

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
HARRISBURG, PENNSYLVANIA 17120**

**Electric Distribution Company
Default Service Plans – Customer
Assistance Program (CAP)
Shopping**

**Public Meeting December 20, 2018
3006578-CMR**

MOTION OF COMMISSIONER DAVID W. SWEET

The Public Utility Code requires that electric distribution companies (EDCs) offer universal service and energy conservation programs that are developed, maintained and appropriately funded to ensure affordability and cost-effectiveness.¹ The portfolio of universal services includes, among other things, Customer Assistance Programs (CAPs), which provide lower monthly payments and arrearage forgiveness for eligible low-income customers.²

The Public Utility Code also provides for competition in the retail electric market.³ As part of the current competitive market, EDCs provide default service for those customers who have chosen not to switch to an electric generation supplier (EGS).⁴ EDCs are required to submit default service plans outlining the procurement process and associated programs tied to their provision of default service.⁵ Over the years, many of these plans have expanded to include a variety of issues, including the manner in which customers participating in EDC CAPs participate in the competitive electric market.⁶

In PPL Electric Utilities Corporation's (PPL) most recent default service plan proceeding, PPL provided data showing that, over the 34-month period ranging from January 2013 through October 2015, an average of 49 percent of its CAP customers were shopping and, of those CAP shopping customers, 55 percent were paying above PPL's Price to Compare (PTC). PPL compared that information with information regarding those CAP customers who shopped during the same time period and paid at or below the PTC and found that the net financial impact was approximately \$2,743,872 over 12 months. PPL concluded, and this Commission agreed, that two forms of harm existed as a result of CAP shopping: (1) those CAP customers paying a rate greater than PPL's PTC were exceeding their CAP credits at a faster rate, which put those CAP customers at risk of being removed from CAP, and (2) that non-CAP customers who subsidize CAP customers were bearing

¹ 66 Pa. C.S. § 2804(9) regarding electric universal service programs.

² Low-income customers are those at 150% or below the Federal Poverty Income Guidelines (FPIG). See the Federal Poverty Guideline - <https://aspe.hhs.gov/poverty-guidelines>.

³ *Electricity Generation Customer Choice and Competition Act*, 66 Pa. C.S. § 2801 *et seq.* (*Competition Act*).

⁴ 66 Pa. C.S. § 2807(e) regarding obligation to serve.

⁵ 66 Pa. C.S. § 2807(e)(6); 52 Pa. Code § 54.182 regarding default service programs and periods of service.

⁶ See *Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2017 through May 31, 2021 (DSP IV)*, *et al.*, Docket Nos. P-2016-2534980, *et al.* *Petition of Duquesne Light Company for Approval of a Default Service Plan for the Period June 1, 2016 to May 31, 2021*, Docket No. P-2016-2543140. *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*, Docket Nos. P-2017-2637855, *et al.* *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 through May 31, 2021*, Docket No. P-2016-2526627.

increased CAP costs. As such, certain limits were placed on PPL's CAP shopping program, including an initial limit on the EGSs' prices provided to those customers and a limit on early termination fees. Additionally, at the end of the contract term, an EGS may only re-enroll the CAP customer at the new CAP shopping rate or must return the customer to default service.⁷ The Pennsylvania Commonwealth Court upheld our decision, finding it permissible for PPL to set a rate ceiling for its CAP shopping program.⁸

Similarly, in the FirstEnergy Companies' most recent default service plans proceeding, it was shown that over a 58-month period ranging from June 2013 through March 2018, nearly 65 percent of FirstEnergy's CAP customers who switched to EGSs paid rates higher than FirstEnergy's applicable PTCs. The net impact of this resulted in more than \$18.3 million in increased CAP costs over that time period. This Commission agreed with the Administrative Law Judge that the record evidence demonstrated that, over a prolonged period of time, a majority of FirstEnergy's CAP customers paid above the PTC. This practice causes harm because generation rates charged to FirstEnergy's CAP customers affect the asked-to-pay amounts for those customers since their monthly maximum CAP credits are based upon their average annual electric bill less a percentage of their annual income. Therefore, higher rates make it more likely that CAP customers will exceed their monthly maximum CAP credits and incur charges they may not be able to pay. If CAP customers are unable to pay their bills, uncollectibles are increased, which are then recovered from the rest of the utility's residential ratepayers, causing those ratepayers harm, as well. As a result, this Commission directed FirstEnergy to develop a CAP shopping program that allows a CAP customer to only enter into a contract with an EGS for a rate that is at or below the utility's PTC(s) at all time periods of the contract between the EGS and the customer. The contract may not contain any early termination or cancellation fees.⁹

Collectively, PPL and the four FirstEnergy utilities serve approximately three million of this Commonwealth's nearly 5.1 million residential electric customers. Of those, PPL and FirstEnergy have almost 430,000 of Pennsylvania's roughly 630,000 confirmed low-income customers. Additionally, these five utilities serve nearly 765,000 of Pennsylvania's approximate 1.3 million estimated low-income customers.¹⁰ This is a significant portion of Pennsylvania's electric customer base that is, or could in the future be, participating in CAPs. As discussed above, this Commission has already taken steps to prevent both CAP *and* non-CAP customers in these five service territories from harm resulting from inappropriate CAP shopping programs. Both CAP customers, in potentially losing their CAP benefits, and non-CAP customers, because they subsidize

⁷ See *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 through May 31, 2021*, Docket No. P-2016-2526627 (Order entered October 27, 2016).

⁸ See *Retail Energy Supply Ass'n v. Pa. Pub. Util. Comm'n*, 185 A.3d 1206 (Pa.Cmwlt. 2018) (*RESA*). I note that the PECO Energy Company petitions for default service, which had been stayed by the Administrative Law Judge (ALJ) pending the outcome of the *RESA* case on appeal, can now be litigated. *Petition of PECO Energy Company for Approval of its Default Service Program (Customer Assistance Program Shopping Plan)*, Docket No. P-2012-2283641 (DSP II), and *Petition of PECO Energy Company for Approval of its Default Service Program for the period June 1, 2017 through May 31, 2021*, Docket No. P-2016-2534980 (DSP IV).

⁹ 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*, Docket Nos. P-2017-2637855, *et al.*, (Order granting reconsideration of September 4, 2018 Opinion and Order entered November 1, 2018).

¹⁰ See *Report on 2017 Universal Service Programs and Collections Performance of the Pennsylvania Electric Distribution Companies and Natural Gas Distribution Companies*, Pennsylvania Public Utility Commission Bureau of Consumer Services.

uncollectibles resulting from CAP defaults, are harmed when CAP customers pay rates above their utilities' applicable PTCs. Although EDC CAPs differ, in all CAPs, customers are at risk of using their CAP benefits more quickly if they are paying rates higher than necessary as compared to the PTC. Additionally, all EDCs ultimately recover uncollectibles from ratepayers, whether through surcharges or base rates, and, as such, increased CAP default rates due to shopping at rates higher than the utilities' PTCs harms non-CAP customers, as well.

Therefore, I propose some areas of uniformity in CAP shopping practices that EDCs with CAP requirements¹¹ should include in their next default service plans. Specifically, in addressing CAP shopping in their next default service plan filings, EDCs should include:

1. A requirement that the CAP shopping product have a rate that is at or below the EDC's PTC(s) at all time periods of the contract between the EGS and the customer;
2. A provision that the contract between the EGS and the CAP customer contains no early termination or cancellation fees; and
3. A provision that, at the end of the contract, the CAP customer may reenroll with the EGS at a product that meets the same requirements as outlined in numbers one and two above, switch to another EGS offering a product that meets those requirements or be returned to default service.

The mechanics of the CAP shopping programs would still be determined through the default service plan proceedings. It is appropriate for these issues to be addressed in each utility's *next* default service plan proceeding so as not to impact current, Commission-approved programs and to allow for due process for all parties. I recognize that PECO's current default service plan proceeding is stayed in the Office of Administrative Law Judge. I encourage the parties in that proceeding to consider the provisions outlined in this Motion when activity in that litigation resumes in that case.

Inclusion of these CAP shopping requirements balances both the intent of the Competition Act to allow for shopping while "ensuring that universal service plans are adequately funded and cost-effective."¹² The Commonwealth Court's decision in *CAUSE-PA* held that the Competition Act does not demand absolute and unbridled competition.¹³ As reiterated by the Commonwealth Court in *RESA*, the Commission "may 'bend' competition so as to 'give way to other important concerns' such as 'ensuring that universal service plans are adequately funded and cost-effective.'"¹⁴ The provisions proposed herein provide a methodology to ensure that both CAP and non-CAP customers avoid harm while still allowing for competition to occur.

Consistent with the Commonwealth Court's statement in *RESA*, any CAP customer is free to shop outside of the specified program, but a CAP customer shopping for a product which does not fit these requirements would be removed from CAP.¹⁵

¹¹ See 52 Pa. Code § 69.261 regarding electric utilities with gross intrastate annual operating revenue in excess of \$40 million implementing residential CAPs.

¹² 66 Pa. C.S. § 2804(9).

¹³ See *Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania v. Pa. Publ. Util. Comm'n*, 120 A.3d 1087, 1103, 1107 (Pa. Cmwlth. 2015) (*en banc*), *allocatur denied*, 136 A.3d 982 (Pa. 2016)(*CAUSE-PA*).

¹⁴ *Retail Energy Supply Ass'n v. Pa. Publ. Util. Comm'n*, 185 A.3d 1206, 1221,(Pa. Cmwlth. 2017), 2018 Pa. Commw. LEXIS 153, 018 WL 2027155.

¹⁵ *RESA* at 1223.

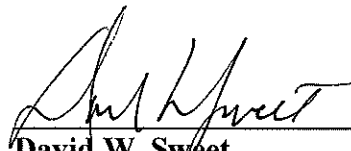
Additionally, if any party believes that it can show through a default service plan proceeding that there is a reasonable alternative to the scenario included herein where harm will not be incurred by either CAP or non-CAP customers, they are free to propose such a model.

In order to allow uniformity in the development of these programs within EDC default service plan proceedings, I propose that a policy statement outlining these recommendations be issued for comment.

THEREFORE, I MOVE THAT:

1. The Law Bureau prepare, for this Commission's consideration at a Public Meeting no later than February 28, 2019, an Order to amend an existing or create a new policy statement consistent with this Motion.
2. The Commission Order and Proposed Policy Statement be served on jurisdictional electric distribution companies, licensed electric generation suppliers, the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Pennsylvania Utility Law Project, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Retail Energy Supply Association and the parties at *Petition of PECO Energy Company for Approval of its Default Service Program (Customer Assistance Program Shopping Plan)*, Docket No. P-2012-2283641 (DSP II), and *Petition of PECO Energy Company for Approval of its Default Service Program for the period June 1, 2017 through May 31, 2021*, Docket No. P-2016-2534980 (DSP IV).
3. The Commission Order and Proposed Policy Statement be published in the *Pennsylvania Bulletin*.
4. Comments to the Commission Order and Proposed Policy Statement be submitted within 45 days of the date it is published in the *Pennsylvania Bulletin*.
5. Reply Comments to the Commission Order and Proposed Policy Statement be submitted within 60 days of the date it is published in the *Pennsylvania Bulletin*.
6. Following the Comment and Reply Comment time period, the Law Bureau prepare a Final Order and Policy Statement.

Date: December 20, 2018



David W. Sweet
Commissioner