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July 10, 2026

***VIA ELECTRONIC FILING***
Secretary Mattew Homsher
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 from June 1, 2027 to May 31, 2031**
**Docket No. P-2026-3060298**

Dear Secretary Homsher:

Enclosed for filing please find the Joint Main Brief of Town Square Energy East, LLC and WGL Energy Services, Inc. in opposition to the Joint Petition for Non-Unanimous Settlement filed in the above-captioned matter. Copies of this filing have been served in accordance with the attached Certificate of Service.

Thank you, and please do not hesitate to contact me if you have any questions or concerns.

Best Regards,

STEVENS & LEE

Michael A. Gruin

Michael A. Gruin, Esq.

Encl.
cc: Deputy Chief Administrative Law Judge Mark A. Hoyer (via email)
Administrative Law Judge Erin L. Gannon (via email)
Certificate of Service

**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 |

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## CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the enclosed Joint Main Brief 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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Michael A Gruin

Dated: July 10, 2026 Michael A. Gruin

***- Indicates Executed Protective Order Acknowledgement**

**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** |

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**JOINT MAIN BRIEF OF**

**TOWN SQUARE ENERGY EAST, LLC AND**

**WGL ENERGY SERVICES, INC.**

**IN OPPOSITION TO JOINT PETITION FOR NON-UNANIMOUS SETTLEMENT**

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DATED: July 10, 2026

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## I. INTRODUCTION

Town Square Energy East, LLC ("Town Square") and WGL Energy Services, Inc. ("WGL"), hereby submit this joint main brief in opposition to the Joint Petition for Non-Unanimous Settlement filed in this proceeding ("Non-Unanimous Settlement"). For the reasons set forth below, Town Square and WGL respectfully request that the Pennsylvania Public Utility Commission ("Commission") modify the Non-Unanimous Settlement and reject FirstEnergy Pennsylvania Electric Company's ("FirstEnergy, "FE PA", or the "Company") proposals related to electric generation supplier ("EGS") and retail shopping issues. Specifically, Town Square and WGL request that the Commission deny FirstEnergy's proposals to 1) to eliminate the Customer Referral Program ("CRP"), 2) to return customers to default service at contract expiration, 3) to require quarterly affirmation for variable rate contracts, and 4) to implement changes to its Purchase of Receivables ("POR") program.

### A. Procedural History

On February 3, 2026, FirstEnergy filed a Petition for Approval of Default Service Plan ("DSP Petition") 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).

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 and 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. ("Constellation") and Constellation Energy Generation, LLC ("CEG") 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 CEG), and Marsha D. Makel, Esq. (Constellation and CEG), respectively.

Also on March 16, 2026, the Constellation and CEG 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 and CEG 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, OCA, CAUSE-PA, RESA, FirstEnergy, JSA, and CGC submitted written Rebuttal Testimony.

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

Commission policy promotes settlements.[2] 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.[3] Rate 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.[4] This means that a settlement should allow the parties to avoid the substantial costs of preparing and

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[2] 52 Pa. Code §§ 5.231, 69.401.

[3] 52 Pa. Code § 69.401.

[4] *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).

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.[5]

The Non-Unanimous submitted in the present case achieves none of the policy goals underlying the Commission's preference for settlements. With respect to the retail shopping issues[6], the "settlement" is nothing more than a wholesale adoption of FirstEnergy's initial proposal with no modification, even though it is actively opposed by all of the EGS parties who will be directly affected by the proposal. The settlement did not narrow any issues in dispute, it did not lessen the time and expense for the parties or the Commission, it did not conserve the Commission's administrative hearing resources and it will not avoid the preparation and service of briefs, reply briefs and, likely, exceptions and reply exceptions.

Less than half of the parties participating in the case joined the Settlement. Only three of the six signatories to the Joint Petition presented evidence or testimony regarding the supplier issues during the course of the proceeding, and two of the signatories (OSBA and Walmart) took no position on the supplier issues in their statements in support. By contrast numerous parties who are directly affected by the retail shopping issues are not parties to the Settlement. The Settlement cannot be considered a universal resolution of highly disputed issues when the Settlement is nothing more than a restatement of the original FirstEnergy proposals on those issues,[7] that are wholly opposed by the retail

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[5] *Id.*

[6] The Retail Shopping issues include FirstEnergy's proposal to abandon the CRP, its proposal to return customers to default service at the expiration of their EGS contract, its requirement for quarterly affirmative consent for ongoing service on month to month variable rates, and its proposed modifications to its POR program.

[7] See Paragraph 65 of the Joint Petition for Non-Unanimous Settlement

supplier parties who are most affected by the proposals. More importantly, as set forth below, the Settlement is not supported by substantial evidence and it legally defective in multiple respects, and therefore 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, the burden of proof is on the public utility.[8] As the filer of a DSP Petition, FirstEnergy must establish its case by a preponderance of the evidence.[9] 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 Supplier Coordination Tariff, its proposed changes to its Customer Referral Program, the new proposed requirements for EGS contract renewals, and changes to its POR Program.

The Commission's review of a non-unanimous settlement is not perfunctory[10]. 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. The public interest inquiry requires examination of the settlement's effect on ratepayers, shareholders, and the regulated community.[11] The Commission's standards for reviewing a non-unanimous settlement are the same as those for deciding a fully

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[8] 66 Pa. C.S. §§ 332(a), 2807(e).

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

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

[11] *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).

contested case. Accordingly, substantial evidence consistent with the statutory requirements must support the proposed settlement. [12]

## D. Summary of Argument

The Non-Unanimous Settlement would adopt, without modification, three separate proposals from the DSP that are aimed at drastically altering the competitive retail market framework in FirstEnergy territory, under the guise of addressing customer affordability concerns:

- A proposal to eliminate FirstEnergy's Customer Referral Program
- A proposal to impose new "affirmative consent" requirement on EGS contract renewals and month to month supply service, by means of what FirstEnergy characterizes as a "waiver" of the Commission's EGS contract renewal regulations, and
- A proposal to eliminate eligibility for suppliers to participate in FirstEnergy's Purchase of Receivables program, except for EGS products that are at or below the FirstEnergy price to compare ("PTC") at the time of the customer's enrollment, or at the time of a pricing change.

There are multiple major defects with FirstEnergy's proposals that prohibit their approval. Overarching FirstEnergy's retail market proposals is a generalized concern with affordability, which everyone agrees is an important issue. The issue is that FirstEnergy has provided no evidence that its proposals address the issues contributing to overall electric bill unaffordability. To the contrary, the record shows that the proposals will violate the Commission's longstanding retail market regulations and will significantly limit customer options to manage their electricity expenses, to the detriment of affordability.

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[12] *Pa. PUC v. PECO Energy Co., Docket Nos*. R-2024-3046932, et al. (Order entered December 12, 2024) *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).

For instance, FirstEnergy's first proposal (elimination of the CRP), involves elimination of a decade-old program that has provided clear and unequivocal financial benefits to thousands of customers each year at no cost to FirstEnergy. If approved, elimination of the CRP will reduce options available to customers to save money on their electricity bills, which clearly does not serve as a solution to affordability issues.

FirstEnergy's second proposal is illegal right out of the gate. The proposed changes to EGS contract renewal rules and a new quarterly affirmation requirement cannot lawfully be enacted via a utility's request to waive regulations that govern EGSs. In order to enact FirstEnergy's proposal, the Commission would need to repeal or amend its longstanding statewide EGS customer enrollment and renewal regulations via a full-blown rulemaking proceeding consistent with the Commonwealth Documents Law, the Regulatory Review Act, and 1 Pa. Code § 7.1, rather than approve piecemeal changes in a single utility's default service proceeding. Even if FirstEnergy had proven that a modification of the EGS customer enrollment and renewal framework was somehow appropriate or necessary to address an existing problem (which it clearly has not done), the Commission is lawfully precluded from modifying its regulations unless and until it undertakes a formal rulemaking process to do so.

FirstEnergy's third proposal (modification of its POR program) is unprecedented and would contradict the longstanding Commission determination that a well-functioning POR program is essential to the competitive retail markets. FirstEnergy fails to explain how the existing POR program has contributed to unaffordable utility bills or how its proposal would benefit affordability in way. To the contrary, the record developed in this proceeding demonstrates that FirstEnergy's proposal would diminish customer options to lower their electric bills and potentially lead to the complete elimination of residential retail choice in the FirstEnergy territory.

## II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

WGLES and Town Square have no position on this aspect of the proceeding.

## III. CLASSIFICATION OF NON-RESIDENTIAL DEFAULT SERVICE CUSTOMERS

WGLES and Town Square have no position on this aspect of the proceeding.

## IV. RATE DESIGN AND COST RECOVERY

WGLES and Town Square have no position on this aspect of the proceeding.

## V. CUSTOMER REFERRAL PROGRAM

### A. The Customer Referral Program provides demonstrated benefits to customers at no cost to FirstEnergy, and should be continued in order to assist customers with affordability

It is highly ironic that FirstEnergy asserts concerns about customer affordability to as a justification for implementing significant changes to the retail shopping framework within its territory, but in the same filing argues to eliminate a successful program that has provided thousands of customers with savings versus the PTC. The record established in this case clearly demonstrates that the CRP has provided tangible benefits to customers, with no evidence of any cost or downside to FirstEnergy, its ratepayers, or any other party. In light of the record that has been developed and the Commission's longstanding directive for electric distribution companies ("EDCs") to consider market enhancement programs in their DSPs, the Commission should direct FirstEnergy to continue its CRP during the duration of if its DSP VII under the same terms and conditions of its existing CRP.

Neither FirstEnergy nor the other opponents of the competitive retail markets (OCA and CAUSE-PA) provided any evidence whatsoever that the CRP has harmed customers. To the contrary, the evidence in the record confirmed that customers who participated in the CRP paid $750,000 less than they would have paid on default service in the years 2025 and 2026 alone.[13] The only justification that FirstEnergy and other retail market opponents provided for eliminating the CRP was that participation in the program was declining. No evidence was submitted by FirstEnergy or the other opponents regarding issues with customer complaints, satisfaction, or outcomes associated with the CRP. [14] There is also no evidence in the record regarding attempts by FirstEnergy to gauge customer awareness of the CRP and reasons for declining participation, and OCA and CAUSE-PA's witnesses admitted that they have not conducted any analysis of potential reforms or improvements to the CRP. [15]

CAUSE-PA's sole justification for eliminating the CRP was "overall adverse outcomes for residential customers in the retail markets", which of course is no justification for eliminating the program at all. OCA witness Alexander attempted to manufacture examples of hypothetical harm by customers as a result of the CRP, but this attempt was full of errors and speculation. Ms. Alexander clearly misunderstood the nature of the CRP by misstating the amount of the discount provided and the frequency of PTC changes.[16] Ms. Alexander then expressed worry that customers could "lose their discount" if the PTC drops during the course of their CRP enrollment.[17] But she completely fails to recognize that under the CRP the customer can cancel their enrollment at any time with no penalty and return to default service, so if the PTC does drop the customer is fully capable of returning to default supply.

Furthermore, the reality is that FirstEnergy's PTCs ***are not*** declining as Ms. Alexander would have the Commission believe. To the contrary, the FirstEnergy PTCs have risen consistently and dramatically over the past 5 years, and the PTC has more than

[13] RESA Statement 1SR, at p. 23, lines 14-22 and Exhibit FL-32

[14] RESA Statement 1R, at p. 23, lines 16-18 and Exhibit FL-23, and p. 25, lines 1-4 and Exhibit FL-24

[15] RESA Exhibit FL-22

[16] RESA Statement 1R, at p. 24 (citing mistakes in OCA Statement 2)

[17] OCA Statement 2, at 6-7

doubled since March of 2021 in three of the four FirstEnergy rate districts.[18] The chart below from Exhibit RM-2 to Town Square Statement No. 1 shows this consistent rise in the PTC in FirstEnergy territory of the past four years:

[18] Town Square Statement No. 1, at p.11, lines 4-7 and Exhibit RM-2.

Price-to-Compare 2015-2025

| | Met-Ed | Penelec | Penn Power | West Penn |
|---|---|---|---|---|
| 12/1/2014 | $0.07007 | $0.06370 | $0.05419 | $0.06313 |
| 3/1/2015 | $0.07924 | $0.06943 | $0.05754 | $0.05331 |
| 6/1/2015 | $0.07843 | $0.07343 | $0.08584 | $0.07311 |
| 9/1/2015 | $0.07246 | $0.07341 | $0.09198 | $0.06917 |
| 12/1/2015 | $0.08305 | $0.07554 | $0.08996 | $0.07011 |
| 3/1/2016 | $0.07072 | $0.06516 | $0.07878 | $0.06983 |
| 6/1/2016 | $0.05945 | $0.06020 | $0.06819 | $0.06410 |
| 9/1/2016 | $0.06902 | $0.07724 | $0.07979 | $0.06061 |
| 12/1/2016 | $0.73510 | $0.71210 | $0.07727 | $0.65740 |
| 3/1/2017 | $0.06964 | $0.06047 | $0.05884 | $0.05975 |
| 6/1/2017 | $0.06018 | $0.06192 | $0.06674 | $0.06602 |
| 9/1/2017 | $0.05995 | $0.05383 | $0.05956 | $0.06289 |
| 12/1/2017 | $0.06816 | $0.06742 | $0.07202 | $0.06149 |
| 3/1/2018 | $0.06181 | $0.05878 | $0.06599 | $0.06085 |
| 6/1/2018 | $0.06341 | $0.06223 | $0.06824 | $0.06560 |
| 9/1/2018 | $0.06068 | $0.05968 | $0.06626 | $0.05595 |
| 12/1/2018 | $0.06684 | $0.06288 | $0.07714 | $0.06354 |
| 3/1/2019 | $0.06241 | $0.05747 | $0.06414 | $0.06092 |
| 6/1/2019 | $0.05540 | $0.05668 | $0.06256 | $0.05517 |
| 9/1/2019 | $0.05667 | $0.05198 | $0.06231 | $0.05338 |
| 12/1/2019 | $0.06510 | $0.06445 | $0.07572 | $0.05760 |
| 3/1/2020 | $0.05390 | $0.05404 | $0.06267 | $0.05637 |
| 6/1/2020 | $0.05361 | $0.05532 | $0.06684 | $0.05125 |
| 9/1/2020 | $0.05757 | $0.05598 | $0.06447 | $0.04891 |
| 12/1/2020 | $0.06174 | $0.05667 | $0.06435 | $0.05198 |
| 3/1/2021 | $0.05418 | $0.04981 | $0.05721 | $0.05154 |
| 6/1/2021 | $0.06690 | $0.06462 | $0.07195 | $0.05707 |
| 9/1/2021 | $0.07114 | $0.06761 | $0.07657 | $0.05447 |
| 12/1/2021 | $0.07414 | $0.06507 | $0.07593 | $0.05698 |
| 3/1/2022 | $0.06832 | $0.06232 | $0.07082 | $0.05667 |
| 6/1/2022 | $0.07936 | $0.08443 | $0.08694 | $0.08198 |
| 9/1/2022 | $0.09397 | $0.10021 | $0.10348 | $0.08306 |
| 12/1/2022 | $0.10303 | $0.09889 | $0.10511 | $0.08517 |
| 3/1/2023 | $0.09991 | $0.09561 | $0.10439 | $0.08228 |
| 6/1/2023 | $0.10240 | $0.09703 | $0.10556 | $0.09929 |
| 12/1/2023 | $0.11306 | $0.10607 | $0.11231 | $0.10001 |
| 6/1/2024 | $0.10404 | $0.09744 | $0.10389 | $0.08787 |
| 12/1/2024 | $0.11011 | $0.10474 | $0.11168 | $0.09481 |
| 6/1/2025 | $0.11903 | $0.11003 | $0.11857 | $0.10317 |
| 12/1/2025 | $0.12965 | $0.11747 | $0.12606 | $0.10947 |

Notably, since this chart was produced by FirstEnergy in April of 2026, the PTC *rose again* in each of the four rate districts.[19] This chart shows that Ms. Alexander's concerns about customers being harmed by the CRP are completely unfounded. The simple truth is that in times of consistently rising PTCs and concerns about customer affordability, it is disingenuous for FirstEnergy and the other retail market opponents to argue for the elimination of a program that has consistently provided customers with the opportunity to save money with no demonstrated ongoing cost to FirstEnergy.

For these reasons, the Commission should require FirstEnergy to continue its CRP during the DSP VII, and perform an analysis of the reasons for declining participation and ways to improve participation in the program and issue a report with suggestions for improving the program's participation levels.

## VI. SUPPLIER COORDINATION TARIFF CHANGES AND RETAIL SHOPPING ISSUES

### A. Return of Customers to Default Service at Contract Expiration

FirstEnergy has requested the right to impose a new "affirmative consent" requirement for EGS customer contract renewals in FirstEnergy territory.[20] FirstEnergy's proposal directly conflicts with the longstanding EGS contract expiration and renewal regulation codified at 52 Pa. Code § 54.10 (3). Consequently, FirstEnergy has styled its proposal as a "request for waiver" of the Commission's regulation of that regulation. However, for the reasons outlined below, FirstEnergy's request clearly cannot be treated as a "request for waiver". In substance, FirstEnergy's proposal is not a request for a waiver at all, but rather an improper request to amend or repeal longstanding Commission regulations in the context of a default service proceeding rather than a formal rulemaking.

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[19] Town Square Statement No. 1, at p. 12, lines 1-10 and Exhibit RM-4

[20] See FirstEnergy Petition for Approval of DSP, at paragraphs 51 and 60.



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FirstEnergy's request suffers from multiple legal and procedural defects that prohibit its approval, even if its request was justified by the evidence in the record (which it is not).

### 1. FirstEnergy's Request for a Waiver of the Commission Regulation at 52 Pa. Code 54.10(3) is Defective and Impermissible

FirstEnergy's DSP Petition includes a request to modify the EGS customer contract renewal regulations that have been in force and uniformly applied throughout the Commonwealth for over a decade. FirstEnergy proposes to implement this change by way of changes to its Supplier Coordination tariff, and characterizes its request as a simple request for a "waiver" of the Commission's regulation at 52 Pa. Code § 54.10(3).[21] However, the regulation for which FirstEnergy seeks a "waiver" is not a regulation that governs the actions of ***EDCs*** in any way, shape or form; rather, it is a regulation that explicitly and solely governs the actions of ***EGSs*** and their interactions with their customers. In other words, FirstEnergy is seeking a waiver of a regulation that does not apply to it, but instead applies to an entirely different universe of companies. Waivers cannot be sought from regulations that don't apply to the waiver-seeker in the first place.

The regulation in question was promulgated in 2014 via a Final Omitted Rulemaking Order. The regulation was amended in 2020 through the standard rulemaking process, beginning with a Notice of Proposed Rulemaking Order issued on December 7, 2017 and culminating with a Final Rulemaking Order on February 27, 2020.[22] The regulation makes no mention of EDCs whatsoever, and imposes no obligations on EDCs. Rather, the regulation is specific to EGSs only, and imposes detailed obligations on EGSs

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[21] Id.

[22] See *Final-Omitted Rulemaking Order Regarding the Provisions of Notices of Contract Expiration or Changes in Terms for Residential & Small Business Customers,* Docket No. L-2014-2409385 (Order entered April 3, 2014), and *Rulemaking Regarding Electricity Generation Customer Choice,* Docket No. L-2017-2628991 (Order entered February 27, 2020).

to provide specific notices to customers in advance of the expiration of the customer's retail supply contract. The regulation includes precise directions regarding the timing for issuing the notices, the language of the notices, and the methods of delivery of the notices. The regulation concludes by directing EGSs how to proceed in situations where the customer does not respond to the expiration notices, and mandates that fixed duration contracts "**shall be converted**" to either month to month contacts or another fixed duration contract as long as the new contract allows cancellation at any time with not cancellation fee and "**shall remain in place**" until the customer chooses another option (emphasis added).

Under FirstEnergy's proposal, the final section of the regulation relating to contract continuations (subsection 3) would be completely altered such that customers would not continue to be served by the EGS upon contract expiration. Instead, upon expiration of the customer contract, the EGS would automatically be required to return a customer default supply service following the expiration of their EGS contract regardless of whether the contract includes automatic renewal provisions, unless the EGS submits proof that the customer affirmatively consented to the continuation of their EGS service.

What FirstEnergy has characterized as a "waiver" is not a waiver at all. It is a request to completely override a carefully constructed and consistently enforced regulation that has governed EGS rights and duties regarding contract expirations throughout the Commonwealth for over a decade, and replace it with a new contract renewal framework that only applies in FirstEnergy territory. In other words, FirstEnergy is proposing to amend or repeal the regulation at 52 Pa. Code 54.10, not request a waiver from it. In examining FirstEnergy's request, it is important to understand the nature of a "waiver" request versus a request to issue, amend or repeal a regulation, and the circumstances under which the Commission evaluates such requests.

A petition for waiver is an ad hoc adjudicatory request for relief from the application of an existing regulation in a particular case in light of a specific set of circumstances that justify the relief.[23] As the Commission has repeatedly explained:

> "[w]aivers of Commission regulations are not liberally construed or lightly granted. Waivers are not granted implicitly or of unlimited duration. In reality, waivers **are narrowly crafted and generally temporary in nature**.[24]

By contrast, a request to amend or issue a regulation invokes the agency's legislative rulemaking authority to change the regulation prospectively for all affected parties, and it is preferable for agencies to adopt and elaborate law and policy by rulemaking rather than ad hoc adjudication.[25] The Commission's regulation at 52 Pa. Code §5.43(a) requires

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[23] See generally Jim Rossi, *Making Policy Through the Waiver of Regulations at the Federal Energy Regulatory Commission,* 45 Admin Law. Rev. 255, at pp. 259, 275-277 (1995).

[24] See, e.g., *Petition of Duquesne Light Company For Waiver and Suspension of Meter Testing Requirements Under 52 Pa. Code 57.20(e) and 57.21(f) For Deployed Legacy Meters,* Dkt. No. P-2016-2525790 (Order Entered December 22, 2016); *PGW 2014-2016 USECP*, Dkt, No. M-2013-2366301 (Order entered August 22, 2014) at 48, citing *Petition of Met-Ed for Waiver of 52 Pa. Code § 56.97,* Dkt. No. P-2013-2384967 (Order entered November 14, 2013) at 3; *Petition of Interstate Gas Supply, Inc., to Amend Natural Gas Supplier License and for Waiver of Commission Regulations*, Dkt. No. P-2021-3026755 (Order entered September 15, 2021). (Emphasis added).

[25] See generally Jim Rossi, *Making Policy Through the Waiver of Regulations at the Federal Energy Regulatory Commission*, 45 Admin Law. Rev. 255, at pp. 275-277 (1995), noting "As defined in the Administrative Procedure Act (APA), a rule is a statement of general applicability and future effect that implements, interprets, or prescribes law or policy or the organization, procedures, and standards for practice before an agency. Rules arise from formal or informal rulemaking proceedings before the

petitions for the issuance, amendment, waiver or repeal of a regulation to set forth clearly the interest of the petitioner in the subject matter, the specific regulation, amendment, waiver or repeal requested, and cite by appropriate reference the statutory provision or other authority involved. Notably, petitions for the issuance or amendment of a regulation also must incorporate the new proposed regulation or amendment. In other words, a waiver excuses compliance with an existing rule under temporary and limited exceptional circumstances, while a regulatory change alters the rule itself, implicating statewide policy consistency, stakeholder reliance interests, and statutory rulemaking obligations. FirstEnergy's proposal clearly is seeking permanent modification of a regulation rather than a limited excusal from it.

Even though FirstEnergy's proposal clearly requires a modification of the contract expiration regulation that has governed EGSs since 2014, FirstEnergy did not file a petition to amend or repeal the regulation in question. Doing so would have required FirstEnergy to incorporate amended regulation language in its request, in accordance with 52 Pa. Code §5.43(a). Instead, FirstEnergy provided a very general and high-level explanation of the new contact expiration rules that it wanted to unilaterally implement in its territory and rolled that request into its default service proceeding with a two-line request for a waiver in Paragraph 60 of its DSP Petition. This was plainly done in an attempt to circumvent the mandatory requirements for amending regulations in Pennsylvania.

Under Pennsylvania law, amendment or repeal of a regulation requires the agency to follow the same processes that apply to the issuance of regulations. The Commonwealth Documents Law ("CDL")[26], the Regulatory Review Act ("RRA")[27], the Commonwealth

issuing administrative agency. Rules create law in the form of statements that are binding on those persons or entities to whom they are addressed, regardless whether those persons or entities participated in the rulemaking proceeding that generated the rule".

[26] Act of July 31, 1968, P.L. 769, as amended, 45 P.S. §§ 1102-1208

[27] 71 P.S. § 745.1, et. seq.

Attorneys Act [28] and 1 Pa. Code § 7.1 establish a mandatory, formal rulemaking procedure that is, with rare exceptions, required for the promulgation of all regulations.[29] Under the Commonwealth Documents Law, an agency must give notice to the public of its proposed rulemaking and an opportunity for the public to comment.[30] The Commonwealth Court has stressed that adherence with the CDL and the RRA is paramount when an agency intends to legally bind regulated entities. [31]

Under the CDL an agency is required to give public notice of its intention to promulgate, <u>*amend or repeal*</u> any administrative regulation. Such notice must include the text of the proposed administrative regulation, a statement of the statutory or other authority under which the administrative regulation or change therein is proposed to be promulgated, a brief explanation of the proposed administrative regulation or change therein, and a request for written comments by any interested person concerning the proposed administrative regulation or change therein.[32] Before taking action upon any administrative regulation <u>*or change therein,*</u> the agency shall review and consider any written comments submitted and may hold such public hearings as seem appropriate.[33]

FirstEnergy's contract renewal proposal, if approved, would result in a drastic alteration of the regulatory framework for EGS contract renewal that is currently codified in 52 Pa. Code § 54.10(3). In order for such action to be legitimate and enforceable, it

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[28] Act of October 15, 1980, P.L. 950, No. 164, 71 P.S. § 732-101, et. seq.

[29] *Naylor v Commissioner, Department of Public Welfare*, 54 A.3d 429 (Pa. Cmwlth 20120; *Germantown Cab Co. v. Philadelphia Parking Auth.*, 993 A.2d 933, 937 (Pa.Cmwlth.2010), aff'd, 614 Pa. 113, 36 A.3d 105 (2012).

[30] Section 201 of the Commonwealth Documents Law, 45 P.S. § 1201; *Borough of Bedford v. Dept. of Envtl. Prot.*, 972 A.2d 53 (Pa.Cmwlth.2009).

[31] See, *Pennsylvania School Boards Association v. Mumin*, 317 A.3d 1077 (Pa. Cmwlth. 2024), at 1099.

[32] See 45 P.S. § 1201 and 1 Pa. Code § 7.1 (Emphasis added)

[33] See 45 P.S. § 1202 and 1 Pa. Code § 7.2 (Emphasis added).

would need to be done through formal rulemaking process to amend the regulation in question.

FirstEnergy's request cannot legitimately be considered a petition for a waiver because the regulation in question does not govern FirstEnergy's actions in any way. Petitions for waiver by EDCs requesting relief from various regulations that govern their activities are common, and in the past EDCs have filed petitions which requested <u>temporary</u> relief from various elements of the retail electricity market operations. However, in all of these cases, the EDCS sought relief from regulations that expressly governed <u>their own</u> duties and obligations, such as obligations related to eligible customer lists and switching timelines.[34] None of the prior EDC waiver petitions sought to change the regulations that ***apply to EGSs***. In fact, FirstEnergy has not identified a single example of a party requesting a waiver from the Commission of a regulation that does not apply to the requesting entity in the first place.

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[34] See, e.g., *Petition of Pike County Light & Power Company For Waiver of Regulations Regarding Standards for Changing Customers Electric Generation Supplier*, Docket No. P-2014-2437967 (Order entered Nov. 25, 2014); *Joint Petition of Citizens Electric Company of Lewisburg, PA and Wellsboro Electric Company For Temporary Waivers of 52 Pa. Code Section 57.174*, Docket Nos.P-2014-2451181, P-2014-2451180 (Order entered December 4, 2014); *Joint Petition of Metropolitan Edison Company, Pennsylvania Electric Company, Pennsylvania Power Company and West Penn Power Company for Temporary Waiver of Technical Requirements of 52 Pa. Code 57.174,* Dkt. Nos. P-2014-2449010, P-2014-2449015, P-2014-2449017, and P-2014-2449027 (Order entered December 4, 2014); *Petition of PPL Electric Utilities Corporation for Temporary Waivers from Certain Technical Requirements of 52 Pa. Code 57.174 and 57.179,* Dkt No. P-2014-2445072 (Order entered May 19, 2015); *Petition of PECO Energy Company for Temporary Waiver of Regulations Related to the Required Days In a Billing Period,* Dkt. No. P-2014-2446292 (Order entered December 8, 2016).

The Commission must recognize FirstEnergy's action for what it is: an attempt to amend the regulation that governs EGS contract renewals without following the required process for amending a regulation, rather than a request for a waiver. For these reasons, FirstEnergy's request to implement a new contract renewal regime must be rejected as being procedurally defective and unlawful.

**2.** <u>A Default Service Proceeding is Not the Proper Forum To Modify Statewide Contract Renewal Rules</u>

In addition to being procedurally defective, FirstEnergy's proposal to implement its own EGS customer contract renewal framework runs afoul of the Commission's stated preference for retail market issues to be considered on an industry-wide basis, as opposed to in one specific company rate case. [35] The evidence in the record highlights the wisdom of that principle.

There is no historical precedent for allowing a utility to write its own customer contract renewal rules and product restrictions, especially when the utility has provided little to no analysis or evidence to justify its proposals. Allowing a single EDC to effectively create a different renewal regime within one utility territory would undermine statewide uniformity, create customer confusion, impose unnecessary operational complexity on suppliers, and invite additional utility-by-utility deviations that would fragment Pennsylvania's retail market rules with little to no justification.[36] FirstEnergy admitted that it did not consult with any stakeholders before developing its proposal. Instead, FirstEnergy developed the proposal completely on its own, and shared a very minimal barebones summary of the proposal a few days before filing its DSP Petition with

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[35] See *Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.*, Dkt. No. R-2025-3053499 (Order entered December 9, 2025) at p. 390.

[36] Town Square Statement No. 1, at p. 22, lines 17-21

no ability for stakeholders to provide substantive input.[37] This lack of input from other stakeholders resulted in some obvious problems with the proposal that FirstEnergy apparently failed to consider when developing its proposal. For instance, FirstEnergy apparently did not consider the fact that under its proposal, customers would be slammed back to default supply even if the customer's renewal offer is lower than the price-to compare. [38] FirstEnergy's willingness to advance a proposal that would increase customer costs is misguided and directly undermines its claimed commitment to affordability.

### **3.** FirstEnergy Has Not Carried Its Burden of Proving That Its Proposed Contract Renewal Changes Are Warranted

The Commission adopted and has periodically refined its consumer protection rules over the years through formal rulemaking proceedings, based on statutory directives, an extensive record, and stakeholder input. The existing renewal framework in Section 54.10 is a carefully balanced approach that provides customers with multiple, advance notices and clear options while preserving market stability. Allowing a single EDC to create a different contract renewal regime within one utility territory would undermine statewide uniformity, create customer confusion, impose unnecessary operational complexity on suppliers, and invite additional utility-by-utility deviations that would fragment Pennsylvania's retail market.[39] FirstEnergy does not provide any evidence to demonstrate that Section 54.10's existing two-notice framework is failing to inform customers or protect them from unfair renewals. Nor does FirstEnergy provide evidence that forcing customers back to default service absent affirmative consent would improve affordability. Instead, as Town Square witness Randal Miller explained "the proposal would increase customer churn, impose new operational burdens on suppliers and utilities, and risk harming

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[37] See Town Square Statement No. 1, at p. 22, line 22 through p. 23, line 3 and Exhibit RM-12.

[38] See Town Square Statement No. 1, at p. 20, line 14 and Exhibit RM-11.

[39] Town Square Statement No, 1, at p. 19

customers who intentionally selected competitive products (including renewable offerings or longer-term fixed rates) but decline to respond to a notice for their own reasons."[40]

In summary, FirstEnergy's proposed requirement to require affirmative consent for contract renewals must be rejected as legally deficient, contrary to the Commission's policy of promoting statewide uniformity in retail market rules, and unsupported by any factual justification.

## B. Quarterly Affirmation for Variable Rate Contracts

### 1. FirstEnergy's "Quarterly Affirmation" Proposal Suffers From Even More Legal Defects Than Its Contract Renewal Proposal

In addition to its EGS contract renewal proposal discussed above, FirstEnergy also proposed to require EGSs to provide an attestation of affirmative customer consent on a quarterly basis for all residential customers on variable-priced month-to-month products. Just like its contract renewal proposal, FirstEnergy proposes to implement this change by way of changes to its Supplier Coordination tariff, and characterizes its request as a simple request for a "waiver" of the Commission's regulation at 52 Pa. Code § 54.10(3).[41] Just like its contract renewal proposal, FirstEnergy's "Quarterly Affirmation" requirement directly contradicts the Commission's lawfully promulgated regulations which govern EGS enrollments and renewals of those contracts, and seeks to amend those regulations without following the legally required processes for doing so. In fact, in the case of the "Quarterly Affirmation" proposal, FirstEnergy has not even requested a waiver of the customer enrollment regulation that controls the process the FirstEnergy seeks to change.

While FirstEnergy's DSP Petition requests a "waiver" of 52 Pa. Code § 54.10(3), it completely ignores other Commission regulations that are directly implicated by its "quarterly affirmation" proposal. For instance, the Commission's existing EGS customer

[40] See Town Square Statement No. 1, at p. 18, lines 3-10.

[41] See FirstEnergy Petition for Approval of DSP, at paragraphs 51 and 60.

disclosure statement regulations (promulgated and amended through the procedurally correct rulemaking processes in 2007, 2014 and 2020)[42] contain no requirement for EGSs to continually obtain consent from customers to continue their EGS supply service. The Commission's regulation at 52 Pa. Code §54.5 provides a very detailed set of rules governing EGSs' terms of service with their customers, including how month-to-month and variable price enrollments must be handled. The regulation requires the EGS to provide the customer with conditions and limits on price variability, information about how customers will receive notice of pricing changes, promotional information, explanations of penalties and fees, renewal provisions, cancellation provisions, the right of rescission, and how to contact the Commission and the OCA for information about retail electricity shopping. The regulations contain no requirement whatsoever for an EGS to repeatedly go back to its existing customers to ask them to confirm that they still want to receive service from the EGS. The Commission has examined this regulation multiple times since it was originally enacted, and the Commission never suggested that such a requirement might be appropriate. The Commission's EGS contract expiration regulation at § 54.10 also contains no requirement for EGSs to continually obtain customer consent for continued service. That regulation only requires notice prior to contract expiration, and unequivocally permits automatic renewal and continuous service of EGS customers without the need for any repeated affirmation of consent by the customers.

Similar to its "Contract Renewal" proposal, FirstEnergy is attempting to do an end-run around the mandated rulemaking process and have its unprecedented "Quarterly Affirmation" requirement approved in the context of a default service proceeding. These procedural and substantive defects require that FirstEnergy's proposal be rejected.

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[42] See *Disclosure Statement for Residential and Small Business Customers; Notices of Contract Expiration or Changes in Terms for Residential and Small Business Customers*, Dkt. No. L-2014-2409385 (Final-Omitted Rulemaking Order entered April 3, 2014); *Rulemaking Regarding Electricity Generation Customer Choice*, Dkt. No. L-2017-2628991 (Final Rulemaking Order entered February 27, 2020);

FirstEnergy's proposal amounts to a new regulatory requirement for EGSs' relations with their customers and new EGS customer contract rules that are directly contrary to the Commission's existing regulations at both 52 Pa. Code §54.5 and 54.10. In order to institute such a regulatory requirement on EGSs, it is first necessary for the Commission's controlling regulations to be amended. And, as set forth above, amendment of a regulation requires the agency to follow the same processes that apply to the issuance of regulations. The Commonwealth Documents Law, the Regulatory Review Act, the Commonwealth Attorneys Act and the provisions of 1 Pa. Code § 7.1. Those processes obviously have not been followed (or even attempted) here, and therefore FirstEnergy's "Quarterly Affirmation" proposal should be dead on arrival.

**2.** <u>Even If It Were Not Procedurally Defective, FirstEnergy Has Not Met Its Burden Of Proving the Need For Its "Quarterly Affirmation" Proposal</u>

FirstEnergy's "Quarterly Affirmation" proposal is a solution in search of a problem. There is no evidence in the record that provides any basis to conclude that a new affirmative consent requirement is needed or will help impact affordability. FirstEnergy's proposal is aimed at month- to- month contracts*, which by their nature are terminable by customers at any time with no penalty*. As Town Square witness Randal Miller explained, FirstEnergy's proposal is simply inconsistent with modern day customer expectations for their services and subscriptions. In many common subscription arrangements, such as cell phone service, cable television services, satellite radio service, streaming services, data storage plans, and many others, services continue unless the customer opts out, and customer protection is provided through up-front disclosures and advance renewal notices. Pennsylvania's existing structure aligns with this model by requiring detailed explanations of price variability and other protections in customer disclosure statements and terms of service. FirstEnergy's proposal flips this model on its head by interpreting a customer's silence as a directive to terminate competitive supply service and return the customer to default service, which is not how customers typically experience subscriptions and renewals in other industries.[43]

Forcing suppliers and customers to incur the time, expense, and inconvenience of re-confirming the customer enrollment is unnecessary and unlike service in any other industry. Customers are entirely capable of understanding automatic renewals and month to month contracts, and they are widespread in the context of streaming services, subscription services, phone contracts, home security plans, satellite radio, and many other aspects of modern life. In Pennsylvania, customers receive monthly updates on their supplier's identity and supply rate on their utility bill.[44] The Commission's consumer protection rules and notice requirements for customer enrollments are comprehensive and have been established and refined multiple times over the past twenty years. FirstEnergy has provided absolutely no justification for enabling a parallel contract renewal system to exist solely in its territory.

It also must be recognized the FirstEnergy's proposal will harm customers and will actually negate customers' affirmative choices. If FirstEnergy's proposal is implemented and a supplier is not able to get a hold of the customer to obtain new affirmative consent in time, the customer would be forced away from the supplier and could actually pay a higher rate with FirstEnergy. In discovery, FirstEnergy admitted that it would move a customer to default service even if the supplier's renewal offer was lower than the PTC.[45] This admission completely undermines FirstEnergy's supposed concerns about affordability. Another problematic example is a customer who desires to use 100% renewable energy to power his or her home. If a supplier would not be able to get a hold of a customer to obtain their affirmative consent in time, FirstEnergy would force the customer onto default service, which is not 100% renewable, without their consent.[46] Both

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[43] Town Square Statement No. 1., at p. 21

[44] 52 Pa. Code § 54.4

[45] FirstEnergy response to RESA Set I, No. 14 (Exhibit RM-11)

[46] Town Square Statement No. 1., at p. 20, lines 16-21

of these scenarios illustrate ways in which FirstEnergy's proposal could harm customers.[47] RESA's witness pointed out other examples of real harm that would be suffered by customers as a result of FirstEnergy's Quarterly Affirmation proposal, in the form of lost rewards and cash back.[48]

### C. Changes to Purchase of Receivables (POR) Program

FirstEnergy's proposed changes to its POR program would require "rate-ready" billing if suppliers want to use FirstEnergy's utility consolidated billing, and it would eliminate the eligibility for suppliers to participate in FirstEnergy's POR program except for a limited category of products that FirstEnergy has chosen. Specifically, FirstEnergy would only allow POR for supplier products that are at or below the FirstEnergy PTC at the time of the customer's enrollment, or at the time of a pricing change.[49]

The evidence in the record demonstrates that FirstEnergy's proposal is unprecedented and would contradict Commission's longstanding determination that a well-functioning POR program is essential to the competitive retail markets. FirstEnergy provides little justification for its radical proposal, other than some sparsely articulated affordability concerns, but fails to connect the dots between the issue of affordability and how its proposal would benefit affordability in any way. To the contrary, the record developed in this proceeding demonstrates that FirstEnergy's proposal would result in far less choice for residential customers in its territory, the loss of options to lower their electric bill, and the likely complete extinguishment of residential retail choice in FirstEnergy territory altogether.

[47] Town Square Statement No. 1, at p. 20, lines 10-21

[48] RESA Statement No. 1, at p. 18

[49] FE-PA Statement No. 1, at p. 21.

**1.** Pennsylvania law mandates a competitive retail electricity market, and the Commission long ago concluded that POR is vital to an effective retail electricity market

In evaluating FirstEnergy's POR proposal, it is important to refresh collective memories regarding the purposes of POR and its central role in Pennsylvania's retail electricity market from its inception. In connection with the expiration of generation rate caps in the late 2000s, the Commission opened several dockets to evaluate steps that EDCs should take to minimize barriers to retail competition. The Commission took these steps:

> "not because competition in and of itself is a good thing, but because the Commonwealth of Pennsylvania has determined through the Electricity Generation Customer Choice and Competition Act ("Competition Act"), 66 Pa. C.S. §§ 2801-2812, that competition among utilities and independent suppliers of generation is the best means available to keep the cost of electricity down. Lower energy costs relative to other states can help the Commonwealth keep the industry and commerce it has now and attract new investment."[50]

After taking extensive input and comments from many interested stakeholders, including EDCs, EGSs, and OCA, the Commission concluded that "based on several years' experience during the transition period, it is the Commission's judgment that a viable POR program is an essential element to the creation of a competitive market for generation in Pennsylvania, as envisioned by the Competition Act., 66 Pa. C.S. § 2802(2)."[51] The Commission went on to explain that "[i]n the Commission's judgment, a POR program is an essential tool to reduce barriers to entry by EGS firms and to create the fully functional retail market for generation envisioned by the General Assembly in Chapter 28", [52] and "a

[50] *PPL Electric Utilities Corporation Retail Markets*, Dkt. No. M-2009-2104271 (Order entered August 6, 2009.)

[51] Id., at p. 27

[52] Id., at p. 28

properly functioning POR program can reduce costs for shopping customers and, therefore, be an incentive for the Company to minimize its own cost of electricity for DSP customers."[53]

Pennsylvania was not alone in recognizing the importance of POR to a viable retail electricity market, and POR has been a key element of retail electric choice markets throughout the country.[54] Suppliers in Pennsylvania, like in most states with retail energy choice, utilize utility consolidated billing for their electric supplier charges, so customers do not receive a separate bill from their suppliers. POR was developed as a mechanism to ensure that suppliers received payment for the supply that they provided to customers and that was billed by utilities. POR has become the standard framework in most markets in the country that utilize utility consolidated billing.[55]

Much of OCA and CAUSE-PA's support for FirstEnergy's proposal boils down to an argument that the competitive electricity market in general has not benefited residential customers.[56] The supporters of FirstEnergy's proposal are vehemently opposed to retail energy choice, and based on the totality of their advocacy in this matter and others, it is clear that they would prefer that every residential electricity customer receive default supply service. If the supporters of FirstEnergy's proposal had their way, the competitive retail market would cease to exist for residential customers. However, the simple fact is that Pennsylvania's competitive retail electricity framework is mandated by the Competition Act, and while that statute remains in force, the Commission has an obligation

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[53] Id. at pp. 29-30

[54] In addition to Pennsylvania, utilities in the following jurisdictions have POR Programs: New York, Connecticut, Massachusetts, New Jersey, Ohio, Delaware, District of Columbia, Illinois, Rhode Island, and New Hampshire. Town Square Statement No. 1., at p. 6.

[55] Town Square Statement No. 1, at p. 6, lines 8-15.

[56] See generally, the Direct, Rebuttal and Surrebuttal Testimony of OCA witness Alexander and CAUSE-PA witness Cicero

to ensure the retail market functions effectively. To achieve that result the Commission has long ago determined that EDCs must have POR programs in place, and more specifically, ***viable*** POR programs.

The record reflects that FirstEnergy's proposed POR program is simply not viable and would result in the destruction of the residential retail market in its territory, rather than facilitating the fully functional retail market for generation envisioned by the General Assembly in the Competition Act. Existing Pennsylvania POR programs have historically been available to any eligible EGS using utility consolidated billing, and are not conditioned in any way on a supplier's price relative to the PTC at the moment of enrollment or a rate change. FirstEnergy's proposal would be a dramatic departure from that framework by empowering the utility to determine, on an account-by-account basis, which competitive retail products will be able to utilize POR and which will not.[57]

### **2.** The existence of POR provides customer benefits

Beyond the well-settled policy determination that POR is an essential tool to reduce barriers to entry by EGSs and act as an incentive for EDCs to minimize the cost of electricity for DSP customers[58], POR provides tangible benefits to customers in practice. POR removes credit risk from the equation when EGSs make offers to customers. Requiring suppliers to evaluate individual customer credit risk provides a significant barrier to a vibrant retail choice market. Under both the utility consolidated billing model and the dual billing model, suppliers have no ability to terminate service or any other mechanism to enforce the collection of their electricity supply charges, other than to pursue collection of unpaid bills after the fact. Because of this, if there was no POR, prudent suppliers would need to evaluate customer creditworthiness when extending offers to them. For customers with a higher credit risk, there is a higher risk of nonpayment of bills, and

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[57] Town Square Energy Statement No. 1, at p. 8, lines 16-21

[58] Id. at pp. 29-30

as a result, customers with a higher credit risk might not be offered the best rates for energy supply.[59] This is a concept that applies to many industries, and is not unique to retail energy. For instance, cell phone companies, auto loan lenders, insurance providers, and other industries sometimes charge higher rates to customers with higher payment risk. POR was implemented in part to remove the credit and payment risk from the equation. With POR, suppliers do not need to screen customers for payment risk, and are therefore able to offer the best rate products to all of their customers equally. This is a very important point to understand. POR provides access to better rates to more customers, regardless of their income or credit status. [60] If suppliers must bear full credit risk for competitive products that can be above the PTC at the time of enrollment depending on market conditions, many suppliers will rationally reduce offerings or exit the market. This will reduce customer choice and eliminate options that protect customers from future PTC increases and/or provide other benefits that some customers may value[61], which will be discussed in the section below.

**3.** FirstEnergy's POR proposal will drastically limit customer choices and will likely result in a complete end to the residential market in its territory.

Witnesses for both RESA and Town Square agreed that FirstEnergy's POR proposal would make it much more difficult to offer residential supply products in FirstEnergy territory, and would likely result in most EGSs exiting the market altogether. Town Square witness Miller noted that if POR was not available for certain types of products, suppliers would need to price-in credit and payment risk when making offers for such products to residential customers, and it would significantly reduce the number and variety of customer

[59] Town Square Statement No. 1., at. P. 7, lines 8-10

[60] Town Square Statement No. 1., at p. 7.

[61] Town Square Statement No. 1., at p. 9.



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offers.[62] To illustrate how critical POR is to serving residential customers, one needs to look no further than FirstEnergy's own data responses which indicate that there are currently no EGSs that are offering products to residential customers without POR, even though all EGSs have option to do so.[63] More precisely, according to FirstEnergy's data responses, there are currently 70 EGSs serving residential customers in the Met-Ed rate district, 71 serving residential customers in the Penelec rate district, 54 serving residential customers in the Penn Power rate district, and 67 serving residential customers in the West Penn Power rate district, ***and not a single one has chosen to serve residential customers without POR.*** [64] If FirstEnergy's proposal is approved, a supplier would need to modify its product offers to qualify for the narrow restrictions that FirstEnergy has unilaterally selected in order to serve residential customers. A supplier could only offer a product using rate-ready billing and would need to ensure that its product offer is below the PTC, which changes every six months with little predictability. This proposal would eliminate a variety of offers from POR qualification including:

- An offer for a flat monthly bill for electric supply regardless of usage. That type of offer is only available using bill ready billing. Therefore, it would not be available under FirstEnergy's proposal.

- An offer that includes value-added elements, such as renewable energy, rewards dollars, or energy efficiency devices or services would not be eligible for POR if the price for such offers is even only slightly higher than the PTC.

- An offer for a long-term fixed rate that is higher than the current PTC. Depending on market conditions, suppliers can offer value and certainty to customers by offering fixed price contracts that lock in a price for the customer, which can be beneficial in times of rising prices. [65]

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[62] Town Square Statement No. 1., at p. 9, lines 16-20

[63] Town Square Statement No. 1, at p. 9, line 21 through p. 10, line 1.

[64] Town Square Exhibit RM-1 (FirstEnergy response to RESA Set 1, No. 9)

[65] Town Square Statement No. 1, at p. 10, line 6 through page 11, line 2

Town Square witness Miller provided a concrete example of how FirstEnergy's proposal would eliminate money-saving options for customers. As noted above, FirstEnergy's PTC has consistently risen over the years and has more than doubled since March of 2021 in three of the four FirstEnergy rate districts. So, while a supplier's rate might be higher than the PTC at the time of enrollment, if the PTC rises, the supplier's fixed rate could very well be lower than the PTC later in the contract term. However, under FirstEnergy's proposal, such an offer would not be eligible for POR because it is higher than the current PTC and therefore suppliers likely would not offer it.

The result of FirstEnergy's proposal would be to significantly limit the variety of offers that are available to residential customers in its territory and would completely exclude certain offers that would save customers money. For instance, as of April 8, 2026, there were 66 different supplier fixed- rate offers of 12 months or longer in MedEd territory according to PaPowerSwitch, but only a few were lower than Met-Ed's current price to compare as of that date. In Penelec territory there were 73 fixed rate offers of 12 months or longer, but only 1 was lower than the Price to Compare.[66] So, if FirstEnergy's proposal were in place, those offers would not be able to participate in POR and therefore would likely not be offered. A review of these same April offers show that many will ultimately result in cost savings for customers once FirstEnergy's PTC increased on June 1, 2026. But, under FirstEnergy's proposal, none of those offers that were above the April PTC would be eligible for POR and therefore likely would not be offered by suppliers. This would cause many customers to lose the option to choose products that provided price certainty for 12 or more months just because the products were at a slightly higher price than the PTC at one point in time, but may well be below the PTC if the PTC rises.

CAUSE-PA and OCA challenged this analysis, but failed to grasp the significance of what this analysis showed. They suggested that suppliers could simply wait until the PTC is announced and then set their prices accordingly in order to qualify for POR.[67] The

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[66] See Town Square Exhibit No. RM-3(PaPowerSwitch results for April 8, 2026).

[67] See OCA Statement 2-R, at p. 23.

OCA and CAUSE-PA framework would force suppliers to continually link their price offers to the ever-changing PTCs and wait for new PTCs to be announced before setting their own prices. The result would be a market where every offer would basically mirror the PTC at all times. This is not the vibrant competitive marketplace the Choice Act envisioned. Allowing a utility to pick and choose what types of competitive retail supply products will be viable in its territory is completely antithetical to retail energy choice. The utility is a monopoly, and under the retail choice framework it should not be able impose its own limits on the types of product offerings that will be permitted in its territory. If a product is permitted by the Electricity Choice and Competition Act and the Commission's regulations, then a utility should not be permitted to unilaterally decide that some products will be supported by POR, but that other products that are equally lawful will not be supported by POR. This undermines the very essence of retail electricity choice and gives an improper amount of power to the monopoly utility. Town Square's pricing and product history shows how a wide variety of products can save money versus the PTC. Even OCA's Statement No. 2R recognized that in 3 of the 4 rate districts, Town Square's various product offerings result in savings versus PTC the large majority of the time in 2024 and 2025.[68] But, as noted by Town Square's and RESA's witnesses, if these offers were not able to utilize POR, suppliers likely would not make them available.

It also must be understood that FirstEnergy's proposal would require suppliers to operate differently in FirstEnergy territory than in another other utility territory in Pennsylvania, because FirstEnergy territory would be the only one where these restrictions apply. If FirstEnergy's POR proposal ever goes into effect, suppliers would have to significantly modify product offerings and billing systems just to make a very limited class of offers in FirstEnergy territory. For instance, it is possible that some customers would flip back and forth between POR and non-POR billing as prices and the PTC change, which will cause customer confusion and administrative difficulties. These factors could cause

[68] OCA Statement 2R, at p. 26

suppliers to incur extra costs to do business in FirstEnergy territory, which could be reflected in price offerings to customers in the territory.[69]

Witnesses for both RESA and Town Square explained why FirstEnergy's POR proposal would be untenable for suppliers and likely would result in the complete extinguishment of the residential electricity supply market in Pennsylvania, which would leave customers with no choice other than default supply at a time when default supply prices continue to rise.[70] RESA witness Frank Lacey explained that in 2024, Maryland enacted legislation that removed POR from the residential market, eliminated automatic contract renewals, and placed price restrictions on product offerings. The result of the legislation was an end to the residential market in Maryland as all of the suppliers ceased making offers, and an outcry from customers who suddenly realized that had no choice but to take the utility default service rate.[71] The experience in Maryland provides a tangible example of the adverse customer impacts that are likely to occur should FirstEnergy's POR proposal be implemented.

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**4.** FirstEnergy has failed to meet its burden of justifying the need for its POR proposal

FirstEnergy's sole justification for its POR proposal is a generalized "affordability" concern, based on the observation that some residential shopping customers pay rates for electricity supply that are above the PTC at some points in time. FirstEnergy suggests – with very little evidence or analysis - that above-PTC pricing is contributing to increased POR-related uncollectible expense and therefore, FirstEnergy proposes to reduce exposure to "EGS-driven write-offs" by prohibiting POR for above-PTC offers. FirstEnergy says

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[69] Town Square Statement No. 1, at p. 12, lines 10-21.

[70] Town Square Statement No. 1., at p. 9, lines 8-11, and RESA Statement No. 1., at pp. 9-10

[71] RESA Statement No. 1., at pp. 9-11

that its POR proposal is necessary because of affordability concerns, and concerns that customers are paying prices that are higher than the Price to Compare, and that limited POR will be a cure for unaffordability. FirstEnergy's justification for its radical POR proposal does not hold water.

First of all, the underlying assumption that the PTC is the benchmark against which all offers should be judged, and that any price higher than the PTC is inherently bad completely ignores the role of default service in the competitive energy market framework. Default service is meant to be a backstop offering, that includes no value additions, no price certainty, and no consideration of customer preferences.[72] By contrast, retail supplier offers are meant to provide choice to customers, each of whom has different priorities and circumstances. The market has developed in Pennsylvania so that there is a variety of offers to meet customers' preferences.[73] As a result of the retail market rules that the Commission has developed, including rules around POR, sales and marketing, disclosure statement requirements, contract summary requirements, renewal notice requirements, and many more, a vibrant market has evolved in Pennsylvania. This market gives customers a wide variety of product offerings that differ from the backstop default service that changes every six months. The product offerings have included, but are not limited to, long term fixed rate contracts, 100% renewable energy products, cash back and rewards offers, energy efficiency device offers, and flat bill products.[74] FirstEnergy did not take any of these other aspects of retail supply offerings into account when doing its analysis. FirstEnergy's witness admitted that in doing his analysis, he did not evaluate any other aspect of retail suppliers' offers, other than a snapshot point-in-time price comparisons.[75] FirstEnergy treats point-in-time PTC price comparison as the only relevant affordability benchmark, which misstates the purpose of default service in a competitive market. In

[72] Town Square Statement No. 1., at p. 14, lines 7-10

[73] See, e.g., Town Square Exhibit No. RM-3 (PaPowerSwitch results for April 8, 2026).

[74] Town Square Statement No. 1., at p. 14, lines 16-18

[75] See Exhibit RM -5 (FirstEnergy response to RESA Set I, No. 7)

competitive markets such as Pennsylvania, default service is meant to be a backstop product, not a measure of whether a competitive offer provides value when customers seek product attributes such as price certainty, renewable content, or bundled benefits.

Secondly, FirstEnergy's "affordability" justification is unsupported by any evidence and in some cases undermined by its own data. FirstEnergy attempts to justify its POR changes by pointing to supposedly high levels of uncollectible accounts served by suppliers. FirstEnergy says that ending POR for EGSs that charge prices higher than the PTC would substantially reduce its customers' exposure to "unreasonable EGS-driven uncollectible expenses".[76] In fact, the only justification provided by FirstEnergy for its POR proposal was the supposedly "unreasonable EGS-driven uncollectible expenses". But when FirstEnergy was asked to provide details about its uncollectible expenses, it admitted that residential and commercial customers also pay for uncollectible expenses from default service as well as from POR uncollectibles.[77] In fact, FirstEnergy's data responses show that accounts served by default service are actually contributing ***more*** to uncollectible expenses than accounts served by suppliers.[78] Another problem with FirstEnergy's "uncollectibles" justification is that the modest rise in POR-related uncollectibles since 2022 is far outpaced by the rise in Default Service uncollectibles during that period, and by the rise in the PTC during that same period. According to FirstEnergy's Exhibit DMY-11, system-wide POR-related uncollectibles rose by approximately 23% between 2022 and 2025. The same chart shows that system-wide Default Service uncollectibles rose by approximately 31% during the same time frame. Meanwhile, during the same time frame the PTC rose by at least 78% in each rate district, as shown on Exhibit RM-2. It bears repeating that the impact of EGS uncollectibles was the sole justification that FirstEnergy gave for its POR proposal, but the data makes its clear that the both the PTC and the rate

[76] FirstEnergy Statement No. 1, at page 28.

[77] See FirstEnergy response to RESA Set I, No. 11 (Exhibit RM-6)

[78] See FirstEnergy response to RESA Set I, No. 10 (Exhibit RM-7)

of Default Service uncollectibles have risen much more significantly than the rate of EGS uncollectibles.

The charts below present the FirstEnergy uncollectibles data side by side with the PTC increases:

**Uncollectible Expense Increases 2022-2025**

| Year | Default Service Uncollectible Amounts | % increase from 2022-2025 | POR Uncollectible Amounts | % increase from 2022-2025 |
|---|---|---|---|---|
| | | | | |
| 2022 | $12,470,103 | | $8,416,863 | |
| 2025 | $16,329,852 | **30.95%** | $10,328,026 | **22.71%** |

Source: FirstEnergy Exhibit DMY-11

**PTC Increases: 2022--2025**

| | PTC Met Ed | PTC Penelec | PTC PP | PTC WPP |
|---|---|---|---|---|
| | | | | |
| as of 3/1/22 | 0.06832 | 0.06232 | 0.07082 | 0.05667 |
| as of 12/1/25 | 0.12965 | 0.11756 | 0.12606 | 0.10947 |
| % increase | **89.77%** | **88.63%** | **78.00%** | **93.17%** |

Source: Town Square Exhibit RM-2 (FirstEnergy Response to RESA I-6)

With the sole justification for FirstEnergy's POR change disproven by its own data, there is literally no legitimate justification for FirstEnergy's unprecedented POR proposal to be approved.

FirstEnergy and CAUSE-PA placed a great deal of weight on supposedly high levels of terminations of shopping customers to justify the proposal to limit POR.[79] For example, CAUSE-PA witness Patrick Cicero's Direct Testimony included a Table 7 which reflects non-payment terminations of shopping customers vs. non-shopping customers. The testimony indicates that the data was drawn from FirstEnergy's responses to CAUSE-PA Interrogatories I-9 and I-10.[80] But a closer look at FirstEnergy's data raises troubling questions about what appears to be targeted and discriminatory terminations of shopping customers.

Mr. Cicero's Table 7 indicates that, in raw numbers, FirstEnergy is terminating many more shopping customers than non-shopping customers each year. But these termination numbers are grossly out of line with all of the other metrics that FirstEnergy provided regarding payment trouble and arrearages. For instance:

- FirstEnergy's response to CAUSE PA I-7, Attachment-A was admitted into the record as RESA Exhibit FL-29. The attachment shows the number of "payment troubled" customers by category for the years 2022-2025. The attachment shows that in every year, most of the "payment troubled customers" were on <u>default supply</u>, and far fewer were shopping customers.

- FE response to CAUSE PA 1-6, attachment B was admitted into the record as RESA Exhibit FL-28. The attachment is a report of residential "write offs" for the years 2022-2025. It shows that nearly none of the write-offs

[79] CAUSE-PA Statement 1, at pp. 22-24, FE-PA Statement 1-R, at p. 9

[80] CAUSE-PA Statement No. 1., at p. 24

were related to shopping customers, and nearly all were customers on default supply.

- FirstEnergy's data responses also show that of all accounts with balances over $10,000 in its service territory, *less than 5%* of those arrearages are attributable to supplier charges.[81]

- Yet, in the West Penn Power rate district, First Energy was terminating two to three times more shopping customers as non-shopping customers in 2022-2025 according to Mr. Cicero's Table 7, in real number terms, not percentages. During that period, FirstEnergy terminated over 15,000 shopping customers per year in West Penn Power rate district, compared to approximately, 6000 default service customers, even though there were 3-4 times more payment troubled default service customers than shopping customers in that rate district according to Exhibit FL-29.

These statistics, which were provided by FirstEnergy directly, raise serious questions about why so many shopping customers' service was terminated compared to default service customers. FirstEnergy's own statistics show that the company is terminating shopping customers at a MUCH higher rate than default service customers, even though default service customers have much higher percentages of payment troubled customers, write-offs, and arrearages over $10,000.

The reality is that FirstEnergy provided no evidence or testimony that establishes a causal link between supplier pricing relative to the PTC and customer unaffordability or delinquencies, or how its proposal would somehow improve affordability or reduce delinquencies. FirstEnergy admitted in its discovery responses that prior to preparing its POR proposal, it had not done any analysis of arrearage levels, write offs, collection

[81] See FirstEnergy response to CAUSE-PA Set I, No. 27 (Exhibit RM-8)

rates, or termination rates for shopping versus non-shopping customers.[82] FirstEnergy also admitted that it had not tracked the number of payment arrangements, disconnection notices, disconnections, or bad debt for default customers vs. shopping customers.[83] Furthermore, FirstEnergy's testimony does not quantify how much of the Company's POR-related uncollectibles are actually attributable to EGS pricing as opposed to broader economic conditions affecting all customers. Simply put, FirstEnergy has not provided any data whatsoever which demonstrates that the current POR framework is contributing to unaffordability, much less demonstrates that its proposal will in some way help affordability. But, as noted above, it is likely that if FirstEnergy's POR proposal is approved, many types of retail supplier offers will disappear from FirstEnergy's territory, to the detriment of customers, and most if not all suppliers will cease making offers in FirstEnergy territory altogether, as happened in Maryland when similar changes were enacted.

## VII. CONCLUSION

FirstEnergy's proposals on the retail shopping issues (and the non-unanimous "settlement" related to those proposals) represent a cynical attempt to paint EGSs as the scapegoat for affordability issues in order justify radical changes to the retail electricity market regulations through a DSP rather than through the appropriate rulemaking process. FirstEnergy, OCA and CAUSE-PA attempt to justify these proposed changes by pointing to some high-level price statistics, but upon closer scrutiny it is clear that the Commission cannot justify approving these proposals in the context of this proceeding.

First and foremost, approval of FirstEnergy's Contract Expiration and Quarterly Affirmation proposals is precluded as a matter of law. Both proposals seek modifications to formally promulgated Commission regulations that govern EGS contracting rights and

[82] FirstEnergy Response to CAUSE-PA Set I, No. 13 (Exhibit RM-9)

[83] FirstEnergy Response to OCA Set I No. 16 (Exhibit RM-10)

requirements statewide (54 Pa. Code. §§ 54.5 and 54.10(3)). Such regulations cannot lawfully be modified by a barebones "waiver" sought by a party whose actions are not governed by the regulations in question in the first place, as part of an individual utility's default service case. To the extent such changes to the regulations are made, they must be made in accordance with the formal rulemaking procedures required by the Commonwealth Documents Law, the Regulatory Review Act, the Commonwealth Attorneys Act and 1 Pa. Code § 7.1. Similarly, FirstEnergy's POR proposal runs afoul of the Commission's longstanding holding that a viable POR program is an essential element to the creation of a competitive market for generation in Pennsylvania, as envisioned by the Competition Act.

To the extent FirstEnergy's proposals are not precluded as a matter of law, the proposals must be rejected because they are not supported by substantial evidence. FirstEnergy's sole justification for its supplier-issue proposals is a general concern with affordability of electric bills. But the Company provided no evidence to demonstrate that 1) EGSs are contributing to affordability issues any more than rising PTCs or distribution rates are, or 2) that FirstEnergy's proposals are reasonably likely to address affordability in any way. In fact, on both of these points, the record proves just the opposite.

FirstEnergy's own statistics show that default service customers have much higher percentages of payment troubled customers, write-offs, and arrearages over $10,000 than shopping customers. FirstEnergy's data responses show that accounts served by default service are actually contributing more to uncollectible expenses than accounts served by suppliers, and Default Service uncollectibles and the PTC are both rising at much faster rates than EGS uncollectibles are rising.

Furthermore the record demonstrates that FirstEnergy's proposals would cause direct customer harm, reduce customer options to lower their electric bills and potentially lead to the complete elimination of residential retail choice in the FirstEnergy territory. Elimination of the CRP would end a program that has consistently provided customers with the opportunity to save money with no demonstrated ongoing cost to FirstEnergy, and FirstEnergy provided no evidence to support a conclusion that elimination of the CRP is in the public interest. Implementation of the POR proposal would eliminate numerous options that customer's have to manage their electricity costs, including flat-rate products and long-term fixed rate products that may initially be priced higher than the PTC but would save customers over the term of the contract. The record demonstrates that the POR proposal would not be viable for suppliers, and would likely result in the elimination of residential choice in the FirstEnergy territory altogether. The record also demonstrates that enacting the unlawful Contract Renewal and Quarterly Affirmation proposals would result in customers being returned to default service against their will, causing them to pay higher prices in some cases and losing other benefits associated with their EGS service.

For these reasons, and the other reasons outlined above, Town Square and WGL respectfully request that the Commission modify the Non-Unanimous Settlement to reject FirstEnergy's proposals to eliminate the CRP, to return customers to default service at contract expiration, to require quarterly affirmation for variable rate contracts and to implement changes to its POR program.

Respectfully submitted,

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**Appendix A- Proposed Findings of Fact**

1. Town Square Energy East, LLC is a retail electricity supplier that has been licensed as an electric generation supplier in Pennsylvania since 2011, with authority to serve all customer classes.[1]
2. In every large electric service territory in Pennsylvania suppliers are able to utilize utility consolidated billing with POR for the residential market. [2]
3. POR has become the standard framework in most markets in the country that utilize utility consolidated billing.[3]
4. In addition to Pennsylvania, utilities in the following jurisdictions have POR Programs: New York, Connecticut, Massachusetts, New Jersey, Ohio, Delaware, District of Columbia, Illinois, Rhode Island, and New Hampshire.[4]
5. Under both the utility consolidated billing model and the dual billing model, EGSs in Pennsylvania have no ability to terminate service or any other mechanism to enforce the collection of their electricity supply charges, other than to pursue collection of unpaid bills after the fact.[5]
6. Existing Pennsylvania POR programs have historically been available to any eligible EGS using utility consolidated billing, and are not conditioned in any way on a supplier's price relative to the PTC at the moment of enrollment or a rate change.[6]
7. POR is a critical element of the retail electricity market structure in Pennsylvania and other utility-consolidated billing jurisdictions because it removes supplier credit and collections risk from the competitive marketplace.[7]

[1] Town Square Statement No. 1., at p. 3
[2] Town Square Statement No. 1., at p. 5
[3] Town Square Statement No. 1., at p. 6
[4] Town Square Statement No. 1., at p. 6
[5] Town Square Statement No. 1., at p. 7
[6] Town Square Statement No. 1., at p. 8
[7] Town Square Statement No. 1., at p. 9

8. If POR was not available for certain types of products, suppliers would need to price-in credit and payment risk when making offers for such products to residential customers.[8]
9. According to FirstEnergy's data, there are currently 70 EGSs serving residential customers in the Met-Ed rate district, 71 serving residential customers in the Penelec rate district, 54 serving residential customers in the Penn Power rate district, and 67 serving residential customers in the West Penn Power rate district, and not a single one has chosen to serve residential customers without POR.[9]
10. EGS products that offer a flat monthly bill for electric supply regardless of usage are only available using bill ready billing.[10]
11. FirstEnergy's PTC has consistently risen over the years and has more than doubled since March of 2021 in three of the four FirstEnergy rate districts.[11]
12. In analyzing EGS pricing versus the PTC, FirstEnergy did not evaluate any other aspect of retail suppliers' offers, other than a snapshot point-in-time price comparison.[12]
13. FirstEnergy's data responses show that accounts served by default service are contributing more to uncollectible expenses than accounts served by suppliers.[13]
14. According to FirstEnergy's data, for the years 2022-2025 most of the "payment troubled customers" were on default supply, and far fewer were shopping customers.[14]

[8] Town Square Statement No. 1., at p. 9
[9] Town Square Statement No. 1., at p. 10
[10] Town Square Statement No. 1., at p. 10
[11] Town Square Statement No. 1., at p. 11 and Exhibit RM-2
[12] Town Square Statement No. 1., at p. 14 and Exhibit RM-5
[13] Town Square Exhibit RM-7
[14] RESA Exhibit FL-29

15. According to FirstEnergy's data, for the years 2022-2025, nearly all of its write-offs were related to customers on default supply, rather than customers who received service from an EGS. [15]
16. FirstEnergy's data responses also show that of all accounts with balances over $10,000 in its service territory, less than 5% of those arrearages are attributable to supplier charges.[16]
17. Prior to filings its DSP, FirstEnergy had not done any analysis of arrearage levels, write-offs, collection rates, or termination rates for shopping versus non shopping customers.[17]
18. Prior to filings its DSP, FirstEnergy had not tracked the number of payment arrangements, disconnection notices, disconnections, or bad debt for default customers vs. shopping customers.[18]
19. FirstEnergy did not consult with any stakeholders while developing its affirmative consent proposals, and instead just shared summary of its proposals several days before it filed its Default Service Plan case.[19]
20. In many common subscription arrangements such as cell phone service, cable television services, satellite radio service, streaming services, data storage plans, and many others, services continue unless the customer opts out, and customer protection is provided through disclosures and advance renewal notices.[20]
21. Under FirstEnergy's contract expiration proposal, customers would be returned to default service even if the supplier's renewal offer was lower than the PTC.[21]

[15] RESA Exhibit FL-28
[16] Exhibit RM-8 (FirstEnergy response to CAUSE-PA Set I, No. 27)
[17] Exhibit RM-9 (FirstEnergy Response to CAUSE-PA Set I, No. 13)
[18] Exhibit RM-1- (FirstEnergy Response to OCA Set I No. 16)
[19] Exhibit RM-12 (FirstEnergy Response to RESA Set I, No. 1)
[20] Town Square Statement No. 1, at p. 21
[21] Exhibit RM-11 (FirstEnergy response to RESA Set I, No. 14 )

22. Customers who participated in the CRP paid $750,000 less than they would have paid on default service in the years 2025 and 2026 alone.[22]

23. FirstEnergy did not present any evidence that operating the CRP causes FirstEnergy to incur any costs.

[22] RESA Statement 1SR, at p. 23, lines 14-22 and Exhibit FL-32

## Appendix B - Proposed Conclusions of Law

1. In any case brought before the Commission pursuant to Section 2807(e) of the Public Utility Code, the burden of proof is on the public utility.[1]

2. FirstEnergy bears the burden of proof in this proceeding to show that its DSP VII and the Non-Unanimous Settlement terms are 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. The public interest inquiry requires examination of the settlement's effect on ratepayers, shareholders, and the regulated community.[5]

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[1] 66 Pa. C.S. §§ 332(a), 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] *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).

6. Where a settlement is non-unanimous, the Commission evaluates it under the same standards applicable to a fully litigated case.[6]
7. The Commission's regulation at 52 Pa. Code § 54.10(3) sets forth the processes that apply to EGS customer contract expirations and renewals.[7]
8. The regulation at 52 Pa. Code § 54.10(3) was promulgated in 2014 via a Final Omitted Rulemaking Order and amended in 2020 through the standard rulemaking process, beginning with a Notice of Proposed Rulemaking Order issued on December 17, 2017 and culminating with a Final Rulemaking Order on February 27, 2020.[8]
9. The regulation at 52 Pa. Code § 54.10(3) directs EGSs how to proceed in situations where the customer does not respond to the expiration notices, and mandates that fixed duration contracts "**shall be converted**" to either month to month contacts or another fixed duration contract as long as the new contract allows cancellation at any time with not cancellation fee and "**shall remain in place**" until the customer chooses another option (emphasis added). [9]
10. The regulation at 52 Pa. Code § 54.10(3) governs the actions of EGSs, not EDCs.

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[6] *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).

[7] 52 Pa. Code § 54.10(3)

[8] See *Final-Omitted Rulemaking Order Regarding the Provisions of Notices of Contract Expiration or Changes in Terms for Residential & Small Business Customers*, Docket No. L-2014-2409385 (Order entered April 3, 2014), and *Rulemaking Regarding Electricity Generation Customer Choice,* Docket No. L-2017-2628991 (Order entered February 27, 2020).

[9] 52 Pa. Code § 54.10(3)

11. Waivers of Commission regulations are not liberally construed or lightly granted. Waivers are not granted implicitly or of unlimited duration. In reality, waivers are narrowly crafted and generally temporary in nature.[10]

12. The Commission's existing EGS customer disclosure statement regulations (promulgated and amended through the procedurally correct rulemaking processes in 2007, 2014 and 2020)[11] contain no requirement for EGSs to continually obtain consent from customers to continue their EGS supply service.

13. The Commission's regulation at 52 Pa. Code §5.43(a) requires petitions for the issuance, amendment, waiver or repeal of a regulation to set forth clearly the interest of the petitioner in the subject matter, the specific regulation, amendment, waiver or repeal requested, and cite by appropriate reference the statutory provision or other authority involved. [12]

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[10] See, e.g., *Petition of Duquesne Light Company For Waiver and Suspension of Meter Testing Requirements Under 52 Pa. Code 57.20(e) and 57.21(f) For Deployed Legacy Meters,* Dkt. No. P-2016-2525790 (Order Entered December 22, 2016) *PGW 2014-2016 USECP*, Dkt, No. M-2013-2366301 (Order entered August 22, 2014) at 48, citing *Petition of Met-Ed for Waiver of 52 Pa. Code § 56.97,* Dkt.t No. P-2013-2384967 (Order entered November 14, 2013) at 3; *Petition of Interstate Gas Supply, Inc., to Amend Natural Gas Supplier License and for Waiver of Commission Regulations,* Dkt. No. P-2021-3026755 (Order entered September 15, 2021). (Emphasis added).

[11] See 52 Pa. Code §54.5 and *Disclosure Statement for Residential and Small Business Customers; Notices of Contract Expiration or Changes in Terms for Residential and Small Business Customers*, Dkt. No. L-2014-2409385 (Final-Omitted Rulemaking Order entered April 3, 2014); *Rulemaking Regarding Electricity Generation Customer Choice,* Dkt. No. L-2017-2628991 (Final Rulemaking Order entered February 27, 2020);

[12] 52 Pa. Code §5.43(a)

14. Petitions for the issuance or amendment of a regulation also must incorporate the new proposed regulation or amendment.[13]

15. Under Pennsylvania law, amendment or repeal of a regulation requires the agency to follow the same processes that apply to the issuance of regulations.[14]

16. The Commonwealth Documents Law (“CDL”)[15], the Regulatory Review Act (“RRA”)[16], the Commonwealth Attorneys Act[17] and 1 Pa. Code § 7.1 establish a establish a mandatory, formal rulemaking procedure that is, with rare exceptions, required for the promulgation of all regulations.[18]

17. Under the Commonwealth Documents Law, an agency must give notice to the public of its proposed rulemaking and an opportunity for the public to comment.[19]

18. Adherence with the CDL and the RRA is paramount when an agency intends to legally bind regulated entities. [20]

19. Under the CDL, an agency is required to give public notice of its intention to promulgate, amend or repeal any administrative regulation. Such notice must include the text of the proposed administrative regulation, a statement of the statutory or other

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[13] 52 Pa. Code §5.43(a)

[14] Act of July 31, 1968, P.L. 769, as amended, 45 P.S. §§ 1102-1208

[15] Act of July 31, 1968, P.L. 769, as amended, 45 P.S. §§ 1102-1208,

[16] 71 P.S. § 741.1

[17] Act of October 15, 1980, P.L. 950, No. 164, 71 P.S. § 732-101, et. seq.

[18] *Naylor v Commissioner, Department of Public Welfare*, 54 A.3d 429 (Pa. Cmwlth 20120; *Germantown Cab Co. v. Philadelphia Parking Auth.*, 993 A.2d 933, 937 (Pa.Cmwlth.2010), aff'd, 614 Pa. 113, 36 A.3d 105 (2012).

[19] Section 201 of the Commonwealth Documents Law, 45 P.S. § 1201; *Borough of Bedford v. Dept. of Envtl. Prot.*, 972 A.2d 53 (Pa.Cmwlth.2009).

[20] See, *Pennsylvania School Boards Association v.Mumin*, 317 A.3d 1077 (Pa. Cmwlth. 2024), at 1099.

authority under which the administrative regulation or change therein is proposed to be promulgated, a brief explanation of the proposed administrative regulation or change therein, and a request for written comments by any interested person concerning the proposed administrative regulation or change therein.[21]

20. Before taking action upon any administrative regulation or change therein, the agency shall review and consider any written comments submitted and may hold such public hearings as seem appropriate.[22]

21. The Commission's stated preference is for retail market issues to be considered on an industry-wide basis, as opposed to in one specific company rate case. [23]

22. The Commonwealth of Pennsylvania has determined through the Electricity Generation Customer Choice and Competition Act 66 Pa. C.S. §§ 2801-2812, that competition among utilities and independent suppliers of generation is the best means available to keep the cost of electricity down.[24]

23. A viable POR program is an essential element to the creation of a competitive market for generation in Pennsylvania, as envisioned by the Competition Act. 66 Pa. C.S. § 2802(2)."[25]

24. A POR program is an essential tool to reduce barriers to entry by EGS firms and to create the fully functional retail market for generation envisioned by the General Assembly in Chapter 28".[26]

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[21] See 45 P.S. § 1201 and 1 Pa. Code § 7.1 (Emphasis added)

[22] See 45 P.S. § 1202 and 1 Pa. Code § 7.2 (Emphasis added).

[23] See *Public Utility Commission v. Columbia Gas of Pennsylvania, Inc.*, Dkt. No. R-2025-3053499 (Order entered December 9, 2025) at p. 390.

[24] *PPL Electric Utilities Corporation Retail Markets*, Dkt. No. M-2009-2104271, Order entered August 6, 2009.

[25] Id., at p. 27

[26] Id., at p. 28

25. A properly functioning POR program can reduce costs for shopping customers and, therefore, be an incentive for the Company to minimize its own cost of electricity for DSP customers.[27]

26. FirstEnergy and the other settling parties have not demonstrated that elimination of the CRP is in the public interest and justified by substantial evidence.

27. With respect to the supplier coordination tariff changes, FirstEnergy has not met its burden on proving that its proposed changes are lawful, supported by substantial evidence or in the public interest.

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[27] Id. at pp. 29-30

## Appendix C -Proposed Ordering Paragraphs

1. FirstEnergy's proposal to discontinue its Customer Referral Program is denied, and FirstEnergy shall be required to continue the CRP in its current form for the duration of its DSP-VII.

2. FirstEnergy's proposal to return customers to default service at the expiration of their EGS contract is denied.

3. FirstEnergy's proposal to require quarterly affirmation for month- to -month variable rate contracts is denied,

4. FirstEnergy's proposal to require "rate-ready" billing if suppliers want to use FirstEnergy's utility consolidated billing, and to only allow POR for supplier products that are at or below the FirstEnergy PTC at the time of the customer's enrollment, or at the time of a pricing change, is denied.

5. The Joint Petition for Approval of Non-Unanimous Settlement is modified consistent with this Recommended Decision to remove the FirstEnergy proposals that are rejected as discussed herein.

6. FirstEnergy shall be required to submit a revised tariff reflecting the continuation of the CRP in its existing form and the POR Program in its existing form, and without the proposed modifications related to contract expirations and quarterly affirmations, as discussed herein, 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.