



Eckert Seamans Cherin & Mellott, LLC
213 Market Street
8th Floor
Harrisburg, PA 17101

TEL 717 237 6000
FAX 717 237 6019
www.eckertseamans.com

Deanne M. O'Dell
717.255.3744
dodell@eckertseamans.com

December 8, 2017

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 Retail Energy Supply Association's ("RESA")
Comments to the Tentative Order Entered November 8, 2017 with regard to the above-
referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

A handwritten signature in cursive script that reads "Deanne M. O'Dell".

Deanne M. O'Dell

cc: Daniel Mumford, Director, Office of Competitive Market Oversight w/enc. (via email only)
Kriss Brown, Assistant Counsel, Law Bureau w/enc. (via email only)
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of RESA's Comments to the Tentative Order Entered November 8, 2017 upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Michael W. Hassell, Esq.
David MacGregor, Esq.
Christopher T. Wright, Esq.
Post & Schell
17 North Second St., 12th Fl.
Harrisburg, PA 17101-1601
mhassell@postschell.com
dmacgregor@postschell.com
cwright@postschell.com

Kimberly A. Klock, Esq.
Amy E. Hirakis, Esq.
Associate General Counsel
PPL Service Corporation
Two North Ninth St.
Allentown, PA 18101
kklock@pplweb.com
aehirakis@pplweb.com

Aron J. Beatty, Esq.
Christy M. Appleby, Esq.
Office of Consumer Advocate
555 Walnut Street, 5th Fl.
Harrisburg, PA 17101-1923
abeatty@paoca.org
cappleby@paoca.org

Gina Miller, Esq.
Bureau of Investigation & Enforcement
PA Public Utility Commission
PO Box 3265
400 North St., 2nd Floor West
Harrisburg, PA 17105-3265
ginmiller@pa.gov

Steven C. Gray, Esq.
Office of Small Business Advocate
300 North Second St., Suite 202
Harrisburg, PA 17101
sgray@pa.gov

Patrick M. Cicero, Esq.
Elizabeth Marx, Esq.
Joline Price, Esq.
Pennsylvania Utility Law Project
118 Locust St.
Harrisburg, PA 17101
pulp@palegalaid.net

H. Rachel Smith, Esq.
Assistant General Counsel
Exelon Business Services Corp.
100 Constellation Way, Suite 500C
Baltimore, MD 21202
holly.smith@exeloncorp.com

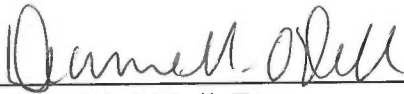
Todd S. Stewart, Esquire
Hawke, McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
tsstewart@hmslegal.com

Charles E. Thomas, III, Esquire
Thomas, Niesen & Thomas, LLC
212 Locust St., Suite 600
Harrisburg, PA 17101
Cet3@tntlawfirm.com

Kenneth L. Mickens, Esq.
The Sustainable Energy Fund of Central
Eastern Pennsylvania
316 Yorkshire Drive
Harrisburg, PA 17111
kmickens11@verizon.net

Pamela Polacek, Esq.
Adeolu A. Bakare, Esquire
Alessandra L. Hylander, Esq.
McNees, Wallace & Nurick LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108-1166
abakare@mwn.com
ppolacek@mwn.com
ahylander@mwn.com

Date: December 8, 2017



Deanne M. O'Dell, Esq.

**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, 2020

**COMMENTS OF THE RETAIL ENERGY SUPPLY ASSOCIATION
TO TENTATIVE ORDER ENTERED NOVEMBER 8, 2017**

Deanne M. O'Dell, Esquire
(Pa. Attorney ID No. 81064)
Karen O. Moury, Esquire
(Pa. Attorney ID No. 36879)
Eckert Seamans Cherin & Mellot, LLC
213 Market Street, 8th Fl.
Harrisburg, PA 17108-1248
717 237 6000

Date: December 8, 2017

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I. INTRODUCTION

On October 26, 2016, the Commission approved implementation of a “CAP-SOP” program for PPL’s customer assistance program (“CAP”) participants.¹ Effective June 1, 2017, the CAP-SOP became the only vehicle for CAP participants to potentially receive service from an electric generation supplier (“EGS”). The Retail Energy Supply Association (“RESA”)² appealed the *CAP-SOP Final Order* and seeks its reversal.³ RESA continues to strongly disagree with the Commission’s decision to implement the CAP-SOP and the comments offered here should not be viewed as a waiver or reversal of RESA’s position in this regard. Notwithstanding this, RESA has been seeking guidance from the Commission regarding the requirements EGSs are expected to follow (along with the supporting operational processes that will be in place) to cancel existing EGS contracts with CAP participants. As such, RESA appreciates the subsequent efforts of staff from the Office of Competitive Market Oversight (“OCMO”) to assist with addressing the complex operational issues associated with implementing the Commission’s directives and offers these comments in response to the

¹ *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, Opinion and Order entered October 27, 2016 (“*CAP-SOP Final Order*”).

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 *Retail Energy Supply Association v. Pennsylvania Public Utility Commission*, Docket No. 230 CD 2017.

Commission's November 8, 2017 Tentative Order. As discussed more fully below, RESA's comments address the following:

1. Require PPL to continue to directly send EGSs lists of their customers who are enrolled in CAP.
2. For fixed-duration contracts, EGSs should have flexibility regarding the notices to be provided to their customers informing the customer that expiring contracts are being cancelled (thus permitting EGSs who so elect to send one cancellation notice to the customer in lieu of the two contract renewal notices mandated by 52 Pa. Code § 54.10).
3. RESA supports the 120-day window to cancel month-to-month contracts even though the notices set forth in 52 Pa. Code § 54.10 are not generally required to cancel these types of contracts.
4. The Commission should clarify that its 120-day window to drop any EGS customers on a month-to-month contract who are enrolled in CAP on the date of publication of the final order applies without regard for whether the CAP enrollment occurred pre or post-June 1, 2017.
5. RESA opposes any requirement that EGSs be required to share their customer contract information with PPL.

II. TENTATIVE ORDER PROPOSALS

According to the Tentative Order, the Commission addresses the issue of *when* a shopping customer who becomes CAP-eligible must be removed from EGS service (i.e. "dropped").⁴ For an existing fixed-duration contract, the Commission proposes that the EGS must drop the existing customer when the contract expires.⁵ For a month-to-month contract, the Commission proposes that the EGS must drop the customer within 120 days after the customer is enrolled in CAP.⁶ To enable this process, the Commission states that PPL has revised its web portal to provide EGSs with information as to their customer's CAP status to include the

⁴ Tentative Order at 8.

⁵ Tentative Order at 8.

⁶ Tentative Order at 9.

customer's CAP recertification date.⁷ The Commission invites comments on its proposed process, the sufficiency of the information provided by PPL through its web portal, whether EGSs should be obligated to provide PPL any other type of contract information for CAP participants and any other implementation issues that may have been overlooked.

III. COMMENTS

A. Presenting Options To Consumers

The *CAP-SOP Final Order* requires low-income consumers who qualify for PPL's CAP to: (1) accept CAP benefits and participate in the CAP-SOP; or, (2) reject CAP benefits and directly shop for an EGS from the competitive market.⁸ Consistent with this, the *CAP-SOP Final Order* directed PPL to "revise its CAP recertification scripts/process" to require EGS customers on a month-to-month contract to enroll in the CAP-SOP or return to default service "at the time of CAP recertification."⁹ For fixed-duration contracts, the Commission prohibited EGSs from offering renewal terms upon contract expiration to existing customers who were enrolled in CAP.¹⁰ In RESA's view, requiring EGS customers who decide they want to receive CAP benefits to take affirmative action (either during initial enrollment or recertification) to cancel existing month-to-month contracts or to not renew an existing contract upon contract expiration is the most appropriate way to proceed.

⁷ Tentative Order at 9.

⁸ RESA does not agree this view of "choice" is consistent with the Choice Act which requires the Commission to "allow customers to choose among electric generation suppliers in a competitive generation market through direct access." 66 Pa.C.S. § 2804(2). The "choice" guaranteed by the statute is not a choice to receive benefits or to freely shop. This specific issue is currently pending appellate review in *Retail Energy Supply Association v. Pennsylvania Public Utility Commission*, Docket No. 230 CD 2017, and RESA's comments here should not be viewed as a waiver or reversal of its position on this issue.

⁹ *CAP-SOP Final Order* at 70, Ordering Paragraph 14(i).

¹⁰ *CAP-SOP Final Order* at 70, Ordering Paragraph 14(g).

If PPL is presenting EGS customers these options when they are enrolling in CAP or at recertification, then those wishing to receive CAP benefits should be taking action to cancel existing month-to-month EGS contracts or not renewing EGS fixed-duration contracts. Thus, any requirement that EGSs must “automatically” drop a customer denies the customer the opportunity to choose to decline CAP benefits and to freely pursue their options in the competitive market. Notwithstanding this, RESA recognizes the apparent desire to place the burden on EGSs to cancel these contracts if the customer fails to take affirmative steps to do so and, to that end, offers the below suggestions for the Commission’s consideration.

B. EGS Action If Consumer Fails To Take Affirmative Steps to Cancel Contract

1. Information provided by PPL to EGSs

To facilitate the cancelling of EGS contracts, PPL initially provided a list to EGSs of their customers enrolled in CAP. PPL subsequently modified its web portal to provide information to EGSs regarding their customer’s enrollment in CAP which is to include providing the customer recertification dates to suppliers.¹¹ Based on some random sampling, RESA members have been unable to confirm the timeliness and accuracy of the data provided. Initially, the recertification date coincided with the date PPL refreshed the list but now some of the dates (but not all) appear to be repopulating more accurately. Because PPL has implemented updates to its web portal, it has discontinued sending EGSs customer lists which identify the new CAP participants. As discussed in the sections below, ensuring that EGSs have timely and accurate access to this information is important to effectuating the Commission’s direction.

¹¹ Tentative Order at 9.

Therefore, even to the extent the portal process is refined so that it is timely and usable, requiring PPL to affirmatively send lists to the EGSs would better ensure prompt EGS action.

2. Fixed-duration contracts

In the *CAP-SOP Final Order*, the Commission prohibited EGSs from renewing existing fixed-duration contracts for any customer enrolled in CAP.¹² The Tentative Order continues this process on a going-forward basis for existing EGS customers who may subsequently enroll in CAP. As discussed above in Section III.A, the ideal way forward is for PPL to inform the customers of their options (at CAP enrollment or recertification) and then let the customer take affirmative action to not renew an EGS contract upon receipt of the Commission required notices. However, recognizing that is not the process set forth in the *CAP-SOP Final Order*, RESA requests that the Commission give EGSs flexibility to manage the notice of contract cancellation process to allow EGSs to send one notice to the customer rather than requiring them to send the two renewal notices mandated by 52 Pa. Code § 54.10.

Managing the Commission's regulations regarding contract renewal notices and contract provisions regarding cancellation continue to be a challenge for EGSs. The Commission's regulations require EGSs to send existing fixed-duration contract customers two notices prior to contract expiration. The initial notice, to be sent 45-60 days prior to contract expiration, informs

¹² *CAP-SOP Final Order* at 70, Ordering Paragraph 14(g). On appeal, RESA specifically objected to the requirement that EGS be required to cancel contracts upon expiration because, in part, the Commission regulations leave the decision about whether or not a contract will continue to the discretion of the contracting parties. To that end, Section 54.10(3) sets forth how an EGS may continue a contract in the event the customer does not take affirmative action to the contrary and provides that "the converted contract shall remain in place until the customer chooses" to elect another product offering from his/her existing EGS, enroll with a different EGS or return to default service. 52 Pa. Code §54.10(3)(ii). Thus, RESA respectfully disagrees with the Commission's view that it is "not directing the abrogation of contracts." Tentative Order at 9. RESA's comments here should not be viewed as a waiver or reversal of its position on this issue.

the customer of the expiration.¹³ The options notice, to be sent 30 days prior to the expiration, gives the customer information about the options he/she can exercise and if he/she does not take any action what will occur.¹⁴ EGS contracts may also contain specific cancellation provisions which detail how and why the EGS may elect to cancel an existing contract. These provisions may also involve another notice that the EGS sends to the customer to cancel an existing contract.

EGSs have had to make individual company decisions based on their specific operations to determine how to best comply with: (1) the *CAP-SOP Final Order*, (2) the Commission's contract renewal requirements; and, (3) specific contract language regarding contract cancellation. Depending on the size and internal operational processes of the specific EGS, it may not have been able to "personalize" the Commission required customer renewal notices leaving it with no choice but to send a third cancellation notice to the customer who is enrolled in CAP. Other companies may have been able to issue an "options" notice stating that as the customer is enrolled in CAP he/she cannot renew the existing contract. Still other companies may have elected to issue a cancellation notice immediately (and consistent with the terms of the existing contract) without sending the initial and options notices set forth in the Commission's regulations.

In its final order, the Commission should give EGSs flexibility to manage the notice of contract cancellation process based on their individual company's processes and abilities. Requiring EGSs to continue to send their "standard" (and Commission required) initial and options notices only to send a third cancellation notice is inefficient and confusing. To be clear,

¹³ 52 Pa. Code § 54.10(1).

¹⁴ 52 Pa. Code § 54.10(2).

RESA is not advocating that EGSs must be required to cancel these contracts prior to expiration but rather that the Commission provide EGSs the flexibility to manage the customer notice process more efficiently. RESA is also not advocating that all EGSs be required to send just one cancellation notice. Rather, the Commission should give EGSs the flexibility to manage their processes consistent with their ability and operation. Also important to remember is that EGSs have no desire to confuse these customers about shopping and are best positioned to determine the optimal way to communicate with them about why their contracts are being cancelled.

Granting this flexibility would also assist EGSs with managing timing issues. As noted in the Tentative Order, PPL has modified its web portal to provide information to EGSs regarding their customer's enrollment in CAP which purportedly includes providing customer recertification dates to suppliers. As the Commission noted, consumers may move in and out of CAP. However, knowing the recertification date does not inform the EGS about whether the customer has elected to recertify on that date. Further, the required timing for the initial and options notices complicates this issue because a customer's recertification date may be between the timing of the two notices. The Tentative Order appears to contemplate: (1) PPL ensuring that the CAP status and recertification date is maintained in real-time; and, (2) EGSs reviewing PPL's web portal on a daily basis to ensure that on the day of contract expiration the customer contract is cancelled if the customer is enrolled in CAP. These are difficult processes to implement and difficult to time with the Commission required notices.

For these reasons, RESA supports giving the EGSs flexibility to manage the contract cancellation process for fixed-duration contracts. The Commission has made clear that expiring fixed-duration contracts with customers enrolled in CAP may not be renewed and PPL is providing EGSs with CAP enrollment status for their customers. With further Commission

guidance that EGS may exercise flexibility regarding the required renewal notices of 54.10 for this situation only, EGSs would be placed in the best position to effectively manage this process in consideration of: (1) their own operations and abilities; and, (2) the best process from the viewpoint of the customer's shopping experience.

3. Future Month-to-Month Contracts

In the *CAP-SOP Final Order*, the Commission required customers served under a month-to-month contract to cancel their EGS contracts at the time of recertification.¹⁵ In the Tentative Order, the Commission is now requiring EGSs to cancel month-to-month contracts within 120 days after the customer is enrolled in CAP.¹⁶ The Commission established this deadline "to give suppliers the time needed to provide appropriate notices to the customer as required by 52 Pa. Code § 54.10."¹⁷ However, month-to-month contracts generally include provisions that allow either party to cancel at any time. These provisions address the process the EGS may use to cancel the contract. In other words, the month-to-month contract will likely require the EGS to give the customer notice in a specific amount of time that it intends to cancel the contract. This notice is not generally any longer than 30 days (and likely shorter given the availability of accelerated switching). Because this ability to cancel a month-to-month contract is a key term in these types of contracts, EGSs are likely not relying on the notice process of 54.10 because they are not "renewing or changing" month-to-month contract terms when the EGS exercises its right

¹⁵ *CAP-SOP Final Order* at 70, Ordering Paragraph 14(i).

¹⁶ Tentative Order at 9.

¹⁷ Tentative Order at 9.