PULP
PENNSYLVANIA
UTILITY LAW PROJECT

July 9, 2018

*Via Electronic Filing*
Rosemary Chiavetta,
Secretary PA Public Utility Commission
PO Box 3265
Harrisburg, PA 17105-3265

**Re:**

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| **Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of their Default Service Programs for the period commencing June 1, 2019 through May 31, 2023** | Docket Nos. P-2017-2637855<br>P-2017-2637857<br>P-2017-2637858<br>P-2017-2637866 |

Dear Secretary Chiavetta:

Enclosed please find **t**he **Reply Exceptions** of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA") in the above-captioned matter.

Copies will be served on Parties of Record in accordance with the attached Certificate of Service.

Respectfully submitted,

Kadeem G. Morris
*Counsel for CAUSE-PA*

**BEFORE THE**
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| **Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of their Default Service Programs for the period commencing June 1, 2019 through May 31, 2023** | **Docket Nos. P-2017-2637855**<br>**P-2017-2637857**<br>**P-2017-2637858**<br>**P-2017-2637866** |

I hereby certify that on July 9, 2018, I have served true and correct copies of the **foregoing letter and CAUSE-PA's Reply Exceptions**, via email and/or first-class mail upon the following persons, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

| **VIA FIRST CLASS MAIL & EMAIL** | |
|---|---|
| Honorable Mary D. Long<br>Administrative Law Judge,<br>Pennsylvania Public Utility Commission<br>Piatt Place, Suite 220<br>301 Fifth Avenue<br>Pittsburgh, PA 15222 | |
| Tori L. Giesler, Esq.<br>Lauren Marissa Lepkoski, Esq<br>Lisa Panchari, Esq.<br>FirstEnergy Service Company<br>2800 Pottsville Pike<br>P.O. Box 16001<br>Reading, PA 19612-6001<br>(Counsel for Companies) | Daniel G. Asmus, Esq.<br>Office of Small Business Advocate<br>Suite 202, Commerce Building<br>300 North Second Street<br>Harrisburg, PA 17101<br>(Counsel for OSBA) |
| Aron Beatty, Esq.<br>Hayley Dunn, Esq.<br>Christy Appleby, Esq.<br>Office of Consumer Advocate<br>555 Walnut Street<br>5th Floor, Forum Place<br>Harrisburg, PA 17101-1923<br>(Counsel for OCA) | Allison C. Kaster, Esq.<br>Gina L. Miller, Esq.<br>Bureau of Investigation & Enforcement<br>Pennsylvania Public Utility Commission<br>P.O. 3265<br>Harrisburg, PA 17105-3265<br>(Counsel for I/E) |

| | |
|---|---|
| Karen O. Moury, Esq.<br>Eckert Seamans Cherin & Mellott, LLC<br>213 Market Street, 8th Floor<br>Harrisburg, PA 17101<br>(Counsel for Respond Power, LLC) | Thomas J. Sniscak, Esq.<br>William E. Lehman, Esq.<br>Christopher M. Arfaa, Esq.<br>Hawke McKeon & Sniscak LLP<br>100 North 10th Street<br>Harrisburg, PA 17101<br>(Counsel for PSU) |
| Charis Mincavage, Esq.<br>Susan East Bruce, Esq.<br>Vasiliki Karandrikas, Esq.<br>Alessandra L. Hylander, Esq.<br>McNees, Wallace & Nurick, LLC<br>100 Pine Street<br>P.O. Box 1166<br>Harrisburg, PA 17108-1166<br>(Counsel for Industrial Intervenors) | Holly Rachel Smith, Esq.<br>Exelon Business Services Corporation<br>701 9th Street, NW Mailstop EP2205<br>Washington, DC 20068<br>(Counsel for Exelon Generation and Constellation) |
| Deanne M. O'Dell, Esq<br>Sarah C. Stoner, Esq.<br>Daniel Clearfield, Esq.<br>Eckert Seamans Cherin & Mellott, LLC<br>213 Market Street., 8th Floor<br>Harrisburg, PA 17101<br>(Counsel for RESA) | Todd S. Stewart, Esq.<br>Hawke McKeon & Sniscak, LLP<br>100 N. Tenth Street<br>Harrisburg, PA 17101<br>(Counsel for Next Era Energy) |
| Charles E. Thomas III, Esq.<br>THOMAS, NIESEN & THOMAS, LLC<br>212 Locust Street, Suite 302<br>Harrisburg, PA 17101<br>(Counsel for Calpine) | Carl R. Shultz, Esquire<br>Eckert Seamans Cherin & Mellott, LLC<br>213 Market St., 8th Floor<br>Harrisburg, PA 17101<br>(Counsel for Direct Energy) |
| **VIA FIRST CLASS MAIL ONLY**<br><br>Kenneth C Springirth<br>4720 Cliff Drive<br>Erie, PA 16511 | |

July 9, 2018

Kadeem G. Morris, PA ID 324702
pulp@palegalaid.net
*On Behalf of CAUSE-PA*

**BEFORE THE**
**PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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| Joint Petition of Metropolitan Edison | : | Docket Nos. | P-2017-2637855 |
| Company, Pennsylvania Electric Company, | : | | P-2017-2637857 |
| Pennsylvania Power Company and West Penn | : | | P-2017-2637858 |
| Power Company for Approval of their Default | : | | P-2017-2637866 |
| Service Programs | : | | |

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# REPLY EXCEPTIONS

## OF THE COALITION FOR AFFORDABLE UTILITY SERVICES AND ENERGY EFFICIENCY IN PENNSYLVANIA ("CAUSE-PA")

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**PENNSYLVANIA UTILITY LAW PROJECT**
*Counsel for CAUSE-PA*
Patrick M. Cicero, Esq., PA ID: 89039
Kadeem G. Morris, Esq., PA ID 324702
Elizabeth R. Marx, Esq., PA ID: 309014
118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088
pulp@palegalaid.net

July 9, 2018

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

# I. INTRODUCTION AND SUMMARY OF REPLY EXCEPTIONS

On June 8, 2018, Administrative Law Judge (ALJ) Mary D. Long issued her Recommended Decision (RD) in the default electricity service plan proceedings for Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company's (collectively "the Companies" or "First Energy").

After extensive testimony and record evidence was gathered and briefed by the parties, ALJ Long correctly concluded that the Companies' proposed Bypassable Retail Market Enhancement Rate Mechanism (PTC Adder) was not just and reasonable, lacked support in the record, and was inconsistent with the Companies' obligations as default service providers under the Public Utility Code.[1] ALJ Long also correctly concluded that the design of the PTC Adder was arbitrary, and that "the modifications proposed by [the Retail Energy Supply Association] do not resolve" these issues or "the lack of data to support the calculation of the adder."[2]

Regarding the Companies' current practice of allowing its Pennsylvania Customer Assistance Program (PCAP) customers to receive generation supply service from an Electric Generation Supplier (EGS) without regard to price, ALJ Long reviewed the unrefuted and substantial evidence of harm to PCAP customers and other residential ratepayers that resulted over a 58-month period from unrestricted PCAP shopping, and concluded that unrestricted PCAP shopping is harming both PCAP participants and non-PCAP residential ratepayers.[3] After reviewing the extensive record evidence, ALJ Long correctly found that there was no reasonable alternative but

[1] See Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023, Recommended Decision, Docket Nos. P-2017-2637855, P-2017-2637857, P-2017-2637858, P-2017-2637866, at 51-53 (June 8, 2018) ("RD").
[2] RD at 55-56.
[3] RD at 66.

to impose restrictions on the offers that PCAP customers can accept and remain in PCAP.[4] Specifically, ALJ Long concluded that the "more than $18.3 million in increased PCAP costs over a 58-month period (nearly five years) is a direct result of the Companies' current practice of allowing PCAP customers to accept any EGS offer regardless of cost."[5] ALJ Long found that these increased costs were net of all shopping decisions and that "RESA offers no data to substantiate its claims that [other value-added components] result in savings on PCAP customers' utility bills."[6] ALJ Long concluded that "RESA's testimony falls far short of providing that any of these services in fact lower any customer's bills" and that "the evidence produced by [the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania] demonstrates that unless PCAP customers are restricted from shopping at rates above the price to compare, the resultant increase in costs will cause harm to PCAP and non-PCAP customers alike."[7] The Retail Energy Supply Association (RESA) filed Exceptions to the RD, which essentially restate the same arguments it made in briefing that were previously rejected by ALJ Long.

For the reasons stated more fully below, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), through its counsel at the Pennsylvania Utility Law Project, asserts that the Commission should reject RESA's Exceptions, and adopt ALJ Long's well-reasoned decision as to these issues.[8]

[4] RD at 71.
[5] RD at 68.
[6] RD at 68-69.
[7] RD at 69.
[8] The Office of Consumer Advocate (OCA) also filed exceptions to the RD. The OCA filed exception as to the ALJ's rejection of its alternative residential procurement schedule, the decision to allow EGSs to be provided with customer specific payment information without the affirmative consent of the customer, and the ALJ's recommendation to approve an extension of the customer referral program through 2023. For purpose of these Reply Exceptions, CAUSE-PA responds only to the exceptions of RESA. CAUSE-PA does not oppose the issues raised in the OCA's Exceptions.

## II. REPLY TO EXCEPTIONS

### A. **Reply to RESA Exception 1: The ALJ correctly concluded that there was no factual or legal justification for the PTC Adder.**

In its exceptions, RESA argues that the ALJ erred in rejecting the proposed PTC Adder by "looking for a 'connection' between the proposal and the costs to provide default service."[9] Specifically, RESA asserts that the record contains cost support for the proposed adder; that the adder would correct alleged "market inequities"; and that the adder would "positively benefit" customers.[10] RESA's arguments are nothing more than a restatement of the arguments it made in its brief which were rebutted by the other parties and rejected by the ALJ. In short, RESA has not convincingly argued why the PTC Adder is necessary or permissible under law.

In essence, RESA asserts that the ALJ erred in not giving more credence to its argument that the current default service structure and price to compare are "anti-competitive."[11] RESA argues, without support, that there are costs for providing default service that are embedded in distribution rates paid for by all customers, and that this alone justifies the adder as a way of leveling the playing field.[12] These arguments are without merit.

RESA introduced no evidence demonstrating that the PTC Adder had any connection to the so-called subsidy that it believes shopping customers are paying to support default service. The PTC Adder was based on the $30 acquisition fee the Companies charge suppliers to enroll on the standard offer program. This fee was then divided by 24 (based on an "assumption" of the average EGS retention rate) to come up with the PTC Adder amount.[13] The ALJ correctly concluded that both the $30 cost and the 24-month retention period were fundamentally arbitrary

[9] RESA Exceptions at 4.
[10] RESA Exceptions at 5-10.
[11] RESA Exceptions at 6.
[12] RESA Exceptions at 6, 7.
[13] RD at 52.

and "not based upon actual, verifiable data" and, thus, fail "to provide a valid basis to underlie calculation of a PTC Adder surcharge."[14] RESA introduced no evidence that contradicts this conclusion or supports the PTC Adder. Instead of quantifying the actual costs by which it believes the PTC is understated, RESA accepted the arbitrarily applied $30 acquisition fee as proxy for costs, but argued that the figure should be divided by 12 rather than 24 months.[15] This change would have the effect of doubling the adder, but – just as the initially proposed PTC Adder – is not based on any actual verifiable data. Thus, RESA's proposal is at least as equally as arbitrary as the Companies' chosen term.

RESA's "evidence" in this case is nothing more than a wishful policy position, which is not grounded in underlying data or facts that are essential to support the consideration of an increase in the price to compare. Under the Public Utility Code, the Companies are entitled to recover only actual and reasonable costs to provide default service on a dollar for dollar basis.[16] They are not entitled to recover arbitrarily designated dollar amounts that have no bearing on the cost of electricity. If there are specific costs that should be included as default service and recovered from default service customers, it was incumbent upon RESA to specifically identify and quantify those costs. While RESA alluded to categories of costs that it believes should be unbundled from base rates,[17] it did not quantify any such costs and made no effort to connect either the $30 fee or the 12 or 24 month period to default service rates, instead it relied on what it describes as "an imperfect proxy."[18] This is insufficient. To constitute substantial evidence upon which the Commission can base a decision, the evidence has to be such that a reasonable mind

[14] RD at 52-53.
[15] See RESA St. No. 1 at 23-24.
[16] 66 Pa. C.S. § 2807(e)(3.9).
[17] See RESA St. No. 1 at 23-25.
[18] RESA St. No. 1 at 26.

might accept as adequate to support a conclusion.[19] More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. [20] Here, RESA built its argument on vague assertions of unfairness unsupported by any data or facts. The ALJ correctly concluded that this was inadequate.

In its exceptions, RESA also asserts that the ALJ failed to acknowledge the "benefits" the adder would bring if RESA's proposal to utilize 10% of the revenue to increase bill credits for CAP customers were to be adopted.[21] The ALJ acknowledged that RESA made this suggestion, but concluded that it did not mitigate or otherwise salvage the absence of evidence that the charge itself was permissible in the first instance.[22] The ALJ concluded correctly that "[t]he modifications proposed by RESA do not resolve the lack of connection between the proposed PTC Adder and the costs to provide default service", nor does it "resolve the lack of data to support the calculation of the adder."[23] In effect, the ALJ concluded that it did not matter whether RESA proposed a benevolent purpose of the funds because there was no support in the record that the funds could be collected in the first instance.

Furthermore, as CAUSE-PA argued in is Main Brief, RESA's suggestion that the Commission double the PTC Adder and direct some portion of the increased funding to universal service programs, is inconsistent with the Choice Act, does nothing to address or ameliorate harm to PCAP, and would be detrimental to the thousands of the Companies' low-income customers not enrolled in PCAP.[24] Specifically, RESA's suggestion is both misplaced and impermissible:

> While CAUSE-PA supports increased funding for PCAP and universal service programs due to the significant unmet need within the Companies' service territory,

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[19] See Norfolk & Western Ry. Co. v. Pa. PUC, 413 A.2d 1037, 1047 (Pa. 1980); see also Murphy v. Comm. Dept. of Public Welfare, White Haven Center, 480 A.2d 382, 386 (Pa. Commw. Ct. 1984).
[20] See id.
[21] RESA Exceptions at 11.
[22] RD at 50.
[23] RD at 56.
[24] See CAUSE-PA Main Br. at 13.

> it does not support RESA's proposal as a mechanism to fund those programs. First, universal service costs are non-bypassable and are to be supported by all customers, whether they are receiving generation through default or EGS-supplied service. See 66 Pa. C.S. § 2802 (17). Under RESA's proposal, these increased costs would be paid for only by default service customers. Second, as stated above, the adder would create an additional burden for those 160,000 confirmed low income customers who are not enrolled in PCAP. These customers also fall within the ambit of the Choice Act's statutory obligation that the Commission is to "continue the protections, policies and services that now assist customers who are low income to afford electric service" in the competitive environment. 66 Pa. C.S. § 2802 (10). Thus, for both these reasons, RESA's proposal appears to violate the Choice Act and is not good public policy.[25]

For all of the foregoing reasons, as well as for the reasons argued more fully in the Main Briefs of CAUSE-PA,[26] the OCA,[27] I&E,[28] Office of Small Business Advocate,[29] NextEra Energy Marketing LLC,[30] and the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, and the West Penn Power Industrial Intervenors,[31] the ALJ reached the correct decision in rejecting the PTC Adder.

The proposal for a PTC Adder was based on an arbitrary determination supported by neither data nor fact. It was not based on substantial evidence of record and would have resulted in unjust, unreasonable, and impermissible rates. The Commission should deny RESA's Exception No. 1, and uphold the ALJ's decision.

[25] CAUSE-PA Main Br. at 13 (footnote omitted).
[26] CAUSE-PA Main Br. at 8-14
[27] OCA Main Br. at 17-28.
[28] I&E Main Br. at 15-26.
[29] OSBA Main Br. at 8-11.
[30] NextEra Main Br. at 1-2.
[31] Industrials Main Br. at 5-9.

B. **<u>Reply to RESA Exception No. 2:</u> The ALJ properly concluded that there was substantial evidence of economic harm to PCAP customers and other ratepayers because of unrestricted PCAP shopping and that there was no reasonable alternative but to restrict a PCAP enrolled customer to only accept offers that are at or below the default service price.**

*1. RESA failed to produce any evidence that non-commodity products and services offered in the competitive market mitigate, reduce, or offset the substantial economic harm associated with unrestricted PCAP shopping.*

The unrefuted substantial evidence shows that unrestricted PCAP shopping has cost PCAP customers and other ratepayers more than $18.3 million over 58-months.[32] Nonetheless, RESA argues that the "ALJ erred by concluding that harm has resulted from permitting CAP participants to shop" because the data did not "factor in the broader benefits that a competitive market can offer low-income customers."[33] RESA's position is unsupportable. CAUSE-PA addressed this argument in its Main Brief[34] and its Reply Brief,[35] as did the OCA[36] and I&E,[37] and will not repeat those arguments here in any length. However, a brief discussion is warranted.

Despite RESA's contention, which is based upon speculative and hypothetical possibilities, the reality is that there is absolutely no evidence in the record showing that any of the Companies' PCAP customers took advantage of any of the so-called "value added" products to which RESA points. This alone is dispositive. The mere fact that some products are *available* in the market that *may* mitigate higher prices does not matter if RESA cannot demonstrate whether any PCAP customers actually took advantage of these offers. This is particularly true when compared to the actual, known, and quantifiable harm of more than $18.3 million associated with paying prices higher than the price to compare. Substantial evidence is "such relevant evidence as a reasonable

[32] RD at 67.
[33] RESA Exceptions at 12.
[34] CAUSE-PA Main Br. at 35-39.
[35] CAUSE-PA Reply Br. at 11-13.
[36] OCA Main Br. at 61-62
[37] I&E Main Br. at 39-41

mind might accept as adequate to support a conclusion."[38] RESA continues to provide speculation as an attempt to refute actual known harm. In the RD, ALJ Long reached a similar conclusion:

> RESA contends that the analysis of the harm caused by unrestricted PCAP shopping fails to consider value-added components of EGS products. RESA's witness provides examples of value-added components such as Amazon Prime membership and smart thermostats. However, RESA offers no data to substantiate its claims that these benefits result in savings on PCAP customers' utility bills.[39]

Furthermore, on May 2, 2018, the Commonwealth Court of Pennsylvania issued its decision in PPL's default service case.[40] The Commonwealth Court explicitly addressed the issue of so-called value added services, concluding that – even if the value added services were quantified – financial harm would still persist to other ratepayers:

> RESA's advocacy in favor of unregulated competition so that CAP customers can choose an EGS for reasons "[b]eyond lower pricing" arguably undercuts the Choice Act's concern for accessible, affordable, and cost-effective electrical service for all Pennsylvanians. RESA would have CAP customers "leverage the power of the competitive market" so that they might obtain "loyalty discounts, reward points and gift cards offered through some EGS programs." However, that leverage of power comes at a cost to non-CAP customers who would be paying even more in subsidies, were there no shopping restrictions, so that CAP customers might earn more reward points to use at a retailer or restaurant. The use of the CAP in this manner would appear to be inconsistent with the Choice Act.[41]

ALJ Long also correctly concluded that "it is inappropriate to use PCAP credits to subsidize services when they are nonessential products and services which increase the commodity price for basic service and are in part paid by the PCAP customer and in part passed through the Companies' universal service rider."[42] ALJ Long concluded:

> The Commission's PCAP Policy Statement explicitly prohibits PCAP participants from subscribing to "nonbasic services that would cause an increase in monthly billing and would not contribute to bill reduction." While the policy statement provides that nonbasic services may be allowed if the service reduces the customer's bills, RESA's

[38] Emporium Water Co. v. Pa. Pub. Util. Comm'n, 955 A.2d 456, 463 (Pa. Commw. Ct. 2008) (citation omitted).
[39] RD at 68-69.
[40] Retail Energy Supply Assoc. v. Pa. Pub. Util. Comm'n, Docket No. 230 C.D. 2017 (Pa. Commw. Ct., Slip Op., May 2, 2018) (en banc) ("PPL CAP Shopping Case"). A copy of the Commonwealth Court's decision was attached as Appendix A to CAUSE-PA's Reply Brief.
[41] PPL CAP Shopping Decision, Slip. Op. at 25, n. 29 (internal citations to the record omitted).
[42] RD at 69.

> testimony falls far short of proving that any of these services in fact lower any customer's bills.[43]

In contrast to the speculation upon which RESA built its argument, the evidence of harm associated with unrestricted PCAP shopping was overwhelming. In its Main Brief, CAUSE-PA outlined the substantial evidence of harm associated with unrestricted shopping. A full discussion of those harms is set out in Section VIII.C.1-4[44]of CAUSE-PA's Main Brief and is incorporated herein by reference. In summary, the evidence showed:

- While enrolled in PCAP, PCAP customers pay a reduced bill.[45]
- The difference between a PCAP customer's PCAP bill and the total bill that the customer would have been charged based on usage and price per kWh is called the customer's PCAP bill subsidy credit.[46]
- Each PCAP customer is permitted a maximum dollar amount of PCAP bill subsidy credits each month– this is known as their maximum PCAP credits.[47]
- In aggregate, the PCAP bill subsidy credits for all PCAP customers are paid for by all residential, non-PCAP customers through a Universal Services rider that is reconciled to account for actual over/under collections every quarter.[48]
- More than 160,000 confirmed low income customers who are not enrolled in PCAP help pay for the PCAP subsidy for those who are enrolled.[49]
- Because of the design of the PCAP program, when prices increase the costs are paid for either by the PCAP customer or other ratepayers who help PCAP customers pay their bills through the PCAP bill subsidy credit. The obligation for the entire bill based on usage and price must be borne by either the PCAP customer or by other ratepayers through the PCAP bill subsidy credit.[50]

[43] RD at 69 (quoting 52 Pa. Code § 69.265(3)(ii)).
[44] CAUSE-PA Main Br. at 22-31.
[45] CAUSE-PA St. 1 at 12:7-8.
[46] CAUSE-PA St. 1 at 13:5-7.
[47] CAUSE-PA St. 1 at 12, table 5.
[48] CAUSE-PA St. No. 1 at 15:3-5
[49] CAUSE-PA St. No. 1 at 15:5-7.
[50] CAUSE-PA St. No 1. at 20:1-7

- The data shows that for the vast majority of months over the 58-month period from June 2013 through March 2018, a majority of PCAP customers paid prices higher than the price to compare. Specifically, the data showed:[51]

| Operating Company | Number of Months from June 2013 to March 2018 where **more than 50%** of customers served by an EGS paid prices higher than price to compare. | Percentage of Months from June 2013 to March 2018 where **more than 50%** of customers served by an EGS paid prices higher than price to compare. |
|---|---|---|
| Met-Ed | 47 of 58 months | 81% of months |
| Penelec | 38 of 58 months | 66% of months |
| Penn Power | 42 of 58 months | 72% of months |
| West Penn Power | 58 of 58 months | 100% of months |

- Over the 58 month period from June 2013 through March 2018, as a result of PCAP customer shopping in the manner presently occurring in the First Energy Service territories, there has been a net increase in the costs to the PCAP program of $18,336,440. This averages out to be $316,146 per month or $3,793,759 per year.[52]

- These increased costs are net of all shopping decisions of PCAP customers and therefore include all those PCAP customers who shopped and paid prices less than the price to compare over this period and all of those who shopped and paid more than the price to compare.[53]

- None of this more than $18.3 million promoted universal service goals under the Choice Act to assist low-income customers to meet their home energy needs.[54]

This overwhelming evidence was unrefuted by RESA, and is the type and quality of evidence that the Commonwealth Court recently found to be substantial evidence of harm associated with competition:

> On the issue of harm, the evidence presented showed that between January 2012 and October 31, 2015, on average, nearly 10,000 CAP customers each month were paying above the PTC. These customers, together, were paying each month, on average, $298,406 more than had they simply paid the PTC. Even when these

[51] Joint Stipulation of CAUSE-PA and the First Energy Companies "("Joint Stipulation # 3), Exhibit A. A copy of Joint Stipulation # 3 was attached to CAUSE-PA's Main Brief as Exhibit A.
[52] Joint Stipulation # 3, ¶ 3.
[53] CAUSE-PA St. No. 1-SR at 9:12-18.
[54] CAUSE-PA St No. 1 at 25.

> overpaying CAP customers were considered together with those CAP customers who were paying below the PTC, the CAP was still more costly than the PTC, in the amount of $228,656 each month, or more than $2.7 million a year. This evidence was "**unrefuted**." This data did not focus "on a single point in time[;]" rather this data spanned 46 months. Thus, we disagree with RESA's claim that this data, showing that about half of CAP shoppers each month were paying above the PTC, is "not reflective of the conditions experienced by CAP shoppers over their entire shopping experience." (*Id.*) There is substantial evidence to support PUC's finding this data demonstrated a pattern of a significant number of CAP customers overpaying for electricity.
>
> Moreover, as a natural corollary to overpayment, there was substantial evidence that these CAP customers eroded their CAP credits more quickly. The data showed that between January 2012 through February 2016, 34,780 CAP customers were removed from the CAP, and of this number, 27,600 shopped with an EGS at some point. Since CAP customers only pay a portion of their bill, non-CAP customers had to pay greater subsidies than had CAP customers simply paid the PTC. *See CAUSE-PA*, 120 A.3d at 1103 (noting that the Choice Act "expressly requires the PUC to administer [low-income programs such as the CAP] in a manner that is cost-effective for both the CAP participants and the non-CAP participants"). In short, substantial evidence supports PUC's determination that unrestricted shopping for CAP customers was resulting in harm both to CAP and non-CAP customers.[55]

The Commonwealth Court found that "[b]ased on PUC's determination that harm was occurring as a result of unrestricted competition, some restriction on competition was permitted."[56]

There is analogous evidence of harm in this record that lead ALJ Long to conclude that restrictions on PCAP shopping were necessary in this case.[57] In both cases, the majority of CAP customers who shopped over a significant length of time paid prices higher than the price to compare. In both cases, even accounting for all CAP customers who paid less than the price to compare, unrestricted CAP shopping has caused, on net, millions of dollars of harm to CAP customers and non-CAP customers who pay for CAP.

[55] PPL CAP Shopping Decision, Slip Op. at 34-36 (internal citations to the record omitted) (emphasis in original).
[56] Id. at 36.
[57] RD at 69.

*2. The price restrictions recommended by the ALJ that limit PCAP customers to purchasing electricity at a rate no greater than the price to compare are the only reasonable alternatives based on the record.*

RESA next argues that even if restrictions on PCAP shopping are necessary, the ALJ erred in adopting a PTC price ceiling because (1) restricting shopping in this matter would require EGSs to agree to only ever offer electricity priced below the PTC, which would limit the number of options available to PCAP customers, and (2) RESA proposed other alternatives that would be less restrictive to EGSs.

As to RESA's first concern, it produced no evidence quantifying any actual impact of limiting CAP customer choice to the PTC or why their concerns outweighed the current ongoing harm caused by unrestricted PCAP shopping. There has been no showing that in a competitive environment, lowering prices would actually limit choice. Moreover, the Choice Act does not demand unbridled competition. It demands a balancing of the need of the markets with the ability of vulnerable populations to afford service. To this end, the documented harm to PCAP customers and residential customers as a whole demands that protections be put in place, even if the protections could possibly result in fewer choices for CAP customers. As CAUSE-PA stated in its Main Brief:

> Just as they currently do, depending on the PTC at any given time, EGSs may find that it is financially advantageous or disadvantageous to serve PCAP customers with these restrictions in place. However, in light of the record in this proceeding amply demonstrating that substantial harm has occurred as a result of unrestricted PCAP shopping, protections need to be put into place. Whether or not any individual supplier chooses to serve or not serve CAP customers will be that supplier's business decision to do so.[58]

This outcome is perfectly consistent with the law as articulated by the court in CAUSE-PA et al., where the Commonwealth Court made plain that limits may be placed on CAP customers

[58] CAUSE-PA Main Br. at 41.

and the offers they may accept and remain eligible for CAP,[59] and specifically that "at times, PUC may ''bend 'competition under the Choice Act' so as 'to give way to other important concerns' such as 'ensuring that universal service plans are adequately funded and cost-effective.'"[60]

As to RESA's second argument, none of the restrictions proposed by RESA would mitigate the substantial economic harm associated with unrestricted PCAP shopping. Specifically, RESA asserts:

> 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 for 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.[61]

There is insufficient evidence in the record for the Commission to conclude that any of these potential alternatives – standing alone or taken together – would address the harm caused by PCAP shopping. CAUSE-PA addressed each of these alternatives in its Reply Brief:

> RESA first raised these purported alternatives in surrebuttal testimony. There – like here – RESA simply listed them and called them alternatives, followed by the statement: "RESA would welcome an opportunity to evaluate these and other options in the context of collaborative stakeholder discussions with the parties."[62] RESA had the opportunity to develop and evaluate these options in three rounds of testimony, but rather than introduce evidence of how these alternatives would address the harm to residential ratepayers and PCAP customers, it simply listed them and said that more discussion was needed. This is insufficient. RESA neglected to introduce a shred of evidence demonstrating how these suggestions are reasonable alternatives to the price ceiling proposed by CAUSE-PA. Merely mentioning that something else may exist and may work to mitigate the harm caused by unrestricted PCAP shopping, and imploring the Commission and other parties to talk about it further to see if it would work, is a mere precatory overture,

[59] CAUSE-PA et al., 120 A.3d at 1104.
[60] PPL CAP Shopping Decision at Slip Op. at 21 (quoting CAUSE-PA et al., 120 A.3d at 1103).
[61] RESA Exceptions at 14.
[62] RESA St. No. 1-SR at 11:10-11.

> not evidence – let alone substantial evidence. See Emporium Water Co., 955 A.2d at 463 (Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion"). For RESA's generic list of possibilities to meet the evidentiary standard, it must have shown the alternative be reasonable: In other words, the alternative proposal must be reasonably calculated to resolve the harm.[63]

None of RESA's proposed alternatives is reasonably calculated to resolve the harm. First, CAUSE-PA agrees with RESA that a prohibition on early termination fees is a necessary part of the solution. However, to be effective, such a prohibition must also limit PCAP customers to electric costs which are at or below the price to compare.[64] As the record clearly shows, a prohibition on early termination and cancellation fees does not, by itself, address the root of the problem: The majority of PCAP households are paying more for EGS-provided electric generation service than they would have paid had they remained on default service. The net impact of this excessive pricing is more than $18.3 million – or $300,000 per month – in additional costs to these customers and the customers who help pay for the PCAP program.[65] While allowing PCAP households to cancel agreements that charge prices higher than the PTC without charging a fee may hasten a PCAP customer getting out of an unaffordable contract, it does not ensure that the PCAP program as a whole is protected from prices higher than the PTC. When PCAP customers contract to pay more than the PTC for energy for any period, they are causing not only themselves but others to pay more than they otherwise would have paid if they remained on default service or contracted for prices less than the PTC. In aggregate, the record reflects that paying higher prices for electricity jeopardizes the affordability of the PCAP program for participants and non-participants alike. The elimination of early termination and cancellation fees – standing alone – is ineffective at addressing this harm.

[63] CAUSE-PA Reply Brief at 17.
[64] See CAUSE-PA St. No. 1 at 30-32.
[65] See RD at 67.

Next, as argued above, RESA's suggestion that the Commission adopt its proposal to double the PTC Adder, and direct some portion of the increased funding to universal service programs, is inconsistent with the Choice Act, does nothing to address or ameliorate harm to PCAP, and would be detrimental to the thousands of the Companies' low-income customers not in PCAP. Even if the Commission were inclined to approve the PTC Adder and RESA's modifications thereto, the increase in funds for universal services that would be generated does not address the harm caused by unrestricted PCAP shopping. Increased funding for universal services – through a method which would cause additional costs to residential ratepayers, including the non-PCAP low income – does not address the fact that these same ratepayers would still have to continue to pay upwards of $300,000 per month in costs over and above what they would have otherwise been required to pay if all PCAP customers paid the PTC.

Finally, RESA's suggestions that the POR Clawback could be modified "to create further incentives for disciplined EGS pricing practices"[66] and that "[a]ggressively educating CAP customers about EGS offers that are lower than the PTC" also fail. RESA introduced no evidence about what modifications would be required to the Clawback in order for it to address the harm associated with unrestricted PCAP shopping. Likewise, although CAUSE-PA supports education of all residential customers about EGS offers that are lower than the PTC, RESA provided no evidence or detail concerning how education would sufficiently ameliorate the known cause of the harm to PCAP: contracts at prices higher than the PTC. For these reasons, RESA's suggestions are not reasonable alternatives.

Simply put, none of RESA's possible alternatives are sufficient to address the harm that has occurred as a result of unrestricted PCAP shopping: higher costs of approximately $300,000

[66] RESA Main Br. at 28.

*per month* to PCAP customers and other ratepayers. As such, they are not reasonable alternatives to CAUSE-PA's proposal to restrict competition. The ALJ correctly found that the evidence of economic harm was substantial and that the only reasonable restriction in the record was the price ceiling protections for PCAP participants proposed by CAUSE-PA, I&E and the OCA.[67] This conclusion is well supported in the record and should be upheld.

RESA also asserts that there are "operational processes" that need to be considered to ensure that EGSs are able to comply with pricing restrictions for future CAP participants."[68] CAUSE-PA proposed a transition plan for those PCAP customers who are currently being served by EGS contracts that is consistent with the transition plan recently approved by the Commission in PPL's DSP Proceeding.[69] Specifically, CAUSE-PA recommended the following:

- Customers who are on a fixed duration contract with a supplier on June 1, 2019, may remain with that supplier until the expiration date of the fixed duration contract or the contract is terminated, whichever comes first. Once the customer's supplier contract expires or is terminated, the supplier can either offer a compliant contract that charges no more than the price to compare for the duration of the contract or return the PCAP customer to default service. This same process would be applicable *after* June 1, 2019 for customers on fixed duration contracts who subsequently are eligible for PCAP.

- PCAP customers who are receiving supply service from an electric generation supplier through a month to month contract on June 1, 2019 must be dropped by the electric generation supplier, and returned to default service within 120 days, or be offered and accept a contract that charges no more than the price to compare for the duration of the contract. This same process would be applicable *after* June 1, 2019 for customers on month to month contracts who subsequently are eligible for PCAP.[70]

The ALJ properly concluded that this "phased-in approach" was the most reasonable timeframe.[71] All of the restrictions – concerning price and transition for existing shopping

[67] RD at 69-71.
[68] RESA Exceptions at 15.
[69] See Petition of PPL Electric Utilities Corp. 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 Feb. 9, 2018).
[70] CAUSE-PA St. No. 1 at 34.
[71] RD at 71.

customers – are consistent with similar restrictions imposed by the Commission in the PPL DSP proceeding. Such consistency is appropriate and there is no reason for the Commission to deviate from the timeframes it ordered in PPL. In both cases, unrestricted shopping by CAP customers has caused millions of dollars of harm to CAP customers and other ratepayers. In both cases, the opposition to CAP shopping restrictions came forward with no reasonable alternatives that would mitigate the harm. Given the substantial similarity of the records, the Commission should reach the same conclusion.

The Commission should deny RESA's Exception No. 2 and uphold the ALJ's decision. Nevertheless, CAUSE-PA does not object to the convening of PCAP shopping restriction implementation meetings to ensure all of the logistical details of *how* the price ceiling restrictions will be operationalized have been worked through, so long as all parties to this proceeding are invited to participate in those meetings and the PCAP shopping protections are put into place beginning no later than June 1, 2019.

## III. CONCLUSION

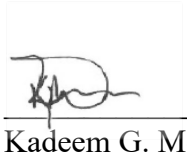
The current system of unrestricted PCAP shopping has harmed PCAP and non-PCAP customers by more than $18.3 million and counting. Indeed, the record suggests that each month that goes by will add more than $300,000 in increased costs, with no added benefit. ALJ Long correctly concluded that the "failure to impose PCAP shopping restrictions would allow PCAP customers' rates to remain unaffordable and would continue to jeopardize the overall adequacy, cost effectiveness, or affordability of the PCAP program for PCAP customers and the ratepayers who pay for PCAP."[72] This conclusion was supported by substantial evidence in the record and

[72] RD at 84, Conclusion of Law ¶ 17.

nothing in RESA's exceptions raises any issue that was not already well-considered. The Commission should adopt ALJ Long's Recommended Decision and should deny both of RESA's exceptions.

Respectfully submitted,

**PENNSYLVANIA UTILITY LAW PROJECT**
*On Behalf of CAUSE-PA*



Kadeem G. Morris, Esq., PA ID 324702
Patrick M. Cicero, Esq., PA ID: 89039
Elizabeth R. Marx, Esq., PA ID: 309014 118 Locust Street
Harrisburg, PA 17101
Tel.: 717-236-9486
Fax: 717-233-4088
pulp@palegalaid.net

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