

Deanne M. O'Dell
717.255.3744
dodell@eckertseamans.com

June 28, 2018

Via Electronic Filing

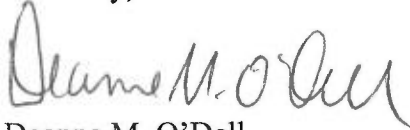
Rosemary Chiavetta, Secretary
PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

Re: Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company,
Pennsylvania Power Company and West Penn Power Company for Approval of Their
Default Service Program (DSP-V) – Docket Nos. P-2017-2637855; P-2017-2637857;
P-2017-2637858; and P-2017-2637866

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Exceptions of the Retail Energy Supply Association (“RESA”) with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,



Deanne M. O'Dell

DMO/lww
Enclosure

cc: Hon. Mary Long w/enc.
Office of Special Assistants – ra-OSA@pa.gov
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of RESA's Exceptions upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

Via Email and/or First Class Mail

Tori Giesler, Esq.
Lauren Lepkoski, Esq.
Teresa K. Harrold
FirstEnergy Service Company
2800 Pottsville Pike
PO Box 16001
Reading, PA 19612-6001
tgiesler@firstenergycorp.com
llepkoski@firstenergycorp.com
tharrold@firstenergycorp.com

Allison C. Kaster, Esq.
Gina L. Miller, Esq.
PA Public Utility Commission
Bureau of Investigation & Enforcement
PO Box 3265
Harrisburg, PA 17101-3265
akaster@pa.gov
ginmiller@pa.gov

Aron J. Beatty, Esq.
Hayley E. Dunn, Esq.
Christy M. Appleby, Esq.
Office of Consumer Advocate
555 Walnut St., 5th Floor, Forum Place
Harrisburg, PA 17101-1923
ABeatty@paoca.org
hdunn@paoca.org
cappleby@paoca.org

Daniel Asmus, Esq.
Office of Small Business Advocate
300 N. Second Street, Suite 202
Harrisburg, PA 17101
dasmus@pa.gov

Patrick Cicero, Esq.
Kadeem G. Moris, Esq.
Elizabeth R. Marx, Esq.
Pennsylvania Utility Law Project
118 Locust Street
Harrisburg, PA 17101
pulp@palegalaid.net

Susan E. Bruce, Esq.
Charis Mincavage, Esq.
Vasiliki Karandrikas, Esq.
Alessandra L. Hylander, Esq.
McNees Wallace & Nurick LLC
1 00 Pine Street
P.O. Box 1166
Harrisburg, P A 17108
sbruce@mwn.com
cmincavage@mwn.com
vkandrikas@mwn.com
ahylander@mcneeslaw.com

Thomas J. Sniscak, Esq.
William E. Lehman, Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
tjsniscak@hmslegal.com
welehman@hmslegal.com

Holly Rachel Smith, Esq.
Exelon Business Services Corp.
701 9th Street, NW Mailstop EP2205
Washington, DC 20068
Holly.Smith@exeloncorp.com

Todd S. Stewart, Esq.
Hawke McKeon & Sniscak LLP
100 North Tenth Street
Harrisburg, PA 17101
tsstewart@hmslegal.com

Charles E. Thomas III, Esq.
Thomas, Niesen & Thomas, LLC
212 Locust Street, Suite 302
Harrisburg, PA 17101
Cet3@tntlawfirm.com

Carl R. Shultz, Esq.
Eckert Seamans Cherin & Mellott
213 Market St., 8th Floor
Harrisburg, PA 17101
cshultz@eckertseamans.com

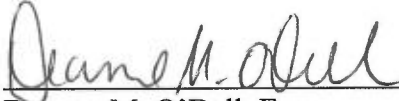
Via Hand Delivery and/ Email

Karen O. Moury, Esq.
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
kmoury@eckertseamans.com

Derek Rykaczewski, Esq.
Gexa Energy, L.P.
20455 State Highway 249, Suite 200
Houston, TX 77070
Derek.rykaczewski@gexaenergy.com

Kenneth C Springirth
4720 Cliff Drive
Erie, PA 16511

Dated: June 28, 2018



Deanne M. O'Dell, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**EXCEPTIONS OF
RETAIL ENERGY SUPPLY ASSOCIATION**

Deanne M. O'Dell, Esquire
Attorney ID #81064
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
(717) 237-6000 (phone)
(717) 237-6019 (fax)

Date: June 28, 2018

Attorneys for Retail Energy Supply
Association

TABLE OF CONTENTS

I. INTRODUCTION.....1

II. EXCEPTIONS.....4

A. Exception No. 1: The ALJ Erred By Concluding That There Is No Justification For the Retail Rate Mechanism And That The Companies Have Failed To Prove That The Proposal Is Just And Reasonable (FOF Nos. 42-46; RD at 51-56; COL Nos. 8-9).....4

1. The ALJ failed to consider the record evidence supporting the proposal and how the proposal could be an effective tool to address current market inequities.....5

(a) The record provides cost support for the proposed retail rate mechanism5

(b) The retail rate mechanism is justified by the current market inequities that disadvantage shopping customers7

2. ALJ did not consider how the retail rate mechanism could positively benefit all customers (including low-income)10

B. Exception No. 2: The ALJ Erred By Both Judging And Restricting The Right Of Participants In FirstEnergy’s Customer Assistance Programs (“CAP”) To Shop For Any Product Priced Above The Companies’ Price-to-Compare (“PTC”) (FOF Nos. 66-71, RD at 63-71; COL Nos. 16-17).....11

1. The ALJ erred in discounting the value of shopping to CAP participants.....12

2. The ALJ erred by directing specific restrictions on the ability of CAP customers to shop.....13

III. CONCLUSION16

I. INTRODUCTION

This proceeding presents the Commission with a great opportunity to implement an effective tool to at least partially address some of the undisputed market inequities that exist in today's retail market design while also having a positive impact on the specific needs of low-income customers. Achieving this result would be an unquestionable win for all consumers. To do this, the Retail Energy Supply Association ("RESA")¹ urges the Commission to deny two fundamentally flawed recommendations contained in the Recommended Decision ("RD") issued June 8, 2018 adjudicating the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, "FirstEnergy" or "Companies") Petition for Default Service Programs for the period of June 1, 2019 through May 31, 2023. The two recommendations that should be denied are: (1) rejecting adoption of the bypassable retail rate mechanism, and; (2) both judging and restricting the right of participants in FirstEnergy's customer assistance programs ("CAP") to shop for any product priced above the Companies' Price-to-Compare ("PTC").²

Consistent with prior Commission statements, the reality of today's retail marketplace for electricity is one in which default service is elevated as a "superior product."³ All competitive offers are judged relative to the default service PTC even though default service enjoys anti-

¹ 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 twenty 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.

² Although the RD denied some of the positions of RESA on other issues, RESA has elected to limit these Exceptions as discussed herein.

³ See, e.g., *Investigation of Pennsylvania's Retail Electricity Market: End State of Default Service*, Docket No. I-2011-2237952, Final Order entered February 14, 2013 at 12 and 21.

competitive advantages due to the traditional monopoly rate structure which continues to enable subsidies to be paid by shopping customers. Stated simply, a fully functional competitive market cannot exist when customers are educated to compare all offers to that of a single regulated entity and that entity: (1) is the historical monopoly provider, (2) the default provider for customers not electing another choice; (3) has the exclusive right to issue the bills and establish a relationship with all customers; and, (4) subsidizes its default service supply price through distribution rates – which no other supplier in the marketplace has the ability to do.

The end result is one that hurts consumers because they are not realizing the full value of a truly competitive market in which all providers are on equal footing with a fair opportunity to compete with one another to develop the products and services that consumers desire. Those consumers electing to shop are harmed because they are paying some generation related costs in their distribution rates even though they are not receiving generation services from the utility. Low-income consumers are harmed in such a marketplace too because competitive suppliers (assuming they are able to offer service to these customers) are not free to design the specific products and services that best suit the personal needs of the low-income customer.

Notwithstanding the opportunity presented in this proceeding, the RD erroneously (1) fails to adopt a very narrowly tailored retail rate mechanism designed to address a portion of the existing market inequities; and, (2) exacerbates the current retail market design flaw by using the existing PTC (without any adjustment) to both judge the impact of shopping by low-income CAP participants and recommends using the same PTC to restrict further shopping by these particular consumers. As explained more fully below, RESA does not support either recommendation and urges the Commission to reject them both. Not taking the opportunities presented in this

proceeding would be an unfortunate result for consumers who are being denied the chance to participant in a functional competitive market.

If, however, the Commission elects to deny RESA's Exceptions, then RESA urges the Commission to consider taking other action focused on addressing the concerns raised in this docket. To address concerns related to the PTC, the Commission could: (1) initiate cost allocation cases for the electric distribution companies ("EDCs") similar to what is contemplated in 52 Pa. Code § 69.1808; (2) direct staff from the Office of Competitive Market Oversight ("OCMO") to undertake a review of utility rates and submit a report and recommendation regarding potential reforms to the PTC to create better parity with competitive market price offerings; and/or, (3) open a generic proceeding to focus specifically on how to ameliorate the current competitive advantages that EDCs have in the retail market.

To address concerns related to CAP participants and shopping, the Commission could: (1) initiate a statewide proceeding focused on ways that low-income customers can have access to both CAP programs and shopping; (2) direct staff to include the issue of CAP shopping in the currently pending proceeding reviewing universal service and energy conservation programs at Docket No. M-2017-2596907; and/or, (3) direct each EDC to affirmatively include recommendations in their universal service plan dockets that give low-income customers access to both CAP programs and shopping. These alternative suggestions are just examples of ways that the Commission could elect to continue to move these issues forward if it denies RESA's Exceptions. The retail market structural issues raised in this proceeding merit further attention because doing nothing will mean continuing an unfortunate status quo whereby Pennsylvania's consumers are being denied a full and fair opportunity to realize all the benefits that can flourish in a functioning competitive market.

II. EXCEPTIONS

A. Exception No. 1: The ALJ Erred By Concluding That There Is No Justification For the Retail Rate Mechanism And That The Companies Have Failed To Prove That The Proposal Is Just And Reasonable (FOF Nos. 42-46; RD at 51-56; COL Nos. 8-9)

The Companies proposed a new retail rate mechanism that would be included as part of the bypassable PTC for default service residential customers. Adopting the Companies' proposal as structured would result in a per kWh amount of \$0.00144 that would be included in the PTC and refunded to all distribution customers.⁴ RESA supports the Companies' proposal as a step toward dealing with the market inequities that exist in today's retail market design. The ALJ errs in recommending that the Commission reject the proposal because the RD did not consider how the proposal: (1) is justified based on current (and undisputed) market inequities, (2) could positively impact these inequities; and, (3) could lead to a more functional competitive marketplace that benefits all consumers. Rather, the RD goes immediately off track by discrediting the Companies' stated purpose for the mechanism as a way to incent shopping and narrowly focusing on looking for a "connection" between the proposal and the costs to provide default service.⁵ Contrary to the conclusion of the RD, there is more than sufficient justification for the Companies proposals (particularly when focusing on the appropriate purpose) and the proceeds generated from the proposal could be used to financially support the Companies' CAP programs for the benefit of low-income customers.

⁴ FE Exhibit KLB-31.

⁵ RD at 45-56.

1. The ALJ failed to consider the record evidence supporting the proposal and how the proposal could be an effective tool to address current market inequities

The two foundational points underlying the ALJ's recommendation to deny the retail rate mechanism appear to be: (1) the mistaken belief that there are no "default service costs" that justify an increased PTC; and, (2) opposition to the Companies' view that the retail rate mechanism should be used as a way to incentivize shopping. The ALJ erred regarding both of these points.

(a) The record provides cost support for the proposed retail rate mechanism

According to the ALJ, the costs that would be added to the PTC as a result of the retail rate mechanism "are not predicated on the cost of generation"⁶ and "lack a direct connection" with the costs to provide default service.⁷ This conclusion is in error for several reasons.

First, the amount the Companies propose to add to the PTC does have a specific cost foundation as it approximates an amount that is "saved" by the Companies but incurred by the electric generation suppliers ("EGSs") for customer enrollment.⁸ All service providers need customers to provide service and customer enrollment costs are a normal part of providing service for any competitive service provider. Conversely the cost of enrolling a customer on

⁶ RD at 52.

⁷ RD at 56.

⁸ The Companies propose to calculate the charge by dividing \$30 over 24 months of residential consumption. The \$30 is derived from the fee that EGSs pay for each enrollment through the Companies' CRP. Utilizing the \$30 per customer fee is a reasonable way to approximate some of the costs EGSs incur for acquiring customers (but EDCs do not) because: (1) it was explicitly approved by the Commission for the standard offer program; and, (2) EGSs have demonstrated a willingness to incur this fee by agreeing to participate in the program. Therefore, it is reasonable to conclude that it is in line with or below the range of customer acquisition costs that EGSs incur through other marketing channels. RESA St. No. 1-R at 7-8.

default service is treated as a distribution function and recovered from all ratepayers, including shopping customers.

In this context, however, utilities have the unfair competitive advantage of not needing to charge this cost because they are the historical monopoly provider (giving them name recognition and an established history with all ratepayers) and the exclusive biller of services (reinforcing their name recognition and relationship with consumers). The fact that the default service supply rate does not include an allocation for the cost of customer enrollment for default service does not mean that those costs “lack a direct connection” with the costs to provide default service.⁹

Second, as supported by the record evidence in this proceeding, there are other costs related to default service that are not included in the PTC which are costs that EGSs also incur such as legal or regulatory and IT system costs.¹⁰ This means that there are costs of providing non-shopping customers default generation service that are embedded in the distribution rates paid by all customers (whether or not they are receiving default service). All customers – to some extent – are paying the costs of default service even those who are not receiving default service (i.e. shopping customers). Thus, even if the Commission is not inclined to require the Companies to include the avoided customer acquisition costs in the PTC, there is support in this proceeding to include an amount to account for the other costs related to default service that are undisputedly not being recovered in the PTC.

⁹ The customer acquisition cost is just one cost EGSs must incur to make a retail electric product available in the market and the Companies’ proposal does not factor into its calculation any of these additional costs. RESA MB at 12-13, citing RESA St. No. 1 at 24-25.

¹⁰ See Exhibit RJH-6, FirstEnergy Discovery Response to RESA-I-10. Other costs that FirstEnergy admitted as not being recovered in the PTC include metering and related expenses and billing system costs.

In sum, the RD errs by concluding that all costs of default service are being properly recovered through the PTC. As the record here shows, there are both “avoided” and other costs that are not included in the PTC. The failure to charge these costs (or a reasonable approximation) through the PTC disadvantages consumers because some EGSs may not make competitive offers where the default service rate does not reflect the true cost of generation supply service to all retail consumers. Moreover, when costs are embedded in the distribution rates that should be recovered through the PTC, customers who shop are harmed because they are paying for generation services that they are not receiving. For all these reasons, the record includes sufficient cost justification for the Companies’ retail rate mechanism and the ALJ’s recommendation to deny it should be denied.

(b) The retail rate mechanism is justified by the current market inequities that disadvantage shopping customers

Much of the RD addressing the proposed retail rate mechanism focuses on using it as a way to incentivize shopping. RESA strongly disagrees with viewing the retail rate mechanism in this way because doing so leads to all the difficulties identified in the RD (namely, how would success be measured? Would the mechanism be viewed by consumers as a penalty for not shopping?). Getting stuck in this hole serves no useful purpose and obfuscates the core inequities existing in the marketplace today that the retail rate mechanism would start to address. This point is well-proven by the RD because it does not mention the undisputed testimony of RESA’s witness discussing the unfair competitive advantage that EDCs enjoy today (advantages that the Commission has long acknowledged) and the anti-competitive advantages deprive consumers of the benefit of a vibrant competitive market. Further, because of the anti-competitive advantages, shopping customers are forced to pay artificially higher distribution

costs in order to subsidize utility default service. Failing to acknowledge these realities, predictably, results in no discussion in the RD about how to address them.

The Commission must not continue down this flawed path. The current inequities in the market include:¹¹

- Costs incurred by EDCs (unlike EGSs) are being recovered from all ratepayers through distribution rates (or other non-bypassable mechanisms) creating an artificially low PTC.
- Numerous other costs associated with the provision of generation supply service to retail customers are incurred by EGSs and included in their price offerings. Some of these costs are also incurred by EDCs but are recovered through distribution rates and are not factored into the PTC pricing for default service.
- As the provider of “first resort” default service with widespread brand recognition after decades as the monopoly service provider (and the current exclusive biller of electricity services), the EDC enjoys an inherent competitive advantage over competitive EGSs.

Ensuring a fair and level playing field in which competition could develop was a fundamental part of the Electricity Generation Customer Choice and Competition Act (“Competition Act”).¹² Specifically, the General Assembly “found and declared” that “the Commonwealth must begin the transition from regulation to greater competition in the electricity generation market” and “competitive market forces are more effective than economic regulation in controlling the costs of energy.”¹³ As part of the transition to competition, the Competition Act defines “direct access,” in part, at the right of EGSs to have nondiscriminatory access comparable to the EDC’s own use of its system.¹⁴ The Competition Act also empowers the

¹¹ RESA M.B. at 9-10 (referencing RESA St. No. 1 at 23-25 and RESA St. No. 1-R at 7-8).

¹² 66 Pa.C.S. §§ 2801-2812.

¹³ 66 Pa. C.S. § 2802(5) and (7).

¹⁴ 66 Pa. C.S. § 2803(Direct Access is defined as “The right of electric generation suppliers and end-use customers to utilize and interconnect with the electric transmission and distribution system on a nondiscriminatory basis at rates, terms and conditions of service comparable to the transmission and distribution companies’ own use of the system to transport electricity from any generator of electricity to any end-use customer.”)(emphasis added); 66 Pa. C.S. § 2804(6) (“A public utility that owns or operates

Commission to take steps to prevent anticompetitive or discriminatory conduct and to investigate “the impact on the proper functioning of a fully competitive retail electricity market. . . anticompetitive or discriminatory conduct affecting the retail distribution of electricity.”¹⁵

In accordance with this statutory authority, the Commission has a long history of approving and implementing policies designed to create a fair and level playing field in Pennsylvania’s retail electricity market. Below are some examples:

- The decision to enable purchase of receivables for utility consolidated billing (“UCB”) is a market design feature meant to correct the inequities of the prior UCB program; POR put supplier receivables on equal footing as utility receivables and gives them equal treatment – customers can be disconnected for nonpayment of supplier charges in the same way they are disconnected for nonpayment of EDC charges.
- Policies requiring the EDCs to make customer data available via EDI, EGS web portals and other EDC to EGS operational interfaces are a recognition that the EDC is the “gatekeeper” for customer usage and meter data.
- The Commission’s code of conduct standards preventing the EDC from leveraging its position to disadvantage new market entrants is a market oversight rule intended to create a level playing field.
- Rate design and cost recovery policies¹⁶ that require the EDCs to reflect wholesale generation supply costs in default service rates instead of through distribution rates or non-bypassable charges, is another market design policy to create a level playing field.¹⁷

Adopting the retail rate mechanism is consistent with these prior pro-competition Commission actions focused on creating a level playing field on which EGSs have a fair and equal opportunity to compete. There is more than sufficient record evidence available in this

jurisdictional transmission and distribution facilities shall provide transmission and distribution service to all retail electric customers in their service territory and to electric cooperative corporations and electric generation suppliers, affiliated or nonaffiliated, on rates, terms of access and conditions that are comparable to the utilities own use of its system.”) (emphasis added).

¹⁵ 66 Pa. C.S. §§ 2811(a) and (b).

¹⁶ 52 Pa. Code § 69.1808 of the Commission’s Policy Statements addresses the costs of default service that should be recovered in the price to compare.

¹⁷ RESA St. No. 1-SR at 3-4.

proceeding to justify adoption of the retail rate mechanism and to support its adoption as a benefit to all consumers. For these reasons, the ALJ's recommendation should be rejected and FirstEnergy's proposed retail rate mechanism should be adopted for the purpose of addressing one of the market inequities of the current retail market design.

2. ALJ did not consider how the retail rate mechanism could positively benefit all customers (including low-income)

The RD concludes that charging default service customers these additional costs through the PTC and then returning 95% of the amounts collected to all customers is “inequitable *per se*.”¹⁸ This view, however, ignores the fact that all customers, through their distribution rates, are paying costs of default service that are only being used by default service customers. Therefore, requiring default service customers – on whose behalf the costs are being incurred – to pay the costs with the remainder credited to all distribution customers is fair and equitable.

The RD is also critical of the Companies' original proposal to retain 5% of the revenue generated by the retail rate mechanism to recover administrative costs but fails to consider RESA's proposal that the Commission could direct a portion of the revenues from the retail rate mechanism to low-income customer assistance programs. This alternative has the benefit of: (1) alleviating concerns expressed by other parties that the 5% level may not bear any relationship to actual administrative costs; and, (2) providing significant benefit for low-income

¹⁸ RD at 55.

customers. The table below illustrates the potential annual revenue that could be available for such funding:¹⁹

<u>Companies' Proposal</u> Retail Rate Mechanism: \$0.00144/kWh Mult. by Default Service Annual kWh: 13,166,402,702	Total Collected: \$18,959,619 10% for assistance programs: \$1,893,901
<u>RESA's Proposal</u> Retail Rate Mechanism: \$0.00288/kWh Mult. by Default Service Annual kWh: 13,166,402,702	Total Collected: \$37,878,028 10% for assistance programs: \$3,787,803
Annual Default Service kWh based on most recent residential customer counts from www.papowerswitch.com multiplied by the average annual residential consumption value of 10,428 as disclosed in KLB-31.	

In real terms, the \$3.7 million that could be utilized at the 10% level could pay for maximum annual bill credits for an additional 3,443 CAP participants.²⁰ As this example illustrates, the retail rate mechanism can be structured in a way to provide real financial benefits to low-income consumers and be a valuable source of supplemental funding for CAP and other universal service programs.

B. Exception No. 2: The ALJ Erred By Both Judging And Restricting The Right Of Participants In FirstEnergy's Customer Assistance Programs ("CAP") To Shop For Any Product Priced Above The Companies' Price-to-Compare ("PTC") (FOF Nos. 66-71, RD at 63-71; COL Nos. 16-17)

Even though the Companies did not propose any shopping restrictions on the ability of CAP participants to shop, the ALJ concludes that "unless CAP customers are restricted from shopping at rates above the price to compare, the resultant increase in costs will cause harm" to all customers.²¹ Based on this, the ALJ recommends that the Companies be directed "to implement a PCAP shopping program which prohibits customers who wish to participate in the Companies' PCAP from entering into a contract with an EGS for a price which exceeds the

¹⁹ RESA St. No. 1-R at 26.

²⁰ RESA St. No. 1-R at 12-13.

²¹ RD at 69.

PTC.”²² The RD also sets forth how these new restrictions should be implemented and how to transition existing shopping customers off of their current EGS contracts.²³ As a threshold matter, the ALJ erred by concluding that harm has resulted from permitting CAP participants to shop. But, even if the Commission were to agree that restrictions are needed, the ALJ erred in directing the specific restrictions that should be implemented.

1. The ALJ erred in discounting the value of shopping to CAP participants

For the reasons detailed in Exception Number 1 discussing how the PTC is not comparable to the prices EGSs must charge, RESA does not agree that the appropriate way to analyze the impact of CAP shopping is through a narrow comparison of what CAP participants paid an EGS vs. what they would have paid with the PTC.²⁴ Apart from this, the data does not factor in the broader benefits that a competitive retail market can offer low-income customers and the ALJ errs in concluding that these broader benefits do not provide value to low-income consumers nor lower customer bills.²⁵ For example, a customer enrolling with an EGS product that includes a bundled smart thermostat would likely experience an overall reduction in energy use. While the energy efficiency gains can result in total bill savings, the per kWh EGS supply charge may be higher than the PTC. RESA Witness Hudson provided a straightforward

²² RD at 71.

²³ RD at 69-71.

²⁴ But, even if this analysis were appropriate, the data in this proceeding shows that many customers are paying less by shopping for their electricity. RESA MB at 25-26. For example, RESA Witness Hudson illustrated that during a 55-month period, there were 32 months where at least one-third of CAP customers paid less than they would have paid on default service and 12 months where a majority of EGS customers paid less. RESA St. No. 1-R at 26-27. Witness Hudson also looked at the total number of customers who are paying less with an EGS than the PTC and found that 7,802 CAP customers served by an EGS had paid less than the PTC. RESA St. 1-R at 27. This data shows that – even through a comparison of PTC to EGS prices – cost savings are being achieved by CAP participants.

²⁵ RD at 68-69.

illustration of this scenario based on a hypothetical MetEd residential customer that consumes 10,428 kWhs per year, spends \$1,030 annually for natural gas and enrolls in an EGS product that is 7.79 cents per kWh with an included bundled smart thermostat.²⁶ The MetEd PTC of 6.181 cents would show a net annual loss for the customer of \$167.79 if the focus was solely on the EGS price to the MetEd PTC. However, a 10% reduction in total energy consumption as a result of the smart thermostat would result in net savings for the customer of \$66.53. The reduction of energy consumption as a result of the smart thermostat is a long-term benefit that would continue even if the customer returned to default service or switches to another supplier.²⁷ This example demonstrates how a narrow analysis of the EGS price compared to the PTC can overlook benefits that offer value and savings to customers.

In sum, the ALJ erred by concluding that the data in this proceeding supports restrictions on the ability of CAP customers to shop. Low-income consumers are capable of making basic, well-informed decisions about their energy service and they – like all customers – should have the same access to competitive market alternatives regardless of income level or CAP participation status.

2. The ALJ erred by directing specific restrictions on the ability of CAP customers to shop

Even if the Commission concludes that restrictions on shopping are necessary based on the record here, the ALJ erred by directing the specific restrictions that should be implemented for several reasons.

²⁶ The product referenced in Mr. Hudson’s testimony at RESA St. 1-R at 29, fn 12 is provided in Exhibit 1 to Joint Stipulation No. 6 (between RESA and CAUSE-PA).

²⁷ RESA St. 1-R at 29-30.

First, restricting shopping in the manner proposed by the ALJ would require EGSs to agree to only ever offer electricity priced below the PTC (which does not reflect all the costs associated with providing default service to retail customers) which would materially and adversely affect the choices available to CAP participants. While some EGSs are serving some CAP customers at rates below the PTC, these EGSs may not be able to offer guaranteed savings products because providing such a product (that guarantees price savings against an unknown future quarterly adjusted PTC) would likely violate the risk policies of prudently operating EGSs. These EGSs would discontinue serving low income customers, resulting in elimination of the lower priced alternatives to default service.²⁸

Second, given the likelihood that restricting EGS pricing to the PTC will severely limit the amount of options available for CAP participants, restrictions that are not tied to the PTC must be considered. Thus, if the Commission decides that restrictions on the ability of CAP participants to shop are appropriate, RESA encourages the Commission to consider:

- (1) Increasing funding for universal service programs as RESA has recommended by utilizing revenues from the retail rate mechanism.
- (2) Considering changes to the POR clawback mechanism to create further incentives for disciplined EGS pricing practices.
- (3) Prohibiting suppliers from assessing early termination fees for CAP customers.
- (4) Aggressively educating CAP customers about EGS offers that are lower than the PTC.²⁹

Third, the operational processes (for both the utilities and the EGSs) that need to be undertaken to transition existing shopping customers who are CAP participants off of current contracts and to ensure that EGSs are able to comply with pricing restrictions for future CAP

²⁸ RESA St. No. 1-R at 28.

²⁹ RESA St. No. 1-SR at 11-12.

participants can be complicated and deserves a more thorough process than what has occurred here to get it right and ensure a smooth transition. As an example, limiting the ability to serve CAP participants to just rate ready billing seems to be an unnecessary barrier for those supplier relying on bill ready billing. Additionally, while a CAP participant flag on the ECL would be useful, this does not provide EGSs information about their existing customers who may sign up for CAP benefits in the future nor does it address customers that the EGS may reach outside of traditional marketing that relies on the ECL. Further, direction about the notices that will be required for existing EGS customers who are currently on CAP or may subsequently enroll in CAP is needed.³⁰ Worth noting is that in the PPL service territory, final Commission direction on how the new shopping restrictions (including the transition of existing EGS customers participating in PPL's CAP) did not occur until a little over a year after the Commission's final order was entered and only after OCMO was directed to become involved in that process.³¹

While RESA fundamentally opposes restricting shopping for FirstEnergy's CAP participants, if the Commission elects to do this, then RESA urges the Commission to direct a reasonable path forward that affords EGSs (and other interested stakeholders) a reasonable opportunity to design the appropriate restrictions and to work out the necessary operational details associated with implementing the restrictions so as to present the least disruption possible for consumers.

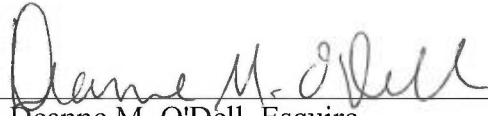
³⁰ 52 Pa. Code §54.10 requires EGSs to provide customers two notices prior to the expiration of their fixed-duration contracts.

³¹ *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, Final Order entered February 9, 2018. The initial order approving PPL's new CAP shopping restrictions was entered on October 26, 2017 with a final order on reconsideration adopted on January 26, 2018. The February 9, 2018 Order addressed "various implementation issues" and was entered after both an all stakeholder meeting led by OCMO and a written comment period.

III. CONCLUSION

For the reasons discussed above, RESA urges the Commission to: (1) adopt the bypassable retail rate mechanism; and, (2) maintain the ability of FirstEnergy's CAP participants to freely shop.

Respectfully submitted,



Deanne M. O'Dell, Esquire

Attorney ID #81064

Eckert Seamans Cherin & Mellott, LLC

213 Market Street, 8th Floor

Harrisburg, PA 17101

(717) 237-6000 (phone)

(717) 237-6019 (fax)

Date: June 28, 2018