**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

Public Meeting held February 28, 2019

Commissioners Present:

Gladys M. Brown, Chairman

David W. Sweet, Vice Chairman

Norman J. Kennard

Andrew G. Place

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.

Pennsylvania Electric Company

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

**FINAL ORDER**

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) is a recommendation from the Commission’s Office of Competitive Market Oversight (OCMO) relative to the above-captioned proceedings and the implementation of Customer Assistance Program (CAP) shopping implementation and Customer Referral Program (CRP) scripting at Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power) and West Penn Power Company (West Penn) (collectively, FirstEnergy). After review and consideration of the comments offered in response to the December 20, 2018 Tentative Order, with this Final Order the Commission sets the rules and procedures for the CAP shopping program and scripting for the FirstEnergy CRP program.

# **History of the Proceeding**

On December 11, 2017, FirstEnergy 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. A Partial Settlement was filed on May 15, 2018. By Interim Order dated May 16, 2018, Administrative Law Judge (ALJ), Mary D. Long directed that parties who did not actively participate in the litigation be given an opportunity to join or object to the Settlement by May 25, 2018. No objections were filed. On May 31, 2018, ALJ Long issued a Recommended Decision approving the partial settlement and resolving the remaining contested issues.

The Office of Consumer Advocate (OCA) and the Retail Energy Supply Association (RESA) filed Exceptions on June 28, 2018, to the Recommended Decision of ALJ Mary D. Long. The Commission’s Bureau of Investigation and Enforcement (I&E), OCA, Respond Power LLC, the Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, and the West Penn Power Industrial Intervenors, and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed Replies to Exceptions on July 9, 2018.

On August 23, 2018, the Commission adopted the Joint Motion of Commissioner David W. Sweet and Vice Chairman Andrew G. Place.[[1]](#footnote-1) The Motion noted that while a partial settlement of the issues has been agreed to, multiple issues remained contested, including the manner in which customers in FirstEnergy’s CAP (PCAP)[[2]](#footnote-2) participate in the competitive retail market and the appropriate scripting for FirstEnergy’s standard offer program (SOP). The Motion directed that the issues of implementing a PCAP shopping program and the appropriate scripts for FirstEnergy’s SOP be referred to OCMO for discussion with stakeholders and the submission of recommendations to the Commission. Specifically, the Commission directed that:

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 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.

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 scripting and training materials associated with FirstEnergy’s Customer Referral Program: (a) to ensure that such scripting and training materials will provide sufficient consumer education/protections and disclaimers to customers that are not misleading, and (b) to determine the impacts that such scripting and training materials may have on customer enrollment in the program as well as any other competitive concerns. A recommendation shall be provided to the Commission on, or before January 31, 2019.

September Order Ordering Paragraphs 8 and 9.

On September 6, a Secretarial Letter was issued announcing the convening of a collaborative meeting on November 5, 2018. All interested stakeholders were invited to submit suggested agenda items by October 19, 2018.

On September 17, 2018, both the OCA and CAUSE‑PA filed Petitions seeking reconsideration regarding the scope of the Commission’s referral of FirstEnergy’s PCAP shopping program to OCMO. On September 19, 2018, FirstEnergy filed a Petition, also seeking reconsideration of the same matter and expressing concern with the timeframes and deadlines established by the Commission.

By Opinion and Order entered November 1, 2018, at these Dockets, the Commission granted the petitions of OCA and CAUSE-PA but denied FirstEnergy’s petition.[[3]](#footnote-3) This order modified the Commission’s September Order declaring the following:

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.

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 [Pennsylvania Customer Assistance Program (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:

a. 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.

b. 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.

c. 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.

d. 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.

 November Order Ordering Paragraphs 4 and 5.

**Collaborative Meeting**

On November 5, 2018 individuals representing FirstEnergy, various suppliers, trade organizations, OCA, CAUSE-PA, and other electric distribution companies (EDCs) met to discuss the issues as directed by the November Order. This two-hour meeting included discussion of the agenda topics along with some other subject areas raised by stakeholders that had been previously overlooked.

**December 20 Tentative Order**

Upon consideration of the input and advice offered at the November 5, 2018 collaborative meeting, on December 20, 2018, the Commission adopted a Tentative Order[[4]](#footnote-4)providing all interested parties 30 days to comment on a variety of PCAP shopping implementation issues and CRP scripting proposals. Four parties filed comments, including the CAUSE-PA; FirstEnergy; the OCA; and RESA.

**DISCUSSION**

**A. PENNSYLVANIA CUSTOMER ASSISTANCE PROGRAM SHOPPING**

**1. Product and Rate-Ready vs. Bill-Ready**

The Commission proposed that PCAP customers should be billed, through rate‑ready billing,[[5]](#footnote-5) by the utility via utility-consolidated billing and should be included in the Purchase of Receivables (POR) program. We opined that a rate-ready, percentage off the PTC product is the simplest PCAP shopping solution and the easiest for FirstEnergy to monitor.[[6]](#footnote-6) This would meet the requirements found in the November Order that PCAP customers may only enter into a contract with an EGS for a rate that is at or below each FirstEnergy Company’s PTC for the duration of the contract. It would also provide suppliers with significant flexibility in that the supplier can select a PTC discount rate on a customer by customer and contract by contract basis. The Commission also proposed prohibiting dual and separate bills for PCAP customers because it would be impossible for FirstEnergy to monitor the customer’s supplier price.

In proposing this solution, we acknowledged the concerns expressed by suppliers that not all suppliers currently use rate-ready billing and that the EGSs that are currently only using bill‑ready billing would need to conduct a new EDI test for rate‑ready billing. To address these concerns, we proposed to direct FirstEnergy to have enough EDI testing resources and capacity available to prevent unreasonable delays in certifying suppliers for rate‑ready billing and that FirstEnergy complete rate‑ready EDI testing within 30 days during the three months before and the three months after it implements the PCAP shopping program on June 1, 2019. We also asked that FirstEnergy affirm that suppliers can use both bill‑ and rate-ready billing (as long as PCAP customers are rate-ready) and select the billing method on a customer‑by‑customer basis.

**a. Comments**

The parties generally supported the Commission’s proposal with no party expressing opposition. FirstEnergy noted that while their Ohio operations are set-up with this functionality – there will be some programming costs to implement this in Pennsylvania. (FirstEnergy at 2.) FirstEnergy also confirmed that EGSs will remain free to offer bill-ready and rate-ready products to different customers. (FirstEnergy at 2.) FirstEnergy, however, asks that we modify our proposed EDI rate-ready testing timeframes by specifying that the requirement would only apply to EGSs that are currently certified for bill-ready billing. FirstEnergy asserts that 30 days is insufficient time to test a new EGS because initial set-up of an EGS for billing can be more time-consuming. FirstEnergy also notes that EGSs need to be responsible for meeting all deadlines during the testing procedure. (FirstEnergy at 3.)

**b. Resolution**

Based upon the feedback received, we will require that PCAP customers receiving service from an EGS shall be billed, through rate‑ready billing, by the utility via utility‑consolidated billing and shall be included in FirstEnergy’s Purchase of Receivables (POR) program. The product PCAP customers receive from an EGS should be a percentage-off the FirstEnergy PTC, as selected by the EGS, and is to be at a price at or below the FirstEnergy PTC for the duration of the contract. FirstEnergy shall reject any enrollments for PCAP customers that do not meet these requirements. These rejections are to be processed using traditional EDI protocols and appropriate EDI transaction codes indicating that the enrollment was rejected due to a failure to comply with PCAP shopping program rules.

To guard against any delays in processing and enrolling PCAP customers into the new PCAP product, we direct that FirstEnergy shall have enough EDI testing resources and capacity available to prevent unreasonable delays in certifying suppliers for rate‑ready billing. FirstEnergy is to complete rate‑ready EDI testing for each eligible EGS within 30 days of the EGS requesting certification during the three months before and the three months after it implements the PCAP shopping program on June 1, 2019. We agree with FirstEnergy that these testing timeframes are only applicable to EGSs that are already certified for bill-ready billing on FirstEnergy’s system. We also acknowledge that timely testing is also contingent upon action and cooperation from the EGS. Accordingly, EGSs are directed to cooperate and respond timely to FirstEnergy during such EDI testing. Finally, we note that EGSs are free to continue to use both bill‑ready and rate-ready billing and select the billing method on a customer‑by‑customer basis, as long as all PCAP customers are billed via rate-ready as described above.

**2. Supplier Disclosure Requirements**

Suppliers requested guidance on the appropriate label to use when presenting a PCAP-compliant product to potential customers as the product’s price is tied to the PTC and changes on a quarterly basis. The Commission acknowledged that neither *variable* nor *fixed* may be an entirely appropriate label, and accordingly proposed the alternative that a supplier should simply identify the product as a “PCAP Program Product” or something similar without labelling it as fixed or variable. This proposed label would be used to identify for customers that this product is targeted for PCAP customers and complies with all the applicable PCAP shopping rules. Suppliers would still be obligated to fully disclose and explain that the customer’s price is pegged to the utility PTC, in that the price will increase and decrease with the PTC at a fixed discount percentage, if any. And while we proposed not calling this a *variable* product, we proposed that many of the disclosure rules relative to variable pricing should apply to this product. This includes telling the customer what the starting price is, how often it could change (quarterly) and how the customer can find their current price.[[7]](#footnote-7) However, we proposed that since this is a new product, the requirement at 52 Pa. Code § 54.5(c)(14)(i) and (ii)[[8]](#footnote-8) to provide a 24-month price history would not be applicable – at least for the first 24 months of the program. The requirement at 52 Pa. Code § 54.10(2)(ii)(A)[[9]](#footnote-9) to provide 30-day notice of any subsequent price changes would also not apply because it is not the supplier determining the price – but rather FirstEnergy, in accordance with FirstEnergy’s approved default service plan.

**a. Comments**

OCA agrees that a variable or a fixed price label would potentially be confusing for a customer and not appropriate. OCA submits that either an indexed price definition (or some variation of the term) or the proposed CAP Shopping Product definition would be appropriate as it will help to identify to customers and suppliers that the product is uniquely designed to provide shopping to CAP customers. OCA asserts that the indexed price definition would not be too complicated for customers to understand, so long as the appropriate education accompanied the CAP shopping rules and recommends that the Commission consider further disclosure requirements for a residential index price or percentage off product. OCA thinks that development of such a product could be particularly helpful to low-income customers who are not in CAP. (OCA at 6-7.) CAUSE-PA supports calling the product a “CAP Program Product.” (CAUSE-PA at 2.)

**b. Resolution**

We agree with OCA and CAUSE-PA and accordingly direct EGSs to identify and label the product for PCAP customers as a “PCAP Customer Product” when presenting the product to potential customers. EGSs are expected to comply with the disclosure requirements at 52 Pa. Code § 54.5 (relating to disclosure statement for residential and small business customers) including § 54.5(c)(2). However, the requirements at § 54.5(c)(14)(i) and (ii) to provide a 24-month price history is not applicable. The requirement at 52 Pa. Code § 54.10(2)(ii)(A)[[10]](#footnote-10) to provide 30-day notice of any subsequent price changes also does not apply. We decline to address the request by OCA to consider further disclosure requirements for “index pricing” in the residential market as it is beyond the scope of this proceeding.

**3. Fees**

The Commission proposed to prohibit any add-on fees; not just early termination fees (ETFs), as they could result in a product offered to PCAP participating customers that has a rate that is above the PTC. This prohibition would include fees that suppliers charge customers in addition to the per-kWh rate, such as membership fees, enrollment fees, monthly service fees, etc. The Commission further reiterated that the fee and ETF ban only apply to the FirstEnergy PCAP-shopping program and that the Commission intends to monitor compliance with these restrictions using traditional Commission enforcement mechanisms, including careful monitoring of consumer informal and formal complaints.

**a. Comments**

No party expressed opposition to the Commission’s proposal, with CAUSE-PA supporting it as well as OCA “strongly” supporting it. (CAUSE-PA at 2, OCA at 8.)

**b. Resolution**

The product PCAP customers receive from an EGS shall never include any fees in addition to the per-kWh unit price. This prohibition includes any ETFs. We again reiterate that it is not FirstEnergy’s responsibility to monitor compliance with this requirement since FirstEnergy has no effective method of knowing if any customer is subject to these fees. Instead, it is the Commission that will monitor compliance with these restrictions using traditional Commission enforcement mechanisms, including careful monitoring of consumer informal and formal complaints. Any EGS caught violating these requirements will be subject to all enforcement mechanisms available to the Commission, including civil penalties and license suspension and revocation in accordance with the Commission’s authority under Section 3301 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 3301.

 **4. Identifying PCAP Participating Customers**

Suppliers need to know which customers are participating in PCAP so that they can apply the appropriate marketing and enrollment procedures for potential enrollees. Suppliers also need to know when one of their existing customers enrolls into PCAP so that they can treat the customer in accordance with the established PCAP shopping rules. Suppliers also need to know when and how FirstEnergy will be communicating quarterly PTC changes. Suppliers emphasized the need for FirstEnergy to provide this information in a timely manner and in a format that is not difficult or burdensome for suppliers to access.

We proposed to accept FirstEnergy’s offer to routinely update its sync lists[[11]](#footnote-11) and the Eligible Customer Lists (ECLs)[[12]](#footnote-12) to note PCAP participating customers, and to identify PCAP customers in the account number access portals[[13]](#footnote-13) in a similar fashion. We also directed FirstEnergy to explain when and how the quarterly PTC changes will be communicated to suppliers.

**a. Comments**

No party expressed opposition to the Commission’s proposal. FirstEnergy finds the proposals such as the updating of sync lists and eligible customer lists to include PCAP participation flags “workable and reasonable.” (FirstEnergy at 2.) Concerning the communication of PTC changes, FirstEnergy noted that they intend to continue their current communication practices related to quarterly changes to the PTC. This includes updating the PAPowerSwitch.com website each quarter to reflect both the projected PTC rate (after it is filed, but not yet approved by the Commission) and the actual PTC rate once approved by the Commission. Additionally, when FirstEnergy files for approval of new PTC rates at the Commission, they send copies of the filings to all EGSs listed at the PAPowerSwitch.com website as serving in their respective territories. Copies of the filings are also included at the FirstEnergy website and incorporated within their tariffs after Commission approval. (FirstEnergy at 4.) OCA supports the proposal to use CAP participation flags to inform EGSs that a customer is a CAP participant. OCA also believes that CAP participation flags should be present only when a household is enrolled in CAP and that CAP participation flags must not be used to label a customer as low‑income. (OCA at 9.)

**b. Resolution**

We will direct FirstEnergy to routinely update its sync lists and the ECLs it makes available to EGSs to identify customers that participate in PCAP. FirstEnergy is also directed to identify PCAP customers in the account number access portals in a similar fashion. EGSs are obligated to access and use this information to identify PCAP customers and to then treat the PCAP customers in the manner described in this Order and the approved PCAP shopping program. Finally, we direct FirstEnergy to continue to provide notice of PTC updates and changes to EGS as they have described.

**5. Transition Timeframes and Requirements**

We proposed that the following rules and timeframes for handling PCAP customers during the transition:

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, within 120 days of the customer’s PCAP enrollment, either: (a) return the PCAP customer to default service; or, (b) enroll the PCAP customer under a contract compliant with the provisions, above.

The Commission further reiterated that existing contracts in place remain in effect – including ETF provisions.

**a. Comments**

No party expressed opposition to the Commission’s proposal. CAUSE-PA opines that the proposed timeframes and required notices with respect to the transition of existing and future contracts appear to strike a reasonable and appropriate balance to ensure that the contractual rights of suppliers are preserved. (CAUSE-PA at 3.)

**b. Resolution**

We will adopt the transition rules and timeframes outlined above – and again reiterate that existing contracts in place remain fully in effect.

**6. Contract Expiration and Change Notice Procedures**

Suppliers requested that the Commission modify or waive the contract expiration and change of terms notices required by 52 Pa. Code § 54.10. They claim that in situations where the supplier intends to return the customer to default service, whether terminating an existing contract or not offering a new PCAP compliant contract, that multiple notices are not necessary because the customer is not being presented with options, making the options notice unnecessary. Some suppliers also asked for a “one-notice” requirement if the supplier is offering a PCAP-compliant product. Suppliers also asked that the Commission reiterate that, per the usual regulation procedures, if the customer does not respond to their contract expiration notice, the supplier can still renew the customer onto the new PCAP-compliant product.

The Commission proposed the following notice procedures for comment:

1. A supplier who intends to drop a customer to default service upon contract expiration or cancellation (is not offering the customer a PCAP-compliant product): one notice, at least 30-days in advance of the drop, is required.
2. If a contract of a current customer is expiring and the supplier is offering to renew the customer onto a PCAP-compliant product, the traditional two notices required by 52 Pa. Code § 54.10 must be provided. The supplier may proceed to renew the customer onto the PCAP-compliant product if the customer affirmatively agrees to the contract or does not respond to the notices.
3. If the supplier wants to *revise* an existing contract with a customer, by moving the customer onto a PCAP‑compliant product, the traditional two notices required by 52 Pa. Code § 54.10 must be provided. The customer must affirmatively accept the new terms to be enrolled onto the new PCAP-compliant product.[[14]](#footnote-14)

**a. Comments**

While RESA supports providing EGSs the choice to either drop the existing month-to-month customer or to enroll the customer in one of the EGS's CAP-compliant products when that customer becomes a participant in the PCAP program, RESA is concerned that the proposed process creates costly and burdensome notice requirements. RESA asserts that due to these burdensome notice requirements EGSs are likely to cancel these contracts rather than to offer their existing month-to-month customer a CAP-compliant product. To avoid this result in furtherance of the policy goal of the Commission to make price-restricted competitive service available to CAP participants, RESA requests that the proposal be simplified. Specifically, RESA requests that EGSs wishing to offer an existing month-to-month customer a PCAP-compliant product be permitted to do so through the appropriate EDI transactions (i.e. notice to FirstEnergy of rate change) with flexibility regarding the notice to be provided to the customer so long as it is consistent with any contract terms for notice. (RESA at 3-4.)

RESA notes that an existing month-to-month customer who is already receiving a contract price from an EGS that is at or below the PTC with no additional fees and the right to cancel at any time without penalty is receiving an EGS product consistent with PCAP shopping rules. RESA asserts that requiring the EGS to comply with the two notice requirements of 52 Pa Code § 54.10 to enroll this existing customer into the same product is confusing and burdensome. RESA believes that the time and cost to manage this process will likely outweigh the potential benefit for electing to continue to serve these customers leading EGSs to exercise their right to cancel the month-to-month contracts instead. (RESA at 4 – 5.)

RESA comments that further complicating this process is the timing required by the two §54.10 notices. For an existing month-to-month EGS customer already enrolled in PCAP prior to June 1, 2019, the EGS must place the customer in its PCAP-compliant product effective June 1, 2019. Per § 54.10(1), EGSs are required to send the Initial Notice 45-60 days prior to expiration of the contract. Applying this notice requirement to existing EGS month‑to‑month contracts would mean that EGSs would have to send the Initial Notice between April 2, 2019 (60 days prior to June 1, 2019) and April 17, 2019 (45 days prior to June 1, 2019). RESA states that this is an extremely short timeframe because of the information EGSs will need to know prior to these dates. Given these realities and the likelihood that they would incentivize EGSs to drop existing month‑to‑month customers who are currently enrolled in FirstEnergy's PCAP program, RESA believes that simplifying the process through which EGSs may “enroll” existing month-to-month customers in the EGS's PCAP-compliant products is a more rational and least disruptive approach that still furthers the goals set forth by the Commission. (RESA at 5 – 6.)

Regarding the notice an EGS should provide to its existing month-to-month customer when the EGS wishes to continue serving the customer consistent with the PCAP restrictions, RESA requests that EGSs be given the flexibility as to how to notify these customers that their EGS service complies with the Commission’s new restrictions. To the extent feasible, consideration should also be given to providing this notice on the utility-consolidated bill. (RESA at 6 – 7.)

Regarding the process for EGSs to revise an existing customer contract to move a customer into a PCAP-compliant product, RESA is concerned that the proposed process unnecessarily frustrates and increases the costs for EGSs. Requiring an EGS to obtain affirmative consent before it can change the terms of an existing fixed-price contract makes the process of changing an existing contract more burdensome than the process of automatically enrolling a customer in a CAP-compliant product upon contract expiration. RESA asserts that creating an additional burden on the ability of EGSs to enroll existing customers in a PCAP-compliant product is not conducive to incenting EGSs to offer PCAP compliant products. (RESA at 7 – 8.)

RESA further opines that the Commission’s PCAP pricing restrictions are not consistent with the reason and purpose for the Fixed Price Label Order. RESA assets that in the Fixed Price Label Order, the Commission was concerned about EGSs including language in fixed-rate contracts that permitted the EGS to change the contract rate based on increased or new costs imposed on the EGS and permitted a “regulatory‑out” clause permitting a price increase with customer consent. RESA asserts that with PCAP shopping, the Commission has mandated the ceiling price giving EGSs the choice to either revise existing contracts or to wait until the contract expiration period to offer new compliant contract terms. RESA believes that all these specific factors make clear that the concerns the Commission sought to address with the Fixed Price Label Order are not present here. Accordingly, RESA recommends that the Commission not apply the Fixed Price Label Order to require affirmative consent before the EGS may revise the existing contract. (RESA at 8 – 9.)

Further, RESA notes that the Commission’s proposal does not provide any direction about what an EGS is expected to do if it elects to revise an existing customer’s contract and does not receive the existing customer’s consent. RESA asks whether the EGS continue to serve its customer at existing contract terms pending the end of the contract or can the EGS drop the customer pursuant to contract cancellation terms? RESA states that neither of these options seem to be in accord with the goals of the PCAP shopping program. Accordingly, RESA recommends that an EGS electing to revise an existing contract (prior to expiration) to be compliant with the new PCAP restriction be permitted to rely on the normal § 54.10 notice process. (RESA at 10.)

 As for the process for EGSs to elect to drop existing customers prior to the expiration of the contract, RESA notes that, apart from the notice requirements of § 54.10, EGS contracts usually contain specific cancellation provisions which detail how and why the EGS may elect to cancel a contract. RESA notes that EGS contract cancellation provisions are likely to be very different among EGSs and potentially among different types of contracts and/or customers. Notwithstanding this, the Commission is proposing that an EGS wishing to cancel a contract must “inform the customer. . . in accordance with the then existing contract, but not less than 30-days in advance of the customer being dropped to default service.”

RESA requests that the Commission remove the newly created timing requirement for several reasons. First, it may be inconsistent with the contract terms. Second, in certain circumstances it creates confusion for customers about the significance of the contract terms and requires EGSs to undertake additional processes to comply with the new requirements for a portion of their customers. Third, a 30-day notice period is not operationally necessary because of accelerated switching. Thus, operationally, an existing EGS customer can be returned to the EDC in less than 30 days. For all these reasons, RESA recommends that the Commission permit those EGSs wishing to cancel existing contracts because their customer has enrolled in CAP to do so consistent with the contract's existing cancellation terms. (RESA at 11 – 12.)

CAUSE-PA opines that the proposed timeframes and required notices with respect to the transition of existing and future contracts appear to strike a reasonable and appropriate balance to ensure that the contractual rights of suppliers are preserved. (CAUSE-PA at 3.)

**b. Resolution**

Concerning suppliers who want to *revise* an existing contract – we first want to reiterate that we are not requiring suppliers to revise existing contracts – nor are we encouraging suppliers to revise existing contracts. We have stated repeatedly that customers served under a fixed‑duration contract who subsequently enroll in PCAP may remain with their EGS until the expiration date of the fixed duration contract or the contract is terminated, whichever comes first. In proposing rules and procedures for suppliers to revise an existing contract, we are merely outlining the rules and expectations for doing so if the supplier so chooses – this is not intended to require or encourage suppliers to revise existing contracts. If a supplier chooses to pursue this option – we direct them to the Commission’s 2013 *Guidelines for Use of Fixed Price Labels for Products With a Pass-Through Clause* (Fixed Means Fixed Order).[[15]](#footnote-15)

RESA objects to the reliance on Fixed Means Fixed Order and argues that requiring “an EGS to obtain affirmative consent before it can change the terms of an existing fixed‑price contract makes the process of changing an existing contract more burdensome than the process of automatically enrolling a customer in a CAP-compliant product upon contract expiration” (RESA at 8.) The Commission agrees, to the extent that the process is more burdensome than the automatic enrollment process RESA seeks. This is not an unintended or accidental outcome. Changing the terms of a deal – abrogating the promises a supplier made to a customer - before the expiration of that contract is clearly a serious matter that should not be entered into lightly. While a customer expects that a deal can change upon contract expiration, changes during the duration of the contract term are not expected. Thus, the process for changing an existing contract is deservedly more onerous and requires the customer’s consent. RESA’s objections also appear to be premised upon a belief that the new, PCAP‑compliant product they would offer would always be more advantageous from the customer’s perspective than the customer’s current product. This is a premise the Commission cannot accept without more than just RESA’s unsubstantiated claim. While the new, PCAP-compliant product may be more advantageous for some customers – it may not be for others. Whether the new offer is advantageous from the customer’s perspective is a decision for the customer to make – another reason that “Fixed Means Fixed” requires an affirmative customer response to existing contract changes.

Accordingly, we decline to make the exception that RESA requests. Suppliers who wish to propose changes to an existing contract are directed to the guidance provided in the Fixed Means Fixed Order. This includes obtaining affirmative customer consent and the expectation that the customer’s disclosure statement provides for the possibility of the supplier proposing changes during the duration of the contract. As for RESA’s question as to what is expected if the customer does not provide an affirmative response – we direct EGSs to page 26 of Fixed Means Fixed Order, where the Commission stated that a “lack of a customer response would be deemed a rejection of the new terms.” The Commission further stated that “[i]n the event of a rejection by the customer, the customer is then free to pursue other opportunities in the market with no penalty.” This infers that the EGS is free to cancel the contract in such an event – but we again note that this is assuming that the disclosure statement provides for such an eventuality.

Concerning an EGS that wants to *drop* a customer to default service upon contract expiration or cancellation, we agree with RESA that this should be governed by the cancellation provisions of the disclosure provided to the customer. RESA is correct in that we have few rules addressing contract cancellation – these matters have generally been left to the agreement between the EGS and the customer as expressed in the disclosure document. Accordingly, while we will maintain our proposal – we will also include an exception for those instances where the disclosure statement provides for cancellation of the contract and the notices outlined within.

Concerning a contract that is expiring and the supplier is offering to enroll the customer onto a PCAP-compliant product, we still see no good reason why the customer should not receive the conventional two notices required by 52 Pa. Code § 54.10. As discussed above, the new PCAP-compliant product may or may not be more advantageous from a customer’s perspective. As such, the customer should have the same right to be provided notice of the product and their options the same as any other customer. And one of those options could be the customer obtaining a PCAP‑complaint product – from a different EGS if they so choose. We see no good reason why the PCAP participant should not have the same information, and the same time period, to consider and shop as any other customer.

Accordingly, the Commission will maintain what it originally proposed, with the following revisions:

1. A supplier who intends to drop a customer to default service upon contract expiration or cancellation (is not offering the customer a PCAP-compliant product): ~~one notice, at least 30-days in advance of the drop, is required.~~ the contract cancellation and notice provisions described in the disclosure statement applies. In instances where the disclosure statement does not address cancellation and notices, the EGS shall provide at least one notice 30-days in advance of the drop. EGSs remain free to provide two notices at their discretion.
2. If a contract of a current customer is expiring and the supplier is offering to renew the customer onto a PCAP-compliant product, the traditional two notices required by 52 Pa. Code § 54.10 must be provided. The supplier may proceed to renew the customer onto the PCAP-compliant product if the customer affirmatively agrees to the contract or does not respond to the notices. However, the requirement at 52 Pa. Code § 54.10(2)(ii)(A) to provide 30-day notice of any subsequent price changes shall not apply.
3. If the supplier wants to *revise* an existing contract with a customer, by moving the customer onto a PCAP‑compliant product, the traditional two notices required by 52 Pa. Code § 54.10 must be provided. The customer must affirmatively accept the new terms to be enrolled onto the new PCAP‑compliant product.[[16]](#footnote-16)

 **7. Supplier Contract Renewal Safe Harbor Provision**

Suppliers raised a concern about what obligations the supplier must check on the PCAP status of a customer whose contract is expiring. In effect, suppliers asked the Commission to define a “safe harbor” period in which they are permitted to offer to enroll a customer upon a good-faith effort to check the customer’s PCAP participation status. In considering this issue, it must be kept in mind that FirstEnergy does not know the terms of the supplier contract a customer has agreed to and does not know when it expires. And they do not necessarily know if the customer has been renewed upon contract expiration. Suppliers point out that a renewal price does not always differ from the customer’s original price – thus FirstEnergy will not even see a price change EDI transaction in all situations. Accordingly, there is no effective means for FirstEnergy to monitor supplier contract expirations.

The stakeholders suggested, and we proposed, that perhaps the easiest way to create a “safe harbor” period is to tie it to the 52 Pa. Code § 54.10 contract change or expiration notice provisions. Specifically – the supplier should check the customer’s PCAP-status prior (within days) to sending the options notice (the second notice that goes out at least 30 days prior to contract expiration). If that customer is now a PCAP participant, the supplier is obligated to comply with the PCAP-shopping rules. However, if that customer is not participating in PCAP as of the second notice, they are free to proceed to complete the traditional notice procedures and can treat that customer as a typical, non-PCAP customer – including offering to enroll the customer into a new product, etc.

**a. Comments**

RESA notes that consumers may move in and out of the PCAP program on a regular basis - meaning that an EGS customer’s PCAP status may change throughout the EGS contract period. As such, RESA supports the proposal to establish a safe harbor period during which the EGS may rely on its customer’s PCAP status to determine how to handle the customer's contract. If the customer is now a PCAP participant, the EGS may want to offer a PCAP-compliant contract. However, if the PCAP participation status of the customer is not known until the 30-day options notice period, then it may be too late for the EGS to revise its processes (and the provided notices) to accommodate that new fact. Therefore, RESA recommends that the safe harbor period be tied with the Initial Notice period, i.e. 60 days prior to contract expiration. EGSs should be permitted to rely on the PCAP participation status of their existing customers at this point in time to determine how the EGS will proceed. Thus, if the customer is not enrolled in PCAP but enrolls in PCAP subsequently, the safe harbor period permits the EGS to treat the customer as a non-PCAP participant throughout the duration of the contract expiration/renewal period. RESA believes that this is a reasonable way for EGSs to manage the timing and contract expiration requirements while using best efforts to effectuate the policy goals of the Commission in this proceeding. (RESA at 12 – 13.)

CAUSE-PA is concerned about a 30-day safe harbor for supplier contract renewal, as it may erode the effectiveness of the PCAP shopping restrictions. CAUSE‑PA asserts that the supplier’s attempt to institute such a lengthy safe harbor provision is unreasonable and does not represent a “good faith effort to check the customer’s PCAP participation status.” Given that information about a customer’s PCAP participation status will be made available to suppliers via three different lists, it is reasonable to require a supplier to check these lists on the contract renewal date – not before – to ensure that newly enrolled PCAP customers do not begin their PCAP participation bound to a potentially lengthy contract for service. (CAUSE-PA at 3 – 4.)

CAUSE-PA notes that the suppliers argued at the Collaborative meeting that the safe harbor is necessary to avoid having to send a second options notice if the customer were to enroll in PCAP after the options notice is sent but before the contract expires. But CAUSE-PA believes that this potential issue is more appropriately resolved by including language in the initial options notice that would notify customers of what would happen if they were to enroll in PCAP before the expiration of the existing contract. Modification of the language in the options notice would ensure that newly enrolled PCAP customers are adequately informed of their shopping options without exposing them to unnecessary harm. (CAUSE-PA at 4 – 5.)

CAUSE-PA requests that the Commission adopt the guidelines set forth in the Commission’s December 20, 2018 Tentative Order, with the exception of the supplier’s proposal to implement a 30-day safe harbor. Rather, the Commission should require suppliers to check PCAP status within three days of the date that an existing contract expires and process a non-PCAP compliant contract renewal upon verification that the customer is not enrolled in PCAP within this short window of time. (CAUSE-PA at 6.)

**b. Resolution**

We agree that we need to define a safe harbor period for EGSs when renewing existing customer contracts – and proposed linking it to the 30-day options notice provided for in 52 Pa. Code § 54.10(2). While, RESA thinks this is too short a time period CAUSE-PA thinks it is too long and risks possibly tying PCAP participating customers to a new non‑PCAP compliant contract. We find that CAUSE-PA’s suggestion that EGSs revise their notice language is problematic in that EGSs likely use the same notice, tailored to comply with § 54.10, across the Commonwealth with all EDC customers. We find it significant that under the scenario being addressed by this provision is that at the point the options notice is being sent, the customer is not participating in PCAP. In essence, CAUSE‑PA is asking that the Commission require all EGSs to provide CAP program language on all option notices. We find that requiring EGSs to tailor specific notices for specific EDCs and EDC CAP programs would be imposing costs and burdens upon EGSs that have not been fully examined or vetted as to their necessity and benefits through a rulemaking process. Accordingly, we will decline to adopt CAUSE‑PA’s proposal.

In response to CAUSE-PA’s concern that a PCAP customer could be subject to an extended new contract that fails to comply with the PCAP shopping rules, we note that per § 54.10(3), if a customer fails to respond to the notices, the supplier can place the customer on a new agreement – but that agreement has to be a month-to-month contract or another fixed term contract with no cancellation fees. This means that if the customer subsequently enrolls in PCAP, the customer on a month‑to‑month contract would have to be returned to default service or placed on a PCAP-shopping compliant product per the month-to-month rules outlined in this Order. If this same customer were enrolled in another fixed term contract, that customer could cancel the contract at any time without penalty and return to default service or enroll in a PCAP‑compliant product offered by any supplier.

Admittedly, if the customer affirmatively agreed to a new fixed-duration agreement during the safe harbor period and entered PCAP during the same safe harbor period, the customer would then possibly be committed to the new fixed‑duration contract. Such a customer would subsequently be identified as a PCAP participant and that supplier, as well as all other suppliers, would be on notice to comply with the PCAP rules from that point forward, when offering any subsequent product. We note, however, that no party has demonstrated that the number of PCAP participating customers impacted by the safe harbor provision are significant or that any potential costs imposed on the PCAP program would also be significant.

Accordingly, we will retain our proposal - for the purposes of renewing all customer contracts, an EGS is obligated to determine the customer’s PCAP status at the time the options notice is provided per 52 Pa. Code § 54.10(2) at least 30 days prior to the expiration of the contract. If the customer is enrolled in PCAP at that time, the EGS is obligated to follow the procedures and product rules for PCAP participating customers. If the customer is not enrolled in PCAP at that time, the EGS is free to treat that customer as a non-PCAP participating customer. All parties can observe and monitor the impact of this safe harbor rule and it can be considered further, if need be, during subsequent related proceedings.

**8. Supplier Disclosure Requirements – Cancellation Provisions**

Suppliers asked the Commission to declare that suppliers are free to include cancellation provisions in disclosure statements that would allow the supplier to cancel the contract if the customer enrolls in FirstEnergy’s PCAP. The Commission agreed and saw no reason why this would not be allowable under the 52 Pa Code § 54.5 disclosure rules.

**a. Comments**

No party expressed disagreement with the Commission’s pronouncement on this issue.

**b. Resolution**

We reiterate that EGSs are free to include in their disclosure statements a cancellation provision based upon a customer’s PCAP status.

**9. Consumer Education**

FirstEnergy proposed informing newly-enrolled PCAP customers of the PCAP‑shopping rules and how they can shop. Many stakeholders thought that current PCAP participants should also be informed of these same rules. Accordingly, the Commission proposed that FirstEnergy should notify both new and existing PCAP participants of the rules and procedures of the PCAP-shopping program. The Commission also proposed that draft PCAP customer notices be prepared by FirstEnergy and reviewed by FirstEnergy’s PCAP advisory group before they are presented to customers. Furthermore, we proposed that FirstEnergy provide drafts to OCMO, OCA and to any interested supplier for review and feedback within a brief designated timeframe of not less than one week and not to exceed two weeks. The Commission also agreed that suppliers are free to communicate with their customers, as long as the communication reflects the rules of the program that result from this proceeding. We also reminded everyone that suppliers are obligated to comply with the disclosure rules contained in 52 Pa. Code § 54.5 and the marketing rules contained in 52 Pa. Code § 111.1 – 111.14 where applicable.

**a. Comments**

No party objects to the Commission’s consumer education proposals. OCA agrees that consumer education should be provided to both new and existing PCAP customers so that customers will fully understand the new rules for the PCAP shopping program, with this being particularly essential for those PCAP participants who are currently shopping, so they understand the changes to the PCAP shopping rules. The OCA also agrees that the PCAP shopping program materials should be provided to the FirstEnergy Universal Services Advisory Group, OCMO, OCA, and interested suppliers. OCA believes that providing the notices for feedback to these entities will ensure that the PCAP shopping materials clearly communicate the rules of the new PCAP shopping program. (OCA at 9 – 10.)

**b. Resolution**

We agree that both existing and future PCAP participants need to be informed of the special rules that apply when they shop for electric supply service. Accordingly, we direct FirstEnergy to notify both new and existing PCAP participants of the rules and procedures of the PCAP-shopping program. We direct FirstEnergy to prepare a draft written notice intended for all current PCAP participants. The draft notice shall be reviewed by FirstEnergy’s PCAP Universal Services Advisory Group and drafts shall also be made available to the OCA, OCMO, and any interested EGS for review and feedback for a period of no less than one week. FirstEnergy is directed to make a good faith effort to accommodate suggestions for changes to the materials being provided to PCAP participants.

**10. Supplier Education**

FirstEnergy offered to host a supplier workshop to educate suppliers on the new PCAP shopping program rules and procedures. In addition, the Commission proposed that FirstEnergy post information about the PCAP-shopping program on their supplier web‑portals and ensure that new suppliers coming onto their systems are directed to the necessary information. We also invited parties to comment on to what extent, if any, these rules and procedures should also be included in FirstEnergy’s supplier tariffs.

**a. Comments**

No party expressed opposition to the Commission’s proposal. FirstEnergy notes that they intend to make compliance filings, including revised supplier tariffs, that reflect the changes approved by the Commission as part of this proceeding. (FirstEnergy at 3 – 4.)

**b. Resolution**

It is essential that both current and future EGSs operating in the FirstEnergy territories are aware of the PCAP shopping rules. Accordingly, FirstEnergy is directed to convene a workshop for EGSs to educate EGSs on the new PCAP shopping program rules and procedures. FirstEnergy shall also post information about the PCAP shopping program on their supplier web‑portal and shall ensure that new EGSs coming onto their systems are directed to the necessary information. And as they have offered, we direct FirstEnergy to file revised supplier tariffs that reflect this Order.

**11. Implementation Timeline**

The Commission reiterated that June 1, 2019, remains the target date for implementing FirstEnergy’s PCAP shopping program.

**a. Comments**

FirstEnergy notes that if the Commission’s proposal as stated in the Tentative Order is approved without major modification, they anticipate that they will meet the June 1 implementation date. To the extent the Commission’s final order in this proceeding markedly differs from the Tentative Order, FirstEnergy reserves the right to seek to delay implementation if the necessary system or process changes cannot be implemented prior to June 1, 2019. (FirstEnergy at 4.)

**b. Resolution**

Given that we are adopting much of our original proposal with only some modifications - the Commission reiterates that June 1, 2019, remains the date for implementing FirstEnergy’s PCAP shopping program.

**B. CUSTOMER REFERRAL PROGRAM SCRIPTING:**

Upon careful consideration of the stakeholder input, the Commission proposed reverting back to the pre-May 2017 scripting as follows:

**FirstEnergy Call Center Mover/New Service Script prior to 5-26-17:**

Are you satisfied with what I have done for you today? I have completed your order. With your permission, I will transfer you and your order information to our vendor. They will provide you with a confirmation number, offer you potential rate savings through our Electric Choice Program, and help you to set up other services if needed.”

**First Energy PTC and High Bill Calls Scripting prior to 5-26-17:**

In Pennsylvania, you can choose the company that generates your electricity – also known as your electric supplier – without impacting the quality of your service. Would you like to speak to a representative who can offer you a potential rate savings by enrolling with an alternate supplier?

**Vendor Call Scripting prior to 5-26-17:**

[CUSTOMER NAME], there are many registered electric suppliers doing business in the state of Pennsylvania and you have the option of choosing any of them. In an effort to encourage choice, the State Utility Commission has made the Standard Offer program available to you.

The program offer is a 7 % discount off the Price to Compare that you are currently paying with [EDC NAME] as your default service supplier. There are no fees for selecting an alternate supplier today or any penalties for changing suppliers before the 12 months are up.

The current Price to Compare rate for [EDC NAME] is [X.XX] cents per kilowatt-hour. The rate for this Standard offer is X.XXX cents per kilowatt-hour. The Standard Offer rate may be higher or lower than the price to compare and the percentage savings you will experience compared to [EDC NAME] supplier generation will vary as the price to compare changes. The price to compare changes quarterly in March, June, September and December, however your Standard Offer rate will remain the same for 12 billing cycles and is the same no matter which participating supplier you select.

**1. Comments**

RESA supports the Commission's proposal to revert the scripts back to the pre‑May 2017 scripting. This recommendation is supported by the average 88% decline in CRP customer enrollments occurring after the CRP scripts were changed in May 2017. (RESA at 1 – 2.) FirstEnergy supports the Commission's proposals and stated that it can modify their scripting to reflect the language used prior to June 1, 2017. (FirstEnergy at 2.)

OCA does not agree with the Commission’s proposed reversion to the pre-May 2017 script language. OCA asserts that the May 2017 changes were designed to ensure that the customer is aware that the regulated transaction is complete and to address inaccuracies in the information provided in the vendor script. Reversion to the pre-May 2017 script would ignore the evidence presented in the DSP IV case that necessitated the changes.

OCA believes that there are several important tenets that should be included in the CRP script. First, it must be clearly communicated to customers that the regulated EDC transaction has concluded prior to the customer being transferred to the vendor. Second, customers must be informed that the PTC at the time of contracting will change and that the advertised discount will also change. Third, customers must be informed that the CRP is optional and that the customer must explicitly be asked if they wish to enroll in the CRP just as in any other EGS transaction. (OCA at 11 – 12.) Accordingly, OCA proposes that the language should be changed to the following:

Are you satisfied with what I have done for you today? I have completed your order. ~~With your permission, I will transfer you and your order information to our vendor. They will provide you with a confirmation number, offer you potential rate savings through our Electric Choice Program, and help you to set up other services if needed.~~ With your permission, I can transfer you to our representative to explain a customer choice program that enrolls you with an alternative supplier with a fixed price agreement that could provide potential rate savings. Are you interested?

(OCA at 12 – 13.)

OCA notes that the third-party vendor’s internal scripts were also changed in May 2017 to require mandatory disclosures. OCA does not agree with the Tentative Order’s statement that the pre-May 2017 scripting provides “meaningful information along with necessary disclosures.” The OCA submits that enrollment levels and individual customer complaints are not a reasonable guide in determining whether full and fair disclosure has been provided. OCA asserts that script changes are necessary in the following areas to ensure that customers are not misled regarding the nature of the CRP and any discounts associated with the program nor enrolled in the CRP without informed consent: (a) clear disclosure that any stated discount off of the PTC is not guaranteed and is temporary; (b) clear disclosure that the PTC will change and that any discount or savings will change with the PTC; (c) disclosure of the dates upon which the PTC will change; (d) information as to how customers can monitor the PTC; (e) disclosure that the CRP is an optional program; and (f) disclosure that there are no early termination fees. The OCA also submits that appropriate disclosures must immediately follow any reference to a stated discount if one is used. (OCA at 15 -16.)

OCA proposes that the vendor script be modified as follows:

[CUSTOMER NAME], there are many registered electric suppliers doing business in the state of Pennsylvania and you have the option of choosing any of them. In an effort to encourage choice, the Public Utility Commission has made the Standard Offer program available to you.

The program offer is a ~~7 %~~ discount off the current Price to Compare that you are ~~currently~~ paying with [EDC NAME] as your default service supplier. ~~There are no fees for selecting an alternate supplier today or penalties for changing suppliers before the 12 months are up.~~

The ~~current~~ Price to Compare ~~rate~~ for [EDC NAME] is [X.XX] cents per kilowatt-hour. The fixed rate for this Standard offer is X.XXX cents per kilowatt-hour for 12 months, 7% less than the current Price to Compare. The Standard Offer Rate may be higher or lower than the price to compare and the percentage savings you will experience compared to [EDC Name] supplier generation will vary as the price to compare changes. The price to compare changes quarterly in March, June, September and December, however your Standard Offer rate will remain fixed for 12 billing cycles and is the same no matter which participating supplier you select. You should compare your supplier rate to the future changes in the Price to Compare that appear on your monthly bill.

There are no fees for selecting an alternate supplier today. You can cancel this contract anytime without penalty and select another supplier or return to [EDC NAME] for service at the Price to Compare.

(OCA at 16 – 17.)

OCA believes that the Commission’s proposed script with the emphasis on a “7% discount” is potentially misleading because customers do not receive a 7% discount every month from the Price to Compare. Citing testimony from the DSP proceeding, OCA concluded that customers enrolled in CRP were regularly paying more than the PTC under the program in both 2016 and 2017. (OCA at 17 – 18.)

OCA notes that CRP is an optional program, but the Commission’s script cuts off before obtaining the informed consent of the customer that the customer wishes to participate in this optional program. The vendor’s agents do not explicitly ask if they choose to enroll in this optional program. As such, the OCA proposes the following additional scripting paragraph:

I can enroll you with an approved supplier of your choice from our list or I can select one for you. Do you have questions? Do you agree to be enrolled with a supplier for this program?

(OCA at 19.)

OCA also notes that the Commission’s proposal does not include a comprehensive training and oversight program. In the past, OCA has found that the required disclosures were not integrated into the vendor training materials. OCA believes that FirstEnergy should implement comprehensive training materials that reflect any updated script materials. Further, FirstEnergy must ensure that both its agents and the vendor’s agents are trained and monitored to ensure that the agents understand how the program works and answer questions correctly to educate the customer. OCA suggests that the results of this oversight program should be reported to the Commission and the OCA on a quarterly basis. (OCA at 19 – 20.)

**2. Resolution**

In response to OCA’s concerns with the savings or lack of customer savings, we have always acknowledged that a customer’s savings or lack of savings can change with the quarterly changes of the default PTC. This is one of the reasons why we structured the program to include no early termination fees. And with 3-business day accelerated switching (and the customer right to contact the EDC directly to return to default service that we instituted in 2014) a change can take place within days. We also point out that any analysis of savings is heavily dependent upon the time-period examined, how long the customer remained in the program, and which EDCs are examined. We note that both 2016 and 2017 did see a rate environment that featured generally declining rates – and admittedly that made it more likely that a customer could pay more than the PTC at some point. We, however, also note that in 2018, the most recent PTC changes in the FirstEnergy markets saw residential PTC increases of 5% – 16%.[[17]](#footnote-17) As such, we do not find that the relatively few examples provided by the OCA to be indicative of the program as a whole or necessary representative of what may occur in the future.

We also note that CRP enrollees, like all shoppers, receive a written disclosure explaining the terms and conditions that includes a 3-business day rescission period and a contract summary that highlights the key information such as the price. Statewide, nearly a million consumers have enrolled in Standard Offer Programs like CRP, [[18]](#footnote-18) with few informal or formal complaints. We maintain that the CRP is the easiest and safest way for a consumer to shop, especially for those consumers who, for whatever reason, do not want the bother of comparison-shopping but would still like to try a competitive offer.

Having said the above, we agree that some revisions to our proposed scripting are in order. Concerning the initial scripting for the FirstEnergy call center, we agree with OCA that the reference to a “confirmation number” appears to be unnecessary and a potential source of confusion for the customer. A customer should opt for a transfer to the vendor to discuss the CRP program – not to obtain a confirmation number. We believe the remainder of the script is sufficient in offering “potential rate savings” –not a promise of specific savings - and it does ask the customer for their permission to transfer the call, requiring an affirmative response from the customer. As for OCA’s concerns with an entity selling other products and services, that is a matter outside the scope of this proceeding and would need to be addressed elsewhere in a more comprehensive manner providing any interested party full due process. For these reasons, we will revise the scripts for FirstEnergy’s call center as follows:

**FirstEnergy Call Center Mover/New Service Script:**

Are you satisfied with what I have done for you today? I have completed your order. With your permission, I will transfer you ~~and your order information~~ to our vendor. They will ~~provide you with a confirmation number,~~ offer you potential rate savings through our Electric Choice Program, and help you to set up other services if needed.”

**First Energy PTC and High Bill Calls Scripting:**

In Pennsylvania, you can choose the company that generates your electricity – also known as your electric supplier – without impacting the quality of your service. Would you like to speak to a representative who can offer you a potential rate savings by enrolling with an alternate supplier?

Concerning the scripting for the third-party vendor, we are not comfortable with OCA’s suggested removal of the reference to 7% when the discount is first mentioned – we find that the amount of initial savings must be provided up-front. We also find that the mention of no fees or penalties needs to be sooner in the script as we proposed – not later. We do agree with OCA that the script should specify “current” when mentioning the PTC. We also find that the script should describe the standard offer rate as “fixed” in the third paragraph. We also agree with OCA that the script should reassure the customer that they can shop for other suppliers or return to default service at any time – and should conclude by offering to answer any questions and obtaining the customer’s consent.

We find that this information is necessary for customers to make an informed decision as to whether to proceed to enroll in the program. We also find that this scripting provides a reasonable balance of providing meaningful information to the potential customer along with the necessary disclosures – while not being too lengthy and placing unreasonable burdens on FirstEnergy’s call center resources. Accordingly, we will revise our proposed vendor script as follows:

[CUSTOMER NAME], there are many registered electric suppliers doing business in the state of Pennsylvania and you have the option of choosing any of them. In an effort to encourage choice, the State Utility Commission has made the Standard Offer program available to you.

The program offer is a 7 % discount off the current Price to Compare that you are ~~currently~~ paying with [EDC NAME] as your default service supplier. There are no fees for selecting an alternate supplier today or any penalties for changing suppliers before the 12 months are up.

The current Price to Compare rate for [EDC NAME] is [X.XX] cents per kilowatt-hour. The rate for this Standard offer is X.XXX cents per kilowatt-hour. The Standard Offer rate may be higher or lower than the price to compare and the percentage savings you will experience compared to [EDC NAME] supplier generation will vary as the price to compare changes. The price to compare changes quarterly in March, June, September and December, however your Standard Offer rate will remain fixed the same for 12 billing cycles and is the same no matter which participating supplier you select.

You can cancel this contract anytime without penalty and select another supplier or return to default service with [EDC NAME] for service at the Price To Compare. I can enroll you with an approved supplier of your choice from our list or I can select one for you. Do you have questions? Do you agree to be enrolled with a supplier for this program?

Regarding OCA’s concerns with training and oversight, we agree that FirstEnergy should ensure that scripting is put into effect and that its call center and vendors have the approved scripting and have been trained adequately. We, however, find that a quarterly reporting requirement to be unnecessarily burdensome and excessive. As we have noted, informal and formal complaint levels about the Standard Offer Programs have been minimal – too low to justify a continuing reporting requirement. In lieu of a quarterly reporting requirement, we will require FirstEnergy to file a report at this docket confirming that revised scripting has been put in place and training completed. We further reiterate that this scripting change should be placed into effect no later than June 1, 2019, if not sooner.

**Conclusion**

We thank the stakeholders for their participation in this proceeding and for their helpful assistance during the collaborative process. With this Final Order, we are resolving concerns identified with the rules and procedures for FirstEnergy’s PCAP shopping program and the scripting for its Customer Referral Program, both to be implemented by June 1, 2019;

**THEREFORE**,

 **IT IS ORDERED:**

 1. That participants in the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company Pennsylvania Customer Assistance Program receiving service from an electric generation supplier shall be billed through rate‑ready billing by the utility via utility‑consolidated billing.

2. That participants in the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company Pennsylvania Customer Assistance Program may only take service from an electric generation supplier at a per‑kilowatt‑hour price that is set at the price‑to‑compare or a percentage-off the price‑to‑compare for the duration of the contract.

3. That the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company shall reject any enrollments submitted by an electric generation supplier for a participant in its respective Pennsylvania Customer Assistance Program that does not meet the requirements described in this Final Order.

4. That electric generation suppliers entering into retail electric service agreements with participants in the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company Pennsylvania Customer Assistance Program shall never charge said participants any early termination, cancellation or other fees in addition to the per-kilowatt‑hour unit price.

5. That electric generation suppliers may identify and label electric retail supply offers meeting the Pennsylvania Customer Assistance Program shopping requirements as a “PCAP Customer Product” and comply with all disclosure requirements contained in 52 Pa. Code § 54.5 (relating to Disclosure statement for residential and small business customers) except for 52 Pa. Code § 54.5(c)(14).

6. That the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company is directed to have sufficient electronic data interchange testing resources and capacity available to certifying suppliers that are currently certified for bill‑ready billing for rate‑ready billing within 30 days of request from March 1, 2019 through September 1, 2019.

7. That the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company are directed to routinely update their sync lists, Eligible Customer Lists and account number access portals to identify customers that participate in their respective Pennsylvania Customer Assistance Programs.

8. That for the purposes of renewing all customer contracts, all electric generation suppliers are obligated to determine if the customer is participating in the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company Pennsylvania Customer Assistance Programs at the time the second (options) notice is provided pursuant to 52 Pa. Code § 54.10(2) at least 30 days prior to the expiration of the contract. If the customer is not a participant in the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company or West Penn Power Company Pennsylvania Customer Assistance Program at the time the electric generation supplier sends the second (options) notice, the electric generation supplier is free to treat that customer as a non-participant.

9. That for the purpose of transitioning participants in the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company or West Penn Power Company Pennsylvania Customer Assistance Programs who are currently being served by an electric generation supplier as of June 1, 2019:

1. Participants 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 the supplier until the expiration date of the fixed duration contract or the contract is terminated, whichever comes first.
2. Retail electric customers receiving service from a supplier under a fixed duration contract who subsequently become a participant on or after June 1, 2019, (also considered to be served under a pre-existing fixed duration contract) may remain with the supplier 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 supplier must either: (i) enroll the participant under a contract compliant with the new participant shopping rules; or, (ii) return the participant to default service.
4. Suppliers serving participants under a month‑to‑month contract as of June 1, 2019, the supplier must either: (i) return the participant to default service effective June 1, 2019; or, (ii) enroll the participant in a compliant contract with an effective date of June 1, 2019.
5. Retail electric customers receiving service from a supplier under a month-to-month contract who subsequently become a participant on or after June 1, 2019, the supplier must, within 120 days of the customer becoming a participant, either: (i) return the participant to default service; or, (ii) enroll the participant in a compliant contract.

10. That the requirements at 52 Pa. Code § 54.10 (relating to Notice of contract expiration or change in terms for residential and small business customers) remain applicable for participants in the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company Pennsylvania Customer Assistance Program, subject to the following clarifications and modifications:

1. A supplier who intends to drop a customer to default service upon contract expiration or cancellation: the cancellation and notice provisions of the disclosure agreement between the supplier and the customer applies. In instances where the disclosure does not address cancellation and notices, the supplier shall provide at least one notice 30-days in advance of the drop.
2. If a contract of a current retail electric supply contract is expiring and the supplier is offering to enroll the customer onto a compliant contract, the two notice requirements of 52 Pa. Code § 54.10 shall apply. The supplier may proceed to enroll the customer into the compliant contract if the customer affirmatively agrees to the contract. The supplier may also proceed to enroll the customer into the compliant contract if the participant does not respond to the notices, however, the supplier is not required to provide 30-day notice of any subsequent price changes.
3. If a supplier seeks to revise an existing non-compliant contract with a participant, by offering to move the participant into a compliant contract, the two notice requirement of 52 Pa. Code § 54.10 shall apply. The participant must affirmatively accept the new terms to be enrolled onto the new compliant contract.

11. That the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company are directed to notify both new and existing participants in their Pennsylvania Customer Assistance Program of the rules and procedures for selecting retail electric service from and electric generation supplier. The notices shall be provided to the Universal Services Advisory Group, the Office of Consumer Advocate, the Commission’s Office of Competitive Market Oversight, and any interested electric generation supplier for review for a period of not less than one week before they are distributed to participants. The Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company are directed to make a good faith effort to accommodate suggestions for changes to the materials being provided.

12. That the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company are directed to convene a workshop for electric generation suppliers to educate them on the new rules and procedures for participants in the Pennsylvania Customer Assistance Programs. The information shall be made available on the supplier web‑portal and shall ensure that new electric generation suppliers offering retail electric service in their service territories are directed to the necessary information.

13. That the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company shall implement the shopping program described in this Final Order by June 1, 2019.

14. That the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company are directed to revise the scripting for their Customer Referral Programs as described in this Final Order no later than June 1, 2019.

15. That the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company are directed to file a report at this Docket once revised scripting for their Customer Referral Program has been put in place and training of staff at their call center and third-party vendor has been completed.

16. That the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company are to file with the Secretary revised supplier tariffs.

17. That this Final Order shall be served on all jurisdictional electric distribution companies, all licensed electric generation suppliers, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate and the parties at these Docket Numbers.

 18. That a copy of this Final Order shall be posted on the Commission’s website at the Office of Competitive Market Oversight’s web page.

19. That the Office of Competitive Market Oversight shall electronically serve a copy of this Final Order on all persons on the contact list for the Committee Handling Activities for Retail Growth in Electricity.

20. That the contact person for technical issues related to this Final Order is Daniel Mumford, 717-783-1957 or dmumford@pa.gov. That the contact person for legal issues related to this Final Order is Kriss Brown, 717-787-4518 or kribrown@pa.gov.

 **BY THE COMMISSION,**

 Rosemary Chiavetta Secretary

(SEAL)

ORDER ADOPTED: February 28, 2019

ORDER ENTERED: February 28, 2019

1. See *Joint Petition of Metropolitan Edison Company (Met-Ed), Pennsylvania Electric Company (Penelec), Pennsylvania Power Company (Penn Power), and West Penn Power Company (West Penn) (collectively, the Companies) for Approval of their Default Service Programs for the Period Beginning June 1, 2019 through May 31, 2023*, Opinion and Order at Docket No. P-2017-2637855, et al. (entered September 4, 2018) (September Order). [↑](#footnote-ref-1)
2. FirstEnergy refers to their Customer Assistance Program (CAP) as the Pennsylvania Customer Assistance Program (PCAP). [↑](#footnote-ref-2)
3. *See Petition of Metropolitan Edison Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023*, Opinion and Order at Docket Nos. P-2017-2637855 *et al*. (entered November 1, 2018) (November Order). [↑](#footnote-ref-3)
4. *See Petition of Metropolitan Edison Company for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023*, Opinion and Order at Docket Nos. P-2017-2637855 *et al*. (entered December 20, 2018) (Tentative Order). [↑](#footnote-ref-4)
5. With *Rate-Ready* billing, the supplier must provide the EDC with the customer’s rate so that the EDC can calculate and present the bill to the customer (the EDC does the math). This differs from *Bill-Ready* billing in that with *Bill- Ready*, the supplier calculates the supplier portion of the bill based on usage data obtained from the EDC, and then presents the dollar amount to the EDC for placement on the bill (the supplier does the math, thus the EDC does not need, nor knows, the customer’s supplier price). [↑](#footnote-ref-5)
6. FirstEnergy noted that it already has this program in place in Ohio, so there should be minimal administrative and programming costs associated with implementing this program. [↑](#footnote-ref-6)
7. *See* 52 Pa. Code § 54.5(c)(2), (10) and (14). [↑](#footnote-ref-7)
8. 52 Pa. Code § 54.5(c)(i) and (ii) state the following: (i)   A telephone number and Internet address at which a customer may obtain the previous 24 months’ average monthly billed prices for that customer’s rate class and EDC service territory. If an EGS has not been providing generation service in a rate class and EDC service territory for 24 months, the EGS shall provide the average monthly billed prices for the months available to date.
     (ii)   In plain language, a statement that historical pricing is not indicative of present or future pricing. [↑](#footnote-ref-8)
9. 52 Pa. Code § 54.10(2)(ii)(A) states the following: (A) If a customer fails to respond to the options notice and is converted to a month-to-month contract, the EGS shall provide a disclosure statement under § 54.5 (relating to disclosure statement for residential and small business customers).

         (I)   Notice of a subsequent change in pricing shall be provided to the customer at least 30 days prior to the new price being charged.

         (II)   For customers who have elected to receive electronic communications from the EGS, notice of the change in pricing shall be transmitted in the manner chosen by the customer. For all other customers, notice shall be provided by first class mail. [↑](#footnote-ref-9)
10. 52 Pa. Code § 54.10(2)(ii)(A) states the following: (A) If a customer fails to respond to the options notice and is converted to a month-to-month contract, the EGS shall provide a disclosure statement under § 54.5 (relating to disclosure statement for residential and small business customers).

         (I)   Notice of a subsequent change in pricing shall be provided to the customer at least 30 days prior to the new price being charged.

         (II)   For customers who have elected to receive electronic communications from the EGS, notice of the change in pricing shall be transmitted in the manner chosen by the customer. For all other customers, notice shall be provided by first class mail. [↑](#footnote-ref-10)
11. “Sync Lists” are lists the EDCs make available to suppliers of all of that supplier’s customers that include account status information. The intention of the list is to ensure that the EDC and EGS are “in-sync” on basic customer information. Sync lists are comprehensive in that all customers of the supplier are listed – no one is exempt. [↑](#footnote-ref-11)
12. Note that ECLs are not a comprehensive listing of all customers because customers can exempt themselves from the ECL. [↑](#footnote-ref-12)
13. These are secure web-based portals suppliers can use to obtain customer account numbers (upon consent of the customer). [↑](#footnote-ref-13)
14. *See*  [*Guidelines for Use of Fixed Price Labels for Products with at Pass-Through Clause*](http://www.puc.pa.gov/pcdocs/1256797.doc), Final Order at Docket No. M-2013-2362961 (entered November 14, 2013), at 25 - 26. [↑](#footnote-ref-14)
15. *See*  [*Guidelines for Use of Fixed Price Labels for Products with at Pass-Through Clause*](http://www.puc.pa.gov/pcdocs/1256797.doc), Final Order at Docket No. M-2013-2362961 (entered November 14, 2013), at 25 - 26. [↑](#footnote-ref-15)
16. *Ibid* at 25 - 26. [↑](#footnote-ref-16)
17. Present and recent past PTCs are available on the PaPowerSwitch.com website. Archived PTCs are available on the Office of Consumer Advocate’s website at: <http://www.oca.state.pa.us/Industry/Electric/elecomp/Archive/pricecharts_archive.htm> [↑](#footnote-ref-17)
18. <https://www.papowerswitch.com/sites/default/files/EDC_SOP_Stats103118.pdf> [↑](#footnote-ref-18)