**PENNSYLVANIA**

**PUBLIC UTILITY COMMISSION**

**Harrisburg, PA 17105-3265**

Public Meeting held October 25, 2018

Commissioners Present:

Gladys M. Brown, Chairman

Andrew G. Place, Vice Chairman

Norman J. Kennard

David W. Sweet

John F. Coleman, Jr.

Petition of Metropolitan Edison Company for P-2017-2637855

Approval of a Default Service Program for

the Period Beginning June 1, 2019 through

May 31, 2023

Petition of Pennsylvania Electric Company for P-2017-2637857

Approval of a Default Service Program for

the Period Beginning June 1, 2019 through

May 31, 2023

Ellen L. Cooper C-2018-2643217

v.

Pennsylvania Electric Company

Betty Dusicsko C-2018-2643249

v.

Pennsylvania Electric Company

Joseph Dusicsko C-2018-2643274

v.

Pennsylvania Electric Company

Angela C. Esters C-2018-2643222

v.

Pennsylvania Electric Company

Debra A. Gibbs C-2018-2643260

v.

Pennsylvania Electric Company

Catherine M. Hartzell C-2018-2643211

v.

Pennsylvania Electric Company

Dennis T. Husted C-2018-2643280

v.

Pennsylvania Electric Company

Cynthia Glover Muhammed C-2018-2643212

v.

Pennsylvania Electric Company

David Nies C-2018-2643243

v.

Pennsylvania Electric Company

Carl E. Palotas, Jr. C-2018-2643225

v.

Pennsylvania Electric Company

Richard S. Powierza C-2018-2643248

v.

Pennsylvania Electric Company

Bernadine Randhanie C-2018-2643284

v.

Pennsylvania Electric Company

Matthew J. Sciarrino C-2018-2643239

v.

Pennsylvania Electric Company

Mark L. Spaeder C-2018-2643244

v.

Pennsylvania Electric Company

Kenneth C. Springirth C-2018-2641907

v.

Pennsylvania Electric Company

Kathleen B. Walls C-2018-2643213

v.

Pennsylvania Electric Company

Robert H. Walls C-2018-2643214

v.

Pennsylvania Electric Company

Julie Whaling C-2018-2643277

v.

Pennsylvania Electric Company

Robert G. Whaling, Sr. C-2018-2643280

v.

Joseph A. and Dianne L. Yochim C-2018-2643246

v.

Pennsylvania Electric Company

Petition of Pennsylvania Power Company for P-2017-2637858

Approval of a Default Service Program for

the Period Beginning June 1, 2019 through

May 31, 2023

Petition of West Penn Power Company for P-2017-2637866

Approval of a Default Service Program for

the Period Beginning June 1, 2019 through

May 31, 2023

**OPINION AND ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the following matters: (1) the Petition for Reconsideration, filed by the Office of Consumer Advocate (OCA), on September 17, 2018, seeking reconsideration of the Commission’s Opinion and Order entered September 4, 2018 (*September 2018 Order*), relative to the above-captioned proceeding (OCA Petition); (2) the Petition for Reconsideration and/or Clarification, filed by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), on September 17, 2018, seeking reconsideration or clarification of the Commission’s *September 2018 Order* (CAUSE-PA Petition); and (3) the Petition for Reconsideration, filed by Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power) and West Penn Power (West Penn) (collectively, the Companies or FirstEnergy), on September 19, 2018, seeking reconsideration of the Commission’s *September 2018 Order* (FirstEnergy Petition)*.* On September 27, 2018, the Retail Energy Supply Association (RESA) filed an Answer to the Petitions for Reconsideration. For the reasons set forth herein, we will deny the FirstEnergy Petition, and grant the OCA Petition and the Cause-PA Petition.

1. **History of Proceeding[[1]](#footnote-1)**

On December 11, 2017, the Companies filed a joint petition for the approval of default service and procurement programs covering a four-year period from June 1, 2019 through May 31, 2023. By law, the Commission was required to render a final decision on the Companies’ Default Service Programs (DSPs) on or before September 11, 2018.[[2]](#footnote-2) This is the Companies’ fifth DSP filing and is referenced as DSP V.

The evidentiary hearing convened on April 10, 2018. Although the Parties had not achieved an agreement on all of the issues raised in the proceeding, all Parties agreed to waive the cross-examination of witnesses. Any argument necessary on the unresolved claims relied solely on the written testimony admitted into the record.

A Partial Settlement was filed on May 15, 2018, along with reply briefs. Parties joining the Settlement included statements in support of the relevant issues in their respective reply briefs. By order dated May 16, 2018, parties who did not actively participate in the litigation were provided an opportunity to join or object to the Settlement. These responses were due on or before May 25, 2018. No objections were filed. By order dated May 29, 2018, the record was closed.

The OCA and RESA filed Exceptions on June 28, 2018, to the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Mary D. Long, issued on June 8, 2018. The Commission’s Bureau of Investigation and Enforcement (I&E), the OCA, Respond Power LLC (Respond Power), the Met-Ed Industrial Users Group (MEIUG), the Penelec Industrial Customer Alliance (PICA), and the West Penn Power Industrial Intervenors (WPPII) (collectively, the Industrials), and CAUSE-PA filed Replies to Exceptions on July 9, 2018.

On September 4, 2018, the Commission entered an Opinion and Order that granted the OCA’s and RESA’s Exceptions, in part, and denied them, and modified ALJ Long’s Recommended Decision.

On September 17, 2018, the OCA filed its Petition, seeking reconsideration regarding the scope of the Commission’s referral of FirstEnergy’s Customer Assistance Program (CAP) shopping program to the Office of Competitive Market Oversight (OCMO). On September 17, 2018, CAUSE-PA filed its Petition, seeking reconsideration or clarification regarding the same matter. On September 19, 2018, the Companies filed its Petition, also seeking reconsideration of the same matter.

By Opinion and Order entered September 20, 2018, we granted the OCA’s and CAUSE-PA’s Petitions for Reconsideration pursuant to Pa. R.A.P. 1701(b)(3), pending review of and further consideration on the merits of the Petitions. RESA filed an Answer to the Petitions on September 27, 2018. Likewise, by Opinion and Order entered October 4, 2018, we granted the Companies’ Petition for reconsideration pending review of and further consideration on the merits of the Petition.

1. **Discussion**
2. **Legal Standards**

Initially, we note that any issue, which we do not specifically address herein, has been duly considered and will be denied without further discussion. It is well settled that we are not required to consider expressly or at length each contention or argument raised by the parties. *Consolidated Rail Corp. v. Pa. PUC*, 625 A.2d 741 (Pa. Cmwlth. 1993); also *see, generally, University of Pennsylvania v. Pa. PUC*, 485 A.2d 1217 (Pa. Cmwlth. 1984).

The Public Utility Code (Code) establishes a party’s right to seek relief following the issuance of our final decisions pursuant to Subsections 703(f) and (g), 66 Pa. C.S. §§ 703(f) and 703(g), relating to rehearings, as well as the rescission and amendment of orders. Such requests for relief must be consistent with Section 5.572 of our Regulations, 52 Pa. Code § 5.572, relating to petitions for relief following the issuance of a final decision.

The standards for granting a petition for reconsideration were set forth in *Duick v. Pennsylvania Gas and Water Company*, 56 Pa. P.U.C. 553, 559 (1982) (*Duick*):

A Petition for Reconsideration, under the provisions of

66 Pa. C.S. § 703(g), may properly raise any matters designed to convince the Commission that it should exercise its discretion under this code section to rescind or amend a prior order in whole or in part. In this regard we agree with the court in the Pennsyl­vania Railroad Company case, wherein it was stated that “[p]arties . . . cannot be permitted by a second motion to review and reconsider, to raise the same questions which were specifically decided against them ….” What we expect to see raised in such petitions are new and novel arguments, not previously heard, or considerations which appear to have been overlooked by the commission.

*Duick,* 56 Pa. P.U.C. at 559 (quoting *Pennsylvania Railroad Co. v. Pennsylvania Public Service Commission*, 179 A. 850, 854 (Pa. Super. 1935)).

Under the standards of *Duick*, a petition for reconsideration may properly raise any matter designed to convince this Commission that we should exercise our discretion to amend or rescind a prior Order, in whole or in part. Such petitions are likely to succeed only when they raise “new and novel arguments” not previously heard or considerations which appear to have been overlooked or not addressed by the Commission. *Duick*, 56 Pa. P.U.C. at 559.

1. **Background**

The Companies’ low-income residential CAP is called the Pennsylvania Customer Assistance Program (PCAP). Eligible customers receive discounted payment amounts and arrearage forgiveness for remaining current on their PCAP payments. The PCAP customers are required to enroll in the Companies’ Equal Payment Plan (EPP) which is based on the CAP customer’s average usage over the last twelve months. The customer’s “asked-to-pay” amount is based on a percentage of the customer’s income. The difference between the EPP amount and the CAP customer’s asked-to-pay amount is the monthly CAP credit which is recovered in rates from non-CAP residential customers. I&E St. 1 at 18 (citing I&E Exhibit 1, Schedule 2).

In the *September 2018 Order*, we approved a new CAP shopping program in which CAP customers may only enter into a contract with an electric generation supplier (EGS) for a rate that is at or below the Price to Compare (PTC) and does not contain early termination or cancellation fees. *September 2018 Order* at 61. We also directed OCMO to convene a group of interested stakeholders to address the mechanics and details of the new CAP shopping program and provide a recommendation on the mechanics of the program. *Id.* at 61. In Footnote No. 19, we stated that “[t]he issue of whether the EGS rates must be below the PTC at the time of contracting, or below that and all future PTCs, is within the scope of this referral to OCMO.” *Id.* at 58.

On September 6, 2018, a Secretarial Letter was issued on behalf of OCMO inviting interested stakeholders to convene and make recommendations to the Commission by the end of January 2019 concerning: (1) the mechanics and details of FirstEnergy’s new CAP shopping program and (2) the scripts to be used for the Customer Referral Program (CRP).

1. **The Petitions and Answer**
2. **OCA Petition**

In its Petition, the OCA requests that the Commission reconsider the *September 2018 Order* as it pertains to the scope of its referral of FirstEnergy’s CAP shopping program to OCMO. The OCA contends that it meets the *Duick* standard for reconsideration because the OCA raises issues which appear to have been overlooked by the Commission or not addressed by the Commission. OCA Petition at 3.

The OCA provides that in the Recommended Decision, the ALJ recommended that “the Commission direct the Companies 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 PTC.” OCA Petition at 4 (citing R.D. at 71). The OCA notes that the ALJ determined there was a net harm resulting from unrestricted CAP shopping from June 2013 through March 2018 in the amount of $18,336,440. OCA Petition at 4 (citing R.D. at 67). The OCA explains that the ALJ determined that “[t]his 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.” OCA Petition at 4 (citing R.D. at 68). The OCA reasons that this harm was the result of CAP customers paying more than the PTC on a regular basis, not only paying more than the PTC upon initially entering into an EGS contract. The OCA contends that to remedy this harm, the ALJ recommended restricting CAP customers from entering into a contract with an EGS for a price which exceeds the PTC, not merely a price which exceeds the PTC at the time of contracting. OCA Petition at 3-4 (citing R.D. at 71).

The OCA avers that witnesses of the OCA, CAUSE-PA and I&E who evaluated the Companies’ data regarding PCAP shopping and the resulting costs concluded that CAP customer shopping should involve only prices below the PTC for the duration of the EGS contract. OCA Petition at 4-5.

The OCA submits that the record establishes that the Companies can bill a product at or below any PTC, not only the PTC at the time of contracting. OCA Petition at 5 (citing R.D. at 69).

The OCA requests that the Commission reconsider the *September 2018 Order* and find that the issue of whether the EGS rate must be below the PTC at the time of contracting or below that and all future PTCs is **not** within the scope of its referral of the CAP shopping program to OCMO. The OCA opines that the matter should be settled that the EGS rate must be at or below the PTC at all times. OCA Petition at 5.

1. **CAUSE-PA Petition**

In its Petition, CAUSE-PA seeks reconsideration of the scope of the CAP shopping restrictions that have been referred to OCMO. CAUSE-PA asserts that the issue identified on page 58, Footnote No. 19 of the *September 2018 Order* is an inappropriate topic for referral to OCMO and the scope of the referral should be limited to issues of technical implementation. CAUSE-PA Petition at 1.

CAUSE-PA contends that after reviewing the record evidence, the Commission found that allowing CAP customers to shop for prices above the PTC caused substantial harm to CAP and non-CAP residential customers and agreed that the only way to prevent the certain and substantial harm was to prevent CAP customers from shopping at a price which exceeds the PTC. CAUSE-PA Petition at 2 (citing Order at 58). CAUSE-PA avers that by allowing parties to again inquire into whether the price for service must always be below the PTC to prevent this harm from occurring, the Commission is effectively affording the parties – along with non-parties who were invited by OCMO to participate in the collaborative – the opportunity to re-litigate the case in an off-the-record collaborative. CAUSE-PA states that the Commission must determine what restrictions are necessary based on substantial evidence in the record of the proceeding, not the preference of participants in an off-the-record collaborative. CAUSE-PA Petition at 2.

CAUSE-PA notes that the discussion of appropriate and lawful protections for CAP customers from costs increased by paying more than the PTC did not begin in this default service proceeding. As part of the DSP IV Settlement,[[3]](#footnote-3) the Companies were required to host a series of collaborative meetings to discuss, among other things, whether consensus could be reached about the scope of shopping in the Companies’ CAPs. The Companies held four collaborative meetings over thirteen months but could not reach consensus about the scope of CAP customer shopping. CAUSE-PA Petition at 3 (citing FirstEnergy St. 1 at 3). CAUSE-PA avers that this history is critical because it demonstrates that prior to the initiation of this proceeding, the parties engaged in good faith negotiations about the necessary scope of CAP shopping protections and could not come to an agreeable resolution. CAUSE-PA provides that as a result, the parties agreed to litigate the issue in this proceeding, with the full expectation that the Commission would reach a decision based on the evidence in the record, rather than demur and refer the issue back to the parties for further discussion. CAUSE-PA Petition at 3.

CAUSE-PA explains that in DSP V, the Companies proposed no CAP shopping restrictions in their initial filing but CAUSE-PA, the OCA and I&E each proposed various ways to ensure that low income customers and those who pay for the CAP program are protected from excessive pricing, and these parties coalesced around the central point that CAP customers should pay no more for generation service than the PTC. CAUSE-PA Petition 4 (citing CAUSE-PA St. 1 at 30-32, OCA St. 2 at 38, I&E St. 1-R at 23-24).

CAUSE-PA provides that the issue raised in Footnote No. 19 was not contained in the Recommended Decision and was not raised by any party in the proceeding. CAUSE-PA explains that Footnote No. 19 ignores and overlooks the substantial evidence of harm to CAP customers and the customer assistance program that is caused when CAP customers pay prices that are higher than the PTC. CAUSE-PA Petition at 5-6. CAUSE-PA notes that the September 6, 2018 Secretarial letter convening the OCMO collaborative was formally served on the parties to the proceeding, but it was also sent to the Commission’s entire Committee Handling Activities for Retail Growth in Electricity (CHARGE) list, thereby effectively inviting hundreds of additional participants to this collaborative who were not parties to the proceeding. CAUSE-PA Petition at 6.

CAUSE-PA opines that the Commission may have overlooked the fact that by opening up the collaborative to the issue of whether a CAP customer should pay a price higher than the PTC at any point while enrolled in the program, it unintentionally undermined its finding that the harm occurring as a result of unrestricted CAP shopping is caused by shopping at or above the PTC. CAUSE-PA Petition at 6-7.

CAUSE-PA maintains that the Commission may have overlooked critical pieces of the record evidence in determining the issue of whether the EGS price could exceed the PTC at any point. CAUSE-PA notes that there was substantial and unrefuted evidence that allowing CAP customers to shop for electricity at prices which exceed the PTC causes significant financial harm to CAP and non-CAP customers. CAUSE-PA Petition at 7. CAUSE-PA notes that this evidence formed the evidentiary basis of the ALJ’s Recommended Decision and the Commission’s decision that, to stop the harm, CAP customers must be prevented from paying prices higher than the PTC. CAUSE-PA Petition at 9 (citing Order at 58). CAUSE-PA explains that allowing EGS rates that are above the PTC at some point after the initial contract would not solve the identified harm, a fact that the Commission appears to have overlooked. CAUSE-PA asserts further that the more than $18 million in harm that necessitated the restrictions in the first instance was caused by EGS contracts with CAP customers that exceed the PTC over long periods of time not just at the initiation of the contract. CAUSE-PA Petition at 9.

CAUSE-PA notes that within the competitive market, EGS prices are often – though not always – lower than the PTC at the time of the initial contract. CAUSE-PA expresses that this is how customers are enticed to switch. Therefore, CAUSE-PA notes, a mere prohibition on contracting for EGS-supplied generation service at prices higher than the PTC at the start of the contract is unlikely to solve the problem of CAP customers paying more than the PTC. CAUSE-PA provides that the ALJ recognized this when she determined that the data presented in the record “demonstrates that – over a prolonged period of time – a significant majority of [CAP] customers who switch to a competitive electric supplier are charged rates that exceed the price to compare.” CAUSE-PA Petition at 9-10 (citing R.D. at 67).

CAUSE-PA contends that it is clear from the record that the harm associated with shopping at prices above the PTC is an ongoing, prolonged, pervasive problem that will not be remedied simply by a time-limited restriction on the price being less than the PTC at the time of contracting. CAUSE-PA argues that the Commission appears to have overlooked this fact in its decision to include this possibility in its referral to OCMO. CAUSE-PA Petition at 10.

CAUSE-PA requests that the Commission reconsider its decision to permit consideration of CAP shopping above the price to compare at the November 5, 2018 collaborative meeting, or in any subsequent recommendations prepared by OCMO. CAUSE-PA Petition at 11.

1. **FirstEnergy Petition**

In its Petition, the Companies request that the Commission reconsider its finding that insufficient record evidence exists to support a rate ready percentage off product that ensures PCAP shopping customers’ prices remain below the currently-effective PTC. The Companies note that in order to implement the information technology (IT) changes that are necessary to ensure PCAP customer prices do not exceed the PTC, the Companies will need Commission approval of a rate ready percentage off product in advance of the OCMO working group process. The Companies are also seeking to accelerate the OCMO process by one month to ensure sufficient implementation time exists before the June 1, 2019 effective date for the PCAP shopping program. FirstEnergy Petition at 2.

The Companies argue that reconsideration of the September 2018 Order is justified for two reasons: (1) the Companies must adopt a rate ready percentage off product that follows the PTC as it changes, because this is the only mechanism supported by substantial evidence in the record; and (2) both the Companies and other parties laid out implementation procedures in their testimony that could be adopted if the Commission agreed to adopt the proposed PCAP shopping changes. FirstEnergy Petition at 3-4.

The Companies provide that a Final Order issued in September 2018 would have provided sufficient time to make all necessary information technology (IT) changes to implement a rate ready percentage off product based on the currently-effective PTC. The Companies request that the Commission approve the Companies’ adoption of a rate ready percentage off product in advance of the OCMO working group process, as the process will delay the Companies’ implementation timeline significantly and likely prevent the Companies from adopting necessary IT changes before June 1, 2019. FirstEnergy Petition at 4.

The Companies state that the only mechanism supported by the testimony of this proceeding which would achieve PCAP shopping customers not shopping at prices above the PTC is a rate ready percentage off product. FirstEnergy Petition at 5.

The Companies aver that a substantial evidentiary record exists in support of a Commission decision to approve a rate ready percentage off product that ensures PCAP shopping customers are not subject to prices exceeding the currently-effective PTC. The Companies assert that throughout this proceeding, they indicated that they could implement a PCAP shopping program that permits suppliers to only offer PCAP customers a rate ready percentage off product based on the currently-effective PTC. FirstEnergy Petition at 5 (citing FirstEnergy St. 1-R at 34, FirstEnergy St. 1-SR at 8).

The Companies explain that any attempted enrollments of PCAP customers by suppliers that do not adhere to the rate ready percentage off rules would automatically be rejected by the Companies’ system. The Companies explain further that they will add a PCAP participation flag to their eligible customer lists to notify suppliers that a customer is enrolled in PCAP and would only be eligible to receive a rate ready percentage off product. FirstEnergy Petition at 5 (citing FirstEnergy St. 1-R at 32).

The Companies assert that other parties including CAUSE-PA, the OCA, and I&E also submitted voluminous testimony in favor of a mechanism like the rate ready percentage off product, which permits the Companies to adjust PCAP customers’ shopping prices to never exceed the currently-effective PTC. FirstEnergy Petition at 5 (citing CAUSE-PA St. 1 at 30, OCA St. 2 at 38, I&E St. 1-SR at 24).

The Companies contend that there is no evidence in the record supporting an approach in which the PCAP customer’s price would be established based on the PTC at the time of the PCAP customer’s contracting with the EGS. The Companies offer that the only party that opposed PCAP shopping rules, the Retail Energy Supply Association (RESA), did not offer any evidence in support of a mechanism that would limit PCAP shopping prices to the PTC at any particular point in time. FirstEnergy Petition at 5-6.

1. **RESA Answer**

RESA states that it does not agree that any restrictions on the ability of any customer to freely shop should be implemented or that the PTC is an appropriate benchmark upon which to judge competitive market pricing. RESA avers that the result reached by the Commission in the *September 2018 Order* of limiting the initial EGS rate so that it is no greater than the PTC along with flexibility for OCMO to consider whether the price guarantee must follow future PTCs – is fully supported by the record in the proceeding. RESA Answer at 2.

RESA provides that the referral to OCMO to work with interested stakeholders to develop a recommended implementation process for the new restrictions is the right way to proceed as it will enable affected stakeholders to present their viewpoints to the Commission’s experts who can then make a recommendation to the Commission for its consideration. RESA Answer at 2.

According to RESA, FirstEnergy, the OCA and CAUSE-PA all seek reconsideration of the Commission’s decision to defer to OCMO the issue of whether EGS pricing should be restricted only at the time of contract initiation or whether the pricing restrictions should be in place at all times while the EGS is serving the CAP participant. RESA avers that all three base their position on the view that the only outcome supported by the record is one in which the EGS must always guarantee a price based on the then-effective PTC. RESA states that these arguments are not supported by the record. RESA Answer at 6.

RESA disagrees with the OCA and CAUSE-PA who argue that harm results any time a CAP participant pays an EGS price higher than the PTC, and, therefore, this cannot be allowed to occur under any circumstance (including the situation where a customer is in a year-long fixed price contract with an EGS and the PTC changes during the contract term). RESA provides that even if an EGS price is higher than the PTC at times, that does not mean that on balance the customer pays the EGS more than he or she would have paid the utility, given the fluctuations in both prices throughout the year or over the term of the contract. RESA Answer at 6-7.

RESA avers that the parties are inaccurate in claiming that the record only supports a guaranteed savings product. RESA provides that both FirstEnergy and RESA submitted testimony regarding the potential negative outcome of requiring EGSs to only offer guaranteed savings products to CAP participants. RESA witness Richard J. Hudson, Jr. testified that “[p]roviding an absolute guarantee of price saving against an unknown future quarterly adjusted price to compare would likely violate the risk policies of at least some prudently operating EGSs. These EGSs would discontinue serving low income customers, removing the lower priced alternatives to default service.” RESA Petition at 7 (citing RESA St. 1-R at 28). RESA notes that FirstEnergy witness Kimberlie L. Bortz testified that a requirement that EGSs can only provide CAP participants a “percentage-off” product would “likely . . . significantly limit the number of EGSs that would be interested in providing service to CAP customers . . . and could effectively eliminate all CAP shopping.” RESA Petition at 7 (citing FirstEnergy St. 1‑R at 29-30).

According to RESA, its witness Richard J. Hudson, Jr. also provided that rate ready billing restrictions unnecessarily limit the billing options available to suppliers with many EGSs preferring to use bill ready billing. RESA avers that the limitation to rate ready billing for CAP shopping restrictions would limit the number of EGSs making offers to CAP customers. RESA Petition at 8 (citing RESA St. 1 at 11-12).

Additionally, RESA does not agree with FirstEnergy’s request for an acceleration of the OCMO stakeholder process regarding the CAP shopping program. RESA states that an extension of the implementation date would be a more appropriate path to take to ensure that the new CAP shopping restrictions are thoughtfully and prudently implemented for the benefit of customers. RESA Answer at 3.

1. **Disposition**

As stated, Petitions for Reconsideration and Clarification are governed by the standards of *Duick*. Those standards essentially require a two-step analysis. *See* *Pa. PUC, Bureau of Investigation and Enforcement v. Columbia Gas of Pennsylvania, Inc.*, Docket No. M-2014-2306076 (Order entered December 18, 2014) (*Columbia Gas*).

First, the Commission will determine whether a party has offered new and novel arguments or identified considerations that appear to have been overlooked or not addressed by the Commission in its previous order. We will not reconsider our previous decision based on arguments that have already been considered. *Columbia Gas.* The second step of the *Duick* analysis is to evaluate the new or novel argument, or overlooked consideration, in order to determine whether to modify our previous decision. *Columbia Gas*.

Upon review, we find that the petitioning parties have established that we may have overlooked the potential impact of Footnote No. 19 on page 58 of our *September 2018 Order*. Thus, the first prong of the *Duick* analysis has been satisfied and we shall consider whether to modify our prior Order. Based on our review of the record, we conclude that a modification to Ordering Paragraph No. 8 of our *September 2018 Order* is warranted.

Preliminarily, we note that we have the authority under Section 2804(9) of the Choice Act, 66 Pa. C.S. § 2804(9), in the interest of ensuring that universal service plans are adequately funded and cost-effective, to impose PCAP rules that would limit the terms of any offer from an EGS that a customer could accept and remain eligible for PCAP benefits. *Coal. For Affordable Util. Servs. & Energy Efficiency in Pennsylvania v. Pa. Pub. Util. Comm’n,* 120 A.3d 1087, 1103 (Pa. Cmwlth. 2015), *appeal denied*, 136 A.3d 983 (Pa. 2016). In our *September 2018 Order,* we approved a new shopping program for customers participating in the Company’s CAP with such limiting terms. The CAP shopping program allowed a CAP customer to only enter into a contract with an EGS for a rate that is at or below the utility's PTC and does not contain early termination or cancellation fees. However, we recognized that the mechanics of the CAP shopping program were not fully developed in the record and, therefore, we directed OCMO to convene a group of stakeholders to address those mechanics so that OCMO may provide recommendations to this Commission by January 31, 2019. In that referral, we included the issue of whether the EGS rates must only be below the PTC at the time of contracting or below that and all future PTCs. *September 2018* Order at 58‑59, n.19.

The referral language contained in Footnote No. 19 on page 58 of the *September 2018 Order* is arguably inconsistent with our intent by suggesting that OCMO consider a product that would allow a PCAP customer to pay more than the PTC. We note that the ALJ’s finding was that over time the CAP and non-CAP customers were harmed by paying more than the PTC. R.D. at 66.

Here, witnesses for I&E, the OCA and CAUSE-PA each concluded that the record is clear that CAP customer shopping should involve only prices below the PTC for the duration of each EGS contract. OCA witness Barbara R. Alexander testified:

FirstEnergy should halt the enrollment of CAP customers with EGSs until a program is in place that ensures that participating EGSs make a contractual commitment to charge a price for generation supply that is ***equal to or less than the applicable Price to Compare during the term of the agreement.***

OCA St. 2 at 38 (emphasis added). CAUSE-PA witness Harry S. Gellar provided:

I am recommending that the Companies create structures whereby PCAP customers are prohibited from contracting with EGSs for ***a price that would ever be higher than the price to compare.***

CAUSE-PA St. 1 at 30 (emphasis added). And I&E witness Christopher Keller testified:

I am convinced by the Companies’ data that excess CAP shopping costs are being incurred within the service territories and that some mechanism should be implemented that would prohibit CAP shoppers from paying ***prices that exceed the Companies PTC on a regular basis.***

I&E St. 1 at 23.

The ALJ clearly agreed and stated her finding in Ordering Paragraph 5.a. of the Recommended Decision when she stated “PCAP customers are prohibited from entering into any retail electricity contract with an EGS which would charge rates exceeding the applicable price to compare ***for the entire duration of the EGS contract***.” We are also persuaded by the testimony of I&E, the OCA and CAUSE-PA in this regard.

We further agree with CAUSE-PA, that the issue raised in Footnote No. 19 was not contained in ALJ Long’s Recommended Decision and was not raised by any party in the proceeding. Thus, it appears to contradict the finding of harm to CAP customers when CAP customers pay prices higher than the PTC.

In contrast to RESA’s claims, the record does not support a finding that OCMO retains flexibility to consider whether the price guarantee must follow future PTCs. The matter in Footnote No. 19 of the *September 2018 Order* was not addressed in the record. We also disagree with RESA that the extension of the implementation date for the PCAP shopping program would be a more appropriate path to take to ensure that the new CAP shopping restrictions are thoughtfully and prudently implemented for the benefit of customers. The record demonstrates that shopping by CAP customers has harmed both CAP and non-CAP customers. Extending the existing CAP shopping that allows CAP customers to pay more than the PTC would cause further harm.

Moreover, we agree with the OCA and CAUSE-PA that the Commission appears to have overlooked record evidence in this proceeding supporting a CAP shopping product that must be at or below the PTC(s) at all time periods of the contract. Thus, we agree that referring this issue to OCMO is inconsistent with our finding that there is clear evidence demonstrating harm to both FirstEnergy’s CAP and non-CAP, residential customers when CAP customers pay above the PTC. Specifically, we agree with the OCA and CAUSE-PA that the record evidence demonstrates that “over a prolonged period of time” a majority of FirstEnergy’s CAP customers paid above the PTC, causing the proven harm. Therefore, the issue of whether the CAP product should be at or above the PTC at the time of enrollment versus all time periods of the contract should not be referred to OCMO. Instead, the record has shown, and multiple parties have proven, that the product should be one that is at or below the PTC(s) at all time periods of the contract between the EGS and the customer. An EGS serving a FirstEnergy CAP customer may provide a rate that is at or below the PTC(s) at all time periods of the contract and that contract may not contain any early termination or cancellation fees.

In response to the OCA and CAUSE-PA Petitions, we shall therefore clarify that the OCMO working group process will not be asked to address the issue of whether the EGS rate must be below the PTC at the time of contracting, or below that and all future PTCs. Furthermore, we shall decline to direct OCMO to accelerate the stakeholder process by one month. However, we encourage OCMO and the interested stakeholders to advance the stakeholder process diligently regarding the CAP shopping program and provide recommendations on the mechanics and details of the CAP shopping program to the Commission as quickly as possible. We note that the FirstEnergy stakeholder process that took place after DSP IV was not able to develop the scope of CAP shopping for FirstEnergy PCAP shopping customers. FirstEnergy St. 1 at 3. Now that the record has illuminated the extent of the harm that has been done to CAP and non-CAP customers in the amount of $18.3 million, we encourage the stakeholders to find resolution of these issues and reach consensus if possible. CAUSE-PA M.B. at 28 (citing Joint Stipulation #3, ¶ 3). In the interest of facilitating the OCMO stakeholder process, we are clarifying the framework upon which the OCMO stakeholder process will build. We note that transitional rules were proposed by CAUSE-PA and approved in the Recommended Decision. R.D. at 70 (citing CAUSE-PA M.B. at 42-43). In this Opinion and Order, we clarify that the transitional rules as presented in Ordering Paragraph Nos. 5 and 6 of the Recommended Decision are adopted and will go into effect for the June 1, 2019 deadline.

Regarding FirstEnergy’s petition, we do not believe the record in this proceeding supports a requirement that the CAP shopping product be a set, rate ready product that reflects a specific percentage off the PTC. The record here has shown that any products *above* the PTC have proven harmful to customers. However, an EGS may offer a rate at the PTC so long as it remains at the PTC throughout the contract duration. Similarly, another EGS may offer a discount off the PTC so long as that rate does not go above the PTC throughout the contract duration. We refer to OCMO for inclusion in its recommendations regarding the mechanics of FirstEnergy’s CAP shopping program the issue of whether the product should be rate ready or bill ready.

In conclusion, OCMO is to proceed with convening a collaborative of all interested stakeholders to discuss and provide information on the matters that were specified in our *September 2018 Order*, with the exception of the requirement that the EGS’s price be at or below the PTC for the duration of the contract. OCMO is to provide for the Commission’s consideration its recommendations on the matters discussed by January 31, 2019.

For the foregoing reason, we shall deny FirstEnergy’s Petition, and grant the OCA and CAUSE-PA Petitions consistent with the appropriate modifications to the *September 2018 Order* and with this Opinion and Order.

1. **Conclusion**

Based on the foregoing discussion, we shall deny FirstEnergy’s Petition and grant the OCA’s and CAUSE-PA’s Petitions. Accordingly, we shall modify the pertinent Ordering Paragraphs of our *September 2018* Order to reflect that in light of our determination in this Opinion and Order that EGS rates must *always* be at or below the PTC, the issue of whether the CAP product should be at or below the PTC at the time of enrollment versus all time periods of the contract will not be referred to OCMO. In addition, with regard to the mechanics of FirstEnergy’s CAP shopping program, we shall direct that OCMO include in its recommendations whether the product should be rate ready or bill ready;**THEREFORE**,

**IT IS ORDERED:**

1. That the Petition for Reconsideration filed on September 17, 2018, by the Office of Consumer Advocate regarding the Commission’s Opinion and Order entered herein on September 4, 2018, is granted.
2. That the Petition for Reconsideration and/or Clarification filed on September 17, 2018, by the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania regarding the Commission’s Opinion and Order entered herein on September 4, 2018, is granted.
3. That the Petition for Reconsideration filed on September 19, 2018, by Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power) and West Penn Power (West Penn), regarding the Commission’s Opinion and Order entered herein on September 4, 2018, is denied.
4. That our Opinion and Order entered herein on September 4, 2018, is hereby modified so that Ordering Paragraph No. 8 reads as follows:

8. That the Office of Competitive Market Oversight is, hereby directed to convene and coordinate a group of interested stakeholders for the purpose of collaboratively addressing the mechanics and details of the new Customer Assistance Program approved by this Opinion and Order and in which CAP customers may only enter into a contract with an Electric Generation Supplier for a rate that is at or below each FirstEnergy Company’s Price to Compare ***for the*** ***duration of the contract*** and does not contain any early termination or cancellation fees, and provide a recommendation on the mechanics and details of the program to the Commission on, or before, January 31, 2019, to ensure a successful implementation of the program.

1. That our Order entered herein on September 4, 2018, is hereby modified to adopt Ordering Paragraph Nos. 5 and 6 of the Recommended Decision issued on June 8, 2018, which provide as follows:

5. That on or before June 1, 2019, the First Energy Companies shall implement the following PCAP shopping rules:

a. PCAP customers are prohibited from entering into any retail electricity contract with an EGS which would charge rates exceeding the applicable price to compare for the entire duration of the EGS contract.

b. EGSs are not permitted to enter into contracts with PCAP customers charging early termination or cancellation fees.

c. EGS enrollments submitted for any PCAP customers that do not meet these requirements will be rejected.

6. That for the purpose of transitioning PCAP customers who are currently being served by an EGS, as of June 1, 2019:

1. PCAP customers who are served under a fixed duration contract with an EGS as of June 1, 2019 (a “pre-existing fixed duration contract”) may remain with their EGS until the expiration date of the fixed duration contract or the contract is terminated, whichever comes first.
2. Non-PCAP customers served under a fixed duration contract who subsequently enroll in PCAP (also considered to be served under a “pre-existing fixed duration contract”) may remain with their EGS until the expiration date of the fixed duration contract or the contract is terminated, whichever comes first.
3. Upon expiration or termination of a pre-existing fixed duration contract, the EGS must either: (a) enroll the PCAP customer under a contract compliant with the new PCAP shopping rules; or, (b) return the PCAP customer to default service. For EGSs serving PCAP customers under a month-to-month contract as of June 1, 2019, the EGS must either: (a) return the PCAP customer to default service effective June 1, 2019; or, (b) enroll the PCAP customer under a contract compliant with the provisions, above, with an effective date of June 1, 2019.
4. For EGSs serving non-PCAP customers under a month-to-month contract who subsequently enroll in PCAP, the EGS must either, within 120 days of the customer’s PCAP enrollment: (a) return the PCAP customer to default service; or, (b) enroll the PCAP customer under a contract compliant with the provisions, above.
5. That, except as otherwise subsequently clarified and/or amended consistent with this Opinion and Order, our Opinion and Order entered on September 4, 2018, remains in full force and effect.

**BY THE COMMISSION,**



Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: October 25, 2018

ORDER ENTERED: November 1, 2018

1. A more complete discussion of the history of this proceeding prior to the entry of the *September 2018 Order* is presented in the *September 2018 Order*. [↑](#footnote-ref-1)
2. 66 Pa. C.S. § 2807(e)(3.6). [↑](#footnote-ref-2)
3. *Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, West Penn Power Company*, Docket No. P‑2015-2511333, P-2015-2511351, P-2015-2511355, and P-2015-2511356 (Final Order entered May 19, 2016) (DSP IV Order) [↑](#footnote-ref-3)