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September 27, 2018

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company,
Pennsylvania Power Company and West Penn Power Company for Approval of Their
Default Service Program (DSP-V) – Docket Nos. P-2017-2637855; P-2017-2637857;
P-2017-2637858; and P-2017-2637866

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Retail Energy Supply Association's ("RESA")
Answer to the Petitions for Reconsideration with regard to the above-referenced matter. Copies
to be served in accordance with the attached Certificate of Service.

Sincerely,



Deanne M. O'Dell

DMO/lww
Enclosure

cc: Hon. Mary Long w/enc.
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of RESA's Answer to Petitions for Reconsideration upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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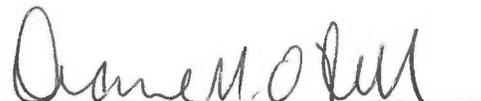
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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs	:	Docket No. P-2017-2637855 P-2017-2637857 P-2017-2637858 P-2017-2637866
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**ANSWER OF THE RETAIL ENERGY SUPPLY ASSOCIATION
TO PETITIONS FOR RECONSIDERATION**

I. INTRODUCTION

In the Opinion and Order entered September 4, 2018 (“*FE DSP V Order*”), the Commission addressed the default service plan filed by Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, “FirstEnergy”) for the period of June 1, 2019 through May 31, 2023. In addition to approving the Joint Petition for Partial Settlement, the *FE DSP V Order* considered the Exceptions of Retail Energy Supply Association (“RESA”)¹ advocating rejection of the recommendations of the administrative law judge (“ALJ”) which would impose restrictions on the ability of consumers participating in FirstEnergy’s customer assistance programs (“CAP”) to freely shop for competitive generation supply from an electric generation supplier (“EGS”). Upon consideration of RESA’s Exceptions and the record in this proceeding, the Commission ultimately concluded that “it is necessary to impose *some restrictions*” and adopted the ALJ’s recommendations “in so far as EGSs may not charge CAP customers a rate *greater* than the

¹ 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 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.

[Price-to-Compare] PTC.”² The Commission specifically left open the issue of whether EGSs should be required to guarantee that their price will remain below the PTC at all times and concluded that “in order to ensure a successful implementation” it would be prudent to refer the program to the Office of Competitive Market Oversight (“OCMO”) so that OCMO could work with stakeholders regarding implementation of the changes and provide a recommendation to the Commission on or before January 31, 2019.³

As a threshold matter, RESA does not agree that any restrictions on the ability of any customer to freely shop should be implemented or that the PTC is an appropriate benchmark upon which to judge competitive market pricing. However the result reached by the Commission in the *FE DSP V Order* – of limiting the initial EGS rate so that it is no greater than the PTC along with flexibility for OCMO to consider whether the price guarantee must follow future PTCs – is fully supported by the record in this proceeding. The referral to OCMO to work with interested stakeholders to develop a recommended implementation process for the new restrictions is the right way to proceed as it will enable the affected stakeholders (which includes EGSs who are already serving CAP participants and marketing to them) to present their viewpoints to the Commission’s experts who can then make a recommendation to the Commission for its consideration. Moreover, the direction provided by the Commission is a reasonable way to ensure that the Commission’s staff experts are able to consider and offer to the Commission a well-informed and reasonable recommendation about how best to accomplish the goals set by the Commission.

² *FE DSP V Order* at 38 (emphasis added).

³ *FE DSP V Order* at 39.

Notwithstanding this, three of the parties – FirstEnergy, Office of Consumer Advocate (“OCA”) and the Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania (“CAUSE-PA”) – have filed Petitions for Reconsideration seeking to hamstring the ability of OCMO to develop its recommendations by claiming that the Commission “overlooked” and/or did not have “substantial evidence” in the record to support the direction provided to OCMO. As discussed further below, the Commission’s decision is fully supported by the record in this proceeding and none of the Petitions for Reconsideration meet the applicable legal standard for reconsideration.

Regarding FirstEnergy’s request to expedite the timeline associated with the OCMO process, RESA believes an extension of the implementation date would be a more appropriate path to take to ensure that the new CAP shopping restrictions are thoughtfully and prudently implemented for the benefit of consumers.

II. PETITIONS FOR RECONSIDERATION REGARDING EGS PRICING AND TIME PERIOD TO MAINTAIN PRICING FAIL TO MEET THE LEGAL STANDARD FOR RECONSIDERATION AND MUST BE DENIED

FirstEnergy, OCA and CAUSE-PA all seek reconsideration of the Commission’s determinations: (1) to prohibit EGSs from charging CAP participants a rate *greater* than the PTC; and, (2) to permit OCMO to consider whether the EGS price must be below the PTC only at the time of contracting or for all future PTCs. Through their petitions, these parties seek a ruling from the Commission that EGSs may not even charge CAP participants a rate that is *equal* to the PTC. None of the parties satisfy the standards to justify the Commission’s reconsideration of these issues.

A. Restricting EGSs To Pricing No Greater Than The PTC

Claims that the record in this proceeding forecloses the Commission from permitting EGSs to offer a price equal to the PTC are blatant attempts to relitigate an issue that was fully developed in the record and appropriately decided by the Commission. The data presented in this proceeding focused on EGS pricing to CAP participants above the PTC.⁴ RESA Witness Hudson's interpretation of the same data resulted in his conclusion that "despite the implications that CAP customers are being overwhelmingly harmed by shopping with EGSs, there is clear evidence that often times and for a substantial number of customers EGSs are indeed delivering lower prices to these customers."⁵ Notwithstanding this testimony, the Commission concluded that: (1) "a significant number of CAP customers paid significantly more than what they would have if they were default service customers;" and, (2) "higher rates" result in CAP customers incurring charges they may not be able to pay and, if they cannot pay, then the amount of uncollectible recovered from the rest of the utility's residential ratepayers will be increased.⁶ Based on this, the Commission concluded that "some restrictions" were necessary to protect against "increased and unnecessary costs" and directed that EGSs not be permitted to charge CAP customers a rate *greater than the PTC*.⁷

While RESA is not generally supportive of price restrictions, the Commission was well within its discretion to focus on prices greater than the PTC based on the record in this

⁴ See, e.g., CAUSE-PA Petition for Reconsideration at 8-9, bullet point numbers 7 ("If a PCAP participant chooses an electric generation supplier with a price higher than the price to compare, the amount that either the PCAP customer or other ratepayers pay will be more."), ("... when prices increase the costs are paid for either by the PCAP customer or other ratepayers"), 9 ("... obligation for greater costs to be incurred by PCAP than if these customers would have been charged the utility default service price for energy"), 10 ("... data shows... PCAP customers paid prices higher than the price to compare.")

⁵ RESA St. No. 1-R at 22-23.

⁶ *FE DSP V Order* at 58.

⁷ *FE DSP V Order* at 58.

proceeding. Neither the claim by OCA 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” nor the claim by CAUSE-PA that “the harm. . . is *caused by shopping at or above the PTC*”⁸ have merit. Customers who do not shop must pay the PTC. According to the view of the Commission, they would receive a financial “benefit” by receiving a lower rate from the EGS but they are not “harmed” by the fact that they are charged the PTC – regardless of whether FirstEnergy or an EGS is providing the generation supply. Therefore, capping initial EGS prices at the PTC is consistent with the Commission’s accepted interpretation of the data in this proceeding.

OCA’s claim that the Commission’s decision is “inconsistent with the ALJ’s recommendation, which the Commission adopted”⁹ lacks merit. The Commission always retains the discretion to adopt or modify the ALJ’s recommendations as it determines appropriate.¹⁰ In fact, the Commission clearly stated in the *FE DSP V Order* that it was adopting the ALJ’s recommendation “in so far as EGSs may not charge CAP customers a rate greater than the PTC.”¹¹ As such, the Commission was clear that it was not adopting the ALJ’s recommendation as offered but was modifying it consistent with its ultimate determinations – a result that is well within the Commission’s prerogative and not one that is an appropriate basis upon which to seek reconsideration.

In conclusion, the interpretation of the data presented in this proceeding by those advocating for CAP shopping restrictions focused on their view of “harm” resulting when CAP

⁸ CAUSE-PA Petition for Reconsideration at 7.

⁹ OCA Petition for Reconsideration at 3.

¹⁰ 66 Pa.C.S. § 335(a) (“On review of the initial decision, the commission has all the powers which it would have in making the initial decision except as it may it may limit the issues on notice or by rule.”)

¹¹ *FE DSP V Order* at 58.

participants pay something higher than the PTC. As such, limiting restrictions to equal to or below the PTC is fully consistent with the record and was well within the Commission's discretion. There is no appropriate basis upon which to grant reconsideration of this decision.

B. Restricting EGS Pricing At The Time Of Contracting Or For Entire Length Of Customer Contract

FirstEnergy, OCA and CAUSE-PA all seek reconsideration of the Commission's decision to defer to OCMO the issue of whether EGS pricing should be restricted only at the time of contract initiation or whether the pricing restrictions should be in place at all times while the EGS is serving the CAP participant. All three base their position on the view that the only outcome supported by the record is one in which the EGS must always guarantee a price based on the then-effective PTC. These arguments, however, are not supported by the record. In fact, the Commission's decision to permit OCMO flexibility regarding its recommendation on this point is correct.

OCA and CAUSE-PA argue that harm results anytime a CAP participant pays an EGS price higher than the PTC and, therefore, this cannot be allowed to occur under any circumstance (including the situation where a customer is in a year-long fixed-price contract with an EGS and the PTC changes during the contract term). However, as discussed in the previous section, the Commission concluded that "some restrictions" were necessary, not that harm results each and every time a CAP participant pays a price higher than the EGS. In fact, the Commission has already implemented CAP shopping restrictions in which the CAP participant may – for a limited period of time – be charged more than the utility's PTC.¹² This program structure was

¹² *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 at 38-39. RESA does not support implementation of a PPL CAP-SOP program

affirmed by the Commonwealth Court on appeal.¹³ As such, the Commission is well within its discretion to determine the most appropriate pricing restrictions for FirstEnergy's CAP participants which may include times when the EGS price is the same as or higher than the then-effective PTC. Notably, even if an EGS price is higher than the PTC at times, that does not mean that on balance the customer pays the EGS more than he or she would have paid the utility, given the fluctuations in both prices throughout the year or over the term of the contract.

Moreover, the parties are inaccurate in claiming that the record only supports a guaranteed savings product. To the contrary, both FirstEnergy and RESA submitted testimony regarding the potential negative outcome of requiring EGSs to only offer guaranteed savings products to CAP participants. As RESA Witness Hudson testified, "Providing an absolute guarantee of price saving against an unknown future quarterly adjusted price to compare would likely violate the risk policies of at least some prudently operating EGSs. These EGSs would discontinue serving low income customers, removing the lower priced alternatives to default service."¹⁴ Similarly, FirstEnergy Witness Bortz testified that a requirement that EGSs can only provide CAP participants a "percentage-off" product would "likely. . . significantly limit the number of EGSs that would be interested in providing service to CAP customers. . . and could effectively eliminate all CAP shopping."¹⁵ As the intent of the Commission appears to be to find a way to enable CAP participants to avail themselves of the competitive market (albeit with restrictions), the Commission was wise – based on the record in this proceeding – to defer the

for FirstEnergy because it too severely limits the offers EGSs may make to PPL's CAP participants and is the only method through which EGSs may serve these customers in PPL's service territory.

¹³ *Retail Energy Supply Association v. Pennsylvania Public Utility Commission*, No. 230 C.D. 2017, 2018 WL 2027155 (Pa. Commw. Ct. May 2, 2018).

¹⁴ RESA St. No. 1-R at 28.

¹⁵ FirstEnergy St. No. 1-R at 29-30.

mechanics of how EGSs are to manage the prices offered to CAP participants as the PTC changes to its staff experts to make a recommendation for the Commission's consideration.

This record evidence also undercuts FirstEnergy's claim that its preferred technical method for implementing CAP shopping restrictions is "the only mechanism supported by the substantial evidence in the proceeding."¹⁶ In fact, evidence from FirstEnergy's own witness (as discussed previously) demonstrates why this approach may not be the wisest course of action. Moreover, the undisputed record evidence presented by RESA Witness Hudson noted that rate ready billing restrictions unnecessarily limit the billing options available to suppliers with many EGSs preferring to use bill-ready billing.¹⁷ While this point was made in the context of FirstEnergy's Standard Offer Customer Referral Program, the limitation to rate ready billing favored by FirstEnergy for implementing CAP shopping restrictions would similarly limit the ability of EGSs preferring to use bill-ready billing from making offers to CAP participants.

Thus, based on the record, the Commission rightly exercised its discretion to defer this issue to the OCMO stakeholder collaborative where all options may be considered for implementing CAP shopping restrictions consistent with the policy direction provided by the Commission. The Commission did not "overlook" the record evidence nor the advocacy presented by these parties but, rather, rightly rejected them. As rejection of a party's position is not an appropriate basis upon which to reconsider a prior decision, the Petitions for Reconsideration of FirstEnergy, OCA and CAUSE-PA must be denied.

¹⁶ FirstEnergy Petition for Reconsideration at 4.

¹⁷ RESA St. No. 1 at 11-12.

III. RESA DOES NOT SUPPORT EXPEDITING THE COLLABORATIVE PROCESS AT THE EXPENSE OF CREATING MORE DIFFICULTY FOR EGSS TO COMPLY WITH FINAL COMMISSION IMPLEMENTATION REQUIREMENTS

FirstEnergy also explains its concerns related to the timeline associated with the OCMO process established by the Commission.¹⁸ According to FirstEnergy, implementing its preferred technical method would require acceleration of the OCMO working group process by one month. As explained in the previous section, RESA does not agree that FirstEnergy's approach is the technical approach that should be adopted here and supports the Commission's decision to explore it – as well as others – in the context of the OCMO collaborative process.

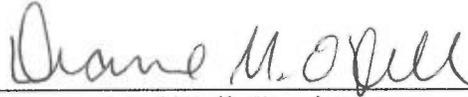
EGSs too will have to adapt their internal processes to accommodate the Commission's final determinations regarding both transitioning existing EGS customers who are CAP participants and the rules under which EGSs will be required to serve future customers who are CAP participants. In recognition of this as well as the Commission's direction to OCMO to take "the time necessary to thoroughly and thoughtfully consider and provide recommendations," RESA believes an extension of the implementation date would be a more appropriate path to take.

¹⁸ FirstEnergy Petition for Reconsideration at 9-10.

IV. CONCLUSION

For all these reasons, RESA respectfully requests that the Commission deny the Petitions for Reconsideration of FirstEnergy, OCA and CAUSE-PA.

Respectfully submitted,



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