



May 6, 2022

Via Electronic Filing

The Honorable Jeffrey A. Watson
Administrative Law Judge
Piatt Place, Suite 220
201 Fifth Avenue
Pittsburgh, PA 15222

Re: Joint Petition of MetEd, Penelec, Penn Power & West Penn Power for Approval of their Default Service Programs for the period commencing June 1, 2023, through May 31, 2027, Docket Nos. P-2021-3030012, -13, -14, -21

CAUSE-PA Statement in Support of the Joint Petition for Partial Settlement

Dear Judge Watson:

Attached for consideration in the above referenced proceeding, please find the **Statement in Support of the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) of the Joint Petition for Partial Settlement.**

Please be advised that CAUSE-PA is not filing a Main Brief in this proceeding. CAUSE-PA reserves the right to file a Reply Brief in response to the arguments and positions advanced by the other parties in this proceeding.

Copies of this filing were electronically served on all parties of record, consistent with the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in blue ink that reads "Elizabeth R. Marx".

Elizabeth R. Marx, Esq.
Counsel for CAUSE-PA

CC: Rosemary Chiavetta, PUC Secretary (*via efilng*)
Certificate of Service

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

Joint Petition of Metropolitan Edison Company, :
 Pennsylvania Electric Company, Pennsylvania Power : Docket No. P-2021-3030012
 Company, and West Penn Power Company for Approval : Docket No. P-2021-3030013
 of their Default Service Programs for the period : Docket No. P-2021-3030014
 commencing June 1, 2023, through May 31, 2027 : Docket No. P-2021-3030021

CERTIFICATE OF SERVICE

I hereby certify I have on this day served copies of **CAUSE-PA Statement in Support** in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party) and consistent with the Commission’s Orders at Docket M-2020-3019262.

VIA EMAIL

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DATE: May 6, 2022

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

JOINT PETITION OF METROPOLITAN	:	
EDISON COMPANY, PENNSYLVANIA	:	Docket Nos. P-2021-3030012
ELECTRIC COMPANY, PENNSYLVANIA	:	P-2021-3030013
POWER COMPANY AND WEST PENN	:	P-2021-3030014
POWER COMPANY FOR APPROVAL OF	:	P-2021-3030021
THEIR DEFAULT SERVICE PROGRAMS	:	

**STATEMENT OF THE COALITION FOR
AFFORDABLE UTILITY SERVICES AND ENERGY
EFFICIENCY IN PENNSYLVANIA IN SUPPORT OF
THE JOINT PETITION FOR PARTIAL SETTLEMENT**

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May 6, 2022

I. INTRODUCTION

The Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA), a signatory party to the Joint Petition for Partial Settlement (Joint Petition or Partial Settlement), respectfully requests that the terms and conditions of the Settlement be approved by the Honorable Administrative Law Judge (ALJ) Jeffrey A. Watson and the Pennsylvania Public Utility Commission (Commission) without modification. For the reasons stated more fully below, CAUSE-PA submits that the terms and conditions of the Partial Settlement are in the public interest and should be approved.

II. SUMMARY OF SETTLEMENT

CAUSE-PA intervened in this proceeding to ensure that the FirstEnergy Companies' Default Service Plan (DSP) is appropriately designed to ensure that FirstEnergy's default service remains accessible and affordable for low income consumers and other vulnerable consumer groups.

Through the course of the proceeding, CAUSE-PA uncovered deeply troubling data, which revealed that FirstEnergy's residential shopping customers were charged over \$431 million in excess of the applicable default service price over a 53 month period (August 2017 to December 2021). (CAUSE-PA St. 1 at 9 & Exh. 1). On a per-customer basis in 2021, the average residential shopping charges more than the default service price ranged from \$244.35 in MetEd's service territory to \$352.32 in West Penn Power's service territory. (Id. at 11 & Exh. 1).

Evidence further indicted that FirstEnergy's confirmed low income customers were at greater risk of excessive pricing. In a single month in December 2021, as residential utility debt soared to unprecedented levels, FirstEnergy's confirmed low income shopping customers were charged over \$1.1 million more than the applicable default service price. (CAUSE-PA St. 1 at 13

& Exh. 2). On an average per-customer basis in that single month, across the four First Energy Companies, confirmed low income shopping customers were charged between \$46.17 and \$60.71 more than the default service price. (Id.)

In FirstEnergy's DSP V proceeding, the Commission approved shopping rules for low income shopping customers participating in its Customer Assistance Program (CAP), which were designed to curtail excessive pricing and prevent financial harm to CAP participants and other residential ratepayers. (CAUSE-PA St. 1 at 30-32). But data in this proceeding revealed that those rules failed to stop ongoing and substantial financial harm. Since June 2019, when FirstEnergy's CAP shopping rules were implemented, CAP shopping customers were nevertheless charged nearly \$4 million in excess of the applicable default service price. (Id. at 15 & Exh. 3). In 2021, on an average per customer basis, CAP shopping customers were charged between \$248.52 (Penelec) and \$367.18 more than the default service price. (Id.) In March 2020, as Pennsylvania went into lockdown across the state and unemployment rates soared to historic levels, between 70-99% of CAP shopping customers were charged rates exceeding the applicable default service rate, further increasing their struggles during this troubling and uncertain time. (Id. at 35 & Exh. 7).

These excessive CAP shopping costs exacerbate rate unaffordability and involuntary termination rates for CAP customers and needlessly increase the cost of the program shouldered by other residential ratepayers. (Id.) In 2021, *29.5% of FirstEnergy's CAP shopping customers were involuntarily terminated for non-payment, compared to 8.8% of CAP default service customers* – and average CAP shopping account write-offs were \$837.42 higher than CAP default service customers. (CAUSE-PA St. 1 at 18, 21 & Exh. 4(c) & 5(b)).

In light of this substantial and unrebutted evidence of excessive residential shopping pricing, CAUSE-PA's expert witness Harry S. Geller, Esq. made a number of recommendations

to reform FirstEnergy’s DSP programming and improve critical protections for CAP customers to prevent excessive pricing and the resulting harm to low income consumers and other residential customers. (CAUSE-PA St. 1 at 59).

The Partial Settlement fairly resolves many of the most pertinent issues raised by CAUSE-PA, adopting several critical recommendations advanced by Mr. Geller, and represents a reasonable balance of the interests in the proceeding. Taken together, as a whole, the terms of the Partial Settlement will help to produce stable default service rates; improve protections for FirstEnergy’s economically vulnerable consumers; and reduce the risk of termination, uncollectible expense rates, and unnecessarily high programmatic costs borne by CAP customers and other residential ratepayers. If approved, the Partial Settlement will also avoid substantial litigation and associated costs and will eliminate the distinct likelihood of further Commission litigation and appeals, along with their attendant costs.

III. THE SETTLEMENT IS IN THE PUBLIC INTEREST AND FULLY SATISFIES THE REQUIREMENTS OF THE COMPETITION ACT AND THE COMMISSION’S DEFAULT SERVICE REGULATIONS

A. Procurement and Implementation Plans (Joint Petition, Paragraphs 15-42)

CAUSE-PA did not take an explicit position on the Companies’ proposed procurement and implementation plans. Nevertheless, we were actively engaged in discussions on these overarching procurement issues. We note a key provision of the Partial Settlement will ensure that the procurement schedule for the residential class will not be subject to a “hard stop” at the end of the Companies’ DSP VI Plan as originally proposed – and will instead include overhanging full requirements contracts that will extend through the first year of the Companies DSP VII Plan. (Joint Petition at 8, para. 27). This provision will help to smooth the transition between plans and prevent spikes in the default service price over the longer term.

B. Rate Design and Cost Recovery (Joint Petition, Paragraphs 43-68)

(1) Price to Compare Default Service Rate Rider

CAUSE-PA did not take a position on the price to compare default service rate rider.

(2) Hourly Pricing Default Service Rider

CAUSE-PA did not take a position on the hourly pricing default service rider.

(3) Default Service Support Rider

CAUSE-PA did not take a position on the default service support rider.

(4) Solar Photovoltaic Requirements Charge Rider

CAUSE-PA did not take a position on the solar photovoltaic requirements charge rider.

(5) Time-of-Use Rates

With regard to FirstEnergy's Time of Use Rate proposal, CAUSE-PA was supportive of FirstEnergy's proposal to exclude CAP customers from its proposed TOU rates - but raised concerns that the TOU rate proposal did not contain adequate protections for other uniquely vulnerable groups, including non-CAP low income households and households with medical usage. (CAUSE-PA St. 1 at 41-44).

Mr. Geller explained that time-varying electricity pricing can be very expensive for households with fixed or inflexible usage patterns that cannot shift their energy usage. He noted that economically vulnerable households often have very little discretionary energy usage like washers and dryers, and are more likely to live in smaller, energy inefficient homes with fewer electrical outlets and fewer lights – “all factors which make it difficult to shift load during peak periods.” (*Id.* at 41). Mr. Geller also noted a recent study of time-varying rates across sociodemographic groups, which found that “ ‘assignment of TOU [rates] ... disproportionately increases bills for households with elderly and disabled occupants, and predicts worse health outcomes for households with disabled or ethnic minority occupants than those for non-vulnerable

counterparts.’ ” (CAUSE-PA St. 1 at 43, *quoting* Lee White & Nicole Sintov, Health and Financial Impacts of Demand-Side Response Measures Differ Across Sociodemographic Groups, *J. Nature & Energy* Vol. 5 (Jan 2020)).

Given the unique vulnerabilities of low income and medically vulnerable consumers, Mr. Geller recommended a number of measures to help ensure that consumers can make an educated and informed decision about whether time-varying usage rates would be right for them. (CAUSE-PA St. 1 at 43-44). Mr. Geller’s recommendations included enhanced screening and universal service program referrals; individualized bill assessments and creation of a bill impact assessment tool; and enhanced tracking and evaluation to help assess whether TOU rates are having a detrimental impact on different sociodemographic groups. (Id.)

While the Partial Settlement did not adopt all of Mr. Geller’s recommendations, CAUSE-PA submits that the agreement nevertheless strikes an appropriate balance of the interests in this proceeding. Specifically, the Partial Settlement preserves the exemption for low income customers enrolled in CAP. (Joint Petition at 16, para. 59). As explained more thoroughly in subsection E, below, when CAP rates exceed the default service rate, the additional costs exacerbate rate unaffordability – placing more households at risk of termination. In turn, excessive pricing also increases the cost of the program – which is supported through residential rates. Given the risk that TOU can substantially increase rates for those who are unable to shift their usage to off-peak hours, and the fact that low income households often have very little discretionary energy usage, it is prudent to exclude CAP customers from TOU rates to prevent negative financial impacts to vulnerable low income customers and other residential ratepayers.

In addition to preserving the TOU CAP exemption, the Partial Settlement also requires FirstEnergy to provide draft outreach and educational materials to the parties and to solicit the parties' feedback for consideration. (Joint Petition at 17, para. 63). All TOU outreach and educational materials are required to include explicit disclaimers advising consumers that TOU rates may not be beneficial for all customers and advising consumers that universal service programming is available. (Joint Petition at 17, para. 64). These provisions of the Partial Settlement will help ensure that consumers with inflexible usage and/or who are struggling to afford their bill are informed of their options and advised that TOU rates may not be the best option.

Together, and in balance with other provisions of the Partial Settlement, these terms regarding FirstEnergy's TOU rates will help protect households with inflexible usage from increased rates. Notably, similar provisions regarding TOU rate proposals were recently approved in the recent PECO Electric, Duquesne Light, and PPL Electric Default Service Plan proceedings. CAUSE-PA submits that the TOU provisions are squarely in the public interest and should be approved.

C. Customer Referral Program (Joint Petition, Paragraphs 69-79)

FirstEnergy's Customer Referral Program was developed following the Commission's 2011 Retail Market Investigation (RMI), and at the time was seen as a "viable means to educate consumers about the retail electric market" that would "allow customers to achieve savings on their bills." (CAUSE-PA St. 1 at 45). Following the RMI, the Commission adopted a policy statement indicating generally that the public interest "would be served by consideration of customer referral programs." (*Id. quoting* 52 Pa. Code § 69.1815). However, as Mr. Geller noted in testimony, FirstEnergy has not conducted any analysis or evaluation of its CRP to determine

whether the program has been successful in achieving the key programmatic goals (education and bill savings) envisioned when the program concept was originally endorsed through the RMI.

As Mr. Geller explained, the available evidence (including call scripts, training materials, and shopping data) appeared to indicate that CRP – in its current iteration – “acts as a funnel – sending residential consumers into the competitive market without providing the proper supports for the customer to learn about and engage in the market and determine whether shopping is right for them.” (CAUSE-PA St. 1 at 48). From August 2017 to December 2021, FirstEnergy’s residential shopping customers paid more than \$431M in excess of the default service price. (Id. at 9). On a per customer basis in 2021, residential shopping customers paid between \$244.37 and \$352.32 more than the default service price. (Id. at 11). The negative financial consequences of this higher pricing are severe. Average account write-offs, payment troubled rates, and involuntary termination rates are all substantially higher for residential shopping customers compared to default service customers. (Id. at 18-22). Taken together with the fact that nearly 50,000 residential consumers have participated in FirstEnergy’s CRP just since June 2019, this data is indicative that FirstEnergy’s CRP is likely not working as intended to educate consumers and drive bill savings. (Id. at 45, 48-49).

The Partial Settlement allows the CRP to continue until May 31, 2027, but requires FirstEnergy to identify and track program metrics identified by parties and stakeholders through a structured collaborative process. (Joint Petition at 18, 19-20, paras. 69, 77-78). Over the course of its current DSP, FirstEnergy will compile the data - and must share the results with the parties at least 90 days prior to filing its next DSP. (Joint Petition at 20, para. 79). If FirstEnergy decides to propose a successor program to its current CRP in the context of its next Default Service Plan

proceeding, the Partial Settlement requires the Companies to justify the proposal and explain why a successor program is necessary. (Joint Petition at 18, para. 69).

CAUSE-PA submits that the terms of the Partial Settlement provide a prudent path forward to better evaluate FirstEnergy's CRP, and assess whether the program is achieving its overarching goals to improve consumer education and assist consumers to achieve bill savings. While CAUSE-PA recommended that the Commission end CRP now, in this proceeding, the Partial Settlement represents a reasonable compromise that will ultimately improve the ability of the parties and the Commission to better assess the effectiveness of FirstEnergy's CRP and appropriately inform future decisions about any successor programming.

D. POR Clawback Charge (Joint Petition, Paragraphs 80-81)

Average account write-offs for residential shopping accounts greatly exceeds the average account write-offs for residential default service accounts. In 2021, the average account write-off for residential shopping accounts was \$1,204.99 – compared to \$767.27 for residential default service accounts. (CAUSE-PA St. 1 at 18 & Exh. 4). The same disparities are present in comparing average write-offs for confirmed low income and CAP shopping accounts. (Id.) This adds costs for all residential consumers and causes substantial financial harm and other severe consequences to individual consumers. (Id. at 19).

As Mr. Geller recognized in testimony, FirstEnergy's POR Clawback Charge helps to reduce the disparity in residential write-offs between shopping and default service accounts. While the POR Clawback Charge does not address harm to individual consumers, it does help to shield other residential consumers from bearing the collective burden of unnecessarily high uncollectible expenses. The Partial Settlement allows FirstEnergy's POR Clawback Charge to continue on a

more permanent basis by eliminating its pilot status. (Joint Petition at 20, para. 81). This is a positive step to help reduce the financial impact of excessive pricing on residential consumers as a whole. As such, CAUSE-PA submits that this provision is in the public interest and should be approved.

E. CAP Customer Shopping (Joint Petition, Paragraphs 82-88)

FirstEnergy has an estimated 455,617 low income customers. As of December 31, 2020, 72,792 of FirstEnergy's low income customers were enrolled in CAP. (CAUSE-PA St. 1 at 23). To enroll in CAP, a household's total income must be at or below 150% of the federal income poverty guidelines (FPIG). In 2020, the average annual gross income of a household enrolled in CAP was just \$14,292. (Id. at 24). As Mr. Geller explained at length, low income households struggle profoundly to afford basic energy services and are regularly forced to choose between critical necessities each month, including housing, food, water, heat, and medicine. (Id. at 24-26). Energy poverty can and does have deep and lasting impacts on the health, safety, and wellbeing of Pennsylvanians and the communities in which they live and work. (Id.)

CAPs are designed to help remediate energy insecurity, and its explicit statutory objective is to help ensure that low income households can maintain service to their home. (Id. at 27). EDCs are statutorily mandated to operate CAPs and other universal service programming, subject to the oversight of the Commission – which is in turn obligated by law to ensure that CAPs are appropriately funded, accessible to those in need, and maintained in a cost-effective manner. (Id.)¹

FirstEnergy's CAP provides participants with a monthly bill credit, targeted to achieve an established energy burden level, as well as comprehensive arrearage management assistance. The

¹ 66 Pa. C.S. §§ 2803(10), (17); 2804(9); see also 52 Pa. Code § 69.265 *et seq.*

mechanics of the program, and how the discount is calculated and applied, are discussed at length in Mr. Geller's direct testimony. (Id. at 27-28). In short, the monthly credit is calculated based on a CAP participant's prior 12 month billing history. (Id.) The credit is subject to a maximum monthly subsidy level, which varies by Company and heating type. (Id. at 28).

When CAP customers pay rates in excess of the default service price, it causes two harms: (1) the CAP participant's pre-calculated monthly credit does not cover as much of the bill, resulting in higher monthly rates and, ultimately, greater payment trouble, involuntary termination rates, and uncollectible expenses; and (2) the cost of the program increases over time, which in turn increases the Universal Service rider recovered from all ratepayers. (Id. at 29).

In FirstEnergy's DSP V proceeding, after data showed that CAP customers were charged \$18.3 million more than the default service price over a 5-year period, the Commission approved comprehensive CAP shopping rules, which restricted the ability of CAP customers to contract for supplier prices in excess of the applicable default service price. (Id. at 30-31). In approving these CAP rules, the Commission explained:

There is clear evidence demonstrating that a significant number of FirstEnergy's CAP customers paid significantly more than what they would have if they were default service customers. As outlined by I&E, this is important since the generation rates charged to FirstEnergy's CAP customers affect the asked-to-pay amounts for those customers since their monthly maximum CAP credits are based upon their average monthly electric burden less a percentage of their income. Therefore, higher rates make it more likely that CAP customers will exceed their monthly maximum CAP credits and incur charges they may not be able to pay. If customers are unable to pay their bills, this leads to increased uncollectibles, which are recovered from the rest of the utility's residential ratepayers. As such, it is necessary to impose some restrictions on FirstEnergy CAP customer shopping in

order to protect both CAP customers and the non-CAP residential rate base from increased and unnecessary costs.²

FirstEnergy's CAP shopping rules were fully implemented in June 2019.

Data in this proceeding undeniably shows that FirstEnergy's CAP shopping rules failed to stem the harms identified in FirstEnergy's DSP V proceeding. Since June 2019, when the CAP shopping rules were implemented, CAP shopping customers across the four FirstEnergy Companies paid \$4,022,308.41 more than the applicable default service price. (Id. at 33). On a per customer basis from July 2019 to December 2021, CAP shopping customers paid on average between \$520.62 (Penelec) and \$1,316.46 (MetEd) more than the applicable default service price. (Id.)

These high prices have had a correspondingly stark impact on rates of payment troubled CAP customers, involuntary termination rates, and uncollectible expenses recovered from all residential ratepayers. In 2021, two years after FirstEnergy implemented the current CAP shopping rules, the average write-off balance for CAP shopping accounts was \$1,876.11 – compared to \$1,038.69 for CAP default service accounts. (Id. at 34 & Exh. 4). In that same year, 9.4% of CAP shopping customers were “payment troubled” – while just 1.8% of CAP default service customers were “payment troubled”; and, shockingly, 29.5% of CAP shopping customers were involuntarily terminated, compared to 8.8% for CAP default service customers. (Id. at 34 & Exhs. 5 & 6).

² Petitions of MetEd, Penelec, Penn Power, and West Penn Power for Approval of a Default Service Program for the Period Beginning June 1, 2019 through May 31, 2023, Opinion and Order, Docket Nos. P-2017-2637855, -57, -58, -56, at 49-50, 53 (order entered Aug. 23, 2018).

Mr. Geller also analyzed individual CAP shopping customer data to determine the extent of supplier non-compliance with the CAP shopping rules. Through this analysis, Mr. Geller revealed that in January, February, and March 2020 – nearly a year after the CAP shopping rules were implemented, a significant percentage of CAP shopping customers were still paying rates substantially higher than the default service price. (Id. at 35 & Exh. 7). In each of these three months, across all four of the FirstEnergy Companies, between 62-99% of CAP shopping customers were charged rates in excess of the default service price – in clear violation of the CAP shopping rules. In short, FirstEnergy’s attempts to restrict CAP shopping failed to stem identified, sustained, and severe financial harm to low income CAP customers and other residential consumers.

The Partial Settlement – which is supported or not opposed by all of the supplier parties in this proceeding – proposes to establish a new CAP rule requiring all CAP customers to be enrolled in default service effective June 1, 2023. (Joint Petition at 2 & 21, para. 82). As the data in this proceeding clearly shows, CAP shopping – even with restrictions – results in excessive pricing for CAP customers, increased payment trouble, involuntary terminations, increased programmatic costs, increased collections activities, and higher uncollectible expenses. As noted, the Commission has an obligation to ensure CAPs and other universal service programs are cost-effective and appropriately funded, and accessible to low income households.

Through careful negotiation and deliberation, the parties crafted a detailed transition plan to return CAP shopping customers to default service in a manner that provides ample notice, options, and information to CAP customers and suppliers. Pursuant to the terms of the Partial Settlement, CAP customers will be informed of the rule change and the options available to them through the transition, without disrupting CAP enrollment. (Joint Petition at 21, para. 83). The

record in this proceeding documents the overwhelming need for rate assistance to low income households, and the severe consequences to Pennsylvanians when they cannot afford to pay full rates. The transition process proposed in the Partial Settlement provides a prudent path that will not interfere with a CAP participant's ability to receive critical energy assistance to maintain service to their home.

The Partial Settlement also provides opportunities for the parties to meaningfully participate in crafting CAP customer notices and requires FirstEnergy to share a draft of its CAP notice with the parties to this proceeding, and allow for an opportunity for the parties to provide suggested revisions. (Partial Petition at 21, para. 84). These opportunities for engagement will help ensure balanced and accessible messaging to consumers.

To ensure that CAP remains accessible to all low income customers, regardless of their shopping status, the Partial Settlement prohibits suppliers from charging early cancellation or termination fees to any shopping customer who transitions into FirstEnergy's CAP. (Partial Petition at 22, para. 86). This key provision fulfills a critical statutory requirement that the Commission ensure CAPs are available to those in need.³ By ensuring that low income shopping customers can enroll in CAP without cancellation or termination fees, the Partial Settlement will help to reduce the accumulation of avoidable arrears and will help consumers access vital assistance without undue barriers.

Together, the CAP shopping provisions of the Partial Settlement are fairly balanced and squarely in the public interest. The Partial Settlement will help ensure that FirstEnergy's

³ 66 Pa. C.S. § 2804(9).

economically vulnerable consumers are able to access and maintain affordable utility services to their home. CAUSE-PA urges the Commission to approve the Partial Settlement without revision.

F. Third-Party Data Access Tariff (Joint Petition, Paragraphs 89-93)

FirstEnergy's initial proposal to implement a new "Third-Party Data Access Tariff" was expansive, and would have permitted the electronic exchange of personal customer data with any third party without confirming that the third party obtained appropriate customer consent. (CAUSE-PA St. 1 at 53-54). As Mr. Geller explained in his direct testimony, FirstEnergy's proposal placed the onus on third parties to collect and maintain record of customer consent – without any standards governing the manner and method in which consent is obtained. (Id. at 55). The initial proposal also relied exclusively on third parties to maintain appropriate protocols for the storage and treatment of highly sensitive personal usage and account information – and lacked clear provisions requiring third parties to maintain confidentiality of the data they obtain. (Id. at 55-56). Mr. Geller also noted that the broad third party access contemplated in the initial tariff proposal could leave consumers without meaningful recourse, as it is unclear how the Commission could exercise jurisdiction over a third party to provide relief to an aggrieved party. (Id. at 57).

The Partial Settlement significantly narrows the scope of FirstEnergy's initially proposed Third-Party Data Access Tariff, which will now apply only to Conservation Service Providers registered with the Commission or Curtailment Service Providers that are PJM members and identified on PJM's list of demand response providers. (Joint Petition at 22, para. 90). It also requires CSPs and curtailment service providers to use a standardized customer authorization form to obtain consent from consumers to access account data – and provides for periodic, randomized audits of the consent forms at least semi-annually of at least 10% of third parties governed by the

tariff. (Joint Petition at 22-23, paras. 89, 91). Non-compliant third parties will be permanently restricted from further access to customer data under the tariff. (Joint Petition at 23, para. 91).

Importantly, the Partial Settlement is explicit that it does not create a precedent for third-party utility data sharing practices, that each party retains the right to advocate for a different approach to data sharing in the context of the Commission's ongoing statewide proceeding, and that FirstEnergy must revise its tariff to comply with any Commission orders issued at the conclusion of the statewide proceeding. (Joint Petition at 23, para. 92-93).

Taken together, these provisions substantially improve FirstEnergy's initial proposal, and will help prevent unauthorized disclosure of sensitive consumer data and information. By limiting the scope of the proposal to include only conservation and curtailment service providers that register with the Commission or are members of PJM, the Partial Settlement helps ensure that only those with a legitimate purpose are utilizing the tariff to obtain access to sensitive third party data. By standardizing the customer consent form and auditing compliance with explicit consequences for violations, the Partial Settlement will also help improve compliance with the tariff standards. Importantly, the Partial Settlement ensures that the tariff can be changed if the Commission establishes different or conflicting policies and procedures for third party data sharing. This provision will help ensure that FirstEnergy can establish formalized data sharing policies in the short term, which FirstEnergy has argued are necessary to help marshal existing data exchange practices, without influencing the important work of establishing holistic privacy and data protection policies in the context of the ongoing statewide proceeding.

G. Additional Settlement Terms (Joint Petition, Paragraphs (94-95))

The Additional Settlement Terms in the Joint Petition lists certain disputed proposals that are not addressed in the Partial Settlement, and that will not be subject to further litigation in this proceeding. This provision helps to streamline litigation in this proceeding, making it certain that disputed issues would not be subject to further briefing.

This section also includes a provision allowing RESA and NRG to incorporate testimony and exhibits from this proceeding into any future Petition filed with the Commission on various recommendations raised by these parties through the course of this proceeding. (Partial Settlement at 24, para. 95). This provision memorializes existing rights of all parties to incorporate records of other proceedings, while preserving the right of any party to object to the admission of record information. (Id.). This provision represents a reasonable compromise that preserves and memorializes the rights of all parties in future proceedings.

IV. CONCLUSION

CAUSE-PA submits that the Partial Settlement, which was achieved by the parties after an extensive investigation of the Companies' filing, is in the public interest and should be approved. Acceptance of the Settlement avoids the necessity of further administrative and possibly appellate proceedings regarding the settled issues at what would have been a substantial cost to the Joint Petitioners and the Companies' customers. Accordingly, CAUSE-PA respectfully requests that the ALJ and the Commission approve the Partial Settlement without modification.

Respectfully submitted,
PENNSYLVANIA UTILITY LAW PROJECT
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