

**PENNSYLVANIA PUBLIC UTILITY COMMISSION  
HARRISBURG, PENNSYLVANIA 17120**

**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 Companies) for Approval of their Default Service Programs for the Period Beginning June 1, 2019 through May 31, 2023**

**Public Meeting October 25, 2018  
2637855-OSA  
Docket No. P-2017-2637855, et al.**

**MOTION OF COMMISSIONER DAVID W. SWEET**

Before the Commission for consideration are three Petitions seeking reconsideration of our Opinion and Order entered September 4, 2018,<sup>1</sup> regarding 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, FirstEnergy) for the approval of their default service programs for the period June 1, 2019 through May 31, 2023. In our *September 2018 Order*, we approved a new shopping program for customers participating in FirstEnergy's Customer Assistance Program (CAP). The CAP shopping program allowed a CAP customer to only enter into a contract with an electric generation supplier (EGS) for a rate that is at or below the utility's Price to Compare (PTC) and does not contain early termination or cancellation fees. We recognized that the mechanics of the CAP shopping program were not fully developed in the record and, therefore, we directed our Office of Competitive Market Oversight (OCMO) to convene a group of stakeholders to address those mechanics so that OCMO may provide recommendations to this Commission by January 31, 2019. In that referral, we included the issue of whether the EGS rates must only be below the PTC at the time of contracting or below that and all future PTCs.<sup>2</sup>

The Petitions for Reconsideration were filed by the Office of Consumer Advocate (OCA), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and FirstEnergy. The OCA and CAUSE-PA Petitions are generally consistent and request reconsideration of our referring to OCMO the issue of whether the EGS rate must be below the PTC only at the time the CAP customer enters into the contract with the EGS or at that time and all future PTCs throughout the duration of the contract.<sup>3</sup> The OCA and CAUSE-PA argue that they have met the *Duick* standard<sup>4</sup> for reconsideration because they believe that the Commission

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<sup>1</sup> See *Petition of Metropolitan Edison Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023, et al.*, Opinion and Order, Docket Nos. P-2017-2637855, et al. (Opinion and Order entered Sept. 4, 2018 (*September 2018 Order*)).

<sup>2</sup> *Id.* at 58-59.

<sup>3</sup> OCA Petition at 2, 5. CAUSE-PA Petition at 1-2,

<sup>4</sup> See *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553 (Order entered December 17, 1982), 179 A. 850, 854 (Pa. Super. Ct. 1935) (*Duick*).

overlooked record evidence that allowing customers who are enrolled in CAP to shop for prices that exceed the PTC causes significant financial harm to both CAP and non-CAP, residential customers. The OCA and CAUSE-PA argue that the Commission overlooked the Administrative Law Judge's (ALJ) finding that the record evidence demonstrated that "over a prolonged period of time" a majority of FirstEnergy's CAP customers paid above the PTC, causing the proven harm.<sup>5</sup>

FirstEnergy argues for reconsideration of our finding that insufficient record evidence exists to support a rate ready, percentage off product, as FirstEnergy argues such a product is the only mechanism supported by the record. FirstEnergy argues that it, and other parties, laid out implementation procedures in testimony that could be adopted if the Commission agreed to adopt the proposed CAP shopping changes.<sup>6</sup>

The Retail Energy Supply Association (RESA) filed an Answer to the three Petitions requesting their rejection. RESA argues that the Commission's decision to refer to OCMO the mechanics of the CAP shopping program, including the appropriate rate, was fully supported by the record and that none of the Petitions meet the *Duick* standard for reconsideration. RESA argues that the parties are simply trying to relitigate an issue that was fully developed in the record.<sup>7</sup>

I agree with the OCA and CAUSE-PA that the Commission overlooked record evidence in this proceeding supporting a CAP shopping product that must be at or below the PTC(s) at all time periods of the contract. I agree that referring this issue to OCMO is inconsistent with our finding that there is clear evidence demonstrating harm to both FirstEnergy's CAP and non-CAP, residential customers when CAP customers pay above the PTC. Specifically, I agree with OCA and CAUSE-PA that the Commission overlooked, in agreeing with the Administrative Law Judge, her finding that the record evidence demonstrated that "over a prolonged period of time" a majority of FirstEnergy's CAP customers paid above the PTC, causing the proven harm. Therefore, the issue of whether the CAP product should be at or below the PTC at the time of enrollment versus all time periods of the contract should not be referred to OCMO. Instead, the record has shown, and multiple parties have proven, that the product should be one that is at or below the PTC(s) at all time periods of the contract between the EGS and the customer. An EGS serving a FirstEnergy CAP customer may provide a rate that is at or below the PTC(s) at all time periods of the contract and that contract may not contain any early termination or cancellation fees.

Regarding FirstEnergy's petition, I do not believe the record in this proceeding supports a requirement that the CAP shopping product be a set, rate ready product that reflects a specific percentage off the PTC. The record here has shown that any products *above* the PTC have proven harmful to customers. However, an EGS may offer a rate at the PTC so long as it remains at the PTC throughout the contract duration. Similarly, another EGS may offer a discount off the PTC so long as that rate does not go above the PTC throughout the contract duration. I refer to OCMO for inclusion in its recommendations regarding the mechanics of FirstEnergy's CAP shopping program the issue of whether the product should be rate ready or bill ready.

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<sup>5</sup> ALJ's Recommended Decision at 67, 71.

<sup>6</sup> FirstEnergy Petition at 3-4.

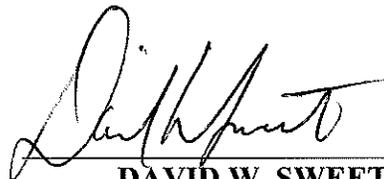
<sup>7</sup> RESA Answer at 3-4.

OCMO is to proceed with convening a collaborative of all interested stakeholders to discuss and provide information on the matters that were specified in our *September 2018 Order*, with the exception of the requirement that the EGS's price be at or below the PTC for the duration of the contract. OCMO is to provide for the Commission's consideration its recommendations on the matters discussed by January 31, 2019.

**THEREFORE, I MOVE THAT:**

1. The Petitions for Reconsideration filed by the Office of Consumer Advocate and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania be granted.
2. The Petitions for Reconsideration filed by Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company be denied.
3. The Office of Special Assistants prepare an Opinion and Order consistent with this Motion.

**Date: October 25, 2018**



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**DAVID W. SWEET  
COMMISSIONER**