Constellation.

July 10, 2026

VIA eFiling

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

Re: Petition of FirstEnergy Pennsylvania Electric Company for Approval of Its Default Service Program for the Period June 1, 2027 to May 31, 2031

Docket No. P-2026-3060298

Dear Secretary Homsher:

Enclosed for filing in the above-referenced proceeding is the Certificate of Service evidencing service of the Main Brief of Constellation Energy Generation, LLC and Constellation NewEnergy, Inc. As indicated in the Certificate of Service, copies have been served upon all parties of record.

If you have any questions, please contact me directly at (267) 533-5387.

Best Regards,

Marsha D. Makel

Marsha D. Makel,
Assistant General Counsel

Enclosures
cc: Per Certificate of Service (w/encls.)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the parties, listed below, in accordance with the requirements of 52 Pa. Code Section 1.54.

Dated this 10th day of July, 2026

VIA ELECTRONIC MAIL

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Date: July 10, 2026

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

MAIN BRIEF OF CONSTELLATION ENERGY GENERATION, LLC AND CONSTELLATION NEWENERGY, INC.

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Date: July 10, 2026

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I. INTRODUCTION

Constellation Energy Generation, LLC ("CEG") and Constellation NewEnergy, Inc. ("CNE") (collectively "Constellation"), submits this Main Brief to detail its opposition to the Joint Petition for Non-Unanimous Settlement filed on July 2, 2026 ("Joint Petition" or "Non-Unanimous Settlement"). Constellation urges the Administrative Law Judges ("ALJs") to reject the Non-Unanimous Settlement as it contains unlawful provisions and is not in the public interest.

Constellation is a publicly-traded holding company headquartered in Baltimore, Maryland, with operations and business activities in 48 states, the District of Columbia, Canada, and the United Kingdom. CEG provides wholesale power and risk management services to wholesale customers, including through participation in wholesale load procurements, in both regulated and restructured energy markets. CNE is a retail marketing subsidiary of Constellation and is a licensed electric generation supplier in the Commonwealth of Pennsylvania. Both CEG and CNE are active participants in PJM Interconnection, L.L.C.

A. Procedural History

On February 3, 2026, FirstEnergy Pennsylvania Electric Company ("FE PA" or "Company") filed its Petition seeking approval of its Default Service Program VII ("DSP VII") for the period June 1, 2027 through May 31, 2031. Thereafter, numerous parties sought and obtained intervention in the proceeding, including the Office of Consumer Advocate ("OCA"), the Office of Small Business Advocate ("OSBA"), Coalition for Affordable Utility Service and Energy Efficiency in Pennsylvania ("CAUSE-PA"), Duquesne Light Company ("DLC"), the Retail Energy Supply Association ("RESA"), Walmart, Inc. ("Walmart"), the Customer-Generator Coalition ("CGC"), Shipley Choice, LLC d/b/a/ Shipley Energy and Interstate Gas Supply, LLC d/b/a IGS Energy (collectively, the "EGS Parties"), Town Square Energy East, LLC ("Town Square"), WGL Energy Services, Inc. ("WGL"), and other interested stakeholders. Constellation filed a Joint Petition to Intervene on March 16, 2026.

Following the March 19, 2026, prehearing conference, the ALJs established a procedural schedule providing for the submission of direct, rebuttal, and surrebuttal testimony, followed by evidentiary hearings. Written direct testimony was filed on April 29, 2026, rebuttal testimony was filed on May 28, 2026, and surrebuttal testimony was filed on June 11, 2026.

Although Constellation remained an active party to the proceeding, Constellation informed the ALJs by letter dated April 29, 2026, that it would not be submitting testimony in the case. Consistent with that representation, Constellation did not submit direct testimony, rebuttal testimony, or surrebuttal testimony.

An evidentiary hearing was conducted on June 15, 2026, at which the written testimony of the parties was admitted into the record and several witnesses were presented for cross-examination. While Constellation did not sponsor testimony, Constellation appeared and participated in the hearing in person. The hearing scheduled for June 16, 2026, was subsequently cancelled.

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

B. Non-Unanimous Settlement

On July 2, 2026, FE PA, OCA, OSBA, CAUSE-PA, Walmart, and DLC (collectively, "Joint Petitioners") filed a Joint Petition for Non-Unanimous Settlement in this proceeding.[1] Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, and West Penn Power Industrial Intervenors (collectively, "Industrial Customer Groups") and Pennsylvania State University ("PSU") indicated that they do not oppose the Settlement.[2] Constellation, RESA, EGS Parties, Town Square, WGL, CGC, Dimension PA 1, LLC, ("Dimension"),

[1] Joint Petition at 1.

[2] Joint Petition at fn. 1.

Penn Renewables LLC ("Penn Renewables"), the Solar Energy Industries Association and the Coalition for Community Solar Access (collectively, "JSA"), oppose the Non-Unanimous Settlement.[3]

Constellation respectfully urges the ALJs to recommend rejection of the Non-Unanimous Settlement.

As an initial matter, the Non-Unanimous Settlement expressly requests approval without modification.[4] Thus, the Non-Unanimous Settlement must be evaluated as an integrated package and not as a series of severable proposals. If the Commission determines that any material provision is unlawful, unreasonable, unsupported by substantial evidence, or inconsistent with the public interest, rejection of the Non-Unanimous Settlement is warranted.

Viewed in its entirety, the Non-Unanimous Settlement is not in the public interest because it adopts several proposals that further entrench default service, restrict customer choice, and place competitive suppliers at a structural disadvantage relative to the utility-provided default service product. Most notably, the Settlement would:

1. Require electric generation suppliers ("EGSs") serving residential customers under contracts entered into after June 1, 2027 to return customers to default service at the end of a fixed-duration contract unless the customer affirmatively elects to remain with the supplier in response to the notices required by 52 Pa. Code § 54.10;
2. Require EGSs, utilizing utility consolidated billing, to use "rate-ready" billing and must charge a rate at or below the Price-to-Compare ("PTC") at the time of enrollment or rate change in order to remain eligible for Purchase of Receivables ("POR") for that customer account;
3. Require quarterly attestations of affirmative customer consent for residential customers served on variable-priced month-to-month products; and
4. Eliminate the Customer Referral Program ("CRP") without implementing any

[3] Joint Petition at fn. 1.

[4] Joint Petition at 1; ¶ 78.

successor program designed to facilitate customer participation in the competitive market.

While the Non-Unanimous Settlement contains provisions addressing procurement, rate design, time-of-use offerings, customer assistance program credits, and other matters, its most consequential provisions are those directed at the competitive retail market. These provisions represent a significant departure from longstanding Commission policies that were intended to facilitate customer access to competitive generation supply and encourage meaningful retail electric competition.

The Non-Unanimous Settlement proposes to require residential customers to be returned automatically to default service at the expiration of their contract unless they take affirmative action to remain with their supplier. This proposal mirrors similar initiatives that have previously been rejected by the Commission[5] and is directly contrary to current regulations permitting EGSs to automatically renew customers so long as the legally required notices are provided.[6] Under the current framework, customers who receive the required renewal notices and do not elect another option may continue receiving service from their existing supplier. The Non-Unanimous Settlement therefore seeks both a substantive change to existing Commission policy and an express waiver of the Commission's regulations.

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[5] *Petition of PPL Electric Utilities Corporation for Approval of its Default Service Plan for the Period June 1, 2021 through May 31, 2025*, Docket No. P-2020-30196356 (Order entered Dec. 17, 2020 at 2, 44-45, 92 and 98) ("*PPL DSP V Order*") (rejecting PPL's proposal to implement process of automatically returning EGS customers to default service upon expiration of the SOP contract).

[6] 52 Pa. Code § 54.10(3) ("When a customer fails to respond to either notice, the following apply: (i) A fixed duration contract shall be converted to one of the following: (A) A month-to-month contract, either at the same terms and conditions or at revised terms and conditions, as long as the contract does not contain cancellation fees. (B) Another fixed duration contract, as long as the new contract includes a customer-initiated cancellation provision that allows the customer to cancel at any time, for any reason, and does not contain cancellation fees.")

The Non-Unanimous Settlement also imposes a new condition on POR eligibility by requiring suppliers utilizing utility consolidated billing to offer prices at or below the PTC at the time of enrollment or contract modification. This proposal elevates the utility's default service rate to a regulatory benchmark for competitive supply offerings and discourages innovative products that provide value through attributes other than short-term price. Competitive products offering renewable attributes, price stability, bundled services, demand-response features, or other customer benefits may reasonably be priced above the utility's default service rate at a given point in time. Conditioning POR eligibility on a price comparison against the PTC not only evaluates differing and incomparable products and services but it undermines the product diversity and customer choice contemplated by the Competition Act.[7]

Similarly, the requirement that suppliers provide quarterly attestations of affirmative customer consent for residential customers on variable-priced month-to-month products imposes unnecessary burdens that are not imposed on default service and further contributes to an uneven competitive landscape. The Non-Unanimous Settlement offers no corresponding obligations on utility default service, despite the Competition Act's directive that competitive suppliers receive comparable treatment.[8]

The elimination of the CRP without implementation of a successor customer-acquisition pathway further weakens one of the remaining utility-administered mechanisms that familiarizes customers with competitive supply. The Non-Unanimous Settlement acknowledges that the current CRP will terminate on May 31, 2027 and provides that FE PA will not implement a successor program during DSP VII. This decision removes a historic avenue through which default service customers could become familiar with competitive supply options.

Taken together, these provisions move the retail market in the wrong direction. Rather than encouraging customer participation in competitive markets, the Non-Unanimous Settlement creates additional barriers to customer retention, adopts new conditions tied to

[7] 66 Pa. C.S. §§ 2801 *et seq.*

[8] 66 Pa. C.S. §2804(6).

utility default service pricing, and eliminates a customer referral mechanism without replacement. The cumulative effect is to deprive customers of the benefits of competitive supply – including product diversity, lower prices, value-added services, and supplier innovation – and to reduce their practical access to the competitive retail market.

Constellation recognizes that settlements often reflect compromise among competing interests and that certain aspects of the Non-Unanimous Settlement may be reasonable when viewed in isolation. However, the Commission's obligation is not merely to determine whether individual provisions are acceptable.[9] The Commission must determine whether the Settlement as a whole is in the public interest and supported by substantial evidence. Here, the Non-Unanimous Settlement advances policy changes that materially impair retail competition while offering no corresponding measures designed to improve customer participation in the competitive market. Settlement cannot supply the legal authority or evidentiary support that the Joint Petitioners did not prove in the record.

For these reasons, and as further discussed below in connection with the specific contested issues, the Non-Unanimous Settlement is not in the public interest and should be rejected.

C. Legal Standards

Constellation adopts the legal standards set forth in the RESA brief.

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

A. Residential Class Default Service Products

Constellation supports FE PA's proposal to meet its residential default service load through a portfolio of fixed-price full requirements ("FPFR") contracts with terms of 12, 24, and 60 months.[10] Specifically, the residential class procurement product being a 100% FPFR tranche with 12-month (45%), 24-month (45%), and 60-month (10%) delivery terms.[11]

[9] 66 Pa.C.S. § 501(a). (duty to ensure overall compliance with the Public Utility Code).

[10] Joint Petition at ¶ ¶ 19-20; *see also* FE PA Statement No. 3 (Nicholas Powers) at 4:23-5:7.

[11] Joint Petition at ¶ 20.

The Competition Act requires procurement through a prudent mix of spot market purchases, short-term contracts, and long-term contracts.[12] Thus, the statute itself recognizes that long-term products play an important role in achieving least-cost outcomes over time and mitigating customer exposure to market volatility.

Consistent with that statutory framework, the Commission has repeatedly evaluated and approved procurement structures that include longer-duration products where supported by the evidentiary record. The relevant legal question is not whether a proposed product extends beyond traditional procurement terms, but whether the record demonstrates that the product contributes to a prudent and balanced portfolio consistent with Section 2807(e)'s least-cost-over-time standard.[13] The Commonwealth Court's decision in *Popowsky v. Pennsylvania Public Utility Commission,* confirms that the Commission evaluates prudency in light of the record and the specific procurement plan before it, rather than applying a mechanical formula.[14] In *Popowsky*, the Court affirmed the Commission's discretion to approve a default service procurement structure where the Commission considered alternative procurement methods and determined, on that record, what approach would best satisfy the least-cost-over-time standard.[15] That principle supports approval here: unlike a portfolio exposed solely to short-term repricing, FE PA's proposed mix uses a modest 60-month tranche alongside 12- and 24-month products to balance market responsiveness with rate stability.[16] FE PA asserted that "the inclusion of longer-term tranches enhances portfolio diversity and provides a partial long-term energy hedge for customers, while maintaining manageable exposure to market changes."[17]

The proposed procurement design achieves a balanced supply portfolio that limits risk

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[12] 66 Pa. C.S. § 2807(e)(3.1)-(3.4).

[13] 66 Pa.C.S. § 2807(e)(3.4)(ii).

[14] *Popowsky v. Pennsylvania Public Utility Commission*, 71 A.3d 1112 (Pa. Commw. Ct. 2013).

[15] *Id.* at 1117-18.

[16] FE PA St. 3 (Powers) at 7:8-11; 21:16-20.

[17] FE PA St. 3 (Powers) at 7:8-11.

while providing reasonable cost stability for customers.[18] FE PA witness Powers testified that "the Company's proposed approach remains reasonable and consistent with Act 129's objective of maintaining a prudent mix of products designed to achieve the least cost to customers over time," and that "the Company's proposal reasonably balances those considerations."[19] FE PA witness Patria testified that PPL successfully procured 5-year products and, more recently, a 10-year long-term block product.[20] Mr. Rose, FE PA witness, also cited to PPL's successful procurement of 5-year and 10-yer block products in 2021 and in 2025, respectively.[21] Mr. Rose also indicated that a default service portfolio without a contract between 4 years and 20 years in length would violate 52 Pa. Code Section 54.186(b)(1)(iii).[22]

A competitively procured 60-month product falls squarely within the type of long-term procurement mechanism contemplated by Section 2807(e).[23] Therefore, the Commission should approve the 60-month product given that the evidentiary record demonstrates that it enhances portfolio diversity, promotes rate stability, and advances the statutory objective of obtaining generation supply at the least cost to customers over time.

III. CLASSIFICATION OF NON-RESIDENTIAL DEFAULT SERVICE CUSTOMERS

IV. RATE DESIGN AND COST RECOVERY

V. CUSTOMER REFERRAL PROGRAM

VI. SUPPLIER COORDINATION TARIFF CHANGES AND RETAIL SHOPPING ISSUES

[18] FE PA St. 3 (Powers) at 8:1-2.

[19] FE PA Statement No. 3R (Nicholas Powers) at 2:5-18.

[20] FE PA Statement No. 5R (Margarita Patria Rebuttal) at 2:11-15.

[21] FE PA Statement No. 2R (Ryan Rose Rebuttal) at 4:2-7.

[22] FE PA St. 2R (Rose) at 4:22-5:3.

[23] 66 Pa.C.S. § 2807(e).

A. Return of Customers to Default Service at Contract Expiration

The Commission should reject the Non-Unanimous Settlement provision requiring residential customers to be returned automatically to default service at the expiration of a fixed-duration contract unless the customer takes a new affirmative action to remain with the supplier. The proposal conflicts with existing Commission regulations, is inconsistent with the customer-choice principles embodied in the Competition Act, lacks evidentiary support, and would harm both customers and Pennsylvania's competitive retail electricity market.

The provision would apply this requirement to new residential contracts entered into after June 1, 2027, and the Joint Petitioners request a waiver of 52 Pa. Code § 54.10(3) to implement it.[24] That request is not a narrow tariff clarification; it is a material change to the Commission's settled customer-renewal framework and to the relationship between a customer and the supplier the customer already selected. The current framework already requires consumer protection measures such as supplier notices, disclosure of renewal terms, and customer freedom to leave without cancellation fees.[25] The Joint Petitioners request waiver of § 54.10(3), but they do not solve the separate switching-law problem: nothing in Chapter 57 authorizes FE PA to process a return-to-default transaction where the EGS remains willing to serve and the customer has not authorized the switch.

The plain language of 52 Pa. Code § 54.10(3) controls and dictates the outcome here. When a customer does not respond to the required contract-expiration notices, a fixed-duration contract "shall be converted" either to a month-to-month contract, at the same or revised terms and without cancellation fees, or to another fixed-duration contract that permits customer-initiated cancellation at any time without cancellation fees.[26] The converted contract then remains in place until the customer selects another product from the existing EGS, enrolls with another EGS, or returns to default to default service.[27] RESA witness Frank Lacey correctly explains that FE PA's proposal seeks a waiver of this rule and would

[24] Joint Petition ¶¶ 66, 73.

[25] 52 Pa. Code § 54.10(1)-(3).

[26] 52 Pa. Code § 54.10(1)-(3)(i)(A)-(B).

[27] 52 Pa. Code § 54.10(1)-(3)(ii)(A)-(C).

reverse a Commission framework adopted after an extensive rulemaking process.[28] The waiver request asks the Commission to replace the rule's mandatory consequence – continued service under a converted contract – with the opposite consequence, termination of the supplier relationship and transfer to default service. The Commission should not use this contested proceeding to rewrite a generally applicable customer-renewal regulation that already balances consumer protection and customer choice. A broad alteration of customer-renewal rights and supplier-switching procedures is more appropriately addressed, if at all, through a rulemaking or generic retail-market proceeding with full statewide participation. Section 54.10 was adopted through a rulemaking framework, and RESA witness Lacey similarly emphasized that the current renewal rules resulted from an extensive rulemaking process. [29]

The proposal is also inconsistent with the Competition Act. The General Assembly expressly declared that customers should have the opportunity to choose their electric generation supplier and that competitive market forces are preferable to traditional economic regulation in controlling generation costs and fostering innovation.[30] [31] A customer who enrolls with an electric generation supplier has already exercised that statutory choice. Under the current regulatory framework, that choice remains effective unless and until the customer elects another supplier or elects to return to default service.[32] FE PA's proposal would instead transfer the customer automatically to utility default service despite having previously selected a competitive supplier and despite the supplier's continued willingness to serve the customer. Such a result improperly elevates default service above competitive supply and authorizes an involuntary supplier change without affirmative customer

[28] RESA Statement No. 1 (Frank Lacey) at 14:14-16:2.

[29] RESA St. 1 (Lacey) at 14:14-16:2.

[30] 66 Pa.C.S. § 2802(3) and (5).

[31] 66 Pa.C.S. § 2806(a).

[32] 52 Pa. Code § 54.10(1)-(3)(ii)(A)-(C)

consent.[33] [34] The proposal inverts the statutory hierarchy: it treats default service not as the provider-of-last-resort function preserved by § 2802(16), but as the preferred destination for customers who already exercised their statutory right to choose competitive supply.[35] This Non-Unanimous Joint Settlement provision would harm customers by making it harder for them to remain with the competitive supplier they previously selected, reducing access to competitive supply options, and steering customers back toward the incumbent utility's default service product. That cumulative effect is contrary to the Competition Act's pro-competitive structure and to the Commission's longstanding effort to preserve customer access to competitive supply options. Default service is a backstop, not a regulatory preference. Default service is triggered by no choice of a supplier or a customer's desire to return. Section 2807 does not authorize an EDC or settlement group to deem silence a customer's 'desire' to return to default service.

The proposal further conflicts with the Competition Act's anti-slamming protections. Section 2807(d)(1) requires regulations ensuring that an EDC does not change a customer's electricity supplier without direct oral confirmation from the customer of record or written evidence of the customer's consent to the supplier change.[36] The Commission's supplier-change regulations likewise identify only a limited default-service exception: Subchapter M does not apply when the customer's service is discontinued by the EGS and subsequently provided by the default service provider because no other EGS is willing to serve the customer.[37] FE PA's proposal does not require either condition. It would return customers to default service even where the existing EGS remains willing to serve the customer and where the customer's contract permits renewal under § 54.10. RESA is therefore correct that the proposal would authorize the functional equivalent of an involuntary supplier change, not a

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33 66 Pa.C.S. § 2807(d)(1).

34 52 Pa. Code § 57.178.

35 66 Pa.C.S. § 2802(16).

36 66 Pa.C.S. § 2807(d)(1).

37 52 Pa. Code § 57.178.

customer choice.[38]

The Commission's prior decisions in both the PECO and PPL default service proceedings strongly support rejection of the proposal. PPL supplies the governing test; PECO applies it to the same automatic-return mechanism; FE PA fails both. In PECO DSP VI, the Commission rejected a substantially similar provision that would have required customers participating in PECO's Standard Offer Program("SOP") to be returned automatically to default service at the end of the contract term unless they affirmatively elected to remain with the supplier.[39] The Commission held that the proposal was inconsistent with Section 54.10 and rejected arguments that higher supplier rates, standing alone, justified overriding existing regulations.[40] Importantly, the Commission recognized that customers may legitimately choose supplier products for reasons other than immediate price comparisons, including product features, contract stability, renewable attributes, or other value propositions.[41]

Likewise, in PPL DSP V, the Commission rejected PPL's proposal to return SOP customers automatically to default service following contract expiration. They concluded that such a requirement was inconsistent with Section 54.10 and the Retail market Investigation framework and found that the utility had failed to demonstrate a customer harm sufficient to justify restricting competition. [42]

The Commission's reasoning in both cases applies equally here. If a customer protection concern exists, the proper response is not to invalidate existing customer choices and contractual relationships absent substantial evidence demonstrating that such an extraordinary remedy is necessary.

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[38] RESA St. 1 (Lacey) at 16:5-17:2.

[39] *Petition of PECO Energy Company for Approval of Its Default Service Program for the Period June 1, 2025 through May 31, 2029,* Docket No. P-2024-3046008, (Order entered Nov. 7, 2024 at 43–47, 74–81, 89, Ordering ¶¶ 5–6) *("PECO DSP VI")*.

[40] *Id.* at 79-81.

[41] *Id.* at 80.

[42] *PPL DSP V Order* at 92-98.

FE PA has not supplied the evidence needed to justify a different result. FirstEnergy's proposal is predicated on improper comparisons between supplier prices and the PTC, yet the record contains no evidence that FirstEnergy analyzed the reasons customers choose supplier products, whether default service would actually be less expensive for the affected customer at the time of transfer, or what implementation costs will be borne by customers. These omissions are significant because the requested waiver would overturn an existing regulation and alter longstanding Commission policy. The record does not permit the ALJ to make the findings necessary to approve the waiver. Under § 332(a), the proponent of a rule or order bears the burden of proof, and under § 332(b), no rule or order may issue except on the whole record and reliable, probative, substantial evidence.[43] In non-unanimous settlements, the Commission emphasized independent review, public-interest review, due process for non-settling parties, and substantial evidence supporting settlement terms.[44] A party seeking such relief should be required to demonstrate both a clear problem with the current framework and a compelling justification for replacing it. Neither showing has been made.

The proposal also fails on the merits because it assumes, incorrectly, that a customer's silence after receiving a renewal notice means the customer has not made a meaningful choice. Under existing law, the customer's initial enrollment is affirmative consent to the supplier relationship, and § 54.10 supplies the Commission-approved renewal consequences if the customer does not choose another option. RESA witness Lacey explains that FE PA's proposal invalidates the customer's original selection of an EGS and disregards the customer's expectations under the existing contract.[45] That is not consumer protection; it is a preference for default service over the competitive product the customer selected.

The proposal also fails as an affordability measure. FE PA cannot guarantee that default service will be lower than the customer's renewal price at the time of transfer, and

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[43] 66 Pa. C.S. § 332(a)-(b).

[44] *Pa. PUC, et al. v. Citizens' Electric Co. of Lewisburg*, Docket Nos. R-2025-3054394, C-2025-3055103, C-2025-3055186, Opinion and Order entered Jan. 15, 2026, at 42–44.

[45] RESA St. 1 (Lacey) at 17:5-18:5.

the proposal is not limited to customers paying above the PTC. RESA identifies several customer-value attributes that would be erased by forced return to default service, including renewable-energy content, loyalty incentives, and other product features that default service does not provide.[46] The Commission's PECO order likewise recognized that customers may rationally choose an EGS for reasons other than price, including product attributes and contract length.[47] A rule that sends customers to default service regardless of the customer's selected product, contract attributes, or price cannot be justified as an affordability measure. PECO is not merely analogous. It is the Commission's most recent answer to the same legal question: customer silence after contract expiration does not justify automatic return to default service absent substantial evidence of harm and no reasonable alternative. [48]

For these reasons, the ALJs should recommend that the Commission reject the Non-Unanimous Joint Settlement return to default service provision and deny the requested waiver of 52 Pa. Code § 54.10(3). If the Commission approves any portion of the Non-Unanimous Joint Settlement, it should strike the automatic return provision and require FE PA to continue administering residential supplier relationships consistently with 52 Pa. Code § 54.10, § 57.178, the Competition Act, and the Commission's PECO and PPL default service precedent.

B. Quarterly Affirmation for Variable Rate Contracts

Constellation supports RESA and the EGS Parties' positions on this issue.

C. Changes to Purchase of Receivables (POR) Program

Constellation supports RESA and the EGS Parties' positions on this issue.

VII. <u>CUSTOMER ASSISTANCE PROGRAM MAXIMUM BILL CREDITS</u>

VIII. <u>ADDITIONAL SETTLEMENT TERMS</u>

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[46] RESA St. 1 (Lacey) at 18:6-19.

[47] *PECO DSP VI Order* at 75, 80–81.

[48] *Id*.

IX. CONCLUSION

For the reasons set forth above, Constellation respectfully requests that the ALJs recommend rejection of the Non-Unanimous Settlement. Although Constellation supports approval of FE PA's proposed 60-month product as part of a prudent mix designed to promote rate stability and least cost over time, the Non-Unanimous Settlement as a whole contains material provisions that are unlawful, unsupported by substantial evidence, and contrary to the public interest. In particular, the automatic return-to-default service provision conflicts with 52 Pa. Code § 54.10, the Competition Act, the Commission's anti-slamming protections, and the Commission's PECO and PPL default service precedent.

The Commission should not approve settlement terms that diminish customer choice, elevate default service over competitive supply, condition competitive market participation on utility default service pricing, or eliminate customer-acquisition mechanisms without a meaningful replacement. The record does not demonstrate that these measures are necessary, reasonable, or consistent with Pennsylvania's competitive retail electric market framework. Accordingly, Constellation respectfully requests that the ALJs recommend that the Commission reject the Non-Unanimous Settlement, or, at minimum, strike the contested retail-market provisions and require FE PA to administer DSP VII in a manner consistent with existing Commission regulations, statutory customer-choice protections, and established precedent.

Appendix A - Proposed Findings of Fact

1. Parties to the Non-Unanimous Settlement are FE PA, OCA, OSBA, CAUSE-PA, Walmart, and DLC (collectively, “Joint Petitioners”). Joint Petition at 1.
2. Parties not opposing the settlement are Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, and West Penn Power Industrial Intervenors (collectively, “Industrial Customer Groups”) and PSU. Joint Petition at fn. 1.
3. Parties opposing the settlement are Constellation, RESA, EGS Parties, Town Square, WGL, CGC, Dimension PA 1, LLC (“Dimension”), Penn Renewables, LLC (“Penn Renewables”), the Solar Energy Industries Association and the Coalition for Community Solar Access (collectively. “JSA”). Joint Petition at fn. 1.
4. FirstEnergy’s witness, Nicholas Powers, describing that the proposal of 12-, 24-, and 60-month fixed price full requirements tranches satisfy default service supply requirements for the period June 1, 2027, through May 31, 2031. FE PA Statement No. 3 (Nicholas Powers) at 4:23-5:7.
5. Mr. Powers states that a 60-month long-term product supports rate stability, by enhancing portfolio diversity and providing a long-term energy hedge for customers. 6 FE PA St. 3 (Powers) at 7:8-11; 21:16-20; FE PA Statement No. 3R (Nicholas Powers) at 2:5-18.
6. Mr. Powers states that the Company’s proposed procurement design achieves a balanced portfolio that limits risk while providing reasonable cost stability. FE PA St. 3 (Powers) at 8:1-2.
7. FirstEnergy’s witnesses, Margarita Patria and Ryan Rose, stated that PPL Electric Utilities successfully procured 5-yar products, and, more recently, a 10-year long-term block product. FE PA Statement No. 5R (Margarita Patria Rebuttal) at 2:11-15; FE PA Statement No. 2R (Ryan Rose Rebuttal) at 4:2-7.
8. FirstEnergy’s witnesses, Ryan Rose, indicated that a default service portfolio without a contract between 4 years and 20 years in length would violate 52 Pa. Code Section 54.186(b)(1)(iii). FE PA St. 2R (Rose) at 4:22-5:3.
9. RESA witness stated that FE PA’s proposal seeks a waiver of 52 Pa. Code § 54.10(3) and would reverse a Commission framework adopted after an extensive rulemaking process. He also stated that the waiver request asks the Commission to replace the mandatory

consequence under 52 Pa. Code § 54.10(3)—continued service under a converted contract—with termination of the supplier relationship and transfer to default service. RESA St. No. 1 (Lacey) at 14:14-16:2.

10. RESA witness Lacey stated that the switching would authorize the functional equivalent of an involuntary supplier change, not a customer choice. RESA St. No. 1 (Lacey) at 16:5-17:2.
11. RESA witness Lacey stated that FE PA's proposal invalidates the customer's original selection of an EGS and disregards the customer's expectations under the existing contract. RESA St. No. 1 (Lacey) at 17:5-18:5.
12. RESA witness Lacey identified renewable-energy content, loyalty incentives, and other product features that default service does not provide as customer-value attributes that could be erased by forced return to default service. RESA St. No. 1 (Lacey) at 18:6-19.
13. In the Commission's PECO DSP VI Order, the Commission recognized that customers may rationally choose an EGS for reasons other than price, including product attributes and contract length. *PECO DSP VI Order* at 75, 80-81.
14. In the Commission's PECO DSP VI Order, the Commission's found that customer silence after contract expiration does not justify automatic return to default service absent substantial evidence of harm and no reasonable alternative. *PECO DSP VI Order* at 75, 80-81.

Appendix B - Proposed Conclusions of Law

1. The Commission rejected PPL's proposal to automatically return EGS customers to default service upon expiration of the Standard Offer Program contract unless the customer took affirmative action to the contrary. *Petition of PPL Electric Utilities Corporation for Approval of its Default Service Plan for the Period June 1, 2021 through May 31, 2025*, Docket No. P-2020-30196356 (Order entered Dec. 17, 2020 at 2, 44-45, 92 and 98.

2. 52 Pa. Code § 54.10(3) provides that, when a customer does not respond to the required contract-expiration notices, a fixed-duration contract shall be converted either to a month-to-month contract or to another fixed-duration contract that permits customer-initiated cancellation without cancellation fees. 52 Pa. Code § 54.10(3).

3. The Competition Act requires EDCs to provide EGSs nondiscriminatory access to the EDC's transmission and distribution system on rates, terms of access, and conditions comparable to the utility's own use of its system. 66 Pa. C.S. § 2804(6).

4. A residential default service portfolio containing 12-month, 24-month, and 60-month products may satisfy the prudent mix standard where supported by record evidence showing that the portfolio promotes diversity, rate stability, and least cost over time. 66 Pa. C.S. § 2807(e)(3.1)-(3.4).

5. The prudent mix of resources must be designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to customers over time; and, (iii) to achieve these results through competitive processes which includes auctions, requests for proposals and/or bilateral agreements. 66 Pa. C.S. § 2807(e)(3.1).

6. The Competition Act does not require a specific rate design methodology for non-shopping customers in the post transition period. Instead, it requires that the default service provider acquire electric energy through a "prudent mix" of resources. 66 Pa. C.S. § 2807(e)(3.2); *Popowsky v. Pennsylvania Pub. Util. Comm'n*, 71 A.3d 1112, 1117 (Pa. Cmwlth. 2013) (Petition for Allowance of Appeal Denied Dec. 31, 2013,

Docket No. 641 MAL 2013).

7. Adoption of the Non-Unanimous Settlement would be changing the customer's electricity supplier without consent and in violation of Section 2807(d) of the Competition Act, 66 Pa. C.S. § 2807(d).
8. In 2020 the Commission rejected PPL's proposal to automatically return EGS customers to default service upon expiration of the SOP contract unless the customer took affirmative action to the contrary. *PPL DSP V Order.*
9. The Competition Act clearly states that it is "…in the public interest to permit retail customers to obtain direct access to a competitive generation market…" (66 Pa. C.S. § 2802(3)) and directed that "all customers…shall have the opportunity to purchase electricity from their choice of EGS. The ultimate choice of the EGS is to rest with the consumer." 66 Pa. C.S. § 2806(a).
10. The Commission rejected PECO's proposal to automatically return EGS customers to default service upon expiration of the Standard Offer Program contract unless the customer took affirmative action to the contrary. [3]9 *Petition of PECO Energy Company for Approval of Its Default Service Program for the Period June 1, 2025 through May 31, 2029,* Docket No. P-2024-3046008, (Order entered Nov. 7, 2024 at 43–47, 74–81, 89, Ordering ¶¶ 5–6).
11. The Commission established strict standards for non-unanimous settlements in its order requiring the Commission to conduct independent and public-interest reviews, guarantee due process for non-settling parties, and ensure substantial evidence supports all terms. *Pa. PUC, et al. v. Citizens' Electric Co. of Lewisburg*, Docket Nos. R-2025-3054394, C-2025-3055103, C-2025-3055186, Opinion and Order entered Jan. 15, 2026, at 42–44.

Appendix C - Proposed Ordering Paragraphs

1. The Non-Unanimous Settlement is rejected.
2. First Energy’s proposal to require affirmative consent from customers to continue in their contracts renewals with suppliers is denied because it is contrary to law.
3. First Energy’s proposal to require affirmative consent every 3 months from a customer on a variable rate contract is denied as being contrary to law.
4. First Energy’s proposal to restrict participating in its purchase of receivables program based upon the supplier’s prices is denied as being contrary to law.