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July 30, 2019

**VIA ELECTRONIC FILING**

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:

Enclosed, please find the comments of the UGI Utilities, Inc. – Electric Division (“UGI Electric”) filed in response to the Commission’s Proposed Policy Statement Order on electric Customer Assistance Program participant shopping.

Very truly yours,

DocuSigned by:  
*Danielle Jouenne*

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Danielle Jouenne  
Counsel for UGI Electric

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Enclosure

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Electric Distribution Company Default	:	
Service Plans – Customer Assistance	:	Docket No. M-2018-3006578
Program Shopping	:	
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**COMMENTS OF UGI UTILITIES, INC. – ELECTRIC DIVISION**

**I. INTRODUCTION**

UGI Utilities, Inc. – Electric Division (“UGI Electric”) appreciates this opportunity to submit comments in response to the Pennsylvania Public Utility Commission’s (“Commission”) Proposed Policy Statement on electric distribution company (“EDC”) Customer Assistance Program (“CAP”) participant shopping issued for comment on February 28, 2019. UGI Electric also supports the comments filed concurrently by the Energy Association of Pennsylvania (“EAP”).

UGI Electric is a “public utility” and an EDC as those terms are defined under the Public Utility Code, 66 Pa. C.S. §§102 and 803, and provides electric distribution, transmission, and default electric supply services to approximately 62,000 customers in portions of Luzerne and Wyoming counties. Approximately 56,000 of UGI Electric’s retail customers are residential customers. UGI Electric is a small EDC in terms of customer base but its annual operating revenue is still in excess of the \$40 million threshold set by the CAP Policy Statement at 52 Pa. Code §§ 69.261 et seq, and therefore it is required to offer a CAP to eligible residential customers. UGI Electric has not and does not currently offer a CAP participant shopping program in its current

Commission-approved electric default service plan at Docket No. P-2016-2543523 (Order, entered November 9, 2016).

As recognized by both the Commission and the Pennsylvania Commonwealth Court, there are two policy concerns in tension with respect to the ability of CAP participants to choose their electric supplier: the promotion of customer choice on the one hand and protecting access, affordability, and cost-effectiveness on the other.<sup>1</sup> The Commission has noted that the election of some EDCs to offer CAP shopping programs has resulted in CAP customers paying higher electric utility bills to their detriment. The Commonwealth Court has likewise recognized this impact and has upheld the Commission’s purview to place restrictions on competition when doing so would serve the other public benefit of universal service for low income customers.<sup>2</sup>

UGI Electric acknowledges the important policy goals that the Commission aims to achieve in this Proposed Policy Statement – namely the protection of CAP participants from harm in the form of paying higher rates with an Electric Generation Supplier (“EGS”) than they would under their EDC’s applicable default service rates (“price to compare” or “PTC”). UGI Electric believes that the Proposed Policy Statement’s aims of setting the correct balance between providing customer choice and providing affordable utility service would be furthered by consideration and incorporation of certain principles: (1) The Proposed Policy Statement should serve as a guide to utilities that *choose* to institute CAP participant shopping rather than as a vehicle to *mandate* CAP participant shopping; (2) If CAP participant shopping is mandated, small EDCs and combined gas-electric utilities should be granted a waiver or delay in plan implementation; (3) EGSs should play a commensurate role in the safeguarding of CAP participant shopping

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<sup>1</sup> *Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania v. Pennsylvania Public Utility Commission (CAUSE-PA)*, 120 A.3d 1087, 1101 (Pa. Cmwlth. 2015) (en banc), allocatur denied, 635 Pa. 766, 136 A.3d 982 (2016),

<sup>2</sup> *Id.* at 1103 and 1107.

customers; (4) Costs to administer CAP shopping must be allocated appropriately so that other utility customers do not disproportionately bear the costs; (5) The Proposed Policy Statement should ensure that EDCs have sufficient time to develop and implement their CAP participant shopping plan; (6) Reporting requirements must be clearly stated in the Proposed Policy Statement; and (7) The Proposed Policy Statement must clarify in which circumstances and with what immediacy a CAP customer must be removed from a non-compliant EGS plan given that the PTC and EGS rate change over time.

## II. COMMENTS

### **A. The Proposed Policy Statement should serve as a guide for utilities that choose to institute CAP participant shopping rather than as a vehicle to mandate CAP participant shopping**

Currently the language of the Proposed Policy Statement suggests that all EDCs with CAP programs should offer CAP participant shopping.<sup>3</sup> In developing its final policy statement, the Commission may wish to consider moving away from this premise and instead employ the final policy statement as a guide for those EDCs that elect to institute CAP shopping. The Electricity Generation Customer Choice and Competition Act (“Electric Choice Act”)<sup>4</sup> itself, while it requires that EDCs allow customers to choose among electric generation suppliers, does not mandate a CAP participant shopping program. All customers must be permitted to choose their EGS, but that does not necessarily mean that such Choice customers are also entitled to participate in CAP, which is a universal service program subsidized by other residential ratepayers.

### **B. Small EDCs and combined gas-electric utilities should be granted a waiver of CAP participant shopping requirements or compliance delay in plan implementation.**

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<sup>3</sup> See, proposed Section 69.274(a) from the Policy Statement, “An EDC should develop a CAP participant electric generation shopping program consistent with the guidelines provided in....”

<sup>4</sup> Act of Dec. 3, 1996, P.L. 802, No. 138; 66 Pa. C.S. § 2801 et seq.

If the Commission interprets the Electric Choice Act to require that an EDC initiate a CAP participant shopping program, there are public policy rationales for permitting some EDCs to either be waived from offering such a program or to have such program implementation delayed. Waiver would be reasonable for EDCs whose small customer bases would bare an unreasonable burden of implementation costs. UGI Electric would recommend that the Commission revise the Proposed Policy Statement to provide an exception to the CAP participant shopping requirement for those EDCs with fewer than 100,000 customers. Both the legislature and the Commission have used a customer base of 100,000 as a reasonable threshold in determining the applicability of certain statutory and regulatory obligations.<sup>5</sup>

In lieu of outright waiver of the requirement to operate a CAP participant shopping plan, delayed implementation of such a requirement is warranted until sufficient data is available from currently operating programs. EDCs that have enacted CAP participant shopping programs are still refining such programs and it would benefit other, and particularly smaller, EDCs to wait until those existing programs generate sufficient data over several years of operation prior to investing significantly in such a program. As noted by the Commonwealth Court in *RESA v. PaPUC*, CAP participant shopping programs have not always resulted in financial benefit to CAP participants.<sup>6</sup> In the original “OnTrack” CAP shopping program offered by PPL Electric Utilities Corporation (“PPL”) “approximately half of the CAP customers...were paying more than the PTC.”<sup>7</sup> The estimated annual impact on CAP customers paying above the PTC was \$3,580,872.<sup>8</sup> It would behoove the Commission to permit existing programs, such as the PPL CAP Standard Offer

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<sup>5</sup> See, e.g. 66 Pa.C.S. § 2806.1(l) (Act 129 Energy Efficiency and Conservation Plan); 66 Pa. C.S. § 2807(f)(6) (smart meter implementation); 52 Pa. Code § 62.7 (universal service reporting requirements)

<sup>6</sup> *Retail Energy Supply Association v. Pennsylvania Public Utility Commission*, 185 A.3d 1206 (2018)

<sup>7</sup> *Id.* at 1210.

<sup>8</sup> *Id.* at 1212.

Program (“CAP-SOP”) which replaced OnTrack and which was upheld by the Commonwealth Court in *RESA v. PaPUC*, to operate and generate data for the benefit of EDCs that have not yet invested significantly in such programs.

Delayed implementation would also benefit combined electric-gas utilities. As in the case of UGI Electric, there are combined electric-gas utilities that share customer information systems and process for both their EDC and their natural gas distribution company (“NGDC”) operations. If UGI Electric were to implement a CAP participant shopping program, it would either need to segment that program to just apply to the EDC customers – at potentially considerable expense to that small customer base – or it would apply the program to both EDC and NGDC customers in advance of the Commission fully developing its policy on CAP participant shopping for NGDCs.

For the reasons stated above, the Commission would be more appropriately balancing the concerns of customer choice and protecting customer access to affordable utility services if it presented the Proposed Policy Statement as guidance only in such a case where a utility elects to offer a CAP shopping program. In lieu of such an approach, UGI Electric recommends that the Commission consider permitting a waiver of the Proposed Policy Statement’s requirements on small EDCs and combined EDC-NGDC utilities. At minimum, and for the reasons stated above, UGI Electric would propose delayed implementation of the CAP participant shopping plan requirement.

**C. EGSs should play a commensurate role in the safeguarding of CAP participant shopping customers.**

The Proposed Policy Statement raises many questions regarding the role that the EDC and/or EGS should play in CAP participant shopping program administration and in the safeguarding of CAP participant shopping customers. The Proposed Policy Statement sets certain requirements for a compliant CAP participant shopping plan and appears to place the onus on an

EDC to enforce the limitations on such a plan; “an *EDC* should include the following limitations...” (emphasis added)<sup>9</sup> Among those limitations are contractual terms between the EGS and the CAP customer.<sup>10</sup> The Proposed Policy Statement should clarify that the onus for compliance with these requirements falls on the EGS, rather than the EDC. It is not the role of the EDC to approve or audit the contract language between an EGS and a Choice customer. The EDC also has limited or no visibility into a contract between an EGS and a Choice customer and makes the EDC policing role suggested by the Policy Statement virtually impossible. The Proposed Policy Statement should clarify that the EDC does not assume a policing role in assuring EGS compliance with the Proposed Policy Statement.

Additionally, because participation in CAP is limited to those individuals meeting low-income criteria, information as to whether a customer participates in CAP may be considered to be sensitive. The Proposed Policy Statement should be revised to provide more specificity as to what communications are permissible between an EGSs and an EDCs to confirm eligibility in the CAP participant shopping program.

Similarly, prospective CAP participants interested in shopping will need to be educated and advised on the elements of CAP shopping. Putting aside the CAP training and informational materials already maintained by the utility that will need to be updated, there are costs associated with customer education. The Proposed Policy Statement should clarify that EGSs have the primary responsibility to educate prospective customers on a program that the EGSs offer and how it may impact their eligibility in a CAP program. In particular, an EGS should be required to disclose to a prospective CAP shopping customer that if such EGS contract does not fit the policy statement requirements the customer shall be disqualified from CAP. Similarly an EGS should

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<sup>9</sup> Proposed 25 Pa. Code. §69.275(b)

<sup>10</sup> *Id.*

disclose to a low income customer eligible for CAP but not currently enrolled that they would be no longer eligible if they contract for a higher price with an EGS than the EDC's current PTC.

**D. Costs to administer CAP shopping must be allocated appropriately so that utility customers do not disproportionately bear the costs**

The implementation of CAP participant shopping in UGI Electric's system will require extensive programming to permit a current CAP participant to select an EGS, or permit a current Choice customer to enroll in CAP as UGI Electric's CAP Program currently does not allow a Choice customer to participate in CAP. Also, there may be different programming required depending on whether the supplier participates in UGI Electric's purchase of receivables ("POR") program or whether it is a non-POR supplier.

The Electric Choice Act at 66 Pa. C.S. § 1802(17) states that there is a public purpose in "continuing universal service and energy conservation policies, protections and services" and that "full recovery of such costs is to be permitted through a non-bypassable rate mechanism." However, the costs associated with the implementation of a CAP participant shopping program are not incurred for the purpose of promoting universal service and energy conservation policies. They are incurred to further retail consumer choice and permit a retail customer to shop for an alternate electric supplier. These costs are therefore not appropriately recoverable through an EDC's universal service rider, but rather through another mechanism, such as recovery from EGSs participating in an EDC's CAP participant shopping program. The Proposed Policy Statement should address how such costs are to be recovered.

**E. The Proposed Policy Statement should ensure that EDCs have sufficient time to develop and implement their CAP participant shopping plan**

Should the Commission deem that CAP participant shopping plans are mandatory and not subject to election, waiver, or delay, as proposed earlier in these comments, the Commission must,

at minimum, ensure that EDCs have sufficient time to develop their plans prior to their default service filing and then have sufficient time to implement such plans after the conclusion of the default service proceeding. The Proposed Policy Statement would require each EDC to develop a CAP participant shopping program in the first default service program filing submitted for Commission approval six months after Commission approval of this Proposed Policy Statement.<sup>11</sup> UGI Electric would propose that this period be extended to twelve months to work through the considerable administrative issues involved in plan implementation. This additional six months would assist an EDC to complete sufficient pre-scoping to occur to ensure that all costs associated with the CAP participant shopping plan proposed by the EDC are contemplated during the default service proceeding.

As each EDC's CAP participant shopping proposal will be subject to modification during the default service proceeding, flexibility in the implementation period will be key to the successful operation of these programs. Each EDC may need more or less implementation time for their CAP participant shopping program depending on the specific program design and the information systems utilized by the EDC. UGI Electric would recommend that the Commission consider the option of permitting EDCs to delay the retail choice aspect of their default service plan if needed to ensure successful implementation.

**F. Reporting requirements must be clearly stated in the Proposed Policy Statement.**

To the extent that the Commission intends for EGSs or EDCs to provide informational reports on the operation of the CAP participant shopping plans, those reporting obligations should be set out with specificity in the Proposed Policy Statement or elsewhere in Commission regulations to ensure that either an EGS or an EDC can incorporate and fully plan for any such

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<sup>11</sup> Proposed 52 Pa. Code § 69.2784(b)

reporting requirements in the design of their system. With utilities developing ever more sophisticated customer service information systems, such reporting must be considered at the design stage in order to provide the Commission with timely information. In order to maximize efficiency and avoid time consuming manual manipulation and review of data, staff data requests should be considered a last resort to information gathering.

**G. The Proposed Policy Statement must clarify in what scenarios and with what immediacy a CAP customer must be removed from a non-compliant EGS plan given that the PTC and EGS rate change over time.**

The Proposed Policy Statement provides that “[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.” There are several questions raised by this disqualification language. First, one of the main precepts of the Proposed Policy Statement is that a CAP customer cannot choose an EGS plan with a rate higher than the PTC. However, the PTC is a rate that may vary on a quarterly basis. Likewise an EGS rate may vary. A CAP customer who chooses a less expensive EGS plan one month may find, after a quarterly PTC rate change, that the EGS plan has become more expensive than the PTC. It would benefit both EDCs and EGSs alike to understand under what circumstances, and how expediently, the Commission expects customers to be disqualified from CAP for selecting a supplier plan with a rate higher than the PTC. The EGS may be in a better position than the customer to monitor the changes in the PTC rate against the supplier rate. Also, the Commission should consider whether the appropriate remedy for non-compliance with the Proposed Policy Statement is removal from CAP. If the intention of the Commission in issuing this policy statement is to modify existing CAP participant shopping plans to negate the harms caused to CAP and non-CAP customers alike, then removal of a low-income customer from a program designed to promote energy affordability seems a severe response.

### III. CONCLUSION

UGI Electric again appreciates the opportunity to provide comments on the Commission's Proposed Policy Statement on CAP participant shopping and respectfully requests that the Commission consider these comments in the development of its final policy statement.

Respectfully submitted,

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