

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

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July 30, 2019

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

Re: Electric Distribution Company Default  
Service Plans – Customer Assistance Program  
Shopping  
Docket No. M-2018-3006578

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,

Handwritten signature of Christy M. Appleby in blue ink.

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Enclosures:

cc: Kriss Brown, Law Bureau  
Tiffany Tran, Law Bureau  
Certificate of Service  
\*276749

BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Electric Distribution Company :  
Default Service Plans -- : Docket No. M-2018-3006578  
Customer Assistance Program Shopping :

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COMMENTS  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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**I. INTRODUCTION**

On December 20, 2018, the Pennsylvania Public Utility Commission (Commission) directed the Commission’s Law Bureau to prepare by no later than February 28, 2019 “an Order to amend an existing policy statement, or to create a new policy statement addressing the issue of electric distribution company (EDC) Customer Assistance Program (CAP) participant shopping with electric generation suppliers (EGS).” Policy Statement Order at 1; see also, Electric Distribution Company Default Service Plans – Customer Assistance Program (CAP) Shopping, Motion of Commissioner David W. Sweet, Public Meeting, December 20, 2018, Docket No. M-2018-3006578.<sup>1</sup> On February 28, 2019, the Commission issued its Proposed Policy Statement Order, and the Policy Statement Order was published in *Pennsylvania Bulletin* on Saturday, June 15, 2019. Interested parties were to provide Comments within 45 days of the publication in the *Pennsylvania Bulletin*, and Reply Comments are due 15 days thereafter, or 60 days after

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<sup>1</sup> The CAP is designed to provide an affordable bill to the CAP customer to better enable the customer to make the monthly bill payment. See 52 Pa. Code § 69.265(2)(i)(A). In general, CAP provides bill payment assistance to eligible low-income customers who are payment-troubled. The difference between the full residential customer bill and the discounted bill provided to CAP customers is collected from all non-CAP residential ratepayers through the Universal Service Charge.

publication in the *Pennsylvania Bulletin*. In accordance with the requirements of the Proposed Policy Statement Order, the OCA submits the following Comments in support of the proposed Policy Statement Order.

Under the Public Utility Code, the Commission has the clear legal authority, as well as a duty, to maintain affordable, cost-effective universal service programs and may exercise that authority to implement rules for CAP customer shopping within the universal service programs. See, Retail Energy Supply Ass'n v. Pa. PUC, 185 A.3d 1206 (Pa. Cmwlth. 2018). Universal service programs are defined in the Customer Choice Act as follows:

**“Universal service and energy conservation.”** Policies, protections and services that help low-income customers to maintain electric service. The term includes customer assistance programs, termination of service protection and policies and services that help low-income customers to reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction program, application of renewable resources and consumer education.

66 Pa. C.S. § 2803. The Customer Choice Act specifically requires that universal service and energy conservation are to be maintained and supported as part of the restructuring of the electric industry. Specifically, Section 2802(10) provides:

The Commonwealth must, at a minimum, continue the policies, protections and services that now assist customers who are low-income to afford electric service.

66 Pa. C.S. §2802(10). Section 2802(17) also requires the following:

There are certain public purpose costs, including programs for low-income assistance, energy conservation and others, which have been implemented and supported by public utilities' bundled rates. The public purpose is to be promoted by continuing universal service and energy conservation policies, protections and services, and full recovery of such costs is to be permitted through a nonbypassable rate mechanism.

66 Pa. C.S. § 2802(17). These purposes are specifically recognized along with the essential nature of electric service and the need for electric service to be available on reasonable terms and conditions to all customers. The Act provides:

Electric service is essential to the health and wellbeing of residents, to public safety and to orderly economic development, and electric service should be available to all customers on reasonable terms and conditions.

66 Pa. C.S. § 2802(9).

The Commission's Proposed Policy Statement Order provides important rules and protections for CAP customers who are participating in the retail electric choice market. The proposed Policy Statement on Electric Customer CAP Shopping "sets guidelines for EDCs that limit harm to CAP participants while still providing CAP participants the benefits of the retail electric market." Policy Statement Order at 1. The Proposed Policy Statement Order provides that EDCs should include the following provisions in a CAP customer shopping plan:

1. A requirement that the CAP shopping product has a rate that is always at or below the EDCs' PTC(s) over the duration of the contract between the EGS and the CAP participant.
2. A provision that the contract between the EGS and the CAP participant contains no early termination or cancellation fees.
3. A provision that, at the end of the contract, the CAP participant may re-enroll with the EGS at a product that meets the same requirements as outlined in numbers 1 and 2 above, switch to another EGS offering a product that meets those requirements or be returned to default service.

Proposed Policy Statement Order at 3; Proposed 52 Pa. Code § 69.275(a)-(b). The Commission's Proposed Policy Statement Order provides that the mechanics of the CAP shopping programs should be developed in the next EDC default service proceedings. Proposed Policy Statement Order at 3; Proposed 52 Pa. Code § 69.274.

The Order identifies the need for protections, in part, based upon the CAP shopping experiences in PPL's and the FirstEnergy Companies' service territories. In support of the need for additional protections, the Order raises the impact of unrestricted CAP customer shopping in PPL's service territory:

In PPL Electric Utility Corporation's (PPL) most recent default service plan proceeding, PPL provided data showing that, over the 34-month period ranging from January 2013 through October 2015, an average of 49 percent of PPL's CAP participants were shopping and, of the CAP participants who were shopping, 55 percent were paying above PPL's Price to Compare (PTC). PPL compared that information with information regarding those CAP participants who shopped during the same time period and paid at or below the PTC and found that the net financial impact was approximately \$2,743,872 over 12-months. PPL concluded, and this Commission agreed, that two forms of harm resulted from CAP shopping: (1) those CAP participants paying a rate greater than PPL's PTC were exceeding their CAP credits at a faster rate, which put those CAP participants at risk of being removed from CAP; and (2) that non-CAP participant ratepayers who subsidize CAP participants and a limit on early termination fees. Additionally, at the end of the contract term a requirement was added that limited an EGS to only re-enroll the CAP participant at the new CAP shopping rate or returning the CAP participant to default service. The Commonwealth Court upheld the Commission's decision, finding that the Commission had the authority to place conditions under which CAP participants could receive CAP benefits.

Proposed Policy Statement Order at 2, citing 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, Order (October 27, 2016)(PPL DSP Order), *affirmed*, Retail Energy Supply Ass'n v. Pa. PUC, 185 A.3d 1206 (Pa. Cmwlth. 2018).

The Commission's Order also relies upon the CAP shopping experiences identified in the FirstEnergy Companies' Default Service Plan filing:

Similarly, in the FirstEnergy Companies' most recent default service proceeding, evidence showed that over a 58-month period ranging from June 2013 through March 2018, nearly 65 percent of FirstEnergy's CAP participants who were shopping with EGSs paid rates higher than FirstEnergy's applicable PTCs, resulting in a net impact of \$18.3 million in increased costs associated with CAP. This Commission agreed with the ALJ that the record evidence demonstrated that, over a long period of time, most of FirstEnergy's CAP participants paid rates higher than the PTC. FirstEnergy's CAP participants' monthly maximum CAP participants paid rates higher than the PTC. FirstEnergy's CAP participants' monthly maximum CAP credits are based on their average annual electric bill less a percentage of their annual income. Therefore, paying rates higher than the PTC increases the likelihood that CAP participants will exceed their monthly maximum CAP credits and incur charges [sic] they may not be able to pay. If CAP participants are unable to pay their utility bills, utility uncollectibles are increased, which are then recovered from the rest of the utility's residential ratepayers, causing

those ratepayers harm, as well. As a result, the Commission directed FirstEnergy to develop a CAP shopping program that allows CAP participants to only enter into a contract with an EGS for a rate that is always at or below the EDC's PTC(s) over the duration of the contract between the EGS and the CAP participant, and which contained no early termination or cancellation fees.

Proposed Policy Statement Order at 2, citing Joint Petition of Met-Ed, et al. for Approval of their Default Service Programs for the Period Beginning June 1, 2019 through May 31, 2023, Docket Nos. P-2017-2637855, et al., Order (November 1, 2018) (FirstEnergy DSP Order).

The Office of Consumer Advocate (OCA) appreciates the opportunity to respond to the Commission's proposed Policy Statement. The OCA supports the Commission in its endeavors to allow CAP customers to participate in the retail choice environment in such a manner that will provide CAP customers and the non-CAP residential customers who pay the costs of the programs with additional protections related to CAP customer shopping. As the Policy Statement Order correctly identifies and as is discussed in greater detail below, experience with CAP customer shopping in the PPL Electric Company and FirstEnergy Companies' service territories has demonstrated the need for additional protections for both CAP customers and the non-CAP customers who pay the costs of the programs. In these Comments, the OCA makes several specific recommendations regarding: (1) a definition of the term "rate per kilowatt hour;" (2) a modification to add-on fees; and (3) a modification of the provision related to CAP customer eligibility for the CAP Shopping program. The OCA has shown its specific recommendations in each section. The OCA has capitalized its proposed additions and used strike through to show the OCA's proposed deletions.

## II. COMMENTS

### A. Section 69.673

The OCA submits that definitions related to “rate per kilowatt hour” should be defined in its definition Section 69.273. The Commission utilizes the term “rate per kilowatt hour” in Section 69.275(b)(1) of the Proposed Policy Statement. Section 69.275(b)(1) states:

(b) When addressing CAP participant electric generation shopping in default service programs, an EDC should include the following limitations:

(1) A requirement that a contract between an EGS and a CAP participant has a rate per kilowatt-hour that is at or below the EDC’s PTC in effect during the entire duration of the contract.

Proposed Section 69.275(b)(1).

The term “rate per kilowatt hour” could be construed to include other incentives for enrollment or participation with an EGS, and as there may be potential for confusion, the term should specifically be defined to exclude any other consideration of incentives for CAP customer shopping in the determination of the “rate per kilowatt hour.” The OCA submits that the “rate per kilowatt hour” should be defined as “the rate at which bills for current service are calculated, excluding any other incentives, including, but not limited to, gift cards, rewards incentives, or other gifts for enrollment or participation.”

### B. Section 69.275(b)(2)

The OCA submits that proposed Section 69.275(b) should be revised to remove the limitation in Section 69.275(b)(2)(iii) related to “other fees *unrelated to the provision of electric generation service to the CAP participant.*” Inclusion of the phrase “unrelated to the provision of electric generation service to the CAP participant” could potentially *allow* for other fees to be included. Those other add-on fees might include monthly service fees or enrollment fees. The

OCA submits that the Policy Statements should be to modified to clarify that the CAP customer may not be charged any fees which would otherwise increase the customer's bill.

In the FirstEnergy DSP Order, the Commission specifically prohibited the inclusion of any add-on fees. The Commission stated in the FirstEnergy DSP Order that:

The Commission proposed to prohibit any add-on fees; not just early termination fees (ETFs), as they could result in a product offered to PCAP participating customers that has a rate that is above the PTC. This prohibition would include fees that suppliers charge customers in addition to the per-kWh rate, such as membership fees, enrollment fees, monthly service fees, etc.

FirstEnergy DSP Order at 15. The prohibition of these additional fees is important because they can potentially significantly increase the amount that the CAP customer must pay as a part of the EGS contract. There are potentially no limits on additional fees. Allowance of such fees would undermine the purpose of the CAP Shopping Policy Statement which is to ensure that CAP customers are to participate in retail choice market and at the same time, maintain affordable service.

The OCA proposes the following changes to Section 69.275(b)(2) to address the issue identified:

(b) When addressing CAP participant electric generation shopping in default service programs, an EDC should include the following limitations:..

(2) A requirement that a contract between an EGS and a CAP participant contains no:

- (i) Early termination fees.
- (ii) Cancellation fees.
- (iii) Other fees OF ANY TYPE. ~~unrelated to the provision of electric generation service to the CAP participant.~~

Proposed Section 69.275(b)(2).

C. Section 69.276(a)

The OCA proposes the following modification to Proposed Section 69.276(a):

(a) Participation in a CAP participant electric generation shopping program is contingent upon a CAP participant's continuing TO RECEIVE CAP BENEFITS. ~~eligibility for CAP benefits, as verified through an annual reapplication for CAP benefits process established pursuant to § 69.265(6)(viii)(relating to CAP design elements).~~

Proposed Section 69.276(a)(emphasis added). The OCA submits that not all CAP participants have an annual reapplication, or recertification, process. The recertification process may vary from utility to utility. Some utilities have a biannual reapplication process and others permit the receipt of a LIHEAP grant to substitute for the income recertification process for a period of years. The determination should be limited to whether the customer continues to receive CAP benefits.

D. Section 69.276(b)

The OCA proposes that Section 69.276(b) be modified. Section 69.276(b) states:

(b) A CAP participant that enters into a contract with an EGS that does not fit the requirements set forth in this policy statement shall be disqualified from participation in CAP.

Proposed Section 69.276(b). Section 69.276(b) is written as if the CAP customer will be automatically disqualified from CAP if the CAP participant enters into a contract with an EGS that does not meet those regulatory requirements. The OCA submits that automatic disqualification from CAP may unfairly penalize a CAP customer who may not have had any notice that the contract was non-compliant and who may not fully understand the reasons for the disqualification from CAP.

The OCA submits that a CAP participant should not be automatically disqualified from participation in CAP unless the CAP participant has affirmatively chosen to enter into or remain in a contract that is not non-compliant with the CAP shopping rules. The CAP customer must

have full knowledge before signing the contract that it is non-compliant. The Commission should make clear that this is a requirement for an EGS seeking to enroll a CAP customer.

Moreover, under the Policy Statement, a utility is required to provide notice to a CAP participant of the consequences of defaulting from CAP. 52 Pa. Code § 69.265(7)(i). If a default is to occur as a result of entering a non-compliant contract, the same type of notice as to the consequences of defaulting from CAP should be provided.

To address these two issues, Section 69.276(b) should be modified as follows:

(b) A CAP participant that enters into a contract with an EGS that does not fit the requirements set forth in this policy statement shall be disqualified from participation in CAP IF:

(i) THE CAP CUSTOMER HAS BEEN FULLY INFORMED BY THE EGS BEFORE SIGNING THE CONTRACT THAT THE CAP CUSTOMER WILL NO LONGER RECEIVE THE BENEFITS OF CAP PARTICIPATION, INCLUDING CAP CREDITS OR DISCOUNTS OR ARREARAGE FORGIVENESS AND

(ii) THE CAP CUSTOMER RETURNS AND SIGNS A CONFIRMATION THAT READS:

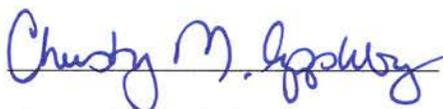
WE HAVE DETERMINED THAT THE CONTRACT YOU RECENTLY SIGNED WITH XXX EGS WILL REQUIRE YOUR REMOVAL FROM CAP. THE EGS CONTRACT DOES NOT MEET THE REQUIREMENTS THAT A CAP SHOPPING CONTRACT MUST BE AT OR BELOW XXX ELECTRIC DISTRIBUTION COMPANY'S PRICE TO COMPARE. BY YOUR SIGNATURE TO THIS FORM, YOU HAVE CONFIRMED THAT YOU UNDERSTAND THAT YOU MAY RECEIVE HIGHER BILLS AS A RESULT OF THE LOSS OF THE CAP BENEFITS, WILL NO LONGER RECEIVE CAP BENEFITS INCLUDING A CAP DISCOUNT OR FORGIVENESS FOR PAST ARREARS. DO YOU WISH TO TERMINATE YOUR PARTICIPATION IN CAP?

The OCA submits that these notice and confirmation procedures are necessary to ensure that the CAP participant has made a fully informed choice. The sole onus of determining a non-compliant contract should never be placed on the CAP participant.

### III. CONCLUSION

The OCA welcomes the Commission's efforts to provide additional protections regarding CAP customer shopping. The OCA looks forward to continuing to work with the Commission and the stakeholders to develop appropriate and necessary protections for CAP customers and non-CAP residential customers who pay the costs of the programs.

Respectfully Submitted,



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DATE: July 30, 2019

CERTIFICATE OF SERVICE

Re: Electric Distribution Company :  
Default Service Plans – Customer : Docket No. M-2018-3006578  
Assistance Program Shopping :

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 30<sup>th</sup> day of July 2019.

SERVICE BY E-MAIL AND INTER-OFFICE MAIL

Richard A. Kanaskie, Esquire  
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SERVICE BY E-MAIL AND FIRST CLASS MAIL, POSTAGE PREPAID

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