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July 10, 2026

VIA ELECTRONIC FILING

Matthew L. Homsher, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, Filing Room
Harrisburg, PA 17120

RE: Petition of FirstEnergy Pennsylvania Electric Company for Approval of Default Service Program for the Period From June 1, 2027 through May 31, 2031; Docket No. P-2026-3060298; **MAIN BRIEF OF SHIPLEY CHOICE, LLC D/B/A SHIPLEY ENERGY AND INTERSTATE GAS SUPPLY, LLC D/B/A IGS ENERGY**

Dear Secretary Homsher:

Enclosed for filing with the Commission is the Main Brief of Shipley Choice, LLC d/b/a Shipley Energy and Interstate Gas Supply, LLC d/b/a IGS Energy ("EGS Parties") in the above-captioned matter. Copies of this Brief have been served in accordance with the attached Certificate of Service.

If you have any questions, please do not hesitate to contact my office.

Very truly yours,

Todd S. Stewart
Counsel for Shipley Choice, LLC d/b/a Shipley Energy and Interstate Gas Supply, LLC d/b/a IGS Energy ("EGS Parties)

TSS/jld
Enclosure
cc: Administrative Law Judge Mark A. Hoyer (via electronic mail – mhoyer@pa.gov)
Administrative Law Judge Erin L. Gannon (via electronic mail – egannon@pa.gov)
Per Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties listed below in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party).

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DATED: July 10, 2026

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Todd S. Stewart

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of FirstEnergy Pennsylvania Electric Company for Approval of Default Service Program for the Period From June 1, 2027 through May 31, 2031	:	Docket No. P-2026-3060298

MAIN BRIEF
OF SHIPLEY CHOICE, LLC D/B/A SHIPLEY ENERGY
AND INTERSTATE GAS SUPPLY, LLC D/B/A IGS ENERGY

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DATED: July 10, 2026

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I. INTRODUCTION

Shipley Choice, LLC D/B/A Shipley Energy and Interstate Gas Supply, LLC D/B/A IGS Energy (Collectively the "EGS Parties") hereby submit their Main Brief in the above-captioned matter.

A. Procedural History

On February 3, 2026, FirstEnergy Pennsylvania Electric Company ("FE PA" or the "Company") filed a petition seeking approval of its seventh Default Service Program (DSP VII) for the period June 1, 2027 through May 31, 2031. FE PA represented that DSP VII is designed to procure a prudent mix of long-term, short-term, and spot-market generation supply so that default service customers receive adequate and reliable generation service at the least cost over time.

The Petition requests approval of DSP VII, including FE PA's proposed procurement plan, contingency plans, rate design changes and tariffs, and pro forma Supplier Master Agreement. FE PA also asks the Commission to make the findings required by 66 Pa. C.S. § 2807(e)(3.7): that DSP VII includes prudent steps to negotiate favorable generation supply contracts; includes prudent steps to obtain least-cost generation supply through long-term, short-term, and spot-market procurement; and that neither FE PA nor its affiliates has unlawfully withheld generation supply from the market.

On February 10, 2026, the Office of Administrative Law Judge issued a notice scheduling a telephonic prehearing conference for March 19, 2026. On February 19, 2026, Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Erin L. Gannon issued a Prehearing Conference Order establishing the parties' prehearing obligations.

The Office of Small Business Advocate filed its Notice of Intervention and Public Statement on February 20, 2026. Notice of the DSP VII filing and the prehearing conference was published in the Pennsylvania Bulletin on February 21, 2026. The Office of Consumer Advocate filed its Notice of Intervention and Public Statement, together with an Answer, on March 9, 2026.

Multiple parties, including the EGS Parties, timely sought intervention, including consumer, supplier, industrial customer, customer-generator, solar, institutional, and retail energy interests. No objections were raised to the petitions to intervene, and the Administrative Law Judges granted all such petitions at the prehearing conference.

The Administrative Law Judges also granted pro hac vice motions filed on behalf of counsel for Dimension PA 1 LLC, Constellation, and the Joint Solar Advocates. FE PA, the statutory advocates, and the intervening parties submitted prehearing memoranda as directed. FE PA also requested entry of a protective order in the form attached to its prehearing memorandum.

The prehearing conference proceeded as scheduled on March 19, 2026, with FE PA, the statutory advocates, and all intervening parties represented by counsel. The resulting Prehearing Order memorialized the rulings and agreements reached at the conference and established the procedural framework for the remainder of the proceeding.

A hearing was held in-person in Harrisburg on June 15, 2026, and all testimony and exhibits were entered into the record and cross-examination of certain witnesses was conducted.

The Presiding Administrative Law Judges issued an Interim Order Setting Additional Requirements on June 24, 2026. Under the Schedule a Joint Settlement (including less than all the parties and less than all of the issues) and including statements in support of the signatories to the "Settlement" is to be filed on July 2, 2026; Proposed findings of fact and conclusions of law for the Settling parties are to be filed on July 10, 2026, with Main Briefs also due July 10, 2026, and Reply Briefs are due July 22, 2026. This Main Brief is offered in compliance with these requirements.

B. Non-Unanimous Settlement

The Non-Unanimous Settlement is a "settlement" joined by less than half of the parties to this proceeding. For a number of reasons, some of which are discussed herein, neither the settlement nor the default service plan and associated tariff, nor other proposed changes addressed in the "settlement" are just, reasonable or in the public interest and they should be rejected as such.

C. Legal Standards

1. Burden of Proof

At issue here is FE PA's Petition for Approval of Its Default Service Program that will establish FE PA's approach to acquiring the energy for, and the rate structure of its provision of default service for the next four years. These proceedings are required by and conducted in accordance with the Commission's Regulations at 52 Pa. Code §§ 54.181–190. As the party submitting the Petition, FE PA is the proponent of the rule or order in this matter and bears the burden of proving that every proposal made or approval requested is just and reasonable and in the public interest.[1]

Section 1301(a) of the Code mandates that "[e]very rate made, demanded, or received by any public utility ... shall be just and reasonable, and in conformity with [the] regulations or orders of the [C]ommission."[2] That burden does not shift to parties opposing the approval of FE PA's petition. Instead, the utility's obligation to prove the justness and reasonableness of each component of its request remains affirmative and stays with the utility throughout the proceeding.

2. Questions Presented

These questions presented for Commission review lie outside of the issues addressed in the dubiously named non-unanimous settlement. The EGS Parties respectfully request that the Commission answer these negatively and conclude that FE PA's requests remain contrary to law and long-standing policy.

1. Whether the Commission should approve the Company's proposal to return customers to default service at the end of a fixed-duration contract unless the customer affirmatively chooses to remain with the EGS in response to notices required by 52 Pa. Code § 54.10.

   Suggested Answer: No.

[1] 66 Pa. C.S. § 332(a).

[2] 66 Pa. C.S. § 1301(a).

2. Whether the Commission should approve the Company's proposal to require quarterly attestations of affirmative customer consent for residential customers served on month-to-month variable-price products.

Suggested Answer: No.

3. Whether the Commission should approve FirstEnergy's proposal to restrict POR eligibility to customer accounts charged a rate-ready price at or below the PTC at enrollment or at the time of a pricing change.

Suggested Answer: No.

D. Summary of Argument

FirstEnergy PA ("FE PA") proposes three changes to its electricity shopping requirements, all three of which are contrary to law and Commission Policy and which should be rejected as further attempts to disrupt the competitive electricity market in Pennsylvania. FE PA is proposing (1) to require a statement of affirmative consent of every customer, at the end of every contract, as a condition of renewing that contract with their current supplier, with the consequence of not producing evidence of consent being FE PA's switching of the customer (effectively slamming the customer) to default service; (2) to require affirmative consent every 3 months for customers on variable rate supply to remain with an EGS and not be slammed to default service; and (3) to restrict participation in FE PA's Purchase of Receivables (POR) program to suppliers whose prices are at or below the Price to Compare (PTC).

The Commission should reject all three proposals. FirstEnergy's own witness describes the proposals as utility-driven changes to customers' arrangements with EGSs: customers on fixed-duration contracts would be returned to default service at contract expiration absent an affirmative choice to remain, month-to-month variable-rate customers would require quarterly consent attestations, and POR would be limited to accounts priced at or below the PTC.[3] FirstEnergy brazenly seeks a waiver of a regulation that currently protects customers and imposes notice requirements on suppliers, but does not create any

[3] FE PA St. No. 1 (Young) at 21:18-22:15, 24:5-25:18.

obligation for FE PA, demonstrating clearly that FE's intent is to re-write regulations outside of a rulemaking process.[4] Those descriptions matter because they show that the Company is not proposing a modest disclosure tweak; it is proposing to alter the mechanics of contract continuation, customer retention, and billing support for competitive supply. These proposals are structural retail market restrictions, that favor a single market participant (FE PA) and are unsupported by record evidence, inconsistent with Commission policy, harmful to the competitive retail market and must be rejected.

The Commission cannot lose sight of the fact that default service serves the majority of customers on the FE PA system. That there is a "competitive" market with most customers not shopping is not the fault of the market - there are numerous offers on PaPowerSwitch that are priced at or below the price to compare - and yet most customers remain on default service. It is in this context that FE PA presents a proposal that will undoubtedly result in many more customers finding themselves on default service, without having chosen to be there, if they even realized they were switched. Their choice will have been overridden by the utility and they may very well never shop again. These proposals appear to be a weapon pointed at ending the market, as opposed to helping customers.

FE PA has proposed that at the expiration of every customer contract with an EGS that unless the customer affirmatively consents (having already consented) to remain with the EGS, the customer will automatically and without further notice or opportunity, be converted to a default service customer of FE PA. The most direct record evidence comes from the Town Square testimony cited by RESA's witness, Frank Lacey. Mr. Miller explains that Pennsylvania's regulations already require an initial notice forty-five to sixty days before contract expiration and an options notice at least thirty days before expiration; those notices must describe the customer's options, and the rules eliminate cancellation fees if a customer terminates after receiving the options notice.[5] That same testimony states

[4] FE PA Petition at pp. 18-19.

[5] Town Square Energy East LLC Statement No. 1 - Direct Testimony of Randal Miller, at 17:15-18:24.

that FirstEnergy did not show that the existing two-notice framework is failing or that forcing customers onto default service would improve affordability.[6] The proposal therefore conflicts with the existing paradigm while lacking a showing that the process is defective.

FE PA's proposal violates the customer's right to choose its supplier as evidenced by the customer's contract with a supplier[7]; which similarly violates the slamming rules. 52 Pa. Code § 54.171, et seq. There is no authorization in the public utility code for an EDC/Default service provider to "steal" customers based upon a none-existing requirement for supplier/customer relationships not present in the Commission's regulations or the Public Utility Code.[8] To the contrary, the Code **requires** regulations that prohibit customers from being switched without their consent and FirstEnergy's proposal would violate both the Commission regulations established to address this mandate and would violate the letter of the mandate. The statute expressly forbids the electric distribution company to "change a customer's electricity supplier without direct oral confirmation from the customer of record or written evidence of the customer's consent to a change of supplier."[9] The Commission cannot waive a mandatory statutory requirement and FirstEnergy's switch to default service provisions accordingly must fail. Customers receive at least two required notices at the end of their contract, along with information on their options and offers from their then current EGS. Most contracts automatically renew upon termination, which has been the case since the beginning of choice, so it should be no surprise to any customer that their contract will eventually expire and that they must take some action at the end of every current contract, even if that action is to do nothing.

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[6] Town Square St. No. 1 at 18:1-10.

[7] 66 Pa. C.S. § 2807(d)(1); 66 Pa. C.S. § 2806(a). ("The ultimate choice of the electric generation supplier is to rest with the consumer").

[8] See, 52 Pa. Code § 54.10.

[9] 66 Pa. C.S. § 2807(d)(1).

To automatically assume that a customer's choice is to not remain with their current provider at the end of a contract is contrary to logic and the law and cannot be approved.

FE PA also is proposing to institute a tariff change that will require Electric Generation Suppliers ("EGS" or "Suppliers") to also obtain affirmative consent on a quarterly basis from each variable rate customer to allow those customers to remain on a variable rate. As noted above, the Commission's existing regulations already provide a comprehensive framework for contract renewal, including two separate advance notices of any change, and full disclosure of any proposed changes.[10] These notices provide customers with the information they need to reach a decision to switch to another supplier, switch to default service, or continue to receive service from their current supplier at the existing rate or a new proposed rate.[11] Further, EGS are required to provide 30 days advance notice of a rate change to any customer on a post-term, variable month-to-month rate providing customers with ample opportunity to shop for a new supplier or product with no cancellation fees.[12] The law clearly states that the choice of supplier is with the customer, so even if FE PA had demonstrated that these notices and protections are inadequate or defective, which it has not, its proposal would still violate the customer's expression of choice when they executed the contract with the supplier. FE PA's proposal takes the ultimate choice away from consumers and is illegal.

What FE PA and others point to, instead, are statistics that show that some customers on variable rates pay higher rates than customers on default service. FE PA has failed to provide any analysis that demonstrates any actual harm from this conclusion. There is no allegation that suppliers don't send the required notices, there is no evidence to establish customers did not affirmatively choose to be on a variable rate, or that customers were not presented with options that may have included a fixed rate contract. The only evidence FE PA presented is that some customers end up on variable rates at the end of fixed rate or

[10] 52 Pa. Code § 54.10.

[11] Town Square Energy East LLC St. 1 at 18:15-23.

[12] 52 Pa. Code § 54.10(2)(ii)(A)(I).

variable rate contracts – which is permitted by the existing regulations – and FE PA wants to unilaterally defy the statute and the product of several rulemaking processes and go its own way with no proof of causation.

The EGS Parties and other parties to this case, including RESA and Town Square, oppose FE PA's proposal primarily because it will devastate the retail market if EGSs must obtain affirmative consent from customers with signed contracts in order to retain the benefit of those contracts for the customer and the supplier. Moreover, what FE PA proposes is prohibited by existing Commission Regulations and is in blatant violation of the Public Utility Code.

Similar terminal infirmities lie within FE PA's proposal to limit POR to only suppliers who price their product at or below the price to compare. Not only is using price to regulate a supplier's ability to receive a critical service illegal rate regulation, it also is discriminatory and contrary to the policy for competitive markets adopted by the Commission since competition was introduced. The Commission has consistently viewed POR as a necessary and lawful tool for implementing Choice in Pennsylvania. Similar to the affirmative consent issue therefore, there is no legal or factual basis to assume that the use of POR, or even its mere existence, causes any harm. Without any evidence of causation FE PA is asking this Commission to cripple the competitive market on pure speculation.

All three of these "market killer" proposals are illegal and ill-advised. The Commission has previously stood fast in the face of FE PA's (and others') attempts to cripple the market by proposing 180-degree shifts of policy in a time-limited proceeding that lacks the process, the evidence and the important viewpoints of all stakeholders, and the Commission should stand firm once more and reject FE PA's proposals.

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

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A. The Commission Should Reject FE PA's Proposal to Return of Customers to Default Service at Contract Expiration.

FirstEnergy's return-to-default-service proposal should be rejected for several critical reasons: 1) it violates the plain language of the Public Utility Code; 2) it conflicts with the existing contract-renewal framework in the Commission's Regulations; 3) there is a complete lack of any record evidence that the existing framework requires modification; and, 4) it would harm both customers and the competitive market. The Commission's regulations already prescribe how contract expiration and renewal are to be handled. As Randal Miller explains, Section 54.10 requires two advance notices, mandates disclosure of the customer's options, eliminates cancellation fees in the relevant circumstances, and was adopted through a required rulemaking process.[13] Those facts matter because they show that Pennsylvania already made the policy choice to regulate contract continuity through standardized notices and customer protections, not through a utility-specific automatic switch to default service without any evidence that the customer consents to being assigned to default service rather than having their contract renewed. This is in spite of the obvious fact that the customer has already agreed to renew the contract.

As noted above, the Code speaks directly to the point of who gets to choose a customer's electric generation supplier and the list does not include the monopoly utility. The Code is clear – it is the consumer who has the ultimate choice of supplier.[14] Not only would forcibly switching customers to default service against their will violate the Code, it would abrogate the customer's right to enter into and maintain a contract of its choosing.

The record does not show that the current framework is inadequate. FirstEnergy did not demonstrate the existing two-notice framework is failing to inform customers or protect them from unfair renewals and did not provide evidence that forcing customers onto default service would improve affordability.[15] Rather, FE's proposal would deprive customers of the opportunity to hedge against market price volatility and select value-added products and services such as 100% renewable electricity. That is a critical failure of proof – there is no evidence of causation showing that the present system is causing the harm. That step is critical because FE PA is asking to be permitted to violate the current regulation, and the

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[13] Town Square St No. 1 at 17:15-18:24.

[14] 66 Pa. C.S. § 2806(a).

[15] Town Square St. No. 1 at 18:1-10.

statute that requires it, based on its theory that the current two notice process causes customer harm to the degree that we need to ignore the plain language of their contracts and slam them to default service at the end of their contracts. A utility asking the Commission to depart from Commission Regulations required by statute should at least identify the deficiency in those rules and show why a waiver is necessary, even if it is not permitted. That did not occur here.

The proposal would also create harms unrelated, or poorly related, to the stated affordability objective. By FirstEnergy's own design, non-response is treated as a direction to terminate competitive supply and move the customer to default service.[16] The suppliers' evidence explains why that is problematic. Mr. Miller testifies that the proposal would increase churn, burden suppliers and utilities operationally, and harm customers who intentionally chose competitive products but do not respond to a notice.[17] That same testimony states that FirstEnergy admitted it would move a customer to default service *even where the supplier's renewal offer is lower than the PTC*.[18] The proposal's application without regard to whether the renewal offer is actually favorable in price or features, is too blunt of an approach to be justified as an affordability measure and appears to be framed solely as a mechanism to forcibly remove customers from the competitive market. Imagine the reaction from FE PA if a supplier filed a petition seeking to have all customers transferred to that supplier if the customers' rates were above the price to compare. FirstEnergy would certainly argue that such a maneuver would deprive customers of choice and that it would be slamming, and they would be right, but that is what they are proposing to do here – deprive customers of their ability to choose and to have that choice recognized and even defended by the utility. The sort of harm that FE PA's proposal will knowingly impose raises serious questions about its motives. FE PA claims that its concern is affordability, but its solution is to attack its "competitors" in the market and to impose

[16] FE PA St. No. 1 (Young) at 21:18-22; 24:5-14.

[17] Town Square Statement No. 1 at 18:5-10.

[18] Town Square Statement No. 1 at 20:7-14 & fn.13.

measures that will undoubtedly increase costs for those competitors that will have to be passed on to customers, thus creating an additional affordability concern for those customers who continue to avail themselves of the benefits of the competitive market.

The proposal cannot be reconciled with current policy which permits automatic contract renewals.[19] Utility-specific deviations would undermine uniformity, create confusion, and fragment Pennsylvania's retail market rules.[20] When a monopoly utility asks to rewrite the customer-renewal rules in its service territory to require that customers automatically return to default service, regardless of their already expressed choice, the Commission should be especially wary. The record makes it clear that FirstEnergy's proposal has "no business" being addressed in a default service proceeding because it seeks to alter established contract-renewal rules rather than to design procurement for default service.[21] Rejecting FE PA's proposal is critical to preserving any semblance of a competitive market moving forward.

B. The Commission should reject the quarterly affirmative-consent requirement for month-to-month variable-rate products

The proposed quarterly affirmative consent requirement for customers on variable-rate products should be rejected for most of the same reasons stated immediately above. Not only will it cause chaos for customers, suppliers and FE PA, it purports to supersede the existing regulatory framework where customers have already stated their agreement to variable rate contracts and should not have their choice second-guessed every three months. Such a requirement will lead to churn and un-needed effort that will undoubtedly result in larger numbers of customers eschewing the market because of the additional burdens. All this in spite of the fact that Pennsylvania already has notice rules that apply at renewal and

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[19] 52 Pa. Code § 54.10.

[20] Town Square Statement No. 1. at 18:15-20:17; 22:13-20.

[21] Town Square Statement No. 1. at 19:15-17.

before price changes, and that FirstEnergy did not establish that those protections are failing.[22]

FirstEnergy's witness states that month-to-month variable-rate customers would need quarterly consent attestations and would be returned to default service if the EGS did not affirm customer consent through EDI.[23] The quarterly-consent proposal is especially problematic because it converts a non-response into a forced return to default service on a repeating basis. Such a structure would impose new operational burdens on suppliers and utilities and would risk harming customers who intentionally selected competitive products but decline to respond to quarterly affirmations for their own reasons.[24] The record is replete with testimony that the proposal will increase costs for suppliers, costs that they will pass on to customers which will exacerbate the very affordability concerns that FE PA purports to address. The record before us also supports the conclusion that the proposal creates a recurring friction layer that would tend to push customers off competitive supply through process failure or customer inattention rather than through informed product choice. This new process differs from the current system in at least one very important way – today's variable rate customers *consented* to the variable rate, for whatever reason they relied upon. Under FE PA's proposal the *customer's intention* is ignored unless the customer keeps saying yes, every quarter. The law is clear that a customer need only consent a single time to demonstrate agreement to be bound by a contract. The rules of the market, established for customers and suppliers, permit customers to sign contracts that allow for automatic renewal and allow for those renewals to be to a variable rate, subject to some conditions, chief of which is that such contracts must be cancellable anytime without penalty.

There is no contractual, regulatory or Public Utility Code reason why customers should be required to say yes to their electricity supply contract over and over again, just

[22] Town Square St. No. 1 at 17:15-18:24; 18:1-10.

[23] FE PA St. No. 1 (Young) at 24:9-14.

[24] Town Square St. No. 1 at 18:5-10.

to prove to the utility that they really do want to be on the rate they are on. Switching customers to default service without consent to that switch is a direct violation of the Commission's Regulations, and FE PA's request for waiver of a provision that does not apply to it notwithstanding, it also is a violation of the plain language of the Public Utility Code that requires that consumers alone get to decide who will be their supplier.[25] The Commission cannot waive a statutory requirement and FE PA's forced slamming to default service must be rejected.

C. The Commission Should Reject the Proposed Changes to Purchase of Receivables (POR) Program

1. POR is an Essential Utility Service.

FirstEnergy's POR restrictions should also be rejected. POR is not a peripheral convenience; it is an integral part of the infrastructure that makes Pennsylvania's retail market function.[26] In his direct testimony, RESA witness Mr. Frank Lacey states that POR programs facilitate utility consolidated billing, promote consistent billing and collection practices, reduce barriers to entry, and have repeatedly been maintained by the Commission as part of the market structure supporting customer choice.[27] Mr. Miller agrees and notes that that POR removes supplier credit and collections risk so suppliers can compete on price and product innovation, rather than their ability to finance bad debt and manage collections.[28]

2. POR is not prohibited by 66 Pa. C.S. § 2807(c)(3).

Beginning with the proceedings that implemented Chapter 28, the Commission has consistently rejected the argument raised by EDCs and others, that Section 2807(c)(3) of the Public Utility Code prohibits POR unless the utility volunteers to provide it. The

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[25] 66 Pa. C.S.§ 2806(a); 66 Pa. C.S. § 2807(d)(1).

[26] *PPL Electric Utilities Corporation Retail Markets*; Docket No. M-2009-2104271("*PPL Retail Markets Order*")(Opinion and Order entered August 11, 2009) at pp.26-28.

[27] RESA St. No. 1 at 29:12-20.

[28] Town Square St. No. 1 at 9:1-10.

Commission instead, has found that § 2807(c)(3) prohibits advance remittances to an EGS, and does not address POR.[29]

To the contrary, the Commission has consistently held, for more than a decade, that the Public Utility Code provides the requisite authority to mandate POR programs and "to regulate the terms and conditions" thereof.[30] Moreover, the Commission has viewed POR as an essential part of a properly and fairly functioning market and has dispelled the notion that utilities cannot be restricted in how they operate such programs. Accordingly, there is no basis to conclude that restricting access to a functioning POR program due to the level of prices offered would be permitted under existing PUC precedent that has not changed since it was first established.

3. Providing or refusing to provide POR on the basis of price is illegal discrimination.

Mr. Miller's testimony on the differential treatment is directly on point because FirstEnergy's proposal would withhold access to market infrastructure from any product priced above the current PTC at enrollment or at a pricing change. The Public Utility Code labels such differential treatment as discrimination.[31] Subjecting EGSs to differential and detrimental treatment because their prices are above or below the PTC — which is itself an arbitrary measure that may not reflect the supplier's current wholesale costs, product features, contract duration, risk allocation, or customer-selected value — violates Section 1502 by discriminating among suppliers on the basis of price. Billing for suppliers' electric service to its customers is required by the Code.[32] Section 1502's prohibits providing discriminatory service as between similarly situated customers. In this case, unlike the

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[29] *Establishment of Interim Guidelines for Purchase of Receivables (POR) Programs*, Docket No. M-2008-2068982 and I-00040103F0002, Order entered December 19, 2008 at 4-5.

[30] *PPL Retail Markets Order*, p.27.

[31] 66 Pa. C.S. § 1502.

[32] 66 Pa. C.S. § 2807(c).

recent *IGS* case, the billing service in question is **not** for what the Court concluded was a non-essential product.[33] Instead, it is billing for core utility services and is required to be provided to customers regardless of their supplier, as a foundational utility service, thus distinguishing the current situation with that in *IGS*. Here there can be no doubt that POR is a critical utility function that cannot be provided in a discriminatory fashion.

4. Neither the Commission nor FE PA is authorized to regulate the rates EGSs charge.

The proposal also functions as unauthorized rate regulation. The Commission may not regulate EGS commodity rates, and an EDC may not accomplish indirectly, through denial of POR, what neither the Commission nor the EDC may do directly: condition a competitive supplier's practical ability to bill and serve customers on the supplier charging a Commission-approved price. Nor is there any statutory authorization to provide a critical billing-related service to one class of licensed suppliers while denying that same service to another class solely because the utility dislikes the supplier's disclosed, customer-selected price. In this case, there can be no doubt that utility consolidated billing and the associated POR mechanism are services subject to the Code's nondiscrimination principles.[34] FirstEnergy's proposal would turn that essential market support into a price-control tool, and that is not permitted by the Public Utility Code or by the Commission's retail-market framework.

The proposal would use access to POR as the enforcement mechanism for a price cap tied to the utility default-service rate. The premise is backwards. POR was adopted and preserved to support utility consolidated billing, reduce barriers to entry, and permit suppliers to compete for customers; it was not created as a utility-administered rate-regulation device. A price-to-compare limitation would transform POR from a neutral market-facilitation mechanism into a punitive eligibility test. Suppliers priced at or below the PTC would receive the billing and receivables support needed to compete, while

[33] *IGS, Inc. v. Pa. P.U.C,* 343 A.3d 1152, 1158, 2025 Pa. LEXIS 1491 (Pa. 2025).

[34] 66 Pa. C.S. §§ 101, 2807(c).

suppliers offering products above the PTC — including products customers may value for term, budget certainty, renewable attributes, rewards, long-term protection against market price volatility and volumetric uncertainty, or other non-price features — would lose that support. That is discrimination based solely on price, and it is even more egregious where the record contains no evidence that POR itself causes the alleged customer harm. A customer paying a price that is higher than the price to compare, whether for a day or a month or longer, so long as it is pursuant to a proper contract, is not harm – it is how Pennsylvania's energy markets were intended to operate.

5. First Energy has failed to prove that POR causes harm.

The absence of causation evidence is fatal. FirstEnergy's evidence at most attempts to show that some customers on competitive supply paid more than the PTC during certain periods. That showing does not establish that POR caused those prices, that the customers lacked adequate disclosures, that the customers did not knowingly choose the products, or that the products lacked value when selected. The Commission's regulations already require supplier disclosure and renewal notices; they do not condition competitive supply on a continuing utility-administered price test. If FirstEnergy believes the Commission's disclosure and renewal rules are inadequate, the proper vehicle is a rulemaking supported by a full record, not a utility-specific tariff restriction embedded in a default-service proceeding.

The proposal is also administratively unworkable and unstable. A supplier's product may move above or below the PTC over time for multiple reasons, including changes in wholesale prices, changes in the default-service rate, differences in the treatment of wholesale market costs between EGS and default supply bidders, contract duration, hedging strategy, and non-price product attributes. Conditioning POR on a comparison at enrollment or at a pricing change would require FirstEnergy to police supplier prices, determine eligibility, remove or restore POR access, and manage billing consequences on a rolling basis. It also forces supplier products to mimic default supply pricing structure, which would limit innovation, eliminate choices and homogenize competitive market offerings, essentially taking competition for diversity of offerings out of the market.[35] Moreover, FE PA's proposal creates precisely the kind of "sometimes in, sometimes out" billing regime that invites errors, customer confusion, supplier disruption, and market exit. The fact that the PTC changes while supplier contracts may be designed around different terms and risk profiles underscores why the PTC is an unsuitable gatekeeper for access to essential billing infrastructure.

Record evidence explains why the pricing-based denial of POR is harmful and unreasonable. Mr. Miller states that if POR is unavailable for certain products, suppliers will have to price in credit and payment risk and many suppliers will rationally reduce offerings, be forced to incorporate increased costs into customer pricing, or exit the market.[36] He also states that FirstEnergy's own discovery responses showed no suppliers were serving residential customers without POR in FirstEnergy territory, indicating how dependent the current market is on that support.[37] The testimony then identifies products that would be effectively driven from the market for POR-served customers, including flat monthly bill products, value-added products such as renewable energy or rewards, and long-term fixed-price products that may be above the PTC today but protect a customer from future PTC increases.[38] Those examples are specific and demonstrate the mechanism of harm. The record also undermines FirstEnergy's factual justification for the POR

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[35] 66 Pa. C.S. §2804(2)("Consistent with the time line set forth in section 2806 ("relating to implementation, pilot programs and performance-based rates), *the commission shall allow customers to choose among electric generation suppliers in a competitive generation market through direct access. Customers should be able to choose among alternatives such as firm and interruptible service, flexible pricing and alternate generation sources, including reasonable and fair opportunities to self-generate and interconnect.* These alternatives may be provided by different electric generation suppliers.") *emphasis supplied.*

[36] Town Square St. No. 1.at 9:6-10; 10:13-20.

[37] Town Square St. No. 1 at 10:20-11:10.

[38] Town Square St. No. 1 at 11:11-12:10.

proposal. FirstEnergy's sole justification is a generalized affordability concern based on some above-PTC prices.[39] Mr. Miller further states that FirstEnergy does not track several default-versus-shopping metrics and has not quantified how much POR-related uncollectible expense is attributable to EGS pricing rather than broader economic conditions.[40] Mr. Lacey's surrebuttal makes the same core point from another angle: it states that the Mr. Young's rebuttal testimony fails to establish why pricing-based POR restrictions are necessary, fails to evaluate competitive consequences, and fails to justify departure from the historic public-interest rationale underlying POR programs.[41] On this record, the Commission cannot conclude that the proposed restriction is a measured or evidence-based response to a demonstrated problem. Nor does FE PA's position overcome the unreasonable and damaging discrimination that FE PA's plan will impose on EGSs on its system.

VII. CONCLUSION

Apart from the specific problems with each of the three market change proposals, the suppliers' testimony shows a broader flaw: the market restrictions are being justified by simplistic historical comparisons to the PTC that do not establish whether customers received value from the products they selected. Mr. Lacey's surrebuttal states that the comparisons are retrospective because they compare historical EGS prices and historical default service prices after both are already known, while customer choice occurs prospectively under uncertainty.[42] Mr. Lacey goes on to point out that no party performed an analysis establishing that the products being compared were economically equivalent from the customer's perspective. Id. at 18:21-19:17.

This criticism matters because the record shows customers may choose products for reasons other than immediate spot comparison to the then-current PTC. Mr. Lacey also

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[39] Town Square St. No. 1 at 13:12-18.

[40] Town Square St. No. 1 at 17:8-17.

[41] RESA St. No. 1-SR at 15:4-15.

[42] RESA St. No. 1-SR at 18:5-20.

testifies that no analysis in the record evaluated customer preferences, decision-making, risk tolerance, or valuation of non-price attributes such as fixed-price certainty, renewable energy, rewards programs, or other product characteristics.[43] Mr. Lacey further testifies that FE PA acknowledged in discovery that PTC fluctuations can cause price volatility, budgeting difficulties, and financial stress.[44] These facts support the suppliers' central point: above-PTC pricing at a point in time does not, by itself, establish lack of customer value or justify major restrictions on contract continuation, product design, or access to POR.

For all of the reasons stated herein, the Commission should reject FirstEnergy's proposed retail shopping changes regarding: (1) automatic return of customers to default service at the conclusion of fixed-duration contracts absent affirmative customer action to remain with the EGS; (2) quarterly affirmative-consent attestations for month-to-month variable-rate products; and (3) POR restrictions tied to above-PTC pricing. The existing contract-renewal framework already provides customer protections, the record does not show that framework is failing, and the proposed changes would create customer and market harms while restricting competitive products and choices. The Commission should preserve the existing market structure and decline to adopt utility-specific deviations that are not supported by this record.

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[43] RESA St. No. 1-SR at 19:21-20:4; 20:8-21:5.

[44] RESA St. No. 1-SR at 19:16-20.

Respectfully submitted,

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APPENDIX A

PROPOSED FINDINGS OF FACT

1. FirstEnergy's witness, David M. Young, describes the three disputed changes: automatic return to default service at the end of fixed-duration contracts absent affirmative action; quarterly consent attestations for month-to-month variable-rate products; and POR eligibility limited to accounts priced at or below the PTC. FE PA St. No. 1 (Young) at 21:18-22:15; 24:5-25:18.

2. Randal Miller states that 52 Pa. Code § 54.10 already requires two advance notices, clear disclosure of customer options, and advance notice of price changes for contracts that convert from fixed to variable rates, and that these rules were adopted through statewide rulemaking. Town Square St. No. 1 at 17:15-18:24.

3. Mr. Miller states that FirstEnergy did not show the current two-notice framework is failing or that forcing customers back to default service would improve affordability. Town Square St. No. 1 at 18:1-10.

4. Mr. Miller's direct testimony states that automatic renewals are clearly permitted and common under the existing regulations, and that a utility-specific waiver would undermine statewide uniformity, create confusion, and fragment Pennsylvania's rules. Town Square St. No. 1. at 18:15-20:17; 22:13-20.

5. The same testimony identifies customer harms, including that FirstEnergy admitted it would move customers to default service even where the supplier's renewal offer is lower than the PTC and that customers desiring renewable supply could be forced to default service without consent. Id. at 20:7-20 & n.13.

6. RESA Exhibit FL-20 reflects that Mr. Young has not conducted an analysis of whether jurisdictions require affirmative consent to continue electricity service. RESA St. No. 1R, Exh. FL-20 at 1.

7. Frank Lacey's Direct Testimony states that POR programs facilitate consolidated billing, reduce barriers to entry, and have repeatedly been maintained by the Commission as part of the market structure supporting customer choice. RESA St. No. 1 at 29:12-20.

8. Mr. Miller testifies that POR allows suppliers to compete on price and innovation rather than on bad-debt financing and collections, and that many suppliers would reduce offerings or leave the market if required to bear full credit risk for products above the PTC. Town Square St. No. 1 at 9:1-10.

9. Mr. Miller states that no EGSs are presently serving residential FirstEnergy customers without POR and that the proposed POR limitation would eliminate or materially impair flat monthly bill offers, value-added offers, renewable offers, and long-term fixed-price offers that may initially be above the PTC. Town Square St. No. 1 at 10:20-12:10.

10. Mr. Miller provided testimony stating that FirstEnergy's justification for the POR proposal is a generalized affordability concern and that FirstEnergy had not quantified the extent to which POR-related uncollectibles are attributable to EGS pricing as opposed to broader economic conditions. Town Square St. No. 1 at 13:12-18; 17:8-17.

11. Frank Lacey's surrebuttal states that FE, OCA, and CAUSE-PA rely on historical PTC comparisons that are retrospective, do not establish product equivalence, and do not evaluate customer preferences or the value of non-price product attributes. RESA St. No. 1-SR (Lacey) at 16:24-17:20; 18:5-20; 18:21-19:17; 19:21-20:4; 20:8-21:5.

12. Mr. Lacey's surrebuttal states that Mr. Young's rebuttal testimony fails to establish why pricing-based POR restrictions are necessary, fails to evaluate competitive consequences, and fails to justify departure from the historic Commission rationale for POR. RESA St. No. 1-SR at 15:4-15.

APPENDIX B

PROPOSED CONCLUSIONS OF LAW

1. Section 2807(c) establishes the EDC as the default biller for electric service. 66 Pa. C.S. §2807(c).

2. The Public Utility Code prohibits granting an unreasonable preference to any entity. 66 Pa. § 1502.

3. The Public Utility Code does not authorize the regulation of prices charged by EGSs. 66 Pa. C.S. § 2806(a).

4. The Code requires that it is the customer and the customer alone that is able to choose their electricity supplier. 66 Pa. C.S. § 2806(a).

5. The Code requires the Commission to implement regulations ensuring that it is only the customer that may choose its electric generation supplier. 66 Pa. C.S. § 2807(d)(1).

6. FE PA switching a customer's supplier when that customer has a lawfully executed contract with their existing supplier and the customer has not authorized the switch, violates the Code.

7. Determining eligibility for participation in FirstEnergy's POR program based upon rates, which neither FE PA or the Commission are legally able to regulate, violates the Code.

APPENDIX C

PROPOSED ORDERING PARAGRAPHS

1. FirstEnergy's proposal to require affirmative consent from customers to continue in their contracts renewals with suppliers is denied because it is contrary to law.

2. FirstEnergy's proposal to require affirmative consent every 3 months from a customer on a variable rate contract is denied as being contrary to law.

3. FirstEnergy's proposal to restrict participating in its purchase of receivables program based upon the supplier's prices is denied as being contrary to law.