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July 30, 2019

Via Electronic Filing

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Retail Energy Supply Association's ("RESA")
Comments to the Proposed Policy Statement Order Entered February 26, 2019 with regard to the
above-referenced matter

Sincerely,



Deanne M. O'Dell

DMO/lww
Enclosure

cc: Kriss Brown, Esq., w/enc. (kribrown@pa.gov)
Tiffany Tran, w/enc. (tiftran@pa.gov)

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**COMMENTS OF
THE RETAIL ENERGY SUPPLY ASSOCIATION
TO PROPOSED POLICY STATEMENT
ORDER ENTERED FEBRUARY 26, 2019**

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Date: July 30, 2019

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I. INTRODUCTION

On February 28, 2019, the Commission adopted a Proposed Policy Statement Order focused on providing guidance about restricting the price to be paid by low-income customers enrolled in the Customer Assistance Program (“CAP”) of an electric distribution company (“EDC”) when contracting for service with an electric generation supplier (“EGS”). The Proposed Policy Statement is singularly focused on using the default service Price-to-Compare (“PTC”) as the upper limit of the price a CAP participant can agree to pay an EGS and still be permitted to receive financial assistance provided through the EDC’s CAP. The Retail Energy Supply Association (“RESA”)¹ appreciates this opportunity to submit comments and strongly supports the goal of providing statewide guidance to inform the industry about the Commission’s expectations regarding this topic. However, RESA is concerned about the absence from the Proposed Policy Statement of critically important fundamental principles that need to be included to decrease the potential shutting down of this one avenue the Commission hopes to leave open for CAP participants to access to the competitive market.

RESA is a trade association of energy companies, including many Pennsylvania licensed EGSs, who have invested significant resources in developing, marketing and providing competitive generation service across the United States. In Pennsylvania, millions of consumers are receiving competitive electric generation service from EGSs. Consumers have this ability as a direct result of the Commission’s 20-year history of strong leadership and support for

¹ The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

competitive retail markets during its implementation of the Electricity Generation Customer Choice and Competition Act (“Choice Act”).²

While there is much to applaud, Pennsylvania’s competitive retail electricity market is not a “set it and forget it” type of project. Rather, the competitive market requires consistent care and attention. What is currently working must not be undermined. What is not working – including the presence of barriers preventing the market from evolving into a healthy and vibrant competitive state with strong and reasonable customer protections – must be removed. Focusing on these core matters is the optimal way to allow the market to evolve into one that gives all consumers (including low-income ones) access to a wide variety of competitive products and services from EGSs that address the individual needs and desires of the consumer. Such result is consistent with the foundational purpose of the Choice Act and care must be taken to continue to strive toward achieving this result for the benefit of all Pennsylvania’s consumers.

As has been well documented in numerous proceedings (in Pennsylvania and other jurisdictions), RESA opposes placing restrictions on the ability of any consumer to choose to receive competitive generation supply from an EGS. This opposition is rooted in the fundamental principle that all consumers benefit from unrestricted access to a vibrant and functioning competitive market where many EGSs are competing against one another to satisfy consumer demands with the goal of having consumers choose the particular EGS’s product and services over competitors. RESA opposes determining that a particular segment of consumers should not be (or are not) capable of making choices that benefit them because these consumers are low-income. Furthermore, the express language of the Choice Act guarantees that as of

² 66 Pa. C.S. §§ 2801-2812.

January 1, 2001, “all customers of electric distribution companies in this Commonwealth shall have the opportunity to purchase electricity from their choice of electric generation suppliers. The ultimate choice of the electric generation supplier is to rest with the consumer.”³ Prohibiting the choices available to any consumer through regulatory dictates is not reconcilable with either fundamental competitive market principles or the Choice Act.

While RESA recognizes that the Commonwealth Court has empowered the Commission to place restrictions on the shopping ability of low-income customers participating in an EDC’s CAP, RESA cannot emphasize enough the critical importance of ensuring that such restrictions do not stymie the forward progression of the competitive retail electricity market. Carving out a segment of Pennsylvania consumers that EGSs cannot realistically serve due to market barriers in combination with other initiatives that further erode the incentive of EGSs to participate in Pennsylvania’s competitive market,⁴ could return consumers to the decades prior to the Choice Act where there was only the monopoly electricity provider available to them. In those decades, consumers had no choice and their desires did not drive market development. Rather, the products and services of the monopoly electricity provider were dictated largely through regulatory processes and fully funded by all ratepayers regardless of whether the offerings were

³ 66 Pa.C.S. § 2806(a)(emphasis added).

⁴ See, e.g., PECO Energy Company’s Pilot Plan for an Advance Payments Program Submitted Pursuant to 52 Pa. Code §56.7, Docket No. P-2016-2573023, Order entered June 18, 2019 at 82 (Commission authorized PECO to implement a pilot pre-pay program noting its view that the Choice Act “does not bar an EDC from offering a service if the market cannot”); *Petition of NRG Energy, Inc. for Implementation of Electric Generation Supplier Consolidated Billing*, Opinion and Order entered January 31, 2018 at 20 (Commission denied NRG Supplier Consolidated Billing petition expressing concern that it “could be harmful for Pennsylvania electric customers and retail electric market in general.”); and, *Investigations into Default Service and PJM Interconnection, LLC. Settlement Reforms*, Docket No. M-2019-3007101, Investigation Order entered February 26, 2019 (Commission sought feedback on a number of questions focused on whether changes to the current default service rate structure could be implemented to provide more meaningful information to consumers about their usage and the wholesale costs of energy to incent positive customer behaviors.)

desirable or not to those ratepayers. RESA cautions against shackling the future of Pennsylvania's competitive retail electricity market to its monopolistic past by going down the path of foreclosing the ability of a certain segments of customers to have access the competitive market because onerous and/or unworkable regulatory requirements prevent EGSs from offering service to those consumers.

For these reasons and as explained further below, RESA urges the Commission to accept its recommended textual revisions to the Commission's Proposed Policy Statement as shown on Exhibit A. These recommended changes (as explained further in Section II) are intended to address the fundamental principles currently absent in the text while respecting the goals of the Commission. These principles include:

- (1) the significant issues that arise with the EDC in the dual role as default service provider and monopoly distribution provider;
- (2) the lack of any language making clear that alternative structures are permitted and will be considered by the Commission in good faith; and,
- (3) the lack of any direction to EGSs about how they are to ensure compliance with all their current regulatory requirements related to their contracts with customers when those customers are enrolled in an EDC's CAP.

Although RESA does not support making low-income customers choose between unrestricted access to the competitive market or receipt of financial assistance through an EDC's CAP or any other bill payment assistance resources, the recommended changes herein are offered as a way to avoid dis-incentivizing EGSs from offering any service at all to these customers. If EGSs were to stop participating in the market for these low-income consumers, then the stated purpose of the Commission to give low-income customers this one pathway to the competitive market will not be achieved leaving the default service currently offered exclusively by the EDC as the only available option for CAP participants.

II. FUNDAMENTAL PRINCIPLES ABSENT IN PROPOSED POLICY STATEMENT

A. No Language Clearly Inviting Possibility Of Alternative Structures

Based on the Commission's review of data from two specific default service proceedings for PPL Electric Utility Corporation ("PPL") and the FirstEnergy Companies ("FirstEnergy"), it has concluded that: (1) CAP participants are at risk of using their CAP benefits more quickly if they are billed EGS contract prices that are higher than the PTC; and, (2) increases in an EDC's uncollectible expense due to increased non-payment from CAP participants because CAP participants are billed prices higher than the PTC harms all residential ratepayers who pay for an EDC's uncollectible expense.⁵ The Commission's conclusions are based on a point-in-time price comparison of the EDC's PTC to EGS prices. Beyond not respecting the ability of low-income customers to make choices about their retail electricity service, there are many reasons why drawing conclusions from historical price comparisons of the PTC to an EGS's contract price at a particular point in time is specious:

- the analysis does not paint the full picture of the individual customer's experience and personal reasons for selecting a particular EGS;
- the analysis does not provide any particular insight into how future pricing differences may advantage the customer;
- the analysis does not acknowledge that individual customers may have experienced lower prices with their chosen EGS at various points in time and, on average, may have been billed less at the EGS price than he/she would have been billed at the EDC's PTC for the same period of time as the EGS contract;
- the analysis fails to consider value-added benefits that customers may receive from their supplier which may have reduced overall energy (or other household) costs the consumer paid as a result of electing the EGS product; and,
- the analysis fails to recognize that energy markets are cyclical, exhibit volatility and can experience disruptive and anomalous events that affect both the EDC's default service and the EGS's competitive supply so maintaining a robust

⁵ Tentative Policy Statement Order at 5.

competitive market with a diversity of business practices is the best way to preserve optionality for consumers and offer a hedge against volatile market cycles.

In sum, limiting the assessment of the value of energy choice for CAP participants to a single metric – price and price alone – is too narrow and summarily dismisses the value to the low-income consumer of numerous other benefits that a range of competitive alternatives can offer. A higher price for EGS service is not necessarily evidence of consumer harm. As just one example, an EGS's bundled product may result in lower energy consumption thereby reducing the customer's total energy usage even though a comparison to the PTC shows the EGS price is higher. As another example, the customer may be in a long-term contract with the EGS that – on average over the term of the contract – is lower than the PTC during the same period. This, however, would not be evident if the historical review period fails to compare the PTC with the EGS price during the EGS contract period. The availability of a diverse variety of competitive offers presents consumers with enormous savings potential, value-added propositions and may often be an important avenue for consumers to reduce overall household costs. A proactive customer – even one that is low-income and needs financial assistance through participation in an EDC's CAP – can easily avail him or herself of these opportunities to appropriately factor them into his or her own personal situation.

Notwithstanding the deficiencies inherent in focusing on price comparisons to draw conclusions about what is best for low-income consumers, the Commission Proposed Tentative Policy Statement is singularly requiring EGSs to restrict their pricing to CAP participants to the EDC's PTC. This is the case even though the text below from the Commission's Tentative Policy Statement Order appears to show an openness on the part of the Commission to consider alternative structures beyond EGS price restrictions:

If any party believes that it can show through a default service plan proceeding that there is a reasonable alternative to the Commission's proposed CAP shopping guidelines that will not result in harm to either CAP participants or non-CAP participants, they are encouraged to proposed such a model.⁶

However, nowhere in the language of the Proposed Policy Statement is there any invitation or indication that any other model but restricting an EGS's price to the EDC's PTC can be proposed by the EDC in its role as the default service provider. Once the default service proceeding is underway, it is unrealistic to expect that any other party – including EGSs – would have the resources available to challenge the price restrictions model proposed by the EDC if the Proposed Policy Statement remains unchanged. Even if a party were to undertake the task of proposing an alternative model to restricting EGS pricing, the lack of any indication from the Proposed Policy Statement that such alternative proposal would be seriously considered by the Commission means there is little to no chance that other parties and/or the Administrative Law Judge would be persuaded to entertain any alternative structure beyond a restriction of the EGS's price to the EDC's. In essence, the openness to consider alternative structures expressed in the text of the Commission's Proposed Policy Statement Order is meaningless unless the intent is also included in the text of the Policy Statement.

Issues that low-income consumers face are multi-faceted and complex and policymakers' views about how to best address them develops over time. In fact, programs intended to provide assistance to low-income customers within a specific EDC's service territory are considered in a proceeding focused solely on the EDC's universal service plan wherein the specific programmatic terms of an EDC's CAP are approved by the Commission. This is important

⁶ Proposed Policy Statement Order at 6-7.

because there may be programmatic changes that could be made to an EDC's CAP rather than eliminating a low-income consumer's statutory right to shop that could maintain for low-income consumers the best avenue available to them to receive the greatest potential for cost savings – the ability to freely shop and receive financial assistance through participation in CAP.

For all these reasons, embedding flexibility and a good faith openness to consider alternative CAP shopping restrictions into the language of the Policy Statement is vitally important. Otherwise, the EDCs as default service providers will only ever propose restricting EGS pricing to the PTC. Other parties will likely elect to conserve resources by not undertaking the costly process of developing and litigating alternative approaches even if such approaches could lead to a more positive outcome from the perspective of the low-income consumer. Such a shutting out of divergent viewpoints from the Commission process (even when they do not prevail) does not serve the public interest. Yet, that is the most likely outcome unless the Commission's final policy statement more clearly invites flexible approaches and expresses a willingness to consider such approaches in good faith.

B. EDC Role As Default Service Provider Presents Significant Issues

Setting aside the issue of whether there are reasonable alternatives to restricting an EGS's price to an EDC's PTC, the dual role of the EDC as the monopoly distribution provider and the default service provider presents significant issues that need to be addressed in the language of the final policy statement. The Proposed Policy Statement as drafted fails to separate these roles and, as a result: (1) creates an unsupportable pricing benchmark; (2) likely eliminates the ability of EGSs to offer low-income consumers fixed-duration contracts; (3) lacks clear direction to EDCs with regard to operational matters necessary for EGSs to be in compliance; and, (4) creates the potential for over recovery of costs associated with future CAP shopping restrictions.

1. **Using EDC's PTC As A Benchmark For Pricing Restrictions for Low-Income Customers Is Not Appropriate**

In Pennsylvania today, consumers are educated to compare the EDC's PTC with the EGS competitive price offers. The PTC appears on every bill (which only the EDC is permitted to issue to residential customers with EGS charges included) and the Commission sponsored shopping website (www.PaPowerSwitch.com) invites consumers to compare competitive offers to the PTC. While the Commission views its statutory duty to "facilitate the comparison of [generation] prices on a uniform basis (i.e. apples-to-apples),"⁷ such "apples-to-apples" comparison is simply not possible when the "benchmark" PTC is being provided by the EDC and every other product is being provided by EGSs. While not all EGSs are the same in relation to one another, all EGSs are in the same position relative to the EDC. No EGS has the opportunities available to the EDC as no EGS has served in the role of historical monopoly energy provider (through which EDCs have entrenched their relationships with all consumers in their service territory) and no EGS has a captive rate base of distribution ratepayers from which to seek cost recovery related to the provision of electricity services. That the EDCs have a competitive advantage in relation to EGSs was well-understood in the Choice Act. To that end, the Choice Act empowered the Commission to ensure that the EDCs did not exercise their competitive advantage in an unfair way to snuff out competitors or to advantage any particular EGS over another or to deny EGSs equal access to the EDCs facilities in the same manner the

⁷ *Guidelines for Use of Fixed Price Labels for Products With a Pass-through Clause*, Docket No. M-2013-2362961 (Final Order entered November 14, 2013), at 28. ("*Fixed Price Label Order*")

EDC can access these facilities.⁸ Consistent with this, the Choice Act also contemplates that the default service product may be provided by an entity other than the EDC.⁹

Notwithstanding all of this, the reality in Pennsylvania today is that the EDC is the default service provider and the EDC's PTC is what consumers are encouraged to use to judge EGS offers. Because of this retail market structure, expanding the use of the PTC as a benchmark upon which to restrict EGS pricing to CAP participants undermines the movement toward a vibrant and functioning competitive market. Using the PTC in this manner reinforces to customers that they should judge EGS products and services against the price of the EDC's PTC. However, the EDC's PTC and EGS prices are not comparable. Rather, as the default service provider the EDC has significant advantages that no EGS can access. These include:

- The ability of EDCs to recover costs incurred for default service from all ratepayers through distribution rates (or other non-bypassable mechanisms) creating an artificially low PTC.
- Numerous other costs associated with the provision of generation supply service to retail customers are incurred by EGSs and included in their price offerings. Some of these costs are also incurred by EDCs but are recovered through distribution rates and are not factored into the PTC pricing for default service.
- As the provider of "first resort" default service with widespread brand recognition after decades as the monopoly service provider (and the current exclusive biller of electricity services), the EDC enjoys an inherent competitive advantage over competitive EGSs.

⁸ See, 66 Pa. C.S. §§ 2803, 2804(6)(requires EDCs to provide EGSs nondiscriminatory access to the public utility's transmission and distribution system on "rates, terms of access and conditions that are comparable to the utilities own use of its system."); 66 Pa. C.S. §§ 2811(a) and (b)(empowers the PaPUC to take steps to prevent anticompetitive or discriminatory conduct and to investigate "the impact on the proper functioning of a fully competitive retail electricity market. . . anticompetitive or discriminatory conduct affecting the retail distribution of electricity."); and, *The Mid-Atlantic Power Supply Ass'n v. PaPUC*, 755 A.2d 723 (Pa. Commw. Ct. 2000)(Commission retains general statutory authority under the Public Utility Code to take action regarding an EDC's provisioning of default service where it may negatively impact the development of the competitive market.)

⁹ The statutory definition of default service provider states that it can be performed by a public utility or an alternative supplier approved by the PaPUC. 66 Pa.C.S. § 2803.

The ability of EDCs as default service providers to include certain costs related to the provisioning of default service in the distribution rates that all ratepayers pay undercuts the value of using the PTC as the benchmark for EGS pricing restrictions. As the historical monopoly provider, the current distribution provider for all ratepayers in its service territory, the only entity permitted to bill residential customers each and every month for energy services, and no regulatory requirements to manage related to contracting with ratepayers, the EDC's PTC is not comparable to the competitive market-based price for energy that EGSs must develop. Thus, the price consumers see for an EDC's default service – as presented through the PTC – is not an accurate way to “judge” the prices offered by EGSs. Using the PTC as the benchmark upon which to judge EGS price offers to low-income customers participating in an EDC's CAP only further deepens the core “comparison” problem that exists in Pennsylvania today.

While RESA does not support placing pricing restrictions on the ability of a low-income customer to receive CAP benefits and participate in the competitive market, RESA strongly opposes a “dollar-for-dollar” restriction (i.e. EGS price must be the same or lower than the PTC) of EGS pricing to the EDC's PTC. For this reason, RESA urges the Commission to adopt its recommended language change to the Proposed Policy Statement which directs that the EGS' price will not exceed the EDC's PTC in effect at the time of contract initiation by more than 20 percent. This recommendation is made because of the complexity likely involved in developing a more accurate market-based benchmark rate in each utility's service territory during each applicable default service period. Permitting a maximum range above the existing PTC is a reasonable way to recognize the inherent advantages existing in the EDC's PTC and to account for market realities present at the time of pricing.

2. **Requiring EGSs To Maintain Specific Price As PTC Changes Will Further Limit Competitive Supply Options Available To CAP Participants**

For all the reasons explained in the previous section, RESA urges the Commission to not rely on a “dollar-for-dollar” comparison of the EDC’s PTC to dictate EGS pricing. Beyond this, RESA also does not support the Commission’s proposal to require the EGS to hold whatever price is directed by the Commission each time the EDC’s PTC changes for several reasons.

First, EGSs are generally comfortable providing a truly fixed 12-month price as such offers can be hedged at the time they are made. The same is not true of a price that might change over time depending on the PTC rate change. Complying with this requirement is especially risky for EGSs where the reconciliation process can result in large variations in the PTC that are far beyond those attributable solely to changes in the underlying market price for power. These unpredictable fluctuations caused by the reconciliation process are beyond an EGS’s control and cannot be hedged effectively. In fact, the Commission cited this particular risk as a justification for its proposed price of five percent off the then-current PTC for the retail opt-in action program: “[T]he utility’s default service rate is not fully reflective of the market because it is also impacted by the reconciliation process. Predicting market prices in advance is always challenging; we think that adding to this the vagaries of the reconciliation process is asking too much.”¹⁰

Second, requiring the EGS pricing to guarantee low-income customers a steady supply of electricity based on EDC pricing takes away any incentive for the low-income customer to shop in the competitive market. The result is that the low-income consumer will miss out on the

¹⁰ *Investigation of Pennsylvania’s Retail Electricity Market Intermediate Work Plan Final Order*, Final Order entered March 2, 2012 at 70.

opportunity to consider whether there are EGS products and services available that could add real value to his or her own individual circumstances.

Third, a lack of shopping on the part of low-income consumers coupled with onerous regulatory requirements to simply be able to make a product available for these consumers discourages EGSs from developing and offering products and services that could specifically benefit low-income customers. To the extent EGSs do offer service to low-income customers such service will likely be month-to-month products to ensure that EGSs comply with the requirement to change the price depending on PTC changes.

Thus, not only does the Commission's proposal continue to reinforce the narrow message that price should be the only consideration when shopping (rather than focusing on product offerings and/or other value-added propositions), requiring EGSs to always maintain their price at or below the EDC's PTC when serving CAP participants will likely discourage suppliers from providing low-income customers offers.

For these reasons, RESA recommends that the policy statement permit EGSs to maintain initial contract pricing with CAP participants throughout the term of any fixed duration contract. As the initial contract price will need to be consistent with the pricing restrictions approved by the Commission, RESA believes this will provide access to CAP participants to longer-term, fixed-price contracts. As discuss previously, consumers may find such contracts preferable to month-to-month contracts and such contracts have the potential – over the long term – to provide significant value to enable a low-income consumer to better manage overall household expenses.

3. **Operational Expectations Of EDC In Traditional Distribution Provider Role Need To Be Included In Policy Statement**

The Commission's Proposed Policy Statement does not direct the EDCs to engage in the operational processes that will be needed for EGSs to comply with any new CAP shopping

restrictions. These operational processes between EDCs and EGSs are extremely important. In fact, stakeholders (and the Commission) have spent significant time working through them in the context of the PPL and FirstEnergy processes implementing restrictions on CAP shopping. In the PPL service territory, final Commission direction on how the new shopping restrictions (including the transition of existing EGS customers participating in PPL's CAP) did not occur until a little over a year after the Commission's final order was entered and only after OCMO was directed to become involved in that process.¹¹ The process was more streamlined for FirstEnergy but still took six months after the Commission directed restrictions to be implemented and included: (1) resolution of petitions for reconsideration; (2) an in-person meeting of stakeholders, guided by OCMO; and, (3) written comments all of which addressed operational issues.¹² Also, given the dual role of the EDC as the distribution provider and the default service provider, it is important to be clear that the operational processes needed to enable any Commission-approved restrictions are the obligation of the EDC in its role as the distribution provider. Setting forth these expectations in the final policy statement is important to ensure that operational processes between the EDC and EGSs flow smoothly.

¹¹ *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, Final Order entered February 9, 2018. (“*PPL CAP Restrictions Implementation Order*”) The initial order approving PPL's new CAP shopping restrictions was entered on October 26, 2017 with a final order on reconsideration adopted on January 26, 2018. The February 9, 2018 Order addressed “various implementation issues” and was entered after both an all stakeholder meeting led by OCMO and a written comment period.

¹² *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs*, Docket Nos. Docket No. P-2017-2637855, P-2017-2637857, P-2017-2637858, P-2017-2637866, Opinion and Order entered September 4, 2018; *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Approval of their Default Service Programs*, Docket Nos. Docket No. P-2017-2637855, P-2017-2637857, P-2017-2637858, P-2017-2637866, Final Order entered February 28, 2019 at 10 (“*FirstEnergy CAP Restrictions Implementation Order*”).

4. Potential For Excessive Cost Recovery Needs To Be Eliminated

An EDC's CAP is a program within the EDC's universal service plan. The full costs of an EDC's universal service plan are paid for by all customers usually through a non-bypassable rate mechanism.¹³ Regarding default service, the Choice Act sets forth the process by which the default service provider is to procure the electric power needed to serve the default service role.¹⁴ Pursuant to the statute, the default service provider has "the right to recover on a full and current basis, pursuant to a reconcilable automatic adjustment clause under section 1307. . . , all reasonable costs incurred under this section. . ." ¹⁵

Because the EDC is also the default service provider, these two statutory sections present an opportunity for recovering the costs of implementing a CAP shopping program twice. Once in the context of the universal service plan and again in the context of providing default service since the Commission has directed the EDCs, as default service providers, to present their CAP shopping restrictions plans in the default service proceeding. While both of these cost recovery mechanisms require cost recovery from customers, the Commission has in the past authorized EDCs to recover from EGSs the costs of retail market enhancement programs to include administrative costs related to the Purchase of Receivables programs and the Standard Offer Customer Referral programs.¹⁶ To be clear, RESA strongly opposes any future requirement that EGSs be required to pay for the costs of CAP shopping restrictions.

¹³ 66 Pa.C.S. §2802(17).

¹⁴ 66 Pa.C.S. § 2807(e)(3.2)-(e)(4).

¹⁵ 66 Pa.C.S. § 2807(e)(3.9)(emphasis added).

¹⁶ *See, e.g., Petition of PECO Energy Company for Approval of its Default Service Program II*, Order entered June 13, 2013 at 5, 9-10 (approving a \$30.00 customer acquisition fee to be paid by EGSs participating in PECO's standard offer customer referral program with 50% of costs coming from the Purchase of Receivables discount paid by EGSs and 50% from residential and small commercial default service customers); *Petition of PPL Utilities Corporation Requesting Approval of a Voluntary Purchase of Accounts Receivables Program and Merchant Function Charge*, Opinion and Order entered November 19,

The costs of EDC programs intended to restrict the ability of low-income customers to shop are not appropriately recovered from EGSs. Unlike the previously implemented retail market enhancement programs, EGSs do not support CAP shopping restrictions. Moreover, these restrictions require EGSs to expend their own resources to adjust their internal operations to accommodate the new regulatory requirements. Given the availability of a specific cost recovery mechanism related to the EDC's universal service plan, RESA recommends that the final policy statement include language specifically stating that cost recovery related to CAP shopping programs will be recovered through existing universal service mechanisms.

C. Direction To EGSs Needed Regarding Contract Cancellations And Renewal Processes

There are numerous existing residential customer protection regulations regarding the competitive retail electricity market that are specifically directed to the EGSs. These include regulations related to an EGS's sales and marketing practices to potential new customers, specific direction about the language EGSs must include in their customer contracts (referred to as the disclosure statement), and the notices EGSs must provide to their customers during the contract renewal process.¹⁷ The Commission's Proposed Policy Statement directly impacts EGSs and their existing regulatory requirements in regard to their customers; yet, none of the language in the Proposed Policy Statement provides direction to the EGSs regarding the Commission-regulated interactions of the EGS with their customers and potential customers. Rather than provide clear direction to the EGSs, the Proposed Policy Statement directs the EDCs

2009 at 5 (approving PPL Purchase of Receivables program with the discount rate paid by EGSs including an administrative factor of 0.05%)

¹⁷ See, e.g., 52 Pa. Code §§54.5 (disclosure statement for residential and small business customers); 54.10 (notice of contract expiration or change in terms for residential and small business customers); and, 111.1-111.14 (marketing and sales practices for the retail residential energy market).

to establish certain requirements that the EGSs are expected to include in their contracts with CAP participants.

Placing the EDCs in the position of policing EGS customer contracts is wholly inappropriate. EDCs have no role in reviewing an EGS's contracts with the EGS's customers and requiring them to do this raises serious conflict questions in light of the EDC's provisioning of default service. The fact that the EDC is also the default service provider already presents numerous difficulties since default service is a generation supply product of the EDC which all EGSs have to consider in the development of their competitive generation supply products (and which, as explained previously, enjoys certain advantages that are not available to EGSs). The role of enforcing EGS's compliance with Commission regulations is more properly left with the Commission which has the requisite authority to address any violations of its requirements.¹⁸

Relatedly, the lack of guidance to EGSs in the Proposed Policy Statement about how EGSs are to manage their existing customer contracts when those customers enroll in an EDC's CAP is an oversight that needs to be corrected. Important to remember is that the enrollment of an EGS's customer in an EDC's CAP requires an EGS to treat that customer differently from all other customers. For the newly enrolled CAP participant on an existing EGS contract, the EGS must determine the duration of the existing contract, identify the contract renewal period, determine what contract it can offer that customer upon expiration, and provide appropriate notice to the customer. The existing EGS customers that are on month-to-month contracts who

¹⁸ *FirstEnergy CAP Restrictions Implementation Order* at 16 (“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.”); *PPL CAP Restrictions Implementation Order* at 24-25. (“We agree. . . there is no need for suppliers to inform PPL of the type of contracts there customers are on. . . PPL has no need for this information. We also agree that sharing this type of information raises customer privacy and confidentiality concerns.”)

subsequently enroll in CAP also present a unique situation that EGSs must manage regarding what type and how many notices must be provided to that customer before the EGS can enroll him/her in a new CAP compliant contract. EGSs may also elect to cancel the customer's contract upon notice of his/her enrollment in CAP. And, for any existing EGS customer that enrolls in CAP and for whom the EGS would like to offer new terms pursuant to the CAP shopping program, the Commission has directed EGSs to also consider the requirements of the Commission's *Fixed Price Label Order*¹⁹ which require the EGS to get the customer's affirmative consent before the existing contract can be revised to be in compliance with the new CAP restrictions (an approach RESA does not support applying in this context). Stated simply, layering on requirements such as the need to get affirmative consent before an EGS can convert an existing customer to a CAP-compliant product unnecessarily frustrates and increases the costs for EGSs wishing to move existing customers onto a CAP-compliant product. Such realities will likely result in EGSs electing to return existing customers to default service rather than converting their existing contract to one that satisfies the Commission-approved CAP shopping restrictions. This approach and outcome simply does not seem logical nor in line with the expressed goals of the Commission to provide low-income consumers access to the competitive market.

Ultimately, RESA supports streamlining and not creating burdensome requirements on the process for EGSs to continue to serve their existing customers with a CAP-compliant product. Developing such processes and stating them clearly in the final policy statement is the best way to incentivize EGSs to present offers and continue to serve their low-income customers

¹⁹ *Fixed Price Label Order* at 25-26.

who enroll in CAP. Failing to do this will likely result in: (1) EGSs electing to not provide offers to low-income consumers; and/or, (2) EGSs developing their own interpretations of Commission expectations leading to varying EGS processes and likely the need for further Commission intervention in the future.

For these reasons, RESA proposes removing the directive in the Proposed Policy Statement about what EDCs should require in EGS's contracts with CAP participants and replace this with a new section providing clear direction to EGSs about the Commission's expectations regarding their contracting with their CAP participant customers. These proposals are intended to: (1) provide clarity to EGSs; (2) streamline the regulatory processes for EGSs to manage potentially changing CAP status during contract renewal periods; and, (3) lessen the obstacles to EGSs to continue to serve their customers who enroll in an EDC's CAP with a CAP-compliance EGS product.

III. RECOMMENDED LANGUAGE REVISIONS

All of RESA's recommended language revisions to the Proposed Policy Statement as reflected in Exhibit A are based upon and consistent with the issues discussed previously in Section II of these comments. Here, RESA provides additional information related to the recommended language revisions in each specific section of the Commission's Proposed Policy Statement.

A. Section 69.271 – Scope

RESA's recommended language revisions to Section 69.271 are intended to be clear that the policy statement applies to EDCs when they are in their role as default service provider. This is important to include given that there is not statutory or other requirement that the default service is required to be the EDC. Other language changes are intended to be clear that this policy statement applies to price restrictions and not to other CAP shopping programs that may

be offered. The final set of recommended language revisions are intended to make clear that this policy statement also provides guidelines to EGSs. It is important to add this language to signal more clearly to EGSs that this policy statement impacts their operations with regarding CAP participants who may also be the EGS's customer.

B. Section 69.272 – Purpose

This section has been streamlined to more clearly state the purpose of the policy statement which is to establish guidelines for enabling customers enrolled in an EDC's CAP to receive the benefits of the retail electric market while balancing the need to ensure that EDCs' universal service plans are adequately funded and cost-effective. Apart from the fact that RESA simply does not agree with the statement that "unbridled competition has proven to be detrimental," this language serves no useful purpose in the context of the policy statement and should be streamlined consistent with RESA's recommendations.

C. Section 69.273 – Definition

RESA proposes additional language to a few of the definitions. All the proposals are intended to be clear about the roles of the EDC as default service provider, the EDC as the CAP administrator, and the role of EGSs in the market.

D. Section 60.274 – CAP Participant Shopping Addressed in Electric Default Service Program

Recommended language revisions for this section are intended to make clear that this policy statement is focused on price restrictions and that the Commission is open to the EDC or any other party proposing an alternative structure. RESA urges the Commission to accept these proposed revisions for the reasons discussed above in Section I.A of these comments.

E. Section 69.275 – CAP Participant Shopping Program Design

RESA recommends that the title of this section and a few other reference points in the text make clear that the policy statement is referring to CAP shopping programs that restrict EGS pricing. RESA also proposes revisions to the specific price restrictions set forth in (b)(1) for the reasons discussed above in Sections I.B.1 and I.B.2 of these comments. RESA also proposes to delete (3) and handle the issues contained there in RESA’s newly proposed Section 69.277. As discussed above in Section I.B.3 of these comments, it is not appropriate to place EGSs in the role of policing what is in the contracts of EGSs with their customers. Also as further discussed above in Section I.C of these comments, a separate section of the policy statement specifically directed at EGSs and informing EGSs about their regulatory obligations is better than burying it in a section currently directed to the EDCs.

F. Section 69.276 – Eligibility

RESA does not propose any changes to this section of the Proposed Policy Statement.

G. Section 69.277 (New) – EDC and EGS Requirements

RESA recommends that the Commission include a new section in the final policy statement that is intended to specifically address: (1) EDC operational issues in relation to EGSs; and, (2) the Commission’s expectations regarding EGS’s regulated interactions with their customers who are in or become enrolled in an EDC’s CAP.

Regarding the EDC’s operational requirements toward EGSs, it is important that the Commission specifically set forth its expectations. As discussed above in Section I.B.3 of these comments, ensuring that the EGSs are able to timely obtain the information that they need from the EDCs to ensure their compliance with regulatory requirements is a very important issue and one that would benefit from clear direction in the final policy statement.

Further, as discussed above in Section I.C of these comments, direction to the EGSs from the Commission is vitally important given that the Commission's policy statement directly impacts how an EGS manages its customer. Streamlining and not creating burdensome requirements on the process for EGSs to continue to serve their existing customers with a CAP-compliant product and stating these requirements clearly in the final policy statement is the best way to incentivize EGSs to present offers and continue to serve their low-income customers who enroll in CAP.

H. Section 69.278 (New) – Cost Recovery

As explained more fully above in Section I.B.4 of these comments, RESA recommends including a new section in the final policy statement to guard against excess cost recovery related to any final Commission-approved CAP shopping programs.

IV. CONCLUSION

RESA appreciates this opportunity to provide its viewpoint regarding this important proceeding and supports focusing this investigation on evolving the current structure and role of default service to better support the development of a functioning competitive retail electricity market.

Respectfully submitted,



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Date: July 30, 2019

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§ 69.271. Scope.

Sections 69.272–69.278~~6~~ provide guidelines to EDCs **when, in their role as default service provider, they propose** regarding programs **restricting the price** ~~permitting~~ CAP participants **may agree to pay when** entering into contracts with an EGS for electric generation service. **Sections 69.272–69.278 also provide guidelines to EGSs governing their interactions with their customers and potential customers who enroll or may become enrolled in an EDC’s CAP.**

§ 69.272. Purpose.

The purpose of this Policy Statement is to establish guidelines for enabling customers enrolled in an EDC’s CAP to receive ~~While the Commission supports retail competition in electric markets, unbridled competition has proven to be detrimental to both CAP participants and non-CAP participant ratepayers when CAP participants contract for electric generation service at rates more than the PTC offered by the EDC. CAP participants paying more than the PTC may exhaust their available CAP benefits earlier than if they were on default service. Non-CAP participants subsidize the EDC’s uncollectibles resulting from CAP participants’ inability to pay their bills, resulting in higher distribution rates. Accordingly, with this Policy Statement the Commission seeks to provide guidelines to EDCs to limit this harm, but still provide CAP participants the benefits of the retail electric market~~ **while balancing the need to** ~~The guidelines are intended to balance both the requirement for nondiscriminatory access to electric service shopping while~~ **ensuring** that EDCs’ universal service plans are adequately funded and cost-effective as required by the Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. § 2804 (relating to standards for restructuring of electric industry).

§ 69.273. Definitions.

The following words and phrases, when used in §§ 69.271—69.278~~6~~, have the following meanings, unless the context clearly indicates otherwise:

CAP—Customer Assistance Program **offered by the EDC.**

CAP participant—A residential retail electric customer enrolled in CAP.

DSP—*Default service provider*—The term has the same meaning as defined in 66 Pa.C.S. § 2803 (relating to definitions) **and the DSP may be an EDC or EGS.**

Default service—Electric generation supply service provided pursuant to a default service program to a retail electric customer not receiving **competitive generation supply** service from an EGS.

Default service program—A filing submitted to the Commission by the DSP that identifies a procurement plan, an implementation plan, a rate design to recover all

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reasonable costs and all other elements identified in § 54.185 (relating to default service programs and periods of service).

EDC—Electric distribution company—The term has the same meaning as defined in 66 Pa.C.S. § 2803 (relating to definitions). **An EDC develops and administers CAP programs and may also be the DSP.**

EGS—Electric generation supplier—The term has the same meaning as defined in 66 Pa.C.S. § 2803 (relating to definitions).

Low income customer—A residential utility customer whose annual household gross income is at or below 150% of the Federal poverty income guidelines.

PTC—Price-to-compare—A line item that appears on a retail customer’s monthly bill for default service. The PTC is equal to the sum of all unbundled generation and transmission related charges to a default service customer for that month of service.

Retail customer or retail electric customer—These terms have the same meaning as defined in 66 Pa.C.S. § 2803 (relating to definitions).

§ 69.274. CAP Participant Shopping Addressed in Electric Default Service Program.

- (a) **When A-an EDC, in its role as DSP, should develops a CAP participant electric generation shopping program that restricts the price which CAP participants may agree to pay when entering into contract with an EGS for electric generation service, such proposal shall be** consistent with the guidelines provided in §§ 69.275–69.2786.
- (b) **An EDC, in its role as DSP, or any other party has the option of presenting a reasonable alternative to Section 69.274(a) that will not result in harm to either CAP participants or non-CAP participants. The Commission will consider any such proposed alternatives in good faith.**
- (c) An EDC, **in its role as DSP,** should include **its proposed** ~~the~~ CAP participant electric generation shopping program in the first default service program filing submitted for Commission approval after _____. (*Editor’s note:* The blank refers to 6 months and 1 day after the effective date of the adoption of this statement of policy.)

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§ 69.275. CAP Participant Shopping Program Design Restricting The Price For Which CAP Participants May Agree To Pay When Contracting With An EGS.

- (a) The Commission has set forth guidelines for CAP programs in its CAP policy statement at §§ 69.261–69.267 (relating to policy statement on customer assistance programs), which are applicable to this policy statement concerning CAP participant electric generation shopping programs **restricting the price for which CAP participants may agree to pay when contracting with an EGS.**
- (b) When addressing CAP participant electric generation shopping in default service programs **which restricts the price for which CAP participants may agree to pay when contracting with an EGS**, an EDC **in its role as the DSP** should include the following limitations:
- (1) A requirement that a contract between an EGS and a CAP participant **that the EGS' price will** ~~has a rate per kilowatt-hour~~ **not exceed** ~~that is at or below the~~ EDC's PTC in effect **at the time of contract initiation by more than 20 percent and, for fixed duration contracts, the EGS must maintain the initial contract price** during the entire duration of the contract.
- (2) A requirement that a contract between an EGS and a CAP participant contains no:
- (i) Early termination fees.
 - (ii) Cancellation fees.
 - (iii) Other fees unrelated to the provision of electric generation service to the CAP participant.
- ~~(3) Provisions that allow an EGS and a CAP participant to take the following actions at the end of any contract between the EGS and the CAP participant:~~
- ~~(i) Enter into another contract with the same EGS that meets the requirements outlined in (1) and (2).~~
 - ~~(ii) Enter into a contract with another EGS that meets the requirements outlined in (1) and (2).~~
 - ~~(iii) Enroll the CAP participant in default service.~~

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§ 69.276. Eligibility.

- (a) Participation in a CAP participant electric generation shopping program is contingent upon a CAP participant's continuing eligibility for CAP benefits, as verified through an annual reapplication for CAP benefits process established pursuant to § 69.265(6)(viii) (relating to CAP design elements).
- (b) A CAP participant that enters into a contract with an EGS that does not fit the requirements set forth in this policy statement shall be disqualified from participation in CAP.

§ 69.277. EDC and EGS Requirements.

- (a) **For any Commission approved CAP participant electric generation shopping program, the EDC shall develop processes:**
 - (1) **To timely inform EGSs about the CAP status of their existing and potential future customers. These processes shall include, but not be limited to: (1) a CAP flag on the Eligible Customer List; (2) an update of the CAP status of EGS customers on the EDC's sync list; (3) an update of CAP status as part of the account number look-up access portal; and, (4) monthly communications from EDC to EGS about customer status.**
 - (2) **To timely communicate advanced notice to EGSs about future rate changes to the EDC's PTC.**
 - (3) **To hold at least two workshops with the EGSs prior to implementation to discuss the operational implementation of the new program and/or any changes.**
 - (4) **To enable EGSs to serve CAP customers on any currently available billing method so long as the EGS certifies that it will comply with the requirements of the Commission approved CAP participant electric generation shopping program.**
 - (5) **To share customer facing education material with EGSs and provide an opportunity for EGS input and comment.**

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- (b) For customers who enroll in an EDC's CAP, the following contract disclosure and contract renewal requirements shall apply:**
- (1) EGS customers who subsequently enroll in an EDC's CAP after they contract with an EGS:**
- (i) and are in a pre-existing fixed duration contract with the EGS, the CAP participant may remain with their existing EGS and be served under the terms of the existing contract until expiration of the existing contract.**
 - (ii) and are in a pre-existing month-to-month contract with the EGS, may be converted to a new month-to-month contract that complies with the requirements of the Commission approved CAP participant electric generation shopping program so long as the EGS provides 30 days' notice to the customer.**
 - (iii) may have their contracts cancelled by the EGS pursuant to any pre-existing contract option to cancel the contract and the customer may return to default service or enroll with another EGS.**
- (2) The CAP participation status of an EGS's customer**
- (i) in a pre-existing fixed-duration contract shall be as verified sixty days prior to the expiration of a fixed duration contract and EGSs may rely on the customers status at this point in time to inform its contract renewal processes**
 - (ii) in a month-to-month contract shall be upon notice from the EDC that the customer has enrolled in an EDC CAP and EGS may proceed in accordance with Section 69.277(b)(1)(ii) or (iii).**

§ 69.278. Cost Recovery

All administrative and programming costs incurred by EDCs to implement any CAP participant electric generation shopping program shall be collected in the same manner as other costs related to the EDC's universal service and energy conservation program.