PULP
PENNSYLVANIA
UTILITY LAW PROJECT

August 13, 2019

VIA e-file

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street, Second Fl.
Harrisburg, PA 17120

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

Dear Secretary Chiavetta,

Please find the **Joint Reply Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN et al.)**, which are being submitted for filing in the above noted proceeding.

Please do not hesitate to contact me at 717-710-3825, or by email at pulp@palegalaid.net with any questions or concerns.

Respectfully Submitted,

Elizabeth R. Marx
Counsel for CAUSE-PA

CC: Kriss Brown, Esq., Law Bureau, kribrown@pa.gov
Tiffany Tran, Esq., Law Bureau, tiftran@pa.gov

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

JOINT REPLY COMMENTS OF

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

AND

THE TENANT UNION REPRESENTATIVE NETWORK AND ACTION ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA (TURN ET AL.)

PENNSYLVANIA UTILITY LAW PROJECT
Counsel for CAUSE-PA
Elizabeth R. Marx, Esq.
Patrick M. Cicero, Esq.
John W. Sweet, Esq.
118 Locust Street
Harrisburg, PA 17101
717-236-9486
pulp@palegalaid.net

COMMUNITY LEGAL SERVICES, INC.
Counsel for TURN et al.
Robert W. Ballenger, Esq.
Josie B. H. Pickens, Esq.
Joline Price, Esq.
1424 Chestnut Street
Philadelphia, PA 19102-2505
215-981-3700
rballenger@clsphila.org
jpickens@clsphila.org
jprice@clsphila.org

August 13, 2019

I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), together with the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN *et al.*), file the following Joint Reply Comments in response to the comments and recommendations of other interested parties to the Public Utility Commission's (Commission) Proposed Policy Statement Order (Order) issued February 28, 2019.

CAUSE-PA and TURN *et al.* filed initial Joint Comments in this proceeding on July 30, 2019, which supported the Commission's efforts to establish a formal Policy Statement to address CAP Shopping on a consistent basis across the state and recommended several critical revisions to ensure that the Policy Statement would function as intended to prevent financial harm to CAP customers and other residential ratepayers. Initial comments were also filed by the Consumer Advisory Council to the Pennsylvania Public Utility Commission (CAC), Duquesne Light Company (Duquesne), the Energy Association of Pennsylvania (EAP), the First Energy Companies (FirstEnergy), the Office of Consumer Advocate (OCA), PECO Energy Company (PECO), PPL Electric Utilities Corporation (PPL), the Retail Energy Supply Association (RESA), UGI Electric Company (UGI), and WGL Energy Services, Inc. (WGL). CAUSE-PA and TURN *et al.* submit the following reply comments in response thereto.

As described more fully below, CAUSE-PA and TURN *et al.* agree with many of the commenters that the Policy Statement should not preclude the possibility of Customer Assistance Program (CAP) shopping rules which would require CAP customers to remain on or return to default service while enrolled in CAP.[1] If the record in a Default Service Plan proceeding shows

[1] See PPL Comments at 9; UGI Comments at 3, Duquesne Comments at 8-9. Note that CAUSE-PA and TURN *et al.* continue to assert that low income consumers must not be excluded from participating in CAP if they are in a contract which does not comply with the EDC's approved CAP shopping rules at the time they apply for CAP or if they

that such a rule is necessary to prevent financial harm to CAP customers and other ratepayers who finance CAP, and there are no other reasonable alternatives proposed on the record that would adequately address the financial harm to CAP customers and other ratepayers, that proposal should be approved.

Moreover, while CAUSE-PA and TURN *et al.* agree with other commenters that suppliers should be held accountable for violating established CAP shopping rules, we nevertheless continue to assert that – as with all CAP rules – each EDC must be charged with monitoring and enforcing its CAP shopping rules. Each EDC should be required, as part of its proposed CAP shopping rules outlined in its Default Service Plan (DSP), to detail the manner and method by which it plans to monitor supplier compliance. EDCs are the only entities with access to the necessary information[2] to monitor compliance, and in fact have the legal obligation to administer universal service programming in a manner which is cost-effective.

CAUSE-PA and TURN *et al.* submit that the Commission should disregard comments by RESA which seek to revisit the Commonwealth Court's determination on the legality of reasonable CAP shopping restrictions. Likewise, RESA's attacks on the validity of the Price to Compare (PTC) as a ceiling for CAP shopping prices are misplaced, and should be ignored. As explained more thoroughly below, the PTC – which is statutorily mandated to be offered at the least cost to consumers over time – offers the most appropriate price to ensure that CAP customers are not overpaying for basic electricity service. Indeed, consistent with existing and long-standing CAP

unknowingly select a non-compliant offer while enrolled in CAP. As explained in our initial Joint Comments, each EDC should be required to develop, as part of its Default Service Plan, a detailed transition process for customers with an existing supplier contract at the time the customer seeks to enter CAP and for current CAP customers who may unknowingly enter a non-compliant contract while enrolled in CAP. See CAUSE-PA and TURN *et al.* Joint Comments at 10; see also OCA Comments at 9.

[2] CAUSE-PA and TURN *et al.* recognize that there may be information that an EDC currently lacks, but in the context of the development of appropriately tailored CAP shopping rules, this can be corrected and protocol can be developed to ensure that EDCs can effectively ensure that their CAP rules are enforced.

cost control features,[3] CAP customers should not be permitted to pay a premium for electricity or use CAP credits to fund non-basic and/or non-energy services. CAP provides a critical resource to low income families to help them connect with and maintain affordable utility services. The expense of the program is shouldered by all other residential consumers. It is inappropriate to impose unnecessarily higher costs on CAP customers and other residential customers, and we continue to support the Commission's core cost-control objectives in proposing the Policy Statement.

As set forth in our initial Joint Comments, CAUSE-PA and TURN *et al.* recommend changes to the proposed Policy Statement to better shield vulnerable low income consumers and other ratepayers from ongoing financial harm caused by unbridled competition. We maintain that the recommendations set forth in our initial Joint Comments should be implemented because they are critically important to the success of the Commission's CAP Shopping Policy Statement's objective of preventing ongoing financial harm to consumers across the state.

II. COMMENTS

a. It would be efficient and cost-effective to prevent ongoing harm to CAP and non-CAP consumers by prohibiting shopping while in CAP.

CAUSE-PA and TURN *et al*. find merit in the comments of several others in this proceeding that "the best policy to protect CAP customers is to simply require that all CAP customers be placed on default service."[4] A CAP shopping proposal that requires CAP customers to remain on or return to default service is an effective means of ensuring the heart of the Commission's goals under the proposed CAP Policy Statement: To ensure that CAP customers do

[3] 52 Pa. Code § 69.265(3)(ii).
[4] PPL Comments at 9; see also UGI Comments at 3, Duquesne Comments at 8-9.

not pay more than the PTC for basic electric service. Such a policy is consistent with the laws and regulations of the Commonwealth and the explicit direction of the Commonwealth Court. We submit that the Policy Statement should retain sufficient flexibility to allow the Commission to approve CAP Shopping proposals that would require CAP customers to remain on or return to default service while enrolled in the program.

RESA argues that placing any restrictions on the ability of CAP customers to engage in the competitive market violates the Competition Act, and that imposing price restrictions on CAP customers could lead to the demise of the competitive market.[5] RESA's apparent attempt to re-litigate arguments that have already failed twice before the Commonwealth Court should be summarily rejected.[6] Furthermore, RESA's assertion that CAP shopping restrictions could mark the end of the competitive market in Pennsylvania cannot be taken seriously.[7]

The law squarely supports the introduction of reasonable CAP shopping restrictions, provided the Commission finds that such restrictions are necessary, as supported by substantial record evidence. In CAUSE-PA *et al.* v. Pa. PUC, the Commonwealth Court definitively and

[5] RESA Comments at 2-3, 4, 12-13 (asserting that "Prohibiting the choices available to any consumer through regulatory dictates is not reconcilable with either fundamental competitive market principles or the Choice Act" and that "Carving out a segment of Pennsylvania consumers that EGSs cannot realistically serve due to market barriers in combination with other initiatives that further erode the incentive of EGSs to participate in Pennsylvania's competitive market, could return consumers to decades prior to the Choice Act where there was only the monopoly electricity provider available to them.").

[6] RESA reluctantly recognizes this fact, though it attempts to assert that the Commonwealth Court acted to "empower" the Commission to impose price restrictions on CAP customer shopping. To the contrary, the General Assembly empowered the Commission to protect low income consumers and other residential ratepayers from potentially excessive pricing in the competitive market – and in fact imposed an affirmative obligation for the Commission to ensure that universal service programming is both available and cost-effective. The Commonwealth Court merely interpreted this obligation, as is the proper role for the courts.

[7] In essence, RESA's assertion intimates that the success of the competitive market is reliant on the ability to exploit vulnerable CAP customers (which account for just over 5% of the total residential customer class) for high-cost energy services. See Pa. PUC, BCS, 2017 Report on Universal Service Programs and Collections Performance, at 6, 51 (Oct. 2018). As of December 31, 2017, there were 271,796 electric CAP customers compared to an average of 4,988,471 electric residential customers in that year. Id. If the market can only thrive through exploitation of the poor, then the demise of the competitive market should be embraced by all, including the Commission and the General Assembly. Fortunately, that does not appear to be the case.

unambiguously found that the Competition Act imposes a legal obligation on both EDCs and the Commission to ensure that universal service programs (including CAP) offer an appropriate level of assistance to all those in need in a cost effective manner. The Court found that the Competition Act empowers the Commission to allow EDCs to implement different rules for CAP customers who engage in the competitive market to protect the affordability and cost effectiveness of CAP.[8] Specifically, the Court stated that the Competition Act "does not demand absolute and unbridled competition," and that "under certain circumstances, unbridled competition may give way to other important concerns [such as] ensuring that universal service plans are adequately funded and cost effective."[9]

A few years later, in RESA v. Pa. PUC, the Commonwealth Court further defined its ruling in CAUSE-PA et al., explaining:

> So long as it "provides substantial reasons why there is no reasonable alternative so competition needs to bend" to ensure adequately-funded, cost-effective, and affordable programs to assist customers who are of low-income to afford electric service, *the PUC may impose CAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for CAP benefits* – e.g., an EGS rate ceiling, a prohibition against early termination/cancellation fees, etc.[10]

The Court then explicitly upheld the Commission's decision to approve PPL's CAP shopping rules, as the decision was based on substantial record evidence.[11] The Court took the time to provide clear and unambiguous guidance for when and how the Commission could approve future CAP shopping rules:

> [W]hat CAUSE-PA requires, in order for a rule restriction to survive our review, is that there be substantial evidence in the record showing a substantial reason why

[8] Coalition for Affordable Utility Servs. and Energy Efficiency in Pa. (CAUSE-PA) *et al.* v. Pa. PUC, 120 A.3d 1087 (Pa. Commw. Ct. 2015).
[9] CAUSE-PA *et al.*, 120 A.3d at 1103; see also RESA v. Pa. PUC, 230 C.D. 2017 (slip op. May 2, 2018) (discussing the precedent and the scope of review that the Court established in CAUSE-PA *et al.*)
[10] RESA, 230 C.D. 2017, at 23 (emphasis added) (quoting CAUSE-PA et al., 120 A.3d at 1104).
[11] Id. at 34-38.

> a restriction on competition is necessary, that is to say, there are no reasonable alternatives to restricting competition. Stated simply, the [CAP shopping rules], as it constitutes a restriction on competition, must be necessary. A restriction on competition is necessary when, one, there is a harm associated with competition, and, two, there is no reasonable alternative to the rule that restrictions competition.[12]

Regarding the existence of a "reasonable alternative," the Court found that it was enough for the Commission to consider possible alternatives provided on the record in the underlying proceeding, and declined to require the Commission to consider every conceivable alternative to the proposed CAP shopping restrictions.[13]

It is quite possible that the record in a Default Service Plan proceeding may show that there are no reasonable alternatives available in a given service territory that would allow CAP customers to select an alternative supplier without posing a distinct and ongoing risk of financial harm to CAP customers and the ratepayers who finance the program. Furthermore, even if a CAP shopping platform could be implemented, the potential cost-effectiveness and efficiency of the platform must be evaluated to determine whether, in fact, it is a *reasonable* alternative. As several of the EDCs noted in comments, a great amount of administrative and programming expenses may be incurred to effectively integrate a detailed CAP shopping program, and yet minimal or nonexistent bill savings for CAP customers or other ratepayers may be available to justify those expenses.[14] Likewise, many commenters question who will pay for the costs associated with implementing CAP shopping rules. The Competition Act permits "full recovery" of universal service costs, but as UGI explains, the costs of CAP shopping "are not incurred for the purpose of promoting universal service and energy conservation policies." Rather, those costs are "incurred to further retail consumer choice and permit a retail customer to shop for an alternate electric

[12] Id. at 35-36.
[13] Id. at 37-38.
[14] See, e.g., UGI Comments at 7; RESA Comments at 15.

supplier."[15] If the costs of implementing CAP shopping rules will be borne by residential consumers, the Commission should fully understand what those anticipated costs will be and must weigh whether those costs are reasonable before requiring those costs to be incurred. The Commission should review the record in each EDC DSP proceeding to determine whether the EDC's proposed rule is both necessary and supported by substantial record evidence.

As the Commission moves forward with implementation of its CAP Shopping Policy Statement, CAUSE-PA and TURN *et al.* submit that the Commission should retain the ability to consider any CAP shopping proposal that is supported by substantial record evidence and protects CAP customers and those who pay for CAP from higher prices. This could include proposals which would require CAP customers to remain in or return to default service if the Commission determines there to be no other reasonable alternative presented on the record to realistically prevent financial harm to consumers.

b. Suppliers should not be charged with oversight and enforcement of their own adherence to CAP Shopping rules.

CAUSE-PA and TURN *et al.* agree with several of the commenters that suppliers should be held responsible if they violate CAP shopping rules.[16] As the Energy Association of Pennsylvania (EAP) rightfully asserts: "If a supplier is found to be ignoring the proposed CAP shopping restrictions, it is the supplier, rather than the EDC or the customer, who should be held responsible."[17] Indeed, robust enforcement of CAP shopping rules will be a critical part of ensuring that each EDCs' CAP is operated in a cost-effective manner, and suppliers must be

[15] UGI Comments at 7.
[16] See Duquesne Comments at 4-5; EAP Comments at 4; UGI Comments at 5-7.
[17] EAP Comments at 4.

charged with and responsible for understanding and complying with all approved CAP shopping rules.

However, without clear guidance from the Commission requiring EDCs to actively monitor supplier compliance with established CAP shopping rules, it remains unclear how a supplier will be "found to be ignoring" any approved CAP shopping rules. Suppliers cannot be relied upon to self-police their compliance with the Commission's Policy Statement and approved CAP shopping rules. CAUSE-PA and TURN *et al.* disagree with assertions of other commenters that EDCs should be absolved of monitoring compliance with their CAP rules or that traditional enforcement mechanisms will be adequate to prevent ongoing harm.[18] To the contrary, as we explained in our initial comments, EDCs must be charged with monitoring compliance with their own CAP shopping rules, as they are the only entity which has ready access to the tools necessary for actively monitoring supplier compliance.[19] Without active monitoring, supplier violations will most likely go undetected unless and until a CAP customer exceeds their maximum CAP credit limit. While the most egregious violations may eventually bubble up through the Commission's complaint process, more subtle pricing violations will likely go unnoticed due to the complex structure and design of CAP benefits and the added complexity of layering in CAP shopping rules. The Commission is certainly aware that even subtle pricing mechanisms resulting in charges in excess of the PTC can produce cumulatively significant CAP costs.

Requiring each EDC to monitor compliance with its CAP rules – including any approved CAP shopping rules – is not only a sound policy decision, it is also a clear legal requirement. As the Commonwealth Court concluded in CAUSE-PA *et al.*, the Competition Act imposes an

[18] See FirstEnergy Comments at 4-5; EAP Comments at 3-4; UGI Comments at 6; PPL Comments at 7-8.
[19] See CAUSE-PA and TURN *et al.* Joint Comments at 10-11.

obligation on both the EDC and the Commission to ensure that universal service programming is both cost-effective and available to those in need:

> The obligation to provide low-income programs *falls on the public utility* under the Choice Act. Moreover, the Choice Act expressly requires the PUC to administer these programs in a manner that is cost-effective for both the CAP participants and the non-CAP participants, who share the financial consequences of the CAP participants' EGS choice.[20]

It would be a dereliction of this obligation for the Commission to dismiss EDCs of the responsibility to monitor EGS compliance with CAP shopping.

To ensure compliance with any proposed CAP shopping rules, EDCs should propose detailed plans and/or procedural mechanisms to monitor compliance. For example, some suggest through comments that requiring suppliers to offer rate-ready billing, with a set percentage off the PTC, would allow the EDC to effectively monitor compliance with CAP shopping price rules.[21] Others suggest that the only way to adequately monitor compliance would be to require CAP customers to remain on default service while enrolled in the program.[22] Either mechanism may be appropriate in a given service territory, depending on a number of unique facts and circumstances – including but not limited to the EDC's system capabilities and potential costs of alternatives. The Commission should review each proposed plan, including the proposed process and mechanisms for monitoring and enforcement, to ensure EDC implementation of CAP shopping rules that will shield against ongoing harm.

---

[20] CAUSE-PA *et al.*, 120 A.3d at 1103.

[21] See, e.g., PPL Comments at 8; EAP Comments at 5 ("One potential method for EDCs to effectively maintain limitations on EGSs who wish to serve CAP participants would be to require EGSs to offer a rate-ready percentage-off-PTC product.")

[22] See, e.g., UGI Comments at 6 (asserting that it would be "virtually impossible" for UGI to monitor a suppliers' compliance with pricing restrictions for CAP shopping customers).

As more fully explained in our initial comments, CAUSE-PA and TURN *et al.* submit that EDCs must play an active role in the oversight and enforcement of their CAP shopping program rules. This is required by the universal service obligations imposed on the Commission and the EDCs by the Competition Act.

c. The Commission should reject attempts to undermine the crucial role of the Price to Compare (PTC) as a statutorily prescribed least-cost service option, which offers a critical price comparison point to assess competitive offers in the marketplace.

Through its comments, RESA seeks to invalidate the PTC as an appropriate benchmark for CAP shopping, arguing that the default service price represented by the PTC (which is statutorily mandated to be provided at the least cost to consumers over time and without profit to the EDC) is somehow distorted, and does not provide an appropriate price point for comparison.[23] RESA argues that the Commission should therefore permit CAP shopping at prices up to 20% in excess of the EDC PTC – though it provides no justification for its proposed 20% premium, a figure seemingly plucked from thin air.[24] RESA's attack on the PTC is unfounded and inconsistent with statutory law and policy. Adoption of RESA's proposals would enable the continued infliction of economic harm on CAP customers through higher EGS contract prices.[25]

It is both established public policy and a statutory mandate that default service reflected in the PTC must be provided at the least cost to consumers over time.[26] The cost of default service is determined through the course of an extensively litigated Default Service Plan proceeding – where the length, terms, and conditions of default service program pricing is subject to intense

[23] See RESA Comments at 9-11.
[24] RESA Comments at 11.
[25] The Commission should be reminded here that EGS marketing and sales tactics have been shown to disproportionately impact Black and Latinx communities in other jurisdictions. CAUSE-PA and TURN *et al.* Joint Comments at 6. Allowing EGSs to place up to a 20% premium on the cost of electricity for CAP customers may disproportionately impact low-income communities of color. Id.
[26] See 66 Pa. C.S. § 2807(e); 52 Pa. Code §§ 54.181-.190.

scrutiny by numerous parties – including, most often, a multitude of competitive suppliers which operate in a given service territory. Moreover, the Competition Act is clear in articulating that the EDC's default service price is the price of electricity procured by the EDC pursuant to its DSP.[27]

The Competition Act ensures that customers who choose not to contract with an EGS will pay the default service cost of electricity passed through by the EDC.[28] In other words, it provides a baseline service, which is available to all consumers at a relatively consistent and least-cost rate. As such, the PTC offers the appropriate price point to compare EGS offers and is the correct price limitation to ensure CAP costs are not unnecessarily inflated.

CAUSE-PA and TURN *et al*. submit that this is not the appropriate forum to challenge the validity of the PTC as an accurate benchmark for CAP shopping. We note that suppliers – including RESA – are currently engaged in an appeal before the Commonwealth Court that seeks to change how the PTC is determined in one EDC service territory.[29] But, as it stands, the PTC - as approved in each EDC's DSP - is the appropriate benchmark for CAP shopping prices, as it offers a statutorily prescribed least-cost point of comparison for competitive offers. Absent amendment to the Competition Act that would fundamentally change the role of default service in the competitive market or the manner and method by which default service is procured, we submit that the default service price reflected in the PTC is the most accurate point of reference in the market and cannot be successfully challenged in this or any other proceeding.

[27] 66 Pa. C.S. § 2807(e).
[28] 66 Pa. C.S. § 2807(e)(3.1) ("if a customer does not choose an alternative electric generation supplier, the default service provider shall provide electric generation supply service to that customer pursuant to a commission-approved competitive procurement plan."); see also 52 Pa. Code § 54.181 ("This subchapter ensures that retail customers who do not choose an alternative EGS … have access to generation supply procured by a DSP pursuant to a Commission-approved competitive procurement plan.").
[29] See NRG Energy, Inc. v. Pa. PUC, 58 CD 2019 (Pa. Commw. Ct).

d. Non-energy products and services should not be considered in determining whether a supplier product is compliant with the Policy Statement.

CAUSE-PA and TURN *et al.* assert that the Commission's proposed Policy Statement rightly focuses on the per kWh price of competitive supplier service, and that potential (and often illusory) non-energy benefits should not be considered when determining whether a supplier offer is compliant with the Policy Statement.

WGL Energy Services (WGL) argues that the Commission should not focus solely on the "per kWh costs of a product without taking into consideration other factors that could effectively lower a customer's bill."[30] WGL offers a list of potential non-energy benefits that should be considered, such as access to renewable energy, time-of-use offers, energy efficient products and services, longer-term fixed prices, grocery discounts, rebates, reward points, coupons, and even charitable donations.[31]

First, in proposing that non-energy benefits be considered in assessing whether an offer is compliant with CAP shopping rules, WGL has forgotten that the harm the Commission seeks to avoid is both to the CAP customer *and other ratepayers*. Allowing CAP customers to pay a premium for electric service in order to earn rewards points or make charitable donations to an organization of their choice would not remedy the harm caused to other residential consumers who will bear at least some portion of the inflated cost for basic electric service, and in fact would violate long-standing Commission policy regarding the use of CAP dollars to pay for nonbasic service. The Commission's CAP Policy Statement includes a number of explicit "control features" to help limit program costs.[32] This includes a prohibition on the use of CAP dollars to finance

[30] WGL Energy Comments at 2-3.
[31] Id.
[32] 52 Pa. Code § 69.265(3).

"nonbasic" products and services: "A CAP participant may not subscribe to nonbasic services that would cause an increase in monthly billing and would not contribute to bill reduction."[33] While the provision goes on to provide that non-basic services "*may* be allowed" if the service will affirmatively contribute to bill reduction, the statement nevertheless expressly prohibits the use of CAP credits to pay for those services.[34] Thus, if the cost of the additional fringe benefits are imbedded in the price of electricity charged by the EGS, then CAP credits will necessarily be used to offset those costs in violation of longstanding Commission policy and established CAP control features. Notably, through the course of multiple litigated proceedings, suppliers continually failed to produce any evidence of offers for a price higher than the PTC that would provide additional services or incentives capable of producing bill savings to offset a higher price.[35]

It is also critical to keep in mind that all of the additional non-basic services and benefits listed by WGL could be offered to CAP customers by the EGS as long as it does not charge in excess of the PTC for electricity. Suppliers remain free to offer such services as an added benefit to CAP customers if they do not charge a premium for those fringe benefits. If CAP customers wish, they also remain free to remove themselves from CAP in order to select a non-compliant offer.

Notably, low income CAP customers already have the opportunity to obtain free energy efficiency and usage reduction products and services through the Low Income Usage Reduction Program (LIURP) and the Act 129 Energy Efficiency and Conservation Programs. Authorizing

[33] 52 Pa. Code § 69.265(3)(ii).
[34] 52 Pa. Code § 69.265(3)(ii) (emphasis added).
[35] 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, at 59, 66 (order entered Oct. 27, 2016); see also Petitions of MetEd, Penelec, Penn Power, and West Penn Power for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023, Docket Nos. P-2017-2637858, -2637866, -2637855, -2637857, Final Order, at 56-59 (order entered Sept. 4, 2018).

CAP customers to pay a premium on the cost of electricity to access energy efficiency products and services outside of the existing free programs would duplicate expenses, adding unnecessary costs to the bills of both CAP customers and the other ratepayers who pay for CAP. Also, with regard to access to renewable energy options, CAUSE-PA and TURN *et al.* submit that all consumers – including those enrolled in CAP – already support renewable energy in Pennsylvania through the Alternative Energy Portfolio Standards (AEPS), which require EDCs to procure a certain percentage of their energy from renewable energy sources.[36] Again, there is nothing to prohibit suppliers from offering 100% renewable energy to CAP customers – they just have to do so at a price which does not exceed the applicable PTC. CAUSE-PA and TURN *et al*. submit that this is just and appropriate, and ensures that economically vulnerable consumers can maintain access to affordable service through CAP.

CAUSE-PA and TURN *et al*. submit that the Commission's use of the PTC as a benchmark price for CAP shopping is appropriate. The Commission should not allow CAP customers to pay a premium for basic electric service in order to obtain additional non-basic and/or non-energy products and services.

[36] See 66 Pa. C.S. § 2807(e)(3.5), 2814; 73 P.S. §§ 1648.1-1648.8.

III. CONCLUSION

As we explained in our initial comments, CAUSE-PA and TURN *et al.* continue to support the Commission's adoption of a formal CAP Shopping Policy Statement to provide uniform protections for CAP customers and other non-CAP ratepayers across the state. However, for the reasons stated more fully above, CAUSE-PA and TURN *et al.* urge the Commission to remain open to proposals from EDCs which achieve the Commission's stated goals by requiring CAP customers to remain with or return to default service, provided the record in the EDC's DSP proceeding supports such a plan. Likewise, we urge the Commission to reject calls to re-litigate the legality of reasonable CAP shopping restrictions and attempts to assail the validity of the PTC as a price ceiling for CAP shopping.

Respectfully Submitted,

Pennsylvania Utility Law Project
On Behalf of CAUSE-PA

Elizabeth R. Marx, Esq., PA ID 309014
Patrick M. Cicero, Esq., PA ID 89039
John W. Sweet, Esq., PA ID 320182
118 Locust Street
Harrisburg, PA 17101
717-236-9486
pulp@palegalaid.net

Community Legal Services
On Behalf of TURN and Action Alliance

Robert Ballenger, Esq., PA ID 93434
Josie B.H. Pickens, Esq., PA ID 309422
Joline Price, Esq., PA ID 315405
1424 Chestnut Street
Philadelphia, PA 19102-2505
215-981-3700
rballenger@clsphila.org
jpickens@clsphila.org
jprice@clsphila.org

August 13, 2019