

COMMONWEALTH OF PENNSYLVANIA



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August 14, 2019

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Attached for electronic filing are the Reply Comments of the Office of Consumer Advocate in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in blue ink that reads "Christy M. Appleby".

Christy M. Appleby  
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Enclosures:

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Certificate of Service  
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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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REPLY COMMENTS  
OF THE  
OFFICE OF CONSUMER ADVOCATE

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**I. INTRODUCTION**

On December 20, 2018, the Pennsylvania Public Utility Commission (Commission) directed the Commission’s Law Bureau to prepare by no later than February 28, 2019 “an Order to amend an existing policy statement, or to create a new policy statement addressing the issue of electric distribution company (EDC) Customer Assistance Program (CAP) participant shopping with electric generation suppliers (EGS).” Policy Statement Order at 1; see also, Electric Distribution Company Default Service Plans – Customer Assistance Program (CAP) Shopping, Motion of Commissioner David W. Sweet, Public Meeting, December 20, 2018, Docket No. M-2018-3006578.<sup>1</sup> On February 28, 2019, the Commission issued its Proposed Policy Statement Order, and the Policy Statement Order was published in *Pennsylvania Bulletin* on Saturday, June 15, 2019. Interested parties were to provide Comments within 45 days of the publication in the *Pennsylvania Bulletin*, and Reply Comments are due 15 days thereafter, or 60 days after

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<sup>1</sup> The CAP is designed to provide an affordable bill to the CAP customer to better enable the customer to make the monthly bill payment. See 52 Pa. Code § 69.265(2)(i)(A). In general, CAP provides bill payment assistance to eligible low-income customers who are payment-troubled. The difference between the full residential customer bill and the discounted bill provided to CAP customers is collected from all non-CAP residential ratepayers through the Universal Service Charge.

publication in the *Pennsylvania Bulletin*. In accordance with the requirements of the Proposed Policy Statement Order, the OCA submits the following Reply Comments.

On July 30, 2019, the OCA filed its Comments. Comments were also filed by: (1) the Consumer Advisory Council (CAC); (2) Duquesne Light Company (Duquesne); (3) Energy Association of Pennsylvania (EAP); (4) 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.*) (collectively low-income advocates); (5) Joint Comments of the Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company (collectively FirstEnergy Companies); (6) PECO Energy Company (PECO); (7) PPL Electric Utilities Corporation (PPL); (8) the Retail Energy Supply Association (RESA); (9) UGI Utilities, Inc. – Electric Division (UGI Electric) and (10) WGL Energy Services, Inc. (WGL Energy).

As the OCA discussed in its Comments, the OCA generally supports the Commission's proposed Policy Statement Order. The Commission's Proposed Policy Statement Order provides important rules and protections for CAP customers who are participating in the retail electric choice market. The OCA supports the Commission in its endeavors to allow CAP customers to participate in the retail choice environment in such a manner that will provide CAP customers and non-CAP residential customers who pay the costs of the programs with additional protections related to CAP customer shopping. Experience with CAP customer shopping in the PPL and FirstEnergy Companies services territories has demonstrated the need for additional protections for both CAP customers and non-CAP customers who pay the costs of the programs. In its Comments, the OCA identified several specific recommendations regarding: (1) a definition of the

term “rate per kilowatt hour;” (2) a modification to add-on fees; and (3) a modification of the provision related to CAP customer eligibility for the CAP Shopping program. See OCA Comments at 6-9. The OCA continues to recommend these modifications and incorporates by reference its Comments.

Many of the Commenters, including the OCA, support the Commission’s Proposed Policy Statement with modifications, and many of the EDCs identify specific potential operational issues that should be addressed. See, PECO Comments; FirstEnergy Companies Comments; CAC Comments; EAP Comments; and CAUSE-PA and TURN *et al.* Comments. Like the OCA, many of the Commenters identify the same potential harms that the Commission identifies in its Proposed Policy Statement Order. Other Commenters identify concerns with the value of allowing CAP customers to shop. Duquesne Light Comments at 9; PPL Comments at 7-10. In particular, UGI Electric identifies the potential costs and impact for CAP customer shopping with a small EDC or combined gas-electric utility. UGI Electric at 3-7. RESA and WGL Energy reiterate arguments regarding the need for CAP shopping protection, the opportunity to provide “value-added” products, and cost recovery. See, RESA Comments; WGL Energy Comments.

The OCA appreciates the opportunity to provide these Reply Comments as discussed below. The OCA specifically addresses in these Reply Comments the following issues raised by RESA and WGL Energy: (1) the need for protections for the CAP Shopping program; (2) value-added products; and (3) cost recovery.

## **II. REPLY COMMENTS**

### **A. The Need for CAP Shopping Protections Has Been Established.**

In their respective Comments, many of the Electric Distribution Companies, the low-income advocates, the Consumer Advisory Council, and the OCA agree that additional protections

are needed for CAP customers. See, OCA Comments at 1-6; CAC Comments; PECO Comments; FirstEnergy Comments; PECO Comments; EAP Comments; and CAUSE-PA and TURN *et al.* Comments. The Commenters propose a variety of methods of implementing those protections, but the common denominator is the need for protections for low-income CAP customers and the non-CAP residential ratepayers who pay the costs of the program. As the CAC Comments state “it is unfair to impose this additional unnecessary burden on non-participating residential customers, especially when these higher cost EGS contracts also jeopardize the ability of CAP customers to retain their critical CAP benefits.” CAC Comments at 2. RESA and WGL Energy argue that such CAP shopping protections are not necessary.

RESA raises many issues that have already been decided by the Commission and the Commonwealth Court. While RESA states that it recognizes that the Commonwealth Court allows the Commission to place restrictions on a CAP customer’s ability to shop, RESA then argues why the restrictions proposed in the Proposed Policy Statement are contrary to the law and why CAP customers should be permitted unrestricted access to the retail choice market. RESA Comments at 3-13. RESA also argues that the harms are based on a “point in time analysis” and that there are deficiencies inherent in focusing on “price comparisons to draw conclusions about what is best for low-income customers.” RESA Comments at 5-6.

The OCA submits that the proposed CAP shopping restrictions are needed, and the evidence presented in the PPL and FirstEnergy Companies service territories demonstrate the harms to both CAP customers and non-CAP residential ratepayers who pay the costs of the programs. Based upon the evidence presented in the PPL Default Service proceeding, the Commonwealth Court determined that under the Public Utility Code, the Commission has the clear legal authority, as well as a duty, to maintain affordable, cost-effective universal service programs

and may exercise that authority to implement rules for CAP customer shopping within the universal service programs. See, Retail Energy Supply Ass'n v. Pa. PUC, 185 A.3d 1206 (Pa. Cmwlth. 2018). Universal service programs are defined in the Customer Choice Act as follows:

**“Universal service and energy conservation.”** Policies, protections and services that help low-income customers to maintain electric service. The term includes customer assistance programs, termination of service protection and policies and services that help low-income customers to reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction program, application of renewable resources and consumer education.

66 Pa. C.S. § 2803. The Customer Choice Act specifically requires that universal service and energy conservation are to be maintained and supported as part of the restructuring of the electric industry. Specifically, Section 2802(10) provides:

The Commonwealth must, at a minimum, continue the policies, protections and services that now assist customers who are low-income to afford electric service.

66 Pa. C.S. §2802(10). Section 2802(17) also requires the following:

There are certain public purpose costs, including programs for low-income assistance, energy conservation and others, which have been implemented and supported by public utilities' bundled rates. The public purpose is to be promoted by continuing universal service and energy conservation policies, protections and services, and full recovery of such costs is to be permitted through a nonbypassable rate mechanism.

66 Pa. C.S. § 2802(17). These purposes are specifically recognized along with the essential nature of electric service and the need for electric service to be available on reasonable terms and conditions to all customers. The Act provides:

Electric service is essential to the health and wellbeing of residents, to public safety and to orderly economic development, and electric service should be available to all customers on reasonable terms and conditions.

66 Pa. C.S. § 2802(9).

Contrary to RESA and WGL Energy's arguments, the Commission's Proposed Policy Statement Order provides important rules and protections for CAP customers who are participating

in the retail electric choice market. The proposed Policy Statement on Electric Customer CAP Shopping “sets guidelines for EDCs that limit harm to CAP participants while still providing CAP participants the benefits of the retail electric market.” Policy Statement Order at 1. The Proposed Policy Statement Order provides that EDCs should *inter alia* include the following provisions in a CAP customer shopping plan:

1. A requirement that the CAP shopping product has a rate that is always at or below the EDCs’ PTC(s) over the duration of the contract between the EGS and the CAP participant.
2. A provision that the contract between the EGS and the CAP participant contains no early termination or cancellation fees.
3. A provision that, at the end of the contract, the CAP participant may re-enroll with the EGS at a product that meets the same requirements as outlined in numbers 1 and 2 above, switch to another EGS offering a product that meets those requirements or be returned to default service.

Proposed Policy Statement Order at 3; Proposed 52 Pa. Code § 69.275(a)-(b). The Commission’s Proposed Policy Statement Order provides that the mechanics of the CAP shopping programs should be developed in the next EDC default service proceedings. Proposed Policy Statement Order at 3; Proposed 52 Pa. Code § 69.274.

The Proposed Policy Statement Order identifies the need for protections, in part, based upon the CAP shopping experiences in the PPL and the FirstEnergy Companies service territories. RESA’s arguments do not address the fundamental harms of unrestricted CAP customer shopping identified in the PPL and FirstEnergy Companies service territories. In support of the need for additional protections, the Order specifically raises the impact of unrestricted CAP customer shopping in PPL’s service territory:

In PPL Electric Utility Corporation’s (PPL) most recent default service plan proceeding, PPL provided data showing that, over the 34-month period ranging from January 2013 through October 2015, an average of 49 percent of PPL’s CAP participants were shopping and, of the CAP participants who were shopping, 55

percent were paying above PPL's Price to Compare (PTC). PPL compared that information with information regarding those CAP participants who shopped during the same time period and paid at or below the PTC and found that the net financial impact was approximately \$2,743,872 over 12-months. PPL concluded, and this Commission agreed, that two forms of harm resulted from CAP shopping: (1) those CAP participants paying a rate greater than PPL's PTC were exceeding their CAP credits at a faster rate, which put those CAP participants at risk of being removed from CAP; and (2) that non-CAP participant ratepayers who subsidize CAP participants and a limit on early termination fees. Additionally, at the end of the contract term a requirement was added that limited an EGS to only re-enroll the CAP participant at the new CAP shopping rate or returning the CAP participant to default service. The Commonwealth Court upheld the Commission's decision, finding that the Commission had the authority to place conditions under which CAP participants could receive CAP benefits.

Proposed Policy Statement Order at 2, citing Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2017 through May 31, 2021, Docket No. P-2016-2526627, Order (October 27, 2016)(PPL DSP Order), *affirmed*, Retail Energy Supply Ass'n v. Pa. PUC, 185 A.3d 1206 (Pa. Cmwlth. 2018).

The Commission's Order also relies upon the CAP shopping experiences identified in the FirstEnergy Companies' Default Service Plan filing:

Similarly, in the FirstEnergy Companies' most recent default service proceeding, evidence showed that over a 58-month period ranging from June 2013 through March 2018, nearly 65 percent of FirstEnergy's CAP participants who were shopping with EGSs paid rates higher than FirstEnergy's applicable PTCs, resulting in a net impact of \$18.3 million in increased costs associated with CAP. This Commission agreed with the ALJ that the record evidence demonstrated that, over a long period of time, most of FirstEnergy's CAP participants paid rates higher than the PTC. FirstEnergy's CAP participants' monthly maximum CAP participants paid rates higher than the PTC. FirstEnergy's CAP participants' monthly maximum CAP credits are based on their average annual electric bill less a percentage of their annual income. Therefore, paying rates higher than the PTC increases the likelihood that CAP participants will exceed their monthly maximum CAP credits and incur chargers [sic] they may not be able to pay. If CAP participants are unable to pay their utility bills, utility uncollectibles are increased, which are then recovered from the rest of the utility's residential ratepayers, causing those ratepayers harm, as well. As a result, the Commission directed FirstEnergy to develop a CAP shopping program that allows CAP participants to only enter into a contract with an EGS for a rate that is always at or below the EDC's PTC(s) over

the duration of the contract between the EGS and the CAP participant, and which contained no early termination or cancellation fees.

Proposed Policy Statement Order at 2, citing Joint Petition of Met-Ed, et al. for Approval of their Default Service Programs for the Period Beginning June 1, 2019 through May 31, 2023, Docket Nos. P-2017-2637855, *et al.*, Order (November 1, 2018) (FirstEnergy DSP Order).

RESA argues that “the Commission’s conclusions are based on a point-in-time comparison of the EDC’s PTC to EGS prices.” RESA Comments at 5. The OCA submits that both of the analyses presented in the FirstEnergy Companies and the PPL proceedings were beyond the scope of a single “point in time.” The FirstEnergy Companies analysis examined a 58-month period, and the PPL analysis examined a 34 month period. Proposed Policy Statement Order at 2. The analysis completed for both the PPL and the FirstEnergy Companies was undeniably comprehensive and goes beyond the scope of a single point in time.

RESA recommends that the Commission “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.” RESA Comments at 11. The OCA submits that RESA’s proposals do not address the core problem identified in the PPL and FirstEnergy Companies proceedings. The overwhelming evidence presented in the FirstEnergy and PPL proceedings demonstrates that an unrestricted CAP shopping structure harms both CAP customers and non-CAP residential ratepayers who pay the costs of the program. In fact, RESA proposes that CAP customers should be able to purchase products that are up to 20% more than the PTC at the time of the contract initiation. RESA Comments at 11. The OCA submits that RESA provides no justification for its proposal to be allowed to offer products that are 20% more than the PTC, and perhaps significantly more over the course of the contract length. There is absolutely no basis to charge CAP customers, who are already struggling with unaffordable bills,

even more. Further, RESA does not offer any proposed benefits that will assist CAP customers in maintaining electric service for this increased generation price or any benefit to the non-CAP residential ratepayers who pay the costs of the program.

RESA also raises the idea that CAP reform may address the issues presented. RESA Comments at 7-8. The CAP program costs are a zero-sum equation. If the CAP rates are aligned to the EGS price instead of the default service price, someone will still have to pay the difference between the asked to pay amount and the EGS price. The calculation is no different, and changes to the CAP program will only potentially modify who pays the costs. The impact of higher EGS costs either shifts to CAP shopping customers, who are economically vulnerable, or to non-CAP residential ratepayers who pay the costs of the program. More to the point, the default service price is the price of supply procured under Commission-approved plans and is determined to be just and reasonable. There is no basis for using any other metric for affordability.

The OCA submits that RESA and WGL Energy's arguments have already been addressed by the Commission, the Commonwealth Court and the Commission's Proposed Policy Statement. The Proposed Policy Statement addresses the need to develop a long-term solution to the harms of unrestricted CAP customer shopping presented in the PPL and FirstEnergy Default Service proceedings. The OCA submits that RESA's and WGL Energy's Comments should be given no weight regarding the need for further CAP shopping protections. The OCA submits that the Proposed Policy Statement should be adopted with the modifications identified in the OCA's Comments.

B. Value-Added Products

In Comments, WGL Energy and RESA identify concerns that under the Proposed Policy Statement, CAP customers will be denied the opportunity to purchase "value-added products."

RESA Comments at 3-4, 12-13; WGL Energy Comments at 2-4. WGL Energy and RESA specifically identify as potential “value-added” products the following: “bundled products”; renewable products; time-of-use products; a “product offer that includes free energy efficiency products;” a long-term fixed price offer; cash back or rewards products; and charitable donation products. RESA Comments at 6; WGL Energy Comments at 2-3. There is absolutely no demonstration or evidence that these unknown products and services actually provide any value to CAP customers that is not already available to the CAP customer at no cost or that should be paid for by the CAP customer or non-CAP residential ratepayers. Moreover, there is no showing of how these “value-added” products foster an affordable bill.

The WGL Energy and RESA Comments also demonstrate their fundamental misunderstanding of the CAP program and the purpose of the CAP program. The purpose of the CAP program is to assist payment-troubled customers to maintain electric service. 52 Pa. Code § 69.265(2)(i)(A). The undisputed facts presented in the PPL and FirstEnergy proceedings demonstrate that CAP customers have paid higher electric bills where unrestricted CAP customer shopping has been permitted. For the FirstEnergy Companies, costs of the CAP program increased by \$18.3 million per year due to unrestricted CAP shopping and costs for PPL’s CAP program increased by \$2.74 million per year due to unrestricted CAP shopping. See, Proposed Policy Statement Order at 2, citing FirstEnergy DSP Order and PPL DSP Order. These increases have impacted both CAP shopping customer bills and non-CAP residential customer bills through the Universal Service Rider. Moreover, non-CAP residential customers may also include other low-income customers. The records were clear that without CAP shopping protections, the cost-effectiveness of the CAP and CAP customer affordability were compromised.

RESA and WGL Energy's arguments regarding "value-added" products are wholly without merit. See, RESA Comments at 6; WGL Energy Comments at 2-3. The proposed "value-added" products provide no benefit for non-CAP residential customers who likely will pay the cost of these "value-added" products and no benefit commensurate with the increased costs for the CAP customer. The risks of unrestricted CAP shopping to both CAP customers and non-CAP residential ratepayers are clear. Higher bills endanger CAP customer's affordability of service and increase the likelihood of exhaustion of CAP benefits and likelihood of greater collection and termination activities by the EDC.

The New York Public Service Commission (New York PSC) recognized this impact when it adopted low-income program shopping rules in 2014. The New York PSC recognized that without a guarantee of savings to the overall bill, the value of low-income assistance programs would be diminished. The New York PSC stated:

Continuing to allow participants in utility low income assistance programs and HEAP [Home Energy Assistance Program] to purchase energy commodity from an ESCO [Energy Service Companies], without a guarantee of savings in comparison with what the customer would have paid the utility, or without tangible energy-related value-added services that may reduce a customer's overall energy bill, is not in the public interest. Doing so diminishes the value of utility low income assistance programs and federal and state assistance programs. In addition, it may also interfere with our interest in minimizing the unnecessary termination of essential electricity and natural gas service to residential customers.

Order Taking Actions To Improve The Residential and Small Non-Residential Retail Access Markets, 2014 NY PUC LEXIS 54, \*36-37 (Feb. 25, 2014) (NY Retail Market Access Order).

The NY PSC defined "value-added" services as designed "to reduce customers' overall energy bills" and the suppliers were required to guarantee savings through price or value-added measures that reduced the total bill to maintain affordability. NY Retail Market Access Order at \*37-38.

Simply put, ratepayers should not be asked to subsidize higher prices when the whole purpose of CAP is to preserve access to basic electric service.

With respect to the WGL Energy proposal to offer “free energy efficiency products,” WGL Energy does not recognize that CAP customers already receive free weatherization and free energy efficiency products through the Low Income Usage Reduction Program (LIURP), through the EDC’s Act 129 programs, and through federal Low Income Home Energy Assistance Programs (LIHEAP). WGL Energy Comments at 2. In fact, an EGS’s energy efficiency product, depending on the nature of the product, may actually present an obstacle for CAP customers to receive weatherization under these programs. Many of the LIURP programs specifically exclude customers who have otherwise been weatherized in the years preceding a potential LIURP treatment. It’s possible that an EGS treatment may exclude a CAP customer from receiving some of the deeper measures offered by the free LIURP.

One of the other potential “value-added” products raised by WGL Energy’s Comments is a renewable product. WGL Energy’s Comments assume that an EGS could not offer renewable products under the Proposed Policy Statement. See, WGL Energy Comments at 2. The OCA submits that there is no such restriction in the Proposed Policy Statement. EGSs may offer any product that is priced at or below the Price to Compare. WGL Energy has provided no demonstration that renewable energy offers must or would necessarily cost more than the Price to Compare. The OCA submits that there is no basis to conclude that an EGS must charge a higher price than the PTC for a renewable product.

The OCA submits that WGL Energy’s and RESA’s Comments regarding “value-added” products should be afforded no weight. The proposed inclusion of “value-added” products will harm both CAP customers and the non-CAP residential ratepayers who pay the costs of the

program. The OCA submits that the Proposed Policy Statement should be adopted without RESA and WGL Energy's proposed modifications to permit "value-added" products to be included in the CAP Shopping program.

C. Cost Recovery

RESA raises a concern that there is a potential that the costs for the CAP Shopping Program would be recovered twice by EDCs, once through the universal service charge and again through the default service rider. RESA Comments at 15. RESA recommends that the Final Policy Statement should "include language specifically stating that cost recovery related to CAP shopping programs will be recovered through existing universal service cost recovery mechanisms" and not from EGSs. RESA Comments at 16. The OCA submits that cost recovery for the CAP Shopping Plan should not be addressed as a part of the Proposed Policy Statement, but should be addressed in the default service plans.

The Commission has provided that the proposed CAP Shopping program would be developed through the EDC's next default service plan. Cost recovery should be addressed in the default service plan. The OCA would question the premise of RESA that all costs contemplated by RESA would properly be defined as universal service costs. Shopping by CAP customers is not a universal service program. As discussed in Section A above, universal service programs and the costs to be recovered through a universal service cost recovery mechanism are specifically defined at 66 Pa. C.S. Section 2803. Universal service and energy conservation is defined as:

**"Universal service and energy conservation."** Policies, protections and services that help low-income customers to maintain electric service. The term includes customer assistance programs, termination of service protection and policies and services that help low-income customers to reduce or manage energy consumption in a cost-effective manner, such as the low-income usage reduction program, application of renewable resources and consumer education.

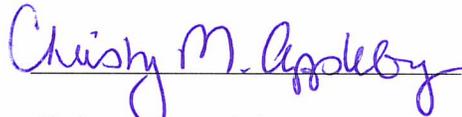
66 Pa. C.S. § 2803 (emphasis added). The Competition Act’s cost recovery mechanism allows only for the recovery of the “electric utility’s universal service and energy conservation costs” as defined in the statute. 66 Pa. C.S. § 2804(a). Many of the costs suggested by RESA and WGL do not help low-income customers to maintain electric service.

Shopping has traditionally been addressed through the EDC’s Default Service Plan. Like other shopping programs, such as the Standard Offer Program, the OCA submits that EGSs should bear costs in support of the programs designed to support retail choice. The issue should be addressed more fully in the EDC’s next Default Service Plan as proposed by the Proposed Policy Statement.

### III. CONCLUSION

The Office of Consumer Advocate commends the Commission for this initiative and again thanks the Commission for this opportunity to comment. The OCA looks forward to continuing to work with the Commission and the stakeholders to develop appropriate and necessary protections for CAP customers and non-CAP residential customers who pay the costs of the program.

Respectfully Submitted,



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DATE: August 14, 2019

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following documents, the Office of Consumer Advocate's Reply Comments, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 14<sup>th</sup> day of August 2019.

SERVICE BY E-MAIL and INTER-OFFICE MAIL

Richard A. Kanaskie, Esquire  
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