**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held August 3, 2017

Commissioners Present:

Gladys M. Brown, Chairman

Andrew G. Place, Vice Chairman

Robert F. Powelson

David W. Sweet, Statement

John F. Coleman, Jr.

Petition of PPL Electric Utilities Corporation P-2016-2526627

for Approval of a Default Service Program and

Procurement Plan for the Period June 1, 2017

Through May 31, 2021

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Petition for Reconsideration and/or Clarification filed by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) on July 5, 2017 (CAUSE-PA Petition), and the Petition for Reconsideration and/or Clarification filed by the Office of Consumer Advocate (OCA) on July 7, 2017 (OCA Petition), (collectively, Petitions), relative to the above-captioned proceeding. The Petitions pertain to our Opinion and Order entered on June 23, 2017 (*June 2017 Order*). On July 11, 2017, PPL Electric Utilities Corporation (PPL or the Company) filed separate letters in response to each of the two Petitions. Also, on July 11, 2017, the Retail Energy Supply Association (RESA) filed a letter in response to the two Petitions. For the reasons discussed, *infra*, we shall grant the Petitions and clarify our *June 2017 Order*.

# 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 July 19, 2016, PPL, the Commission’s Bureau of Investigation and Enforcement (I&E), the OCA, the Office of Small Business Advocate (OSBA), PP&L Industrial Customer Alliance (PPLICA) and RESA (collectively, the Settling Parties) filed a Joint Petition for Approval of Partial Settlement (Settlement or Partial Settlement). Several of the Parties to the proceeding filed briefs and reply briefs with regard to a single litigated issue – the Customer Assistance Program (CAP) customer shopping issue. The record closed on July 19, 2016.

On August 17, 2016, Administrative Law Judge (ALJ) Susan D. Colwell issued her Initial Decision wherein she approved the Partial Settlement, as modified by the Initial Decision; approved 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 time-of-use (TOU) Program within ninety days of the entry date of the final Opinion and Order; and adopted the Customer Assistance Program Standard Offer Referral 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 an Opinion and Order issued on October 27, 2016 (*October 2016 Order*), we approved the Settlement and adopted the CAP-SOP jointly proposed by the Joining Parties to become effective June 1, 2017.[[1]](#footnote-1) On November 14, 2016, RESA filed a Petition for Reconsideration (Petition), seeking reconsideration of our approval of the CAP-SOP in the *October 2016 Order*. 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. In an Opinion and Order issued on January 26, 2017 (*January 2017 Order*), we denied RESA’s Petition.

On February 27, 2017, RESA filed with the Commonwealth Court a Petition for Review of our *October 2016 Order* and *January 2017 Order*, with respect to our approval of the CAP-SOP. *RESA v. Pa. PUC*, 230 C.D. 2017. However, RESA has not sought a stay of the implementation of the CAP-SOP.

On March 10, 2017, PPL filed a Petition for Approval to Amend the Implementation Date of the Customer Assistance Program Standard Offer Referral Program (Petition to Amend) seeking amendment of our *October 2016 Order*. On March 30, 2017, letters in response to the Petition to Amend were filed by the OCA and CAUSE-PA.

On April 25, 2017, RESA filed a letter indicating that although it has appealed the Commission’s Orders approving the CAP-SOP, such appeal does not preclude the Commission from acting on PPL’s Petition.

On May 8, 2017, PPL filed a Petition for Leave to Withdraw its Petition to Amend the Implementation Date of the Customer Assistance Program Standard Offer Referral Program (Petition to Withdraw), seeking to withdraw its Petition to Amend. On May 12, 2017, RESA filed a letter in opposition to the Petition to Withdraw (Opposition Letter). On May 16, 2017, CAUSE-PA filed a letter in support of the Petition to Withdraw (Support Letter). On May 16, 2017, PPL filed a letter in response to RESA’s Opposition Letter (PPL May 16 Letter). On May 17, 2017, RESA filed a response to PPL’s May 16 Letter, seeking clarity of PPL’s May 16 Letter (RESA May 17 Letter).

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

As previously noted, CAUSE-PA and the OCA filed the instant Petitions on July 5, 2017, and July 7, 2017, respectively. On July 11, 2017, letters in response to the instant Petitions were filed by PPL and RESA. In an Opinion and Order issued on July 12, 2017 (*July 2017 Order*), the Commission granted the Petitions, pending further review of, and consideration on, the merits. Furthermore, we suspended the directives within our *June 2017 Order* that OCMO hold a meeting within thirty days and provide a status report within ninety days pending a final Commission order on the merits of the instant Petitions.

**Discussion**

Before addressing the instant Petitions, 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).

**CAUSE-PA’s Petition**

In its Petition, CAUSE-PA requests that the Commission clarify and/or reconsider its *June 2017 Order* directing OCMO to facilitate meetings between PPL, the affected EGSs and RESA to examine and resolve operational issues related to the implementation of the CAP-SOP. CAUSE-PA points out that the *June 2017 Order* does not address participation in these meetings by other parties to this proceeding, including CAUSE-PA and the OCA. CAUSE-PA asserts that this lack of clarity necessitates that the Commission consider the instant Petition.[[2]](#footnote-2) CAUSE-PA requests that the Commission clarify its *June 2017 Order* to allow all parties to the instant case to participate in these meetings, as the process and procedures discussed are likely to have a significant impact on the proper implementation of the Commission’s underlying Order requiring PPL to institute the CAP-SOP to protect CAP customers and other residential customers who pay for CAP. CAUSE-PA Petition at 1, 3.

Next, CAUSE-PA asserts that to the extent that the Commission intended to limit the participation at these meetings, it requests that the Commission reconsider its decision as inappropriately exclusive of the parties to this proceeding. According to CAUSE-PA, limiting the conversation on these issues is unfairly prejudicial and inappropriately exclusive. CAUSE-PA opines that the issues identified by RESA and acknowledged by the Commission impact all parties to the proceeding, and may extend into the realm of policy decisions that are not limited to pure technical questions. CAUSE-PA posits that if the questions were purely technical questions, RESA, a trade association, would not be a necessary party, and any implementation issues could be resolved between PPL and the EGSs participating in the CAP-SOP. CAUSE-PA maintains that the issues identified directly affect CAUSE-PA’s interests and the consumers it advocates for. For example, CAUSE-PA notes that whether or not a CAP customer with a month-to-month contract must be returned to default service, and how cancellation provisions of existing customer contracts are addressed, are as much policy issues as they are technical issues. CAUSE-PA opines that for the CAP-SOP to succeed, care must be taken in how these operational changes are implemented and communicated to CAP customers. For these reasons, CAUSE-PA submits that all parties must be permitted to participate in that conversation. CAUSE-PA Petition at 3-4.

Lastly, CAUSE-PA also requests that the Commission rule on this Petition expeditiously and/or require OCMO to delay the meetings until such time as the Commission rules on this Petition. OCMO states that it understood that a preliminary meeting was tentatively scheduled for July 18, 2017. CAUSE-PA requests that the Commission rule on this Petition prior to that date and/or require that meeting to be postponed. CAUSE-PA Petition at 4.

**OCA’s Petition**

In its Petition, the OCA similarly requests that the Commission clarify the *June 2017 Order* to permit the OCA and other interested intervenors in the underlying PPL default service proceeding to participate in the OCMO led collaborative related to CAP-SOP implementation issues. The OCA points out that it had been an active party in PPL’s default service proceeding that ultimately led to the approval by the Commission of the CAP-SOP in its *October 2016 Order*. The OCA asserts that each of the issues identified in the *June 2017 Order* by the Commission involves compliance with existing regulatory and statutory consumer protections and has the potential to affect implementation costs. According to the OCA, all parties, including consumer representatives, have an interest in these operational and implementation issues. While the *June 2017 Order* does not specifically include consumer representatives in the collaborative process, the OCA avers the outcome could impact consumer protections and ultimately costs. As such, the OCA submits that reconsideration and/or clarification is necessary to ensure that the interests of all parties are considered in the collaborative process. OCA Petition at 1-5.

**Letters in Response**

PPL filed separate letters on July 11, 2017, in response to the CAUSE-PA Petition and the OCA Petition. In these letters, PPL states that it will not be filing an answer to either Petition and states the Company has no opposition to CAUSE-PA, the OCA or any other interested party participating in the CAP-SOP implementation meetings with OCMO as ordered in the *June 2017 Order* by the Commission. PPL Letters at 1.

RESA also filed a letter on July 11, 2017, in lieu of a more formal answer, to the Petitions of CAUSE-PA and the OCA. In this letter, RESA states that while it does not seek to exclude the advocates from participating in any future discussions regarding the implementation process, it is critical that EGSs have this opportunity afforded by the Commission to engage in business-to-business discussions that are focused on resolving the EGSs’ operational concerns regarding their existing customers and future customers who may also be PPL’s CAP participants. RESA further asserts that while it did not specifically request that these discussions be limited to PPL and the EGSs, PPL and the EGSs do regularly engage in business-to-business operational discussions without the presence of consumer advocates. RESA notes, in fact, that two such meetings have already occurred in which PPL set forth the process it will utilize for EGSs who wish to voluntarily participate as suppliers in the CAP-SOP program. According to RESA, these meetings have not resolved the continuing uncertainty about how the new shopping restrictions should be implemented for certain groups of existing EGS customers. RESA states that its preference would be for the entities that are managing the operations and in control of the customer relationships to be able to meet and focus on operational issues with the leadership of OCMO to guide the discussion. RESA Letter at 1-2.

Next, to be clear, RESA reiterates that it does not seek to exclude the advocates from participating in this process entirely as OCMO can seek their input at any time. However, RESA opines that the failure to date to resolve these important operational issues between PPL and the EGSs counsels in favor of ensuring that PPL and the EGSs have this opportunity afforded by the Commission to engage in focused business-to-business discussions intended to resolve the outstanding issues related to EGSs’ existing and future customers who also participate in PPL’s CAP. RESA Letter at 2.

**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 CAUSE-PA’s Petition and the OCA’s Petition, the letters filed in response thereto, and the record in this proceeding, we are in agreement with both Petitions that our *June 2017 Order* requires clarification to ensure that any interested party to this proceeding has the ability to participate within the Commission-directed OCMO meetings to discuss solutions to the CAP-SOP implementation issues. It was not our intention to exclude any interested party from participating in the OCMO-directed meetings to discuss implementation issues to ensure the success of such an important program as the CAP-SOP program. Furthermore, we are persuaded by the arguments presented by CAUSE-PA and the OCA that the issues identified by RESA, and acknowledged by the Commission in our *June 2017 Order*,may impact all parties to the proceeding, and may extend into the realm of policy decisions that are not limited to pure technical questions.

Accordingly, we shall grant the Petitions for Reconsideration and/or Clarification filed by CAUSE-PA and the OCA and clarify our *June 2017 Order* such that any interested party in this proceeding, including CAUSE-PA and the OCA, may participate in the meetings led by OCMO for the purpose of addressing and resolving any operational CAP-SOP issues and details. As previously mentioned, in our *July 2017 Order* we suspended the directives within our *June 2017 Order* that OCMO hold a meeting within thirty days and provide a status report within ninety days pending a final Commission Order on the merits of the instant Petitions. As such, within thirty days of the entry date of this Opinion and Order, we shall direct OCMO to facilitate meetings with PPL, the affected EGSs, including RESA, CAUSE-PA, the OCA and any other interested Party to this proceeding to examine and resolve any operational issues that are integral to the implementation of the CAP-SOP. Thereafter, within ninety days of the entry date of this Opinion and Order, we shall further direct OCMO to provide a status report of the discussions and the disposition of the implementation issues in this matter to the Commission.

**Conclusion**

Based on the foregoing discussion, we shall grant the Petition for Reconsideration and/or Clarification filed by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania. We shall also grant the Petition for Reconsideration and/or Clarification filed by the Office of Consumer Advocate. Additionally, we shall direct the following: (1) that, within thirty days of the entry date of this Opinion and Order, the Office of Competitive Market Oversight will facilitate meetings with PPL, the affected EGSs, including RESA, CAUSE-PA, the OCA and any other interested party to this proceeding to examine and resolve any operational issues that are integral to the implementation of the CAP-SOP; and, (2) that, within ninety days of the entry date of this Opinion and Order, the Office of Competitive Market Oversight will provide a status report of the discussions and the disposition of the implementation issues in this matter to the Commission; **THEREFORE,**

**IT IS ORDERED:**

1. That the Petition for Reconsideration and/or Clarification filed on July 5, 2017, by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, relative to the Opinion and Order entered herein on June 23, 2017, is hereby granted, consistent with the discussion in the body of this Opinion and Order.

2. That the Petition for Reconsideration and/or Clarification filed on July 7, 2017, by the Office of Consumer Advocate, relative to the Opinion and Order entered herein on June 23, 2017, is hereby granted, consistent with the discussion in the body of this Opinion and Order.

3. That, within thirty (30) days of the entry date of this Opinion and Order, the Office of Competitive Market Oversight shall facilitate meetings with PPL Electric Utilities Corporation, the affected electric generation suppliers, including the Retail Energy Supply Association, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Office of Consumer Advocate and any other interested party to this proceeding to examine and resolve any operational issues that are integral to the implementation of the Customer Assistance Program Standard Offer Referral Program.

4. That, within ninety (90) days of the entry date of this Opinion and Order, the Office of Competitive Market Oversight is directed to provide a status report of the discussions and the disposition of the implementation issues in this matter to the Commission.

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**BY THE COMMISSION,**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: August 3, 2017

ORDER ENTERED: August 3, 2017

1. The CAP-SOP was proposed as the only vehicle that a CAP customer may use to shop and receive supply from an electric generation supplier (EGS), wherein EGSs participating in the CAP-SOP must agree to serve customers at a 7% discount off the price-to-compare (PTC) at the time of enrollment. [↑](#footnote-ref-1)
2. CAUSE-PA notes that it pursued informal resolution of this issue and that while PPL indicated that it would not object to any other party to the proceeding participating in the OCMO-directed meetings, RESA refused to allow CAUSE-PA, or any other party not specifically listed in the *June 2017 Order*, to attend and participate in the meetings. As such, CAUSE-PA states that this Petition for Reconsideration is necessary to preserve its rights to fully participate in resolving matters pertinent to full implementation of the CAP-SOP. CAUSE-PA Petition at 1, n. 2. [↑](#footnote-ref-2)