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July 10, 2026

Via Electronic Filing

Matthew Homsher, Secretary
Pennsylvania Public Utility Commission
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 electronic filing please find the Retail Energy Supply Association's ("RESA") Main Brief with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

Deanne M. O'Dell

Deanne M. O'Dell.

DMO/dmc

Enclosure

cc: Honorable Mark A. Hoyer (*via email*)
Honorable Erin L. Gannon (*via email*)
Cert. of Service w/enc.

CERTIFICATE OF SERVICE

I hereby certify that this day I served a copy of RESA's Main Brief, upon the persons listed below in the manner indicated in accordance with the requirements of 52 Pa. Code Section 1.54.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

MAIN BRIEF OF RETAIL ENERGY SUPPLY ASSOCIATION

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Date: July 10, 2026

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I. INTRODUCTION

The Retail Energy Supply Association ("RESA")[1] submits this Main Brief to detail its opposition to the Joint Petition for Non-Unanimous Settlement filed on July 2, 2026 ("Joint Petition" or "Non-Unanimous Settlement"). RESA urges the Administrative Law Judges ("ALJs") to reject the Joint Petition.

This proceeding is ultimately not about individual tariff revisions or isolated changes to FE PA's default service program. Nor is it likely to remain confined to FE PA. Many of the challenged proposals involve fundamental questions regarding the operation of Pennsylvania's competitive retail electricity market. Because Commission decisions in default service proceedings routinely guide future proceedings involving other electric distribution companies, the precedential effect of this case extends well beyond FE PA's service territory. It presents a more fundamental question: whether the Commission may dismantle key elements of Pennsylvania's competitive retail electricity market based upon the premise that today's affordability challenges are the product of competition, or whether it must continue to implement the market-oriented framework established by the Competition Act. The General Assembly has already made that policy choice. In enacting the Competition Act, the Legislature recognized that electricity prices would continue to fluctuate with market conditions. The Competition Act does not promise that electricity prices will never rise. Rather, it reflects the General Assembly's determination that, when

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[1] The comments expressed in this filing represent the position of the Retail Energy Supply Association (RESA) as an organization but may not represent the views of any particular member of the Association. Founded in 1990, RESA is a broad and diverse group of retail energy suppliers dedicated to promoting efficient, sustainable and customer-oriented competitive retail energy markets. RESA members operate throughout the United States delivering value-added electricity and natural gas service at retail to residential, commercial and industrial energy customers. More information on RESA can be found at www.resausa.org.

market conditions cause prices to fluctuate, competitive market forces—not continued regulation of generation prices—provide the best means of achieving affordable electric service over time. Consistent with that legislative judgment, the Competition Act expressly provides that the generation of electricity "shall no longer be regulated as a public utility service," declares that "competitive market forces are more effective than economic regulation in controlling the cost of generating electricity," and directs the Commission to foster a competitive retail electricity market while procuring default service through competitive processes designed to provide the least cost to customers over time.[2] The challenged proposals turn that legislative judgment on its head. They seek to respond to affordability concerns not by strengthening the competitive market the Legislature prescribed, but by weakening it through regulatory measures designed to influence generation prices and customer behavior.

Nearly every proposal challenged by RESA departs from that statutory framework. Whether by redesigning wholesale default service procurement to produce a potentially lower default service price, broadly conditioning participation in Commission-approved market mechanisms upon an EGS's pricing and fundamentally restructuring long-standing components of Pennsylvania's competitive retail market based upon residential affordability concerns that were never shown to justify such broad changes, automatically returning customers to default service, or otherwise impairing competitive market participation, FE PA's proposals seek to influence the prices customers pay for generation service through regulatory intervention rather than competitive market forces. Although FE PA presents these challenged proposals as measures intended to address customer affordability, they are, in substance, efforts to regulate generation pricing and competitive market outcomes in a manner the Competition Act does not contemplate.

RESA does not dispute that Pennsylvania customers face genuine affordability challenges or that the Commission should continue working to address them. Nor does

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[2] 66 Pa. C.S. §§ 2802(12), 2806(a), 2807(e).

RESA oppose improvements to Pennsylvania's retail electricity market. To the contrary, through the testimony of Frank Lacey, RESA identifies numerous opportunities to strengthen competition while better protecting customers. Thus, the disagreement in this proceeding is not whether affordability matters or whether Pennsylvania's retail market can be improved, but whether the Commission may pursue those objectives by departing from the competitive market framework the General Assembly established in the Competition Act. The Commission's precedent, as upheld by the Commonwealth Court, provides the appropriate framework for answering that question. When asked to depart from that statutory framework by approving restrictions on competition or customer choice, the Commission has consistently required record evidence demonstrating an actual customer harm and that no reasonable alternative exists before approving such restrictions. Through the testimony of RESA witness Frank Lacey, RESA demonstrated that FE and the Settlement proponents failed to satisfy that standard. They simply assumed that point-in-time comparisons showing some customers paying more than the default service rate (referred to as the "Price to Compare" or "PTC") established that the competitive market itself was causing customer harm, then stopped the analysis there. They did not evaluate whether those customers received value through fixed-price certainty, renewable energy, or other product attributes; they did not evaluate the impact their proposals would have on competitive market participation or customer choice; they did not evaluate reasonable alternatives; they did not demonstrate that the competitive market itself – as opposed to broader market conditions or other external factors – was responsible for the affordability concerns they identified; and they did not evaluate the real-world consequences of substantially similar reforms implemented elsewhere.

Mr. Lacey also demonstrated that this is not a theoretical concern. Many of the retail market restrictions proposed in this proceeding closely resemble reforms adopted in Maryland through Senate Bill 1. Those reforms were likewise promoted as consumer-protection and affordability measures. The result, however, was not lower long-term costs achieved through healthier competition. Instead, meaningful residential competition effectively disappeared, leaving customers with virtually no meaningful competitive supply options despite continuing increases in electricity prices. FE, through its Potomac Edison affiliate, has firsthand knowledge of those consequences, yet neither FE nor the Settlement proponents analyzed that real-world experience before recommending substantially similar restrictions in Pennsylvania. The Commission should not repeat that experience in Pennsylvania.

Because FE has failed to satisfy either the Competition Act or the Commission's own standard for restricting competition, the ALJs should recommend that the Commission reject both the challenged provisions of the Joint Petition and the corresponding proposals in FE PA's underlying Petition.

A. Procedural History

On February 3, 2026, FE PA filed a petition with the Commission proposing to establish the terms and conditions under which it will procure default service supplies, provide default service to non-shopping customers, satisfy requirements imposed by the Alternative Energy Portfolio Standards Act ("AEPS Act") and recover all associated costs on a full and current basis for the period from June 1, 2027 through May 31, 2031 ("DSP VII Petition"). By public notice published in the *Pennsylvania Bulletin* on February 21, 2026, the Commission established a deadline of March 17, 2026 for formal protests, petitions to intervene and answers. RESA filed a timely Petition to Intervene which was subsequently granted pursuant to a Prehearing Order dated March 23, 2026.

An Evidentiary Hearing was held on June 15, 2026, at which the following evidence was admitted into the record on behalf of RESA: (1) RESA St. No. 1, the Direct Testimony of Frank Lacey, including RESA Exhibits FL-1 through FL-11; (2) RESA St. No. 1R, the Rebuttal Testimony of Frank Lacey, including RESA Exhibits FL-12 through FL-27; and (3) RESA St. No. 1SR, the Surrebuttal Testimony of Frank Lacey, including RESA Exhibits FL-28 through FL-32.

B. Non-Unanimous Settlement

On July 2, 2026, a Joint Petition for Non-Unanimous Settlement was filed. Parties to the Settlement are FE PA, the Office of Consumer Advocate ("OCA"), the Office of

Small Business Advocate ("OSBA"), the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), Walmart, Inc., and Duquesne Light Company (collectively, the "Joint Petitioners"). Parties not opposing the Settlement are Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, and West Penn Power Industrial Intervenors (collectively, the "Industrial Customer Groups"), and The Pennsylvania State University ("PSU"). Parties opposing the Settlement are RESA, Constellation Energy Generation, LLC and Constellation NewEnergy, Inc. ("Constellation"), the Customer-Generator Coalition ("CGC"), Dimension PA 1, LLC ("Dimension"), Penn Renewables LLC ("Penn Renewables"), Shipley Choice, LLC d/b/a Shipley Energy and Interstate Gas Supply, LLC d/b/a IGS Energy (collectively, the "EGS Parties"), the Solar Energy Industries Association and the Coalition for Community Solar Access (collectively, the "Joint Solar Advocates" or "JSA"), Town Square Energy East, LLC ("Town Square"), and WGL Energy Services, Inc. ("WGL").[3]

RESA urges the ALJs to recommend rejection of the Settlement. Reasons why individual terms are objectionable and/or in violation of the Commission's rules and regulations are set forth below. As the Joint Petition seeks approval without modification,[4] rejection of any of these terms supports rejection of the entire Settlement.

Viewed in its entirety, adoption of the Joint Petition is not in the public interest nor is it supported by substantial evidence. If approved as filed, the Settlement will move Pennsylvania backward by harming the competitive market in violation of the Competition Act and PUC regulations and precedent. Importantly, this individual utility DSP proceeding is not the appropriate forum for parties to attempt broad retail market restructuring.

Make no mistake, the Settlement provisions discussed herein will harm consumers by moving generation-related market risks away from the market onto consumers, and by

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[3] Joint Petition at fn. 1.

[4] Joint Petition at 1, ¶ 78.

proposing further measures to thwart the intent and purpose of the Competition Act to give consumers access to innovative competitive products. RESA strongly opposes each of these proposals. For all these reasons and as discussed further below, approval of the Non-Unanimous Settlement is not in the public interest and must be rejected.

C. Legal Standards

1. Competition Act

As a creation of the Legislature, the Commission has only the powers and authority granted to it by the Legislature and contained in the Public Utility Code, 66 Pa. C.S. §§ 101 *et seq.*[5] A part of the Public Utility Code, the Electricity Generation Customer Choice and Competition Act ("Competition Act") addresses the requirements that FirstEnergy, as the default service provider, must meet.[6] It requires that the default service provider acquire electric energy through a "prudent mix"[7] of resources that must be designed: (i) to provide adequate and reliable service; (ii) to provide the least cost to

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[5] *See City of Phila. v. Phila. Elec. Co.*, 473 A.2d 997, 999-1000 (Pa. 1984) ("We begin our inquiry by recognizing that the authority of the Commission must arise from the express words of the pertinent statutes or by strong and necessary implication therefrom…It is axiomatic that the Commission's power is statutory; and the legislative grant of power in any particular case must be clear."); *see also Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 795 (Pa. 1977); *Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937, Order entered May 28, 2008.

[6] *See* 66 Pa. C.S. § 2807(e).

[7] 66 Pa. C.S. § 2807(e)(3.2); "In interpreting the term 'prudent mix,' the PUC must exercise some balance and discretion under the circumstances of the case in order for the 'mix' in question to be 'prudent'." *Popowsky v. Pennsylvania Pub. Util. Comm'n*, 71 A.3d 1112, 1117 (Pa. Cmwlth. 2013) (Petition for Allowance of Appeal Denied Dec. 31, 2013, Docket No. 641 MAL 2013).

customers over time; and (iii) to achieve these results through competitive processes which includes auctions, requests for proposals and/or bilateral agreements.[8]

The "overarching goal of the [Competition] Act is competition through deregulation of the energy supply industry, leading to reduced electricity costs for consumers."[9] Therefore, the Competition Act also directs the Commission to create a competitive market for the generation of electricity through a separation of the distribution and generation services that had been previously provided exclusively by the EDCs on a monopoly basis.[10] The purpose of this restructuring is to ensure that "all customers of electric distribution companies in this Commonwealth shall have the opportunity to purchase electricity from their choice of electric generation suppliers ["EGSs"]."[11]

Recognizing the then-existing monopoly market structure in place and the need to create a pathway for EGSs to be able to offer generation services to end user customers in competition with one another, the Competition Act sets forth specific directives regarding interactions between the EDCs and EGSs. More specifically, the Competition Act requires that EDCs provide EGSs nondiscriminatory access to the EDC's transmission and distribution system on "rates, terms of access and conditions that are comparable to the utilities own use of its system."[12] The Competition Act also empowers the

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[8] 66 Pa. C.S. § 2807(e)(3.1).

[9] *Coalition for Affordable Util. Servs. and Energy Efficiency in Pennsylvania, et al. v. Pa. Pub. Util. Comm'n*, 120 A.3d at 1101 (Pa. Commw. Ct. 2015), appeal denied, 2016 WL 1383864 (Pa. Apr. 5, 2016). ("CAUSE-PA CAP Shopping Order") (emphasis added); 66 Pa. C.S. § 2802(13).

[10] 66 Pa. C.S. §§ 2801-2812.

[11] 66 Pa. C.S. § 2806(a).

[12] 66 Pa. C.S. § 2803 (Direct Access is defined as "The right of electric generation suppliers and end-use customers to utilize and interconnect with the electric

Commission to take steps to prevent anticompetitive or discriminatory conduct and to investigate "the impact on the proper functioning of a fully competitive retail electricity market. . . anticompetitive or discriminatory conduct affecting the retail distribution of electricity."[13] Thus, the Competition Act establishes competition and customer choice as the governing framework for Pennsylvania's retail electricity market while recognizing that, in appropriate circumstances, the Commission may impose restrictions on competition when necessary to protect customers and the proper functioning of the market.

Consistent with that statutory framework, both the Commonwealth Court and the Commission have held that proposals restricting competition require particular justification. Where a proposal departs from the competitive market framework established by the Competition Act by restricting competition or limiting customer choice, the proponent must demonstrate that the restriction is necessary because an actual harm exists and that no reasonable alternative exists to address that harm.[14] The

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transmission and distribution system on a nondiscriminatory basis at rates, terms and conditions of service comparable to the transmission and distribution companies' own use of the system to transport electricity from any generator of electricity to any end-use customer.)(emphasis added); 66 Pa. C.S. § 2804(6) ("A public utility that owns or operates jurisdictional transmission and distribution facilities shall provide transmission and distribution service to all retail electric customers in their service territory and to electric cooperative corporations and electric generation suppliers, affiliated or nonaffiliated, on rates, terms of access and conditions that are comparable to the utilities own use of its system.") (emphasis added).

13 66 Pa. C.S. §§ 2811(a) and (b).

14 *See Retail Energy Supply Ass'n v. Pa. PUC*, 185 A.3d 1206, 1228 (Pa. Cmwlth. 2018); *Coalition for Affordable Utility Services & Energy Efficiency in Pennsylvania v. Pa. PUC*, 120 A.3d 1087, 1103-04 (Pa. Cmwlth. 2015).

Commission recently reaffirmed that standard in PECO DSP VI, holding that a proposed modification to an existing competitive market structure that is inconsistent with Commission regulations "is viewed as a restriction on competition," and therefore may be approved only where "there is a harm associated with competition and no reasonable alternative exists."[15] Applying that standard, the Commission rejected the proposal because the record did not support a finding that harm had occurred and the proponents likewise failed to demonstrate that no reasonable alternative existed.[16]

2. Burden of Proof

FirstEnergy has the ultimate burden of proof in this proceeding and the initial burden of going forward with evidence showing that its proposals are lawful and reasonable. Section 332(a) of the Public Utility Code provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.[17] It is axiomatic that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible."[18] A preponderance of the evidence means evidence which is more convincing, by even the smallest amount, than that presented by the other party.[19] Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.[20] More information is required

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15 *Petition of PECO Energy Company for Approval of Its Default Service Program for the Period from June 1, 2025 Through May 31, 2029*, Docket No. P-2024-3046008, Opinion and Order entered Jan. 8, 2025, at 21.

16 *Id*. at 21-23.

17 66 Pa. C.S. § 332(a).

18 *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Commw. Ct. 1990).

19 *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

20 *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Commw. Ct. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Commw. Ct. 1993).

than a mere trace of evidence or a suspicion of the existence of a fact sought to be established.[21]

3. Standard of Review for Settlements

Although the Commission generally encourages settlements,[22] it must still review any proposed settlement to determine whether its terms are in the public interest in order to be adopted.[23] The Commission has stated that "the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest."[24] In determining whether this standard has been met and whether a partial settlement should be approved, all objections to the settlement must be considered.[25] Further, proposed settlements (including partial settlements) must also be supported by substantial evidence.[26]

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21 *Norfolk and Western Ry. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. Ct. 1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Commw. Ct. 1984).

22 52 Pa. Code § 5.231.

23 *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered Jan. 7, 2004); *see also Pa. PUC Bureau of Investigation and Enforcement v. PPL Electric Utilities Corp.,* Docket No. M-2023-3038060 (Order entered May 16, 2024).

24 *Pa. PUC et al. v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Order entered July 14, 2011), *citing Warner v. GTE North, Inc.*, Docket No. C-00902815 (Order entered Apr. 1, 1996); *Pa. PUC v. CS Water and Sewer Associates*, 74 PA PUC 767 (1991).

25 *Pa. PUC et al. v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Order entered July 14, 2011).

26 *Joint Application of West Penn Power Co. d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public*

D. Summary of Argument

Through the expert testimony of its witness Frank Lacey, RESA demonstrated that the challenged provisions of the Joint Petition must be rejected because they share two fundamental legal flaws.

First, rather than strengthening the competitive retail market framework established by the Competition Act, the Settlement repeatedly seeks to influence competitive generation prices through regulatory means even though the General Assembly expressly determined that generation prices "shall no longer be regulated as a public utility service" and that affordability is to be achieved through competitive market forces.

Second, even assuming the Settlement proponents had demonstrated that Pennsylvania's competitive retail market is causing customer harm – which they did not – they failed to satisfy the Commission's own standard for restricting competition. They neither established an actual harm caused by competition nor demonstrated that the challenged proposals represent the least restrictive means of addressing any such harm after considering reasonable alternatives.

Specifically:

- **The procurement proposals**, including the treatment of NITS charges, the Capacity Proxy Price mechanism, and the expanded use of long-term procurement products, improperly transfer wholesale market risk from sophisticated market participants to customers while undermining the Competition Act's requirement that default service be procured through competitive processes designed to produce the least cost over time.

- **The retail market restrictions**, including automatic return to default service, quarterly affirmation requirements for variable-rate contracts,

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Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Co. and Trans-Allegheny Interstate Line Co., Docket Nos. A-2010-2176520 and A-2010-2176732 (Order entered Mar. 8, 2011), at 17.

and the proposed restructuring of the Purchase of Receivables ("POR") program which is applicable across multiple residential and commercial classes served on consolidated EDC billing, are unsupported by evidence demonstrating harm caused by competition, fail to evaluate reasonable alternatives, and repeatedly impose broad restrictions on Pennsylvania's competitive market based upon far narrower allocations of customer harm.

- **The proposal to eliminate the Customer Referral Program** is fundamentally inconsistent with the Settlement's stated affordability objectives. FE PA's own evidence demonstrates that the CRP has produced measurable customer savings through voluntary participation in the competitive market. Rather than improving that successful program, FE proposes to eliminate it without demonstrating that customers will be better off.

Because the Settlement proponents failed to satisfy either the Competition Act or the Commission's own framework for restricting competition, the challenged provisions are not supported by substantial evidence and are not in the public interest. The ALJs should therefore recommend that the Commission reject the challenged provisions of the Joint Petition, reject the corresponding proposals contained in FE PA's Petition, and approve only those portions of FE PA's DSP VII that are consistent with the Competition Act, supported by substantial evidence, and in the public interest.

II. DEFAULT SERVICE PROCUREMENT AND IMPLEMENTATION PLANS

A. Residential Class Default Service Products

FE PA proposes to introduce a new 60-month fixed-price, full-requirements residential procurement product representing approximately 10 percent of residential default service load. The Joint Petition retains the 60-month product while adopting several modifications negotiated primarily between FE PA and the OCA regarding procurement timing, contingency procurement, and independent review of auction results.[27]

RESA does not oppose the Commission's consideration of a longer-term residential procurement product. As Mr. Lacey explained, he "do[es] not have a recommendation on whether or not the Commission should approve inclusion of a 60-month contract." Rather, RESA's concern is that, if the Commission approves such a product, it should be procured in a manner that is best overall for customers, the competitive market, and consistent with Act 129.[28]

RESA's principal concern is not the duration of the proposed contract, but whether the product being procured remains a genuine fixed-price, full-requirements product. As discussed in Sections II.B and II.C below, FE PA simultaneously proposes to remove significant wholesale market risks—including NITS and, through the Capacity Proxy Price mechanism, certain long-term capacity price risks—from the obligations of wholesale default service suppliers. If the Commission elects to approve the proposed 60-month product, it should ensure that the product remains a true fixed-price, full-requirements product by rejecting those proposed risk reallocations.[29]

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

FE PA presents its proposal to remove Network Integration Transmission Service ("NITS") from the wholesale default service product as a straightforward means of reducing default service prices by eliminating wholesale default service supplier risk premiums. That characterization understates what FE PA actually proposes. This is not merely a revision to the Supplier Master Agreement or a technical change to wholesale procurement. It is a fundamental redesign of the default service product the Commission has repeatedly approved for more than a decade. By removing NITS from wholesale

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27 Petition ¶¶ 13, 16; FE PA St. No. 3 at 4-7, 20; Joint Petition ¶¶ 20-25, 32-33.

28 RESA St. No. 1 at 62-63.

29 RESA St. No. 1 at 63-66.

supplier responsibility, FE PA asks the Commission to transfer a significant wholesale market risk from sophisticated market participants to default service customers in order to produce a lower apparent default service price. That proposal is also not an isolated change. Together with the Capacity Proxy Price mechanism discussed below, it reflects a broader effort to redesign the wholesale default service product itself by shifting risks historically managed through competition to customers. FE PA has not demonstrated that the Competition Act permits that result or that customers will be better served by it.

Since restructuring, the Commission has consistently approved FE PA's procurement of a fixed-price, full-requirements wholesale default service product under which wholesale suppliers assume responsibility for energy, capacity, transmission service, ancillary services, and other obligations specified in the Supplier Master Agreement. The Commission repeatedly rejected proposals to remove NITS from supplier responsibility in DSP II and DSP III before continuing that same allocation of risk through DSP IV, DSP V, and DSP VI. Wholesale suppliers, electric generation suppliers, and customers have therefore developed pricing practices, risk-management strategies, and market expectations around a procurement product that has remained materially unchanged for more than a decade.

FE PA now asks the Commission to fundamentally alter that product. Rather than requiring wholesale suppliers to continue managing NITS as part of a fixed-price, full-requirements obligation, FE PA proposes to remove that responsibility from the procurement product entirely and instead recover actual NITS costs directly from default service customers.[30] In the instant proceeding, FE PA asks the Commission to depart

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[30] *Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Programs*, Docket Nos. P-2009-2093053 & P-2009-2093054, Opinion and Order entered Nov. 6, 2009, at 26-27 ("**DSP I Order**"); *Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co. and West Penn Power Co. for Approval of Their Default Service*

from more than a decade of Commission-approved procurement practice by removing NITS from the wholesale suppliers' obligations under the SMA.[31] That proposal would

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Programs, Docket Nos. P-2011-2273650, P-2011-2273668, P-2011-2273669 & P-2011-2273670, Opinion and Order, entered Aug. 16, 2012, at 73-76 ("**DSP II Order**"), as modified on reconsideration, Opinion and Order, entered Sept. 27, 2012 (“**DSP II Reconsideration Order”**), and Amended Opinion and Order, entered Oct. 11, 2012; *Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co. and West Penn Power Co. for Approval of Their Default Service Programs*, Docket Nos. P-2013-2391368, P-2013-2391375, P-2013-2391376 & P-2013-2391377, Opinion and Order, entered Feb. 20, 2015, at 41-47 ("**DSP III Order**"); *Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co. and West Penn Power Co. for Approval of Their Default Service Programs*, Docket Nos. P-2015-2495062, P-2015-2495063, P-2015-2495064 & P-2015-2495065, Recommended Decision, adopted by Opinion and Order entered Feb. 9, 2017, at 31-36 ("**DSP IV RD**"); *Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co. and West Penn Power Co. for Approval of Their Default Service Programs*, Docket Nos. P-2017-2637855, P-2017-2637856, P-2017-2637857 & P-2017-2637865, Opinion and Order, entered Sept. 4, 2018, at 18-19 ("**DSP V Order**"); *Petition of Metropolitan Edison Co. for Approval of Its Default Service Plan for the Period from June 1, 2023 through May 31, 2027*, Docket No. P-2021-3030012, et al., Recommended Decision, adopted without modification by Opinion and Order entered Aug. 4, 2022, at 23-30 ("**DSP VI RD**").

31 *See* FE PA Statement No. 2 of Ryan J. Rose at 16-17 (proposing to remove NITS from the auction product so that NITS "will be part of the Price-to-Compare ... and is no longer the responsibility of the supplier"), FE PA Ex. RJR-2; Joint Petition ¶ 29 (adopting FE PA's proposed revisions to the Supplier Master Agreement, including removal of PJM charges for NITS from supplier pricing).

depart from the Commission's prior decisions in DSP II and DSP III, which rejected substantially the same risk-allocation proposal following full litigation, and to the procurement framework subsequently approved in DSP IV, DSP V, and DSP VI.[32] The Joint Petition for Nonunanimous Settlement supports adoption of FE PA's proposal to remove NITS from supplier pricing under the SMA.[33] If approved, the proposal would fundamentally change the wholesale default service product that has formed the basis of FE PA's procurement process—and the expectations of market participants operating under that process—for more than a decade.

1. RESA's Opposition to FE PA's Proposed Reallocation of Wholesale Market Risk

RESA opposes the proposal for three principal reasons: (a) risk is transferred to default service customers, not eliminated; (b) FE PA failed to justify fundamentally changing FE PA's longstanding procurement model; and (c) the proposal distorts competition between default service and competitive supply.

(a) Risk is Transferred to Default Service Customers, Not Eliminated

FE PA's principal justification for removing NITS from the wholesale procurement product is that wholesale default service suppliers currently include a risk premium in their auction bids to account for uncertainty regarding future NITS costs.

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32 *See also* DSP II Order at 73-76 (rejecting FE PA's proposal to recover NITS through the Default Service Support Rider); DSP II Reconsideration Order at 10 ("Consistent with the Commonwealth's continued migration to a more competitive retail market, we believe that these supply-related costs should remain with the EGSs."); DSP III Order at 41-47 (again rejecting FE PA's proposal to shift NITS responsibility from suppliers to customers and leaving the existing allocation unchanged).

33 Joint Petition for Partial Settlement ¶ 29 (adopting FE PA's proposed revisions to the Supplier Master Agreement, including the removal of PJM charges for NITS from supplier pricing);

According to FE PA, removing NITS from wholesale default supplier responsibility will eliminate those risk premiums, resulting in lower default service procurement costs while allowing customers to pay only the actual NITS costs incurred. FE PA witness Ryan Rose testified that removing NITS from the auction product will "reduce the supplier risk premium and therefore reduce the overall cost to customers."[34] Likewise, the Joint Petition asserts that removing NITS from the wholesale procurement product allows customers to pay "actual NITS costs rather than estimated costs plus a supplier risk premium."[35] Mr. Rose reiterated this position in rebuttal, explaining that wholesale default service suppliers will no longer need to estimate future NITS costs and include those estimates in their wholesale bids.[36][37]

RESA does not dispute that removing NITS from the wholesale procurement product may reduce wholesale default service supplier risk premiums. The flaw in FE PA's analysis is that it treats reduced supplier risk as though the underlying risk disappears. It does not. As Mr. Lacey explains, "the risk of changing transmission costs for default customers does not go away," because "the proposal guarantees that the price change (increase) will be borne in full by the default service customer."[38] Put simply,

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34 FE PA Statement No. 2 (Ryan Rose) at 16-17.

35 Joint Petition ¶¶ 28-29 and Statement B at 8-10 (customers pay actual NITS costs rather than estimated costs plus supplier risk premiums).

36 FE PA Statement No. 2-R (Ryan Rose Rebuttal) at 9-10 (suppliers currently estimate NITS costs and include a premium to cover that uncertainty),

37 Joint Petition ¶¶ 28-29 and Statement B at 8-10 (customers pay actual NITS costs rather than estimated costs plus supplier risk premiums); FE PA Statement No. 2-R (Ryan Rose Rebuttal) at 9-10 (suppliers currently estimate NITS costs and include a premium to cover that uncertainty).

38 RESA St. No. 1 at 39-42 (proposal guarantees customers bear future NITS increases and shifts risk from suppliers to customers).

"removing the risk premiums does not remove the risk. It moves the risk—to the customers who generally have limited ability to evaluate or manage those risks."[39] Indeed, even the Settlement proponents acknowledge that this is what FE PA's proposal accomplishes. OCA witness R. Ogur expressly admitted that FE PA's proposal "shift[s] cost risks associated with NITS charges from suppliers to customers, in return for eliminating risk premiums in wholesale fixed price full requirement suppliers' bids tied to NITS cost uncertainty."[40] Thus, the central factual premise underlying RESA's objection—that FE PA transfers rather than eliminates wholesale market risk—is not disputed in this proceeding.

The significance of that risk transfer extends beyond the mechanics of default service procurement. As Mr. Lacey explains, one of the fundamental principles underlying Pennsylvania's restructuring of the electric industry was to transfer generation-related market risks away from captive ratepayers and to competitive market participants capable of managing those risks.[41] Consistent with that policy, the General Assembly expressly found that "competitive market forces are more effective than economic regulation in controlling the cost of generating electricity."[42] FE PA's proposal moves in the opposite direction by returning a significant wholesale market risk to default service customers while relieving sophisticated wholesale default service suppliers of responsibility for managing that risk. Although FE PA contends that this change may

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39 RESA Statement No. 1R at 30-31.

40 RESA Exhibit FL-26 (OCA Response to RESA Set I, No. 44) (Dr. Ogur acknowledging that FE PA's proposal "shift[s] cost risks associated with NITS charges from suppliers to customers, in return for eliminating risk premiums in wholesale FPFR suppliers' bids tied to NITS cost uncertainty"); RESA St. No. 1R at 30-31.

41 RESA St. No. 1 at 4-8.

42 66 Pa. C.S. § 2802(12).

reduce supplier risk premiums, it has not shown that customers will be better served by assuming the risk themselves rather than continuing to rely on competitive suppliers to forecast, manage, and absorb that risk through fixed-price, full-requirements contracts. As Mr. Lacey aptly framed the issue, "the question then for the Commission is: what is best for the consumer—allowing expert risk managers (default service suppliers and EGSs) to price products based on their expertise and bear their own risk of miscalculations, or ensuring default customers will always bear the full cost that will likely be increasing by an amount that is unknowable to most customers?" Mr. Lacey concluded that "the former results in a better outcome for the consumer."[43]

Accordingly, FE PA's proposal is not eliminating wholesale market risk. It would merely transfer that risk from sophisticated market participants to default service customers without demonstrating that customers will be better served by assuming it. Because that change shifts wholesale market risk back to default service customers in a manner inconsistent with the market-oriented principles reflected in the Competition Act, and because FE PA has not demonstrated that such a reallocation of risk will benefit customers, the Commission should reject the proposed amendment to the Supplier Master Agreement.

(b) FE PA Failed to Justify Departing from Long-Standing Procurement Model

The question presented in this proceeding is not whether the Commission has the authority to approve a different allocation of NITS risk. The Commission has approved different procurement structures for other Pennsylvania electric distribution companies. The question presented here is whether FE PA has demonstrated that, after more than a decade of Commission-approved procurement under which wholesale default service suppliers successfully managed NITS risk, the Commission should now fundamentally alter the procurement model around which the FE PA default service market has developed. FE PA made no such showing. Fundamentally, FE PA never explained why

43 RESA St. No. 1 at 40-41.

the Commission should alter the competitive procurement process itself in an effort to influence the resulting wholesale generation price. The Competition Act expressly provides that generation prices are no longer to be regulated as a public utility service, and FE PA has not shown why the Commission should depart from that legislative framework here.[44]

Mr. Lacey directly addressed FE PA's repeated reliance on the procurement practices of other Pennsylvania EDCs directly. As he explained, "[i]t is not relevant, as the Commission has steadfastly approved FE PA's current approach since 2014." He acknowledged that transmission costs are likely to increase but emphasized that FE PA "provided no data to ascertain the anticipated level of increase." In Mr. Lacey's view, that absence of evidence is "exactly why the Commission should, in this proceeding, reject the placement of NITS risk on default service customers."[45]

Nor did FE PA demonstrate that the existing procurement product has failed. From the outset of this proceeding, RESA questioned FE PA's factual premise for making such a significant change. As Mr. Lacey testified, FE PA "does not in any way support its contention that there will be an increase in transmission spend." Rather, FE PA "should be required to disclose its expected 'increase in transmission spend' over the duration of the default service period if it is going to justify such a big change to default service." Mr. Lacey concluded that FE PA's rationale amounted to "a grossly misleading characterization of the impact of this change with no actual data presented to support FE PA's speculations."[46]

Likewise, FE PA never demonstrated that wholesale default service suppliers are unable to efficiently manage or hedge NITS risk. As Mr. Lacey explained in rebuttal, "FE has not presented any evidence to suggest that NITS charges are not capable of being

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[44] `66 Pa. C.S. §§ 2802(6), 2804(1); Lacey St. No. 1 at 33-35.

[45] RESA St. No. 1 at 41-42.

[46] RESA St. No. 1 at 38-39.

hedged." To the contrary, "NITS charges have been included in FE PA's prior default service auctions. It is only now that FE is seeking to remove that component from the wholesale requirements." While FE PA repeatedly asserts that removing NITS will reduce supplier risk premiums, it "made no mention ... of any inability of wholesale default service suppliers to hedge NITS exposure."[47]

Perhaps most telling, FE PA's own evidence demonstrates that the existing procurement model is functioning successfully. FE PA's own witness, Nicholas Powers, testified that participation in FE PA's prior default service procurements "has remained consistently robust" and explained that winning wholesale default service suppliers are "the most efficient risk managers" selected through the competitive auction process.[48] Mr. Lacey observed that, if wholesale default service suppliers are in fact "the most efficient risk managers," they are likewise well-positioned to manage NITS risk. Moreover, FE PA's evidence of continued robust supplier participation directly undermines its Petition's assertion that removing NITS is necessary "to facilitate increased supplier participation in auctions."[49]

Most importantly, FE never compared the long-term cost to customers of supplier-managed risk with customer-borne risk. Instead, it simply assumes that eliminating supplier risk premiums necessarily benefits customers. The record contains no analysis comparing those alternatives, no evidence that suppliers have been unable to manage NITS successfully under FE PA's long-standing procurement model, and no evidence that customers will ultimately be better served if the wholesale default service product is fundamentally redesigned.[50]

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47 RESA St. No. 1R at 30-31.

48 FE PA St. No. 3 (Powers) at 10, 21.

49 RESA St. No. 1 at 42-44.

50 RESA St. No. 1 at 39-42; RESA St. No. 1R at 30-31.

The Commission is not obligated to perpetuate FE PA's procurement model indefinitely. But FE bears the burden of demonstrating why the procurement product the Commission has repeatedly approved for more than a decade should now be fundamentally changed. On this record, FE has not carried that burden. The Commission should therefore reject FE PA's proposal to remove NITS from the wholesale procurement product and preserve the long-standing allocation of NITS risk reflected in FE PA's current Supplier Master Agreement.

(c) The Proposal Distorts Competition and Reduces Customer Choice

Throughout this proceeding, FE PA repeatedly justifies its challenged procurement and retail-market proposals on the basis of customer affordability. The NITS proposal is no exception. FE PA argues that removing NITS from the wholesale default service product will reduce wholesale default service supplier risk premiums and thereby lower default service prices. As discussed above, however, FE PA has not demonstrated that transferring NITS risk to default service customers will reduce customers' costs over time. Rather, FE PA simply assumes that making the default service product appears less expensive necessarily improves affordability.

That assumption reflects the fundamental disagreement between the parties. RESA does not dispute that affordability is an appropriate objective. The Competition Act, however, already establishes how that objective is to be achieved. Rather than regulating the price of generation or redesigning competitive procurement products to produce a preferred default service price, the General Assembly determined that "competitive market forces are more effective than economic regulation in controlling the cost of generating electricity."[51] Likewise, the Competition Act requires default service to be procured at the least cost to customers over time, not simply at the lowest apparent price in a particular procurement cycle.[52]

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[51] 66 Pa. C.S. § 2802(12).

[52] 66 Pa. C.S. § 2807(e)(3.4)(ii).

The distinction is important because the Competition Act relies on competition – not administrative reallocations of wholesale market risk — to protect customers. Wholesale default service suppliers compete to determine who can most efficiently forecast wholesale market conditions and manage risks such as NITS. Electric generation suppliers likewise compete by offering customers different products, pricing strategies, renewable energy options, value-added services, and different approaches to managing wholesale market risks. Customers—not suppliers—are the intended beneficiaries of that competition because they may choose the products and risk allocations that best meet their individual needs.[53]

FE PA's proposal moves away from that competitive framework. Rather than allowing wholesale default service suppliers to compete over how best to manage NITS risk, FE PA proposes that default service customers simply bear whatever NITS costs ultimately occur. At the same time, electric generation suppliers must continue to forecast, hedge, and price that same risk because they have no mechanism to recover actual NITS costs from customers after the fact. That disparity exists because FE PA, as the incumbent default service provider, is permitted to recover prudently incurred default service costs from default service customers.[54] As Mr. Lacey explained, FE PA's proposal therefore "creates another economic advantage" for EDC provided default service because it "requires a higher price for the EGS to hedge the risk that default service suppliers are not providing."[55]

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[53] 66 Pa. C.S. § 2802(3), (5), (12); RESA St. No. 1 at 4-7, 11-13.

[54] The Competition Act does not require an electric distribution company to serve as the default service provider, demonstrating that guaranteed cost recovery is not an inherent characteristic of default service itself, but rather a function of the procurement model the Commission has approved for FE. 66 Pa. C.S. § 2803 (definition of "default service provider"); RESA St. No. 1 at 5-6.

[55] RESA St. No. 1 at 44.

The result is not merely a different allocation of wholesale market risk. It is a marketplace in which the EDC provided default service product increasingly appears less expensive because significant wholesale market risks have been removed from the product itself, while competitive retail suppliers continue to offer products that include those same risks. The resulting comparison between default service and competitive supply therefore becomes increasingly misleading because the products no longer allocate wholesale market risk in the same manner. The Commission has long sought to ensure that customers receive information enabling them to make informed comparisons among electricity products.[56] FE PA's proposal moves in the opposite direction by changing the default service product itself while continuing to encourage comparisons against competitive retail products that remain responsible for managing NITS risk.[57]

Ultimately, customers bear the consequences. That result is particularly troubling because the NITS proposal is not an isolated amendment to the Supplier Master Agreement. Rather, together with the Capacity Proxy Price mechanism discussed below and FE's retail market proposals, it reflects a broader effort to redesign the default service product itself while shifting wholesale market risks away from sophisticated market participants and onto customers. Evaluated together—as they should be—these proposals move FE PA's default service program away from the competitive market principles embodied in the Competition Act and Act 129. As wholesale default service suppliers are relieved of responsibility for managing NITS risk while competitive suppliers remain responsible for pricing that same risk into their retail products, customers are presented with fewer meaningful competitive alternatives to default service. Over time, that reduces the competitive pressure that encourages innovation, product diversity, and sophisticated

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[56] 66 Pa. C.S. § 2807(d)(2); *Guidelines for Use of Fixed Price Labels for Products With a Pass-Through Clause*, Docket No. M-2013-2362961, Final Order entered Nov. 14, 2013, at 4-9.

[57] RESA St. No. 1 at 45-47.

risk management on behalf of customers. As Mr. Lacey explains, FE PA's proposals offer only "an illusion of lower prices in the short run while sacrificing customers' well-being in the longer run."[58] Rather than preserving a market in which sophisticated participants compete to manage wholesale risks on behalf of customers, FE PA's proposal moves default service toward the "consumer-risk product" Mr. Lacey describes, where customers ultimately bear risks that competition previously managed for them.[59]

Accordingly, the Commission should reject FE PA's proposal not because affordability is unimportant, but because the General Assembly has already determined that affordability is to be achieved through competitive market forces and least-cost procurement over time—not by shifting wholesale market risks to customers or by redesigning wholesale default service products to shift wholesale market risks from sophisticated suppliers to captive customers. FE PA has not demonstrated that its proposal advances that statutory framework. The ALJs should therefore recommend that the Commission reject FE PA's proposal.

C. Capacity Proxy Price

FE PA also proposes to continue using a Capacity Proxy Price ("CPP") mechanism to relieve wholesale default service suppliers of the risk associated with unknown future PJM capacity prices by reconciling proxy prices to actual capacity costs after the applicable Base Residual Auction. The Joint Petition retains that proposal with minor modifications regarding the treatment of 60-month products.[60] As Mr. Lacey explained in his direct testimony, RESA supports requiring wholesale default service suppliers to competitively price capacity and other wholesale supply obligations as part of a true full-requirements product. FE PA's proposal, however, relieves suppliers of

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[58] RESA St. No. 1 at 7, 11-13, 66-68.

[59] RESA St. No. 1 at 6-8, 66-68.

[60] FE PA St. No. 2 (Rose) at 18-19; FE PA St. No. 2-R (Rose) at 10-11; Joint Petition ¶¶ 21, 34; Statement B at 14-16.

significant wholesale market risks through the CPP mechanism while simultaneously removing NITS from the wholesale procurement product, thereby reducing the scope of the wholesale product suppliers are actually being asked to price.[61]

RESA continues to oppose the CPP mechanism for substantially the same reasons discussed above with respect to NITS as discussed in Section II.B above. As Mr. Lacey explains, CPP shifts capacity price risk from wholesale default service suppliers to default service customers while reducing suppliers' long-term hedging obligations. Wholesale default service suppliers are better positioned than customers to manage those risks and should remain responsible for doing so, just as competitive retail suppliers remain responsible for managing capacity risk in their retail contracts.[62]

While Mr. Lacey acknowledges that the CPP mechanism may have been more understandable during periods when PJM's delayed capacity auctions created extraordinary uncertainty regarding future capacity prices, FE PA has not demonstrated on this record why wholesale default service suppliers should no longer be required to manage that risk or why customers will benefit from assuming it instead..[63]

As discussed above regarding NITS, FE PA cannot satisfy its burden merely by asserting that reducing supplier risk premiums may lower wholesale bid prices. The relevant question under the Competition Act is whether transferring wholesale market risks from sophisticated market participants to default service customers will provide least-cost service over time. FE PA made no such showing with respect to CPP. Accordingly, the ALJs should recommend that the Commission reject FE PA's proposed CPP mechanism.

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[61] RESA St. No. 1 at 48-49.

[62] RESA St. No. 1R at 31-32.

[63] RESA St. No. 1R at 31-32.

III. CLASSIFICATION OF NON-RESIDENTIAL DEFAULT SERVICE CUSTOMERS

RESA takes no specific position on the classification of non-residential default service customers.

IV. RATE DESIGN AND COST RECOVERY

A. Price to Compare Default Service Rate Rider

RESA takes no position regarding continuation of the existing Price to Compare Default Service Rate Rider except to the extent it incorporates or reflects other contested proposals addressed elsewhere in this Brief, including the proposed treatment of NITS costs, Capacity Proxy Pricing, and other procurement-related changes. To the extent the PTC Rider is modified to implement those proposals, RESA's objections are incorporated herein by reference.

B. Hourly Pricing Default Service Rider

In its filing, FE PA proposed to modify the Hourly Pricing Default Service Rider ("HP Rider") to eliminate the $4.00 per MWh added for winning suppliers in the hourly-priced auctions.[64] This change would require suppliers to consider all costs of providing full-requirements supply in their bid price.[65] FE PA further explained the effect of this change as follows:

> Industrial default service load will be priced based on the PJM real-time market. Suppliers will compete for this load through an auction process where they will bid an additional adder to cover any costs (or profit margin requirements) of the capacity, ancillary services, AEPS Act, and other costs that are part of the full-requirements obligation.[66]

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64 RESA St. No. 1 at 48.

65 FE PA St. No. 2 at 16.

66 FE PA St. No. 3 at 21.

The Joint Petition accepts the HP Rider as filed by FE PA.[67] RESA, however, opposes this change as written. As Mr. Lacey discussed, RESA generally supports a competitive bid process for costs that are part of a full-requirements obligation, but the HP Rider as written does not actually reflect "full requirements" as it does not include NITS.[68]

FE PA recovers its own costs to serve Hourly Pricing Service ("HPS") customers in the HP Rider via an HP Administrative Charge. The Commission should reject the Settlement, and require FE PA to modify the HP Administrative Charge to include all costs to serve HPS customers, including costs for billing, customer care, computers, billing systems, desks, chairs, offices, office expenses, personnel to perform and/or manage these functions, personnel to run the supply auctions, personnel to schedule and deliver the power, and any other costs incurred to serve these customers.[69] Further, any costs collected in the HP Administrative Charge should be refunded to HPS distribution ratepayers so that there is no net overcollection from customers.[70]

V. CUSTOMER REFERRAL PROGRAM

FE PA's filing proposed to eliminate the Standard Offer Customer Referral Program ("CRP"). The Company described the CRP as "provid[ing] eligible customers with an opportunity to select among a group of EGSs that have voluntarily chosen to offer customers a twelve-month contract priced at least 7% below the Company's applicable PTC at the time of the offer. Customers may terminate a CRP contract at any time without penalty, either to re-enroll in the CRP with a new rate, select another EGS, or return to default service."[71] FE PA is seeking to eliminate the program because it

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67 Joint Petition ¶ 43.

68 RESA St. No. 1 at 48-49.

69 RESA St. No. 1 at 49.

70 RESA St. No. 1 at 49.

71 FE PA St. No. 4 (De La Rosa) at 8-11.

claims that supplier participation is declining and interest from customers is “very low.”[72] The Joint Petition includes a term that, if accepted, would terminate the CRP in each of the FE PA Rate Districts as of May 31, 2027. The Joint Petition further states that FE PA will not implement a successor CRP for DSP VII “based on data reviewed during the collaborative” held to discuss this program.[73]

RESA opposes the termination of the CRP and submits that the Commission should reject these settlement terms. Unlike many of the other affordability proposals advanced in this proceeding, the CRP has produced documented customer savings. As Mr. Lacey explains, FE PA’s own discovery response demonstrates that participating customers achieved cumulative savings of more than $750,000 compared to the applicable Price to Compare across the FE PA service territories during the period analyzed by the Company, from January 2025 through February 2026.[74] The CRP “provides direct and measurable economic benefits to customers participating in the program.”[75] The evidence is difficult to reconcile with FE PA's repeated reliance on customer affordability to justify eliminating the CRP and other challenged retail-market proposals in this proceeding. Throughout this proceeding, FE PA repeatedly asserts that the challenged retail-market proposals are intended to improve customer affordability and reduce the impact of above-PTC prices. Yet the CRP is one of the few programs in this record that has demonstrably reduced customer bills through voluntary participation in the competitive market. Rather than seeking to improve or expand that successful program, FE PA proposes to eliminate it. As Mr. Lacey observed, if FE PA is truly concerned with affordability, it should focus its efforts on expanding and improving the

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72 RESA St. No. 1 at 58.

73 Joint Petition ¶¶ 63-64.

74 RESA St. No. 1-SR at 23; RESA Exh. FL-32.

75 RESA St. No. 1R at 22.

CRP – not abolishing one of the competitive market programs that has produced documented customer savings.[76]

FE PA also relies on the collaborative process conducted pursuant to the DSP VI Settlement to support elimination of the CRP. That reliance is misplaced. The issue before the Commission is not whether FE PA convened a stakeholder meeting. The issue is whether the evidentiary record developed in this proceeding demonstrates that eliminating a program producing documented customer savings is in the public interest. It does not. As Mr. Lacey explained, the discussion convened by FE PA primarily consisted of a presentation of FE PA's historical participation data. It did not meaningfully evaluate reforms that might improve supplier participation, customer participation, customer education, pricing methodology, or other modifications that could preserve the demonstrated customer benefits of the CRP while addressing the concerns identified by FE.[77] In fact, the discovery record confirms that neither FE PA nor the parties supporting elimination of the CRP evaluated alternatives short of eliminating the program. OCA admitted that it considered no disclosure reforms, pricing modifications, enrollment changes, customer education measures, or other alternatives. Likewise, CAUSE-PA admitted that it considered no alternatives whatsoever. Nor did any supporting witness identify evidence demonstrating that eliminating the CRP would improve customer outcomes relative to disclosure reforms, pricing modifications, revised enrollment rules, customer education measures, or other reforms short of elimination.[78]

Importantly, Mr. Lacey does not contend that the current CRP is perfect. Rather, he recommends that if supplier participation has declined, the Commission should direct FE PA and stakeholders to determine why and develop improvements to the program. If customer education can be enhanced, enhance it. If supplier participation can be

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[76] RESA St. No. 1 at 58.

[77] RESA St. No. 1-SR at 22-24.

[78] RESA Exh. FL-22.

increased, improve it. Those possibilities are illustrative, not exhaustive. Their significance is that they demonstrate numerous reasonable alternatives exist before eliminating a program that has demonstrably benefited customers. What the record does not support is eliminating one of the competitive market programs that demonstrably reduced customer bills without first evaluating reasonable alternatives.[79]

Accordingly, FE PA has failed to demonstrate that eliminating the CRP will improve customer outcomes, failed to evaluate reasonable alternatives that would preserve the program's demonstrated customer benefits, and failed to reconcile elimination of the CRP with its broader claim that this proceeding is intended to improve affordability. The Commission should reject the proposal to eliminate the CRP and instead direct FE PA to work with stakeholders to identify reforms that improve supplier participation, customer participation, and customer education while preserving the measurable affordability benefits the program has already delivered to Pennsylvania customers.

VI. <u>SUPPLIER COORDINATION TARIFF CHANGES AND RETAIL SHOPPING ISSUES</u>

A. Return of Customers to Default Service at Contract Expiration

FE PA's proposal to automatically return residential customers to default service without their affirmative authorization represents another attempt to influence the price customers pay for generation service through regulatory means rather than competitive market forces.[80]

The proposal reflects FE PA's view that residential customers should be transferred to default service unless they affirmatively elect to remain with their chosen electric generation supplier ("EGS") following expiration of a fixed-term contract. RESA agrees that affordability is an important objective. The Competition Act, however, does

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[79] RESA St. No. 1SR at 24.

[80] 66 Pa. C.S. §§ 2802(5), (12), 2806(a), 2807(e).

not authorize the Commission or an EDC to pursue affordability by steering customers toward a preferred generation price or by making it more difficult for customers to remain with competitive suppliers. Rather, the General Assembly expressly provided that generation "shall no longer be regulated as a public utility service," and determined that "competitive market forces are more effective than economic regulation in controlling the cost of generating electricity." The Competition Act further requires default service to be procured through competitive processes designed to provide the least cost to customers over time.[81]

The Joint Petition asks the Commission to adopt FE PA's proposal requiring that, for EGSs entering into new contracts with residential customers after June 1, 2027, those customers should be transferred to default service without affirmative customer authorization at the conclusion of the fixed-duration contract unless they take new action to remain with the EGS in response to the notices required by Section 54.10 of the Commission's regulations.[82]

RESA respectfully submits that the proposal should be rejected because it is inconsistent with the Competition Act, violates the Commission's regulations and longstanding precedent, and ultimately reduces customer choice in an effort to influence the price customers pay for generation service. Specifically, (1) the Commission's regulations expressly permit EGSs to renew existing contracts after providing the required customer notices; (2) automatically transferring EGS customers to default service without affirmative customer authorization would constitute unauthorized switching, or slamming; (3) the Commission has repeatedly rejected materially similar proposals; and (4) FE PA's reliance on comparisons between supplier prices and the Price

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[81] 66 Pa. C.S. §§ 2802(5), (12), 2806(a), 2807(e)(3.1), (3.4)(ii).

[82] Joint Petition ¶ 66; FE PA St. No. 1 at 21-23.

to Compare ("PTC") is legally and factually misplaced because the PTC is not a meaningful benchmark against which to judge competitive generation products.[83]

1. Returning Shopping Customers to Default Service Violates the Competition Act and the Commission's Long-Established Regulations Governing Contract Renewals.

The Joint Petition asks the Commission to reverse a fundamental policy choice it made more than a decade ago when, after extensive rulemaking (in which FE PA participated), it adopted regulations governing how customer choice operates at the expiration of competitive generation contracts.[84] Consistent with the Competition Act, the Commission has long recognized that customers—not utilities or regulators—should decide whether to remain with a competitive supplier or return to default service. The Commission's contract renewal regulations implement that legislative policy by allowing customers to remain with their chosen EGS unless, after receiving detailed advance notices, they take action to elect another option. FE PA now asks the Commission to abandon that framework – and automatically transfer EGS customers to default service at the end of their contracts without affirmative customer authorization, not because the regulations have failed, but because FE PA prefers a different competitive outcome. Neither the Joint Petition nor the evidentiary record justifies such a fundamental departure from the Competition Act or the Commission's longstanding regulations and precedent.

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83 2 Pa. Code §§ 54.10, 57.171-57.180; RESA St. No. 1 at 13-32.

84 52 Pa. Code § 54.10 (effective June 14, 2014); *Rulemaking to Amend the Provisions of 52 Pa. Code § 54.5 Regarding Disclosure Statements for Residential and Small Business Customers and to Add § 54.10 Regarding the Provision of Notices of Contract Expiration or Changes in Terms for Residential and Small Business Customers*, Docket No. L-2014-2409385, Final-Omitted Rulemaking Order, entered Apr. 3, 2014, at 38. ("2014 Contract Renewal Rulemaking Order").

The Competition Act fundamentally changed the Commission's role with respect to generation service. The General Assembly declared that Pennsylvania must transition "from regulation to greater competition in the electricity generation market," determined that "competitive market forces are more effective than economic regulation in controlling the cost of generating electricity," and expressly provided that generation "shall no longer be regulated as a public utility service."[85] Consistent with those directives, the Competition Act guarantees customers direct access to competitive suppliers on a nondiscriminatory basis and authorizes the Commission to prevent anticompetitive conduct and protect the proper functioning of a fully competitive retail electricity market.[86]

The Commission implemented those statutory directives through its contract renewal regulations. After full notice-and-comment rulemaking, the Commission expressly rejected the proposition that EGS customers should automatically be transferred to default service simply because they did not take another new action in response to contract expiration notices, explaining:

> Because the intent of the competitive market is to encourage customers to shop for their retail electricity supply, we do not believe it is appropriate for a customer to be reverted to default service should that customer fail to respond to either of the two EGS-provided notices.[87]

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[85] 66 Pa. C.S. §§ 2802(5), (12); 2806(a).

[86] 66 Pa. C.S. §§ 2803, 2804(6), 2811.

[87] See, e.g., *Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Expiration or Changes in Terms for Residential and Small Business Customers*, Docket No. L-2014-2409385, Final-Omitted Rulemaking Order entered Apr. 3, 2014, at 38.

Consistent with this, the regulations require all EGSs to send their customers two contract expiration notices prior to expiration of a fixed duration contract or prior to a change in contract terms, pursuant to the Commission's regulations at 52 Pa. Code § 54.10. The first is an "Initial Notice" that the EGS is required to send to the customer between 45 and 60 days before the expiration date of the contract. The second is an "Options Notice" that the EGS must send to the customer at least 30 days prior to the expiration of the fixed duration contract. The Commission's regulations are very detailed as to what must be contained in those notices. For example, the Options Notice is required to advise the customer of the specific changes being proposed by the EGS and inform the customer of how to exercise the customer's options, including the customer's ability to accept the proposed change, to choose another product offering from the customer's existing EGS, to select another EGS or to return to default service.[88] If a customer fails to respond to either of these notices, the Commission's regulations permit an EGS to convert its current customer to either a month-to-month contract or another fixed duration contract so long as certain requirements are met.[89] In addition, the Commission's 2014 revision of its customer disclosure regulations requires EGSs to provide notice to their customer of a subsequent change in pricing at least 30 days in advance when the customer does not take action to respond to the contract expiration notices and is moved to a month-to-month pricing.[90]

As discussed by RESA Witness Lacey, FE PA's proposal seeks reversal of this longstanding Commission policy and regulations. In fact, FE PA acknowledged that implementation of its proposal requires a waiver of Section 54.10(3) of the Commission's regulations.[91] Significantly, however, Section 54.10 governs the renewal of EGS

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[88] 52 Pa. Code § 54.10(2)(i).

[89] 52 Pa. Code § 54.10(3).

[90] 52 Pa. Code § 54.10(2)(ii)(A)(I).

[91] RESA St. No. 1 at 14-15.

contracts—not the conduct of electric distribution companies. FE PA therefore asks the Commission to waive regulations governing competitive supplier contract renewals in order to alter the relationship between customers and their chosen EGSs, notwithstanding that FE PA itself is not subject to those requirements. Importantly, the Commission has recently reaffirmed that once a customer enrolls with an EGS, the EDC's role largely ends. The EGS—not the EDC—is responsible for providing generation service, administering the customer relationship, and complying with the Commission's contract renewal requirements.[92] FE PA's proposal would reverse that allocation of responsibility by authorizing the EDC to intervene after the EGS has fully complied with Section 54.10 and transfer the customer to default service notwithstanding the customer's existing contractual relationship.

For all these reasons, FE PA has entirely failed to justify a waiver (if it could even seek one). Section 54.10(3) clearly mandates that an EGS customer who does not take action in response to contract expiration notices "*shall be converted*" to either a month-to-month contract or another fixed duration contract.[93] The regulation includes specific obligations by EGSs to ensure that its customers are well informed of their options upon expiration of the existing contract. These regulations were adopted after a thorough review and rejection of the same arguments that FE PA has made in this case.[94] And the Commission has consistently held that once a customer enrolls with an EGS, the EDC's role largely ends. Neither FE PA nor the Joint Petitioners have shown the right to request a waiver or, even if they could ask, proven one is justified. What they ask the Commission to approve here would be a major departure of decades of Commission precedent and must be rejected.

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[92] PECO DSP VI Order at 93-95.

[93] 52 Pa. Code § 54.10(3).

[94] RESA St. No. 1 at 15.

2. FE PA's Proposal Would Authorize the Transfer of EGS Customers Without New Affirmative Customer Authorization

FE PA's proposal also conflicts with one of the Competition Act's most fundamental customer protections—the requirement that a customer's electric generation supplier may not be changed without the customer's authorization. The proposal asks the Commission to disregard the EGS customer's previously expressed choice to receive generation service from an EGS and instead treat the EGS customer's failure to take action in response to contract renewal notices as authorization to transfer that customer to default service. That premise is inconsistent with both the Commission's longstanding interpretation of its contract renewal regulations and the Competition Act's prohibition against unauthorized switching of electric generation suppliers.[95] Importantly, nothing in the Competition Act authorizes the Commission to substitute its judgment—or an EDC's judgment—for the EGOS customer's own competitive generation choice simply because the customer did not take a further action in response to the EGS's contract renewal notice.

EGS customers who remain with an EGS after the expiration of their existing fixed-term contract are not passive participants in the competitive market. They previously exercised their statutory right to select a competitive supplier, agreed to the terms governing renewal of that contract, and then received the contract renewal notices required by Section 54.10. The Commission has long recognized that, after those notices are provided, an EGS customer's decision not to take further action to receive service from another supplier or return to default service constitutes a decision to remain with the existing EGS under the terms permitted by the Commission's regulations. Importantly, nothing in the Competition Act suggests that an EGS customer's competitive generation choice should be judged solely by comparing the supplier's price to the utility's default service rate. Customers may reasonably value price certainty, renewable energy content,

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[95] 66 Pa. C.S. § 2807(d); 52 Pa. Code §§ 54.10, 57.171-57.180; 2014 Contract Renewal Rulemaking Order at 38.

loyalty incentives, customer service, or other product attributes when deciding to remain with their chosen supplier. FE PA's proposal would override the EGS customer's previously expressed competitive choice and transfer the customer from its contracted supply service to default service without any new affirmative customer authorization. Since the Commission has well-established that EGSs are legally permitted to convert an existing contract consistent with the terms of its contract renewal notices and without the customer taking affirmative action to the contrary,[96] any proposal requiring an EDC to disregard the customer's existing contractual relationship with the EGS and transfer that customer to default service without any new affirmative customer authorization allows precisely the type of involuntary supplier change the Competition Act's anti-slamming protections were enacted to prevent. Whether the Commission ultimately characterizes that conduct as "slamming" is beside the point. The more fundamental problem is that FE PA asks the Commission to authorize an EDC to disregard a customer's existing competitive generation relationship after the EGS has complied with the Commission's contract renewal regulations and without any new affirmative customer authorization. The Competition Act's anti-slamming protections reinforce—not replace—that fundamental principle.

Slamming occurs when a customer's EGS is switched without authorization.[97] In May 1998, the Commission adopted a final rulemaking to establish anti-slamming

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[96] The Commission has specifically stated that this process of relying on a customer's inaction as affirmative consent to continue with the EGS is <u>not</u> slamming. *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of Impending Changes Affecting Customer Service, Amendment re: Supplier Contract Renewal/Change Notices*, Docket No. M-2010-2195286, Order entered Sept. 23, 2010, at 23.

[97] 66 Pa. C.S. § 2807(d) requires the Commission to establish regulations to ensure that an EDC does not change a customer's electricity supplier without consent.

regulations designed to ensure customer consent to a change of EGS.[98] In adopting the anti-slamming regulations, the Commission announced a "zero-tolerance" policy on slamming, stating as follows:

> Today, we set in place the "rules of the road" by which customers' requests to switch electric generation supplier will be processed. We have observed other industries in which unauthorized customer switching, known as "slamming," has occurred. We wish to state now, up front and for the record: this Commission will have zero tolerance for slamming by any means and in any form.[99]

For the past two decades, the Commission has been steadfast in its resolve to prohibit and prevent slamming in any means and any form. It has repeatedly reiterated its long-standing "zero-tolerance" policy on slamming.[100] As promised in 1998, the Commission has levied maximum civil penalties on EGSs who have slammed customers.[101] The Commission's anti-slamming policy protects more than the mechanics

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98 28 Pa.B. 5770; 52 Pa. Code §§ 57.171-180.

99 Statement of Chairman Quain, Vice Chairman Bloom, Commissioner Hanger, Commissioner Rolka and Commissioner Brownell, Docket No. L-00970121 (May 21, 1998) (emphasis added), quoted in *Standards for Changing a Customer's Electricity Generation Supplier*, 44 Pa.B. 3539 (June 14, 2014).

100 *See, e.g., Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Expiration or Changes in Terms for Residential and Small Business Customers*, Docket No. L-2014-2409385, Final-Omitted Rulemaking Order entered Apr. 3, 2014.

101 *See PUC v. MXenergy Electric Inc.*, Docket No. M-2012-2201861, Order entered Dec. 5, 2013, at 9, *quoting PUC v. Total Gas & Electric Inc.*, Docket No. M-0011529, Order entered Sept. 26, 2001, at 5 (the Commission stressed that it does

of switching suppliers. It protects the customer's right to determine who will provide generation service – a right FE PA's proposal would override by authorizing the transfer of an EGS customer to default service without any affirmative customer authorization.

The Commission's regulations include detailed requirements for changing a customer's EGS, which are described in 52 Pa. Code Chapter 57, Subchapter M. The only time these switching rules do not apply is "when the customer's service is discontinued by the EGS and subsequently provided by the default service provider because no other EGS is willing to provide service to the customer."[102] As Mr. Lacey discussed, FE PA's proposal would not require a showing that either of those conditions have been met, let alone both. Unlike Section 54.10, for which FE expressly seeks a waiver, FE has not requested any waiver of Chapter 57, nor has it explained how the Commission could authorize conduct that Chapter 57 otherwise prohibits while leaving those regulations unchanged.[103] Nor has FE PA explained how the Commission could authorize conduct that Chapter 57 otherwise prohibits while leaving those regulations unchanged.

Adoption of the Joint Petition would authorize precisely the type of unauthorized supplier change the Competition Act and the Commission's anti-slamming regulations were designed to prevent. A customer who affirmatively enrolled with an EGS and thereafter remained with that supplier pursuant to the Commission's contract renewal regulations cannot lawfully be transferred to default service without affirmative customer authorization. Because FE PA's proposal would authorize an involuntary transfer from competitive generation service to default service without any new affirmative customer authorization, it is fundamentally inconsistent with the customer-choice protections

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not trivialize slamming allegations and seeks to deter such conduct by instituting firm retaliatory measures).

102 52 Pa. Code § 57.178.

103 RESA St. No. 1 at 16.

reflected in Section 2807(d), Chapter 57, and the Commission's longstanding anti-slamming policy.

3. The Commission Has Repeatedly Rejected Similar Proposals By Other Utilities

FE PA's proposal is not novel. The Commission has repeatedly been asked to approve proposals that would alter the competitive market framework established by the Competition Act by automatically moving customers away from their chosen generation supplier without affirmative customer authorization. Just as consistently, the Commission has rejected those proposals as inconsistent with the Competition Act, its regulations, and the principle that customer choice—not utility preference—should determine who provides generation service.

In November 2024, in PECO's DSP proceeding, a proposed non-unanimous settlement would have required shopping customers participating in PECO's Standard Offer Program ("SOP") to return automatically to default service upon expiration of the twelve-month SOP contract.[104] The Commission rejected that proposal, concluding that it was inconsistent with its regulations and longstanding precedent. Significantly, the Commission expressly agreed with RESA that "customers paying more for EGS service than the PTC does not necessarily prove that a harm is occurring, because customers could be making shopping decisions based on factors other than price, such as the specific product offered or the length of the contract."[105]

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[104] *Petition of PECO Energy Co. for Approval of Its Default Service Program for the Period From June 1, 2025*, Through May 31, 2029, Docket No. P-2024-3046008 (Opinion and Order entered Nov. 7, 2024), at 74–81.

[105] *Petition of PECO Energy Co. for Approval of Its Default Service Program for the Period From June 1, 2025*, Through May 31, 2029, Docket No. P-2024-3046008 (Opinion and Order entered Nov. 7, 2024), at 74–81. This conclusion was consistent with prior PPL default service proceeding, rejecting a materially similar proposal that would have automatically returned shopping customers to default service upon

Nor is PECO DSP VI significant merely because the Commission rejected a similar proposal. Equally important is the analytical framework the Commission applied. The Commission recognized that modifying the SOP to require customers to be automatically transferred to default service constituted a restriction on competition because it departed from the Commission's existing regulations and competitive market framework. Applying the Competition Act and Commonwealth Court precedent, the Commission held that such a restriction could be justified only upon a demonstrated showing of harm and proof that no reasonable alternative existed. Because the proponents failed to satisfy either requirement, the Commission rejected the proposal. Those same deficiencies are present here. FE PA has not demonstrated that EGS customers remaining with an EGS after contract expiration suffer cognizable harm, that the Commission's existing contract renewal regulations have failed, or that automatically transferring customers to default service upon EGS contract expiration represents the only reasonable means of addressing any identified concern. Nor did FE PA demonstrate that transferring customers to default service without affirmative customer authorization represents the least restrictive means of addressing its stated concerns. As Mr. Lacey's testimony and the discovery record establish, FE PA performed no analysis of enhanced customer education, improved contract disclosures, additional customer notifications, or other less restrictive measures that might address any perceived customer confusion while preserving customer choice. Instead, FE PA moved directly from the assumption that some customers paid more than the PTC to the conclusion that EGS customers should be transferred to default service without affirmative customer authorization upon expiration

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expiration of SOP contracts. *Petition of PPL Elec. Utils. Corp. for Approval of Its Default Service Plan for the Period June 1, 2021 through May 31, 2025*, Docket No. P-2020-3019356 (Opinion and Order entered Dec. 17, 2020), at 2, 44–45, 92, 98.

of their EGS contract. That is precisely the type of incomplete analysis the Commission rejected in PECO DSP VI.[106]

The Commission reaffirmed the same statutory limitation in its 2025 Community Choice Aggregation Declaratory Order filed by a group of municipalities, seeking to have all customers move to EGS supply offered through a community choice aggregation program unless they affirmatively opted out of such a transfer. The Commission's 2025 Order in this proceeding states that:

> The Boroughs expressly request an acknowledgment that the Commission will authorize them "to transfer residents and resident small businesses to CCA supply without advance consent." Restated Petition, App'x A at 3. As such, **granting the Boroughs' requested authorization would directly violate Section 2807(d)(1) of the Code and require the Commission to exceed its authority by permitting the type of slamming that the Choice Act prohibits**.[107]

Taken together, these decisions reflect a consistent and unmistakable line of Commission precedent. Whether the proposal involves contract renewals, standard offer programs, or community choice aggregation, the Commission has consistently required that customer choice remain paramount absent clear statutory authority and a demonstrated basis for restricting competition. FE PA asks the Commission to depart from that settled framework without satisfying the very standard the Commission recently reaffirmed in PECO DSP VI. The record contains neither a demonstrated harm

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106 RESA St. No. 1 at 14-24; RESA St. No. 1-R at 3-4, 12-18; RESA Exhs. FL-16, FL-17, FL-18.

107 *See Petition of the Boroughs of Camp Hill, Carlisle, Hatboro, Lansdowne, Media, Narberth, State College and Swarthmore for a Declaratory Order Regarding the Implementation of Community Choice Aggregation*, Docket No. P-2024-304963 (Opinion and Order entered Aug. 14, 2025), at 68 (emphasis added) (note that an appeal of the Commission's Order is currently pending before Commonwealth Court at Docket No. 1195 CD 2025).

nor evidence that FE PA's proposal represents the only reasonable means of addressing the concerns it identifies. Consistent with the Competition Act and the Commission's own precedent, the ALJs should recommend that the Commission reject this proposal.

4. Comparing Supplier Rates to the Price To Compare Does Not Establish Harm Caused By Competition

A central premise underlying FE PA's proposal is that customers are harmed whenever they pay more than the Price to Compare ("PTC") for competitive generation service. That premise is inconsistent with both the Competition Act and the nature of the products being compared. The Competition Act does not require EGSs to match the default service rate, nor does it authorize the Commission to regulate competitive generation prices by judging every competitive offer against the PTC at a particular point in time. Rather, the General Assembly expressly provided that generation "shall no longer be regulated as a public utility service" and instead directed that customers receive least-cost service over time through competitive market forces.[108]

As Mr. Lacey explains, FE PA's pricing analysis begins with a fundamentally flawed premise because it treats the default service product and competitive supply products as though they were equivalent. They are not. In Mr. Lacey's words, the products are not merely "apples-to-oranges"; FE PA "has presented an analysis comparing what you could have paid for apples last month versus what you agree to pay for oranges, or even a basket of fruit, for some period of time into the future, and FE PA has positioned the two as equivalent."[109] The PTC is not a competitive market price. As Mr. Lacey testified, it is "nothing more than a point-in-time pricing metric" reflecting historical wholesale procurement costs and numerous reconciliations and adjustments. It does not obligate FE PA to provide service at that price at any point in the future. By

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[108] 66 Pa. C.S. §§ 2802(5), (12); 2806(a); 2807(e)(3.1), (3.4).

[109] RESA St. No. 1 at 50-53.

contrast, an EGS contract price is "an actionable, enforceable agreement to provide goods and services for a time period into the future."[110]

Those differences matter. Competitive supply products include different contractual commitments, different hedging strategies, different allocations of wholesale market risk, different regulatory obligations, and frequently different product attributes altogether. As Mr. Lacey explains, competitive products may include fixed-price certainty, renewable energy, rewards programs, bundled products, customer service features, or other value-added services that default service simply does not provide. Yet neither OCA nor CAUSE-PA performed any analysis regarding customer preferences for those non-price attributes, fixed-price certainty, hedging value, renewable energy, or other customer considerations before concluding that customers paying more than the PTC necessarily received no commensurate value.[111]

More fundamentally, the PTC was never intended to serve as a regulatory benchmark against which competitive generation prices would be judged. As Mr. Lacey explained in rebuttal, nowhere in the testimony of OCA or CAUSE-PA "is there reference to any statutory requirement or economic principle providing that the Price-to-Compare should be any type of price cap, maximum permissible price, or regulatory benchmark for competitive offers." Rather, FE PA's proposals would "effectively transform the default service rate into a regulatory ceiling against which EGS pricing ... would be judged and restricted."[112]

Indeed, if paying more than the PTC alone established customer harm, the Commission would necessarily be regulating competitive generation prices by treating the PTC as the maximum acceptable price for competitive supply. That is precisely what

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110 RESA St. No. 1 at 50-53; RESA St. No. 1-R at 5-7.

111 RESA St. No. 1 at 50-56; RESA St. No. 1-R at 4-11; RESA Exh. FL-12; RESA Exh. FL-13; RESA Exh. FL-14.

112 RESA St. No. 1-R at 5-7.

the Competition Act forbids. Retail generation prices are not regulated by the Commission, and nothing in either the Competition Act or Act 129 establishes the PTC as a price cap or regulatory metric for competitive supplier pricing. To the contrary, the Competition Act expressly recognizes that "competitive market forces are more effective than economic regulation in controlling the cost of generating electricity."[113]

The Commission recently reaffirmed precisely this principle in PECO DSP VI. Rejecting the same policy argument advanced here, the Commission agreed with RESA that "customers paying more for EGS service than the PTC does not necessarily prove that a harm is occurring, because customers could be making shopping decisions based on factors other than price, such as the specific product offered or the length of the contract."[114]

Accordingly, FE PA's reliance on point-in-time comparisons between competitive supply prices and the PTC fails at the threshold step of the Commission's own analysis. Those comparisons do not establish that customers have been harmed. As Mr. Lacey ultimately recommended, the Commission should expressly reject "the simplistic and misleading comparisons of supplier contract prices to the point in time PTC metric" and reject any proposal in this proceeding that depends upon those flawed comparisons.[115]

5. The Proposal is Inconsistent with the Competitive Market Framework Established by the Competition Act.

The proposal to transfer EGS customer to default service upon expiration of their EGS contracts without affirmative customer authorization is inconsistent with the market structure the General Assembly established through the Competition Act. The Legislature

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[113] `66 Pa. C.S. §§ 2802(12), 2806(a); RESA St. No. 1-R at 6-7.

[114] *Petition of PECO Energy Company for Approval of Its Default Service Program for the Period from June 1, 2025 Through May 31, 2029*, Docket No. P-2024-3046008, Opinion and Order entered Nov. 7, 2024, at 80; *reaffirmed*, Opinion and Order entered Jan. 8, 2025, at 19-23.

[115] RESA St. No. 1 at 55-58.

did not merely authorize customer choice as an end in itself. Rather, it determined that competitive market forces are more effective than economic regulation in controlling the cost of generating electricity and directed the Commission to foster a competitive retail electricity market through which customers—not utilities or regulators—would determine the products, services, and risk allocations that best meet their individual needs.[116]

FE PA's proposal moves Pennsylvania in the opposite direction. Rather than strengthening the competitive market as the Legislature intended, it makes it more difficult for EGS customers to remain with their chosen EGS while simultaneously making default service increasingly attractive through regulatory intervention rather than market competition. At the same time, other proposals in this proceeding shift additional wholesale market risks away from wholesale default service suppliers and onto customers, transforming default service into what Mr. Lacey aptly describes as a "consumer-risk product" while simultaneously making competitive alternatives less viable. As discussed throughout this Brief, FE PA repeatedly justifies these proposals on the basis of affordability.[117] Yet the Competition Act already establishes the mechanism by which affordability is to be achieved—a properly functioning competitive market—not by restricting customer choice or redesigning market rules to influence generation prices.

As Mr. Lacey explained, customers routinely enter contracts that automatically renew absent affirmative action, including contracts for cellular telephone service, automobile insurance, homeowners' insurance, cable or streaming services, newspaper and magazine subscriptions, and internet service. Customers understand those arrangements because they have already agreed to the renewal provisions when they entered the contract. The Commission's regulations governing EGS contract renewals reflect the same principle by requiring detailed advance notices explaining the customer's

[116] 66 Pa. C.S. §§ 2802(5), (12); 2806(a); 2807(e).

[117] RESA St. No. 1 at 6-7; 39-47.

options while permitting the existing contractual relationship to continue unless the customer affirmatively chooses otherwise.[118]

More importantly, FE PA's proposal assumes that transferring EGS customers to default service without affirmative customer authorization necessarily benefits them. The record establishes otherwise. FE PA acknowledged that EGS customers would be transferred to default service regardless of whether the default service rate was higher or lower than the customer's renewal price.[119] Thus, the proposal is not truly about protecting EGS customers from higher prices. It is about preventing EGS customers from remaining with their chosen supplier. Nor does FE PA account for the many non-price benefits EGS customers may receive through competitive supply, including fixed-price certainty, renewable energy products, loyalty incentives, bundled services, or emerging technologies and distributed energy resources. Indeed, Mr. Lacey demonstrated that FE PA performed no analysis of those customer preferences or the value customers place upon them before proposing to eliminate those choices.[120]

Nor did FE PA evaluate how its proposal would affect the continued evolution of Pennsylvania's competitive retail electricity market. As Mr. Lacey explained, today's competitive market extends well beyond commodity electricity supply. Suppliers increasingly offer customers products incorporating renewable energy, distributed energy resources, electric vehicle charging, demand response, and other innovative services designed to help customers manage both their electricity usage and their electricity costs. Those products require suppliers to make long-term investments in customer relationships. By increasing the likelihood that EGS customers will be involuntarily transferred from their existing competitive service to default service at contract expiration, FE PA’s proposal discourages those investments and reduces the incentive for

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118 RESA St. No. 1 at 17-20; 52 Pa. Code §§ 54.5, 54.10.

119 RESA Exh. FL-3; RESA St. No. 1 at 18-20.

120 RESA St. No. 1 at 20-24; RESA St. No. 1-R at 4-11.

suppliers to develop new products and services in Pennsylvania. FE PA presented no analysis of those long-term impacts before proposing to weaken the existing competitive market framework.[121]

Finally, the proposal ignores the real-world consequences of adopting policies that make competitive supply less viable. As Mr. Lacey explained, Maryland recently adopted a series of retail market restrictions—including several materially similar to those proposed here—that were likewise promoted as consumer-protection and affordability measures.[122] The result was not a healthier competitive market or lower long-term prices. Instead, residential shopping participation collapsed. Before enactment of Maryland Senate Bill 1, approximately 12.8% of residential customers statewide shopped for competitive supply. By January 2026, that figure had fallen to 0.3% statewide and to only 0.2% (two-tenths of one percent) in FirstEnergy's own Potomac Edison service territory.[123] In his rebuttal testimony, Mr. Lacey explained that neither OCA nor CAUSE-PA analyzed the impact those Maryland restrictions had on residential shopping participation, supplier participation, product availability, or customer choice before supporting materially similar restrictions in Pennsylvania.[124] Likewise, in surrebuttal, Mr. Lacey responded to FE PA's attempt to distinguish Maryland by explaining that, although Maryland did not formally abolish retail choice, the practical effect of the reforms was that fewer than one-half of one percent of residential customers statewide—and only 0.2% of customers in FE PA's own Maryland service territory—remained on competitive supply.[125] Rather than asking why those reforms produced that result and whether less restrictive approaches were available, FE PA proposes many of the same

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[121] RESA St. No. 1 at 20-24; RESA St. No. 1-R at 11-18.

[122] RESA St. No. 1 at 9-11.

[123] RESA St. No. 1 at 9-11.

[124] RESA St. No. 1R at 14-18.

[125] RESA St. No. 1SR at 8-9, 13-15.

restrictions in Pennsylvania without analyzing their likely effect on competitive market participation.[126] The record therefore contains not only a failure to analyze reasonable alternatives, but a failure even to grapple with the only real-world example demonstrating what happens when substantially similar restrictions are adopted.

The Commission should not permit Pennsylvania's competitive retail electricity market to move down the same path. The Commission need not determine whether every alternative identified by RESA would ultimately be preferable. Under the Commission's own precedent, the burden rests with FE PA to demonstrate that restricting competition is necessary and that no reasonable alternative exists. FE PA did neither. It presented no evidence that the Commission's existing contract renewal regulations have failed, no evaluation of less restrictive alternatives that would preserve customer choice, and no analysis of the long-term effects its proposal would have on competitive market participation. Instead, it relied upon flawed point-in-time pricing comparisons, assumed harm caused by competition, and proposed one of the most restrictive remedies available—automatically returning customers to default service. The Competition Act, the Commission's own precedent, and the evidentiary record require more before customer choice may be curtailed. The ALJs should therefore recommend that the Commission reject this proposal regardless of whether it is considered through FE PA's Petition or the Joint Petition.

B. Quarterly Affirmation for Variable Rate Contracts

FE PA proposes that, beginning June 1, 2027, EGSs provide an attestation of affirmative customer consent each calendar quarter for all residential customers receiving service under month-to-month variable-priced contracts. If the EGS does not provide the required attestation, the customer will be returned automatically to default service. The Joint Petition supports that proposal without modification.[127] FE PA and the Settlement

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[126] RESA St. No. 1 at 9-15; RESA St. No. 1-R at 24-25.

[127] FE PA St. No. 1 (Young) at 21-24; Joint Petition ¶ 66.

proponents justify this proposal on the same basis as the proposal to return customers to default service at the end of a fixed-term contract. According to the OCA, quarterly affirmations are intended to "ensure that customers remain aware of their enrollment status and the nature of the product they have selected," while reducing the likelihood that customers "unknowingly remain on higher-priced variable-rate products."[128] FE PA posits that the proposal will ensure customers make intentional decisions regarding the cost of generation service, and mitigate the affordability concerns associated with above-PTC variable-rate products.[129]

The Commission has already considered precisely these concerns. During its comprehensive 2014 rulemaking revising the customer disclosure and contract expiration regulations following the Polar Vortex, the Commission specifically addressed the treatment of customers who remain on month-to-month variable-priced contracts after expiration of a fixed-term agreement. Rather than prohibiting variable-priced products or requiring customers to repeatedly reaffirm their choice of supplier, the Commission adopted a different approach. It strengthened the disclosure requirements in Section 54.10, required detailed contract expiration notices, and – most significantly – required EGSs to provide customers with at least thirty days' advance notice of every subsequent price change after a customer transitions to a month-to-month variable-priced product.[130]

That regulatory framework reflects the Commission's considered judgment that customer protection and competition are complementary—not competing—objectives. The Commission chose to address concerns regarding variable-priced products by

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[128] OCA Statement in Support at 75.

[129] E PA St. No. 1 (Young) at 21-24; Joint Petition ¶ 66; FE Statement in Support at 31-32; OCA Statement in Support at 74-75; CAUSE-PA Statement in Support at 21-22.

[130] *See Final Rulemaking Order, Revision of the Electric Generation Customer Choice Disclosure Statement Regulations*, Docket No. L-2012-2317273 (entered Dec. 18, 2014), 44 Pa.B. 7523 (Dec. 20, 2014); 52 Pa. Code § 54.10(2)(ii)(A)(I).

improving customer disclosures while preserving customer choice and the competitive market framework established by the Competition Act. FE PA has presented no evidence that those regulations have failed, that customers are not receiving the required notices, or that the Commission's chosen regulatory framework no longer protects customers. FE PA's proposal fails under the Commission's own framework for restricting competition. Even assuming FE PA had demonstrated that some customers unknowingly remain on variable-priced products—which the existing record does not establish—the Commission has already identified and implemented a less restrictive solution through Section 54.10. FE PA therefore bears the burden of demonstrating not merely that customer confusion exists, but that the Commission's existing disclosure regime has failed and that an unprecedented recurring affirmative-consent requirement is necessary. FE PA made no such showing.

RESA opposes this proposal for substantially the same reasons discussed in Section VI.A regarding FE PA's proposal to return customers to default service upon expiration of a fixed-term contract, which are incorporated herein by reference. If anything, the quarterly affirmation proposal represents an even greater intrusion into the competitive retail market because it requires customers repeatedly to reaffirm a competitive generation choice they have already made. Customers already provide affirmative consent when they enroll with an EGS and agree to the terms governing that contractual relationship. Requiring customers to provide that same consent every ninety days does not create additional customer protection; it merely creates additional opportunities for customers to be returned involuntarily to default service. Nothing in the Competition Act or the Commission's regulations authorizes the Commission to require customers to repeatedly reaffirm a competitive supply decision they have already lawfully made.[131] FE PA has identified no evidence suggesting those existing protections have failed, nor has it demonstrated that residential customers on month-to-month

[131] RESA St. No. 1 at 14-16; 26-27.

products are suffering any cognizable harm requiring the Commission to impose a recurring affirmative-consent obligation.[132]

Indeed, this proposal suffers from the same analytical defects discussed throughout this Brief. FE PA assumes that because some customers remain on variable-priced contracts that may exceed the default service rate, additional regulation of competitive supply is required. Yet FE PA presented no evidence that the Commission's existing regulations are inadequate, no analysis of customer understanding or confusion, no evaluation of less restrictive alternatives, and no assessment of the proposal's effect on competitive market participation or customer choice. Instead, FE PA simply assumes harm caused by competition and proceeds directly to one of the most restrictive remedies available. That approach is inconsistent with the Commission's own precedent governing restrictions on competition.

The proposal is also fundamentally inconsistent with ordinary commercial practice. As Mr. Lacey observed, consumers routinely enter month-to-month arrangements for products and services—including cellular telephone service, insurance, internet service, streaming services, and similar recurring relationships—without being required to reconfirm their decision every three months. The Commission's existing regulations governing competitive electricity supply reflect that same practical understanding by requiring meaningful disclosures at enrollment and upon material changes, not perpetual reaffirmation of a customer's original choice.[133]

Finally, FE PA has not explained how this proposal would be implemented, what costs implementation would impose, or who ultimately would bear those costs. Nor has FE PA demonstrated that repeatedly requiring affirmative consent would improve affordability, increase customer understanding, or produce any measurable customer benefit. What the proposal plainly will do is increase administrative burdens, create

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[132] RESA St. No. 1 at 24-26; RESA St. No. 1-R at 12-18.

[133] RESA St. No. 1 at 17-20.

additional opportunities for customers to be involuntarily returned to default service, and further discourage suppliers from offering innovative competitive products to Pennsylvania customers.

Even assuming FE PA had demonstrated some level of customer confusion—which it has not—that would not justify the proposal, under the Commission's own precedent, FE was also required to demonstrate that no reasonable alternative exists before restricting competition and customer choice. FE PA made no such showing. It never analyzed whether the Commission's existing disclosure requirements under Section 54.10 adequately address the concerns it identifies, never proposed targeted modifications to those regulations, and never explained why the Commission should abandon the less restrictive approach it adopted in 2014 in favor of an unprecedented recurring affirmative-consent requirement. Instead, FE PA simply assumes that customers paying more than the PTC establishes harm caused by competition and proceeds directly to one of the most restrictive remedies available. That is insufficient under both the Competition Act and the Commission's own precedent.

Because FE PA has failed to demonstrate that the Commission's existing regulatory framework is inadequate, failed to demonstrate harm caused by competition requiring additional restrictions on competition, failed to evaluate less restrictive alternatives, and failed to identify any statutory or regulatory authority for this unprecedented recurring affirmation requirement, the ALJs should recommend that the Commission reject this proposal regardless of whether it is considered through FE PA's Petition or the Joint Petition.

C. Changes to Purchase of Receivables (POR) Program

A Purchase of Receivables ("POR") program is a billing and payment mechanism under which an electric distribution company purchases the receivables associated with a customer's supply charges when the customer is billed through utility consolidated billing. The utility then bills, collects, and manages credit for both distribution and supply charges through a single consolidated bill. FE PA's POR program is governed by Section 12.9 of its Supplier Coordination Tariff which makes clear that it is applicable across multiple residential and commercial customer classes served on consolidated EDC billing under the following rate schedules:[134]

Rate Schedule	ME	PN	PP	WP
Residential Service RS	X	X	X	X
General Service GS-Small	X	X	X	X
General Service GS-Medium	X	X	X	X
Borderline Service	X	X		
Street Lighting Service	X	X		
Street Lighting Service-SV			X	
Street Lighting Service-SVD			X	
Street Lighting Service-SM			X	
Private Outdoor Lighting Service PLS			X	
Ornamental Street Lighting Service	X	X		
Outdoor Lighting Service	X	X		
Municipal Service	X	X		
51-58 and 71				X
GS-V	X	X	X	X

The Commission has repeatedly recognized that POR programs are not merely a supplier accommodation, but a customer-focused component of Pennsylvania's competitive market design. As Mr. Lacey explains, POR programs promote billing

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134 FirstEnergy Pennsylvania Electric Company, Electric Pa P.U.C. No. S-1 page 37. *See also* FE PA Exhibit CDL-4 (proposed changes to Supplier Coordination Tariff).

simplicity, facilitate utility consolidated billing, reduce barriers to supplier participation, expand customer access to competitive supply options, and improve the effectiveness of utility collections.[135] Accordingly, the Commission's Default Service Policy Statement expressly provides that "[t]he public interest would be served by the consideration of an EGS receivables purchase program in each service territory."[136] This policy reflects more than a general preference for POR. The Commission has determined that a viable POR program is "an essential element to the creation of a competitive retail electricity market," that a properly structured POR program is necessary to carry out Chapter 28 of the Competition Act, and that POR is an "essential tool" for reducing barriers to entry by electric generation supplier.[137] The Commission has consistently maintained that policy through successive default service proceedings, including FE PA's default service plans, where POR has remained a central component of the supplier coordination framework.

FE PA now asks the Commission to fundamentally restructure one of the foundational components of Pennsylvania's competitive retail market. Rather than using POR to encourage supplier participation and customer choice, FE PA proposes to condition access to that Commission-approved market mechanism upon the price an EGS charges. Specifically, FE PA proposes that, for contracts entered into after June 1, 2027, an EGS using utility consolidated billing will be eligible for POR only if it utilizes rate-ready billing and charges a rate at or below the PTC at the time of enrollment or any subsequent rate change. The Joint Petition adopts that proposal and further provides that FE PA's existing POR Clawback Provision will be phased out during the first year of DSP VII if the new restrictions are approved.[138]

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135 RESA St. No. 1 at 27.

136 52 Pa. Code § 69.1814.

137 *PPL Electric Utilities Corporation Retail Markets, Docket No. M-2009-2104271,* Opinion and Order entered Aug. 11, 2009 at 27-33.

138 Joint Petition ¶ 67.

FE PA justifies these restrictions primarily on affordability grounds. According to FE, residential customers paying prices above the PTC generate increased customer complaints, increased termination activity, higher uncollectible expense, and increased collection costs. FE PA therefore concludes that suppliers charging prices above the PTC should lose access to the Company's POR program.[139] In FE PA's view, restricting POR eligibility will reduce above-PTC pricing by shifting collection risk back to suppliers and thereby improve customer affordability.

FE PA's own filing reveals another fundamental disconnect between the problem it claims to be addressing and the remedy it proposes. Throughout the Petition and Mr. Young's testimony, FE explains that its retail shopping changes are intended to address concerns arising from *residential shopping customers* paying prices above the PTC and the resulting impact on residential customer affordability.[140] Indeed, FE PA specifically identifies "FE PA residential shopping customers" as the basis for the proposed supplier tariff changes and explains that the revised POR eligibility requirements are intended to incentivize EGSs to consider the impact of their pricing on "a customer's ability to pay and affordability."[141] The proposal FE PA actually asks the Commission to approve, however, is far broader. It does not simply modify the POR program for residential customers. Rather, FE PA proposes to rewrite Section 12.9 of its Supplier Coordination Tariff governing the POR program itself. Under the proposed tariff, every EGS seeking to utilize POR for any residential or commercial customer served through utility consolidated billing must satisfy FE PA's new pricing and rate-ready billing requirements. Those restrictions would apply not only to Residential Service, but also to General Service-Small, General Service-Medium, General Service-V, Borderline Service,

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[139] FE PA St. No. 1 at 24-28; FE PA St. No. 1-R at 9-13.

[140] Petition ¶¶ 50-55; Young St. No. 1 at 20-28.

[141] Petition ¶¶ 50, 54-55.

Municipal Service, and numerous additional commercial, municipal, and lighting rate schedules.[142]

That disconnect is significant. Nothing in FE PA's filing explains why rewriting the rules governing the POR program for every residential and commercial customer class eligible for POR is an appropriate response to the residential affordability concerns FE PA identifies. FE PA has not asked the Commission to approve a narrowly tailored residential affordability measure. It has asked the Commission to fundamentally restructure a Commission-approved competitive market mechanism serving multiple customer classes. Yet neither the Petition nor the supporting testimony contains any analysis explaining why concerns FE PA attributes principally to residential shopping customers justify imposing those same restrictions across the broader POR program. FE PA presented no evidence that the commercial and other customer classes subject to the revised tariff present the same alleged affordability concerns, contribute to the collection issues FE PA identifies, or otherwise warrant conditioning supplier participation in the POR program upon price. Under the Commission's own precedent, that mismatch between the scope of the alleged harm and the breadth of the proposed restriction is itself a sufficient reason to reject the proposal.

The record does not support that conclusion. As discussed in Section VI.A.4 above, point-in-time comparisons between competitive supplier prices and the PTC do not establish harm caused by competition. More fundamentally, the principal data relied upon by FE PA and the Settlement proponents do not actually measure supplier-specific collection performance. As Mr. Lacey explains, FE PA's uncollectible expense analyses are based upon accounting allocation methodologies that allocate generation-related uncollectible expense between default service and POR based upon billed revenues rather than actual supplier-specific write-offs.[143] Moreover, FE PA maintains multiple datasets

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142 Exhibit CDL-4, Proposed Supplier Coordination Tariff § 12.9, at Revised Page 037.

143 RESA St. No. 1SR at 10-11.

regarding customer payment performance – including write-offs, payment-troubled customers, arrearages, and other measures – that do not necessarily measure the same thing. The existence of those multiple datasets makes it difficult to conclude that any single metric, standing alone, provides a sufficient basis for the significant competitive market restrictions FE PA proposes.[144] None of the proponents analyze whether fundamentally restructuring the POR framework would affect supplier participation, supplier attrition, product diversity, customer access to competitive products, or innovative retail offerings before recommending this significant market restriction.[145]

Nor did FE PA demonstrate that its existing POR protections are inadequate. In fact, FE PA itself acknowledges that the Commission approved the Clawback Provision as a permanent element of DSP VI and that it employs objective screening criteria to identify suppliers whose write-offs substantially exceed those of their peers.[146] That Commission-approved Clawback Provision is specifically designed to identify suppliers generating unusually high write-offs and require those suppliers to bear additional costs. Indeed, when the Commission previously identified concerns with the operation of FE PA's POR program, it adopted targeted improvements rather than broad restrictions on competition. In DSP V, the Commission required FE PA to provide participating EGSs with quarterly customer arrears reports specifically so suppliers could identify payment issues early, work with customers, and reduce clawback exposure before write-offs occurred.[147] In approving DSP VI, the Commission concluded that continuation of the Clawback Provision represented a reasonable mechanism for managing POR-related

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144 RESA St. No. 1SR at 10-12.

145 RESA St. No. 1R at 20-21.

146 FE PA St. No. 1 at 25-27.

147 See FE DSP V Order at 17-19 (adopting Joint Stipulation No. 2, ¶ 3); id. at 20-21 (discussing RESA's recommendation that timely arrears information would enable suppliers to proactively reduce write-offs).

uncollectible expense while expressly recognizing that future modifications could be proposed if experience demonstrated they were warranted.[148]

FE PA did not offer any proposals to refine the existing Clawback Provision, no analysis evaluating whether refinements to that Commission-approved mechanism could adequately address its stated concerns, and no explanation as to why the existing Clawback Provision could not be strengthened before replacing it with a pricing restriction that conditions POR eligibility upon the price an EGS charges.[149] Instead, FE PA proceeds directly from the assumption that some customers paid more than the PTC to the conclusion that suppliers charging above the PTC should lose access to one of the Commission's principal market-enhancement mechanisms. That is precisely the type of incomplete analysis the Commission rejected in PECO DSP VI, where it required proponents of restrictions on competition to demonstrate not only the existence of harm, but also that no reasonable alternative exists.

The proposal, therefore, suffers from the same analytical defects discussed throughout this Brief. Even assuming FE PA identified legitimate affordability concerns—which RESA disputes—it was still required under the Commission's own precedent to demonstrate not only that restricting competition through POR eligibility was necessary, but also that no reasonable alternative existed. FE PA performed no such analysis. Indeed, FE PA never demonstrated why the residential affordability concerns it identifies require restructuring a Commission-approved competitive market mechanism that has long served as a foundational element of Pennsylvania's retail market design. As Mr. Lacey explained, neither FE PA nor the Settlement proponents evaluated whether less restrictive alternatives could address their stated concerns while preserving the

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148 *Petition of Metropolitan Edison Co. et al. for Approval of Their Default Service Plans,* Docket Nos. P-2021-3030012 et al., Recommended Decision, adopted without modification by Opinion and Order entered Aug. 4, 2022, at 85-86.

149 FE PA St. No. 1 at 25-28.

public-interest benefits historically associated with POR programs. Nor did they analyze the proposal's effect on supplier participation, supplier attrition, product diversity, customer access to competitive products, renewable-energy offerings, or other innovative retail products before recommending these restrictions.[150]

Mr. Lacey also identified a separate and independent defect in FE PA's proposal. POR eligibility would be limited not only by price, but also by a new requirement that suppliers utilize rate-ready billing. FE PA presented no evidence regarding how many suppliers currently utilize bill-ready billing, how many suppliers would lose POR eligibility solely because of that restriction, or what effect the proposed billing limitation would have on supplier participation, product availability, customer choice, or innovation. Nor did FE PA explain why limiting POR eligibility to rate-ready billing is necessary to accomplish its stated objectives.[151] Before restricting competition, the Commission's own precedent requires precisely that type of analysis.[152] FE PA performed none. Under the Commission's own framework, that omission alone precludes approval of a proposal restricting competition and supplier participation.

Perhaps most importantly, Mr. Lacey does not suggest that the existing POR framework is beyond improvement. To the contrary, he identifies numerous alternatives the Commission could consider if it determines additional customer protections are warranted, including preserving and improving the existing POR framework, enhancements to utility billing systems, supplier consolidated billing, outsourced billing arrangements, alternative default service providers, unbundling of default service functions, and other market-design enhancements that could be developed through a collaborative process.[153] Those alternatives are illustrative rather than exhaustive. Their

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[150] RESA St. No. 1-SR at 20-21; RESA Exh. FL-21; PECO DSP VI Order at 75-76.

[151] RESA St. No. 1 at 30-32.

[152] PECO DSP VI Order at 75-76.

[153] RESA St. No. 1 at 36-37.

significance is that they demonstrate numerous potential approaches that preserve and improve Pennsylvania's competitive market without conditioning supplier participation upon price. The point, however, is that FE PA never considered any of those alternatives. Rather than evaluating whether the Commission's existing competitive market framework could be improved while preserving customer choice, FE PA simply proposes restricting supplier participation by conditioning access to a Commission-approved market mechanism upon price. That is precisely the type of incomplete analysis the Commission rejected in PECO DSP VI.

Viewed collectively, these restrictions reveal the true nature of FE PA's proposal. Access to a Commission-approved market-enhancement mechanism would no longer depend upon an EGS's operational qualifications or financial responsibility. Instead, it would depend upon the price the supplier chooses to charge. The Competition Act expressly provides that the generation of electricity "shall no longer be regulated as a public utility service."[154] Although FE PA does not directly cap the prices an EGS may charge, it conditions participation in one of Pennsylvania's principal competitive market mechanisms upon compliance with FE PA's preferred pricing benchmark. The Commission may not accomplish indirectly through POR eligibility what the Competition Act prohibits it from doing directly—regulating competitive generation prices.

Finally, FE PA repeatedly responds that suppliers remain free to continue participating in utility consolidated billing without POR. As Mr. Lacey explains, however, that misses the point. The relevant question is not whether suppliers can theoretically survive without POR. The relevant question is whether restricting access to one of the Commission's foundational market-enhancement mechanisms will reduce supplier participation, product availability, customer choice, and innovation.[155] FE PA

[154] 66 Pa. C.S. §§ 2802(14), 2806(a).

[155] RESA St. No. 1-SR at 19-21.

performed no such analysis. As competitive suppliers increasingly offer renewable energy products, distributed energy resources, electric vehicle charging, demand response, and other innovative services extending beyond commodity electricity supply, restricting POR eligibility based upon a historical pricing benchmark discourages precisely the type of innovation the Competition Act was intended to foster.[156]

Accordingly, FE PA has not simply proposed revisions to the administration its POR program. It is asking the Commission to fundamentally restructure one of the principal mechanisms supporting Pennsylvania's competitive retail electricity market. Yet is has failed to demonstrate that the existing POR framework is inadequate, failed to establish that the proposed restrictions are necessary to address any demonstrated harm caused by competition, failed to evaluate less restrictive alternatives, failed to assess the proposal's impact on supplier participation, innovation, customer choice, or the broader competitive market, and failed to identify any statutory authority permitting the Commission to condition participation in a Commission-approved market-enhancement program upon competitive generation pricing. Having failed to satisfy either the Competition Act or the Commission's own framework for restricting competition, FE PA’s proposal cannot be reconciled with Pennsylvania's long-standing competitive retail market design. The ALJs should therefore recommend that the Commission reject FE PA’s proposed changes to the POR program.

VII. <u>CONCLUSION</u>

The General Assembly made the policy choice that governs this proceeding nearly three decades ago. Rather than continuing to regulate generation prices, it directed the Commission to foster a competitive retail electricity market and to procure default service through competitive processes designed to provide customers the least cost over time. The challenged provisions of the Joint Petition depart from that legislative framework. They seek to address today's affordability concerns not by improving the competitive

[156] RESA St. No. 1 at 33-36.

market the Competition Act requires, but by restricting competition, shifting wholesale market risks to customers, and indirectly influencing competitive generation prices through regulatory means. Several of the challenged proposals go even further by fundamentally restructuring long-standing components of Pennsylvania's competitive retail market without demonstrating that the scope of those restrictions is justified by the harms they purport to address.

The Commission's own precedent likewise establishes the framework for evaluating such proposals. Before restricting competition or customer choice, the proponent must demonstrate that the competitive market itself is causing harm, that reasonable alternatives have been considered, and that the proposed restriction represents the least restrictive means of addressing that harm. As demonstrated through the testimony of RESA witness Frank Lacey, FE PA and the Settlement proponents failed to satisfy that burden. Instead, they largely assumed that customers paying more than the Price to Compare established that competition is causing harm, then proceeded directly to proposals that restrict competition without meaningfully evaluating their consequences for customer choice, supplier participation, innovation, or the long-term health of Pennsylvania's competitive retail market.

If aspects of Pennsylvania's competitive retail market warrant improvement, the appropriate response is to improve that market – not to dismantle the competitive framework the Legislature established and the Commission has spent decades developing. The record demonstrates that many of the challenged proposals can be addressed through less restrictive means that preserve competition while continuing to protect customers.

For these reasons, the Administrative Law Judges should recommend that the Commission reject the challenged provisions of the Joint Petition, reject FE PA's corresponding underlying proposals, and approve only those portions of DSP VII that are consistent with the Competition Act, supported by substantial evidence, and in the public interest.

Respectfully submitted,

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APPENDIX A

PROPOSED FINDINGS OF FACT

APPENDIX A – PROPOSED FINDINGS OF FACT

1. The Retail Energy Supply Association ("RESA") is a trade association of power marketers, independent power producers, and a broad range of companies within the Mid-Atlantic marketplace, each of whom support the electric services industry and seek to develop a more competitive power industry.

2. RESA members are licensed to sell electric energy in the markets of Pennsylvania's major electric distribution companies ("EDCs"), including in the service territory of FirstEnergy Pennsylvania Electric Company ("FE PA" or the "Company"). RESA St. No. 1 at 3.

3. Parties to the Non-Unanimous Settlement are FE PA, OCA, OSBA, the Coalition for Affordable Utility Services and Energy Efficiency in Pennsylvania ("CAUSE-PA"), and Walmart, Inc. Duquesne Light Company also supports certain provisions of the Settlement. Joint Petition at 1, fn 1.

4. Parties not opposing the Settlement are Met-Ed Industrial Users Group, the Penelec Industrial Customer Alliance, and West Penn Power Industrial Intervenors (collectively, the "Industrial Customer Groups"), and The Pennsylvania State University ("PSU"). Joint Petition at fn. 1.

5. Parties opposing the Settlement are RESA, Constellation Energy Generation, LLC and Constellation NewEnergy, Inc. ("Constellation"), the Customer-Generator Coalition ("CGC"), Dimension PA 1, LLC ("Dimension"), Penn Renewables LLC ("Penn Renewables"), Shipley Choice, LLC d/b/a Shipley Energy and Interstate Gas Supply, LLC d/b/a IGS Energy (collectively, the "EGS Parties"), the Solar Energy Industries Association and the Coalition for Community Solar Access (collectively, the "Joint Solar Advocates" or "JSA"), Town Square Energy East, LLC ("Town Square"), and WGL Energy Services, Inc. ("WGL"). Joint Petition at fn. 1.

6. Since the Commission first approved FE PA's post-restructuring default service procurement model in 2009 (effective January 1, 2011), FE PA has procured default service through fixed-price, full-requirements contracts under which wholesale suppliers assume the obligations of a PJM load-serving entity, including responsibility for energy, capacity, transmission service, ancillary services, PJM administrative expenses, and other obligations specified in the Supplier Master Agreement ("SMA"). *Joint Petition of Metropolitan Edison Company and Pennsylvania Electric Company for Approval of Their Default Service Programs*, Docket Nos. P-2009-2093053 & P-2009-2093054, Opinion and Order entered Nov. 6, 2009, at 26-27 ("DSP I Order").

7. The Commission consistently reaffirmed FE PA's procurement structure in each subsequent default service proceeding. See, e.g., Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co. and West Penn Power Co. for Approval of Their Default Service Programs, Docket Nos. P-2011-

2273650, P-2011-2273668, P-2011-2273669 & P-2011-2273670, Opinion and Order, entered Aug. 16, 2012, at 73-76 ("DSP II Order"), as modified on reconsideration, Opinion and Order, entered Sept. 27, 2012 ("DSP II Reconsideration Order"), and Amended Opinion and Order, entered Oct. 11, 2012; Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co. and West Penn Power Co. for Approval of Their Default Service Programs, Docket Nos. P-2013-2391368, P-2013-2391375, P-2013-2391376 & P-2013-2391377, Opinion and Order, entered Feb. 20, 2015, at 41-47 ("DSP III Order"); Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co. and West Penn Power Co. for Approval of Their Default Service Programs, Docket Nos. P-2015-2495062, P-2015-2495063, P-2015-2495064 & P-2015-2495065, Recommended Decision, adopted by Opinion and Order entered Feb. 9, 2017, at 31-36 ("DSP IV RD"); Joint Petition of Metropolitan Edison Co., Pennsylvania Electric Co., Pennsylvania Power Co. and West Penn Power Co. for Approval of Their Default Service Programs, Docket Nos. P-2017-2637855, P-2017-2637856, P-2017-2637857 & P-2017-2637865, Opinion and Order, entered Sept. 4, 2018, at 18-19 ("DSP V Order"); Petition of Metropolitan Edison Co. for Approval of Its Default Service Plan for the Period from June 1, 2023 through May 31, 2027, Docket No. P-2021-3030012, et al., Recommended Decision, adopted without modification by Opinion and Order entered Aug. 4, 2022, at 23-30 ("DSP VI RD").

8. In DSP IV, the Commission expressly approved a settlement providing that Network Integration Transmission Service ("NITS") would remain the obligation of both default service suppliers and electric generation suppliers. DSP IV RD at 36 ("NITS will remain the obligation of default service providers and electric generation suppliers during the default service delivery period beginning June 1, 2017.").

9. DSP V preserved the existing allocation of NITS responsibility, expressly providing that "NITS will remain the responsibility of both default service and electric generation suppliers." DSP V Order at 18-19.

10. DSP VI continued to require wholesale suppliers to fulfill all transmission obligations under the Supplier Master Agreement as part of the full-requirements product. DSP VI RD at 23-27 and Ordering ¶ 4.

11. Removing supplier risk premiums does not eliminate the underlying risk associated with future transmission costs. Rather, the risk of changing transmission costs for default customers does not go away, because the proposal guarantees that the price change (increase) will be borne in full by the default service customer. Put simply, removing the risk premiums does not remove the risk. It moves the risk—to the customers who generally have limited ability to evaluate or manage those risks. RESA St. No. 1 at 39-42; RESA St. No. 1R at 30-31.

12. OCA witness Dr. Ogur expressly acknowledged in discovery that FE PA's proposal "shift[s] cost risks associated with NITS charges from suppliers to customers, in return for eliminating risk premiums in wholesale fixed price full requirement suppliers' bids tied to NITS cost uncertainty." RESA Exhibit FL-26; RESA Statement No. 1R at 30-31.

13. One of the fundamental principles underlying Pennsylvania's restructuring of the electric industry was to transfer generation-related market risks away from captive ratepayers and to competitive market participants capable of managing those risks. RESA St. No. 1 at 4-8.

14. FE PA presented no analysis comparing the long-term cost to customers of supplier-managed risk versus customer-borne risk, no evidence that wholesale default service suppliers have been unable to manage NITS successfully under FE PA's historical procurement model, and no evidence that customers will ultimately be better off if the wholesale default service product itself is fundamentally changed. RESA St. No. 1 at 39-42; RESA St. No. 1R at 30-31.

15. FE PA's NITS proposal creates an economic advantage for EDC-provided default service because it requires a higher price for the EGS to hedge the risk that default service suppliers are not providing. RESA St. No. 1 at 44.

16. FE PA's CPP proposal relieves suppliers of significant wholesale market risks through the CPP mechanism while simultaneously removing NITS from the wholesale procurement product, thereby reducing the scope of the wholesale product suppliers are actually being asked to price. RESA St. No. 1 at 48-49.

17. CPP shifts capacity price risk from wholesale default service suppliers to default service customers while reducing suppliers' long-term hedging obligations. Wholesale default service suppliers are better positioned than customers to manage those risks and should remain responsible for doing so, just as competitive retail suppliers remain responsible for managing capacity risk in their retail contracts. RESA St. No. 1R at 31-32.

18. The proposes HP Rider as written does not reflect “full requirements” as it does not include NITS. RESA St. No. 1 at 48-49.

19. FE PA recovers its own costs to serve Hourly Pricing Service ("HPS") customers in the HP Rider via an HP Administrative Charge. RESA St. No. 1 at 49.

20. The Company's Customer Referral Program ("CRP") provides eligible customers with an opportunity to select among a group of EGSs that have voluntarily chosen to offer customers a twelve-month contract priced at least 7% below the Company's applicable PTC at the time of the offer. Customers may terminate a CRP contract at any time without penalty, either to re-enroll in the CRP with a new rate, select another EGS, or return to default service. FE PA St. No. 4 (De La Rosa) at 8-11.

21. FE PA's CRP has produced documented customer savings. Participating customers achieved cumulative savings of more than $750,000 compared to the applicable Price to Compare across the FE PA service territories during the period analyzed by the Company. RESA St. No. 1-SR at 23; RESA Exh. FL-32.

22. The CRP provides direct and measurable economic benefits to customers participating in the program. RESA St. No. 1R at 22.

23. FE PA held a stakeholder meeting that primarily consisted of a presentation of FE's historical participation data. It did not meaningfully evaluate reforms that might improve supplier participation, customer participation, customer education, pricing methodology, or other modifications that could preserve the demonstrated customer benefits of the CRP while addressing the concerns identified by FE PA. RESA St. No. 1-SR at 22-24; RESA Exh. FL-22.

24. An EDC's default service product competes in the market with EGS products and services. RESA St. No. 1 at 5.

25. Maryland's SB-1, 2024 Md. Laws Ch. 537, has resulted in an electricity market that is providing zero offers to residential customers and has transitioned the market from one in which about 13% of residential customers were on competitive supply contracts to one in which less than one-half of one percent of customers are on competitive supply contracts. RESA St. No. 1 at 4-5.

26. Maryland's SB-1 included provisions similar to those proposed in FE PA's Petition including the following: (1) residential electricity supply contracts other than for renewable energy had to be priced below the trailing 12-month average of the host utility's standard offer [i.e., default service] rate; (2) residential supply contracts cannot exceed 12 months; (3) inability to auto-renew renewable energy contracts; (4) prohibited variable rate contracts that varied with anything other than seasonality and changed not more than twice in a single year; and (5) removed POR capabilities from the market. RESA St. No. 1 at 9-10.

27. According to the Maryland Public Service Commission, prior to enactment of Maryland's SB-1, in January 2024, 12.8% of residential customers in the state were taking competitive supply service. In January 2026, the statewide residential shopping percentage stood at 0.3% and at 0.2% in FirstEnergy's Maryland service territory. RESA St. No. 1 at 10; s*ee also* Maryland Public Service Commission, Electric Choice Monthly Enrollment Reports, available at: https://psc.maryland.gov/regulated-utilities/electricity/electric-choice-enrollment-reports/.

28. On May 12, 2026, Maryland's HB-1532 was signed into law, also known as the Utility RELIEF Act. This bill repealed some of the provisions of SB-1, in an effort to reenergize electric choice in Maryland. RESA St. No. 1 at 10.

29. FE PA proposes to require that an EGS's residential customers be returned to default service at the conclusion of their EGS contract term, absent an affirmative choice to remain with the EGS in response to the notices required by Commission regulations related to expiring contracts. RESA St. No. 1 at 14; FE PA St. No. 1 at 20.

30. Customers already provide affirmative consent upon enrollment with the EGS and the terms of the contract for enrolling with that EGS. RESA St. No. 1 at 14.

31. The rulemaking process enacting the Commission's current contract renewal rules was an almost three-year process that included comments from more than a dozen stakeholders, including trade associations that represent dozens of additional companies and millions of customers. The U.S. Federal Trade Commission also weighed in on the rulemaking. RESA St. No. 1 at 14.

32. FE PA seeks a waiver of 52 Pa. Code § 54.10(3). RESA St. No. 1 at 14.

33. FE PA has not requested a waiver of 52 Pa. Code Chapter 57, Subchapter M.

34. There is nothing new in FE PA's filing to justify a reversal or waiver of the Commission's long-standing view of affirmative consent and the processes EGSs are required to follow upon expiration of an existing customer contract. RESA St. No. 1 at 15-16.

35. The Commission's regulations in 52 Pa. Code § 54.10 were adopted after a thorough review and rejection of the same arguments that FE PA has made in this case. RESA St. No. 1 at 15.

36. The Commission has levied maximum civil penalties on EGSs who have slammed customers. *See PUC v. MXenergy Electric Inc.*, Docket No. M-2012-2201861, Order entered Dec. 5, 2013, at 9, q*uoting PUC v. Total Gas & Electric Inc.*, Docket No. M-0011529, Order entered Sept. 26, 2001, at 5 (the Commission stressed that it does not trivialize slamming allegations and seeks to deter such conduct by instituting firm retaliatory measures).

37. The PTC is not a competitive market price. Rather, it is nothing more than a point-in-time pricing metric reflecting historical wholesale procurement costs and numerous reconciliations and adjustments. RESA St. No. 1 at 50-53; RESA St. No. 1-R at 5-7.

38. The PTC does not obligate FE PA to provide service at that price at any point in the future. RESA St. No. 1 at 50-53; RESA St. No. 1-R at 5-7.

39. An EGS contract price is an actionable, enforceable agreement to provide goods and services for a time period into the future. RESA St. No. 1 at 50-53; RESA St. No. 1-R at 5-7.

40. Competitive products may include fixed-price certainty, renewable energy, rewards programs, bundled products, customer service features, or other value-added services that default service simply does not provide. Yet neither OCA nor CAUSE-PA performed any analysis regarding customer preferences for those non-price attributes, fixed-price certainty, hedging value, renewable energy, or other customer considerations before concluding that customers paying more than the PTC necessarily received no commensurate value. RESA St. No. 1 at 50-56; RESA St. No. 1-R at 4-11; RESA Exh. FL-12; RESA Exh. FL-13; RESA Exh. FL-14.

41. There are many industries where residential consumers have term-based contracts that auto-renew absent a consumer's direct action, such as cellular phones, auto insurance, homeowners' insurance, cable or streaming services, newspaper and magazine subscriptions, and basic internet services, to name just a few. RESA St. No. 1 at 17.

42. FE PA has no insight into the customer's decision-making process or the terms of the contract between a customer and an EGS. RESA St. No. 1 at 17.

43. FE PA cannot promise that its default service price will be lower than a supplier's renewal term. RESA St. No. 1 at 18.

44. FE PA proposes to return customers to default service at the end of the contract term even if the default service price is higher than the EGS contract price. RESA St. No. 1 at 18; RESA Exh. FL-3.

45. FE PA does not know if there is a renewal incentive included in the customer's original contract with the EGS, or if the customer values other aspects of the contract (such as renewable energy). RESA St. No. 1 at 18.

46. As of 2024, approximately 43% of all residential shopping customers are choosing renewable energy products. RESA St. No. 1 at 18; Pa. Pub. Util. Comm'n, *Retail Electricity Report, Activity Report 2024*, (December 2025), at 32, available at: https://www.puc.pa.gov/media/3747/retail-elec-choice-report-2024-final.pdf.

47. FE PA's proposal may interfere with a customer's contract to provide services to the wholesale market under FERC Order Nos. 745 or 2222. This could financially

harm the customer, jeopardize the operational reputation of the supplier, and potentially expose the EGS to financial penalties from PJM or sanctions from the Commission (or FERC). RESA St. No. 1 at 19.

48. FE PA has not provided data about the Company's costs to implementing its proposal, which will almost certainly be passed on to captive ratepayers. RESA St. No. 1 at 19.

49. FE PA proposes that, beginning on June 1, 2027, "EGSs will be required to provide an attestation of affirmative customer consent on a quarterly basis for all residential customers on variable-priced month-to-month products." RESA St. No. 1 at 14; FE PA St. No. 1 at 21.

50. In 2014, the Commission strengthened the disclosure requirements in Section 54.10, required detailed contract expiration notices, and – most significantly – required EGSs to provide customers with at least thirty days' advance notice of every subsequent price change after a customer transitions to a month-to-month variable-priced product. *See Final Rulemaking Order, Revision of the Electric Generation Customer Choice Disclosure Statement Regulations*, Docket No. L-2012-2317273 (entered Dec. 18, 2014), 44 Pa.B. 7523 (Dec. 20, 2014); 52 Pa. Code § 54.10(2)(ii)(A)(I).

51. FE PA has not demonstrated that residential customers on month-to-month products are suffering any cognizable harm requiring the Commission to impose a recurring affirmative-consent obligation. RESA St. No. 1 at 24-26; RESA St. No. 1-R at 12-18.

52. The Commission's regulations require meaningful disclosures at enrollment and upon material changes, not perpetual reaffirmation of a customer's original choice. RESA St. No. 1 at 17-20.

53. A Purchase of Receivables ("POR") program is a billing and payment mechanism under which an electric distribution company purchases the receivables associated with a customer's supply charges when the customer is billed through utility consolidated billing. The utility then bills, collects, and manages credit for both distribution and supply charges through a single consolidated bill. RESA St. No. 1 at 27.

54. POR programs promote billing simplicity, facilitate utility consolidated billing, reduce barriers to supplier participation, expand customer access to competitive supply options, and improve the effectiveness of utility collections. RESA St. No. 1 at 27.

55. FE PA's uncollectible expense analyses are based upon accounting allocation methodologies that allocate generation-related uncollectible expense between default service and POR based upon billed revenues rather than actual supplier-specific write-offs. RESA St. No. 1-SR at 10-11.

56. None of the proponents of the POR changes analyze whether the proposed POR restrictions would affect supplier participation, supplier attrition, product diversity, customer access to competitive products, or innovative retail offerings before recommending this significant market restriction. RESA St. No. 1-R at 20-21.

57. FE PA acknowledges that the Commission approved the Clawback Provision as a permanent element of DSP VI and that it employs objective screening criteria to identify suppliers whose write-offs substantially exceed those of their peers. FE PA St. No. 1 at 25-27.

58. When the Commission previously identified concerns with the operation of FE PA's POR program, it adopted targeted improvements rather than broad restrictions on competition. In DSP V, the Commission required FE PA to provide participating EGSs with quarterly customer arrears reports specifically so suppliers could identify payment issues early, work with customers, and reduce clawback exposure before write-offs occurred. *See* FE DSP V Order at 17-19 (adopting Joint Stipulation No. 2, ¶ 3); *id*. at 20-21 (discussing RESA's recommendation that timely arrears information would enable suppliers to proactively reduce write-offs).

59. In approving DSP VI, the Commission concluded that continuation of the Clawback Provision represented a reasonable mechanism for managing POR-related uncollectible expense while expressly recognizing that future modifications could be proposed if experience demonstrated they were warranted. *Petition of Metropolitan Edison Co. et al. for Approval of Their Default Service Plans,* Docket Nos. P-2021-3030012 et al., Recommended Decision, adopted without modification by Opinion and Order entered Aug. 4, 2022, at 85-86.

60. In this proceeding, FE PA has offered no proposal to modify the existing Clawback Provision, no analysis evaluating whether refinements to that Commission-approved mechanism could adequately address its stated concerns, and no explanation as to why the existing Clawback Provision could not be strengthened before replacing it with a pricing restriction that conditions POR eligibility upon the price an EGS charges. FE PA St. No. 1 at 25-28.

61. Regarding its rate-ready billing proposal, FE PA presented no evidence regarding how many suppliers currently utilize bill-ready billing, how many suppliers would lose POR eligibility solely because of that restriction, or what effect the proposed billing limitation would have on supplier participation, product availability, customer choice, or innovation. Nor did FE explain why limiting POR eligibility to rate-ready billing is necessary to accomplish its stated objectives. RESA St. No. 1 at 30-32.

62. There are numerous alternatives the Commission could consider to improve the existing POR framework if it determines additional customer protections are warranted, including preserving and improving the existing POR framework,

enhancements to utility billing systems, supplier consolidated billing, outsourced billing arrangements, alternative default service providers, unbundling of default service functions, and other market-design enhancements that could be developed through a collaborative process. RESA St. No. 1 at 36-37.

APPENDIX B

PROPOSED CONCLUSIONS OF LAW

APPENDIX B – PROPOSED CONCLUSIONS OF LAW

1. As a creation of the Legislature, the Commission has only the powers and authority granted to it by the Legislature and contained in the Public Utility Code, 66 Pa. C.S. §§ 101 *et seq. See City of Phila. v. Phila. Elec. Co.*, 473 A.2d 997, 999-1000 (Pa. 1984) ("We begin our inquiry by recognizing that the authority of the Commission must arise from the express words of the pertinent statutes or by strong and necessary implication therefrom…It is axiomatic that the Commission's power is statutory; and the legislative grant of power in any particular case must be clear."); *see also Feingold v. Bell Tel. Co. of Pa*., 383 A.2d 791, 795 (Pa. 1977); *Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937, Order entered May 28, 2008.

2. A part of the Public Utility Code, the Electricity Generation Customer Choice and Competition Act ("Competition Act") addresses the requirements that FirstEnergy, as the default service provider, must meet. *See* 66 Pa. C.S. § 2807(e).

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

4. The Competition Act expressly provides that the generation of electricity "shall no longer be regulated as a public utility service." 66 Pa. C.S. § 2802(12).

5. The Competition Act declares that "competitive market forces are more effective than economic regulation in controlling the cost of generating electricity." 66 Pa. C.S. § 2806(a).

6. The Competition Act directs the Commission to foster a competitive retail electricity market while procuring default service through competitive processes designed to provide the least cost to customers over time. 66 Pa. C.S. § 2807(e).

7. The "overarching goal of the [Competition] Act is competition through deregulation of the energy supply industry, leading to reduced electricity costs for consumers." *Coalition for Affordable Util. Servs. and Energy Efficiency in Pennsylvania, et al. v. Pa. Pub. Util. Comm'n*, 120 A.3d at 1101 (Pa. Commw. Ct. 2015), appeal denied, 2016 WL 1383864 (Pa. Apr. 5, 2016). ("CAUSE-PA CAP Shopping Order") (emphasis added); 66 Pa. C.S. § 2802(13).

8. The Competition Act also directs the Commission to create a competitive market for the generation of electricity through a separation of the distribution and generation services that had been previously provided exclusively by the EDCs on a monopoly basis. 66 Pa. C.S. §§ 2801-2812.

9. The purpose of this restructuring is to ensure that "all customers of electric distribution companies in this Commonwealth shall have the opportunity to purchase electricity from their choice of electric generation suppliers ["EGSs"]." 66 Pa. C.S. § 2806(a).

10. The Competition Act requires that EDCs provide EGSs nondiscriminatory access to the EDC's transmission and distribution system on "rates, terms of access and conditions that are comparable to the utilities own use of its system." 66 Pa. C.S. § 2803; 66 Pa. C.S. § 2804(6).

11. The Competition Act empowers the Commission to take steps to prevent anticompetitive or discriminatory conduct and to investigate "the impact on the proper functioning of a fully competitive retail electricity market. . . anticompetitive or discriminatory conduct affecting the retail distribution of electricity." 66 Pa. C.S. §§ 2811(a) and (b).

12. Where a proposal departs from the competitive market framework established by the Competition Act by restricting competition or limiting customer choice, the proponent must demonstrate that the restriction is necessary because an actual harm exists and that no reasonable alternative exists to address that harm. *See Retail Energy Supply Ass'n v. Pa. PUC*, 185 A.3d 1206, 1228 (Pa. Cmwlth. 2018); *Coalition for Affordable Utility Services & Energy Efficiency in Pennsylvania v. Pa. PUC*, 120 A.3d 1087, 1103-04 (Pa. Cmwlth. 2015).

13. A proposed modification to an existing competitive market structure that is inconsistent with Commission regulations "is viewed as a restriction on competition," and therefore may be approved only where "there is a harm associated with competition and no reasonable alternative exists." *Petition of PECO Energy Company for Approval of Its Default Service Program for the Period from June 1, 2025 Through May 31, 2029*, Docket No. P-2024-3046008, Opinion and Order entered Jan. 8, 2025, at 21.

14. Section 332(a) of the Public Utility Code provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. 66 Pa. C.S. § 332(a).

15. It is axiomatic that "[a] litigant's burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence which is substantial and legally credible." *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600, 602 (Pa. Commw. Ct. 1990).

16. A preponderance of the evidence means evidence which is more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

17. Any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Pa. PUC*, 447 A.2d 1100 (Pa. Commw. Ct. 1982); *Edan Transportation Corp. v. Pa. PUC*, 623 A.2d 6 (Pa. Commw. Ct. 1993). More information is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. PUC*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. Ct. 1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center,* 480 A.2d 382 (Pa. Commw. Ct. 1984).

18. Although the Commission generally encourages settlements, it must still review any proposed settlement to determine whether its terms are in the public interest in order to be adopted. 52 Pa. Code § 5.231; *Pa. PUC v. Philadelphia Gas Works*, Docket No. M-00031768 (Order entered Jan. 7, 2004); see also *Pa. PUC Bureau of Investigation and Enforcement v. PPL Electric Utilities Corp.,* Docket No. M-2023-3038060 (Order entered May 16, 2024).

19. The Commission has stated that "the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest." *Pa. PUC et al. v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Order entered July 14, 2011), *citing Warner v. GTE North, Inc.*, Docket No. C-00902815 (Order entered Apr. 1, 1996); *Pa. PUC v. CS Water and Sewer Associates*, 74 PA PUC 767 (1991).

20. In determining whether a settlement is in the public interest and whether a partial settlement should be approved, all objections to the settlement must be considered. *Pa. PUC et al. v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Order entered July 14, 2011).

21. Proposed settlements (including partial settlements) must also be supported by substantial evidence. *Joint Application of West Penn Power Co. d/b/a Allegheny Power, Trans-Allegheny Interstate Line Company and FirstEnergy Corp. for a Certificate of Public Convenience under Section 1102(a)(3) of the Public Utility Code approving a change of control of West Penn Power Co. and Trans-Allegheny Interstate Line Co*., Docket Nos. A-2010-2176520 and A-2010-2176732 (Order entered Mar. 8, 2011), at 17.

22. Customers—not suppliers—are the intended beneficiaries of that competition because they may choose the products and risk allocations that best meet their individual needs. 66 Pa. C.S. § 2802(3), (5), (12); RESA St. No. 1 at 4-7, 11-13.

23. When serving residential and small business customers, EGSs are required to follow the Commission's detailed regulations regarding language to be included in the contracts, as well as the timing and content of notices to be provided to customers upon pending expiration of the contract or notice of material changes. 52 Pa. Code §§ 54.5 and 54.10.

24. Act 129 modified the default service providers' ability to manage default service and put certain requirements on default service suppliers. Act 129 also created very robust energy efficiency and demand response opportunities which use market tools to allow consumers to manage their electricity expenses. *See* 66 Pa. C.S. § 2807(e)(3.1)–(3.9).

25. The Competition Act guarantees customers direct access to competitive suppliers on a nondiscriminatory basis and authorizes the Commission to prevent anticompetitive conduct and protect the proper functioning of a fully competitive retail electricity market. 66 Pa. C.S. §§ 2803, 2804(6), 2811.

26. The Commission has expressly rejected the proposition that customers should automatically return to default service simply because they failed to respond to contract expiration notices, explaining, "[b]ecause the intent of the competitive market is to encourage customers to shop for their retail electricity supply, we do

not believe it is appropriate for a customer to be reverted to default service should that customer fail to respond to either of the two EGS-provided notices." *See, e.g., Rulemaking to Amend the Provisions of 52 Pa. Code, Section 54.5 Regulations Regarding Disclosure Statement for Residential and Small Business Customers and to Add Section 54.10 Regulations Regarding the Provision of Notices of Contract Expiration or Changes in Terms for Residential and Small Business Customers*, Docket No. L-2014-2409385, Final-Omitted Rulemaking Order entered Apr. 3, 2014, at 38.

27. All EGSs are required to send customers two contract expiration notices prior to expiration of a fixed duration contract or prior to a change in contract terms. 52 Pa. Code § 54.10.

28. If a customer fails to respond to either of the notices prior to contract expiration, the Commission's regulations permit an EGS to convert the contract to either a month-to-month contract or another fixed duration contract so long as certain requirements are met. 52 Pa. Code § 54.10(3).

29. The Commission's 2014 revision of its customer disclosure regulations requires EGSs to provide notice of a subsequent change in pricing at least 30 days in advance when a customer does not respond to the contract expiration notices and is moved to a month-to-month pricing. 52 Pa. Code § 54.10(2)(ii)(A)(I).

30. Section 54.10 of the Commission's regulations governs the renewal of EGS contracts, not the conduct of electric distribution companies. 52 Pa. Code § 54.10.

31. Section 54.10(3) clearly mandates that a customer who does not respond to contract expiration notices "*shall be converted*" to either a month-to-month contract or another fixed duration contract. 52 Pa. Code § 54.10(3).

32. Both the Commission's contract renewal regulations and the Competition Act prohibit unauthorized switching of electric generation suppliers. 66 Pa. C.S. § 2807(d); 52 Pa. Code §§ 54.10, 57.171-57.180; 2014 Contract Renewal Rulemaking Order at 38.

33. The Commission has specifically stated that the process of relying on a customer's inaction as affirmative consent to continue with the EGS is not slamming. *Interim Guidelines Regarding Advance Notification by an Electric Generation Supplier of*

Impending Changes Affecting Customer Service, Amendment re: Supplier Contract Renewal/Change Notices, Docket No. M-2010-2195286, Order entered Sept. 23, 2010, at 23.

34. Slamming occurs when a customer's EGS is switched without authorization. *See* 66 Pa. C.S. § 2807(d).

35. The Commission has a "zero-tolerance" policy on slamming, having stated that: "[t]oday, we set in place the 'rules of the road' by which customers' requests to switch electric generation supplier will be processed. We have observed other industries in which unauthorized customer switching, known as 'slamming,' has occurred. We wish to state now, up front and for the record: this Commission will have zero tolerance for slamming by any means and in any form." Statement of Chairman Quain, Vice Chairman Bloom, Commissioner Hanger, Commissioner Rolka and Commissioner Brownell, Docket No. L-00970121 (May 21, 1998) (emphasis added), quoted in *Standards for Changing a Customer's Electricity Generation Supplier*, 44 Pa.B. 3539 (June 14, 2014).

36. The Commission's regulations include detailed requirements for changing a customer's EGS, which are described in 52 Pa. Code Chapter 57, Subchapter M. The only time these switching rules do not apply is "when the customer's service is discontinued by the EGS and subsequently provided by the default service provider because no other EGS is willing to provide service to the customer." 52 Pa. Code § 57.178.

37. In November 2024, in PECO's DSP proceeding, the Commission rejected a settlement term that would have required shopping customers participating in PECO's Standard Offer Program ("SOP") to return automatically to default service upon expiration of the twelve-month SOP contract, concluding that it was inconsistent with its regulations and longstanding precedent and stating that "customers paying more for EGS service than the PTC does not necessarily prove that a harm is occurring, because customers could be making shopping decisions based on factors other than price, such as the specific product offered or the length of the contract." *Petition of PECO Energy Co. for Approval of Its Default Service Program for the Period From June 1, 2025*, Through May 31, 2029, Docket No. P-2024-3046008 (Opinion and Order entered Nov. 7, 2024), at 74–81.

38. In PPL's default service proceeding in 2020, the Commission rejected a proposal that would have automatically returned shopping customers to default service upon expiration of SOP contracts. *Petition of PPL Elec. Utils. Corp. for Approval of Its Default Service Plan for the Period June 1, 2021 through May 31, 2025*, Docket No. P-2020-3019356 (Opinion and Order entered Dec. 17, 2020), at 2, 44–45, 92, 98.

39. The Commission rejected a Community Choice Aggregation Petition for Declaratory Order filed by a group of municipalities that sought to have all customers move to EGS supply offered through a community choice aggregation program unless they affirmatively opted out of such a transfer. The Commission's 2025 Order in this proceeding states that: "[t]the Boroughs expressly request an acknowledgment that the Commission will authorize them 'to transfer residents and resident small businesses to CCA supply without advance consent.' Restated Petition, App'x A at 3. As such, granting the Boroughs' requested authorization would directly violate Section 2807(d)(1) of the Code and require the Commission to exceed its authority by permitting the type of slamming that the Choice Act prohibits." *See Petition of the Boroughs of Camp Hill, Carlisle, Hatboro, Lansdowne, Media, Narberth, State College and Swarthmore for a Declaratory Order Regarding the Implementation of Community Choice Aggregation*, Docket No. P-2024-304963 (Opinion and Order entered Aug. 14, 2025), at 68 (note that an appeal of the Commission's Order is currently pending before Commonwealth Court at Docket No. 1195 CD 2025).

40. Nothing in the Competition Act or the Commission's regulations authorizes the Commission to require customers to repeatedly reaffirm a competitive supply decision they have already lawfully made. RESA St. No. 1 at 14-16; 26-27.

41. The Commission's Default Service Policy Statement expressly provides that "[t]he public interest would be served by the consideration of an EGS receivables purchase program in each service territory." 52 Pa. Code § 69.1814.

42. The Commission has determined that a viable POR program is "an essential element to the creation of a competitive retail electricity market," that a properly structured POR program is necessary to carry out Chapter 28 of the Competition Act, and that POR is an "essential tool" for reducing barriers to entry by electric generation supplier. *PPL Electric Utilities Corporation Retail Markets, Docket No. M-2009-2104271,* Opinion and Order entered Aug. 11, 2009 at 27-33.

43. FE PA’s proposal to restrict POR eligibility based upon a historical pricing benchmark discourages precisely the type of innovation the Competition Act was intended to foster. RESA St. No. 1 at 33-36.

44. FE PA and the Joint Petitioners have failed to meet their burden of proof.

APPENDIX C

SAMPLE ORDERING PARAGRAPHS FOR RECOMMENDED DECISION

APPENDIX C – PROPOSED ORDERING PARAGRAPHS

IT IS ORDERED:

1. That the Joint Petition for Non-Unanimous Settlement denied.

2. That FE PA's Petition is approved only as expressly modified by this Order.

2. FE PA's proposal to remove Network Integration Transmission Service ("NITS") from the wholesale default service product and amend the Supplier Master Agreement accordingly is denied.

3. FE PA's proposed Capacity Proxy Price mechanism is denied.

4. FE PA's proposed HP Rider modification is denied. If the Commission nevertheless approves modifications to the Hourly Pricing Default Service Rider, FE PA shall modify the HP Administrative Charge to recover all costs incurred to serve Hourly Pricing Service customers, including billing, customer care, information technology systems, personnel, auction administration, scheduling, and all other administrative costs associated with providing Hourly Pricing Service. Any resulting overcollection shall be refunded to Hourly Pricing Service distribution customers.

5. FE PA's proposal to eliminate the Standard Offer Customer Referral Program is rejected. FE PA shall continue the Customer Referral Program during DSP VII unless and until the Commission approves a replacement program or other modifications in a future proceeding.

6. FE PA's proposal to automatically transfer residential EGS customers to default service upon contracts without affirmative customer authorization is denied.

7. FE PA's proposal to require EGSs to provide quarterly attestation of affirmative customer consent for all residential customers receiving service under month-to-month variable-priced contracts is denied.

8. FE PA's proposed maendments to Section 12.9 of the Supplier Coordination Tariff governing the Purchase of Receivables Program are denied.

9. The Commission declines to adopt FE PA's proposed use of the Price to Compare as a regulatory benchmark for evaluating competitive generation prices or restricting participation in Commission-approved competitive market mechanisms.

10. The Commission directs FE PA to continue procuring default service through fixed-price, full-requirements wholesale products that require wholesale suppliers to competitively price and manage wholesale market risks, including NITS and capacity risks, unless otherwise authorized by future Commission order.