



**Phillips Lytle** LLP

VIA ELECTRONIC FILING

September 3, 2020

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
Harrisburg, PA 17120

**Re: Docket P-2020-3019356, PPL Electric Utilities Corporation Petition for Default Service Plan for the Period June 1, 2021 through May 31, 2025**

Dear Secretary Chiavetta,

Enclosed please find the Main Brief of StateWise Energy Pennsylvania LLC and SFE Energy Pennsylvania, Inc. (collectively, "StateWise") in the above-referenced proceeding. Copies have been provided to Administrative Law Judge Elizabeth H. Barnes and those indicated on the Certificate of Service.

Respectfully submitted,

Phillips Lytle LLP

By *Gregory L. Peterson*

Gregory L. Peterson

Enclosure

cc: Certificate of Service  
Administrative Law Judge Elizabeth H. Barnes

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**PPL Electric Utilities Corporation Petition for  
Default Service Plan for the Period June 1, 2021  
through May 31, 2025**

**Docket P-2020-3019356**

**MAIN BRIEF  
OF STATEWISE ENERGY PENNSYLVANIA LLC AND  
SFE ENERGY PENNSYLVANIA, INC.**

**I. INTRODUCTION**

On March 25, 2020, PPL Electric Utilities Corporation (“PPL”) filed a Petition for Approval of its Default Service Plan for the Period from June 1, 2021 through May 31, 2025 (“DSP V Petition”). The DSP V Petition outlines PPL’s proposal to acquire and supply default service to PPL customers who do not take service from an alternative electric generation supplier (“EGS”). On May 6, 2020, StateWise Energy Pennsylvania LLC and SFE Energy Pennsylvania, Inc. (collectively, “StateWise”) filed a Petition to Intervene. As described in its Petition to Intervene, StateWise is a licensed EGS serving residential and commercial customers in Pennsylvania. Issues of interest identified by Statewise included, among other things, whether PPL’s proposed modifications to its Customer Assistance Program (“CAP”) would impede or interfere with existing EGS customer contracts, terms, and conditions of service and whether PPL’s proposed modifications to its CAP are consistent with Commission regulations, orders, and the Public Utility Code.

## II. ARGUMENT

Statewise takes no position on the merits of PPL's proposed revisions to the Standard Offer Program ("SOP"), nor on PPL's proposed discontinuance of CAP-SOP. Statewise submits this Main Brief solely in response to CAUSE-PA's unfounded proposal that if the CAP-SOP is modified, PPL should impose additional terms and conditions which do not align with the Policy Statement or are otherwise inconsistent with basic principles of contract law.

On February 28, 2019, the Commission issued a Proposed Policy Statement Order to address CAP participant shopping. *See* Electric Distribution Company Default Service Plans – Customer Assistance Program Shopping, Proposed Policy Statement Order, Docket No. M-2018-3006578 (February 28, 2019) ("Policy Statement"). In the Policy Statement, the Commission provided certain proposed guidelines to address the mechanics of CAP shopping programs while providing CAP participants the benefits of the retail electric market.<sup>1</sup> Specifically, the Policy Statement outlined three requirements that should be incorporated into a CAP program:

1. A requirement that the CAP shopping product has a rate that is always at or below the EDCs' PTC(s) over the duration of the contract between the EGS and the CAP participant.
2. A provision that the contract between the EGS and the CAP participant contains no early termination or cancellation fees.
3. A provision that, at the end of the contract, the CAP participant may re-enroll with the EGS at a product that meets the same

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<sup>1</sup> As of the date of this filing, the Commission has not issued a final order on the Policy Statement.

requirements as outlined in numbers 1 and 2 above, switch to another EGS offering a product that meets those requirements or be returned to default service.

Policy Statement at 5.

To the extent PPL's proposed modifications to CAP are found to be prudent and appropriate at this time – an issue on which Statewise takes no position – PPL's CAP shopping proposal appears to reflect the elements of the above-referenced framework and the intent of the Policy Statement to “ensure that both CAP and non-CAP participants may continue to avail themselves of retail competition.” *Id.* at 6. However, as further described below, CAUSE-PA's proposal oversteps the boundaries established by the Policy Statement while introducing unnecessary and unworkable additions to PPL's proposal that would impede and interfere with existing EGS customer relations.

As proposed by PPL, a customer that is currently enrolled with an EGS pursuant to a supplier contract who seeks to enroll in OnTrack will be notified by PPL that in order to be eligible for OnTrack, the customer must receive default service. PPL St. No. 3-R at 3-4. In that circumstance, PPL would notify the customer that they should contact their supplier to evaluate their supply rate, check whether termination fees might apply, and then make an informed decision as to whether the he or she should terminate their EGS contract early and enroll in OnTrack immediately, or wait for their EGS contract to expire to enter into OnTrack. *Id.* In this manner, the customer can evaluate his or her personal circumstances and preferences and make a rational, informed decision.

CAUSE-PA proposes to introduce a number of additional measures to PPL's proposed CAP which are unnecessary, beyond the scope of PPL's authority, and otherwise inconsistent with the Policy Statement. Notably, CAUSE-PA appears to suggest that upon a customer completing a CAP application, PPL should unilaterally switch a customer to default service without involving the supplier, if the customer checks a particular box on the application. CAUSE-PA St. No. 1 at 29. Furthermore, CAUSE-PA suggests that PPL block or prohibit suppliers from exercising their rights under existing contracts with their customers—to which PPL is not a party—to prevent contractually agreed upon termination fees from being issued to customers. *Id.* Not only does PPL lack the authority to override existing contractual terms and conditions of a supplier contract,<sup>2</sup> but adopting such a rule would have the effect of introducing unreasonable uncertainty into the marketplace with respect to the basic enforceability of contract terms entered into and agreed by the customer and his or her chosen supplier. Moreover, CAUSE-PA's recommendations are not grounded in the framework of the Commission's Policy Statement. The Policy Statement is focused entirely on the terms, conditions, and rates that govern the relationship between a CAP participant and an EGS—it does not seek to govern or modify the terms and conditions of existing EGS contracts with non-CAP participants. While the Policy Statement expressly addresses

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<sup>2</sup> See PPL St. No. 3-R at 6-10 (PPL noting that it “does not have authority to intervene when a shopping contract is between a customer and a non-CAP SOP supplier” and that “PPL Electric has no authority over the terms provided for in the supplier contract”).

termination fee provisions in a contract between an EGS and a CAP participant, the Commission did not propose overriding terms and conditions of contracts with non-CAP participants. Because CAUSE-PA's proposal is beyond the scope of PPL's authority, inconsistent with the Policy Statement, and would unduly interfere with existing contractual relationships, it should be rejected.

September 3, 2020

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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