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July 10, 2026

VIA ELECTRONIC MAIL

The Honorable Mark A. Hoyer
Deputy Chief Administrative Law Judge
Pennsylvania Public Utility Commission
Philadelphia District Office
801 Market Street
Philadelphia, PA 19107
(mhoyer@pa.gov)

The Honorable Erin L. Gannon
Administrative Law Judge
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street,
Harrisburg, PA 17120
(egannon@pa.gov)

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

Your Honors:

Enclosed on behalf of 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") is the CGC's Main Brief and Appendices A-C.

Service of the CGC's Main Brief and its associated appendices has been made upon all parties of record in this proceeding in accordance with the attached Certificate of Service.

If you have any questions regarding the enclosed, please contact the undersigned.

Very truly yours,

STEVENS & LEE

Nicholas A. Stobbe

Enc.
Cc: Secretary Matthew L. Homsher
Certificate of Service

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

MAIN BRIEF OF 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 IN OPPOSITION TO THE NON-UNANIMOUS SETTLEMENT

TO DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE MARK A. HOYER AND ADMINISTRATIVE LAW JUDGE ERIN L. GANNON:

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Dated: July 10, 2026

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I. INTRODUCTION

The issue disputed by the Customer-Generator Coalition ("CGC") in this proceeding is the proposal of FirstEnergy Pennsylvania Electric Company ("FirstEnergy") to implement a new "Maximum Registered Peak Load" ("MRPL") framework that would force large net-metering customer-generators from the stable Price-to-Compare ("PTC") Rider rate into the volatile Hourly Pricing ("HP") Rider rate based on the nameplate capacity of those customers' generating equipment, rather than their actual demand. FirstEnergy's MRPL proposal it is not supported by evidence (much less substantial evidence) to show that customer-generators increase costs for other customers served under the PTC Rider. FirstEnergy's arguments to the contrary are unfounded and meritless. Furthermore, the MRPL proposal is contrary to the public interest and is illegal under the Commission's regulations, the Alternative Energy Portfolio Standards ("AEPS") Act, and Act 129. The consequences of the MRPL proposal are severe for the CGC and other non-residential customers that install generation to participate in net-metering under the AEPS Act.

Even if the Commission were to find that compensation for the excess generation produced by customer-generators increases the costs of providing default service under the PTC Rider, which they do not, FirstEnergy's proposal still fails. FirstEnergy's MRPL proposal seeks to unilaterally revise the Commission's regulations which contain a definition for "Maximum Registered Peak Load." To the extent FirstEnergy seeks substantive changes to the Commission's regulations, a one-off Default Service Plan ("DSP") proceeding is the incorrect vehicle to pursue these changes. Further, the MRPL proposal both ignores the substantial benefits that customer-generators provide and worsens the recognized resource adequacy crisis. Relatedly, the AEPS Act mandates that default service providers provide full retail value compensation for excess generation from customer-generators. FirstEnergy's MRPL proposal flaunts that requirement by forcing customer-generators to a wholesale compensation structure under the HP Rider. The MRPL proposal also violates Act 129's requirement that small business customers receive a default service rate that does not change more frequently than quarterly. FirstEnergy would force these customers to an HP Rider rate based on hourly wholesale Locational Marginal Price ("LMP"), with pricing components that change every five minutes. Last, approval of the MRPL proposal *vis-à-vis* the Non-Unanimous Settlement is contrary to sound public policy and would be contrary to the public interest. The MRPL proposal would reduce compensation for net-metering customer-generators, thereby disincentivizing the development of Distributed Energy Resource ("DER") facilities at a time in which there is a recognized resource adequacy crisis.

FirstEnergy's failure to carry its burden necessary to demonstrate that its contrived MRPL proposal would result in just and reasonable rates and be in the public interest, coupled with the MRPL proposal's express violations of Pennsylvania law, mandate its rejection.

A. Procedural History

On February 3, 2026, FirstEnergy filed a Petition for Approval of Default Service Plan at the above-referenced docket which contained proposed terms and conditions under which FirstEnergy would procure and supply default electric service between June 1, 2027, and May 31, 2031.[1]

On February 10, 2026, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA") filed a Petition to Intervene and Answer.

Also on February 10, 2026, the Commission issued a Call-In Telephonic Prehearing Conference Notice, scheduling a Telephonic Prehearing Conference for March 19, 2026, at 10:00 a.m.

On February 11, 2026, the Office of Small Business Advocate ("OSBA") filed a Notice of Appearance.

[1] *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 (Petition filed Feb. 3, 2026) ("*DSP VII*").

On February 12, 2026, the Office of Consumer Advocate ("OCA") filed a Notice of Appearance.

On February 18, 2026, the OSBA filed a Withdrawal of Appearance.

On or around February 19, 2026, Deputy Chief Administrative Law Judge Mark A. Hoyer and Administrative Law Judge Erin L. Gannon (collectively, the "ALJs") issued a Prehearing Conference Order.

On February 19, 2026, Penn Renewables LLC ("Penn Renewables") filed a Petition to Intervene.

On February 20, 2026, the OSBA filed a Notice of Intervention, Public Statement, and Verification.

On February 23, 2026, Shipley Choice, LLC d/b/a Shipley Energy and Interstate Gas Supply, LC d/b/a IGS Energy filed a Petition to Intervene.

On February 24, 2026, the Met-Ed Industrial Users Group ("MEIUG"), the Penelec Industrial Customer Alliance ("PICA"), and the West Penn Power Industrial Intervenors ("WPPII") filed a Joint Petition to Intervene.

On March 5, 2026, Dimension PA 1 LLC ("Dimension") filed a Petition to Intervene and a Motion for Admission *Pro Hac Vice*.

On March 9, 2026, the OCA filed an Answer to the DSP Petition.

Also on March 9, 2026, the CGC filed a Joint Petition to Intervene.

WGL Energy Services, Inc. ("WGL") and Town Square Energy East, LLC ("Town Square"), respectively, also filed Petitions to Intervene on March 9, 2026.

On March 10, 2026, The Pennsylvania State University filed a Petition to Intervene.

Also on March 10, 2026, Constellation NewEnergy, Inc. and Constellation Energy Generation, LLC (collectively, "Constellation") filed a Motion for Admission *Pro Hac Vice.*

On March 13, 2026, the Solar Energy Industries Association ("SEIA") and the Coalition for Community Solar Access ("CCSA") (collectively, the "Joint Solar Advocates" or "JSA") filed a Joint Petition to Intervene.

On March 16, 2026, the ALJs issued Interim Orders Granting the Motions for Admission *Pro Hac Vice* of Mitchell H. Kinzer, Esq. (Dimension), Linda S. Kizuka, Esq. (Constellation), and Marsha D. Makel, Esq. (Constellation), respectively.

Also on March 16, 2026, the Constellation filed a Petition to Intervene and Prehearing Conference Memorandum.

Also on March 16, 2026, Duquesne Light Company ("DLC") filed a Petition to Intervene.

On March 17, 2026, various parties filed Prehearing Conference Memorandums.

On March 18, 2026, SEIA and CCSA filed a Motion for Admission *Pro Hac Vice*.

On March 19, 2026, the Prehearing Conference took place as scheduled.

On March 23, 2026, the Commission issued an In-Person Evidentiary Hearing Notice, scheduling in-person Evidentiary Hearings for June 15 and 16, 2026.

Also on March 23, 2026, the ALJs issued a Prehearing Order.

On March 26, 2026, Constellation filed a Motion to Excuse Colleen P. Kartychak.

On March 27, 2026, SEIA and CCSA filed an Entry of Appearance.

Also on March 27, 2026, the ALJs issued a Protective Order.

Additionally, on March 27, 2026, the CGC filed a Motion to Compel Responses to Interrogatories and Requests for Production of Documents directed at FirstEnergy – Set I ("Motion to Compel").

On March 31, 2026, RESA filed a letter notifying the ALJs and Parties of an intended witness.

On April 2, 2026, FirstEnergy filed a Notice of Appearance.

Also on April 2, 2026, FirstEnergy filed an Answer to CGC's Motion to Compel.

On April 3, 2026, the CGC filed a letter in response to FirstEnergy's Answer to CGC's Motion to Compel.

On April 8, 2026, the ALJs issued an Order granting CGC's Motion to Compel.

On April 16, 2026, the ALJs issued an Interim Order Granting Constellation's Motion to Excuse.

On April 29, 2026, OCA, OSBA, CAUSE-PA, RESA, Town Square, JSA, Walmart, and CGC submitted written Direct Testimony.

On May 28, 2026, FirstEnergy, OCA, OSBA, CAUSE-PA, RESA, JSA, and CGC submitted written Rebuttal Testimony.

On June 1, 2026, OCA submitted corrected written Rebuttal Testimony.

On June 11, 2026, FirstEnergy, OCA, CAUSE-PA, RESA, JSA, and CGC submitted written Surrebuttal Testimony.

On June 12, 2026, OCA submitted corrected written Surrebuttal Testimony.

Early on June 15, 2026, the CGC submitted corrected Surrebuttal Testimony.

On June 15, 2026, the in-person Evidentiary Hearing was held as scheduled. There, all evidence was entered into the record, various witnesses were cross-examined, one FirstEnergy witness presented oral rejoinder testimony, and the second Evidentiary Hearing, scheduled for June 16, 2026, was cancelled.

On July 2, 2026, FirstEnergy, OCA, OSBA, CAUSE-PA, DLC and Walmart filed a Joint Petition for Non-Unanimous Settlement.

B. Non-Unanimous Settlement

The Non-Unanimous Settlement presents an unreasonable solution to a fabricated problem. The CGC's opposition to the same is limited to the MRPL-related provisions in Section II(F) of the Settlement.[2]

Commission policy promotes settlements.[3] In theory, settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative hearing resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding.[4] Rate

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[2] *See Joint Petition for Non-Unanimous Settlement*, Section II(F), Docket No. P-2026-3060298 (Filed July 2, 2026).

[3] 52 Pa. Code §§ 5.231, 69.401.

[4] 52 Pa. Code § 69.401.

cases and DSPs are expensive to litigate and the cost of such litigation at a reasonable level is an operating expense recovered in the rates approved by the Commission.[5] This means that a settlement should allow the parties to avoid the substantial costs of preparing and serving testimony and the cross-examination of witnesses in lengthy hearings, the preparation and service of briefs, reply briefs, exceptions and reply exceptions, together with the briefs and reply briefs necessitated by any appeal of the Commission's decision, and yield significant savings for the company's customers. This is one reason why settlements are encouraged by long-standing Commission policy.[6]

None of these policy considerations are present here. The Settlement has not lessened the time and expense for the parties. Nor has it conserved the Commission's administrative hearing resources. Nor did it allow the parties to avoid the substantial costs of preparing and serving testimony, nor avoid cross-examination of witnesses in lengthy hearings. Further, it will not avoid the preparation and service of briefs, reply briefs and, likely, exceptions and reply exceptions. Therefore, the Commission should not presumptively favor the Settlement.

The MRPL provisions of the Settlement are nothing but an adoption of FirstEnergy's original proposal. The relevant Settlement terms read:

> 36. The Joint Petitioners agree to the Company's original proposal to introduce the MRPL into FE PA's determination of eligibility for participation in the PTC Rider and HP Rider as set forth in the DSP VII Petition.
>
> 37. Customer-generators online prior to June 1, 2027 will be exempt from the MRPL proposal until June 1, 2029 as originally proposed in the DSP VII Petition.

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[5] *Petition of Duquesne Light Company for Approval of Its Default Service Plan for the Period from June 1, 2025, through May 31, 2029*, Docket No. P-2024-3048592 (Order entered Jan. 14, 2025).

[6] *Id.*

38. For purposes of determining compensation for net excess generation for customer-generators taking service under the HP Rider, such compensation shall include capacity and line loss portions of the HP Rider until May 31, 2041, absent a material change in the capacity markets operated by PJM. In the event of such an occurrence, FE PA will notify and meet with parties to this Settlement, including Walmart, to discuss the proposed changes and their impact on customer-generator compensation at least 30 days in advance of any Commission filing.[7]

The Settling parties (FirstEnergy, OCA, OSBA, CAUSE-PA, DLC and Walmart) did not present a fulsome examination of the MRPL proposal's reasonableness. In fact, CAUSE-PA and DLC did not present *any* testimony on the MRPL proposal at all. Yet, the Settlement purports to be a universal resolution of a complicated issue in a case involving fifteen (15) distinct parties. The fact that FirstEnergy could only get 40% of these parties to agree to the manufactured Settlement terms speaks volumes.[8]

The only term in the Settlement that purportedly varies from FirstEnergy's original MRPL proposal requires FirstEnergy to not tamper with compensation for net-metering customer-generators until 2041, absent a "material change" in the capacity markets by

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[7] *Settlement*, ¶¶ 36-38.

[8] CGC notes that this is in stark contrast to the other cases involving similar issues. *See Petition of UGI Utils., Inc. – Elec. Div. for Approval of a Default Serv. Plan for the Period of June 1, 2025 through May 31, 2029*, Docket Nos. P-2024-3049343, *et al.* (Opinion and Order entered Feb. 20, 2025) *("UGI DSP"); Pa. PUC, et al. v. Citizens' Electric Company of Lewisburg, PA*, Docket Nos. R-2025-3054394, *et al.* (Opinion and Order entered Jan. 15, 2026); *See Pa. PUC v. PPL Electric Utilities Corp., et al.*, Docket Nos. R-2025-3057164, *et al.*, p. 198 (Opinion and Order entered June 11, 2026) ("*2025 PPL Rate Case*").

PJM.[9] The Settlement does not define "material change." Nor does the Settlement require FirstEnergy to consult with any customer-generators before making a Commission filing to change the net-metering compensation structure. This is not compromise. It is a half-hearted attempt to lock-in a resolution to a contentious issue through a hollow commitment that does not involve, let alone address, the concrete interests immediately affected by the MRPL proposal. OCA, OSBA, CAUSE-PA, DLC, and Walmart are not customer-generators. As explained at length in Section III, *supra*, the MRPL proposal is unjust, unreasonable, contrary to public policy, and illegal under the Commission's regulations, the AEPS Act, and Act 129. The Settlement does not change that stark reality and, as a result, it must be rejected.

C. Legal Standards

1. Burden of Proof

In any case brought before the Commission pursuant to Section 2807(e) of the Public Utility Code, as is the instant *DSP VII*, the burden of proof is on the public utility.[10] FirstEnergy must establish its case by a preponderance of the evidence.[11] FirstEnergy requests that the Commission approve its *DSP VII*. As part of this request, FirstEnergy seeks to change the way net-metering customer-generators are compensated under the AEPS Act. Therefore, FirstEnergy has the burden of proving that its *DSP VII* satisfies all applicable legal requirements for it to be approved, including the changes to its Commission-approved Tariff and its proposed changes to default service procurement classes.

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[9] *Settlement*, ¶ 38.

[10] 66 Pa.C.S. §§ 332(a), 2807(e).

[11] *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990).

2. Standard for Non-Unanimous Settlement

The Commission's review of non-unanimous settlements is not perfunctory, nor can there be a preordained outcome.[12] Indeed, a contested settlement may only be approved if its commitments are lawful, supported by the substantial evidence and proven to be in the public interest.[13] Where a settlement is non-unanimous, the Commission evaluates it under the same standards applicable to a fully litigated case.[14] To approve the non-unanimous settlement, the Commission must find that it is supported by the evidentiary record.[15]

3. Reasonableness of Rates

The chief standard for all utility ratemaking is the constitutionally-based "just and reasonable" standard.[16] The Commission has a "duty to set 'just and reasonable' rates."[17] The just and reasonable standard requires the Commission to conduct a careful weighing of the interests of customers in affordable rates against the financial needs of the

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[12] *ARIPPA v. Pa. PUC*, 792 A.2d 636, 658-60 (Pa. Cmwlth. 2002).

[13] See *Pa. PUC v. City of Lancaster - Bureau of Water*, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011) (*citing Warner v. GTE North, Inc.*, Docket No. C-00902815 (Opinion and Order entered April 1, 1996)); *Popowsky v. Pa. PUC*, 805 A.2d 637 (Pa. Cmwlth. 2002); *Pa. PUC v. C. S. Water and Sewer Associates*, 74 Pa. P.U.C. 767 (1991); *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825 (1972)

[14] *See Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp.*, Docket Nos. A-2010-2176520 and A-2010-2176732 (Order entered March 8, 2011).

[15] *Penn Renewables, LLC v. Pa. PUC,* No. 337 C.D. 2025 (Pa. Cmwlth. Ct., Opinion issued Mar. 13, 2026).

[16] *See* 66 Pa.C.S. § 1301.

[17] *Popowsky v. PUC*, 665 A.2d 808, 811, 542 Pa. 99, 107-108 (1995); 66 Pa.C.S. § 1301.

utility.[18] The Commission must balance the interests of customers in receiving efficient utility service at the lowest possible rates, and the interest of the utility in obtaining sufficient revenues to conduct its operations, maintain its financial integrity, and achieve access to financial markets for revenue bonds at reasonable rates.[19]

In determining what constitutes just and reasonable rates, the Commission has discretion to determine the proper balance between the interests of ratepayers (*i.e.*, customers) and that of the utility.[20] Satisfying the constitutionally imparted "just and reasonable" standard requires the Commission to base its decision on substantial evidence. The "substantial evidence" is strict and rests uniquely on the utility, which does not receive any favorable presumption(s). Courts evaluating the application of the substantial evidence standard have explained that this standard is directly related to the nature and extent of the authority requested by the utility.[21]

When evaluating the justness and reasonableness of rates proffered by a utility, the Commission is "obliged to consider broad public interest in the rate-making process."[22] That evaluation is governed as follows:

> [T]he term 'just and reasonable' was not intended to confine the ambit of regulatory discretion to an absolute or mathematical formulation but rather to confer upon the regulatory body the power to make and apply policy

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[18] *Federal Power Commission v. Hope Natural Gas Co*., 320 U.S. 591, 607 (1944)

[19] *Id.*

[20] *Pa. PUC v. Philadelphia Electric Co.*, 522 Pa. 338, 342-43, 561 A.2d 1224, 1226 (1989); *Pa. PUC v. Pa. Gas & Water Co.*, 492 Pa. 326, 337, 424 A.2d 1213, 1219 (1980), *cert. denied*, 454 U.S. 824, 102 S. Ct. 112, 70 L. Ed. 2d 97 (1981)).

[21] *Lansberry v. Pa. PUC*, 578 A.2d 600, 603 (Pa. Cmwlth. 1990).

[22] *See Nat'l Utilities, Inc. v. Pa. PUC*, 709 A.2d 972, 979 (Pa. Cmwlth. 1998), following *D.C. Transit Sys., Inc. v. Washington Metro. Area Transit Com'n*, 466 F.2d 394, 411 (D.C. Cir. 1972), *cert denied*.

> concerning the appropriate balance between prices charged to utility customers and returns on capital.[23]

The Public Utility Code defines "rates" inclusively, including the following:

> Every individual, or joint fare, toll, charge, rental, or other compensation whatsoever of any public utility … made, demanded, or received for any service within this part, offered, rendered, or furnished by such public utility, or contract carrier by motor vehicle, whether in currency, legal tender, or evidence thereof, in kind, in services or in any other medium or manner whatsoever, and whether received directly or indirectly, and any rules, regulations, practices, classifications or contracts affecting any such compensation, charge, fare, toll, or rental.[24]

Therefore, when considering whether the rates (and rate classifications) proposed by FirstEnergy are just, reasonable, and in the public interest, the Commission must also consider the rules, regulations, programs, and practices affecting such rates and rate classifications.

D. Summary of Argument

FirstEnergy's MRPL construct fails for multiple independent reasons – any one of which requires the Commission's rejection of the proposal. To approve the MRPL proposal, as supposedly modified or clarified by the Non-Unanimous Settlement, the Commission must find that FirstEnergy has met each of the following prongs:

1. That FirstEnergy's sole reasons for the MRPL proposal – affordability and subsidization – are supported by substantial evidence. They are not.
2. Assuming *arguendo* that FirstEnergy's rationale is supported by the record, these flimsy rationales are not outweighed by the unrefuted benefits of

[23] *Id.*, *citing Pa. Elec. Co. v. Pa. PUC*, 509 Pa. 324, 331, 502 A.2d 130, 134 (1985)

[24] *McCloskey v. Pa. PUC*, 219 A.3d 1216, 1223 (Pa. Cmwlth. 2019) (citing 66 Pa.C.S. § 102).

customer-generation, including avoided capacity, transmission, and system costs under the current PTC Rider paradigm. They are.

3. That FirstEnergy's proposal comports with sound public policy. It does not.
4. That FirstEnergy's proposal adheres to the mandates of the Commission's regulations. It does not.
5. That FirstEnergy's proposal adheres to the mandates of the AEPS Act. It does not.
6. That FirstEnergy's proposal adheres to the mandates of Act 129. It does not.

FirstEnergy's MRPL proposal fails each of these prongs requisite for approval. Thus, the proposal must be rejected. Even if the Commission finds that one – or even several – prong(s) have been met by FirstEnergy, it still cannot approve the Non-Unanimous Settlement; FirstEnergy must "bat 1.000" to warrant approval.

First, the Company's sole rationales for the MRPL proposal – that wholesale suppliers building in risk premiums to their default supply bids because of customer-generation and compensation for excess generation results in subsidization – is an evidentiary fallacy. FirstEnergy, nor any of the settling parties, have presented *any* cogent evidence that wholesale suppliers have or will bake risk premiums into their bids because of customer-generation. FirstEnergy's theory is purely theoretical. Indeed, FirstEnergy has not been advised by wholesale suppliers that risk premiums have been or will be added because of net-metered customer-generation.[25] Nor can FirstEnergy quantify these alleged risk premiums.[26] Nor can FirstEnergy predict changes to the PTC.[27] Perhaps most inhibiting to FirstEnergy's hypothesis, it has not asked wholesale bidders whether its theory has merit, despite wholesale generators that bid on Fixed-Price Full Requirements

[25] CGC St. No. 1, p. 11, lines 18-20; CGC Exhibit No. JAH-8.

[26] CGC St. No. 1, p. 10, lines 18-19.

[27] CGC St. No. 1, p. 8, lines 15-19; CGC Exhibit No. JAH-5.

(“FPFR”) contracts being party to this case.[28] Citing “affordability” is not a proxy for a utility’s burden of proof. FirstEnergy must prove with substantial evidence that customer-generator-caused risk premiums are or will be added to default service bids and, in turn, prompt subsidization. Similarly, FirstEnergy must prove that its excess generation growth projections are accurate. It has not, so the proposal fails.

Second, even if FirstEnergy has supported its risk premium and growth-based affordability concerns, which it has not, FirstEnergy has not refuted, nor even addressed, the benefits provided by customer-generation under the current PTC Rider scheme. Nor has FirstEnergy proved that the risk-premium, which is not shown to exist, would be large enough to result in subsidization. Customer-generation provides electric energy, electric capacity, reduced distribution system losses, reduced transmission costs, market electric price reductions, health benefits, decarbonized energy, investment in the local distribution system, and other state economic benefits.[29] Moreover, customer-generation is not used as default supply, thus, is not subject to the Code’s “least cost” procurement standards for default supply.[30] Simply, FirstEnergy’s unsupported, unquantified, and entirely speculative cost concerns – even if true – are outweighed by the myriad of benefits endemic to customer-generation.

Third, FirstEnergy’s MRPL proposal is contrary to sound public policy. There is substantial record evidence proving that: (1) approval of the MRPL proposal would chill investor confidence; (2) discourage distributed generation during a recognized generation crisis; (3) exacerbate critical resource adequacy concerns.[31] Now is not the time for the

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[28] *See* Constellation Prehearing Memorandum, ¶ 5; Tr. at 86.

[29] CGC St. No. 1, p. 13.

[30] FirstEnergy St. No. 1, p. 17, lines 11-12.

[31] Even if the MRPL proposal did further sound public policy, those “proffered policy arguments and bleak predictions are best addressed to the General Assembly…” *Sunrise Energy, LLC v. FirstEnergy Corp.*, 148 A.3d 894, 908 (Pa. Cmwlth. 2016).

Commission and Pennsylvania's largest Electric Distribution Company ("EDC") to rug pull the regulatory and statutory scaffolding for investment in critically necessary, local, and clean generation resources.

Fourth, the MRPL proposal violates the Commission's regulations. Unlike UGI,[32] FirstEnergy boldly attempts to redefine a defined regulatory term in a one-off default service proceeding.[33] The Commission's regulations are clear. FirstEnergy seeks to sidestep and alter those regulations in a vacuum as a single utility in a single case. But that is not the correct procedure, and the Commission should not bend to the will of a single EDC to circumvent its rulemaking authority to pursue a poorly thought-out policy end.

Fifth, the MRPL proposal violates both the text and intent of the AEPS Act.[34] Section 5 of the AEPS Act requires that all customer-generators be compensated for their excess generation at the "full retail value," which includes generation, transmission, and distribution components. By forcing customers with systems over 100 kilowatts ("kW") into the HP Rider and compensating them at only the HP Rider rate, FirstEnergy is unlawfully substituting a wholesale rate for the full retail rate mandated by statute. This would not only violate the letter of the law but frustrate the AEPS Act's purpose of promoting renewable energy development across the Commonwealth.[35]

Last, the proposal violates Act 129.[36] Act 129 prohibits default service rates for small business customers from changing more frequently than quarterly. FirstEnergy's proposal to force small business customers under the HP Rider, which fluctuates every five minutes based on wholesale LMP, cannot lawfully be applied to small business customers

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[32] *See UGI DSP*.

[33] FirstEnergy Exhibit No. DMY-6, Revised Page 25.

[34] 73 Pa.C.S. § 1648.5(a)(3).

[35] *Dauphin Cnty. Indus. Dev. Auth. v. Pennsylvania Pub. Util. Comm'n,* 123 A.3d 1124, 1131 (Pa. Cmwlth. 2015)

[36] 66 Pa.C.S. § 2807(e)(7).

whose peak loads are below 25 kW. By reclassifying these customers based on generator nameplate capacity rather than actual peak demand, FirstEnergy would impermissibly assign them to a rate structure that can change 12 times every hour, 24-hours a day, 7-days a week, thereby undermining the stability and transparency that Act 129 guarantees.

FirstEnergy's MRPL proposal fails all six prongs. But the Commission need only find it fails one to reject the MRPL proposal as modified by the Non-Unanimous Settlement.

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

A. Residential Class Default Service Products

The CGC does not take a position on the Company's residential class default service products.

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

The CGC does not take a position on the Company's proposal regarding assignment of responsibility for PJM charges under the Master Supply Agreement ("MSA").

C. Capacity Proxy Price

The CGC does not take a position on the Company's capacity proxy price

III. CLASSIFICATION OF NON-RESIDENTIAL DEFAULT SERVICE CUSTOMERS

A. Classification of Customers Based on Maximum Registered Peak Load

FirstEnergy's MRPL proposal illegally seeks to equate demand with supply. Since June 1, 2019, FirstEnergy default service customers with a *demand* of 100 kW or above have been classified as industrial customers and receive hourly-priced default service under the HP Rider.[37] Default service customers with a *demand* below 100 kW are classified as commercial customers and are served under the PTC Rider.[38] Every year, FirstEnergy

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[37] FirstEnergy St. No. 1, p. 15, lines 15-18.

[38] *Id.*

reviews customers' demand determination in order to pursue appropriate customer classification.[39]

Under the MRPL proposal, FirstEnergy looks to upend the existing paradigm, classifying customers not by demand, but by an arbitrary assignment and redefinition of "Maximum Registered Peak Load."[40] If approved, the Company's MRPL proposal would result in default service customers with a demand of 100 kW or above or with an MRPL of 100 kW or above being served under the HP Rider.[41] As FirstEnergy correctly points out, MRPL is defined by the Commission's regulations.[42] It is defined as:

> The highest level of demand for a particular customer, based on the PJM Interconnection, LLC, 'Peak Load Contribution Standard [("PLC")],' or its equivalent, and as may be further defined by the EDC tariff in a particular service territory.[43]

Under this regulation, the Commission has affirmatively incorporated PJM's PLC construct, which establishes a demand-based metric premised on a customer's contribution to the system's peak demand.

Despite this clear definition, FirstEnergy proposes to redefine 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.[44]

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[39] *Id.*, at p. 16, lines 3-5.

[40] *Id.*, at p. 16, lines 8-11.

[41] *Id*; *See also* FirstEnergy Exhibit No. DMY-6, Revised Page 25.

[42] *Id.*, p. 16, lines 13-16.

[43] 52 Pa. Code § 54.182.

[44] FirstEnergy Exhibit No. DMY-6, Revised Page 25.

The Company's MRPL definition is an overt departure from the Commission's regulations. Rather than follow the standard course for revising a Commission regulation, FirstEnergy seeks to depart from the regulations via a single DSP proceeding, the outcome of which will only affect FirstEnergy and its customers. The regulation ties the definition of MRPL to PJM's PLC, thereby adopting a demand-based metric. It does not authorize treating exported generation as "demand," nor does it permit the substitution of generation output for load. Where a regulation's language is clear, the Commission must apply it consistent with its plain meaning. Interpretative back bending to meet policy ends – as FirstEnergy plainly seeks – violates the Statutory Construction Act.[45] This concept is discussed at further length in Section III(D), *infra*.

In sum, FirstEnergy's MRPL proposal is a significant and illegal departure from the Commission's regulations, which clearly define "Maximum Registered Peak Load." To approve the proposal would signal to all Pennsylvania EDCs that regulatory requirements can be rewritten through individual tariffs. Approval of the MRPL proposal is untenable for this reason alone, and for the reasons set forth more fully in Sections III(A)-(E) below.

B. Projections of Customer-Generator Growth

In its filing and throughout subsequent testimony in this proceeding, FirstEnergy pains to highlight the projected future growth of customer-generation as the one of the bases for the Commission to approve its MRPL proposal. FirstEnergy's position is erroneously scaffolded on this premise. FirstEnergy surmises that its random and unsupported projections as to the buildout of customer-generation are accurate. They are not. Because this justification fails upon critical review, the CGC submits that FirstEnergy has wholly failed to carry its burden of proof undergirding the MRPL proposal.

[45] *See* 1 Pa.C.S. § 1921(b)(when the words of a statute are clear and free from ambiguity, "the letter of it is not to be disregarded under the pretext of pursuing its spirit.")

1. **FirstEnergy's projections for customer-generator growth are speculative and unsupported by the record.**

FirstEnergy explained that its net-metering true-up expense for the period of June 1, 2024, to May 31, 2025, is $4.6 million.[46] FirstEnergy then extrapolated this figure using a projection of net-metering customer-generation in future years to reach rough estimate of future net-metering borne "true-ups."[47] According to FirstEnergy, if 10% of the roughly 1,555 net-metering projects in its queue are energized, FirstEnergy's true-up expense would be approximately $60 million by 2029. If 50% of the projects are energized, the true-up expense that year would be approximately $544 million.[48]

These figures are red herrings and irrelevant to the Commission's determination as to whether the MRPL proposal is legal – which it is not – and supported by substantial evidence – which is it not.

As explained by FirstEnergy and outlined by CGC witness Mr. James A. Heidell, there are several thousand megawatts ("MW") of capacity in FirstEnergy's net-metering queue (comprised of approximately 1,555 net-metering applications).[49] However, the queue is an inappropriate benchmark to use when projecting project energization. For instance, only 18% of the projects in the queue have progressed to or beyond agreeing to pay for a Study Agreement that funds FirstEnergy's feasibility study.[50] Similarly, less than 15% of prospective net-metering customers have signed a Construction Services

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[46] FirstEnergy St. No. 1-R, p. 17, lines 3-4.

[47] *See* FirstEnergy St. No. 1, p. 18, lines 18-21; *See also* FirstEnergy Exhibit No. DMY-7.

[48] FirstEnergy St. No. 1-R, p. 17, lines 4-7; FirstEnergy Exhibit No. DMY-7 (Revised).

[49] CGC St. No. 1, p. 7, lines 19-21.

[50] *See* CGC St. No. 1-SR, p. 2, lines 16-18; CGC Exhibit No. JAH-2SR.

Agreement.[51] Even for customers that sign a Construction Services Agreement, there is no guarantee that the customer will proceed with development of the net-metering project after analysis of the underlying costs and economics of the same.[52]

This concept is made clear in CGC Exhibit No. JAH-2SR. Of the 786 applications for net-metering solar facilities larger than 1MW that FirstEnergy received in 2025: (1) zero have been energized; (2) 92 have paid the interconnection study fee; (3) zero have made any payment towards facilities upgrades; and (4) 42 have been cancelled.[53] This discovery response was served on June 8, 2026, meaning that more than 17-months had passed since 2025 net-metering applications began. Despite this, no projects have made material advancements to energization, and less than 12% have paid an interconnection study fee.

Energization through FirstEnergy's net-metering interconnection queue is akin to a fad diet or a New Year's resolution. Plenty begin the process. Few see it through. The reason for this is simple. The process is difficult and expensive. FirstEnergy's projections fail to account for this reality. Nor does FirstEnergy attempt to put into historical context how many of the "applied-for" projects have been energized since the advent of the AEPS Act in 2004.[54] What is clear is that a significant portion of net-metering interconnection applications are cancelled or go nowhere.[55] If that was not the case, FirstEnergy would have more than a handful of net-metering facilities receiving year-end true-up payments after more than 20-years under the AEPS continuum.[56]

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[51] *Id.*, at pp. 7-8, lines 23, 1.

[52] *Id.*, at p. 7, lines 1-3.

[53] *See* CGC St. No. 1-SR, p. 2, lines 21-23; CGC Exhibit No. JAH-2SR.

[54] *See* 73 Pa.C.S. §§ 1648.1 – 1648.8 and 66 Pa.C.S. § 2814.

[55] *See* CGC St. No. 1, p. 19, lines 2-6.

[56] *See* generally FirstEnergy Exhibit No. DMY-7 (Revised).

In short, FirstEnergy's growth projections are overstated and not premised on any reliable data. As the party with the burden of proof, it is incumbent on FirstEnergy to demonstrate why its projections are reliable and evidence based. FirstEnergy has not done so, with FirstEnergy witness Mr. Young going so far as to admit that he does not know the penetration rates of net-metered installations will be next year, let alone 25-years from now:

> Q. But you certainly can't say with any certainty what the penetration rate would be next year or 25 years from now. Correct?
>
> A. I don't know that, correct.[57]

Absent coherent evidence supporting FirstEnergy's growth projections – which are demonstrably too high given historic trends – FirstEnergy cannot premise approval of its MRPL proposal on these estimates and the same should be rejected on this basis alone.

C. Costs and Benefits of Customer-Generators

The CGC and JSA identified a broad range of benefits associated with customer-generators throughout this proceeding. The Company's MRPL proposal, if approved, would kneecap these benefits from being recognized in the future by removing much of the incentive structure now present for existing and prospective customer-generators. Moreover, the MRPL proposal undercuts the benefits provided by existing customer-generators, like the members of the CGC, because those customer-generators brought net-metering facilities to market in FirstEnergy territory under the existing PTC Rider paradigm. Projects were identified, financed, and constructed with the understanding that the PTC Rider would be the applicable classification. Under that structure, the CGC's net-metering projects are viable. Under the MRPL proposal, they likely will not be.[58]

Conversely, FirstEnergy has not identified *any* costs associated with customer-generators that are: (1) not assigned to the customer-generators themselves; (2) not wholly

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[57] Tr. at 81.

[58] CGC St. No. 1, p. 5, lines 16-20.

counteracted by the benefits provided by customer-generators; or (3) quantifiable with any precision. FirstEnergy identified two cost drivers associated with Customer Generation. Both are meritless. FirstEnergy first argues that default wholesale supply bidders bake risk premiums into their FPFR bids, thereby driving up the PTC. Second, FirstEnergy argues that continued buildout of customer-generation will result in increased true-up payments for that generation, thereby raising the costs for the commercial class served under the PTC Rider. At best, these arguments are speculative and unsupported by the evidentiary record. At worst, they are false. Under either scenario, the MRPL proposal fails.

1. PTC Rider vs. HP Rider

Approval of the MRPL proposal would have devastating effects on net-metering customer-generation in FirstEnergy service territory. As acknowledged by FirstEnergy at Hearing, the HP Rider has been historically lower than the PTC Rider.[59] FirstEnergy witness Mr. David Young also agreed that he – as a purveyor of a particular hypothetical commodity – would be more inclined to sell said commodity at a comparably higher compensation rate.[60] The same concept applies to customer-generation.[61] Indeed, the MRPL proposal "is anticipated to make it uneconomic to develop and operate solar Photovoltaic ("PV") distribution generation projects and will encourage developers and investors to pursue other states where the investment risk is lower. As a result, less PV distributed generation will be developed, in turn reducing economic development in the state…"[62]

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[59] Tr. at 92.

[60] Tr. at 92.

[61] *See* CGC St. No. 1 at p. 5, lines 15-16 ("FirstEnergy's change will reduce the compensation that net-metered customer-generators will be entitled to for their exported green energy.")

[62] CGC St. No. 1, p. 5, lines 16-20.

As explained by JSA witness Mr. Michelman, there are three primary cost components that drive generation supply: (1) an energy component; (2) a capacity component; and (3) a transmission component.[63] Net-metering customer-generation reduces the costs associated with all three components.[64] The Company's proposal ignores this reality, while simultaneously hamstringing the viability of existing and future projects.

2. Risk Premiums

a. The costs identified by FirstEnergy and other parties are a fallacy and/or are overstated.

i. Volumetric Risk Premiums

FirstEnergy premises its MRPL proposal on the assumption that wholesale default supply bidders bake in "risk premiums" to their FPFR default service bids because of customer-generation. According to FirstEnergy, "adding large customer-generator supply to the commercial procurement group would decrease load provided by default service suppliers and would increase risk premiums in [FPFR] products."[65] Said another way, FirstEnergy believes that customer-generation increases bid prices for FPFR contracts. There is no credible record evidence to suggest that this is occurring, thus, FirstEnergy's primary reason for the MRPL proposal – avoidance of risk premiums – is meritless. In turn, the MRPL proposal must be rejected.

In Direct Testimony, FirstEnergy witness Dr. Nicholas Powers estimated that the total risk premium ranges from $6.46 - $10.24/MWh, depending on rate district, for the 2018-2025 auctions.[66] Dr. Powers provides several factors that may contribute to a bidder's inclusion of risk premiums:

- Fluctuating wholesale prices

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[63] *See* JSA St. No. 1, p. 8, Table 1.

[64] *See* JSA St. No. 1, pp. 9-40.

[65] FirstEnergy St. No. 1, p. 17, lines 15-18.

[66] FirstEnergy St. No. 3, p. 15, line 3.

- Customer migration
- Weather-related variability
- Other market factors

Customer-generation is conspicuously not identified by Dr. Powers as a potential contributor to risk premiums. Nor has the Company attempted to quantify what – if any – risk premium is associated with customer-generation.

When pushed to substantiate its risk premium claims, the Company sputtered. FirstEnergy confirmed that it had not affirmatively asked any wholesale bidder whether customer-generation is a cause of additional risk premiums.[67] Further, FirstEnergy has not been informed by any wholesale default supply bidder that customer-generation risk premiums are included in wholesale supply bids.[68] This, despite FirstEnergy having the opportunity to confirm its theory throughout the entirety of this proceeding with a wholesale supply bidder party to the case.[69] That wholesale bidder provided no evidence to suggest that it did or will include customer-generation related risk premiums into its default service bids.

FirstEnergy's risk premium arguments are completely unsubstantiated and fail to approach the evidentiary burden needed to prevail on the MRPL proposal. FirstEnergy cannot quantify the alleged customer-generation risk premiums. FirstEnergy has not asked wholesale bidders whether these risk premiums exist. FirstEnergy has also not been told by a wholesale bidder whether these risk premiums exist. To the extent that they do exist, FirstEnergy has declined to present *any* supportive evidence to bolster its contention. Raw

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[67] Tr. at 86.

[68] Tr. at 86.

[69] *See* Tr. at 86; *See also* Constellation Prehearing Memorandum, ¶ 5.

speculation cannot be the basis for approval of the MRPL proposal.[70] Therefore, the MRPL proposal fails.

ii. Switching Related Risk Premiums

In tepid support of FirstEnergy's MRPL proposal, OCA witness Dr. Serhan Ogur argued that net-metering customer-generators engender "switching risk" which, in turn, increase wholesale bidders risk premiums.[71] As explained by CGC witness Heidell, "switching risk" entails:

> [c]ustomers changing suppliers either between default and competitive supply or between competitive suppliers. Switching risk occurs in competitive electricity market states including Pennsylvania. For example, if a default service bidder believes it must bid to provide 500MW, and then a large 100MW customer decides to enroll in a competitive supply option, then the default supplier is obligated to serve that 100MW delta. The inverse can also happen, where a supplier underbids the total load because of a large customer or subset of customers returning to default service from competitive supply. Therefore, default service bidders may evaluate the volumetric risk associated with switching and could incorporate that risk into their default bids, though I am unaware of any substantive evidence of that occurring in this case.[72]

The OCA's "switching risk" concerns are nonsensical. Indeed, large net-metering customer-generators typically have little or no load.[73] Therefore, a customer-generator switching between default service and competitive supply would have no meaningful effect on a default supplier's load obligation.[74] Moreover, the practical underpinning of OCA's

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[70] *See 2025 PPL Rate Case*, p. 198 (changes to the MRPL construct must be supported by the record).

[71] OCA St. No. 1, p. 38, lines 21-23.

[72] CGC St. No. 1-R, pp. 3-4, lines 20-23, 1-6.

[73] CGC St. No. 1-R, p. 4, lines 10-11.

[74] CGC St. No. 1-R, p. 4, lines 11-13.

"switching risk" concern is incorrect. Customer-generators have no incentive to enroll in a competitive supply option at a rate lower than the PTC. Doing so would reduce the customer-generator's compensation for excess generation. Conversely, an Electric Generation Supplier ("EGS") has no incentive to enroll a customer-generator in a competitive supply option. Doing so would result in that EGS paying the customer-generator, rather than being paid by the customer-generator. These concepts ring true regardless of the price of the competitive supply option. Certainly, it would not be prudent business for a supplier to enroll a customer-generator at a rate above the PTC.

Compounding the OCA's erroneous argument, FirstEnergy, nor OCA, are aware of the number of customer-generators who shop for competitive supply.[75] Moreover, FirstEnergy, nor OCA, appear to be aware of the level of alleged "switching risk" that wholesale bidders build into speculative risk premiums as a result of customer-generation, nor can they quantify it. Further, as discussed in Section III(C)(2)(a)(i), *supra*, FirstEnergy has not been told by wholesale bidders that customer-generators create risk premiums. Nor has FirstEnergy asked wholesale bidders whether this theory is true.

For these reasons, the OCA's "switching risk" analysis should be rejected as speculative and meritless.

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

The JSA recommended that FirstEnergy recognize the concepts of Negative Peak Load Contribution ("PLC") and Negative Network Service Peak Load Contribution ("NSPL").[76] JSA explained that FirstEnergy's failure to do so would result in costs exceeding $108 million in 2029.[77] The Settlement does not contemplate recognition of these obvious cost-savings.

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[75] Tr. at 84; Tr. at 164.

[76] JSA St. No. 1, pp. 59-60, lines 15-19, 1-13.

[77] JSA St. No. 1, p. 60, lines 7-8.

While the CGC does not take a position on JSA's recommendation regarding the recognition of negative PLCs and negative NSPLs, CGC is in general agreement that those benefits exist and would reflect the reduced costs to FirstEnergy ratepayers as a result of net-metered customer-generation. These benefits are examined in more detail in Section III(4), *infra*.

4. Other Costs and Benefits

a. Customer-generation provides substantial, cognizable benefits.

i. Customer-Generation helps address the resource adequacy crisis.

The Commission has recognized the looming resource adequacy crisis in Pennsylvania and identified historical and future load growth.[78] The five-year projected annual electricity demand growth rate is 6.17%.[79] However, the Commission is not the only one that recognizes this future generation shortfall and potential solutions thereto. Governor Shapiro,[80] PPL Electric Utilities Corporation,[81] DLC,[82] the PJM Independent

[78] Electric Power Outlook for Pennsylvania 2024 – 2029, Pennsylvania Public Utilities Commission, Technical Utility Services, August 2025; *See also* CGC St. No. 1, pp. 19-20, lines 16-22, 1-2.

[79] *Id.*

[80] *Governor Josh Shapiro and The Commonwealth of Pa. v. PJM*, FERC Docket No. EL25-46-000, p. 25 (Complaint filed Dec. 30, 2024).

[81] *See* CGC St. No. 1, p. 20, fn. 46.

[82] *See* CGC St. No. 1, p. 20, fn. 47.

Market Monitor,[83] OCA,[84] the Commission,[85] and FirstEnergy,[86] among others, have all identified concerns related to resource adequacy.

In his Complaint against PJM before the Federal Energy Regulatory Commission, Governor Shapiro noted that the Commonwealth of Pennsylvania "supports and encourages every rational measure to ensure the reliability of our electrical grid…"[87] Governor Shapiro also explained that demand is "expected to skyrocket from 23 GW to 128 GW of growth in the next five years."[88] Similarly, PPL explained that "new data center requests are poised to more than double [PPL's] system peak within the next 5-6 years"[89] and that "the Commonwealth will lack the adequate electric generation supply to meet future demands."[90] DLC stated that "the extreme energy demands of data centers, if not managed correctly, could result in grid impacts and unintended cost shifting of costs to

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[83] *See* CGC St. No. 1, p. 20, fn. 48.

[84] *See* CGC St. No. 1, p. 20, fn. 49.

[85] *See* CGC St. No. 1, p. 20, fn. 51.

[86] *See* CGC St. No. 1, p. 20, fn. 52.

[87] *Governor Josh Shapiro and The Commonwealth of Pa. v. PJM*, FERC Docket No. EL25-46-000, p. 25 (Complaint filed Dec. 30, 2024).

[88] *Id.*, at 15.

[89] *See En Banc Hearing Concerning Interconnection and Tariffs for Large Load Customers,* Docket No. M-2025-3054271, Testimony of Joseph B. Lookup, p. 2 (April 24, 2025); CGC St. No. 1, p. 20, fn. 46.

[90] *See Technical Conference on Resource Adequacy in Pennsylvania*, Docket No. M-2024-3051988, Comments of PPL Electric Utilities Corporation (Comments submitted on Jan. 9, 2025).

other customers."[91] PJM's Independent Market Monitor explained that the "current supply of capacity in PJM is not adequate to meet the demand from large data center loads and will not be adequate in the foreseeable future."[92] The OCA urged Pennsylvania leaders to "take a deliberate approach to addressing resource adequacy, one that seeks to maintain existing resources and to incentivize new resources."[93] FirstEnergy itself is "deeply concerned about the looming resource adequacy challenges…,"[94] has acknowledged that "demand is dramatically outpacing the rate at which new generation supply is scheduled to or can come online,"[95] and stated that it "supports development of all resources in Pennsylvania that address the projected gap between increasing load and capacity resources."[96]

FirstEnergy confirmed as much at the Evidentiary Hearing, verifying that: (1) Pennsylvania is facing a resource adequacy crisis,[97] (2) less generation or decreased

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[91] *See En Banc Hearing Concerning Interconnection and Tariffs for Large Load Customers*, Docket No. M-2025-3054271, Testimony of C. James Davis, pp. 2-3 (April 24, 2025).

[92] *See* PJM Critical Issues Fast Path Proposal, *https://www.pjm.com/-/media/DotCom/committees-groups/cifp-lla/2025/20251024/20251024-item-04g---imm-memo.pdf (*last visited July 9, 2026; *See also* CGC St. No. 1, p. 20, fn. 48.

[93] *See Technical Conference on Resource Adequacy*, Docket No. M-2024-3051988, Comments of the Office of Consumer Advocate (Comments submitted Jan. 9, 2025).

[94] *See Technical Conference on Resource Adequacy,* Docket No. M-2024-3051988, Comments of FirstEnergy Pennsylvania Electric Company, p. 2 (Comments submitted Jan. 9, 2025).

[95] *Id.*

[96] *Id.*, at 6.

[97] Tr. at 89.

buildout of generation coupled with increased load may result in a capacity shortfall,[98] (3) electricity demand is increasing at an unprecedented pace and that supply is unable to keep pace with demand,[99] (4) that customer-generation is delivered into the distribution grid,[100] and (5) that the more customer-generation built, the more supply there is.[101]

Despite all this, FirstEnergy's MRPL proposal discourages the buildout of additional distributed energy resources that could help alleviate the resource adequacy crisis. As explained by CGC witness Mr. Heidell, FirstEnergy's MRPL proposal discourages future investment in the Commonwealth of Pennsylvania because:

> [d]evelopers have limited resources with respect to time and capital and will focus their attention on other states where there is an opportunity to achieve their target investment returns without the uncertain regulatory environment created by FirstEnergy and other electric distribution utilities.[102]

This conclusion is supported by FirstEnergy's own data. Indeed, there was a decrease in the MW application requests in 2025.[103] An uncertain regulatory environment wherein individual utilities pursue significant net-metering compensation changes in one-off regulatory proceedings, rather than a cogent statewide approach, is not an environment in which investors will continue to build generation resources. Rejection of the MRPL proposal avoids this problem by continuing the traditional net-metering incentive structure which, in turn, assists the Commonwealth in its fight for resource adequacy. If the MRPL proposal is approved, existing net-metering projects may no longer be economically viable. Furthermore, investors will be less inclined to pursue FirstEnergy's vast service territory as a home for generation investment. Approval of the MRPL proposal will worsen the

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[98] *Id.*

[99] *Id.*

[100] *Id.*, at 90.

[101] *Id.*

[102] CGC St. No. 1, p. 18, lines 11-14.

[103] CGC St. No. 1, p. 19, lines 2-3.

resource adequacy crisis and presents an untenable outcome for the Commission. Therefore, it must be rejected.

ii. Customer-generation provides electric energy.

As explained by CGC witness Mr. Heidell's Direct Testimony, the continued development of net-metered customer-generation provides electric energy to the FirstEnergy distribution grid at a time when Pennsylvania is facing a potential generation shortfall.[104] No party to this case disputed this assertion. The MRPL proposal would kneecap the viability of customer-generation and reduce investor incentive to continue developing like DER projects.[105] As acknowledged by FirstEnergy, a purveyor of a particular product is more likely to sell their product in a marketplace if the compensation is higher than the alternative.[106] The HP Rider's compensation will be less than the current PTC Rider structure applicable to large customer-generation.[107] Therefore, existing and prospective customer-generators will be less likely to build and generate electricity if the MRPL proposal is approved. FirstEnergy ignores this critical benefit, which is yet another indicator of the MRPL proposal's half-baked and unsubstantiated reasoning.

iii. Customer-generation reduces FirstEnergy's capacity obligation.

CGC witness Mr. Heidell and JSA witness Mr. Michelman both illustrated that local customer-generation reduces FirstEnergy's capacity obligation. Excess generation from customer-generators closely aligns with system demand peaks.[108] System demand peaks ultimately set capacity costs.[109] Excess generation during PJM's 5 Coincident Peak ("CP") hours thereby reduces a supplier's capacity obligation which will be recognized in the

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[104] CGC St. No. 1, p. 13, line 6.

[105] CGC St. No. 1, p. 4, lines 4-7.

[106] Tr. at 92.

[107] Tr. at 100-101; CGC St. No. 1, p. 5, lines 15-16.

[108] JSA St. No. 1, p. 19, lines 14-15; Table 3.

[109] *Id.*, p. 15, lines 7-9.

supplier's default service bid(s). FirstEnergy failed to rebut this concept and the MRPL proposal completely ignores the significant capacity benefits intrinsic to distributed solar generation.

iv. Customer-generation reduces system losses.

CGC witness Mr. Heidell and JSA witness Mr. Michelman both examined how local customer-generation reduces system losses.[110] While this concept is undisputed, it stands to reason that a reduction in the amount of customer-generation, which the MRPL would cause, would *increase* line losses.

v. Customer-generation reduces transmission costs.

JSA witness Mr. Michelman explained that customer-generation reduces transmission costs to the benefit of FirstEnergy and its customers. A customer that curtails load during a demand response event during an NSPL peak receives the full benefit of that curtailment in its NSPL calculation.[111] Under FirstEnergy's MRPL proposal, net-metered generation is excluded from the NSPL calculation.[112] Evaluating customer-generators' reduction to transmission costs is a straightforward exercise:

> (1) Net-metered excess generation coincident with the NSPL peak hours reduces aggregate net load for the applicable FirstEnergy transmission zone.
>
> (2) This lowers the NSPLs assigned to all retail customers in the zone for the following calendar year.
>
> (3) That lowers the zone's total NITS cost obligation for the following year.
>
> (4) That reduction lowers default service bid costs or, if FirstEnergy's NITS proposal is approved, lowers FirstEnergy's acquisition costs.

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[110] CGC St. No. 1, p. 13; JSA St. No. 1, p. 51.

[111] *Id.*, p. 30, lines 8-10.

[112] *Id.*, at lines 10-14.

(5) These lower costs then reduce the PTC Rider or HP Rider rate for the following year.[113]

Put simply, customer-generation reduces net load during transmission peak hours. This reduces transmission costs. FirstEnergy's MRPL proposal does not account for this obvious benefit and, if approved, would abate the benefit for all FirstEnergy customers as a result of the curtailed development of customer-generation.

vi. Customer-generation reduces the market price for electricity.

CGC witness Mr. Heidell and JSA witness Mr. Michelman both examined how local customer-generation reduces FirstEnergy's capacity obligation which, in turn, reduces the market price for electricity.[114] As explained by Mr. Michelman, "capacity costs are determined by the PJM capacity auction. The capacity auction incorporates forecasts of future demand and how much capacity will be required to meet that demand curve."[115] Capacity costs set at auction are allocated based on customer demand during PJM's 5CP hours.[116] Excess generation produced during those 5CP hours lowers FirstEnergy's overall peak load, thus lowering FirstEnergy's overall capacity cost obligations.[117]

PJM's 5CP hours occur between June 1 and September 30 each year.[118] Net-metered solar generation closely aligns with peak load.[119] This reduces capacity costs, the concept for which has been recognized by the Federal Energy Regulatory Commission ("FERC") and in other states.[120] The CGC does not take a position on the JSA's proposal for

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[113] *Id.*, p. 30, lines 6-15.

[114] *See* CGC St. No. 1, p. 13, line 7; JSA St. No. 1, pp. 15-29.

[115] JSA St. No. 1, p. 15, lines 5-7.

[116] *Id.*, at lines 7-9.

[117] *Id.*, at p. 19, lines 1-3.

[118] *Id.*, at lines 6-7.

[119] *Id.*, at lines 14-15.

[120] *Id.*, at p. 20, lines 7-13.

FirstEnergy to recognize and allow negative PLCs, but does note that it appears FirstEnergy erroneously ignores the concept.

Additionally, renewable energy such as the CGC's solar net-metering facilities have essentially no dispatch costs.[121] Therefore, PJM will use those resources before more expensive fossil fuel generated electricity.[122] As more zero or near zero dispatch cost resources are added to the system, it will likely reduce the cost of the last unit in PJM dispatched to meet load.[123] Because the PJM market price is set based upon the clearing price of the last unit dispatched, reduction in the price to that unit reduces the market price.[124] This concept is recognized in Pennsylvania, New Jersey, and Maine as part of the evaluation of Demand Side Management ("DSM") programs in the Demand-Reduction-Induced Price Effects ("DRIPE") calculation.

That said, it is clear that FirstEnergy has wholly failed to consider – let alone recognize – the cost reductions inherent to customer-generation. Once more, the Company's MRPL proposal will reduce or curtail the development of customer-generation. Doing so will increase the market price of electricity, thereby negatively affecting FirstEnergy's customers.

vii. Customer-generation provides health benefits.

Customer-generation provides significant health benefits which would be curtailed if FirstEnergy's MRPL proposal were approved. CGC witness Mr. Heidell explained that "[i]ncreased renewable energy production on the system displaces fossil fuel electricity generation because it is zero marginal cost."[125] In turn, that displacement results in bringing fewer fossil fuels, thereby reducing or curbing the amount of criteria air pollutants that are

[121] CGC St. No. 1, p. 13, lines 22-24.

[122] *Id.*

[123] *Id.*, lines 24-25.

[124] *Id.*

[125] CGC St. No. 1, p. 14, lines 8-9.

associated with harmful health impacts.[126] FirstEnergy does not appear to dispute this clear benefit and, if the MRPL proposal is approved, the continued development of clean and green customer-generation will be curtailed, thereby resulting in negative health consequences for all Pennsylvania residents. Customer-generation supports clean air. The MRPL proposal does not.

viii. Customer-generation provides clean, decarbonized energy.

Encouraging the continued development of clean customer-generation is critical to pursuing the Commonwealth's decarbonization goals. As explained by CGC witness Mr. Heidell, renewable energy – which is what CGC members produce – is "assumed to reduce the need for burning fossil fuels," which reduces greenhouse gas emissions.[127] Various states recognize the societal benefits incumbent with reduction to greenhouse gas emissions.[128] Furthermore, customer-generation supports a diverse generation portfolio to meet the needs of FirstEnergy customers. The more diverse a generation portfolio is, the less reliance there is on any single fuel or technology.[129] Diversity of generation sources is critical for a more resilient and reliable electricity grid.[130] Governor Shapiro appears to have recognized as much, as his "Lightning Plan" includes a Climate Emissions Reduction Act and a tax credit for "reliable energy sources."[131]

The CGC's membership's generation reduces the harmful emissions that would otherwise be emitted if the electricity came from a standard fossil fuel burning generation

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[126] *Id.*, at lines 10-11.

[127] *Id.*, at lines 21-22.

[128] *Id.*, pp. 14-15, lines 21, 1-5.

[129] *Id.*, lines 5-6.

[130] *Id.*, lines 5-7.

[131] *Id.*, lines 7-8.

source.[132] This generation also provides clean, reliable energy.[133] FirstEnergy's MRPL proposal would curtail development of this valuable asset, contradicting the plain intent of the AEPS Act, the Governor's Lightning Plan, and generally accepted public policy considerations.

ix. Customer-generation provides needed investment in FirstEnergy's distribution system.

Not only does customer-generation provide valuable clean energy, reduce costs, avoid negative health outcomes, and squares firmly within rational policy ends, it also directly benefits FirstEnergy and its customers by providing necessary distribution upgrades as part of the interconnection process. The addition of large customer-generators can delay or address the need for FirstEnergy to pursue distribution upgrades which would otherwise be shouldered by FirstEnergy's other customers.[134] Furthermore, additional customer-generation connected to the distribution system can reduce the need to build new transmission capacity.[135] FirstEnergy does not engage with this benefit in any meaningful way. Customer-generators are bearing the costs for meaningful distribution system upgrades and may be contributing to a reduction in the need for transmission system upgrades. The MRPL proposal discourages continued development of customer-generator projects and, as a result, approval of the MRPL proposal would mitigate – if not eliminate – these benefits to FirstEnergy and its customers.

x. Customer-generation helps the statewide economy and Pennsylvania farmers.

Encouraging the continued development of net-metered customer-generation benefits the statewide economy.[136] Not only does the construction of these facilities spur

[132] *Id.*, lines 8-10.

[133] *Id.*, line 10.

[134] *Id.*, p. 15, lines 17-18.

[135] *Id.*, lines 18-20.

[136] CGC St. No. 1, p. 16, lines 7-11.

local economic development through employment during the construction, installation, and maintenance phases, but the presence of large net-metering customer-generation installations can also increase the local and state tax base.[137] Further, ancillary economic benefits accompany the presence of net-metered customer-generation through a general increase in economic activity in the facility's locale.[138]

This concept is made clear in CGC witness Mr. Heidell's Rebuttal Testimony, where he identifies a news article from the Record-Argus which explained that a CGC member's investment in a solar array may have prevented an inter-generational family-owned farm from closing or selling.[139] Indeed, CGC's investment "will not only keep the farm running, benefitting [landowner's] family, but […] allowed the family to buy a new, sorely needed tractor…"[140] In the face of FirstEnergy's MRPL proposal, benefits like these may no longer be feasible.

As recently explained by the Commission, the "future of Pennsylvania agriculture and the future of our energy system are increasingly indistinguishable."[141] FirstEnergy's MRPL proposal is inapposite to the Commission's clear policy objective to support Pennsylvania farms. For farms that host net-metered solar PV DER installations, those installations are "not a side business."[142] They are a "critical part of how the farm works."[143] Moreover, solar PV net-metering installations are Tier I alternative energy resources under the AEPS Act.[144] For those installations, "net-metering treatment [is] not an abstraction;

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[137] *Id.*, lines 8-11.

[138] *Id.*

[139] CGC St. No. 1-R, p. 5, line 21, fn. 10.

[140] *Id.*

[141] *PPL Rate Case*, p. 189.

[142] *Id.*

[143] *Id.*

[144] 73 Pa.C.S. § 1648.2.

rather, it was part of the framework that allowed these projects to be built, financed, and maintained."[145] The fact that these installations have little or no load is of no consequence to the Commission's determination that they support local farms. Further, by failing to provide a meaningful grandfathering period, the MRPL proposal "does not fully address the reliance interests of farms that have already made major investments" in customer-generation."[146] The Commission's conclusions in the *2025 PPL Rate Case* seek to establish a meaningful difference in Tier I generation sources that does not exist. If the Commission supports farming operations, rejection of the MRPL proposal is a simple way to pursue that end.

Adequate compensation under the PTC Rider isn't just for customer-generators and developers. It buoys the state and local economies and provides critical income to landowners who would otherwise have to sell their land or forego purchasing new farm equipment. FirstEnergy's MRPL proposal ignores this reality.

D. Compliance with Applicable Laws and Regulations

FirstEnergy's MRPL proposal fails on three independent legal grounds. First, it subjugates an unambiguous Commission regulation and openly violates another. Second, it violates both the text and intent of the AEPS Act. Last, it violates Act 129. Each of these violations of law are addressed individually below.

1. The MRPL proposal violates the Commission's regulations

FirstEnergy seeks to redefine "Maximum Registered Peak Load" for purposes of classifying certain customer-generator facilities. Namely, FirstEnergy 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

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[145] *Id.*

[146] *Id.*, at p. 190.

shall also be inclusive of the nameplate capacity of the generation system."[147] Under this construct, customer-generation would be included into the MRPL calculation and would affect large customer-generators' rate classification despite those customers' negligible demand on the distribution system remaining unchanged.

This directly contradicts the Commission's regulation, which defines MRPL as "[t]he highest level of demand for a particular customer, based on the PJM Interconnection, LLC, 'Peak Load Contribution Standard,' or its equivalent, and as may be further defined by the EDC tariff in a particular service territory."[148] PJM's PLC construct requires a demand-based metric to measure a particular customer's contribution to peak demand. The regulation does not permit the treatment of generation – *i.e.*, supply – as demand. There is nothing in the Commission's regulations, nor the PJM's PLC construct, that allows such practice.

Where regulatory language is clear, it must be applied according to its plain meaning and may not be expanded through interpretation or ill-thought-out policy considerations. The Statutory Construction Act explains that, when the words of a statute are clear and free from ambiguity, "the letter of it is not to be disregarded under the pretext of pursuing its spirit."[149] Demand is simply that. As is supply. Equating the two as FirstEnergy attempts is untethered from any reasonable reading of the Commission's regulation.[150] FirstEnergy's MRPL definition is not a mere clarification of an ambiguous regulation. It is an adulteration and substitution of plain text.

[147] FirstEnergy Exhibit No. DMY-6, Revised p. 25.

[148] 52 Pa. Code § 54.182.

[149] 1 Pa.C.S. § 1921(b).

[150] *W. Penn Power Co. v. Pa. PUC*, 615 A.2d 951 (Pa. Cmwlth. 1992) (citing Pennsylvania Public Utility Commission Rate Case Handbook, at 12-14) (defining "load" as the sum of customer demand and "peak load" as the highest level of such demand over a defined period).

FirstEnergy leans heavily on the last clause of the regulation to justify its departure from the clear directive of same.[151] This reliance is misplaced. Ambiguity exists only "when there are at least two reasonable interpretations of the text under review."[152] FirstEnergy's MRPL proposal is not merely an interpretive cast of an unclear regulation. It is a substantive departure from the text of the regulation itself that fundamentally disregards the demand-based requirement as written. By attempting to include exportation of customer generation under the demand-based paradigm, FirstEnergy rewrites the regulation. Doing so in a single-utility DSP proceeding is not the appropriate vehicle to pursue this change. Moreover, approval of the MRPL proposal would signal to all EDCs that it is permissible to expand a clear regulatory definition to meet unjustified policy ends. The CGC respectfully submits that, for the Commission to allow this practice, is to allow individual EDCs to rewrite and revise regulations *vis-à-vis* their individual tariffs. The Commission's regulations, nor the Public Utility Code, permit such a result.[153]

Moreover, the MRPL proposal directly clashes with PJM's methodology incorporated into the regulation. The PJM PLC construct measures a load-serving entity's share of system peak demand based on customer load during the PJM systems five (5) CP hours.[154] The PJM framework – and, by extension, the Commission's regulation – does not

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[151] FirstEnergy St. No. 1, p. 16, lines 13-16.

[152] *Warrantech Consumer Prods. Servs., Inc. v. Reliance Ins. Co. in Liquidation*, 96 A.3d 346, 354-55 (Pa. 2014).

[153] *See Phila. Suburban Water Co. v. Pa. PUC*, 808 A.2d 1044, 1056 (Pa. Cmwlth. 2002) (an administrative agency may not disregard or waive governing legal requirements on the theory that doing so would advance policy objectives); *Aetna Casualty and Surety Insurance Co. v. Insurance Dep't.*, 638 A.2d 194 (Pa. 1994).

[154] See PJM Manual 18: PJM Capacity Market, § (Capacity Obligation – Peak Load Contribution); PJM Manual 19: Load Forecasting and Analysis (describing calculation of coincident peak load); *see also* JSA St. No. 1, p. 15, lines 5-9.

treat exported generation as demand. Nor does it permit generation to be substituted for load in determining the PLC. Pennsylvania law requires that tariff provisions conform to applicable statutes and regulations. Tariffs, though broad and controlling of a utility's rates, terms, and conditions of service, cannot be used as a lever to rewrite regulatory requirements.[155] That principal controls here. FirstEnergy cannot rewrite the Commission's regulations to pursue a policy end. Even if it could, doing so in a one-off individual utility proceeding does not engender a fulsome review by all interested stakeholders – not limited to FirstEnergy customers – and avoids critical analysis of the proposal's intersection and violation with other legal requirements.

Beyond its illegality, the devastating effects of FirstEnergy's MRPL proposal are clear. If approved, it will: (1) discourage future investment in new generation; (2) reduce future clean energy investment; and (3) destroy the scaffolding upon which existing net-metering projects were evaluated, financed, and constructed.[156] In doing so, it will reduce or eliminate the significant benefits provided by customer-generation, which are examined in Section III(C), *supra*.

FirstEnergy's paradigm shifting MRPL proposal appears to be the ill-thought-out product of the Commission's decision in the *UGI DSP*. But this is not the *UGI DSP*. The MRPL proposal cannot be approved simply because another utility, serving a different territory with different customers, under a different record, with a materially different proposal, had a Supply Peak Load Impact ("SPLI") concept approved. FirstEnergy's burden of proof is not supplanted by the record in the *UGI DSP*. Alternatives to address FirstEnergy's speculative concerns were never evaluated by the Company.[157] The MRPL

[155] *See* 66 Pa.C.S. § 1301 (requiring utility rates and practices to be just and reasonable and in conformity with regulations of the Commission).

[156] *See* CGC St. No. 1, p. 18, lines 3-6.

[157] *See* CGC St. No. 1-SR (Corrected), p. 4, lines 19-21, p. 7, lines 7-9, p. 8, lines 5-8.

proposal is a ham-handed solution to a speculative problem. Indeed, FirstEnergy does not know where the excess generation from customer-generators goes once it enters the grid.[158] It is then delivered to FirstEnergy's distribution customers agnostic of those customers' rate class(es). Because the excess generation can be used by any of FirstEnergy's customers,[159] and excess generation is not used to serve default service,[160] it is perplexing why FirstEnergy has not evaluated other tariff options, such as a rider, to recover true-up costs from all classes benefiting from net-metered excess generation. FirstEnergy has the capability to evaluate this approach but has opted instead for the binary MRPL proposal. Certainly, evaluating the recovery of net-metered related true-up costs under a different mechanism could address FirstEnergy's unsupported and speculative subsidization concerns.

Furthermore, the Commission's regulations require that customers with peak load up to 25 kW have rates changed no more than quarterly.[161] The regulations also require an EDC like FirstEnergy to provide a single-rate option and display the customer's PTC on its monthly bills.[162] The PTC should equal the sum of all unbundled generation and transmission related charges for that month of service.[163] Customers receiving the PTC Rider rate properly receive this information. However, there is no evidence that FirstEnergy plans to provide the improperly re-classified HP Rider customers, those with MRPL greater than 100 kW (due to their generating system size), with this information. Furthermore, since the HP Rider rate is based on the hourly LMP, which cannot be determined in advance, FirstEnergy would not be able to provide a "single rate" option on HP Rider

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[158] Tr. at 88-89.

[159] *See* JSA St. No. 1-S, p. 23, lines 3-4.

[160] FirstEnergy St. No. 1, p. 17, lines 11-14.

[161] 52 Pa. Code § 54.187(h).

[162] 52 Pa. Code § 54.187(c).

[163] 52 Pa. Code § 54.182.

customer bills or provide a fulsome PTC, including all generation and transmission charges. As a result, FirstEnergy's proposal to classify customers based on the contrived MRPL, rather than demand, violates the regulatory requirements set forth in 52 Pa. Code 54.187, and reduces bill transparency and predictability for net-metering customer-generators.

2. The MRPL proposal violates both the text and intent of the AEPS Act.

FirstEnergy's MRPL proposal violates Section 5 of the AEPS Act which requires that customer-generators be compensated for excess generation at full retail value. Specifically, 73 Pa.C.S. § 1648.5 states that "[e]xcess generation from net-metered customer-generators shall receive *full retail value* for all energy produced on an annual basis." The statute does not define "full retail value," but in the net metering regulations, the Commission explained that "[a]n EDC and DSP shall credit a customer-generator at the full retail kilowatt-hour rate, *which shall include generation, transmission and distribution charges*, for each kilowatt-hour produced…"[164] FirstEnergy's MRPL proposal blatantly violates both the statute and the regulations by compensating excess generation for certain customer-generators at the LMP, which is a wholesale rate.

Under the proposed MRPL definition, any customer-generator with a system nameplate at or above 100kW will be compensated at the wholesale generation rate for its excess generation. This result violates both the plain meaning and the intent of the AEPS Act. Both the Commission and the Commonwealth Court have explicitly acknowledged that the purpose of the AEPS Act is to encourage the development and deployment of renewable energy sources, even if doing so does not result in the lowest possible rates.[165]

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[164] 52 Pa. Code § 75.13(d).

[165] *See Dauphin Cnty. Indus. Dev. Auth. v. Pennsylvania Pub. Util. Comm'n,* 123 A.3d 1124, 1135 (Pa. Cmwlth. 2015) and *Hommrich v. Pennsylvania Pub. Utilities Comm'n*, 231 A.3d 1027, 1040 (Pa. Cmwlth. 2020), *aff'd sub nom. Hommrich v. Commonwealth,* 664 Pa. 567, 245 A.3d 637 (2021).

To that end, the AEPS Act was amended in 2007 to provide for compensation of excess generation at full retail value, rather than the avoided cost of wholesale power.[166] In doing so, the legislature did not distinguish the compensation to be paid based on nameplate capacity size – instead, the provision utilizes the term "customer-generator," which was also amended to allow distributed generation systems up to 3,000 kW for non-residential customers.[167] The plain language and meaning of the statute is that non-residential customers with generating systems up to 3 MW may participate in net metering and shall be compensated for the excess energy they provide to the grid at its full retail value.

Interpreting "full retail value" is not a novel inquiry before the Commission. In fact, the Commission already found that:

> [T]he clear intent of the [AEPS Act] was to facilitate the research, development and deployment of small alternative energy resources by providing monthly credits consistent with the full *retail* value for the kilowatt-hours generated by the renewable resource. As such, this Commission believes that energy produced from a renewable resource up to the level of monthly energy usage by a customer-generator should include the *fully bundled charges for generation, transmission and distribution service*.[168]

The Commission also explicitly acknowledged that "[i]t is clear that the Act 35 amendments replaced the Commission's use of avoided cost of wholesale power with full

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[166] *In Re Implementing of Act 35 of 2007*, Final Omitted Rulemaking Order, 103 Pa. P.U.C. 91 at 2 (July 2, 2008).

[167] 73 Pa.C.S. § 1648.2.

[168] *In Re Implementing of Act 35 of 2007*, Final Omitted Rulemaking Order at 14 (*emphasis added*).

retail value in relation to EDC compensation for excess generation."[169] In light of these findings, the Commission's regulations require that EDCs compensate customer-generators monthly on a per kilowatt-hour ("kWh") basis at the full retail rate, including all generation, transmission and distribution charges.[170] At the end of each year, utilities are required to compensate the customer-generator for any remaining excess kilowatt hours generated at the PTC. By moving large customer-generators into a compensation structure governed by the HP Rider, FirstEnergy's MRPL proposal is a blatant violation of the plain language of the statute, clear legislative intent to offer customer-generators more than the "avoided cost of wholesale power," and the Commission's net metering regulations.

Furthermore, FirstEnergy's MRPL proposal contravenes the intent of the AEPS Act. Not only does FirstEnergy's proposal fail to comply with a clear statutory directive, if approved, it will effectively pull the reins on development of DER customer-generation projects at or larger than 100kW in FirstEnergy's service territory. The change, if approved, will deny existing customer-generators of the opportunity to continue participating in the market economically, and short the Commonwealth of continued net-metering development which provides critical generation capacity during a recognized resource adequacy crisis. This frustrates the intent of the AEPS Act to encourage development of renewable energy facilities. As explained by Pennsylvania Courts, the powers "conferred to the PUC under the AEPS Act are much narrower."[171] FirstEnergy's failure to meet its evidentiary burden, coupled with the Commission's narrow authority under the AEPS Act, require rejection of the MRPL proposal.

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[169] *Id.* at 19.

[170] 52 Pa. Code § 75.13(d).

[171] *See Hommrich v. Pa. PUC*, 231 A.3d 1027, 1035 (Pa. Cmwlth. 2020) (*citing Sunrise Energy, LLC v. FirstEnergy Corp.*, 148 A.3d 894, 901 (Pa. Cmwlth. 2016).

3. The MRPL proposal violates Act 129.

FirstEnergy's MRPL proposal violates Act 129[172] by improperly assigning small business customers to the HP Rider. 66 Pa.C.S. § 2807(e)(7) requires default service providers, like FirstEnergy, to offer a rate that changes no more frequently than quarterly for residential and small business customers. While the statute does not define "small business customers," the Commission has defined "small business customer" to mean "a person, sole proprietorship, partnership, corporation, association or other business entity that receives electric service under a small commercial, small industrial or small business rate classification, and whose maximum registered peak load was less than 25 kW within the last 12 months."[173] To the extent that FirstEnergy's proposed definition of MRPL causes any PTC Rider customers with maximum registered peak loads – as defined by regulation – less than 25 kW, customers that therefore qualify as "small business customers," to be assigned to the HP Rider rate, it violates the specific requirements of the statute. The HP Rider rate is based on hourly LMP pricing, which changes frequently. This rate clearly does not comply with the statutory requirement that rates for small business customers change no more frequently than quarterly.

The Public Utility Code,[174] is clear and unambiguous: small business customers' default service rates cannot be changed more frequently than quarterly. The regulations also unambiguously define small business customers as those with maximum registered peak loads less than 25kW. Despite these clear directives, FirstEnergy's proposal seeks to bypass this specific statutory requirement by classifying customers not by registered peak load but rather by its proposed MRPL definition, which places customers with over 100 kW of either demand or generator nameplate capacity into the HP Rider rate. Application of the HP Rider rate to customers that in fact have registered peak loads less than 25kW is

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[172] 66 Pa.C.S. § 2807(e)(7).

[173] 52 Pa. Code § 54.2.

[174] *See* 66 Pa.C.S. § 2807(e)(7),

a clear violation of Act 129, which guarantees small business customers a default service rate that does not change more frequently than quarterly.

E. Grandfathering Proposals

The CGC does not offer a grandfathering proposal other than recommending that the Commission reject the MRPL proposal in its entirety for the reasons set forth above. The CGC nevertheless notes that FirstEnergy's proposed two-year grandfathering period for existing customer-generators is wholly inadequate.[175] Project planning, valuation, and financing were all based on the existing tariff structure and the PTC Rider.[176] FirstEnergy's proposed two-year grandfathering period does not allow the CGC's members to recover their initial investment and anticipated costs at the time the investment decisions were made and the project(s) were financed.[177] Therefore, the CGC submits that the MRPL proposal – and its spiritless grandfathering proposal – should be rejected.

IV. RATE DESIGN AND COST RECOVERY

A. Price to Compare Default Service Rate Rider

The CGC does not take a position on the Company's PTC Rider beyond what was discussed in Section III(A)-(E), *supra*. The CGC incorporates Section III(A)-(E), *supra*, as though fully set forth herein.

B. Hourly Pricing Default Service Rider

The CGC does not take a position on the Company's HP Rider beyond what was discussed in Section III(A)-(E), *supra*. The CGC incorporates Section III(A)-(E), *supra*, as though fully set forth herein.

V. CUSTOMER REFERRAL PROGRAM

The CGC does not take a position on the Company's Customer Referral Program.

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[175] CGC St. No. 1, p. 21, lines 19-20; *See also Settlement* ¶ 36.

[176] *Id.*, lines 20-21.

[177] *Id.*, pp. 21-22, lines 21-22, 1-2.

VI. SUPPLIER COORDINATION TARIFF CHANGES AND RETAIL SHOPPING ISSUES

A. Return of Customers to Default Service at Contract Expiration

The CGC does not take a position on the Company's proposal to return customers to default service at contract expiration.

B. Quarterly Affirmation for Variable Rate Contracts

The CGC does not take a position on the Company's proposal to require quarterly affirmation for variable rate contracts.

C. Changes to Purchase of Receivables (POR) Program

The CGC does not take a position on the Company's Purchase of Receivables ("POR") Program.

VII. CONCLUSION

The instant proceeding is not the *UGI DSP*, and the burden FirstEnergy bears is not carried on coattails, but on the specific record developed in this proceeding.

It remains a mystery as to why FirstEnergy and various advocates are opposed to locally produced clean energy, and why they are going to such lengths to curtail its development at a time when there is an immediate need for new generation. But the sole rationale that they have devised to try to squelch the development is demonstrably false and misguided. This same rationale was adopted in the *UGI DSP* without the benefit of substantial scrutiny. But now that the Commission has the benefit of a thorough examination of the issue, it is clear that: (1) customer-generators do not increase risk premiums in the default service bidding process; (2) FirstEnergy's speculation as to the buildout of customer-generation is inaccurate; (3) customer-generators provide significant benefits to the Commonwealth of Pennsylvania and support farming operations, (4) existing customer-generators are not being subsidized by other customers in the applicable rate class; and (5) FirstEnergy has not given any serious consideration on how to recover customer-generator true-up expenses without kneecapping the viability of the entire industry.

Moreover, FirstEnergy has failed every prong identified in Section II, *supra*, requisite for the Commission's approval of the MRPL proposal. FirstEnergy's affordability concerns are not supported by competent record evidence. Assuming *arguendo* that FirstEnergy's affordability concerns are supported by the record – which they are not – the benefits of incenting customer-generation outweigh those concerns. Further, FirstEnergy's MRPL proposal discourages new, green generation at a time when it is critically necessary to address the resource adequacy crisis in contravention of sound public policy. The MRPL proposal also violates the Commission's regulations, the AEPS Act, and Act 129.

Any one of FirstEnergy's many failures warrants rejection of the MRPL proposal as modified by the Non-Unanimous Settlement. FirstEnergy's failure of all factors mandates it. For these reasons, the CGC submits that the Commission should modify the Non-Unanimous Settlement to reject FirstEnergy's MRPL proposal.

Respectfully submitted,

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DATED: July 10, 2026

APPENDIX A - FINDINGS OF FACT

1. In FirstEnergy service territory effective June 1, 2019, default service customers with a demand of 100 kilowatts ("kW") or above have been classified as industrial customers and receive hourly priced default service under the Hourly Pricing Default Service Rate Rider ("HP Rider") while default service customers with a demand below 100 kW are classified as commercial customers served under the Price-to-Compare Rider ("PTC Rider").[1]

2. FirstEnergy reviews customers' demand annually to determine whether a customer should be served under the PTC or HP Riders, respectively.[2]

3. FirstEnergy proposes to use a new "Maximum Registered Peak Load" baseline of 100 kilowatts ("kW") and shift existing net-metering customer-generators and new customer-generators from a compensation regime based upon the Price-to-Compare Rider ("PTC Rider") to a compensation rate based upon the HP Rider applicable to industrial customers.[3]

4. The Commission's regulations define "Maximum Registered Peak Load" as: the highest level of demand for a particular customer, based on the PJM Interconnection, LLC, "Peak Load Contribution Standard," or its equivalent, and as may be further defined by the EDC tariff in a particular service territory.[4]

5. FirstEnergy seeks to define "Maximum Registered Peak Load" 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.[5]

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[1] FirstEnergy St. No. 1, p. 15.

[2] FirstEnergy St. No. 1, p. 16.

[3] FirstEnergy St. No. 1, p. 16.

[4] FirstEnergy St. No. 1, p. 16.

[5] FirstEnergy Exhibit No. DMY-6, Revised Page 25; FirstEnergy St. No. 1, p. 16.

6. FirstEnergy does not use energy generated by net-metering customer-generators as supply to serve default service load.[6]

7. Customer-generators placed under the HP Rider would receive an annual cash out at a weighted average locational marginal price (“LMP”), rather than the Price-to-Compare (“PTC”) under the PTC Rider.[7]

8. FirstEnergy presented a wide range of hypothetical impacts and costs as a result of solar photovoltaic (“PV”) distributed generation.[8]

9. Among those costs, FirstEnergy argued that “adding large customer-generator supply to the commercial procurement group would decrease load provided by default service suppliers and would increase risk premiums inclined in fixed-price full requirements [(“FPFR”)] products.”[9]

10. FirstEnergy estimated that the total risk premium ranges from $6.46 - $10.24/MWh, depending on rate district, for the 2018-2025 auctions.[10]

11. FirstEnergy has not affirmatively asked any wholesale bidder whether customer-generation is a cause of additional risk premiums.[11]

12. FirstEnergy has not been informed by any wholesale default supply bidder that customer-generation risk premiums are included in wholesale supply bids.[12]

13. FirstEnergy has not quantified the risk premium allegedly attributable to customer-generation.[13]

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[6] FirstEnergy St. No. 1, p. 17.

[7] FirstEnergy St. No. 1, p. 17.

[8] CGC St. No. 1, p. 4; *see generally* FirstEnergy St. No. 1, pp. 15-20.

[9] FirstEnergy St. No. 1, p. 17.

[10] FirstEnergy St. No. 3, p. 15, line 3.

[11] Tr. at 86.

[12] See Tr. at 86; See also Constellation Prehearing Memorandum, ¶ 5.

[13] CGC St. No. 1, p. 10; FirstEnergy St. No. 3-R, p. 15, line 3.

14. There is a wholesale supply bidder party to this case that FirstEnergy did not ask to confirm its risk premium theory.[14]

15. Net-metered customer-generation does not cause "switching risk" as identified by OCA.[15]

16. There is no evidence to suggest that customer-generators switch into or out of default service.[16]

17. Because large net-metering customer-generators typically have little or no load, the alleged switching from default service to competitive supply (or vice versa) has no – or negligible – effect on a default supplier's load obligation.[17]

18. OCA prepared no independent analysis of the risk premiums allegedly associated with customer-generation.[18]

19. OSBA prepared no independent analysis of the risk premiums allegedly associated with customer-generation.[19]

20. FirstEnergy experienced a decrease in the amount of megawatts ("MW") applied for by prospective net-metering customer-generators in 2025.[20]

21. 35% of the total MW submitted for review in the net-metering queue in the last four years has been cancelled.[21]

22. Solar PV is the predominate generation type being added to the system and it is being coupled with Battery Energy Storage Systems ("BESS").[22]

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[14] *See* Tr. at 86; *See also* Constellation Prehearing Memorandum, ¶ 5.

[15] CGC St. No. 1-R, p. 4; OCA St. No. 1, p. 38.

[16] CGC St. No. 1-R, pp. 3-4.

[17] CGC St. No. 1-R, p. 4.

[18] CGC St. No. 1-R, pp. 4-5; CGC Exhibit No. JAH-1R.

[19] CGC St. No. 1-R, p. 7; CGC Exhibit No. JAH-2R.

[20] CGC St. No. 1, p. 19.

[21] CGC St. No. 1, p. 19; CGC Exhibit No. JAH-12.

[22] CGC St. No. 1, p. 19.

23. Electricity demand continues to increase at an unprecedented pace due to electrification and the influx of intensive energy consuming data centers.[23]

24. The Commission has recognized the resource adequacy crisis in Pennsylvania and identified historical and future load growth.[24]

25. FirstEnergy has recognized a resource adequacy crisis.[25]

26. FirstEnergy acknowledges that less generation or less buildout of generation coupled with increased load may result in a capacity shortfall.[26]

27. FirstEnergy acknowledges that electricity demand is increasing at an unprecedented pace and is unable to keep up with demand.[27]

28. FirstEnergy acknowledges that customer-generation from net-metering customers is delivered into the distribution grid.[28]

29. FirstEnergy acknowledges that the more customer-generation that is built, the more electricity supply there is.[29]

30. Pennsylvania's projected 5-year electricity load-growth rate is 6.17%.[30]

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[23] CGC St. No. 20; *See also See* Technical Conference on Resource Adequacy, Docket No. M-2024-3051988, *Comments of FirstEnergy Pennsylvania Electric Company* (Jan. 9, 2025).

[24] CGC St. No. 1, pp. 19-20.

[25] Tr. at 89.

[26] Tr. at 89.

[27] Tr. at 89.

[28] Tr. at 90.

[29] Tr. at 90.

[30] CGC St. No. 1, p. 19.

31. New data center requests are poised to more than double PPL Electric Utilities Corporation's system peak within the next 5-6 years.[31]

32. The Commonwealth of Pennsylvania will lack the adequate electric generation supply to meet future demands.[32]

33. The extreme energy demands of data centers, if not managed correctly, could result in grid impacts and unintended cost shifting of costs to other customers.[33]

34. Current supply of capacity in PJM is not adequate to meet the demand from large data center loads and will not be adequate in the foreseeable future.[34]

35. Pennsylvania must take a deliberate approach to addressing resource adequacy, one that seeks to maintain existing resources and to incentivize new resources."[35]

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[31] *See* Testimony of Joseph B. Lookup, p. 2, *En Banc Hearing Concerning Interconnection and Tariffs for Large Load Customers*, Docket No. M-2025-3054271 (April 24, 2025); CGC St. No. 1, p. 20, fn. 46.

[32] *See Technical Conference on Resource Adequacy in Pennsylvania*, Comments of PPL Electric Utilities Corporation, Docket No. M-2024-3051988 (Comments submitted on Jan. 9, 2025).

[33] *See* Testimony of C. James Davis, pp. 2-3, En Banc Hearing Concerning Interconnection and Tariffs for Large Load Customers, Docket No. M-2025-3054271 (April 24, 2025).

[34] *See* PJM Critical Issues Fast Path Proposal, *https://www.pjm.com/-/media/DotCom/committees-groups/cifp-lla/2025/20251024/20251024-item-04g---imm-memo.pdf (*last visited July 9, 2026; *See also* CGC St. No. 1, p. 20, fn. 48.

[35] *See Technical Conference on Resource Adequacy*, Docket No. M-2024-3051988, Comments of the Office of Consumer Advocate (January 9, 2025); CGC St. No. 1, p. 20, fn. 49.

36. Electricity demand continues to increase at an unprecedented pace due to electrification and the influx of intensive energy consuming data centers.[36]

37. Energy supply is not only unable to keep pace with unprecedented demand increases; it is decreasing in the proportion of demand it is projected to meet,"[37]

38. FirstEnergy currently recovers the costs of net-metering excess power purchases paid by the Company from customers in the same rate class as the customer-generator.[38]

39. FirstEnergy did not offset those costs with the value of the energy, capacity, and transmission that is avoided but for the export of electricity from the customer-generator systems.[39]

40. Net-metered customer-generation provides electric energy to the FirstEnergy distribution grid during a recognized resource adequacy crisis.[40]

41. Excess generation from customer-generators closely aligns with system demand peaks.[41]

42. System demand peaks ultimately set capacity costs.[42]

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[36] *See* Technical Conference on Resource Adequacy, Docket No. M-2024-3051988, *Comments of FirstEnergy Pennsylvania Electric Company* (Jan. 9, 2025); CGC St. No. 1, p. 20, fn. 52.

[37] *See* Technical Conference on Resource Adequacy, Docket No. M-2024-3051988, *Comments of FirstEnergy Pennsylvania Electric Company* (Jan. 9, 2025); CGC St. No. 1, p. 20, fn. 52.

[38] FirstEnergy St. No. 1, p. 17.

[39] CGC St. No. 1, p. 5.

[40] CGC St. No. 1, p. 4, lines 4-7.

[41] JSA St. No. 1, p. 19, lines 14-15; Table 3.

[42] *Id.*, p. 15, lines 7-9.

43. Excess generation during PJM's 5 Coincident Peak ("CP") hours thereby reduces a supplier's capacity obligation which will be recognized in the supplier's default service bid(s).[43]

44. Customer-generation results in reduced distribution and transmission system line losses.[44]

45. Customer-generation reduces transmission costs.[45]

46. Customer-generation reduces the market price for electricity.[46]

47. Renewable energy resources such as wind and solar, essentially have zero dispatch costs and PJM Interconnection, LLC ("PJM") will dispatch those resources before more expensive fossil fuel generated electricity.[47]

48. As more zero dispatch cost resources are added to the electricity system, it is estimated to reduce the cost of the last unit in PJM dispatched to meet load.[48]

49. The PJM market price is set based upon the clearing price of the last unit dispatched.[49]

50. This benefit is recognized in Pennsylvania and measured as part of the evaluation of Demand Side Management ("DSM") programs in the Demand-Reduction-Induced Price Effects ("DRIPE") calculation to estimate the reduction of market electricity and capacity prices.[50]

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[43] JSA St. No. 1, p. 19.

[44] CGC St. No. 1, p. 13.

[45] JSA St. No. 1, p. 20.

[46] CGC St. No. 1, p. 13, line 7; JSA St. No. 1, pp. 15-29.

[47] CGC St. No. 1, p. 13.

[48] CGC St. No. 1, p. 13.

[49] CGC St. No. 1, pp. 13-14.

[50] CGC St. No. 1, pp. 13-14; *see also* Pennsylvania Public Utility Commission, 2026 Total Resource Cost (TRC) Test, Final Order, M-2024-3048998.

51. The DRIPE value is also recognized in New Jersey and Maine calculations to estimate the reduction of market electricity prices associated with adding more renewables.[51]

52. Net-metered generation reduces PJM's energy prices.[52]

53. Net-metered provides health benefits associated with less air pollution.[53]

54. Increased renewable energy production on the system displaces fossil fuel electricity generation because it is zero marginal cost.[54]

55. Bruning fewer fossil fuels reduces the amount of criteria air pollutants (NOx, SOX, PM, and VOCs).[55]

56. These pollutants are associated with harmful health impacts. The avoided impacts on human health are recognized and quantified in California and Maine.[56]

57. Renewable generation is assumed to reduce the need for burning fossil fuels, which therefore reduces greenhouse gas emissions including carbon dioxide.[57]

58. Electricity production accounted for approximately one third of net Green House Gas ("GHG") emissions in 2022.[58]

59. Pennsylvania must pursue additional policies to meet the state's 20230 GHG reduction target(s).[59]

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[51] CGC St. No. 1, p. 14.

[52] CGC St. No. 1, p. 13; JSA St. No. 1, pp. 15-29.

[53] CGC St. No. 1, pp. 5, 14.

[54] CGC St. No. 1, p. 14.

[55] CGC St. No. 1, p. 14.

[56] CGC St. No. 1, p. 14.

[57] CGC St. No. 1, p. 14.

[58] CGC St. No. 1, p. 21.

[59] CGC St. No. 1, p. 21.

60. Building a net-zero GHG emitting electricity grid must include developing solar energy.[60]

61. Maine's Net Energy Billing program recognizes societal benefits from greenhouse gas reduction, as well as avoided environmental compliance costs.[61]

62. Minnesota recognizes the avoided costs of CO2, PM10, NOx, Pb, and CO as the avoided environmental cost in the Value of Solar Methodology.[62]

63. A more diverse generation portfolio reduces reliance on any single fuel or technology, leading to a more resilient system overall.[63]

64. Governo Shapiro's "Lighting Plan" includes a Climate Emissions Reduction Act, and a tax credit for "reliable energy sources."[64]

65. Net-metering customer-generation both reduces the climate emissions that would be emitted if that energy came from standard fossil fuel generation and provides reliable energy.[65]

66. Renewable generation provides clean decarbonized energy.[66]

67. Adding large customer-generators to the system can delay the need for distribution upgrades which would otherwise be borne by other customers.[67]

68. Installing generation on the distribution system can reduce the need to build new transmission capacity.[68]

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[60] Pennsylvania's Climate Action Plan Update 2024, Pennsylvania Department of Environmental Protection, April 2025, p. 7; CGC St. No. 1, p. 21.

[61] CGC St. No. 1, p. 15.

[62] CGC St. No. 1, p. 15.

[63] CGC St. No. 1, p. 15.

[64] CGC St. No. 1, p. 15.

[65] CGC St. No. 1, p. 15.

[66] CGC St. No. 1, pp. 14-15.

[67] CGC St. No. 1, p. 15.

[68] CGC St. No. 1, p. 15.

69. It is common in evaluating energy efficiency and demand side management programs to associate a benefit from reducing the need to build new transmission. New Jersey, Minnesota, Maine, and California recognize this.[69]

70. Distributed generation has a comparable benefit with regards to the transmission system that is similarly recognized and quantified.[70]

71. Supporting in-state investment in large customer-generator projects provides local economic development through employment and tax base.[71]

72. Employment includes direct jobs such as construction, installation, and maintenance, as well as indirect and induced jobs from increased economic activity.[72]

73. Net-metering projects contribute to state and local tax revenues.[73]

74. 750 MW of community solar development will generate approximately $2.1B in eco-nomic impact and 14,000 local jobs.[74]

75. Community solar projects offer environmental benefits through reduction in fossil fuel generation.[75]

76. Community solar projects offer health benefits including reducing risks from asthma, lung issues, and cancer from hazardous chemicals.[76]

77. For 235 planned community solar facilities, the construction phase will support nearly 12,000 jobs including direct, indirect, and induced jobs.

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[69] CGC St. No. 1, pp. 15-16.

[70] CGC St. No. 1, p. 16.

[71] CGC St. No. 1, p. 16.

[72] CGC St. No. 1, p. 16.

[73] CGC St. No. 1, p. 16; CGC St. No. 1-R, p. 5, fn. 10.

[74] CGC St. No. 1, p. 16.

[75] CGC St. No. 1, p. 17.

[76] CGC St. No. 1, p. 17.

78. Within Pennsylvania, approximately $1.8 billion in economic activity will be generated during the construction phase for these projects.[77]

79. During the operations phase for these projects, an ongoing 520 jobs would be supported and $83 million in economic activity would be generated.[78]

80. These economic benefits of community solar also apply to net-metered customer-generation in Pennsylvania.[79]

81. Net-metered customer-generation helps Pennsylvania farms and farmers by providing needed investment to prevent the closure or sale of locally owned family farms.[80]

82. FirstEnergy did not assess the impact on existing or potential new net metering installations at or over 100kW that would be impacted by the MRPL proposal, if approved.[81]

83. FirstEnergy's MRPL proposal, if approved, would reduce the compensation owed to customer-generators for all excess generation they deliver back to the distribution grid.[82]

84. The LMP price, a component of the HP Rider, can decline below $0.00.[83]

85. The MRPL proposal will discourage future investment in new generation as well as reduce future clean energy investment.[84]

86. The MRPL proposal will create financial distress for existing net-metering projects that were evaluated, financed, and constructed under the existing scheme.[85]

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[77] CGC St. No. 1, p. 17.

[78] CGC St. No. 1, p. 17.

[79] CGC St. No. 1, p. 17.

[80] CGC St. No. 1-R, p. 5.

[81] CGC St. No. 1, p. 17; CGC Exhibit No. JAH-11.

[82] CGC St. No. 1-SR, pp. 10-11 (Corrected).

[83] CGC St. No. 1-SR, p. 11; CGC Exhibit No. JAH-4SR.

[84] CGC St. No. 1, p. 18.

[85] CGC St. No. 1, p. 18.

87. Developers of net-metered customer-generation have limited resources with respect to time and capital and will focus their attention on other states where there is an opportunity to achieve their target investment returns without the uncertain regulatory environment created by FirstEnergy and other electric distribution utilities.[86]

88. Alternatives to address FirstEnergy's speculative concerns were never evaluated by FirstEnergy.[87]

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[86] CGC St. No. 1, p. 18.

[87] *See* CGC St. No. 1-SR (Corrected), pp. 4, 7, and 8.

APPENDIX B – CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding.[1]

2. FirstEnergy bears the burden of proof in this proceeding to show that its DSP VII and the Non-Unanimous Settlement terms just and reasonable and in the public interest.[2]

3. FirstEnergy must establish its case by a preponderance of the evidence.[3]

4. The Commission's review of a non-unanimous settlement is not perfunctory.[4]

5. Although the Commission encourages settlements, a contested settlement may be approved only if its terms are lawful, supported by the record, and affirmatively shown to be in the public interest.[5]

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[1] 66 Pa.C.S. §§ 701, 2807(e).

[2] *See* 66 Pa. C.S. § 1301; *Pa. PUC v. City of Lancaster - Bureau of Water*, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011) (*citing Warner v. GTE North, Inc.*, Docket No. C-00902815 (Opinion and Order entered April 1, 1996)); *Popowsky v. Pa. PUC*, 805 A.2d 637 (Pa. Cmwlth. 2002); *Pa. PUC v. C. S. Water and Sewer Associates*, 74 Pa. P.U.C. 767 (1991); *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825 (1972)

[3] *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n,* 578 A.2d 600 (Pa. Cmwlth. 1990).

[4] *ARIPPA v. Pa. PUC*, 792 A.2d 636, 658-60 (Pa. Cmwlth. 2002).

[5] See *Pa. PUC v. City of Lancaster - Bureau of Water*, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011) (*citing Warner v. GTE North, Inc.*, Docket No. C-00902815 (Opinion and Order entered April 1, 1996)); *Popowsky v. Pa. PUC*, 805 A.2d 637 (Pa. Cmwlth. 2002); *Pa. PUC v. C. S. Water and Sewer Associates*, 74 Pa. P.U.C. 767 (1991); *City of York v. Pa. PUC*, 449 Pa. 136, 295 A.2d 825 (1972)

6. The public interest inquiry requires examination of the settlement's effect on ratepayers, shareholders, and the regulated community.[6]

7. Where a settlement is non-unanimous, the Commission evaluates it under the same standards applicable to a fully litigated case.[7]

8. In determining what constitutes just and reasonable rates, the Commission has discretion to determine the proper balance between the interests of ratepayers (*i.e.*, customers) and that of the utility.[8]

9. Satisfying the constitutionally imparted "just and reasonable" standard requires the Commission to base its decision on substantial evidence.[9]

10. The "substantial evidence" is strict and rests uniquely on the utility, which does not receive any favorable presumption(s).[10]

11. Courts evaluating the application of the substantial evidence standard have explained that this standard is directly related to the nature and extent of the authority requested by the utility.[11]

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[6] *Pa. PUC v. City of Lancaster - Bureau of Water*, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011), citing *Warner v. GTE North, Inc*., Docket No. C-00902815 (Opinion and Order entered April 1, 1996); Pa. *PUC v. C. S. Water and Sewer Associates*, 74 Pa. P.U.C. 767 (1991).

[7] *Pa. PUC v. PECO Energy Co*., 2024 PA. PUC LEXIS 356, *71, citing *Joint Application of West Penn Power Company d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp*., Docket Nos. A 2010-2176520 and A-2010-2176732 (Order entered March 8, 2011).

[8] *Pa. PUC v. Philadelphia Electric Co*., 522 Pa. 338, 342-43, 561 A.2d 1224, 1226 (1989); *Pa. PUC v. Pa. Gas & Water Co.*, 492 Pa. 326, 337, 424 A.2d 1213, 1219 (1980), *cert. denied*, 454 U.S. 824, 102 S. Ct. 112, 70 L. Ed. 2d 97 (1981)).

[9] *Lansberry v. Pa. PUC*, 578 A.2d 600, 603 (Pa. Cmwlth. 1990).

[10] *Lansberry v. Pa. PUC*, 578 A.2d 600, 603 (Pa. Cmwlth. 1990).

[11] *Lansberry v. Pa. PUC*, 578 A.2d 600, 603 (Pa. Cmwlth. 1990).

12. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.[12]

13. Mere opinion, without more, is insufficient to meet the utility's burden.[13]

14. Bald assertions, personal opinions or perceptions do not constitute evidence.[14]

15. When evaluating the justness and reasonableness of rates proffered by a utility, the Commission is "obliged to consider broad public interest in the rate-making process."[15]

16. The Public Utility Code defines "rates" inclusively.[16]

17. The Commission's regulations define "Maximum Registered Peak Load."[17]

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[12] *Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n*., 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Comp. Bd. of Rev.,* 166 A.2d 96 (Pa. Super. 1961); *Murphy v. Comm., Dept. of Pub. Welfare, White Haven Ctr.*, 480 A.2d 382 (Pa. Cmwlth. 1984).

[13] *Kirby v. PPL Elec. Utils. Corp*., Docket No. C-20066297 (Final Order entered Nov. 16, 2006) (*citing Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A. 2d 12 (Pa. 1987)).

[14] *Rivera v. Phila. Gas Works*, Docket No. C-2010-2164222 (Opinion and Order entered Jan. 12, 2012) (*citing Pa. Bureau of Corr. v. City of Pittsburgh*, 532 A.2d 12 (Pa. 1987).

[15] *See Nat'l Utilities, Inc. v. Pa. PUC*, 709 A.2d 972, 979 (Pa. Cmwlth. 1998), following *D.C. Transit Sys., Inc. v. Washington Metro. Area Transit Com'n*, 466 F.2d 394, 411 (D.C. Cir. 1972), *cert denied*.

[16] *McCloskey v. Pa. PUC*, 219 A.3d 1216, 1223 (Pa. Cmwlth. 2019) (citing 66 Pa. C.S. § 102).

[17] 52 Pa. Code § 54.182.

18. When the words of a statute are clear and free from ambiguity, "the letter of it is not to be disregarded under the pretext of pursuing its spirit."[18]

19. Ambiguity exists only "when there are at least two reasonable interpretations of the text under review."[19]

20. The PJM PLC construct measures a load-serving entity's share of system peak demand based on customer load during the PJM systems five (5) CP hours.[20]

21. Pennsylvania law requires that tariff provisions conform to applicable statutes and regulations. Tariffs, though broad and controlling of a utility's rates, terms, and conditions of service, cannot be used as a lever to rewrite regulatory requirements.[21]

22. The AEPS requires that net-metered customer-generators shall receive full retail value for all energy produced on an annual basis.[22]

23. An EDC and DSP shall credit a customer-generator at the full retail kilowatt-hour rate, *which shall include generation, transmission and distribution charges*, for each kilowatt-hour produced.[23]

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[18] 1 Pa. C.S. § 1921(b).

[19] *Warrantech Consumer Prods. Servs., Inc. v. Reliance Ins. Co. in Liquidation*, 96 A.3d 346, 354-55 (Pa. 2014).

[20] See PJM Manual 18: PJM Capacity Market, § (Capacity Obligation – Peak Load Contribution); PJM Manual 19: Load Forecasting and Analysis (describing calculation of coincident peak load); *see also* JSA St. No. 1, p. 15, lines 5-9.

[21] *See* 66 Pa. C.S. § 1301 (requiring utility rates and practices to be just and reasonable and in conformity with regulations of the Commission).

[22] 73 P.S. § 1648.5

[23] 52 Pa. Code § 75.13(d).

24. The purpose of the AEPS Act is to encourage the development and deployment of renewable energy sources, even if doing so does not result in the lowest possible rates.[24]

25. The AEPS Act was amended in 2007 to explicitly provide for compensation of excess generation at full retail value, rather than the avoided cost of wholesale power.[25]

26. The legislature did not distinguish the compensation to be paid based on nameplate capacity size – instead, the provision utilizes the term "customer-generator," which was also amended to allow distributed generation systems up to 3,000 kW for non-residential customers.[26]

27. The Act 35 amendments replaced the Commission's use of avoided cost of wholesale power with full retail value in relation to EDC compensation for excess generation."[27]

28. Default service providers, like FirstEnergy, are required to offer a rate that changes no more frequently than quarterly for residential and small business customers.[28]

29. "Small business customer" to mean "a person, sole proprietorship, partnership, corporation, association or other business entity that receives electric service

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[24] *See Dauphin Cnty. Indus. Dev. Auth. v. Pennsylvania Pub. Util. Comm'n,* 123 A.3d 1124, 1135 (Pa. Cmwlth. 2015) and *Hommrich v. Pennsylvania Pub. Utilities Comm'n*, 231 A.3d 1027, 1040 (Pa. Cmwlth. 2020), *aff'd sub nom. Hommrich v. Commonwealth*, 664 Pa. 567, 245 A.3d 637 (2021); *In Re Implementing of Act 35 of 2007*, Final Omitted Rulemaking Order at 14 (*emphasis added*).

[25] *In Re Implementing of Act 35 of 2007*, Final Omitted Rulemaking Order, 103 Pa. P.U.C. 91 at 2 (July 2, 2008).

[26] 73 P.S. § 1648.2.

[27] *In Re Implementing of Act 35 of 2007*, Final Omitted Rulemaking Order at 19 (*emphasis added*).

[28] 66 Pa. C.S. § 2807(e)(7).

under a small commercial, small industrial or small business rate classification, and whose maximum registered peak load was less than 25 kW within the last 12 months."[29]

30. FirstEnergy and other settling parties have not demonstrated that the MRPL proposal is in the public interest and justified by substantial evidence.

31. The MRPL proposal is contrary to the public interest and not supported by substantial evidence.

32. The MRPL proposal violates the Commission's regulations.[30]

33. The MRPL proposal violates the text and intent of the AEPS Act.[31]

34. The MRPL proposal violates Act 129.[32]

35. As a result, the settlement rates, terms and conditions contained in the Non-Unanimous Joint Petition for Settlement of FirstEnergy's DSP VII filed on July 2, 2026, are not just or reasonable, and are contrary to the public interest.

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[29] 52 Pa. Code § 54.2.

[30] 52 Pa. Code § 54.182; 52 Pa. Code § 54.187(c).

[31] 73 P.S. § 1648.5(a)(3).

[32] 66 Pa. C.S. § 2807(e)(7).

APPENDIX C – PROPOSED ORDERING PARAGRAPHS

1. That the Joint Petition for Approval of Non-Unanimous Settlement in this proceeding is denied as it is not in the public interest and contains terms that are unjust and unreasonable.

2. That the Joint Petition for Approval of Non-Unanimous Settlement be modified consistent with this Recommended Decision to reject FirstEnergy's proposed "MRPL" classification change.

3. That FirstEnergy shall be required to submit a revised tariff reflecting these changes within 30-days of a Final Order in this proceeding, to be effective on one day's notice after entry of a Final Order in this proceeding.

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

CERTIFICATE OF SERVICE

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

VIA E-MAIL

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Dated: July 10, 2026

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