

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

August 14, 2019

Via Electronic Filing

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

Re: Electric Distribution Company Default Service Plans – Customer Assistance Program
Shopping, Docket No. M-2018-3006578

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Retail Energy Supply Association's ("RESA")
Reply Comments to the Proposed Policy Statement Order Entered February 26, 2019 with regard
to the above-referenced matter

Sincerely,



Deanne M. O'Dell

DMO/lww
Enclosure

cc: Kriss Brown, Esq., w/enc. (kribrown@pa.gov)
Tiffany Tran, w/enc. (tiftran@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Electric Distribution Company	:	Docket No.	M-2018-3006578
Default Service Plans – Customer	:		
Assistance Program Shopping	:		

**REPLY COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION
TO PROPOSED POLICY STATEMENT
ORDER ENTERED FEBRUARY 26, 2019**

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

Date: August 14, 2019

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. COMMISSION LACKS AUTHORITY TO ELIMINATE ANY SHOPPING OPPORTUNITY FOR LOW INCOME CONSUMERS3

A. Forgoing CAP Benefits To Shop Is Not Consistent With Legal, Policy Or Public Interest Requirements4

B. PPL’s Failed CAP-SOP Is Not A Reason To End All Shopping For CAP Participants.....6

III. PROGRAMMATIC PROPOSALS OF OTHER PARTIES THAT WILL ELIMINATE SHOPPING FOR LOW INCOME CONSUMERS MUST BE REJECTED8

A. EGS Contracts Not Conforming With Commission Approved CAP Shopping Rules.....8

1. EDCs Need To Be Responsible For Informing CAP Eligible Consumers About The CAP Shopping Rules9

2. Managing The EGS Contracting Process Must Be Left To The EGSs With Enforcement By The Commission.....11

B. Cost Recovery From EGSs Is Wholly Inappropriate.....14

IV. CONCLUSION16

I. INTRODUCTION

In response to the Commission's Proposed Policy Statement Order adopted February 28, 2019, initial comments were filed by a diverse number of stakeholders including consumer advocates,¹ electric distribution companies ("EDCs")² and electric generation suppliers ("EGSs").³ The Retail Energy Supply Association ("RESA"),⁴ a trade association of energy companies including many Pennsylvania licensed EGSs, also filed initial comments urging the Commission to include in its final policy statement critically important fundamental principles absent from the Proposed Policy Statement. Addressing these fundamental principles in the final policy statement is necessary to decrease the potential shutting down of this one avenue the Commission hopes to leave open for participants in an EDC's Customer Assistance Program ("CAP") to access the competitive market.

Though some commenters outright support the elimination of shopping for CAP participants and others offer programmatic changes that will lead to the same outcome, finding a way to enable low income consumers to assess the benefits of a financial assistance program and ensuring they have access to a diverse variety of competitive offers is in the public interest. As

¹ Coalition of Affordable Utility Services and Energy Efficiency in Pennsylvania and Tenant Union Representative Network And Action Alliance of Senior Citizens of Greater Philadelphia (collectively, "CAUSE-PA"); Office of Consumer Advocate ("OCA"); and, Consumer Advisory Council ("CAC").

² Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, "FirstEnergy"); PPL Electric Utilities Corporation ("PPL"); Duquesne Light Company ("DLC"); UGI Utilities, Inc. – Electric Division ("UGI"); PECO Energy Company ("PECO"); and, Energy Association of Pennsylvania ("EAP").

³ WGL Energy Services, Inc. ("WGL Energy").

⁴ 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 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.

more fully explained in Section II below, this view aligns with the Commonwealth Court's direction that the Commission can place "restrictions" on the ability of CAP participants to shop. "Restrictions" do not mean the same as eliminating the right altogether. As stated by the Commonwealth Court, the Commission is authorized to "strike a balance" between the ability to shop and ensuring access to affordable low income customer assistance programs.⁵ Where, as in the example of the failed PPL CAP-SOP, the Commission approves restrictions that result in no EGSs making offers to CAP participants, the restrictions have been poorly designed and the "shopping program" is effectively eliminating any shopping opportunity for the low income consumer. In the face of such results, the answer is not to just give up and eliminate all shopping but to go back to the drawing board and figure out what design features would incentivize (or at least not discourage) EGSs from making offers so as to strike the "balance" as authorized by the Commonwealth Court.

As explained more fully below in Section III, the programmatic suggestions offered by commenters in their initial comments related to EGS contracts that do not conform with the Commission approved CAP shopping rules and to require EGSs to pay for the costs of the CAP shopping program must not be pursued because implementing them will lead to the elimination of shopping for CAP participants. Rather than spending any more time debating these programmatic elements that do not work and will doom the functioning of a future CAP shopping program, RESA urges the Commission to make clear that the future focus of these issues needs to be about designing programs that will encourage EGSs to make offers while also addressing the policy concerns related to universal service identified by the Commission.

⁵ *Retail Energy Supply Ass'n v. Pa. PUC*, 185 A.3d 1206, 1223 (Pa. Cmwlth. 2018). ("Cmwlth Ct CAP-SOP Order").

Shifting the discussion in this direction going forward may ultimately result in an outcome that truly benefits all Pennsylvania's retail electricity consumers.

II. COMMISSION LACKS AUTHORITY TO ELIMINATE ANY SHOPPING OPPORTUNITY FOR LOW INCOME CONSUMERS

The Commonwealth Court has authorized the Commission to limit competition for low income consumers so that other important policy concerns related to access, affordability and cost effective low income customer assistance programs may be served.⁶ Importantly, as interpreted by the Commonwealth Court, the Electricity Generation Customer Choice and Competition Act ("Choice Act")⁷ does not authorize the Commission to end all shopping opportunities for low income consumers who participate in an EDC's CAP. Rather, the Commission must strike a balance between shopping and low income customer assistance programs to find a way for the low income consumer to have access to an EDC's CAP and the ability to shop.⁸ Notwithstanding this clear legal direction, some commenters suggest that the Commission should forgo trying to balance the right to shop with the receipt of financial assistance for low income consumers and "simply" require that all CAP participants be placed on an EDC's default service. However, neither a "take it or leave" it choice with regarding the CAP benefits nor the failed PPL CAP-SOP provide the legal, policy or public interest justification for the Commission to determine that CAP participants are precluded from exercising any right to shop for a competitive supplier.

⁶ *Id.* at 1222.

⁷ 66 Pa. C.S. §§ 2801-2812.

⁸ *Id.* at 1223.

A. Forgoing CAP Benefits To Shop Is Not Consistent With Legal, Policy Or Public Interest Requirements

DLC and UGI take the view there is no need to develop a shopping program that enables CAP eligible low income consumers to both shop and participate in an EDC's CAP because CAP eligible consumers can choose to forgo financial assistance through an EDC's CAP to freely shop for an EGS.⁹ The Choice Act, however, requires the Commission to "allow customers to choose among electric generation suppliers in a competitive generation market through direct access" and nothing in the statute requires low income consumers to first give up CAP financial benefits before they may exercise their right to shop.¹⁰

The Commonwealth Court has already made clear that CAP programs and shopping are not analogous to two entrees on a lunch menu required simply be made available to low income consumers to satisfy statutory requirements. Rather, and according to the Commonwealth Court, the right to shop and have access to CAP programs are two separate and distinct "competing" policy concerns.¹¹ Before the Commission can restrict the right to shop, it must: (1) show there is a harm associated with competition (defined as permitting CAP participants to freely shop); and, (2) there are no reasonable alternatives to a rule that restricts competition (i.e. placing limits on how CAP participants may shop).¹² Stated more simply, the Choice Act requires the Commission to first justify the need for restrictions on shopping and then to ensure that the restrictions are reasonably tailored to limit (not eliminate) the ability of CAP participants to

⁹ DLC Comments at 9; UGI Comments at 3.

¹⁰ 66 Pa.C.S. § 2804(2).

¹¹ *Cmwllth Ct CAP-SOP Order* at 1223.

¹² *Id.* at 1228.

shop. Thus, the Commission cannot, as UGI and DLC propose, legally take the view that CAP eligible consumers must receive an EDC's default service as a condition of participating in CAP.

From the public interest standpoint of the low income consumer no good purpose is served by requiring low income consumers to give up financial assistance because they elect to shop in the competitive market. In fact, the record in the PPL CAP-SOP proceeding was clear that approximately half of the CAP participants who shopped during the period of time covered by the data were charged a price less than PPL's PTC. As EGS customers being billed a rate lower than PPL's PTC while also receiving the financial assistance available through PPL's CAP, these consumers offer clear evidence about how they were able to leverage the competitive market to maximize affordability while also reducing overall universal service costs. Notably, these low income consumers did this by shopping on their own initiative without any regulatory confines placed on them. While unfortunate that the implementation of CAP-SOP took away the ability of low income consumers like these to freely design such an outcome in the future, finding a way to permit them to still avail themselves of CAP benefits and some form of shopping better serves the public interest.

In sum, creating a take-it-or-leave condition on financial assistance relegates low income consumers to second tier citizens who cannot shop and are denied access to the shopping tool the General Assembly deemed all consumers are required to have available. While the Commonwealth Court has authorized the Commission to place restrictions on the ability of these consumers to freely shop and receive CAP benefits, there is no support for the view that all shopping in any form can be completely eliminated as a condition of receiving CAP benefits. For these reasons, the view of DLC and UGI that the Commission need not do anything further

to accommodate the ability of CAP participants to shop while accessing CAP benefits must be rejected.

B. PPL's Failed CAP-SOP Is Not A Reason To End All Shopping For CAP Participants

PPL posits that the ability of its CAP participants to shop should be eliminated based on PPL's experience with the failed PPL CAP-SOP. PPL's CAP-SOP is a failure because no EGS is participating.¹³ That PPL's CAP-SOP is a failure due to lack of EGS participation is precisely the reason why RESA never supported PPL's CAP-SOP as structured and appealed the Commission's adoption of the CAP-SOP to the Commonwealth Court. Consistent with the expert testimony of RESA's witness, the structure of PPL's CAP-SOP is unattractive to EGSs because:

- (1) the only potential for a CAP participant to receive EGS service is restricted to the CAP-SOP and PPL assigns the EGS to the CAP participant.
- (2) EGSs are not free to design their own products to compete with one another inside or outside of CAP-SOP; rather, every EGS is only allowed to offer one basic product through CAP-SOP at a price that must be 7% below PPL's PTC.
- (3) at the end of the EGS contract period with a CAP participant, the EGS must return its customer (the CAP participant) to the CAP-SOP to be assigned by PPL to an EGS.
- (4) EGSs must pay PPL a \$28 fee for each customer enrolled through the CAP-SOP.

These program features doomed the CAP-SOP to fail because they discourage EGSs from participating. Without EGSs, PPL's CAP participants have no competitive supply options and are stuck with PPL's default service. Rather than using this experience as an excuse to eliminate shopping altogether (as PPL suggests), a better approach is to learn from the

¹³ PPL Comments at 9.

experience and figure out how to design reasonable restrictions that keep the shopping avenue open (because EGSs are willing to offer service) while also achieving the policy goals related to universal service. Just as there is more than one way to cook an egg, there is more than just the PPL CAP-SOP way to design restrictions on the ability of CAP participants to shop. For example, FirstEnergy's shopping restrictions for its CAP participants are quite different from PPL's CAP-SOP. Likewise, Commissioner Place articulated alternative design solutions for the PPL CAP-SOP at the time he dissented from approval of the program.¹⁴ Other possible ways to address concerns related to universal service programs related to shopping by CAP participants could include:

- (1) aggressive education of CAP customers about EGS offers that are lower than the PTC (to include the availability of the standard offer customer referral programs);
- (2) creating positive program incentives for CAP participants who shop for EGS services that lower the amount they are billed such as an extending their CAP eligibility period, additional arrearage forgiveness, etc.;
- (3) coordination with EGSs to develop other competitive market based rewards and incentives for CAP participants who lower their overall energy costs to include gift cards, reward points, etc.;
- (4) creating an aggregation of low income consumers and selecting an EGS to serve them through a competitive process; and/or,
- (5) changes to EDC Purchase of Receivables programs to create further incentives for disciplined EGS pricing practices

Without endorsing any of these ideas, the point is that PPL's failed CAP-SOP is not the only way to approach the policy issues here and the predictable fact that CAP-SOP failed does

¹⁴

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-2016-2526672, Statement of Vice Chairman Andrew G. Place dated October 27, 2016.

not mean that a more appropriately designed CAP shopping program cannot be developed to achieve the stated goals of the Commission.

For these reasons, RESA does not support a wholesale elimination of the ability of CAP participants to shop for a competitive supplier. Rather, the Commission is required to balance the ability of low-income consumers to have access to EDC assistance programs with their ability to shop for competitive service from an EGS. Balancing these objectives means ensuring that low income consumers can access both CAP benefits and shopping at the same time. This is the optimal way to empower low income consumers to structure their specific energy needs in an affordable way for their own personal benefit while assuring that the Commission's stated policy goals related to universal service are also served.

III. PROGRAMMATIC PROPOSALS OF OTHER PARTIES THAT WILL ELIMINATE SHOPPING FOR LOW INCOME CONSUMERS MUST BE REJECTED

Though not directly recommending an outright elimination of all shopping opportunities for CAP participants, some of the proposed program design elements offered by commenters will achieve that result if adopted. For the reasons discussed further below, RESA urges the Commission to reject these proposals.

A. EGS Contracts Not Conforming With Commission Approved CAP Shopping Rules

Commenters express concern about the loss of access to CAP benefits due to the receipt of EGS service that does not satisfy the Commission approved restrictions. These commenters offer various proposals intended to address this concern.¹⁵ Embedded within these proposals are the following issues that the Commission needs to address: (1) who is responsible for informing

¹⁵ OCA Comments at 8-9; CAUSE-PA Comments at 5-9; CAC Comments at 5.

CAP eligible consumers about the CAP shopping rules; and, (2) managing the EGS contracting process and enforcement of the CAP shopping rules.

1. **EDCs Need To Be Responsible For Informing CAP Eligible Consumers About The CAP Shopping Rules**

Both OCA and UGI take the view that the EGS should be required to inform prospective customers at the time of enrollment (before signing any EGS contract) about the potential loss of CAP benefits if the contract does not conform with the Commission approved CAP shopping rules. OCA offers specific language for a confirmation that it proposes must be signed and returned by the consumer before the EGS can provide the consumer service pursuant to a contract that does not comply with the Commission approved CAP shopping rules. UGI proposes that the EGS educate the prospective consumer if the contract does not conform to the Commission approved CAP shopping rules and “disclose to a low income customer eligible for CAP but not currently enrolled that they would no longer [be] eligible if they contract for a higher price with an EGS than the EDC’s current PTC.”¹⁶ Implementing any of these proposals is not realistic and would discourage EGSs from making offers to low income consumers and quite possibly to other consumers as well.

Placing EGSs in the role of explaining an EDC’s CAP and its specific CAP shopping rules is not reasonable. EGSs do not administer the EDC’s CAP and all of the CAP programs in Pennsylvania are EDC specific. As such, EGSs would be required to become knowledgeable about each EDC’s specific CAP to be able to provide meaningful information to consumers. EGSs would also be required to monitor the regular changes that occur with each EDC’s CAP as well as policy changes that may be directed by the Commission. Requiring EGSs to learn about

¹⁶ UGI Comments at 6-7.

and remain current about information for a program that is designed and maintained by EDCs is not feasible nor reasonable and does not ensure that the consumers are being provided with the most accurate and current information available.

Moreover, implementing either OCA or UGI's proposals would require EGSs to ascertain whether the prospective customer is: (a) low income; and, (b) meets the EDC's specific income requirements to participate in the EDC's CAP. The only way for EGSs to do this is by asking every potential customer embarrassing and intrusive questions about his or her income.¹⁷ Even UGI recognizes that "information as to whether a customer participates in CAP may be considered to be sensitive."¹⁸ Mandating EGSs to implement either OCA or UGI's proposals will discourage all consumers from shopping because both proposals would require every shopping consumer to share their private income information with suppliers as a pre-condition to receiving competitive supply.

In addition, EGSs do not administer the EDC's CAP. Therefore, for those consumers who newly discover in their interactions with the EGS that they are eligible for an EDC's CAP, the EGS will not be able to enroll the consumer in the EDC's CAP. Rather, the consumer will be forced to make yet another telephone call to the EDC to complete the CAP enrollment process. And, for those consumers who make it through the embarrassing income questioning of the EGS and still want to contract with the EGS understanding that they will not be eligible for the EDC's CAP, OCA's process makes them go through the additional step of signing a written

¹⁷ Requiring EGSs to undertake this type of income inquiry of every prospective customers is way more intrusive than requiring EDCs to include a CAP participant designation on the Eligible Customer List which is something that is opposed by DLC. DLC Comments at 8.

¹⁸ UGI Comments at 6.

confirmation and returning it to the EGS before the consumer can finally have his or her shopping choice honored.

These processes increase the burdens on consumers frustrating both their ability to shop and their ability to participate in an EDC's CAP. They are also burdensome for EGSs as well and will likely increase these costs to EGSs to offer competitive products in Pennsylvania. Rejecting these proposals of OCA and UGI and requiring EDCs to inform their CAP participants (and potentially eligible CAP participants) about the Commission approved shopping program is the most effective, reasonable, and rational way to get the appropriate information to the consumers and to allow them to make informed choices. As EDCs know the specific details about their CAPs – to include eligibility requirements and any Commission approved shopping restrictions – there is simply no reason why Commission approved CAP shopping rules should be treated any differently from other CAP rules and requirements from the perspective of educating consumers. For these reasons, 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. EDCs should be required to inform CAP enrollees of their options (at CAP enrollment or recertification) and the customer should take affirmative action to not renew an EGS contract upon receipt of the Commission required notices. For all these reasons, RESA urges the Commission to reject the proposals of OCA and UGI to shift the required educational component of CAP shopping rules to EGSs.

2. **Managing The EGS Contracting Process Must Be Left To The EGSs With Enforcement By The Commission**

Some commenters suggest that the Commission insert the EDCs into the EGS/customer contracting process as a way to prevent CAP participants from unknowingly entering into an

EGS contract that does not conform to Commission approved shopping rules.¹⁹ To accomplish this, CAUSE-PA claims that EDCs need “to be the first line of defense in monitoring and ensuring compliance with the requirements” and proposes that EDCs reject any EGS request to enroll a new CAP enrollee in a contract that does not conform with Commission approved shopping rules.²⁰ For pre-existing EGS customers who subsequently enroll in an EDC’s CAP, DLC suggests that the EGS customer should be “dropped from the supplier and re-enrolled in default service” upon CAP enrollment.²¹ Other commenters suggest that EDCs need “methods to enforce EGS compliance” with PPL lamenting it does not know enough about specific EGS contract terms to determine when to “enforce EGSs obligations to drop customers.”²² None of these ideas are good, workable or reasonable.

Using EDCs to police or control the EGS/customer contracting process violates the Choice Act which states that “[t]he ultimate choice of the [EGS] is to rest with the consumer.”²³ A mandate that an EDC must reject an enrollment submitted by an EGS for a consumer who has affirmatively selected that EGS is in clear violation of this statutory requirement. Likewise, a mandate that an EDC – upon its review of EGS contracts – is required to process a drop of the EGS’s service and return the EGS customer to the EDC’s default service violates the statute requiring the ultimate choice of EGS to reside with the consumer.

¹⁹ It should be noted that not all the EDCs submitting comments agree that EDCs should be empowered to police EGSs. *See, e.g.*, Energy Association of Pennsylvania Comments at 3; and, FirstEnergy Comments at 3.

²⁰ CAC Comments at 4; CAUSE-PA Comments at 9-10.

²¹ DLC Comments at 5.

²² PPL Comments at 8-9.

²³ 66 Pa. C.S. § 2806(a).

Mandating EDCs to reject customer enrollments or to cancel existing EGS contracts is also confusing for consumers. These EGS customers have taken the time to shop for and chose a competitive supplier. They have elected to enter into a contract with their chosen EGS only to subsequently have that choice overturned by the EDC. The cumulative effect of such a decision will likely result in consumers electing not to even bother shopping.

Also problematic about these recommendations is that they upend the current operational processes whereby EDCs are required to process enrollments so long as technical requirements are satisfied. EDCs are not empowered today to reject EGS enrollment requests or to proactively cancel pre-existing EGS contracts based on the EDC's substantive review of EGS contracts. From a competitive market standpoint, not giving EDCs the power to reject enrollments based on the content of the EGS contracts is the only reasonable way to proceed. The EDC provides supply service as the default service provider and the EDC will acquire on default service every customer that the EDC chooses not to enroll or every EGS contract the EDC decides to unilaterally cancel. Empowering EDCs to give preference to their default service over the service of the EGS (regardless of the reason for such empowerment) is antithetical to fostering the development of a functioning competitive market.

Moreover, just like the EGSs do not develop or administer the EDC's CAPs, EDCs do not enter into contracts with default supply customers. In fact, EDCs do not have a history of developing retail end user contracts because they previously served all customers via their role as monopoly provider. This means that EDCs are not versed in the contracting requirements that EGSs are required to manage every day and giving them the authority to review these contracts and make decisions about whether or not the contract may go forward or continue places way too much power in the hands of the EDC as default service provider.

Finally, PPL comments that “program costs would increase” if EDCs are tasked with ensuring that EGSs “are appropriately adhering to rate and contract requirements” and “actively tracking customer rates and communicating violations” to the EGSs and/or the Commission.²⁴ In addition to all the all reasons discussed previously, RESA views costs for EDC policing activities as completely unnecessary and a waste of ratepayer dollars.

Stated simply, managing the contracting process for EGS customers who move in and out of EDC CAPs and EGS retail contracts is one that is appropriately addressed by establishing clear guidance about the Commission’s expectations for EGSs. As explained in RESA’s initial comments, the Commission already has regulatory requirements that EGSs must follow in their contracting with customers to include changing terms and renewing contracts.²⁵ Focusing on streamlining these processes for consumers, simplifying what is required of the EGSs, and making sure the EGSs have the information that they need to comply is the most appropriate focus of this proceeding.²⁶ While some commenters appear to be skeptical of EGSs and/or the Commission’s enforcement of EGS’s contracting, such skepticism is speculative and must be rejected.

B. Cost Recovery From EGSs Is Wholly Inappropriate

RESA addressed the issue of cost recovery in its initial comments explaining that EDCs have the right to full cost recovery for universal service programs. EDCs, as default service providers, have an additional right to full cost recovery for their default service plans. This means that EDCs have two sources of full cost recovery available for CAP shopping programs

²⁴ PPL Comments at 9-10.

²⁵ RESA Comments at 16-19.

²⁶ RESA opposes suggestions by commenters attempting to limit or block EGS access to CAP status information about potential consumers and existing customers.

and there is no basis upon which to further require EGSs to pay for these CAP shopping programs which limit the customers and products EGSs may offer to CAP participants.²⁷

Notwithstanding this, UGI takes the view that CAP shopping restrictions are not in furtherance of “promoting universal service and energy conservation policies” but rather intended to “further retail consumer choice,” and; therefore, costs should be recovered from EGSs participating in the CAP shopping program.²⁸ This statement is patently wrong. Programs that restrict EGS access to a certain class of consumers are not in furtherance of retail consumer choice. Importantly, all consumers have the right to choose and, according to Commonwealth Court, only when that right creates tension with universal service policies can that right be restricted (not outright eliminated). Nothing about CAP shopping restrictions benefit EGSs or promote retail shopping. Instead, they place more burdens on EGSs to manage operations to ensure conformity with a special set of rules that apply to only one type of consumer – the low-income consumer receiving an EDC’s CAP benefits. Retail market enhancement programs like the Standard Offer Customer Referral Program (“SOP”) are not analogous to CAP shopping restrictions because the SOP complements the competitive market by incenting consumers to receive service from an EGS while allowing the EGS the freedom to make other price offers to the same consumers outside of the SOP. Importantly, EGSs do not have to participate in the SOP to offer other products and services to consumers and EGSs are free to market other products and services to their customers acquired through the SOP.

While RESA continues to view this whole process of restricting a low income consumer’s ability to freely access the competitive market as an inefficient use of resources and

²⁷ RESA Comments at 15-16.

²⁸ UGI Comments at 7.

not the best way to serve the public interest for all the reasons more thoroughly detailed in its initial comments, there is absolutely no basis upon which to charge EGSs the costs of restricting their ability to freely access low income consumers. Doing so will only further cement the likelihood that EGSs will not offer service to CAP participants and/or low income consumers that could become CAP participants. Rather than going down this path, RESA urges the Commission to make clear that costs are not to be recovered from EGSs and keep the focus on how to design a CAP shopping program in which EGSs may be encouraged to participate.

IV. CONCLUSION

RESA is hopeful that going forward, the important role and needs of the EGSs are seriously considered so that future CAP shopping programs can be better designed to more fully benefit all Pennsylvanians.

Respectfully submitted,



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

Date: August 14, 2019

Attorneys for the Retail Energy Supply Association