



July 30, 2019

VIA e-file

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
400 North Street, Second Fl.
Harrisburg, PA 17120

**Re: Electric Distribution Company Default Service Plans – Customer Assistance
Program Shopping, Docket No. M-2018-3006578**

Dear Secretary Chiavetta,

Please find the **Joint Comments of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) and the Tenant Union Representative Network and Action Alliance of Senior Citizens of Greater Philadelphia (TURN et al.)**, which are being submitted for filing in the above noted proceeding.

Please do not hesitate to contact me at 717-710-3825, or by email at pulp@palegalaid.net with any questions or concerns.

Respectfully Submitted,

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BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Electric Distribution Company Default :
Service Plans – Customer Assistance : Docket No. M-2018-3006578
Program Shopping :
:

JOINT COMMENTS OF

**THE COALITION FOR AFFORDABLE UTILITY SERVICES AND
ENERGY EFFICIENCY IN PENNSYLVANIA
(CAUSE-PA)**

AND

**THE TENANT UNION REPRESENTATIVE NETWORK AND
ACTION ALLIANCE OF SENIOR CITIZENS OF GREATER PHILADELPHIA
(TURN ET AL.)**

PENNSYLVANIA UTILITY LAW PROJECT

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I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania¹ (CAUSE-PA), together with the Tenant Union Representative Network² and Action Alliance of Senior Citizens of Greater Philadelphia³ (TURN *et al.*⁴), file the following Joint Comments in response to the Public Utility Commission's (Commission) Proposed Policy Statement Order (Order) issued February 28, 2019, which requested comments from interested stakeholders regarding the Commission's proposed Policy Statement on Electric Customer Assistance Program Participant Shopping (Statement).

CAUSE-PA and TURN *et al.* strongly support the Commission's efforts to establish clear guidelines for CAP Shopping through a formal Policy Statement to prevent financial harm to low income customers and other residential ratepayers. As the Commission has recognized, based on ample empirical data, "unbridled competition has proven to be detrimental to both CAP participants and non-CAP participant ratepayers." (Order at 3-4, 7-8). Providing uniform guidelines for CAP Shopping to be implemented by each Electric Distribution Company (EDC) in

¹ CAUSE-PA is a statewide unincorporated association of low income individuals which advocates on behalf of its members to enable consumers of limited economic means to connect to and maintain affordable water, electric, heating and telecommunication services. CAUSE-PA membership is open to moderate- and low income individuals residing in the Commonwealth of Pennsylvania who are committed to the goal of helping low income families maintain affordable access to utility services and achieve economic independence and family well-being.

² The Tenant Union Representative Network (TURN) is a not-for-profit corporation with many low and lower income members. TURN's mission is to advance and defend the rights and interests of tenants and homeless people. TURN's goal is to guarantee to all Philadelphians equal access to safe, decent, accessible, and affordable housing.

³ Action Alliance of Senior Citizens of Greater Philadelphia (Action Alliance) is a not-for-profit corporation and membership organization whose mission is to advocate on behalf of senior citizens on a wide range of consumer matters vital to seniors, including utility service.

⁴ As part of advancing the respective interests of tenants and seniors, TURN and Action Alliance advocate on behalf of low and moderate income residential customers of public utilities in Philadelphia in proceedings before the PUC.

the context of its Default Service Plan provides a reasonable path forward to remedy the undisputed harms caused by unbridled competition.

That said, CAUSE-PA and TURN *et al.* are concerned that, as drafted, certain aspects of the Statement may thwart advancement of the affordability objectives of CAP, which are reflected in the Electricity Generation Customer Choice and Competition Act⁵ (Competition Act), and are contrary to the Commission's purposes in establishing CAP Shopping guidelines. Namely, the Statement would categorically exclude low income customers from participating in CAP if they enter a non-compliant contract. (See proposed section 69.276(b)). As explained below, this proposed CAP exclusion would bar vulnerable, payment-troubled consumers from participating in CAP, thereby erecting an unnecessary barrier to affordability. We are also concerned that the Statement places too much of the onus on CAP customers to know and understand CAP shopping rules, ignores the means by which EGS contracts are often presented, and lacks a clear oversight and enforcement component to ensure that suppliers are following the applicable CAP Shopping Plan for a given EDC's service territory.

Excluding low income customers who are otherwise eligible for CAP from participation in the program based on the fact that they are in a non-compliant EGS contract is not the best means to accomplish the Commission's explicit intent of protecting CAP customers and other ratepayers from the consequences of unrestricted CAP Shopping. Contrary to the goal of responding to and resolving the harms caused by unrestricted shopping, preventing low income customers from accessing CAP as a result of a high-cost contract may exacerbate the harms to all customers. (See

⁵ 66 Pa. C.S. §§2801-2815.

Order at 5). As more fully explained below, CAUSE-PA and TURN *et al.* urge the Commission to modify its proposed Policy Statement and accompanying Order to:

- (1) Ensure that CAP customers are not automatically removed from or subsequently ineligible to participate in CAP if they enter a non-compliant contract.⁶
- (2) Require EDCs to develop appropriate mechanisms to prevent and/or cancel non-compliant EGS contracts with CAP customers to ensure satisfaction of the Commission's sound policy objectives.
- (3) Provide clear guidelines for oversight and enforcement of CAP Shopping rules by both the EDC and the Commission.

Adopting these critical modifications to the Statement would help to shield both CAP and non-CAP residential consumers from the financial harms created by unbridled competition, and would better align with the Universal Service mandates enshrined in the Competition Act.

II. COMMENTS

CAUSE-PA and TURN *et al.* voice their strong support for the Commission's efforts to adopt uniform standards for CAP Shopping through a formal CAP Shopping Policy Statement. Adopting clear guidelines and principles to govern the adoption and implementation of CAP Shopping terms and conditions will help focus and streamline litigation of the issue within the EDCs' next Default Service Plan proceedings, and will help to standardize the Commission's response. Consistency in this context will also help Pennsylvania's market, as it provides regulatory certainty, and will enable suppliers to develop compliant products.

⁶ As discussed more fully below, CAUSE-PA and TURN *et al.* recognize and submit that as part of each EDC's Default Service Plan proceeding, CAP customers should have the ability to *knowingly and voluntarily* remove themselves from CAP if they desire to enter or continue a non-compliant EGS contract instead of receiving the reduced rates and arrearage forgiveness benefits available to them through CAP. However, customers who seek to remove themselves from CAP should first be provided information and an opportunity to cancel the EGS contract to receive the benefits of CAP. In turn, customers who voluntarily remove themselves from CAP to pursue a non-compliant EGS product should not be barred from returning to CAP in the future.

Notwithstanding the overall support for the Policy Statement, however, CAUSE-PA and TURN *et al.* have concerns about certain aspects of the proposed CAP Shopping Policy Statement, and urge the Commission to make necessary changes to provide clarity and effectuate its stated purpose to prevent ongoing harm to both CAP and non-CAP residential consumers across the state.

A. Revise the CAP Shopping Policy Statement to protect low income consumers' eligibility for and access to CAP.

As proposed, the CAP Shopping Policy Statement would exclude low income customers from participation in CAP if they enter a contract that is non-compliant. (Proposed section 69.276). CAUSE-PA and TURN *et al.* are concerned that this provision would serve to exacerbate the current harms to CAP customers and other non-CAP customers, as it would exclude payment troubled and low income customers from receiving critical bill assistance at a time when they need it most. As written, this exclusion would apply even if the customer entered into such a contract unintentionally, unwittingly, or without adequate understanding of the impacts of that decision on their participation in CAP.

The language in proposed section 69.276(b) provides that CAP participants who enter into a non-conforming contract with a supplier “shall be disqualified from participation in CAP.” (Id.) Functionally, this means that a low income customer – who has already demonstrated that they are payment troubled and unable to afford to pay full tariff rates – would be removed from CAP, receive full tariff bills, face renewed EDC collection efforts on prior arrears which were deferred for forgiveness through CAP, and be bound to EGS prices in excess of the EDC’s price to compare. These customers have verified to an EDC that their income level is not sufficient to afford service without assistance and are otherwise compliant with the EDC’s requirements to obtain said assistance. It would run counter to the purpose of CAP to remove these customers from the program and, thus, *raise* their monthly electric bill because the contract with an EGS is non-

compliant - meaning it exceeds the applicable PTC. This is particularly the case when, as written, the proposed Policy Statement's disqualification provision does not provide low income customers with a pathway to cancel a non-compliant EGS contract and remain in or return to CAP.

As the Commission squarely recognized in the Order, data from two of Pennsylvania's largest utilities – First Energy and PPL Electric – has conclusively shown that CAP customers do not fare well in the competitive market. Available data from both Pennsylvania utilities and other competitive market states shows that this pricing issue is not limited to Pennsylvania CAP customers, and that low income families across the state often pay more for electric service through the competitive market.⁷ CAUSE-PA and TURN *et al.* are particularly concerned that, because of the marketing and sales tactics employed by EGSs, the harms created by higher priced electricity may (as in other states) be concentrated in communities of color, disproportionately impacting Black and Latinx consumers.⁸

⁷ See Laurel Peltier & Arjun Makhijani, Ph.D., Abell Foundation, Maryland's Dysfunctional Residential Third-Party Energy Supply Market: An Assessment of Costs and Policies (Dec. 2018), available at <https://www.abell.org/publications/marylands-dysfunctional-residential-third-party-energy-supply-market> (hereinafter Abell Report) (finding that, over a three-year period, Maryland's residential consumers paid **\$255 million** more for competitive electric and natural gas when shopping through a supplier, and concluding that low income households were impacted most profoundly by the increased costs); see also Susan M. Baldwin, Analysis of the Individual Residential Electric Supply Market in Massachusetts: Are Consumers Benefiting from Competition, A Report by the Massachusetts Attorney General (Mar. 2018), available at <https://www.mass.gov/files/documents/2018/03/29/Comp%20Supply%20Report%20Final%20032918.pdf> (hereinafter Mass. Attorney General Report) (finding that, over a two-year period, Massachusetts' residential consumers paid **\$176.8 million** more (net) for competitive electric and natural gas when shopping through a supplier).

⁸ See Mass. Attorney General Report, at viii, x, 27-34. In Massachusetts, a report published by the Attorney General concluded the following:

[R]esidents in communities with the following demographics paid higher rates to competitive suppliers:

- Communities with low median incomes;
- Communities with high percentages of households receiving subsidized low-income rates;
- Communities with high percentages of minority households; and
- Communities with high percentages of households with limited English proficiency.

See also La Risa Lynch, Alternative energy scams hit poor blacks and Latinos the hardest, complaints show, The Chicago Reporter (Nov. 16, 2018) (investigating consumer complaints before the Illinois Public Utility Commission, and finding: "Majority Black ZIP codes have twice as many complaints per household as Latino ZIP codes and three times the rate of white ZIP codes").

Excluding low income consumers from CAP will exacerbate these problems, increasing the debt and financial burdens of low income families, particularly in communities of color, by excluding them from CAP and enabling the continuation of excessive energy charges. Indeed, all low income consumers should have the ability to access CAP, and should not be categorically excluded from participation solely because they enter or seek to enter a contract for competitive electric supply at a cost which exceeds the applicable PTC.

The proposed CAP ineligibility provision directly contravenes the language and intent of the Universal Services provisions of the Competition Act, which require that universal service programs must be “appropriately funded *and available*” in each EDC service territory.⁹ “Disqualification” from CAP based on a low income customer’s attempt to enter or current participation in a non-compliant EGS contract would impermissibly impact the availability of universal service programming to a great number of low income consumers. If such a rule were in place in either First Energy or PPL service territories before recent shopping safeguards were implemented, a substantial number of CAP customers would have been removed from the program. As Vice Chairman Sweet explained in his motion,¹⁰ during a 34-month period in PPL’s service territory, “an average of 49 percent of [PPL’s] CAP customers were shopping and, of those CAP shopping customers, 55 percent were paying above PPL’s Price to Compare (PTC).”¹¹ In other words, over one-quarter of CAP customers would have been immediately and categorically disqualified for the program. In First Energy’s service territory, up to 65% of CAP customers would have been categorically disqualified for CAP: “[O]ver a 58-month period ranging from June

⁹ 66 Pa. C.S. § 2804(9).

¹⁰ CAUSE-PA and TURN et al. note that *Vice Chairman (then Commissioner) Sweet’s Motion did not include any statement or suggestion that new CAP eligibility criteria should be imposed in the Policy Statement*. We urge the Commission not to incorporate any such criteria in its final CAP Shopping Policy Statement.

¹¹ Motion of Commissioner David W. Sweet, at 1 (Dec. 20, 2018).

2013 through March 2018, nearly 65 percent of FirstEnergy’s CAP customers who switched to EGSs paid rates higher than FirstEnergy’s applicable PTC.”¹² If the proposed CAP exclusion rule were in place, each of these disqualified customers would have been returned to full tariff distribution rates, the utility would have immediately resumed collections efforts for any previously deferred arrears, and the customer would have continued paying a price that exceeds the PTC. As the Commission is well aware, low income consumers already profoundly struggle to pay the full cost of utility services.¹³ Disqualification from CAP would only exacerbate that struggle, causing increasingly more low income consumers to either go without service or turn to potentially dangerous alternatives to bring heat and light into their home.

CAUSE-PA and TURN *et al.* respectfully submit that the Commission’s Policy Statement should not provide for disqualification from participation in CAP on the basis of non-compliant EGS contracts because such a provision would adversely affect the availability of CAP. Furthermore, because such a measure would subject low income customers to higher priced electricity, it fails to appropriately achieve the Commission’s stated purposes in promulgating the Policy Statement – creating increased uncollectible expenses and termination rates, which will raise the cost of service to residential customers as a whole. Accordingly, we submit that Section 69.276(b) should be omitted. Instead, as discussed below, the Commission’s Policy Statement should specifically require EDCs to incorporate appropriate mechanisms into their CAP shopping programs to prevent and/or cancel non-compliant EGS contracts with CAP customers unless the

¹² Id. at 2.

¹³ For an in-depth assessment of energy poverty in Pennsylvania, see Review of Universal Service and Energy Conservation Programs, Joint Comments of CAUSE-PA and TURN et al., Docket No. M-2017-2596907, at 9-19 (filed Aug. 8, 2017); see also Energy Affordability for Low Income Customers, Joint Comments of TURN et al. and CAUSE-PA, Docket No. M-2017-2587711, at 4-12 (filed May 8, 2019) (explaining that, even with assistance of CAP, many low income consumers often still cannot afford the cost of utilities).

CAP customer *knowingly and voluntarily* opts to affirmatively withdraw from or forego the benefits of CAP to enter or continue a non-compliant EGS contract.

B. Revise the CAP Shopping Policy Statement to require EDCs to develop appropriate mechanisms to prevent and/or cancel non-compliant EGS contracts with CAP customers.

As proposed, the Policy Statement does not contain appropriate requirements on EDCs to ensure that CAP customers are not being served at contracts in excess of the PTC. CAUSE-PA and TURN *et al.* submit that this is necessary, and that the Commission should incorporate requirements into the Policy Statement that require each EDC to develop appropriate mechanisms to ensure that low income customers can access CAP and exit EGS contracts that do not comply with proposed Section 69.275. There are two scenarios in which such mechanisms should be employed: (1) at the time a low income customer enrolls in CAP; and (2) at the time an existing CAP customer enters into a non-compliant EGS contract.

With regard to new enrollees in CAP, the EDC's CAP shopping provisions should provide for an orderly and immediate transition to compliant EGS service or default service. With regard to existing CAP customers, a non-compliant EGS contract should be rejected unless the CAP customer knowingly and voluntarily opts to withdraw from CAP. For this purpose, the EDC should be required to send a notice to the customer explaining that their request to enroll with the EGS was denied because it did not meet the parameters of the requirements for CAP shopping, and that the customer should contact the EDC if they would like additional information. If the customer contacts the EDC in response to the letter, the EDC should explain that, in order to switch to the particular EGS-supplied product, they will have to leave CAP - which will result in the loss of CAP benefits. The EDC should be required to inform the customer of the amount of monthly CAP benefits that the customer will lose if they remove themselves from CAP, and provide

education and information to the CAP customer about any CAP-compliant products that may be available. If the CAP customer still wishes to proceed with the switch, they should be required to formally acknowledge their desire to withdraw from CAP. Finally, upon the conclusion of or cancellation of a non-compliant EGS contract, the Policy Statement should ensure that a low income customer retains the ability to apply for and return to CAP in the future.

CAUSE-PA and TURN *et al.* recognize that the means by which EDCs comply with these enforcement mechanisms may vary depending on the EDC. We respectfully submit that the Policy Statement should require each EDC, as part of its Default Service Plan, to propose and implement appropriate procedures to ensure that non-compliant EGS contracts do not impose unnecessary barriers to CAP participation. This should include details for how the EDC will transition new CAP participants to compliant EGS contracts or default service, as well as how it intends to ensure that CAP customers are not removed from CAP unless they knowingly, voluntarily, and expressly choose an EGS offer that conflicts with Section 69.275 of the Policy Statement. We submit that the details concerning the transition process and implementation of outreach and education efforts to ensure compliant EGS contracts should be decided in the context of each EDC's Default Service Plan proceedings.

C. The CAP Policy Statement should clearly explain that, as with all other CAP requirements, it is appropriate to have EDCs assume responsibility for compliance and oversight of CAP shopping rules.

The proposed CAP Shopping Policy Statement does not explain how CAP Shopping will be monitored and enforced. CAUSE-PA and TURN *et al.* submit that this is a critical oversight that should be corrected. While the Commission plays an important role in enforcing the rules, it should require EDCs to be the first line of defense in monitoring and ensuring compliance with the requirements. EDCs know which customers are enrolled in CAP, when their enrollment was

processed, whether they are shopping, how long they have been shopping, and the price they are paying for service. In turn, EDCs can develop systems capable of monitoring CAP Shopping contracts, and have access to the systems necessary to reject non-compliant products. Thus, EDCs are in the best position to fully implement their respective CAP Shopping rules.

While the Commission is well equipped to adjudicate complaints brought by a consumer against a supplier, in the absence of such complaints, it is not well equipped to implement and/or monitor compliance with CAP Shopping rules, as it lacks access to the customer data necessary to perform that type of oversight. Given the nature of the harms associated with CAP Shopping, and the technical nature of the proposed CAP Shopping rules, many CAP customers may never realize – on their own – that they are paying more than the PTC, that this overpayment impacts the speed with which they approach exhaustion of their maximum CAP credits, that it results in additional costs to other residential ratepayers, or that there are rules in place to protect them from excessive costs through CAP.

Ultimately, CAUSE-PA and TURN *et al.* submit that CAP Shopping rules should be treated no different than other CAP rules. Just as an EDC (and its contractors) are responsible for periodically verifying household income for enrollment in CAP, so too should an EDC be vested with the responsibility to ensure that EGS CAP contracts comply with the Commission's requirements to ensure that CAP customers' benefits are not diminished and that the cost of CAP is controlled. CAUSE-PA and TURN *et al.* urge the Commission to clarify in its Statement that EDCs must develop a plan – as part of its Default Service Plan Proceeding – to monitor the supplier prices paid by CAP customers and to take action, consistent with our recommendations above and the guidance provided by the Policy Statement, to prevent ongoing financial harm to CAP customers and the customers who pay for CAP.

III. CONCLUSION

For the reasons explained thoroughly above, CAUSE-PA urges the Commission to modify its Policy Statement to (1) ensure that CAP customers are not automatically removed from or subsequently ineligible to participate in CAP if they enter a non-compliant contract; (2) require EDCs to develop appropriate mechanisms to prevent and/or cancel non-compliant EGS contracts with CAP customers to ensure satisfaction of the Commission's sound policy objectives; and (3) provide clear guidelines for EDC oversight of and compliance with established CAP Shopping rules.

Respectfully Submitted,

Pennsylvania Utility Law Project
On Behalf of CAUSE-PA



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