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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")
Reply 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	:	Docket No.	M-2018-3006578
Default Service Plans – Customer	:		
Assistance Program Shopping	:		

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

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Date: August 14, 2019

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I. INTRODUCTION

In response to the Commission's Proposed Policy Statement Order adopted February 28, 2019, initial comments were filed by a diverse number of stakeholders including consumer advocates,¹ electric distribution companies ("EDCs")² and electric generation suppliers ("EGSs").³ The Retail Energy Supply Association ("RESA"),⁴ a trade association of energy companies including many Pennsylvania licensed EGSs, also filed initial comments urging the Commission to include in its final policy statement critically important fundamental principles absent from the Proposed Policy Statement. Addressing these fundamental principles in the final policy statement is necessary to decrease the potential shutting down of this one avenue the Commission hopes to leave open for participants in an EDC's Customer Assistance Program ("CAP") to access the competitive market.

Though some commenters outright support the elimination of shopping for CAP participants and others offer programmatic changes that will lead to the same outcome, finding a way to enable low income consumers to assess the benefits of a financial assistance program and ensuring they have access to a diverse variety of competitive offers is in the public interest. As

¹ Coalition of Affordable Utility Services and Energy Efficiency in Pennsylvania and Tenant Union Representative Network And Action Alliance of Senior Citizens of Greater Philadelphia (collectively, "CAUSE-PA"); Office of Consumer Advocate ("OCA"); and, Consumer Advisory Council ("CAC").

² Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company (collectively, "FirstEnergy"); PPL Electric Utilities Corporation ("PPL"); Duquesne Light Company ("DLC"); UGI Utilities, Inc. – Electric Division ("UGI"); PECO Energy Company ("PECO"); and, Energy Association of Pennsylvania ("EAP").

³ WGL Energy Services, Inc. ("WGL Energy").

⁴ 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.

more fully explained in Section II below, this view aligns with the Commonwealth Court's direction that the Commission can place "restrictions" on the ability of CAP participants to shop. "Restrictions" do not mean the same as eliminating the right altogether. As stated by the Commonwealth Court, the Commission is authorized to "strike a balance" between the ability to shop and ensuring access to affordable low income customer assistance programs.⁵ Where, as in the example of the failed PPL CAP-SOP, the Commission approves restrictions that result in no EGSs making offers to CAP participants, the restrictions have been poorly designed and the "shopping program" is effectively eliminating any shopping opportunity for the low income consumer. In the face of such results, the answer is not to just give up and eliminate all shopping but to go back to the drawing board and figure out what design features would incentivize (or at least not discourage) EGSs from making offers so as to strike the "balance" as authorized by the Commonwealth Court.

As explained more fully below in Section III, the programmatic suggestions offered by commenters in their initial comments related to EGS contracts that do not conform with the Commission approved CAP shopping rules and to require EGSs to pay for the costs of the CAP shopping program must not be pursued because implementing them will lead to the elimination of shopping for CAP participants. Rather than spending any more time debating these programmatic elements that do not work and will doom the functioning of a future CAP shopping program, RESA urges the Commission to make clear that the future focus of these issues needs to be about designing programs that will encourage EGSs to make offers while also addressing the policy concerns related to universal service identified by the Commission.

⁵ *Retail Energy Supply Ass'n v. Pa. PUC*, 185 A.3d 1206, 1223 (Pa. Cmwlth. 2018). ("Cmwlth Ct CAP-SOP Order").

Shifting the discussion in this direction going forward may ultimately result in an outcome that truly benefits all Pennsylvania's retail electricity consumers.

II. COMMISSION LACKS AUTHORITY TO ELIMINATE ANY SHOPPING OPPORTUNITY FOR LOW INCOME CONSUMERS

The Commonwealth Court has authorized the Commission to limit competition for low income consumers so that other important policy concerns related to access, affordability and cost effective low income customer assistance programs may be served.⁶ Importantly, as interpreted by the Commonwealth Court, the Electricity Generation Customer Choice and Competition Act ("Choice Act")⁷ does not authorize the Commission to end all shopping opportunities for low income consumers who participate in an EDC's CAP. Rather, the Commission must strike a balance between shopping and low income customer assistance programs to find a way for the low income consumer to have access to an EDC's CAP and the ability to shop.⁸ Notwithstanding this clear legal direction, some commenters suggest that the Commission should forgo trying to balance the right to shop with the receipt of financial assistance for low income consumers and "simply" require that all CAP participants be placed on an EDC's default service. However, neither a "take it or leave" it choice with regarding the CAP benefits nor the failed PPL CAP-SOP provide the legal, policy or public interest justification for the Commission to determine that CAP participants are precluded from exercising any right to shop for a competitive supplier.

⁶ *Id.* at 1222.

⁷ 66 Pa. C.S. §§ 2801-2812.

⁸ *Id.* at 1223.

A. Forgoing CAP Benefits To Shop Is Not Consistent With Legal, Policy Or Public Interest Requirements

DLC and UGI take the view there is no need to develop a shopping program that enables CAP eligible low income consumers to both shop and participate in an EDC's CAP because CAP eligible consumers can choose to forgo financial assistance through an EDC's CAP to freely shop for an EGS.⁹ The Choice Act, however, requires the Commission to "allow customers to choose among electric generation suppliers in a competitive generation market through direct access" and nothing in the statute requires low income consumers to first give up CAP financial benefits before they may exercise their right to shop.¹⁰

The Commonwealth Court has already made clear that CAP programs and shopping are not analogous to two entrees on a lunch menu required simply be made available to low income consumers to satisfy statutory requirements. Rather, and according to the Commonwealth Court, the right to shop and have access to CAP programs are two separate and distinct "competing" policy concerns.¹¹ Before the Commission can restrict the right to shop, it must: (1) show there is a harm associated with competition (defined as permitting CAP participants to freely shop); and, (2) there are no reasonable alternatives to a rule that restricts competition (i.e. placing limits on how CAP participants may shop).¹² Stated more simply, the Choice Act requires the Commission to first justify the need for restrictions on shopping and then to ensure that the restrictions are reasonably tailored to limit (not eliminate) the ability of CAP participants to

⁹ DLC Comments at 9; UGI Comments at 3.

¹⁰ 66 Pa.C.S. § 2804(2).

¹¹ *Cmwllth Ct CAP-SOP Order* at 1223.

¹² *Id.* at 1228.

shop. Thus, the Commission cannot, as UGI and DLC propose, legally take the view that CAP eligible consumers must receive an EDC's default service as a condition of participating in CAP.

From the public interest standpoint of the low income consumer no good purpose is served by requiring low income consumers to give up financial assistance because they elect to shop in the competitive market. In fact, the record in the PPL CAP-SOP proceeding was clear that approximately half of the CAP participants who shopped during the period of time covered by the data were charged a price less than PPL's PTC. As EGS customers being billed a rate lower than PPL's PTC while also receiving the financial assistance available through PPL's CAP, these consumers offer clear evidence about how they were able to leverage the competitive market to maximize affordability while also reducing overall universal service costs. Notably, these low income consumers did this by shopping on their own initiative without any regulatory confines placed on them. While unfortunate that the implementation of CAP-SOP took away the ability of low income consumers like these to freely design such an outcome in the future, finding a way to permit them to still avail themselves of CAP benefits and some form of shopping better serves the public interest.

In sum, creating a take-it-or-leave condition on financial assistance relegates low income consumers to second tier citizens who cannot shop and are denied access to the shopping tool the General Assembly deemed all consumers are required to have available. While the Commonwealth Court has authorized the Commission to place restrictions on the ability of these consumers to freely shop and receive CAP benefits, there is no support for the view that all shopping in any form can be completely eliminated as a condition of receiving CAP benefits. For these reasons, the view of DLC and UGI that the Commission need not do anything further

to accommodate the ability of CAP participants to shop while accessing CAP benefits must be rejected.

B. PPL's Failed CAP-SOP Is Not A Reason To End All Shopping For CAP Participants

PPL posits that the ability of its CAP participants to shop should be eliminated based on PPL's experience with the failed PPL CAP-SOP. PPL's CAP-SOP is a failure because no EGS is participating.¹³ That PPL's CAP-SOP is a failure due to lack of EGS participation is precisely the reason why RESA never supported PPL's CAP-SOP as structured and appealed the Commission's adoption of the CAP-SOP to the Commonwealth Court. Consistent with the expert testimony of RESA's witness, the structure of PPL's CAP-SOP is unattractive to EGSs because:

- (1) the only potential for a CAP participant to receive EGS service is restricted to the CAP-SOP and PPL assigns the EGS to the CAP participant.
- (2) EGSs are not free to design their own products to compete with one another inside or outside of CAP-SOP; rather, every EGS is only allowed to offer one basic product through CAP-SOP at a price that must be 7% below PPL's PTC.
- (3) at the end of the EGS contract period with a CAP participant, the EGS must return its customer (the CAP participant) to the CAP-SOP to be assigned by PPL to an EGS.
- (4) EGSs must pay PPL a \$28 fee for each customer enrolled through the CAP-SOP.

These program features doomed the CAP-SOP to fail because they discourage EGSs from participating. Without EGSs, PPL's CAP participants have no competitive supply options and are stuck with PPL's default service. Rather than using this experience as an excuse to eliminate shopping altogether (as PPL suggests), a better approach is to learn from the

¹³ PPL Comments at 9.

experience and figure out how to design reasonable restrictions that keep the shopping avenue open (because EGSs are willing to offer service) while also achieving the policy goals related to universal service. Just as there is more than one way to cook an egg, there is more than just the PPL CAP-SOP way to design restrictions on the ability of CAP participants to shop. For example, FirstEnergy's shopping restrictions for its CAP participants are quite different from PPL's CAP-SOP. Likewise, Commissioner Place articulated alternative design solutions for the PPL CAP-SOP at the time he dissented from approval of the program.¹⁴ Other possible ways to address concerns related to universal service programs related to shopping by CAP participants could include:

- (1) aggressive education of CAP customers about EGS offers that are lower than the PTC (to include the availability of the standard offer customer referral programs);
- (2) creating positive program incentives for CAP participants who shop for EGS services that lower the amount they are billed such as an extending their CAP eligibility period, additional arrearage forgiveness, etc.;
- (3) coordination with EGSs to develop other competitive market based rewards and incentives for CAP participants who lower their overall energy costs to include gift cards, reward points, etc.;
- (4) creating an aggregation of low income consumers and selecting an EGS to serve them through a competitive process; and/or,
- (5) changes to EDC Purchase of Receivables programs to create further incentives for disciplined EGS pricing practices

Without endorsing any of these ideas, the point is that PPL's failed CAP-SOP is not the only way to approach the policy issues here and the predictable fact that CAP-SOP failed does

¹⁴

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-2016-2526672, Statement of Vice Chairman Andrew G. Place dated October 27, 2016.

not mean that a more appropriately designed CAP shopping program cannot be developed to achieve the stated goals of the Commission.

For these reasons, RESA does not support a wholesale elimination of the ability of CAP participants to shop for a competitive supplier. Rather, the Commission is required to balance the ability of low-income consumers to have access to EDC assistance programs with their ability to shop for competitive service from an EGS. Balancing these objectives means ensuring that low income consumers can access both CAP benefits and shopping at the same time. This is the optimal way to empower low income consumers to structure their specific energy needs in an affordable way for their own personal benefit while assuring that the Commission's stated policy goals related to universal service are also served.

III. PROGRAMMATIC PROPOSALS OF OTHER PARTIES THAT WILL ELIMINATE SHOPPING FOR LOW INCOME CONSUMERS MUST BE REJECTED

Though not directly recommending an outright elimination of all shopping opportunities for CAP participants, some of the proposed program design elements offered by commenters will achieve that result if adopted. For the reasons discussed further below, RESA urges the Commission to reject these proposals.

A. EGS Contracts Not Conforming With Commission Approved CAP Shopping Rules

Commenters express concern about the loss of access to CAP benefits due to the receipt of EGS service that does not satisfy the Commission approved restrictions. These commenters offer various proposals intended to address this concern.¹⁵ Embedded within these proposals are the following issues that the Commission needs to address: (1) who is responsible for informing

¹⁵ OCA Comments at 8-9; CAUSE-PA Comments at 5-9; CAC Comments at 5.

CAP eligible consumers about the CAP shopping rules; and, (2) managing the EGS contracting process and enforcement of the CAP shopping rules.

1. **EDCs Need To Be Responsible For Informing CAP Eligible Consumers About The CAP Shopping Rules**

Both OCA and UGI take the view that the EGS should be required to inform prospective customers at the time of enrollment (before signing any EGS contract) about the potential loss of CAP benefits if the contract does not conform with the Commission approved CAP shopping rules. OCA offers specific language for a confirmation that it proposes must be signed and returned by the consumer before the EGS can provide the consumer service pursuant to a contract that does not comply with the Commission approved CAP shopping rules. UGI proposes that the EGS educate the prospective consumer if the contract does not conform to the Commission approved CAP shopping rules and “disclose to a low income customer eligible for CAP but not currently enrolled that they would no longer [be] eligible if they contract for a higher price with an EGS than the EDC’s current PTC.”¹⁶ Implementing any of these proposals is not realistic and would discourage EGSs from making offers to low income consumers and quite possibly to other consumers as well.

Placing EGSs in the role of explaining an EDC’s CAP and its specific CAP shopping rules is not reasonable. EGSs do not administer the EDC’s CAP and all of the CAP programs in Pennsylvania are EDC specific. As such, EGSs would be required to become knowledgeable about each EDC’s specific CAP to be able to provide meaningful information to consumers. EGSs would also be required to monitor the regular changes that occur with each EDC’s CAP as well as policy changes that may be directed by the Commission. Requiring EGSs to learn about

¹⁶ UGI Comments at 6-7.