COMMONWEALTH OF PENNSYLVANIA

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July 10, 2026

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

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

Dear Secretary Homsher:

Attached for electronic filing please find the Office of Consumer Advocate's Main Brief in the above-referenced proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Harrison W. Breitman
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Enclosures

cc: Deputy Chief Administrative Law Judge Mark A. Hoyer (Via Email Only: mhoyer@pa.gov)
Administrative Law Judge Erin L. Gannon (Via Email Only: egannon@pa.gov)
Certificate of Service

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day filed electronically on the Commission's electronic filing system and served a true copy of the following document, the Office of Consumer Advocate's Main Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code Section 1.54 (relating to service by a participant), in the manner and upon the persons listed below.

Dated this 10th day of July 2026.

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Dated: July 10, 2026

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

MAIN BRIEF OF THE
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Dated: July 10, 2026

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I. INTRODUCTION

A. Procedural History

On February 3, 2026, the FirstEnergy Pennsylvania Electric Company (FE PA or Company) filed with the Pennsylvania Public Utility Commission (Commission) a Petition for approval of its Default Service Plan for its generation customers (Petition). The Company's existing Default Service Plan (DSP) is set to expire on May 31, 2027. The proposed DSP is for the period of June 1, 2027, through May 31, 2031. This filing has been made pursuant to the requirements of Act 129 of 2008 (Act 129), the Commission's Default Service Regulations, the Commission's Policy Statement on Default Service, and related Commission Orders.

FE PA's Petition was assigned to the Office of Administrative Law Judge (OALJ) and further assigned to Administrative Law Judges (ALJs) Mark A. Hoyer and Erin L. Gannon. On February 10, 2026, OALJ issued a Notice scheduling a Call-In Telephonic Prehearing Conference for March 19, 2026, at 10:00 a.m. and the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania (CAUSE-PA) filed its Petition to Intervene and Answer.

On February 19, 2026, the ALJs issued a Prehearing Conference Order setting forth the parties' obligations with respect to the Prehearing Conference and directing the parties to prepare and distribute prehearing memorandums by March 17, 2026, at 3:30 p.m., and Penn Renewables LLC filed its Petition to Intervene. The OSBA filed its Notice of Intervention and Public Statement on February 20, 2026. On February 23, 2026, Shipley Choice, LLC d/b/a Shipley Energy and Interstate Gas Supply, LLC d/b/a IGS Energy filed a Joint Petition to Intervene. On February 24, 2026, Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, and the West Penn Power Industrial Intervenors filed their Joint Petition to Intervene. On March 5, 2026, Dimension PA 1 LLC filed a Petition to Intervene.

On March 9, 2026, the OCA filed its Notice of Intervention and Public Statement, and Answer in response to the Company's Petition. Also on March 9, 2026, the following parties filed Petitions to Intervene: WGL Energy Services, Inc.; Sunrise Airport Road LLC, Sunrise Forrester Road LLC, Sunrise Franklin Road LLC, Sunrise Harlansburg Road LLC, Sunrise Hendersonville Road LLC, Sunrise McCurdy Road LLC, Sunrise Perry Highway LLC, Sunrise Sandy Lake Greenville Road LLC, Sunrise Sandy Lake Polk Road LLC, and Sunrise Springfield Church Road LLC (collectively, the Customer-Generator Coalition or CGC); and Town Square Energy East, LLC. On March 10, 2026, Pennsylvania State University (Penn State) filed a Petition to Intervene.

On March 13, 2026, the Solar Energy Industries Association and the Coalition for Community Solar Access (collectively, Joint Solar Advocates or JSA) filed a Joint Petition to Intervene. On March 16, 2026, Constellation Energy Generation, LLC and Constellation NewEnergy, Inc., filed a Joint Petition to Intervene, and Duquesne Light Company filed a Petition to Intervene. On March 17, 2026, Walmart Inc. (Walmart) filed a Petition to Intervene.

On March 19, 2026, the Prehearing Conference was held as scheduled. On March 23, 2026, a Prehearing Order was issued memorializing the discovery modifications and litigation schedule adopted at the Prehearing Conference.

On April 29, 2026, the OCA served the Direct Testimony of Serhan Ogur and the Direct Testimony of Barbara Alexander. On May 28, 2026, the OCA served the Rebuttal Testimony of Serhan Ogur and the Rebuttal Testimony of Barbara Alexander. On June 1, 2026, the OCA served the Corrected Direct Testimony of Barababara Alexander and the Corrected Rebuttal Testimony of Barbara Alexander. On June 11, 2026, the OCA served the Surrebuttal Testimony of Serhan Ogur and the Surrebuttal Testimony of Barababara Alexander.

On June 12, 2026, FE PA informed the ALJs via email that FE PA, the OCA, OSBA, CAUSE-PA, and Walmart (collectively, Settling Parties) reached a non-unanimous settlement on all issues. Also on June 12, 2026, the OCA served the Corrected Surrebuttal Testimony of Serhan Ogur. On June 14, 2026, FE PA submitted written rejoinder testimony. On June 15, 2026, an in-person evidentiary hearing was held in Harrisburg.

On July 2, 2026, FE PA served a Joint Petition for Non-Unanimous Settlement (Settlement), which included the OCA's Statement in Support of Settlement. The OCA submits the following Main Brief pursuant to the litigation schedule in this proceeding.

B. Non-Unanimous Settlement

The OCA, a signatory party to the Settlement in the captioned proceeding, respectfully requests that the terms and conditions of the Settlement be approved without modification by the ALJs, and the Commission. The OCA supports the Settlement as it is supported by substantial evidence in the record, is in the public interest, and in the interests of the residential customers of FE PA.

C. Legal Standards

1. Burden of Proof

Proponents of an order bear the burden of proof.[1] The burden of proof in administrative proceedings is the preponderance of the evidence standard.[2] That is, the party with the burden must bring forth evidence that is more convincing, by even the smallest amount, than the evidence presented by the other parties.[3] "The term 'burden of proof" is comprised of two distinct burdens, the burden of production and the burden of persuasion."[4] The burden of production dictates which party has the duty to introduce enough evidence to support the proposed order.[5] The burden of persuasion determines

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[1] 66 Pa. C.S. § 332(a); *see also Petition of Pike County Light and Power Company for Approval of its Default Service Implementation Plan for the Period of June 1, 2014 through May 31, 2016*, Docket No. P-2013-2371666, Order at 5-6 (Mar. 20, 2014).

[2] *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied*, 529 Pa. 654 (1992) (*Lansberry*).

[3] *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45 (1950).

[4] *Hurley v. Hurley*, 754 A.2d 1283, 1285 (Pa. Super. 2000).

[5] *Id.* at 1286.

which party has the duty to convince the finder-of-fact that a fact has been established.[6] "The burden of persuasion never leaves the party on whom it is originally cast."[7]

Additionally, the Commission's decision must be supported by substantial evidence in the record. Indeed, "the elements of that cause of action [must be] proven with substantial evidence which enables the party asserting the cause of action to prevail, precluding all reasonable inferences to the contrary."[8] More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.[9]

2. Default Service Supply Requirements

Default service is the basic service that Pennsylvania's electric customers are entitled by law to receive if they do not switch to an alternative retail electric generation supplier (EGS), or if their alternative EGS fails to provide them with service.[10] FE PA as the Default Service Provider (DSP) is required to provide electric generation supply service to all of its default service customers through a Commission-approved competitive procurement plan.[11]

By statute, the DSP must offer default supply service "pursuant to a commission-approved competitive procurement plan" through a "prudent mix of contracts" that is designed to ensure the "least cost to customers over time."[12] The DSP must procure generation supply through competitive procurement processes that include one or more of

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[6] *Id.*

[7] *Id.*; *see also Milkie v. Pa. PUC*, 768 A.2d 1217 (Pa. Cmwlth. 2001); *see also Pa. PUC v. Equitable Gas Co.*, 57 Pa. PUC 423, 471 (1983).

[8] *Burleson v. Pa. PUC*, 461 A.2d 1234, 36 (Pa. 1983).

[9] *Norfolk & Western Ry. Co. v. Pa. PUC*, 489 Pa. 109 (1980).

[10] 66 Pa. C.S. § 2807.

[11] *See* 66 Pa. C.S. § 2807(e).

[12] 66 Pa. C.S. § 2807(e)(3.1, 3.4).

the following: auctions, requests for proposals, and bilateral agreements.[13] As part of a procurement plan, the DSP must include a "prudent mix" of power purchases, as follows:

> The electric power procured pursuant to paragraph (3.1) shall include a prudent mix of the following:
>
> (i) Spot market purchases.
> (ii) Short-term contracts.
> (iii) Long-term purchase contracts, entered into as a result of an auction, request for proposal or bilateral contract that is free of undue influence, duress or favoritism, of more than four and not more than 20 years.[14]

The prudent mix of contracts must be designed to achieve certain goals, as follows:

> The prudent mix of contracts entered into pursuant to paragraphs 3.2 and 3.3 shall be designed to ensure:
>
> (i) Adequate and reliable service.
> (ii) The least cost to customers over time.
> (iii) Compliance with the requirements of paragraph (3.1).[15]

A determination of what constitutes "prudent mix" is subject to the Commission's discretion based on the substantive evidence in the record.[16] The Commonwealth Court determined as follows: "[I]n interpreting the term 'prudent mix,' the PUC must exercise some balance and discretion under the circumstances of the case in order for the 'mix' in question to be 'prudent.''[17]

The Commission must evaluate whether the DSP's plan meets the requirements of the Act. The Commission must take several factors into consideration, and must make

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[13] 66 Pa. C.S. § 2807(e)(3.1).

[14] 66 Pa. C.S. § 2807(e)(3.2).

[15] 66 Pa. C.S. § 2807(e)(3.4).

[16] *Popowsky v. Pa. PUC*, 71 A.3d 1112, 1117-1118 (Pa. Cmwlth. 2013) (*Popowsky*).

[17] *Popowsky* at 1117.

specific findings that the default supplier's plan meets the requirements of the Act, as follows:

> (3.7) At the time the commission evaluates the plan and prior to approval, in determining if the default electric service provider's plan obtains generation supply at the least cost, the commission shall consider the default service provider's obligation to provide adequate and reliable service to customers and that the default service provider has obtained a prudent mix of contracts to obtain least cost of a long-term, short-term and spot market basis and shall make specific findings which shall include the following:
>
> (i) The default service provider's plan includes prudent steps necessary to negotiate favorable generation supply contracts.
>
> (ii) The default service provider's plan includes prudent steps necessary to obtain least cost generation supply contracts on a long-term, short-term and spot market basis.
>
> (iii) Neither the default service provider nor its affiliated interest has withheld from the market any generation supply in a manner that violates Federal law.[18]

The Commission has recognized that the "least cost" standard must be considered in conjunction with the statutory requirements that prices be stable, and that service be reliable. The Commission's *Final Rulemaking Order* states:

> Finally, it should be noted that the "least cost over time" standard should not be confused with the notion that default prices will always equal the lowest cost price for power at any particular point in time. In implementing default service standards, Act 129 requires that the Commission be concerned about rate stability as well as other considerations such as ensuring a "prudent mix" of supply and ensuring safe and reliable service. *See* 66 Pa. C.S. §§ 2807(e)(3.2), (3.4) and (7). In our view, a default service plan that meets the "least cost over time" standard in Act 129 should not have, as its singular focus, achieving the absolute lowest cost over the default service plan time frame but, rather, a cost for power that is both

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[18] 66 Pa. C.S. § 2807(e)(3.7).

> adequate and reliable and also economical relative to other options.[19]

As the Commission's *Final Rulemaking Order* makes clear, default service providers must consider price stability and reliability when developing a procurement plan that meets the "least cost over time" standard.

In addition to the foregoing statutory requirements, the Commission has enacted regulations[20] and a Policy Statement[21] addressing default service programs.

3. Settlement

The Commission encourages parties in contested, on-the-record proceedings to settle cases.[22] A settlement, by definition, reflects a compromise of the parties' positions. When active parties in a proceeding reach a settlement, the principal issue for Commission consideration is whether the settlement suits the public interest.[23] When the settling parties submitted their joint settlement petition for approval, the principal issue for the Commission is whether the agreement serves the public interest.[24]

D. Summary of Argument

FE PA's proposal to remove PJM Interconnection, LLC (PJM) charges for Network Integration Transmission Service (NITS) from pricing under the Supplier Master Agreement (SMA), like the treatment of these costs by other EDCs, is reasonable. Similarly, FE PA's proposal to continue using a Capacity Proxy Price (CPP) mechanism

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[19] *Implementation of Act 129 of October 15, 2008: Default Service and Retail Electric Markets*, Docket No. L-2009-2095604, Slip op. at 11-12 (Oct. 4, 2011) (*Final Rulemaking Order*).

[20] *See* 52 Pa. Code §§ 54.181-54.190.

[21] *See* 52 Pa. Code §§ 69.1801-69.1817

[22] *See* 52 Pa. Code § 5.231.

[23] *Pa. PUC v. CS Water and Sewer Associates*, 74 Pa. PUC 767, 711 (1991).

[24] *Pa. PUC v. Philadelphia Electric Company*, 60 Pa. PUC 1, 21 (1985).

in FE PA's auctions in the event PJM does not conduct a base residual auction is appropriate as future PJM capacity prices are uncertain.

FE PA's proposal to classify non-residential default service customers according to their Maximum Registered Peak Load (MRPL) is supported by both record evidence and recent Commonwealth Court precedent. A two-year grandfathering for MRPL is appropriate.

FE PA's Customer Referral Program (CRP) should be discontinued, as proposed by FE PA, as it no longer fulfills any meaningful role in PA's mature competitive retail market and suffers several design flaws. Moreover, FE PA's proposal to return customers to default service at contract expiration is reasonable and in the public interest as there is consumer harm resulting from automatic renewals into supplier contracts. The OCA similarly supports FE PA's proposal to require EGSs to obtain affirmative customer consent on a quarterly basis for residential customers receiving variable rate contracts.

Additionally, the OCA supports FE PA's modifications to its Purchase of Receivables program as FE PA's proposal does not eliminate customer choice. Instead, under FE PA's proposals, residential customers remain free to shop, select any licensed EGS, or remain with their existing supplier simply by affirmatively responding to the required notices.

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

A. Residential Class Default Service Products

Residential class default service has been resolved through the Settlement and is not a contested issue.

B. Responsibility for PJM Charges (including NITS) Under the Supplier Master Agreement

FE PA proposed removing PJM charges for NITS from pricing under the Supplier Master Agreement (SMA), like the treatment of these costs by other EDCs, to facilitate increased supplier participation in auctions.[25] The Company proposed to remove NITS charges from the DSP VII Fixed-Price Full-Requirements (FPFR) products and retain responsibility for those charges, recovering the costs through a bypassable rider charged to default service customers.[26] Although Network Service Peak Loads (NSPL) will continue to be assigned to default service suppliers, FE PA will pay the NITS charges to PJM pursuant to a billing line-item transfer arrangement.[27] This represents a departure from DSP VI, under which suppliers were responsible for NITS charges.[28] The Company contends that shifting NITS responsibility away from suppliers will reduce supplier risk premiums associated with increasing transmission costs and thereby lowering overall costs to customers.[29]

The OCA supports and supported Company's proposal to remove NITS from FPFR contracts because it shifts NITS cost risk from suppliers to customers while eliminating supplier risk premiums tied to uncertain, unhedgeable transmission costs.[30] Customers are better served by paying actual NITS and capacity costs as incurred rather than estimated costs inflated by supplier risk premiums.[31] Historically, NITS was included in FPFR contracts because transmission costs were stable, but increased transmission investment has made those costs significantly more volatile.[32] Several Pennsylvania EDCs have already removed NITS from FPFR products, and the Commission has approved those procurement structures.[33]

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[25] Petition at ¶ 22.

[26] FE PA St. 3 at 5.

[27] *See* OCA St. 1 at 23.

[28] FE PA St. 2 at 16.

[29] *Id*.

[30] OCA St. 1 at 24.

[31] *Id*. at 39; *see also* OCA St. 1SR at 20.

[32] *See* OCA St. 1 at 24.

[33] OCA St. 1SR at 19-20.

RESA witness Lacey challenged the Company's proposal to remove NITS costs from default service contracts, arguing that doing so would undermine the definition of a true FPFR product.[34] According to Mr. Lacey, excluding NITS would allow suppliers to avoid responsibility for a key cost of serving customers, leaving the contracts incomplete and inconsistent with a full-requirements obligation.[35] Mr. Lacey also claimed that creating different types of products makes it harder to fairly compare competitive offers.[36] Mr. Lacey further claimed that removing NITS from the contracts would hurt competition and that default service suppliers should continue including fixed NITS costs in their bids.[37]

OCA witness Ogur explained that Mr. Lacey's assertions incorrectly assume that a contract cannot be considered full requirements unless it includes every PJM billing charge.[38] Dr. Ogur further testified that contracts without NITS costs are still referred to as "full requirements", NITS is a separate transmission cost, and excluding it does not eliminate the supplier's responsibility to serve the required load.[39] Dr. Ogur testified: "These full-requirements contracts typically also include most other (than energy) PJM billing line items and other costs (e.g., distribution losses, AEPS Act compliance), but they do not need to include **all** such costs to be considered full requirements."[40]

The current FE PA's FPFR default service contracts (or SMAs) in DSP VI already exclude certain PJM billing line items these contracts.[41] The excluded PJM billing line items are Transmission Enhancement, Transmission Enhancement Settlement (EL05-121-

[34] RESA St. 1 at 7, 43-44; RESA St. 1R at 30.

[35] *Id*.

[36] *Id.* at 44.

[37] *Id*. at 46-47.

[38] OCA St. 1R at 4.

[39] *Id*. at 4-5.

[40] *Id*. (emphasis added).

[41] *Id*. at 5.

009), Meter Error Correction, Expansion Cost Recovery, and Generation Deactivation.[42] Mr. Lacey agreed in discovery that the current DSP VI contracts are FPFR,[43] and seemingly failed to respond to this argument in surrebuttal. Instead, RESA witness Lacey attempts to reframe the argument by alleging that the key question for the Commission on this point is who should bear this risk and whether the record supports shifting it from knowledgeable market participants to retail customers.[44]

As Dr. Ogur demonstrated in record evidence, the NITS risk still exists under the proposal, "but the risk premium is eliminated when wholesale suppliers do not have to take on the risk. Over time, customers pay the true NITS cost, nothing more or less. Importantly, customers do not have to pay a risk premium in addition to the full NITS cost."[45] Dr. Ogur also demonstrated that adopting the Company's NITS proposal also eliminates unnecessary premiums while preserving recovery of actual costs, resulting in lower expected costs over time for customers.[46] Removal of NITS also reflects current market realities, as increased transmission investment has made NITS costs significantly more volatile than when they were originally included in FPFR contracts.[47] Furthermore, "NITS rates or costs are not hedgeable, so risk managers can only price the risk by including appropriate risk premiums in their fixed price offers."[48]

The Commission has already approved similar procurement structures for other Pennsylvania EDCs, recognizing that removing NITS from FPFR contracts better balances

[42] *Id*.

[43] *See* OCA St. 1SR at 17.

[44] RESA St. 1SR at 26.

[45] OCA St. 1R at 9-10.

[46] *See* OCA St. 1SR at 19-20.

[47] *See* OCA St. 1 at 35.

[48] OCA St. 1R at 10.

least cost and rate stability.[49] The Commission should likewise approve the proposal to remove NITS as it is consistent with prior Commission precedent[50] and results in a more cost-effective default service portfolio for customers, while leaving EGSs to compete through their own products and offerings rather than through an inferior default service design. Removing NITS from default service contracts does not undermine the full-requirements obligation but instead ensures that transmission costs are addressed through an appropriate and transparent mechanism and their request for relief should be denied.

C. Capacity Proxy Price

FE PA proposed to continue using a CPP mechanism in FE PA's auctions in the event PJM does not conduct a base residual auction (BRA), with some revisions to clarify the true-up methodology for the CPP.[51] For capacity, FE PA proposed to continue the use of a CPP in DSP VII. Because future PJM capacity prices are uncertain, the CPP serves as a forward estimate of the BRA outcomes for later delivery years in the terms of the 24- and

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[49] *See Pennsylvania Universal Default Supplier Master Agreement, Duquesne Light Co.* at 102 2025); https://www.duquesnedsp.com/Portals/0/SupplierDocuments/DSP_X_SMA.pdf (previously accessed on July 8, 2026); *PECO Energy Co. Pennsylvania Default Service Supplier Master Agreement* at 104 (Dec. 15, 2025); https://www.pecoprocurement.com/assets/files/1%20DSP%20VI%20RFP%20Rules%20Appendix%201%20-%20Uniform%20SMA_MAR%202026.pdf (previously accessed on July 8, 2026); *Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2025 through May 31, 2029,* Docket No. P-2024-3047290, Joint Petition for Settlement Attach. A at 14, Attach. B at 13 (previously accessed on Aug. 27, 2024).

[50] *See, e.g. Joint Petition of Citizens' Electric Company of Lewisburg, PA and Wellsboro Electric Company for Approval of Default Service Plan and Waiver of Commission Regulations for the Period June 1, 2025 Through May 31, 2029*, Docket No. P-2024-3049357, et al, R.D. at 18 (Dec. 23, 2024).

[51] Petition at ¶ 22.

60-month default service contracts.[52] Prior to the relevant auctions, suppliers will be informed of the CPP so they can account for it in their bids."[53]

RESA witness Lacey opposed the CPP mechanism because it believes the proposal improperly shifts future capacity cost risks from default service suppliers to customers.[54] RESA argues that suppliers are better positioned to manage capacity risk through hedging and long-term planning.[55] According to RESA witness Lacey, allowing suppliers to true-up capacity costs after the fact reduces their incentive to manage those risks and leaves customers responsible for uncertain future costs.[56]

The record is replete with evidence demonstrating that FE PA's CPP proposal is the preferable approach. As Dr. Ogur explained, the CPP mechanism allows suppliers to submit bids using a reasonable proxy capacity price when PJM capacity prices are unavailable, while a subsequent true-up ensures that suppliers recover only their actual capacity costs.[57] Using CPP avoids requiring suppliers to include uncertain capacity costs in their bids, thereby preventing increased customer costs associated with risk premiums, while preserving suppliers' opportunity to secure lower-cost bilateral capacity arrangements.[58] The OCA laid out and then rejected alternatives that would shift capacity costs directly to the Company or shorten FPFR contract terms, concluding those options would increase administrative burdens and/or reduce rate stability.[59] Accordingly, the

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[52] Petition at ¶ 31.

[53] FE PA St. 3 at 5.

[54] RESA St. 1 at 65.

[55] RESA St. 1 at 65.

[56] RESA St. 1 at 65.

[57] OCA St. 1 at 22.

[58] *Id*.

[59] OCA St. 1 at 21-22.

OCA has demonstrated that the Company's CPP proposal is the approach most likely to minimize customer costs while maintaining stable default service rates.[60]

III. CLASSIFICATION OF NON-RESIDENTIAL DEFAULT SERVICE CUSTOMERS

A. Classification of Customers Based on Maximum Registered Peak Load

FE PA proposed that, moving forward, non-residential default service customers with a demand of 100 kW or above or a Maximum Registered Peak Load (MRPL) of 100 kW or above will be classified as "commercial," for default service procurement and provision purposes, and served under the Hourly Pricing Default Service Rider (HP Rider).[61] Default service customers with a demand below 100 kW and MRPL below 100 kW would be served under the PTC Rider.[62] FE PA proposes to define MRPL as: "A customer's net demand contribution impact to the Company's default service procurement activity, as determined upon the net power flow from or into the Company's distribution or transmission system. As related to customer-generators, this shall also be inclusive of the nameplate capacity of the generation system."[63]

JSA and CGC argue against FE PA's MRPL proposal because they feel that it does not account for societal benefits[64], as discussed more in Section (C)(4) below. However, as demonstrated throughout this brief, the OCA has shown that the record contains substantial evidence supporting FE PA's MRPL proposal as a reasonable measure that advances the interests of customers and the public.

B. Projections of Customer-Generator Growth

The OCA responds to CGC's arguments related to projections of customer-generator growth in Section III.C.2, below.

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[60] *See* OCA St. 1 at 22.

[61] Petition at ¶ 32.

[62] *Id*.

[63] FE PA Exh. DMY-6 at 1.

[64] JSA St. 1 40-51; CGC St. 1 at 22.

C. Costs and Benefits of Customer-Generators

1. PTC Rider vs. HP Rider

FE PA witness Young testified that FE PA's proposed methodology for implementing its MRPL proposal includes both demand and supply impacts to ensure that large customer-generators are grouped with other large customers for default supply procurement purposes.[65] Mr. Young explained that net metering generation projects are typically utility scale (between 1 MW and 3 MW).[66] He also testified that FE PA does not use excess energy from net-metered customer generators as supply to serve default service load.[67] Rather, the Company financially recognizes the excess energy from intermittent net-metered customer generators as an aggregate reduction of the load served by winning bidders in the Company's default service auctions.[68]

Through Mr. Young's testimony, the Company explained two benefits of classifying default service customers based on both demand and MRPL. First, adopting FE PA's proposal would avoid the risks associated with reduced load for commercial customers on the PTC Rider.[69] Second, adopting the proposal would help prevent large customer-generators from being subsidized by smaller commercial customers.[70] Because the costs the Company incurs to purchase excess net-metered electricity are recovered from other customers within the same rate class, separating large customer-generators reduces the potential for smaller commercial retail customers to bear costs attributable to larger customers.[71]

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[65] FE PA St. 1 at 17.

[66] *Id*.

[67] *Id*.

[68] *Id*.

[69] *Id*.

[70] *Id*.

[71] *Id*.

While JSA and CGC oppose the Company's proposal to transition net-metered customer-generators from the Commercial Class to the Industrial Class, JSA's argument is primarily based on its proposed grandfathering treatment for existing customer-generators.[72] The OCA addresses and refutes that grandfathering proposal in Section III.E, below. CGC's argument is primarily rooted in its request for credits in the form of negative peak load contributions (negative PLCs) and the OCA addresses and refutes the negative PLC proposal in Section III.C.3, below.

The OCA agrees with FE PA. OCA witness Ogur testified that differences in compensation between the HP Rider and the PTC Rider do not reflect unequal treatment; rather, they appropriately reflect the different procurement costs and risk characteristics of the customer classes.[73] Because large customer-generators share the same load profile and wholesale procurement characteristics as industrial customers, compensating them under the HP Rider as proposed will ensure they are treated consistently with similarly situated customers and aligns compensation with the Company's actual cost of providing default service.[74]

CGC also expressed concern that moving large customer-generators from the PTC Rider to the HP Rider could result in different compensation levels for exported energy.[75] However, Dr. Ogur demonstrated that this concern is speculative as both the PTC Rider and HP Rider recover the same underlying categories of default service costs.[76] Again, any difference in the resulting PTC rates is not due to unequal treatment, but rather due to

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[72] JSA St. 1 at 65-66.

[73] OCA St. 1R at 21.

[74] *Id.*; *see also Petition of UGI Utilities, Inc – Electric Division for Approval of a Default Service Plan for the period of June 1, 2025 through May 31, 2029*, Docket No. P-2024-3049343, Order at 54 (Feb. 20, 2025).

[75] CGC St. 1 at 5.

[76] OCA St. 1R at 21.

differences in how supply is procured for each customer class and the unique risk characteristics associated with serving each class.[77]

The OCA supports the FE PA's proposal recognizing that the Commission's definition of MRPL is intended to identify customers based on their impact on default service procurement and associated costs. Although 52 Pa. Code Section 54.182 defines MRPL as the highest level of demand for a customer based on the PJM Interconnection, LLC Peak Load Contribution Standard, or its equivalent, the regulation also permits further definition through the applicable EDC tariff. Consistent with this framework, the OCA recognizes that large customer-generators may warrant treatment like industrial customers where their procurement characteristics, load impacts, and associated risks are comparable.

Because large customer-generators can introduce uncertainty into default service load requirements and create procurement risks that differ from smaller commercial customers, applying the HP Rider to these customers ensures that compensation more accurately reflects the Company's costs of serving them.[78] The Company's proposal therefore aligns HP Rider eligibility with the customers' actual impact on default service procurement and promotes more equitable allocation of costs among similarly situated customers, and the Commission should adopt the Company's proposal.

2. Risk Premiums

FE PA supports its MRPL proposal, in part, because it is justifiably concerned that uncertainty in customer-generation creates an additional risk premium that default supply bidders build into their bids that is paid by default service customers.[79] Both the CGC and JSA oppose the proposal, with the CGC raising the most voluminous objections regarding

[77] *Id*.

[78] OCA St. 1SR at 30

[79] FE PA St. 1 at 17.

risk premiums.[80] CGC's argument focuses primarily on the fact that the parties have not quantified the risk premiums.[81] However, this argument fails.

Dr. Ogur testified that even though the switching risk premium has not been calculated or assigned a specific dollar amount, that does not prove the risk "is zero."[82] Suppliers may still face some uncertainty because net-metering customer-generators could change their behavior, such as leaving or returning to default service.[83] Dr. Ogur also noted that even CGC's witness did not say the risk completely does not exist, only that it could not be quantified.[84] Dr. Ogur further noted that even CGC's witness did not dispute the existence of the risk, but instead testified only that the risk could not be quantified.[85] The inability to precisely quantify a risk does not eliminate its existence or make it irrelevant for ratemaking purposes. Because the risk remains real and can affect procurement costs, it should be considered when evaluating the costs associated with customer-generators. The Commission should not disregard or minimize a known risk simply because it cannot be measured with exact precision.

Dr. Ogur testified that even when large customer-generators remain on default service, they continue to create significant volumetric risk for FPFR suppliers due to ongoing uncertainty regarding the level and timing of their on-site generation.[86] Factors such as generator outages, changes in output, and variability in the in-service dates of projects in the interconnection queue make it difficult for suppliers to accurately forecast how much electricity these large customer-generator customers will draw from the grid

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[80] CGC St. 1 at 22; JSA St. 1 at 7.

[81] CGC St. 1 at 10.

[82] Tr. 171.

[83] *Id*.

[84] *Id*.

[85] *Id*.

[86] *Id*.; *see also* FE PA St. 1 at 17.

over the term of the contract.[87] This uncertainty increases risk for suppliers, similar to switching risk, because it directly affects the expected load they must serve.[88] Thus, in response, suppliers are likely to incorporate additional risk premiums into their bids to account for this unpredictability, or alternatively may reduce their participation in FPFR auctions altogether.[89] Either outcome would result in higher Price to Compare rates and/or greater rate volatility for smaller commercial customers, who ultimately bear the cost of this uncertainty.[90]

The OCA demonstrated throughout this record, through multiple lines of analysis, that the Commission should adopt FE PA's MRPL proposal.[91] In this context, the OCA demonstrated that including large customer-generators in the small commercial procurement group would increase costs and risks for small commercial default service customers.[92] Dr. Ogur testified that large customer-generators introduce both switching risk and volumetric risk into FPFR procurements.[93] These risks would likely cause FPFR suppliers to include higher risk premiums in their bids or reduce participation in the auctions, resulting in higher and/or more volatile PTC rates for small commercial customers.[94] Additionally, large customer-generators would receive the higher PTC rates for their exported generation, causing those increased costs to be recovered from the broader small commercial customer class.[95] By assigning large customer-generators to the

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87 *Id*.

88 *Id*.

89 *Id*.

90 *Id*.

91 *See* OCA St. 1 at 37-41; OCA St. 1R at 15-24; OCA St. 1SR at 28-39; Tr. 164-172.

92 OCA St. 1 at 39.

93 OCA St. 1 at 38.

94 *Id*. at 38-39.

95 *Id*.

appropriate procurement group, the MRPL proposal better aligns procurement costs and risks with the customers that create them and the Commission should adopt this proposal.

The Commission should also approve the Company's MRPL proposal because the record demonstrates that it will address future procurement risks associated with customer-generators. As Dr. Ogur explained during the evidentiary hearing, even if certain large net-metered customer-generators do not currently exist within the customer class, additional customer-generators are coming online in the future.[96] The potential growth of these resources creates ongoing uncertainty regarding default service load and reinforces the need for an MRPL methodology that accounts for the associated risks and mitigates the risk premiums that suppliers may otherwise include in their bids.[97] OCA witness Ogur testified: "Like just to give magnitude, I believe there are companies said there are 14 net metering customers right now. The Company said there are 1,555 applications."[98]

The 1,555 pending applications for new generation further demonstrate that the volumetric risks identified by the OCA are not speculative and represent a growing challenge for default service procurement.[99] As additional distributed generation resources are interconnected, suppliers face increasing uncertainty regarding the amount and timing of customer load that will remain on default service.[100] This uncertainty affects suppliers' ability to accurately forecast load requirements and manage procurement risk, particularly where generation output may vary based on system conditions, operational status, and the timing of new projects entering service.[101]

The continued growth of customer generation therefore reinforces the need for a procurement structure that appropriately accounts for these risks and avoids imposing

[96] Tr. 166.

[97] Tr. 166.

[98] Tr. 166; *see also* OCA St. 1 at 38-39.

[99] OCA St. 1 at 38-39.

[100] *Id*.

[101] *Id*.

additional risk premiums on smaller commercial default service customers. Substantial evidence supports approval of the FE PA's MRPL proposal because it provides a mechanism to appropriately address these procurement risks and ensure that costs are allocated among customers in a manner consistent with their impact on default service requirements.

3. Negative Peak Load Contribution and Negative Network Service Peak Load Contribution

JSA witness Michelman recommended that FE PA modify how it calculates customer peak loads used to determine generation capacity and transmission cost allocation by allowing customers to register "negative loads" as a result of the excess generation they produce; and applying the cost savings of those negative loads to reduce the allocation of the relevant costs to the default service class in which the customer-generator is assigned.[102] JSA witness Michelman supported this recommendation by mentioning that the Federal Energy Regulatory Commission (FERC) allowed it for a utility's wholesale tariff in Illinois.[103]

However, FE PA provided significant counter evidence to this proposal. FE PA witness Hussing disagreed with Mr. Michelman's proposal to assign negative PLCs to customer-generators for three reasons. First, FE PA witness Hussing explains that PLC is a cost allocation mechanism used to assign each customer a share of system capacity costs.[104] He asserts that allowing a customer-generator's PLC to be reduced through a negative PLC would shift those costs to other customers, presumably non-customer-generators within the same customer class.[105] FE PA witness Hussing also explains that JSA's proposed negative PLC methodology improperly assumes that customer-generators will provide capacity benefits during future peak events without requiring any obligation

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[102] JSA St. 1 at 5, 20.

[103] *Id*. at 20.

[104] *See* OCA St. 1SR at 32-33.

[105] FE PA St. 6R at 5.

to perform.[106] Because customer-generators are not required to produce during the PJM peak periods used for capacity allocation, the Company contends that assigning a negative PLC would provide an unguaranteed benefit and shift capacity costs to other customers when expected generation does not materialize.[107] Lastly, while customer-generators may receive a benefit and the utility's overall position in PJM may improve relative to other utilities, the cost of that benefit is borne by other customers within the same rate district should a negative PLC be adopted.[108]

The OCA also disagrees with JSA's proposal to assign negative PLCs and NSPLs to customer-generators because JSA assumes that these negative values accurately represent the capacity and transmission benefits provided by customer generation.[109] OCA witness Ogur recognized that, if a customer-generator's negative PLC and negative NSPL reliably reflect actual capacity and transmission benefits, compensation based on those values *could* align payments with the value provided.[110] However, the OCA witness Ogur agreed with the Company in that JSA's proposal does not adequately account for whether customer-generators will actually provide those benefits during PJM peak capacity and transmission conditions.[111] Dr. Ogur warned that, without a requirement that customer-generators perform during the relevant peak periods, customer-generators could receive compensation for capacity and transmission benefits even when they produce little or no electricity when those benefits are needed.[112]

The OCA maintains that the Commission should deny JSA's request because it relies on speculative assumptions regarding the availability and performance of customer-

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[106] *Id*.

[107] *Id*.; *see also* OCA St. 1SR at 32-37.

[108] *Id*.

[109] OCA St. 1SR at 37.

[110] *Id*.

[111] *Id*.

[112] *Id*.

generators during peak conditions. As the OCA and FE PA have demonstrated, customer-generators may not produce electricity during the critical capacity and transmission peak periods necessary to provide the claimed benefits. Accordingly, the Commission should not adopt a compensation mechanism that assigns value based on uncertain benefits that may not materialize.

Alternatively, if the Commission determines that customer-generators should be assigned negative PLCs and NSPLs, it should adopt the OCA's proposed alternative methodology for calculating the corresponding capacity and transmission compensation.[113] Any corresponding capacity and transmission compensation should be based on each customer-generator's individual negative PLCs and NSPLs, rather than the average capacity and transmission costs applicable to the customer's class.[114] If the Commission accepts the premise that negative PLCs and NSPLs reflect a customer-generator's capacity and transmission value, which the OCA is not suggesting here, then compensation should be limited to that customer's actual demonstrated contribution, rather than class-average values, which could overcompensate customers whose generation provides little or no measurable benefit during peak load conditions.

4. Other Costs and Benefits

In a default service proceeding, default service pricing, including both the HP Rider and PTC Rider, is designed to recover the costs of providing electric generation service and does not separately compensate customer-generators for asserted external benefits such as reduced market prices, public health impacts, decarbonization, distribution system investment, or broader economic effects.[115] CGC's argument that the HP Rider, as proposed, fails to compensate customer-generators for certain asserted benefits, including reduced market prices, public health benefits, decarbonization, distribution system investments, and broader economic benefits, is misplaced and irrelevant in the context of

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[113] *See* OCA St. 1SR at 36-37.

[114] *Id*.

[115] *See* 52 Pa. Code § 54.187(e).

this case.[116] JSA similarly argues that the Company's MRPL proposal does not account for the societal benefits of solar energy.[117]

However this issue as it pertains to this proceeding is whether the MRPL methodology appropriately classifies customer-generators for default service procurement purposes, not whether customer-generators should receive compensation for categories of benefits that are outside the scope of both relevant riders.[118] These benefits, to the extent recognized at all, are addressed through appropriated public policy tools such as legislative programs, tax incentives, and market-based credit mechanisms, rather than through utility ratemaking mechanisms within default service proceedings.

The record also fails to support the CGC's assertion that the Company's MRPL proposal will discourage investment in sustainable energy resources.[119] The proposal is not intended to limit the development of customer generation or alter the availability of renewable energy opportunities; rather and as discussed herein, it addresses the appropriate allocation of costs and procurement risks associated with larger customer-generators. The evidence demonstrates that the Company's proposal is focused on ensuring that rates accurately reflect the costs and risks created by different customer classes, not on other policy-based issues.[120] Aligning compensation and cost responsibility with actual procurement impacts promotes a fair and sustainable framework for integrating customer generation while protecting other customers from bearing costs that are not attributable to their usage and the Company's proposal should therefore be adopted.

D. Compliance with Applicable Laws and Regulations

FE PA's approach to classification of non-residential default service customers is consistent with Commission precedent approving similar rate classifications that reflect

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[116] OCA St. 1R at 22.

[117] JSA St. 1 40-51.

[118] OCA St. 1R at 22.

[119] CGC St. 1 at 22.

[120] *See e.g.* FE PA St. 1R at 20.

both the demand and supply impact of customer-generators on default service cost allocation and procurement. Moreover, the MRPL proposal as outlined in this case is remarkably similar to the Supply Peak Load Impact (SPLI)[121] proposal as recently affirmed by the Commonwealth Court only a few months ago.[122] Specifically, UGI Electric proposed to classify customers for default service procurement based on their System Peak Load Impact (SPLI), measured by their net demand contribution to the distribution system.[123] Under this approach, customers with an SPLI of 100 kW or more, including both large load customers and large net-metered customer-generators, would be placed in the GSR-2 class to align similarly situated customers and avoid cost impacts on smaller customers.[124]

The Commonwealth Court explained that the Commission has established a regulatory framework for compensating customer-generators through net metering, which does not match nor include the "benefits" as laid out by CGC and JSA in this instant proceeding.[125] First, utilities must credit customer-generators for any net electricity they produce during a billing period at the full retail rate, which includes generation, transmission, and distribution components.[126] Second, any excess electricity generated beyond the customer's usage in a billing period is carried forward as a credit at the same full retail rate, which may then be used to offset future periods when the customer's usage exceeds its generation.[127] Finally, if any credit remains unused at the end of the year, the EDC must pay the customer-generator for it at the provider's price-to-compare (PTC)

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[121] SPLI is the equivalent of MRPL in FE PA's Petition. *See* OCA St. 1R at 23.

[122] *Penn Renewables, LLC v. PUC*, 2026 Pa. Commw. LEXIS 88, (Pa. Cmwlth. Mar. 13, 2026) (*Penn Renewables*).

[123] *Penn Renewables* at *5.

[124] *Id*. at *3-5.

[125] *See Id*. at *10.

[126] *Id*. at *10-11 *citing* 52 Pa. C.S. § 75.13(d).

[127] *Id*. at *11.

rate.[128] According to the Commonwealth Court, these regulations provide clear guidance on net metering by explaining how excess generation is measured, credited, and ultimately compensated at the full retail rate on an annual basis, consistent with the AEPS Act.[129]

In *Penn Renewables*, the Commonwealth Court upheld the Commission's determination that the record supported compliance with the AEPS Act where there was no dispute that the applicable default service rate constituted the full retail rate for purposes of the analysis.[130] The Commonwealth Court generally understood a "full retail rate" in the AEPS context to reflect a bundled rate encompassing the costs of generation, transmission, and distribution service provided to retail customers.[131]

Accordingly, the presence or absence of any single component within a particular ratemaking construct does not, by itself, determine AEPS compliance; rather, the inquiry turns on whether the rate, as designed and applied in the record, reflects the full retail value of electric service.[132] Here, consistent with that framework, the relevant DSP pricing structure remains a bundled retail rate intended to recover the costs of providing default service, and thus satisfies the statutory requirement under the AEPS Act.

Additionally, the Customer Choice Act establishes a competitive retail electric market, but Pennsylvania courts have made clear that it does not require "unbridled" or absolute competition.[133] Accordingly, the Commission should approve the Company's

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[128] *Id*. at *11-12.

[129] *Id*.

[130] *Id*.

[131] *Id*.

[132] *See Id.*

[133] *See Retail Energy Supply Ass'n v. Pa. PUC*, 185 A.3d 1206, 1221 (Pa. Cmwlth. 2018) and *Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. et al. v. Pa. PUC*, 120 A.3d 1087, 1093, 1103 (Pa. Cmwlth. 2015), app. den., 136 A.3d 982 (Pa. 2016); 66 Pa. C.S. § 2801, *et seq*.

MRPL proposal as a reasonable exercise of the authority granted to the Company to further define MRPL through its tariff.

Implementing MRPL fits within this same "permissible structuring of competition" framework because it is a method for managing how customers are grouped for procurement in a way that reduces distortions and protects consumers from cost shifts created by market variability, as explained in the *Penn Renewables* case as well.[134] By more accurately distinguishing large customer-generators from traditional commercial load based on their net demand characteristics, MRPL helps ensure that customers with fundamentally different usage and export patterns are not treated as interchangeable for default service procurement purposes.[135]

The Commonwealth Court, in its discussion regarding the UGI DSP V GSR-2 rate and the underlying SPLI-based classification found that the SPLI as proposed "will provide customers with the least cost over time by ensuring that price and supply volatility driven by large customer-generators with higher SPLIs does not flow through into rates for residential customers and smaller commercial and industrial customers."[136] By more precisely separating customers based on their net demand characteristics, the Commonwealth Court reasoned that the proposed SPLI classification serves as an important consumer safeguard within the Commission's broader authority to structure competitive procurement.[137] It helps prevent avoidable risk premiums and unintended cost shifts, while promoting stable, least-cost default service outcomes consistent with the public interest.[138] Thus, as the MRPL is factually similar to the SPLI in the *Penn Renewables* case, the Commission should find that the Settlement terms as to MRPL are

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[134] *Penn Renewables* at *13-14.

[135] *Id*. at *3-5; *See also* OCA St. 1SR at 29-31.

[136] *Id*.

[137] *Id*.

[138] *Id*.

also promoting stable, least-cost default service outcomes consistent with the public interest in the instant matter.

RESA argues in a similar fashion here. RESA witness Lacey also contends that the FPFR contracts proposed by FE PA are not aligned with the Act 129 requirements for such contracts.[139] According to Mr. Lacey, FPFR contracts as proposed by the Company are not for full-requirements service.[140] The OCA responds to the argument of FPFR above in Section (B), above. Mr. Lacey also claims that FE PA's proposed default service portfolio is anti-competitive because it disadvantages offerings of electric generation suppliers relative to default service.[141] The OCA addresses this argument above by explaining how the Commonwealth Court has interpreted the Customer Choice Act in cases involving similar issues.

E. Grandfathering Proposals

FE PA proposed to grandfather existing net-metered customer-generators that were online before the start of DSP VII by exempting them from annual MRPL reclassification until June 1, 2029, thereby allowing those customers to remain under their existing classification for a limited transition period before the new methodology would apply.[142] JSA counters this proposal with a grandfathering mechanism that would allow existing and sufficiently advanced customer-generation projects to remain on the Commercial PTC Rider rather than being subject to the Company's proposed MRPL reclassification.[143] JSA further requests that operational projects or projects that have submitted a Certificate of Completion by June 1, 2027 would continue to receive the full Commercial PTC Rider rate for excess generation for 25 years.[144] JSA also proposes that pre-construction projects that

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[139] RESA St. 1 at 4.

[140] RESA St. 1 at 44.

[141] RESA St. 1 at 44.

[142] FE PA St. 1 at 19.

[143] JSA St. 1 at 65-66.

[144] *Id*.

have achieved specified development milestones by that date would also remain on the Commercial PTC Rider but would receive 90% of the PTC Rider rate for excess generation for a 15-year period.[145]

Dr. Ogur demonstrated that both the 25-year grandfathering for completed projects and the 15-year grandfathering for pre-construction projects, even at 90 percent of commercial PTC, are simply excessive.[146] Dr. Ogur explained that in UGI Electric's most recent DSP proceeding, the Commission determined that residential and small commercial customers will pay higher default service rates caused by and for the benefit of large customer-generators in the absence of System Peak Load Impact, which is the equivalent of MRPL in FE PA's Petition.[147,148] In the same case, the Commission also determined that including customers with large on-site generators attached to their loads in the same default service procurement and rate group as residential customers would also result in unreasonable subsidization by the residential customers.[149] The reasoning for residential customers also, then, applies to small commercial customers.[150]

The OCA demonstrated that grandfathering these arrangements for an additional 15 or 25 years would unnecessarily prolong the inequitable cost shift from large customer-generators to small commercial customers. The record establishes that large customer-generators create distinct procurement risks and costs that are not shared by similarly situated small commercial customers.[151] Continuing to recover those costs through the

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[145] *Id*.

[146] OCA St. 1R at 23-24.

[147] OCA St. 1R at 23.

[148] *Petition of UGI Utilities, Inc – Electric Division for Approval of a Default Service Plan for the period of June 1, 2025 through May 31, 2029*, P-2024-3049343, Order at 54 (Feb. 20, 2025).

[149] *Id*.

[150] OCA St. 1R at 23-24.

[151] *Id.;* FE PA St. 1R at 23-24.

Commercial PTC Rider would perpetuate an unreasonable subsidy in which small commercial customers bear costs associated with the benefits received by large customer-generators. Accordingly, the Commission should reject JSA's proposed grandfathering provisions and ensure that customer classifications and cost recovery mechanisms accurately reflect the costs and risks associated with serving each customer group.

Dr. Ogur recognized that *some* transition period may be appropriate to account for existing customer-generators that made investments based on the regulatory framework and compensation structure in place at the time of their investment.[152] At the same time, though, he acknowledged the need to protect small commercial customers from continued cost shifting and subsidization associated with large customer-generators.[153] Dr. Ogur, however, warned that extending grandfathering for an extended period would also prolong the very cost allocation concerns the FE PA's MRPL proposal is intended to address.[154] Thus, the Company's two-year grandfathering proposal appropriately balances these interests by providing existing customer-generators with a limited transition period while ensuring that the Commission moves toward a procurement and rate structure that more accurately reflects customer impacts, costs, and risks, and should be so adopted.

IV. <u>RATE DESIGN AND COST RECOVERY</u>

A. Price to Compare Default Service Rate Rider

The PTC Default Service Rate Rider has been resolved through the Settlement and is not a contested issue in this proceeding.[155]

B. Hourly Pricing Default Service Rider

As discussed above, OCA witness Ogur supported FE PA's MRPL proposal.[156] Inclusion of large customer-generators in the commercial customer procurement group

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[152] *Id*.

[153] *Id*.

[154] *Id*.

[155] *See* OCA Statement in Support at 49-54.

[156] OCA St. 1 at 40.

would bundle small commercial customers with more sophisticated large customer-generators in the same FPFR contract procurements.[157] OCA witness Ogur testified that this would negatively affect small commercial default service customers in two ways as follows:

> First, because the more sophisticated, large customer-generators would entail higher switching risk for the FPFR suppliers, the FPFR suppliers would either build larger risk premiums into their FPFR contract bids or shy away from participating in the FPFR auctions. This would have the likely effect of higher PTCs and/or more volatile rates for small commercial customers due to the inclusion of large customer-generators in the small commercial procurement group. In addition, large customer-generators would receive the higher PTC, which would have been inflated simply by their mere participation and switching risk, for their exports, which in turn would be recovered from all small commercial default service customers, most of which are small commercial customers.
> …
> Second, even the large customer-generators that stay on default service constitute volumetric risk for FPFR suppliers because of the uncertainty surrounding the level and profile of on-site generation (e.g., outages, in-service dates of on-site generators that are in FE PA's distribution interconnection queue). Similar to switching risk, this volumetric risk would prompt the FPFR suppliers to either build larger risk premiums into their FPFR contract bids or shy away from participating in the FPFR auctions, resulting in higher PTCs and/or more volatile rates for small commercial customers.[158]

CGC opposed FE PA's MRPL proposal claiming that it would reduce compensation that net-metered customer-generators would be entitled to for their exported energy.[159] CGC also claimed that the HP Rider does not properly compensate customer-generators because it only addresses electric energy, electric capacity, reduced system losses, and reduced transmission costs, but not other benefits customer-generators provide such as

[157] OCA St. 1 at 38.

[158] OCA St. 1 at 38-40.

[159] CGC St. 1 at 5.

market electric price reductions, health benefits, decarbonized energy, investments in the distribution system, and state economic benefits.[160]

These concerns, however, are unsubstantiated because the PTC Rider and the HP Rider include the same cost components.[161] OCA witness Ogur testified that:

> Commercial customer PTCs (under the PTC Rider) would only differ (positively or negatively) from industrial customer PTCs (under the HP Rider) because of the way in which individual cost components are procured by the Company for each customer class as well as the unique load and (switching and usage) risk characteristics of each customer class. Therefore, regardless of whether compensation for customer-generators' exported energy is smaller or larger, or more or less volatile, under the HP Rider than under the PTC Rider, that is the fair outcome because large customer-generators belong in the same default service procurement group as the industrial customers in terms of sophistication and risk profile for wholesale suppliers of FPFR contracts as affirmed by the UGI Electric DSP case (Docket No. P-2024-3049343).[162]

Accordingly, since both the PTC Rider and the HP Rider capture the same set of benefits customer-generators provide, as claimed by the CGC, CGC witness Heidell's assertion that the HP Rider fails to appropriately compensate customer-generators is inconsistent.[163]

V. <u>CUSTOMER REFERRAL PROGRAM</u>

The Commission should approve FE PA's proposal to discontinue FE PA's CRP, and decline to implement a successor program during DSP VII.[164] FE PA's proposal to end the CRP recognizes the demonstrated failure of FE PA's CRP in providing meaningful benefits to residential customers while eliminating an unnecessary subsidy for EGSs.[165] As

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[160] *Id.* at 13.

[161] OCA St. 1R at 21.

[162] *Id.*

[163] *Id.* at 22.

[164] OCA St. 2 at 3.

[165] OCA St. 2 at 5-6.

the record demonstrates, the CRP has experienced declining supplier participation, minimal customer enrollment, and persistent consumer protection concerns.[166]

The record further demonstrates that the CRP no longer fulfills any meaningful role in Pennsylvania's mature competitive retail market. FE PA determined that supplier participation has declined dramatically, with participation decreasing by more than fifty percent in three rate districts and disappearing entirely in the Penelec rate district.[167] Moreover, only 10,367 residential customers currently participate in the program which accounts for only approximately three percent of eligible residential customers.[168]

The OCA consistently supported discontinuation of FE PA's CRP because the program fails to deliver the consumer benefits it promises and instead primarily benefits participating EGSs.[169] As the OCA explained in the DSP VI proceeding, the retail electric market has now existed for well over a decade, eliminating any legitimate need for the EDC to serve as the marketing arm of competitive suppliers.[170] Rather than encouraging informed customer choice, the CRP uses the EDC's relationship with its customers to promote supplier contracts that frequently do not provide lasting savings.[171]

As OCA witness Barbara Alexander explained, the CRP suffers from several fundamental design flaws that have been documented repeatedly in FE PA and other DSP proceedings.[172] First, although the program advertises a seven percent discount from the

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[166] *Id.* at 5-8.

[167] FE PA St. 4 at 11.

[168] *Id.*

[169] OCA St. 2 at 5-6 *citing Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company, and West Penn Power Company, for Approval of Their Default Service Programs*, Docket Nos. P-2021-3030012 et al., OCA Statement in Support of Settlement at 10-11 (May 6, 2022).

[170] *Id.*

[171] *Id.*

[172] OCA St. 2 at 6-7.

PTC, that discount is calculated using the PTC in effect at the time of enrollment, even though the PTC changes quarterly.[173] Consequently, if the PTC decreases during the twelve-month contract term, which may occur as soon as one month after enrollment, the customer receives a significantly smaller discount than advertised or may actually pay more than the applicable PTC.[174] Second, EGSs retain complete discretion over whether and when to participate in the program.[175] Suppliers may decline to participate during periods when rising wholesale prices make it difficult to offer rates below the PTC, thereby participating only when it is financially advantageous to do so.[176] Third, once the initial contract expires, many participating suppliers retain customers through negative-option renewal notices, under which customers are automatically enrolled in new contract terms unless they affirmatively act to return to default service or switch suppliers.[177] As a result, customers frequently transition into contracts with generation prices exceeding the PTC without making an affirmative choice to do so.[178]

These structural flaws explain why the CRP has produced little consumer value despite years of operation. The program creates the appearance of guaranteed savings while exposing customers to higher prices after enrollment and allowing suppliers to capitalize on customer inaction through automatic renewals.[179] Accordingly, the CRP functions less as a consumer savings program than as an EDC-sponsored marketing mechanism that benefits participating suppliers.[180]

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[173] *Id.*

[174] *Id.*

[175] OCA St. 2R at 6-7.

[176] *Id.*

[177] *Id.*

[178] *Id.*

[179] *Id.* at 7.

[180] *Id.* at 6.

RESA nevertheless urges the Commission to continue the CRP, arguing that discontinuing the program would eliminate valuable discounts offered by EGSs and that communications to customers about the program should be reviewed and revised.[181] RESA further argues that the participation data demonstrates the program's success because thousands of customers are enrolled in the CRP and relatively few customers terminated their contracts early or entered renewal contracts priced above the PTC.[182]

The Commission should reject RESA's arguments because they focus on the benefits available at the time of enrollment while ignoring the fundamental structural flaws identified by the OCA.[183] As OCA witness Barbara Alexander explained, the CRP does not guarantee that customers will continue paying less than default service throughout the twelve-month contract term.[184] Accordingly, if the PTC subsequently decreases, the customer's savings may diminish or disappear altogether.[185] Although RESA emphasizes that customers may terminate the contract without penalty, that argument merely confirms the burden placed on customers.[186] Residential customers must monitor changes to the PTC, recognize when the CRP is no longer advantageous, and affirmatively switch suppliers or return to default service to avoid paying more than necessary. The Commission should not conclude that this burden represents sound consumer protection simply because customers are permitted to exit the contract.

Additionally, RESA's reliance on enrollment statistics does not establish that the CRP should be continued.[187] Even assuming that many participating customers realized savings during their initial contract terms, those figures do not demonstrate that the

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[181] RESA St. 1 at 61.

[182] RESA St. 1R at 25-26.

[183] OCA St. 2 at 6-7; OCA St. 2R at 6-7.

[184] OCA St. 2 at 6-7.

[185] *Id.*

[186] RESA St. 1R at 25.

[187] *Id.* at 25-26.

Company should continue using its resources and customer relationships to market competitive suppliers.[188] Pennsylvania's retail electric market is now well established.[189] Suppliers remain free to advertise, market, and enroll customers independently, and customers remain free to shop for competitive generation at any time.[190]

FE PA appropriately balances the interests of customers and the competitive market by discontinuing a program that has outlived its usefulness while preserving every supplier's ability to compete. It protects consumers from misleading discount claims and automatic renewals into potentially higher-priced contracts, avoids the costs of maintaining or replacing an ineffective program, and recognizes that Pennsylvania's mature competitive market no longer requires EDCs to serve as marketing agents for unregulated suppliers.[191] The Commission should conclude that discontinuing the CRP is in the public interest.

VI. SUPPLIER COORDINATION TARIFF CHANGES AND RETAIL SHOPPING ISSUES

A. Return of Customers to Default Service at Contract Expiration

The Commission should adopt FE PA's proposal to require that residential customers entering into new EGS contracts after June 1, 2027, be returned to default service upon expiration of their fixed-term contract unless they affirmatively elect to remain with their current supplier or enroll with another supplier.[192] To implement this reform, FE PA also appropriately requests a waiver of 52 Pa. Code Section 54.10(3), which currently permits automatic renewal of an expired fixed-term contract into a month-to-month or another fixed-term contract absent customer action.[193] This reform addresses

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188 OCA St. 2R at 6-7

189 OCA St. 2 at 5.

190 *Id.*

191 *Id.* at 5-8; OCA St. 2R at 6-7.

192 Petition at ¶ 51.

193 *Id.* at ¶¶ 51-52.

documented affordability concerns while preserving customer choice and is plainly in the public interest.

RESA and Town Square oppose this proposal, arguing that returning customers to default service will undermine the competitive retail market and Commission rules.[194] According to Town Square and RESA, customers should instead remain with their existing supplier through automatic renewals unless they affirmatively choose otherwise.[195]

The Commission should reject Town Square and RESA's arguments because they ignore the substantial evidence demonstrating consumer harm resulting from automatic renewals into supplier contracts.[196] As OCA witness Barbara Alexander demonstrated, residential shopping customers paid approximately $82 million more than they would have paid under default service in 2025 alone, and nearly $395 million more between January 2022 and January 2026.[197] Those higher prices have contributed to increased customer arrearages, uncollectable expense, and other affordability challenges for essential electric service.[198]

FE PA's DSP directly addresses the source of that harm. Under the current regulatory framework, customers who fail to respond to expiration notices are automatically renewed into new supplier contracts, frequently on variable-rate products with pricing determined solely by the supplier.[199] Customers therefore remain exposed to volatile wholesale prices without ever affirmatively agreeing to those new terms.[200] By requiring affirmative customer action before a customer remains with an EGS following

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194 Town Square St. 1 at 18-19; RESA St. 1 at 14-19.

195 *Id.*

196 OCA St. 2 at 9-10.

197 *Id.*

198 *Id.*

199 OCA St. 2R at 10-12.

200 *Id.*

expiration of a fixed-term contract, FE PA's proposal ensures that customers knowingly choose to leave the protection of Commission-approved default service.[201]

Contrary to RESA's assertions, FE PA's proposal does not eliminate customer choice.[202] Residential customers remain free to shop, select any licensed EGS, or remain with their existing supplier simply by affirmatively responding to the required notices.[203] The only customers returned to default service are those who do nothing.[204]

Default service itself is not a punitive outcome. Rather, as Ms. Alexander explained, default service is procured through Commission-approved competitive wholesale procurements designed to achieve the lowest reasonable cost and price stability for residential customers.[205] It is available to every residential customer without qualification and has consistently resulted in lower prices than those paid by most shopping customers.[206]

Additionally, RESA and Town Square's suggestion that automatic renewal is commonplace in other industries is unpersuasive.[207] As Ms. Alexander testified, electric service is fundamentally different from magazine subscriptions, streaming services, or cellular contracts because it is an essential service provided through a regulated monopoly distribution system.[208] Customers who cannot afford bills inflated by high supplier charges face collection activity and potential termination of essential electric service.[209] Those

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[201] OCA St. 2 at 10-11.

[202] OCA St. 2R at 8-9.

[203] *Id.*

[204] *Id.*

[205] *Id.* at 5.

[206] *Id.*

[207] RESA St. 1 at 17; Town Square St. 1 at 21.

[208] OCA St. 2R at 16.

[209] *Id.*

unique circumstances justify stronger consumer protections than those applicable to discretionary consumer products.

Because FE PA's proposed DSP protects customers from unintentionally remaining on higher-priced generation products while fully preserving the ability to shop competitively, the Commission should approve the requested waiver of Section 54.10(3) and adopt the plan as proposed.

B. Quarterly Affirmation for Variable Rate Contracts

The OCA likewise requests that the Commission approve FE PA's proposal requiring EGSs to obtain and attest to affirmative customer consent on a quarterly basis for all residential customers receiving variable-priced month-to-month generation service.[210] This requirement represents a reasonable consumer protection that addresses documented affordability concerns while preserving customers' ability to select variable-rate products, if they choose to do so.[211]

RESA opposes this proposal for substantially the same reasons it opposes the return-to-default-service provision for fixed-rate contracts.[212] According to RESA, existing notice requirements sufficiently protect customers, affirmative consent requirements will discourage competitive supply, and customers should continue to be renewed automatically into variable-rate products absent affirmative action.[213]

As the OCA established, the principal affordability problem arises when customers initially enroll in an attractive fixed-price offer and are subsequently transitioned, often through negative-option renewals, to variable-rate contracts under which the supplier retains unilateral discretion to determine future prices.[214] Although customers receive notices of these changes, current regulations do not require affirmative agreement before

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[210] Petition at ¶ 51.

[211] OCA St. 2 at 9-11; OCA St. 2R at 8.

[212] RESA St. 1 at 14-15.

[213] *Id.*

[214] OCA St. 2R at 9-10.

those new prices become effective.[215] Consequently, customers frequently remain on variable-rate products through inattention rather than informed choice.[216]

FE PA's DSP directly remedies that problem by requiring suppliers to verify, on a quarterly basis, that residential customers knowingly choose to remain on variable-rate service.[217] Unlike fixed-price products, variable-rate contracts expose customers to significant and unpredictable wholesale market fluctuations that may substantially exceed the PTC.[218] Quarterly affirmation therefore ensures that customers periodically evaluate whether continued participation in a variable-rate product remains in their best interest.

RESA failed to present evidence demonstrating that existing protections adequately safeguard customers or that negative-option renewals produce consumer benefits.[219] To the contrary, Ms. Alexander reviewed supplier contract language showing that many variable-rate renewals permit suppliers to establish future prices using broad discretionary criteria entirely within the supplier's control.[220] RESA identified no evidence that such renewals routinely result in prices below the PTC or that customers knowingly prefer these products after expiration of their introductory contracts.[221]

FE PA's proposal to return customers to default service absent quarterly affirmation for variable-rate contracts is necessary to protect residential consumers from predatory rate contracts.[222] FE PA's proposal neither prohibits variable-rate products nor limits suppliers' ability to market innovative services. Instead, it ensures that customers remain on variable-rate contracts only after knowingly and voluntarily reaffirming that decision. Given the

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[215] *Id.*

[216] *Id.*

[217] *Id.* at 2.

[218] *Id.* at 10.

[219] OCA St. 2SR at 3-4.

[220] OCA St. 2R at 11-12.

[221] OCA St. 2SR at 3-4.

[222] OCA St. 2 at 9-10.

record evidence documenting the substantial costs imposed on residential customers through negative-option renewals and higher supplier prices, the Commission should conclude that the quarterly affirmation requirement is a reasonable consumer protection that serves the public interest and should be approved.[223]

C. Changes to Purchase of Receivables (POR) Program

The Commission should adopt FE PA's proposed modifications to its Purchase of Receivables (POR) program, that EGSs using rate-ready billing must charge a generation rate that is at or below the applicable PTC at the time of the customer's enrollment.[224] FE PA's DSP VII further provides for the phased elimination of the existing POR clawback mechanism during the first year of DSP VII if the revised POR program is approved.[225]

As OCA witness Alexander correctly testified:

> There is no statutory obligation that I am aware of that requires Pennsylvania's EDCs to subsidize retail energy suppliers as is currently the case with the POR and CRP programs. Rather than claiming that FirstEnergy's proposals eliminate or restrict customer choice, it is the decision of the EGSs to rely entirely on FirstEnergy's billing and collection system and use FirstEnergy to market their contracts under the CRP. Instead, they can develop their own marketing, billing, and collection systems for their products that exceed the price of the PTC or that include values and attributes that are not allowed to be billed under the POR.[226]

By permitting suppliers to place their charges on the EDC's bill, those charges become subject to the Company's collection activities and, potentially, service termination for nonpayment.[227] The Company therefore should retain the ability to determine under what circumstances its billing system is used to collect supplier charges. Where an EGS elects to charge rates substantially above the PTC, it is neither reasonable nor equitable to

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[223] *Id.*

[224] OCA St. 2 at 4.

[225] Petition at ¶ 55.

[226] OCA St. 2R at 20.

[227] *Id.* at 6.

require the Company and its customers to absorb the resulting collection risk through the POR program.[228]

The record demonstrates that this concern is far from theoretical. Throughout this proceeding, the evidence established that residential shopping customers have paid millions of dollars more for generation service than they would have paid under default service.[229] OCA witness Alexander testified: "In total, FirstEnergy's residential shopping customers paid approximately $82 million more in net generation charges in 2025 than they would have paid if they were paying for the same amount of generation at the Company's default service rates."[230] Those excessive supplier charges contribute directly to customer arrearages, uncollectible accounts, and increasing affordability challenges.[231] When those higher-priced charges are collected through utility consolidated billing and subsequently purchased through POR, the financial risks associated with supplier pricing decisions are shifted away from the suppliers who established those prices and onto the Company and its customers.[232]

FE PA's plan appropriately realigns those incentives by requiring suppliers whose prices exceed the PTC to bear the collection risks associated with their own pricing decisions. Ms. Alexander testified:

> [T]he use of FirstEnergy's bill to collect EGSs charges subject to termination of service is an option that FirstEnergy should be able to control to benefit their customers, avoid unaffordable bills, and eliminate FirstEnergy's responsibility for collecting charges that are much higher than the PTC and that threaten their reputation and community satisfaction.[233]

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[228] *Id.* at 7.

[229] OCA St. 2 at 9-10.

[230] *Id.* at 10.

[231] *Id.* at 9-10.

[232] OCA St. 2R at 7.

[233] OCA St. 2 at 13.

RESA and Town Square oppose the proposal, arguing that limiting POR eligibility to supplier products priced at or below the PTC will discourage innovation, reduce customer choice, and undermine retail competition.[234] RESA contends that suppliers should continue to receive the benefits of utility consolidated billing and POR regardless of the prices they charge because POR is intended to facilitate a competitive retail market rather than regulate supplier pricing.[235] Town Square alleges that there are multiple valuable products that would be eliminated if FE PA's revisions to the POR program are approved.[236]

The Commission should reject RESA's and Town Square's position because it fundamentally mischaracterizes the purpose of the POR program. FE PA's DSP does not regulate the prices that EGSs may charge, nor does it prohibit suppliers from offering premium products or innovative services. Rather, it simply establishes reasonable conditions governing when suppliers may utilize the Company's billing and collection infrastructure and transfer the risk of uncollectible accounts to the utility and, ultimately, its customers.[237]

RESA's suggestion that the proposal improperly discriminates against competitive suppliers likewise lacks merit.[238] The revision establishes an objective, nondiscriminatory standard tied directly to customer affordability. Suppliers charging rates at or below the PTC continue to receive the benefits of POR because those products are reasonably priced in comparison to Commission-approved default service.[239] Suppliers choosing to market higher-priced products likewise remain free to do so, but they appropriately retain

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[234] OCA St. 2R at 8, 21.

[235] *Id.* at 8.

[236] *Id.* at 21.

[237] *Id.* at 7.

[238] *Id.* at 8.

[239] *Id.* at 15.

responsibility for collecting the resulting receivables.[240] Indeed, dual billing is already a common billing and collection method for EGSs serving commercial and industrial customers.[241] Nothing in FE PA's plan prevents suppliers from competing on price, product features, renewable attributes, or customer service.[242]

FE PA's revisions to its POR program create appropriate incentives for suppliers to offer competitively priced products while ensuring that those suppliers, not the utility and its captive distribution customers, bear the financial consequences of pricing decisions that exceed PTC. As FE PA's proposal advances affordability, promotes responsible risk allocation, and preserves meaningful retail competition, the Commission should conclude that the proposed modifications to the POR program are in the public interest.

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[240] *Id.*

[241] OCA St. 2 at 13.

[242] *Id.*

VII. CONCLUSION

The OCA's positions on the contested issues in this proceeding are supported by substantial evidence and are in the public interest for the reasons outlined above. As such, the OCA respectfully requests that the Commission approve FE PA's DSP VII as modified by the Settlement. The Settlement ensures that FE PA will meet its statutory responsibilities to procure a default service portfolio that is designed to ensure service at least cost over time.

Respectfully submitted,

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Appendix A

PROPOSED FINDINGS OF FACT

1. FE PA proposed revising the treatment of PJM Network Integration Transmission Service (NITS) charges under the Supplier Master Agreement (SMA) by removing NITS charges from the pricing of default service supply products.[1]

2. FE PA proposed that NITS charges no longer be included in the pricing of the DSP VII Fixed-Price Full-Requirements (FPFR) products and that FE PA retain responsibility for payment of those charges.[2]

3. FE PA proposed recovering NITS costs through a bypassable rider applicable to default service customers.[3]

4. Under FE PA's proposal, Network Service Peak Loads (NSPL) will continue to be assigned to default service suppliers; however, FE PA will pay NITS charges directly to PJM through a billing line-item transfer arrangement.[4]

5. FE PA's proposal represents a change from the DSP VI procurement structure, under which default service suppliers were responsible for NITS charges.[5]

6. The Commission has approved removal NITS charges from supplier pricing in other cases and doing so is consistent with the treatment of these costs by other electric distribution companies (EDCs).[6]

7. Shifting responsibility for NITS charges from suppliers to FE PA reduces supplier risk premiums associated with uncertainty in transmission costs.[7]

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[1] Petition at ¶ 22.

[2] FE PA St. 3 at 5.

[3] OCA St. 1 at 23.

[4] FE PA St. 2 at 16.

[5] FE PA St. 2 at 16.

[6] OCA St. 1SR at 19-20.

[7] OCA St. 1 at 24.

8. Reducing supplier risk premiums associated with NITS charges is expected to result in lower overall costs for default service customers.[8]

9. The OCA supports Company's proposal to remove NITS from FPFR contracts because it shifts NITS cost risk from suppliers to customers while eliminating supplier risk premiums tied to uncertain, unhedgeable transmission costs.[9]

10. FPFR contracts do not require inclusion of every PJM billing charge to be considered full-requirements contracts.[10]

11. NITS charges are a separate transmission cost and are not required to be included in an FPFR contract.[11]

12. NITS costs are not hedgeable and suppliers account for NITS cost uncertainty through risk premiums included in fixed-price offers.[12]

13. The exclusion of NITS charges from an FPFR contract does not eliminate a supplier's obligation to serve the required load.[13]

14. FPFR contracts typically include most PJM billing line items and other costs, such as distribution losses and AEPS Act compliance costs, but inclusion of every cost component is not required.[14]

15. A contract may be considered a full-requirements contract even when certain PJM charges, including NITS costs, are addressed separately.

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[8] OCA St. 1 at 24; OCA St. 1SR at 20.

[9] OCA St. 1 at 24.

[10] OCA St. 1R at 4.

[11] OCA St. 1R at 4-5.

[12] OCA St. 1R at 10.

[13] OCA St. 1R at 4-5.

[14] OCA St. 1R at 4-5.

16. The characterization of a contract as "full requirements" depends on the supplier's obligation to serve the customer's required load, rather than on whether the contract includes every individual PJM billing component.[15]

17. FE PA's current DSP VI FPFR contracts exclude certain PJM billing line items, including Transmission Enhancement, Transmission Enhancement Settlement (EL05-121-009), Meter Error Correction, Expansion Cost Recovery, and Generation Deactivation, while maintaining their status as FPFR contracts.[16]

18. Under FE PA's proposal to remove NITS charges from FPFR contracts, customers would continue to pay actual NITS costs, while supplier risk premiums associated with NITS cost uncertainty would be eliminated.[17]

19. FE PA proposed to continue the use of a Capacity Price Proxy (CPP) mechanism for DSP VII capacity procurement if PJM does not conduct a Base Residual Auction (BRA).[18]

20. Because future PJM capacity prices are uncertain, the CPP provides an estimate of future BRA outcomes for delivery years included in FE PA's 24- and 60-month default service contracts.[19]

21. FE PA proposed revisions to the CPP mechanism to clarify the true-up methodology and provide suppliers with the CPP value before applicable auctions so that suppliers may incorporate the estimate into their bids.[20]

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[15] OCA St. 1R at 4-5.

[16] OCA St. 1R at 5.

[17] OCA St. 1R at 9-10

[18] Petition at ¶ 22.

[19] Petition at ¶ 31.

[20] FE PA St. 3 at 5.

22. The CPP mechanism allows suppliers to submit bids using a reasonable proxy capacity price when PJM capacity prices are unavailable, while a subsequent true-up ensures that suppliers recover only their actual capacity costs.[21]

23. Using CPP avoids requiring suppliers to include uncertain capacity costs in their bids, thereby preventing increased customer costs associated with risk premiums, while preserving suppliers' opportunity to secure lower-cost bilateral capacity arrangements.[22]

24. Suppliers may account for uncertainty associated with large customer-generators by including risk premiums in FPFR bids or by reducing participation in FPFR auctions, which may result in higher or more volatile PTC rates for smaller commercial customers.[23]

25. FE PA proposes that non-residential default service customers with a demand of 100 kW or greater or a Maximum Registered Peak Load (MRPL) of 100 kW or greater be classified as "commercial" customers and served under the Hourly Pricing Default Service Rider (HP Rider).[24]

26. FE PA proposes that non-residential default service customers with demand and MRPL below 100 kW be served under the Price to Compare (PTC) Rider.[25]

27. FE PA proposed defining MRPL as the customer's net demand contribution impact on FE PA's default service procurement activity, based on net power flow from or into FE PA's distribution or transmission system, including the nameplate capacity of customer-generator facilities.[26]

28. Classifying customers based on both demand and MRPL reduces risks associated with reduced load for commercial customers served under the PTC Rider and reduces the

[21] OCA St. 1 at 22.

[22] OCA St. 1 at 22.

[23] Tr. 171.

[24] Petition at ¶ 32.

[25] Petition at ¶ 32.

[26] FE PA Exh. DMY-6 at 1.

potential for smaller commercial customers to subsidize costs associated with larger customer-generators.[27]

29. FE PA does not use excess energy from net-metered customer-generators as supply to serve default service load; instead, FE PA recognizes excess net-metered generation as an aggregate reduction in the load served by winning bidders in its default service auctions.[28]

30. Costs incurred by FE PA to purchase excess net-metered electricity are recovered from customers within the same rate class.[29]

31. Differences in compensation between the HP Rider and PTC Rider reflect differences in procurement costs and risk characteristics among customer classes and do not constitute unequal treatment.[30]

32. FE PA's proposes MRPL methodology considers both demand and supply impacts to classify large customer-generators with similarly situated large customers for default service procurement purposes.[31]

33. Large customer-generators introduce both switching risk and volumetric risk into FPFR procurements.[32]

34. These risks would likely cause FPFR suppliers to include higher risk premiums in their bids or reduce participation in the auctions, resulting in higher and/or more volatile PTC rates for small commercial customers.[33]

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[27] FE PA St. 1 at 17.

[28] FE PA St. 1 at 17.

[29] FE PA St. 1 at 17.

[30] OCA St. 1R at 21.

[31] FE PA St. 1 at 17.

[32] OCA St. 1 at 38.

[33] OCA St. 1 at 38-39.

35. Large customer-generators have load profiles and wholesale procurement characteristics more like industrial customers.[34]

36. Large customer-generators create distinct procurement risks and costs that differ from those associated with small commercial customers.[35]

37. Compensating large customer-generators under the HP Rider would align compensation with FE PA's actual costs of providing default service and ensure consistent treatment with similarly situated customers.[36]

38. Large customer-generators may introduce uncertainty into default service load requirements and create procurement risks that differ from those associated with smaller commercial customers.[37]

39. FE PA identified uncertainty associated with customer generation as a factor that may increase supplier risk premiums included in default service bids and affect costs incurred by default service customers.[38]

40. Net-metered customer-generators create switching and volumetric risks for default service procurement because changes in customer participation, generation output, generator outages, and project in-service dates may affect suppliers' ability to forecast load obligations under FPFR contracts.[39]

41. The inability to precisely quantify switching or volumetric risks does not eliminate the existence of those risks or their potential impact on default service procurement costs.[40]

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[34] OCA St. 1R at 21.

[35] OCA St. 1R at 23-24; FE PA St. 1R at 23-24.

[36] OCA St. 1R at 21.

[37] OCA St. 1SR at 30.

[38] FE PA St. 1 at 17.

[39] Tr. 171; *see also* FE PA St. 1 at 17.

[40] Tr. 171.

42. The potential growth of large net-metered customer-generators creates ongoing uncertainty regarding default service load requirements and supports consideration of an MRPL methodology that accounts for associated procurement risks.[41]

43. FE PA has reported 1,555 pending net metering applications showing potential future growth in customer generation coming online.[42]

44. The addition of customer generation resources may increase uncertainty regarding the amount and timing of customer load served through default service.[43]

45. Peak Load Contribution (PLC) is a cost allocation mechanism used to assign each customer a share of system capacity costs.[44]

46. Assigning negative PLC values to customer-generators would reduce their allocated share of capacity costs and shift those costs to other customers within the same customer class.[45]

47. Customer-generators are not required to produce energy during the PJM peak periods used for capacity allocation purposes.[46]

48. Assigning negative PLC values would provide capacity-related benefits to customer-generators without an obligation that those customers perform during the peak periods used to establish capacity requirements.[47]

49. Negative PLC and negative NSPL values could reflect actual capacity and transmission benefits only if those values reliably represent customer-generators' performance during relevant PJM peak conditions.[48]

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[41] Tr. 166.

[42] Tr. 166.

[43] Tr. 166.

[44] OCA St. 1SR at 32-33.

[45] FE PA St. 6R at 5.

[46] FE PA St. 6R at 5; *see also* OCA St. 1SR at 32-37.

[47] FE PA St. 6R at 5.

[48] OCA St. 1SR at 37.

50. A customer-generator may have the ability to produce electricity, but if it does not reliably generate electricity during the peak times PJM uses to calculate capacity and transmission obligations, it may not actually reduce those costs.[49]

51. Negative PLC and negative NSPL values could reflect actual capacity and transmission benefits only if those values reliably represent customer-generators' performance during relevant PJM peak conditions.[50]

52. Any adoption of Negative PLC and/or Negative NSPL values should be based on each customer-generator's individual demonstrated capacity and transmission impacts rather than class-average costs.[51]

53. The Company proposes a transition period for existing net-metered customer-generators by exempting customers online before DSP VII from annual MRPL reclassification until June 1, 2029.[52]

54. The Company's proposed two-year grandfathering period provides existing customer-generators with a limited transition period while allowing implementation of a procurement and rate structure that reflects customer impacts, costs, and risks.[53]

55. Extending the grandfathering period for existing customer-generators beyond the Company's proposal would continue the allocation of costs associated with large customer-generators to small commercial customers.[54]

56. A limited transition period may be appropriate for existing customer-generators that invested under the prior regulatory framework.[55]

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[49] OCA St. 1SR at 37.

[50] OCA St. 1SR at 37.

[51] OCA St. 1SR at 36-37.

[52] FE PA St. 1 at 19.

[53] OCA St. 1R at 23-24.

[54] OCA St. 1R at 23-24.

[55] OCA St. 1R at 23-24.

57. FE PA, in its Default Service Plan (DSP) VII Petition, proposed to discontinue the Customer Referral Program (CRP) and declined to implement a successor program.[56]

58. The CRP has experienced declining supplier participation, minimal customer enrollment, and persistent consumer protection concerns.[57]

59. FE PA determined that supplier participation has declined dramatically, with participation decreasing by more than fifty percent in three rate districts and disappearing entirely in the Penelec rate district.[58]

60. Only 10,367 residential customers currently participate in the program which accounts for only approximately three percent of eligible residential customers.[59]

61. The retail electric market has now existed for over a decade.[60]

62. The CRP uses the Electric Distribution Company's (EDC) relationship with its customers to promote supplier contracts that frequently do not provide lasting savings.[61]

63. Although the program advertises a seven percent discount from the Price to Compare (PTC), that discount is calculated using the PTC in effect at the time of enrollment, even though the PTC changes quarterly.[62]

64. If the PTC decreases during the twelve-month contract term, which may occur as soon as one month after enrollment, the customer receives a significantly smaller discount than advertised or may actually pay more than the applicable PTC.[63]

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[56] OCA St. 2 at 3.

[57] OCA St. 2 at 5-8.

[58] FE PA St. 4 at 11.

[59] FE PA St. 4 at 11.

[60] OCA St. 2 at 5-6.

[61] OCA St. 2 at 5-6.

[62] OCA St. 2 at 6-7.

[63] OCA St. 2 at 6-7.

65. EGSs retain complete discretion over whether and when to participate in the program.[64]

66. Suppliers may decline to participate during periods when rising wholesale prices make it difficult to offer rates below the PTC.[65]

67. Once the initial contract expires, many participating suppliers retain customers through negative-option renewal notices, under which customers are automatically enrolled in new contract terms unless they affirmatively act to return to default service or switch suppliers.[66]

68. Customers frequently transition into contracts with generation prices exceeding the PTC without making an affirmative choice to do so.[67]

69. The CRP does not guarantee that customers will continue paying less than default service throughout the twelve-month contract term.[68]

70. FE PA's proposed to require that residential customers entering into new EGS contracts after June 1, 2027, be returned to default service upon expiration of their fixed-term contract unless they affirmatively elect to remain with their current supplier or enroll with another supplier.[69]

71. To implement this reform, FE PA also requests a waiver of 52 Pa. Code Section 54.10(3), which currently permits automatic renewal of an expired fixed-term contract into a month-to-month or another fixed-term contract absent customer action.[70]

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[64] OCA St. 2R at 6-7.

[65] OCA St. 2R at 6-7.

[66] OCA St. 2R at 6-7.

[67] OCA St. 2R at 7.

[68] OCA St. 2 at 6-7.

[69] Petition at ¶ 51.

[70] Petition at ¶¶ 51-52.

72. Residential shopping customers paid approximately $82 million more than they would have paid under default service in 2025 alone, and nearly $395 million more between January 2022 and January 2026.[71]

73. Higher prices have contributed to increased customer arrearages, uncollectable expense, and other affordability challenges for essential electric service.[72]

74. Under the current regulatory framework, customers who fail to respond to expiration notices are automatically renewed into new supplier contracts, frequently on variable-rate products with pricing determined solely by the supplier.[73]

75. By requiring affirmative customer action before a customer remains with an EGS following expiration of a fixed-term contract, FE PA's proposal ensures that customers knowingly choose to leave the protection of Commission-approved default service.[74]

76. Residential customers remain free to shop, select any licensed EGS, or remain with their existing supplier simply by affirmatively responding to the required notices.[75]

77. The only customers returned to default service are those who do nothing.[76]

78. Default service is procured through Commission-approved competitive wholesale procurements designed to achieve the lowest reasonable cost and price stability for residential customers.[77]

79. Default service is available to every residential customer without qualification and has consistently resulted in lower prices than those paid by most shopping customers.[78]

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[71] OCA St. 2R at 9-10.

[72] OCA St. 2R at 9-10.

[73] OCA St. 2R at 10-12.

[74] OCA St. 2 at 10-11.

[75] OCA St. 2R at 8-9.

[76] OCA St. 2R at 8-9.

[77] OCA St. 2R at 5.

[78] OCA St. 2R at 5.

80. Customers who cannot afford bills inflated by high supplier charges face collection activity and potential termination of essential electric service.[79]

81. FE PA's Petition proposes a requirement for Electric Generation Suppliers (EGSs) to obtain and attest to affirmative customer consent on a quarterly basis for all residential customers receiving variable-priced month-to-month generation service.[80]

82. Affordability problems arise when customers initially enroll in an attractive fixed-price offer and are subsequently transitioned, often through negative-option renewals, to variable-rate contracts under which the supplier retains unilateral discretion to determine future prices.[81]

83. Although customers receive notices of these changes, current regulations do not require affirmative agreement before those new prices become effective.[82]

84. Unlike fixed-price products, variable-rate contracts expose customers to significant and unpredictable wholesale market fluctuations that may substantially exceed the PTC.[83]

85. Supplier contract language shows that many variable-rate renewals permit suppliers to establish future prices using broad discretionary criteria entirely within the supplier's control.[84]

86. FE PA's DSP VII Petition proposes modifications to its Purchase of Receivables (POR) program, that EGSs using rate-ready billing must charge a generation rate that is at or below the applicable PTC at the time of the customer's enrollment.[85]

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[79] OCA St. 2R at 16.

[80] Petition at ¶ 51.

[81] OCA St. 2R at 9-10.

[82] OCA St. 2R at 9-10.

[83] OCA St. 2R at 10.

[84] OCA St. 2R at 11-12.

[85] OCA St. 2 at 4.

87. FE PA's DSP VII provides for the phased elimination of the existing POR clawback mechanism during the first year of DSP VII if the revised POR program is approved.[86]

88. By permitting suppliers to place their charges on the EDC's bill, those charges become subject to the Company's collection activities and, potentially, service termination for nonpayment.[87]

89. In total, FirstEnergy's residential shopping customers paid approximately $82 million more in net generation charges in 2025 than they would have paid if they were paying for the same amount of generation at the Company's default service rates.[88]

90. When those higher-priced charges are collected through utility consolidated billing and subsequently purchased through POR, the financial risks associated with supplier pricing decisions are shifted away from the suppliers who established those prices and onto the Company and its customers.[89]

91. Suppliers choosing to market higher-priced products remain free to do so, but they retain responsibility for collecting the resulting receivables.[90]

92. Dual billing is already a common billing and collection method for EGSs serving commercial and industrial customers.[91]

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[86] Petition at ¶ 55.

[87] OCA St. 2R at 6.

[88] OCA St. 2 at 10.

[89] OCA St. 2R at 7.

[90] OCA St. 2R at 15.

[91] OCA St. 2 at 13.

Appendix B

PROPOSED CONCLUSIONS OF LAW

1. Default service pricing, including the HP Rider and PTC Rider, is designed to recover the costs of providing electric generation service and does not provide separate compensation to customer-generators for asserted external benefits, including reduced market prices, public health impacts, decarbonization, distribution system investment, or broader economic effects.[92]

2. The Commission has authority to approve a default service procurement structure that removes NITS charges from FPFR contracts while maintaining supplier obligations to serve default service load.[93]

3. The exclusion of NITS charges from an FPFR contract does not prevent the contract from satisfying the requirements of a full-requirements obligation.[94]

4. FE PA's proposed removal of NITS charges from FPFR contracts appropriately allocates NITS cost risk while allowing recovery of actual NITS costs through a separate mechanism in accordance with Commission precedent.[95]

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[92] 52 Pa. Code § 54.187(e).

[93] *See, e.g. Joint Petition of Citizens' Electric Company of Lewisburg, PA and Wellsboro Electric Company for Approval of Default Service Plan and Waiver of Commission Regulations for the Period June 1, 2025 Through May 31, 2029*, Docket No. P-2024-3049357, et al, R.D. at 18 (Dec. 23, 2024).

[94] *Petition of PPL Electric Utilities Corporation for Approval of Its Default Service Plan For the Period June 1, 2021 Through May 31, 2025*, Docket No. P-2020-3019356, Order at 24-25 (December 17, 2020).

[95] *Petition of PPL Electric Utilities Corporation for Approval of Its Default Service Plan For the Period June 1, 2021 Through May 31, 2025*, Docket No. P-2020-3019356, Order at 24-25 (December 17, 2020).

5. The Commission has already approved similar procurement structures for other Pennsylvania EDCs, recognizing that removing NITS from FPFR contracts better balances least cost and rate stability.[96]

6. The proposed treatment of large customer-generators under the HP Rider is consistent with the treatment of similarly situated industrial customers because it reflects comparable load profiles, wholesale procurement characteristics, and FE PA's actual costs of providing default service.[97]

7. Pursuant to 52 Pa. Code Section 54.182, MRPL is defined as the highest level of demand for a customer based on the PJM Interconnection, LLC Peak Load Contribution Standard, or its equivalent.[98]

8. Regulation permits further definition of MRPL through the applicable electric distribution company tariff.[99]

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[96] *See Pennsylvania Universal Default Supplier Master Agreement, Duquesne Light Co.* at 102 2025); https://www.duquesnedsp.com/Portals/0/SupplierDocuments/DSP_X_SMA.pdf (Last Accessed July 8, 2026); *PECO Energy Co. Pennsylvania Default Service Supplier Master Agreement* at 104 (Dec. 15, 2025); https://www.pecoprocurement.com/assets/files/1%20DSP%20VI%20RFP%20Rules%20Appendix%201%20-%20Uniform%20SMA_MAR%202026.pdf (Last Accessed July 8, 2026); *and See Petition of PPL Electric Utilities Corporation for Approval of a Default Service Program and Procurement Plan for the Period June 1, 2025 through May 31, 2029,* Docket No. P-2024-3047290, Joint Petition for Settlement Attach. A at 14, Attach. B at 13 (Aug. 27, 2024).

[97] *Petition of UGI Utilities, Inc – Electric Division for Approval of a Default Service Plan for the period of June 1, 2025 through May 31, 2029*, Docket No. P-2024-3049343, Order at 54 (Feb. 20, 2025).

[98] 52 Pa. Code § 54.182

[99] 52 Pa. Code § 54.182.

9. An electric distribution company's tariff may further define MRPL in a manner that accounts for customer impacts on default service procurement and associated costs, provided such definition is consistent with Commission regulations.[100]

10. The Company's proposed classification of non-residential default service customers based on both demand and supply impacts is consistent with Commission precedent recognizing that customer classifications may account for the effect of customer-generators on default service cost allocation and procurement.[101]

11. The Company's proposed MRPL methodology is consistent with prior Commission-approved methodologies that consider customer-generation impacts when allocating default service procurement costs.[102]

12. The Commission has authority to approve tariff provisions that further define Maximum Registered Peak Load (MRPL) for purposes of customer classification and default service procurement.[103]

13. The Commission's net metering regulations establish the applicable framework for compensating customer-generators, including compensation through full retail rate credits for net excess generation consistent with the requirements of the Alternative Energy Portfolio Standards Act.[104]

14. The Commonwealth Court has recently recognized that a "full retail rate" under the AEPS Act reflects the bundled value of electric service, including generation, transmission, and distribution components, and that AEPS compliance is determined based on the rate

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[100] 52 Pa. Code § 54.182; *see also PUC v. PPL*, Docket No. R-2025-3057164, et al, R.D. at 239, 255-257 (Apr. 17, 2026).

[101] *Penn Renewables, LLC v. PUC*, 2026 Pa. Commw. LEXIS 88, (Pa. Cmwlth. Mar. 13, 2026) (*Penn Renewables*).

[102] *Penn Renewables* at *5.

[103] *Penn Renewables* at *13-14.

[104] *Penn Renewables* at *11-12.

structure as designed and applied, rather than the inclusion or exclusion of any individual rate component.[105]

15. The AEPS Act does not require that customer-generators receive separate compensation for asserted external benefits beyond the compensation provided through the Commission's established net metering framework.[106]

16. The Customer Choice Act permits the Commission to establish reasonable default service procurement structures and does not require unrestricted competition without regard to customer impacts, cost allocation, or rate stability.[107]

17. Classifying large customer-generators separately from other commercial customers for default service procurement purposes is consistent with Commission precedent recognizing that customers with materially different load characteristics and procurement impacts may be treated differently for cost allocation purposes.[108]

18. The Company's MRPL methodology is consistent with the principles underlying the System Peak Load Impact (SPLI) methodology upheld by the Commonwealth Court because both approaches consider customer-specific impacts on default service procurement and seek to align procurement costs and risks with the customers creating those impacts.[109]

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[105] *Penn Renewables* at *11-12.

[106] *Penn Renewables* at *11-12.

[107] *See Retail Energy Supply Ass'n v. Pa. PUC*, 185 A.3d 1206, 1221 (Pa. Cmwlth. 2018) and *Coalition for Affordable Util. Servs. & Energy Efficiency in Pa. et al. v. Pa. PUC*, 120 A.3d 1087, 1093, 1103 (Pa. Cmwlth. 2015), app. den., 136 A.3d 982 (Pa. 2016); 66 Pa. C.S. § 2801, *et seq*.

[108] *Penn Renewables* at *3-5.

[109] *Penn Renewables* at *3-5.

19. Approval of the Company's MRPL proposal is consistent with the Commission's obligation to establish default service procurement structures that balance cost minimization, rate stability, and the public interest.[110]

20. In UGI Electric's most recent default service proceeding, the Commission determined that a methodology accounting for the impacts of large customer-generators, such as SPLI, is necessary to prevent residential and small commercial customers from bearing increased default service costs attributable to procurement impacts associated with large customer-generators.[111]

21. The Commission has previously determined that, absent a methodology such as SPLI, which is comparable to the MRPL methodology proposed in this proceeding, residential and small commercial customers may bear higher default service costs resulting from procurement impacts associated with large customer-generators.[112]

22. 52 Pa. Code Section 54.10(3) allows EGSs to convert, without consent, fixed duration contracts with customers to month-to-month contracts or additional fixed duration contracts, if customers fail to respond to expiration notices so long as customers can cancel at any time, for any reason, and without cancellation fees.[113]

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[110] *Penn Renewables* at *3-5.

[111] *Petition of UGI Utilities, Inc – Electric Division for Approval of a Default Service Plan for the period of June 1, 2025 through May 31, 2029*, Docket No. P-2024-3049343, Order at 54 (Feb. 20, 2025).

[112] *Petition of UGI Utilities, Inc – Electric Division for Approval of a Default Service Plan for the period of June 1, 2025 through May 31, 2029*, Docket No. P-2024-3049343, Order at 54 (Feb. 20, 2025).

[113] 52 Pa. Code § 54.10.

Appendix C

PROPOSED ORDERING PARAGRAPHS

1. That the Joint Petition for Approval of Non-Unanimous Settlement, filed on July 2, 2026, is approved.

2. That First Energy Pennsylvania Electric Company's proposed Default Service Program VII, for the period of June 1, 2027 through May 31, 2031, be approved, as modified by the Joint Petition for Approval of Non-Unanimous Settlement; and the Parties be directed to comply with the terms of the Joint Petition for Approval of Non-Unanimous Settlement, as though each term and condition stated therein had been the subject of an individual ordering paragraph.

3. That First Energy Pennsylvania Electric Company be permitted to file a tariff or tariff supplement to implement the rates, terms, and conditions of service contained in the Joint Petition for Non-Unanimous Settlement, to become effective on one day's notice after entry of this Recommended Decision.

4. That First Energy Pennsylvania Electric Company's request for a waiver of the Commission's regulation at 52 Pa. Code Section 54.10(3) be granted to the extent that is necessary to permit the Company to implement its proposed changes to Electric Generation Supplier arrangements with First Energy Pennsylvania Electric Company's residential shopping customers.

5. That upon acceptance and approval by the Commission of the tariff and tariff supplements filed by First Energy Pennsylvania Electric Company, as set forth in Ordering Paragraph No. 3 above, consistent with this Recommended Decision, this proceeding at Docket No. P-2026-3060298 shall be marked closed.