

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

FAX (717) 783-7152
consumer@paoca.org

January 22, 2019

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 are the Comments of the Office of Consumer Advocate in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in black ink that reads "Christy M. Appleby".

Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CAAppleby@paoca.org

Enclosures:

cc: Honorable Mary D. Long
Daniel Mumford, Office of Competitive Market Oversight
Kriss Brown, Law Bureau
Certificate of Service
*265400

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 documents, the Office of Consumer Advocate's Comments, 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 22nd day of January 2019.

SERVICE BY E-MAIL AND INTER-OFFICE MAIL

Gina L. Miller, Esquire
Allison C. Kaster, Esquire
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
Counsel for I&E

SERVICE BY E-MAIL AND FIRST CLASS MAIL, POSTAGE PREPAID

William E. Lehman, Esquire
Thomas J. Sniscak, Esquire
Hawke, McKeon, & Sniscak, LLP
100 North Tenth Street
Harrisburg, PA 17101
Counsel for PSU

Todd S. Stewart, Esquire
Hawke, McKeon, & Sniscak, LLP
100 North Tenth Street
Harrisburg, PA 17101
Counsel for NextEra Energy

Tori L. Giesler, Esquire
Lauren M. Lepkoski, Esquire
Teresa K. Harrold, Esquire
First Energy Service Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612
Counsel for First Energy

H. Rachel Smith
Exelon Business Service Corporation
701 Ninth Street
NW Mailstop EP 2205
Washington, DC 20068
Counsel for Constellation NewEnergy & Exelon Generation

Derek Rykaczewski, Esquire
Gexa Energy, L.P.
20455 State Highway 249
Suite 200
Houston, TX 77070
Counsel for NextEra Energy

Carl R. Schultz, Esquire
Eckert, Seamans, Cherin, & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
Counsel for Direct Energy

Susan E. Bruce, Esquire
Alessandra L. Hylander, Esquire
Vasiliki Karandrikas, Esquire
Charis Mincavage, Esquire
McNees, Wallace, & Nurick, LLC
100 Pine Street
P.O. Box 1166
Harrisburg, PA 17108
Counsel for MEIGU, PICA, & WPPIII

Daniel Clearfield, Esquire
Sarah C. Stoner, Esquire
Deanne M. O'Dell, Esquire
Eckert, Seamans, Cherin, & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
Counsel for RESA

Patrick Cicero, Esquire
Kadeem G. Morris, Esquire
Elizabeth R. Marx, Esquire
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
Counsel for CAUSE-PA

Charles E. Thomas III, Esquire
Thomas, Niesen, & Thomas, LLC
212 Locust Street
Suite 302
Harrisburg, PA 17101
Counsel for Calpine Energy Solutions

Sharon E. Webb, Esquire
Office of Small Business Advocate
300 North Second Street
Suite 202
Harrisburg, PA 17101
Counsel for OSBA

Karen O. Moury, Esquire
Eckert, Seamans, Cherin, & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
Counsel for Respond Power LLC

SERVICE BY FIRST CLASS MAIL, POSTAGE PREPAID

Kenneth Springirth
4720 Cliff Drive
Erie, PA 16511

/s/ Christy M. Appleby
Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CApplby@paoca.org

Darryl A. Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

Counsel for Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: January 22, 2019
*262794

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

COMMENTS
OF THE
OFFICE OF CONSUMER ADVOCATE

I. INTRODUCTION

On December 20, 2018, the Pennsylvania Public Utility Commission issued its Tentative Order regarding the implementation of the Customer Assistance Program (CAP) shopping and Customer Referral Program (CRP) scripting and training materials for Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power) and West Penn Power Company (West Penn) (collectively FirstEnergy or Companies). The Tentative Order also seeks Comments regarding the implementation of the Commission's September Order and November Reconsideration Order that approved a CAP Shopping Program for the FirstEnergy Companies. The November Reconsideration Order, modified Ordering Paragraphs 5 and 6 of the September Order as follows:

5. That on or before June 1, 2019, the First Energy Companies shall implement the following [Pennsylvania Customer Assistance Program (PCAP)] shopping rules:

a. PCAP customers are prohibited from entering into any retail electricity contract with an EGS which would charge rates exceeding the applicable price to compare for the entire duration of the EGS contract.

- b. EGSs are not permitted to enter into contracts with PCAP customers charging early termination or cancellation fees.
 - c. EGS enrollments submitted for any PCAP customers that do not meet these requirements will be rejected.
6. That for the purpose of transitioning PCAP customers who are currently being served by an EGS, as of June 1, 2019:
- a. PCAP customers who are served under a fixed duration contract with an EGS as of June 1, 2019 (a “pre-existing fixed duration contract”) may remain with their EGS until the expiration date of the fixed duration contract or the contract is terminated, whichever comes first.
 - b. Non-PCAP customers served under a fixed duration contract who subsequently enroll in PCAP (also considered to be served under a “pre-existing fixed duration contract”) may remain with their EGS until the expiration date of the fixed duration contract or the contract is terminated, whichever comes first.
 - c. Upon expiration or termination of a pre-existing fixed duration contract, the EGS must either: (a) enroll the PCAP customer under a contract compliant with the new PCAP shopping rules; or, (b) return the PCAP customer to default service. For EGSs serving PCAP customer under a month-to-month contract as of June 1, 2019, the EGS must either: (a) return the PCAP customer to default service effective June 1, 2019; or, (b) enroll the PCAP customer under a contract compliant with the provisions, above, with an effective date of June 1, 2019.
 - d. For EGSs serving non-PCAP customers under a month-to-month contract who subsequently enroll in PCAP, the EGS must either, within 120 days of the customer’s PCAP enrollment; (a) return the PCAP customer to default service; or, (b) enroll the PCAP customer under a contract compliant with the provisions, above.

Tentative Order at 8-9; see also, November 1 Reconsideration Order at Ordering Paragraphs 4 and 5.

The Tentative Order requested Comments regarding the following CAP shopping implementation issues: (1) product and rate-ready vs. bill-ready; (2) supplier disclosure requirements; (3) fees; (4) identifying CAP participating customers; (5) transition timeframes and requirements; (6) contract expiration and change notice procedures; (7) supplier contract renewal

safe harbor provision; (8) supplier disclosure requirements - cancellation provisions; (9) consumer education; (10) supplier education; and the (11) implementation timeline. The Tentative Order also seeks Comments regarding proposed changes to the Customer Referral Program (CRP) scripting. The OCA specifically addresses the following issues in its Comments: (1) supplier disclosure requirements; (2) fees; (3) identifying CAP participating customers; (4) consumer education; and (5) CRP scripting and training materials.

The OCA agrees with many aspects of the Tentative Order, in particular, with respect to the implementation of the CAP Shopping program. The modifications to the rules will follow many aspects of the spirit of the CAP Shopping rules set forth for PPL's CAP-Standard Offer Program (CAP-SOP) as recommended by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) in this proceeding. The OCA recommends that the Commission's proposed labeling of the product as the "CAP Shopping Product" be approved but that further consideration be given to disclosure of an index-price product or percentage off product for residential customers. Development of such a product and disclosures could be particularly helpful for low-income customers who are not in CAP. The OCA also recommends that the Tentative Order's proposal to prohibit other add-on fees, in addition to early termination fees, be approved. The OCA supports FirstEnergy's proposal to use CAP participation flags to inform EGSs that a customer is a CAP participant, with the modification that CAP participation flags should only be present when a household is enrolled in CAP. The OCA also supports additional customer education for new and existing CAP customers about the new CAP shopping program.

The OCA, however, does not agree with the Commission's proposed changes to the Customer Referral Program (CRP) script and the training materials. As discussed below, the OCA recommends modifications to the CRP scripts and training materials necessary to ensure that: (1)

it is clearly communicated to customers that the regulated EDC transaction has been completed; (2) customers are informed that the PTC at the time of contracting will change and, consequently, the advertised discount will change; (3) customers are informed that the CRP is optional and are explicitly asked if they elect to enroll in the CRP; and (4) FirstEnergy implements comprehensive training materials that reflect updated scripting language and establish an oversight program. The OCA does not agree that fully and fairly disclosing the nature of this program will have a negative impact. The OCA submits that that changes recommended herein are necessary to reduce the incidence of customers being misled regarding the nature of CRP and any discounts associated with the program or enrolled in the CRP without proper informed consent.

II. PROCEDURAL HISTORY

On August 23, 2018, (then) Commissioner David W. Sweet and (then) Vice Chairman Andrew G. Place issued a Joint Motion relevant to the default service proceedings of the FirstEnergy Companies. The Joint Motion addressed the manner in which FirstEnergy's CAP customers participate in the competitive retail market as well as the scripting of FirstEnergy's Customer Referral Program (CRP). The Joint Motion directed that, consistent in part with the Administrative Law Judge's (ALJ) recommendations set forth in the May 31, 2018 Recommended Decision, both the CAP shopping program and the CRP be referred to the Commission's Office of Competitive Market Oversight (OCMO) for review and analysis, and that OCMO provide recommendations regarding these programs to the Commission by January 31, 2019.

In particular, the Joint Motion noted that "there is clear evidence demonstrating that a significant number of FirstEnergy's CAP customers paid significantly more than what they would have if they were default service customers" and that "it is necessary to impose some restrictions on FirstEnergy CAP customer shopping in order to protect both CAP customers and the non-CAP

residential rate base from increased and unnecessary costs.” Joint Motion at 2. Accordingly, the Joint Motion directed that “the ALJ’s recommendation should be adopted in so far as EGSs may not charge CAP customers a rate greater than the PTC, nor charge early termination or cancellation fees” and that the program should be referred “to OCMO to work with stakeholders on the details of the program in order to ensure a successful implementation.” Joint Motion at 2 (footnote omitted). With regard to the scripting of the CRP, the Joint Motion noted that the “ALJ acknowledged the benefit of a stakeholder meeting to discuss the scripting issue” and the issue should be referred to OCMO as “OCMO has the resources and expertise to address this scripting issue” and “consider the consumer protection concerns of the OCA.” Joint Motion at 3.

On September 4, 2018, the Commission entered an Order consistent with the Joint Motion. The Commission approved a new CAP shopping program in which CAP customers may enter into a contract with an EGS only “for a rate that is at or below the PTC and does not contain an early termination or cancellation fee.” September Order at 61. In this regard, the Commission ordered as follows:

That the Office of Competitive Market Oversight is hereby, directed to convene and coordinate a group of interested stakeholders for the purpose of collaboratively addressing the mechanics and details of the new Customer Assistance Program approved by this Opinion and Order and in which CAP customers may only enter into a contract with and Electric Generation Supplier for a rate that is at or below each FirstEnergy Company’s Price to Compare and does not contain any early termination or cancellation fees, and provide a recommendation on the mechanics and details of the program to the Commission, on or before January 31, 2019, to ensure successful implementation of the program.

September Order at 61. Additionally, the Commission also approved the continuation of the CRP through 2023 and noted that it “believe[s] it is in the public interest to consider improvements to the CRP script.” September Order at 32. Accordingly, the Commission ordered as follows:

That the Office of Competitive Market Oversight is, hereby, directed to convene and coordinate a group of interested stakeholders for the purposes of collaboratively

addressing the scripting and training materials associated with FirstEnergy's Customer Referral Program: (a) to ensure that such scripting and training materials will provide sufficient customer education/protections and disclaimers to customers that are not misleading, and (b) to determine the impacts that such scripting and training materials may have on customer enrollment in the program as well as other competitive concerns. A recommendation shall be provided to the Commission on or before January 31, 2019.

September Order at 61.

On September 6, 2018, the Commission issued a Secretarial Letter in which it notified stakeholders that an informal collaborative hosted by OCMO will convene on November 5, 2018 and requested that stakeholders submit comments regarding the implementation of the Commission-ordered CAP shopping program and the scripting and training materials associated with the CRP. Secretarial Letter at 1, 2. The Commission further requested that any comments provide topics to be discussed at the collaborative within the scope of the two main issues identified in the Joint Motion and the Order. Secretarial Letter at 2. On October 19, 2018, the OCA submitted its Comments. On November 1, 2018, in response to the Petitions for Reconsideration filed by CAUSE-PA and OCA, the Commission issued a Reconsideration Order that modified the September Order as discussed above. The Collaborative was held on November 5, 2018, and the Commission issued its Tentative Order on December 20, 2018.

III. COMMENTS

A. Supplier Disclosure Requirements

The Commission's Tentative Order examines the label that should be used to describe a CAP-compliant product. Tentative Order at 12. The Tentative Order proposes to modify the label used to describe the CAP Shopping program product because the proposed product is tied to the PTC and will change on a quarterly basis. Tentative Order at 12. The Commission also suggests the possibility of identifying the product as an indexed product since it is tied to an index, the

utility's PTC minus a set percentage. Tentative Order at 13. Although the Commission does have a definition of an indexed price included in its glossary on PaPowerSwitch.com, the Commission states that that they have concerns about "introducing this rather technical label into the residential market."¹ Instead, the Tentative Order proposes:

That a supplier should simply identify the product as something like a "CAP Program Product" without labelling it as fixed or variable. This proposed new label would be used to identify for customers that this product is targeted for CAP customers and complies with all the applicable CAP shopping rules in that it will always be at or below the PTC, with no early termination (ETFs), etc.

Tentative Order at 13-14.

The Commission also proposes that many of the disclosure rules relative to variable pricing should apply to this product. The Commission proposes:

This includes telling the customer what the starting price is, how often it could change (quarterly) and how the customer can find their current price. However, since this is a new product, the requirement at 52 Pa. Code § 54.5(c)(14)(i) and (ii) to provide a 24-month price history would not be applicable – at least for the first 24 months of the program. The requirement at 52 Pa. Code § 54.101(2)(ii)(A) to provide the 30-day notice of any subsequent price changes would also not apply because it is not the supplier determining the price – but rather FirstEnergy, in accordance with FirstEnergy's approved default service plan. As such, the supplier may not always know the price 30-days in advance.

Tentative Order at 14 (footnotes omitted).

The OCA agrees with the Tentative Order that a variable price label or a fixed price label would potentially be confusing for a customer and would not be appropriate. The OCA submits that either an indexed price definition (or some variation of the term) or the proposed CAP

¹ Index Pricing is defined as:

A type of variable rate product in which the product's price is tied to a specific index, such as the NYMEX, hourly prices in the retail energy market, or even a utility's Price to Compare. The product's price rises or falls whenever the index changes. Index pricing is more commonly offered to small and large commercial customers.

Tentative Order at 13, citing www.papowerswitch.com/glossary#i

Shopping Product definition would be appropriate. The OCA does not agree that that the indexed price definition would be too complicated for customers to understand, so long as the appropriate education accompanied the CAP Shopping rules. The OCA, however, would accept the proposed use of the CAP Shopping Product definition for the CAP Program. The OCA submits that the proposed CAP Shopping Product definition will help to identify to customers and suppliers that the product is uniquely designed to provide shopping to CAP customers. The OCA recommends, though, that the Commission further consider disclosure requirements for a residential index price or percentage off product. Development of such a product could be particularly helpful to low-income customers who are not in CAP.

B. Fees

Under the CAP Shopping program, customers cannot be charged an early termination fee (ETF); however, the Commission's Tentative Order correctly identifies that the program does not specifically prohibit other types of fees. The Tentative Order states:

While it is clear in the November Order that ETFs are to be banned for CAP customers, other fees that suppliers charge customers in addition to the per-kWh rate, such as membership fees, enrollment fees, monthly service fees, etc. are not specifically addressed. These types of fees could have the effect of increasing the customer's price above the PTC, even if the per-kWh price is below the PTC. Accordingly, the Commission proposes to prohibit any add-on fees; not just ETFs, as they would result in a product offered to CAP participating customers that has a rate that is not at or below the PTC for the duration of the contract.

Tentative Order at 15. The OCA agrees that the purpose of the CAP Shopping program is to provide CAP customers with the opportunity to shop, but to also ensure that the customer does not pay more than the PTC. Allowance of such additional fees would have the impact of increasing the customer's overall price paid above the PTC and undermine the reasons for the development of the CAP Shopping program. The OCA strongly supports the Commission's proposal to prohibit the addition of any fees for the CAP Shopping Program.

C. Identifying CAP Participating Customers

The Tentative Order proposes that CAP customers should be identified by FirstEnergy to suppliers. The CAP identifier is needed because “suppliers need to know which customers are participating in CAP so that they can apply the appropriate marketing and enrollment procedures for potential enrollees. Suppliers also need to know when one of their existing customers enrolls into CAP...” Tentative Order at 16. As discussed in the Tentative Order, FirstEnergy “offered to routinely update its sync lists and the Eligible Customer Lists (ECLs) to note participating customers. FirstEnergy has also offered to identify CAP participating customers in the account number access portals in a similar fashion.” Tentative Order at 16 (footnotes omitted).

The OCA supports the proposal to use CAP participation flags to inform EGSs that a customer is a CAP participant. The OCA also supports the position of CAUSE-PA that CAP participation flags should be present only when a household is enrolled in CAP and that CAP participation flags must not be used to label a customer as low-income.

E. Consumer Education

The Tentative Order proposes to inform both new and existing CAP customers of the rules and procedures for the CAP shopping program. Tentative Order at 21. The Commission proposes that draft CAP customer notices should be prepared by FirstEnergy and reviewed by FirstEnergy’s Universal Services Advisory Group before they are submitted to customers and by OCMO, OCA and interested suppliers. *Id.* The OCA agrees that consumer education should be provided to both new and existing CAP customers so that customers will fully understand the new rules for the CAP shopping program. Customer education will be particularly essential for those CAP customers who are currently shopping, so the CAP customers understand the changes to the CAP shopping rules.

The OCA also agrees that the CAP shopping program materials should be provided to the FirstEnergy Universal Services Advisory Group, OCMO, OCA, and interested suppliers. Providing the notices for feedback to these entities will allow FirstEnergy to receive valuable feedback from interested stakeholders to ensure that the CAP shopping materials clearly communicate the rules of the new CAP shopping program to customers.

F. CRP Scripting

1. Overview

The Tentative Order proposes changes to the Customer Referral Program (CRP) scripting in significant ways to eliminate the changes made by the DSP IV May 2017 settlement. Tentative Order at 22-24. The Tentative Order proposes reverting to the pre May 2017 CRP script and states:

Upon careful consideration of the stakeholder input, the Commission proposes reverting back to the pre-May 2017 scripting as follows:

FirstEnergy Call Center Mover/New Service Script prior to 5-26-17:

Are you satisfied with what I have done for you today? I have completed your order. With your permission, I will transfer you and your order information to our vendor. They will provide you with a confirmation number, offer you potential rate savings through our Electric Choice Program, and help you to set up other services if needed.”

First Energy PTC and High Bill Calls Scripting prior to 5-26-17:

In Pennsylvania, you can choose the company that generates your electricity – also known as your electric supplier – without impacting the quality of your service. Would you like to speak to a representative who can offer you a potential rate savings by enrolling with an alternate supplier?

Vendor Call Scripting prior to 5-26-17:

[CUSTOMER NAME], there are many registered electric suppliers doing business in the state of Pennsylvania and you have the option of choosing any of them. In an effort to encourage choice, the State Utility Commission has made the Standard Offer Program available to you.

The program offer is a 7% discount off the Price to Compare that you are currently paying with [EDC NAME] as your default service supplier. There are no fees for selecting an alternate supplier today or penalties for changing before the 12 months are up.

The current Price to Compare rate for [EDC NAME] is [X.XX] cents per kilowatt-hour. The rate for this Standard offer is X.XXX cents per kilowatt-hour. The Standard Offer rate may be higher or lower than the price to compare and the percentage savings you will experience compared to [EDC NAME] supplier generation will vary as the price to compare changes. The price to compare changes quarterly in March, June, September and December, however your Standard Offer rate will remain the same for 12 billing cycles and is the same no matter which supplier you select.

Tentative Order at 23.

The OCA does not agree that the Tentative Order's proposed reversion to the pre-May 2017 script language would be appropriate. For the reasons set forth in the OCA's Direct Testimony of Barbara Alexander, the OCA's Briefs, and the OCA's Comments in this proceeding, the OCA submits that script changes are necessary in order to ensure full and fair disclosure of the nature of the program and to provide adequate and reliable, regulated service to customers before a discussion of the CRP or transfer to the third-party agent, AllConnect. The May 2017 changes were designed to ensure that the customer is aware that the regulated transaction is complete and to address inaccuracies in the information provided in the vendor script. Reversion to the pre-May 2017 script would ignore the evidence presented in the DSP IV case that necessitated the changes.

The May 2017 script from the DSP IV Settlement referenced in the Tentative Order provided:

1. Program Administration
 - a. The currently-effective Customer Referral Program ("CRP") including the cost recovery mechanisms last approved by the Commission in the Companies' DSP III Proceeding, will continue until May 31, 2021.
 - b. The Customer Referral Program scripts will be modified to include the following:

Allconnect script will continue to state that the EGS "rate could be higher or lower than the PTC;" and,

The Companies' CSR script initiating the transition to the program specialist will provide as follows: "In Pennsylvania, you can choose the company that provides your electricity without impacting the quality of service. Would you like to speak with a representative who can offer you a potential savings opportunity by enrolling with an electric generation supplier.

The Allconnect script will be revised to include the following language:

"The CRP offers a fixed price of ___/kWh for one year provided by an Electric Generation Supplier. The fixed CRP provides an initial discount off of today's Price to Compare which is ___/kWh. The Price to Compare will change again on [March/June/September/December] first. The CRP price will not change through twelve monthly bills, but the PTC could be higher or lower than the CRP price during this period.

May 2017 DSP IV Settlement.

The May 2017 DSP IV Settlement implemented changes to provide important, necessary information to customers so that the customer can make an informed choice. There are several important tenets that should be included in the CRP script. First, it must be clearly communicated to the customers that the regulated EDC transaction has concluded prior to the customer being transferred to AllConnect. Second, customers must be informed that the PTC at the time of contracting will change and that the advertised discount will also change. Third, customers must be informed that the CRP is optional and that the customer must explicitly be asked if they wish to enroll in the CRP just as in any other EGS transaction. Finally, FirstEnergy should implement comprehensive training materials that reflect updated scripting materials and establish oversight of the program.

2. It Must Be Clearly Communicated To Customers That The Regulated EDC Transaction Has Ended Prior To Transferring Customers To AllConnect.

The pre-May 2017 language used by the FirstEnergy representative stated:

Are you satisfied with what I have done for you today? I have completed your order. With your permission, I will transfer you and your order information to our vendor. They will provide you with a confirmation number, offer you potential rate

savings through our Electric Choice Program, and help you to set up other services if needed.”

Pre-May 2017 Script. The approved May 2017 script set forth in the DSP IV Settlement specifically does not include a reference by FirstEnergy representatives to a “confirmation number” prior to transferring customers to third-party AllConnect agents. OCA St. 2 at 23. The May 2017 changes explicitly eliminate the requirement or suggestion (by reference to the need for a confirmation number) that the FirstEnergy transaction was not complete. It is completely improper to use the regulated transaction to transfer a customer to an entity selling other products and services.

The OCA proposes that the language should be changed to the following:

Are you satisfied with what I have done for you today? I have completed your order. ~~With your permission, I will transfer you and your order information to our vendor. They will provide you with a confirmation number, offer you potential rate savings through our Electric Choice Program, and help you to set up other services if needed.~~ With your permission, I can transfer you to our representative to explain a customer choice program that enrolls you with an alternative supplier with a fixed price agreement that could provide potential rate savings. Are you interested?

The evidence presented in the DSP IV proceeding supported eliminating the practice that resulted in customers being transferred to AllConnect based on the premise that the transfer was required to complete the regulated transaction of establishing service with FirstEnergy. The OCA submits that any reference to a confirmation number or other indicia of the completed transaction with FirstEnergy must be eliminated from the script.

As discussed in the DSP IV and in this DSP V proceeding, the suggestion that the customer must agree to the transfer to obtain a confirmation for the regulated FirstEnergy transaction is improper and deceptive. Indeed, requiring customers to undergo multiple sales pitches under the

guise of the regulated transaction is wholly unreasonable.² As OCA witness Alexander found from her review of call recordings, “This statement and the meaning of the reference to a ‘confirmation number’ is not at all clear to the customer.” OCA St. 2 at 23. It must be clearly communicated to customers that the regulated EDC transaction has ended prior to transferring customers to AllConnect. OCA St. 2 at 31.

As indicated by FirstEnergy, the confirmation number is not related to the regulated EDC transaction at all; it is merely an internal reference used by FirstEnergy and AllConnect to track calls about the CRP program. OCA St. 2 at 23. FirstEnergy representative’s reference to a confirmation number given after the transfer to AllConnect, however, may lead customers to believe that the transfer is related to the regulated EDC transaction or that the EDC transaction will not be completed unless the customers agree to the transfer. As OCA witness Alexander noted, “Under no circumstances should customers be enticed into agreeing to this transfer under the impression that the transfer is linked in any manner to the completion of their call and their transaction with the EDC.” OCA St. 2R at 6-7. FirstEnergy must complete the regulated EDC transaction to ensure adequate and reliable service to customers before a discussion of the CRP or transfer to AllConnect, and it must be made clear to customers that the EDC transaction has been completed. OCA St. 2 at 31; see 52 Pa. Code § 56.1. (“This chapter assures adequate provision of residential public utility service...” and “[e]very...duty required under this chapter imposes an obligation of good faith, honest and fair dealing in its enforcement.”) Therefore, the unnecessary and misleading reference to a “confirmation number” must be eliminated.

The customer should be informed of the purpose of the optional transfer to hear more about the choice program or an option to enroll with an alternative supplier. It should be noted that it is

² It must also be remembered that AllConnect offers the customer other products and services beyond the CRP program.

FirstEnergy's decision to bifurcate the conduct of its regulated transactions from the presentation and potential enrollment under the Customer Referral Program with a third party agent. In so doing, the customer should not be misled about the purpose of the transfer to the agent.

The OCA submits that customers must be clearly informed by the script that the regulated EDC transaction has concluded and that the customer has the option to hear about and enroll with an alternative supplier. The OCA proposes the above language so that it is clear to the customer that the regulated EDC transaction has concluded and the customer is being transferred in order to invite the customer to consider an alternative electric generation supplier.

2. Customers Must Be Informed That The PTC At The Time Of Contracting Will Change And, Consequently, That The Advertised Discount Will Change.

AllConnect's internal scripts were also changed in May 2017 to require mandatory disclosures. The OCA does not agree with the Tentative Order's statement that the pre-May 2017 scripting provides "meaningful information along with necessary disclosures." Tentative Order at 23. The Commission states that the "language has faced the scrutiny of previous DSP proceedings, and while it was in place, enrollment levels were reasonable with few complaints." Tentative Order at 23-24. The OCA submits that the Tentative Order's statements do not reflect the evidence in the case particularly regarding the call recordings of the transactions that were reviewed by OCA witness Alexander. The OCA also respectfully submits that enrollment levels and individual customer complaints are not a reasonable guide in determining whether full and fair disclosure have been provided.³

³ The OCA notes that many factors contribute to fluctuations in the level of CRP enrollment. As OCA witness Alexander pointed out, CRP enrollment increased in 2014 and 2016, but decreased in 2015 and 2017. OCA St. 2 at 9-10. The decrease in 2015 can be attributed to the 2014 Polar Vortex when EGS customers experienced dramatic rate increases, which resulted in decreased EGS enrollment generally, while the decrease in 2017 can be attributed to a trend of lower PTC rates, which also resulted in lower EGS enrollment generally. OCA St. 2 at 9. Additionally, OCA witness Alexander noted that "the sample call recording did not reveal any connection between this reduced level of enrollment with the reaction by customers to the FirstEnergy EDC statements or the expanded disclosures made by Allconnect agents." OCA St. 2R at 6.

The OCA submits that script changes are necessary in the following areas to ensure that customers are not misled regarding the nature of the CRP and any discounts associated with the program nor enrolled in the CRP without informed consent: (a) clear disclosure that any stated discount off of the PTC is not guaranteed and is temporary; (b) clear disclosure that the PTC will change and that any discount or savings will change with the PTC; (c) disclosure of the dates upon which the PTC will change; (d) information as to how customers can monitor the PTC; (e) disclosure that the CRP is an optional program; and (f) disclosure that there are no early termination fees. The OCA also submits that appropriate disclosures must immediately follow any reference to a stated discount if one is used.⁴

The OCA proposes that the script be modified as follows:

[CUSTOMER NAME], there are many registered electric suppliers doing business in the state of Pennsylvania and you have the option of choosing any of them. In an effort to encourage choice, the Public Utility Commission has made the Standard Offer program available to you.

The program offer is a 7% discount off the current Price to Compare that you are ~~currently~~ paying with [EDC NAME] as your default service supplier. ~~There are no fees for selecting an alternate supplier today or penalties for changing suppliers before the 12 months are up.~~

The ~~current~~ Price to Compare ~~rate~~ for [EDC NAME] is [X.XX] cents per kilowatt-hour. The fixed rate for this Standard offer is X.XXX cents per kilowatt-hour for 12 months, 7% less than the current Price to Compare. The Standard Offer Rate may be higher or lower than the price to compare and the percentage savings you will experience compared to [EDC Name] supplier generation will vary as the price to compare changes. The price to compare changes quarterly in March, June, September and December, however your Standard Offer rate will remain fixed for 12 billing cycles and is the same no matter which participating supplier you select. You should compare your supplier rate to the future changes in the Price to Compare that appear on your monthly bill.

⁴ The OCA remains very concerned about the use of the phrase “7% discount” when the “7% discount” is not guaranteed and could last as little as one day. The OCA prefers to remove all references to a specific percentage, but has left an explanatory reference in a more reasonable portion of the script.

There are no fees for selecting an alternate supplier today. You can cancel this contract anytime without penalty and select another supplier or return to [EDC NAME] for service at the Price to Compare.⁵

In terms of the Commission's proposed script, the emphasis on a "7% discount" is potentially misleading because customers do not receive a 7% discount every month from the Price to Compare. It is important to explain in plain language that this fixed price contract is for 12 months and that the fixed rate is 7% lower than the current PTC but that the PTC will vary. The customer may experience savings or losses compared to the PTC over the 12 months. The presentation of the CRP to customers, however, separates this important information from the use of the 7% discount language. OCA St. 2 at 27; OCA St. 2S at 7. As OCA witness Alexander stated, "it is not reasonable...to assume that customers understand this distinction or the actual meaning of the 7% language used to present this program" and "[i]t is unreasonable to assume that customers who enroll in this program understand or agree to such a potential wide variation in monthly saving and losses during the 12-month term compared to the actual PTC." OCA St. 2 at 27. Customers must explicitly be informed that, although the EGS fixed rate will not change, the PTC at the time of contracting will change and, consequently, the advertised initial discount off of the PTC will change. Such disclosure must be made clearly and at the appropriate point in the script for customer understanding.

It is critical that customers have this information presented in a manner that allows them to make an informed decision. Indeed, as the record here shows, customers of the FirstEnergy Companies enrolled in CRP were regularly paying more than the PTC under the program. OCA St. 2 at 26-27, Exh. BA-2. For instance, in both 2016 and 2017, Met-Ed, Penelec and Penn Power

⁵ The OCA has proposed additional scripting language in section 3 below regarding enrollment procedure and consent.

customers paid significantly *more* than the PTC under the CRP.⁶ OCA St. 2 at 26-27, Exh. BA-2. Customers using 1,000 kWh per month who enrolled in the CRP in January 2016 and remained for one year experienced the following bill impacts: Met-Ed customers paid \$89.71 more than the PTC, Penelec customers paid \$12.94 more than the PTC, and Penn Power customers paid \$66.48 more than the PTC.⁷ Similarly, customers using 1,000 kWh per month who enrolled in the CRP in January 2017 and remained for one year experienced the following bill impacts: Met-Ed customers paid \$35.83 more than the PTC; Penelec customers paid \$57.28 more than the PTC; and Penn Power customers paid \$78.33 more than the PTC.⁸ OCA St. 2 at 26; Exh. BA-2.

As can be seen, it is important that customers be fully informed about the potential impacts of participation in the program before making a decision on signing up for the program. The OCA presented modified language to attempt to disclose the nature of the discount. The OCA would also note that because of the nature of the discount, AllConnect agents should inform customers as to how to monitor the PTC changes. This information will allow the customer to understand how to ensure that CRP remains the right program for the customer's circumstances.

The OCA submits that the OCA's proposed language helps to clarify misconceptions presented by the previous pre-May 2017 language. The evidence of call recordings presented in both this proceeding and the DSP IV proceeding demonstrate that customers did not have clear

⁶ OCA witness Alexander documented a similar trend in DSP III and DSP IV. In DSP III, Ms. Alexander found that:

[R]esidential customers either did not realize the full value of this discount (i.e. receiving an actual discount of less than 7% as a result of changes to the PTC) or, in some cases, actually ended up paying more than the PTC shortly after entering the program because the PTC dropped (in some cases, the month after enrollment) during the 12-month Referral contract term."

OCA St. 2 at 25. In DSP IV, Ms. Alexander found that there was a "wide disparity in the actual discount levels" and that some "customers experienced wild swings in savings and losses compared to the PTC." OCA St. 2 at 25.

⁷ West Penn customers experienced savings of only \$7.21. OCA St. 2 at 26; Exh. BA-2.

⁸ West Penn customers experienced savings of \$25.12. OCA St. 2 at 26-27; Exh. BA-2.

information in the pre-May 2017 script. The OCA submits that script changes are necessary to ensure that customers are not misled and better informed, regarding the nature of the CRP and any discounts associated with the program.

3. Customers Must Be Informed That The CRP Is Optional And Explicitly Asked If They Elect To Enroll In The CRP.

Importantly, the CRP is an optional program. The Commission’s script, however, cuts off before obtaining the informed consent of the customer that the customer wishes to participate in this optional program. AllConnect agents ask the customer which agents they would like to select and offer to select an EGS for the customer, but “the customer is not explicitly asked if they choose to enroll in this optional program.” OCA St. 2 at 24. Customers should be explicitly asked if they choose to enroll in this optional program. It is crucial that the consumer protections that apply to all EGS transactions, that is obtaining the customer’s affirmative consent to enroll with the supplier, be part of this EGS transaction. See, 66 Pa. C.S. § 2807(d)(1); 52 Pa. Code §§ 57.171-179. As such, the OCA proposes the following additional scripting paragraph:

I can enroll you with an approved supplier of your choice from our list or I can select one for you. Do you have questions? Do you agree to be enrolled with a supplier for this program?

This language will better ensure that the customer has voluntarily agreed to the program.

4. FirstEnergy Should Implement Comprehensive Training Materials That Reflect Updated Scripting Materials And Establish An Oversight Program.

The Tentative Order does not address the OCA’s recommendation in its Comments to the Collaborative that script changes must also include a comprehensive training and oversight program. The DSP IV settlement provided that certain required disclosures must be included in the FirstEnergy DSP scripts. The OCA found, however, that the required disclosures were not, in fact, integrated into the AllConnect training materials. OCA St. 2 at 19. As OCA witness Alexander noted, FirstEnergy “did not revise its training and scripting materials in a

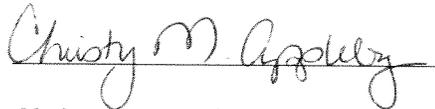
comprehensive manner to implement its obligations for disclosures under the DSP IV settlement.” OCA St. 2 at 18-19. In particular, there are “no documents that explain to the representatives why this script change was made or what the purpose of the change is or how this script change relates to the presentation of the program by Allconnect.” OCA St. 2 at 18. In addition, AllConnect training aids do not include the required disclosures or information about the PTC. OCA St. 2S at 8-9. FirstEnergy should implement comprehensive training materials that reflect any updated script materials.

Further, FirstEnergy must ensure that both its agents and AllConnect agents are trained and monitored to ensure that the agents understand how the program works and answer questions correctly to educate the customer. As OCA witness Alexander explained, FirstEnergy’s call audits are not currently directed at determining compliance with approved scripts. OCA St. 2 at 20-21. In particular, the review of FirstEnergy representatives’ calls is limited to “customer service skills and requirements related to obtaining the needed customer information for the transaction,” while the review of AllConnect agents’ calls is limited to whether the agents “correctly quoted the PTC and the Referral Program rate and confirmation that the agent asked if the customer knows the supplier they want to select.” OCA St. 2 at 20-21. FirstEnergy should implement an oversight program that includes routine monitoring of customer calls for compliance with scripts. The program should also be aimed at identifying agent statements that conflict with CRP terms, including statements that do not properly present the risks and benefits of the CRP. The results of this oversight program should be reported to the Commission and the OCA on a quarterly basis.

IV. CONCLUSION

The Office of Consumer Advocate thanks the Commission for the opportunity to provide Comments in this proceeding. The OCA respectfully requests that with respect to the CAP shopping program that the Tentative Order be adopted for the reasons set forth above. With respect to the Customer Referral Program and training materials, the OCA respectfully requests that the modifications discussed above be adopted.

Respectfully Submitted,



Christy M. Appleby
Assistant Consumer Advocate
PA Attorney I.D. # 85824
E-Mail: CAppleby@paoca.org

Darryl A. Lawrence
Senior Assistant Consumer Advocate
PA Attorney I.D. # 93682
E-Mail: DLawrence@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

DATE: January 22, 2019
265233.doc