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January 22, 2019

**Via Electronic Filing**

Rosemary Chiavetta, Secretary  
PA Public Utility Commission  
P.O. 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 Programs, Docket Nos. P-2017-2637855, P-2017-2637857, P-2017-  
2637858, P-2017-2637866

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Comments of the Retail Energy Supply Association  
("RESA") to the Tentative Order Entered December 20, 2018 with regard to the above-referenced  
matter.

Sincerely,



Deanne M. O'Dell

DMO/lww  
Enclosure

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## CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of RESA's Comments to the Tentative Order dated Dec. 20, 2018 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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Deanne M. O'Dell, Esq.

Dated: January 22, 2019

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Joint Petition of Metropolitan	:	Docket No.	P-2017-2637855
Edison Company, Pennsylvania	:		P-2017-2637857
Electric Company, Pennsylvania	:		P-2017-2637858
Power Company and West Penn	:		P-2017-2637866
Power Company for Approval of their Default Service Programs	:		

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**COMMENTS OF  
THE RETAIL ENERGY SUPPLY ASSOCIATION  
TO TENTATIVE ORDER ENTERED DECEMBER 20, 2018**

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Date: January 22, 2019

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## I. INTRODUCTION

In the Tentative Order entered December 20, 2018 (“TO”), the Commission sets forth its proposed recommendations regarding two specific issues related to Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, “FirstEnergy”). These two issues are: (1) the customer referral standard offer program (“CRP”); and, (2) the implementation of restrictions on the ability of consumers enrolled in the customer assistance plan (“CAP”) to shop for competitive service provided by an electric generation supplier (“EGS”). The TO is based on recommendations from the Office of Competitive Market Oversight (“OCMO”) which were informed by the Commission’s various relevant orders at this docket<sup>1</sup> and the discussion that ensued at a Stakeholder Collaborative conducted by OCMO staff on November 5, 2018.

The Retail Energy Supply Association (“RESA”),<sup>2</sup> a trade association of EGSs (many of whom are licensed in Pennsylvania and make competitive supply offerings available to consumers in the service territories of FirstEnergy), has been an active participant in this proceeding and appreciates this opportunity to provide further written comment in response to the TO. Regarding the CRP, RESA supports the Commission’s proposal to revert the

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<sup>1</sup> *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. Docket No. P-2017-2637855, P-2017-2637857, P-2017-2637858, P-2017-2637866, Opinion and Order entered September 4, 2018; *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. Docket No. P-2017-2637855, P-2017-2637857, P-2017-2637858, P-2017-2637866, Opinion and Order on Reconsideration, entered November 1, 2018.

<sup>2</sup> 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 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](http://www.resausa.org).

Companies' scripts back to the pre-May 2017 scripting.<sup>3</sup> This recommendation is supported by the average 88% decline in CRP customer enrollments occurring after the CRP scripts were changed in May 2017.<sup>4</sup>

While RESA continues to oppose placing restrictions on the ability of CAP participants to shop on the basis that doing so denies these consumers their opportunity to choose the competitive products and services that satisfy their personal needs, the majority of the Commission's proposed recommendations about how to facilitate the soon-to-be-imposed restrictions are rational and provide reasonable guidance for EGSs to facilitate the policy goals of the Commission. There are, however, a few proposals that – unless clarified – create burdensome and arguably confusing customer disclosure notice requirements that will increase the costs of EGSs to serve these CAP participants. These issues include: (1) the customer disclosure notice process EGSs wishing to “enroll” an existing month-to-month customer on a CAP-compliant product must follow; (2) requiring affirmative customer consent to revise an existing contract to be compliant with the new CAP restrictions; (3) notice required when EGS elects to voluntarily cancel an existing contract because their customer enrolls in CAP; and, (4) establishing the Initial Notice period as the “safe harbor” period when an EGS may rely on the then-current CAP status of its customer to move forward. RESA is concerned that without adjustments to these Commission proposals, EGSs may judge these increased costs and time commitments too much for them to justify offering a CAP-compliant product to FirstEnergy's CAP participants. If that occurs, then the Commission's stated goal of permitting EGSs to offer

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<sup>3</sup> TO at 23.

<sup>4</sup> As explained in the Direct Testimony of RESA Witness Richard J. Hudson, Jr., across all of the FirstEnergy EDCs, there were 8,456 average monthly enrollments in the CRP program prior to the scripting changes, and only 999 enrollments following the scripting changes. RESA St. 1 at 20.

competitive service (with price restrictions) to CAP participants will not be successful. Thus, for the reasons explained more fully below, RESA recommends that the Commission make the following adjustments to its proposal in the final order:

1. EGSs wishing to offer an existing month-to-month customer a CAP-compliant product will be permitted to do so through the appropriate EDI transactions (i.e. notice to FirstEnergy of rate change) with flexibility regarding the notice to be provided to the customer so long as it is consistent with any contract terms for notice.
2. EGSs electing to revise an existing contract (prior to expiration) to be compliant with the new CAP restrictions shall be permitted to rely on the normal 54.10 notice process (and are not required to receive affirmative consent prior to revising the existing contract).
3. EGSs wishing to cancel existing contracts because their customer has enrolled in CAP shall be permitted to do so consistent with the contract's existing cancellation terms.
4. EGSs shall be permitted to rely on the CAP status of their existing customers 60 days prior to the expiration of the existing contract to determine what options the EGS may offer during the contract renewal period.

## II. COMMENTS

### A. **Streamline The Process For EGSs To “Enroll” An Existing Month-to-Month EGS Customer In The EGS’s CAP-Compliant Product**

The TO sets forth the Commission's proposals as to how an EGS can continue to serve an existing month-to-month customer who participates (either as of June 1, 2019 or subsequently) in FirstEnergy's CAP program.<sup>5</sup> Regardless of the time period, an EGS whose existing month-to-month customer is a CAP participant must either: (1) drop the existing customer and return him or her to default service; or, (2) “enroll” the existing customer into a new CAP-complaint contract offered by the EGS. RESA supports providing EGSs the choice to either drop the

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<sup>5</sup> The TO identifies two different time periods – prior to June 1, 2019 and after June 1, 2019 – but proposes the same process an EGS is required to undertake if it wants to continue to serve these existing customers notwithstanding their CAP program participation.

existing month-to-month customer or to enroll the customer in one of the EGS's CAP-compliant products when that customer becomes a participant in FirstEnergy's CAP program. RESA is concerned, however, that the processes proposed by the TO to enable the EGS to continue to serve its existing month-to-month customer with a CAP-compliant product creates costly and burdensome notice requirements on EGSs that are likely result in more EGSs electing to cancel these contracts rather than to offer their existing month-to-month customer a CAP-compliant product. To avoid this result in furtherance of the policy goal of the Commission to make price-restricted competitive service available to CAP participants, RESA respectfully requests that the TO be modified to simplify the process through which EGSs may "enroll" existing month-to-month customers in the EGS's CAP-compliant products. More specifically, EGSs wishing to offer an existing month-to-month customer a CAP-compliant product should be permitted to do so through the appropriate EDI transactions (i.e. notice to FirstEnergy of rate change) with flexibility regarding the notice to be provided to the customer so long as it is consistent with any contract terms for notice.

From a practical standpoint, an existing month-to-month customer who is already receiving a contract price from an EGS that is at or below the price-to-compare ("PTC") with no additional fees and the right to cancel at any time without penalty is receiving an EGS product consistent with the new shopping restrictions being imposed by the Commission. Requiring the EGS to comply with the two notice requirements of 52 Pa Code § 54.10 to "enroll" this existing customer into the same product is confusing and burdensome. The practical reality of requiring the two 54.10 notices for the existing month-to-month customer is that he or she will receive two notices from his/her existing EGS stating that the existing EGS is continuing the customer's existing pricing terms due to the customer's participation in FirstEnergy's CAP program. For

EGSs, the time and cost to manage this process will likely outweigh the potential benefit for electing to continue to serve these customers leading EGSs to exercise their right to cancel the month-to-month contracts instead. Such a result is not only unfortunate for the existing customer and the EGS but one that does not advance the policy goals the Commission seeks to achieve here – i.e. finding a way to enable CAP participants to receive price-restricted service from EGSs.

Further complicating this process is the timing that is required by the two 54.10 notices to enable EGSs to exercise their choice to continue serving existing month-to-month customers effective June 1, 2019. The TO identifies two separate time periods related to an EGS wishing to continue to serve its existing month-to-month customer through a CAP compliant product. The first is on June 1, 2019 which is the date on which the new restrictions are to take effect.<sup>6</sup> The second period of time is after June 1, 2019 at any time an EGS's existing customer under a month-to-month contract subsequently enrolls in FirstEnergy's CAP program.<sup>7</sup> For an existing month-to-month EGS customer already enrolled in CAP prior to June 1, 2019, the EGS must place the customer in its CAP-compliant product effective June 1, 2019. For EGS month-to-month customers who subsequently enroll in CAP, EGS have 120 days to elect to enroll its existing customer in a CAP-compliant product.

Pursuant to 52 Pa Code § 54.10(1), EGSs are required to send the Initial Notice 45-60 days prior to expiration of the contract. Applying this notice requirement to existing EGS month-to-month contracts would mean that EGSs would have to send the Initial Notice between April 2, 2019 (60 days prior to June 1, 2019) and April 17, 2019 (45 days prior to June 1, 2019).

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<sup>6</sup> TO at 17 paragraph c.

<sup>7</sup> TO at 17 paragraph d.

This is an extremely short timeframe even assuming final direction from the Commission is adopted at the February 7, 2019 public meeting. To satisfy the notice requirements of 54.10 for existing month-to-month customers enrolled in FirstEnergy's CAP program, EGSs will need to know all of the following prior to deciding whether or not to keep the existing month-to-month customer: (1) which of the EGS's existing customers are participating in FirstEnergy's CAP program; (2) which of those customers are currently under a month-to-month contract; (3) what FirstEnergy's PTC will be on June 1, 2019; (4) whether EGS is able to offer these customers a price that is at or below the PTC effective June 1, 2019; and, (5) whether EGS needs to create new consumer educational materials and/or new CAP-compliant contracts. Given these realities and the likelihood that they would incentivize EGSs to drop existing month-to-month customers who are currently enrolled in FirstEnergy's CAP program effective June 1, 2019, RESA believes that simplifying the process through which EGSs may "enroll" existing month-to-month customers in the EGS's CAP-compliant products (effective June 1, 2019 and beyond) is a more rational and least disruptive approach that still furthers the goals set forth by the Commission.

Regarding the notice an EGS should provide to its existing month-to-month customer when the EGS wishes to continue serving the customer consistent with the CAP restrictions, RESA requests that EGSs be given the flexibility as to how to notify their existing month-to-month customers that their EGS service will (or already does) comply with the Commission's new restrictions. RESA submits that an EGS's election as to customer notification will serve as a reasonable complement to other educational efforts. To that end, FirstEnergy's customers will be educated about the new requirements through customer notices to be drafted by FirstEnergy. The Commission has also acknowledged that EGSs will undertake efforts to educate their own customers (apart from any Commission required notices). The Commission will also likely

undertake some consumer education through its website and/or social media platforms or other events.

For all these reasons, in the month-to-month situation where the EGS is willing to continue to serve its existing with pricing terms consistent with the CAP restrictions, there appears to be no measurable customer benefit to requiring EGSs to incur the substantial costs related to the Section 54.10 two notice requirements. Thus, EGSs should be given the flexibility to notify their existing month-to-month customers consistent with any notice requirements in the existing contract. To the extent feasible, consideration should also be given to providing this notice on the EDC consolidated bill. Ultimately, streamlining and not creating burdensome requirements on the process for EGSs to elect to continue to serve existing month-to-month customers with a CAP-compliant product is the best way to incentivize EGSs to continue to serve these customers (consistent with the required pricing restrictions) rather than just simply dropping them. Such result is a far preferable outcome for customers and the marketplace generally.

**B. Streamline The Process For EGSs To Revise An Existing Customer Contract To Move Customer Into The EGS's CAP-Compliant Product**

If an EGS wants to move an existing customer into a CAP-compliant product prior to the expiration of the current contract's term, then the TO proposes to apply the Commission's *Fixed Price Label Order*<sup>8</sup> to require the EGS to get the customer's affirmative consent before the existing contract can be revised to be in compliance with the new CAP restrictions.<sup>9</sup> Consistent with the discussion in the previous section, RESA is concerned that the process proposed in the

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<sup>8</sup> *Guidelines for Use of Fixed Price Labels for Products With a Pass-through Clause*, Docket No. M-2011-2362961, Final Order entered November 14, 2013 ("*Fixed Price Label Order*").

<sup>9</sup> TO at 19, paragraph c.

TO unnecessarily frustrates and increases the costs for EGSs wishing to move existing customers onto a CAP-compliant product.

Requiring an EGS to obtain affirmative consent before it can change the terms of an existing fixed-price contract makes the process of changing an existing contract more burdensome than the process of automatically enrolling a customer in a CAP-compliant product upon contract expiration. The TO makes clear that the “normal” contract expiration processes apply so that an EGS may enroll an existing eligible customer on a CAP-compliant product at contract expiration so long as it provides the required notices. Thus, even though the “normal” contract expiration processes do not require an EGS to receive affirmative consent to enroll a customer in a CAP-compliant product, the TO proposes to add a customer consent layer in the situation where the EGS wants to proactively enroll (prior to contract expiration) an existing customer who becomes eligible for the CAP-compliant product. Creating an additional burden on the ability of EGSs to enroll existing customers in the CAP-compliant product is not conducive to incenting EGSs to update the service being provided to these consumers to comply with the new CAP restrictions. More likely, the EGS will either choose to drop the customer or to offer updated contract terms during the normal contract expiration processes of Section 54.10.

Moreover, applicability of the *Fixed Price Label Order* when an EGS wants to revise an existing customer contract to comply with the Commission’s CAP pricing restrictions is not consistent with the reason and purpose for the *Fixed Price Label Order*. In the *Fixed Price Label Order*, the Commission was concerned about EGSs including language in fixed-rate contracts that permitted the EGS to change the contract rate based on increased or new costs

imposed on the EGS.<sup>10</sup> Ultimately, the Commission recognized that not permitting EGSs to recover costs imposed upon them could limit the variety of long-term fixed price offers that could be made available to consumers.<sup>11</sup> As a way to strike a balance between these issues, the Commission decided to allow EGSs to include a “regulatory-out” clause in their fixed-price contracts which permits them to increase the fixed price of the existing contract only if the customer affirmatively consents to the change.<sup>12</sup>

Here, the Commission has mandated the ceiling price that all EGSs may offer to FirstEnergy’s CAP participants and has mandated that this ceiling must be in effect at all times during which the EGS provides service to the customer. The Commission is also prohibiting “any add-on fees” in addition to early termination fees.<sup>13</sup> And, the Commission is giving EGSs the choice to either revise existing contracts to comply with the new restrictions or to wait until the contract expiration period to offer new compliant contract terms. All of these situation specific factors make clear that the concerns the Commission sought to address with the *Fixed Price Label Order* are not present here. Thus, rather than attempting to fit a square peg into a round hole and creating additional costs on EGSs who wish to revise existing contracts prior to expiration to offer existing customers CAP-compliant products, RESA recommends that the Commission not apply the *Fixed Price Label Order* to require affirmative consent before the EGS may revise the existing contract.

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<sup>10</sup> *Fixed Price Label Order* at 2-3.

<sup>11</sup> *Id.* at 25-26.

<sup>12</sup> *Id.* at 26.

<sup>13</sup> TO at 15.

Also worth noting is that the TO does not provide any direction about what an EGS is expected to do if it elects to revise an existing customer's contract and does not receive the existing customer's consent to revise the contract to one that is CAP-complaint. Can the EGS continue to serve its customer at existing contract terms pending the end of the contract? Can the EGS drop the customer pursuant to contract cancellation terms? Neither of these options seem to be in accord with the goals of the Commission to enable CAP participants to receive price-restricted service from competitive suppliers and further illustrates why applicability of the *Fixed Price Label Order* in this context does not serve a legitimate purpose.

Thus, rather than creating more obstacles for EGSs seeking to revise existing customer contracts to place their customer on a CAP-compliant product, RESA recommends that the Commission make the process as efficient as possible for both the customer and the EGS. To that end, RESA recommends that an EGS electing to revise an existing contract (prior to expiration) to be compliant with the new CAP restriction be permitted to rely on the normal 54.10 notice process. Requiring EGSs to follow this same process whether the EGS is electing to offer the CAP-compliant product prior to expiration of the existing contract or during the expiration period enables EGSs to rely on existing protocols, is consistent with current practices and provides EGSs the greatest flexibility to convert existing customers to CAP compliant products as soon as possible. This outcome is consistent with the policy goals of the Commission and does not require applicability the *Fixed Price Label Order* requirements that were never designed for revising existing contracts to comply with Commission mandated pricing restrictions for CAP participants.

**C. Streamline The Process For EGSs To Elect To Drop Existing Customer Prior To Expiration Of The Contract**

The TO recognizes that EGSs may choose to drop existing customers who enroll in FirstEnergy's CAP program consistent with a contract cancellation term.<sup>14</sup> Apart from the notice requirements of 54.10 during contract expiration or to change a material term, EGS contracts usually contain specific cancellation provisions which detail how and why the EGS may elect to cancel an existing contract. Because these contract cancellation provisions cover issues not governed by 54.10 and there are no specific Commission regulations specifically addressing contract cancellation, EGS contract cancellation provisions are likely to be very different among EGSs and potentially among different types of contracts and/or customers. Notwithstanding this, the TO directs that an EGS wishing to cancel a contract must "inform the customer. . . in accordance with the then existing contract, but not less than 30-days in advance of the customer being dropped to default service."<sup>15</sup> RESA requests that the Commission remove the newly created timing requirement for several reasons.

First, as noted, EGS contracts will specify the timing of any contract cancellation notice requirements. Requiring the EGSs to act "in accordance with the then existing contract" cancellation notice requirements but then directing a 30 day advance notice requirement may be inconsistent with the contract terms. EGSs have invested time and energy to acquire their customers and to negotiate with the customer the contract terms related to their service. Directing EGSs to ignore these terms in certain circumstances creates confusion for customers

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<sup>14</sup> The TO affirms that during the contract expiration period, EGS will be required to comply with the requirements of 52 Pa Code § 54.10. TO at 18-19. RESA supports this approach.

<sup>15</sup> TO at 18 (emphasis added).

about the significance of the contract terms and requires EGSs to undertake additional processes to comply with the new requirements for some of their customers but not others.

Second, a 30-day notice period is not operationally necessary. Because of accelerated switching, an existing customer's service can be switched in three business days after the EGS notifies the EDC via EDI to make the change.<sup>16</sup> Thus, operationally, an existing EGS customer can be returned to the EDC in a much shorter timeframe than 30 days. As the Commission's policy goal is to create a ceiling on the price a CAP participant may pay equal to or below the EDC's PTC, permitting an EGS to more quickly drop the customer furthers this goal. As such adding in a required 30-day notice period before the EGS can return the customer to the EDC is unwarranted.

For all these reasons, RESA recommends that the final order permit those EGSs wishing to cancel existing contracts because their customer has enrolled in CAP to do so consistent with the contract's existing cancellation terms. Doing this will be consistent with how contract cancellations are handled every day in Pennsylvania and there is nothing about this proceeding to warrant a deviation from the existing processes.

**D. Set The Safe Harbor Period Consistent With The Initial Notice Timeframe**

Given that consumers may move in and out of the CAP program on a regular basis meaning that an EGS customer's CAP status may change throughout the EGS contract period, RESA fully supports the TO's proposal to establish a safe harbor period during which the EGS may rely on its customer's CAP status to determine how to handle the customer's contract. This is important because the EGS may take different actions during the contract renewal period

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<sup>16</sup> 52 Pa. Code § 57.174(a).

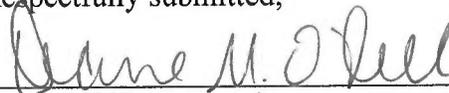
depending on the existing customer's CAP status. Thus, if the customer is now a CAP participant, the EGS may want to offer a CAP-compliant contract. If the CAP status of the customer, however, is not known until the 30-day Options Notice period, then it may be too late for the EGS to revise its processes (and the provided notices) to accommodate that new fact. Therefore, RESA recommends that the safe harbor period be tied with the Initial Notice period, i.e. 60 days prior to contract expiration. EGSs should be permitted to rely on the CAP status of their existing customers at this point in time to determine how the EGS will proceed. Thus, if the customer is not enrolled in CAP but enrolls in CAP subsequently, the safe harbor period permits the EGS to treat the customer as a non-CAP participant throughout the duration of the contract expiration/renewal period. This is a reasonable way for EGSs to manage the timing and contract expiration requirements while using best efforts to effectuate the policy goals of the Commission in this proceeding.

### III. CONCLUSION

RESA appreciates this opportunity to provide its viewpoint regarding this important proceeding and recommends that the Commission revise the following proposals in its final order:

1. EGSs wishing to offer an existing month-to-month customer a CAP-compliant product will be permitted to do so through the appropriate EDI transactions (i.e. notice to FirstEnergy of rate change) with flexibility regarding the notice to be provided to the customer so long as it is consistent with any contract terms for notice.
2. EGSs electing to revise an existing contract (prior to expiration) to be compliant with the new CAP restrictions shall be permitted to rely on the normal 54.10 notice process (and are not require to receive affirmative consent prior to revising the existing contract).
3. EGSs wishing to cancel existing contracts because their customer has enrolled in CAP shall be permitted to do so consistent with the contract's existing cancellation terms.
4. EGSs shall be permitted to rely on the CAP status of their existing customers 60 days prior to the expiration of the existing contract to determine what options the EGS may offer during the contract renewal period.

Respectfully submitted,



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Date: January 22, 2019

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