



December 21, 2017

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

Re:
**Joint Petition of Metropolitan Edison Company,
Pennsylvania Electric Company, Pennsylvania Power
Company, and West Penn Power Company for
Approval of their Default Service Programs for the
period commencing June 1, 2019 through May 31, 2023**

Docket Nos. P-2017-2637855
P-2017-2637857
P-2017-2637858
P-2017-2637866

Dear Secretary Chiavetta:

Enclosed for electronic filing, please find an Answer and Intervention on behalf of the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (CAUSE-PA) in the above referenced matter.

A copy of the Answer and Intervention has been served via d First Class mail will be circulated to interested parties in accordance with the attached Certificate of Service. A copy is also being provided, via email and First Class mail, to Chief Administrative Law Judge Charles E. Rainey and the Commission's Office of Special Assistants, as this proceeding is not currently assigned to an Administrative Law Judge.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Patrick Cicero".

Patrick Cicero

Counsel for CAUSE-PA

CC: Chief Administrative Law Judge Charles E. Rainey – crainey@pa.gov

Answer and Intervention

Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Joint Petition of Metropolitan Edison Company,
Pennsylvania Electric Company, Pennsylvania Power
Company, and West Penn Power Company for
Approval of their Default Service Programs for the
period commencing June 1, 2019 through May 31, 2023**

**Docket Nos. P-2017-2637855
P-2017-2637857
P-2017-2637858
P-2017-2637866**

CERTIFICATE OF SERVICE

I hereby certify that I have December 21, 2017, served copies of the **Answer and Intervention of CAUSE-PA**, via email and/or first-class mail upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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Rapid Power Management, LLC
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Patrick Cicero, Esq.
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On Behalf of CAUSE-PA

December 21, 2017

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**Joint Petition of Metropolitan Edison Company,
Pennsylvania Electric Company, Pennsylvania Power
Company, and West Penn Power Company for
Approval of their Default Service Programs for the
period commencing June 1, 2019 through May 31, 2023**

Docket Nos. P-2017-2637855
P-2017-2637857
P-2017-2637858
P-2017-2637866

**Answer and Intervention
of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania
to the Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company,
Pennsylvania Power Company, and West Penn Power Company**

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (“CAUSE-PA”), through its counsel at the Pennsylvania Utility Law Project, hereby files this Answer and Intervention to the Joint Petition of Metropolitan Edison Company (“Met-Ed”), Pennsylvania Electric Company (“Penelec”), Pennsylvania Power Company (“Penn Power”) and West Penn Power Company (“West Penn”) (collectively the “First Energy Companies” or “Companies”) the captioned proceedings, pursuant to the provisions of the Rules of Practice and Procedure of the Pennsylvania Public Utility Commission (“PUC” or “Commission”), 52 Pa. Code §§ 5.61(e) and 5.71-5.76.

Answer

On December 11, 2017, the Companies filed a Joint Petition for Approval of their Default Service Programs for the period commencing June 1, 2019 through May 31, 2023. The Joint Petition seeks to establish the terms and conditions under which the Companies will procure default service supply, provide default service to non-shopping customers, and satisfy the requirements imposed by the Alternative Energy Portfolio Standards Act. In addition, the Company seeks to continue its existing Customer Referral Programs (CRP), including the

previously-approved cost recovery mechanism, and proposes to make permanent its Purchase of Receivables (POR) Clawback program that was approved in its prior default service proceeding.¹ Joint Petition ¶ 7. The Companies also seek to establish what they describe as a “bypassable retail rate market enhancement rate mechanism,” which would have the effect of increasing the default service rate in an effort to spur retail shopping. Id. The Companies are proposing no modification to shopping for their customers enrolled in the Customer Assistance Program (CAP).

While the crux of this proceeding is ostensibly the Companies’ default service portfolio for the period beginning June 1, 2019, the three issues addressed above – the scope of CAP customer shopping, the continuation of POR Clawback, and the proposed default service adder – are all critical issues that must be addressed in the context of this proceeding. In fact, as a part of the settlement reached with the parties in the Companies’ DSP IV Proceeding, the Companies specifically agreed that these issues would be addressed in this proceeding.²

As a part of the settlement of DSP IV, the Companies agreed to hold stakeholder collaborative meetings beginning in the fall of 2016 to discuss each of these issues. Of particular significance to CAUSE-PA, the Companies agreed to discuss the scope of shopping that should be available to customers while participating in the Companies’ CAPs.³ CAUSE-PA, through its counsel, actively participated in four (4) such meetings on September 13, 2016, November 30, 2016, May 25, 2017, and October 4, 2017. At each of these meetings, the Companies presented information demonstrating that low-income customers who were participating in each

¹ See Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of their Default Service Programs for the period commencing June 1, 2017 through May 31, 2019, Docket Nos. P-2015-2511333 (Met-Ed), P-2015-2511351 (Penelec), P-2015-2511355 (Penn Power), and P-20152511356 (West Penn) (collectively, the “DSP IV Proceeding”), Final Order entered May 19, 2016.

² See DSP IV Proceeding, Joint Petition for Settlement ¶ J.

³ Id., ¶ J.1.b.

Company's CAP and who were receiving competitive electric service from an Electric Generation Supplier (EGS) paid substantially more than the price to compare for generation service. The data presented at these meetings showed that the net effect of CAP customers shopping for EGS-supplied service across all Companies, over a 51 month period for which information was provided, demonstrated clear and pervasive harm to CAP customers and other residential customers who pay for the CAP program as a result of unrestricted CAP shopping. Specifically, over that period, CAP customers and other ratepayers who pay for CAP paid in excess of \$16 million more than they would have paid had all CAP customers been served at prices that were equal to the default service price to compare.

Despite this evidence of harm, the parties to DSP IV could not agree on a means to mitigate the impact of unrestricted CAP shopping in the Companies' service territory and agreed that the issue would be litigated in this proceeding. Pursuant to the Joint Settlement Agreement in DSP IV, the parties agreed that in the absence of a settlement of the issue, that "the Companies will make [a] proposal[] in a docketed proceeding . . . following discussion and input from the collaboratives in the earlier of the next default service proceedings filed following the close of the collaboratives or January 31, 2018."⁴ The Joint Settlement Agreement also provided that the "parties retain any right they may otherwise have to raise with the Commission any issues discussed in the collaboratives and no parties waive their right to oppose to take any other action with respect thereto."⁵

Notwithstanding the clear evidence of harm resulting from unrestricted CAP shopping to customers and residential ratepayers who pay for CAP, the Companies' "proposal" in this

⁴ Id.

⁵ Id., ¶ J.4.

proceeding is to maintain the status quo, and allow the harm persist. Joint Petition ¶ 7. This is unacceptable.

There is clear and unrefuted evidence available which demonstrates that CAP customers and other ratepayers who pay for CAP are substantially and materially harmed by First Energy's current policy of permitting CAP customers to shop without restriction. As such, CAUSE-PA intends to propose restrictions in this proceeding for the types of EGS-provided service that CAP customers can accept and remain on CAP.

CAUSE-PA's position that CAP shopping restrictions are needed is consistent with the Commission's recent decision in PPL Electric Utilities default service plan proceeding.⁶ In that case, the Commission found that, where EGS-supplied service caused millions of dollars of harm to CAP customers and other ratepayers as a result of unrestricted CAP shopping, the Commission had an obligation to impose rules on the types of EGS-supplied service that CAP customers who wish to receive the benefits of CAP could accept. In so doing, the Commission was following the Commonwealth Court's decision in Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. v. Pa. PUC, 120 A.3d 1087, 1095 (Pa. Commw. Ct. July 14, 2015) ("CAUSE-PA"). In that case, the Court held that the Commission has the authority under Section 2804(9) of the Competition Act,⁷ for the purpose of ensuring that universal service plans are adequately funded and cost-effective, to approve CAP rules that would limit the terms of an offer from an EGS which a customer could accept and remain eligible for CAP benefits.⁸ The Court stated as follows:

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

⁶ 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, Final Order, Docket No. P-2016-2526627 (Oct. 27, 2016).

⁷ 66 Pa. C.S. § 2804(9).

⁸ CAUSE-PA at 1103

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.⁹

Based on the information available to CAUSE-PA, it reasonably believes that the evidence of harm to the Companies' CAP customers and other ratepayers who pay for CAP is more pervasive and more severe in the First Energy service territory than the evidence of harm available to the Commission when it reached a decision in PPL's default service proceeding. CAUSE-PA intends to fully explore these issues in this proceeding through discovery, testimony, and hearings.

In addition to addressing the CAP issues, CAUSE-PA will also address the other two issues that were the topic of conversation at the collaboratives that resulted from DSP IV: the POR Clawback and the default service adder. Specifically, CAUSE-PA opposes the Companies' proposed changes to its Default Service Rate Rider to include a non bypassable retail market enhancement rate mechanism, and intends to address this issue in testimony. CAUSE-PA views this default service adder as an unnecessary add-on to default service that should be fully vetted through this proceeding. With regard to the POR Clawback, CAUSE-PA supports the Companies' proposal to continue this charge as a permanent part of their POR program and also intends to address this issue in testimony.

Each of the matters raised in this answer must be thoroughly reviewed through discovery and hearings to ensure that the Companies' low-income customers are not harmed and the programs are in the public interest.

⁹ *Id.* at 1104.

Standing to Intervene and Participate

Eligibility to intervene in Commission proceedings is governed by 52 Pa. Code § 5.72. This section provides, in relevant part, that “[a] petition to intervene may be filed by a person claiming a right to intervene or an interest of such nature that intervention is necessary or appropriate to the administration of the statute under which the proceeding is brought.”¹⁰

Section 5.72 further provides that the right or interest may be one “which may be directly affected and which is not adequately represented by existing participants, and as to which the petitioner may be bound by the action of the Commission in the proceeding.”¹¹ Even though Section 5.72 speaks of the rights of a “person” to intervene, the Commonwealth Court has consistently stated that “an association may have standing as a representative of its members . . . as long as an organization has at least one member who has or will suffer a direct, immediate, and substantial injury to an interest as a result of the challenged action, [i.e., is aggrieved, the organization] has standing.”¹²

CAUSE-PA is an unincorporated association of low-income individuals that advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating and telecommunication services. CAUSE-PA membership is open to moderate- and low-income individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping low-income families maintain affordable access to utility services and achieve economic independence and family well-being. CAUSE-

¹⁰ 52 Pa. Code § 5.72(a).

¹¹ 52 Pa. Code § 5.72(a)(2).

¹² *Energy Cons. Council of Pa. v. Pa. P.U.C.*, 995 A.2d 465, 476 (Pa. Commw. Ct. 2010) (alteration in original) (citing *Tripps Park v. Pa. P.U.C.*, 415 A.2d 967 (Pa. Commw. Ct. 1980) and *Parents United for Better Schools v. School District of Philadelphia*, 614 A.2d 689 (Pa. Commw. Ct. 1994)).

PA is located, c/o the Pennsylvania Legal Aid Network, at 118 Locust Street, Harrisburg, PA 17101.

CAUSE-PA has interests in the impact that the proposed Default Service Plan has on moderate- and low-income residential customers. These interests, outlined in the previous section, are not adequately represented by other participants. CAUSE-PA was granted intervenor status and actively participated in earlier proceedings relating to the First Energy Companies Joint Petitions for Approval of their Default Service Programs. Members of CAUSE-PA are customers of First Energy Companies and will be directly affected by the outcome of this proceeding.¹³ Because at least one member of CAUSE-PA has or will suffer a direct, immediate, and substantial injury to an interest as a result of this proceeding, CAUSE-PA has standing to intervene.¹⁴ CAUSE-PA is represented in this proceeding by:

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¹³ Linda Bergman (WPP), Nancy Gibson (Penelec), Genora Gosha (Penelec), Linda Morris (Penelec), and Gladys Tullis (Penn Power) are members of CAUSE-PA.

¹⁴ See *Energy Cons. Council of Pa.*, 995 A.2d at 476.

WHEREFORE, CAUSE-PA respectfully request that the Public Utility Commission:

- (1) enter an order granting CAUSE-PA full status as an intervenor in this proceeding with active party status; and
- (2) grant such other relief as is just and appropriate.

Respectfully submitted,

PENNSYLVANIA UTILITY LAW PROJECT
Counsel for CAUSE-PA



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December 21, 2017

VERIFICATION

I, Minta Livengood, a member of the Executive Committee of the Coalition for Affordable Utility Services and Energy Efficiency (“CAUSE-PA”), on behalf of CAUSE-PA, hereby state that the facts contained in the foregoing pleading are true and correct to the best of my knowledge, information and belief, that I am duly authorized to make this Verification, and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 10 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: December 21, 2017



Ms. Minta Livengood

On behalf of the Executive Committee of
the Coalition for Affordable Utility Services
and Energy Efficiency in Pennsylvania
(CAUSE-PA)