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

Public Meeting held December 20, 2018

Commissioners Present:

Gladys M. Brown, Chairman

Andrew G. Place, Vice Chairman

Norman J. Kennard

David W. Sweet

John F. Coleman, Jr.

Petition of Metropolitan Edison Company for P-2017-2637855

Approval of a Default Service Program for

the Period Beginning June 1, 2019 through

May 31, 2023

Petition of Pennsylvania Electric Company for P-2017-2637857

Approval of a Default Service Program for

the Period Beginning June 1, 2019 through

May 31, 2023

Ellen L. Cooper C-2018-2643217

 v.

Pennsylvania Electric Company

Betty Dusicsko C-2018-2643249

 v.

Pennsylvania Electric Company

Joseph Dusicsko C-2018-2643274

 v.

Pennsylvania Electric Company

Angela C. Esters C-2018-2643222

 v.

Pennsylvania Electric Company

Debra A. Gibbs C-2018-2643260

 v.

Pennsylvania Electric Company

Catherine M. Hartzell C-2018-2643211

 v.

Pennsylvania Electric Company

Dennis T. Husted C-2018-2643280

 v.

Pennsylvania Electric Company

Cynthia Glover Muhammed C-2018-2643212

 v.

Pennsylvania Electric Company

David Nies C-2018-2643243

 v.

Pennsylvania Electric Company

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

 v.

Pennsylvania Electric Company

Richard S. Powierza C-2018-2643248

 v.

Pennsylvania Electric Company

Bernadine Randhanie C-2018-2643284

 v.

Pennsylvania Electric Company

Matthew J. Sciarrino C-2018-2643239

 v.

Pennsylvania Electric Company

Mark L. Spaeder C-2018-2643244

 v.

Pennsylvania Electric Company

Kenneth C. Springirth C-2018-2641907

 v.

Pennsylvania Electric Company

Kathleen B. Walls C-2018-2643213

 v.

Pennsylvania Electric Company

Robert H. Walls C-2018-2643214

 v.

Pennsylvania Electric Company

Julie Whaling C-2018-2643277

 v.

Pennsylvania Electric Company

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

 v.

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

**TENTATIVE 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 (West Penn) (collectively, FirstEnergy). After considering the information and advice offered by stakeholders at a November 5, 2018 collaborative meeting, with this Tentative Order the Commission seeks comment on these matters.

# **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, along with reply briefs. 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. These responses were due on or before May 25, 2018. No objections were filed. By Order dated May 29, 2018, ALJ Long closed the record.

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, issued on June 8, 2018. 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 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 CAP 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 a Petitions seeking reconsideration regarding the scope of the Commission’s referral of FirstEnergy’s CAP 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.[[2]](#footnote-2) This order modified the Commission’s September Order declaring 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. For two hours the stakeholders engaged in a discussion that OCMO found useful and informative on both agenda topics and some other subject areas raised by stakeholders that had been previously overlooked.

**DISCUSSION**

**A. CAP SHOPPING**

The stakeholders discussed the issues raised by the Commission in its November Order as well as some additional issues and concerns raised by the stakeholders that had not been previously identified or considered. We shall discuss these issues and the proposed resolutions below.

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

FirstEnergy reports that the only mechanism they have to monitor and enforce supplier pricing is to require suppliers to provide CAP customers a rate-ready, percentage-off-the-price‑to‑compare (PTC) product.[[3]](#footnote-3) This percentage discount, selected by the EGS per customer, could range from 0% (which equals the PTC) to 100% in 0.5% increments. Any supplier enrollment request for a CAP customer that is not rate-ready or does not select a percentage discount off the PTC would be automatically rejected via the standard electronic data interchange (EDI) protocols and codes.[[4]](#footnote-4)

The Commission tentatively finds that a rate-ready, percentage off the PTC product is the simplest CAP shopping solution and the easiest for FirstEnergy to monitor that meets our requirement in the November Order that CAP 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 also gives suppliers significant flexibility in that the supplier can select a PTC discount rate on a customer by customer and contract by contract basis. Accordingly, we propose requiring EGSs seeking to serve customers participating the FirstEnergy’s CAP must use rate‑ready billing and provide a percentage off the PTC product.

Stakeholders raised the possibility that a CAP customer could be separately billed by a supplier under the dual-bill option. While this is relatively rare in the residential market, it is an option available to suppliers and consumers. It would be impossible for FirstEnergy to monitor the customer’s supplier price if the customer is billed separately by the supplier. Accordingly, the Commission proposes prohibiting dual/separate bills for CAP customers. CAP customers should be billed, through rate‑ready billing, by the utility via utility-consolidated billing and should be included in the Purchase of Receivables (POR) program.

In proposing this solution, we acknowledge 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. Suppliers expressed concern as to whether FirstEnergy has enough EDI testing capacity to certify suppliers for rate-ready transactions within a reasonable period. Suppliers also expressed a need for assurances that this rate-ready requirement is not applicable to *all* customer enrollments – that they would remain free to enroll their non‑CAP participating customers via bill-ready while enrolling CAP participating customers via rate-ready.

To address these concerns, we propose to direct FirstEnergy to have enough EDI testing resources and capacity available to prevent unreasonable delays in certifying suppliers for rate‑ready billing. We propose that FirstEnergy complete rate‑ready EDI testing within 30 days during the three months before and the three months after it implements the CAP shopping program on June 1, 2019. This proposal appears reasonable as it only requires FirstEnergy to allocate additional resources to EDI testing during a brief transition period of six months. We also ask that FirstEnergy affirm that suppliers can use both bill‑ and rate-ready billing (as long as CAP customers are rate-ready) and select the billing method on a customer‑by‑customer basis.

**2. Supplier Disclosure Requirements**

Suppliers requested guidance on the appropriate label to use when presenting a CAP-compliant product to potential customers as the product’s price is tied to the PTC and changes on a quarterly basis. Stakeholders noted that this product could be viewed as a *variable* product, with the condition of variability being the utility’s PTC and the percent discount amount. Several stakeholders expressed concerns that such a product is not what is traditionally considered *variable* in that it does not change monthly – and is tied to something that is beyond the supplier’s control. In addition, stakeholders expressed concern that there is a negative connotation associate with variable products.

While the Commission understands these concerns, we do not agree that these types of products should be described as *fixed*. While the percentage off the PTC may be fixed – the result is not a fixed price as the price will be changing quarterly. In an Order[[5]](#footnote-5) adopted on November 14, 2013, the Commission declared that:

A ”fixed price” product does not change in price during the term of the agreement. Customers are best served by labels and terms that are precise, transparent, and in plain language. Given this, “fixed means fixed” is the appropriate guidance.

Fixed Means Fixed Order at 32.

We note that this product can be called a *variable* product. The same Fixed Means Fixed Order defined *variable* – and it does not necessarily have to be a price that changes monthly:

Variable Price: An all-inclusive per kWh price that can change, by the hour, day, month, etc. according to the terms and conditions in the supplier’s disclosure statement.

*Id*. Appendix.

Another possibility is to identify the product as an *indexed* product – which it is in that it is tied to an index – the utility’s PTC less a set percentage off. We do have a definition in the glossary on PaPowerSwitch.com[[6]](#footnote-6) for index pricing, noting that the definition does specify that this is still a type of variable rate product that is defined as follows:

Index Pricing: A type of variable rate product in which the product’s price is tied to a specific index, such as the NYMEX, hourly prices in the retail energy market, or even a utility’s Price to Compare. The product’s price rises or falls whenever the index changes. Index pricing is more commonly offered to small and large commercial customers.

While this definition might be applicable, we have concerns about introducing this rather technical label into the residential market. There has never been a consumer education effort to introduce or explain *index pricing* to residential customers – other than placing a definition of such in the glossary that notes it is generally for commercial customers.

Regardless of the above, the Commission is sensitive to the concerns of the stakeholders about avoiding confusion with the use of the term *variable*, and we think there is an alternative. We propose that a supplier should simply identify the product as something like a “CAP Program Product” without labelling it as fixed or variable. This proposed new label would be used to identify for customers that this product is targeted for CAP customers and complies with all the applicable CAP shopping rules in that it will always be at or below the PTC, with no early termination fees (ETFs), etc.

Suppliers would of course 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 propose not calling this a variable product, we propose 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, 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. As such, the supplier may not always know the price 30-days in advance. The Commission invites comments on the concepts outlined above, including what to call the product and how it should be disclosed.

**3. Fees:**

While it is clear in the November Order that ETFs are to be banned for CAP customers, other fees that suppliers charge customers in addition to the per-kWh rate, such as membership fees, enrollment fees, monthly service fees, etc. are not specifically addressed. These types of fees could have the effect of increasing the customer’s price above the PTC, even if the per‑kWh price is below the PTC. Accordingly, the Commission proposes to prohibit any add-on fees; not just ETFs, as they would result in a product offered to CAP participating customers that has a rate that is not at or below the PTC for the duration of the contract.

Regarding ETFs, while it is clear that these are prohibited, it was also generally understood that there is no way for FirstEnergy to monitor or enforce this prohibition. Some stakeholders suggested that the Commission make a statement explaining how this would be enforced using traditional Commission enforcement mechanisms and that any supplier caught violating this requirement are subject to all enforcement mechanisms available to the Commission, including civil penalties. Suppliers asked that the Commission declare that any such prohibition be applicable to only this particular FirstEnergy CAP-shopping program.

We agree with these suggestions. The Commission reiterates that the fee and ETF ban only apply to the FirstEnergy CAP-shopping program. The Commission intends to monitor compliance with these restrictions using traditional Commission enforcement mechanisms, including careful monitoring of consumer informal and formal complaints. Any supplier 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 CAP Participating Customers**

 Suppliers need to know which customers are participating in CAP 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 CAP so that they can treat the customer in accordance with the established CAP 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 too difficult or burdensome for suppliers to access.

FirstEnergy offered to routinely update its sync lists[[10]](#footnote-10) and the Eligible Customer Lists (ECLs)[[11]](#footnote-11) to note CAP participating customers. FirstEnergy has also offered to identify CAP participating customers in the account number access portals[[12]](#footnote-12) in a similar fashion. FirstEnergy noted that it prefers to avoid a routine email update of this same information because they do not think it is a necessary, nor an effective means of communicating.

We propose that FirstEnergy provide the information via the formats they have offered. We also direct FirstEnergy to explain when and how the quarterly PTC changes will be communicated to suppliers.

**5. Transition Timeframes and Requirements**

In general, stakeholders expressed no concerns or disagreements with the transition timeframes outlined in the November Order. Accordingly, we propose that the following rules apply:

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.

Some suppliers asked the Commission to reiterate that when we say a contract remains in effect until expiration or cancellation, that this means *all* provisions are in effect, including any ETF provisions. The Commission agrees and reiterates that existing contracts in place remain in effect – including ETF provisions.

**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 CAP compliant contract, that multiple notices are not necessary because the customer is not being presented with options, making the options notice unnecessary. The Commission agrees that this is reasonable and proposes modifying the notice requirements in such situations. All that will be required is that the customer be informed that the contract is being terminated or that it will end and that the customer is being returned to default service. The timing of such a notice must be given in accordance with the terms of the then existing contract, but not less than 30‑days in advance of the customer being dropped to default service.

Some suppliers have also asked for a “one-notice” requirement if the supplier is offering a CAP-compliant product because the customer will be receiving a less‑expensive, more customer-friendly product. The Commission disagrees with this premise in that a CAP-compliant product may not always necessarily be better or costs less than what the customer may have originally been receiving from that supplier. Accordingly, the Commission is not inclined to adopt different notice procedures based on the proposed product being better or costing less than the customer’s current product. There is no reason to treat customers participating in CAP differently in this regard by providing them with less than the traditional two notices required by 52 Pa. Code § 54.10.

Suppliers have 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 CAP-compliant product. Again, the Commission does not see any reason why a customer participating in CAP should be treated any differently than any other customer in this regard. We propose that a customer can be renewed/rolled into a new CAP-compliant product even if the customer fails to respond to the notices required by 52 Pa. Code § 54.10.

However, if the supplier is seeking to *revise* an existing contract to offer a new, CAP-compliant product, we think the guidance offered in the November 2013 Fixed Means Fixed Order should be applicable.[[13]](#footnote-13) We propose that the new, revised terms, can only be applied upon an affirmative response from the customer.

Accordingly, the Commission proposes 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 CAP-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 CAP-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 CAP-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 CAP‑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 CAP-compliant product.[[14]](#footnote-14)

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

Suppliers raised a concern about what obligations the supplier has to check on the CAP status of a customer whose contract is expiring. In effect, suppliers are asking 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 CAP participation status.

In considering this issue, it must be kept in mind that FirstEnergy does not know the terms of the customer’s contract 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 contract expirations.

The stakeholders suggested 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 CAP-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 on CAP, the supplier is obligated to comply with the CAP-shopping rules. However, if that customer is not participating in CAP 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-CAP customer – including offering to enroll the customer into a new product, etc. We invite stakeholders to comment on this proposed rule.

**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 sees no reason why this would not be allowable under the 52 Pa Code § 54.5 disclosure rules. More specifically, Section 54.5(c)(7) states the following:

 (c)  The contract’s terms of service shall be disclosed, including the following terms and conditions, if applicable:
 \* \* \* \* \*
   (7)  The cancellation provisions, if applicable.

The Commission finds that such a cancellation provision is possible and not contrary to regulation. Accordingly, the Commission proposes to take no further action on this request.

**9. Consumer Education**

FirstEnergy proposed informing newly-enrolled CAP customers of the CAP‑shopping rules and how they can shop. Many stakeholders thought that current CAP customers should also be informed of these same rules. Accordingly, the Commission proposes that FirstEnergy should notify both new and existing CAP customers of the rules and procedures of the CAP-shopping program. The Commission also proposes that draft CAP customer notices be prepared by FirstEnergy and reviewed by FirstEnergy’s CAP 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.

Suppliers also asked the Commission to state that suppliers are free to communicate with their own customers about CAP shopping. The Commission agrees that suppliers are free to provide such communications, as long as the communication reflects the rules of the program that result from this proceeding. We stress though 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.

**10. Supplier Education**

FirstEnergy has offered to host a supplier workshop to educate suppliers on the new CAP shopping program rules and procedures. Accordingly, the Commission proposes directing FirstEnergy to conduct such a workshop. Further, we propose that FirstEnergy should post information about the CAP-shopping program on their supplier web‑portal and should ensure that new suppliers coming onto their system are directed to the necessary information. We also invite parties to comment on to what extent, if any, these rules and procedures should also be included in FirstEnergy’s supplier tariffs.

**11. Implementation Timeline**

The Commission reiterates that June 1, 2019, remains the target date for implementing FirstEnergy’s CAP shopping program. The Commission intends to adopt a Final Order on these matters as soon as possible to provide all stakeholders with time to adopt the new procedures.

**B. CRP SCRIPTING:**

The stakeholders reviewed FirstEnergy’s scripting; both current and pre-May 2017 versions. This included the scripting for the FirstEnergy CSRs to introduce the program to the customer and the script used by the third-party vendor. They also reviewed similar scripts from PPL Electric Utilities Company and PECO Energy Company.

The stakeholders basically echoed their positions from the DSP litigation. Suppliers expressed concerns that the current scripting provided insufficient information and fails to explain the benefits of the program – which has led to a dramatic decline in program enrollment. OCA expressed concerns about using the seven percent discount figure out of concerns that it is only applicable during the initial quarter and could be misleading; any use of the discount percentage needs to be in the context of extensive disclosure and explanation. FirstEnergy’s main concern was that the script not be lengthened as to prolong call handling times at their call centers and thus adversely impact customer service levels reported annually to the Commission.[[15]](#footnote-15)

Upon careful consideration of the stakeholder input, the Commission proposes 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.

The Commission believes that the above scripting is reasonable in that it provides meaningful information along with necessary disclosures. This language has faced the scrutiny of previous DSP proceedings, and while it was in place, SOP enrollment levels were reasonable with few complaints.[[16]](#footnote-16) In considering this, we also note that SOP enrollees, like all shoppers, receive a written disclosure, with a rescission period, and that the customer can exit the program without penalty at any time. We further note that with accelerated switching, this can occur within a matter of days.

We invite stakeholders to comment on this proposal, and to submit alternative language if they find the proposal unsatisfactory. We further propose that any scripting changes flowing from this proceeding 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 Tentative Order, we are providing yet another opportunity for any interested parties to offer input and advice on these matters. Upon review of the comments, we intend to issue a Final Order putting in place the rules and procedures for FirstEnergy’s CAP shopping program and the scripting for their Standard Offer Program to be implemented by June 1, 2019;**THEREFORE**,

 **IT IS ORDERED:**

 1. That this Tentative 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 Docket Nos. in this proceeding.

 2. That interested parties shall have 30 days from the entry date of this Tentative Order to file written comments referencing Docket Number P-2017-2637855with the Pennsylvania Public Utility Commission, Attention: Secretary, Commonwealth Keystone Building, Second Floor, 400 North Street, Harrisburg, PA 17120. Comments may also be filed electronically through the Commission’s e-File System.

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

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

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

 **BY THE COMMISSION,**

 Rosemary Chiavetta Secretary

(SEAL)

ORDER ADOPTED: December 20, 2018

ORDER ENTERED: December 20, 2018

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. *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-2)
3. 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-3)
4. 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-4)
5. *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) (Fixed Means Fixed Order). [↑](#footnote-ref-5)
6. <http://www.papowerswitch.com/glossary#i> [↑](#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. “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-10)
11. Note that ECLs are not a comprehensive listing of all customers because customers can exempt themselves from the ECL. [↑](#footnote-ref-11)
12. These are secure web-based portals suppliers can use to obtain customer account numbers (upon consent of the customer). [↑](#footnote-ref-12)
13. *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-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* 52 Pa. Code §§ 54.151 – 156. [↑](#footnote-ref-15)
16. <https://www.papowerswitch.com/sites/default/files/EDC_SOP_Stats103118.pdf> [↑](#footnote-ref-16)