

STATEMENTS OF POLICY

Title 52—PUBLIC UTILITIES

PENNSYLVANIA PUBLIC UTILITY COMMISSION

[52 PA. CODE CH. 69]

[M-2018-3006578]

Electric Distribution Company Default Service Plans—Customer Assistance Program Shopping

Public Meeting held
February 28, 2019

Commissioners Present: Gladys M. Brown, Chairperson;
David W. Sweet, Vice Chairperson; Norman J. Kennard;
Andrew G. Place; John F. Coleman, Jr.

*Electric Distribution Company Default Service
Plans—Customer Assistance Program Shopping;
M-2018-3006578*

Proposed Policy Statement Order

By the Commission:

On December 20, 2018, the Pennsylvania Public Utility Commission (Commission) directed the Commission's Law Bureau to prepare for consideration at a Public Meeting 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).¹ With this Order the Commission issues, for comment, a proposed Policy Statement on Electric Customer Assistance Program Participant Shopping that sets guidelines for EDCs that limit harm to CAP participants while still providing CAP participants the benefits of the retail electric market.

Background

The Public Utility Code (Code), 66 Pa.C.S. §§ 101 et. seq., requires that EDCs offer universal service and energy conservation programs that are developed, maintained, and appropriately funded to ensure affordability and cost-effectiveness.² The portfolio of universal services includes, among other things, CAP, that provides lower monthly payments and arrearage forgiveness for eligible low-income customers.³

The Code also provides for competition in the retail electric market.⁴ As part of the current competitive market, EDCs provide default service for those customers who have chosen not to switch to an EGS.⁵ EDCs are required to submit default service plans outlining the procurement process and associated programs tied to their provision of default service.⁶ Over the years, many of these plans have expanded to include a variety of

issues, including the manner in which customers participating in EDC CAPs participate in the competitive electric market.⁷

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 were bearing increased costs related to CAP. As such, certain limits were placed on PPL's CAP shopping program, including an initial limit on the EGS's prices provided to 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.⁸ 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.⁹

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 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 they may not be able to pay. If CAP participants are unable to pay their bills, utility uncollectibles are increased, which

⁷ See Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2017 through May 31, 2021, (DSP IV), et al., Docket Nos. P-2016-2534980, et al.; Petition of Duquesne Light Company for Approval of a Default Service Plan for the Period from June 1, 2016 to May 31, 2021, Docket No. P-2016-254310. Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company 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.; Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period of June 1, 2017 through May 31, 2021, Docket No. P-2016-2526627.

⁸ See, Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period from June 1, 2017 through May 31, 2021, Docket No. P-2016-2526627 (Order entered October 27, 2016).

⁹ See, *Retail Energy Supply Ass'n. v. Pa. Public Utility Commission*, 185 A.3d 1206 (Pa. Cmwlth. 2018) (*RESA*). The Commission notes that the PECO Energy Company petitions for default service, which had been stayed by the presiding Administrative Law Judge (ALJ) pending the outcome of the *RESA* case on appeal, can now be litigated. Petition of PECO Energy Company for Approval of its Default Service Program (Customer Assistance Program Shopping Plan), Docket No. P-2012-2283641 (DSP II), and Petition of PECO Energy Company for Approval of its Default Service Program for the Period from June 1, 2017 through May 31, 2021, Docket No. P-2016-2534980 (DSP IV).

¹ See 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.

² 66 Pa.C.S. § 2804(9) (relating to standards for restructuring of electric industry).

³ For the purposes of this policy statement, low-income customers are households that are at or below 150% of the Federal Poverty Income Guidelines (FPIG). See U.S. Federal Poverty Guidelines Used to Determine Financial Eligibility for Certain Federal Programs—<https://aspe.hhs.gov/poverty-guidelines>.

⁴ Electricity Generation Customer Choice and Competition Act, 66 Pa.C.S. §§ 2801—2815 (relating to restructuring of electric utility industry) (Competition Act).

⁵ See 66 Pa.C.S. § 2807(e) (relating to obligation to serve). See also, 52 Pa. Code §§ 54.182—54.190 (relating to default service).

⁶ See 66 Pa.C.S. § 2807(e)(6) (relating to obligation to serve). See also, 52 Pa. Code § 54.185 (relating to default service programs and periods of service).

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.¹⁰

Collectively, PPL and the four FirstEnergy companies serve approximately three million of the Commonwealth's nearly 5.1 million residential electric customers served by jurisdictional EDCs. Additionally, PPL and the FirstEnergy companies together serve nearly 765,000 of the Commonwealth's approximately 1.3 million estimated low-income customers, and about 430,000 of the Commonwealth's roughly 630,000 confirmed low-income customers.¹¹ This is a significant portion of the Commonwealth's electric customer base that is participating in CAP or could be in the future. As previously discussed, the Commission has already taken steps to prevent both CAP participants and residential ratepayers in PPL's and the FirstEnergy companies' service territories from being harmed by unrestricted CAP shopping.

Discussion

Again, both CAP participants, in potentially losing their CAP benefits, and non-CAP participants, because they subsidize uncollectibles resulting from CAP defaults, are harmed when CAP participants pay rates higher than their EDCs' applicable PTCs. Although EDCs CAP differ, all EDC CAP participants are at risk of using their CAP benefits more quickly if they are paying rates higher than the PTC. Additionally, all EDCs ultimately recover uncollectibles from their residential ratepayers, through mechanisms such as surcharges or base rates. As such, increased CAP participant default rates due to shopping at rates higher than the EDCs' PTCs harms non-CAP participants as well.

In response to CAP participants and non-CAP participants being harmed by unrestricted CAP shopping, the Commission is proposing the development of uniform guidelines for EDCs' CAP shopping programs in the form of a proposed policy statement.

In designing CAP shopping programs, EDCs should include the following provisions:

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.

The mechanics of CAP shopping programs should be addressed by EDCs in their next default service plan

¹⁰ See Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company for Approval of their Default Service Programs for the Period Beginning June 1, 2019 through May 3, 2023, Docket Nos. P-2017-2637855, et al. (Order granting reconsideration of September 4, 2018 Opinion and Order entered November 1, 2018).

¹¹ See, Report on 2017 Universal Service Programs and Collections Performance of the Pennsylvania Electric Distribution Companies and Natural Gas Distribution Companies, Pennsylvania Public Utility Commission Bureau of Consumer Services.

proceedings following adoption of the proposed policy statement, so as not to impact current, Commission-approved programs, and to allow for due process for all parties. The Commission envisions that the proposed policy statement will establish a methodology to ensure that both CAP and non-CAP participants may continue to avail themselves of retail competition, while avoiding the harm caused by unrestricted CAP shopping.

The Commission reasons that proposing CAP participant shopping requirements balances both the intent of the Competition Act to allow shopping, while "ensuring that universal service plans are adequately funded and cost-effective."¹² The Commonwealth Court has held that competition as envisioned by the Competition Act does not necessarily mean absolute and unbridled competition, and that the Commission "may 'bend' competition so as to 'give way to other important concerns' such as 'ensuring that universal service plans are adequately funded and cost-effective.'"¹³ Consistent with the Commonwealth Court's holding in *RESA*, any CAP participant is free to shop outside of their EDC's CAP shopping program. However, any CAP participant who contracts with an EGS for a product that does not meet the Commission's CAP shopping guidelines shall be removed from CAP.¹⁴

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 propose such a model.¹⁵

Proposed Policy Statement

In accordance with the discussion above and for the reasons expressed, we are proposing the following Policy Statement as set forth in Annex A to this Order. Initially, we propose paragraphs setting forth the scope and purpose of the proposed policy statement. These proposed paragraphs are intended to convey the scope of the proposed guidelines is limited to EDC programs permitting CAP participants to enter into contracts with an EGS for electric generation service and the harm and benefits the guidelines are intended to address in such programs. Specifically, we propose the following:

§ 69.271. Scope.

Sections 69.272—69.276 provide guidelines to EDCs regarding programs permitting CAP participants to enter into contracts with an EGS for electric generation service.

§ 69.272. Purpose.

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 partici-

¹² 66 Pa.C.S. § 2804(9).

¹³ See *Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania v. Pa. Public Utility Commission*, 120 A.3d 1087, 1103, 1107 (Pa. Cmwlth 2015) (en banc), allocatur denied, 136 A.3d 982 (Pa. 2016) (CAUSE-PA); *RESA* at 1221.

¹⁴ *RESA* at 1223.

¹⁵ Commissioner Andrew G. Place issued a statement on December 20, 2018, seeking additional comments as to whether EGS fixed price offers to CAP customers should alternatively be required to be at or below the PTC at the time of the offer, and whether such fixed price contracts should have a maximum fixed price term limit. In addition, Commissioner Place requested additional information to help guide the decision making, including information that will help identify the underlying causes of higher historical EGS prices for CAP participants and whether initial fixed price contracts at or below the PTC at the time the offer was agreed to were the cause of the CAP participant price premiums, or whether, for example, such premiums resulted from the repricing terms of the EGS contract with CAP participants.

pants 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. 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).

Next, we propose the following definitions to provide clarity and understanding to the proposed policy statement:

§ 69.273. Definitions.

The following words and phrases, when used in §§ 69.271—69.276, have the following meanings, unless the context clearly indicates otherwise:

CAP—Customer Assistance Program.

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).

Default service—Electric generation supply service provided pursuant to a default service program to a retail electric customer not receiving 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 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).

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).

We then propose the following guidance on when and how EDCs should address the guidelines being proposed:

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

(a) An EDC should develop a CAP participant electric generation shopping program consistent with the guidelines provided in §§ 69.275—69.276.

(b) An EDC should include 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.)

Next, we propose the following guidelines for the design of a program that allows CAP participants to shop for electric generation supply service with an EGS:

§ 69.275. CAP Participant Shopping Program Design.

(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.

(b) When addressing CAP participant electric generation shopping in default service programs, an EDC should include the following limitations:

(1) A requirement that a contract between an EGS and a CAP participant has a rate per kilowatt-hour that is at or below the EDC's PTC in effect 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.

Finally, we propose the following language addressing the eligibility requirements for CAP participants to participate in the CAP shopping program:

§ 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.

Conclusion

With this Order, the Commission is proposing guidance for the design of EDC customer assistance program participant shopping programs. The Commission welcomes comments on all aspects of this proposed policy statement; *Therefore,*

It Is Ordered That:

1. The proposed policy statement set forth in Annex A is issued for comment.

2. The Law Bureau shall submit this Order and Annex A to the Governor's Budget Office for review of fiscal impact.

3. The Law Bureau shall deposit this Order and Annex A with the Legislative Reference Bureau for publication in the *Pennsylvania Bulletin*.

4. Interested parties shall have 45 days from the date of publication of this proposed policy statement in the *Pennsylvania Bulletin* to file written comments referencing Docket No. M-2018-3006578 to the Pennsylvania Public Utility Commission, Attn: Secretary Rosemary Chiavetta, Pennsylvania Public Utility Commission, Commonwealth Keystone Building, Second Floor, 400 North Street, Harrisburg, Pennsylvania 17120. Comments may also be filed electronically through the Commission's e-file System.

5. Written replies to comments referencing Docket No. M-2018-3006578 be submitted within 60 days of the date of publication of this proposed policy statement in the *Pennsylvania Bulletin* to the Pennsylvania Public Utility Commission, Attn: Secretary Rosemary Chiavetta, Pennsylvania Public Utility Commission, Commonwealth Keystone Building, Second Floor, 400 North Street, Harrisburg, Pennsylvania 17120. Comments may also be filed electronically through the Commission's e-file System.

6. A copy of this Order and Annex A be served on all jurisdictional electric distribution companies, all licensed electric generation suppliers, the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, The Office of Small Business Advocate, the Pennsylvania Utility Law Project, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania, the Retail Energy Supply Association and the parties at Docket No. P-2012-2283641 and Docket No. P-2016-2534980.

7. The contact persons for this matter are Kriss Brown, Law Bureau, (717) 787-4518, kribrown@pa.gov, and Tiffany Tran, Law Bureau, (717) 783-5413, tiftran@pa.gov.

ROSEMARY CHIAVETTA,
Secretary

Fiscal Note: 57-325. No fiscal impact; (8) recommends adoption.

Annex A

TITLE 52. PUBLIC UTILITIES

PART I. PUBLIC UTILITY COMMISSION

Subpart C. FIXED SERVICE UTILITIES

CHAPTER 69. GENERAL ORDERS, POLICY STATEMENTS AND GUIDELINES ON FIXED UTILITIES

(Editor's Note: The following sections are proposed to be added and are printed in regular type to enhance readability.)

POLICY STATEMENT ON ELECTRIC CUSTOMER ASSISTANCE PROGRAM PARTICIPANT SHOPPING

§ 69.271. Scope.

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§ 69.272. Purpose.

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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. 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).

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Default service—Electric generation supply service provided pursuant to a default service program to a retail electric customer not receiving 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 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).

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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) An EDC should develop a CAP participant electric generation shopping program consistent with the guidelines provided in §§ 69.275—69.276.

(b) An EDC should include 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.)

§ 69.275. CAP Participant Shopping Program Design.

(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.

(b) When addressing CAP participant electric generation shopping in default service programs, an EDC should include the following limitations:

(1) A requirement that a contract between an EGS and a CAP participant has a rate per kilowatt-hour that is at or below the EDC's PTC in effect 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.

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(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.

§ 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.

[Pa.B. Doc. No. 19-892. Filed for public inspection June 14, 2019, 9:00 a.m.]