

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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September 17, 2018

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Petition for Reconsideration in the above-referenced proceeding. The undersigned certifies that this filing contains no averments or denials of fact subject to verification and penalties under 52 Pa. Code Section 1.36.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in blue ink that reads "Hayley E. Dunn".

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Enclosures:

cc: Honorable Mary D. Long
Office of Special Assistants (e-mail only: ra-OSA@pa.gov)
Certificate of Service
*259110

CERTIFICATE OF SERVICE

Re: Joint Petition of Metropolitan Edison :
Company, Pennsylvania Electric Company : Docket Nos: P-2017-2637855
Pennsylvania Power Company, and West : P-2017-2637857
Penn Power Company for Approval of : P-2017-2637858
Their Default Service Programs : P-2017-2637866

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Petition for Reconsideration, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 17th day of September 2018.

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Dated: September 17, 2018
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

| | | |
|--|---|----------------------------|
| Joint Petition of Metropolitan Edison Company, | : | |
| Pennsylvania Electric Company, | : | Docket Nos. P-2017-2637855 |
| Pennsylvania Power Company, and | : | P-2017-2637857 |
| West Penn Power Company for Approval of | : | P-2017-2637858 |
| Their Default Service Programs | : | P-2017-2637866 |

PETITION OF THE
OFFICE OF CONSUMER ADVOCATE
FOR RECONSIDERATION

The Office of Consumer Advocate (OCA) hereby submits this Petition in accordance with Sections 5.41 and 5.572 of the Pennsylvania Public Utility Commission's (Commission) regulations. 52 Pa. Code §§ 5.41, 5.572. The OCA requests that the Commission reconsider its Order entered September 4, 2018, in the default service proceedings of Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power), and West Penn Power Company's (West Penn) (collectively, FirstEnergy or the Companies) as it pertains to the scope of its referral of FirstEnergy's Customer Assistance Program (CAP) shopping program to the Office of Competitive Market Oversight (OCMO).

I. INTRODUCTION

On September 4, 2018, the Commission entered an Order in the above-captioned proceeding. In its Order, the Commission approved a new CAP shopping program in which CAP customers may only enter into a contract with an electric generation supplier (EGS) for a rate that is at or below the Price-to-Compare (PTC) and does not contain early termination or cancellation fees. Order at 61. The Commission directed OCMO to convene and coordinate a

group of interested stakeholders to address the mechanics and details of the new CAP shopping program and provide a recommendation on the mechanics of the program. Order at 61. In footnote 19, the Commission stated, “The issue of whether the EGS rates must be below the PTC at the time of contracting, or below that and all future PTCs, is within the scope of this referral to OCMO.” Order at 58. The OCA requests the Commission reconsider the scope of its referral of FirstEnergy’s new CAP shopping program to OCMO as set forth in footnote 19. The record in this case is clear, and has been duly recognized by the Commission Order, that charges to CAP participants above the PTC result in harm to both CAP customers and non-CAP customers. The Commission, in footnote 19, has overlooked the extensive record on this point.

II. STANDARD OF REVIEW

In Duick v. Pennsylvania Gas and Water Co., 56 Pa. P.U.C. 553 (1985) (Duick), the Commission set forth the standards for granting a petition for reconsideration, as follows:

A petition for reconsideration, under the provisions of 66 Pa.C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the Court in the Pennsylvania Railroad case, wherein it was stated that “[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 . . .” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked or not addressed by the Commission. Absent such matters being presented, we consider it unlikely that a party will succeed in persuading us that our initial decision on a matter or issue was either unwise or in error.

Duick at 559, (quoting Pennsylvania R.R. Co. v. Pa. PUC, 179 A. 850 (Pa. Super 1935)).

In this Petition, the OCA raises considerations which appear to have been overlooked by the Commission or not addressed by the Commission. For the reasons set forth below, the OCA submits that this Petition meets the Duick standard for reconsideration.

III. RECONSIDERATION

In its September 4, 2018 Order, the Commission acknowledged that “there is clear evidence demonstrating that a significant number of FirstEnergy’s CAP customers paid significantly more than what they would have paid if they were default service customers.” Order at 58. The Commission determined:

We agree with the ALJ’s recommendation that FirstEnergy implement a CAP shopping program where CAP customers may only enter into a contract with an EGS for a rate that is at or below the utility’s PTC and does not contain an early termination or cancellation fee. However, we find that the mechanics and details of this program are not fully developed within the record of this proceeding to adequately ensure a program can be implemented in a successful fashion by June 1, 2019. Therefore, we shall adopt the ALJ’s recommendation in so far as EGSs may not charge CAP customers a rate greater than the PTC, nor charge early termination or cancellation fees.¹⁹

¹⁹ The issue of whether the EGS rate must be below the PTC at the time of contracting, or below that and all future PTCs, is within the scope of this referral to OCMO.

Order at 58; Order at 58, n. 19 (emphasis added). Including the issue of whether EGS’ rates must be below the PTC at the time of contracting or below the PTC at the time of contracting and all future PTCs in the scope of the Commission’s referral to OCMO is inconsistent with the ALJ’s recommendation, which the Commission adopted, and overlooks the extensive record evidence of harm to shopping CAP customers resulting from EGS’ rates above the PTC.¹

In the Recommended Decision (R.D.), the ALJ recommended that “the Commission direct the Companies to implement a PCAP shopping program which prohibits customers who wish to participate in the Companies’ PCAP from entering into a contract with an EGS for a

¹ The OCA also notes that the Commission’s characterization of the issue as “whether the EGS rate must be *below* the PTC,” is inconsistent with its determination that “CAP customers may only enter into a contract with an EGS for a rate that is *at or below* the utility’s PTC.” Order at 58, 61.

price which exceeds the PTC.” R.D. at 71. This recommendation stemmed from the ALJ’s finding of a net harm resulting from unrestricted CAP shopping from June 2013 through March 2018 in the amount of \$18,336,440. R.D. at 67. The ALJ determined, “This more than \$18.3 million in increased PCAP costs over a 58-month period (nearly five years) is a direct result of the Companies’ current practice of allowing PCAP customers to accept any EGS offer regardless of cost.” R.D. at 68. The ALJ further determined, “This data demonstrates that – *over a prolonged period of time* – a significant majority of PCAP customers who switch to a competitive electric supplier are charged rates that exceed the price to compare.”² R.D. at 67. This harm was the result of CAP customers paying more than the PTC on a regular basis, not only paying more than the PTC upon initially entering into an EGS contract. Accordingly, to remedy this harm, the ALJ recommended restricting CAP customers from entering into a contract with an EGS for a *price which exceeds the PTC*, not merely a price which exceeds the PTC at the time of contracting. R.D. at 71.

Moreover, as the ALJ noted, “BIE, OCA, and CAUSE-PA extensively reviewed data regarding shopping of PCAP participants and the resulting costs.” R.D. at 66. The respective witnesses of the OCA, Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), and Bureau of Investigation and Enforcement (I&E) who evaluated this data each concluded that CAP customers shopping should involve only prices below the PTC for the duration of the EGS contract. OCA witness Barbara R. Alexander testified:

FirstEnergy should halt the enrollment of CAP customers with EGSs until a program is in place that ensures that participating EGSs make a contractual commitment to charge a price for generation supply that is equal to or *less than the applicable Price to Compare during the term of the agreement*.

² The data to which the ALJ referred is the Companies’ data, which “revealed that during the same period, an average of 63%, 62%, 65% and 72% of MetEd, Penelec, Penn Power, and West Penn Power PCAP customers paid rates that exceeded the Companies’ PTC respectively.” R.D. at 67.

OCA St. 2 at 38 (emphasis added). CAUSE-PA witness Harry S. Geller likewise testified:

I am recommending that the Companies create structures whereby PCAP customers are prohibited from contracting with EGSs for *a price that would ever be higher than the price to compare.*

CAUSE-PA St. 1 at 30 (emphasis added). Similarly, I&E witness Christopher Keller testified:

I am convinced by the Companies' data that excess CAP shopping costs are being incurred within the service territories and that some mechanism should be implemented that would prohibit CAP shoppers from paying *prices that exceed the Companies' PTC on a regular basis.*

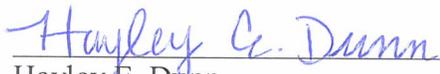
I&E St. 1 at 23. Each witness concluded that the Companies should eliminate the practice of regularly paying EGS prices higher than the PTC in order to avoid the evidenced harm. Further, the record establishes that the Companies can bill a product at or below any PTC, not only the PTC at the time of contracting. R.D. at 69 (“suppliers would agree to rate ready billing utilizing a percentage off variable priced product, which would allow the Companies to adjust the supplier’s price by the required percentage off of the PTC for PCAP customers”); FirstEnergy St. 1R at 30-32.

For the reasons set forth above, the OCA submits that the Commission overlooked record evidence establishing that the EGS rate must be below the PTC at all times in order to avoid harm to CAP customers. The recommendation of the ALJ adopted by the Commission was to accept the proposal of the OCA, I&E, and CAUSE-PA. Therefore, the OCA submits that this Petition meets the Duick standard for reconsideration and respectfully requests that the Commission reconsider its September 4, 2018 Order and find that the issue of whether the EGS rate must be below the PTC at the time of contracting or below that and all future PTCs is *not* within the scope of its referral of the CAP shopping program to OCMO. It should be settled that the EGS rate must be at or below the PTC at all times.

IV. CONCLUSION

For the reasons set forth in this Petition for Reconsideration, the OCA respectfully requests that the Commission reconsider its September 4, 2018 Order with regard to the scope of its referral of FirstEnergy's CAP shopping program to OCMO as described herein.

Respectfully Submitted,



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