to PPL, RESA’s attempt to rely on the “procedural manner” in which the Parties presented and evaluated the various CAP shopping proposals introduced into the record is misplaced and fails to meet the threshold for reconsideration. PPL Answer at 14-15; *see also*, I&E Answer at 11-12; OCA Answer at 11-12 and CAUSE-PA Answer at 11-16.

Next, PPL states that RESA’s argument that EGSs will not participate in CAP-SOP is nothing more than a request that the Commission reweigh the evidence, *i.e.*, reject the evidence presented by the other Parties and accept the evidence presented by RESA. PPL avers that this request fails to meet the threshold for reconsideration. PPL claims that as the Commission recognized, PPL’s current SOP has extensive participation and, therefore, the Commission chose not to rely upon the speculative assertion by RESA’s witness that no EGS would participate in the CAP-SOP. PPL points out that the Commission was provided with evidence to demonstrate that RESA members are only six of the sixteen EGSs currently participating in SOP, and thus could not speak for all EGSs. Further, PPL notes that CAUSE-PA determined that RESA’s witness only spoke on behalf of 3.3 percent of all EGSs licensed to serve on PPL’s system. PPL avers that its witness also opined that EGSs likely would participate in CAP-SOP, given the success of SOP and the similarity of the programs. Therefore, PPL posits that there is more than sufficient evidence of record to support the Commission’s determination that EGSs will participate in CAP-SOP. PPL avers that the Commission properly rejected RESA’s position in the *October 2016 Order*, and RESA has offered no basis to reconsider that rejection. PPL Answer at 15-17; *see also*, I&E Answer at 13-15, OCA Answer at 13-14 and CAUSE-PA Answer at 17-21.

In response to the first of two alternative requests for relief made by RESA, that the Commission should not adopt any limits on CAP shopping, PPL states that the Commission previously considered and rejected this proposal and RESA has failed to offer any reason to support reconsideration here. However, PPL posits that RESA completely overlooks the CAP shopping data and statistics accepted by the Commission, which demonstrate unrestricted CAP shopping in PPL’s service territory has resulted and will likely continue to result in: (1) CAP customers exceeding their CAP credits at a faster pace than they would have if they did not shop, which puts these low-income customers at risk of early removal from CAP; and (2) a substantial increase (estimated at approximately $2.7 million annually) in the CAP costs paid for by other residential customers. PPL asserts that RESA’s “do nothing” alternative would allow these adverse impacts of CAP shopping to continue without limit, thereby continuing the harm to CAP customers and to customers who pay CAP costs. As such, PPL posits that the Commission properly rejected RESA’s proposal to adopt no limits on CAP shopping. Additionally, PPL maintains that RESA has failed to offer any basis that would support reconsideration of this previously considered and rejected CAP shopping proposal. PPL Answer at 17-18; *see also*, I&E Answer at 16-18 and CAUSE-PA Answer at 21-24.

In response to the second of two alternative requests for relief made by RESA that the Commission should remand the CAP shopping issue to develop a record on other alternatives to the CAP-SOP, PPL asserts that the Commission should not entertain RESA’s request at a rehearing stage for further hearings on CAP-SOP. PPL states that at no time at the hearing, briefing or exception stage of this proceeding did RESA claim that it was in some way denied an opportunity to develop a record on CAP shopping or to offer alternatives to address the harms experienced by OnTrack and non-CAP residential customers from the excessive CAP credits incurred from EGS prices in excess of the PTC. Rather, PPL asserts, RESA chose to offer nothing for the record but continued unrestricted CAP shopping. PPL opines that RESA has not shown that there is any evidence it would offer at rehearing which was not available at the time of the hearings. PPL maintains that RESA has not even specified or otherwise identified these unexplored alternatives it would provide if rehearing were granted. PPL Answer at 18‑19; *see also*, I&E Answer at 18-19 and CAUSE-PA Answer at 24.

Next, PPL states that RESA’s implied contention that it had insufficient time to investigate the CAP-SOP ignores the substantial record that was developed on the issue of CAP shopping from the very beginning of this case, including the various alternatives proposed and evaluated by the Parties. PPL points out that the concept of an SOP solution to the substantial harms to CAP and non-CAP residential customers from unrestricted shopping was first presented in the Company’s case-in-chief and that this concept continued to be refined through subsequent rounds of testimony. PPL states that RESA had full right of cross-examination of all Parties that proposed restrictions on OnTrack shopping and declined to exercise that right. PPL states that RESA also had the right to present testimony and witnesses to oppose CAP shopping restrictions and exercised that right. PPL avers that the fact that RESA offered no reasonable alternatives to CAP shopping restrictions is not a basis for a remand for further hearings to consider unidentified alternatives. PPL Answer at 19-20.

Finally, PPL asserts that RESA’s assertion that claimed operational issues related to CAP-SOP require further hearings is similarly without merit. PPL claims that these operational questions will be resolved in the context of the terms of the CAP-SOP, in particular: (1) existing fixed term contracts entered into by CAP customers will not be terminated by PPL; (2) CAP customers will be informed of their right to shop through the CAP-SOP, and not through other means; (3) because OnTrack customers may only shop through CAP-SOP, any EGS submission of new contracts for OnTrack customers not entered into through the CAP-SOP will be rejected; and (4) because SOP is a standard contract, no EGS may offer “value added offerings” under CAP-SOP. Thus, PPL avers that hearings are unnecessary. For all of the mentioned reasons, PPL submits that RESA’s Petition should be denied on the merits. PPL Answer at 20-21; *see also*, I&E Answer at 19-20.

In its Answer, I&E requests that the RESA Petition, which provides no evidence that was not previously available and which raises the same arguments that definitively have been decided, be denied. I&E Answer at 21. Similarly, in its Answer, the OCA submits that the Commission already has considered and rejected RESA’s arguments. As such, the OCA avers that RESA has not met the standards for reconsideration. The OCA states that RESA presents no new or novel arguments that warrant reconsideration of the proposed CAP-SOP and should be denied. Moreover, the OCA explains that the CAP-SOP is similar in design to the successful regular residential SOP. OCA Answer at 2-3.

In its Answer, CAUSE-PA states that RESA’s arguments for reconsideration are without merit and should be denied as they do not meet the standards for reconsideration, and impermissibly seek a proverbial second bite at the apple. CAUSE-PA asserts that RESA distorts the evidentiary record and the Commission’s *October 2016 Order.* According to CAUSE-PA, rather than point to any true error, RESA relies on hyperbole and statements that are not contained in the record. CAUSE-PA opines that RESA’s argument is hollow and meritless because it is unsupported by law or fact and should be denied. CAUSE-PA Answer at 1. CAUSE-PA maintains that the Commission’s determination that the Joint Parties have met their burden of proof, and that the CAP-SOP proposal is reasonable to remedy significant and substantial harm to CAP customers and the residential ratepayers which finance CAP, is amply supported by the record and should not be disturbed. *Id.* at 25.

**Disposition**

The Public Utility Code (Code) establishes a party’s right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and (g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

A petition to modify or rescind a final Commission decision may only be granted judiciously and under appropriate circumstances, because such an action results in the disturbance of final orders. *City of Pittsburgh v. Pennsylvania Department of Transportation,* 490 Pa. 264, 416 A.2d 461 (1980). Additionally, we recognize that while a petition under Section 703(g) may raise any matter designed to convince us that we should exercise our discretion to amend or rescind a prior order, at the same time “[p]arties . . ., cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically considered and decided against them.” *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (Order entered December 17, 1982) (quoting [*Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. Ct. 1935)](http://www.lexis.com/research/xlink?app=00075&view=full&searchtype=get&search=118+Pa.+Super.+380)). Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick* at 559.

Based on our review of RESA’s Petition and the Answers thereto, and in light of the record as described in the proceeding, we find that RESA has failed to allege any “new or novel arguments” that would persuade us to modify or amend our *October 2016 Order*. On this point, we agree with PPL, I&E, the OCA and CAUSE-PA that RESA’s Petition raises no new or novel arguments and raises no arguments that we have not already considered and rejected. Also, the Petition fails to raise any arguments that have been overlooked by the Commission. We find that each of the arguments raised by RESA in its Petition were addressed, considered and rejected in our *October 2016 Order.*  For example, RESA’s argument related to the failure to address other alternatives was considered and rejected within our *October 2016 Order* wherein we determined it was not feasible to require the Joint Parties to identify all possible alternatives and that several alternatives were, in fact, considered by the Parties. *See October 2016 Order at 55.* Also, RESA’s argument that EGSs will not participate in the proposed CAP-SOP was considered and rejected within our *October 2016 Order* wherein we determined that this position was speculative, amounted to an unsupported assertion and had no basis in the record. *See October 2016 Order at 66.*

Furthermore, in the instant Petition, RESA never mentions the most crucial aspect of any CAP Shopping Plan and the most determinative factor in the Commission’s decision, that being how the Plan will impact the CAP customer and the non-CAP residential customers who pay the costs of the program. We emphasize that the overwhelming substantial evidence presented in this proceeding demonstrated that there has been significant harm to both CAP shopping customers and non-CAP residential customers who pay the costs of the program. As such, we affirm that the CAP-SOP proposal was the best of several alternatives provided on the record of this proceeding to address the unreasonable ramifications of unrestricted shopping by PPL’s CAP customers. *October 2016 Order* at 54, 55. Accordingly, we decline to reconsider our *October 2016 Order* and shall deny RESA’s Petition.

**Conclusion**

Based on the foregoing discussion, we shall deny the Petition for Reconsideration filed by the Retail Energy Supply Association; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Reconsideration filed on November 14, 2016, by the Retail Energy Supply Association, relative to the Opinion and Order entered herein on October 27, 2016, is hereby denied, consistent with the discussion in the body of this Opinion and Order.

2. That the record in this proceeding be marked closed.

**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: January 26, 2017

ORDER ENTERED: January 26, 2017

1. Pursuant to 52 Pa. Code § 5.572(c), petitions for reconsideration shall be filed within fifteen days after the Commission Order is entered. RESA’s Petition was late-filed, as it was required to be filed by November 11, 2016; *i*.*e*., fifteen days after October 27, 2016. Under the circumstances, we will exercise our discretion pursuant to 52 Pa. Code § 1.2 and consider RESA’s Petition as a Petition for Rescission or Amendment which may be filed at any time. *See* 52 Pa. Code § 5.572(d). [↑](#footnote-ref-1)
2. The CAP-SOP was proposed as the only vehicle that a CAP customer may use to shop and receive supply from an EGS wherein EGSs participating in the CAP-SOP must agree to serve customers at a 7% discount off the PTC at the time of enrollment. [↑](#footnote-ref-2)